

**City of Ramsey**  
**Agenda**  
**Regular Planning Commission**  
**Thursday, October 6, 2011**  
**Immediately following the Board of Adjustment meeting**  
**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:  
  
Joint Planning Commission and Environmental Policy Board meeting minutes dated September 8, 2011  
Planning Commission meeting minutes dated September 8, 2011
- 5. Note City Council Minutes**
  1. Note the Following City Council Meeting Minutes:  
  
City Council meeting minutes dated August 9, 2011  
City Council meeting minutes dated August 23, 2011
- 6. Public Hearing/Commission Business**
  1. Request for an Amended Conditional Use Permit for an Accessory Dwelling at 16101 Ramsey Blvd NW;  
Case on Anthony Reed
  2. Staff Update
  3. Zoning Bulletins
- 7. Commission/Staff Input**
- 8. Adjournment**

**Regular Planning Commission**

**4. 1.**

**Meeting Date:** 10/06/2011

**By:** JoAnn Shaw, Community Development

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**Title:**

Approve the Following Planning Commission Meeting Minutes:

Joint Planning Commission and Environmental Policy Board meeting minutes dated September 8, 2011  
Planning Commission meeting minutes dated September 8, 2011

**Background:**

n/a

**Notification:**

**Observations:**

**Funding Source:**

**Staff Recommendation:**

**Committee Action:**

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**Attachments**

09.08.11 Joint with EPB

09.08.11

**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Tim Gladhill	Tim Gladhill	09/26/2011 08:59 AM
Form Started By: JoAnn Shaw		Started On: 09/23/2011 03:28 PM
	Final Approval Date: 09/26/2011	

**PLANNING COMMISSION/ENVIRONMENTAL POLICY BOARD  
CITY OF RAMSEY  
ANOKA COUNTY  
STATE OF MINNESOTA**

The Ramsey Planning Commission and the Environmental Policy Board conducted a special joint meeting on Thursday, September 8, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Planning Members Present: Chairperson Gary Levine  
Commissioner Randy Bauer  
Commissioner Ralph Brauer  
Commissioner Andrew Dunaway  
Commissioner Joseph Field  
Commissioner Robert Schiller

Members Absent: Commissioner Gary Van Scoy

EPB Members Present: Member Bob Benz  
Member John Enstrom  
Member Thomas Stodola

EPB Members Absent: Member Jennifer Carlson  
Member Michael Max

Also Present: Senior Planner Tim Gladhill  
Associate Planner/Environmental Coordinator Chris Anderson

**CALL TO ORDER**

Chairperson Levine called the special joint meeting to order at 5:38 p.m.

**CITIZEN INPUT**

None.

**APPROVAL OF AGENDA**

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

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Dunaway, Schiller, Bauer, Brauer, and Field. Members Benz, Enstrom and Stodola. Voting No: None. Absent: Commissioner Van Scoy, Members Carlson and Max.

## **INTRODUCTIONS**

### **COMMISSION/BOARD BUSINESS**

**Case #1: Discuss EPB's 2011-2012 Work Plan and its Relation to the City's Zoning and Subdivision Ordinances**

Associate Planner/Environmental Coordinator Anderson presented the Staff Report and EPB work plan.

Discussion ensued regarding zoning standards and potential amendments.

Commissioners and Members listed the following as potential zoning amendments:

- Points based system
- Setback flexibility
- Utility company regulations
- Parking lot standards

### **COMMISSION/STAFF INPUT**

### **ADJOURNMENT**

Motion by Commissioner Dunaway, seconded by Commissioner Bauer, to adjourn the meeting.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Dunaway, Bauer, Brauer, Field, and Schiller, Members Benz, Enstrom and Stodola. Voting No: None. Absent: Commissioner Van Scoy, Members Carlson and Max.

The regular meeting of the Planning Commission adjourned at 6:52 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 regular meeting on Thursday, September 8, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

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

Members Absent:           None

Also Present:               Senior Planner Tim Gladhill  
                                  Economic Development/Marketing Manager Aaron Backman  
                                  Fire Marshal Matt Kohner

**CALL TO ORDER**

Chairperson Levine called the regular meeting to order at 7:14 p.m.

**CITIZEN INPUT**

None.

**APPROVAL OF AGENDA**

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

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

**APPROVE PLANNING COMMISSION MINUTES**

Motion by Commissioner Dunaway, seconded by Commissioner Van Scoy, to approve the following minutes as presented:

- 1) Planning Commission public hearing and regular meeting minutes dated August 4, 2011.

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

## **PUBLIC HEARINGS/COMMISSION BUSINESS**

**Case #1: Public Hearing – Request for an Interim Use Permit to Allow for the Operation of a Church in the H-1 Highway 10 Business District; Case of Northern Light Church**

### **Public Hearing**

Chairperson Levine called the public hearing to order at 7:15 p.m.

### **Presentation**

Senior Planner Gladhill presented the Staff Report.

### **Citizen Input**

Discussion ensued regarding parking space requirements.

Gary Ladyka, 16360 Zuni St. Andover, stated they are excited to be coming to Ramsey, there is not a Methodist church in Ramsey at this time.

Lyndy Zabel, Associate Pastor, Anoka United Methodist Church, stated he will be the Pastor for the Ramsey church.

Commissioner Dunaway asked the applicants if they have any concerns or questions regarding fire suppression requirements.

Mr. Ladyka stated his discussions with Economic Development/Marketing Manager Backman had been that bids were being received and the fees would be amortized over the term of the lease. Then it was discovered that additional fire suppression was needed as well as widening the water main and if these costs are all passed on to them it would be a deal breaker as they are not financially capable at this time.

Economic Development/Marketing Manager Backman stated that bids are being received for the additional fire suppression and water main and he should have them next week. He explained that fire suppression is needed in the attic and that requires widening the water main to move the water up to the attic. The fire suppression would encompass 10,000 square feet.

Fire Marshal Matt Kohner stated this ordinance as passed, is part of the Building Code. What triggers the need for fire suppression is new construction, increase in square footage of an existing building or change of use. This building is going from a business to an assembly and

that triggers the need for fire suppression. In order to comply with the code, the minimum fire suppression needed would be the area the applicant would be using and the attic.

Chairperson Levine stated that it would be cost effective for the City to do the whole 10,000 square feet, and asked if that is why the water supply needs to be increased or would it need to be completed even if just the 5,000 square feet were done.

Economic Development/Marketing Manager Backman stated when the water goes up 20 feet; the pressure loses 10-15 psi. If it was just in the ceiling the two inch line would be sufficient, going up into the attic a six inch line is needed. His estimation would be that the line would extend from the main line about 270 feet to reach the attic. He added that given the fact it would be covering the 10,000 square feet, the applicants would not pay for the whole cost.

Discussion ensued regarding the timeframe of Highway 10 reconstruction and how that would affect this building and the life of the new fire suppression system.

Commissioner Bauer stated that this is a safety issue even if not required by law it would be the right thing to do for the safety of the people.

Discussion ensued regarding condition number six of the permit concerning the responsibility of who is pay for the fire suppression.

Mr. Ladyka stated they were agreeable with it being negotiated through the lease.

The Commissioners discussed events other than worship services where there would be more than the anticipated 70 people and the additional parking that would be needed. Mr. Ladyka stated that larger events would be held at their home church in Anoka where there is the space to handle the additional parking and people.

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

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

Chairperson Levine closed the public hearing at 7:50 p.m.

### **Commission Business**

Motion by Commissioner Brauer, seconded by Commissioner Dunaway to recommend that City Council adopt findings of fact favorable relating to Northern Light Church's request for an Interim Use Permit to allow for a church operation in the H-1 Highway 10 Business District.

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

Motion by Commissioner Brauer, seconded by Commissioner Van Scoy to recommend that City Council approve the request for an Interim Use Permit and declaring the terms as proposed with the wording change in Condition #6 from arrange to negotiate.

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

**Case #2: Public Hearing – Request for a Conditional Use Permit to Exceed Sign Size Restrictions at 7545 Veterans Dr. NW (formerly Civic Center Drive); Case of PSD, LLC**

### **Public Hearing**

Chairperson Levine called the public hearing to order at 7:52 p.m.

### **Presentation**

Senior Planner Gladhill presented the Staff Report.

### **Citizen Input**

Commission Brauer stated this is different from previous requests to exceed sign size as it is imperative that the people using this type of facility are able to find it and so it is important for the sign to be seen from as far away as possible.

Commissioner Bauer stated he concurred as the clientele will be regionally based as opposed to locally based.

Matt Kuker, PSD, LLC stated that their number one concern also was for the veterans to be able to see and find the facility. He continued that Sandman Signs does all their signs and does very nice work. The reverse hallowed light is more expensive, but will look nice on this building.

Commissioner Field questioned how the applicant came up with the logo size.

Mr. Kuker stated that it is the sign code that the VA internally adopted.

Commissioner Field stated this deviates significantly from what has been approved in the past and the Commission needs to provide a factual basis to justify such an expansion. He continued that he agrees with what was suggested before regarding the clientele, the patients need to visually spot it, also the VA has recommendations for their logo with regard to spacing and lettering size.

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

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

### **Commission Business**

Commissioners discussed the findings of fact.

Motion by Commissioner Brauer, seconded by Commissioner Bauer to recommend City Council adopt findings of fact favorable relating to PSD, LLC's request for a conditional use permit to exceed sign size restrictions established in City Code subject to review by the City Attorney as to the legal form with the addition of number 25. "That the proposed clientele, some of whom have disabilities, purpose and location of this facility, require a deviation from the normal sign size to allow them to easily locate this facility" and number 26. "That the height required is dictated by the standards of the Veterans Administration".

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

Motion by Commissioner Brauer, seconded by Commissioner Bauer to recommend City Council approve PSD, LLC's request to exceed sign size restrictions based on the findings of fact, and adopt a resolution declaring terms of the conditional use permit subject to review by the City Attorney as to legal form.

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

#### **Case #3: Staff Update**

The Staff Update was noted.

#### **Case #4: Zoning Bulletins**

The Zoning Bulletins were noted.

### **COMMISSION/STAFF INPUT**

### **ADJOURNMENT**

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

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

The regular meeting of the Planning Commission adjourned at 8:23 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**

**5. 1.**

**Meeting Date:** 10/06/2011

**By:** JoAnn Shaw, Community Development

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**Title:**

Note the Following City Council Meeting Minutes:

City Council meeting minutes dated August 9, 2011

City Council meeting minutes dated August 23, 2011

**Background:**

n/a

**Notification:**

**Observations:**

**Funding Source:**

**Staff Recommendation:**

**Committee Action:**

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**Attachments**

08.09.11

08.23.11

**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Tim Gladhill	Tim Gladhill	09/26/2011 08:59 AM
Form Started By: JoAnn Shaw		Started On: 09/23/2011 12:50 PM
	Final Approval Date: 09/26/2011	

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**CITY COUNCIL  
CITY OF RAMSEY  
ANOKA COUNTY  
STATE OF MINNESOTA**

The Ramsey City Council conducted a regular meeting on Tuesday, August 9, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Mayor Bob Ramsey  
Councilmember Randy Backous  
Councilmember David Elvig  
Councilmember Colin McGlone  
Councilmember Jason Tossey  
Councilmember Jeffrey Wise

Members Absent: Council Vacancy

Also Present: City Administrator Kurtis Ulrich  
Deputy City Administrator Heidi A. Nelson  
Public Works Director Brian Olson  
Economic Development/Marketing Director Aaron Backman  
Senior Planner Tim Gladhill  
City Engineer Tim Himmer  
City Attorney William Goodrich  
Planning Intern Patrick Brama

**1. CALL TO ORDER**

Mayor Ramsey called the regular meeting of the Ramsey City Council to order at 7:00 p.m., and led in the Pledge of Allegiance to the Flag.

**2. PRESENTATION**

None.

**3. CITIZEN INPUT**

None.

**4. APPROVE AGENDA**

Motion by Councilmember Wise, seconded by Councilmember McGlone, to approve the agenda as presented.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Wise, McGlone, Backous, Elvig, and Tossey. Voting No: None.

## 5. CONSENT AGENDA

Motion by Councilmember Wise, seconded by Councilmember Tossey, to approve the following items on the Consent Agenda:

- 5.01 Receive Cash & Investments for Period Ending June 30, 2011
- 5.02 Receive Cash & Investments for Period Ending July 31, 2011
- 5.03 Note the following Boards and Commissions meeting minutes:
  - a) Joint Planning Commission and City Council meeting minutes dated Thursday, June 2, 2011
  - b) Planning Commission meeting minutes dated Thursday, June 2, 2011
  - c) Environmental Policy Board meeting minutes dated Monday, June 6, 2011
  - d) Economic Development Authority meeting minutes dated Thursday, June 9, 2011
- 5.04 Approve for Exemption for a Gambling License for the Wounded Warriors Guide Service, Inc at Game Fair
- 5.05 Approve Assignment and Assumption of Agreement between Northstar Corridor Development Authority and the City of Ramsey
- 5.06 Approve License Applications

### Temporary On-Sale Liquor

Ramsey Rotary Club, 7550 Sunwood Drive NW, Ramsey, MN 55303 (To allow Ramsey Rotary Club to serve alcohol in The Draw Park on August 18, 2011)

### Peddler/Solicitor

Amy Jo Olson, 8711 60<sup>th</sup> Street SW, Willmar, MN 56201 (to sell puppies at Game Fair)

- 5.07 Consider Designation of Prize Proceeds to Employee Year-End Appreciation Banquet
- 5.08 Adopt Resolution #11-08-139 Requesting Grant from State's 2012 Capital Budget for US 10/CSAH (Armstrong) Interchange Project
- 5.09 Adopt Resolution #11-08-138 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing received during the Period of July 21 through August 4, 2011
- 5.10 Report from Public Works
  - 1) Consider Stormwater Solutions for Woodland Green Pond – *Consensus to move forward with relocating the septic field or hooking up to sewer and in the meantime work with the homeowner to extend the easement back as far as we can.*
  - 2) Consider the sidewalk snowplow policy – *Consensus for townhome developments to maintain their own sidewalks.*
  - 3) RFP for the parking ramp and parking lot snow removal at the Municipal Center – *Ratify the recommendation of the Public Works Committee to authorize staff to do RFPs for contracted snow removal services for municipal parking ramp and parking lot at the municipal center.*
  - 4) Review the dirt road elimination policy – *Consensus to continue eliminating dirt roads when development opportunities present themselves.*
  - 5) Update on Anoka County Access Spacing Guidelines that Determine Locations

for Hard Channelization – *informational only; no action necessary.*

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Wise, Tossey, Backous, Elvig, and McGlone. Voting No: None.

## **6. PUBLIC HEARING**

None

## **7. COUNCIL BUSINESS**

### **7.01: Consider Sanitary Sewer Options for the Property Located at 5220 156th Lane NW**

City Engineer Himmer reviewed the staff report. He introduced the homeowners, Jason and Ruth Obermaier.

Mr. Obermaier stated he did not want his property hooked up to only City sewer. He expressed concern that this alone would not be of much help and inquired whether the mound system could work.

City Engineer Himmer explained how that system would work, and added it was not the direction of the Council.

Mayor Ramsey indicated the option of hooking up to City sewer would necessitate the regrading of the yard, and the sale of the easement to the City.

Mr. Obermaier stated he would not sell any land.

City Administrator Ulrich noted there is a process for negotiation, and the City would like to meet with the homeowners to discuss more details.

Motion by Councilmember Tossey, seconded by Councilmember Wise, to table this item to allow further discussion.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Tossey, Wise, Backous, Elvig, and McGlone. Voting No: None.

### **7.02: Consider Installation of Permanent Power for City Happy Days Event**

City Engineer Himmer reviewed the staff report. He explained Connexus has modified their costs, and they proposed \$18,000 on the low end, to run three separate locations within the park. They also proposed \$16,000 for two locations. He suggested the \$18,000 proposal was the best to get the entire project done.

Councilmember Wise said he has been on the Happy Days Committee for two years, and this issue had been discussed then. He agreed it was a good idea to get this done. The City would

recover \$3,500 each year in rental expenses. Most of the locations designated are in City easements and lot lines, which means the electricity would not need to be moved in the future. The benefit is to not hear generators run.

Mayor Ramsey stated he was somewhat in agreement with this when the proposal was \$13,000. He noted the expense is now higher than anticipated from when he was on the Public Works Committee. He stated he is no longer in favor of this. He suggested the electricity be put in at the time of the roads to save costs.

Councilmember Elvig noted the original proposal said it could be as high as \$13,000, and the low proposal was \$8,300. He questioned why there was a change.

City Engineer Himmer explained the numbers were first calculated through a private contractor the City worked with, and the contractor was going to help to come up with a proposal. This contractor has since become too busy and staff is now working with Connexus.

Councilmember McGlone stated he would not approve of spending \$18,000 when there is a dirt road that needs to be finished. He said he prefers to keep the expenditure lower.

City Engineer Himmer noted that based on the most current plans, the power feed would not be in the right-of-way and would not be impacted by roadway alignment. He added there is existing power on the east side of the right-of-way for the Veterans Clinic. In the future, to extend the power, the cost would not change. The cost from Connexus is fixed.

Motion by Mayor Ramsey, seconded by Councilmember Tossey, to deny staff to negotiate agreements/contracts with Connexus Energy and a private electrical contractor for the installation of electrical power to support the City's Happy Days event.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Tossey, Backous, Elvig, and McGlone. Voting No: Wise.

### **7.03: Consider Introducing Ordinance to Change Civic Center Drive to Veteran's Drive**

Senior Planner Gladhill reviewed the staff report. He noted the request is to drop the apostrophe in "Veterans" and make it plural.

Motion by Mayor Ramsey, seconded by Councilmember Tossey to introduce the ordinance to change Civic Center Drive to Veterans Drive.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Tossey, Backous, Elvig, McGlone, and Wise. Voting No: None.

### **7.04: Ordinance to Amend City Code Section 117-53 Entitled Variances**

Planning Intern Brama presented the staff report.

City Attorney Goodrich explained any variance granted by the City must comply with State Statute; the City is given some latitude.

Senior Planner Goodrich further explained the City's ordinance was consistent with the State statute. The direction from the Planning Committee was to remove older language in descriptions and use less strict language.

Councilmember McGlone questioned whether the State could change the rules and make every city comply.

City Attorney Goodrich replied that scenario could happen. In that case, the City would fall back on its Charter and may opt out of the rule, depending on the language of the charter.

Motion by Mayor Ramsey, seconded by Councilmember Wise, to waive the City Charter requirement to read the ordinance aloud adopt the Ordinance #11-10 amending City Code Chapter 117, Section 117-53 (Variances) of the city code of Ramsey, Minnesota.

Roll Call Vote:

Councilmember Elvig	aye
Councilmember McGlone	nay
Councilmember Wise	aye
Councilmember Backous	aye
Councilmember Tossey	aye
Mayor Ramsey	aye

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Wise, Backous, Elvig, and Tossey. Voting No: Councilmember McGlone.

**7.05: Consider Award of Contract for Improvement Project #10-22, Ramsey Municipal Parking Facility**

Public Works Director Olson reviewed the staff report. He stated the Anoka County Regional Transit Authority approved a grant request for an additional \$2 million. They originally offered \$1 million contingent upon the City raising the rest of the money. The Met Council has contributed up to \$1.3 million for the rail station. The funding is becoming more complete, and emphasizes the need to move forward.

Councilmember Elvig stated he is pleased the City has been working on this for the better part of the year, and many of the funds the City has been working toward in this time have gotten approved. He stated part of the reason for the expansion is because a larger ridership is anticipated, and there will be more ridership when this comes to reality.

Motion by Councilmember Elvig, seconded by Mayor Ramsey to approve the Contract to Knutson Construction for \$2,734,000 while reserving a 5% construction contingency of \$136,700 and to approve the contract with Braun for a cost not to exceed \$55,453 for specialty

inspections and to adopt Resolution #11-08-139A defining the limits of authority for change orders on the project.

Further discussion: Councilmember Tossey indicated there are 100 riders a day, and the existing parking ramp is more than adequate. He stated to take the money is irresponsible, and he would oppose the motion. Councilmember Elvig respectfully responded that part of the job of the Council is to look forward 5 to 10 years and plan for infrastructure. In the future, the land will cost double. Councilmember McGlone stated the zoning in The COR is for vertical parking. The zoning required the ramp parking to be used by all structures within the zone. The ramp is needed now and in the future. Other ramps will need to be built in the development and this is one of a total of five. Public Works Director Olson explained when the Town Center was envisioned, there were three parking ramps. Councilmember Backous suggested some of the funds be used for a pedestrian overpass. Mr. Olson stated this was mentioned before, and because the timing was not clear, this was not included in the cost staff bid out. He said the meeting with MnDOT went well, and they are supportive of the City's endeavors. All indications at this point look positive for an overpass, but he said he could not say if it would be supported in the future. The cost will be around \$1 million. Councilmember Backous stated he agreed with Councilmember Tossey; he declared he would oppose the motion as well. Councilmember Elvig commented without accepting the grant, it is a guarantee that the overpass will not be built. The applications for the CMAQ funds are competitive. There are many areas fighting for this grant. This project was awarded at the top of the list, which means that this is worthwhile. He stated the City fought hard to win the competition and he felt it would be irresponsible to turn this back. Councilmember Wise noted the money would not go back to taxpayers if the City did refuse it. Mayor Ramsey concurred and noted it could be reallocated. He explained the City's intent is to build The COR, which the City owns, and it needs to be put back into private development. If the funds are refused, the City will have to come back to the taxpayer at some point and ask them to add on to the parking ramp. He said he felt it seemed foolish to turn the money away.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, McGlone, and Wise.  
Voting No: Councilmember Backous and Tossey.

## **8. MAYOR, COUNCIL AND STAFF INPUT**

City Administrator Ulrich noted the following events:

### Game Fair

August 12 through 14 is the annual Game Fair at Armstrong Kennels. The City will have a tent at the event.

### Business Appreciation Day / Special Election Day

The Business Appreciation Day is August 16 at the Links at Northfork. It is also the day of the special election for the seat vacated by Councilmember Jeffrey.

Anoka County Board

The Anoka County Board will hold a meeting at the Ramsey City Hall on September 13 in the Chambers.

Broadband Fiber Optic

The groundbreaking ceremony for the landmark infrastructure, which marks the beginning of broadband fiber optic, is September 13 at Connexus at 1:30 p.m.

Happy Days

Happy Days is scheduled for September 17, 2011. There will be a craft show, car show, parade, food vendors, street dance, fireworks and kids events.

The Draw

The Farmers Market and Concerts take place in The Draw on Thursday afternoons/evenings. Adult beverages are allowed in The COR.

**9. ADJOURNMENT**

Motion by Councilmember Wise, seconded by Councilmember Backous, to adjourn the meeting. Motion carried.

The regular meeting of the City Council adjourned at 7:51 p.m.

Respectfully submitted,

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Kurtis G. Ulrich  
City Administrator

ATTEST:

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Jo Ann M. Thieling  
City Clerk

Drafted by Chris Moksnes  
*TimeSaver Off Site Secretarial, Inc.*

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**CITY COUNCIL  
CITY OF RAMSEY  
ANOKA COUNTY  
STATE OF MINNESOTA**

The Ramsey City Council conducted a regular meeting on Tuesday, August 23, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Mayor Bob Ramsey  
Councilmember Randy Backous  
Councilmember David Elvig  
Councilmember Colin McGlone  
Councilmember Sarah Strommen  
Councilmember Jason Tossey  
Councilmember Jeffrey Wise

Also Present: Deputy City Administrator Heidi A. Nelson  
Finance Officer Diana Lund  
Public Works Director Brian Olson  
Economic Development/Marketing Director Aaron Backman  
Fire Chief Dean Kapler  
Police Chief James Way  
Parks Supervisor Mark Riverblood  
Senior Planner Tim Gladhill  
Environmental Coordinator Chris Anderson  
City Engineer Tim Himmer  
Development Manager Darren Lazan  
City Attorney William Goodrich  
Planning Intern Patrick Brama  
Streets Supervisor Grant Reimer

## **1. CALL TO ORDER**

Mayor Ramsey called the regular meeting of the Ramsey City Council to order at 7:00 p.m., followed by the Pledge of Allegiance led by Mayor Ramsey.

## **2. PRESENTATIONS**

### **2.1 Swearing in/Oath of Office for Councilmember Sarah Strommen**

City Attorney Goodrich issued the Oath of Office to Councilmember Sarah Strommen.

Former Councilmember Jeffrey congratulated Councilmember Strommen and expressed good wishes.

Councilmember Strommen commented she has big shoes to fill and thanked former Councilmember Jeffrey for his years of service. She thanked the residents of Ward 4 for putting their confidence in her.

## **2.2 Recognize Police Reserve Sharon Johnson for Years of Service**

Police Chief Way introduced Sergeant Tim Frankfurth. Sergeant Frankfurth introduced Sharon Johnson and noted she has 13 years of service with the Reserve program.

Police Captain Tim Dwyer presented Ms. Johnson with a Certificate of Appreciation for her years of service.

Ms. Johnson thanked the Police Chief for the support he has given to the Police Reserves.

## **2.3 Mayor Ramsey read the Resolution Proclaiming September 27 - 23 as Constitution Week.**

Representatives of the Daughters of the American Revolution were present to accept the Proclamation of Constitution Week.

## **3. CITIZEN INPUT**

Eric Zaetsch, 6521 - 154<sup>th</sup> Lane NW, commented on a memo from Stacy Kvilvang to Deputy City Administrator Nelson. He noted it is in regard to the proposed apartments and the possible funding. He questioned if there is not adequate cash to pay off the outstanding General Obligation TIF bonds, the City can use TIF revenue from Allina and the Veterans Clinic. He said this seems as though the City is dodging a referendum. He suggested the citizens be informed and invited to support the endeavor by having a referendum.

Jenny Brock, 15240 Kangaroo Street NW, Ramsey, stated she asked about the potential traffic flow on Alpine that would result from the new school. She was told Alpine would not be affected. She said her property backs up to this development. It looks like there will be a back door exit out of that school onto Puma. This would increase traffic on Alpine, and she would have a difficult time getting out onto Alpine.

Mayor Ramsey explained there must be two accesses into any type of development. This was not done to plan to increase the traffic on Puma; it was only to offer an alternate route. He added Bunker Lake Boulevard is the primary ingress and egress for that project, and the expectation is that Bunker Lake Boulevard will be the primary traffic route.

Councilmember Backous explained the original plan was to cul-de-sac the road and to not connect it to Puma; the plan did change from the original. It was not incorrect information given to her; it was a change that had to be made.

Councilmember Tossey confirmed the original plan was a cul-de-sac, when staff approached Council and pointed out there was no alternate route. It is a public safety reason to put the alternate route in, to be used, for example, when there is an accident on Highway 10.

Ms. Brock stated he heard on the morning news that the City of Ramsey is going to add on to the parking ramp at a cost of \$14 million dollars. She questioned how the taxpayers would pay for this with the economy as it is.

Mayor Ramsey noted the City received a grant for the expansion. With the train stop coming to Ramsey, the expansion was needed. There is no impact on the tax levy for either of these projects.

Mr. Zaetsch noted County Commissioner Look had given him a written statement indicating a possibly 4-way stop may be installed on Armstrong and Alpine, and possibly one at the Central Park intersection. He urged the Council to consider lights and suggested the Council discuss this item with Commissioner Look.

Mayor Ramsey responded the Council has addressed the intersections mentioned. He noted they have requested the County consider the intersection at Central Park, as this is on a County Road. This intersection did not meet their warrants for a stop sign. He noted the intersection at Alpine and Armstrong may meet the criteria, and this will be the County's decision.

Mayor Ramsey requested the Consent Agenda be acted on prior to the Approval of the Agenda.

#### **4. CONSENT AGENDA**

Councilmember Tossey requested Item 4.7 be removed from the Consent Agenda and added to the Agenda as Item 7.07

Councilmember Strommen requested Item 4.15 be removed from the Consent Agenda and added to the Agenda as Item 7.08.

- 4.1 Receive May 2011 Financial Reports - General Fund and Enterprise Funds
- 4.2 Receive June 2011 Financial Reports - General Fund and Enterprise Funds
- 4.3 Approve the following Council and Council Committee Meeting Minutes:
  - a) City Council Special – May 17, 2011
  - b) City Council Work Session – May 17, 2011
  - c) City Council Work Session – June 7, 2011
  - d) City Council Work Session – June 14, 2011
  - e) City Council Regular – June 14, 2011
  - f) City Council Work Session – June 28, 2011
  - g) City Council Regular – June 28, 2011
  - h) City Council Regular – July 12, 2011
  - i) City Council Special – July 19, 2011
  - j) City Council Work Session – July 19, 2011
  - k) City Council Work Session – July 26, 2011

- l) City Council Regular – July 26, 2011
- 4.4 Approve Management of City Hall Lobby Area to The Ramsey Foundation with regard to Displays and Exhibits
  - 4.5 Approve Contract Maintenance Services for The Draw
  - 4.6 Introduce Ordinance to Amend City Code Section 117-117 (E1 Employment District) and Section 117-116 (E2 Employment District).
  - 4.7 ~~Council Dias – bid selection~~
  - 4.8 Approve Extension of Contract for General Legal Services
  - 4.9 Adopt Resolution #11-08-140 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing received during the Period of August 5, 2011 through August 17, 2011
  - 4.10 Adopt Resolution #11-08-141 Proclaiming September 17 - 23, 2011 as Constitution Week
  - 4.11 Adopt Resolution 11-08-142 Authorizing Partial Payment to Omann Brothers Paving Inc for IP 11-22 Rhinestone Commons Parking Lot
  - 4.12 Adopt Resolution 11-08-143 Authorizing Partial Payment to County Line Excavating LLC for IP 09-25 Dysprosium Street Improvements
  - 4.13 Adopt Resolution 11-08-144 Authorizing Partial Payment to Rum River Contracting for IP 10-07 Alpine Drive/Roanoke Street Improvements
  - 4.14 Adopt Resolution #11-08-145 Authorizing Final Payment to Rum River Contracting for IP 08-33 Ute Street Improvements
  - 4.15 ~~Adopt Resolution 11-08-XXX Authorizing Partial Payment to Rum River Contracting for IP 08-34 Bituminous Paving of 151st, 152nd, and Fluorine Street~~
  - 4.16 Adopt Resolution #11-08-146 Authorizing Partial Payment to Douglas-Kerr Underground LLC for IP 11-21 Armstrong and Bunker Lake Blvd Improvements
  - 4.17 Adopt Resolution #11-08-148 Requesting MnDOT Funding for Construction of a Frontage Road on the South Side of Highway 10 (Riverdale Drive Extension to Traprock Street) Through the State Municipal Agreement Program
  - 4.18 Report from the Personnel Committee meeting held on August 9, 2011.
    - 1) Consider a Resolution Ending the Probationary Period of the Senior Planner and Assigning a New Interim Supervisor to the Planning Division – *Ratified the recommendation of the Personnel Committee to approve Resolution 11-08-147 which removes Mr. Tim Gladhill from probation and retains him as the City’s regular full-time Senior Planner, and assigns the Planning Division Supervisory duties to Mr. Gladhill on an interim basis of six months beginning August 24, 2011 to be reviewed in February 2012.*

Motion by Councilmember Backous, seconded by Councilmember Wise to approve the Consent Agenda as amended.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Backous, Wise, Elvig, McGlone, Strommen, and Tossey. Voting No: None.

## **5. APPROVE AGENDA**

Motion by Councilmember Backous, seconded by Councilmember Elvig, to approve the agenda as amended.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Backous, Elvig, McGlone, Strommen, Tossey, and Wise. Voting No: None.

## **6. PUBLIC HEARING**

None.

## **7. COUNCIL BUSINESS**

### **7.01: Authorization of Resolution #11-08-XXX Authorizing the Sale of \$4,365,000 General Obligation Bonds, Series 2011 A**

Finance Director Lund reviewed the staff report.

Northland Securities representative Paul Donna reviewed the summary of the City's bond and the bond pricing. He said he does not anticipate the need to levy any property taxes.

Motion by Councilmember McGlone, seconded by Councilmember Wise, to Adopt Resolution #11-08-149 authorizing the issuance and awarding the sale of \$4,365,000 General Obligation Bonds, Series 2011A.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers McGlone, Wise, Backous, Elvig, Strommen, and Tossey. Voting No: None.

### **7.02: Accept Petition Requesting the Review of Drainage Concerns Around the 149th Lane NW and TH 47 Wetland Complex**

City Engineer Himmer reviewed the staff report. He spoke for the applicant who could not be at the meeting. He noted residents have been there 18 years, and they have not experienced this before. He indicated his only request at this time is to have the Council review the situation. He asked the Council to consider whether there might be a long-term solution. He explained the residents had two pumps running 24 hours a day for two weeks. There was very little progress.

Councilmember Wise suggested the structure on Highway 47 mentioned in the staff report might have been installed incorrectly.

City Engineer Himmer replied staff did review that structure. He said they are waiting for calls back from agencies. He said it is a protected wetland, and the elevation cannot be changed.

City Engineer Himmer noted there is a petition with 29 signatures from 28 properties. The signatures have been verified as accurate. He noted staff would look at the water flow, storm sewer and evaluate the water shed.

Motion by Councilmember Elvig, seconded by Councilmember McGlone, to accept the petition

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, McGlone, Backous, Strommen, Tossey, and Wise. Voting No: None.

**7.03: Consider Final Plat, Site Plan, and Comprehensive Plan/Zoning Amendment Approval of Stoney River; Case of First Phoenix Group and Lord of Life**

Senior Planner Gladhill reviewed the staff report.

Phoenix Group representative, David Kiefer, 601 Carlson Parkway, Minneapolis offered to answer questions.

Eric Kellogg, representative with the engineering firm, also stood for questions.

Councilmember Elvig questioned whether it would be feasible to make three lanes to accommodate a fair amount of traffic and most likely peak travel times.

Mr. Kellogg responded he is working with the County and considering these issues. There will be a full right in, right out that is not there today.

City Engineer Himmer indicated this is being discussed in Anoka County in terms of an overlay. There may be a dedicated right in, dedicated through land and dedicated left turn.

Mr. Kiefer gave an overview of Stoney River Apartments. The idea is one can move into Stoney River independent living, and services can be brought to them as needed. There will be memory care units for those that require this level of care. Ebenezer will be managing the unit. He noted there would be a pre-leasing office on the premises of Lord of Life in the fall. He offered his phone number for the public to call with questions. Mr. Kiefer added the groundbreaking will be in the late fall of 2011, and construction will be approximately 12 months. Residents can begin moving in early fall of 2012. The project will bring 70 employees to Ramsey for full and part time jobs, not including the construction of the project.

Motion by Councilmember Elvig, seconded by Councilmember Wise, to Adopt Resolution #11-08-150 approving the Final Plat of Stoney River, with necessary adjustments allowed to line up the common property line with the shared access; dependant on the City Attorney's review and approval, to approve the site plan for Stoney River, contingent upon final design of a shared access, and adopt Resolution #11-08-151 approving the Comprehensive Plan Amendment to High Density Residential, and to introduce the ordinance to amend the Official Zoning Map to R-3 Residential for the Subject Property.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, Wise, Backous, McGlone, Strommen, and Tossey. Voting No: None.

**7.04: Adopt Ordinance to Change Civic Center Drive to Veteran's Drive**

Senior Planner Gladhill reviewed the staff report.

Motion by Mayor Ramsey, seconded by Councilmember Backous, to waive the Charter requirement to read the ordinance aloud and adopt Ordinance #11-11 to change Civic Center Drive to Veterans Drive.

Roll Call Vote:

Councilmember Elvig	aye
Councilmember McGlone	aye
Councilmember Tossey	aye
Councilmember Strommen	aye
Councilmember Wise	aye
Councilmember Backous	aye
Mayor Ramsey	aye

Motion carried.

**7.05: Consider Comprehensive Plan Amendment**

Senior Planner Gladhill reviewed the staff report.

Motion by Councilmember Tossey, seconded by Councilmember McGlone, to direct staff to distribute the Comprehensive Plan Amendment to adjacent jurisdictions as required by State Statute and adopt Resolution #11-08-152 to approve the Comprehensive Plan Amendment, subject to final review by the Metropolitan Council.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Tossey, McGlone, Backous, Elvig, Strommen, and Wise. Voting No: None.

**7.06: Site Plan Review for Ramsey Northstar Commuter Rail Station; Case of City of Ramsey**

Environmental Coordinator Anderson reviewed the staff report.

Public Works Director Olson stated he spoke with Kimley-Horn and Associates and they will revise the plan to include the topsoil to meet Ramsey’s specifications. He reviewed the costs associated with the project. He also presented the project management plan. The agreement identifies the funding sources and commitments and provides this will come before the Council. He said he expected bid documents to be completed in December.

Motion by Councilmember Elvig, seconded by Mayor Ramsey, to approve the site plan for the Ramsey Northstar Commuter Rail Station contingent upon compliance with the City Staff Review Letter dated August 17, 2011.

Further discussion: Mayor Ramsey stated he appreciated all the work County Commissioner Look has put into this. Councilmember Strommen questioned whether bike lockers and racks would be a future item to consider. Environmental Coordinator Anderson replied that it would be.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, Backous, McGlone, Strommen, Tossey, and Wise. Voting No: None.

**7.07: Request for Council Dias--bid selection**

Planning Intern Brama reviewed the staff report. He noted the work to lower the façade of the dais is funded by a balance from QCTV.

Councilmember Tossey stated the money would be spent for a room that is used only five days a month, so he will oppose the request.

Councilmember McGlone indicated he is satisfied with the dais as is, and will oppose the motion.

Motion by Mayor Ramsey, seconded by Councilmember Elvig to select Timber Creek to alter the dais desk.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, Backous, and Strommen. Voting No: Councilmembers McGlone, Tossey and Wise.

**7.08: Adopt Resolution 11-08-XXX Authorizing Partial Payment to Rum River Contracting for IP 08-34 Bituminous Paving of 151st, 152nd, and Fluorine Street**

City Engineer Himmer stated this is considered partial payment to Rum River Contracting; this is not a final payment. He explained the City has held back payment since June, and they have not requested extra money on any of the repairs they have done.

Councilmember Strommen explained she pulled this item from the Consent Agenda to make sure the residents understood this is only partial payment. The City is aware there is still work to be done. She asked that the residents help the City, and water to make the turf take hold if there is a dry spell of weather.

Mayor Ramsey asked if there is a plan to finish this project.

City Engineer Himmer explained the plan to finish the project was made and then delayed due to weather. He said they know this project has to be made right before the assessments come due, and the contractor is well aware of the issues.

Motion by Councilmember Wise, seconded by Councilmember McGlone, to adopt Resolution #11-08-153 Authorizing Partial Payment to Rum River Contracting for IP #08-34 Bituminous Paving of 151st, 152nd, and Fluorine Street.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Wise, McGlone, Backous, Elvig, Strommen, and Tossey. Voting No: None.

## **8. MAYOR, COUNCIL AND STAFF INPUT**

1. There will be a Council Work Session on Tuesday, August 30, beginning at 5:30 p.m.
2. Every Thursday - Farmers Market and Events at The Draw Park
3. City of Ramsey Happy Days Festival - Friday through Sunday, September 16 - 18, 2011
4. The ramp expansion will be starting next week. There is a preconstruction meeting Thursday. Residents will start to see a change in access and signage. The overlay project will start September 19.
5. Senator Jungbauer will be on the roof of Coburn's next week to benefit the Lee Carlson Center. The Lee Carlson Center is a mental health facility.

## **9. ADJOURNMENT**

Motion by Councilmember Tossey, seconded by Councilmember McGlone, to adjourn the meeting.

Motion carried.

The regular meeting of the City Council adjourned at 8:55 p.m.

Respectfully submitted,

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Kurtis G. Ulrich  
City Administrator

ATTEST:

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Jo Ann M. Thieling  
City Clerk

Drafted by Chris Moksnes  
*TimeSaver Off Site Secretarial, Inc.*

## Regular Planning Commission

6. 1.

**Meeting Date:** 10/06/2011

**By:** Tim Gladhill, Community Development

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### Title:

Request for an Amended Conditional Use Permit for an Accessory Dwelling at 16101 Ramsey Blvd NW;  
Case on Anthony Reed

### Background:

The City has received an application to amend an existing Conditional Use Permit (CUP) for an accessory dwelling in a detached accessory structure at 16101 Ramsey Blvd NW. The City approved a CUP in November, 2000 that allowed for an accessory dwelling on the Subject Property for use by a relative of the owner/tenant of the primary dwelling. The Subject Property was sold in May, 2010. The new owner of the Subject Property desires to lease the accessory dwelling to a non-relative for the purposes of gaining lease revenue. This appears to be in conflict with the CUP approved in 2000 and the City's current ordinances related to accessory apartments/dwellings. City Code currently does not allow for accessory dwellings.

### Notification:

All property owners within 350 feet of the Subject Property were notified of the Public Hearing via Standard US Mail. A Notice of Public Hearing was also published in the Anoka County Union.

### Observations:

Although accessory dwellings are not currently allowed by City Code, the City did approve the accessory dwelling by CUP in 2000, thereby affording the Subject Property certain lawful, non-conforming rights under Minnesota Statute Sect. 462.357 subd. 1 e and City Code Sect. 117-57. The question at hand is whether the Planning Commission believes that this request is an expansion of a lawful, non-conforming use. This type of use would be considered an accessory apartment or an accessory dwelling. Neither is listed as an allowable use under Chapter 117 of City Code. Furthermore, City Code Section 117-348 states that there shall be only one (1) main building per lot. The City Attorney is reviewing the term of restricting use to a relative of the primary dwelling as it relates to Minnesota Statutes and Fair Housing Act standards.

Mr. Reed purchased the Subject Property in 2010. At the time of sale, Staff was contacted by a real estate agent regarding the status of what was being marketed as a 'guest cottage'. With any request that was submitted to the City, a copy of the CUP that was approved in 2010 was sent as background, which included the provision that the tenant of this dwelling needed to be related to the primary dwelling tenant.

The City Council recently addressed accessory apartments and whether the City's policy should allow for these types of uses. However, at that time, questions regarding regulation of off-street parking and maintenance of the dwellings remained unresolved. There are certain benefits in allowing accessory apartments, especially from an affordable, life-cycle housing standpoint. Accessory apartments do allow independent living arrangements, especially for family members that have the need or desire to live in close proximity to other family members for a variety of reasons. However, Staff reminds the Planning Commission that it is acting in an administrative and advisory manner for these types of requests. If the Planning Commission desires to consider allowing this type of use for future requests, amendments to City Code will need to be processed and specifically address off-street parking and housing maintenance standards.

Finally, the Applicant does operate a Home Occupation on the Subject Property. It appears that the only business activity that occurs on the Subject Property is a home office for mailing and billing purposes. The Applicant operates a sign fabrication and installation company called Lumen Signs. According to the applicant, all other activities other than the office occur at 4835 Lyndale Ave in Minneapolis. No non-resident employees nor vehicles

or equipment related to the operation of Lumen Signs are located at the Subject Property. Based on this information, Staff would recommend that a Home Occupation Permit shall not be required.

**Funding Source:**

All costs associated with the application are the responsibility of the Applicant.

**Staff Recommendation:**

Staff recommends approval of the amended CUP, given certain lawful, non-conforming status stemming from the previous approval of the accessory dwelling.

-AND-

Staff recommends that the Planning Commission recommend a policy to the City Council related to accessory apartments.

**Committee Action:**

Motion to recommend that the City Council adopt the resolution approving findings of fact.

-AND-

Motion to recommend that the City Council adopt the resolution approving the conditional use permit.

-OR-

Motion to recommend that the City Council deny the resolution approving the conditional use permit, based on findings of fact.

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**Attachments**

[Site Location Map](#)

[Aerial Photo](#)

[Applicant Photos](#)

[Findings of Fact](#)

[Conditional Use Permit](#)

**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Chris Anderson	Chris Anderson	09/26/2011 11:06 AM
Tim Gladhill (Originator)	Tim Gladhill	09/26/2011 11:12 AM
Form Started By: Tim Gladhill		Started On: 09/12/2011 01:00 PM
	Final Approval Date: 09/26/2011	





Accessory Dwelling



Primary Dwelling



56 Ramsey Blvd NW

56



View from Ramsey Blvd.

The Cottage sits approx. 240' back from Ramsey Blvd. Please note that the 6'tall brown wooden fence would be removed, increasing the frontage on Ramsey Blvd. from 30' to 65'+



West Elevation

Please note that the cottage sits 92' East of the main house and has separate gas/electric meters, separate septic system, and cable TV connections.



North Elevation



East Elevation



South Elevation



View from rear of cottage: looking West towards main house.



View from cottage looking North towards neighbors RV storage area.



09.12.2011

Councilmember \_\_\_\_\_ introduced the following resolution and moved for its adoption:

**RESOLUTION #11-10-\_\_\_\_**

**A RESOLUTION ADOPTING FINDINGS OF FACT #\_\_\_\_ RELATING TO A REQUEST FROM ANTHONY REED FOR AN AMENDED CONDITIONAL USE PERMIT TO MAINTAIN TWO DWELLINGS ON THE PROPERTY LOCATED AT 16101 RAMSEY BOULEVARD NW.**

**WHEREAS**, the City of Ramsey received an application from Anthony Reed for an amended conditional use permit to maintain a second dwelling on the property generally known as 16101 Ramsey Boulevard NW and legally described as follows:

South 138.4 feet of West 825 feet of Southwest quarter of Northeast quarter Section 15-32-25 as measured along West and South lines thereof excluding road subject to easement of record.

(“Subject Property”)

**NOW THEREFORE, BE IT RESOLVED BY THIS CITY COUNCIL OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA that the findings of fact relating to the request are determined to be as follows:**

1. That on November 28, 2000, the City approved a conditional use permit to maintain two dwellings on the Subject Property, provided that the occupant of the accessory dwelling was related to the occupant of the primary dwelling. The findings of fact and permit for that approval are hereby incorporated as reference. Said documents are in City files and available upon request.
2. That on August 18, 2011, Anthony Reed (the “Applicant”), properly applied for an amended condition use permit to maintain two (2) dwellings on the Subject Property.
3. That on August 25, 2011, the City invoked a 60-day extension to the 60-day time limit for reviewing the conditional use permit as permitted by Minnesota Statute 15.99.
4. That the Applicant appeared before the Ramsey Planning Commission for a public hearing pursuant to Section 117-51 of the City Code on October 6, 2011, and that said public hearing was properly advertised, and that the minutes of said public hearing are hereby incorporated as a part of these findings by reference.
5. That the Subject Property is approximately 2.48 acres in size.
6. That the Subject Property and surrounding parcels are zoned R-1 Residential (Rural Developing).
7. That Section 117-358 (Newly erected buildings; lot grade elevations) of City Code states that there shall not be more than one main dwelling on a lot except as otherwise provided.

8. That City Code Section 117-111 (R-1 Residential District) does not list accessory apartments/dwellings as an allowable use.
9. That the Applicant's dwelling on the Subject Property is considered to be the main building and the Applicant is requesting to utilize the accessory dwelling to lease to a separate tenant with the intent to obtain lease revenue from use of the accessory dwelling.
10. That the use will/will not be unduly dangerous or otherwise detrimental to persons residing or working in the vicinity of the use, or to the public welfare.
11. That the use will/will not substantially adversely impair the use, enjoyment or market value of any surrounding property.
12. That the use will/will not be harmonious with and in the specific objectives of the Comprehensive Plan.
13. That the use will/will not be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and the use will/will not change the essential character of the area.
14. That the use will/will not be hazardous or disturbing to existing or future neighboring uses.
15. That the use will/will not be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, or schools.
16. That the use will/will not create excessive additional requirements at public cost for public facilities and services and the use will/will not be detrimental to the economic welfare of the community.
17. That the use will/will not involve uses, activities, processes, materials and equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.
18. That the use will/will not be consistent with the intent and purposes of City Code Chapter 117.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember \_\_\_\_\_, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the 25<sup>th</sup> day of October, 2011.

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Mayor

**ATTEST:**

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City Clerk

Councilmember ~~Connolly~~\_\_\_\_\_ introduced the following resolution and moved for its adoption:

**RESOLUTION #~~1100-110-309~~\_\_\_**

**A RESOLUTION APPROVING THE ISSUANCE OF AN AMENDED CONDITIONAL USE PERMIT BASED ON FINDINGS OF FACT # 0540 AND DECLARING TERMS OF PERMIT TO MAINTAIN A SECOND DWELLING ON A PARCEL.**

**WHEREAS,** ~~Pamela and Stephen Upton~~Anthony Reed ~~have has~~ properly applied for an amendment to the existing conditional use permit to maintain a second dwelling on the property generally known as 16101 Ramsey Boulevard and legally described as follows:

South 138.4 feet of West 825 feet of Southwest quarter of Northeast quarter Section 15-32-25 as measured along West and South lines thereof excluding road; subject to easement of record.

("Subject Property").

**WHEREAS,** the Planning Commission met on ~~November 6~~October 6, 200011, conducted the public hearing and recommended that the City Council approve ~~of~~ the request.

**NOW THEREFORE, BE IT RESOLVED BY THIS CITY COUNCIL OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA, as follows:**

1. Based on Findings of Fact # 309, an amended conditional use permit ("Permit") to maintain a second dwelling on the Subject Property is hereby granted to ~~Pamela and Stephen Upton~~Anthony Duane Reed and Anisa Marie Thomas (~~the~~ "PermitteesPERMITTEES").
2. The second dwelling shall not be discontinued as an accessory use to the principal dwelling by way of sale, ~~lease, or use by other than a relative of the Permittees and a relative is defined as someone who is related by blood, marriage, or adoption to the Permittees,~~ unless the property is subdivided in accordance with relevant City Codes. ~~In addition, the permittee shall not be permitted to rent or lease the premises in exchange for any consideration.~~
3. The ~~Permittees~~PERMITTEES shall obtain a Certificate of Occupancy for the second dwelling on the Subject Property. The Building Official will conduct the appropriate inspections of the second dwelling to insure the structure meets Uniform Building Code requirements, prior to occupancy.
4. The ~~Conditional Use~~ Permit, upon written notice being provided by the City to the ~~Permittees~~ PERMITTEES but without further action by the Planning Commission or City Council, shall expire if the ~~permit holder~~PERMITTEE fails to initiate such conditional use permit and fulfill each and every condition attached thereto within one (1) year from the date of its authorization, or if the use is discontinued for a continuous twelve (12) month period, unless

a petition for an extension of time in which to complete or utilize the use that has been granted by the Council. Such extension shall be requested in writing and filed with the ~~City~~ CITY at least thirty (30) days before the expiration of the original ~~conditional-use permit~~Permit. The request for extension shall state facts showing a good faith attempt to complete or utilize the use permitted in the ~~conditional-use permit~~Permit. Such petition shall be presented to the Planning ~~and Zoning~~ Commission for a recommendation to the Council and acted upon by the City Council.

5. The ~~Permittees~~ PERMITTEES shall be responsible for all ~~City~~ CITY costs incurred in administering and enforcing this Permit. Said expenses shall be paid within 15 days of billing by the ~~City~~ CITY and failure to pay the ~~City's~~ CITY'S expenses within the 15 day billing period will ~~permit~~ the ~~City~~ CITY to draw upon any of the escrows required by this agreement for payment.
6. The City Administrator and/or his/her designee shall have the right to inspect the premises for compliance and safety purposes annually or at any time upon reasonable request.
7. The ~~City~~ CITY shall record this Permit in the office of the Anoka County Recorder and the ~~Permittees~~ PERMITTEES agree to the terms and provisions of this Permit.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember ~~Hendriksen~~ \_\_\_\_\_, and upon vote being taken thereon, the following voted in favor thereof:

- ~~Mayor Gamee~~
- ~~Councilmember Connolly~~
- ~~Councilmember Hendriksen~~
- ~~Councilmember Anderson~~
- ~~Councilmember Zimmerman~~

and the following voted against the same:

~~None~~

and the following abstained:

~~None~~

and the following were absent:

~~None~~

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the 25<sup>th</sup> day of ~~November~~October, 2011~~00~~.

~~Mr. and Mrs. Upton~~ Anthony Duane Reed and Anisa Marie Thomas, hereby acknowledge receipt of this permit and have reviewed the conditions of this permit and have agreed that they will comply with the terms of this permit.

By: \_\_\_\_\_  
~~Mr. and Mrs. Upton~~ Anthony Duane Reed \_\_\_\_\_ Anisa Marie Thomas

STATE OF MINNESOTA )  
 ) SS.  
COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 201100, before me a Notary Public personally appeared ~~Mr. and Mrs. Upton~~ Anthony Duane Reed and Anisa Marie Thomas, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same at her free act and deed.

\_\_\_\_\_  
Notary Public

CITY OF RAMSEY:

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Administrator

STATE OF MINNESOTA )  
 ) SS.  
COUNTY OF ANOKA )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2000, before me a Notary Public personally appeared ~~Thomas G. Gamee~~ Bob Ramsey and ~~James E. Norman~~ Jo Thieling, to me personally known, who, being each by me duly sworn, did say that they are respectively the Mayor and City ~~Administrator~~ Clerk of the City of Ramsey, the Municipal Corporation named in the foregoing instrument, and seal affixed to said instrument is the corporate seal of said Municipal corporation, and the said instrument was signed and sealed on behalf of said Municipal Corporation by authority of its City Council, and said ~~Thomas G. Gamee~~ Bob Ramsey and ~~James E. Norman~~ Jo Thieling acknowledge said instrument to be the free act and deed of said Municipal Corporation.

\_\_\_\_\_  
Notary Public

This document drafted by:

This document reviewed by:

The City of Ramsey  
15153 Nowthen Boulevard N.W.  
Ramsey, MN 55303

Randall, Dehn & Goodrich  
2140 4<sup>th</sup> Avenue  
Anoka, MN 55303

**Regular Planning Commission**

**6. 2.**

**Meeting Date:** 10/06/2011

**By:** Tim Gladhill, Community Development

---

**Title:**

Staff Update

**Background:**

The following is a brief summary of actions taken in September that may be of interest to the Planning Commission (due to scheduling, the update was prepared in advance of the September 26 City Council Meeting):

*Introduce Ordinance to Merge Board of Appeals and Adjustment with the Planning Commission.* The City Council considered introducing an ordinance to restructure Board of Appeals and Adjustment duties with the Planning Commission.

*Consider Request for CUP for Sign Overage for the VA Clinic at 7545 Veterans Dr NW.* The City Council considered the request for a sign overage for the new VA Clinic in The COR.

**Notification:**

**Observations:**

**Funding Source:**

**Staff Recommendation:**

**Committee Action:**

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**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Tim Gladhill (Originator)	Tim Gladhill	09/26/2011 11:12 AM
Form Started By: Tim Gladhill		Started On: 09/26/2011
	Final Approval Date: 09/26/2011	

**Regular Planning Commission**

**6.3.**

**Meeting Date:** 10/06/2011

**By:** JoAnn Shaw, Community Development

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**Title:**

Zoning Bulletins

**Background:**

Enclosed are zoning periodicals for your review.

**Notification:**

**Observations:**

**Funding Source:**

**Staff Recommendation:**

**Committee Action:**

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**Attachments**

Zoning Bulletins

**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Tim Gladhill	Tim Gladhill	09/26/2011 10:48 AM
Form Started By: JoAnn Shaw		Started On: 09/23/2011 03:40 PM
	Final Approval Date: 09/26/2011	

# Zoning Bulletin

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## Remedy of Consent Judgment—County and Applicant Enter Into Consent Judgment, Allowing Applicant to Construct Cell Phone Tower

Homeowner's association argues consent judgment violates state law by compelling issuance of permit without regard to zoning regulations

Citation: *St. Charles Tower, Inc. v. Kurtz*, 643 F.3d 264 (8th Cir. 2011)

*The U.S. Court of Appeals, Eighth Circuit, has jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.*

EIGHT CIRCUIT (MISSOURI) (06/28/11)—This case addressed the issues of: (1) whether a consent judgment entered into between a county and a cell tower applicant violated state law by compelling issuance of permits without following county land use regulation procedures; and (2) if so, whether the consent judgment remained valid as “necessary” to correct a violation of federal law (the Telecommunications Act of 1996).

The Background/Facts: In 2008, St. Charles Tower, Inc. (“St. Charles”) applied for a conditional use permit (“CUP”) to build a cell phone tower in Franklin County, Missouri (the “County”). The County’s Planning and

Contributors  
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Zoning Commission denied the application. St. Charles Tower appealed to the County's Board of Zoning Adjustment (the "Board"). The Board also denied the appeal because "the proposed location of the tower would primarily serve areas outside of Franklin County, not providing an adequate amount of benefit to Franklin County residents."

St. Charles sued the Board and the County (hereinafter, collectively, the "County"). It claimed that the Board's decision violated the federal Telecommunications Act of 1996 ("TCA"). The TCA requires local board denials of requests to construct personal wireless service facilities to be "in writing and supported by substantial evidence contained in a written record." St. Charles alleged that the Board's denial of the CUP was not supported by substantial evidence.

Ultimately, St. Charles and the County agreed to a consent judgment that required the issuance of the CUP, as well as "any other permits necessary for [St. Charles] to being construction of its proposed facility."

Trustees of the homeowners' association (the "Intervenors") of the subdivision in which St. Charles proposed to build the cell-phone tower had intervened in the litigation. They also moved to "alter, amend, or vacate the consent judgment." Among other things, they argued that the consent judgment violated Missouri law because it compelled the Board and the County to issue a CUP without following the procedures specified in the County's Land Use Regulations.

The district court denied the Intervenors' motion for relief from the consent judgment. The court held that the consent judgment did not violate state law. It further held that, even if the consent judgment did violate state law, the Board's denial of the CUP had violated the TCA and the consent judgment's remedy was "necessary to correct this violation of federal law."

The Intervenors appealed.

**DECISION: Reversed and matter remanded.**

The United States Court of Appeals, Eighth Circuit, held that: (1) the consent decree's remedy violated Missouri law in that it compelled issuance of permits without regard to procedures specified in the County's Land Use Regulations; and (2) the consent decree's remedy was not necessary to remedy the alleged TCA violations, and thus, the consent judgment's violation of state law rendered the consent judgment invalid and unenforceable.

The court explained that "[w]hile parties can settle their litigation with consent decrees, they cannot agree to 'disregard valid state laws.'" In other words, "[s]tate actors cannot enter into an agreement allowing them to act outside of their legal authority, even if that agreement is styled as a 'consent judgment' and approved by a court." "While parties can settle their litigation with consent decrees, they ... cannot consent to do something together that they lack the power to do individually."

Here, the County's Land Use Regulations required, among other things: actions of the Board be taken by a four-fifths vote; and written findings be made with respect to certain issues before the issuance of a CUP. None of these procedural requirements were fulfilled before the consent judgment,

and an attempt to comply with them afterward would be an “empty formalism.” Since the Land Use Regulations were adopted pursuant to Missouri statutory law, the consent judgment’s circumvention of them violated state law, concluded the court.

The district court had concluded that even if the consent judgment violated state law, such a violation was “not fatal to the consent judgment because ‘the granting of the permit was a necessary remedy to rectify the violation of the TCA.’” The U.S. Court of Appeals disagreed. The court explained that “[s]uch judicial action [approving a consent judgment that violates state law] is authorized only when the federal law in question mandates the remedy contained in the settlement. Even then, ‘[r]emedies that override state law must be narrowly tailored so as to infringe state sovereignty as minimally as possible.’” Here, the TCA prescribed no particular remedy. In any case, the court found that the consent judgment not only provided for issuance of the CUP, but issuance of “any other permits necessary” as well. The court said it “fail[ed] to see how requiring the issuance of other permits, such as a building permit, [was] necessary to remedy the alleged TCA violation at issue here.” Accordingly, “[b]ecause the consent judgment’s remedy [was] not ‘narrowly tailored so as to infringe state sovereignty as minimally as possible,’ its violation of state law [could] not be excused on the ground that it [was] necessary to rectify a violation of federal law.” The court concluded that the unexcused state law violation rendered the consent judgment invalid and unenforceable.

See also: *Perkins v. City of Chicago Heights*, 47 F.3d 212 (7th Cir. 1995).

See also: *League of Residential Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052 (9th Cir. 2007).

## Postdeprivation Due Process—Administrative Agency Suspends Developer’s Permits Without Hearing

**Agency claims that postdeprivation remedies were sufficient to satisfy constitutional due process**

Citation: *San Geronimo Caribe Project, Inc. v. Acevedo-Vila*, 2011 WL 2436607 (1st Cir. 2011)

*The United States Court of Appeals, First Circuit, has jurisdiction over Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.*

FIRST CIRCUIT (PUERTO RICO) (06/17/11)—This case addressed the issue of whether postdeprivation (of due process) remedies were sufficient to meet the (constitutional) requirements of due process.

**The Background/Facts:** In January, 2000, the Puerto Rico Planning Board approved a proposal from San Gerónimo Caribe Project, Inc. (“San Gerónimo”) to develop the Paseo Caribe Project. The Paseo Caribe Project (the “Project”) is a mixed residential, commercial, and tourism project located in San Juan, Puerto Rico. In July, 2000, San Gerónimo purchased two parcels of land

on which it planned to construct the Project. The Regulations and Permits Administration of Puerto Rico (the "ARPE," for its Spanish acronym) issued all necessary permits for the development of the Project. San Gerónimo began construction in August 2002. By 2007, San Gerónimo had invested over \$200 million in construction of the Project, which was nearing completion.

During construction, a persistent group of citizens raised concerns that the Project obstructed access to the San Gerónimo del Boquerón Fort. There had been some controversy regarding whether the lands on which the Project was being built were part of the public domain and had therefore been improperly sold to a private party without necessary legislative action. In 2002, a Department of Justice of Puerto Rico opinion determined that the lands were not part of the public domain. However, in December 2007, that opinion was reversed. Based on that reversal, on December 12, 2007, the governor of Puerto Rico, Aníbal Acevedo Vilá, ordered the pertinent administrative agencies to suspend all permits for the Project and to freeze all construction for an initial period of 60 days. On December 14, 2007, the administrator of ARPE invoked Puerto Rico's emergency adjudicatory procedure and issued an order to show cause why the Project permits should not be held in abeyance and the construction suspended for 60 days. The ARPE scheduled a hearing for December 20, 2007. At that hearing, the ARPE did not introduce any evidence against San Gerónimo and did not charge it with any violations. On December 27, 2007, the ARPE's administrator issued a resolution and order holding the permits in abeyance and ceasing construction for a period of 60 days, subject to extension "in the public interest."

San Gerónimo appealed the ARPE's order. Eventually, the Puerto Rico Supreme Court held that the ARPE violated San Gerónimo's due process rights under the Puerto Rico Constitution "by deviating from the ordinary procedure and failing to hold a meaningful hearing before depriving San Gerónimo of its permits." In a separate decision, that court also declared that San Gerónimo had valid title to the land underlying the Project.

San Gerónimo later filed a procedural due process complaint under 42 U.S.C.A. § 1983 in federal district court. It sought damages of \$38 million due to the 70-day delay in construction that the Secretary of the Puerto Rico Justice Department, the governor, and the administrator of ARPE (collectively, the "Defendants") allegedly caused.

The district court dismissed San Gerónimo's due process claims. It found they were barred by the *Parratt-Hudson* doctrine. That doctrine provides that: where "a deprivation of property interest is occasioned by random and unauthorized conduct by state officials," postdeprivation remedies can be sufficient to satisfy due process. The district court determined that was the case here. Moreover, the court also dismissed San Gerónimo's claims under the doctrine of qualified immunity. That doctrine shields government officials from personal liability for damages arising from actions taken while performing discretionary functions.

San Gerónimo appealed.

**DECISION:** Affirmed as to the dismissal of San Gerónimo' complaint.

The United States Court of Appeals, First Circuit, held: (1) that the postdeprivation remedies available to San Gerónimo could not be sufficient to satisfy due process; but that (2) the Defendants were entitled to qualified immunity on San Gerónimo's due process claim.

The court explained that for San Gerónimo to establish a procedural due process claim under 42 U.S.C.A. § 1983, it had to allege that the Defendants: (a) deprived it of a property interest that is recognized under state law; (b) while acting under color of state law; and (c) without providing constitutionally adequate process (i.e., without due process of law). The court further explained that, "[t]ypically, due process requires that an opportunity for a hearing be provided prior to the deprivation." However, "the necessity of quick action by the State or the impracticality of providing any meaningful predeprivation process' may render a postdeprivation remedy constitutionally adequate in some circumstances."

Here, all parties agreed that San Gerónimo was denied an adequate hearing prior to being deprived of its permits (which constituted a property interest). The Defendants, however, argued that San Gerónimo was not unconstitutionally denied due process because, here, postdeprivation remedies were sufficient. The First Circuit disagreed.

The court acknowledged the *Parratt-Hudson* doctrine. Again, that doctrine provides that: where "a deprivation of property interest is occasioned by random and unauthorized conduct by state officials, ... the due process inquiry is limited to the issue of adequacy of postdeprivation remedies provided by the state." However, the court emphasized that doctrine "has no application where a loss is the result of an 'established state procedure,' even if due in part to negligent official conduct." It also, said the court, has no application "where a deprivation of a liberty or property interest occurs under the auspices of a state law that gives government officials 'broad power and little guidance'" when: (1) the deprivation was not "unpredictable"; (2) a predeprivation process was not impossible; and (3) the defendants "could not rightly characterize their conduct as 'unauthorized' ... because [their powers were] delegated to them [under State law]."

The court found the latter rationale applied here, and thus, the postdeprivation remedies available to San Gerónimo could not be sufficient to satisfy due process. Here, ARPE chose an "emergency procedure," which the court found departed from state law protocols. The *Parratt-Hudson* doctrine did not apply because the Defendants' actions were not "random and unauthorized." Rather: (1) the point at which San Gerónimo would be deprived of property was predictable—"it was the point where [the ARPE] chose between regular and emergency procedures"; (2) additional processes could have been implemented "to 'limit[] and guide[]' the defendants' power to effect deprivations of property under the emergency adjudicatory procedure"; and (3) the Defendants could not rightly claim their conduct as "unauthorized" because ARPE purported to act under the authority given to it for emergency procedures.

The court concluded that this was not a case where postdeprivation remedies could satisfy due process. Here, San Gerónimo was not denied its permits due to “random and unauthorized conduct by state officials.” Instead, the court concluded that this was a case of: “predictable overreaching by government officials given broad discretion to choose the manner by which property interests might be deprived.”

Nevertheless, although San Gerónimo had made out a valid procedural due process claim, the court concluded that it had to be dismissed. The court found the Defendants were entitled to qualified immunity because the state law at the time did not put them “on clear notice that their failure to provide predeprivation process violated [San Gerónimo]’s constitutional rights.” The court found that statements in its prior decisions “could have easily led the [D]efendants to believe that they were not required to provide a meaningful predeprivation and hearing and that, under *Parratt* and *Hudson*, providing postdeprivation remedies was all the process that was due.”

See also: *Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).

See also: *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265, 28 Fair Empl. Prac. Cas. (BNA) 9, 28 Empl. Prac. Dec. (CCH) P 32433 (1982).

See also: *Zimermon v. Burch*, 494 U.S. 113, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990).

## Standing—Individual Owners of Corporations That Operate Gas Stations in County Challenged Permit Issued for New Gas Station

### County says owners lack standing as individuals to bring challenge

Citation: *Gosain v. County Council of Prince George’s County*, 2011 WL 2462950 (Md. 2011)

MARYLAND (06/22/11)—This case addressed the issue of whether stockholders and employees of corporations which owned businesses and paid property taxes in the county had standing to challenge a county land use determination.

**The Background/Facts:** Atapco Ritchie Interchange, Inc. (“Atapco”) sought to develop a portion of business park property it owned in Prince George’s County (the “County”). Among the proposed construction was a gasoline service station with a convenience store.

The County's Planning Board approved Atapco's site plan for the parcel with conditions.

The County's District Council "elected to review the Planning Board's approval." Subsequently, several individuals filed with the District Council an appeal of the Planning Board's approval. Among those individuals appealing was Rishi Gosain ("Gosain") and Abid Chaudhry ("Chaudhry").

The District Council ultimately affirmed the Planning Board's decision to approve Atapco's site plan.

Gosain and Chaudhry appealed to the circuit court. They argued that the District Council's approval was based upon an earlier invalidated text amendment to the County's zoning ordinance and was not supported by substantial evidence.

Atapco joined the action. Thereafter, it filed a motion to dismiss the action. It argued that Gosain and Chaudhry lacked standing (i.e., the legal right to bring the action) under the Regional District Act, Article 28, § 8-106(e) (Ann. Md. Code, Art. 28, § 8-106(e)). They argued that to have standing under § 8-106(e), one must: (1) be a resident of the County; or (2) be a County taxpayer; and (3) be aggrieved.

Gosain was a resident of Springfield, Virginia. He operated an Exxon gasoline service station in the County. That business was owned by a corporation named "Sona Auto Care, Inc." Gosain was the president of the corporation. The corporation leased the building and land from Exxon Mobil corporation. Sona Auto Care, Inc. paid taxes in connection with the business.

Chaudhry did not reside in the County. He operated a BP-Amoco gasoline service station in the County. Until 2005, the service station property was owned by BP-Amoco. As of December 2005, the property was owned by another corporation, MNA, LLC. Chaudhry was co-owned that corporation.

The Circuit Court dismissed Gosain and Chaudhry's action, finding they lacked standing.

Gosain and Chaudhry appealed.

**DECISION: Affirmed (on different grounds).**

The Court of Appeals of Maryland held that Gosain and Chaudhry (hereinafter, collectively, the "Objectors") were not required to be aggrieved in order to have standing to seek review of the District Council's decision. The court also held that the Objectors were not required to be domiciled in the County in order to have standing. However, the court held that the Objectors were required, in order to have standing, to: (a) reside in the County; or (b) have a property interest in the County; or (c) pay property taxes in the County.

The court based its decision on the interpretation of Art. 28, § 8-106(e). It reads as follows:

In Prince George's County, any incorporated municipality located in Prince George's County, any person or taxpayer in Prince George's County, any civic or homeowners association represent-

ing property owners affected by a final district council decision, and, if aggrieved, the applicant may have judicial review of any final decision of the district court.

Applicable here was the phrase “any person or taxpayer in Prince George’s County.” Finding that this phrase reached the “height of ambiguity,” the court looked to legislative history to interpret its meaning. Based on that history, the court concluded as follows: First, the court found it was clear that, except for the applicant, aggrievement is not required for standing to bring a § 8-106(e) judicial review action. Thus, the court rejected the argument that Gosain and Chaudhry could not maintain this action because, allegedly, they were not aggrieved by the District Council’s decision. Second, the court that “any person ... in the [County]” did not mean “domiciled” in the County.

The court noted that “[t]raditionally, standing to challenge in court governmental decisions regarding the use of land has been based on the challenger’s having some type of interest in real property in the area.” Consequently, the court determined that “a reasonable interpretation of ‘any person ... in [the County]’” meant “a person or entity having some type of interest in real property in the County.” This, said the court, would include: a person residing in the county; and businesses or other entities owning or leasing real estate in the County. Similarly, the court found it “reasonable to conclude that ‘any ... taxpayer in [the County]’” meant “any person or entity which pays property taxes to the [the County].”

Here, the court found that neither Gosain nor Chaudhry resided or had a property interest in a residence in the County. Neither owned or leased any real property in the County, nor paid property taxes to the County. While both were owners of corporations which leased or owned property in the County and paid property taxes to the County, the court emphasized that in Maryland: “a corporation is a distinct legal entity, separate and apart from its stockholders.” Gosain and Chaudhry could not gain standing to challenge the District Council’s decision “based on employment in the same area or owning stock in a corporation doing business and owning property in the same area,” concluded the court.

See also: *Egloff v. County Council of Prince George’s County*, 130 Md. App. 113, 744 A.2d 1083 (2000).

See also: *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 150 Md. App. 479, 822 A.2d 478 (2003).

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**Case Note:** The court also found it would be unreasonable to give the phrase “any person ... in the [County]” its broadest literal meaning.

**Case Note:** Neither corporation owned by Gosain and Chaudhry was a party to the litigation.

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## First Amendment—Homeowner Alleges First Amendment Violations After Borough Orders Her To Remove Biblical Message From Roof

**Borough says homeowner's right of free expression was not infringed since she did not remove the message**

Citation: *Trask v. Ketchikan Gateway Borough*, 253 P.3d 616 (Alaska 2011)

ALASKA (06/17/11)—This case addresses the elements needed to successfully: have standing to assert a 42 U.S.C.A. § 1983 claim (i.e., here, a claim of violation of free speech rights under the First Amendment to the United States Constitution) in Alaska against a municipality; and state a § 1983 claim (i.e., here, for violation of a right to free speech under the First Amendment) against a municipality.

**The Background/Facts:** Leta Trask owned a house in the Ketchikan Gateway Borough (the “Borough” or “KGB”). She planned to refresh and modify a painted Biblical message on her roof. She asked the Borough if she would need a permit. The Borough informed Trask that she would not need a permit because the message as she described it was not a “sign” under the KGB Code.

Trask subsequently painted a message on her roof. It read: “DO UNTO OTHERS ... BY YOUR DEEDS YOU’RE KNOWN: LOVE YOUR NEIGHBOR: YOU’RE WELCOME.” The roof also displayed a cross and two hearts. The roof was mainly visible to Trask’s uphill neighbors.

After some of Trask’s neighbors complained to the Borough about the message, the Borough informed Trask that the message violated the KGB Code. The Borough instructed Trask to remove the message. It also threatened Trask that citations might issue if Trask did not remove the message.

Trask did not remove the message. The Borough filed a legal action in court to enjoin Trask from displaying the message and seeking the imposition of a \$200 fine. The Borough alleged that the message violated the KGB Code.

Trask counterclaimed. Among other things, she alleged that the ordinance, as applied to her, violated the First Amendment of the United States Constitution by restricting her freedom of speech. Trask sought relief under 42 U.S.C.A. § 1983.

The Borough asked the court to dismiss Trask’s counterclaim. Trask asked the court to find that there were no material issues of fact in dispute and to issue summary judgment in her favor on the law alone.

The superior court found that Trask’s roof message was not a “sign” as defined by the KGB Code. As a result, the court dismissed the Borough’s enforcement action. The court also dismissed Trask’s § 1983 claim. It concluded that Trask lacked standing to challenge the sign ordinance because: her message was not a “sign” under the ordinance; and her right of free expression was not infringed since she did not remove the message.

Trask appealed. She argued that she was entitled to relief under § 1983 because: “the actions of [the Borough] in using the ordinance to demand removal of the painting and then file suit again[st] [her] was an overbroad and unconstitutional application of the ordinance that had the effect of curtailing her speech.”

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

The Supreme Court of Alaska held that Trask had “interest-injury standing” and her allegations were sufficient to state a § 1983 claim.

The court explained that, in Alaska, a litigant has interest-injury standing when she has “an interest adversely affected by the conduct complained of.” The court found that, here, Trask had “articulated enough of an injury to confer interest-injury standing” by: “alleging that the Borough infringed on her right to free speech through an enforcement action that was aimed directly at her.” The court noted that, although Trask was not prosecuted, the Borough: ordered her to remove her message; threatened her with citations for violating the ordinance; and filed a complaint against her in which it requested injunctive relief prohibiting her from displaying the message, the imposition of a \$200 civil penalty, and attorney’s fees and costs. Trask also had alleged that, although she did not remove the message, as a result of the enforcement actions, she did not refresh or modify her roof paintings.

As to whether Trask’s § 1983 claim was sufficient, the court said that a successful § 1983 claim required: (1) allegations that the plaintiff’s (i.e., here, Trask) harm was caused by a constitutional violation; and (2) allegations that the municipality (i.e., here, the Borough) was responsible for that violation.

The court found that Trask did allege a set of facts consistent with constitutional violation; she alleged a set of facts consistent with stating a claim that her speech was protected: “Trask alleged that the actions of the Borough in applying the ordinance to her were ‘an overbroad and unconstitutional application of the ordinance that had the effect of curtailing her speech’ and that ‘fear of further prosecution kept her from making any modifications or performing any upkeep.’”

The court also found that Trask did allege facts consistent with stating a claim that the Borough was responsible for that violation. The court explained that “[t]o show municipal liability, a litigant must ‘demonstrate that, through its deliberate conduct, the municipality was the ‘moving force’ behind the injury alleged.’” Here, Trask expressly alleged that the Borough’s enforcement of the ordinance against her violated her First Amendment right to free speech. The court found this claim was “clear and straightforward”: she set forth facts stating a claim that the Borough was responsible for the constitutional violation.

The court concluded by reversing the superior court’s dismissal of Trask’s § 1983 claim because: Trask had standing to assert a § 1983 claim; and Trask had alleged a set of facts stating a claim that the Borough violated her right to free speech.

See also: *State v. Planned Parenthood of Alaska*, 35 P.3d 30 (Alaska 2001).

See also: *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 112 S. Ct. 1061, 117 L. Ed. 2d 261, 7 I.E.R. Cas. (BNA) 233, 15 O.S.H. Cas. (BNA) 1513 (1992).

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*Case Note:* The Borough had argued that it was entitled to absolute immunity from Trask's claims. The said that "[t]he Supreme Court has clearly stated that 'municipalities have no immunity from damages liability flowing from their constitutional violations ....'"

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## Zoning News from Around the Nation

### CALIFORNIA

Malibu is considering adopting a "formula retail ordinance" that "would limit chain stores."

Source: *The Malibu Times*; [www.malibutimes.com](http://www.malibutimes.com)

### NEW YORK

The state's Department of Environmental Conservation ("DEC") recently released revised recommendations on mitigating the environmental impacts of high-volume hydraulic fracturing related to natural gas extraction. Among the recommendations is that: high-volume fracturing be prohibited in New York City and Syracuse watersheds, including a buffer zone; drilling be banned within all primary aquifers and on state-owned land; drilling be permitted on other private land with rigorous and effective protections. Also among the recommendations: DEC would notify local government of each well permit application for high-volume fracturing; and applicants must certify that a proposed activity is consistent with local land use and zoning laws.

Source: *New York State Department of Environmental Conservation via Read Media*; <http://readme.readmedia.com>

### RHODE ISLAND

The state legislature has passed legislation "that would require the operators of construction and debris demolition facilities located near residential neighborhoods around Rhode Island to get clearance from the municipalities where they operate." The measure recently passed the house. A companion bill passed the senate in April. Before becoming law, the legislation requires the governor's signature.

Source: *East Providence Patch*; <http://eastprovidence.patch.com/articles/state-lawmakers-pass-legislation-to-restrict-construction-and-demolition>

# ZONING PRACTICE

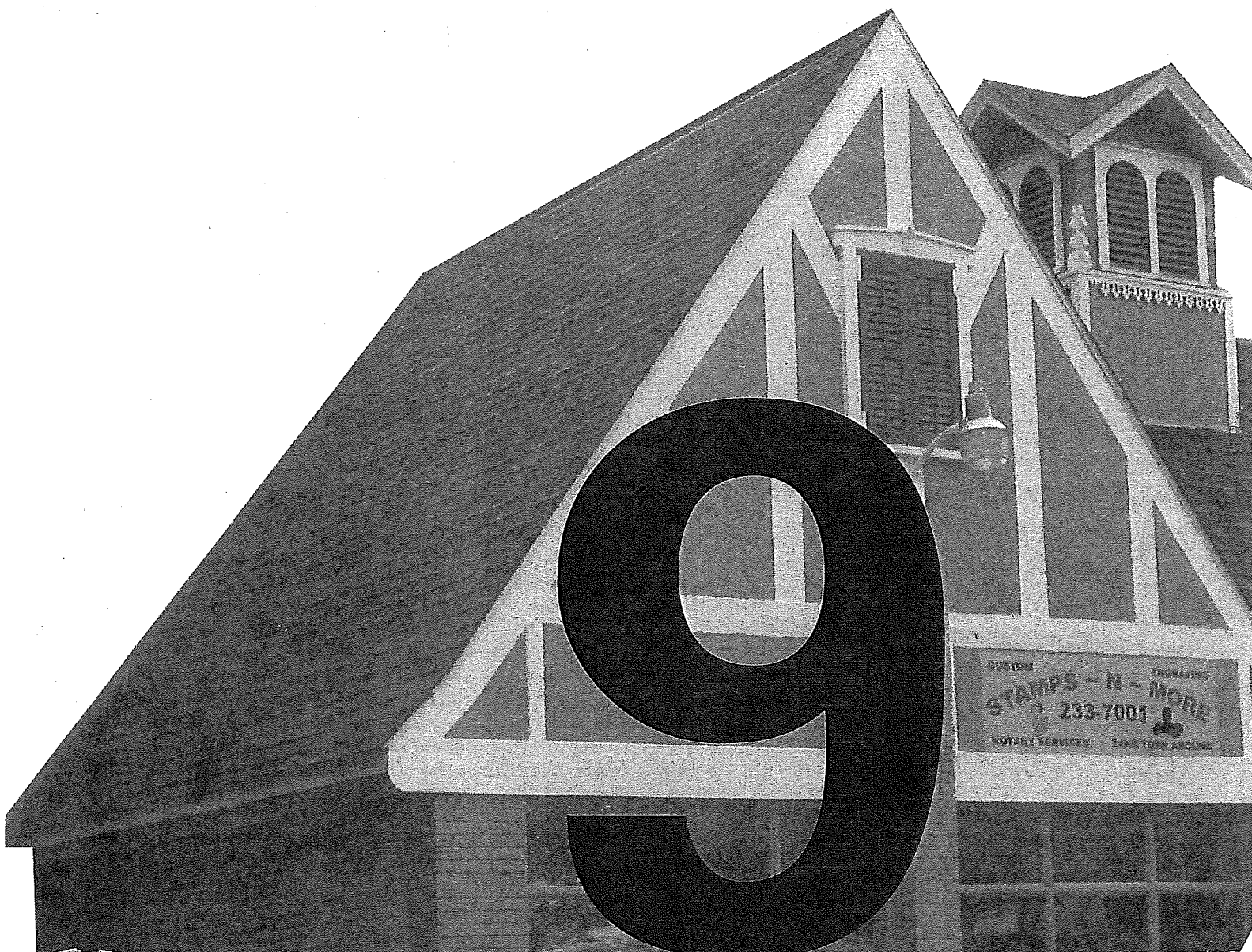
SEPTEMBER 2011



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 9

## PRACTICE RELAXED ZONING OVERLAY



# The Relaxed Zoning Overlay: A Tool for Addressing the Property Vacancy Cycle

By Stephen Pantalone and Justin B. Hollander, AICP

The relaxed zoning overlay (RZO) is a planning tool for municipalities anticipating declining populations, either communitywide or within individual neighborhoods.

All images by Justin Hollander



⊕ This partially boarded-up building in Flint, Michigan, sits next to a vacant lot overrun with vegetation.

Significant population decline may lead to an excess supply of residential, commercial, or industrial structures, and evidence has shown that even a small concentration of vacant property brings a host of economic and social problems.

The purpose of the RZO is to mitigate these impacts by anticipating decline and adapting the property supply in a given community. For example, if a residential neighborhood is consistently losing population, there will be a point at which the housing supply exceeds housing demand.

At this point housing prices in these neighborhoods will begin to fall along with the respective property's profitability. Without the prospect of recovery, the continued maintenance of the residential property may become economically burdensome to owners. However, in such circumstances there may be a demand for other uses that are not currently zoned, such as cold storage facilities or agricultural uses. Currently, the inflexibility of zoning restricts the ability of communities to quickly react to decline by expanding the legally allowable uses of

property. In the example above, the property will remain restricted to a residential use despite falling housing prices and may ultimately become derelict and abandoned—blighting the surrounding neighborhood. The RZO addresses this issue by expanding the list of by-right uses in a given community when it faces declining residential demand, thereby providing owners the flexibility to adapt their properties to a use that will continue to be productive.

The RZO concept is a combination of a normal zoning overlay and an urban growth boundary (UGB). It is similar to a UGB in that it relies on a trigger mechanism designed through a planning process. And, like other overlays, the RZO sits on top of the underlying zoning. The RZO is triggered when the vacancy rate in the respective community reaches a certain level, and once it is activated, expands the scope of permitted uses.

The RZO concept was introduced in Justin Hollander's *Sunburnt Cities*, and is part of a larger body of scholarly research on planning for decline. The research has focused primarily on Rust Belt cities with large inventories of vacant property. It has taken decades for some cities to develop regulatory and market tools to acquire and demolish or reuse these properties. There is now evidence that some of the Sun Belt cities that have seen staggering growth in the last several decades are also facing decline. The RZO offers a prospective tool for these cities and others to curtail and even take advantage of decline. This is accomplished by keeping property in use and improving

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Go online during the month of September to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. Stephen Pantalone and Justin B. Hollander, AICP, will be available to answer questions about this article. Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and *Zoning Practice* will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

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the quality of the community for the existing residents, thereby reducing the inevitable costs of would-be vacant property.

In this article we will briefly review the research on declining cities and vacant properties, making the case that these properties are tremendously harmful to communities because of the criminal activity and disinvestment they encourage. Then we will discuss tools applied by municipalities to address their large inventories, including the utilization of the property or site for alternative uses. Finally, we will introduce the basics of an RZO, including its legal foundation, its trigger mechanism, and examples of permitted uses communities might adopt.

### THE PROBLEM OF VACANCY

The lifecycle of vacant property often follows a similar series of events. In the instance of a residential home, an owner may be forced to leave the neighborhood to find another job as the employment market deteriorates. However, as the excess supply of housing grows, prices continue to drop, making it more difficult for that owner to sell the property without taking a loss. When the owner is not able to pay off the remaining mortgage, the property ends up in foreclosure. The patterns for rental property and commercial real estate are similar. Rents decrease; owners defer maintenance. And eventually the property is abandoned.

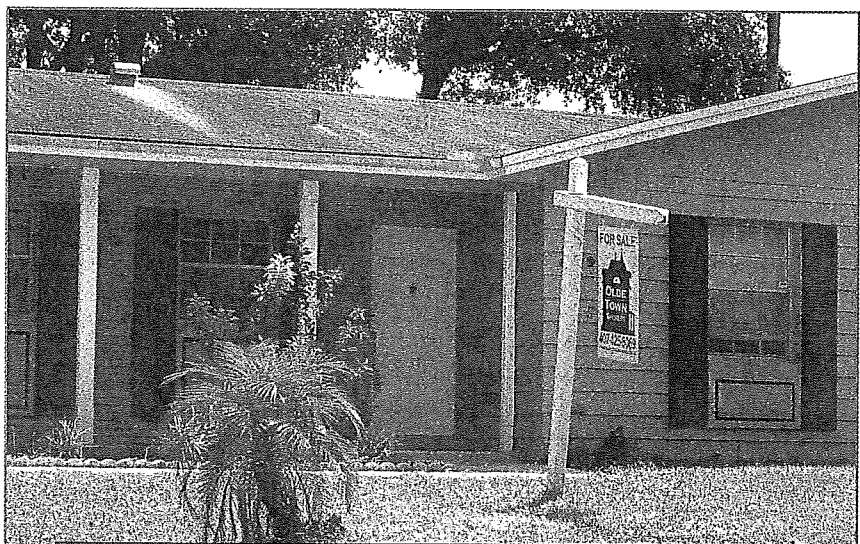
Vacant properties are a significant drain to a city's resources both in terms of lost revenue from falling property values and in increased expenses from crime and vandalism. The Center for Community Progress has issued several reports documenting the

costs of vacant and abandoned property. In the 2005 report *Vacant Properties: The True Costs to Communities*, they note that "Such properties produce no or little property tax income, but they require plenty of time, attention, and money." Over time these properties continue to be contaminated, further increasing the costs of redevelopment or demolition.

In the past, property vacancy was considered a problem confined to the old industrial cities of the Midwest and Northeast. However, the recent foreclosure crisis is bringing the issue to Sun Belt cities that, until recently, were experiencing staggering growth. The same real estate speculation

that fueled rapid construction of residential housing and commercial and retail development is now resulting in growing inventories of vacant properties. These cities present an opportunity to address decline earlier in the cycle.

Edward Glaeser uses the City of Buffalo as an example of the strategies municipalities have historically used to fight decline. During the urban renewal period of the 1960s Buffalo spent almost \$60 million to rebuild a downtown neighborhood and redevelop its waterfront (Glaeser 2007). The goal was to attract private development and new residents. Yet the city continued to lose population in most neighborhoods despite



Ⓜ This single-family ranch home in Orlando, Florida, exhibits signs of dereliction after an extended period of vacancy.

these growth strategies. The problem with redevelopment in some cases is that cities are simply replacing the old inventory of property with a new inventory of the same property (albeit better), without increasing demand or lowering maintenance costs.

The failings of the growth strategy led to the “smart decline” (planning for decline) movement. The goal of planning for decline is to concentrate on improving the quality of life for the existing residents and to reduce the future infrastructure costs of the city. This can mean concentrating populations into smaller geographic areas and returning other land to its natural and more efficient state. To date, smart decline has generally been applied in cities that have already undergone significant population loss, such as Youngstown, Detroit, and Cleveland. Using these principles, cities have employed regulatory, administrative, and market-based tools to target vacant property for acquisition or reuse.

Regulatory approaches include requiring owners to maintain unoccupied properties, enforcing code violations, using tax foreclosure for acquisition, and creating land banks to facilitate reuse. Administrative strategies include instituting better monitoring systems to manage the inventory of vacant property and fast-tracking the permitting process for temporary or permanent reuse. Finally, market-based approaches might focus on adaptive reuse or the creation of management agreements between nonprofit organizations and landowners.

Realizing that their populations are not going to return to previous levels, cities are increasingly acquiring vacant property with the intent of demolition. Detroit had demolished approximately 3,000 homes by the end of September 2010, with the eventual goal of reaching approximately 10,000 demolitions. Even though it is the last resort for a city, demolition creates an opportunity to remove excess supply and reuse the land for more productive uses, such as recreational facilities, agricultural uses, or even renewable energy systems. And as cold as it sounds, demolition also allows a city to plan its decline strategically, deciding the geographic layout of the city in the future and determining which neighborhoods should be preserved.

#### THE LEGAL PRECEDENT FOR THE RELAXED ZONING OVERLAY

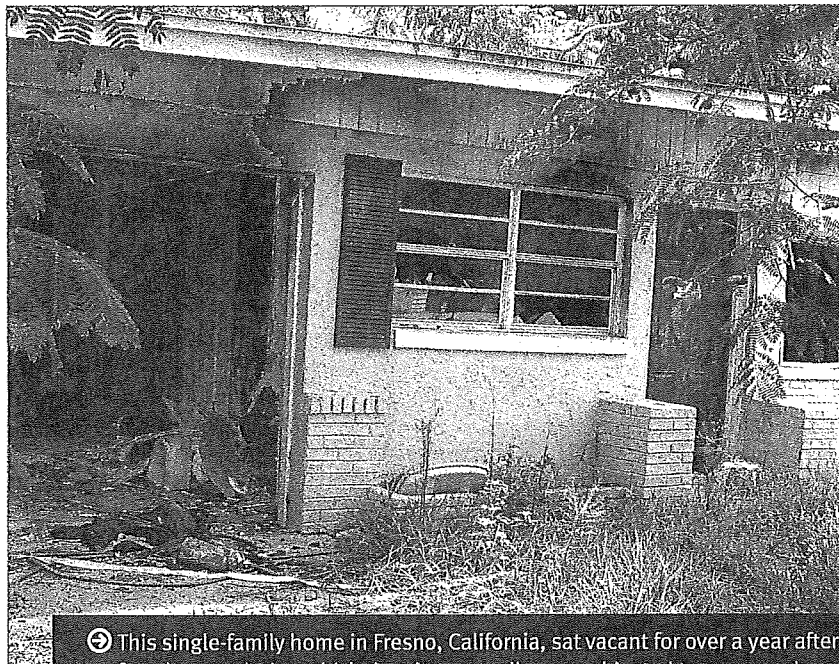
Federal and state courts have consistently upheld the constitutionality of zoning over-

lays because the public benefit purpose satisfies the rational basis test. However, it is important to review certain legal concepts relevant to the RZO. These concepts include procedural and substantive due process and “void for vagueness.”

Procedural due process is satisfied during the community engagement process, where local planning officials hold workshops and public meetings with residents. These meetings provide an opportunity for residents to gather information, share their opinions, and create a vision for the future of their neighborhood. There are two critical reasons why the RZO depends on com-

to the local governments in determining what is deemed a “rational relationship.” Whether the RZO works in practice is not critical, only that it is rational to think that it would work. Considering the logical relationship between allowing more uses and reducing vacancy rates, and the well-researched relationship between vacancy and community disinvestment, the RZO should also pass the substantive due process test.

To avoid “void for vagueness” the zoning language has to be worded clearly enough for a reasonable property owner to understand. The RZO passes the test of void for vagueness but is an area for caution. In



➦ This single-family home in Fresno, California, sat vacant for over a year after foreclosure, during which time it eventually was subjected to arson and vandalism.

munity participation more so than a typical overlay. First, the expanded list of permitted uses should not create intolerable nuisances to residents. If it does, the municipality may face resource-intensive legal challenges on the back end. Secondly, the purpose of the RZO is to fill a void in the market by allowing property owners or the city to bring in services that were previously unavailable. The expanded list of uses should reflect the needs of the community or the properties will continue to remain vacant.

Substantive due process examines the public policy purpose of a regulation and its presumed effectiveness in achieving that purpose. The courts give tremendous deference

adding flexibility to the zoning regulations, the RZO must be clear in defining its trigger mechanism and identifying the expanded types of permitted uses.

In addition to the legal precedent for the RZO in overlay zoning cases, it is also useful to look to other land-use regulations that use trigger mechanisms. Donald Elliot’s (2008) dynamic development standards concept provides a solid legal ground for using standards that change over time in predictable ways. Another good model in land-use regulations are Oregon’s urban growth boundaries. The UGB process allows the respective cities to move the boundaries that determine developable land and den-

sity based on projected growth numbers for different land-use needs. These tools create flexibility in zoning for future demographic changes and provide precedent for the RZO.

**CREATING THE RELAXED ZONING OVERLAY**

The trigger mechanism for the RZO is based on the vacancy rate for a given geographic area. There are several decisions required in creating the trigger, including the geographic scope of the vacancy rate (i.e., certain neighborhoods, certain zip codes, or entire metropolitan areas), defining which properties will be included in the calculation of the vacancy rate (e.g., occupancy, tenure, and land use), and determining a vacancy rate that signals the onset of decline.

Because this is a new concept, there are no case studies on an appropriate trigger rate. However, there is some research cited by John Accordino that suggests a vacancy rate as low as three percent can signal the onset of decline, and there is a greater body of research that suggests that the domino effect of vacant property occurs quickly. Adequate planning, forecasting, and community involvement is important in creating a trigger rate that is low enough to be effective in addressing decline but not so low as to affect a relatively healthy neighborhood.

Once triggered, the RZO expands the list of by-right uses in the zoning code, essentially acting as a new use table. The community identifies the new uses in a typical planning/visioning process. This can both allow new uses that the community wants, or in a situation where the community must unhappily face the facts of decline, it allows them to identify uses that are at least tolerable and will keep the properties or land active. Decline offers a special opportunity in situations where the community desires new uses that are economically infeasible for property owners. An example of this is urban agriculture, which in any vibrant community would not be economically viable without subsidies. Yet it may make sense in a community with a declining population and falling property values.

The new uses will be unique to each situation because every community will have a different property inventory mix. The point from the research on vacant properties is that inactivity is the worst-case scenario, as there are tremendous costs to the community. The RZO, in combination with the existing tools such as land banks and fast-track permitting, allows the reuse to happen

quickly and in advance of serious decline. Instead of rezoning after abandonment happens, the RZO is a prospective tool. And while any community, whether healthy or unhealthy, could always go through a rezoning process, the RZO is most suited for cities experiencing or expecting decline. While each situation may be different, these could be communities that are generally happy with single-family neighborhoods without any commercial activity. However, if faced with the prospect of vacant properties next door, they are willing to explore new uses that may even benefit their neighborhoods. This is important in the case of decline because the reality is that expanding the list of by-right uses will not save every property from abandonment. Some properties may

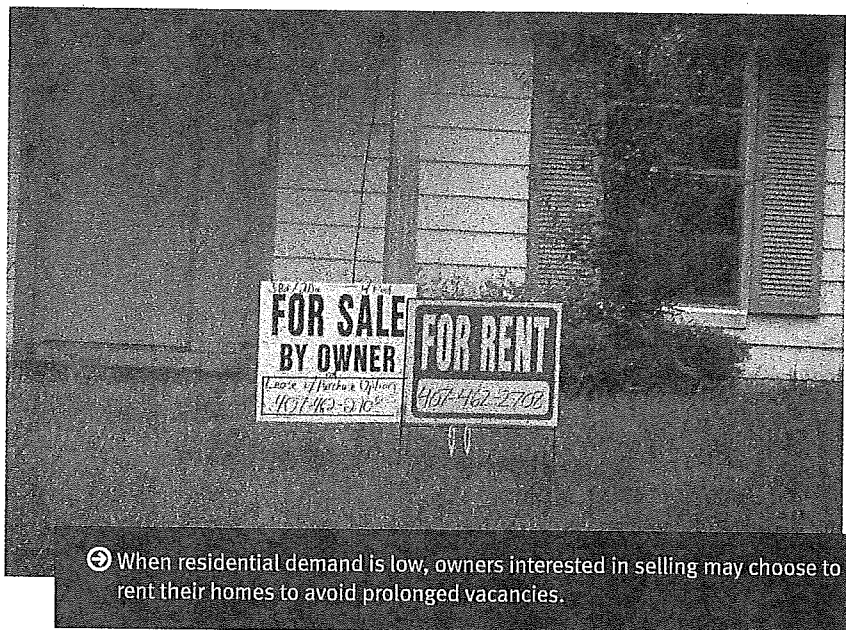
- Demolition of housing for urban agriculture or recreation centers, pocket parks, and vacant land for renewable energy

*Urban multifamily neighborhoods with excess housing supply:*

- Allowing commercial activity and non-profit groups, such as incubation or training centers, medical offices, small businesses (law offices, travel centers), nonprofits, artist studios
- Potential demolition for pocket parks/recreation

*Large suburban-type retail centers with excess commercial or institutional space:*

- Allowing all uses, such as outdoor/ indoor markets, distribution centers, industrial uses,



be abandoned, razed, and then reused for agricultural, forestry, or recreational uses.

The following examples represent uses that could benefit the community from an economic, social, and environmental perspective; they include the reuse of both vacant property and vacant land. The examples of new uses are tailored to three general scenarios.

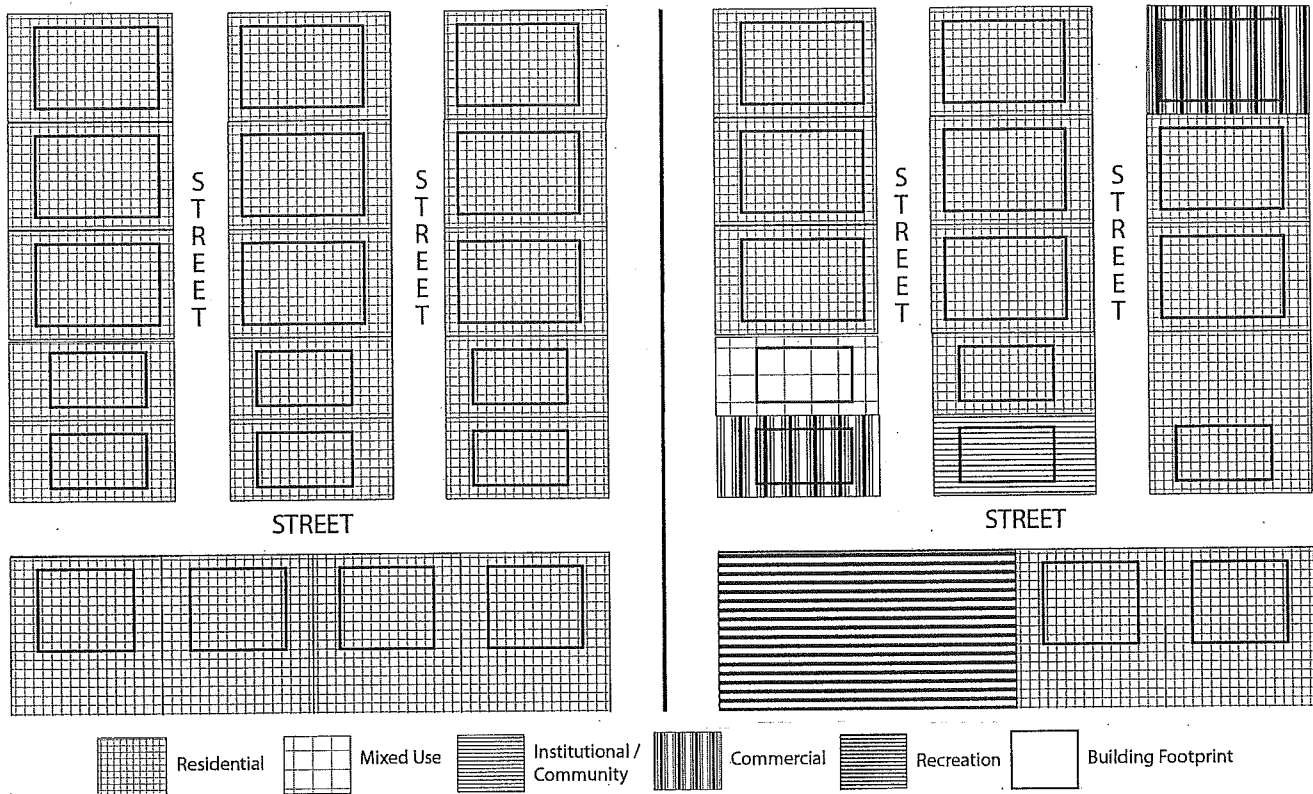
*Single-family neighborhoods with excess housing supply:*

- Allowing commercial activities or open space, such as small grocery/convenience stores, day care centers, home offices, markets, or seasonal temporary uses

renewable energy production, mixed use housing, parks and recreation (e.g., paintball/indoor rock climbing), reforestation, transportation centers, and music venues

In the best-case scenario, the activation of the RZO will reduce vacancy rates to a point where the neighborhood is stable. This may require a reverter rate, which causes the RZO to become dormant again so as to limit commercial development opposed by residents. A reverter rate itself creates zoning issues with respect to non-conforming uses with the underlying base code. This will create obvious problems for property owners as they seek changes in

## ZONING USES BEFORE AND AFTER RZO



⊕ This diagram shows three street blocks before and after the adoption of the RZO. The illustration on the left shows the existing zoning, which is restricted to single family uses, while the illustration on the right presents the potential expansion of uses under the RZO. Under the RZO underutilized residential buildings and land can be used for commercial purposes, community activities, and new parks:

the future. The likely solution is a special legal mechanism whereby new uses are essentially grandfathered in and allowed future zoning relief. Municipalities could also choose to simply leave the RZO in place by not adopting a reverter rate. This decision will again depend on each community and how they see their future, rather than on planning that focuses on growth and increased revenues.

A potential abuse of the RZO could be collusion between property owners to purposely increase vacancy rates even in situations when decline is not imminent. Their goal would be to trigger the RZO and transform their properties into more profitable uses. This may be particularly true in cases with larger property owners outside of the community that can afford to keep their properties vacant. Safeguarding against such abuse would be difficult to do through

zoning changes or other legal mechanisms. These are areas to be explored further by the respective municipality as they create trigger rates, geographic boundaries, and monitoring systems for vacant properties.

A final issue with the RZO is how it will interact with business licenses, building codes, and design standards. Zoning regulations require certain setbacks, height limits, and other physical dimensions, and business licenses and building codes are often specific to the use. While this article focuses on by-right uses under the RZO, it is clear that physical zoning regulations and other general business regulations will also need to be addressed.

### SUMMARY

Whereas most of the planning tools for shrinking cities focus on post-decline problems, the RZO is a prospective tool. The RZO

seeks to attack the issue of excess supply early by establishing an expanded list of permitted uses in advance of decline. As a result, the RZO will allow property owners to react quickly to decline with the goal of reprogramming the uses of their buildings or land.

The most important aspect of the RZO is that its creation relies heavily on a community-driven process. The RZO will only be successful if there is demand for the expanded list of permitted uses or if it adds value from a cost or environmental perspective. Therefore, the input of residents on the type of uses they would like to see in their neighborhoods is critical. This article has shown that the details of the RZO will require a number of difficult decisions, such as how to measure vacancy and the vacancy rate, how to select the proper trigger and reverter rates, the geographic scope of the

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overlay, and the allowable by-right uses. These questions require additional research and the answers will be unique to each community. However, there are a few general benchmarks that can be established to start the conversation. The following ordinance framework summarizes the key aspects of the RZO.

### RZO ORDINANCE FRAMEWORK

#### Purpose

The ordinance should include a stated public policy goal. An example may be "to fight the onset of blight, and specifically vacant property, in the respective neighborhood by increasing the ability of property owners and residents to make continued use of their property."

#### Applicability (Geographic Scope)

The ordinance should identify the geographic scope of the RZO; the demographic/ economic projections and vacancy rates should be measured at this level, as should the application of expanded by-right uses. It is noted that information necessary for doing projection and trends may not be available at the desired level.

#### Defining Vacancy Rate

The ordinance must determine a vacancy rate that will trigger the RZO. A potential definition for a vacant property counted in the trigger rate could be any building that has been completely unoccupied for at least one year. Evidence of vacancy could be based on U.S. Postal Service information, and addresses that are no longer receiving mail could be deemed unoccupied. In addition to defining what is included in the calculation of the vacancy rate, the ordinance must also define the trigger rate itself.

#### Reverter Rate

The ordinance should address whether there is a "reverter" rate that would trigger the original zoning. If there is a reverter rate, the ordinance should address the issue of new nonconforming uses created under the RZO, and what the protections are for owners seeking physical changes to their properties in the future.

#### Permitted Uses

The ordinance should include an expanded use table with the new community-deter-

mined uses. The structure of the use table would mirror other use tables. Depending on the scope of the RZO in terms of the number of affected neighborhoods, a zoning map may be necessary.

#### Dimensional Requirements

The ordinance should address situations where the conversion of a property to a new use (e.g., a residence to an office or convenience store) does not meet the dimensional requirements for that new use. The ordinance should ensure that roadblocks are removed in these situations.

The historic Carriage Town neighborhood in Flint, Michigan, is an eclectic mix of urban prairie, derelict or abandoned residences, restored Victorian and Craftsman homes, and residential to commercial conversions. Cover photo © Sarah Razak; design concept by Lisa Barton.

### VOL. 28, NO. 9

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for \$90 (U.S.) and \$115 (foreign). W. Paul Farmer, FAICP, Chief Executive Officer; William R. Klein, AICP, Director of Research

Zoning Practice (ISSN 1548-0135) is produced at APA. Jim Schwab, AICP, and David Morley, AICP, Editors; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

Missing and damaged print issues: Contact Customer Service, American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601 (312-431-9100 or [customerservice@planning.org](mailto:customerservice@planning.org)) within 90 days of the publication date. Include the name of the publication, year, volume and issue number or month, and your name, mailing address, and membership number if applicable.

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HOW COULD THE RELAXED  
ZONING OVERLAY HELP CITIES  
IN TRANSITION?

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