City of Ramsey
Agenda
Special Planning Commission
Thursday September 8, 2011
Immediately following the 7:00 pm 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:

Planning Commission Meeting Minutes dated August 4, 2011

5. Note City Council Minutes

1. Note the Following City Council Meeting Minutes:

City Council Meeting Minutes dated Tuesday, June 14, 2011
City Council Meeting Minutes dated Tuesday, June 28, 2011
City Council Meeting Minutes dated Tuesday, July 12, 2011
City Council Meeting Minutes dated Tuesday, July 26, 2011

6. Public Hearing/Commission Business

1. Request for an Interim Use Permit to Allow for the Operation of a Church in the H-1 Highway 10 Business District on the Property Located at 6701 Highway 10 NW; Case of Northern Light Church

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

3. Staff Update

4. Zoning Bulletins

7. Commission/Staff Input

8. Adjournment

Special Planning Commission **4. 1.**

Meeting Date: 09/08/2011

By: JoAnn Shaw, Community Development

Title:

Approve the Following Planning Commission Meeting Minutes:

Planning Commission Meeting Minutes dated August 4, 2011

Background:

n/a

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

08.04.11

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	08/30/2011 02:37 PM

Form Started By: JoAnn Shaw Started On: 08/30/2011 01:54 PM

Final Approval Date: 08/30/2011

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a regular meeting on Thursday, August 4, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Gary Levine Commissioner Andrew Dunaway Commissioner Joseph Field Commissioner Robert Schiller Commissioner Gary Van Scoy
Members Absent:	Commissioner Randy Bauer Commissioner Ralph Brauer
Also Present:	Senior Planner Tim Gladhill Associate Planner/Environmental Coordinator Chris Anderson Management/Planning Intern Patrick Brama

CALL TO ORDER

Chairperson Levine called the regular meeting to order at 7:00 p.m.

CITIZEN INPUT

None.

APPROVAL OF AGENDA

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

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

APPROVE PLANNING COMMISSION MINUTES

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

1) Planning Commission public hearing and regular meeting minutes dated July 7, 2011.

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

PUBLIC HEARINGS/COMMISSION BUSINESS

Case #1: Public Hearing – Proposed Amendment to the 2030 Comprehensive Plan

Public Hearing

Chairperson Levine called the public hearing to order at 7:01 p.m.

Presentation

Senior Planner Gladhill presented the Staff Report describing the proposed amendments to the 2030 Comprehensive Plan.

Citizen Input

The COR Master Plan

Senior Planner Gladhill stated the change will affect 50 acres of the total of 322 of the COR.

Commissioner Van Scoy stated the change makes a nice transition from residential to retail.

Planned Transportation System

Chairperson Levine asked if the Variolite Street reconstruction would have an impact on any existing homes.

Senior Planner Gladhill stated the City is trying it's best to minimize those impacts and unfortunately the City Engineer was unable to attend the meeting tonight, he had an emergency and does apologize that he is not present. There may be impact to one or two housing units to make that connection, however he stated he does not have the answer.

Future Land Use Map

Mike Black, RLK Engineering, representing Hope Fellowship Church and their mortgage company, stated they request that the zoning remain the same and that the land use change back to what it was before the 2030 Comprehensive Plan. Hope Fellowship is no longer going to build a church campus on the site and is marketing the property.

Wellhead Protection Plan

Chairperson Levine asked what the issue of contamination is.

Senior Planner Gladhill stated there are no immediate hazards; this is aimed at preventing those hazards from occurring.

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

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

Chairperson Levine closed the public hearing at 7:33 p.m.

Commission Business

Commissioner Van Scoy stated he prefers the original master plan for the COR; however he has seen a need for some big box anchors, and thinks this change is necessary.

Senior Planner Gladhill stated that even though there is more parking area, the design keeps the street scape and pedestrian connections to the original vision.

Commissioner Schiller asked how the amendment to the Hope Fellowship parcel impacts the existing residential area to the west.

Senior Planner Gladhill stated there will be transitioning from residential and commercial, possibly a natural buffer created between the areas. The official zoning is B-2 Highway Business currently.

Discussion continued regarding the Future Land Use Map section of the Comprehensive Plan Amendment.

Motion by Commissioner Dunaway, seconded by Commissioner Schiller to recommend that the City Council approve the Comprehensive Plan Amendment, contingent upon flexibility in transportation section pertaining to the area west of the Legacy Christian Academy project as well as the desired alignment for the Highway 10 freeway conversion

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

Case #2: Public Hearing – Consider Ordinance to Amend Section 117-117 (E1 Employment District) and Section 117-116 (E2 Employment District)

Public Hearing

Chairperson Levine called the public hearing to order at 7:43 p.m.

Presentation

Management Intern Brama presented the Staff Report.

Citizen Input

Commissioner Field stated he thought a better fit would be the Commercial district; this would give permission to go to retail mode at any time.

Senior Planner Gladhill stated that this is set up as a conditional use so there would be additional controls and reasonable conditions can be placed on the conditional use permit. This use is typically in the commercial district, however, he sees benefit for allowing retail activity related to the industrial use in the employment district that would provide some flexibility and allow users to have a fuel source close to their place of business.

Commissioner Van Scoy stated he has a concern allowing the retail use in the Employment District.

Senior Planner Gladhill stated that the Fire and Building Code will address the potential hazards and how to address them.

Chairperson Levine stated that this is a good environmental work in the city and wants to make sure these alternative fuels are available, it is already regulated. The city is trying to be a green city and make accessible the fuels to be used to be better citizens.

Commissioner Schiller stated by offering the retail portion, you can limit how many dispensing stations are created for the business that are using this fuel.

Commissioner Van Scoy asked what type of storage it will be, external or underground.

Senior Planner Gladhill stated most will be above ground, however, there is a potential some will be buried as well. It will be up to the individual users to make sure proper mitigation is in place. This is not opening up a gas station, only compassed natural gas, a very specific specialized fueling station.

Commissioner Field asked how the public would distinguish between the two, does it actually have a different presence.

Senior Planner Gladhill stated proper signage would be in place. He does not envision these being on the corners of the major thoroughfares. There would not be as much passer by traffic; people would be going there for a purpose.

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

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

Commission Business

Commissioner Dunaway stated his concern of the language in the ordinance that seems to allow for other alternative fuels that have not been tested as the compressed natural gas has.

Management/Planning Intern Brama stated this is a conditional use in the district, and each case would be brought before the Planning Commission and City Council for approval.

Commissioner Van Scoy stated that the expense invested into dispensing and utilization in the vehicles has got to be relatively expensive. It would probably be for commercial type situation, and the volume would be far less than a gas station.

Motion by Commissioner Dunaway, seconded by Commissioner Schiller to recommend City Council adopt the ordinance related to retail sales of compressed natural gas fuel stations.

Further Discussion

Commissioner Field stated the motion does say compressed natural gas and no other alternative automotive fuels.

Motion amended by Commissioner Dunaway, seconded by Commissioner Schiller to recommend City Council adopt the ordinance related to retail sales of compressed natural gas fuel and other alternative fuel stations.

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

Case #3: Site Plan Review for Ramsey Commuter Rail Station

Presentation

Associate Planner/Environmental Coordinator Anderson presented the Staff Report.

Commission Business

Chairperson Levine asked if the station is similar to the Coon Rapids station.

Associate Planner/Environmental Coordinator Anderson stated it is similar with the enclosed pedestrian crossing over the tracks to get to the platforms.

Commissioner Dunaway asked with the substantial costs involved if other alternative types of stations were considered. Fridley station has an underground tunnel to the platform, would that type of station save any costs.

Senior Planner Gladhill stated that the water table is too high for an underground tunnel and the same grade crossing as in Anoka is not safe for this site.

Commissioner Van Scoy asked if there was access off of Highway 10.

Associate Planner/Environmental Coordinator Anderson stated south of the BNSF right away there is an emergency egress area for safety concerns. There is not direct access to the platform; all passengers will be entering from the municipal parking ramp.

Commissioner Van Scoy asked if the City anticipates filling up the parking ramp, because there is a development going in that will be utilizing the ramp as well.

Senior Planner Gladhill stated Residence at the COR will utilize approximately 270 spaces. The grant funding of the ramp extension does require dedicated parking spaces reserved for the rail station. Calculations have been done and there will be adequate parking for all of the uses; the Residence at the COR, rail station, shared uses within the immediate area and the municipal center.

Commissioner Field stated he saw a pedestrian walk way over Highway 10, and asked if that would allow access to the platform.

Associate Planner/Environmental Coordinator Anderson stated the pedestrian walkway connects the two staircases along the north and south side of the tracks.

Senior Planner Gladhill added that there are future plans of a pedestrian walkway over Highway 10; however that is not part of this project. There will not be parking on the south side of Highway 10; however it will provide residences south of Highway 10 another mode of transportation to get across Highway 10 to get to this rail station.

Commissioners discussed the irrigation of the landscaping and its importance to the representation of the city.

Motion by Commissioner Van Scoy, seconded by Commissioner Field to recommend that City Council approve the site plan for the Ramsey Northstar Commuter Rail Station contingent upon compliance with the City Staff Review Letter dated July 29, 2011.

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

Case #4: Discussion of Duties Assigned to the Planning Commission and board of Adjustment

Presentation

Senior Planner Gladhill presented the Staff Report.

Commission Business

Commissioner Field asked what is it in the state statute that allows us to do this and why has it not been done before.

Senior Planner Gladhill replied it has not been done before because of the quasi-judicial versus advisory functions and making a clear delineation of the two and we now have a better mechanism to do that. In State Statute Chapter 462.354 talks about identifying Planning Commission and Board of Adjustment authority, stating that the City Council can act as or delegate to another board or add a separate board.

Commissioner Dunaway stated that Board of Adjustment Chairperson Van Scoy did a very good job at chairing the Board of Adjustment.

Motion by Commissioner Dunaway, seconded by Commissioner Schiller to direct staff to prepare an ordinance to institute the proposed changes to the duties of the Planning Commission and Board of Adjustment.

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

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 Field, to adjourn the meeting.

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

The regular meeting of the Planning Commission adjourned at 8:44 p.m.

Respectfully submitted,

_____
Tim Gladhill
Senior Planner

ATTEST:

_____
JoAnn Shaw
Planning Division Secretary

Special Planning Commission **5. 1.**

Meeting Date: 09/08/2011

By: JoAnn Shaw, Community Development

Title:

Note the Following City Council Meeting Minutes:

City Council Meeting Minutes dated Tuesday, June 14, 2011
City Council Meeting Minutes dated Tuesday, June 28, 2011
City Council Meeting Minutes dated Tuesday, July 12, 2011
City Council Meeting Minutes dated Tuesday, July 26, 2011

Background:

N/A

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

06.14.11
06.28.11
07.12.11
07.26.11

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	08/30/2011 02:34 PM

Form Started By: JoAnn Shaw Started On: 08/30/2011 01:51 PM

Final Approval Date: 08/30/2011

TABLE OF CONTENTS

CITY COUNCIL
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey City Council conducted a regular meeting on Tuesday, June 14, 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: None – Council Vacancy

Also Present: City Administrator Kurtis Ulrich
Deputy City Administrator Heidi A. Nelson
Fire Chief Dean Kapler
Public Works Director Brian Olson
Senior Planner Timothy Gladhill
City Engineer Tim Himmer
Police Chief James Way
Parks Supervisor Mark Riverblood
Finance Officer Diana Lund
City Attorney William Goodrich
Economic Development/Marketing Manager Aaron Backman
Associate Planner/Environmental Coordinator Chris Anderson

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 City employee Len Linton and his sons.

2. PRESENTATION

The Pledge of Allegiance was led by Ramsey Civil Engineer II Len Linton and two of his sons. It was noted that Mr. Linton and all five of his sons, Jeff, Jason, Jeremy, Jacob and Jared, have earned the highest honor of Eagle Scout.

Patrol Officer Kyle Hemmerich was administered the oath of office by City Attorney Goodrich.

Aaron Nielson of Malloy, Montague, Karnowski, Radosevich & Company, the City's auditing firm, presented the City's 2010 Audit Report**.**

Councilmember Backous said the Council discussed this report during its Work Session and complimented the firm on a very thorough audit.

City Administrator Ulrich commended staff for their work during the audit, especially Finance Officer Diana Lund and staffmember Denelle McAlpine.

Finance Officer Lund stated Ms. McAlpine took a major portion of audit and CAFR this year, adding they will be receiving certification of financial reporting for the 17th year in a row.

Mayor Ramsey asked staff to read a statement in response to a recent literature piece being distributed regarding The COR.

Deputy City Administrator Nelson read a statement regarding The COR, the development team, and The Residences at the COR. She said the statement is an effort to clarify the HRA's role and outline facts, including history and price, with regard to Landform Developmental Services.

Eric Hauge, 6521 - 154th Lane NW, expressed his concerns regarding a lack of shops or restaurants in Ramsey and the proposed Flaherty and Collins financing package. He said the HRA didn't bond because they spent down reserves, adding the purchase price was too much. Mr. Hauge expressed concerns about Cronk and McGreavy's fiduciary duty and disclosure of subordinates of Landform, including Senator Jungbauer.

Margaret Connelly, 16235 Camelot Street NW, expressed her concerns as well. She asked if the City plans on adding to the parking ramp.

Mayor Ramsey stated that topic has been scheduled for the next meeting agenda.

Ms. Connelly expressed concern about first rights and suggested waiting for the economy to return.

Mayor Ramsey said the City is trying to finish development of The COR so a developer is interested in purchasing it.

Ms. Connelly stated she is concerned about the amount of money being invested and asked for more information on the proposals. She asked that Work Sessions be televised and encouraged the Council to get input from residents.

Mayor Ramsey encouraged her to attend his regular Town Hall meetings on the third Thursday of each month. He said the City has been working very hard on The COR and keeping residents involved. Mayor Ramsey said the majority of citizens are satisfied with the progress but encouraged people to call for more information and not listen to misinformation.

Councilmember Backous said the literature circulated included a lot of misinformation that only hurts the City and taxpayers by deteriorating this investment. He encouraged anyone who has proof of any accusations to bring it forward to the County Attorney. Councilmember Backous stated the City works very hard to share information with residents through all available avenues,

including the webpage, FaceBook, Twitter, televised HRA meetings, and being available. He encouraged people to contact the Council and become involved.

Mayor Ramsey clarified that Mr. Cronk is not an employee of Landform. He is a real estate agent, is not involved in any negotiations with a relationship with Flaherty, and is receiving no compensation on any transactions.

Councilmember Wise said there has been an enormous amount of staff time wasted on these accusations, including Council. He said the amount of information is overwhelming and it would be impossible to inform everyone of every step in the process. Councilmember Wise said it is fine to oppose the plans but asked people to become educated on the process.

Councilmember Tossey said he has not seen improprieties with the process and believes this and prior Councils' intentions have always been in the right place. He encouraged the public to state if they don't agree with something, adding the topic of how much money will be spent is a valid concern.

Councilmember Backous said if he thought anything was illegal he would have addressed it before this letter. He agreed with Councilmember Tossey about all wanting the same thing. He said the City did the right thing in repackaging and rebranding The COR to clear the way for development, and he is proud of where we are at.

Councilmember McGlone said adversity is an opportunity and this has resulted in people asking questions and getting the real facts.

Councilmember Backous stated The COR is separate from the Ramsey Town Center and we need to move towards the future.

2.01 Bio of Len Linton and Sons

City Administrator Ulrich reviewed the biographies.

3. CITIZEN INPUT

Citizen Input was received under Item 2.

4. APPROVE AGENDA

Motion by Councilmember Elvig, seconded by Councilmember Tossey, to approve the agenda as presented.

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

5. CONSENT AGENDA

Councilmember Wise stated he will be abstaining from Consent Agenda Item 5.10 and asked that it be moved to Item 7.07.

Motion by Councilmember Elvig, seconded by Councilmember McGlone, to approve the following remaining items on the Consent Agenda:

5.01 Receive Cash & Investments for Period Ending May 31, 2011
5.02 Receive April 2011 Financial Reports - General Fund and Enterprise Funds
5.03 Receive 2010 Comprehensive Annual Financial Report (CAFR)
5.04 Note the following Commission and Boards meeting minutes:
  a) Environmental Policy Board meeting minutes dated May 3, 2011
  b) Planning Commission meeting minutes dated May 5, 2011
  c) Economic Development Authority meeting minutes dated May 12, 2011
  d) Special Planning Commission meeting minutes dated May 19, 2011
5.05 Introduce Ordinance to Amend to Chapter 117 of City Code Relating to Required Depth of Topsoil; Case of City of Ramsey
5.06 Approval of Business Subsidy Agreement with Ramsey Retail Rental for SAC/WAC Assistance
5.07 Consider Registered Land Survey Related to Bunker Lake Boulevard Project
5.08 Consider Ordering City Improvement Projects #11-01 through 11-06; 2011 Street Maintenance Program
5.09 Accept Plans and Specifications, and Authorization to Bid City Improvement Project #10-25; Chameleon Street Paving
~~5.10 Approve Off-Sale Intoxicating Liquor, Off-Sale 3.2% Liquor, On-Sale Intoxicating Liquor, Beer, Sunday Sales, and Optional 2:00 a.m. Closing~~ **Moved to Item 7.07.**
5.11 Adopt Resolution #11-06-108 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received during the Period of May 26, 2011 through June 8, 2011
5.12 Adopt Resolution #11-06-109 Supporting the Concept of Cooperation and Collaboration to Promoting Greater Efficiency in the Use of Public Resources
5.13 Adopt Resolution #11-06-110 in Support of 2011 State Bond Funding for the Repair and Renovation of the Coon Rapids Dam as an Invasive Fish Barrier
5.14 Authorize Resolution #11-06-111 Resolution Establishing Procedures Relating to Compliance with Reimbursement Bond Regulations Under the Internal Revenue Code
5.15 Report from the Finance Committee of May 31, 2011
  1) Consider Collection Procedure for Delinquent Escrow Accounts – *Ratify the recommendation of the Finance Committee to draft an escrow policy with the terms as outlined for future Council consideration*
  2) City Financial Dashboard – *Ratify the recommendation of the Finance Committee and to update the financial dashboard with additional information related to the cash flow section and to place it on the City's web site*
5.16 Report from the Personnel Committee meeting held on May 31, 2011

1) Consider a Resolution to Consider Authorizing Staff to Recruit and Hire a Temporary IT Intern – *Ratify the recommendation of the Personnel Committee and adopt Resolution 11-06-112 to Recruit and Hire a Temporary IT Intern*

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

6. PUBLIC HEARING

None.

7. COUNCIL BUSINESS

7.01: Request for Selection of a Towing Vendor for the City of Ramsey

Police Chief Way reviewed the staff report, adding this item had been reviewed at the earlier work session.

Mayor Ramsey said bids reviewed during the Work Session were very close between Champlin Towing and First Choice. He said Champlin Towing did a good job last year, but the Council had some questions regarding First Choice's impound lot and storage. He said if First Choice had clarified these unknowns it would have made their bid more attractive.

Councilmember Wise said he was concerned about First Choice being a home occupation instead of being located in a commercial area.

Scott Grams, First Choice, 1645 Nowthen Boulevard, stated they are very close to an agreement for a commercial lot in Ramsey which would address the impound lot and storage. He said of the four bids received he is the only Ramsey resident, adding that 50% of his staff are citizens as well.

Councilmember Tossey commended Mr. Grams for hiring Ramsey citizens but said the City is prohibited to take that into consideration. He said that while they try to hire Ramsey residents the bidder still has to be the lowest qualified. He encouraged Mr. Grams rebid again in future.

Motion by Councilmember Wise, seconded by Councilmember Elvig to select Champlin Towing for a two-year contract.

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

7.02: Consider Receiving Petition for Feasibility Study to Install Subdivision Street Lights on Sunfish Lake Boulevard between Highway #10 and Bunker Lake Boulevard

Public Works Director Olson reviewed the staff report.

City Attorney Goodrich advised the petition was not properly signed by the fee owners, which is a technicality, but there was also not 35% on the petition. He said in order to approve a project, the Council must approve on a 4/5 vote. He explained this petition doesn't qualify for 35% but does acknowledge that residents want the project and suggested staff conduct a feasibility study.

City Engineer Himmer shared a map from D&G Properties, noting signatures were for both properties. He said the residents want a subdivision street light and would pay for it.

Councilmember McGlone asked if Council could approve the request conditioned upon staff receiving a proper petition.

City Attorney Goodrich suggested adopting the proposed resolution asking for a proper petition, although it is not essential because they could have a majority vote instead of 4/5 vote without a petition.

Councilmember Elvig asked if there is a need for lighting.

City Engineer Himmer said they would meet with Connexus about costs and likelihood of future road construction first, adding the residents will probably want more lights at the building façades. He said staff will get clarification from them first.

Councilmember Elvig suggested rejecting the petition but then follow up with a plan for the residents on how this can be accomplished.

Councilmember Wise left the dais at 8:04 p.m.

Motion by Councilmember Elvig, seconded by Councilmember Backous, declaring insufficient signatures on a petition for a public improvement consistent of street lighting along a part of Sunfish Lake Boulevard.

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

Councilmember Wise returned to the meeting at 8:10 p.m.

7.03: Consider Revised Full-Service Restaurant Subsidy Policy

Economic Development/Marketing Manager Backman reviewed the staff report.

Motion by Councilmember McGlone, seconded by Councilmember Wise, to accept the revised policy by the EDA.

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

Councilmember Elvig said this policy is both good and bad but is willing to consider it when it fits. He stated it will push a lot of energy into the marketplace. Councilmember Elvig noted there are two restaurants in the City that were not here before, and the two-year sunset will be critical. He asked how this subsidy will be marketed.

Councilmember Backous stated this is a good problem to have and that is how it should be marketed.

Councilmember McGlone said marketing should include the understanding of subject to funds availability, which is a sales tool.

7.04: Consider Approval of Environmental Policy Board Work Plan

Councilmember Elvig left the dais at 8:10 p.m.

Associate Planner/Environmental Coordinator Anderson reviewed the staff report.

Motion by Councilmember McGlone, seconded by Councilmember Wise, to adopt Resolution #11-06-113 approving the Environmental Policy Board's annual work plan.

Further discussion: Mayor Ramsey stated this is a good plan and thanked the Boards and Commissions for sharing their advice and assistance.

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

Councilmember Elvig returned at 8:14 p.m.

7.05: Adopt Ordinance to Amend Section 117-90 "Map" of Chapter 117 of the Ramsey City Code Related to the 2030 Comprehensive Plan.

Senior Planner Gladhill reviewed the staff report.

Motion by Councilmember McGlone, seconded by Mayor Ramsey, to waive the Charter requirement to read the ordinance aloud and adopt Ordinance #11-07 to amend Section 117-90 "Map" of Chapter 117 of the Ramsey City Code related to the 2030 Comprehensive Plan.

A roll call vote was performed by the Recording Secretary:

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

Motion carried.

7.06: Adopt Ordinance to Amend City Code Section 117-349 (Accessory Uses and Buildings)

Senior Planner Gladhill reviewed the staff report.

Motion by Councilmember McGlone, seconded by Councilmember Elvig, to waive the Charter requirement to read the ordinance aloud and adopt Ordinance #11-08 Amending Section 117-349 (Accessory Uses and Buildings) of the Ramsey City Code.

Further discussion: Councilmember McGlone asked staff to clarify rural development requirements and the MUSA. He stated this new ordinance is less restrictive and more beneficial to those who want to store more items. Senior Planner Gladhill explained this ordinance would allow for more square footage of storage, allow more administrative privileges, and add more character. Councilmember McGlone asked if this ordinance will allow more space for hobby items. Senior Planner Gladhill said this would allow processing as a conditional use permit so overages will be processed better and allow additional storage. Councilmember Elvig said when the City abates a property for clutter this will allow for a property owner to store their items. He said this is a good response to that concern and will allow new building materials and other options for making the area architecturally expressive. Mayor Ramsey said Council used to approve every conditional use permit so this action will help streamline that process. Councilmember Elvig clarified this does not apply to small businesses, which will still require a license.

A roll call vote was performed by the Recording Secretary:

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

Motion carried.

Mayor Ramsey noted the ordinance will take effect in 30 days.

7.07: Approve Off-Sale Intoxicating Liquor, Off-Sale 3.2% Liquor, On-Sale Intoxicating Liquor, Beer, Sunday Sales, and Optional 2:00 a.m. Closing

City Administrator Ulrich reviewed the staff report.

Mayor Ramsey clarified this item was removed from the Consent Agenda because Councilmember Wise is abstaining from the vote.

Motion by Councilmember Elvig, seconded by Councilmember Backous, to Approve Off-Sale Intoxicating Liquor, Off-Sale 3.2% Liquor, On-Sale Intoxicating Liquor, Beer, Sunday Sales, and Optional 2:00 a.m. Closing.

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

8. MAYOR, COUNCIL AND STAFF INPUT

Meetings

City Administrator Ulrich noted the Council recently held a joint meeting with Anoka and announced two upcoming meetings:

1) Mayors Town Hall Meeting - Thursday, June 16 - 7:00 p.m. - Lake Itasca Room
2) Joint Meeting with Nowthen City Council - Thursday, June 23 - Lake Itasca Room **9.**

The Draw Park Events

Deputy City Administrator Nelson announced the upcoming Music in the Park concert on Thursday, June 23, adding the Farmers Market will be returning on Thursdays.

David Jeffrey Benefit Update

Councilmember Backous said the benefit for former Councilmember Dave Jeffrey was a huge success with over 500 people attending and it raised a lot of money.

Congrats to Boys Soccer Team

Councilmember Elvig congratulated the U12 Boys Soccer Team on winning their division in Waterloo, Iowa. He added Waterloo's soccer fields were very nice and asked Council and staff to review the City's facilities for possible improvements.

Special Election

Deputy City Administrator Nelson stated a special election for Ward 4 Councilmember will be held on Tuesday, August 16. She stated candidate filing will be open from June 10 to June 24, and absentee voting will be available beginning July 15.

Improvements

Mayor Ramsey noted the former Holiday station has been demolished and the pylon sign will be rehabbed for The COR marquee.

9. ADJOURNMENT

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

Motion carried.

The regular meeting of the City Council adjourned at 8:29 p.m.

Respectfully submitted,

_____
Kurtis G. Ulrich
City Administrator

ATTEST:

_____
Jo Ann M. Thieling
City Clerk

Drafted by Cathy Sorensen
TimeSaver Off Site Secretarial, Inc.

TABLE OF CONTENTS

CITY COUNCIL
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey City Council conducted a regular meeting on Tuesday, June 28, 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: None

Also Present: City Administrator Kurtis Ulrich
Deputy City Administrator Heidi A. Nelson
Public Works Director Brian Olson
Senior Planner Timothy Gladhill
City Engineer Tim Himmer
City Attorney William Goodrich
Associate Planner/Environmental Coordinator Chris Anderson
Human Resources Representative Colleen Lasher

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. PRESENTATION

Mayor Ramsey noted that Council, staff, family, and friends had met prior to the Council meeting to honor former Councilmember David Jeffrey.

3. CITIZEN INPUT

None.

4. APPROVE AGENDA

City Administrator Ulrich stated staff suggests adding Item 5.15 Resolution Recognizing Councilmember David Jeffrey for His Service to the City of Ramsey and Item 7.06 Consider

Change Order for City Project #10-07, 151st and 152nd Avenues and Fluorine Street, Soils and Turf Re-Establishment.

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

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

5. CONSENT AGENDA

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

5.01 Approve the following licenses:

Special Events Permit

City of Ramsey Happy Days - 7550 Sunwood Drive NW - September 16 - 18

Lord of Life Church, 14501 Nowthen Boulevard NW - Outdoor Services - 10:30 - amplified music - May 29 - September 4

Motor Vehicle

Auto Fitness and Service Center - 7029 Highway #10 NW

5.02 Approve Special Event Permit for The Draw for 2011

5.03 Approve Rental License - Savannah Oaks Senior Apartments

5.04 Approve Lease Agreement for 6811 Hwy 10 by TMBC, LLC dba Crystal Pierz Marine

5.05 Authorization to Purchase Wetland Banking Credits for City Improvement Project #11-21; Armstrong and Bunker Lake Boulevard Intersection Signalization

5.06 Adopt Resolution #11-06-114 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received during the Period of June 9, 2011 through June 22, 2011

5.07 Adopt Resolution #11-06-115 Extending and Amending the Terms of an Interim Use Permit for Grading and Mining Purposes through December 31, 2011; Case of BNSF Railway Company

5.08 Adopt Resolution #11-06-116 Approving Minnesota Law, 2011, Chapter 112, Article 11, Section 16 (TIF District 14)

5.09 Adopt Resolution #11-06-117 Appointing Councilmember Backous to Serve on the Public Works Committee

5.10 Adopt Resolution #11-06-118 Appointing Councilmember Tossey to Serve as the Primary Council Representative to the Joint Law Enforcement Council

5.11 Adopt Resolution #11-06-119 Appointing Representatives to the Connect Anoka County Broadband Governance Group

5.12 Adopt Resolution #11-06-120 Amending the "Policy for Appointing Board and Commission Members"

5.13 Adopt Resolution #11-06-121 Renaming A Public Park within the COR

5.14 Adopt Resolution 11-06-122 Authorizing 3rd Partial Payment to Rum River Contracting for IP 10-07 Alpine Drive/Roanoke Street Improvements

5.15 Adopt Resolution #11-06-123 Recognizing Councilmember David Jeffrey for His Service to the City of Ramsey

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

6. PUBLIC HEARING

None.

7. COUNCIL BUSINESS

7.01: Adopt Ordinance to Amend to Chapter 117 of City Code Relating to Required Depth of Topsoil; Case of City of Ramsey

Associate Planner/Environmental Coordinator Anderson reviewed the staff report.

Mayor Ramsey stated that when the six-inch topsoil depth standard was adopted, the City cast a burden on developments already graded by requesting that they remove two inches of topsoil. He said this outcome was never considered.

Motion by Councilmember Tossey, seconded by Mayor Ramsey, to waive the Charter requirement to read the ordinance aloud and adopt Ordinance #11-09 to amend Chapter 117 of City Code reducing the required depth of topsoil from six (6) to four (4) inches.

A roll call vote was performed by the Recording Secretary:

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

Motion carried.

7.02: Consider a Resolution Approving the 2011-2012 LELS Sergeant's Labor Contract

Human Resources Representative Lasher reviewed the staff report.

Councilmember McGlone stated he will be opposing this resolution and contract because it will result in the only group receiving a raise as well as paid work out time, which is half of the full time equivalents.

Motion by Councilmember Tossey, seconded by Councilmember Backous, to adopt Resolution #11-06-124 to approve the 2011-2012 LELS Sergeant's Labor Contract.

Further discussion: Mayor Ramsey noted the raise would be for 2012, which has not yet been budgeted. He stated that while this will open up discussions for other groups, others have gone to arbitration so this contract is in the best interest of the City. Ms. Lasher stated the Patrol group would be negative for two percent as of January 1, 2012.

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

7.03: Appoint Alternate Council Representative to Economic Development Authority

City Administrator Ulrich reviewed the staff report.

Mayor Ramsey nominated Councilmember Backous as the alternate Council representative to the Economic Development Commission.

Motion by Councilmember Elvig, seconded by Councilmember Wise, to Resolution #11-06-125 Appointing Councilmember Backous as Alternate Council Representative to the Economic Development Authority.

Further discussion: None.

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

7.04: Consider Change Order for City Project #10-07; Alpine/Roanoke Street Improvements

City Engineer Himmer reviewed the staff report.

Councilmember Elvig asked if the pedestrian ramps would be $7,000 on just this project.

City Engineer Himmer said there would be 12-13 ramps or almost double, adding there was to be 10 feet of curb removal but will now be 18 feet, as the ramps have to be full width across and maintained.

Councilmember Elvig clarified the ramps will be $700 to $800 each.

City Engineer Himmer stated that was correct.

Councilmember Elvig inquired about funding.

City Engineer Himmer stated funding would come from MSA funds for the pedestrian ramps, trails, and sod all being eligible except for 10% of the landscaping, which the City will get back at the end of the year.

Motion by Councilmember Elvig, seconded by Councilmember Wise, to approve the change order for trail extension and pedestrian ramp upgrades to current MnDOT standards, and consideration of potential turf establishment revisions.

Further discussion: Councilmember Wise asked if the turf establishment will be more because of the North Fork location and asked if this is an unnecessary expense. City Engineer Himmer said if this were to happen today the turf restoration would be included as good or better, adding that on Alpine Street work is not assessable so the City would likely get many questions of why we restored on one side and not the other. He said seed is a good option and the City cannot attribute this to any certain property. Councilmember McGlone said he is concerned about path elevations undulating above the curve making it harder to mow. He asked if this sod is designated for some of those other areas, adding 400 yards seems to be a lot. City Engineer Himmer explained that seed and blankets were included in the original contract with geo-mesh blanket to avoid gas mains, and the contractor followed the grade as best they could but likely erred on the side of boulevard snow storage. Councilmember McGlone said he wanted to clarify this point for the residents to better understand this change and why the heights will vary. Mayor Ramsey said it is appropriate to restore the yards, as they were very nice in this area. Councilmember Elvig noted Council has not set policy on how to do this but will do so through policy review over the next few weeks. Councilmember Wise said he was pleased that this action is not precedent setting and will be up for review.

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

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

Public Works Director Olson reviewed the staff report and noted the $4.1 million engineer's estimate resulted in a $2.68 million contract with Knutson, which was competitively bid. He said the City has 60 days to award the contract, after which the City includes bid alternates to give flexibility for both the Council and contractor to construct after August 25, 2011, at a cost to be defined within the different bids.

Councilmember Elvig asked staff to bring all the changes to Council first unless untimely. He said he would like to manage the change orders.

Public Works Director Olson said that would be fine as long as it does not delay the decision-making.

Councilmember Backous suggested delaying this vote.

City Attorney Goodrich suggested tabling the item instead.

Mayor Ramsey said there is no need to table because this is an informational item at this point only and no vote is necessary.

Councilmember Elvig suggested clarifying Council's position more formally.

Public Works Director Olson said that action would not be necessary because Council has the authority to delay action for 60 days.

City Administrator Ulrich suggested a motion to bring this item back in 60 days for formal action.

Motion by Councilmember Wise, seconded by Councilmember Elvig, to bring back consideration of award of contract for Improvement Project #10-22, Ramsey Municipal Parking Facility by August 9, 2011, to award contract without penalty or alternate.

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

7.06: Consider Change Order for City Project #10-07, 151st and 152nd Avenues and Florine, Soils and Turf Re-Establishment

City Engineer Himmer reviewed the staff report, adding the current contract outlined importing material through the City but that cost should not be absorbed by the contractor or assessed. He added time and material estimates are outlined as not to exceed $9,000, and the change order will be funded through the public improvement fund.

Councilmember McGlone asked if the residents have been informed of this change order.

City Engineer Himmer said notice was given to the residents last Friday and the contractor is prepared to do the work immediately. He said the notice also offered residents to do the work on their own and receive a credit for the seed of $0.15/sq. ft. or $110.

Motion by Councilmember McGlone, seconded by Councilmember Wise, to approve Change Order for City Project #10-07, 151st and 152nd Avenues and Fluorine, Soils and Turf Re-Establishment.

Further discussion: Councilmember Tossey confirmed there would be no increase to the residents' assessment.

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

8. MAYOR, COUNCIL AND STAFF INPUT

Schedule

The following schedule was acknowledged:

1) Local Government Officials Meeting - Wednesday, June 29 - Chomonix Golf Course, Lino Lakes
2) City offices will be closed in observance of Independence Day, Monday, July 4

3) There will be no EDA meeting on July 4 - the July meeting has been canceled
4) There will be no Council or HRA Work Session on Tuesday, July 5

Filings Closed for Special Election

City Administrator Ulrich stated that election filings have closed and the ballot will include the following candidates: Brenda Look, Sarah Strommen, Thomas Towberman, and Tim Wrenn. He said the special election will be held on August 16.

Mayor Ramsey encouraged candidates to check with City staff about campaign signage rules.

Events at The Draw

Mayor Ramsey said last week's event at The COR included a wonderful concert by Big Walter Smith, but approximately 100 people attended because of the poor weather. He encouraged residents to attend this week's event featuring sailboat and remote control boats at the amphitheater in The Draw.

State Shutdown

Councilmember Elvig asked if any City operations will be affected if the State government shuts down.

City Administrator Ulrich said the shutdown will have some effect on road construction projects such as a delay in the parking ramp and other roadway projects. He said that while Ramsey does not rely on Local Government Aid, licensing and regulations such as permits through the State will be unavailable, water inspections and private contracting. City Administrator Ulrich stated essential services will be determined and remain in effect, so there are no concerns about health, safety, and wellness matters. City Administrator Ulrich stated the shut down will affect mostly projects and State approval delays, such as Board of Soil and Water Conservation.

Mayor Ramsey encouraged the public to obtain their tabs and licenses from the License Center in case the State government shuts down.

Ramsey Raceway

Councilmember Wise announced that Ramsey Raceway will be open on July 8, which is a slight delay because of the recent rain and weather.

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 7:40 p.m.

Respectfully submitted,

_____
Kurtis G. Ulrich
City Administrator

ATTEST:

_____
Jo Ann M. Thieling
City Clerk

Drafted by Cathy Sorensen
TimeSaver Off Site Secretarial, Inc.

TABLE OF CONTENTS

CITY COUNCIL
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey City Council conducted a regular meeting on Tuesday, July 12, 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: None – Council Vacancy

Also Present: City Administrator Kurtis Ulrich
Deputy City Administrator Heidi A. Nelson
Fire Chief Dean Kapler
Public Works Director Brian Olson
Associate Planner Timothy Gladhill
City Engineer Tim Himmer
Police Chief James Way
City Attorney William Goodrich
Development Manager Darren Lazan

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. PRESENTATION

None.

3. CITIZEN INPUT

None.

4. APPROVE AGENDA

City Administrator Ulrich requested Item 7.3 be added: Flaherty & Collins Financing – Third Amendment. He noted it has been approved by the HRA and now needs Council approval. The request is to extend the deadline date.

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

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

5. CONSENT AGENDA

Councilmember Elvig expressed concern with item 5.1 Acknowledge Anoka County's Plans and Specs for the 2011 Construction of a Boat Landing and Fishing Platform. He advised the discussion of traffic patterns.

City Administrator Ulrich suggested removing this item from the Consent Agenda and adding the item as item 7.4 Consider Anoka County's Plans for 2011 Construction of Boat Landing.

Motion by Councilmember Elvig, seconded by Councilmember McGlone to approve the following items on the Consent Agenda:

5.1. Approval for Exemption for a Gambling License for the Anoka County Pheasants Forever at Game Fair.
5.2. Approve the following Meeting Minutes:
1) City Council - Regular - May 31, 2011
5.3. Adopt Resolution #11-07-126 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing received during the Period of June 23, 2011 through July 7, 2011
5.4. Adopt Resolution 11-07-127 Authorizing 2nd Partial Payment to Dryden Excavating for IP 10-24 Wetland 656 W Outlet
5.5. Adopt Resolution #11-07-128 Authorizing 2nd Partial Payment to Dryden Excavating for IP #10-32 176th Avenue Culvert Replacement
5.6. Approve Resolution #11-07-129 Applying for Federal Funding for the Mississippi River Trail
5.7. Report from Public Works (*Ratify the recommendations of the Public Works Committee regarding the use of pavement reinforcement systems on overlay project, the policy on Turf Establishment Related to City Improvement Project, the Policy for Importing Material into the COR and the Review Summary of Proposals for Profession Engineering Services and Development of a Consulting Pool)*

6. PUBLIC HEARING

None.

7. COUNCIL BUSINESS

7.01: Consider Award of Contract for City Improvement Project 10-25; the Bituminous Paving of Chameleon Street

City Engineer Himmer reviewed the staff report.

Motion by Councilmember Backous, seconded by Councilmember Elvig, to award a contract for City Improvements Project #10-25; the Bituminous Paving of Chameleon Street, to Oman Brothers Paving in the amount of $336,000

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

7.02: Consider Establishment of a Consultant Pool for Overflow Engineering Services

City Engineer Himmer reviewed the staff report. He emphasized he is seeking to create an overall pool of consultants rather than employing consultants in each specific area of expertise.

Mayor Ramsey questioned who the decision maker will be to determine which firm is offered the type of work needed at the time.

City Engineer Himmer explained there is approximately $31,000 in the budget for consulting. As projects arise where assistance is needed, staff will send emails to all firms and request a quote. If is more than the budget allows, staff will bring the request to Council.

Councilmember Backous requested there be a review process implemented through Public Works to evaluate the consultant pool.

Public Works Director Olson agreed to the review process.

Motion by Councilmember Elvig seconded by Mayor Ramsey, to authorize staff to create a consultant pool for overflow engineering services, and bring items to the Council for approval as needed, and create a review process in one year

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

7.03: Flaherty & Collins Financing – Third Amendment

Community Development Director Lazan noted the HRA and the Council are parties to this Agreement. There are two key dates: July 15 is the last day Flaherty can opt out. August 15 is the date of closing. The request is to move each date out 30 days. He stated this case is expected to be before the HRA before the end of the month for a fourth amendment.

Councilmember Tossey questioned whether the fourth amendment would be in response to the financing or the key dates.

Community Development Director Lazan answered it would be a revised structured deal, depending on the direction of the HRA and Council.

Mayor Ramsey confirmed this request is a formality.

Community Development Director Lazan confirmed this request is to keep the agreement in place.

Councilmember Elvig stated there are a lot of components to this, and to complete them in 30 days is optimistic. He suggested moving the dates another 30 days out.

Community Development Director Lazan responded this is an aggressive date and it was set in order to keep the item moving. He stated he would be in favor of a longer extension but then it would need to be brought before the HRA for execution. He said the deadline is too close to implement that process

Motion by Councilmember Wise, seconded by Councilmember McGlone to extend the dates of the Agreement 30 days.

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

7.04: Acknowledge Anoka County's Plans and Specs for the 2011 Construction of a Boat Landing and Fishing Platform.

Public Works Director Olson explained the Joint Powers Agreement was approved by the Council. He stated it is the intention to use Traprock until the development of the park is achieved. An entrance from Ramsey Boulevard could be a possibility in the distant future. An open house was held at the Municipal Center, where the Master Plan was discussed and how this boat landing would fit into it. He mentioned the City is loaning the money to the County to be paid back when they apply for funds through Met Council. The request is to approve the plans and specs for the landing and the fishing platform.

Councilmember Elvig expressed concern with the amount of room to navigate in the parking lot. While someone is landing their boat, they could easily be in the way of someone wanting to launch their boat.

Public Works Director Olson explained this is the beginning of the plans for the Landing. Anoka County designed this, and it is their land. He offered to forward the comments to the County.

Discussion took place regarding the size of the lot and potential traffic issues. Further discussion took place on whether the handicap stall is needed and where a boat could be parked to remove weeds from it.

Public Works Director Olson stated due to the expressed concerns, it could be beneficial to have the County attend our next regularly scheduled Council meeting. He also noted the Council is invited to look at the plan anytime at the County offices.

City Administrator Ulrich cautioned that timing is tight. This is a high priority in order to get this started and finished this year. He acknowledged the concerns are valid and they will be passed along to the County.

Motion by Mayor Ramsey, seconded by Councilmember McGlone, to acknowledge Anoka County's Plans and Specs for the 2011 Construction of a Boat Landing and Fishing Platform.

Further discussion: Councilmember Tossey expressed concern in the possibility of adding costs to the project. He raised the issue of snow storage.

Public Works Director Olson noted there is no curb on this plan. The roundabout, or the median, is the infiltration basin which helps to treat the water before it is discharged. Due to their previous experiences, he explained they do not want to have people parking that may block the route of others. He also noted the DNR permits were null and void during the State shut down, which could affect the dates in this project.

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

8. MAYOR, COUNCIL AND STAFF INPUT

Meeting with PCA

City Administrator Ulrich noted the Mayor and Staff met with the staff from the Pollution Control Agency. He stated they discussed the utilization of land in the vicinity of the closed landfill and the future of that area. Discussions took place in the last several years regarding this piece of land. This issue will continue to move forward, and he said he would bring the ideas back to the Council.

Impacts w/re to State Shutdown

City Administrator Ulrich explained the impacts to the City of the State shutdown. The road reconstruction projects are on hold. He said the Alpine and Sunfish project is moving ahead, but Anoka County can continue to move forward with it until the end of July. In terms of City services, the impact has been minimal. The most difficult area is if a project needs State approval, it can run into difficulties.

Update on Storm Clean-up

Public Works Director gave an update on the large storm event in the last week. He said the residents have been given one week to get their tree debris to the curb, and a contractor was hired to help handle the debris. The City did enter a state of emergency. He said one of the most frequently asked questions is whether tree disposal sites that had been used in 2005 could be used. He said it is not a service that will be offered this year. The other frequent question is whether the boulevard trees will be replaced. He stated there is a budget, and some trees can be replaced. The boulevard trees will be replaced when that activity fits within the normal budget. He advised citizens to call the City for a list of contractors. They should make sure the contractors they choose are bonded and licensed.

Fire Chief Kapler stated the debris can be brought to the City's site and burned, and there is usually a $25 permit fee. He requested the Council waive that fee for 30 days.

Motion by Councilmember Wise, seconded by Councilmember Elvig, to waive the permit fee for burning debris for a period of 30 days.

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

Fire Chief Kapler stated a recreational fire is 20 feet. There are no restrictions; however, he noted pine trees create a lot of smoke, and if that smoke is seen by an employee they will respond.

Farmers Market/The Draw Events

City Administrator Ulrich reminded the public that The Draw summer series event continues. The farmers market is open as well.

Soccer Tournament

Councilmember Backous stated the Northern Lights Soccer Club is hosting the boys' tournament. There will be several thousand people will be coming to Ramsey, and volunteers are needed for various positions.

9. ADJOURNMENT

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

The regular meeting of the City Council adjourned at 7:47 p.m.

Respectfully submitted,

_____
Kurtis G. Ulrich
City Administrator

ATTEST:

_____
Jo Ann M. Thieling
City Clerk

Drafted by Chris Moksnes
TimeSaver Off Site Secretarial, Inc.

TABLE OF CONTENTS

CITY COUNCIL
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey City Council conducted a regular meeting on Tuesday, July 26, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Mayor Bob Ramsey Councilmember Randy Backous Councilmember Colin McGlone Councilmember Jason Tossey Councilmember Jeffrey Wise
Members Absent:	Councilmember David Elvig Council Vacancy
Also Present:	City Administrator Kurtis Ulrich Fire Chief Dean Kapler Senior Planner Timothy Gladhill City Engineer Tim Himmer Police Chief James Way Planning Intern Patrick Brama Street Supervisor Grant Reimer City Attorney William Goodrich

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

Following the approval of the Consent Agenda, which includes the approval of the end of probationary period, firefighter Joshua Diekow was presented.

3. CITIZEN INPUT

Helen Kamrowski, 16756 Sodium Street, Ramsey, stated she has a flooded house. She requested information to file a claim. She explained they have had three floods and there is still standing water in the front and back yards of her home.

City Engineer Himmer said he will give an update at the end of the meeting relating to flooding city wide. He noted in the short term, staff discussed creating a ditch. This cannot be solved for

the long term at this point. He noted there is $20,000 in the budget annually for storm water fixes. He explained this case will be presented to the Council, as they are the most interested in how to move forward with a claim for their insurance.

Ms. Kamrowski indicated her insurance won't cover this, because they have labeled it a flood.

Mayor Ramsey asked when the City was first notified.

Ms. Kamrowski answered on the 19th of July. Staff visited the next day.

City Engineer Himmer noted there are many photos. This is an unfortunate, and unlikely, instance where the water got into the structure.

Ms. Kamrowski informed the Council her neighbors helped get furniture out of the finished basement. Now it is just a shell. The water is coming into the basement through the bricks. They have been working on getting the water out daily. She stated they have resealed the basement, and the water still comes in.

Discussion took place whether sandbagging or pumping could help.

Mayor Ramsey said it was clear the water table is to the bottom of the slab. It is coming through the floor. It is not coming through the walls.

City Administrator Ulrich stated the City could do what they can with the resources available. The property damage will be referred to the City's insurance company. He asked the Kamrowskis to submit a detailed claim to the City which could then be turned into the City's insurance.

City Engineer Himmer stated staff will continue to monitor the situation and apprise the Council as needed.

4. APPROVE AGENDA

City Administrator Ulrich read a statement from Councilmember Elvig. Councilmember Elvig's letter explained he was absent due to his son's semi final game in soccer. He was supporting his son and the team. His team is winning in the tournaments.

City Engineer Himmer notified the Council that Item 7.3: Consider Acquisition of Drainage and Utility Easement at 16259 Coquina Street NW, would be removed from the agenda, as there is no discussion needed.

Mayor Ramsey stated Items 7.1 and 7.2 will be reversed in order to accommodate the consultant who is present for that item.

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

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

5. CONSENT AGENDA

City Administrator Ulrich stated former item 5.02: Consider Lease Terms for 6701 and 6745 Hwy 10 Properties with Sharp & Associates, LLC is moved to Item 7.07 under Council Business.

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

5.01 Adopt Resolution #11-07-129A Adopting Findings of Fact #0889 relating to a request from Tri Star Enterprise to conduct Motor Vehicle Sales in the B-2 Business District at the Property located at 6740 Highway #10 and adopt resolution #11-07-129B approving the Issuance of a Conditional use Permit to Tri Star Enterprise to Conduct Motor Vehicle Sales in the B-2 Business District and Declaring Terms of Same.

5.02 ~~Consider Lease Terms for 6701 and 6745 Hwy 10 Properties with Sharp & Associates, LLC~~ **(Placed on Regular Agenda)**

5.03 Adopt Resolution #11-07-130 Authorizing Partial Payment to Douglas-Kerr Underground LLC for IP 11-21 Armstrong and Bunker Lake Blvd Improvements.

5.04 Adopt Resolution #11-07-131 Authorizing Partial Payment to W. Gohman Construction Co. for IP 10-23 East Meandering Commons Park

5.05 Adopt Resolution #11-07-132 Authorizing Partial Payment to Rum River Contracting for IP 10-07 Alpine/Roanoke Street Improvements

5.06 Adopt Resolution #11-07-133 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received during the Period of July 8, 2011 and July 20, 2011

5.07 Report from the Personnel Committee

1) Consider a Resolution Ending the Probation of a Paid-On-Call Firefigher - *Ratify the recommendation of the Personnel Committee and adopt Resolution #11-07-134 Ending the Probation of a Paid-On-Call Firefighter.*
2) Consider a Resolution to Authorize Hiring Paid-On-Call Firefighters – *Ratify the recommendation of the Personnel Committee and adopt Resolution #11-07-135 Authorize Hiring Paid-On-Call Firefighters.*

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

6. PUBLIC HEARING

6.01: Public Hearing to Consider Adoption of Assessment Roll for City Improvement Project 11-21, Bunker Lake Boulevard and Armstrong Boulevard

Mayor Ramsey closed the regular portion of the City Council meeting at 7:15 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Ramsey called the public hearing to order at 7:15 p.m.

Presentation

City Attorney Goodrich reviewed the staff report. He noted a representative from Hageman Holdings LLC is present and may be asked to speak.

City Attorney Goodrich explained the bonds have not yet been sold, which prohibits knowledge of the interest rate. The Bond will be sold August 9. Since the case was prepared, the owner has agreed to eliminate a portion of the resolution due to a portion not listed in the assessment agreement. The function of the Council is to adopt the assessment roll, which is $1,701,077.34.

Citizen Input

There was none.

Motion by Councilmember Backous, seconded by Councilmember Wise, to close the public hearing.

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

The public hearing was closed at 7:24 p.m.

Council Business

Mayor Ramsey called the regular City Council meeting back to order at 7:24 p.m.

City Attorney Goodrich noted there have been changes to the Resolution in paragraph 2, and paragraph 3 was simplified.

Finance Director Lund agreed with the changes.

Motion by Mayor Ramsey, seconded by Councilmember Wise, to adopt Resolution #11-07-136 which Resolution is adopting the Assessment Roll for City Public Improvement Project 11-21 as amended.

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

7. COUNCIL BUSINESS

7.01: Consider Award of Contract for Engineering Services to Complete the Required Armstrong Boulevard Improvements Related to the Proposed Sunwood Drive Realignment

City Engineer Himmer reviewed the staff report. He explained this would be necessary under the interchange work, and the dollar amount had been considered in the interchange project. The funds are from State Aid, reimbursed through TIF 14.

Motion by Councilmember Wise, seconded by Councilmember McGlone, to award an engineering services contract to WSB & Associates in the amount of $35,290 to complete the required feasibility study items, AUAR traffic updates, and conceptual layout of the realign Armstrong Boulevard and Sunwood Drive intersection and to authorize staff to negotiate a future design contract with WSB & Associates, in an amount not to exceed $140,212 consistent with the estimated budget for such services.

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

7.02: Authorization of the Issuance of General Obligation Bonds, Series 2011A for the Construction Upgrade of Bunker Lake Boulevard/Armstrong Boulevard

This item was discussed as Item 7.01 due to the consultant, Paul Donna with Northland Securities, who is present for this item.

Finance Officer Lund reviewed the staff report.

Mr. Donna reviewed the summary of the finance plan. He referred to Page 6 in the plan, pointing out that he is expecting the fixed interest rate to be slightly over 2%. He noted all of the debt service will be paid back, and a tax levy will not be needed. He warned the City that if the assessments are behind schedule, the City will be asked to bridge the gap until it can be brought back on track.

Mayor Ramsey asked if there was any fiscal penalty or fines for being late, in reference to the City possibly needing to bridge the gap.

Finance Director Lund explained penalties will be accrued. Since this is a break even starting point for the City, the City will have to pay it.

Mayor Ramsey indicated he sought to be assured there will be no risk to the City.

Finance Director Lund responded if the payment is not made for the year, the City will have to find other funding resources to cover it.

Motion by Councilmember McGlone, seconded by Councilmember Tossey, to adopt Resolution #11-07-137 Authorizing the Issuance of General obligation Bonds, Series, 2011A as amended.

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

7.03: Consider Acquisition of Drainage and Utility Easement at 16259 Coquina Street NW (Removed; discussion unnecessary)

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

Planning Intern Brama reviewed the staff report.

Motion by Mayor Ramsey, seconded by Councilmember McGlone, to Introduce the Ordinance Amending city code Chapter 117, Section 117-53 (Variances) of the city code of Ramsey, Minnesota.

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

7.05: Community Sign Policy

Planning Intern Brama reviewed the staff report.

Motion by Councilmember McGlone, seconded by Councilmember Backous, to approve the new Community Sign Policy.

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

7.06: Review August Meeting Calendar

City Administrator Ulrich reviewed the staff report.

Motion by Mayor Ramsey, seconded by Councilmember Wise to cancel the August 2 and August 16 City Council Work session meetings.

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

7.07: Consider Lease Terms for 6701 and 6745 Hwy 10 Properties with Sharp & Associates, LLC

City Administrator Ulrich reviewed the staff report.

Motion by Councilmember McGlone, seconded by Mayor Ramsey to approve the lease terms as presented for the properties at 6701 and 6745 Highway 10.

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

8. MAYOR, COUNCIL AND STAFF INPUT

Night to Unite

City Administrator Ulrich noted August 2 is National Night to Unite (formerly National Night Out). He encouraged residents to join their block party, or contact City Hall to start one.

The Draw

City Administrator Ulrich noted The Draw holds free concerts every week on Thursday evenings. The farmers market has started as well, so citizens can come to the farmers market and stay for a concert.

Game Fair

City Administrator Ulrich noted the Game Fair is starting up soon. The dates are August 12, 13 and 14, and August 19, 20, 21. This will be held in the City of Ramsey at Armstrong Kennels.

Councilmember Wise

Councilmember Wise acknowledged his name has been in the paper for an incident that happened last November. He was convicted of 5th Degree Assault. He explained he thought he had a good defense, though the judge disagreed. He offered an apology to his family, the Councilmembers and the residents. He invited residents to call him directly if they would like more information.

Flooding

City Engineer Himmer mentioned the flooding in various areas of the city. Rum River Hills had some flooding. The staff had found there were animals living in the pipes. Once they were removed, the flooding subsided somewhat. He stated the City will continue to work with them.

City Engineer Himmer noted there has been water in a driveway at 152nd Avenue. There has been water in the septic system at Yakima and 156th.

City Engineer Himmer indicated there have been issues with flooding at 163rd Lane, west of Elmcrest Park.

He pointed out on a map the various areas in the city with water issues. He indicated the City will work on all the situations and keep the citizens notified.

Improvements at 149th Lane and Highway 47

City Engineer Himmer noted there has been an issue with the improvements in this area. He said the City will continue to monitor the situation.

Permits for Burning Fees Waived

Fire Chief Kapler reminded residents the fees for permits for open burning are waived to help with storm damage of the last few storms. He stated the City is doing all that it can do to help people with their storm debris.

151st Avenue

Councilmember Backous stated he received a call during the day about 151st Avenue.

City Engineer Himmer explained the contractor completed the work. However, it rained again, and he received calls from people in the area. The contractor does have to return to correct the erosion issues. He stated he anticipates having more conversations regarding this issue.

Anoka County Fair

Councilmember McGlone stated the Anoka County Fair started today.

9. ADJOURNMENT

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

Motion carried.

The regular meeting of the City Council adjourned at 7:57 p.m.

Respectfully submitted,

_____
Kurtis G. Ulrich
City Administrator

ATTEST:

_____
Jo Ann M. Thieling
City Clerk

Drafted by Chris Moksnes
TimeSaver Off Site Secretarial, Inc.

Special Planning Commission **6. 1.**

Meeting Date: 09/08/2011

By: Chris Anderson, Community Development

Title:

Request for an Interim Use Permit to Allow for the Operation of a Church in the H-1 Highway 10 Business District on the Property Located at 6701 Highway 10 NW; Case of Northern Light Church

Background:

The City has received an application for an Interim Use Permit from Northern Light Church to allow for the operation of temporary church facility in an area zoned H-1 Highway 10 Business District. The Subject Property is also located within the Official Map Area for the Highway 10 corridor. The temporary church facility will be in a multi-tenant building (generally known as the Youth First building) located at 6701 Hwy 10. The Applicant would like to utilize the space for weekly worship services, educational programs and community outreach programs.

Notification:

In accordance with State statute, Staff attempted to notify property owners within 350 feet of the subject property of the public hearing via Standard US Mail. The Public Hearing was also noticed in the Anoka County Union, the City's official newsletter for public notices.

Observations:

The Applicant is interested utilizing the western half of the building's office area (roughly 4,900 square feet) for its operations. The building has roughly 10,000 square feet of office space (the other roughly 5,000 square feet is being utilized by Youth First) plus cold storage space behind the office area. The Applicant is proposing to utilize the area for worship space as well as for offices and educational and community outreach programs.

The primary activity on this site would be worship services, which would occur on weekends and would likely be either Saturday evening or Sunday morning. Attendance is estimated to be about thirty (30) people initially with the hope of growing to about fifty to seventy (50-70) members. Other offerings being contemplated by the Church include an evening bible study group (likely around ten adults or so) and/or a vacation bible study (possibly around 20 kids and several adults). Any larger, planned activities would likely still be coordinated and held at their Anoka location, which is designed to accommodate a much greater capacity then this site.

The existing uses of the building include Youth First and cold storage. Youth First typically utilizes their portion of the building only during the week (and occasionally on Saturdays) and the cold storage operation may have customers throughout the week including weekends, but by appointment only. It should be noted that Northern Light Church has partnered with Youth First on various activities in the past and there may be potential for more joint offerings with this location. It doesn't appear that the proposed use would conflict with the existing uses on the site and it appears to be compatible with the surrounding area.

The parking lot that serves the building has a total of twenty-six (26) striped parking stalls (this includes two handicap spaces). There is the ability to potentially add an additional fourteen (14) stalls around the median within the parking lot, which would provide a total of forty (40) parking spaces. Under City Code, places of assembly require one parking space for every three seats. Based on the projected overall attendance (70 people), a total of twenty-three (23) parking stalls would need to be provided. While there appears to be sufficient parking area, Staff believes it may still be beneficial to stripe additional parking stalls along the median to clearly demark designated parking areas. The Applicant shall provide the City a floor plan that indicates seating capacity as background to ensure the proposed use does not expand to a capacity that would exceed the available off-street parking. The City has received concern from existing tenants regarding the location of off-street parking in certain areas and conflicts with access to portions of the site. Staff believes this concern can be mitigated with the above

referenced striping and monitoring of the number of off-street parking spaces required.

The proposed church operation does represent a change in use (from retail to place of assembly) and therefore, will require fire suppression. The Applicant is currently negotiating a lease with the City (current owner of property) and they are aware of the fire suppression requirement.

The Applicant is requesting the Interim Use Permit for a term of thirty (30) months. At that time, they would evaluate their operation and whether the location is working out. If, at that time, they determine that the location is working, Northern Light Church would need to apply for another Interim Use Permit to continue operating at this site.

The request was forwarded to Mn/DOT for review and they stated that they have no comments/concerns regarding this request.

Funding Source:

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

Staff Recommendation:

Staff recommends approving the request for an Interim Use Permit contingent upon striping of additional parking stalls and installation of a fire suppression system prior to occupying the building.

Committee Action:

Motion to recommend that City Council adopt findings of fact 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.

-and-

Motion to recommend that City Council adopt Resolution #_____ approving the request for an Interim Use Permit and declaring the terms as proposed.

-or-

Motion to recommend that City Council deny the request for an Interim Use Permit based on the findings of fact.

Attachments

Site Location Map

Site Layout

Proposed Findings of Fact

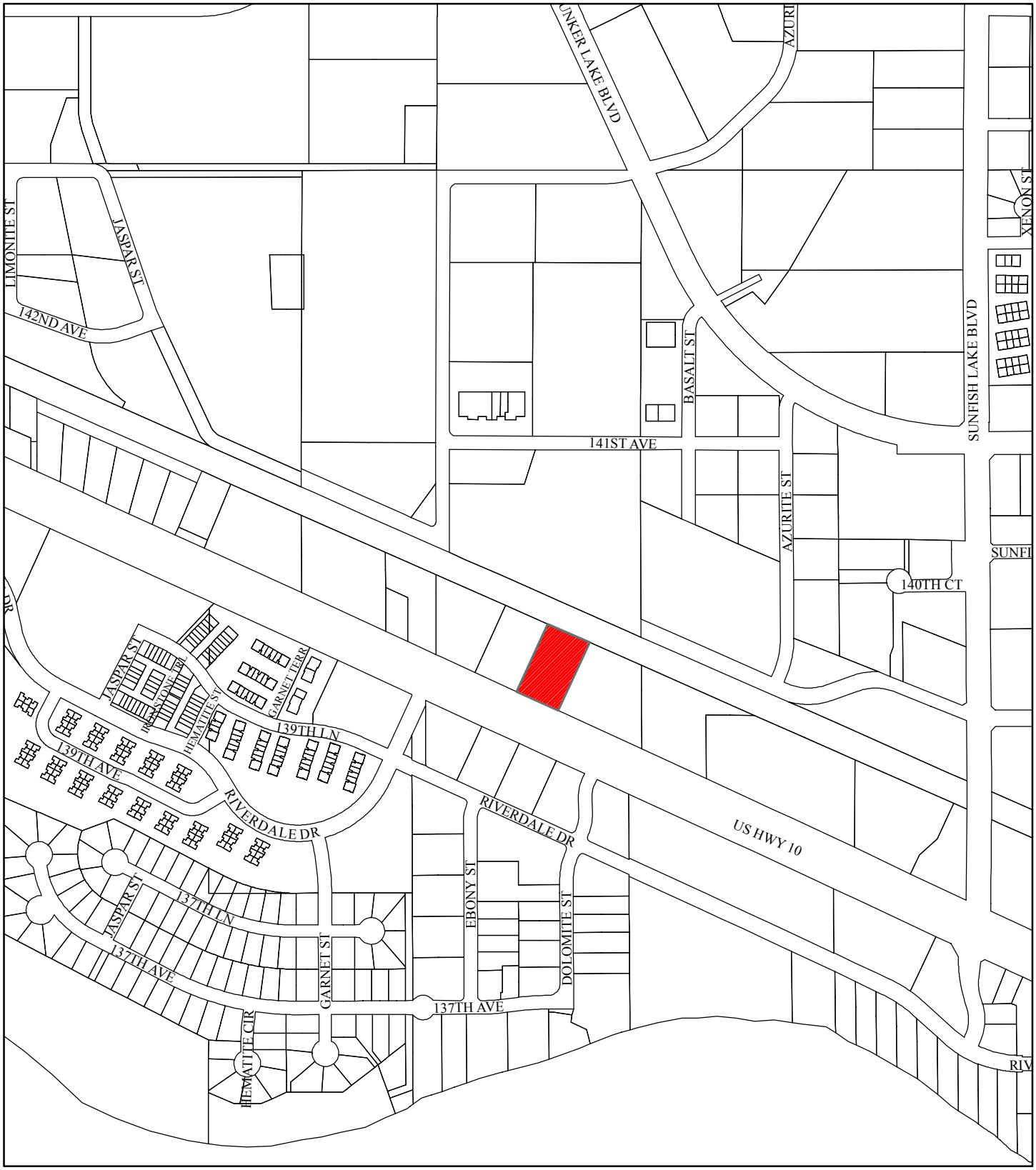
Proposed Interim Use Permit

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	08/31/2011 11:28 AM

Form Started By: Chris Anderson Started On: 08/30/2011 11:22 AM

Final Approval Date: 08/31/2011



City of RAMSEY

Northern Light Church
6701 Highway 10 NW

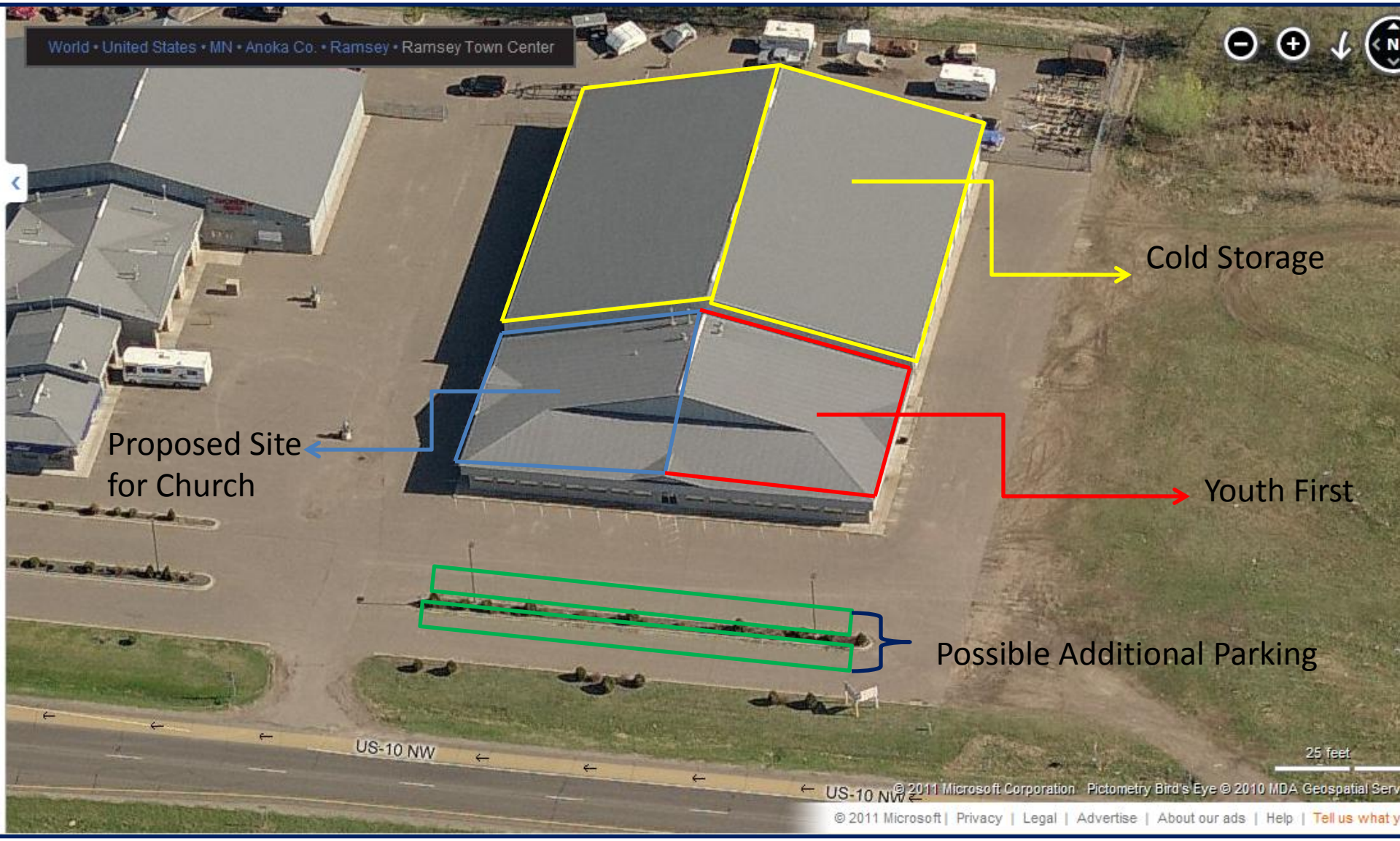
Legend

Site

Parcels

N

0 850 1,700 Feet


World • United States • MN • Anoka Co. • Ramsey • Ramsey Town Center
Cold Storage
Proposed Site for Church
Youth First
Possible Additional Parking
US-10 NW
US-10 NW
25 feet
© 2011 Microsoft Corporation Pictometry Bird's Eye © 2010 MDA Geospatial Serv
© 2011 Microsoft | Privacy | Legal | Advertise | About our ads | Help | Tell us what y

Councilmember _____ introduced the following resolution and moved for its adoption:

RESOLUTION #11-09-___

A RESOLUTION ADOPTING FINDINGS OF FACT #____ RELATING TO A REQUEST TO ALLOW FOR THE OPERATION OF A CHURCH IN THE H-1 HIGHWAY 10 BUSINESS DISTRICT

WHEREAS, Northern Light Church, hereinafter referred to as "Applicant", has properly applied to the City of Ramsey (the "City") for an interim use permit to operate a Church in the H-1 Highway 10 Business District on the property located at 6701 Highway 10 legally described as follows:

Lot 3, Block 1, Deal Industrial Park, Anoka County, Minnesota

(the "Subject Property")

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

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 117-52 of the Ramsey City Code on September 8, 2011, and that the public hearing was properly advertised and that the minutes of said public hearing are hereby incorporated by reference.

2. That the Subject Property is zoned H-1 Highway 10 Business District; the adjacent parcels to the west and east are zoned H-1 Highway 10 Business District, the property to north is E-2 Employment and is bounded by the Burlington Northern Santa Fe Railroad and the property to the south is on the south side of Hwy 10 and is B-2 Business District.

3. That the H-1 Highway 10 Business District does not allow for churches as a permitted use.

4. That the Applicant is proposing to utilize roughly 4,900 square feet of the building located at 6701 Highway 10 NW for the purpose of a temporary Church facility.

5. That the Applicant is requesting the Interim Use Permit for a term of thirty (30) months.

6. That Section 117-52 of City Code allows for an Interim Use Permit to be granted for a maximum of five (5) years, unless otherwise extended by Council.

7. That according to the Applicant, membership could grow from about thirty (30) people to seventy (70) people.

8. That Section 117-356 of City Code states that for places of assembly, there shall be at least one (1) parking stall for every three (3) seats, resulting in a minimum of twenty-three (23) required parking stalls.

9. That there are twenty-six (26) striped parking stalls on the site currently.

10. That there are two (2) other existing uses on the property, Youth First Community of Promise and a cold storage operation.

11. That Youth First only utilizes their portion of the building Monday through Thursday and occasionally on Saturdays and the cold storage operation is open for business by appointment only, including weekends.

12. That the Applicant has stated that they will offer one (1) weekend service, either Saturday evening or Sunday morning and will potentially have a staff member on site during the week for administrative purposes.

13. That the Applicant has stated that they are contemplating various educational and community outreach programs, such as a bible study group and a vacation bible study that, if implemented, would be offered on a weekday evening (bible study group) or for one full week (vacation bible study).

14. That the Applicant has stated that they still intend to host larger, planned activities at their main location in Anoka, MN, which is designed to accommodate a much greater number of people than the Subject Property.

15. That the proposed church operation represents a change in use from retail to a place of assembly, which requires the installation of a fire suppression system.

16. That the proposed use will/will not adversely impact traffic in the area.

17. That the proposed use will/will not be dangerous or detrimental to persons residing or working in the vicinity of the use or to the public welfare.

18. That the proposed use will/will not substantially or adversely impair the use, enjoyment or market value of surrounding properties.

19. That the proposed use will/will not be operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and such use will/will not change the essential character of the area.

20. That the proposed use will/will not create additional requirements at public cost for public facilities and services.

21. That the proposed use will/will not be detrimental to the economic welfare of the community.

22. That the proposed use will/will not be disturbing or hazardous to existing or future neighboring uses.

23. That the proposed use will/will not involve uses, activities, processes, materials and equipment and conditions of operation that may be detrimental to any persons, property or the general welfare, by reason of excessive production of traffic, noise, smoke or glare.

24. That the proposed use will/will not be in accordance with the objectives of the intent of Section 117-52 (Interim Use Permits) of the City Code.

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 27th day of September, 2011.

_____
Mayor

ATTEST:

_____
City Clerk

Councilmember _____ introduced the following resolution and moved for its adoption:

RESOLUTION #11-09-___

RESOLUTION APPROVING THE ISSUANCE OF AN INTERIM USE PERMIT TO ALLOW FOR THE OPERATION OF A CHURCH IN THE H-1 HIGHWAY 10 BUSINESS DISTRICT BASED ON FINDINGS OF FACT #____ AND DECLARING TERMS OF SAME.

WHEREAS, Northern Light Church, hereinafter referred to as "Permittee", has properly applied to the City of Ramsey (the "City") for an interim use permit (the "Permit") to operate a Church in the H-1 Highway 10 Business District on the property located at 6701 Highway 10 NW and legally described as follows:

Lot 3, Block 1, Deal Industrial Park, Anoka County, Minnesota

(the "Subject Property"); and

WHEREAS, the Planning Commission met on September 8, 2011, conducted a public hearing and recommended that the City Council approve/deny the request for an interim use permit to operate a Church in the H-1 Highway 10 Business District;

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

This permit is issued pursuant to Section 117-52 of the Ramsey City Code. The conditions of this Permit are as follows:

1) The **Permittee** is herein allowed to operate a Church and Parish Offices on the **Subject Property**.

2) This **Permit** shall allow worship services to be offered on Saturday evening and Sunday mornings ("Normal Operating Hours").

3) That should the **Permittee** develop educational and/or community outreach programming to be offered on the **Subject Property** outside of Normal Operating Hours, this must be communicated, in writing, to the **City** for review. Should it appear to exceed available parking or conflict with existing uses on the **Subject Property**, the programming may need to be adjusted to eliminate potential conflicts.

4) The **Permittee** shall be responsible for ensuring all off-street parking related to the Church operation is in accordance with Section 117-356. Parking along Highway 10 shall be prohibited at all times. Any off-street parking violation would cause the **Permit** to be revisited.

5) The **Permittee** shall provide two (2) weeks written notification to the other tenants of 6701 Highway 10 NW, the tenant(s) of 6745 Highway 10 NW and the City whenever worship

services may be scheduled outside of normal operating hours (such as for Ash Wednesday, Good Friday, Christmas Eve etc).

6) The Permittee shall be responsible for installation of fire suppression as required by the Fire Chief and as arranged through the lease by and between the City and the Permittee.

7) This **Permit** shall commence on the date of City Council approval of same and shall expire on March 27, 2013 (a term of thirty [30] months).

8) This **Permit** is applicable only to the operation of a church and parish offices on the **Subject Property**. The granting of this **Permit** does not allow for any other use that is prohibited in the H-1 Highway 10 Business District.

9) This **Permit** shall become null and void in the event the use granted under this **Permit** permanently ceases prior to the expiration date or upon the expiration date, whichever occurs first.

10) That all costs incurred by the **City** in administering and enforcing this **Permit** shall be the responsibility of the **Permittee**.

11) That the City Administrator or his or her designee shall have the right to inspect the Subject **Property** for compliance and safety purposes at any time.

12) That the failure of the **City** at any time to require performance by the Permittee of any provisions herein shall in no way affect the right of the City thereafter to enforce the same. Nor shall waiver by the City of any breach of any of the provisions hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

13) That if any provision of this **Permit** shall be declared void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect.

14) That this **Permit** shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the **City** and the **Permittee**.

15) That if the **Permittee** or its successors or assigns violates any material term or condition of this **Permit**, it is grounds for suspension or revocation hereof consistent with applicable law. Specifically, but without limiting the foregoing, the **City** may amend, suspend, or revoke this **Permit**, consistent with applicable law, if the City Council reasonably determines that continued operation of the facility places the public health, safety or welfare or the environment in jeopardy or creates a public nuisance due to odors, litter, debris or other nuisance factors. The change, alteration or amendment of any statute, regulation, ordinance or permit condition by any governmental authority other than the **City**, shall not excuse the **Permitee** from compliance with statutes, regulations, ordinances or **Permit** conditions in effect on the date of the original issuance of this **Permit** unless compliance is waived or excused by the **City**.

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 27th day of September, 2011.

NORTHERN LIGHT CHURCH

By:_____

As:_____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this ____ day of _____, _____, before me, a Notary Public, personally appeared _____, the _____ of Northern Light Church, a to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

_____
Notary Public

CITY OF RAMSEY:

By:_____ By:_____
Mayor City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

On this ____ day of _____, _____, before me, a Notary Public, personally appeared Bob Ramsey and JoAnn M. Thieling, to me personally known, who, being each by me duly sworn did say that they are respectively the Mayor and City 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 Bob Ramsey and JoAnn M. Thieling acknowledge said instrument to be the free act and deed of said Municipal Corporation.

_____
Notary Public

This document drafted by:
The City of Ramsey
7550 Sunwood Drive NW
Ramsey, MN 55303

This document reviewed by:
Randall, Dehn and Goodrich
2140 Fourth Avenue
Anoka, MN 55303

Special Planning Commission **6. 2.**

Meeting Date: 09/08/2011

By: Chris Anderson, Community Development

Title:

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

Background:

The City has received an application from PSD, LLC requesting a conditional use permit (CUP) to exceed sign size restrictions for the new VA outpatient clinic located at 7545 Veterans Dr NW.

Notification:

In accordance with State statute, Staff attempted to notify property owners within 350 feet of the subject property of the public hearing via Standard US Mail. The Public Hearing was also noticed in the Anoka County Union, the City's official newsletter for public notices.

Observations:

The COR zoning district sign regulations, excluding the COR-2 subdistrict, have distinctly different architectural standards than those for the general Business and Employment zoning districts within the community. These regulations were developed with the intention of applying them to the central areas of The COR where there would likely be higher concentrations of multi-tenant buildings, with each individual tenant having very limited frontage. Consistent with all sign regulations in the City, the City has built in flexibility in its sign regulations through the use of the CUP process.

The building has frontage along both Sapphire St and Civic Center Dr and is roughly 130 feet by 185 feet. The height of the building is about forty (40) feet. The site is located in the COR-1 zoning district, which restricts wall-mounted signs to a maximum of five percent (5%) of the ground floor building facade area or twenty-four (24) square feet, whichever is less (in this case, twenty-four [24] square feet would be the maximum allowable area per City Code). Furthermore, lettering, numbers, and graphics are restricted to a maximum height of twelve (12) inches. Businesses with frontage on more than one public road are allowed the permitted sign criteria for each street frontage.

The proposed signage includes two (2) wall signs consisting of reverse channel LED letters and graphics. The signs would be located above the main entrance facing Sunwood Dr and along the south wall of the building facing Highway 10. The building itself is two stories and may have a second tenant at some future point. The applicant is aware that any future tenant(s) would not likely be eligible for any wall signage (at least not without a conditional use permit). The proposed letter height is twenty-four (24) inches and the proposed logo height is fifty-six (56) inches. Each of the proposed signs would be seventy-three (73) square feet, resulting in a total of 146 square feet of signage (an overage of ninety-eight [98] square feet). The proposed letter height is consistent with other conditional use permit requests, while the logo is taller than any previously approved height. The proposed overage is slightly greater than previously approved overages.

The City has processed several conditional use permit applications over the past couple years relating to square footage, letter/graphics height and number of signs within The COR. Approved letter/graphic heights have ranged from 14.75 inches to 36 inches. Approved overages have ranged from 24.5 sq. ft. to 82 sq. ft. Staff is aware that the sign regulations for the COR area are limited in terms of both size and number of signs allowed and are currently working with our planning consultant on some possible amendments to these regulations.

Funding Source:

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

Staff Recommendation:

Committee Action:

Motion to recommend that City Council adopt findings of fact 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 legal form.

-and-

Motion to recommend that 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 conditional use permit subject to review by the City Attorney as to legal form.

-or-

Motion to recommend that City Council deny the request for a conditional use permit based on the findings of fact.

Attachments

Site Location Map

Front Entrance Sign

South Wall Sign

Site Photos of Front Entrance and South Wall

Proposed Findings of Fact

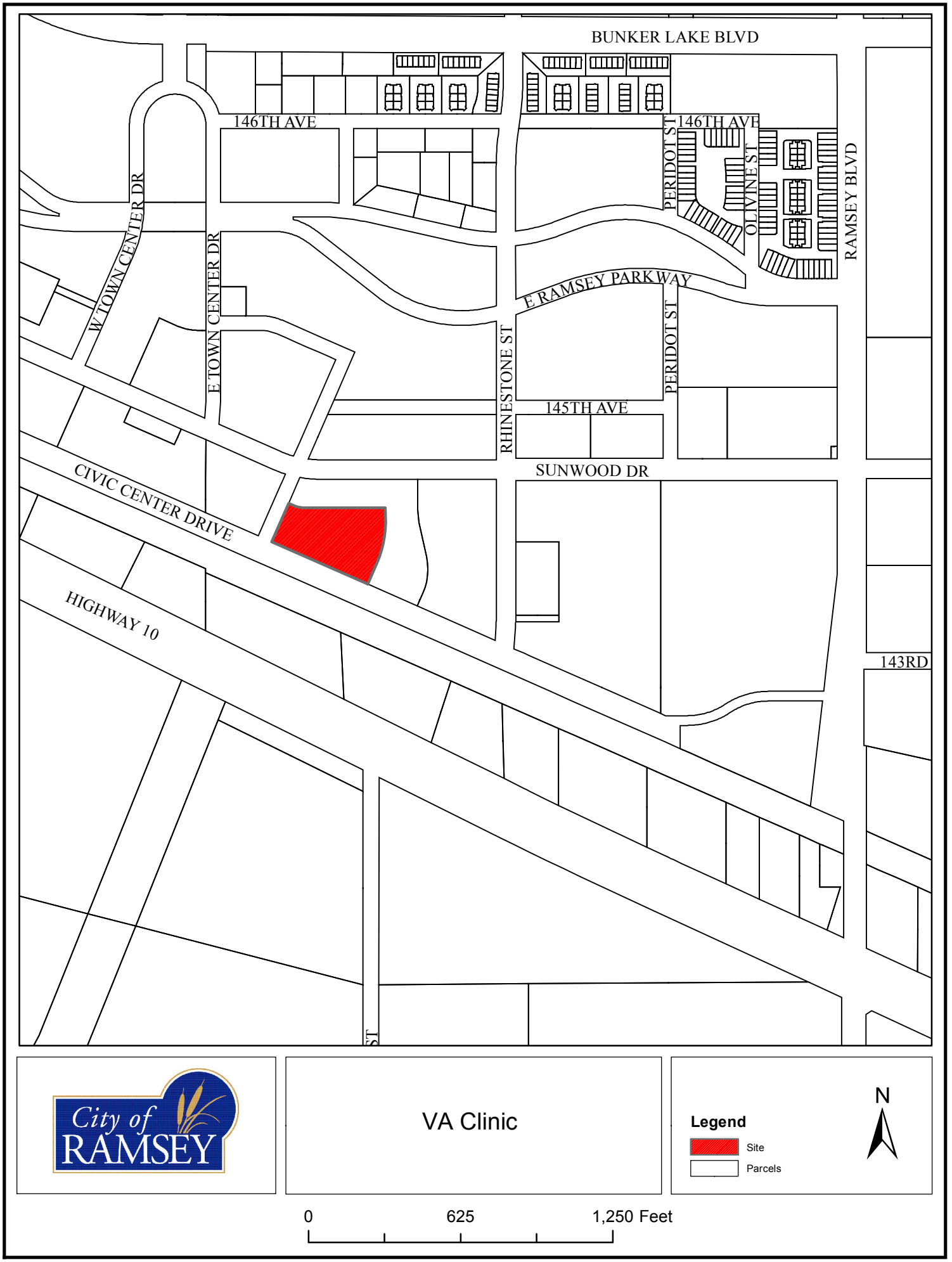
Proposed Conditional Use Permit

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	08/31/2011 08:57 AM

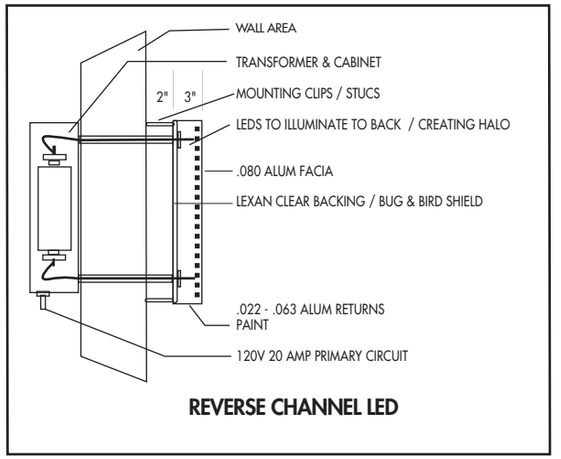
Form Started By: Chris Anderson Started On: 08/24/2011 09:24 AM

Final Approval Date: 08/31/2011


BUNKER LAKE BLVD
146TH AVE
146TH AVE
PERIDOT ST
OLIVINE ST
RAMSEY BLVD
W TOWN CENTER DR
E TOWN CENTER DR
E RAMSEY PARKWAY
RHINESTONE ST
PERIDOT ST
145TH AVE
SUNWOOD DR
CIVIC CENTER DRIVE
HIGHWAY 10
143RD
ST
City of RAMSEY
VA Clinic
Legend
Site
Parcels
N
0
625
1,250 Feet

Reverse Channel LED letters & logo

73.22 SQ. FT. Separate units
135.14 SQ. FT. boxed rectangle



VA Clinic / Ramsey Day-night view - Reverse channel LED letters

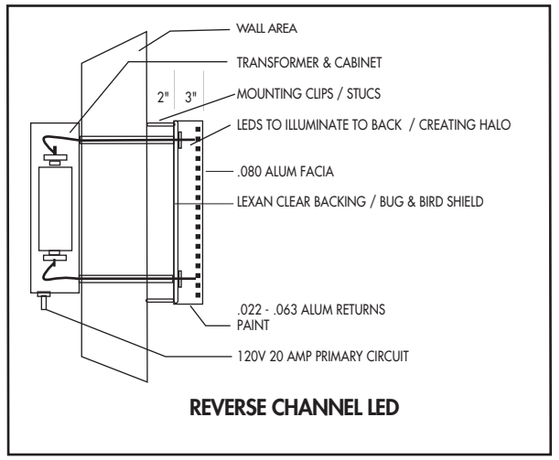
Sandmann Signs & Electric

Reverse Channel LED letters & logo

31.44 sq ft

41.65 sq ft

73.22SQ. FT. Separate units
135.14 SQ. FT. boxed rectangle



REVERSE CHANNEL LED

VA Clinic / Ramsey Day-night view - Reverse channel LED letters / Side of building

Sandmann Signs & Electric


LULL

RESOLUTION #11-09-____

A RESOLUTION ADOPTING FINDINGS OF FACT #_____ RELATING TO A REQUEST FROM PSD, LLC FOR A CONDITIONAL USE PERMIT TO EXCEED SIGN SIZE RESTRICTIONS

WHEREAS, the City of Ramsey received an application from PSD, LLC for a conditional use permit to exceed sign size (area and letter/graphic height) restrictions on the property generally known as 7545 Civic Center Drive NW and legally described as follows:

Lot 1, Block 1, Ramsey Town Center 12th Addition, except road subject to easement of record, Anoka County, Minnesota

("Subject Property")

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

1. That PSD, LLC, hereinafter referred to as "Applicant," properly applied for a conditional use permit (the "Permit") to exceed the allotted square footage for wall signage and to use lettering and graphics that are greater than twelve (12) inches in height on the Subject Property.

2. That the Applicant appeared before the Ramsey Planning Commission for a public hearing pursuant to Section 117-51 (Conditional Use Permits) of the City Code on September 8, 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.

3. That the Subject Property is approximately 2.34 acres in size.

4. That the Subject Property is zoned COR-1.

5. That the parcels to the west, east and north of the Subject Property are zoned COR-1 and the parcel to south of the Subject Property (south of the railroad right-of-way) is zoned H-1 Highway 10 Business District.

6. That Section 117-118 (COR District) of the Ramsey City Code restricts the area of wall signs to five percent (5%) of the ground floor façade or twenty-four (24) square feet, whichever is less.

7. That Section 117-118 (COR District) of the Ramsey City Code restricts the height of letters, numbers and graphics to no more than twelve (12) inches.

8. That the intent of the more restrictive sign regulations was to apply them to the central areas of The COR where there will typically be many multi-tenant buildings, with individual tenants having very limited frontage.

9. That the building on the Subject Property is roughly 185 feet by 130 feet, is approximately forty (40) feet in height and has frontage along two (2) public streets, Civic Center Dr and Sapphire St.

10. That Section 117-118 (COR District) of the Ramsey City Code states that businesses with frontage on more than one public street are allowed the permitted sign criteria for each street frontage.

11. That the Applicant is proposing to install two (2) wall signs; one would be above the front entrance of the building and the other would be affixed to the south wall of the building.

12. That both wall signs would utilize twenty-four (24) inch tall letters and fifty-six (56) inch tall logos.

13. That each wall sign is seventy-three (73) square feet in size, resulting in a total of 146 square feet of signage on the Subject Property.

14. That the Applicant is aware that any future, additional tenant(s) would not be eligible for any additional exterior wall signage (other than by a building directory sign) under the current sign regulations within Section 117-118 (COR District).

15. That the wall signs will consist of reverse-lit channel LED letters/graphics.

16. That conditional use permits for additional sign square footage and taller letter/graphics height have been previously approved.

17. That a conditional use permit to exceed sign size restrictions will/will not grant the Applicant special privileges that are denied by the City Code to other properties in the commercial area.

18. That the proposed increase in sign surface area will/will not be designed so as to be harmonious and appropriate in appearance with the existing or intended character of the vicinity and will/will not change the essential character of the area.

19. That the proposed increase in sign surface area will/will not adversely impact traffic in the area.

20. That the proposed increase in sign surface area 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.

21. That the proposed increase in sign surface area will/will not substantially impair the use, enjoyment, or market value of surrounding properties.

22. That the proposed increase in sign surface area will/will not be hazardous or disturbing to existing or future neighboring uses.

23. That the proposed increase in sign surface area will/will not create excessive additional requirements at public cost for public facilities and services, and it will/will not be detrimental to the economic welfare of the community.

24. That the proposed increase in sign surface area will/will not involve activities and uses that will be detrimental to any persons, property, or the general welfare by reason of excessive production of glare.

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 27th day of September, 2011.

_____
Mayor

ATTEST:

_____
City Clerk

Councilmember _____ introduced the following resolution and moved for its adoption:

RESOLUTION #11-09-___

A RESOLUTION APPROVING THE ISSUANCE OF A CONDITIONAL USE PERMIT BASED ON FINDINGS OF FACT #____ AND DECLARING TERMS OF PERMIT TO EXCEED SIGN REGULATIONS ESTABLISHED IN CITY CODE.

WHEREAS, PSD, LLC properly applied for a conditional use permit to exceed sign size and letter/graphic height restrictions as established in City Code on the property generally known as 7545 Civic Center Drive NW and legally described as follows:

Lot 1, Block 1, Ramsey Town Center 12th Addition, except road subject to easement of record, Anoka County, Minnesota

("Subject Property")

WHEREAS, the Planning Commission met on September 8, 2011, conducted a public hearing, and recommended City Council approval/denial 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 #____, a conditional use permit ("Permit") to exceed allotted square footage and letter/graphic height is hereby granted to PSD, LLC ("Permittee").

2. The **Permittee** is herein granted permission to erect two (2) wall signs on the **Subject Property**.

3. The wall signs shall not exceed seventy-three (73) square feet each, for a total of 146 square feet of overall signage on the **Subject Property**.

4. The wall signs shall not project outward from the wall to which they are attached more than six (6) inches.

5. The installation of the signs on the **Subject Property** shall require a sign permit from the City of Ramsey (the "City").

6. The signs shall be properly constructed and maintained in accordance with Division 8 (Signs) & 117-118 (COR District) (f) (Signage) of the Ramsey City Code.

7. The **Permittee** shall be responsible for all **City** costs incurred in administering and enforcing this **Permit**.

8. The City Administrator, or his/her designee, shall have the right to inspect the **Subject Property** for compliance and safety purposes annually or at any time, upon reasonable request.

9. Should any provision of this **Permit** be declared void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect.

10. This **Permit** shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the **City** and the **Permittee**.

11. That if the **Permittee** or its successors or assigns violates any material term or condition of this **Permit** it is grounds for suspension or revocation hereof consistent with applicable law, if the City Council reasonably determines that continued operation of the facility places the public health, safety or welfare or the environment in jeopardy or creates a public nuisance due to odors, litter, debris or other nuisance factors.

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 27th day of September, 2011.

PSD, LLC hereby acknowledges receipt of this permit and has reviewed the conditions of this permit and has agreed to comply with the terms of this permit.

PSD, LLC

By:_____

Its:_____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me a Notary Public, personally appeared _____, the _____ of PSD, LLC, a limited liability corporation under the laws of the State of Minnesota, on behalf of the corporation.

_____
Notary Public

CITY OF RAMSEY:

By:_____ By:_____
Mayor City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

On this _____ day of _____, _____, before me a Notary Public personally appeared Bob Ramsey and JoAnn M Thieling, to me personally known, who, being each by me duly sworn, did say that they are respectively the Mayor and City 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 Bob Ramsey and JoAnn M Thieling acknowledge said instrument to be the free act and deed of said Municipal Corporation.

_____
Notary Public

This document drafted by:
The City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

This document reviewed by:
Randall, Dehn and Goodrich
2140 Fourth Avenue
Anoka, Mn 55303

Special Planning Commission **6. 3.**

Meeting Date: 09/08/2011

By: Tim Gladhill, Community Development

Title:

Staff Update

Background:

The following is a brief summary of actions taken in June that may be of interest to the Planning Commission:

Consider Amendment to the Development Contract for CROSS OF HOPE ADDITION. The City Council approved an amendment related to required financial sureties based on the City's newly adopted ordinance.

Adopt Ordinance to Rename Civic Center Drive to Veterans Drive located in The COR. The City Council adopted the ordinance to officially rename Civic Center Drive as Veterans Drive to coincide with the opening of the new Veterans Administration Clinic.

Adopt Ordinance to Amend City Code Section 117-53 (Variances). The City Council adopted the ordinance to amend the City's accessory variance regulations to match the newly adopted state statute.

Consider Amendment to the 2030 Comprehensive Plan. The City Council approved the amendment to the 2030 Comprehensive Plan. Staff is compiling final data to send to the adjacent communities/jurisdictions and Metropolitan Council for review.

Consider Site Plan, Minor Plat, Comprehensive Plan Amendment, and Zoning Amendment for Stoney River. The City Council approved the various land use applications for Stoney River, the proposed senior housing complex on the Lord of Life complex. An application for a Comprehensive Plan Amendment has been submitted to the Metropolitan Council. City Staff expects this application to qualify under the Metropolitan Council's administrative review process and hopes to hear final word by Friday, September 2nd.

The COR Design Guidelines. Staff has begun discussions with the City Council regarding an update to the Design Guidelines for The COR. The current document references the former Ramsey Town Center and is in need of updating. At a recent Work Session, Staff discussed with the City Council the merits of keeping these design guidelines, plus including certain components currently only found in private covenants. Staff anticipates forwarding a revised document and proposed revisions to the zoning code for The COR in the near future.

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

League of Minnesota Cities
LU501: Land Use Basics: Grasping the Ground Rules
Web-based
www.lmc.org/page/1/landuse.jsp

American Planning Association (APA) Minnesota Chapter Conference
September 28-30
St. Cloud, MN
www.plannersconference.com

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	08/31/2011 08:14 AM
Tim Gladhill (Originator)	Tim Gladhill	08/31/2011 08:53 AM

Form Started By: Tim Gladhill Started On: 08/30/2011

Final Approval Date: 08/31/2011

Special Planning Commission **6. 4.**

Meeting Date: 09/08/2011

By: JoAnn Shaw, Community Development

Title:

Zoning Bulletins

Background:

Enclosed are zoning periodicals for your review.

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

Zoning Bulletins

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	08/30/2011 02:37 PM

Form Started By: JoAnn Shaw Started On: 08/30/2011 01:55 PM

Final Approval Date: 08/30/2011

July 10, 2011 | Volume 5 | No. 13

QUINLAN™

Zoning Bulletin

in this issue:

WEST®

41059276

Meaning of Language—Zoning Board Says It Is Entitled To Deference In Interpreting Meaning Of Term In Variance It Granted

Applicant contends board illegally and arbitrarily interpreted term

Citation: *R and R Pool and Patio, Inc. v. Zoning Bd. of Appeals of Town of Ridgefield, 129 Conn. App. 275, 2011 WL 2135677 (2011)*

CONNECTICUT (06/07/11)—This case addressed the issue of "whether a [local zoning board] is entitled to deference in its consideration of the meaning of undefined words or phrases contained in a certificate of variance."

The Background/Facts: In 1990, Richard Amatulli, a tenant of certain real property in the town (the "Property"), was granted a variance allowing wholesale and retail sales at the Property (the "Amatulli variance"). The variance limited the type of items that could be sold to: "oriental rugs, fine furniture and art ...."

Eventually, R & R Pool & Patio, Inc. ("R & R") became tenants at the Property. In December 1998, the owners of the Property, on behalf of R & R, filed with the town's planning director an appli-

Contributors
Corey E. Burnham-Howard

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526 St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to, Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526 St. Paul, MN 55164-0526.

WEST®

610 Opperman Drive • P.O. Box 64526 • St. Paul, MN 55164-0526
1-800-229-2084 • email: west.customerservice@thomsonreuters.com • west.thomson.com/quinlan
ISSN 0514-7905 • © 2011 Thomson Reuters. All Rights Reserved.
Quinlan™ is a Thomson Reuters brand.

cation for site plan approval of specific products to be sold at the Property. R & R proposed to sell:

> 1. Furniture and furnishings, including customary related accessories such as cushions, umbrellas, and tableware related to furniture in stock ... 2. Spas, hot tubs and pool accessories ... 3. Billiard and gaming tables and accessories ... 4. Fireplace equipment and grills ... 5. Works of art ... 6. Christmas and seasonal holiday products.

The planning director denied the application. R & R then appealed to the town's zoning board of appeals (the "Board"). The Board considered the list of six items proposed by R & R. In doing so, the Board looked at the items permitted under the Amatulli variance and "attempted to derive a workable definition of 'fine furniture.'" The Board found no intent in the legislative history of the Amatulli variance and instead developed a definition over the course of deliberations. The Board eventually concluded that the only items permitted to be sold at the Property were: works of art; and furniture and billiard tables that were "one of a kind, handcrafted, not mass produced and capable of appreciating in value."

R & R appealed the Board's decision to the superior court. R & R claimed that "the [B]oard acted illegally, arbitrarily and in abuse of its discretion" in redefining "fine furniture" as it was used in the Amatulli variance.

The court agreed. It found the Board's definition of "fine furniture" had "no relation to the use of the premises as originally proposed and approved by the [B]oard at the time of the grant of the original variance." The court then held that the meaning of "fine furniture" as used in the Amatulli variance was "'good quality furniture,' nothing more and nothing less."

The Board appealed the court's decision. It argued that the court improperly overturned its definition of fine furniture; and substituted its interpretation of the term. The Board argued that it was "entitled to deference in its interpretation of the words and terms contained in a certificate of variance that it issued."

DECISION: Affirmed in part and reversed in part; remanded.

The Appellate Court of Connecticut held that whether a local zoning board's interpretation of undefined words or phrases contained in a certificate of zoning variance is entitled to deference depends on whether the words or phrases are ambiguous. If they are clear and unambiguous on their face, the interpretation of their meaning poses a question of law requiring only a look at the certificate and therefore according no deference to the board, said the court. However, if the undefined words or phrases are ambiguous

or reasonably susceptible to multiple interpretations, then a search of the intent of the board at the time it approved the variance is necessary. If that search yields no conclusions, the undefined term "may not be interpreted to mean whatever the zoning commission chooses it to mean; that would render it impossible for a party to discern the true meaning of the term, and, thus, to know whether compliance with the regulations is possible." Rather, the term must be construed based on its "common and ordinary meaning."

Here, the court found that the town's zoning regulations did not define "fine furniture." The court also found that the Amatulli variance did not define "fine furniture." The intent of the board in drafting the Amatulli variance did not unambiguously indicate intent as to the meaning of "fine furniture." The court further determined that the Board's interpretation of "fine furniture"—as that which is "one of a kind, hand-crafted, not mass produced, and capable of appreciating in value"—lacked any basis in the record and therefore was arbitrary and illegal. The appellate court also determined that the superior court's interpretation of the term—as meaning "good quality furniture"—was wrong. Looking to the dictionary's definition of "fine," the court concluded that "fine furniture" meant "high quality furniture."

The appellate court remanded the case to the superior court with directions for the superior court to remand the case to the Board for further proceedings consistent with the appellate court's determination as to the meaning of "fine furniture."

See also: *Spero v. Zoning Bd. of Appeals of Town of Guilford, 217 Conn. 435, 586 A.2d 590 (1991).*

See also: *Kraiza v. Planning and Zoning Com'n of Town of Hartland, 121 Conn. App. 478, 997 A.2d 583 (2010), certification granted in part, 298 Conn. 904, 3 A.3d 70 (2010).*

See also: *200 Associates, LLC v. Planning and Zoning Com'n of Town of Thompson, 271 Conn. 906, 859 A.2d 567 (2004).*

Notice—In Adopting Zoning Amendments, Town Provides Only Public Notice

Property owners argue amendments were specific, and therefore required individual notice

Citation: *Generation Realty, LLC v. Catanzaro, 2011 WL 2118773 (R.I. 2011)*

RHODE ISLAND (05/27/11)—This case addressed the issue of whether, under Rhode Island's Zoning Enabling Act of 1991 (§ 45-

24-53(c)), certain zoning amendments were "specific," requiring individual written notice to property owners, or were general, requiring only public notice. The determination of that issue dictated whether a town was required to provide only public notice of a hearing on amendments, or whether individual written notice to all owners of real property within 200 feet was necessary.

The Background/Facts: In 1999, the Town of North Providence (the "Town") adopted a zoning ordinance, Ordinance 99-127Z (the "Ordinance"), to conform to the Town's comprehensive plan. The zoning amendments effectuated by the Ordinance (the "1999 Amendments") "eliminated one commercial zoning district and created seven new zoning districts; set new dimensional regulations for all of the new zoning districts; deleted the existing table of use codes and substituted a new table in its stead; changed zoning maps to reflect the locations of the new zoning districts; and ultimately placed about 50 percent of the land area of the [T]own into a different zoning district."

Among the many properties affected by the 1999 Amendments was property (the "Property") owned by Capital City Community Centers, Inc. ("Capital City"). The Property was originally zoned as residential single family, but it was rezoned to open space by these amendments.

Eventually, Generation Realty, LLC ("Generation Realty") entered into an agreement to purchase the Property from Capital City. In April 2007, Capital City and Generation Realty (collectively, the "Owners") filed an application to amend the town zoning map and zoning ordinance to change the Property's designation from open space to residential general or multihousehold. In the midst of this process, the Owners determined that the Town "never followed necessary and property established procedures" regarding notice when adopting Ordinance 99-127Z.

The Town's planning board (the "Board") rejected the Owners' contentions and voted to deny their request for a zoning amendment.

The Owners then filed an action in superior court. Among other things, they asked the court to "declare [the Town's] actions in attempting to rezone [the Property] null and void." The Owners filed a motion for summary judgment. They asserted that no genuine issue of material fact existed and asked the court to declare that the Property was zoned residential single family and not open space. In support of the motion, the Owners argued that "rezoning the [P]roperty from residential single-family to open space constituted 'a specific change in a zoning district map' because '[f]ewer than two dozen individual properties were purportedly removed from various zoning districts and redesignated as open space lots.'" They contended that because

it was a specific change, individual written notice was required under Rhode Island's Zoning Enabling Act of 1991, § 45-24-53(c). They further contended that because the Town did not comply with this requirement, Ordinance 99-127Z and the related 1999 Amendments were invalid.

Section 45-24-53(b) mandates that "[w]here a proposed general amendment to an existing zoning ordinance includes changes in an existing zoning map," only "public notice" is necessary. However, "[w]here a proposed amendment to an existing ordinance includes a specific change in a zoning district map, but does not affect districts generally," § 45-24-53(c) additionally requires "[w]ritten notice ... to all owners of real property whose property is located in or within not less than two hundred feet of the perimeter of the area proposed for change ...."

The court agreed with the Owners. The hearing justice concluded that because the zoning changes brought by Ordinance 99-127Z were not "universal," the rezoning of the Owners' Property was specific, not general, and required individual written notice.

The Town appealed. On appeal, it argued that the Ordinance and the 1999 Amendments "[did not] target a specific parcel for change, leaving districts generally unaffected;" rather they "effected a sea change in the zoning scheme for the community at large." They maintained that the only kind of notice necessary regarding the Ordinance and the 1999 Amendments was public notice, which was made.

On appeal, the Owners maintained their argument that the zoning changes were specific, requiring individual written notice (not just public notice), because not all of the properties in the original zoning districts were affected in the same way.

DECISION: Vacated, reversed, and remanded.

The Supreme Court of Rhode Island held that the Ordinance and 1999 Amendments were "general," and therefore under § 45-24-53(b) required only public notice.

The court found that Ordinance 99-127Z, as a whole, "was a far-reaching ordinance that did not single out a specific property for revision, but rather completely overhauled the towns' zoning mosaic to conform to the comprehensive plan." The Ordinance "ultimately placed about 50 percent of the land area of the [T]own into a different zoning district." Given that "extensive nature," the court concluded that the 1999 Amendments did not include a "specific change" that "[did] not affect districts generally."

In reaching this conclusion, the court explained that for an amendment to be general, "[it] does not have to apply to every piece of property." "[G]eneral does not necessarily refer to all members of a class or category, but rather implies a majority or a prevalence," said the court. Here, the court found that the 1999 Amendments "affected a wide range of properties in [the Town] in a variety of different ways ...." Therefore, the court concluded the 1999 Amendments were not specific; they were general.

See also: *Sorenson v. Colibri Corp., 650 A.2d 125 (R.I. 1994).*

Case Note: The Owners had also contended that the Town's failure to include a proposed zoning map along with its public notice further invalidated the 1999 Amendments. The court found that argument "without merit." "The plain language of § 45-24-53(a) does not require public notice to include a map." Such a requirement is only triggered if the amendment at issue "includes a specific change ..., but does not affect districts generally."

Penalties and Fines—Town Sues Landowner For Violation Of Land Use Ordinance

Landowner contends it could not be responsible for violation that resulted from third-party actions

Citation: *Town of Levant v. Taylor, 2011 ME 64, 2011 WL 2135728 (Me. 2011)*

MAINE (05/31/11)—This case addressed the issue of whether property owners can be held responsible for land use violations resulting from actions taken on their property by a third party.

The Background/Facts: Lawrence A. Taylor and Donald C. Taylor (the "Taylors") owned a lot in the Town of Levant (the "Town"). The Taylors were negotiating sale of the lot to a third person, Timothy Linnell ("Linnell"). At some point, pending a sale of the lot to him, Linnell parked a mobile home, sitting on a trailer with tires attached, on the lot.

On December 30, 2009, the Town's code enforcement officer ("CEO") sent the Taylors a notice that the mobile home on the lot was a violation of the Town's land use ordinance. On January 21, 2010, the Town sent a letter to the Taylors demanding they cease

the violation within 15 days. Finally, on March 9, 2010, the Town filed a complaint in court against the Taylors. The complaint alleged the storage of the mobile home on the Taylors lot violated the Town's land use ordinance.

The Taylors contended that they had played no role in allowing the mobile home to be moved onto and to remain on their lot. They argued that they therefore could not be responsible for a violation of ordinance.

The court rejected the Taylors' argument. The court found that the Taylors, after having been put on notice of the land use violation, did not take any significant steps to obtain a permit or have the mobile home removed from their land. The court assessed against the Taylors a civil penalty of $2,500, plus attorney's fees, expert witness' fees, and costs.

The Taylors appealed.

DECISION: Affirmed.

The Supreme Judicial Court of Maine held that, even though it was a third-party that placed the mobile home on the Taylors' lot without first obtaining a permit, the Taylors were responsible for the land use violation.

The court explained its holding. The violation applied to the Taylors because "(1) the Ordinance authorize[d] fines against the landowner for this violation; (2) [the Taylors] had notice of the violation; (3) [the Taylors], as landowners had control over the use of their land; and (4) [the Taylors] had a reasonable opportunity to correct the violation."

See also: *Town of Boothbay v. Jenness, 2003 ME 50, 822 A.2d 1169 (Me. 2003).*

Enforcement—Landowner builds on lot declared unbuildable

Court orders demolition of structure, and landowner argues that is an inappropriate remedy

Citation: *Cornell v. Michaud, 79 Mass. App. Ct. 607, 947 N.E.2d 1138 (2011)*

MASSACHUSETTS (05/31/11)—This case addressed the issue of whether a court-ordered demolition of a structure was an "appropriate remedy" where a landowner built the structure despite notice of a nonconformity and adverse judicial action.

The Background/Facts: In 1986, the Town of Blackstone's (the "Town") zoning board of appeals (the "Board") granted a variance to Roland M. Michaud ("Roland"). The variance allowed the reconfiguration of three lots—lots 33, 47, and 48—into two buildable lots. The variance was subject to the condition that the abandoned building on historic lot 48 be removed. The building was not removed. The variance was not recorded. Nevertheless, Roland constructed and sold a house on historic lot 47. He also built a two-family home on historic lot 33. He conveyed historic lot 48 to his brother Ernest. Ernest later conveyed that lot to his nephew, Norman W. Michaud ("Norman")—the son of Roland.

In 1995, the Town's building inspector issued a permit for construction on the original lot 48. Soon after, he rescinded the permit on the ground that the abandoned building had not been removed as required by the 1986 variance. Norman applied to the Board for a special permit, which the Board denied. Eventually, the Superior Court entered final judgment in 2000 (the "2000 Superior Court judgment") that conclusively determined that historic lot 48 was not a buildable lot.

Raymond and Marcia Cornell (the "Cornells") owned land adjacent to historic lot 48. In the spring of 2005, the Cornells observed that construction of a large structure had begun on historic lot 48. After inquiring, they learned that Norman and Roland had entered an "agreement" with the then-current Town building inspector, Gerald D. Rivet ("Rivet"). Rivet, Norman, and Roland purportedly agreed that "historic lot 48 was eligible for a building permit."

Citing the 2000 Superior Court judgment, the Cornells filed a formal enforcement request with Rivet. Getting no response, the Cornells then appealed Rivet's nonaction to the Board. The Board heard the appeal and denied it. The Cornells then filed an action in Superior Court. The judge ruled that the 2000 Superior Court judgment conclusively determined that historic lot 48 was not a separate, buildable lot, and that Rivet could not issue the subject permit. The judge ordered Roland to remove any and all structures and restore historic lot 48, as nearly as possible, to its undeveloped state.

Roland appealed. Among other things, he argued that "the judge erroneously ordered [him] to restore historic lot 48 to its preconstruction condition without determining whether, in its current state, historic lot 48 could support a permissible use."

DECISION: Affirmed.

The Appeals Court of Massachusetts first held that the "agreement" between Norman, Roland, and Rivet was "void ab initio."

The court said this was because the agreement contravened the 2000 Superior Court judgment, and "[n]othing in the by-law or the zoning act [gave] Rivet the authority to enter into such an 'agreement.'" In other words, Rivet did not have the authority to abrogate a final judgment of the Superior Court by clandestine agreement with parties bound to it. Accordingly, the "agreement"—made in excess of Rivet's authority and in contravention of a binding Superior Court judgment and the bylaw—"was void from its inception."

The court also held that the judge's order of restoring historic lot 48 to the status quo before construction "was correct." In so holding, the court rejected Roland's argument that "the judge inappropriately ordered the 'extreme remedy' ... without first considering if the structure could conform to a legal use." The court acknowledged that ordinarily a court-ordered demolition would be an inappropriate remedy "[i]f a landowner c[ould] modify an incomplete structure or seek an appropriate variance or permit so as to bring the property into compliance with a zoning by-law." However, said the court, "where a landowner builds despite notice of a nonconformity and adverse judicial action, the landowner acts at his own peril and cannot protest an order to restore the land to its preconstruction state."

Here, found the court, Roland, Rivet, and the Board "all had ample notice of the tortured history of historic lot 48," including the 2000 Superior Court judgment. The court found it clear that Roland appreciated the risks of the unlawful construction and proceeded anyway. Roland therefore acted at his own peril; he could not "request an opportunity to cure the nonconformity of his use which he did not cure prior to beginning construction."

See also: *Building Inspector of Falmouth v. Haddad, 369 Mass. 452, 339 N.E.2d 892 (1976).*

See also: *Wells v. Zoning Bd. of Appeals of Billerica, 68 Mass. App. Ct. 726, 864 N.E.2d 586 (2007).*

See also: *City of Boston v. Back Bay Cultural Ass'n, Inc., 418 Mass. 175, 635 N.E.2d 1175 (1994).*

Zoning News from Around the Nation

FLORIDA

On June 2, Governor Rick Scott signed the "Community Planning Act" (HB 7207) into law. "The legislation, which has been characterized as the most sweeping change to Florida's growth management laws since 1985, does away with many state restrictions,

placing the regulatory burden on local governments. The law also shortens the evaluation period for state agencies and markedly limits their authority to raise objections and make comments." Environmental lobbies had heavily opposed the legislation, voicing concern that it would "eliminate[ ] the state's ability to act as a check to local growth." Among other things, "the legislation eliminates state requirements for school capacity, infrastructure, and park and recreation upgrades to be conducted concurrent with development." Local governments will now have the authority to maintain such requirements, if desired. "The law also repeals the requirement that all development agreements be reviewed by the state land planning agency and takes away the organization's authority to pursue civil action as a means of enforcing development orders."

Source: *The Walton Sun*; www.waltonsun.com

MARYLAND

Anne Arundel County Executive John R. Leopold reportedly "intends to block a bill that would make sweeping rezoning changes to the central and southern parts of the county." Leopold has said that "the public needs a bigger voice in rezoning talks." However, other council members have reportedly objected to Leopold's call to withdraw the proposed legislation.

Source: *Greater Annapolis Patch*; http://greaterannapolis.patch.com/

MASSACHUSETTS

State Senator Jamie Eldridge recently filed "[c]omprehensive legislation designed to overhaul the state's decades-old zoning laws." The proposed Comprehensive Land Use Reform and Partnership Act (CLURPA–S1019) has been heard by the state senate's Joint Committee on Municipalities. The bill reportedly "encourages communities to adopt or update their local master plans and provides them the tools necessary to implement zoning regulations to reach their planning goals."

Source: *Sudbury Patch*; http://sudbury.patch.com

PENNSYLVANIA

Pittsburgh City Councilwoman Theresa Smith recently introduced legislation "that not only would restrict where adult businesses can operate, but drastically change how they operate. The measure would ban any contact between dancers and patrons and

would prohibit private video-viewing booths." Smith wants to put aside the city's practice of having adult businesses apply for a conditional-use permit, and instead "wants adult businesses to operate under the 'permitted by right' rule, which means a person can create such a business only in an area zoned for it."

Source: *Pittsburg Tribune-Review*; www.pittsburghlive.com

A bill pending before the state senate would require "a municipality receiving impact fee revenue not adopt a drilling zoning ordinance more restrictive than a model zoning ordinance that would be developed by the state Public Utility Commission. Any municipality that bans drilling would not be eligible for impact fee revenue."

Source: *The Times-Tribune*; http://thetimes-tribune.com

RHODE ISLAND

The state senate is considering proposed legislation that would "create a commission with wide latitude to determine what happens to about 35 acres available for development because of the relocation of Route 195. The seven-member commission would be empowered to hire staff and an executive director for its work." The legislation would give the commission powers to, among other things, set zoning regulations.

Source: *The Providence Journal*; www.projo.com

July 25, 2011 | Volume 5 | No. 14

QUINLAN™

Zoning Bulletin

in this issue:

WEST®

41059277

Notice—Local Business Challenges Public Notice of Proposed Wal-Mart

Says notice of "150,000 square foot" store failed to notify of all proposed uses

Citation: *Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Bd., 420 N.J. Super. 193, 19 A.3d 1038 (App. Div. 2011)*

NEW JERSEY (06/13/11)—This case addressed the issue of whether: "public notice of an application for site plan approval that included the construction of 'a main retail store of 150,000 [square feet]' was legally insufficient because the application failed to identify the store as a Walmart."

The Background/Facts: The Golf Center, Inc. ("GCI") owned 53.26 acres in Old Bridge Township (the "Township"). GCI planned to develop this land. Its plan included the construction of a 150,000 square foot "main retail store." GCI applied to the Township's Planning Board (the "Board") for a preliminary and final site plan approval for this proposed development.

Contributors
Corey E. Burnham-Howard

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526 St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to, Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526 St. Paul, MN 55164-0526.

WEST®

610 Opperman Drive • P.O. Box 64526 • St. Paul, MN 55164-0526
1-800-229-2084 • email: west.customerservice@thomsonreuters.com • west.thomson.com/quinlan
ISSN 0514-7905 • © 2011 Thomson Reuters. All Rights Reserved.
Quinlan™ is a Thomson Reuters brand.

In furtherance of its proposal, pursuant to New Jersey statutory law, N.J.S.A. 40; 55D-12, GCI published newspaper notice of each of four public hearings on its proposed development. Each notice included a statement that there would be a hearing on GCI's application for preliminary and final approval of: "all buildings, structures, parking areas and other site improvements related to: (a) Construction of a main retail store of 150,000 s.f."

Following the public hearings, the Board approved GCI's application.

Shakoor Supermarkets, Inc. ("Shakoor"), a local supermarket, challenged the approval. Among other things, Shakoor argued that the public notice of the hearings was legally insufficient. Shakoor said this was because GCI's notice failed to "identify the uses proposed for the buildings."

The superior court affirmed the Board's approval of GCI's application. The court found that public notice of the hearing was sufficient.

DECISION: Affirmed.

The Superior Court of New Jersey, Appellate Division, held that GCI's public notice of the hearings was legally sufficient.

In so holding, the court explained that "[f]ailure to provide proper notice deprives a municipal planning board of jurisdiction and renders null any subsequent action." For a public notice of applications before a zoning board to be "proper" or "legally sufficient," it must state "the nature of the matters to be considered," said the court. In other words, such public notice had to provide a "common sense description of the nature of the application, such that the ordinary layperson could understand its potential impact upon him or her." However, noted the court, it "need not be 'exhaustive' to satisfy the standard." Rather, to "adequately inform, the notice must give 'an accurate description of what the property will be used for under the application.'" This, further explained the court, "ensure[s] that members of the general public who may be affected by the nature and character of the proposed development are fairly apprised thereof so that they may make an informed determination as to whether to they should participate in the hearing ...."

Here, GCI's public notice of the hearings "identified the proposed use as 'a main retail store of 150,000 s.f.'" Shakoor had argued that the notice was insufficient because it failed to disclose that the 150,000-square-foot retail store was "a Wal-Mart Supercenter/Shopping Center which would itself contain multiple retail uses." The court rejected this argument. It found the notice "adequately informed laypersons that a major 'big box' store was proposed for the site and alerted them to the possible concerns such as traffic, commonly associated with those stores ...." Moreover, although the proposed store included multiple retail uses, all were permitted uses, and none of the proposed uses provided "legitimate cause for 'heightened concern' to the public, beyond those associated with a 150,000 square foot retail store."

See also: *Perlmart of Lacey, Inc. v. Lacey Tp. Planning Bd., 295 N.J. Super. 234, 684 A.2d 1005 (App. Div. 1996).*

See also: *Township of Stafford v. Stafford Tp. Zoning Bd. of Adjustment, 154 N.J. 62, 711 A.2d 282 (1998).*

Case Note: In its decision, the court gave examples of cases in which it had found the public notice was legally insufficient: It said that a notice describing a proposed use as the "creation of 3 commercial lots with a total of 42.53 acres" "provided no common sense description of the actual uses of those lots." It also said that a notice that a project included "retail/office" units was deficient because it failed to disclose that the approval sought included that for a large restaurant with a potential liquor license.

Vested Rights—Sign Companies Apply to County For Billboard Permit When Land Is Unincorporated

After land is incorporated by cities, cities argue sign companies have no vested right in billboard construction

Citation: *Fulton County v. Action Outdoor Advertising, JV, 11 Fulton County D. Rep. 1729, 2011 WL 2305974 (Ga. 2011)*

GEORGIA (06/13/11)—This case addressed the rights of certain sign companies to construct billboards in areas formerly located in unincorporated areas within a county which subsequently became incorporated cities. It addressed the issue of whether the creation of new cities could retroactively divest sign companies of their vested rights to construct signs pursuant to applications they filed at a time when the proposed billboard sites were in unincorporated areas of the county and the county had no valid sign regulations.

The Background/Facts: Action Outdoor Advertising JV, LLC, Boardworks Outdoor Advertising Company, Inc., Granite State Outdoor Advertising, Inc., KH Outdoor Advertising, Inc., and Steven Galberaith and Larry Roberts (collectively, the "Sign Companies") were companies and owners and principals of companies that leased and constructed billboards for displaying commercial and noncommercial messages. Between May 2003 and November 2006, the Sign Companies submitted complete applications to Fulton County (the "County") for permits to construct billboards at different locations within unincorporated areas of the County. The County found the signs were pro-

hibited under the County sign ordinance (the "Ordinance"), and denied the applications.

The Sign Companies then sued the County. They argued the Ordinance was unconstitutional.

While that case was pending, in a separate appeal, the Supreme Court of Georgia determined that the Ordinance was unconstitutional under the First Amendment to the United States Constitution.

Thereafter, finding there were no material issues of fact in dispute and deciding the matter on the law alone, the trial court in the Sign Companies' case then issued summary judgment in favor of the Sign Companies. The court found that since the Ordinance was invalid at the time of the Sign Companies' applications for permits, the Sign Companies "had a vested right to erect their billboards and ordered that they be allowed to erect the billboards."

Meanwhile, the unincorporated areas of the County where the Sign Companies had intended to erect billboards became incorporated into new cities (the "Cities"). The County claimed it no longer had jurisdiction to issue permits to the Sign Companies, so the Sign Companies sued the Cities. The trial court in that case agreed that the Sign Companies had a vested right to erect the billboards as of the date their applications were filed.

The Cities and the County appealed. They argued that the trial court erred by granting summary judgment to the Sign Companies and ordering them to permit construction of the signs at issue.

DECISION: Affirmed.

The Supreme Court of Georgia held that the Sign Companies had a vested right to construct the billboards at issue.

As an initial matter, the court noted that the entire County Sign Ordinance had been struck down as unconstitutional—not just the regulatory provisions applicable to billboards. As wholly void, the Ordinance was "of no force and effect from the date it was enacted." As such, it "could not be used as the basis for the denial of the [S]ign [C]ompanies' applications," explained the court. Since the County Ordinance was invalid, there was no valid restriction on the construction of billboards in the County. Therefore, the Sign Companies obtained vested rights in the issuance of the permits they sought, said the court.

In so holding, the court explained that "vested rights" are: "interests which it is proper for [the] state to recognize and protect and of which [the] individual cannot be deprived arbitrarily without justice." Thus, if an applicant submits a proper application for a permit, the applicant has a vested right to consideration of the application under the law in existence at the time the application was filed.

Here, there was no valid law governing signs and billboards at the time the Sign Companies submitted their permit applications. Therefore, under their proper applications for a permit, the Sign Companies had a vested right to construct the billboards, concluded the court.

The Cities had argued that the Sign Companies' rights did not vest because the Sign Companies did not own or have signed leasehold interests in all of the properties on which the signs were to be located. The court rejected this argument. It found the Cities failed to cite any authority for that proposition that only applicants with ownership or formal leasehold interest in the land may obtain vested rights. Rather, the court noted that Georgia law was clear that: "a party holding an option from the owner of the land, an agent of the owner, or a party standing in any contractual relationship with the owner of the land" whom "submits an application for a permit in accordance with applicable ordinances, ... is entitled to issuance of the permit." Here, the Sign Companies either owned the tract of land or had leases or informal agreements with the landowners of the tracts on which the signs at issue were to be located.

The Cities had also argued "that the subsequent creation of new cities within unincorporated Fulton County ... divested the [S]ign [C]ompanies of their vested rights." The court also rejected this argument. The court noted that the Georgia Constitution, Article I, § I, Paragraph Z, "forbids passage of retroactive laws which injuriously affect the vested rights of citizens." The creation of the new Cities, thus, "could not constitutionally and retroactively divest these companies of their vested rights to construct signs pursuant to the applications they filed in [the] County at a time when [the] County had no valid sign regulations and the [C]ities did not yet exist."

See also: *Hayes v. Howell, 251 Ga. 580, 308 S.E.2d 170 (1983).*

See also: *Recycle & Recover, Inc. v. Georgia Bd. of Natural Resources, 266 Ga. 253, 466 S.E.2d 197 (1996).*

Case Note: The Cities had also argued that the Sign Companies' vested rights were voided by Georgia Statutory law, OCGA § 36-60-26. Section 36-60-26 prohibits the issuance by a county of backdated sign permits for an area no longer within its jurisdiction due to formation of a new city or annexation. The court also rejected this argument. The court noted that statute was not enacted until "well after the time the [S]ign [C]ompanies filed their applications and it [could] not retroactively be applied to divest the [Sign] [C]ompanies of their vested rights."

Validity of Ordinance—Ordinance Prohibits Churches From Obtaining Special Use Permits in Zoning District

Church challenges ordinances as violating the Equal Terms Clause of RLUIPA

Citation: *Elijah Group, Inc. v. City of Leon Valley, Tex., 2011 WL 2295215 (5th Cir. 2011)*

The Fifth Circuit has jurisdiction over Louisiana, Mississippi, and Texas.

FIFTH CIRCUIT (TEXAS) (06/10/11)—This case addressed the issue of whether a city ordinance that prohibited churches from obtaining a special use permit to operate in a business zone in the city violated the Equal Terms Clause of the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA").

The Background/Facts: Until March 2007, the City of Leon Valley, Texas (the "City"), had maintained a zoning code that allowed churches to obtain Special Use Permits ("SUPs") to operate in business zones designated "B-2". In March 2007, the City amended its zoning code in order to "stimulat[e] the economy by creating a retail corridor" on a roadway in the City. That amendment (the "Ordinance") eliminated the right of churches to obtain SUPs in B-2 zones. Churches were effectively excluded from B-2 zones. Churches were permitted in B-3 zones. B-3 zones were designated for commercial uses with larger space requirements.

Nearly a year after the Ordinance was adopted, The Elijah Group, Inc. (the "Church") sought to purchase a property in the B-2 zone. The City denied the property owner's request to rezone the property from a B-2 to a B-3. Thereafter, the Church agreed to lease the property from the owner. Later, when the Church began to hold religious services on that B-2 property, the City obtained a temporary restraining order against such activity as violating the Ordinance.

Eventually, the Church filed suit against the City in state court. Among other things, the Church challenged the Ordinance as violative of the Equal Terms Clause of the federal RLUIPA.

The City moved the case to federal district court. That court held that the Ordinance was valid.

The Church appealed.

DECISION: Reversed, and matter remanded.

The United States Court of Appeals, Fifth Circuit, held that the Ordinance violated the Equal Terms Clause of RLUIPA.

The court explained that the Equal Terms Clause of RLUIPA provides that: "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." The court interpreted the Clause as: "prohibiting the government from ... enacting, a facially discriminatory ordinance or ... enforcing a facially neutral ordinance in a discriminatory manner."

Here, the Church had not taken issue with enforcement of the Ordinance. It had taken issue with enactment of the Ordinance. The Church had made a facial challenge (i.e., that the ordinance was invalid on its face) to the Ordinance's treatment of "churches" less favorably than other nonretail, nonreligious institutions. The Church argued that the Ordinance should be invalidated "for differentiating between religious and nonreligious assemblies ...."

The court agreed that in analyzing the validity of a challenged ordinance, "the [Equal Terms] Clause by its nature require[d] that the religious institution in question be compared to a nonreligious counterpart." The Church needed to show more than simply that its religious use was forbidden and some other nonreligious use was permitted. It needed to show, said the court, that the Ordinance failed to treat churches and other nonreligious uses—such as private clubs—the same and on "equal terms."

Looking at the Ordinance here, the court found that its "Permitted Use Table" specifically provided that: "churches" were not allowed in B-2 zones at all; but that many nonreligious, nonretail buildings (e.g., "Club or Lodge (private)") were allowed to request SUPs and, if granted, to occupy a B-2 zone. The court agreed with the Church that, in light of the way that B-2 zones were defined, the Ordinance facially treated a church differently than a private club. The court concluded that the Ordinance was invalid because "it prohibit[ed] the Church from even applying for a SUP when, e.g., a nonreligious private club may apply for a SUP despite the obvious conclusion that the Church and a private club must be treated the same, i.e., on 'equal terms' by the [O]rdinance, given the similar non-B-2 nature of each." In other words, the court found the Ordinance invalid in violation of the Equal Terms Clause of RLUIPA because it treated the Church on terms that were less than equal to the terms on which it treated similarly situated nonreligious institutions.

See also: *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County, 450 F.3d 1295 (11th Cir. 2006).*

See also: *Lighthouse Institute for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253 (3d Cir. 2007).*

See also: *River of Life Kingdom Ministries v. Village of Hazel Crest, Ill., 611 F.3d 367 (7th Cir. 2010).*

See also: *Third Church of Christ, Scientist, of New York City v. City of New York, 626 F.3d 667 (2d Cir. 2010).*

Case Note: In addressing the Church's challenge, the court noted that four circuits of the U.S. Court of Appeals had "constructed different tests for applying the Clause, each with varying determinations of which nonreligious assemblies and institutions are proper comparators to the religious assembly or institution that brings the claim." The Third Circuit's test, which the district court here had applied, provides that: "a regulation will violate the Equal Terms provision [of RLUIPA] only if it treats religious assemblies or institutions less well than secular assemblies or institutions that are similarly situated as to the regulatory purpose." The Eleventh Circuit's test, which the Church asserted the district court should have applied—and which the Fifth Circuit apparently did apply here—provides that: "[w]hen alleging discriminatory application [of an ordinance], a religious plaintiff must show that 'a similarly situated nonreligious comparator received differential treatment under the challenged regulation." The Seventh Circuit provides that: "a zoning ordinance violates the Clause if it treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution that is similarly situated as to 'accepted zoning criteria.'" The court found that the Second Circuit seems to provide that: a zoning ordinance violates the Clause if it fails to treat equally a religious institution and a nonreligious "comparator that is similarly situated for all 'functional intents and purposes' of the regulation."

Agriculture and Farming Uses—County Enforces Land Use Restrictions Against Farming Operations

Farmer says such restrictions are prohibited by Right to Farm Act

Citation: *Wilson v. Palm Beach County, 2011 WL 2330077 (Fla. Dist. Ct. App. 4th Dist. 2011)*

FLORIDA (06/15/11)—This case addressed the issue of whether Florida's Right to Farm Act prohibits enforcement of county ordinances enacted prior to the Act's effective date.

The Background/Facts: Richard Wilson ("Wilson") and his two business entities, Plant Explorers, LLC ("Plant Explorers") and Excalibur Fruit Trees, LLC, own and operate a nursery on several parcels of

land located in unincorporated Palm Beach County (the "County"). Those parcels were located in an agricultural-residential zoning district. Wilson purchased one of those parcels is 2005 (the "2005 Parcel").

In 2008, Plant Explorers filed a special permit application for the 2005 Parcel. The County issued a "Special Permit" which allowed the operation of the business on the 2005 Parcel, subject to certain conditions. Those conditions required Plant Explorers to comply with specific portions of the County's Unified Land Development Code ("ULDC"). Those conditions included: set-back provisions; time prohibitions on the operation of commercial vehicles; and buffer requirements.

Apparently unhappy with the required permits and conditions, Wilson, Plant Explorers, and Excalibur Fruit Trees, LLC (hereinafter, collectively, "Wilson") filed a legal action against the County. Wilson asked the court to declare that the Special Permit conditions violated Florida's Right to Farm Act (§ 823.14(6), Florida Statutes). Section 823.14(6) of that Act provides in relevant part that: "a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land ...."

Wilson also argued that the County lacked the authority to enforce provisions of its ULDC on farming activities. Wilson said this was because such farming activities were not "development" (which charter counties were authorized to regulate) under Florida's Local Government Comprehensive Planning and Land Development Regulation Act (See §§ 163.3164(6) and 380.04, Florida Statutes). That Act excluded the use of land for agricultural purposes from its definition of "development."

The County responded by maintaining that the Right to Farm Act restricted only new ordinances, not the enforcement of preexisting ordinances. The County also argued that restrictions on the term "development" (under Chapters 163 and 380, Florida Statutes) did not prohibit the County's ordinances. The County said its ordinances were authorized under more general grants of constitutional and statutory authority.

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the trial court issued summary judgment in favor of the County.

Wilson appealed.

DECISION: Affirmed in part, reversed in part, and remanded.

The District Court of Appeal of Florida held that Florida's Right to Farm Act did not prohibit enforcement of county ordinances enacted prior to the Act's effective date.

In reaching this conclusion, the court looked to the legislative intent and language of the Right to Farm Act. The court found that while § 823.14(6) prevented counties from "adopting" ordinances relating to agriculture, it did not address the enforcement of provisions already in place.

Here, the Right to Farm Act provisions restricting local government from adopting ordinances restricting farming activities became effective June 16, 2000. The County's ULDC was enacted in 1989. The relevant ULDC provisions existed within the ULDC prior to June 2000. Accordingly, the court determined that the County could enforce those ULDC provisions—despite the fact that they restricted farming activities—because they pre-existed the Right to Farm Act.

The court also rejected Wilson's second argument—that the County lacked the authority to enforce provisions of its ULDC on farming activities because such farming activities were not "development". Instead, the court agreed with the County. It held that even if the farming activities were not "development" as defined under Florida's Local Government Comprehensive Planning and Land Development Regulation Act, the County had authority to regulate those activities based upon constitutional home-rule powers and general authority granted to local governments.

See also: *J-II Investments, Inc. v. Leon County, 908 So. 2d 1140 (Fla. Dist. Ct. App. 1st Dist. 2005).*.

Case Note: One of the ULDC provisions that the County had sought to enforce against Plant Explorers was adopted after the enactment of the Right to Farm Act. The court found it had no way of knowing how those requirements would impact the Plant Explorers' wholesale nursery operations. Accordingly, the court concluded that a genuine issue of material fact precluded summary judgment on whether the permit restrictions violated the Act. The issue was remanded for further analysis.

Zoning News from Around the Nation

CALIFORNIA

Glendora's city council recently approved two locations within the city "to be zoned for emergency shelters and housing for the area's homeless." "[T]he new zoning codes will allow for year-round transitional housing and permanent supportive housing for homeless and formerly homeless individuals."

Source: *Glendora Patch*; http://glendora.patch.com

NEW YORK

Recently, "[t]he state Senate unanimously passed the Adirondack Community Housing Bill 62-0." This follows the bills unanimous passage in the state assembly. "If signed by Gov. Andrew Cuomo, the legislation will allow clustered development on private lands that had

previously been deemed off-limits by regional land use controls." Supporters of the bill said that it would "limit[ ] sprawl and will keep the price of new homes at a level people can afford." "The bill will allow the construction of up to four housing units on a single parcel of land in 'moderate' and 'low intensity' zoning that is located up to three miles outside an Adirondack hamlet." Previously, clustered development was typically permitted only in hamlets. Clustered housing projects would be banned within one-tenth of a mile of a shoreline.

Source: *Glen Falls Post-Star*; http://poststar.com

The town of Gaines is reportedly considering legislation which would "prohibit demonstrations within 1,000 feet of a military funeral or church service." Rochester recently passed a similar law. State Assemblyman Stephen Hawley (Republican-Batavia) has also sponsored a similar bill, which has passed the assembly and is awaiting consideration in the senate.

Source: *The Daily News*; http://thedailynewsonline.com

OHIO

Brunswick's city council is considering legislation that would prohibit "sweepstakes terminals [i.e., Internet cafes] in all zoning districts in the city."

Source: *Brunswick Sun Times*; http://blog.cleveland.com/brunswicksuntimes

TENNESSEE

A new state law (HB600) provides: "No local government shall by ordinance, resolution, or any other means impose on or make applicable to any person an anti-discrimination practice, standard, definition, or provision that shall deviate from, modify, supplement, add to, change, or vary in any manner from" state law. Essentially, the law prohibits cities, counties and school districts from having laws that prohibit discrimination based on sexual orientation or gender identity. Reportedly a lawsuit has been filed, challenging the state and federal constitutionality of the new law.

Source: *Pink Paper*; http://news.pinkpaper.com

ZONING PRACTICE JULY 2011

AMERICAN PLANNING ASSOCIATION

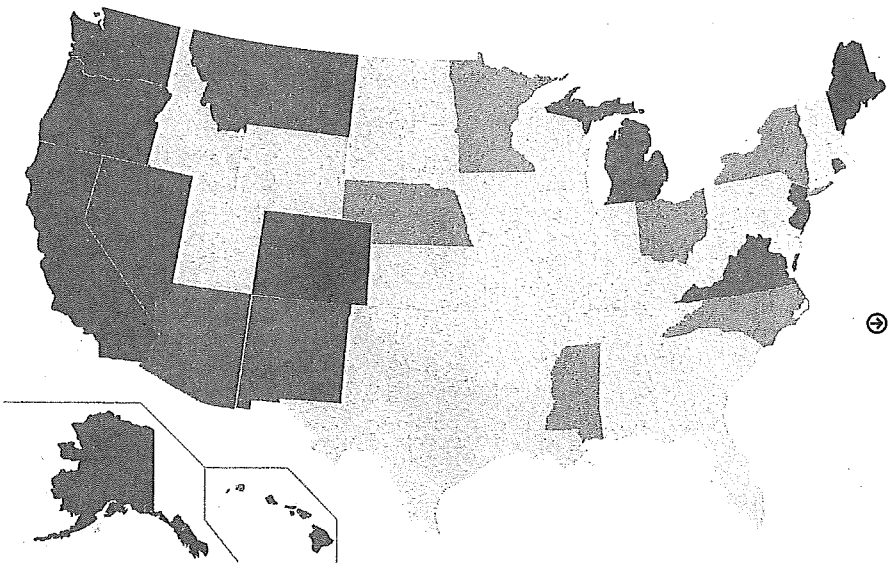
ISSUE NUMBER 7

PRACTICE MEDICAL MARIJUANA

The Next Zoning Battleground: Trends and Challenges in Local Regulation of Medical Marijuana

By Deborah M. Rosenthal, AICP, and Alfred Fraijo Jr.

Fifteen states and the District of Columbia currently allow the private possession of small quantities of marijuana for medical use.



Twenty-one states and the District of Columbia have passed laws either decriminalizing the use of marijuana or sanctioning the cultivation or distribution of medical marijuana subject to local regulations. For information about specific state laws, see the National Organization for Reform of Marijuana Laws (www.norml.org).

The trend, which began with California's adoption of the Compassionate Use Act in 1996, is expected to accelerate in the future, with the majority of state laws passed in just the last six years. Last year alone, 19 states considered measures to legalize medical marijuana, although they were approved in only two states. In most states, medical marijuana possession has initially been approved by ballot measure, not statute. Medical marijuana possession, therefore, enjoys wide public support in an increasing number of jurisdictions.

State statutes decriminalizing marijuana for medical purposes typically do not govern marijuana cultivation, processing, distribution, and sale. This task is left to individual jurisdictions under the police power, specifically their zoning and business licensing authority. In response to this regulatory vacuum at the state level, local governments have responded with an almost staggering variety of ordinances and regulations over the past few years.

Local land-use approaches range from total exclusion to standard zoning and business permitting systems. To date, there is no national consensus on regulation of medical marijuana, although the need for local ordinances is readily apparent. The cautionary experiences of cities like Los Angeles, which was rapidly overwhelmed by hundreds of dispensaries after legalization, have led to a recent surge in local ordinances. For purposes of this article, the term "dispensary" is used to refer generally to medical marijuana dispensing facilities without distinction to cooperatives, collectives, or other legal entities defined by state or local law.

This article reviews the most common regulatory issues, emerging trends, and judicial challenges to regulations adopted by local government in response to state law changes permitting possession of medi-

ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of July to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. *Deborah Rosenthal, AICP, and Alfred Fraijo Jr. will be available to answer questions about this article. Go to the APA website at 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.*

About the Authors

Deborah Rosenthal, AICP, is a partner in the Orange County office of Sheppard Mullin Richter & Hampton LLP, where she is engaged in innovative land-use, environmental, and natural resource regulatory compliance matters for a broad range of clients.

Alfred Fraijo Jr. is a partner in the Los Angeles office of Sheppard Mullin Richter & Hampton LLP, where he handles complex land-use and real estate matters for private and nonprofit businesses implementing urban renewal projects in emerging markets throughout California.

cal marijuana. We conclude that traditional zoning and business licensing, for the most part, is adequate to address the local land-use issues raised by medical marijuana. However, some problems are unique to medical marijuana and require advance planning, careful policy consideration, and coordination with other local government agencies.

WHAT IS MEDICAL MARIJUANA?

At its simplest, medical marijuana is any form of the plant *Cannabis sativa* L., including its seeds and resin, intended for medical use by qualified patients (California Health & Safety Code, Section 11018). It may consist of the dried plant or products derived from or incorporating the plant, such as foodstuffs or medicines. All laws legalizing medical marijuana require that it be used to treat conditions listed in the statute—or otherwise determined to be covered—including, but not limited to, chronic pain and terminal illnesses (e.g., Nevada Constitution, Article 33, Section 1.a.). All state statutes mandate written documentation from a physician but cannot require a prescription, which may expose the doctor to penalty under federal law (e.g., Michigan Medical Marijuana Act, MCL 333.26422).

Virtually all state laws cap the amount of marijuana that may be possessed by a qualified patient, and most regulate the number or square footage of marijuana plants that may be grown at a single location. State laws may also limit the type of transaction (e.g., nonprofit or exchange) and the type of provider (e.g., collectives or cooperatives). Most, though not all, states have a registration system to ensure that patients qualify for possession of medical marijuana. A few states, like New Jersey and Arizona, regulate the total number of dispensaries (New Jersey Compassionate Use Medical Marijuana Act, P.L. 2009, Chapter 307 (2010) and Arizona Medical Marijuana Act, Arizona Revised Statutes, Title 36, Chapter 28.1).

Consistent with the basic legal framework established by state law, local governments are expected to regulate the cultivation, processing, distribution, delivery, dispensing, storage, exchange, and consumption of medical marijuana. Each separate activity may require a different type of regulation, or different regulatory provisions within the municipal code. Local jurisdictions should carefully review existing ordinances governing each type of activity to determine whether special provisions need to be made for medical marijuana. For instance, cities may already regulate agriculture and on-site agricultural sales, but would

Under a contract from the National Institute on Drug Abuse, the University of Mississippi Marijuana Project is the only producer of marijuana for medical and research purposes explicitly sanctioned by the federal government.

Wikimedia Commons

Many cities and counties have banned dispensaries and the consumption of medical marijuana so as not to violate the federal Controlled Substances Act, which continues to classify marijuana as a Class 1 substance.

be unlikely to have adopted standards for security fencing, setbacks, coverage, and on-site processing and sale that would be applicable to medical marijuana. Similarly, home food delivery, pharmaceutical sales, inventory storage, and alcohol use may share some objective characteristics with, but do not raise the same issues as, medical marijuana.

FEDERAL PREEMPTION

Many cities and counties have banned dispensaries and the consumption of medical marijuana so as not to violate the federal Controlled Substances Act (CSA), which continues to classify marijuana as a Class 1 substance. For example, by the end of 2010, at least 12 counties in California had banned dispensaries.

Local governments are state subdivisions authorized to exercise the state's police power rather than to enforce federal law. Local land-use regulations do not *authorize* the possession or use of medical marijuana; they merely establish local requirements for its distribution in accordance with state law. In the wake of these concerns, however, several states, including Colorado, have amended their laws and issued guidelines to permit municipalities to prohibit dispensaries within their jurisdiction (Colorado House Bill 1284 and Senate Bill 109, effective June 7, 2010).

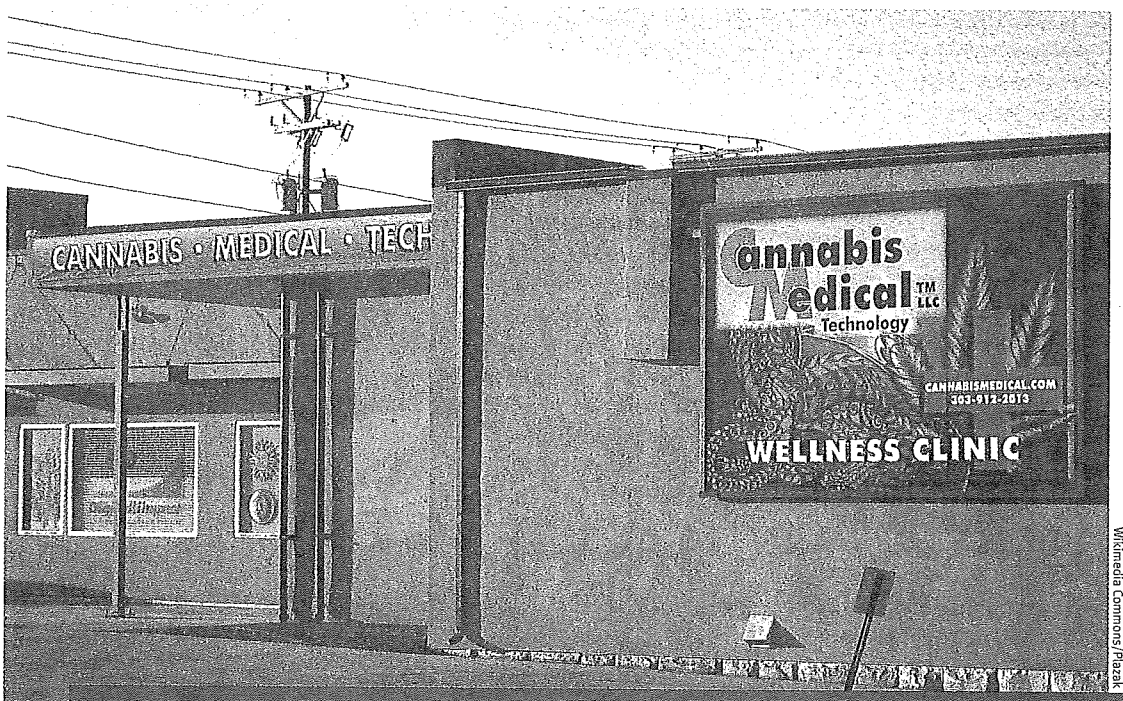
In October 2009, the U.S. Department of Justice announced that it did not intend to use scarce federal drug enforcement resources in prosecuting individuals "whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana" (U.S. Department of Justice, "Memorandum for Selected U.S. Attorneys on Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana," October 19, 2009). While the memorandum did not legalize marijuana possession at the federal level or provide a defense against federal prosecution, it reduced the likelihood of conflict between the CSA and state and local land-use regulations. It also clarified that the state and federal governments use different enforcement mechanisms and that local officials are not obligated to act on behalf of federal regulators. It is unclear whether the policy will have an impact on enforcement activities in states without laws permitting dispensaries, though recent suits against the department are testing the policy's reach.

Recent case law suggests that a city's ability to ban the sale or consumption of medical marijuana may be limited in states that have enacted medical marijuana laws. As noted above, several cities and counties have adopted prohibitions, some through temporary moratoria, on the sale or consumption of medical marijuana and the operation of dispensaries on grounds that the federal prohibition preempts state law. The basic argument in such cases is that local law, like state law, must yield to federal law. However, the rationale for the preemption argument has been rejected by the courts. In other cases, cities have moved to ban medical marijuana by limiting or prohibiting dispensaries through local land-use controls—an area of law in which local governments have traditionally enjoyed exclusivity. Other local governments are using nuisance abatement measures to exclude marijuana dispensaries, even if possession is beyond their reach.

The proposition that a city can prohibit the operation of a dispensary by invoking federal preemption of state law was recently rejected in California in *Qualified Patients Association v. City of Anaheim* and *County of San Diego v. San Diego NORML*. The courts found that, generally, state medical marijuana laws are not preempted by federal law because the state law merely exempts individuals who possess, cultivate, transport, or sell medical marijuana from state criminal prosecution. Accordingly, the local jurisdiction could not justify its law solely under the CSA. According to *Anaheim*, "a city may not stand in for the federal government and rely on purported federal preemption to implement federal legislative policy that differs from corresponding, express state legislation concerning medical marijuana." Conversely, the fact that individuals or a collective may elect to act in accordance with state law in a way that violates federal law does not implicate the local jurisdiction in such violation.

Wikimedia Commons/Laurie Avocado

In Los Angeles, many medical marijuana dispensaries choose to cluster along high-traffic corridors such as Ventura Boulevard.



Wikimedia Commons/Plazak

Between 2000 and 2007, medical marijuana dispensaries in Colorado were limited to five patients each. After Colorado courts lifted these restrictions, dispensaries proliferated rapidly along commercial corridors in Denver.

LOCAL PROHIBITIONS

As distinguished from federal preemption, many municipalities in states with statutes permitting medical marijuana have adopted local moratoria or prohibitions on the basis of their plenary powers to regulate local land uses and abate a nuisance. These measures have generally been upheld (e.g., *City of Claremont v. Kruse* (2000) 177 Cal.App.4th 1153). In the case of nuisance abatement, local governments may rely on existing ordinances that prohibit any use—as a nuisance per se—that is inconsistent or not specifically authorized by local regulations. In many cases, local governments have not enumerated in local codes the sale, cultivation, or distribution of marijuana as a permitted use or permitted business activity. In these jurisdictions nuisance per se, therefore, can be an effective defensive measure to close or enjoin dispensaries from operating within their limits.

Local governments have also enjoyed considerable latitude to control medical marijuana through land-use regulations even when state laws permit its consumption, cultivation, and distribution. Generally, local governments may make and enforce local land-use and business regulations that do not conflict with state statutes. Because the majority of state laws permitting medical marijuana do not mandate specific land-use requirements or business permits, such issues are not deemed exclusively a matter of state concern that preempts local governments from adopting regulations that restrict or even prohibit such activities within their limits. Further, many of the new laws narrowly permit the use of marijuana for medical purposes for patients with specific conditions, while keeping the general law criminalizing cultivation, distribution, and use as unlawful. In that sense, local governments may enjoy wider latitude regarding their regulation on grounds of public health and safety or other concerns.

Though local measures to prohibit or restrict medical marijuana cultivation, distribution, and use have been upheld by recent case law, local municipalities will be required to support their enforcement measures with policy and findings of fact that establish a direct link between the restrictions, legitimate government concerns, and local authority. Local governments may also draw regulatory distinctions among activities (e.g., cultivators and dispensaries that implicate different policy considerations). Medical marijuana cultivation for distribution may require different land-use controls or licensing compared to personal cultivation.

UNLISTED USES

There can be considerable controversy when local governments do not adopt ordinances to address changes in state laws that permit medical marijuana. Such changes in state law may create a perception among consumers, dispensaries, and other organizations that distribution, cultivation, or consumption is permitted locally as a matter of state law. Indeed, in California, a lower court judge found that state law permitting the use of medical marijuana created a "statutorily conferred right" to operate a dispensary and to obtain marijuana for medical purposes (*Medical Marijuana Collectives Litig. Americans for Safe Access v. City of Los Angeles*, Case No. BC433942, December 10, 2010). Some local governments have responded many months or years after changes in state law take effect. These jurisdictions must sometimes contend with the lack of clarity in the local permitting process that may result from the existence of dispensaries prior to enacting such local regulations.

There also may be an increase in enforcement or legal costs to local governments if dispensaries are regulated or restricted after facilities have opened and allowed to operate solely under state regulations. To illustrate, in response to a proliferation of dispensaries, Los Angeles adopted a comprehensive medical marijuana ordinance in January 2010 (effective June 2010), nearly 15 years after the statewide initiative legalizing the use marijuana for medical purposes in California.

In response to a growing number of dispensaries and prior to the enactment of a comprehensive ordinance, Los Angeles adopted an interim control ordinance, or ICO, in August 2007. The ICO permitted the operations of all dispensaries that existed prior to August 1, 2007, and that had submitted a series of documents to the city by November of the same year. The effect was a moratorium on new dispensaries in the city. However, the ICO expired by operation of state law in September 2007.

In January 2010, the city passed a comprehensive ordinance for dispensaries. Among various operating and licensing requirements, the new ordinance limited the operation of collectives to those that had registered by the November deadline. That summer, several dispensaries filed suit against the city alleging numerous constitutional and procedural claims and requested an injunction.

In December 2010, a superior court judge struck down the provisions in the law that only benefited the dispensaries with proof of registration as an unconstitutional violation of procedural due process and equal protection (*Medical Marijuana Collectives*). Because the 2007 deadline was set two months after expiration of the ICO, the judge reasoned, dispensaries that were in operation prior to the 2007 deadline, but that did not register afterward (presumably, because the expiration of the moratorium did not warrant it) were denied equal protection. "[N]o one could have anticipated that compliance with a dead statute would be necessary in order to continue as a collective three years later" (*Medical Marijuana Collectives*, p. 23). The judge also struck other provisions of the law on grounds that it violated the right to privacy (e.g., dispensaries were required to keep contact information of their members).

In contrast, Tucson, Arizona, adopted a comprehensive zoning ordinance the same month, which voters approved in a statewide referendum, permitting the cultivation, distribution, and consumption of medical marijuana. By addressing problems in advance, Tucson hopes to avoid the problem plaguing the cities that acted after the fact.

Jurisdictions that allow staff or commissions to allow uses determined to be "similar" to specifically enumerated uses may face difficult definitional problems. Medical marijuana may have characteristics similar to agriculture, home occupations, nurseries, adult uses, pharmacies, processing plants, and retail stores, depending on the circumstances and type of applications. Conditional use permits may be desired to ensure compatibility with surrounding uses but may not be available unless the zoning code authorizes them in specified districts.

[L]icensing and zoning requirements for medical marijuana will require coordination with state law to avoid conflicting requirements.

BUSINESS VERSUS ZONING REQUIREMENTS

Local jurisdictions may benefit from carefully distinguishing between the land-use issues raised by medical marijuana operations and those issues most appropriately addressed through business licensing and business permitting. For instance, operator qualifications, security patrols, inventory levels, record keeping, and other operational issues are properly the subject of annual licenses that may be monitored by a state licensing board or local agencies like the police department. On the other hand, allowable uses, fencing, coverage, parking access, hours of operation, signage, and separation of uses should be handled through local zoning regulations.

The business license and zoning requirements should be coordinated and include cross-references. For instance, a typical business license condition requires that the proposed location be properly zoned and, accordingly, that the businesses obtain clearances from planning divisions in advance of operating. The zoning ordinance may prohibit any medical marijuana facilities that are operated without a current business license. However, attempting to regulate operations directly through zoning, or to control land uses through business licenses, may make each vulnerable to legal challenge.

Many jurisdictions already have relevant experience in coordinating licensing for massage establishments and technicians with zoning requirements. As is the case with such businesses, licensing and zoning requirements for medical marijuana will require coordination with state law to avoid conflicting requirements. Many state laws allowing medical marijuana include both licensing and zoning regulations that may require different enforcement mechanisms and statutory treatment by local governments.

Local jurisdictions in states that allow medical marijuana should audit their zoning codes to ensure that they are consistent with state law and local intent. For instance, cities may add medical marijuana cultivation as a permitted or conditional use in specified districts, with limits on acreage, requirements for indoor cultivation or shielding, and processing controls.

Some jurisdictions require cultivation in residential districts to take place only in owner-occupied structures, with strict limits on the number or size of plants. Processing small amounts may be allowed in residential districts, with larger processing operations reserved to industrial or manufacturing zones. Commercial zones or districts similarly may be restricted by local regulations to specialized activities. Some jurisdictions do not allow cultivation or consumption in commercial zones, although dispensaries are allowed to operate. For example, in Colorado, state law prohibits smoking of medical marijuana on the premises of a dispensary; some jurisdictions have extended such prohibitions on consumption to within a certain radius from the dispensary. Other local governments further address consumption by prohibiting the sale of any food on-site or the sale of smoking devices and paraphernalia.

Most jurisdictions appear to prefer separating medical marijuana dispensaries from sensitive uses, like schools, churches, and each other. For instance, some municipali-

ties require a minimum 1,000-foot distance between the property lines of a site with a dispensary and the nearest residential district. New Mexico prohibits the operation of a dispensary within 300 feet of any school, church, or day care center. However, the Los Angeles experience is that dispensaries may choose to cluster together in high-traffic areas, where they can be easily accessed by potential customers. The zoning regulations should reflect the choices of the local community in how to regulate all aspects of medical marijuana.

COMPREHENSIVE PLAN CONSISTENCY

An important step for local governments addressing medical marijuana use, cultivation, and distribution will be to address the interplay between proposed zoning rules and the local comprehensive plan. As a general matter, zoning and land-use regulations are subordinate to a city or county's comprehensive plan. In some states, inconsistencies between the locally adopted plan and development regulations are vulnerable to legal challenges. This includes any regulations or guidelines that the city may adopt in connection with new land uses. Unfortunately, consistency is not the default law of the land, just a good idea. Many states don't even require a comprehensive plan.

INTERGOVERNMENTAL COOPERATION

In addition to overlapping regulations, local governments are considering intergovernmental cooperation to address the potential impacts of overlapping jurisdictions that regulate the same activity in different ways. In Michigan, for example, many of the townships have adopted ordinances that address coordination with local and state agencies with authority to inspect local businesses, including medical marijuana dispensaries. In a more expansive move, Tuolumne County and the City of Sonora in California are collaborating on regulations for dispensaries. The joint effort is designed to eliminate conflicts between the city's general plan, which listed dispensaries as an accepted use, and the county zoning code, which was silent on their operations.

PRIVACY RIGHTS

Some jurisdictions have expanded their standard business licensing standards to include more robust public reporting and background check requirements as a prerequisite to licensing dispensaries. These new regulations range from mandated background checks on applicants as well as employees and greater on-site security, lighting, and video protocols to monitor activity inside and outside the facility. Colorado requires a physical inspection of the premises prior to issuing a license. In some jurisdictions, like Fort Bragg, California, local rules mandate maintaining records of all patients and primary caretakers (Municipal Code, Sections 9.30.010–9.30.270). The chief of police also is required to conduct a detailed background investigation into the dispensary, its operator, and employees. Additionally, the ordinance provides broad discretion for denying a license. The police chief must make a determination on the good standing of the applicant, including whether he or she has engaged in any "unfair" or "deceptive" acts (although the ordinance does not define the terms).

The extensive investigation and reporting required for dispensaries are likely to be justified as necessary to ensure public safety. However, these efforts may provoke challenges on grounds that they violate legally protected privacy interests, including a legal mandate for health care providers to protect patients' medical records. The ordinance adopted in Los Angeles exemplifies this dynamic. The ordinance requires dispensaries to keep a log of all members' general contact information and mandates disclosure of the information to the police department and other departments under limited circumstances (Municipal Code, Sections 45.19.6 *et seq.* 45.19.6.6). In *Medical Marijuana Collectives*, the trial court found that patients have a "legally protected privacy interest" in the contact and medical information maintained by the dispensary, and that provisions mandating disclosure to the police violated state law. According to the court, "members of collectives have an objectively reasonable expectation of privacy" (*Medical Marijuana Collectives*, p. 26–27). The court suggested that requiring the dispensary to obtain patient consent to disclose could validate these provisions of the ordinance.

WHERE ARE WE HEADED?

We are now seeing a second wave of state statutes authorizing the use of medical marijuana. As public opinion changes and more states address this issue, officials may benefit from observing the practical impact of older initiatives. There are no common approaches or standard practices nationally or even at the state level. Rather, a balance of local interests, perceptions regarding the effects on public safety and health and, in many cases, the proliferation of unlicensed dispensaries appear to be crucial drivers influencing new legislation. Officials, planners, and lawyers in these states are also challenged by existing state statutes and court decisions that further define the reach of local land-use regulations and licensing procedures. Courts have taken some important steps to clarify the issues; we anticipate further challenges to local regulations and their relationship to legitimate public purpose and procedural due process issues, including public review, rights to a hearing, and appeal.

Cover photo © iStockphoto.com/Yarygin; design concept by Lisa Barton.

VOL. 28, NO. 7

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.

IS YOUR COMMUNITY READY FOR MEDICAL MARIJUANA?

7

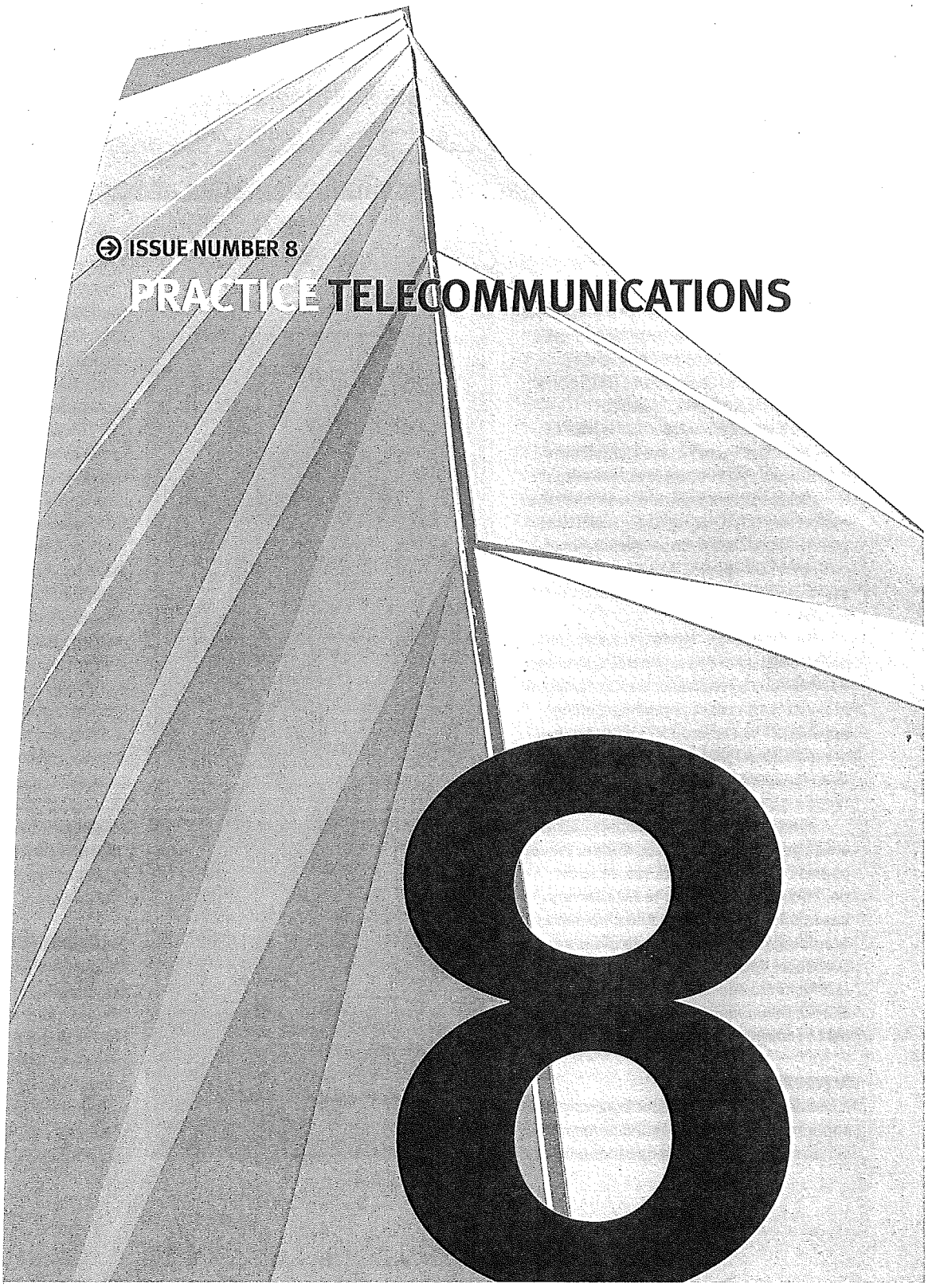
ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

205 N. Michigan Ave.
Suite 1200
Chicago, IL 60601–5927

1030 15th Street, NW
Suite 750 West
Washington, DC 20005–1503

ZONING PRACTICE AUGUST 2011

AMERICAN PLANNING ASSOCIATION



ISSUE NUMBER 8

PRACTICE TELECOMMUNICATIONS

8

Federal Cell Tower Zoning: Key Points and Practical Suggestions

By John W. Pestle

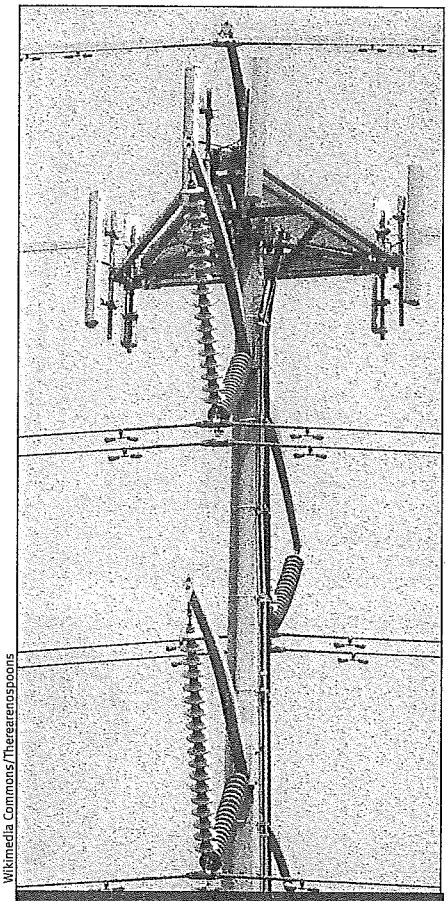
Congress first became involved with cell tower zoning with the passage of the Telecommunications Act of 1996, which added provisions entitled "Preservation of Local Zoning Authority" (47 U.S.C. § 332(c)(7)) to the principal federal telecommunications statute, the Communications Act of 1934.

This article summarizes key points regarding the Act as it has actually been interpreted and applied by the courts and Federal Communications Commission (FCC) during the 15 years since it was passed.

As interpreted by the courts, the Act does not affect many or most substantive provisions of local zoning law. However, it does impose procedural and administrative requirements that are unique to cell tower zoning. It is on these requirements where cell phone companies have been most successful in claims against local governments for violations of the Act.

The stakes are high for planners and public officials because, generally, the remedy imposed by federal courts for violations of the Act is an order approving a zoning application "as applied for" without any of the restrictions that might ordinarily have been imposed in the public interest during the zoning process.

Finally, how the Act is actually applied varies geographically due to different federal appeals courts' interpretations. In addition, how to comply with the Act can vary based on local ordinances and state laws. Accordingly, this article only provides an overview of the main points regarding the Act. Planners and local officials should consult with their municipal attorneys on how best to comply with the Act.



Wikimedia Commons/Thereareenospoons

Many communities encourage or require colocation of cell towers. This example shows how cellular antennas can be added to existing electrical transmission towers.

WHY MORE CELL TOWERS?

A cellular *tower* is a free-standing structure supporting one or more cellular *antennas*. Cellular antennas also can be mounted on buildings, water towers, or other structures. For convenience, the terms *cell tower* and *cellular tower* are used to refer to cell towers, cellular antennas, and associated equipment.

There were over 256,000 cell towers in the United States at the end of 2010. Installations of cell towers continue to increase at a rapid pace due to the demand for increased capacity as cell phones evolve into small mobile computers used to surf the web, receive and transmit videos, pictures, and other data, as well as carry conventional voice conversations. Web surfing, videos, pictures, and data use far more cell tower and provider network capacity than do phone calls. In addition, approximately 100,000 new towers are being added for WiMax, which uses cell phone-type antennas to provide high-speed wireless Internet access on a city or countywide basis, usually for a fee. Finally, the federal government is promoting the expansion of wireless service as one of the main ways to achieve its goal of expanding broadband service availability nationwide.

BACKGROUND ON THE ACT

At the time Congress was considering the Act, the FCC had a proceeding under way to preempt local zoning of cellular towers. The Act terminated that proceeding, and Congress did not generally preempt local zoning or turn the FCC into a federal zoning authority for cellular towers. Instead, the Act basically preserves local zoning while adding some additional federal requirements.

ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of August to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. *John W. Pestle will be available to answer questions about this article. Visit the APA website at www.planning.org and follow the links to the Ask the Author section. From there, 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.*

About the Authors
John W. Pestle is an attorney and chair of the Telecommunications Group at Varnum LLP. He represents municipalities across the country on cable and telecommunications matters. He is a graduate of Harvard, Yale, and the University of Michigan Law School and received the Member of the Year award from the National Association of Telecommunications Officers and Advisors for his representation of municipalities on matters concerning the Federal Telecommunications Act of 1996. Pestle provides model cell tower leases to municipalities (www.varnumlaw.com/lease) and has a frequently updated paper for municipal attorneys that summarizes and provides citations to the various cases that formed the basis for this article. He can be contacted at 616-336-6000, ext. 6725, or by e-mail at jwpestle@varnumlaw.com.

Although the cell tower zoning amendments focused principally on "cell phone service," technically the Act covers "personal wireless services" and facilities used to provide personal wireless services as defined in 47 U.S.C. § 332(c)(7)(C). The terms include the antennas and facilities used to provide not just cell phone service but also "fixed wireless" (similar to microwave point-to-point) services and other similar services.

Finally, municipalities must comply with state and local zoning laws applicable to cell towers. If the state or local law is more restrictive then the Act, then the more restrictive law controls. This follows from the basic principle that the Act is an *overlay* on traditional zoning law, which is largely preserved. For example, in one case, a federal court reversed a local zoning decision because it used aesthetics to deny an application for a cell tower to be located in a public right-of-way. Aesthetics are allowed under the Act, but under the applicable *state law*, municipalities could not consider aesthetics for utility fixtures located in public rights-of-way (cell phone companies were public utilities in the state in question).

REMEDIES

The most troubling aspect of the Act relates to remedies for violations. In contrast to many state laws, the remedy that wireless providers usually request, and which courts frequently impose, is an order granting the cell tower zoning application "as applied for."

The rationale for this result is a provision that directs the courts to handle cell tower zoning cases "on an expedited basis." Cell phone companies contend this means the remedy for violations must be approval of the zoning application, not a remand with consequent delay. In many instances the courts have agreed.

Such decisions can cause well-intentioned municipal actions to have adverse effects. For example, in a 2005 case, the City of Chattanooga found that seven cell tower zoning applications did not comply with a recent zoning ordinance change. Rather than rejecting them and allowing them to be refiled, the city delayed action on the applications to allow the provider a chance to bring them into compliance with the revised ordinance. After the applications sat for a period of time, the provider sued the city, and the federal court ordered all seven applications to be approved as applied for because the city had been too slow in acting!

More recent federal decisions show some tendency to move away from the "approval order" remedy toward the more traditional remedy of a remand for proceedings in compliance with the court's order. However, as a practical matter, municipalities are well advised to be careful to comply with the Act so as to make sure they do not receive the harsh remedy described above.

On the bright side, it is clear that providers cannot get attorney fees or damages either under the Act itself or Section 1983 (Civil Rights Act) for violations. This was resolved in 2005 by the U.S. Supreme Court, supplemented by later decisions of the federal appellate courts.

PROCEDURAL RULES

As interpreted by the courts, the Act creates procedural requirements for cell tower zoning applications that often differ significantly from typical local practices. As a result, procedural challenges are one of the areas where cellular companies have been most successful in appealing local zoning decisions.

Written Decision/Separate Record

Municipalities can inadvertently violate the Act by running afoul of its "written decision/separate record" requirement. These requirements derive from a provision stating that cell tower zoning decisions "be in writing and supported by substantial evidence contained in a written record" (47 U.S.C. § 332 (c)(7)(B)(iii)). Most courts that have considered this issue have adopted a requirement that a municipality's written decision simply must provide a sufficient explanation for the court to be able to conduct a meaningful review of it.

In a significant deviation from local practice in many municipalities, some courts have required that the written zoning decision be *separate* from the written record or transcript of the local zoning proceeding. This means that local decisions may be open to challenge by providers if they are not clearly separated from the hearing or proceeding at which evidence is taken.

Until there is a clear resolution on the "separate record" issue, a practical approach is for a municipality not to make a formal decision at the zoning meeting or city council meeting where the zoning hearing occurs or an appeal is heard. Instead, following the hearing or the close of an appeal the municipality should direct counsel or staff to prepare a written order or decision along specified lines (for example, denying the application generally or approving

it with conditions) for the municipal body to consider at its *next* meeting. Then, at the next meeting, the municipal body considers the proposed decision, modifies it as necessary, and adopts it. Meeting minutes should reflect this. Proceeding in this fashion ensures that the municipality's decision complies with the written decision/separate record requirement.

Perhaps more important, using the two-step approach helps ensure that a municipality's decision is well documented and conforms with local, state, and federal law, thus providing the maximum assurance that it will be upheld on appeal. For example, in a recent California case, a municipality's carefully reasoned decision resulting from the use of the two-step approach appears to have contributed significantly to a federal court's decision to uphold the municipality's denial of several cell tower zoning applications predominantly on aesthetic grounds.

Timely Actions and FCC Shot Clocks

The Act contains a requirement that cell tower zoning decisions occur in a timely fashion, specifically "within a reasonable period of time after the request is duly filed . . . taking into account the nature and scope of such request." However, the FCC has effectively rejected this *individualized* time period approach by setting blanket time frames for action on all cell tower zoning requests through two orders that have come to be known as the "shot clock" orders.

In late 2009 the first FCC order imposed a 90-day shot clock for colocations and 150 days for new cellular towers, and in August 2010 it followed this up with an order clarifying certain points (and rejecting requests for changes). Because the orders are declaratory rulings, no "rule'" was issued. Instead, municipalities and providers have to examine the approximately 40 pages of text that comprise the two FCC orders to attempt to understand and interpret them. And the two orders are not always entirely consistent.

The FCC decided that 90 days (not 150) was reasonable for *colocations* because they often are easier to process than new towers and may involve little or no new construction. The FCC defined colocations in footnote 146 of its initial shot clock order. Because the definition is both highly detailed and adapted from an unrelated proceeding, it is unlikely to coincide exactly with the definition of colocation in local ordinances.

In general, under the shot clocks a zoning application for an additional antenna at a given location is not a colocation if it involves more than a 10 percent increase in height, more than four new equipment cabinets or one new equipment shelter, extends more than 20 feet from the tower, or if excavation is needed outside the current tower site.

Under the shot clocks municipalities must act on a cell tower zoning application within the 90/150-day time frame. If they take longer, the burden is on them to justify to a court why it was reasonable to take longer. In recognition that zoning applications can be incomplete, the orders state that the time frames do not include the time for an applicant to respond to a request for additional information. However, this extension *only* applies if the municipality notifies the applicant within 30 days of filing that the application is incomplete, which creates practical problems when the need for additional information only appears after the review is well under way.

Due to the short time periods involved, municipalities should require a provider to state in its zoning application which shot clock (90- or 150-day) it contends applies to its request. And if the provider contends that it is the 90-day shot clock, it should be required to identify the specific criteria in the FCC shot clock order it meets. By doing this, municipalities will know which time frame the provider contends is applicable and will be able to decide if the claim is accurate. More importantly, municipalities will avoid the harmful situation where the municipality believes that it has 150 days to act while the provider contends that the 90-day shot clock applies.

The FCC orders state that the shot clocks can be extended ("tolled") by mutual agreement. As a practical matter, both parties may want to extend the applicable time periods to avoid a provider having to refile because a municipality believes it needs to deny a zoning application (without prejudice) due to incompleteness, or to prevent a shot clock from expiring.

In response to the shot clocks, some municipalities have adopted detailed application forms for cell tower zoning matters to better ensure that all requisite documents and other information are provided at the outset. In addition, some municipalities are conducting a more detailed check for the presence and completeness of all relevant attachments and signatures at the filing counter *before* a cell tower zoning application will be accepted.

In seminars about the FCC shot clocks, the most frequently asked question is how the shot clocks apply when a municipality has a two-step zoning process—for example a planning commission makes an initial zoning decision and a disaffected party has the option of an internal (not court) appeal to a board of zoning appeals or city council. Municipalities frequently ask: Do the shot clocks apply just to the first step—the planning commission decision—or do they apply to the entire process?

The short answer is that the FCC has refused to address this question, although it was asked do so in its August 2010 order.

With this in mind, municipalities should carefully calendar and compute the 90- and 150-day time periods from the outset and then work backward to make sure that they act within the requisite time period after allowing for all notices, possible internal appeals, preparation of written orders, and the like.

Under the Act there are good legal grounds (not as yet ruled on by the courts or FCC) for contending that the shot clocks legally can *only* apply to a municipality's initial zoning decision (the planning commission decision in the example above). If it is not possible to complete the second step (appeal to board of zoning appeals or equivalent) of the zoning process within the appropriate time frame, then municipalities should seek a mutually agreed-upon extension from the provider.

It may help to point out to the provider that under the Act it has only 30 days from the expiration of a shot clock to file suit for exceeding the clock. In some cases it may be possible to get the provider to agree to an extension (including where only the board of zoning appeals has the authority to grant a needed variance) because the municipality will otherwise contend that the shot clock was met when the planning commission issued its decision. And by the time the board of zoning appeals rules, which is more than 30 days later, the provider will have lost its right to go to federal court, unless it agrees to an extension.

Additionally, the municipality should carefully keep track of any events that might cause the shot clocks to be exceeded. For example, if additional information is needed from the provider, the municipality should request it in writing with a very short time to respond, stating that this is due to the shot clocks and that any delay may cause a delay in the municipality's decision. Careful records such as this can provide a solid basis for either a mutually agreed-upon extension or for justifying to a court the reasonableness of a municipality taking more than 90 or 150 days to act.

Finally, some courts have specifically allowed the "written decision" by a municipality explaining the reasons for denying a zoning request to occur *after* it acts on a zoning request by denying it. In the appropriate circumstance, this may allow a municipality to comply with the shot clocks by issuing a denial within the appropriate time period and then issuing the separate written decision shortly thereafter.

Even though, as of mid-2011, the shot clock orders are currently in effect, there is serious doubt as to their validity. In part this is due to language at the start of the Act preventing any provision of the Federal Communications Act of 1934 from being used to "limit or affect" a municipality's zoning authority other than as set forth in the Act. The Act also indicates that there should be individualized time periods for each application, and the committee report accompanying the Act states that in terms of timing it is not intended to give "preferential treatment" to cell tower zoning applications compared to other zoning matters. Finally, the committee report emphasizes that the time for action should be the "usual time period under the circumstances."

A court appeal of the shot clock orders on these (and other) grounds is currently pending and is likely to be decided in late 2011. Municipalities should periodically check as to the outcome of this appeal, *City of Arlington v. FCC*, No. 10-60039 (5th Cir.).

Substantial Evidence

The Act requires that there be "substantial evidence" supporting a municipality's cell tower zoning decisions. The cases are all in agreement on this; specifically, the courts have formulated the standard that there must be "more than a scintilla but less than a preponderance" of evidence in the written record supporting a municipality's decision. The courts have emphasized that this standard means they must uphold a municipality's decision if the facts meet the preceding low standard *even if* the court would have reached a different conclusion were it free to consider the matter afresh.

In other words, the courts have stated that they cannot substitute their judgment for that of the municipality and try the zoning case anew. However, this deference only applies to factual support for substantive matters such as the impact of a cell tower on property values, the environment, or fragile environmental areas. It does not apply to claims for violations related to the radio frequency emissions or "prohibition of service" provisions of the Act.

The federal court covering mid-Atlantic Coast states has emphasized that the views of residents or laymen should be considered and may be given some weight by a municipality. It also emphasized that the "predictable barrage" of expert testimony from a cell phone provider does not necessarily trump or mandate approval of a cell tower zoning request over the objections of residents. Other courts have also allowed citizen testimony to be used as evidence to support a denial of a cell tower zoning request. However, the issue of how much weight to give to the testimony of ordinary citizens tends to be case-specific and can vary greatly depending on factors such as the number of statements and how detailed and persuasive they are in terms of their facts and reasoning.

Radio Frequency Emissions Preemption

The Act (47 U.S.C. § 332(c)(7)(B)(iv)) prevents municipalities from denying or conditioning cell tower zoning based upon the "environmental effects of radio frequency emissions" (often pejoratively termed "radiation") from cell towers, to the extent they comply with FCC emission rules (47 C.F.R. § 1.1307 *et seq.*). This provision is part of the more general federal preemption of states and municipalities from regulating matters relating to radio frequency (RF) emissions. What municipalities *may* do is enforce the FCC's emission rules, including reviewing a tower's planned compliance with the rules.

Municipalities can face emotional requests that a cellular zoning application be denied due to RF-related health concerns. The best legal advice in these circumstances is three-fold: First, state at the start of a zoning hearing that comments or claims about the adverse health effects from "cell tower radiation" will not be allowed (because federal law prohibits the municipality from considering them). Second, if a speaker attempts to raise such issues, he or she should promptly be stopped on the same grounds. Third, if attempts persist, it may be desirable to point out that allowing testimony against the tower based on RF health effects actually increases the likelihood that the cell tower will be approved. This is because the cases are clear in holding that if the court believes the real reason for denial of a zoning application was on RF-emissions grounds, it will usually order that the zoning application be granted. At a minimum, allowing such testimony gives the cell tower applicant clear grounds to appeal a denial to federal court.

Numerous cases under the Telecommunications Act hold that the allowable grounds for local zoning decisions on cellular towers include aesthetics, impact on property values, proximity to a historic district, safety, environmental impacts, and the impact of a commercial operation on a residential neighborhood.

SUBSTANTIVE ZONING RULES

Because the Act does not affect traditional local substantive zoning principles, it is generally a local decision to choose between having fewer, taller towers with more colocations or more, shorter towers with less colocation. Similarly, numerous cases under the Act hold that the allowable grounds for local zoning decisions on cellular towers include aesthetics, impact on property values, proximity to or view from a historic district or structure, safety (if the tower fell, property or persons could be hurt, especially on adjacent properties), environmental impacts (e.g., fragile areas, wetlands), and the impact of a commercial operation on a residential neighborhood.

The courts have rejected tower company complaints that local zoning requirements can increase the cost of a tower, for example, by requiring that it be camouflaged, or rejecting a single tower to be placed at the top of the scenic ridge in favor of shorter towers on either side that have a less prominent visual impact. Aesthetic objections tied to scenic vistas, proximity to historic districts, or views

from national parks are particularly likely to be upheld by the courts.

The Act prohibits "unreasonable discrimination" in cell tower zoning. The courts have interpreted this to mean that differences in the treatment of cell towers are allowed as long as there is a valid, articulated basis for the difference. For example, just because a cell tower has been allowed in *one* residential area does not mean that they must be allowed other residential areas if there are legitimate reasons for the difference (e.g., visibility, height, impact on the neighborhood or property values, etc.).

CAMOUFLAGING

Well-camouflaged cell towers are nearly invisible. Cellular companies can object due to their increased cost, but camouflaged towers are a very effective way to allow a cell tower to be placed where it is needed with little or no impact on aesthetics, historical sites and views, or property values.

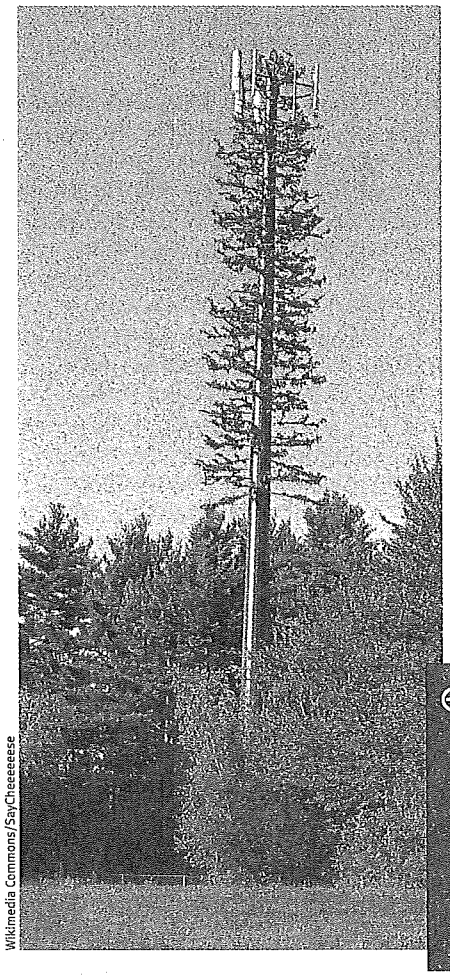
In urban settings, cell phone antennas are routinely concealed in sculptures, signs, billboards, church steeples, water tanks, crosses, and parapets of buildings. Meanwhile, in rural and suburban areas, towers are effectively concealed as trees and are nearly indistinguishable from the real thing (apart from being taller than nearby trees). In the southwest, cell towers are effectively camouflaged as large cactuses (e.g., saguaro cactuses). Many pictures of camouflaged cell towers are available at http://CellularPCS.com/gallery.

From a legal standpoint, there have been virtually no cases under the Act challenging camouflaging requirements in local zoning decisions. However, municipalities are well advised to be highly specific in any camouflaging requirements they impose and to require compliance with photo simulations, as there are examples of unsuccessful camouflaging.

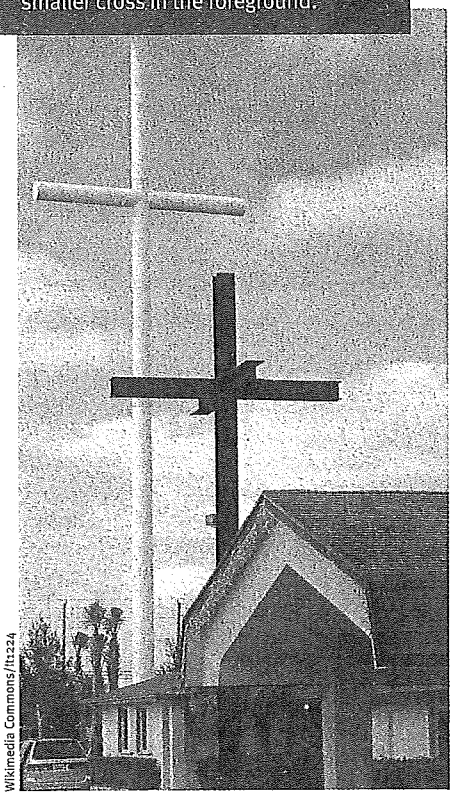
GAPS IN SERVICE AND ALTERNATE SITES

The Act bars municipalities from taking zoning actions that "prohibit or have the effect of" prohibiting personal wireless services. As a practical matter this provision usually refers to claims by providers of gaps in coverage and that there are no feasible alternate sites for the tower proposed to fill the gap. Several points should be noted.

First, small gaps in coverage are expressly allowed by the FCC, and the courts have noted this. It is only "significant" gaps that typically trigger a "prohibition in service" requirement.



Wikimedia Commons/SayCheeeeeese



Wikimedia Commons/tt1224

(Left) Although taller than surrounding trees, towers camouflaged as evergreens can be a logical aesthetic compromise in rural New England. (Below) This 100-foot cross at Epiphany Lutheran Church in Lake Worth, Florida, houses a cell tower. After the new camouflaged tower was completed, the church removed the smaller cross in the foreground.

Second, there are differences between the federal appellate courts on how they apply the "prohibition of service" provision. Municipalities should consult their attorneys to make sure they are following the Act as interpreted by the federal courts in their area.

Third, and perhaps most important, gap analysis deals with radio frequency propagation and computer models that try to *predict* both whether there is a gap and the height and location of the cell tower that will fill the gap. These maps are comparable to a weather map for the day after tomorrow—predictions based upon a range of factors—and for that reason are rarely completely accurate. The computer programs used to generate the map take the topography and buildings in the area and then apply a range of "typical" factors and assumptions selected by the wireless applicant to generate a map showing how RF signals will likely propagate in the area in question. The resulting map costs relatively little to create, is sensitive to its inputs, and can be skewed in favor of the provider's zoning request.

Municipalities should require providers to set forth *all* evidence supporting a gap/prohibition of service claim so that the municipality can consider it. This will prevent providers from withholding significant evidence until a court challenge, or, if they do, will allow the municipality to seek a remand so it can consider the new evidence.

Requiring the applicant to make actual RF measurements in the field is the *only* way to accurately determine the actual size and contours of a gap and the shortest tower at a specific location that will fill it. Typically, a small antenna is suspended from a crane at a given location and height; technicians then measure the signal strength in a variety of directions and distances. They repeat the process with the antenna at different heights to determine the shortest tower height that will

fill the gap. Often this test is combined with a "balloon test," where a balloon approximating the cubic footage of the antennas is suspended at different heights to determine the visual impact of the proposed tower.

Related technical analyses are needed when the claim is that existing antennas are overloaded and a tower must be added to increase the capacity of the system in the area.

In these cases the courts typically require a showing by the provider (or rebuttal by the municipality) to the effect that there are "no feasible alternate sites" for the cell tower in question. This analysis usually involves *both* technical and economic considerations. From an engineering perspective there *rarely* is only one site for an antenna that would fill a gap. However, while a given site may be technically feasible, the provider may reject it because the cost to build or rent is too high. Municipalities are not bound to approve the "least cost" site if a reasonable alternate site (or sites) with greater cost or rent is preferable. Also, some courts give consideration to minimizing the impact or intrusion by the cell tower.

The bottom line is that in "significant gap" or "prohibition of service" cases a municipality usually needs technical assistance to knowledgeably review, comment on, and (where appropriate) challenge a provider on the issues of whether and to what extent there is a gap, its contours, the location and minimum height of a tower necessary to fill a gap, and the feasibility of alternate sites. In a number of states, municipalities can obtain this technical assistance at the provider's expense through local ordinances requiring a deposit for experts and studies at the time of application.

A qualified expert can evaluate a cellular zoning application and provide an analysis and recommendations (e.g., camouflaging suggestions) that will assist in deciding the zoning application. However, because there are cases where municipalities have lost in the courts due to assistance from unqualified experts, municipalities should obtain the names of cases where proposed experts have testified and review any opinions where a court has commented on their credentials. This will help ensure that the experts' work for the municipality will be persuasive with the provider and stand up in court.

DISTRIBUTED ANTENNA SYSTEMS

Distributed Antenna Systems (DAS) are often an attractive alternative to cell towers. Essentially, they involve a series of microcells, each with a small antenna and box mounted on a utility pole. The boxes often are smaller than other boxes or transformers on utility poles and sometimes can be put underground.

DAS is an attractive alternative for providing cell phone service, especially in residential areas, although multiple DAS antennas are required to serve the same geographic area typically served by one cell tower. Another advantage of DAS systems is that *one* set of DAS antennas can serve *all* cell phone companies licensed to serve a community. The downside is that DAS systems are sometimes more expensive to install than towers because of the need for multiple DAS sites to cover the same area as a tower, with the sites interconnected by fiber optic cables.

The cellular industry has resisted some municipal attempts to encourage or force the use of DAS. In one case, the industry mounted a major challenge and was successful in overturning (on federal preemption grounds) a local ordinance that expressed a preference for DAS. The court found that a municipality could not impose such a blanket legislative requirement; however, later decisions from the same court upheld a community's right to consider DAS on a case-by-case basis.

NOTICE OF INQUIRY

In April 2011 the FCC issued a Notice of Inquiry on "key challenges and best practices in expanding the reach and reducing the cost of broadband deployment by improving government policies for access to rights of way *and wireless facilities siting*" (emphasis added). Such notices are normally followed by rulemakings addressing issues revealed by the notice.

Among many other things, the notice asks about challenges or problems that the wireless industry claims has occurred with local zoning and with leasing land from municipalities for cell towers. In the notice, the FCC basically claims that it has the legal authority to further restrict local zoning of cell towers. Likely areas for rulemaking flowing from this notice are (a) preventing municipalities from allowing cell towers in residential areas only by variance; (b) greatly restricting or eliminating zoning approvals for colocations; and (c) putting limits on what must be included in a cell tower zoning application and the fees that may be charged.

CONCLUSION

In 1996 Congress for the first time created federal requirements for cell tower zoning. As interpreted by the courts, the Act creates some challenges for municipal compliance, in part because some of the procedural provisions are quite different from local zoning practice and in part because federal courts often order zoning applications approved when the Act is violated.

By careful attention to the matters described in this article, and by paying attention to the specific interpretations of the Act by the courts in their area, municipalities can ensure that cell tower zoning decisions comply with federal, state, and local law as well as the public interest.

"Truly Twisted Cell Tower" is a multi-carrier cell tower constructed in Albuquerque, New Mexico, by architect Dekker/Perich/Sabatini. Photograph © 2010 Kramer.Firm, Inc. Used with permission; design concept by Lisa Barton.

VOL. 28, NO. 8

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) 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.

NON-PROFIT ORG.
U.S. POSTAGE
PAID
CHICAGO, IL
PERMIT #4342

ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

205 N. Michigan Ave.
Suite 1200
Chicago, IL 60601–5927

1030 15th Street, NW
Suite 750 West
Washington, DC 20005–1503

RECD AUG 08 2011

S2 P12 **********AUTO**3-DIGIT 553
Z4I-D AUGUST 231626
TIM GLADHILL
CITY OF RAMSEY
7550 SUNWOOD DR NW
RAMSEY MN 55303-5137

ARE YOUR CELL TOWER STANDARDS IN COMPLIANCE WITH FEDERAL LAW?

8