

**City of Ramsey**  
**Agenda**  
**Regular Planning Commission**  
**Thursday June 2, 2011**  
**7:00 pm**  
**City Council Chambers, 7550 Sunwood Drive NW**

- 1. Call to Order**
- 2. Citizen Input**
- 3. Approve Agenda**
- 4. Approve Minutes**
  1. Approve the following Planning Commission meeting minutes:  
  
Planning Commission meeting minutes dated May 5, 2011  
Planning Commission meeting minutes dated May 19, 2011
- 5. Note City Council Minutes**
- 6. Public Hearing/Commission Business**
  1. Public Hearing - Consider Amendment to Chapter 117 of City Code Relating to Required Depth of Topsoil; Case of City of Ramsey
  2. Consider Amendment to Master Park and Trail Map
  3. Staff Update
  4. Zoning Bulletins
- 7. Commission/Staff Input**
- 8. Adjournment**

**Regular Planning Commission**

**4. 1.**

**Meeting Date:** 06/02/2011

**By:** JoAnn Shaw, Community Development

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**Title:**

Approve the following Planning Commission meeting minutes:

Planning Commission meeting minutes dated May 5, 2011

Planning Commission meeting minutes dated May 19, 2011

**Background:**

n/a

**Notification:**

**Observations:**

**Funding Source:**

**Staff Recommendation:**

**Committee Action:**

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**Attachments**

05.05.11

05.19.11

**Form Review**

**Inbox**  
Tim Gladhill  
Aaron Backman

**Reviewed By**  
Tim Gladhill  
Aaron Backman

**Date**  
05/25/2011 10:00 AM  
05/25/2011 04:10 PM  
Started On: 05/25/2011 09:54 AM

Form Started By: JoAnn Shaw

Final Approval Date: 05/25/2011

**PLANNING COMMISSION  
CITY OF RAMSEY  
ANOKA COUNTY  
STATE OF MINNESOTA**

The Ramsey Planning Commission conducted a regular meeting on Thursday, May 5, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Vice Chairperson Gary Van Scoy  
Commissioner Randy Bauer  
Commissioner Ralph Brauer  
Commissioner Andrew Dunaway  
Commissioner Joseph Field  
Commissioner Robert Schiller

Members Absent: Chairperson Gary Levine

Also Present: Senior Planner Tim Gladhill  
Economic Development/Marketing Manager Aaron Backman

**CALL TO ORDER**

Vice Chairperson Van Scoy called the regular meeting to order at 7:01 p.m.

**CITIZEN INPUT**

There was none.

**APPROVAL OF AGENDA**

Motion by Commissioner Dunaway, seconded by Commissioner Schiller, to approve the agenda as presented.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Schiller, Bauer, Brauer, and Field. Voting No: None. Absent: Chairperson Levine.

**APPROVE PLANNING COMMISSION MINUTES**

Motion by Commissioner Bauer, seconded by Commissioner Field to approve the following minutes as presented:

- 1) Planning Commission regular meeting minutes dated April 7, 2011.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Bauer, Field, Brauer, Dunaway, and Schiller. Voting No: None. Absent: Chairperson Levine.

## **NOTE CITY COUNCIL MINUTES**

The following Council minutes were noted:

- 1) City Council regular meeting minutes dated February 22, 2011
- 2) City Council regular meeting minutes dated March 8, 2011
- 3) City Council regular meeting minutes dated March 22, 2011

## **PUBLIC HEARINGS/COMMISSION BUSINESS**

**Case #1: Public Hearing – Request for a Conditional Use Permit to Exceed Sign Size Restrictions at 7333 Sunwood Dr. NW; Case of Leroy Signs, Inc.**

### **Public Hearing**

Vice Chairperson Van Scoy called the public hearing to order at 7:02 p.m.

### **Presentation**

Senior Planner Gladhill presented the Staff Report.

### **Citizen Input**

Senior Planner Gladhill stated this seems consistent with the approval already given to NAU and Staff is recommending approval.

Scott Laage with Leroy Signs stated the illuminated back letters didn't fit their need, because they are using LED and it absorbs into the background and does not reflect the light. The face lit letters NAU is requesting to use are the same type of lettering as on the Medical Examiners building.

Commissioner Bauer asked if the applicant's request is consistent with the changes that the City is looking at making to the sign ordinance.

Senior Planner Gladhill stated absolutely, we are going to look at what we have approved and look at what can be approved administratively and at the design guidelines. There are some ways for flexibility. The applicant is asking for 24 inches in height and 18 inches is what may be suggested to be the baseline height for administrative approval.

Vice Chairperson Van Scoy stated that one of the discussions in the past was that a lot of the signs in The COR would be at street level, and most of what the Commission is asked to approve are second story, and he asked if this would be addressed with the new ordinance.

Senior Planner Gladhill confirmed that it would and added that what makes this request different is that it is a single tenant building.

Motion by Commissioner Dunaway, seconded by Commissioner Field, to close the public hearing.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Field, Bauer, Brauer, and Schiller. Voting No: None. Absent: Chairperson Levine.

The public hearing closed at 7:13 p.m.

### **Commission Business**

Motion by Commissioner Dunaway, seconded by Commissioner Bauer to recommend City Council approve the resolution adopting findings of fact favorable relating to Leroy Signs, Inc. request for a conditional use permit to exceed sign size restrictions established in City Code.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Bauer, Brauer, Field, and Schiller. Voting No: None. Absent: Chairperson Levine.

Motion by Commissioner Dunaway, seconded by Commissioner Field to recommend City Council approve the issuance of a conditional use permit based on findings of fact relating to Leroy Signs, Inc. and adopt the resolution declaring the terms.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissions Dunaway, Field, Bauer, Brauer, and Schiller. Voting No: None. Absent: Chairperson Levine.

**Case #2: Public Hearing – Request for a Home Occupation Permit to Operate an Auto Body Repair Business on the Property Located at 17441 Baugh St. NW; Case of Lawrence and Paula Ferber**

### **Public Hearing**

Vice Chairperson Van Scoy called the public hearing to order at 7:14 p.m.

### **Presentation**

Senior Planner Gladhill presented the Staff Report.

### **Citizen Input**

Two letters in support of the applicant were submitted after the agenda was created.

Lawrence Ferber, 17441 Baugh St. NW, the applicant stated he has been operating the business for 39 years. It is a clean operation, a nice looking property and he does not have junk.

Vice Chairperson Van Scoy stated he would like to have a time limit on the permit and asked the applicant what was his timeframe for retirement, as was noted in the staff report.

Mr. Ferber replied two or three years.

Senior Planner Gladhill asked the applicant if he was comfortable with a sunset clause that would have the home occupation expire in three years. He also clarified that in the event this operation is discontinued for more than a year it expires, that the business cannot be sold to someone else that any future owner would have to go through the same process of approval, and that Mr. Ferber could not move the approval of the home occupation permit to another parcel.

Mr. Ferber replied he would like the permit to remain open and not expire.

Senior Planner Gladhill stated he would leave it to the commission if they want to entertain an expiration date or if they feel we have enough control within our city code to make sure this doesn't become a public nuisance. He continued that with the size of this parcel and the adequate separation that it should not impact the neighboring structures.

Vice Chairperson Van Scoy asked if there was a written report from the fire department. Senior Planner Gladhill stated there was not a written report, but the department has reviewed the substance of this case and is comfortable with the findings of fact and the terms in the permit.

Commissioner Dunaway asked how much automotive paint was stored on site.

Mr. Ferber stated a total of probably 5 - 10 gallons of thinner and reducers and only enough paint for what is needed for the current repair and then he properly recycles it.

Commissioner Bauer asked if the 39 years he has been in business has been at this location.

Mr. Ferber replied 19 years at this location and 20 years next door to this location. He is the sole employee, business has operated the same and is strictly by referral and no advertising is done.

Motion by Commissioner Dunaway, seconded by Commissioner Field, to close the public hearing.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Field, Bauer, Brauer, and Schiller. Voting No: None. Absent: Chairperson Levine.

The public hearing closed at 7:27 p.m.

### **Commission Business**

Motion by Commissioner Bauer, seconded by Commissioner Dunaway to recommend that City Council adopt the resolution adopting Findings of Fact favorable relating to the applicant's request for a home occupation permit.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Bauer, Dunaway, Brauer, Field, and Schiller. Voting No: None. Absent: Chairperson Levine.

Motion by Commissioner Bauer, seconded by Commissioner Dunaway to recommend that City Council approve the applicant's request for a home occupation permit.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Bauer, Dunaway, Brauer, Field, and Schiller. Voting No: None. Absent: Chairperson Levine.

**Case #3: Consider Ordinance to Amend Section 117-90 "Map" of Chapter 117 of the Ramsey City Code Related to the 2030 Comprehensive Plan.**

### **Public Hearing**

Vice Chairperson Van Scoy called the public hearing to order at 7:30 p.m.

### **Presentation**

Senior Planner Gladhill presented the Staff Report.

### **Citizen Input**

Eileen Rick, 15059 Limonite St. inquired as to why she received a letter.

Senior Planner Gladhill stated everyone within the boundary received a letter because the zoning district was being changed back to what it was previously.

Ms. Rick asked if it was going back to one acre lots.

Senior Planner Gladhill explained that there is a two and one half-acre lot minimum for any redevelopment. Those lots that are one acre lots will remain, however any future development would have a minimum lot size of two and one-half acres. He continued to explain the reason the one-acre lots are included in this district.

Carol Sibbel, 7311 Alpine Drive, asked if this does pass when it would be reviewed again.

Senior Planner Gladhill stated every ten years the city is required to update its Comprehensive Plan. There are opportunities for comp plan amendments; however, in this fashion it is done once every ten years. If you have five acres you would be able to divide into two lots, there might be some public infrastructure requirements.

Motion by Vice Chairperson Van Scoy, seconded by Commissioner Dunaway, to close the public hearing.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Bauer, Brauer, Field, and Schiller. Voting No: None. Absent: Chairperson Levine.

The public hearing closed at 7:43 p.m.

## **Commission Business**

Commissioner Bauer asked if there is no action taken, does it remain 10 acre lot requirement.

Senior Planner Gladhill stated it would remain Central Rural Reserve, which would be in conflict with the current Comprehensive Plan. The City would need to request an amendment to the Comprehensive Plan with the Metropolitan Council.

Discussion ensued regarding the number of one acre lots already in existence in the zoning district.

Commissioner Brauer stated that the reason for the 2.5 acre lot minimum was to prevent the owners of the larger parcels from having one acre lot developments right next to them.

Vice Chairperson Van Scoy stated another criteria in combining the different lot sizes besides the size of the lot, is to keep this area outside of the MUSA.

Commissioner Field clarified that the only properties affected by this change are those five acres or larger in size that have a potential for subdivision.

Motion by Commissioner Dunaway, seconded by Commissioner Field to recommend the City Council approve the Ordinance to amend the Official Zoning Map as presented.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Field, Bauer, Brauer, and Schiller. Voting No: None. Absent: Chairperson Levine.

### **Case #4: Request for Interim Use Permit for a Go Cart Track at 14550 Armstrong Boulevard; Case of Karl Janzen**

## **Public Hearing**

Vice Chairperson Van Scoy called the public hearing to order at 7:51 p.m.

## **Presentation**

Senior Planner Gladhill presented the Staff Report.

## **Citizen Input**

Karl Janzen, 9131 178<sup>th</sup> Avenue NW, and Tim Marchiafava 19119 Waco Street, Elk River the applicants stated they started looking into a Go-Cart track about 18 months at a different site that didn't work out with the owner. They asked the City if they would be interested in a joint venture. They stated it is a win/win situation for both the city and them. There shouldn't be a dust issue. The motors are 5 hp Briggs and Stratton, 4-cycle with mufflers mandated. The applicants presented two letters one from Coborns, and one from Acapulco Restaurant in support of the Go Cart Track.

Vice Chairperson Van Scoy stated he would like the noise addressed, as that has been the number one concern of other motor type activity in the City.

Senior Planner Gladhill read the letters in support presented from Coborns and Acapulco Restaurant at the request of Vice Chairperson Van Scoy.

Vice Chairperson Van Scoy questioned if all business in the area received notification.

Senior Planner Gladhill stated notice went out to the property owners within 350 of this property, which might not have been received by each of the tenants.

Jeff Wise, 7901 165<sup>th</sup> Avenue, stated he was in support of the Go Cart Track as it is good for his business and all the businesses in the area. The pine fence going up will keep it clean.

Commissioner Bauer asked if the applicants had long range plans as to how to proceed when the Highway #10 and Armstrong interchange develops.

Mr. Marchiafava stated they want to show that they are a viable business and good for the City and when the interchange develops the City will want to retain the business and work with them to find a new location.

Commissioner Bauer asked what would happen to the site if the track didn't stay in business.

Mr. Janzen stated the provisions in the contract state they have to turn it into a flat piece of land, which would be to remove fencing and light poles and re-grading.

Commissioner Field asked what other locations they have operated their racetrack and if the participants provide their own go-cart.

Mr. Janzen stated the Sherburne County Fairgrounds, Wisconsin, Cokato, MN and the participants provide their own go-cart.

Commissioner Field asked what the schedule was.

Mr. Marchiafava stated Friday nights as a general guideline. The gates will open at 5:00 p.m., race at 7:00 p.m. and close at 10:00 p.m. There are a few opportunities that they might race on a different night.

Commissioner Dunaway noted that each machine puts out 75 decibels of noise and asked how many teams are running at any particular time.

Mr. Janzen stated there will be three to 12 carts on the track at a time. He continued that there would be more noise from Armstrong Blvd. and Highway #10 then there would be from the go-carts.

Senior Planner Gladhill stated that noise is measured at the property line and has to sustain the level for a fair amount of time.

Commissioner Brauer asked if Senior Planner Gladhill was comfortable that the noise ordinance would manage any noise problems with this track.

Senior Planner Gladhill stated the applicants have to work within the noise ordinance and the data they have provided states they will be in compliance.

Vice Chairperson Van Scoy asked clarification of the schedule and if the applicants were planning on having a sound system.

Mr. Janzen stated the schedule would be once a week at the most and they haven't planned on a sound system.

Vice Chairperson Van Scoy asked if the racers are primarily children or exclusively children.

Mr. Janzen stated they are primarily children. The ages range from six to 60. Parents will bring their children and race with them. Seventy-five percent are under the age of 16.

Commissioner Field asked if the insurance is provided by the applicants, or if the teams have their own insurance. Mr. Janzen replied they cover insurance for the property, racers, and spectators.

Commissioner Brauer stated in the agreement it states that it would be twice a week and the applicants had stated once a week.

Mr. Marchiafava stated there is the option for twice a week, maybe a Wednesday and a Friday. It is not a regular occurrence; however it is nice to have the option.

Commissioner Dunaway asked how many races are run on a night and how the dust will be controlled.

Mr. Janzen stated there are seven or eight classes and each runs three times. There is a water truck that will water the track before, during and after each race.

Commissioner Field asked if there are additional parking spaces.

Senior Planner Gladhill stated we have verbal or written approval from two different property owners. There will be items to work through following Council review and approval and one of those items is to determine whether an easement needs to be given so there is a recordable document so it will survive sales of the different parcels.

Commissioner Dunaway asked how many spectators can be accommodated.

Mr. Marchiafava stated there is a bleacher that will hold 45 and plenty of ground space for blankets or lawn chairs. If attendance grows past that they would put up another set of bleachers.

Tim Kelsey, 7900 151<sup>st</sup> Lane, stated his concern regarding the traffic on Armstrong Blvd. with these events and oil getting onto the dirt.

Senior Planner Gladhill stated Armstrong is getting some upgrades this summer; signalization is going in at Bunker Lake Blvd. intersection. There is a need for upgrades and an interchange and the City saw that through the Comprehensive Plan process. He added that the applicant will be responsible for any environmental cleanup.

Mr. Wise stated two years ago when Oasis was still in operation they had more than 50 vehicles in a two hour timeframe pull into their business. The racers will be entering the site off of 146<sup>th</sup> Avenue and that was done to prevent traffic back up.

Motion by Commissioner Bauer, seconded by Commissioner Field, to close the public hearing.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Bauer, Field, Dunaway, Brauer, and Schiller. Voting No: None. Absent: Chairperson Levine.

The public hearing closed at 8:43 p.m.

### **Commission Business**

Commissioner Dunaway stated he does have some concern regarding the traffic with Legacy Christian Academy coming and school activities being on Friday nights.

Mr. Janzen stated the race dates are after school ends and before it starts in the fall again.

Motion by Commissioner Dunaway, seconded by Commissioner Field to recommend that City Council adopt the resolution adopting findings of fact favorable to the applicant relating to the request for an Interim Use Permit to allow for commercial outdoor recreation for the operation of a Go-Cart Track.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Field, Bauer, Brauer, and Schiller. Voting No: None. Absent: Chairperson Levine.

Motion by Commissioner Brauer, seconded by Vice Chairperson Van Scoy to recommend that City Council approve the Interim Use Permit based on findings of fact; contingent upon compliance with the City Staff Review Letter dated April 28, 2011 and combining condition #2 and #22.

### **Further Discussion**

Commissioners discussed the IUP terms and a friendly amendment was made and accepted.

Motion by Commissioner Brauer, seconded by Vice Chairperson Van Scoy to recommend that City Council approve the Interim Use Permit based on findings of fact; contingent upon compliance with the City Staff Review Letter dated April 28, 2011 with the following changes to conditions: #2 “These IUP uses are for a five year term commencing on the date of approval of this permit or including termination of the IUP in the event the Subject Property is needed for another public purpose including, but not limited to, the construction of Armstrong Boulevard. This IUP is defined in Section 117-52 of City Code. City Staff will monitor the events for any problems related to traffic, crowd control, noise, and other issues related to public safety”. #3 “The PERMITTEE may operate no more than twice per week and no race shall commence after 10:00 p.m.” #22 “That the IUP shall abide by all lease terms between the PERMITTEE and the City”.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Bauer, Brauer, Dunaway, Field, and Schiller. Voting No: None. Absent: Chairperson Levine.

**Case #5: Ordinance to Amend City Code Section 117-349 (Accessory Uses and Buildings)**

**Public Hearing**

Vice Chairperson Van Scoy called the public hearing to order at 9:00 p.m.

**Presentation**

Senior Planner Gladhill presented the Staff Report.

**Citizen Input**

Discussion ensued regarding two-story accessory structures and when a conditional use permit should remain a requirement to allow for them.

Mr. St Hilaire, 7335 Alpine Drive, stated he has a land locked parcel and would like some resolution to this situation.

Senior Planner Gladhill stated these are two separate issues, he was familiar with the situation; however what is being reviewed and discussed today has nothing to do with land locked parcels. He continued that the City has offered various solutions to both parties and their attorneys and this is not something that is going to be resolved tonight.

Norman Archer, 15410 Jackel Street, stated he built a two-story structure eleven years ago and a storm came through and now it needs to be replaced. The ordinance in place now does not allow for him to rebuild the structure at the current height. He stated that he has been waiting for this ordinance to be brought forward so he could rebuild.

Senior Planner Gladhill described the process of the ordinance to this point.

Vice Chairperson Van Scoy thanked Mr. Archer for working with Staff and following the guidelines of city code, as not everyone does. He asked Mr. Archer if the changes that are being reviewed were favorable to him. Mr. Archer said they were.

Motion by Commissioner Dunaway, seconded by Commissioner Brauer, to close the public hearing.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Brauer, Bauer, Field, and Schiller. Voting No: None. Absent: Chairperson Levine.

The public hearing closed at 9:41 p.m.

### **Commission Business**

Commissioner Schiller suggested that attached garages be excluded from the total number of accessory structures allowed.

Commissioners continued discussing the two story accessory structure requirements.

Motion by Commissioner Dunaway, seconded by Commissioner Field to recommend that the City Council adopt the ordinance to amend City Code Section 117-349 (Accessory uses and buildings) with the following amendments to the draft ordinance: clarifying two story in different areas, checking that the intent of the language is captured in the footnotes, and excluding attach garages rather than primary garages.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Field, Bauer, Brauer, and Schiller. Voting No: None. Absent: Chairperson Levine.

Planning Commission recessed at 9:57 p.m. and returned at 10:02 p.m.

### **Case #6: Recommend Planning Services Consultants for Interview with the City Council**

#### **Presentation**

Senior Planner Gladhill presented the Staff Report.

Commissioner Brauer questioned that Farr & Associates were one of the applicants, however, not one of the five.

Senior Planner Gladhill stated their location and travel expense were considered in the decision. There will be occasions the consultant will need to attend meetings and the cost was factored into their response.

Commissioner Brauer asked if the Commission could pass on to council that it give staff the flexibility to call on Farr's expertise if and when needed, especially if the City goes to form based codes.

Senior Planner Gladhill stated if that is the direction or recommendation of the Planning Commission Staff will pass that along, however, we have to look at budget constraints and make sure we can handle both.

Economic Development/Marketing Manager Backman stated that as they looked at these companies they looked at the principals and who they are assigning to do the work.

Discussion ensued regarding the proposals for planning services.

The Planning Commission recommends that Staff and Council make the decision regarding the firms with the flexibility to call on Farr & Associates as a potential resource for special projects.

**Case #7: Update on Legislation Related to Variance Authority**

The Update on Legislation Related to Variance Authority was noted.

**Case #8: Review Upcoming Comprehensive Plan Amendments**

The Review on Upcoming Comprehensive Plan Amendments was noted.

**Case #9: Staff Update**

The Staff Update was noted.

**Case #10: Zoning Bulletin**

The Zoning Bulletin was noted.

**Case #11: Upcoming Training Opportunities**

Upcoming Training Opportunities was noted.

**Case #12: APA MN Newsletter**

The APA MN Newsletter was noted.

**OTHER COMMISSION BUSINESS**

**ADJOURNMENT**

Motion by Vice Chairperson Van Scoy, seconded by Commissioner Dunaway, to adjourn the meeting.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Bauer, Brauer, Field, and Schiller. Voting No: None. Absent: Chairperson Levine.

The regular meeting of the Planning Commission adjourned at 10:26 p.m.

Respectfully submitted,

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Tim Gladhill  
Senior Planner

ATTEST:

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JoAnn Shaw  
Planning Division Secretary

**PLANNING COMMISSION  
CITY OF RAMSEY  
ANOKA COUNTY  
STATE OF MINNESOTA**

The Ramsey Planning Commission conducted a special meeting on Thursday, May 19, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Vice Chairperson Gary Van Scoy  
Commissioner Andrew Dunaway  
Commissioner Joseph Field  
Commissioner Robert Schiller

Members Absent: Chairperson Gary Levine  
Commissioner Randy Bauer  
Commissioner Ralph Brauer

Also Present: Senior Planner Tim Gladhill  
Economic Development/Marketing Manager Aaron Backman  
Associate Planner/Environmental Coordinator Chris Anderson

**CALL TO ORDER**

Vice Chairperson Van Scoy called the regular meeting to order at 6:00 p.m.

**CITIZEN INPUT**

There was none.

**APPROVAL OF AGENDA**

Motion by Commissioner Dunaway, seconded by Commissioner Field, to approve the agenda as presented.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Schiller, and Field. Voting No: None. Absent: Chairperson Levine, Commissioners Bauer and Brauer.

**APPROVE PLANNING COMMISSION MINUTES**

There were none.

**NOTE CITY COUNCIL MINUTES**

1) There were none.

## **PUBLIC HEARINGS/COMMISSION BUSINESS**

**Case #1: Public Hearing – Request for a Conditional Use Permit to Exceed Sign Size Restrictions at 7231 Sunwood Dr. NW; Case of Allina Medical Clinic.**

### **Public Hearing**

Vice Chairperson Van Scoy called the public hearing to order at 6:01 p.m.

### **Presentation**

Associate Planner/Environmental Coordinator Anderson presented the Staff Report.

### **Citizen Input**

There was none.

Motion by Commissioner Dunaway, seconded by Vice Chair Van Scoy, to close the public hearing.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Field, and Schiller. Voting No: None. Absent: Chairperson Levine, Commissioners Bauer and Brauer.

The public hearing closed at 6:06 p.m.

### **Commission Business**

Vice Chairperson VanScoy asked if the Applicant was willing to reduce the size of the logo on the monument sign.

Kristian Thonvold of Allina Hospitals and Clinics stated Allina would be open to the request, but would need additional information.

Vice Chairperson VanScoy inquired if the wall to serve as the monument sign has already been constructed.

Mr. Thonvold confirmed in the affirmative.

Associate Planner/Environmental Coordinator Anderson reviewed the proposed locations of the signs.

Commissioner Schiller stated he was in favor of the request as presented by the Applicant.

Commissioner Field reviewed the intent of the monument sign to attract attention to the entrance of the parking lot.

Mr. Thonvold confirmed and reviewed the location of the signs and stated that the proposed signs have the highest visibility facing west.

Brian Elsesser of Designer Sign Systems stated a larger logo is desired for visibility purposes.

Discussion ensued regarding current sign regulations and how square footage is calculated.

Senior Planner Gladhill reviewed the upcoming potential amendments to the City's sign code and the City's desire for more flexibility. Senior Planner Gladhill stated this request appears to generally be in line with those discussions, especially in terms of construction specifications of the proposed lettering.

Discussion ensued regarding proposed sign size as well as current procedures and regulations related to sign review.

Economic Development/Marketing Manager Backman clarified that no sign is being proposed along Ramsey Boulevard.

Vice Chairperson Van Scoy stated he desired the logo height on the monument sign to be lowered.

Commissioner Schiller stated he believed that the logo would not stand out enough if the height was lowered.

Discussion ensued regarding locations of signs and visibility from Ramsey Boulevard.

Senior Planner Gladhill reviewed the original conceptual drawings that were part of the site plan review which showed lettering on the glass façade facing Ramsey Boulevard. Senior Planner Gladhill stated it was his understanding that lettering on the glass façade did not provide enough contrast to give adequate visibility of the letters, so the Applicant amended the sign plan as shown today.

Mr. Thonvold stated that they would be willing to reduce the logo height to 30 inches.

Motion by Commissioner Dunaway, seconded by Commissioner Field, to recommend City Council approve the resolution adopting findings of fact favorable relating to Allina Medical Clinic's request for a conditional use permit to exceed sign size restrictions established in City Code, and reducing the logo height on the monument sign to 30 inches..

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Field, and Schiller. Voting No: None. Absent: Chairperson Levine, Commissioners Bauer and Brauer.

Motion by Commissioner Dunaway, seconded by Commissioner Field, to recommend City Council approve the issuance of a conditional use permit based on findings of fact relating to Allina Medical Clinic's request and adopt the resolution declaring the terms and reducing the height of the monument sign logo to 30 inches.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissions Dunaway, Field, and Schiller. Voting No: None. Absent: Chairperson Levine, Commissioners Brauer and Bauer.

**OTHER COMMISSION BUSINESS**

None.

**ADJOURNMENT**

Motion by Vice Chairperson Van Scoy, seconded by Commissioner Dunaway, to adjourn the meeting.

Motion Carried. Voting Yes: Vice Chairperson Van Scoy, Commissioners Dunaway, Field, and Schiller. Voting No: None. Absent: Chairperson Levine, Commissioners Bauer and Brauer.

The regular meeting of the Planning Commission adjourned at 6:40 p.m.

Respectfully submitted,

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Tim Gladhill  
Senior Planner

ATTEST:

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JoAnn Shaw  
Planning Division Secretary

**Regular Planning Commission**

**6. 1.**

**Meeting Date:** 06/02/2011

**By:** Chris Anderson, Community Development

**Title:**

Public Hearing - Consider Amendment to Chapter 117 of City Code Relating to Required Depth of Topsoil; Case of City of Ramsey

**Background:**

In January of 2010, City Council adopted Ordinance #10-01 amending the definition of topsoil to ensure material was available that could meet the City's specification. The City Council directed Staff to bring forth an ordinance that would increase the required depth of topsoil from four (4) inches to six (6) inches, due to the more lenient definition of topsoil, which was adopted in April of 2010 (Ordinance #10-04).

**Notification:**

In accordance with Minnesota Statute §15.99, the City properly advertised the Public Hearing in the Anoka Union, the official City newspaper.

**Observations:**

One of City Council's strategic goals for 2011 is to review the costs of developing within the City. One topic that several builders called attention to is topsoil. While builders typically understand the purpose of the requirement, they have stated that Ramsey's topsoil requirement is more stringent than surrounding communities and it is difficult to justify the additional cost when they can offer their same housing product in other communities at a lesser cost. Reducing the required depth of topsoil back to four (4) inches, as it was when the topsoil requirement was established in 2009, could result in an estimated \$1,500 savings per lot for builders while still providing improved moisture retention capabilities. This information was presented to the Public Works Committee in April and their recommendation, which was subsequently ratified by City Council, was to amend the required depth of topsoil to four (4) inches and leave all other aspects, such as trigger mechanisms and the specification itself, as is.

**Funding Source:**

Amendments to Chapter 117 are processed as part of regular Staff duties.

**Staff Recommendation:**

Staff recommends forwarding the proposed ordinance to City Council for adoption.

**Committee Action:**

Motion to recommend that the City Council adopt Ordinance #11-\_\_ amending the required depth of topsoil from six (6) to four (4) inches.

**Attachments**

Public Works Committee Meeting Minutes Dated April 19, 2011

Proposed Ordinance Showing Revisions

**Form Review**

**Inbox**  
Tim Gladhill  
Aaron Backman

**Reviewed By**  
Tim Gladhill  
Aaron Backman

**Date**  
05/25/2011 10:21 AM  
05/25/2011 08:13 PM  
Started On: 05/24/2011 10:23 AM

Form Started By: Chris Anderson

Final Approval Date: 05/25/2011



Councilmember Elvig stated as a resident that shares this easement, he was shocked to see the size of the project and the lack of uniformity. He understood from the City Attorney that he was the sole owner of the top of the land. He explained he wanted to put a dock on the top of the rock, and that cannot happen now. This has severed access along any easement he owns.

Chairperson McGlone clarified the City intends to change the structure as it is now.

City Engineer Himmer replied the City does intend to make changes that include this Committee's and the Council's direction. This will be a separate case on the Council agenda, and the City Attorney will be present to aid in the discussion. He added the contractor performed the work they were asked to do, and any changes would be paid by the City.

**Case #5: Consider Amendments to the City's Topsoil Ordinance**

Motion by Councilmember Elvig, seconded by Chairperson McGlone, to recommend that the Public Works Committee table this item to call the City Council Work Session to order.

Motion carried. Voting Yes: Chairperson McGlone and Councilmembers Elvig and Tossey.  
Voting No: None.

The Public Works Committee meeting recessed at 7:06 p.m. and reconvened at 7:16 p.m.

City Engineer Himmer reviewed the staff report. He added that Staff did attempt to determine the potential cost savings on a typical family home between the current standard and without, however the numbers were inconclusive.

Motion by Chairperson McGlone, seconded by Councilmember Elvig, to recommend that the City Council amend the topsoil ordinance in City Code to reduce the thickness requirement from 6 inches to 4 inches.

Discussion: Councilmember Tossey expressed concern in how readily available the topsoil compound is and how expensive it is. City Engineer Himmer explained it is a MNDOT specification now. The City gives reminders of its ordinance to all the contractors. It is more expensive. The builders have mentioned it is \$1,500 more per lot. It is readily available. Chairperson McGlone noted every state highway project uses this topsoil compound. He also noted that the soil Ramsey has is unable to hold water so this kind of compound is necessary. Public Works Director Olson stated this is a good compromise to help hold the water, and for the builders that have already graded their lots. This is a good step in finding another management tool to decrease water consumption and decrease the demand on the system.

Motion carried. Voting Yes: Chairperson McGlone and Councilmembers Elvig and Tossey.  
Voting No: None.

**COMMITTEE INPUT**

**ORDINANCE #11-XX**  
**CITY OF RAMSEY**  
**ANOKA COUNTY**  
**STATE OF MINNESOTA**

**AN AMEMDMENT TO CHAPTER 117 OF THE RAMSEY CITY CODE, WHICH CHAPTER IS KNOWN AS THE ZONING AND SUBDIVISIONS CHAPTER OF THE RAMSEY, MINNESOTA, CITY CODE.**

**AN ORDINANCE AMENDING SECTIONS 117-114 (B-1 GENERAL BUSINESS DISTRICT), 117-115 (B-2 HIGHWAY BUSINESS DISTRICT), 117-116 (E-2 EMPLOYMENT DISTRICT), 117-117 (E-1 EMPLOYMENT DISTRICT), 117-120 (H-1 HIGHWAY 10 BUSINESS DISTRICT), 117-121 (B-3 BUSINESS DISTRICT), 117-348 (NEWLY ERECTED BUILDINGS; LOT GRADE ELEVATIONS), 117-614 (SUBDIVISION DESIGN STANDARDS), AND 117-615 (CONSTRUCTION OF IMPROVEMENTS).**

The City of Ramsey ordains:

**SECTION 1. AUTHORITY**

This ordinance is adopted pursuant to and under the authority of the City Charter of the City of Ramsey.

**SECTION 2. AMENDMENTS**

Section 117-114 (e) (14) b. is hereby amended to read as follows:

- b. Topsoil. All exposed ground areas of a site not occupied by building, parking or storage, excluding natural areas that are left undisturbed, shall be covered with ~~six (6) inches~~[four \(4\) inches](#) of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348.

Section 117-115 (e) (16) b. is hereby amended to read as follows:

- b. Topsoil. All exposed ground areas of a site not occupied by building, parking or storage, excluding natural areas that are left undisturbed, shall be covered with ~~six (6) inches~~[four \(4\) inches](#) of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348.

Section 117-116 (e) (3) b. is hereby amended to read as follows:

- b. Topsoil. All exposed ground areas of a site not occupied by building, parking or storage, excluding natural areas that are left undisturbed, shall be covered with ~~six (6) inches~~[four \(4\) inches](#)

(4) inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348.

Section 117-117 (e) (3) b. is hereby amended to read as follows:

- b. Topsoil. All exposed ground areas of a site not occupied by building, parking or storage, excluding natural areas that are left undisturbed, shall be covered with ~~six (6) inches~~four (4) inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348.

Section 117-120 (e) (14) b. is hereby amended to read as follows:

- b. Topsoil. All exposed ground areas of a site not occupied by building, parking or storage, excluding natural areas that are left undisturbed, shall be covered with ~~six (6) inches~~four (4) inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348.

Section 117-121 (g) (2) f. is hereby amended to read as follows:

- f. *Landscaping.* The master plan shall include a landscape plan for the entire development site. Landscaping shall be integrated throughout the site and shall include a combination of overstory trees, ornamental trees, shrubs, flowers (planting beds and raised planters), ground cover, and other landscaping elements. The required number of plantings will be site specific and will be determined largely by the total pervious area of a site. Landscaping should be used to soften and shade parking areas, line sidewalks and streets, accent building entrances, and break up large building facades. Plant selection should focus on functionality and take into account characteristics such as tolerance of soil compaction, poor drainage, and deicing salts. All landscaping shall be over at least ~~six (6) inches~~four (4) inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348, and all landscaped areas shall include underground irrigation systems.

Section 117-348 (h) (1) & (2) are hereby amended to read as follows:

- (1) Mass grading activities of the overall development of a site may utilize on-site stripped topsoil at a minimum thickness of ~~six (6) inches~~four (4) inches.
- (2) Areas reserved for open space or dedicated parkland, except for natural areas that are left undisturbed, shall include a minimum of ~~six (6) inches~~four (4) inches of topsoil, as defined in Section 117-1, or an approved alternative as referenced in section 117-348 (i) (1) b., over the entire area and reestablish the same with sod (or seed and/or native grasses and wildflowers, if approved by the city council). Noxious weeds do not constitute acceptable ground cover in any district.

Section 117-348 (i) (1) is hereby amended to read as follows:

(i) Lawn requirements/ground cover. All exposed ground areas, including boulevards and areas not devoted to off-street parking, driveways, sidewalks and/or trails, patios or other such improvements shall be landscaped with grass, shrubs, trees and/or other ornamental landscape materials within six (6) months of the date of issuance of the certificate of occupancy. Also refer to individual zoning districts for specific planting requirements.

(1) Topsoil. In all zoning districts, a minimum of ~~six (6) inches~~ four (4) inches of topsoil, as defined in Section 117-1, shall be applied across all exposed ground areas to the edge of improved streets, sidewalks, driveways and other impervious surfaces, excluding natural areas that are left undisturbed, whenever a building permit is issued for the construction of a principal building.

a. The depth of topsoil at the time of inspection shall be no less than ~~six (6) inches~~ four (4) inches.

b. Alternatives to the import of topsoil, such as compost or other soil amendments known to improve soil water holding capacity may be permitted, but only with the prior approval of the city engineer.

Section 117-614 (j) (10) a. is hereby amended to read as follows:

a. Provide finish grading and turf establishment for all park, playground, trail and public open spaces and provide landscape screening in accordance with City Policy. Except for natural areas that are left undisturbed and areas improved with buildings or paving, all areas reserved for dedicated parkland shall include at least ~~six (6) inches~~ four (4) inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348.

Section 117-615 (c) (8) is hereby amended to read as follows:

(8) *Lot grading*. All lots shall be graded in accordance with the final grading plan. In addition, erosion control measures shall be followed to eliminate erosion. Upon completion of the grading, at least ~~six (6) inches~~ four (4) inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348, shall be applied to all exposed ground areas. And said areas shall be landscaped in accordance with the final landscape plan.

Section 117-615 (c) (14) is hereby amended to read as follows:

(14) *Boulevard sodding*. This item shall be completed just prior to occupancy of the building. This item may be completed sooner provided the subdivider maintains the sod until the dwelling or structure is occupied. Boulevard sod shall be installed over at least ~~six (6) inches~~ four (4) inches of topsoil, as defined in section 117-1, or an approved alternative as referenced in section 117-348.

**SECTION 3. SUMMARY**

The following is the official summary of Ordinance #11-XX which has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance.

It is the intent and effect of Ordinance #11-XX to amend Ramsey, Minnesota City Code Sections 117-114 (B-1 General Business District), 117-115 (B-2 Highway Business District), 117-116 (E-2 Employment District), 117-117 (E-1 Employment District), 117-120 (H-1 Highway 10 Business District), 117-121 (B-3 Business District), 117-348 (Newly erected buildings; lot grade elevations), 117-614 (Subdivision design standards), and 117-615 (Construction of improvements) to:

- Reduce the required depth of topsoil from six (6) inches to four (4) inches on a lot whenever a building permit is issued for the construction of a principal structure, excluding those areas that will be improved with buildings, structures, parking and storage as well as natural areas that are left undisturbed.

**SECTION 4. EFFECTIVE DATE**

The effective date of this Ordinance is thirty (30) days after its passage and publication, subject to City Charter Section 5.07.

Adopted by the Ramsey City Council the XXX day of XXXXXX, 2011.

---

Mayor

**ATTEST:**

---

City Clerk

**Introduction Date:**

**Posting Dates:**

**Adoption Date:**

**Publication Date:**

**Effective Date:**

**Regular Planning Commission**

**6.2.**

**Meeting Date:** 06/02/2011

**By:** Tim Gladhill, Community Development

---

**Title:**

Consider Amendment to Master Park and Trail Map

**Background:**

The City's Park and Recreation Commission is considering a revised Master Park and Trail Map. This document is important for future park and trail planning, especially as it relates to Park Dedication requirements for new developments. The Planning Commission is asked to make a recommendation as to the consistency of the proposed Master Park and Trail Map and the 2030 Comprehensive Plan.

**Notification:**

None required.

**Observations:**

The Master Park and Trail Map provides additional detail, using the Future Land Use Map in the 2030 Comprehensive Plan as the base. This is similar to the multiple zoning districts that provide additional detail to the more generalize land use categories in the Comprehensive Plan. The Planning Commission's task is to ensure that the areas categorized as Park, Proposed Park, and Open Space are properly identified as PARK in the Comprehensive Plan.

Staff, per direction of City Council, is in the process of reviewing all City-owned parcels and their current use. As a sub-set of that request, Staff is creating additional categories on the Master Park and Trail Map to illustrate the type of park or open space the area is. These proposed categories are:

- Park
- Open Space
- Proposed Park
- Quasi-Public Park (Golf Course, Scout Camp, School)
- Regional-State
- Trail Corridor

**Funding Source:**

Review of the Master Park and Trail Plan is being handled as part of regular staff duties.

**Staff Recommendation:**

Staff recommends approval of the Master Park and Trail Map

**Committee Action:**

Motion to recommend that the City Council adopt the revised Master Park and Trail Map.

---

**Attachments**

Proposed Map

**Form Review**

**Inbox**  
 Tim Gladhill (Originator)  
 Aaron Backman

**Reviewed By**  
 Tim Gladhill  
 Aaron Backman

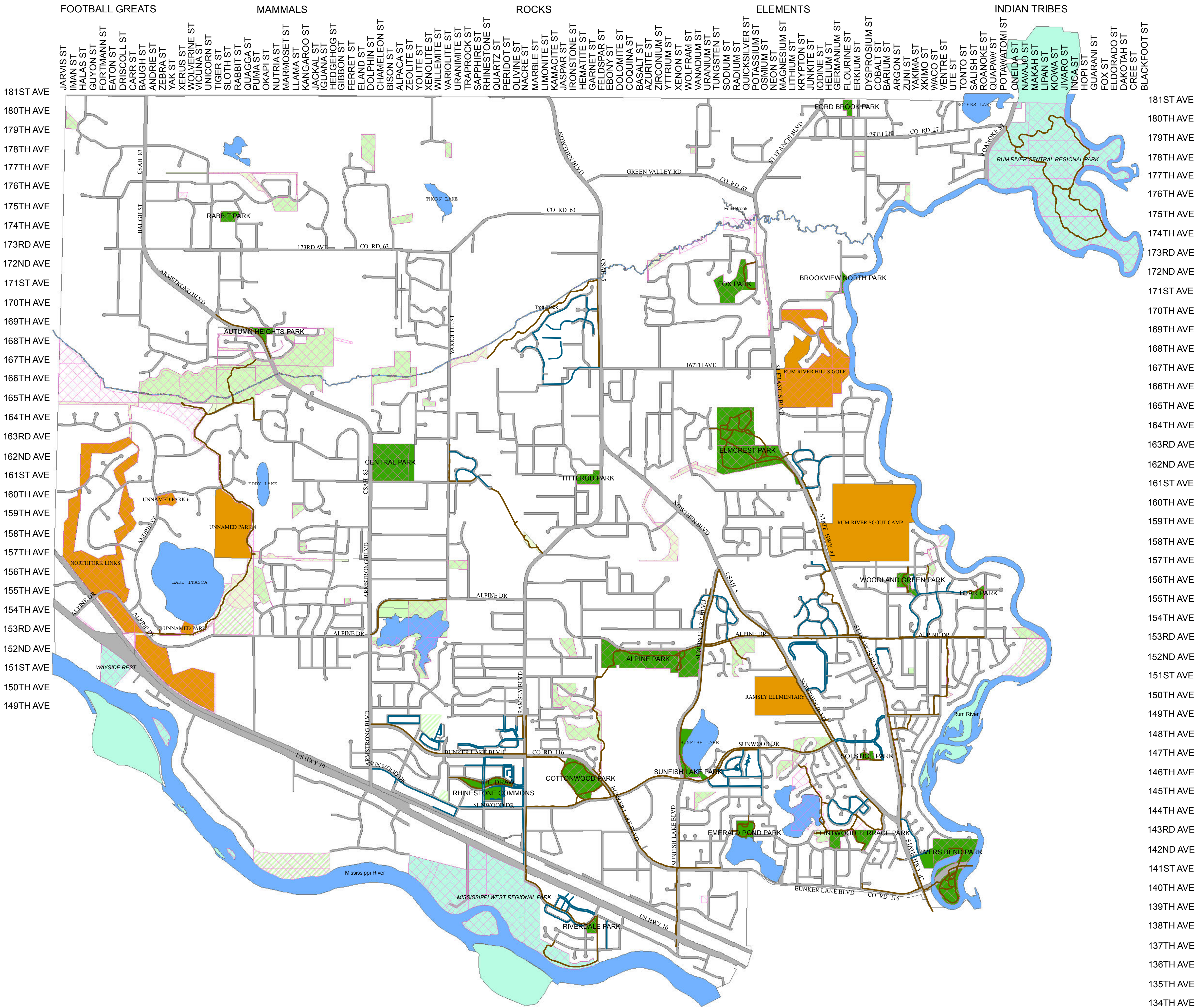
**Date**  
 05/23/2011 01:37 PM  
 05/25/2011 04:34 PM

Form Started By: Tim Gladhill

Started On: 05/23/2011 01:19 PM

Final Approval Date: 05/25/2011

# CITY OF RAMSEY 2011 PARK AND TRAIL MAP



**Legend**

- Sidewalks
- trails

**Z1\_2003\_LU**

- Comp Plan Park
- Creeks
- Lakes\_Ponds

**PARK AND OPEN SPACE**

**TYPE**

- PARKS
- OPEN SPACE
- PROPOSED PARK
- QUASI-PUBLIC
- REGIONAL-STATE
- TRAIL CORRIDOR

**Regular Planning Commission**

**6.3.**

**Meeting Date:** 06/02/2011

**By:** Tim Gladhill, Community Development

---

**Title:**

Staff Update

**Background:**

Attached is the monthly staff update.

**Notification:**

**Observations:**

**Funding Source:**

**Staff Recommendation:**

**Committee Action:**

---

**Attachments**

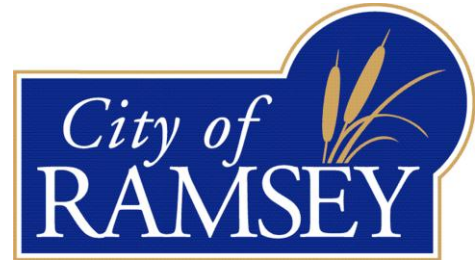
Staff Update

**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Tim Gladhill (Originator)	Tim Gladhill	05/25/2011 09:01 AM
Aaron Backman	Aaron Backman	05/25/2011 04:11 PM
Form Started By: Tim Gladhill		Started On: 05/25/2011 08:58 AM
	Final Approval Date: 05/25/2011	

# Memo

**DATE:** May 26, 2011  
**TO:** Ramsey Planning Commission  
**FROM:** Community Development Staff  
**RE:** Staff Update



---

**City Council Update.** The following is a brief summary of actions taken in May that may be of interest to the Planning Commission:

**Legacy Christian Academy.** Staff is pleased to announce that the group purchasing the property for the future Legacy Christian Academy campus has officially purchased the property as of May 20, 2011. City Council approved revisions to the development contract, consistent with the recently approved ordinance related to financial sureties. Staff is nearing completion of review of the Building Permit, with construction to commence in June.

**Planning Consultant Selection.** At the May 10<sup>th</sup> City Council Work Session, three (3) consultants presented to City Council in response to the City's RFP. Consensus of the City Council was to take feedback given at the Work Session and recommend a consultant for selection. City Staff is finalizing those details, with a recommendation available for the May 31 Regular City Council Meeting.

**Training Opportunities.** As a reminder, the following training opportunities are available. Contact Senior Planner Gladhill for more information.

**League of Minnesota Cities**

LU501: Land Use Basics: Grasping the Ground Rules

Web-based

[www.lmc.org/page/1/landuse.jsp](http://www.lmc.org/page/1/landuse.jsp)

**American Planning Association (APA) Minnesota Chapter Conference**

September 28-30

St. Cloud, MN

[www.plannersconference.com](http://www.plannersconference.com)

Have a wonderful and safe Memorial Day Weekend!

**PC: 06.02.2011**

**Regular Planning Commission**

**6. 4.**

**Meeting Date:** 06/02/2011

**By:** JoAnn Shaw, Community Development

---

**Title:**

Zoning Bulletins

**Background:**

Enclosed are zoning periodicals for your review.

**Notification:**

**Observations:**

**Funding Source:**

**Staff Recommendation:**

**Committee Action:**

---

**Attachments**

Zoning Bulletins

**Form Review**

**Inbox**  
Tim Gladhill  
Aaron Backman

**Reviewed By**  
Tim Gladhill  
Aaron Backman

**Date**  
05/24/2011 10:23 AM  
05/24/2011 04:05 PM  
Started On: 05/24/2011 08:53 AM

Form Started By: JoAnn Shaw

Final Approval Date: 05/24/2011

# Zoning Bulletin

**in this issue:**

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## Pre-emption—County Seeks to Prohibit Operation of Medical Marijuana Dispensary For Its Failure to Comply With County Ordinances

**Dispensary argues ordinances are pre-empted by state law and unconstitutional**

Citation: *County of Los Angeles v. Hill*, 192 Cal. App. 4th 861, 2011 WL 454524 (2d Dist. 2011)

CALIFORNIA (02/10/11)—This case addressed the issue of whether county ordinances regulating medical marijuana dispensaries (“MMDs”) were pre-empted by state laws governing MMDs and/or in violation of the equal protection clause of the state constitution.

**The Background/Facts:** In California, the “Compassionate Use Act” allows for the “safe and affordable distribution of marijuana to all patients in medical need of marijuana.” The state’s Medical Marijuana Program Act (“MMPA”) includes guidelines for implementation of the Compassionate Use Act.

### Contributors

Corey E. Burnham-Howard

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In June 2006, Los Angeles County adopted ordinances regulating the operation of medical marijuana dispensaries in unincorporated areas of the county (the "Ordinances"). Among other things, the Ordinances required MMDs: to obtain a conditional use permit ("CUP"); obtain a business license before operating; and "not be located within a 1,000 foot radius of schools, playgrounds, parks, libraries, places of religious worship, child care facilities, youth facilities ...."

Martin Hill and the Alternative Medicinal Collective of Covina (collectively, "Hill") operated a MMD in an unincorporated area of the County. Hill's MMD was operating without having obtained a business license, a conditional use permit or a zoning variance to allow it to operate within a 1,000-foot radius of a public library.

The county brought a nuisance action in court against Hill. The county asked the court to grant a temporary restraining order and preliminary injunction prohibiting Hill from "possessing, offering, selling, or giving away marijuana" anywhere in the unincorporated area of the county without the necessary permits and licenses required by law.

The court granted the county's request.

Hill appealed. On appeal, Hill argued that the county's Ordinances regulating MMDs were: (1) pre-empted by the Compassionate Use Act and MMPA; (2) inconsistent with those state laws; and (3) unconstitutionally discriminatory against MMDs.

**DECISION: Affirmed.**

The Court of Appeal, Second District, Division 1, California, held that the county's MMD Ordinances were not: (1) pre-empted by Compassionate Use Act and MMPA; (2) inconsistent with those state laws; or (3) unconstitutionally discriminatory against MMDs.

Hill had argued that the Compassionate Use Act and MMPA "fully occupied the field of MMD regulation and thereby preclude[d] the County from enforcing any additional requirements." The court disagreed. It found Hill's argument failed. Section 11362.83 of the MMPA provides that it does not "prevent a city or other local governing body from adopting and enforcing laws consistent with [the MMPA]." Thus, found the court, state law allowed counties to regulate the establishment of MMDs and their locations so long as those regulations were consistent with the provisions of the MMPA.

Hill had also argued that even if the MMPA did not pre-empt the county's authority to regulate MMDs, the county's regulations were invalid because they were inconsistent with the state law. Again, the court disagreed. Section 11362.83's allowance of local laws "consistent" with the MMPA did not mean that the county could only enact the same limitations as provided in the MMPA, said the court. Rather, the legislature clearly "expected and intended that local governments [would] adopt additional ordinances." Section 11362.768 made this clear, providing

that nothing in the MMPA “shall prohibit a [county] from adopting ordinances or policies that further restrict the location or establishment of a [MMD].”

Hill had further argued that even if the county’s MMD Ordinances were consistent with state law, they were inconsistent as applied. Hill said this was because the Ordinances so restricted the establishment and location of MMDs as to “make it practically impossible for such dispensaries to exist anywhere in the unincorporated areas of the County.” Again, the court rejected this argument. Hill had specifically pointed to the county’s \$11,500 application fee for a CUP for an MMD. The court found no evidence that the fee was inconsistent with the Compassionate Use Act or MMPA: Hill had failed to show that the county charged a higher fee to MMDs than to other businesses or that the fee applicable to MMDs was unreasonable. Hill had also argued that there was no location where a MMD could exist “without being in violation of the ordinance and/or forced out of existence due to the remote and unreasonably inconvenient location.” The court found the county code permitted MMDs to operate in certain commercial zones.

Finally, Hill had maintained that the county’s Ordinances violated the equal protection clause of the California Constitution (Article I, § 7). Hill said this was because the Ordinances did not allow the dispensaries to operate in the same zones as pharmacies. Once again, the court found Hill’s argument unpersuasive. Equal protection laws require entities “similarly situated with respect to the legitimate purpose of the law receive like treatment.” Dispensaries and pharmacies, noted the court, “are not ‘similarly situated’ for public health and safety purposes.” Therefore, said the court, they “need not be treated equally.” Moreover, because similar risks are not associated with the location of pharmacies as with MMDs, the court concluded that the county had a “rational basis for zoning MMDs differently than pharmacies.”

See also: *City of Corona v. Naulls*, 166 Cal. App. 4th 418, 83 Cal. Rptr. 3d 1 (4th Dist. 2008).

See also: *City of Claremont v. Kruse*, 177 Cal. App. 4th 1153, 100 Cal. Rptr. 3d 1 (2d Dist. 2009), review denied, (Dec. 2, 2009).

---

*Case Note:* Hill had also argued that the MMPA precluded the county from applying its nuisance laws to MMDs. Hill said this was because § 11362.775 of the MMPA provided a limited statutory immunity from prosecution under the “drug den” abatement law. While the statute exempted qualified patients and their primary caregivers from nuisance laws, it did not confer on them the “unfettered right to cultivate or dispense marijuana anywhere they [chose],” said the court. Section 11362.775 did not affect the county’s constitutional authority to regulate the particular manner and

location in which a business may operate. In other words, the court found that § 11362.775 did not prohibit the county from applying its nuisance laws to MMDs that did not comply with the county's valid ordinances.

---

*Case Note:* On December 7, 2010, the county banned MMDs in all zones in the county. The validity of that ban was not before the court in the case summarized here.

---

## Standing—Commission Adopts Amendment Creating an Overlay Zone in an Industrial Zone

### Property owner in industrial zone maintains he is statutorily aggrieved and has standing to challenge amendment

Citation: *Douglas v. Planning and Zoning Com'n of Town of Watertown*, 127 Conn. App. 87, 2011 WL 722526 (2011)

CONNECTICUT (03/08/11)—This case addressed the issue of whether a property owner had standing to challenge an amendment to a zoning ordinance, which created an overlay district.

**The Background/Facts:** The town planning and zoning commission (the "PZC") adopted a text amendment to the town zoning regulations (the "Amendment"). The Amendment created a B-PCD262 zone, which permitted retail and office development in an existing industrial zone. Essentially, the Amendment created an "overlay zone," which under specific circumstances and subject to specific preconditions affected 150 acres of land bound by five different roads in town.

Jonathan Andrew ("Andrew") owned land that was located within the newly created zoning district. He brought a court action, challenging the town's adoption of the Amendment. Among other things, he argued that the "approval of the [A]mendment was illegal, arbitrary, capricious, in abuse of the [PZC]'s discretion and in violation of its own regulations and applicable statutes."

Andrew had maintained that he had standing to bring the challenge because he was statutorily aggrieved under Conn. Gen. Stat. § 8-8(a)(1). Section 8-8(a)(1), which governs planning and zoning commission appeals, allows an appeal to be brought by an "aggrieved person" ... [and] includes any person owning land which abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board."

The PZC argued that Andrew was not aggrieved and thus lacked standing. The PZC said that the zone created by the Amendment was a

“floating zone.” Therefore, the PZC argued, since the zone did not apply to any specific parcel of land, Andrew was not aggrieved.

The trial court agreed with the PZC. It held that Andrew was not aggrieved by the Amendment’s creation of the “floating zone” because “no particular area was affected by the text amendment.” Finding he lacked standing to challenge the PZC’s adoption of the Amendment establishing the new zoning district, the court dismissed Andrew’s action.

Andrew appealed.

**DECISION:** Reversed in relevant part.

The Appellate Court of Connecticut found that Andrew was a “statutorily ‘aggrieved person’” with standing to challenge the Amendment.

In so holding, the court first rejected the PZC’s argument that the zone created by the Amendment was a “floating zone.” “Floating zones,” explained the court, were zones that did not apply to a specifically described parcel of land. Those challenging the enactment of floating zone regulations ordinarily would not be aggrieved and have standing because they could not show that they would likely be affected by the particular regulation. Here, however, found the court, the parcel of land subject to the new “overlay zone” did not float over the entire community. Rather, it had “distinct geographical boundaries”. The B-PCD262 zone was specifically described as approximately 150 acres being bound by five specified roads. Thus, the court concluded that because the Amendment “sufficiently defined the specific, limited geographic area to which the [Amendment] related ... the new zoning district [could] not be considered a floating zone.”

Having found that the Amendment created a defined, bounded zoning district, the court next concluded that Andrew was “statutorily aggrieved under [Conn. Gen. Stat.] § 8-8(a) because his property [fell] within the particular zone to which the text amendment pertained.” Again, § 8-8(a)(1) allowed an appeal to be brought by an “aggrieved person,” which included “any person owning land which abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board.”

The PZC had also argued that Andrew was not aggrieved because there had not been any change to the zoning map; and Andrew could “opt out of the amendment to the zoning map.” The court rejected these arguments. It said whether the zoning map had been changed or further steps in the application process would be taken was immaterial to its determination that Andrew was statutorily aggrieved: The area (affected by the new overlay zone) was “no less bounded than if it were delineated on the zoning map.” Additionally, even if Andrew could somehow opt out of the amendment to the zoning map, his land still would abut or be within a radius of 100 feet of any portion of the land involved.

See also: *Schwartz v. Town Plan and Zoning Commission for Town of Hamden*, 168 Conn. 20, 357 A.2d 495 (1975).

See also: *Cole v. Planning and Zoning Com'n of Town of Cornwall*, 30 Conn. App. 511, 620 A.2d 1324 (1993).

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**Case Note:** In its decision, the court had explained that Andrews could have shown standing to challenge the adoption of the Amendment if he could establish classical aggrievement or statutory aggrievement. To establish he was classically aggrieved, Andrews would have to show: (1) a specific personal and legal interest in the decision, as distinguished from the general interest of the community as a whole; and (2) that the specific personal and legal interest had been specially and injuriously affected by the decision. However, Andrews did not have to prove either of those prongs because he was statutorily aggrieved under § 8-8(a)(1), which only required that he show that he owned land abutting or within a radius of 100 feet of the newly zoned area.

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**Case Note:** The court's decision also addressed the standing of intervening plaintiffs—owners of property from other parts of town who also challenged the PZC's adoption of the Amendment. The court found those plaintiffs did not have standing under an environmental protection statute to challenge the Amendment.

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## Grounds For Denial—Commission Denies Developer's Plat on Ground That It Does Not Meet "Purposes" of Zoning Code

Developer argues plat must be approved since use is permitted and plat complies with zoning standards

Citation: *Pomeranc-Burke, LLC v. Wicomico Environmental Trust, Ltd.*, 2011 WL 711995 (Md. Ct. Spec. App. 2011)

MARYLAND (03/02/11)—This case addressed the issue of whether, when a proposed use is a permitted use in a zoning district, and the plat complies with specific statutory (i.e., zoning code) standards, a zoning board can deny approval of the plat on the ground that it does not meet the purposes of the code or the Comprehensive Plan.

**The Background/Facts:** Pomeranc-Burke, LLC ("PB") sought approval from the county planning and zoning commission (the "Commission") of a preliminary plat for a "cluster subdivision" (the "subdivision"). The

proposed subdivision was to be developed on a site in the A-1 "Agriculture-Rural" zoning district. It would contain 147 lots on the 519.2-acre tract. Lots would average 1.04 acres in size and 352.30 acres would remain undeveloped as forested set-aside and open space area.

Ultimately, the Commission denied PB's preliminary plat for the subdivision. The Commission did so upon concluding that the subdivision did not meet the "purpose" of a cluster development, as outlined in the county zoning code (the "Code"). In relevant part, the Code provided that the purpose of the "cluster development" regulations was: "[t]o encourage innovative and creative cluster design of residential developments"; "[t]o encourage more efficient use of land ..."; and "[t]o preserve agriculture lands and enhance the rural atmosphere and visual character in the county." The Commission determined that PB's plat did not represent any of those purposes.

PB appealed the Commission's denial to the county Board of Appeals (the "Board"). The Board adopted the Commission's findings and upheld the denial.

PB appealed to court. The circuit court affirmed the Board's decision.

PB again appealed. On appeal, PB contended, among other things, that: "because an A-1 'cluster subdivision' [was] a permitted use pursuant to 'unambiguous criteria' set forth in [the Code], the Commission did not have the authority to deny an application for such use, especially by relying on the 'purpose provisions' of [the relevant sections of the Code]."

The county countered that "the Commission had the authority to consider the 'purpose provisions,' because they [were] not preambles, but rather [were] part of the 'statutes themselves.'"

**DECISION: Affirmed.**

The Court of Special Appeals of Maryland held that the Commission could rely on the "purpose" sections of the Code in denying approval of PB's plat.

The court observed that the Board's findings, as adopted from the Commission's findings, went "beyond just the purpose provisions of the Code and of the Comprehensive Plan." In any event, said the court, the Board (and Commission) was entitled to consider the purposes of the Code and the Comprehensive Plan as part of its analysis. As the county had asserted, "the purpose sections [were] part of the ordinances themselves, not a preamble to an ordinance," found the court.

PB had argued that the Board had "exceeded its authority as an administrative body and acted legislatively when it relied on purposes and plans." The court disagreed, finding the Code gave the Board "considerable latitude in determining the design of a cluster development consistent with the maximum density permitted": "The language of the Code ... [was] permissive, not mandatory .... While residential use [was] a permitted use, and a cluster form of development [was] permitted under

certain circumstances, the design of a specific subdivision, including its location and density, [was] subject to approval. The Board did not deny the plat on the ground that cluster developments were not a permitted use, [or that they were inconsistent with the applicable ordinance], but rather on the ground that this particular subdivision, as designed was inconsistent with the purposes.” The court concluded that the Board could deny approval of PB’s plat, even though it met zoning requirements, because it did not comply with the purposes set forth in the Code when the Code required compliance with the purposes.

See also: *Maryland-Nat. Capital Park and Planning Com’n v. Washington Business Park Associates*, 294 Md. 302, 449 A.2d 414 (1982).

See also: *Coffey v. Maryland-National Capital Park and Planning Commission*, 293 Md. 24, 441 A.2d 1041 (1982).

## Constitutionality of Zoning Decision—Zoning Commission Grants Conditional Use Permit For Less Units Than Landowner Claims Entitlement

### Landowner argues commission’s action amounted to an unconstitutional regulatory taking

Citation: *Henry v. Jefferson County Com’n*, 2011 WL 724666 (4th Cir. 2011)

*The Fourth Circuit has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia.*

FOURTH CIRCUIT (WEST VIRGINIA) (03/03/11)—This case addressed the issue of whether a planning and zoning commission’s decision to grant a conditional use permit (“CUP”) for less units than the landowner claimed entitlement to amounted to an unconstitutional regulatory taking or the landowner’s property.

**The Background/Facts:** Aubrey Henry (“Henry”) owned or had an interest in four adjoining parcels of land totaling 13.69 acres in the county. Henry sought to develop the land. In 2001, Henry applied to the county planning and zoning commission (the “PZC”) for a CUP to build a 76-unit townhouse development. The PZC granted Henry’s request. However, it limited the number of units to 51.

Neighboring landowners appealed the grant of the CUP. Ultimately, the circuit court reversed because it found that the PZC had failed to enter sufficient factual findings.

After reconsideration, eventually, in 2005, the PZC again granted Henry’s CUP, but this time allowing only 14 units.

Henry appealed. The county board of zoning appeals (the “BZA”) affirmed the CUP.

Henry later sold the land. However, he still sued the county. He alleged that the county “took his property without just compensation by... denying him a meaningful CUP.” More specifically, he claimed that the PZC “took his property by granting him a 14-unit CUP rather than the 51-unit CUP to which he claims he was entitled.”

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the district court granted summary judgment against Henry on all claims.

Henry appealed.

**DECISION: Affirmed.**

The United States Court of Appeals, Fourth Circuit, held that the PZC’s decision to grant Henry a 14-unit CUP rather than a 51-unit CUP did not amount to a regulatory taking.

Henry had argued that his CUP proposal fell under certain heightened density provisions that entitled him to a CUP of over 100 units. Thus, he contended that he was “entitled as a matter of right to a permit for his [earlier] high-density townhouse project.” He argued that once he agreed in principle to resolve all issues, the PZC was obligated to issue the CUP. The court disagreed. It acknowledged that “when a developer’s uncontradicted expert evidence resolves outstanding issues, the [PZC] lacks discretion to deny the CUP.” However, emphasized the court, in the absence of such circumstances, the PZC could “properly consider density in using its discretion to resolve murkier requests.” Here, Henry presented no expert testimony on density, and the PZC explicitly cited density in granting only a 14-unit CUP. It had discretion to do so, and as a result Henry was not entitled to a 51-unit CUP, concluded the court. Thus, Henry could not claim that the PZC took his property simply by granting a smaller CUP.

Henry had also alleged that the grant of the smaller CUP took his property under “ordinary regulatory takings doctrine.” The court disagreed. It acknowledged that property regulations that go too far take a landowner’s property. However, the court found it “obvious that the grant of the smaller CUP did not unacceptably interfere with Henry’s existing property interests under the regulatory takings framework.” The PZC’s action on Henry’s CUP request “never subjected his property to physical invasion, nor did it eliminate the property’s value,” found the court. Otherwise, explained the court, a regulatory taking would be found to have occurred only if there was “economic harm approaching constitutional magnitude”; there was interference with Henry’s “investment-backed expectations”; or the character of the PZC’s action was “functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain.”

Here, the court found, even if it assumed the 14-unit CUP was not economically feasible, Henry’s various parcels “retained permitted uses

that obviously possessed economic value.” The court also found that Henry did not suffer economic harm “approaching constitutional magnitude”: he ultimately sold the parcels for a total of over \$100,000. Moreover, all of Henry’s investment-backed expectation claims were based on his having an entitlement to those claims, which he did not. In any case, he received “significant return” on his investments when he sold the land. Finally, found the court, the character of the PZC’s action—which was based on density and other traditional zoning concerns—“did nothing like” directly appropriating private property or ousting Henry from his domain.

See also: *Jefferson Orchards, Inc. v. Jefferson County Zoning Bd. of Appeals*, 225 W. Va. 416, 693 S.E.2d 781 (2010).

See also: *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 125 S. Ct. 2074, 161 L. Ed. 2d 876, 35 *Env’t. L. Rep.* 20106 (2005).

See also: *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631, 11 *Env’t. Rep. Cas. (BNA)* 1801, 8 *Env’t. L. Rep.* 20528 (1978).

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*Case Note:* Henry had also claimed that the CUP process violated his substantive and procedural due process rights. The court disagreed.

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## Zoning News from Around the Nation

### ILLINOIS

The state senate is considering Senate Bill 167, which would allow communities without a zoning ordinance to restrict wind turbine development within 1.5 miles of the town. Currently, the law allows communities to ban such development surrounding its “zoning jurisdiction.”

Source: *Quincy Herald-Whig*; [www.whig.com](http://www.whig.com)

The state house recently passed a measure “to expedite township razing of nuisance properties.” The bill would allow townships “to deal with nuisance properties if a county has not acted within 60 days.” The bill still must pass in the senate.

Source: *Peoria Journal Star*; [www.pjstar.com](http://www.pjstar.com)

### MARYLAND

The Maryland General Assembly is considering House Bill 948, which would “empower local jurisdictions and the state to plan for and

permit increased density and more diverse uses within designated areas around rail stations throughout Maryland.” More specifically, the bill would enable “State Rail Station Overlay Districts.” Goals of the bill include: “to foster vibrant, pedestrian-oriented, energy-efficient communities centered on transit”; and “to improve public services and the aesthetic quality of the public realm—streetscapes, open space, civic amenities, architecture—within overlay districts.”

Source: *The Washington Post*; [www.washingtonpost.com](http://www.washingtonpost.com)

## KANSAS

The state house recently approved the “Community Defense Act,” a bill that would “restrict strip clubs, adult video stores and other sexually oriented businesses.” The bill “would limit the hours and location of such businesses, ban total nudity inside them and impose a ‘no touch’ rule for employees and customers.” Reportedly, critics of the bill say that the “regulation of sexually oriented businesses is best left to cities and counties.” Proponents of the bill reportedly say “small, rural communities often lack the resources to resist such businesses, if they’re willing to challenge restrictions or adverse zoning decisions in court.” The bill still awaits senate consideration.

Source: *Bloomberg Business Week*; [www.businessweek.com](http://www.businessweek.com)

## TENNESSEE

Pending before the state General Assembly is HB 1345, which would “prohibit[] the rezoning of private property by local governments without written consent of property owner[s].” Proponents of the bill reportedly feel it will help ease the economic burden of multiparcel zoning. Opponents fear “state government stripping away the power of communities to determine their futures.”

Source: *Nashville Scene*; [www.nashvillescene.com](http://www.nashvillescene.com)

## UTAH

State Senate Bill 231, which would have created a “so-called film enterprise zone,” failed to pass before the Utah legislative session that recently ended. The bill could have overridden local zoning rules to benefit the development of a movie studio.

Source: *Park Record*; [www.parkrecord.com](http://www.parkrecord.com)

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# Zoning Bulletin

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## Proceeding—Board Approves Variance But Fails to Timely File Decision With Town Clerk

### Opponent argues failure to timely file should annul approval

Citation: *Frank v. Zoning Bd. of Town of Yorktown*, 917 N.Y.S.2d 697 (App. Div. 2d Dep't 2011)

NEW YORK (03/01/11)—This case addressed the issue of whether the failure of a zoning board to file its written decision within the time specified in the town zoning law mandated annulment of its determination.

**The Background/Facts:** Tom Knoesel and Joan Knoesel (the “Knoesels”) applied to the town’s zoning board (the “Board”) for an area variance to legalize an existing fence that was taller than permitted. The Board granted the application. The Board concluded that legalizing the fence would not have an adverse impact on the neighborhood.

Thereafter, neighbors of the Knoesels (the “Neighbors”) appealed the Board’s approval of the variance. Among other things,

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the Neighbors argued that the Board's approval had to be annulled because the Board had failed to file its written decision in the office of the town clerk within five business days, as required by the town zoning law.

The Supreme Court dismissed the Neighbors' action.

**DECISION: Affirmed.**

The Supreme Court, Appellate Division, Second Department, New York, held that the failure of the Board to file its written decision in the office of the town clerk within the time specified in the town zoning laws "did not mandate annulment of its determination" to grant the variance. The court so concluded upon finding that: the zoning law did not specify a sanction for failure to comply with the five-day filing requirement; and, "[i]n any event, the Board offered a reasonable explanation for its delay in filing its written decision, and the delay was not extensive."

See also: *Nyack Hosp. v. Village of Nyack Planning Bd.*, 231 A.D.2d 617, 647 N.Y.S.2d 799 (2d Dep't 1996).

See also: *Platzman v. Munno*, 184 Misc. 2d 201, 706 N.Y.S.2d 846 (Sup 2000), judgment aff'd, 282 A.D.2d 539, 722 N.Y.S.2d 886 (2d Dep't 2001).

## Pre-emption—Town Says Transloading Facility at Rail Yard is an Impermissible Use Under Ordinance

Railway company and facility operator argue ordinance is pre-empted by federal law

Citation: *New York & Atlantic Ry. Co. v. Surface Transp. Bd.*, 2011 WL 873030 (2d Cir. 2011)

*The Second Circuit has jurisdiction over Connecticut, New York, and Vermont.*

SECOND CIRCUIT (03/15/11)—This case "delineates the power of the Surface Transportation Board ("STB") to decide ... the extent to which the construction and operation of transloading facilities fall within the STB's exclusive jurisdiction, freeing the operations from local regulation by way of federal preemption."

**The Background/Facts:** New York & Atlantic Railway Company (“NYAR”) was a short-line railroad that ran the freight operation of the Long Island Rail Road (“LIRR”). In 2002, Coastal Distribution, LLC (“Coastal”) and NYAR entered into an agreement to refurbish a rail yard in the Town of Babylon (the “Town”) to handle the transloading of construction materials, mainly building materials and construction and demolition debris (the “Facility”).

The Town’s zoning ordinance (the “Ordinance”) forbids the operation of a waste transfer facility anywhere in the Town except for an area remote from the Facility and inaccessible by rail.

As work on the new Facility neared completion, a Town building inspector served Coastal with a stop work order. The inspector had determined that the Facility violated the Ordinance. Coastal appealed to the Town’s Zoning Appeals Board (the “ZBA”). The ZBA upheld the stop work order, finding the Facility constituted an impermissible use.

NYAR and Coastal then sued in federal district court. They asked the court to enjoin the stop work order. They argued that: the Town’s zoning Ordinance was pre-empted under the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”); and that the Facility fell within the exclusive jurisdiction of the STB. The court issued a preliminary injunction barring the Town from enforcing the stop work order. The United States Court of Appeals, Second Circuit, upheld the injunction but allowed the parties to bring the matter to the STB for a determination as to whether the Facility did, in fact, fall within its exclusive jurisdiction.

The Town and the lessor of the rail yard, Pinelawn Cemetery Corporation, (hereinafter, collectively, the “Town”) asked the STB to declare that: the Town’s zoning Ordinance was not pre-empted; and that STB did not have jurisdiction over the Facility. The STB did so declare. The STB found that its exclusive jurisdiction “extends to the rail-related activities that take place at transloading facilities if the activities are performed by a rail carrier or the rail carrier holds out its own service through the third-party as an agent or exerts control over the third-party’s operation.” Here, the STB determined that NYAR was not involved with Facility and that Coastal “exercised almost total control over the [F]acility.”

Thereafter, the Town asked the district court to vacate the preliminary injunction. NYAR and Coastal objected. Among other things, they argued that the “newly passed Clean Railroads Act of 2008 (the “CRA”), 49 U.S.C. § 10909, preempted [the Town’s Ordinance].” The CRA “requires that solid waste rail transfer facilities follow the same state and federal laws and regulations that apply to

non-railroads, except that land use regulations may not be applied to existing facilities.”

The Town again petitioned the STB, asking it to declare that the CRA did not apply to the Facility. The STB did so declare. It found that the CRA did not apply to the Facility because the Facility was not “owned or operated by or on behalf of a rail carrier.” Again, the STB had found that NYAR “lacked control over the operation of the Facility.”

NYAR and Coastal appealed to the United States Court of Appeals for the District of Columbia. That court transferred the case to the United States Court of Appeals, Second Circuit.

**DECISION: Petition denied.**

The United States Court of Appeals, Second Circuit, held that the Town’s Ordinance was not pre-empted by the ICCTA or the CRA.

The court noted that the ICCTA grants the STB exclusive jurisdiction over “transportation by rail carriers,” which includes “wide authority over transloading facilities.” However, after analyzing the statutory language (see 49 U.S.C.A. § 10501(2)), the court determined that the STB does not exercise exclusive jurisdiction over Facilities when they are not operated by, or under the control of, a “rail carrier.” The STB could exercise exclusive jurisdiction only if: the activity constituted “transportation”; and was performed by, or under the auspices of, a “rail carrier.” Here, the court found there was “no question that the activity at issue ... constitutes ‘transportation.’” However, the court found the activity was not performed by NYAR, the rail carrier. NYAR’s involvement was essentially limited to transporting cars to and from the Facility, found the court. Thus, the STB did not have jurisdiction over Coastal’s activities, and Federal pre-emption under the ICCTA did not apply.

Similarly, the court found that the CRA did not pre-empt the application of the Town’s Ordinance. Under the CRA, the STB only had jurisdiction over “solid waste transfer facilities” under certain exceptions. (See 49 U.S.C.A. § 10908(b)) Those exceptions applied only to facilities that fell under STB’s jurisdiction. Again, because the Facility was not part of “transportation by rail carrier,” it was not within the STB’s jurisdiction, and therefore the Facility was not covered by the CRA.

See also: *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295 (3d Cir. 2004).

See also: *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005).

## Standing—Property Owners Challenge Issuance of Special Permit Allowing Neighbors to Increase the Height of Their Home

**They claim standing based on obstruction of their ocean view and related diminution in their property value**

Citation: *Kenner v. Zoning Bd. of Appeals of Chatham*, 459 Mass. 115, 2011 WL 817428 (2011)

MASSCHUSETTS (03/11/11)—This case addressed the issue of whether abutting property owners had standing to challenge the issuance of a special permit to their neighbors based on the allegations of obstruction of ocean view and diminution in property value based on obstruction of ocean view.

**The Background/Facts:** Louis and Ellen Hieb (the “Hiebs”) owned property (the “Hieb Property”) abutting the Atlantic Ocean in the Town of Chatham (the “Town”). In June 2006, the Town’s Zoning Board of Appeals (the “ZBA”) granted a special permit to the Hiebs. The special permit allowed the Hiebs to raze their existing house and construct in the same footprint a new house that would be seven feet taller than their existing one.

Brian and Carol Kenner lived across the street from the Hiebs, such that the Hieb Property was between the Kenners’ property and the Atlantic Ocean. The Kenners challenged to court the issuance of the special permit to the Hiebs.

The Hiebs asked the court to dismiss the Kenners’ action. The Hiebs argued that the Kenners were not “aggrieved” parties within the meaning of Mass. Gen. L. c. 40A, § 17, and therefore did not have standing to bring their action. Massachusetts General Laws c. 40A, § 17 provides that: “[a]ny person aggrieved by a decision of the [zoning] board of appeals ... may appeal to the land court department ....”

The land court judge agreed with the Hiebs, and concluded that the Kenners were not “persons aggrieved” and therefore did not have standing to challenge the issuance of the permit to the Hiebs.

The Kenners appealed. They maintained that they had standing because they were “aggrieved” given that, among other things: the Hiebs’ new house would obstruct the Kenners’ view of the ocean; and the obstructed ocean view would diminish the value of the Kenners’ property.

The Appeals Court agreed with the Kenners and reversed.

The Hiebs and the ZBA appealed.

**DECISION:** Vacated, and matter remanded.

The Supreme Judicial Court of Massachusetts held that the obstruction of the Kenners' ocean view based on the seven-foot increase in height of the Hiebs' house was insufficient to qualify the Kenners as "aggrieved persons," so as to confer standing. The court also held that any diminution in the value of the Kenners' property based on obstruction of their ocean view due to the increased height of the Hiebs' house did not provide the Kenners with a basis for standing to bring an action to challenge the permit issued to the Hiebs.

The court explained that a "person aggrieved," within the meaning of Mass. Gen. L. c. 40A, § 17, is one who "suffers some infringement of his legal right." Generally, abutting landowners, like the Kenners, enjoy a rebuttable presumption that they are "persons aggrieved." However, said the court, if their standing is challenged and evidence is offered supporting that challenge, there is no benefit of presumption of aggrievement.

Here, the Hiebs had challenged the standing of the Kenners, and the Hiebs had successfully (according to the land court judge) offered evidence to rebut the Kenners' presumption of aggrievement based on their claim that the Hiebs' new house would block the Kenners' view of the ocean. Therefore, the burden then shifted to the Kenners to prove, "by direct facts and not speculative evidence, that they would suffer a particularized injury as a consequence of the increased height of the Hiebs' house." The Kenners had to not just show they were "impacted," but had to show that they would be "injured or harmed." The Supreme Judicial Court found that the Kenners failed to meet that burden.

The court explained that, "[g]enerally speaking, concerns about the visual impact of a proposed structure on an abutting property are insufficient to confer standing." "However, where a municipality's bylaw specifically provides that the zoning board of appeals should take into consideration the visual impact of a proposed structure, '[that] defined protected interest may impart standing to a person whose impaired interest falls within that definition.'" Here, the Town's bylaw did address the visual impact of a proposed structure "on the visual character of the neighborhood as a whole." So, in order for the Kenners to establish standing based on the visual impact of the Hiebs' new house, the court said the Ken-

ners had to show: (1) a particularized harm to the Kenners' own property; and (2) a detrimental impact on the neighborhoods' visual character. The court found that the Kenners failed to put forth "credible facts to support their allegation that the increased height of the Hiebs' new house [would] block their view of the ocean." Moreover, the court found there was no evidence that the increased height of the Hiebs' new house would have a detrimental impact on the visual character of their neighborhood. Instead, evidence showed that the increased height of the Hiebs' house would have only a de minimis impact on the Kenners' view of the ocean.

The Kenners had also claimed that the obstruction of their ocean view by the increased height of the Hiebs' new house would diminish the value of the Kenners' property. The court said that diminution in the value of real estate is a sufficient basis for standing "only where it is 'derivative of or related to cognizable interests protected by the applicable zoning scheme.'" Given that the Kenners' view of the ocean was not an interest protected by the Town's zoning by-law, and that the land court judge had concluded, in any event, that any impact on the Kenners' ocean view would be de minimis, the alleged diminution in value of the Kenner property was not a basis for standing, concluded the court.

See also: *Martin v. Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 434 Mass. 141, 747 N.E.2d 131 (2001).

See also: *Standerwick v. Zoning Bd. of Appeals of Andover*, 447 Mass. 20, 849 N.E.2d 197 (2006).

## Modification—Landowners Seek a Building Permit to Construct a Deck That Complies With All Zoning Regulations

**Zoning Board of Appeals denies the permit, saying landowners need to obtain modification of prior variances**

Citation: *Anatra v. Zoning Bd. of Appeals of Town of Madison*, 127 Conn. App. 125, 2011 WL 722532 (2011)

CONNECTICUT (03/08/11)—This case addressed the issue of whether property owners were required to obtain modification of prior variances before building a deck.

**The Background/Facts:** Victor and Heather Anatra (the “Anatras”) owned a home in the Town of Madison (the “Town”). In 2001, the Anatras applied to the Town’s zoning board of appeals (the “ZBA”) for a variance to replace the then-existing house on the footprint of that prior structure. The ZBA granted the variance.

In September 2003, the Anatras were issued another variance to enable them to install new stairs and an air conditioning unit on the outside of their home.

Several years later, the Anatras submitted an application for a building permit to construct an uncovered deck on their property. The zoning officer denied the application. The zoning officer determined that the Anatras needed to obtain modification of the prior variances before they could build the deck.

The Anatras appealed the zoning officer’s decision to the ZBA. The ZBA upheld the zoning officer’s decision. The Anatras were denied a certificate of zoning compliance to enable them to secure a building permit to construct the proposed uncovered deck. They were told that they needed to obtain modification of their prior variances.

The Anatras appealed to court. The court dismissed their appeal, concluding that the ZBA had acted properly.

The Anatras again appealed. On appeal, they argued that the proposed uncovered deck fully complied with the town’s zoning regulations. They also argued that the ZBA did not have the authority to “monitor and approve modifications to the structure [that] did not affect aspects of the structure for which variances had been granted.” In other words, they argued that they should not be required to obtain variance modifications because: their proposed deck complied with all zoning regulations; and their prior variance did not contain conditions related to the proposed deck.

The ZBA did not contest that the proposed deck complied fully with zoning regulations. However, the ZBA argued that the Anatras were bound by their prior variances and needed a new or modified variance to construct the deck.

**DECISION:** Reversed, and matter remanded with direction.

The Appellate Court of Connecticut held that the Anatras did not need a new or modified variance to build their proposed deck, which fully complied with the zoning regulations and was not prohibited by any condition attached to the certificates of variances previously granted.

The court explained that a variance runs with the land and is not personal to the parties applying for it. For that reason, any conditions attached to a variance “must be stated explicitly on the certificate of variance recorded in the land records.” Here, the first variance contained conditions that: all construction had to be in conformity with standards put forth by the Federal Emergency Management Agency (“FEMA”); and replanting of beach grass be scheduled for early spring. The second variance contained a condition that the air conditioning unit meet specified efficiency standards. The court found: “There was no condition placed on the certificates that would give anyone knowledge that the [Anatras] or the future owners of [the] property forever would be precluded from modifying the property in any manner that was inconsistent with the plans submitted at that time that the [Anatras]’s variances were granted, even if such modifications fully complied with the zoning regulations.” Because “[t]he conditions [of the prior variances] did not restrict the [Anatras] from seeking to construct an uncovered deck within the scope of the regulation,” the Anatras did not now need to obtain modifications to those variances in order to construct the deck, concluded the court.

See also: *Dodson Boatyard, LLC v. Planning and Zoning Com’n of Town of Stonington*, 77 Conn. App. 334, 823 A.2d 371 (2003).

See also: *Reid v. Zoning Bd. of Appeals of Town of Lebanon*, 235 Conn. 850, 670 A.2d 1271 (1996).

## Zoning News from Around the Nation

### ARIZONA

Governor Jan Brewer recently signed a law that “gives rescue ranches a chance to seek agricultural status and win exemption from county zoning and building codes.”

Source: *The Arizona Republic*; [www.azcentral.com](http://www.azcentral.com)

### CONNECTICUT

Westport’s Planning and Zoning Commission is considering a proposal to amend Westport’s zoning regulations to exempt from the definition of “structure” all swing and play sets that are not buildings, as defined in the regulations. The proposal also seeks to exempt swing and play sets from the town’s setback requirements.

Source: *Westport News*; [www.westport-news.com](http://www.westport-news.com)

## ILLINOIS

Bills pending in the state senate (SB 402) and the state house of representatives (HB 45) would limit local governments from enforcing gun laws stricter than the state's. Reportedly, the bills would "void ... zoning ordinances designed to restrict or prohibit the sale or manufacture of firearms or ammunition ... [and] would also eliminate provisions authorizing counties to adopt an ordinance requiring a waiting period between the purchase and delivery of a handgun."

Source: *Highlands Today*; <http://www2.highlandstoday.com>

## MARYLAND

"A bill that would have authorized Garrett County commissioners to control the development of wind farms in the county" recently "died" in the Maryland General Assembly. The House Economic Matters Committee reported the bill unfavorably, effectively killing it. A companion senate bill remains in committee. Garrett County "does not have zoning, and without passage of the bill, has limited ability to regulate wind-powered electricity generation."

Source: *Cumberland Times-News*; <http://times-news.com>

## MICHIGAN

The Muskegon City Commission recently gave final approval to a zoning ordinance change that allows for medical marijuana businesses and regulates those businesses. Medical marijuana businesses are now limited to the city's heavy industrial zones.

Source: *Muskegon Chronicle*; [www.mlive.com/news/muskegon](http://www.mlive.com/news/muskegon)

## OHIO

Legislation recently introduced into the state house of representatives seeks to allow local communities to "prohibit sweepstakes gaming operations at Internet cafes." The legislation was reportedly proposed to address concerns "about the potential for consumers to be defrauded by the machines and the potential for competition with legally licensed charitable gaming activities." Proponents say "the proposed legislation will help define what is or is not legal gambling in Ohio." Among other things, the legislation "would limit the number of machines to five per establishment. Each would require two licenses and be subject to inspection to determine if

customers have a fair chance at winning. Both the operator and the machine would require a license for each machine .... Oversight would be provided by the Ohio Casino Control Commission.”

Source: *Sun News*; [www.cleveland.com](http://www.cleveland.com)

## PENNSYLVANIA

State Representative Phyllis Mundy (Democrat-Kingston) has introduced a bill that would “ban zoning hearing board members from voting when they have conflicts of interest.” Under the proposed bill, “the governing authority responsible for appointing members to the zoning board would select a temporary replacement who would only serve for the specific issue.”

Source: *Citizens' Voice*; <http://citizensvoice.com>

## SOUTH CAROLINA

Legislation introduced in both the state senate and House of Representatives “could soon make it easier for coastal towns to have more control over piers.” The proposed legislation “would give individual towns the power to make additions to piers, as long as they follow individual town zoning laws and ordinances.”

Source: *WMBF News*; [www.wmbfnews.com](http://www.wmbfnews.com)