

City of Ramsey
Agenda
Regular Planning Commission
Thursday February 2, 2012
7:00 pm
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 work session minutes dated December 1, 2011
Planning Commission meeting minutes dated December 1, 2011
- 5. Note City Council Minutes**
 1. Note the following City Council meeting minutes:

City Council meeting minutes dated November 7, 2011
City Council meeting minutes dated November 22, 2011
City Council meeting minutes date December 13, 2011
- 6. Public Hearing/Commission Business**
 1. Appointment of Chairperson and Vice Chairperson
 2. Public Hearing - Consider an Ordinance Amending City Code Section 117-118 Entitled 'The COR District'
 3. Discuss 2030 Comprehensive Plan Assumptions Related to Pending Updates to the City's Comprehensive Sanitary Sewer and Water Plans
 4. Discussion of Pending Zoning Code Amendments
 5. Staff Update
 6. Zoning Bulletins
- 7. Commission/Staff Input**
- 8. Adjournment**

Regular Planning Commission

4. 1.

Meeting Date: 02/02/2012

By: JoAnn Shaw, Community Development

Information

Title:

Approve the following Planning Commission meeting minutes:

Planning Commission work session minutes dated December 1, 2011

Planning Commission meeting minutes dated December 1, 2011

Background:

n/a

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

12.01.11 Work Session

12.01.11

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	01/23/2012 10:19 AM
Form Started By: JoAnn Shaw		Started On: 01/23/2012 10:09 AM
		Final Approval Date: 01/23/2012

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

The Ramsey Planning Commission conducted a work session on Thursday, December 1, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Chairperson Gary Levine (arrived at 6:10 p.m.)
 Commissioner Randy Bauer
 Commissioner Ralph Brauer
 Commissioner Joseph Field
 Commissioner Rob Schiller
 Commissioner Gary Van Scoy

Members Absent: Commissioner Andrew Dunaway

Also Present: Senior Planner Tim Gladhill
 Associate Planner/Environmental Coordinator Chris Anderson
 Deputy City Administrator/Community Development Director
 Heidi Nelson
 Development Manager Darren Lazan
 Consultant Kendra Lindahl
 Councilmember David Elvig
 Councilmember Colin McGlone
 Management Intern Patrick Brama

CALL TO ORDER

Vice Chairperson Van Scoy called the regular meeting to order at 5:47 p.m.

APPROVAL OF AGENDA

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

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

COMMISSION BUSINESS

Case #1: Review Proposed Amendment to the COR Design Framework

Senior Planner Gladhill introduced Planning Consultant Kendra Lindahl.

Planning Consultant Lindahl presented the Design Framework for the COR. She started with the original Town Center Guidelines, and the need to update based on the new plan. Ms. Lindahl

stated the importance of calling the design framework versus guidelines. The Zoning Code will focus on the uses and the design standards will be located in the Framework. The framework will be divided into two sections; the overall framework and the sub-district standards.

Planning Consultant Lindahl continued stating that the COR vision has changed, however, the strict neighborhood design guidelines are kept in the center of the development and softened as the development moves out to the edge. She stated one of the priorities was to design based on street hierarchy. She defined City/Developer expectations, presented additional architectural standards and presented changes to the sign code.

Commissioner Van Scoy asked if the architectural standards will replace the review board.

Senior Planner Gladhill stated the design framework will make it easier to review plans by having one document to review and developers will have everything they need to know in one document as well.

Development Manager Lazan provided background on the Master Declaration.

Commissioner Brauer shared original Design Guidelines for comparisons.

Discussion ensued regarding the history of the City's Architectural Review Board and the Developer's Master Association and possible Architectural Review Committee.

Commissioner Van Scoy stated he liked the additional detail. He asked how the new sub-districts compare to the original sub-districts.

Development Manager Lazan presented background on Development Plan 5.03. He noted retail and additional flexibility on the western portion of the development.

Commissioner Van Scoy asked about additional requirements along Sunwood Drive, a destination street.

Development Manager Lazan clarified there would be specific streetscape standards for Sunwood Drive.

Commissioner Van Scoy asked about the amount of parking in Districts 2 and 2a.

Development Manager Lazan stated that parking was more traditional in this area versus other areas of The COR, but still lower than standard.

Commissioner Bauer asked how structured parking is factored into the maximum parking requirements.

Development Manager Lazan provided background on the Parking Use and Maintenance Agreement (PUMA) and structured parking in the COR-1 sub-district.

Discussion ensued regarding the funding of ramps.

Commissioner Van Scoy asked about parking standards in COR-2a and COR-2b along the streets and how many spaces would be allowed to be parked along the roadway.

Development Manager Lazan stated in COR 2, the building frontage requirement is eliminated and replaced in portion by landscape screening or architectural walls.

Consultant Lindahl stated that the Development Plan chooses the primary frontage and explained the percentage of “build-to” that shall be required. Parking is allowed in the front yard. She explained the 40% build-to or building coverage.

Discussion ensued regarding appropriate building frontage and placement.

Commissioner Brauer stated this looks like too traditional of a retail area. He provided examples of alternative parking strategies for retail. Commissioner Brauer also expressed concern that the City should complete this in a fashion that acknowledges the original vision.

Discussion ensued regarding the changes from Ramsey Town Center Master Plan and The COR Development Plan.

Consultant Lindahl stated the importance of the streetscape serving as screening for certain areas of the development, especially along the parkway.

Development Manager Lazan provided background on the street hierarchy and standards tied to street types.

Commissioner Brauer provided an example of Stantonville and the need of that development to drive from store to store, being auto dominant. Commissioner Brauer stated there were certain dangers for pedestrians in this environment and congestion issues. He also expressed a desire to ensure proper function of the roundabouts and give consideration to pedestrian walkability.

Discussion ensued regarding the design of The COR Development Plan.

ADJOURNMENT

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

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

The Planning Commission work session adjourned at 7:00 p.m.

Respectfully submitted,

Tim Gladhill
Senior Planner

ATTEST:

JoAnn Shaw
Planning Division Secretary

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

The Ramsey Planning Commission conducted a regular meeting on Thursday, December 1, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

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

Members Absent: None

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

CALL TO ORDER

Chairperson Levine called the regular meeting to order at 7:05 p.m.

CITIZEN INPUT

None.

APPROVAL OF AGENDA

Motion by Commissioner Dunaway, seconded by Commissioner Van Scoy, to approve the agenda with the following two additions from the 5:30 p.m. work session:

Discussion of Metropolitan Council's 2040 Framework Plan Process
Review Findings of Development Cost Study

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

APPROVE PLANNING COMMISSION MINUTES

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

- 1) Board of Adjustment public hearing and regular meeting minutes dated October 6, 2011
- 2) Planning Commission public hearing and regular meeting minutes dated November 3, 2011

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

NOTE CITY COUNCIL MINUTES

The Council minutes were noted.

PUBLIC HEARINGS/COMMISSION BUSINESS

Case #1: Public Hearing – Request for a Home Occupation Permit to Operate a Youth Horse Ranch at 7202 181st Avenue NW; Case of Robin Veach Fitzgerald (Second Chance Youth Ranch)

Public Hearing

Chairperson Levine called the public hearing to order at 7:07 p.m.

Presentation

Senior Planner Gladhill presented the Staff Report.

Citizen Input

Merlin Hunt, 17860 Nowthen Boulevard NW, stated he has no objection to the request as written in the application. The Fitzgerald's are the only ones living in the house and he would assume no overnight volunteers or clients and hopefully there will not be any drug rehabilitation allowed with this program. He asked how many horses are allowed on 7½ acres without special approvals.

Senior Planner Gladhill stated the applicant owns two contiguous parcels, which give them approximately 12 acres. City code allows for two horses with three acres and an additional horse for every full acre over three. The applicant will be within City Code with the six to eight horses the applicant is applying for.

Associate Planner/Environmental Coordinator Anderson stated on a 12½ acre parcel per City Code 11 horses would be allowed.

Glenna Anderson, 7280 181st Avenue NW, stated she is in attendance for informational purposes. Her biggest concern was if this was going to be a residential program. Her house is within visual range of the barn and pasture.

Mr. Hunt stated there is a 50 yard meadow/wetland at the corner where their properties match up and anything the applicant would put in the southeast corner would drain onto his property. He would ask that they don't deposit their waste in that corner.

Robin Veach Fitzgerald and Scott Fitzgerald, 7202 181st Avenue NW, the applicants, presented a drawing of the property. They stated it is a day program. They would like to start with an a.m. and p.m. program and possibly one full day session to see what works best for the kids. They stated they are not certified as professional chemical dependency counselors and that is not part of the program. The children will be emotionally distressed; however they will be able body children. It will be a peaceful, beautiful place for them to come to find peace and healing.

Chairperson Levine asked if they had any type of licensing for the program.

Ms. Veach Fitzgerald answered some of the volunteers have their counseling license, which will be a benefit to the program. Basically, it is people who want to help kids and have a passion for connecting with kids.

Mr. Fitzgerald stated it is a faith based organization and the basis of the program is a place for young people to come and learn to bond with animals. They learn how to take care of a horse, build some self-esteem and allow us to be their mentor.

Ms. Veach Fitzgerald explained the program and a typical session. The age group will be five and on up.

Commissioner Bauer asked how they will get kids involved.

Ms. Veach Fitzgerald stated that by word of mouth interest has increased, they have been going to horse expos and had a booth at Ramsey Happy Days. She works for the Osseo School District and the staff has given referrals, and through council groups. They will be open to the community, so it won't necessarily be only kids that have problems. They don't want to turn anyone away.

Commissioner Bauer asked how the program is financed.

Mr. Fitzgerald stated it is funded through donations. This is not a fee based organization.

Commissioner Field questioned if the applicants have had coaching as to how to manage what they are going to be doing particularly with the kids. His concern was pertaining to the neighbors; one of the findings states that the proposed use will not be disturbing to the existing or future neighboring uses.

Mr. Fitzgerald stated that every youth will have a coached volunteer from the time they walk on the premise to the time they walk off; they will have one on one mentoring.

Discussion ensued regarding parking.

Mr. Hunt stated he has hunters on his property and asked if during the hunting season that was going to be a problem.

Senior Planner Gladhill stated that any hunting activities need to be coordinated with the Police Department.

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

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

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

Commission Business

Senior Planner Gladhill suggested additional findings that could be added based on the discussions. “That the Applicant has stated that there will be no services provided related to persons with disabilities as defined by Minnesota Statute on the Subject Property”, “That the Applicant has stated that the Home Occupation will not require additional State or County Licenses”, “That the Applicant has stated that appropriate background checks will be performed for all volunteers”.

Motion by Commissioner Brauer, seconded by Commissioner Van Scoy to recommend that City Council adopt findings of fact relating to the request for a Home Occupation Permit with the additional findings language as listed above.

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

Motion by Commissioner Bauer, seconded by Commissioner Brauer to recommend that City Council approve the resolution granting approval of the request, contingent upon compliance with the City Staff Review Letter dated November 23, 2011, based on findings of fact and declaring the terms of the same.

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

Commissioner Brauer left the meeting at 8:09 p.m. and returned at 8:22 p.m.

Case #2: Public Hearing – Request for a Conditional Use Permit to Permit Motor Vehicle Sales at 8175 Riverdale Drive NW; Case of Quality RV

Presentation

Management Intern Brama presented the Staff Report.

Greg Aberle, the property owner stated he is in support of what Quality RV wants to do.

Brian Achtelik, Business Manager for Quality RV, stated they are seeking more space because they have just had their best year ever and it makes sense to find an existing facility.

Commissioner Bauer questioned the condition requiring bituminous requirements be met if the Armstrong/Highway 10 interchange is not constructed by 2016.

Associate Planner/Environmental Coordinator Anderson stated there have been internal discussions and the City's goal, although optimistic, is to see that interchange within the next two to four years. The five year timeframe would allow the City to be in a better position to know where the project will be. There was concern with having an open ended provision that would allow the deviation from the bituminous requirement. Funding is uncertain at this time and it is not definitive that the project will move forward. He stated that the applicant was comfortable with the sunset clause.

Commissioner Bauer stated he would like to have the Class V allowed until the City knows the project is not going forward.

Discussion ensued regarding the bituminous requirement and a sunset clause.

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

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

Chairperson Levine closed the public hearing at 8:30 p.m.

Commission Business

Motion by Commissioner Bauer, seconded by Commissioner Field to recommend that the City Council adopt the findings of fact related to a request for a conditional use permit to permit motor vehicle sales in the B-2 Highway Business District on the following properties: 8175, 8151, and 8101 Riverdale Drive NW.

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

Motion by Commissioner Bauer, seconded by Commissioner Schiller to recommend that the City Council adopt the resolution approving the conditional use permit based on findings of fact and declaring the terms of the same.

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

Case #3: Consider Resolution Declaring Proposed Modifications to Tax Increment Finance Districts #1 & #2 to be Consistent with the 2030 Comprehensive Plan; Case of the City of Ramsey

Presentation

Economic Development/Marketing Manager Backman presented the Staff Report.

Discussion ensued regarding TIF expiration dates and the movement of funds between the districts and projects.

Economic Development/Marketing Manager Backman stated that if the modification for TIF District #1 is not approved, 3.1 million dollars would be at risk for three projects not being accomplished, the rail station, the ramp and the Residence at the COR.

Commissioner Bauer stated he is uncomfortable with the language and would like it to be a clear intent with the rail and parking ramp project and restricted to those two projects.

Motion by Commissioner Field, seconded by Commissioner Schiller to adopt Resolution #11-12-235 declaring proposed modifications to Tax Increment Finance (TIF) Districts #1 & #2 to be consistent with the 2030 Comprehensive Plan.

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

Case #4: Discussion of Metropolitan Council's 2040 Framework Plan Process

Presentation

Senior Planner Gladhill presented the Staff Report.

This case was for information purposes only.

Case #5: Review Findings of Development Cost Study

Presentation

Senior Planner Gladhill presented the Staff Report.

This case was for information purposes only.

Case #6: Staff Update

The Staff Update was noted.

COMMISSION/STAFF INPUT

ADJOURNMENT

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

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

The regular meeting of the Planning Commission adjourned at 9:13 p.m.

Respectfully submitted,

Tim Gladhill
Senior Planner

ATTEST:

JoAnn Shaw
Planning Division Secretary

Regular Planning Commission

5. 1.

Meeting Date: 02/02/2012

By: JoAnn Shaw, Community Development

Information

Title:

Note the following City Council meeting minutes:

City Council meeting minutes dated November 7, 2011
City Council meeting minutes dated November 22, 2011
City Council meeting minutes date December 13, 2011

Background:

n/a

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

11.07.11

11.22.11

12.13.11

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	01/23/2012 10:42 AM
Form Started By: JoAnn Shaw		Started On: 01/23/2012 10:23 AM
		Final Approval Date: 01/23/2012

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

The Ramsey City Council conducted a regular meeting on Monday, November 7, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

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

Members Absent: Councilmember Jeffrey Wise

Also Present: City Administrator Kurtis Ulrich
Deputy City Administrator Heidi A. Nelson
Public Works Director Brian Olson
Senior Planner Timothy Gladhill
Police Chief James Way
Finance Director Diana Lund
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.

2. PRESENTATION

None.

3. CITIZEN INPUT

None.

4. CONSENT AGENDA

Motion by Councilmember Elvig, seconded by Councilmember McGlone, to approve the following items on the Consent Agenda, as amended, removing Item 4:05 and considering Item 4:08 as Item 7:03 under Council Business:

- 4:01 Approve of Institution Community Work Crew Contract for 2012
- 4:02 Approve the following Council Meeting Minutes:
- 1) City Council Work Session – August 30, 2011
 - 2) City Council Work Session – September 6, 2011
 - 3) City Council Special – September 6, 2011
 - 4) City Council Work Session – September 27, 2011
 - 5) City Council Special – September 27, 2011
 - 6) City Council Regular – September 27, 2011
 - 7) City Council Work Session – October 18, 2011
 - 8) City Council Work Session – October 25, 2011
- 4:03 Approve License Applications:
- Transient Merchant License
Abundant Life Ministries to sell Christmas Trees
- Special Events Permit
City of Ramsey HRA for larger signage than allowed by Code
November 11 VA Grand Opening and November 16 Rail Event
- Motor Vehicle
A Plus Auto Sales, Inc., 7751 Highway #10 #5, Ramsey, MN 55303
- 4:04 Approve Request to Declare Surplus Property, 1998 Ford F150 Vehicle #555 and authorize sale/auction of same
- ~~4:05 Introduce Ordinance for 2012 Schedule of Rates, Fees and Charges and Call for a Public Hearing~~
- 4:06 Adopt Resolution #11-11-214 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received During the Period of October 19, 2011 through November 2, 2011
- 4:07 Adopt Resolution #11-11-215 Accepting the State of Minnesota Agency Agreement No. 99948 with the Department of Transportation for Projects Involving the Delegated Contract Process for Receiving Federal Transportation Funding (Consider MnDOT Agreement related to Federal Participation for Transportation Related Projects)
- ~~4:08 Adopt Resolution Requesting Certain Practices of All Utilities Doing Business in the City of Ramsey~~
- 4:09 Report from Finance Committee of October 25, 2011:
- 1) Award Contract for Professional Audit Services – *Ratify the recommendation of the Finance Committee to enter into five-year contract with MMKR for the City's auditing service at the not-to-exceed amount prices quoted within their proposal.*
 - 2) Adopt Resolution #11-11-216 Restricting and/or Committing Revenue Sources in Special Revenue Funds and Adopt Resolution #11-11-217 Amending the Fund Balance Policy in Regard to the Implementation of Governmental Accounting Standards Board (GASB) Statement 54 – *Ratify the recommendation of the Finance Committee to Adopt Resolution #11-11-218 Restricting and/or Committing Revenue Sources in Special Revenue Funds; and, Adopt Resolution #11-11-219 Amending the Fund Balance Policy in Regard to the Implementation of Governmental Accounting Standards Board (GASB) Statement 54.*
 - 3) Report on Fiscal Disparities – *Informational only.*
 - 4) Credit Card Update – *Informational only.*
- 4:10 Report from Public Works Committee of November 7, 2011:

- 1) Consider Vacation of Right-of-Way at 14241 Fluorine Street NW – *Ratify the recommendation of the Public Works Committee to undertake a formal right-of-way vacation process and schedule a public hearing with the City initiating and paying the required fees/escrows.*
- 2) Consider Proposal from Metro Area Repeater Association to Install Skywarn Facilities on Water Tower #2 – *Ratify the recommendation of the Public Works Committee to postpone consideration of the request by Metro Area Repeater Association to install Skywarn facilities on Water Tower #2 to allow time for MARA to provide the names of other municipalities that have allowed this type of equipment on its water towers, costs that would be involved, and agreeing to cover all costs for installation, inspection, and maintenance.*
- 3) Contracted Street Sweeping – *Ratify the recommendation of the Public Works Committee to approve Option 3, authorize staff to seek RFPs for 2012 spring street sweeping, and include an add alternate for disposal of road debris.*
- 4) Sanitary Sewer Maintenance Policy – *Ratify the recommendation of the Public Works Committee to authorize staff to formalize the Sanitary Sewer Maintenance Policy.*
- 5) Consider Change Order for City Improvement Project #11-09; Alpine Drive Overlay – *Ratify the recommendation of the Public Works Committee to approve a change order for Improvement Project #11-09, Alpine Drive Overlay, for subgrade preparation in the amount of \$12,000.*
- 6) Consider Guard Rail Enhancements for the Parking Ramp – *Considered by the City Council on October 25, 2011*

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

5. APPROVE AGENDA

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

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

6. PUBLIC HEARING

None.

7. COUNCIL BUSINESS

7.01: Introduce Ordinance Amending City Code Section 54-96 through 102 Titled Recreational Vehicles

Police Chief Way reviewed the staff report.

The Council discussed the proposed amendment and agreed to prohibit studded vehicles.

City Attorney Goodrich recommended an amendment to Section 54-97.

Police Chief Way answered the Council's questions and indicated information is available on the City's website and a map will identify designated routes.

Motion by Mayor Ramsey seconded by Councilmember McGlone, to introduce the ordinance amending City Code Section 54-96 through 102 Titled Recreational Vehicles, amending Section 54-97 Definitions, to add a 4th paragraph indicating: Except as amended above, no other defined terms in Section 54-97 are affected by this amendment.

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

7.02: Request for an Amended Conditional Use Permit for an Accessory Dwelling at 16101 Ramsey Boulevard NW; Case of Anthony Reed

Senior Planner Gladhill reviewed the staff report.

The Council discussed the request and asked questions of Senior Planner Gladhill.

Motion by Councilmember Tossey, seconded by Councilmember Elvig, to adopt the Resolution approving the findings of fact and adopt the Resolution approving the conditional use permit and request for stucco fence.

Further discussion: City Attorney Goodrich recommended the findings of fact and conditional use permit be acted on separately. Councilmembers Tossey and Elvig withdrew the motion on the floor.

Motion by Councilmember Elvig, seconded by Councilmember Tossey, to adopt Resolution #11-11-220 approving Findings of Fact #0894 favorable to the applicant, Anthony Reed at 16101 Ramsey Boulevard NW.

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

Motion by Councilmember Elvig, seconded by Councilmember Tossey, to adopt Resolution #11-11-221 approving the conditional use permit and request for stucco fence.

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

7.03: Adopt Resolution #11-11-XXX Requesting Certain Practices of All Utilities Doing Business in the City of Ramsey

Councilmember McGlone stated his rationale for not supporting adoption of this resolution.

The Council discussed the resolution and support was expressed to protect Ramsey's residents, especially in the event of eminent domain, and to assure utility companies "play fair" with residents.

Motion by Councilmember Tossey, seconded by Councilmember Strommen, to adopt Resolution #11-11-222 Requesting Certain Practices of all Utilities Doing Business in the City of Ramsey.

Motion by Councilmember McGlone, seconded by Mayor Ramsey (for discussion purposes), to amend Resolution #11-11-222 to add language to address only City-owned property rather than private property.

Further discussion: The Council discussed that the intent of the resolution is to communicate City policy, which will protect residents and improve its working relationship with utility companies. Councilmember McGlone advocated amending the resolution so it only addressed City-owned property, stating again that private property dealings are not under the City's purview.

Amendment failed. Voting Yes: Councilmember McGlone. Voting No: Mayor Ramsey, Councilmembers Elvig, Backous, Strommen, and Tossey. Absent: Councilmember Wise.

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

8. MAYOR, COUNCIL AND STAFF INPUT

Councilmembers and City Administrator Ulrich announced the upcoming school district election, meetings and events.

John Enstrom, 8702 – 181st Avenue NW, invited all to visit Veteran's Park on Veteran's Day and advised of his website.

9. ADJOURNMENT

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

Motion carried.

The regular meeting of the City Council adjourned at 7:44 p.m.

Respectfully submitted,

Kurtis G. Ulrich
City Administrator

ATTEST:

Jo Ann M. Thieling
City Clerk

Drafted by Carla Wirth
TimeSaver Off Site Secretarial, Inc.

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

The Ramsey City Council conducted a regular meeting on Tuesday, November 22, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

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

Members Absent: Mayor Bob Ramsey

Also Present: City Administrator Kurtis Ulrich
 Deputy City Administrator Heidi A. Nelson
 Fire Chief Dean Kapler
 Public Works Director Brian Olson
 City Engineer Tim Himmer
 Environmental Coordinator Chris Anderson
 Senior Planner Timothy Gladhill
 Police Chief James Way
 Parks Supervisor Mark Riverblood
 Building Official Mick Kaehler
 Fire Marshal Matt Kohner
 City Attorney William Goodrich

1. CALL TO ORDER

Acting Mayor Wise called the regular meeting of the Ramsey City Council to order at 7:01 p.m. and led in the Pledge of Allegiance to the Flag.

2. PRESENTATION

2.01: Recognition of Ramsey Garden Club

Acting Mayor Wise extended the City's appreciation to the Ramsey Garden Club for its contribution to the City. At the invitation of Acting Mayor Wise, each member introduced themselves.

3. CITIZEN INPUT

None.

4. CONSENT AGENDA

Motion by Councilmember McGlone, seconded by Councilmember Elvig, to approve the following items on the Consent Agenda as amended to remove Item 4:09 for consideration as Item 7:05 under Council Business and remove Item 4:08 for consideration as Item 7:06 under Council Business.

- 4:01 Receive Cash and Investments for Period Ending October 31, 2011
- 4:02 Receive September 2011 Financial Reports – General Fund and Enterprise Funds
- 4:03 Schedule Public Hearing to Consider Adoption of the 2012-2016 Capital Improvement Program (CIP)
- 4:04 Approve Council Meeting Schedule for December
- 4:05 Consider Extension and Amendment to Site Plan Approval to Residence at The COR; Case of F & C Ramsey, LLC
- 4:06 Consider Extension and Amendment to Site Plan Approval of Suite Living; Case of Toti Development
- 4:07 Consider Amendment to Purchase Agreement – Suite Living
- ~~4:08 Request for Approval to Assign Bonestroo Contract to Stantec~~
- ~~4:09 Introduce Ordinance for 2012 Schedule of Rates, Fees, and Charges and Call for a Public Hearing~~
- 4:10 Adopt Resolution #11-11-223 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received During the Period of November 3, 2011 through November 16, 2011
- 4:11 Adopt Resolution #11-11-224 Rescinding Resolution #11-10-213 and Adopting this Resolution Establishing a Joint Fire Services Study Group
- 4:12 Adopt Resolution #11-11-225 to Consider Extension to Final Plat Approval of Major Plat Known as COR ONE; Cases of the City of Ramsey Housing and Redevelopment Authority (HRA)
- 4:13 Adopt Resolution #11-11-226 Authorizing 1st Partial Payment to Knutson Construction for IP 10-22 Municipal Parking Ramp, Phase II
- 4:14 Adopt Resolution #11-11-227 Authorizing the City of Ramsey to Participate in the Multi-Jurisdictional Anoka County Hazard Mitigation Plan
- 4:15 Adopt Resolution #11-11-228 Authorizing Final Payment to Landmark Concrete, Inc. for IP 10-28 150th Lane Sidewalk
- 4:16 Adopt Resolution #11-11-229 Authorizing Partial Payment to Sandstrom Land Management LLC for IP 09-24 COR Wetland Mitigation
- 4:17 Adopt Resolution #11-11-230 Authorizing Partial Payment to Douglas-Kerr Underground LLC for IP 11-21 Armstrong/Bunker
- 4:18 Adopt Resolution #11-11-231 Authorizing Partial Payment to Omann Brothers Paving, Inc. for IP 10-25 Chameleon Street

4:19 Adopt Resolution #11-11-232 Authorizing Partial Payment to County Line Excavating LLC for IP 09-25 Dysprosium Street

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

5. APPROVE AGENDA

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

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

6. PUBLIC HEARING

None.

7. COUNCIL BUSINESS

7.01: Adopt Ordinance #11-XX Amending City Code Section 54 96-102 Titled Recreational Vehicles (Snowmobiles)

Police Chief Way reviewed the staff report.

The Council acknowledged there had been an effort in the past to ban snowmobiling from southwest Ramsey and if the ordinance was not followed, it may reconsider this ordinance.

Motion by Councilmember McGlone seconded by Acting Mayor Wise to waive the reading of and adopt Ordinance #11-16 amending Chapter 54 of the Ramsey City Code, which Chapter is known as the Traffic and Vehicles Chapter of the Ramsey, Minnesota, City Code.

A roll call vote was performed by the Recording Secretary:

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

Motion carried.

7.02: Request for an Interim Use Permit to Allow for the Operation of a Church in the B-1 Business District on the Property Located at 5900 167th Avenue NW; Case of Rum River Retail Ventures, LLC

Environmental Coordinator Anderson reviewed the staff report.

Councilmember McGlone stated his rationale for opposing this request based on concern for the occupants since the building would not have a fire suppression sprinkling system.

Fire Marshal Kohner answered questions of the Council relating to the application and Chapter 1306 of the Building Code, the requirement for a fire suppression sprinkling system. He clarified he is not opposed to a 9-month temporary permit, which can be granted if agreed upon by the Fire Chief and Building Official.

Environmental Coordinator Anderson explained, if approved, the permit would go into effect January 3, 2012, so it would expire on October 3, 2012. The Planning Commission recommended the Council consider waiving the future application fee should they follow through with installation of the fire suppression system and want an extension. Staff would not be opposed to the extension once the system is in place and operational.

Councilmember Tossey indicated he had been opposed to this request when first presented; however, after speaking with the building owner and being assured the building owner would pay for the fire suppression system he was comfortable supporting this application.

Building Official Kaehler explained Chapter 1306 was optional and adopted by Ramsey in 2005 so the City had the ability to amend, if desired. He answered questions of the Council relating to the “temporary” status of this use.

The Council discussed the application and noted that the first deadline is March 1, 2012, and failure to meet any one of the benchmarks would be cause to bring it back to the Council.

Motion by Councilmember Elvig, seconded by Councilmember Tossey, to adopt Resolution #11-11-233 Adopting Findings of Fact #0895 Relating to a Request to Allow for the Operation of a Church in the B-1 Business District and to adopt Resolution #11-11-234 Approving the Issuance of an Interim Use Permit to Allow for the Operation of a Church in the B-1 Business District Based on Findings of Fact #0895, and Declaring the Terms of Same.

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

7.03: Consider Use of City Septic System Repair Policy for a Failing Septic System at 16361 Ferret Street NW

City Engineer Himmer reviewed the staff report.

The Council discussed the request and asked questions of staff.

City Administrator Ulrich presented a rationale to consider this request to meet the minimum health and safety standards in the community since a failed septic system becomes a nuisance for the neighborhood. The project cost would come from the Enterprise Fund, not the General Fund, and be assessed to the property for collection through property taxes.

City Engineer Himmer explained the City's current policy, noting it was discussed in 2009 and supported by the Council as a last resort, making it incumbent on the property owner to show justification and prove they have gone through all channels and been denied.

Building Official Kaehler described the degrees of failing septic systems and advised in this case there is surface discharge that results in a health hazard and order for repair or replacement in 45 days.

Council consensus was reached that a policy is in place that provides the ability to address failing septic systems causing health hazards. Consensus was also reached to review this policy, adopted in 1992, at a future Work Session to determine whether it should be updated.

Motion by Councilmember Backous, seconded by Councilmember McGlone, to approve the use of the Septic System Repair Policy to repair the failing septic system at 16361 Ferret Street NW, subject to requiring the property owner to submit evidence that they have investigated all other potential funding options and are ineligible to receive financing through such programs.

Further discussion was held by the Council relating to the request and motion for approval; specifically whether the City is assured these funds would be recovered should the house be sold under mortgage value. City Attorney Goodrich advised this assessment would be spread over 10 years, paid through property taxes with interest, and take position ahead of the mortgage. He recommended, based on the 100% petition, that the public hearing be waived subject to the applicant's bank signing the agreement to assure the assessment held position ahead of the mortgage. To verify ownership, City Attorney Goodrich indicated he would obtain an owner encumbrance report.

Kara Butler, 16361 Ferret Street NW, reported on their efforts to secure funds to repair the failing septic system and will know within two weeks whether they will receive "Fix Up Funds." They have exhausted all other funding avenues. She stated since 2009 they have attempted legal recourse against the previous owners since the septic system had been certified by a professional for inspection. However, they have limited funds so it is difficult to pursue a lawsuit.

City Attorney Goodrich explained the City cannot assess without a public hearing unless 100% of the people to be assessed waive the public hearing.

Jeff and Kara Butler, applicants, stated they would waive the public hearing. Ms. Butler advised that the property title is held in four names: Jeff Butler, Kara Butler, and both of Kara Butler's parents. Ms. Butler advised she has power of attorney and is able to sign for all four.

Amendment motion by Councilmember Backous, seconded by Councilmember McGlone, to make the motion contingent on waiving the public hearing, the applicant's bank giving the City prior position, obtaining an owner encumbrance report, and obtaining a subrogation if other payment is made to the Butlers (net proceeds minus legal and court costs).

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

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

7.04: Approve Anoka Ramsey Athletic Association's Request to Fund a Storage and Batting Cage Building at Central Park

Parks Supervisor Riverblood reviewed the staff report.

The Council discussed the request and indicated it was not comfortable waiving the building permit fee because it wanted to assure the storage building was properly constructed and well inspected. The Council also discussed the request of another athletic association to construct a building in Elmcrest Park. Concern was expressed about allowing associations to construct single function buildings on City property.

Parks Supervisor Riverblood answered questions of the Council relating to use of the building, advising the City has the authority to determine the appropriate use of the building including access. It is intended that this building will serve the Anoka Ramsey Athletic Association (ARAA) for the purpose of sport equipment storage.

Chad DeMeier, ARAA Treasurer and Project Lead, described their fundraising efforts and intention to use the building for storage.

Motion by Councilmember Strommen, seconded by Councilmember Elvig, to approve the Memorandum of Understanding and Commitment Agreement, acknowledging ARAA's donation of a 640 sq. ft. storage building at Central Park, pursuant to the draft agreement, subject to payment of the building permit fees, submittal of a copy of the contract between the general contractor and ARAA that authorizes the work in lieu of requiring an escrow, not requiring the ARAA to cover the monthly electrical costs, and subject to review by the City Attorney.

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

7:05 Introduce Ordinance for 2012 Schedule of Rates, Fees, and Charges and Call for a Public Hearing

Councilmember McGlone stated his rationale for voting against introduction because he would like additional information prior to taking action.

City Administrator Ulrich reviewed the staff report.

Motion by Councilmember Strommen, seconded by Councilmember Tossey, to introduce an Ordinance for 2012 Schedule of Rates, Fees, and Charges and Call for a Public Hearing.

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

7:06 Request for Approval to Assign Bonestroo Contract to Stantec

Senior Planner Gladhill reviewed the staff report.

The Council acknowledged Bonestroo had merged with Stantec and raised concern whether Stantec carried the same policies and visioning process.

Deputy City Administrator Nelson explained this contract is administered on a workload basis so if the City determines Stantec is not aligned with its goals; the contract can be terminated on 30-day notice.

Motion by Councilmember Tossey, seconded by Councilmember Elvig, to approve assignment of Bonestroo contract to Stantec.

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

8. MAYOR, COUNCIL AND STAFF INPUT

Acting Mayor Wise provided an update on the revised December meeting schedule.

Deputy City Administrator Nelson and City Administrator Ulrich announced upcoming meetings and events.

The Council commented on the great success of the inaugural train ride and extended appreciation to the taxpayers of Ramsey.

9. ADJOURNMENT

Motion by Acting Mayor Wise, seconded by Councilmember Tossey, to adjourn the meeting.

Motion carried.

The regular meeting of the City Council adjourned at 8:41 p.m.

Respectfully submitted,

Kurtis G. Ulrich
City Administrator

ATTEST:

Jo Ann M. Thieling
City Clerk

Drafted by Carla Wirth
TimeSaver Off Site Secretarial, Inc.

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

The Ramsey City Council conducted a regular meeting on Tuesday, December 13, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

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

Members Absent: None

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

1. CALL TO ORDER

Mayor Ramsey called the regular meeting of the Ramsey City Council to order at 7:03 p.m., and led in the Pledge of Allegiance to the Flag.

2. PRESENTATION

2:01 2012 Levy and General Fund Budget Presentation

Finance Officer Lund presented the 2012 Levy and General Fund Budget of \$8,413,798. The increase of \$285,189, or 3.51% from 2011 will be offset by TIF 1 decertification generating \$285,189, resulting in a zero net levy impact. A short video was presented explaining the

Market Value Homestead Credit (MVHC) calculation and its impact on property taxes. Finance Officer Lund completed the levy and budget presentation and stood for questions.

The Council asked staff to place a link to the PBS video on the City's website. The Council indicated its direction to staff was to assure the tax burden to residents remained the same. Finance Officer Lund answered questions of the Council relating to the elimination of homestead credit and indicated that residents with questions on their valuation were referred to the County Assessor.

Mayor Ramsey opened the floor for input from the public. There being no response, Mayor Ramsey moved to the next agenda item.

2:02 Rail Event Video

A video was played of the November 16, 2011, inaugural train stop in Ramsey. City Administrator Ulrich acknowledged the attendance of Anoka County Commissioner Look who played a big part in supporting the Ramsey rail station, which is an economic investment in Ramsey's future development and would return tax increment to residents in the future.

3. CITIZEN INPUT

Anoka County Commissioner Matt Look thanked all who supported the rail station and event. He provided an update on Anoka County Board activities over the past year.

The Council thanked Commissioner Look for his support of Ramsey's initiatives and asked for his assistance with improvements to the Highway 10 corridor and Highway 47.

4. CONSENT AGENDA

Motion by Councilmember McGlone, seconded by Councilmember Strommen, to approve the following items on the Consent Agenda as revise to remove Items 4:05, 4:06, and 4:08.

- 4:01 Receive October 2011 Financial Reports – General Fund and Enterprise Funds
- 4:02 Receive Cash and Investments for Period Ending November 30, 2011
- 4:02 Approve the following Council Meeting Minutes:
 - 1) City Council – Regular – October 11, 2011
 - 2) City Council – Regular – October 25, 2011
 - 3) City Council – Regular – November 7, 2011
 - 4) City Council – Work Session – November 7, 2011
 - 5) City Council – Work Session – November 15, 2011
 - 6) City Council – Regular – November 22, 2011
- 4:04 Approve Assignments of Councilmembers to Serve on Various Boards/Committees
- ~~4:05 Review and Adopt 2011/Payable 2012 Tax Levy and 2012 General Fund Budget~~ This item was removed from the Consent Agenda and considered as Item 7:07.
- ~~4:06 Consider Waiving/Not Waiving Statutory Tort Limits~~ This item was removed from the Consent Agenda and considered as Item 7:06.

- 4:07 Adopt Resolution #11-12-236 Approving Sale of \$3,090,000 General Obligation Improvement Crossover Refunding Bonds, Series 2011 B
- ~~4:08 Adopt Resolution Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received During the Period of November 17, 2011 through December 7, 2011 This item was removed from the Consent Agenda and considered as Item 7:08.~~
- 4:09 Adopt Resolution #11-12-237 Approving Proposed 2012 EDA Levy
- 4:10 Adopt Resolution #11-12-238 Requesting No Change in Fiscal Disparities
- ~~4:11 Adopt Resolution #11-12-XXX Requesting No Change in Fiscal Disparities (*Duplicate – same as Item #4.10.*)~~
- 4:12 Adopt Resolution #11-12-239 Authorizing Partial Payment to Knutson Construction for IP 10-22 Ramsey Municipal Parking Facility – Phase II
- 4:13 Adopt Resolution #11-12-240 Authorizing Partial Payment to Douglas-Kerr Underground LLC for IP 11-21 Armstrong/Bunker Int and Extensions
- 4:14 Adopt Resolution #11-12-241 Authorizing Final Payment to North Valley, Inc. for IP 11-09 Alpine Drive Overlay
- 4:15 Adopt Resolution #11-12-242 Authorizing Final Payment to Omann Brothers Paving, Inc. for IP 10-25 Chameleon Street Paving
- 4:16 Adopt Resolution #11-12-243 Authorizing Final Payment to County Line Excavating LLC for IP 09-25 Dysprosium Street Reconstruction
- 4:17 Report from Public Works Committee – Meeting Date: November 15, 2011
- 1) Discuss Trail Easement Acquisition on the Hansen Tree Farm – *Ratify the recommendation of the Public Works Committee and enter into an agreement to secure an easement with the Hansen Tree Farm for a 20-year term, renewable for a 5-year periods after the initial term, and subject to legal review with no compensation nor any promise to construct the trail in question.*
 - 2) Consider Proposal from Metro Area Repeater Association (MARA) to Install Skywarn Facilities on Water Tower #2 – *Ratify the recommendation of the Public Works Committee and direct staff to formalize an agreement with MARA including 24-hour notice for tower access, additionally insured on \$1 million liability policy, removal of equipment at their cost should another lease be received or signals conflict, and payment of electric costs.*
 - 3) Consider Policy on Turf Establishment Related to City Improvement Project – *Ratify the recommendation of the Public Works Committee and adopt a Turf Establishment Policy, as presented, requiring the import of 4 inches of premium top soil, sod, and 30 days of watering.*
 - 4) Discuss Turf Restoration Concerns on City Improvement Project #08-34; the Bituminous Paving of 151st and 152nd Avenues, and Fluorine Street – *Ratify the recommendation of the Public Works Committee and direct staff to write a letter to residents in the project area indicating the project would be inspected in the spring to determine whether additional corrective actions are necessary and, at a minimum, the rocks will be removed. After that, the property owners are expected to take responsibility.*
 - 5) Consider Final Draft of RFP and Contract for Contracted Sweeping Services – *Ratify the recommendation of the Public Works Committee and approve the Response for Proposal for 2012 spring sweeping, subject to legal review.*

- 6) Discuss Potential Reconstruction of Garnet Street, North of 167th Avenue – *Ratify the recommendation of the Public Works Committee and approve a Garnet Street roadway project of the same width as streets to the north including concrete curb and gutter, full utilities, and a sidewalk on the east side. The funding would be a 50/50 cost split with the residents for the roadway improvements only, and subgrade corrections would be included with the utility work and paid for through the appropriate City enterprise fund (to be reimbursed in the future if/when the properties connect).*

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

5. APPROVE AGENDA

City Administrator Ulrich added Case 7:09, Appoint Alternate to the Joint Fire Board.

Motion by Councilmember McGlone, seconded by Councilmember Elvig, to approve the agenda as revised.

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

Councilmember McGlone left the Chambers at 7:53 p.m.

6. PUBLIC HEARING

6.01: Public Hearing to Introduce Ordinance to Vacate a Portion of Fluorine Street NW Right-of-Way and Certain Drainage and Utility Easements Adjacent to and on 14241 Fluorine Street NW; Case of City of Ramsey

Mayor Ramsey closed the regular portion of the City Council meeting at 7:53 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Ramsey called the public hearing to order at 7:53 p.m.

Presentation

Associate Planner/Environmental Coordinator Anderson reviewed the staff report.

Citizen Input

There was none.

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

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

The public hearing was closed at 7:57 p.m.

Council Business

Mayor Ramsey called the regular City Council meeting back to order at 7:57 p.m.

The Council acknowledged this item was recommended by the Public Works Committee and provides a straightforward solution.

Motion by Councilmember Elvig, seconded by Councilmember Wise, to Introduce the Ordinance to Vacate a Portion of Fluorine Street NW Right-of-Way and Certain Drainage and Utility Easements Adjacent to and on 1424 Fluorine Street NW; Case of City of Ramsey.

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

6.02: Public Hearing to Consider Tax Increment Financing Plan Modifications to TIF Districts 1 & 2

Mayor Ramsey closed the regular portion of the City Council meeting at 7:59 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Ramsey called the public hearing to order at 7:59 p.m.

Councilmember McGlone returned to the Council dais at 7:59 p.m.

Presentation

Economic Development/Marketing Director Backman reviewed the staff report.

Citizen Input

There was none.

Motion by Councilmember Elvig, seconded by Councilmember Tossey, to close the public hearing.

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

The public hearing was closed at 8:03 p.m.

Council Business

Mayor Ramsey called the regular City Council meeting back to order at 8:03 p.m.

Motion by Councilmember Wise, seconded by Mayor Ramsey, to adopt Resolution #11-12-244 adopting a modification to the Tax Increment Financing Plans for Tax Increment Financing Districts 1 and 2.

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

6.03: Public Hearing and Request for Adoption of City of Ramsey 2012-2016 Capital Improvement Program

Mayor Ramsey closed the regular portion of the City Council meeting at 8:04 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Ramsey called the public hearing to order at 8:04 p.m.

Councilmember Backous left the Chambers at 8:05 p.m.

Presentation

Finance Officer Lund reviewed the staff report.

Citizen Input

There was none.

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

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

The public hearing was closed at 8:06 p.m.

Council Business

Mayor Ramsey called the regular City Council meeting back to order at 8:06 p.m.

Motion by Councilmember Wise, seconded by Mayor Ramsey, to adopt Resolution #11-12-246 adopting the City of Ramsey's 2012-2016 Capital Improvement Program (CIP).

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

6.04: Public Hearing and Adopt Ordinance Establishing the 2012 Schedule of Rates, Fees & Charges

Mayor Ramsey closed the regular portion of the City Council meeting at 8:07 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Ramsey called the public hearing to order at 8:07 p.m.

Councilmember Backous returned to the Council dais at 8:08 p.m.

Presentation

Finance Officer Lund reviewed the staff report.

Citizen Input

There was none.

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

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

The public hearing was closed at 8:10 p.m.

Council Business

Mayor Ramsey called the regular City Council meeting back to order at 8:10 p.m.

Councilmember McGlone stated his intention to oppose adoption of this ordinance because he did not believe there had been enough reductions. He supported a line-by-line consideration to eliminate or reduce every fee possible.

Councilmember Tossey stated this is a good start but agreed it was not enough of a reduction, especially related to development fees, and he intended to oppose adoption of this ordinance.

Motion by Councilmember Elvig, seconded by Councilmember Backous, to adopt Ordinance #11-17, 2012 Schedule of Rates, Fees, and Charges.

Further discussion: The Council debated the motion. It was acknowledged some fees had been eliminated in the 2012 schedule and others had been reduced.

A roll call vote was performed by the Recording Secretary:

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

Motion carried.

7. COUNCIL BUSINESS

7.01: Request for a Conditional Use Permit to Permit Motor Vehicle Sales at 8175 Riverdale Drive NW; Case of Quality RV

Environmental Coordinator Anderson reviewed the staff report.

Motion by Mayor Ramsey, seconded by Councilmember Backous, to adopt Resolution #11-12-247 Adopting Findings of Fact #0896 related to a Request from Quality RV to Permit Motor Vehicle Sales in the B-2 Highway Business District at the Properties Located at 8101, 8151, and 8175 Riverdale Drive NW, subject to review by the City Attorney as to legal form, and adopt Resolution #11-12-248, Approving the Issuance of a Conditional Use Permit to Permit Motor Vehicle Sales in the B-2 Highway Business District and Declaring Terms of Same, contingent on review and approval by the City Attorney as to legal form.

Further discussion: Environmental Coordinator Anderson answered questions of the Council relating to the drainage plans to assure it does not sheet flow onto Riverdale Drive or the County right-of-way. Brian Achteлик, business manager representing the applicant, advised the site will be graded to assure it drains to the middle of the property and holding pond.

City Attorney Goodrich advised that waivers should occur in 2015 or 2016 if the improvement seems imminent and in the best interest of the City and applicant. He indicated it was not in the best interest of the performance standards to make that determination at this time. The City Council accepted this recommendation.

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

7.02: Request for a Home Occupation Permit to Operate a Youth Horse Ranch at 7202 181st Avenue NW; Case of Robin Veach Fitzgerald (Second Chance Youth Ranch)

Environmental Coordinator Anderson reviewed the staff report and advised that Finding 29 should read in the positive indicating the property will be served adequately.

Motion by Councilmember Elvig, seconded by Councilmember Backous, to adopt Resolution #11-12-249 Adopting Findings of Fact #0897 Related to the Request from Robin Veach Fitzgerald for a Home Occupation Permit to Operate a Youth Horse Ranch for Second Chance Youth Ranch on the Property Located at 7202 181st Avenue NW, as revised, and adopt Resolution #11-12-250 Approving Issuance of a Home Occupation Permit to Operate a Youth Horse Ranch for Second Chance Youth Ranch on the Property Located at 7202 181st Avenue NW Based on Findings of Fact #0897 and Declaring Terms of Permit.

Further discussion: Robin Veach Fitzgerald, applicant, responded to the Council's inquiries by explaining how they will recruit volunteers who will be screened and backgrounds checked. The Council expressed its support for the approach taken by the Youth Horse Ranch to gear children toward outdoor activities, and the 1-to-1 ratio between volunteer and attendee.

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

7.03: Consider Resolution #11-12-XXX Supporting the Mississippi River Trail

Parks Supervisor Riverblood reviewed the staff report.

The Council discussed the location of the proposed pedestrian walkway over Highway 10, noting it would connect with existing trails and allow a transit customer to be dropped off, walk over the bridge, and use the train. In addition, separating the pedestrian walkway from the Armstrong Boulevard overpass would provide additional pedestrian safety, bring attention towards the River, and create synergy. However, the Armstrong Boulevard interchange is currently a higher priority.

Motion by Mayor Ramsey, seconded by Councilmember Backous, to adopt Resolution #11-12-251 supporting the goals of the Mississippi River Trail and Bikeway in Minnesota.

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

Parks Supervisor Riverblood reported the City has secured an engagement partner from the Anoka Ramsey Community College to work 30 hours a week and assist with this project. This is the result of staff working with community partners on the City's behalf and the student would be paid by the college. The Council thanked Parks Supervisor Riverblood for securing a donated tree and lights. Parks Supervisor Riverblood acknowledged Kinghorn Construction had identified a tree that would have been impacted by future grading and thanked Connexus for its assistance.

7.04: Consider Entering into the Transit Taxing District and Final Approval of Master Cooperation, Funding and Delegation Agreement for the Ramsey Rail Station

Public Works Director Olson reviewed the staff report.

Anoka County Commissioner Look announced the MTC has considered the City Council's request and agreed to provide a demonstration bus for six months if it meets suburban ridership criteria. It is the intention of the MTC to meet with the Council to work out the details and determine when the bus service will start.

Public Works Director Olson completed presentation of the staff report and answered questions of the Council relating to the taxing district. He explained that in 2014 and 2015, decertified TIF will be utilized to offset costs with the municipal center debt; however, there is a funding gap in 2013.

The Council acknowledged the train stop will spur development of The COR.

Motion by Councilmember Elvig, seconded by Councilmember Wise, to approve the Master Cooperation Funding and Delegation Agreement for the Ramsey Rail Station waiving the lease agreement condition and to enter into the Transit Taxing District for fiscal year 2013 subject to review by the City Attorney.

Further discussion: The Council thanked those who worked with the MTC to get a demonstration bus. It was noted the rail station will tie into a transit system and the Northstar will connect to other transit systems once downtown, opening commuting opportunities to residents who work in downtown Minneapolis or St. Paul. In addition, residents will be able to get to the airport, with luggage, without the need for taxi service or paying to park a car. The Council noted it does not take it lightly to enter into a Transit Taxing District equaling \$30 a year for the average tax holder, when only 1% of the population uses the rail. However, it will save money since the City currently subsidizes bus service in the amount of \$480,000.

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

7:05: Report from Personnel Committee – Meeting Date: December 13, 2011

7:05:1 Consider Resolution #11-12-XXX to Accept the Resignation of the Building Official and Address the 2012 Building Official Needs

Human Resources Representative Lasher reviewed the staff report.

Motion by Councilmember Elvig, seconded by Mayor Ramsey, to ratify the recommendation of the Personnel Committee and Adopt Resolution #11-12-252 Accepting the Resignation of the Building Official and Address the 2012 Building Official Needs.

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

7:05:2 Consider Resolution #11-12-XXX to Approve a 1-year Contract with AFSCME for 2012

Human Resources Representative Lasher reviewed the staff report.

Motion by Mayor Ramsey, seconded by Councilmember Strommen, to ratify the recommendation of the Personnel Committee and Adopt Resolution #11-12-253 Approving a 1-Year Contract with AFSCME for 2012.

Further discussion: The Council acknowledged this action will result in bargaining with all units at the same time.

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

7:05:3 Consider Resolution #11-12-XXX to Approve 2012 Health Insurance Contributions for LELS-Patrol and LELS-Sergeants

Human Resources Representative Lasher reviewed the staff report.

Motion by Mayor Ramsey, seconded by Councilmember Strommen, to ratify the recommendation of the Personnel Committee and Adopt Resolution #11-12-254 Approving 2012 Health Insurance Contributions for LELS-Patrol and LELS-Sergeants.

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

7:05:4 Consider Resolution #11-12-XXX to Approve 2012 Non-union Health Insurance Contribution and 2012 Non-union Cost of Living Adjustments (COLA)

Human Resources Representative Lasher reviewed the staff report, noting the Personnel Committee's recommendation was revised to a 1% increase COLA for department heads and a 2% COLA increase for other nonunion employees.

Motion by Mayor Ramsey, seconded by Councilmember Strommen, to ratify the recommendation of the Personnel Committee and Adopt Resolution #11-12-255 Approving 2012 Non-union Health Insurance Contributions and 2012 Non-union Cost of Living Adjustments (COLA), as revised.

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

7:06 Consider Waiving/Not Waiving Statutory Tort Limits

Finance Officer Lund reviewed the staff report.

Councilmember Tossey stated his intention to vote against waiving tort limits, thinking the City should be held responsible if found negligent.

City Attorney Goodrich read the League finding relating to Tort limits.

Councilmember McGlone stated his intention to vote against waiving tort limits because he believed coverage of \$1.5 million per incident is not a high enough award in some cases.

The Council discussed the tort limits, difference between publicly owned facilities (parks, swimming pools) versus privately owned property, and cost to purchase additional coverage. It was noted the Council is the fiduciary for the City's taxpayers and if the statute regulating tort limits is not supported, the statute should be addressed at the State level. City Attorney Goodrich advised that if the Council takes action tonight, that action can be reversed at a future meeting should the Council determine to purchase additional insurance coverage.

Motion by Mayor Ramsey, seconded by Councilmember Backous, to Adopt Resolution #11-12-256 Not To Waive Statutory Tort Limits for LMCIT Liability Coverage.

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

7:07 Review and Adopt 2011/Payable 2012 Tax Levy and 2012 General Fund Budget

Finance Officer Lund reviewed the staff report.

Councilmember McGlone stated his intention to oppose this action, noting his property value went down 18% in the past year, but his taxes increased.

Finance Officer Lund and City Administrator Ulrich answered questions of the Council relating to reducing the debt service on the municipal building and General Fund budget. It was noted the Council did reduce spending if not for debt service on the municipal building.

Motion by Councilmember Strommen, seconded by Mayor Ramsey, to Adopt Resolution #11-12-258 Adopting the 2011, Payable 2012 Municipal Tax Levy and Adopt Resolution #11-12-259 Adopting the 2012 City of Ramsey General Fund Operating Budget.

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

7:08 Adopt Resolution #11-12-XXX Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received During the Period of November 17, 2011 through December 7, 2011

Councilmember McGlone questioned several items on the bill list and stated his intention to oppose this action.

City Administrator Ulrich indicated staff would provide specific information on the bill items questioned.

Motion by Mayor Ramsey, seconded by Councilmember Backous, to Adopt Resolution #11-12-260 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received During the Period of November 17, 2011 through December 7, 2011.

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

7:09 Appoint Alternate to Joint Fire Board

City Administrator Ulrich advised of the need to appoint an alternate to the Joint Fire Board.

Motion by Councilmember Backous, seconded by Councilmember Wise, to appoint Councilmember Tossey as an alternate to the Joint Fire Board.

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

8. MAYOR, COUNCIL AND STAFF INPUT

Staff announced upcoming meetings and events and encouraged interested residents to make application for Commission vacancies.

Mayor Ramsey announced he has taken a full-time job in North Dakota and fully intends to be present at all Council meetings and special events, as needed. He assured the public that he is dedicated to the City and will make a decision in June whether to run for re-election. He indicated his wife and family continue to reside in Ramsey.

The Council stated its support for Mayor Ramsey, noting he has set the “bar” high to be accessible to his constituents and the Council expected him to uphold his duties as Mayor. If not, the Council will deal with it at that time.

9. ADJOURNMENT

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

Motion carried.

The regular meeting of the City Council adjourned at 9:56 p.m.

Respectfully submitted,

Kurtis G. Ulrich
City Administrator

ATTEST:

Jo Ann M. Thieling
City Clerk

Drafted by Carla Wirth
TimeSaver Off Site Secretarial, Inc.

Regular Planning Commission

6. 1.

Meeting Date: 02/02/2012

By: JoAnn Shaw, Community Development

Information

Title:

Appointment of Chairperson and Vice Chairperson

Background:

Each year the Commissions and Boards appoint officers. Currently, Gary Levine serves as Chairperson and Gary Van Scoy serves as the Vice Chairperson.

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Motion to appoint _____ as Chairperson of the Planning Commission.

-and-

Motion to appoint _____ as Vice Chairperson of the Planning Commission.

Form Review

Inbox
Tim Gladhill

Reviewed By
Tim Gladhill

Date
01/23/2012 10:09 AM
Started On: 01/10/2012 08:47 AM

Form Started By: JoAnn Shaw

Final Approval Date: 01/23/2012

Regular Planning Commission

6. 2.

Meeting Date: 02/02/2012

By: Tim Gladhill, Community Development

Information

Title:

Public Hearing - Consider an Ordinance Amending City Code Section 117-118 Entitled 'The COR District'

Background:

In August of 2011, the City Council approved an amendment to the Comprehensive Plan that created a new development plan for The COR (formerly the Ramsey Town Center Master Plan). The Comprehensive Plan serves as the foundation for land use decisions in the City, and the City must update its official controls (Zoning Ordinance) to implement the plan. Before the Planning Commission this evening is a proposed ordinance to consider amendments to City Code Section 117-118 entitled The COR. In addition, said section also adopts the Ramsey Town Center Design Guidelines (now named The COR Design Framework) by reference. Also before the Planning Commission this evening is a revision to the original Design Guidelines.

Notification:

In accordance with State Statute and City Code, the Public Hearing Notification was properly advertised in the Anoka County Union.

Observations:

As the Planning Commission may recall, this topic was discussed in a Planning Commission Work Session in December. The topic was also discussed with City Council in December as well. The revisions attempt to maintain the pedestrian friendly environment, while including allowances for more traditional suburban retail to improve the mix of land uses to match current market conditions. The intent is to provide a land use plan that will help support a more traditional downtown feel in the center of the development. The framework for zoning standards is also a deviation from traditional zoning structure, focusing on the form and function of each street rather than focusing on a single zoning district.

The intent is to include bulk standards for the development within the Design Framework. The Zoning Code itself shall serve as direction for permitted uses and review procedures. Bulk Standards have been designed based on a street hierarchy to define 'build-to lines', pedestrian circulation (sidewalks), streetscape (landscape), and street design in a consolidated location. The Design Framework will better illustrate the interaction of the building with the street. Finally, the revised Design Framework also gives consideration to incorporating certain standards from private covenants that had previously been reviewed by an architectural review committee of the private association, which appears is no longer active in terms of architectural review.

Additional language has been developed regarding the streetscape/landscape element of the Design Framework. The intent was to emphasize both function and form. While landscaping can enhance any development, for it to be successful and attractive, the biological needs must be incorporated into the design at the outset to provide a habitable growing environment for the landscaping, which is what this language attempts to accomplish.

In addition, concern was raised at the Planning Commission Work Session regarding pedestrian safety and street design in the COR-2b area. The Design Framework attempts to give additional consideration to internal pedestrian circulation and safety. The Design Framework also includes language requiring certain elements such as bike racks near the entrance of buildings internal to the site as a private site improvement. Furthermore, the City is in the process of plan design for the realignment of Sunwood Drive, which shall include a round-a-bout. As part of that design, consideration will be given to appropriate pedestrian safety. Staff is open to additional suggestions to enhance pedestrian safety and address parking needs in this retail area.

Finally, the ordinance amends the review process for The COR that will now follow the City's normal land use application review schedule, rather than additional site plan reviews previously required for this specific development. Additionally, Staff would like direction from the Planning Commission as to the desire to repeat the bulk standards table in the Zoning Code text, or only in the Design Framework.

Funding Source:

Amendments are being processed as part of regular Staff duties and budget for planning consultants for Design Framework revisions.

Staff Recommendation:

Staff recommends approval of the ordinance amending City Code Section 117-118 entitled The COR as well as The COR Design Framework.

Committee Action:

Motion to recommend that the City Council adopt the ordinance amending City Code Section 117-118 entitled The COR as well as The COR Design Framework.

Attachments

The COR Design Framework

The COR Design Framework-Additional Amendments

Proposed Ordinance

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	01/26/2012 08:46 AM
Heidi Nelson	Heidi Nelson	01/26/2012 02:02 PM
Tim Gladhill (Originator)	Tim Gladhill	01/26/2012 02:05 PM
Form Started By: Tim Gladhill		Started On: 01/20/2012 11:45 AM
	Final Approval Date: 01/26/2012	



Design Framework



February 1, 2012

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Appendix A: Specifications

Design Framework – The COR

Purpose

The primary purpose of Design Framework is to set basic parameters, describe preferences and illustrate design intent. These framework standards serve as a framework within which creative design can and should occur – there is no one solution, but many options that meet the basic requirements of this document.

Application

The format and content of this framework are specifically tailored for use as a supplement to the Zoning Ordinance. This document is organized into two sections. The first section outlines issues and recommendations that apply to the entire COR. The second section highlights specific framework that apply to each sub-district within The COR. The City of Ramsey has adopted Development Plan 5.03 as the Master Plan for The COR. Any changes to this approved master plan must be reviewed and approved by the City Council as part of the development application. This Development Plan will be updated by the City as changes are approved.

Implied Responsibility

All participants in the development of The COR recognize the local and regional impacts of this project and the various systems that play an important role. Each parcel and each building must fit within the context of the entire plan. Individual projects must complement, not compete with, adjacent development in terms of public green space, walk and trail connections, stormwater management solutions, street layout, parking strategies, land use mix and building design.

Part One: Overall Framework

There are a number of framework standards that apply to the entire COR, including recommendations for stormwater management, parks, streets, land use, parking, transit and other development components. Many of these overall COR framework standards overlap, or are integrated with one another. For ease of discussion they are categorized according to the same list of 'layers' that formed the basic structure for the Master Framework:

- Context – local, city, regional
- Street Hierarchy--access, circulation, arrangement
- Streetscape—preferred design, location
- Parking -- quantity, location, type
- Building Design-- preferred uses, horizontal/vertical mixed use, built form, character of development
- Signage—design, location, quantity, type
- Stormwater Management-- surface water features, stormwater management
- Parks/Public Spaces – parks, trails and open space

It is essential that proposed design solutions for development projects and other improvements within The COR demonstrate an understanding of the interplay between these layers.

Overall Framework - Context

Overview

The COR is a unique area within the City; but it is a part of, and connected with, a variety of local, city-wide and regional systems (See Figure 1: Development Master Plan 5.03). Each development project, whether a single building, one lot, or a series of blocks, must provide reasonable links to these systems as a primary design objective.

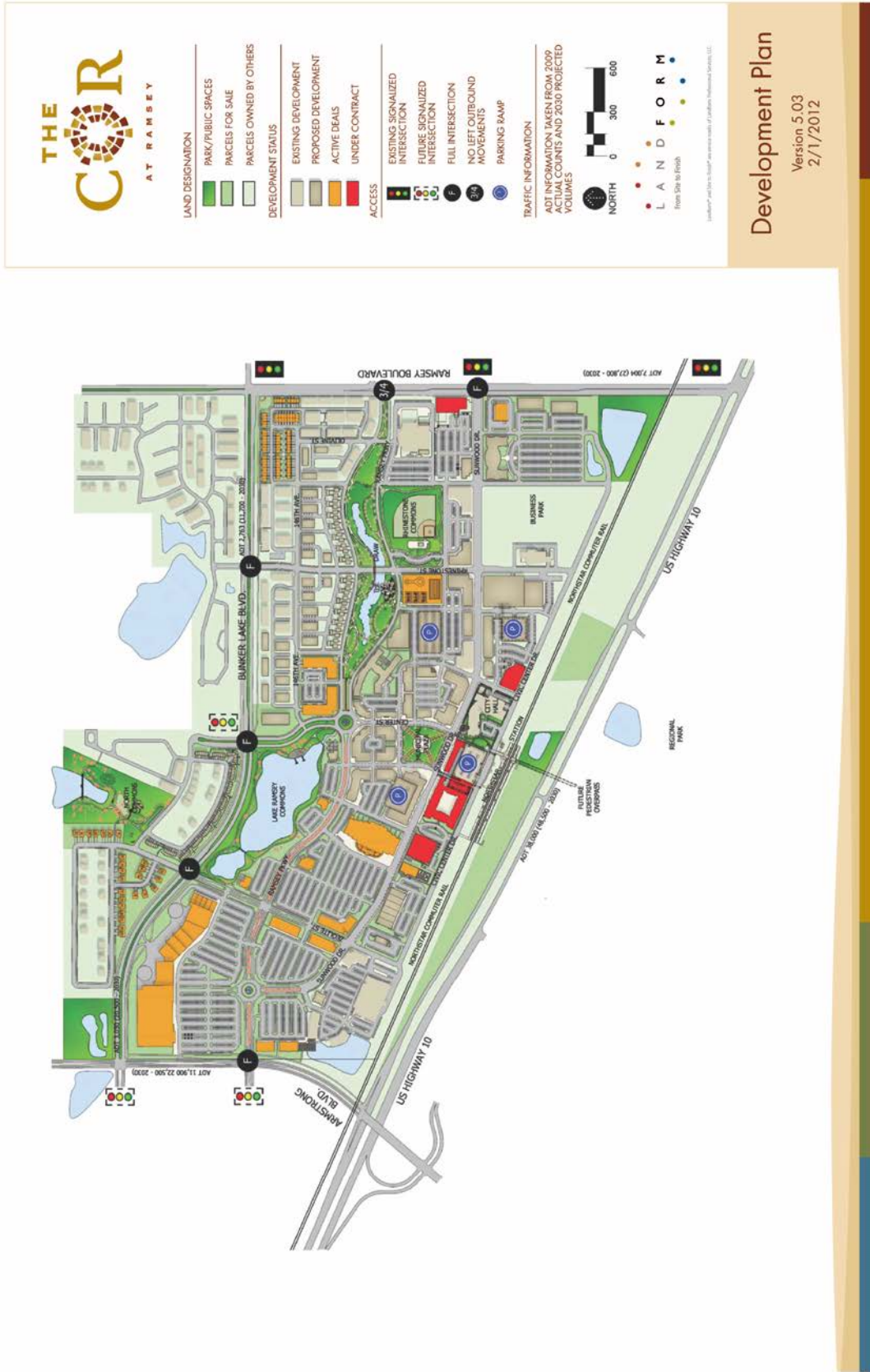
Guideline Recommendations

To ensure that The COR takes full advantage of local and regional systems, development should:

- Provide safe, easily recognized connections to city, county and state trail corridors
- Make provisions for city and regional transit service and amenities (including the Northstar Line) and encourage their use
- Tie into, and improve, the Ramsey utility network
- Integrate with and complement the existing (and future) street framework
- Become an integral part of the city and county drainage/stormwater management plan

Objectives

- Overall COR design (and all new private development within The COR) will accommodate stormwater from new projects and from off-site, and highlight stormwater features as an amenity
- Bikeways and pedestrian routes into The COR from adjacent neighborhoods must be designed for safety and ease of access, suggesting that a person on a bicycle has an equally accessible route to downtown.
- Parks and open space will be easily accessible to all COR residents, visitors, people who work here and also for the citizens of Ramsey and the surrounding area. This connected green system is reminiscent of the world renowned 'Grand Rounds' of Minneapolis.



Development Plan

Version 5.03
2/1/2012

Figure 1: Development Master Plan 5.03

Overall Framework – Street Hierarchy

Overview

The Development Master Plan defines a specific strategy for the layout of streets and blocks within, and around The COR. The size, type and configuration of this street hierarchy (See Figure 2: Street Hierarchy) is based on a combination of projected traffic volume, level of service at intersections, proposed adjacent land use (destination commercial, residential, civic, recreation, etc.) and desired aesthetic character.

Great streets are essential components of an attractive and inviting public realm. These guidelines promote a street system that balances pedestrian and vehicular use. Providing streets that support traffic flow is important, but also creating ample space for street-side activities, strolling promenades, pockets of green and other amenities is critical to the success of The COR. Streets will promote convenient access by car – to storefronts, to parking lots and ramps, to entertainment attractions – but will also encourage foot traffic as a primary way to move about and conduct business in the core area.

Guideline Recommendations

The proposed street and block pattern reflects a compact urban character, not allowing dead end streets or cul-de-sacs, in favor of a traditional grid pattern and connected streets including the following:

- Provide a street network that distributes pedestrian and vehicular traffic throughout the various districts in The COR and encourages a more dispersed and less congested traffic flow (many choices or travel paths).
- Provide a clear hierarchy of streets resulting in a simple and understandable system for movement – easy access and convenient circulation throughout The COR.
- Work with Anoka County to convert primary perimeter streets (arterials such as Ramsey, Armstrong and Bunker Lake Boulevards) to urban street sections, providing sidewalks and street trees to replace roadside ditches.
- Promote improvements that invite pedestrian and bicycle use including wide sidewalks, streetscape amenities and designated bicycle trails (both on and off-street).



Objectives

Creative design solutions for public realm improvements should reflect these basic street classifications (street hierarchy) including:

- Arterial street – these streets provide the boundary of The COR and all access into The COR will be from one of these three streets:
 - Bunker Lake Boulevard
 - Armstrong Boulevard
 - Ramsey Boulevard
- Destination street – signature addresses for shopping, entertainment, services, work place and other primary amenities
 - Sunwood Drive



- Parkway – premier ‘green streets’ adjacent to primary public park / green space, with more landscaping than other streets in The COR
 - Ramsey Parkway
 - Town Center Drive (north of the roundabout)
- Connector street – primary routes that link various districts within The COR, usually providing the most direct means of getting from point A to point B
 - Rhinestone Street
 - Zeolite Street
 - Civic Center Drive
- Downtown street – the most urban of street sections where high pedestrian traffic is intended and traffic calming measures such as on street parking, bump outs and other methods will be employed
 - Town Center Drive (south of the roundabout)
 - Sapphire Street (north of Sunwood)
 - Other streets as shown on the Street Hierarchy Map
- Local street – neither destination nor primary connector routes, these streets provide much of the rest of the street grid throughout The COR.



These street hierarchy classifications are intended to provide guidance regarding the streetscape, but it should be noted that within a street classification, there may be construction or design distinctions, based on the sub-district classification. For example, Sunwood Drive is defined as a destination street throughout The COR, but the design may be different between the COR1 and COR2 sub-districts. The Master Streetscape Map will provide design direction.

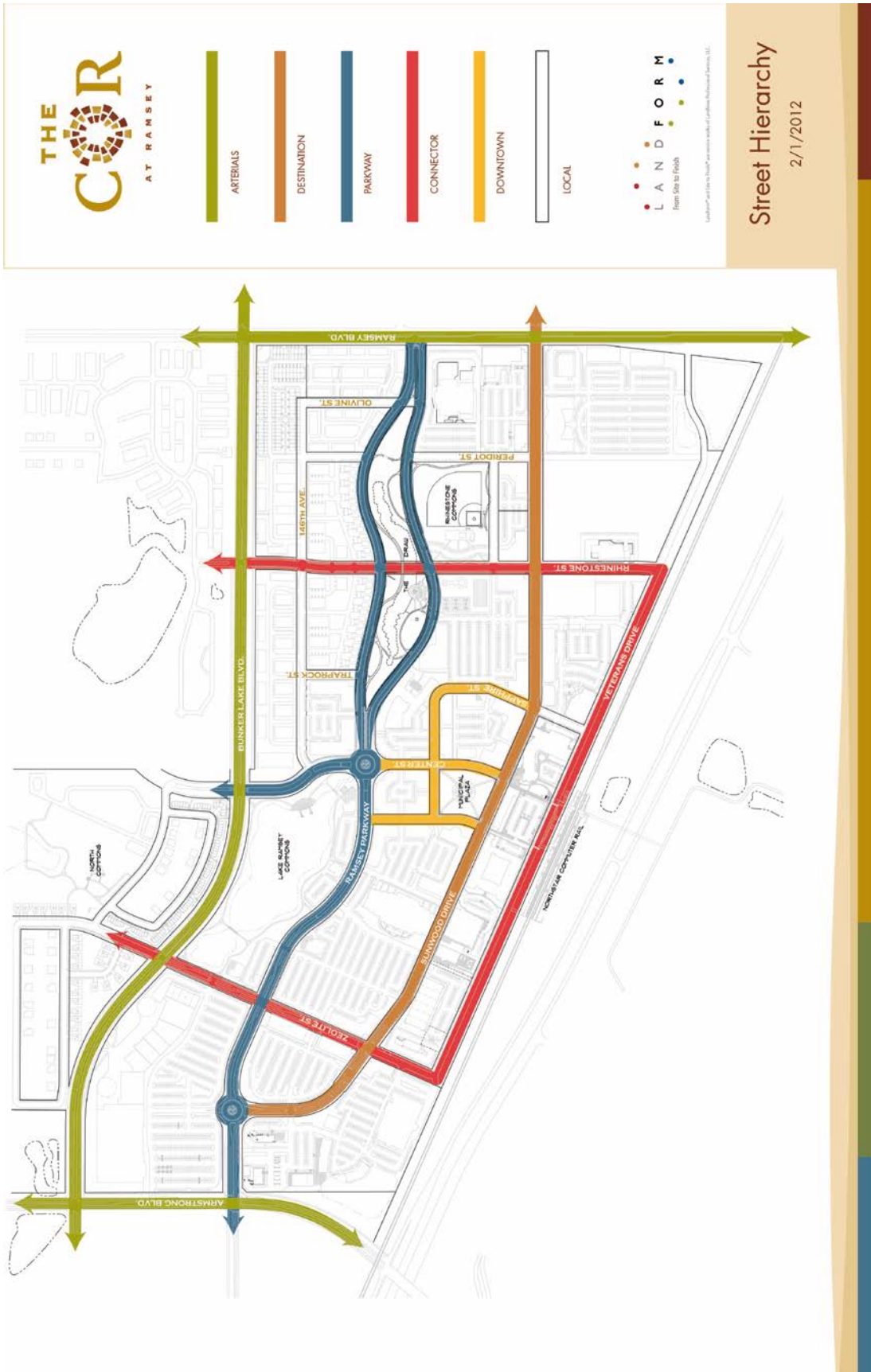
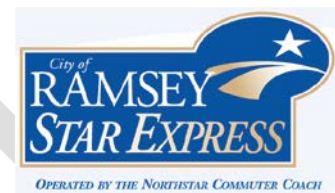


Figure 2: Street Hierarchy Map

Transit Overview

The COR is designed to be “transit ready” in a variety of ways that go beyond providing a walkable public realm and connected street grid. The Master Plan also includes a multimodal transit station, with dedicated commuter parking, integrated with other uses at the heart of the retail, restaurant and entertainment district. This station functions as a hub where local circulator transit comes together with regional transit service and the Northstar Corridor. This station is designed to meet the short term needs of the Ramsey Star Express service, and also the long term objectives for proposed commuter rail service in the future. The COR is the Twin Cities’ first and only transit-oriented development along the new Northstar Commuter Rail Line. With final approval from the Metropolitan Council as an in-fill station, the City of Ramsey has lined up financing and prepared plans for Ramsey Station at The COR. Construction is expected to commence in the fall of 2011 with riders boarding the train in the fall of 2012. As Northstar’s most visible station, The COR will immediately bolster the ridership on the line and continue to build recognition for this regional service.



Transit components include the following:

- Ramsey Star Express service provides peak period, peak direction bus service between downtown Minneapolis and Ramsey
- North Star Commuter Rail provides train service between Big Lake and downtown Minneapolis
- 350 park and ride parking spaces are provided for commuters adjacent to the transit station
- Pedestrian and bicycle connections are emphasized in the Master Plan as major links between the transit station, various districts within The COR and into the surrounding neighborhoods
- The COR can accommodate Metro Mobility, citywide circulator bus or town trolley connections as part of local and regional service to the transit station

The COR also encourages developers to participate in a Travel Demand Management (TDM) program to both assist and encourage residents and visitors to take advantage of the various modes available for their commuting and travel needs. The TDM program draws from incentives and services available through Anoka County and Metro Commuter Services that match riders with carpools and vanpools, provide discounted transit passes and manage work hours among other functions.

- Developers shall submit a TDM plan with their site plan application for new development and work with the City to implement their plans.

Transit Guideline Recommendations

Transit is an important component of the overall plan, with expectations for more ridership, using a greater range of transit options as they become available. More people, together with the mix of activities and amenities in The COR, encourages better designed, better connected transit service. It is a shared responsibility between city, county and developer to promote transit use, with both policy and bricks-and-mortar attention to the following framework:

- Understand and take advantage of opportunities to use existing and proposed transit components
- Provide transit related facilities specifically linked to uses and character within each COR district, including signage and lighting for way-finding and bicycle amenities
- Building future Northstar Commuter Rail riders through the Ramsey Star Express bus service

Transit Objectives

The primary objective is to provide a balance of transit service, bicycle and pedestrian connections and lanes to move traffic. The framework for The COR promotes public transportation as part of the solution and suggests a variety of street improvements and other amenities to invite increased use. Photographs throughout the framework suggest some of the many possibilities.

Overall Framework - Streetscape

Overview

The Master Plan defines a specific strategy for the layout of streets and blocks within and around The COR. The amenities within the public right-of-way -and immediately adjacent -play an important role in the aesthetics of The COR. Great streets are essential components of an attractive and inviting public realm. Developing a streetscape that is comfortable and inviting to pedestrians is important to realizing the vision for The COR. The framework will encourage interesting and inviting places for the public.

The Streetscape framework defines the visual character and physical improvements for all public spaces within The COR. The document also provides the general framework and examples for design of proposed quasi-public and private space located within each development parcel.

Public realm/streetscape framework focus on the following elements:

- Parks, plazas and other public gathering spaces
- Street/sidewalk character and streetscape elements
- Bicycle/pedestrian connections (on-street and off-street)
- Residential courts, pocket parks and other private green space



The goal is to foster a safe and interesting public realm that will invite pedestrian activity, promote traffic calming, increase transit use and encourage community gathering. Street trees, lighting and decorative fencing provide the backbone for streetscape improvements. Added detail, such as special pavements, street furniture, public art and layered plantings will highlight specific nodes or uses. The City has developed a series of street cross-sections illustrate these design expectations. Typical street sections are provided in Appendix A as a reference.

Destination and Connector streets must balance a high level of service for the automobile with attractive and inviting amenities for the pedestrian including:

- Provide gracious sidewalk width to support intensity of pedestrian traffic in the core
- Install street trees to frame the street and provide shade
- Provide street lighting that meets all safety standards and design criteria, while creating a signature character for this district
- Explore a range of options for streetscape improvements including special pavements, interesting concrete tinting or scoring patterns, additional plantings, ornamental fencing and other features (note, however, that simpler is better and too much clutter is a negative)



The COR includes a network of bicycle/pedestrian trails and walkways (both on and off-street) that connect adjacent sub-districts to the Mixed Use Core. As you approach the core, these connections tend to become part of the shared right of way along the major streets, or become part of the urban park spaces. Bicycle riders may choose to share the street with vehicular traffic, or dismount and walk their bicycles along with the other pedestrians using the sidewalks. Providing and maintaining these bicycle and pedestrian connections should be a key component for all development projects in the core.

Placeholder



Figure 3: Master Lighting Plan

Guideline Recommendations

The proposed street and block pattern reflects a compact urban character, including the following:

- Bike racks interspersed throughout The COR to encourage cycling as an alternative mode of transportation.
- Benches on the public sidewalks to encourage people to linger in The COR
- Trees and planters along the streets to create an inviting space
- Wide sidewalks and both on- and off-street bicycle trails
- Kiosks and other way finding tools for visitors and residents in The COR
- Outdoor dining is encouraged on the street side of buildings within all districts.
- Public plaza space is strongly encouraged to be located adjacent to the streets



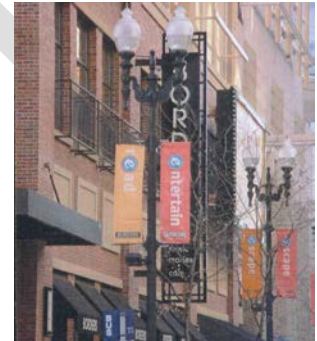
Objectives

Creative design solutions for streetscape improvements should include:

- Streetscape improvements that provide traffic calming, particularly along Destination and Downtown streets
- Inviting streets that draw you into and through The COR
- A marriage of building design and streetscape design that encourages active spaces near the streets

Street Trees and Plantings

Street trees and planter boxes are a critical element in the unique character of The COR and will be used to help distinguish between different street types and sub-districts within The COR. However, there may be variety within the same street when the street crosses into sub-districts.



- Street trees will be chosen to sure that the species allow for clear pedestrian access along the streets and require minimal maintenance.
- Along Destination, Downtown, Parkway and Local streets, where regularly spaced blocks exists, one tree species shall be provided per block. In order to provide variety and protect against disease, adjacent blocks shall not be allowed the same street tree. Initial development along a block shall establish the tree species for that block, subject to City review and approval.
- Along streets without regular block space or longer blocks, such as Connector and Arterial streets, the City may approve groupings of 3-6 trees of one species in lieu of the regular block spacing.
- Alternatives to the above mentioned planting plan shall be subject to review and approval by the City Council.

Destination Street Trees:

- Autumn Blaze Maple
- Swamp White Oak
- Sienna Glenn Maple
- Cleveland Select Pear
- Ginko
- Accolade Elm

Parkway Street Trees:

- Valley Forge Elm
- Bitternut Hickory
- Siouland Poplar
- Sienna Glen Maple
- Boulevard Linden
- Catalpa
- Donald Wyman Crabapple
- Adams Crabapple
- Korean Mountain Ash
- Ohio Buckeye
- Ginkgo

Connector Street Trees:

- Swamp White Oak
- Northern Red Oak
- Princeton Elm
- Accolade Elm
- Autumn Blaze Maple
- Skyline Honeylocust
- Kentucky Coffeytree (male)
- River Birch (single stem)
- Black Alder
- Black Cherry
- Prairiefire Crabapple
- Red Jewel Crabapple
- Japanese Tree Lilac
- Thornless Cockspur Hawthorne

Downtown Street Trees:

- Princeton Elm
- Accolade Elm
- Autumn Blaze Maple
- Skyline Honeylocust
- Kentucky Coffeytree (male)
- River Birch (single stem)
- Black Alder
- Black Cherry
- Prairiefire Crabapple
- Red Jewel Crabapple
- Japanese Tree Lilac
- Thornless Cockspur Hawthorne

Local and Arterial Street Trees:

Local and Arterial Street trees may be chosen from any species on the above lists.

Planter Beds/Boxes/Tree Grates

- In the downtown area, what about using above ground planting beds (these are typically 3-4 feet in height and may contain perennials, showy shrubs, or possibly even very small trees)? Essentially industrial size flower pots...
- For Downtown Street type, tree grates should be of same design, but do we want to specify a particular one, manufacturer, or simply state that they're required and are subject to approval by staff/council? Although probably very expensive, could even explore custom grates that show the COR logo, although not sure if they would be 'expandable' as trees grow in girth.
- Irrigation shall be provided to ensure survival of plant materials. The City shall provide irrigation systems along the Parkway and Destination streets. Unless otherwise approved, all other irrigation shall be the responsibility of the landowner.

Street Furniture

Bike racks, trash enclosures and benches are encouraged on all streets, but will be required on Destination, Connector and Parkways and other streets as shown on the Master Streetscape Plan.

Bike racks shall be the standard bike rack (see Appendix A for specifications).

Trash enclosures shall be the standard trash enclosures (see Appendix A for specifications).

Benches shall be the standard bench (See Appendix A for specifications). Benches shall be grouped in twos that face each other and provide an opportunity for an outdoor conversation space.

Alternative bike rack, trash enclosures and bench designs will be considered on a case-by-case basis. The City will review alternative designs as part of the site plan review and will evaluate these alternatives based on the following:

- Does the design maintain the character of the district?
- Does the alternative design maintain the quality of the standard feature?
- Does the design provide a relationship between the public elements of the streetscape and the building that would not otherwise be possible?



Sidewalks and Boulevard

In the design framework, the term "boulevard" is defined as "the space between the sidewalk and the curb." The boulevard area provides the required space for public features such as street lights, benches, fire hydrants, street signs, etc. The boulevard will have different characteristics based on the street hierarchy.

The street width and layout within different zones may affect the ability of a particular development to provide the minimum boulevard width and the minimum sidewalk width within the existing public right-of-way. In those cases, the landowner shall provide a permanent public easement over the portion of the sidewalk that is located on private property.

Street Lights

Street lights are owned and installed by Connexus Energy. The streetlight design was developed in conjunction with the City of Ramsey and Connexus (See Figure 3: Master Lighting Plan). The standard street lights are designed to accommodate banner arms should banner signage be desired. The banner arms should be the manufacturer's standard break-away banner arms to ensure safety and minimize maintenance costs. Connexus provides street light maintenance for the City. Connexus bills the City of Ramsey for the cost of installation and maintenance.

The choice of street light was intended to emphasize the pedestrian scale of The COR. Light poles within the public right-of-way should be planned to accommodate banners, flowers, hanging artwork and electrical outlets.

There are three different streetlight types within The COR:

- 24-foot high poles at intersections
- 14-foot high poles at mid-block
- 12-foot high poles at The Draw



The City will ensure that the appropriate streetlights are installed on all public streets as described by the Design Framework. Private developers shall provide parking lot or other project lighting that retains these design objectives. All lighting shall comply with City Code performance standards for lighting. All lighting shall be reviewed by City staff to ensure compliance with the Design Framework and City Code standards described above.

Standards for Outdoor Dining.

Outdoor dining is encouraged as an attractive addition to a pedestrian- and retail-friendly, vital COR. Such dining is encouraged subject to the standards in Section 117-118 of the Zoning Ordinance.

Overall Framework - Parking

Overview

Balancing the realities of car-related necessities (streets, parking and so on) with future transit service and the desired character of The COR is a significant challenge. The goal is to provide adequate parking; both quantity and location, while promoting new strategies that support the overall needs of The COR. Parking will be provided through a combination of on street spaces, off-street surface lots, underground lots and structured ramps to support the mix of uses at the core.

Parking structures should contribute to the overall character and image of The COR. Ramp design should include elements, colors and materials that reflect, or complement surrounding buildings. Liner stores or other street level uses should be integrated into ramp design along important street frontages.

Guideline Recommendations

Parking guidelines encourage the following:

- Locate surface parking lots away from the major streets, either behind or to the side of primary buildings; surface parking lots along major street frontage are not allowed in the core area
- Minimize surface parking lots in favor of other solutions including underground parking to serve residential buildings, on-street parking to serve retail shops and parking ramps
- Provide a combination of fencing, landscaping and landform to screen parking areas from major streets and important views, soften parking area edges, provide shade, integrate native plantings, offset islands and reduce to 'sea of parking' image
- Create strategies for shared parking between adjacent uses, taking advantage of peak and off-peak cycles, business hours, nighttime activities, special events and other needs
- Provide alternative surfaces for secondary (less frequently used) parking areas including porous pavements, green pavements and so on
- Provide facilities or services that respond to and connect with future transit to reduce required parking, including shuttle/circulator bus, bicycle lockers
- Provide flexibility including hours for on-street parking, security and enforcement practices, permit or metering
- Provide parallel parking on both public and private streets throughout The COR, to add parking and create a traffic calming, pedestrian buffer; Bumpouts are encouraged as a traffic calming measure on all streets within the COR.
- Explore options to integrate stormwater management requirements into parking area design
- Provide parking spaces for typical daily use, satisfying both quantity and location needs through a mix of on street, small surface lot, underground and ramped parking solutions
- Provide options for additional/overflow parking to support holiday traffic and special events including porous pavements, turf parking areas (Netlon and other soil amendments) or shuttle service from nearby parking areas
- Encourage shared parking solutions that target around the clock shifts in destination, audience or take advantage of peak/off-peak hours of operation for various uses within the core area
- Promote municipal parking ramps as the primary facility to meet public parking needs within the core area

- Discourage driveway access to parking facilities along Arterial, Destination and Parkway streets, in favor of side streets.

Objectives

The primary objective is to provide a balance of surface lots, on-street and structured parking, with ample quantities and close proximity to serve the mix of uses in The COR. In addition to providing adequate space, excellent design is a major factor as well. The framework for The COR encourages creativity, innovation, quality and attention to detail in every aspect of project development, including parking solutions. Photographs throughout the Design Framework suggest some of the many possibilities.



Placeholder



Figure 4: Street Parking Plan

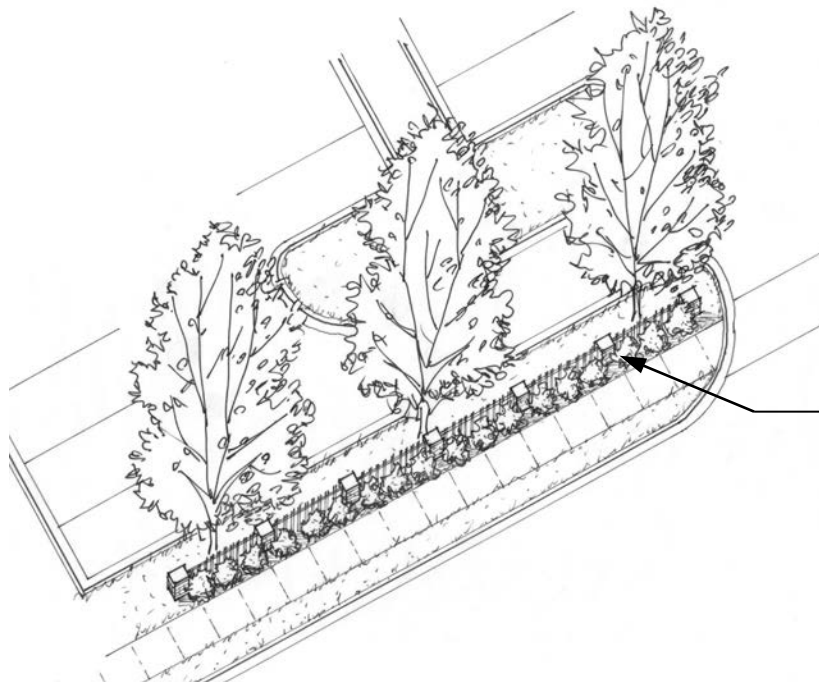


Figure 5: Parking District Map

Minimum Standards

Parking in The COR is intended to be shared to the greatest extent practicable in all mixed-use areas. The parking standards are intended to provide a practical basis for providing adequate parking within the COR District through a careful analysis of uses, shared parking arrangements, use of public street parking and reduction allowances for the proximity to the transit station. A parking plan has been prepared to identify the planned number, location, sharing arrangements and public use (see Figure 4: Street Parking Plan and Figure 5: Parking District Map). The parking plan provides information that can be used to help address longer term parking arrangements where the possibility of use conversion or building expansion exists. Parking shall be provided under any of the following arrangements:

- A. No parking shall be located between the front of the principal structure and the street on parcels abutting Destination and Downtown streets in COR1.
- B. Not more than 50 percent of the parking shall be located in front of the principal structure and the street on parcels abutting Arterial, Parkway, Connector and Local streets.
 - 1. In the COR2 district, developments may be allowed more than 50 percent parking in the front yard, provided all other design standards have been met, including the use of a wall, railing, hedge or combination to create a street edge and screen parking.
- C. Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements, to a minimum height of three feet (3') and a maximum height of four and one-half feet ($4\frac{1}{2}'$) above the level of the parking lot, at the build-to line required for the property. The amount of required screening may vary by sub-district and street frontage and is described in Part Two of this document.



Landscaped edge that combines fence with trees, low shrubs and ground cover for parking lot screening and buffering along sidewalk to screen parking

- D. No parking spaces shall be located on corner lots at the point of street intersections.
- E. Shared parking in COR1 will be accomplished through a Parking Use and Maintenance Agreement (PUMA).
- F. Off-street parking in the COR2 and COR3 sub-districts shall be secured for public use through parking easements and other appropriate conveyances. Shared parking arrangements between nearby uses are encouraged in both sub-districts.
 - 1. The City may approve joint parking for one or more businesses where the total number of parking stalls provided for joint use is less than the sum of the total required for each business should they provide them separately. The applicant must demonstrate the feasibility of the arrangement in a written report. Such a permit shall not be granted except when the following conditions are found to exist:
 - i. Proximity. The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use shall be located within 300 feet of such parking facilities, excluding public rights-of-way.
 - ii. Conflict in Hours. The applicant shall demonstrate in documented fashion that there is no substantial conflict in the principal operating hours of the 2 buildings or uses for which joint use of off-street parking facilities is proposed.
 - iii. Written Consent and Agreement. A legally binding instrument, executed by the parties concerned, for joint use of off-street parking facilities, duly approved as to title of grantors or lessors, and in a form and manner of execution approved by the City Attorney, shall be filed with the City Clerk and recorded with the Anoka County Recorder or Registrar of Titles, and a certified copy of the recorded document shall be filed with the City within 60 days after approval of the joint parking use by the City or the interim use permit shall be considered null and void.
- G. On-street parking adjacent to buildings shall not be used for the purposes of calculating parking requirements.
- H. Within the COR-4 sub-district, parking on individual parcels serving individual uses may be provided if designated and approved as part of the master plan.
- I. Within all sub-districts, a minimum driveway length of 25 feet is required to limit conflicts between vehicles parked in the driveway and street or sidewalk users.
- J. In order to ensure the pedestrian orientation of the COR Districts, minimum/maximum on-site parking standards are set based on the following table:

Table 1

Use	Minimum number of parking stalls	Maximum number of parking stalls*
Retail	2 per 1,000 sq. ft.	4 per 1,000 sq. ft.
Restaurants	3 per 1,000 sq. ft.	5 per 1,000 sq. ft.
Offices	2 per 1,000 sq. ft.	3 per 1,000 sq. ft.
Medical offices, clinics	2 per 1,000 sq. ft.	4 per 1,000 sq. ft.
Health clubs	3 per 1,000 sq. ft.	5 per 1,000 sq. ft.
Theaters, places of assembly	1 per 5 seats	1 per 3 seats
Residential		
Attached or detached	1 per unit	2 per unit
Multifamily units	1 per unit	2 per unit

*If a parking structure is provided on site, maximum parking stalls do not apply.

- K. Non-Specified Uses. For uses not specifically listed above, off-street parking requirements shall be computed by the Zoning Administrator on the same basis as required for the most similar listed uses. In such cases, the Zoning Administrator shall also consult off-street parking reference materials including, but not limited to, manuals prepared by the American Planning Association and Institute of Transportation Engineers.
- L. Handicap Parking. The size, number, and location of stalls reserved for handicapped parking shall be provided and identified as required by applicable regulations. These spaces are included in the computation for the minimum parking space requirement.
- M. Change in Land Use. When the site intensity or use of a building and/or property is increased with consequential effect upon the parking requirements as prescribed in this Section, the parking requirements as prescribed herein shall be used to provide for such increase in the site intensity and/or use.
- N. Use of required parking spaces. Required parking spaces must be available for the use of residents, customers or employees of the use. Fees may be charged for the use of required parking spaces. Required parking spaces may not be assigned in any way to a use on another site, except for joint parking situations. Also, required parking spaces may not be used for the parking of equipment or storage of goods or inoperable vehicles.
- O. Transit Service Reduction. The minimum number of parking stalls required on site may be reduced by 10% for any parcel located within ¼ mile of a transit stop. To qualify for this reduction, the transit stop must provide regular service on all days of the week and direct pedestrian access must be provided between the building and the transit stop.
- P. Bike Racks. In addition to the bike racks provided as part of the streetscape, individual businesses are encouraged to provide bike racks for customers. Bike rack locations will be reviewed and approved by the City as part of the site plan review.

Q. Increase to Maximum Required Parking. If additional parking is sought to exceed these maximum requirements, a conditional use permit can be sought to increase maximums up to 25 percent.

1. In the COR-2 sub-district, an increase of 25% in the maximum number of parking stalls is permitted without the issuance of a conditional use permit if approved as part of the site plan.

R. In the COR1 sub-district, a PUMA (Parking Use and Maintenance Agreement) shall be applied to all development as follows:

1. It is the City's intent to maximize development on individual lots. In order to help landowners accomplish this goal, the City will develop public parking ramps, which will be available for public parking within The COR. In order to minimize the amount of the site required for parking, the landowner may choose to enter into the PUMA for utilization of the public parking ramps to meet all or a portion of their minimum parking requirements.
2. Each development shall be subject to a PUMA that specifies that each property in the COR1 shall be financially responsible for its proportionate share of a shared parking facility. The proportionate share shall be determined on the basis of the property's off-street parking needs, as determined by the parking requirements of Item J above.
3. The City shall establish fees by ordinance. The developer shall be responsible for payment in an amount equal to the value of the required parking on a per-stall price basis for ramp parking through the PUMA. The City will determine the appropriate contribution.
4. Funds collected by the City shall be deposited in a special fund used only to acquire and/or develop off-street parking facilities for the COR. Financial responsibility shall cover the construction and continuing maintenance of the parking facility.
5. The parking facility may be constructed and maintained by the City or by a private management entity acceptable to the City.



Private Streets

Private streets may be allowed within residential subdivisions, subject to the standards in Section 117-112 (e)3.b. of the Zoning Ordinance.

Loading Areas

A. Loading areas and docks shall be located in the rear of the building.

- B. Loading areas shall not be located in the front yard and shall be fully screened from public streets, public parks and residential areas through landscaping and building design measures.

DRAFT

Overall Framework – Building Design

Overview

The COR Development Plan 5.03 identifies the preferred mix and approximate location of a variety of land use types. Together with the Zoning Code, this Design Framework focuses on the following overall objectives:

- Promote vertical and horizontal mixed use (within a building, within a block, within a district)
- Provide a variety of housing types, styles, pricing
- Encourage increased density in and around the central core area
- Promote an interesting mix of building styles, scales and massing for each sub-district
- Support creative, innovative, high quality design solutions as the benchmark for success
- Integrate mix of uses with public green space within each district
- Provide a variety of commercial types
- Mix residential and commercial uses to promote street-level activity throughout the day

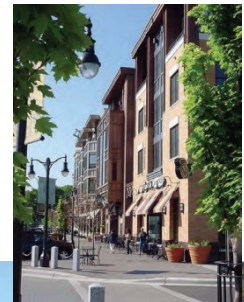
Guideline Recommendations

The mix of land uses in The COR will encourage activity during the day and into the evening and nighttime hours. As a focus of commerce, employment, recreation and housing, The COR resembles a small to medium size Midwestern downtown in scale and character. Land uses are intentionally mixed, to bring shoppers and workers into the area during the day and attract new residents and visitors to entertainment venues in the evening.

The civic component of The COR, anchored by City Hall, Police Station and variety of public spaces and squares, adds an important element to the land use mix and brings a level of authenticity to the district.

Objectives

- Encourage vertical mixed-use in the core with housing and office space over retail uses along the street, particularly in the center of the district.
- In residential districts, particularly closer to the core, a limited amount of retail uses will be encouraged to service residents and provide nearby places to gather.
- Promote innovative models for housing that include a mix of townhomes, flats and lofts within single buildings or on the same block.
- Accommodate larger, ‘big box’ retailing and auto-oriented uses within the COR2 sub-district only if innovative design approaches are used including two story buildings, use of liner stores facing the street, minimal blank walls, creative parking strategies, etc.
- Where similar uses create a ‘family’ or campus of buildings (e.g. medical campus), buildings should reinforce the street edge and parking should be set within the core of the block.
- Uses shall promote pedestrian friendly streets, contributing to street level activities and overall visual character of each district.
- All uses should reinforce the street edge.



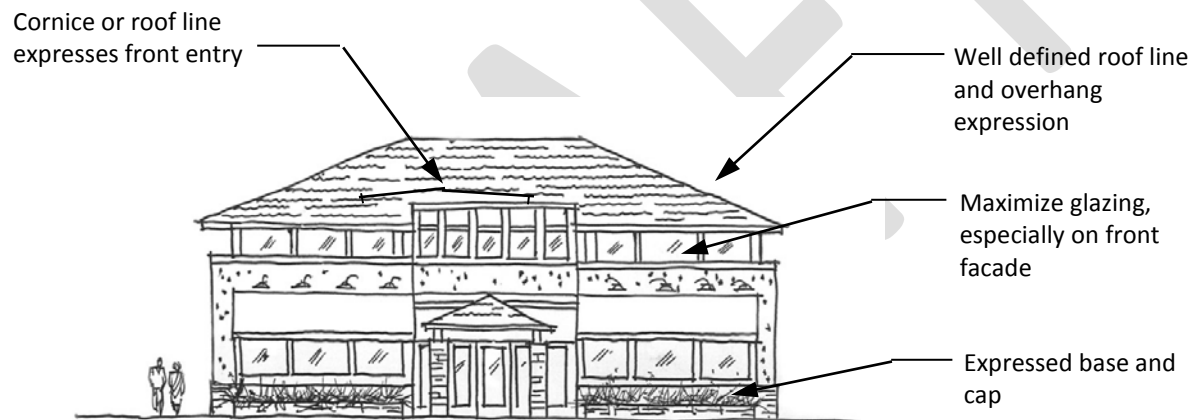
Architectural Overview

High quality architecture is an essential component in fulfilling the objectives of the Design Framework. Rather than prescribing a particular style, these architectural guidelines are intended to encourage an integration of both traditional and contemporary design. Architectural designs should provide a consistent quality, measured, to a great degree, by the pedestrian experience along the street and by an architectural expression that provides character without being thematic, obtrusive, or artificial. Architectural character should strive to be authentic and varied, but not 'thematic'.

Architecture Recommendations

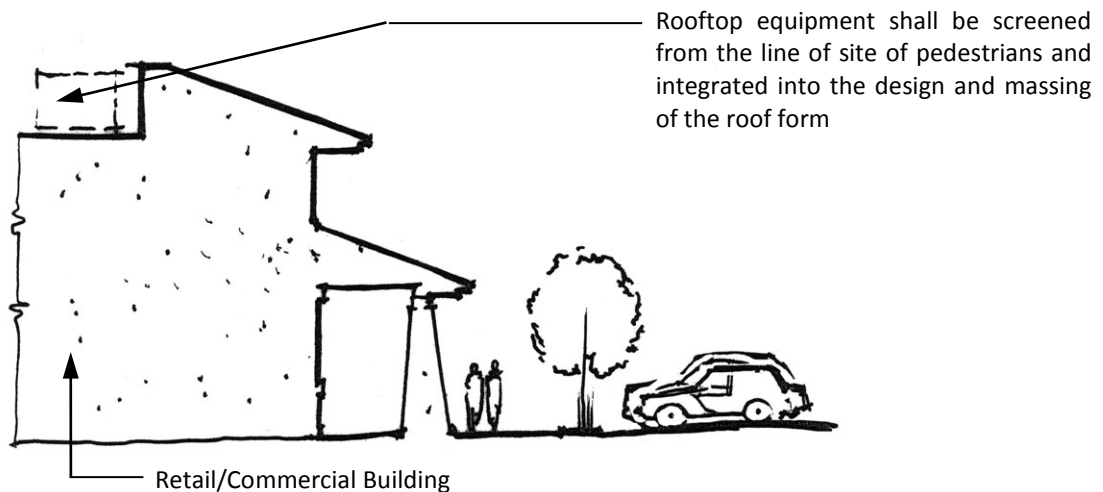
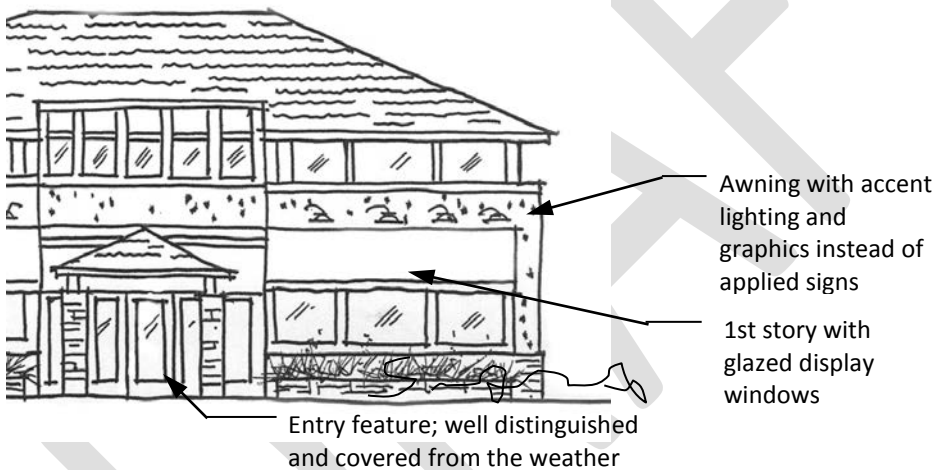
Of all the layers that combine to form The COR Development Plan, architecture will typically be the most prominent development component. Both visually and physically, architecture will play a major role in defining the overall design character and mix of uses for The COR. It is crucial that the design and location of buildings address these architectural guidelines, with specific emphasis on the following:

- An animated street presence with a mix of street-level uses, interesting building façades, many doors and windows on the street, careful design of lighting, awnings, signage and other elements that animate the pedestrian experience

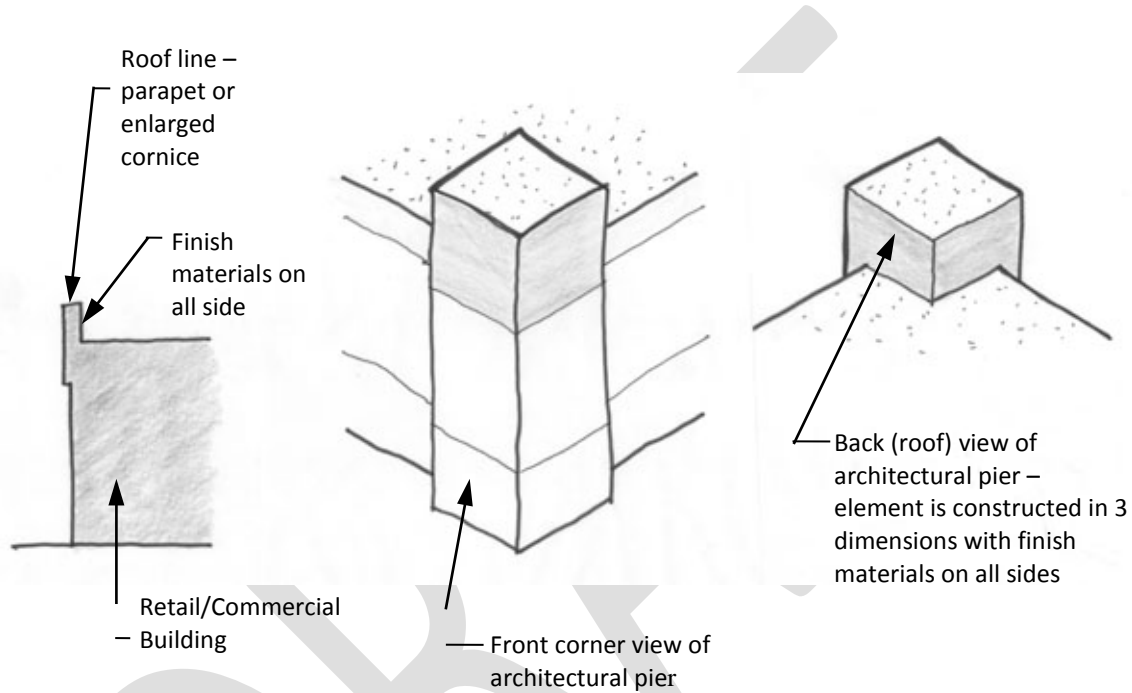


- Variety in building design, character and expression; not one theme or building style, but a thoughtful integration of many design solutions
- Variety of building types including a range of height, scale and proportion, that support an integrated mix of housing options, shopping destinations, entertainment venues, civic structures and other COR uses
- Use of high quality materials, suggesting a preference toward native materials and masonry elements, with respect for local building techniques
- Building location is as important as building style; special architectural elements, character, transparency and a higher level of materials and detailing should be used to highlight key streets and important crossroads throughout The COR
- Buildings should always be located at all four corners of intersections.
 - In the COR2 sub-district, if the City finds that there are unique circumstances where buildings cannot be located on the corner, the City may approve the use of fences, walls or other design elements to create that "street edge"

- Buildings will be located at the street right-of-way line (zero setback), but also allow recessed space for outdoor dining and other street level activities providing some minor deviation for variety
- Greater emphasis should be given to architectural elements, materials and other design features for buildings located at primary intersections, or where streets intersect with parks, such as the streets that front on or end near the Municipal Plaza. These locations can often be seen from several directions, perhaps terminate a view from a distance down the street or sit at a prominent node; They will likely become future landmarks or helpful orientation/wayfinding icons as The COR develops
- Encourage both vertical mixed use (within each building) and horizontal mixed use (within each block) throughout this district
- Include a mix of housing, civic, retail, restaurant, entertainment, performance and other uses that encourage a variety of activities throughout the day.
- Minimize openings between buildings, although limited driveway access and some provision for pedestrian connections through blocks are encouraged – gaps between buildings to accommodate surface parking lots, greater building setbacks or other purposes are discouraged
- Use recessed entries and windows to create street-level interest, variety and enhance pedestrian scale along street frontage



- Equipment, mechanical systems, transformers, etc. must be screened from view in a way that is integral to the architecture of the building. Screening should be accomplished with materials similar to or compatible with materials used on the main structure; metal fencing or mechanical vent screens alone are not sufficient.
- Roof lines and cornice details shall be completed in a 3-dimensional manner so that the back of roof features or similar unfinished areas are not visible.



Overall Framework - Signage

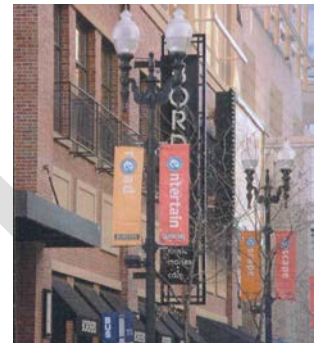
Overview

Signage within The COR should provide a system for clear wayfinding for all modes of transportation and should ensure successful business operation while maintaining the design aesthetic of this unique project. These sign standards are intended to allow flexibility and creativity while maintaining the design concepts of The COR. Due to the distinctive nature of The COR, the sign standards from the City Code are not applicable and signage shall be allowed as prescribed by the Design Framework. A Master Sign Plan identifies the location of key sign locations (see Figure 6: Signage Plan).

Guideline Recommendations

The COR development manager shall prepare a Master Sign Plan for the public elements of the project, which are in compliance with the design framework and will be adopted by reference. The Master Sign Plan will specifically address public signs including:

- The three off-site community signs
- Banner signs on light poles
- Signage for public parks
- Signage for public parking ramps
- Signage for public buildings
- Community kiosks



Objectives

Signage should be used as a tool to help identify businesses and neighborhoods with The COR and should have elements that are focused on the pedestrian nature of The COR as well as the signage needs for businesses.

- Signage and lighting which is integrated into the design of the building is encouraged.

Definitions

Awning Sign means a sign incorporated into or attached to an awning.

Community sign means an off-site sign identifying the development name and key tenants. Community signs may also include public information. Reader boards are allowed to be incorporated into community signs within The COR.

Temporary Sign means a sign which is erected or displayed for a limited period of time and not affixed to a Minnesota State Building Code approved structure.

Project sign means a freestanding area identification sign which identifies a single-family or multifamily residential subdivision, a commercial development or an industrial park or office park and which is located on the same parcel as the development it identifies.

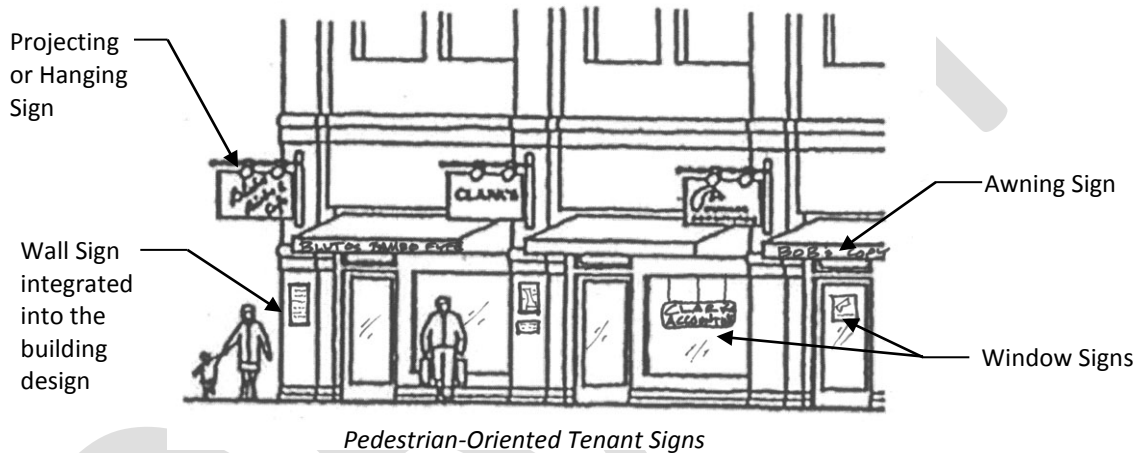
Projecting sign means any sign, all or any part of which extends beyond the surface of the building or wall by more than 16 inches.

Public Realm/Streetscape sign means any sign erected and maintained by public officials or public agencies, or approved and authorized for use by state or local governmental authorities.

Sandwich Board Signs means a self-supporting, freestanding temporary sign with only two (2) sides that are situated adjacent to a business with the intent to attract pedestrian traffic to businesses. Sandwich board signs are not meant to be read by vehicular traffic.

Wall sign means any sign which is affixed to a wall of any building. This definition includes individual letter signs and signs on mansards.

Window sign means a sign installed inside a window, or any sign placed within a building for the purpose of being visible from the public right-of-way. This does not include merchandise on display.



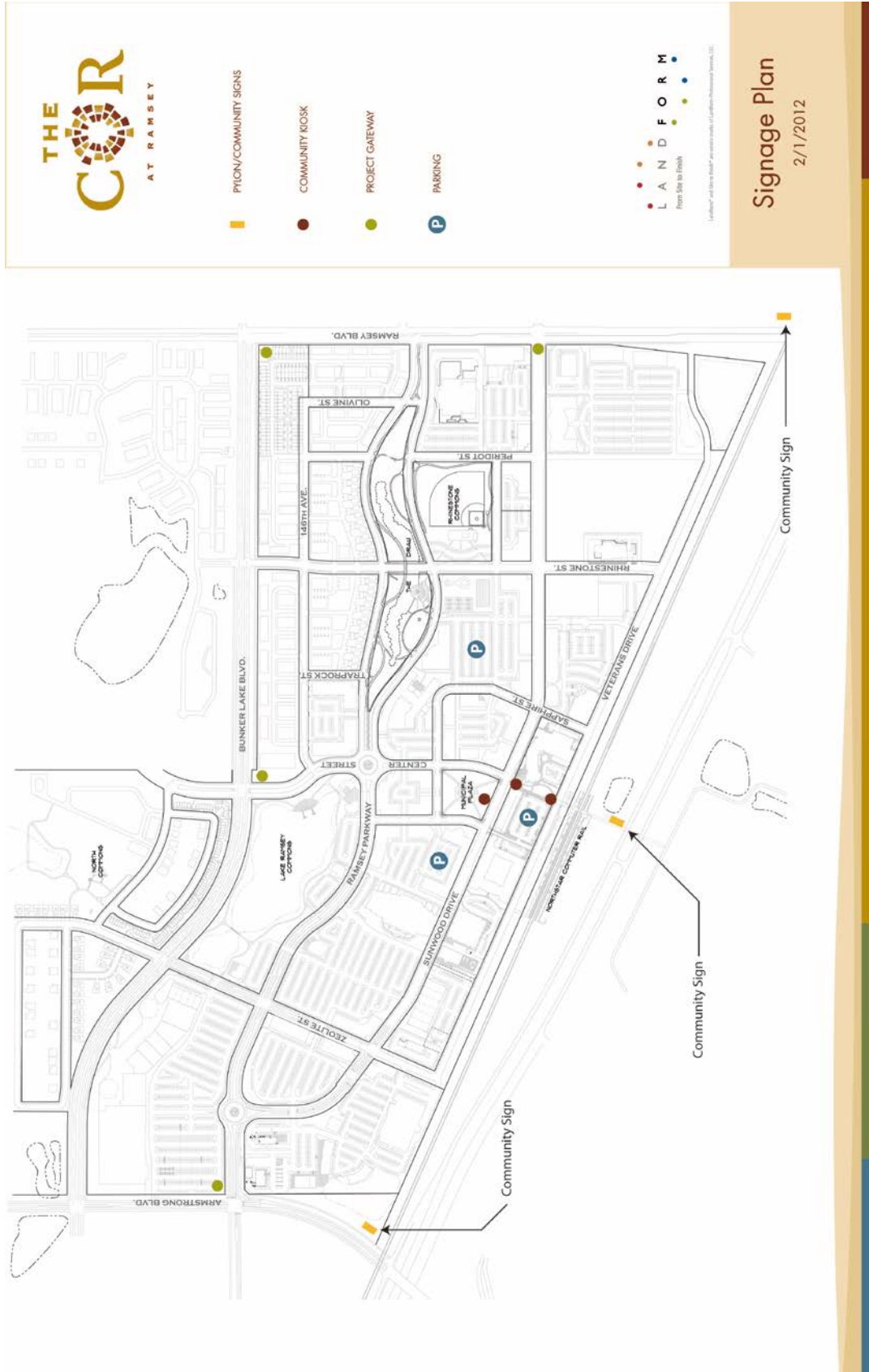


Figure 6: Signage Plan

Standards

Public Realm/Streetscape Signs

The pedestrian oriented nature of The COR requires unique signage that will build on the design concepts for The COR. These types of signs include banner signs on the streetlights, kiosks, street signs, wayfinding signs, signage for public parking ramps, etc. As the design concept for The COR has been refined, so has the signage plan. The COR development manager shall develop standards for these public realm signs as part of the Master Sign Plan. The Master Sign Plan shall be incorporated by reference and may be updated from time to time. Such signage shall be allowed on public spaces as needed to provide information and wayfinding. No advertising shall be allowed on Public Realm/Streetscape Signs except for community events.

Community signs

Community signs include are planned to include three signs on Highway 10, as shown on the Signage Plan (see Figure 4). The signs include the existing Community Sign near the future transit plaza, the sign at the northwest corner of Highway 10 and Ramsey Boulevard and the planned sign at the northwest corner of Highway 10 and Armstrong Boulevard.

These off-site signs are allowed as shown on the signage plan and shall have consistent materials and colors. The Master Sign Plan shall detail the materials, colors and standards for these three community signs. The Master Sign Plan shall include standards for which tenants shall be allowed on the community signs.



Desirable signs are designed to be architecturally compatible with buildings within the development and other signage within the development

Project Signs

Project signs are permitted within all COR sub-districts.

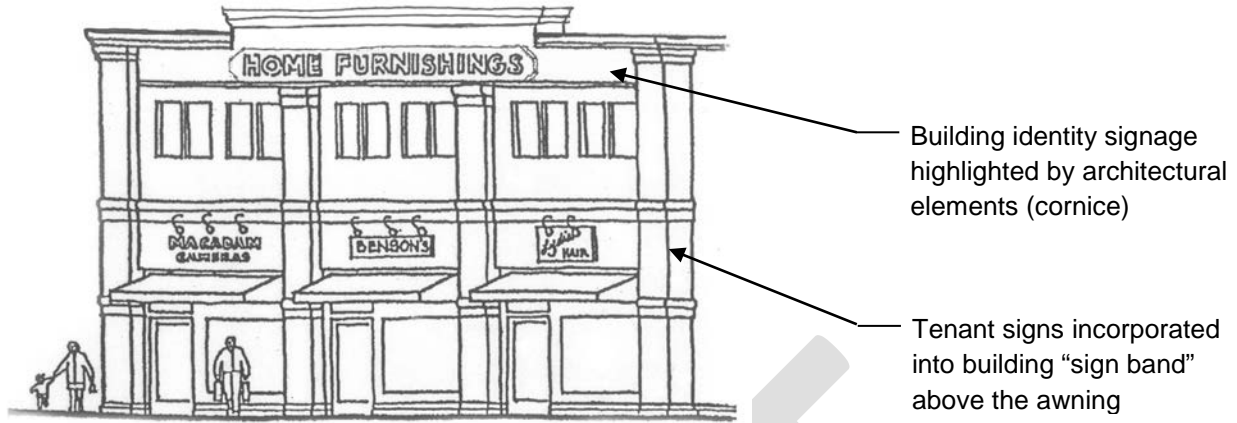
One freestanding sign is allowed per building, provided that the following standards are met:

- A. The building in which the advertising business is located, shall be set back a minimum of six feet from a public street right-of-way.
- B. The area of each face of the signboard shall not exceed six square feet and the signboard shall not have more than two readable faces
- C. The height of the top of the signboard, or of any posts, brackets, or other supporting elements shall not exceed six feet from the ground.

- D. The signboard shall be constructed of wood, acrylic, aluminum or metal and shall be architecturally compatible with the style, composition, materials, colors and details of the building.
- E. No part of the sign shall encroach on the right-of-way and its location shall not interfere with pedestrian or vehicular circulation.
- F. Limited to one sign per building and shall not be in addition to wall-mounted, applied letter or projecting signs.
- G. The readable faces of the sign shall be perpendicular to the adjacent street.

In the COR2 District, the following signage shall be allowed:

- A. Ground sign. There shall not be more than one ground sign for each parcel. The gross surface area of a ground sign shall not exceed 100 square feet for each exposed face nor exceed an aggregate gross surface area of 200 square feet.
- B. Menu board. One on-site menu board per drive-up or walk-up lane of a drive-in restaurant up to a maximum of 32 square feet each and a maximum height of 3 feet. Menu boards are allowed a message on one side only and cannot contain an advertising message.
- C. Directional signs.
 - 1. Directional or instructional signs are permitted in accordance with section 117-463(l).
 - 2. Parking lot directional signs designating parking area entrances and exits are limited to one sign for each entrance and/or exit and shall not exceed four square feet for each exposed face. Parking lot directional signs shall not project higher than five feet in height, as measured from the established grade of the parking area to which such signs are accessory.
 - 3. Parking lot instructional signs designating the conditions of use or identification parking areas shall not exceed eight square feet and shall not project higher than ten feet in height for wall signs and seven feet in height for ground signs, as measured from the established grade of the parking area to which such signs are accessory.



Wall Signs

Wall signs are permitted within all COR sub-districts.

Wall signs shall be permitted on one wall, except that lots with frontage on more than one street may have signage on one wall per street frontage.

Within the COR1, COR3, COR4 and COR5 districts, the following standards apply:

- A. Wall-mounted or painted signs, provided the following standards are met:
 1. The sign shall be affixed to the front facade of the building, and shall project outward from the wall to which it is attached no more than six inches.
 2. Single Tenant Buildings. Each building shall be allowed one wall sign per street frontage. Signage must be located on the street elevation. The area of the sign shall not exceed five percent of the ground floor building facade area or 50 square feet, whichever is less.
 3. Multi-Tenant Buildings.
 - a. Each building shall be allowed wall signage on the street frontage elevation. For buildings with multiple street frontages, the allowable signage is per street frontage. Signage must be located on the street elevation.
 - b. Each building is allowed wall signage that shall not exceed 5% of the wall area of the building façade adjacent to the street or 50 square feet, whichever is less.
 - c. Tenant signage must be located on the tenant lease space.
 - d. At least 50% of the allowed signage must be allocated to ground floor tenants and located on the ground floor.
 - e. Signage is limited to a maximum of one sign per business/tenant, except that tenants with frontage on multiple streets may be permitted to have signage on each street frontage.
 - f. Multi-tenant buildings must have wall signs of similar design. Sign permits for tenants in multi-tenant buildings shall only be permitted by the City after the building owner has submitted a comprehensive sign plan approved by the Zoning

Administrator. The comprehensive sign plan for the building shall include similar design standards including sign material, color, style, spacing and size.

4. Signs for buildings facing Highway 10. Single or multi-tenant buildings that have frontage on Highway 10 or are separated from Highway 10 only by other public right-of-way, shall be allowed to have signage on that street elevation that is up to 5% of the wall area of that building façade with no maximum square footage.
- B. Wall-mounted building directory signs identifying the occupants of a commercial building, including upper story business uses, provided the following standards are met:
1. The sign is located next to the entrance.
 2. The sign shall project outward from the wall to which it is attached no more than six inches.
 3. The sign shall not extend above the parapet, eave, or building facade.
 4. The area of the signboard shall not exceed three square feet, with each tenant limited to one square foot.
 5. The height of the lettering, numbers, or graphics shall not exceed four inches.
 6. One such sign is allowed per public building entrance and is allowed in addition to other permitted wall signage.
- C. Applied letters may substitute for wall-mounted signs, if constructed of painted wood, painted cast metal, bronze, brass, acrylic or black anodized aluminum. The height of applied letters shall not exceed 12 inches.
- D. Logos are considered signs and shall be included in the maximum allowable sign area.
- E. Window or door signs, provided that the following standards are met:
1. The sign shall not exceed ten percent of the window or door area or four square feet, whichever is less.
 2. The sign shall be silk screened, hand painted, applied letters/graphics, neon tubing or other sign technologies that meet these standards.
 3. Limited to one sign per business, applied on either the window or the door, but not on both.
 4. The sign shall not have an opaque backing of any type although smoked glass is allowed.

5. Window signage (includes graphics) shall be permitted on the same building walls that have, or are allowed to have, wall signage pursuant to Item A above. Window signage shall be deducted from the allowable wall signage area.

Within the COR2 district, where more conventional suburban development is expected, rather than the neo-traditional development planned for the other COR sub-districts, the following standards apply:

- A. Wall, canopy or marquee sign. Total sign area may not exceed 15 percent of the front building facade. At least 50 percent of the signage area must be placed on the measured wall with remaining signage area, if desired, distributed on any other wall. Sign height shall not exceed the top of the parapet wall or, if no parapet wall, sign height shall not exceed the height of the eaves. The gross surface area of a wall, canopy or marquee sign may be increased by ten percent if such wall sign:
 1. Consists only of individual, outlined alphabetic, numeric and/or symbolic characters without background except that provided by the building surface to which the sign is to be affixed;
 2. Illumination, if any, is achieved through shielded illumination, shielded silhouette lighting, or shielded spot lighting but not any lighting where the light source is visible or exposed on the face or sides of the characters; and
 3. A wall, canopy or marquee sign may be located on the outermost wall of any principle building but shall not project more than 16 inches from the wall to which the sign is to be affixed. A wall sign shall not project higher than the parapet line of the wall to which the sign is to be affixed.
- B. Window signs are restricted to 30 percent of the area of the window in which the sign is to be displayed.

In all COR sub-districts, restaurants and cafes shall be permitted one wall-mounted display featuring the actual menu as used at the dining table, to be contained within a shallow wood or metal case and clearly visible through a glass front. The display case shall be attached to the building wall, next to the main entrance, at a height of approximately five feet, shall not exceed a total area of two square feet, and may be lighted. This signage is allowed in addition to other permitted wall signage.

Projecting Signs

Projecting signs are permitted within all COR sub-districts.

Projecting signs, including graphics or icon signs, mounted perpendicular to the building wall, are encouraged in all sub-districts, provided the following standards are met:

- A. The sign area shall not exceed six square feet.
- B. The distance from the ground to the lower edge of the signboard shall be ten feet or greater.



- C. The height of the top edge of the signboard shall not exceed the height of the wall from which the sign projects, if attached to a single story building, or the height of the sill or bottom of any second story window, if attached to a multistory building.
- D. The distance from the building wall to the signboard shall not exceed six inches.
- E. The width of the signboard shall not exceed three feet.
- F. Limited to one sign per business. Projecting sign area shall be deducted from the allowable wall signage area.
- G. Granted to ground floor commercial uses only.

Awning Signs

Awning signs are allowed in all COR sub-districts. Awning signs are allowed for ground floor uses only, provided that the following standards are met:

- A. If acting as the main business sign, it shall not exceed 24 square feet in area, and the height of the lettering, numbers, or graphics shall not exceed 12 inches.
- B. If acting as an auxiliary business sign, it shall be located on the valance only, shall not exceed four square feet in area, and the height of the lettering, numbers, or graphics shall not exceed four inches.
- C. Limited to two such signs per business.
- D. If acting as the main business sign, it shall not be in addition to a wall-mounted or applied letter sign.

Sandwich Board Signs

Sandwich board signs are permitted within all COR sub-districts.

- A. One sandwich board sign per business is permitted in any business, commercial and mixed use district and shall be located within five feet (5') of the main building entrance to the business it advertises.
- B. Sandwich board signs shall be displayed only during open business hours and must be removed daily.
- C. Sandwich board signs shall be no more than a total of two feet (2') in width and three feet (3') in height



- D. Sandwich board signs must leave a minimum of five feet (5') of clearance for pedestrian access if placed on a public or private sidewalk. Sandwich board signs may not hinder the ability of persons to access vehicles parked at the curb and/or access to a building.
- E. Acceptable materials for sandwich board signs shall include the following: metal, wood synthetic materials such as a chalk board and whiteboard. Sandwich board signs shall not be illuminated, nor shall they contain moving parts, or have balloons, streamers, stringers, pennants or similar adornments attached to them. Sandwich board signs shall be maintained in a good appearance at all times.
- F. No sandwich board sign shall be secured, tethered or installed on traffic devices, utility equipment, street furniture, street lights, or any other public fixture.
- G. Sandwich board signs are temporary signs and shall not be counted towards the total sign area of the site for permanent signage.
- H. Sandwich board signs may be used only during business hours and must be removed daily.

Real Estate Signs

Real estate signs advertising that a particular property is for sale, rent, or lease are limited to one sign per property.

Temporary Signs

Temporary signs are allowed per Section 117-465 (Temporary signs) of the Zoning Ordinance.

Off-Site Signs

Off-site signs are prohibited except for wayfinding and community signage specifically allowed by the Design Framework.

Table 2

Sign Standards					
Development Standard	COR1	COR2	COR3	COR4	COR5
Project Signs					
Number of signs allowed	1*	1*	1*	1*	1*
Size of Sign (maximum)	6 sq. ft./6 feet high	100 sq. ft./6 feet high	6 sq. ft./6 feet high	6 sq. ft./6 feet high	6 sq. ft./6 feet high
Menu Board**	N/A	1 per drive-through/36 sq. ft. max.	N/A	N/A	N/A
Directional Sign	N/A	Per 117-463(l)	N/A	N/A	N/A
Wall Sign					
Number of signs allowed	1*	1*	1*	1*	1*
Size of Sign					
Single Tenant Building	50 sq. ft. or 5% of the ground floor façade area, whichever is less	15% of façade area	50 sq. ft. or 5% of the ground floor façade area, whichever is less	50 sq. ft. or 5% of the ground floor façade area, whichever is less	50 sq. ft. or 5% of the ground floor façade area, whichever is less
Multi-Tenant Buildings	50 sq. ft. or 5% of the façade area, whichever is less	15% of façade area	50 sq. ft. or 5% of the façade area, whichever is less	50 sq. ft. or 5% of the façade area, whichever is less	50 sq. ft. or 5% of the façade area, whichever is less
Building Facing Highway 10	5% of the façade area	15% of façade area	5% of the façade area	5% of the façade area	5% of the façade area
Window Sign					
Number of signs allowed	1	1	1	1	1
Size of Sign	10% of area of window or 4 sq. ft., whichever is less. Deducted from allowable wall sign area.	30% of area of window. Deducted from allowable wall sign area.	10% of area of window or 4 sq. ft., whichever is less. Deducted from allowable wall sign area.	10% of area of window or 4 sq. ft., whichever is less. Deducted from allowable wall sign area.	10% of area of window or 4 sq. ft., whichever is less. Deducted from allowable wall sign area.
Directory Sign					
Number of signs allowed	1 per building entrance	1 per building entrance	1 per building entrance	1 per building entrance	1 per building entrance
Size of Sign	3 sq. ft. maximum	3 sq. ft. maximum	3 sq. ft. maximum	3 sq. ft. maximum	3 sq. ft. maximum
Projecting Sign					
Number of signs allowed	1*	1*	1*	1*	1*
Size of Sign	6 sq. ft./3 feet wide	6 sq. ft./3 feet wide	6 sq. ft./3 feet wide	6 sq. ft./3 feet wide	6 sq. ft./3 feet wide
Awning Sign					
Number of signs allowed	2 per business	2 per business	2 per business	2 per business	2 per business
Size of Sign	24 sq. ft./max. letter height 12-inches for main business sign or 4 sq. ft./max letter height 4-inches if auxiliary. Area is deducted from allowable wall sign area.	24 sq. ft./max. letter height 12-inches for main business sign or 4 sq. ft./max letter height 4-inches if auxiliary. Area is deducted from allowable wall sign area.	24 sq. ft./max. letter height 12-inches for main business sign or 4 sq. ft./max letter height 4-inches if auxiliary. Area is deducted from allowable wall sign area.	24 sq. ft./max. letter height 12-inches for main business sign or 4 sq. ft./max letter height 4-inches if auxiliary. Area is deducted from allowable wall sign area.	24 sq. ft./max. letter height 12-inches for main business sign or 4 sq. ft./max letter height 4-inches if auxiliary. Area is deducted from allowable wall sign area.

*One sign is allowed per street frontage (either wall or project)

**Restaurants and cafes in all districts are allowed one wall mounted menu board not to exceed 2 sq. ft. in addition to other permitted wall signage.

Additional standards

- A. Businesses with service entrances may identify these with one wall-mounted or applied letter sign not exceeding two square feet.

- B. One directional sign, facing a rear parking lot. This sign may be any type of permitted sign other than a freestanding sign, but shall be limited to four square feet in area.

Creative Sign Standards

- A. *Purpose.* This section establishes standards and procedures for the design, review, and approval of creative signs. The purposes of this creative sign program are to:
 - 1. Encourage signs of unique design, and that exhibit a high degree of thoughtfulness, imagination, inventiveness, and spirit; and
 - 2. Provide a process for the application of sign regulations in ways that will allow creatively designed signs that make a positive visual contribution to the overall image of the city, while mitigating the impacts of large or unusually designed signs.
- B. *Applicability.* An applicant may request approval of a sign permit for a creative sign to authorize onsite signs that employ standards that differ from the other provisions of this chapter but comply with the provisions of this section.
- C. *Application Requirements.* A sign permit application for a creative sign shall include all information and materials required by the City.
- D. *Procedure.* A sign permit application for a creative sign shall be subject to review and approval by the City as part of the Site Plan review process. When the creative sign is proposed after site plan review is complete, a creative sign may be approved by the Zoning Administrator when the proposed sign is fifty square feet or less, and shall be approved by the City Council when the sign is larger than fifty square feet.
- E. *Design Criteria.* In approving an application for a creative sign, the review authority shall ensure that a proposed sign meets the following design criteria:
 - 1. Design Quality. The sign shall:
 - a. Constitute a substantial aesthetic improvement to the site and shall have a positive visual impact on the surrounding area;
 - b. Be of unique design, and exhibit a high degree of thoughtfulness, imagination, inventiveness, and spirit; and
 - c. Provide strong graphic character through the imaginative use of graphics, color, texture, quality materials, scale, and proportion.
 - 2. Contextual Criteria. The sign shall contain at least one of the following elements:
 - a. Classic historic design style;
 - b. Creative image reflecting current or historic character of the City;
 - c. Inventive representation of the use, name, or logo of the structure or business.

3. Architectural Criteria. The sign shall:
 - a. Utilize or enhance the architectural elements of the building; and
 - b. Be placed in a logical location in relation to the overall composition of the building's façade and not cover any key architectural features and details of the façade.
4. Neighborhood Impacts. The sign shall be located and designed not to cause light and glare impacts on neighboring residential uses.

Prohibited signs

The following signs are prohibited:

- A. Box signs or cabinet signs, whether on a wall, projecting or on canopies are prohibited except for logo signs permitted as part of an overall sign plan.
- B. Signs employing mercury vapor, low pressure and high pressure sodium and metal halide lighting; plastic panel rear-lighted signs.
- C. Signs on roofs, dormers, and balconies.
- D. Billboards.
- E. Signs painted or mounted upon the exterior side or rear walls on any principle or accessory building or structure, except as otherwise permitted hereunder.
- F. Free standing pylon signs over six feet in height, except community signs.
- G. Back-lit awnings.
- H. Interchangeable letter boards or panels.
- I. Flashing signs.
- J. Off-premises signs, except community signs.

Overall Framework – Stormwater Management

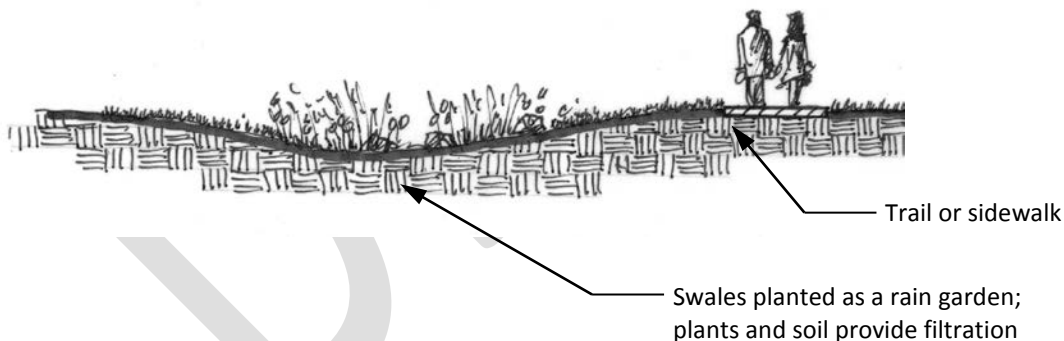
Overview

Water features and drainage systems are essential components of The COR Master Plan. The mix of ponds, streams, fountains and other water elements will provide focal amenities and year round activities within the framework of an environmentally responsible, visually pleasing strategy to manage stormwater. Because the Mississippi River is a restricted discharge water of the state, and because we are creating a new discharge from this development, each sub-district and each site has a responsibility to utilize ‘best management practices’ (BMP) to pretreat run-off, reduce erosion and encourage infiltration. Water elements are not intended to be separate stand-alone features, but instead should be integrated with the variety of parks, trails and public open space proposed for The COR. Water and landscape should be designed and utilized within multipurpose areas that accommodate both active and passive recreational use.

Objectives

Integration of water and landscape, design creativity, use of high quality materials and safety concerns are the critical objectives to be met – the following examples illustrate only a few of many possibilities:

- Innovative new products, such as special soil systems (Netlon, structural soils), pervious pavements for parking areas, storm ceptors, underground storage and other creative techniques should be used to BMP standards
- ‘Green architecture’, expressed through green roofs, gray water recycling and other techniques should be included to reduce the impact of new development on stormwater systems
- Water feature design should include both formal elements (such as reflecting pools or fountains) and natural/informal forms (such as ponds, streams, waterfalls) and should explore creative ways to integrate wetland/rain garden landscapes with active, urban spaces.



Guideline Recommendations

This framework not only defines the overall role and character of The COR, but also encourages each development parcel to address the following:

- **Create** signature water features (ponds, pools, fountains, waterfalls, etc.) as major visual amenities throughout The COR
- **Promote** high quality, creative and appealing aesthetics for all system elements
- **Integrate** stormwater management components (meeting both water quality and quantity requirements)

A great deal of time and effort has gone into the calculation and design of a 'watershed-based' stormwater management plan to support COR development. While this overall strategy addresses the water quantity issue for the entire COR by providing storage and conveyance facilities for storm events, individual development projects (block-by-block) have an equal responsibility to meet water quality standards as a primary goal. Each project should integrate a variety of techniques, materials and methods to promote multiple use, maximum flexibility, improved aesthetics for parking areas, park spaces, drainage swales and other site features.

DRAFT

Overall Framework – Parks/Public Spaces

Overview

The overall design framework of The COR is based on a system of linked parks, trails and open space. The City of Ramsey, Anoka County, and to some extent, the State of Minnesota all play a role in local and regional parks programming, design review, construction sequencing, implementation and ultimately maintenance and operation of key public spaces within this framework. The goal is to link existing and proposed parks and trails defined in regional park plans with proposed new parks and trails within The COR. Of equal importance is the contribution from each block and each development project to this network of green, adding a variety of private, semi-private, and perhaps some additional public space throughout The COR. Private development will share the responsibility to provide inviting, innovative and useable green space as integral parts of individual parcel site design.

Guideline Recommendations

The Design Framework encourages the following:

- Work with the City to create an integrated, comprehensive open space system that links with existing city and county trails and open space networks
- Encourage private development (block-by-block) to share in the responsibility to provide inviting, innovative and useable green space as integral parts of each development project
- Integrate stormwater management components (meeting water quality and quantity requirements) within both public / private park and open space improvements



Together, the system of public and semi-public green space will result in a welcoming public realm throughout the new community.

Objectives

Based on the Development Master Plan for The COR, a variety of public and private green space is proposed including:

- Each block and each project will provide intentional, creative, innovative, useable green areas as integral components of site development and building design.
- At the individual block scale, small squares and greens will provide places for gathering and relaxation, especially targeted to meet the demands of adjacent, or nearby buildings. Elements such as gardens, gazebos and fountains should characterize these more intimate public spaces.
- At the neighborhood scale, parks will provide space for more active recreation, and should be flexible enough to accommodate a variety of recreational activities.
- Playgrounds, game fields and park buildings are park amenities that will target a wider user demand from the surrounding community.
- The Municipal Plaza will connect with all other parks and open space elements, providing a focal point for activity and a sense of place. Gardens, public pavilions and shelters, play lots and open play fields are amenities that will provide built-in flexibility to meet the demands of both the local population and regional visitors to The COR.



Part Two: Sub-district Framework

Overview

The Master Plan and Zoning Ordinance identify five distinct sub-districts within The COR. Each of these sub-districts is defined by a unique mix of uses, specific site development patterns and perhaps a distinctive character or image. The sub-districts complement one another as part of the overall plan. The sub-districts are shown the attached Sub-district Map (Figure 7: Sub-district Map). They include:

- **COR1 Mixed Use Core** – provides the broadest variety, highest density and greatest intensity of development, encouraging both vertical and horizontal mixed use
- **COR2 Commercial** – provides a location for larger scale retail and other auto-orientated commercial uses
- **COR3 Workplace** – provides a location for uses with high concentrations of employees, such as medical/technology related office, and other corporate or institutional uses
- **COR4 Neighborhood** – provides opportunities for a range of housing types from small lot single family to townhouse, to high density senior or rental apartment
- **COR5 Park and Open Space** – preserves environmental features and provides neighborhood/community amenities throughout The COR

Development plans must respond to the overall COR Design Framework described in Part One of this document, but also must address the following detailed framework standards for each sub-district. To further clarify and illustrate proposed features in the Master Plan, these sub-district guidelines are organized under the following categories:

- Public Realm / Streetscape Framework
- Site Design Framework
- Architectural Framework

In all cases, the sub-district framework must be applied in harmony with the overall COR framework and with other existing city, county, state codes, design criteria, plans and studies that support broader goals for regional growth and development. However, within each district, development standards shall be based, in part, on the street hierarchy established in The COR.

Public Realm/Streetscape

- A. The developer shall be responsible for construction of all streetscape improvements along adjacent streets. These improvements include all hardscape improvements, such as trails, sidewalks, street trees, benches, bike racks, etc.
- B. The landowner shall be responsible for maintenance of the streetscape improvements along adjacent streets. Such maintenance may be managed as part of a Special Service District (SSD) or similar.

Plazas

- A. All properties with principal buildings in excess of 30,000 square feet shall be required to have a public plaza space.
- B. The public plaza space shall include benches, bike racks trash receptacles, lighting fixtures and other amenities to create a welcoming space for tenants of the building and members of the public.

- C. These plazas spaces should visible from the public street.

Architecture

These architectural framework standards provide an important balance between design continuity, desirable variety and the notion that buildings should complement, and perhaps contrast, but not compete with one another. The lasting appeal of the final outcome must be grounded in the authenticity of the design and the acceptable level of ‘messiness’ that comes with creating a real downtown over time; ‘faux’ second floors, stage set or themed solutions, and large faceless buildings are not acceptable.



Auto Versus Human Design: Providing rear alleys or side loaded garages enables the home to present itself to the street, which promotes sociability and walkability.

Minimum Standards

Definitions

Build to line: The line at which construction of a building facade is to occur on a lot. The build to line provides a maximum setback for all building facades from the right-of-way or inside edge of the sidewalk, whichever is greater. The build to line applies to all facades abutting a street right of way. Build to line standards are based on the sub-district the parcel is located and the street in which the building is located upon.

Setback: The minimum required distance between a parking lot or the vertical wall of a building and a lot line. Setbacks are typically more flexible than build to lines and allow a building to be set further back from the lot line and street right-of-way.

Requirements:

- A. Additional development standards shall be defined within each sub-district.
- B. Provide a diverse mix of materials, applied in a variety of proportions, exposures and detailing within a block, or along a street.

- C. Buildings should be articulated to break up the mass of the building façade on all elevations. Large blank exterior walls shall be prohibited. Windows are encouraged to be used to break up the mass of the building. Rooflines and building elevations should be articulated to break up the mass of buildings. Buildings must be broken at a minimum of every 50 feet. This variation can be accomplished through one or more of the following:

1. Wall face variations (minimum depth of 2 feet)
2. Pilasters or columns (minimum depth of 2 feet)
3. Upper wall break in color and/or materials (minimum of 2/3 up the height of the wall)
4. Wainscot (minimum of 4 feet high)
5. Canopies (minimum 4 foot width)
6. Corner and demising wall or building separations



More Desirable

- D. Each development application must list building materials, roofing materials and building colors on the plans. Building articulation, mechanical screening by architectural elements and design elements on all building elevations must be identified on the plans. The plans shall be subject to City review and approval to ensure that the design intent of the Framework has been met.



Less Desirable

- E. Building materials shall be high-quality durable materials, such as glass, stone, brick, windows, canvas awnings, etc.
1. Use local sources if available
 2. Siding is not allowed (vinyl, metal, wood) except as a complimentary use
 3. Use clear or lightly tinted glass for all windows and doors – mirrored, reflective or highly tinted glazing is not acceptable
 4. Metal and wood components are acceptable as a complimentary, not primary, building material
 5. COR1 sub-district buildings shall be primarily brick or a comparable alternative and shall comprise a minimum of 50% of the non-glazed wall area
- F. Residential development should provide variety within the subdivision to avoid monotony. Developers will include front porches and windows that face all streets. Corner units are shall have more than one window per side of building to help create a sense of place in the community and promote safety on the street.
- G. Garage forward or “snout houses” are highly discouraged on all residential development as they dominate the view from the street and sidewalk.
- H. All sides of buildings shall have an equal finish in terms of materials and general design.
- I. The main entrance of each principal building must face the street. On corner lots, the main entrance may face either of the streets or be oriented to the corner. With buildings that have more than one main entrance, only one entrance must meet this requirement.

- J. Building massing shall be oriented parallel to the street frontage of the lot.
- K. Trash and recycling areas shall be designed internal to the building.
- L. Provide recessed entries wherever possible.
- M. Buildings shall have a base and top to the architecture.
- N. Multi-story buildings are preferred in the COR1 sub-district, but occasional single story buildings are acceptable; single story buildings should not dominate any street frontage and should be a minimum of 20 feet to the roofline.
- O. Maximize glass openings for all ground level, street front façades – especially for retail, restaurant and other commercial uses – 50% minimum of total ground level façade, or demonstrate great design through other means.
- P. Provide real window openings for all street facing façades above ground level in all districts—a minimum of 40% of total façade.



Residential uses in COR4 and COR 5 must also comply with the following:

- A. *Location of main entrance*
 - 1. A building must include a front porch or stoop at all main entrances that face a street. The porch or stoop shall adjoin the main entrance and the main entrance shall be accessible from the porch.
 - 2. The main entrance of each principal building must face the street. On corner lots, the main entrance may face either of the streets or be oriented to the corner. With buildings that have more than one main entrance, only one entrance must meet this requirement.
- B. *Porches:* Porches used to satisfy the design criteria shall comply with the following:
 - 1. Porches shall be covered by a solid roof. The roof shall not be located more than 12 feet above the floor of the porch. If the roof of a required porch is developed as a deck or balcony, it may be flat.
 - 2. The porch shall have minimum dimensions of 6 feet by 6 feet. For single-family detached dwelling units, the covered area provided by the porch must be at least 48



square feet and a minimum of 8 feet wide. If the main entrance is for more than one dwelling unit, the covered area provided by the porch must be at least 63 square feet and a minimum of 9 feet wide.



- C. *Covered balconies*: The covered area provided by the balcony must be at least 48 square feet, a minimum of 8 feet wide, and no more than 15 feet above grade. The covered balcony must be accessible from the interior living space of the house.
- D. *Openings between porch floor and ground*: Openings of more than 1 foot between the porch floor and the ground must be covered with a solid material or lattice.

E. *Roofs*

1. *Slope*: Principal structures must have a roof that is sloped, with a pitch that is no flatter than six units of horizontal run to 12 units of horizontal rise.
2. *Architectural features*: The roof of a principal structure shall include the following architectural details:
 - a. At least one dormer facing the street. If only one dormer is included, it shall be at least 5 feet wide and shall be centered horizontally between each end of the front elevation. If more than one dormer is provided, a dormer at least 4 feet wide must be provided on each side of the front elevation; or
 - b. A gabled end, or a gabled end of a roof projection, facing the street.
3. *Roof eaves*: Roof eaves must project from the building wall at least 12 inches, measured horizontally, on at least the front and side elevations.





Figure 7: Sub-district Map

Sub-District Framework - COR1 Mixed Use Core

Public Realm / Streetscape

Public realm and streetscape improvements define the character of The COR and create a memorable signature for the Mixed Use Core sub-district. This is the most urban of all sub-districts in The COR and will be developed with a very urban pattern. Great parks and great streets, encourage intensified levels of activity, support the proposed mix of uses, invite community gathering and accommodate special events throughout the year.

Site Development

Framework standards that address building location, organization of space and parking options tend to focus on what can be measured – dimensions, setbacks, number of spaces and so on. But in addition to these issues, the Design Framework also describes the aesthetic qualities and design character of a preferred ‘urban form’ for the Mixed Use Core. The compact and higher density blocks that define this sub-district encourage a mix of uses, with a continuous built edge along street frontage. Innovative parking strategies support this mix, providing easy access to destination shopping, restaurant and entertainment venues. Together these elements will promote the core area as the center of activity – the place to see and be seen within The COR.

Architecture

Buildings in the Mixed Use Core will play a major role in defining the overall character of The COR. The proposed mix of uses for this signature destination suggests the potential for a variety of building types, demanding creativity and innovation to highlight unique architecture, while knitting the entire sub-district together as a coherent whole. Overall building design is an important consideration, but emphasis on first floor façade treatments is essential to encourage street-level activity and enhance the pedestrian experience. Architecture to be ‘4-sided’ at all locations visible to public areas. Emphasis will be on great design along public street frontage.

Table 3

COR1 Development Standards						
	Arterial Street	Destination Street	Parkway	Connector Street	Downtown Street	Local Street
Minimum lot size	None	None	None	None	None	None
Minimum lot width	20 feet	20 feet	20 feet	20 feet	20 feet	20 feet
Minimum lot depth	80 feet	80 feet	80 feet	80 feet	80 feet	80 feet
Allowable residential density in dwelling units per acre ⁽¹⁾	>15 DU/AC	>15 DU/AC	>15 DU/AC	>15 DU/AC	>15 DU/AC	>15 DU/AC
Minimum floor area ratio (FAR) for nonresidential uses/vertically mixed buildings/sites	.75	.75	.75	.75	.75	.75
Build to Line						
Front yard ⁽⁴⁾	30 feet as measured from building front to right-of-way ⁽²⁾⁽³⁾ (60% of front facade w/in max.)	5 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	5 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	5 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	5 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	5 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)
Side yard	no req.	no req.	no req.	no req.	no req.	no req.
Rear yard	no req.	no req.	no req.	no req.	no req.	no req.
Driveway length (minimum)	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units
Building height (min. - max.)	2 - 5 stories.	2 - 5 stories.	2 - 5 stories.	2 - 5 stories.	2 - 5 stories.	2 - 5 stories.
Planter Style	N/A	Planter Bed	Boulevard Sod	Boulevard Sod	N/A	Boulevard Sod
Tree Spacing (on center)	N/A	35 feet	35 feet	35 feet	35 feet	35 feet
Boulevard Width	N/A	6 feet	6 feet	6 feet	N/A	6 feet
Sidewalk Width	10 feet	10 feet	10 feet	10 feet	10 feet	10 feet

1. Residential density is based on the net area of the parcel in question for parcels. In the event that public open space that is not dedicated to the City is developed independently of any particular residential project, the land area of the open space shall be divided equally among those abutting projects for purposes of density calculations.
2. Build to line shall be measured from building front to edge of right-of-way, or edge of sidewalk easement as defined by the City and said sidewalk must be encumbered by a sidewalk easement recorded with the office of the Anoka County Recorder.
3. The City may approve up to a 60-foot setback if it finds that topography or other factors require that a building be set back further to achieve acceptable grades or buffer between the street, the site entrance and the building.
4. In order to address vision clearance standards on higher speed roadways, parcels that are located at an intersection with an arterial roadway are allowed a build-to line of 35 feet from both streets.

A. At least 60% of street frontage of any lot shall be occupied by building facades meeting this build-to-line. On lots with more than one street frontage, the build to line shall apply on each side fronting a street. An enclosed open area plaza space or outdoor seating with a decorative wall with a minimum height of three feet (3') and a maximum of four and one-half feet (4 ½') can be used to meet the 60% street frontage requirement.

B. Screening Of Parking Areas: Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements, to a minimum height of three feet (3') and a maximum height of four and one-half feet (4 ½') above the level of the parking lot, at the build-to line. This screening may be broken into sections along the street edges provided it meets the 60% required.

Sub-District Framework - COR2 Commercial

Public Realm / Streetscape

While the Commercial Sub-district encourages a mix of large and small floor plates accommodating auto-oriented uses, this suggests even greater attention be paid to public realm and streetscape improvements that not only accommodate vehicles, but also invite bicycle and pedestrian traffic. Surface parking lots provide convenient access to storefronts, but present an additional challenge to the overall visual character and aesthetic appeal of this area. While no large public parks are identified for this sub-district, small pocket parks, squares or other gathering spaces are encouraged. A consistent, attractive streetscape is also essential.

Site Development

Site Design Framework for this sub-district focus on a unique opportunity to recast typical commercial development patterns into a contemporary and innovative strategy that responds to overall objectives for The COR. Specifically this suggests that the majority of buildings front on the primary through streets, with parking and service areas on the side or in the back, away from view. However, the market realities suggest that the types of auto-oriented users in this district will have the potential for larger parking fields and drive-throughs that will make a true urban model challenging. The City will hold all users to this design vision while modifying the COR2 standards slightly to accommodate these types of more typical suburban land uses. A mix of uses within individual blocks, including retail, restaurant and residential, further enhances this model, addresses design character/aesthetics and promotes activity throughout much of the day and evening hours.

Architecture

Buildings in the Commercial Sub-district make a significant contribution to first impressions of The COR. Buildings form gateways at the major entries into the site, architectural elements and choice of materials convey a certain character and the scale or massing of structures begins to define the feel or experience of this place. These are not just 'commodity' buildings, but instead should raise the bar in terms of overall design and specific details that make The COR unique, inviting and memorable. Architecture to be '4-sided' at all locations visible to public areas. Emphasis will be on great design along public street frontage.

Table 4

COR2 Development Standards						
	Arterial Street	Destination Street	Parkway	Connector Street	Downtown Street	Local Street
Minimum lot size	None	None	None	None	None	None
Minimum lot width	80 feet	80 feet	80 feet	80 feet	80 feet	80 feet
Minimum lot depth	100 feet	100 feet	100 feet	100 feet	100 feet	100 feet
Allowable residential density in dwelling units per acre ⁽¹⁾	>15 DU/AC	>15 DU/AC	>15 DU/AC	>15 DU/AC	>15 DU/AC	>15 DU/AC
Minimum floor area ratio (FAR) for nonresidential uses/vertically mixed buildings/sites	.25	.25	.25	.25	.25	.25
Build to Line						
Front yard ⁽⁴⁾	30 feet as measured from building front to right-of-way ⁽²⁾⁽³⁾ (40% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (40% of front facade w/in max.)	30 feet as measured from building front to right-of-way ⁽²⁾⁽³⁾ (40% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (40% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (40% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (40% of front facade w/in max.)
Side yard	no req.	no req.	no req.	no req.	no req.	no req.
Rear yard	no req.	no req.	no req.	no req.	no req.	no req.
Driveway length (minimum)	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units
Building height (min. - max.)	1-4 stories.	1-4 stories.	1-4 stories.	1-4 stories.	1-4 stories.	1-4 stories.
Planter Style	N/A	Boulevard Sod	Boulevard Sod	Boulevard Sod	N/A	Boulevard Sod
Tree Spacing (on center)	N/A	35 feet	35 feet	35 feet	35 feet	35 feet
Boulevard Width	N/A	6 feet	6 feet	6 feet	N/A	6 feet
Sidewalk Width	10 feet	10 feet	10 feet	10 feet	10 feet	10 feet

1. Residential density is based on the net area of the parcel in question for parcels. In the event that public open space that is not dedicated to the City is developed independently of any particular residential project, the land area of the open space shall be divided equally among those abutting projects for purposes of density calculations.
2. Build to line shall be measured from building front to edge of right-of-way, or edge of sidewalk easement as defined by the City and said sidewalk must be encumbered by a sidewalk easement recorded with the office of the Anoka County Recorder.
3. The City may approve up to a 60-foot setback if it finds that topography or other factors require that a building be set back further to achieve acceptable grades or buffer between the street, the site entrance and the building.
4. In order to address vision clearance standards on higher speed roadways, parcels that are located at an intersection with an arterial roadway are allowed a build-to line of 35 feet from both streets.

- A. At least 40% of street frontage of any lot shall be occupied by building facades meeting this build-to-line. Lots with more than one street frontage, the build to line shall apply only to one street frontage.
 1. An enclosed open area plaza space or outdoor seating with a decorative wall with a minimum height of three feet (3') and a maximum of four and one-half feet (4 ½') can be used to meet the 40% street frontage requirement.
 2. The City may approve a variation from the required build to line if the applicant provides a street edge consisting of fencing, decorative wall and/or landscaping with a minimum height of three feet (3') and a maximum of four and one-half feet (4 ½') can be used to meet the 40% street frontage requirement.

- B. Screening Of Parking Areas: Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements, to a minimum height of three feet (3') and a maximum height of four and one-half feet (4¹/₂') above the level of the parking lot, at the build-to line. This screening may be broken into sections along the street edges provided it meets the 40% required on all street frontages.

DRAFT

Sub-District Framework - COR3 Workplace

Public Realm/Streetscape

The Workplace Sub-district also encourages a mix of large and small floor plate buildings, but instead of commercial or entertainment, this area of The COR is dominated by office and institutional uses. With opportunities for corporate or medical campus development comes the attendant auto-related infrastructure – easy access, bigger streets and large surface parking lots. Once again, this suggests that equal attention be paid to public realm and streetscape improvements that not only accommodate vehicles, but also invite bicycle and pedestrian traffic. The Draw, an active, neighborhood scale, recreational play space has been included in this sub-district, but small pocket parks, squares or other gathering places are also encouraged. In addition, streetscape improvements provide an important public amenity and inviting pedestrian connection to adjacent sub-districts.

Site Development

The mix of medical, office, institutional and other uses in this sub-district suggest the potential for a campus-like arrangement of buildings on some blocks. These blocks would tend to be more internally oriented than in other districts, with driveways, parking lots, courtyards and walkway connections in the center, ringed by buildings around the outside. Buildings would still face adjacent streets, with both primary and secondary entries provided to animate these important façades, particularly along Ramsey Boulevard, Sunwood Drive and Rhinestone Street. While the Workplace sub-district also encourages mixed use, this desired development objective will likely occur mostly within blocks, not within individual buildings as seen in other districts.

Architecture

Buildings in the Workplace Sub-district also make a significant contribution to first impressions as people enter The COR via Highway 10, Ramsey Boulevard and Sunwood Drive. Buildings form gateways at the major entries into the site, architectural elements and choice of materials convey quality and permanence, and the scale or massing of structures begins to define the feel and character of this place. The proposed mix of uses within this sub-district suggest a variety of potential building types – blending medical campus with small office, storefront and some housing demands design creativity and innovation to highlight unique architecture, and knit the entire sub-district together as a coherent whole. Architecture to be '4-sided' at all locations visible to public areas. Emphasis will be on great design along public street frontage.

Table 5

COR3 Development Standards						
	Arterial Street	Destination Street	Parkway	Connector Street	Downtown Street	Local Street
Minimum lot size	None	None	None	None	None	None
Minimum lot width	40 feet	40 feet	40 feet	40 feet	40 feet	40 feet
Minimum lot depth	80 feet	80 feet	80 feet	80 feet	80 feet	80 feet
Allowable residential density in dwelling units per acre ⁽¹⁾	none	none	none	none	none	none
Minimum floor area ratio (FAR) for nonresidential uses/vertically mixed buildings/sites	.25	.25	.25	.25	.25	.25
Build to Line						
Front yard ⁽⁴⁾	30 feet as measured from building front to right-of-way ⁽²⁾⁽³⁾ (60% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	15 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)
Side yard	no req.	no req.	no req.	no req.	no req.	no req.
Rear yard	no req.	no req.	no req.	no req.	no req.	no req.
Driveway length (minimum)	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units
Building height (min. - max.)	2 - 4 stories.	2 - 4 stories.	2 - 4 stories.	2 - 4 stories.	2 - 4 stories.	2 - 4 stories.
Planter Style	N/A	Planter Bed	Boulevard Sod	Boulevard Sod	N/A	Boulevard Sod
Tree Spacing (on center)	N/A	35 feet	35 feet	35 feet	35 feet	35 feet
Boulevard Width	N/A	6 feet	6 feet	6 feet	N/A	6 feet
Sidewalk Width	10 feet	10 feet	10 feet	10 feet	10 feet	10 feet

1. Residential density is based on the net area of the parcel in question for parcels. In the event that public open space that is not dedicated to the City is developed independently of any particular residential project, the land area of the open space shall be divided equally among those abutting projects for purposes of density calculations.
2. Build to line shall be measured from building front to edge of right-of-way, or edge of sidewalk easement as defined by the City and said sidewalk must be encumbered by a sidewalk easement recorded with the office of the Anoka County Recorder.
3. The City may approve up to a 60-foot setback if it finds that topography or other factors require that a building be set back further to achieve acceptable grades or buffer between the street, the site entrance and the building.
4. In order to address vision clearance standards on higher speed roadways, parcels that are located at an intersection with an arterial roadway are allowed a build-to line of 35 feet from both streets.

A. At least 60% of street frontage of any lot shall be occupied by building facades meeting this build-to-line. Lots with more than one street frontage, the build to line shall apply on each side fronting a street. An enclosed open area plaza space or outdoor seating with a decorative wall with a minimum height of three feet (3') and a maximum of four and one-half feet (4 ½') can be used to meet the 60% street frontage requirement.

B. Screening Of Parking Areas: Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements, to a minimum height of three feet (3') and a maximum height of four and one-half feet (4 ½') above the level of the parking lot, at the build-to line. This screening may be broken into sections along the street edges provided it meets the 60% required.

Sub-District Framework - COR4 Neighborhood

Public Realm/Streetscape

Two prominent public parks supply much of the informal green space for The COR, and more specifically, provide the valuable park frontage and mix of amenities needed to support housing development within the Neighborhood Sub-district. North Commons surrounds an existing wetland and provides open space for year-round activities including a proposed sledding hill. The sub-district is adjacent to The Draw, which is characterized by wetlands, ponds and a meandering stream channel surrounded by gently sloping hills. Other park features include active and passive recreation areas, natural and manicured landscapes, education and interpretation opportunities, pedestrian and bicycle trails and many other amenities. Tree-lined streets connect these parks to surrounding residential neighborhoods and to nearby parks and amenities throughout The COR.

Site Development

The Neighborhood Sub-district emphasizes residential development. To support the proposed mix of housing, a framework of streets and blocks, based on the traditional grid system, encourages compact development patterns with increasing densities closer to the heart of The COR. Typical blocks either front onto signature parks or include some private green space within the site; many blocks have both. The arterial streets that frame this property, including Ramsey, Armstrong and Bunker Lake Boulevards, provide an important 'face' for this sub-district. Residential front doors will connect with public walks along each of these streets promoting the urban character of The COR.

Architecture

The largest in terms of overall acreage, the Neighborhood Sub-district will define the character and quality of the entire northern half of The COR property. With prominent street frontage along most of the major thoroughfares that serve this site, the variety of choices for building type, architectural style and design detailing are crucial decisions that together will promote a safe and attractive residential neighborhood. Integrating contemporary and traditional styles is also an important consideration, central to the notion that a unique and creative model for housing development will be a signature for The COR. Architecture to be '4-sided' at all locations visible to public areas. Emphasis will be on great design along public street frontage.

Table 6

COR4 Development Standards						
	Arterial Street	Destination Street	Parkway	Connector Street	Downtown Street	Local Street
Minimum lot size	None	None	None	None	None	None
Minimum lot width	20 feet	20 feet	20 feet	20 feet	20 feet	20 feet
Minimum lot depth	80 feet	80 feet	80 feet	80 feet	80 feet	80 feet
Allowable residential density in dwelling units per acre ⁽¹⁾	4-15 DU/AC	4-15 DU/AC	4-15 DU/AC	4-15 DU/AC	4-15 DU/AC	4-15 DU/AC
Minimum floor area ratio (FAR) for nonresidential uses/vertically mixed buildings/sites	.25	.25	.25	.25	.25	.25
Build to Line						
Front yard ⁽⁴⁾	30 feet as measured from building front to right-of-way ⁽²⁾⁽³⁾ (60% of front facade w/in max.)	20 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	20 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	20 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	20 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	20 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)
Side yard	no req.	no req.	no req.	no req.	no req.	no req.
Rear yard	no req.	no req.	no req.	no req.	no req.	no req.
Driveway length (minimum)	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units	25 feet for residential units
Building height (min. - max.)	1-4 stories.	1-4 stories.	1-4 stories.	1-4 stories.	1-4 stories.	1-4 stories.
Planter Style	N/A	Planter Bed	Boulevard Sod	Boulevard Sod	N/A	Boulevard Sod
Tree Spacing (on center)	N/A	35 feet	35 feet	35 feet	35 feet	35 feet
Boulevard Width	N/A	6 feet	6 feet	6 feet	N/A	6 feet
Sidewalk Width	10 feet	10 feet	10 feet	10 feet	10 feet	10 feet

1. Residential density is based on the net area of the parcel in question for parcels. In the event that public open space that is not dedicated to the City is developed independently of any particular residential project, the land area of the open space shall be divided equally among those abutting projects for purposes of density calculations.
2. Build to line shall be measured from building front to edge of right-of-way, or edge of sidewalk easement as defined by the City and said sidewalk must be encumbered by a sidewalk easement recorded with the office of the Anoka County Recorder.
3. The City may approve up to a 60-foot setback if it finds that topography or other factors require that a building be set back further to achieve acceptable grades or buffer between the street, the site entrance and the building.
4. In order to address vision clearance standards on higher speed roadways, parcels that are located at an intersection with an arterial roadway are allowed a build-to line of 35 feet from both streets.

A. Screening Of Parking Areas: Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements, to a minimum height of three feet (3') and a maximum height of four and one-half feet (4½') above the level of the parking lot, at the build-to line. This screening may be broken into sections along the street edges provided it meets the 60% required.

Sub-District Framework - COR5 Parks & Open Space

Public Realm/Streetscape

The overall structure of The COR is based on a system of linked parks, trails and open space. This includes existing and proposed parks and trails defined in city and regional parks plans, joined with new parks and trails within The COR. Of equal importance is the contribution from each block and each development project to this green structure, adding a variety of private, semi-private and perhaps some additional public space throughout each sub-district. Great strolling streets provide connections between commercial, workplace, entertainment and residential neighborhoods and encourage shared use for cars, pedestrians and bicycles.

Site Development

The COR Master Plan illustrates a strong framework of green space, including a mix of public parks, destination amenities, courtyards, commons and other features. As a key component of the overall plan, this integrated system of parks, trails and open space provides the framework around which all other land uses are organized. Placemaking and connectivity are important site development considerations, linking each block and each sub-district with major public spaces nearby and with many other amenities and attractions in The COR.

Architecture

There are numerous opportunities to include buildings and other structures as significant design features within the proposed parks, trails and open space system for The COR. These could range from simple picnic shelters and landscaped arbors to more complex park buildings that might contain meeting rooms, rest rooms, storage areas and other facilities. Design of these important buildings should respond to the specific setting and landscape features in each park, and complement the overall character and quality of buildings located within surrounding blocks. Additionally, limited retail is planned along the perimeter of the park.

Table 7

COR5 Development Standards						
	Arterial Street	Destination Street	Parkway	Connector Street	Downtown Street	Local Street
Minimum lot size	0.5	N/A	0.5	0.5	0.5	0.5
Minimum lot width	N/A	N/A	N/A	N/A	N/A	N/A
Minimum lot depth	N/A	N/A	N/A	N/A	N/A	N/A
Allowable residential density in dwelling units per acre ⁽¹⁾	N/A	N/A	N/A	N/A	N/A	N/A
Minimum floor area ratio (FAR) for nonresidential uses/vertically mixed buildings/sites	N/A	N/A	N/A	N/A	N/A	N/A
Build to Line						
Front yard ⁽⁴⁾	30 feet as measured from building front to right-of-way ⁽²⁾⁽³⁾ (60% of front facade w/in max.)	N/A	10 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	10 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	10 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)	10 feet as measured from building front to right-of-way ⁽²⁾ (60% of front facade w/in max.)
Side yard	no req.	N/A	no req.	no req.	no req.	no req.
Rear yard	no req.	N/A	no req.	no req.	no req.	no req.
Driveway length (minimum)	25 feet	N/A	25 feet	25 feet	25 feet	25 feet
Building height (min. - max.)	1-2 stories.	N/A	1-2 stories.	1-2 stories.	1-2 stories.	1-2 stories.
Planter Style	N/A	N/A	Boulevard Sod	Boulevard Sod	N/A	Boulevard Sod
Tree Spacing (on center)	N/A	N/A	35 feet	35 feet	35 feet	35 feet
Boulevard Width	N/A	N/A	6 feet	6 feet	N/A	6 feet
Sidewalk Width	10 feet	N/A	10 feet	10 feet	10 feet	10 feet

1. Residential density is based on the net area of the parcel in question for parcels. In the event that public open space that is not dedicated to the City is developed independently of any particular residential project, the land area of the open space shall be divided equally among those abutting projects for purposes of density calculations.
2. Build to line shall be measured from building front to edge of right-of-way, or edge of sidewalk easement as defined by the City and said sidewalk must be encumbered by a sidewalk easement recorded with the office of the Anoka County Recorder.
3. The City may approve up to a 60-foot setback if it finds that topography or other factors require that a building be set back further to achieve acceptable grades or buffer between the street, the site entrance and the building.
4. In order to address vision clearance standards on higher speed roadways, parcels that are located at an intersection with an arterial roadway are allowed a build-to line of 35 feet from both streets.

A. Where commercial buildings are planned, at least 60% of street frontage of any lot shall be occupied by building facades meeting this build-to-line. Lots with more than one street frontage, the build to line shall apply on each side fronting a street. An enclosed open area plaza space or outdoor seating with a decorative wall with a minimum height of three feet (3') and a maximum of four and one-half feet (4 ½') can be used to meet the 60% street frontage requirement.

B. Screening Of Parking Areas: Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements, to a minimum height of three feet (3') and a maximum height of four and one-half feet (4 ½') above the level of the parking lot, at the build-to line. This screening may be broken into sections along the street edges provided it meets the 60% required.

Implementation

Introduction

This framework provides distinct strategies for guiding The COR's form and appearance. This framework's vision for the COR will take several years to implement. Successful implementation will require consistent application of the Design Framework by City staff. Zoning enforcement and design framework standards will not succeed without the cooperation and commitment of landowners, development interests, and the rest of the community.

Design Review

The Design Framework will be administered by staff as part of the development review process. Staff will incorporate design review to ensure compliance with the Design Framework as a standard step in the development review process.

DRAFT

Additional Amendments to Final Draft of The COR Design Framework

Page 9

- Town Center Drive is Center Street
- Civic Center Drive is Veterans Drive

Page 11

- Should be more reflective of current Transit status. The COR is designed to be a transit oriented development...
- Drop Star Express
- Station set to open November 2012
- TMD – Developers “Shall” submit... Developments of any size? Should we have a template basic plan for small users that informs employees of options?
- See if Riverblood has some text on the Anoka County regional trail, and the Mississippi River national trail. I think his info should be included in the transit section of the framework.

Page 19 Overview

- Incorporate “wrap” option – encourage multi story uses wrapping the ramp and defining the street.
- Define, illustrate, “Bumpouts”
- Objectives – add some explanation of the concept of three anticipated structures sized as the area develops to promote appropriate development and provide ample parking.

Page 45 Overview

- We need a better overview. Each site is not necessarily required to utilize BMP’s – there is regional treatment constructed. We should better define what we are asking of each site in addition to the regional facilities.

ORDINANCE #12-__

CITY OF RAMSEY
ANOKA COUNTY STATE OF MINNESOTA

AN AMENDMENT TO CHAPTER 117 WHICH IS KNOWN AS THE ZONING AND SUBDIVISION OF LAND CHAPTER OF THE CITY CODE OF RAMSEY, MINNESOTA.

AN ORDINANCE AMENDING SECTION 117-118 “THE COR DISTRICTS” OF CHAPTER 117 OF THE CITY CODE OF RAMSEY, MINNESOTA.

The City of Ramsey ordains:

SECTION 1. AMENDMENT

Section 117-118 of Ramsey City Code shall be amended as follows:

Sec. 117-118. - ~~Town-Center~~The COR District.

- (a) *Intent.* The primary intent of the ~~Town-Center~~COR District is to create a focal point in the community that embodies the principles of transit-oriented and mixed-use development. The ~~Town-Center~~COR District envisions a distinctly different development pattern, with a more urban structure of streets and blocks, than the suburban and rural patterns that have shaped the community to date. The ~~Ramsey-Town-Center~~COR area is comprised of a number of distinct subdistricts intended to define the type and intensity of uses, location of amenities and overall character of development. The ~~Town-Center~~COR District incorporates the ~~Ramsey-Town-Center~~COR ~~Master Plan~~Development Plan and Development Guidelines-Framework by reference to provide necessary building and site design features that are essential to a pedestrian environment.
- (b) *~~Town-center~~The COR subdistrict definition.* The ~~Town-Center~~COR District consists of five subdistricts that define the type and intensity of land use.
- (1) *~~COR~~C-1 Mixed-Use Core Subdistrict.* The mixed-use core is intended to provide a mix of residential, retail, service, professional, community service, recreational and similar uses on every block near, and within easy walking distance of the transit station. The broadest variety and highest intensity of uses, including high density housing and lodging facilities, are encouraged near the station. Vertically-integrated mixed use projects with retail, restaurant and service uses, especially at corner locations, are strongly encouraged. This district incorporates the highest architectural and design standards to encourage pedestrian mobility and street activity. The majority of the uses within this district will rely on parking structures to accommodate the parking needs of customers and employees. In order to contribute to an active pedestrian environment, each block within the ~~TCOR~~-1 subdistrict shall include at least two of the following uses: commercial, office, civic and/or residential use.
- (2) *~~TCOR~~-2(COR-2 and 2b) Commercial Subdistrict.* The ~~TCOR~~-2 Commercial Subdistrict is designated to provide a location for retail commercial that has building and/or site designs inconsistent with the ~~TCOR~~-1 Subdistrict, including larger scale retail and other auto-oriented commercial uses. Such uses tend to benefit from direct highway access and good visibility, and may have market areas that extend beyond the community. These commercial and auto-oriented uses shall be clustered in compact identifiable areas and not present the look of typical strip suburban development. Buildings shall be designed with a pedestrian orientation and relationship to the primary street that is compatible with the adjacent ~~TCOR~~-1 subdistrict. The COR-2 subdistrict is further defined by a COR-2b subdistrict that allows for additional flexibility in allowing larger-scale retail that is intended to anchor the development and support the mixed-uses within the

development.

(3) **TCCOR-3 and TCCOR-3a Workplace Subdistrict.** The workplace area is intended to accommodate medical and technology-related office and research uses, as well as other office uses and ancillary retail and service uses designed to support serve employees and office visitors. Uses with high concentrations of employees are most desirable. The **TCCOR-3** subdistrict is further defined by a **TCCOR-3a** subdistrict that allows exclusively schools. Due to the unique design and site layout needs of a school, different standards are in place in the **TCCOR-3a** subdistrict than other development within the **TCCOR-3** subdistrict.

(4) **TCCOR-4 (TCCOR-4a, TCCOR-4b and TCCOR-4c) Neighborhood Subdistrict.** The Neighborhood Subdistrict ~~comprises the northern portion of the Town Center District. The subdistrict~~ is intended to include a full range of housing types, from small-lot single-family detached to high-density senior and general apartments, as well as a limited number of small-scale retail and office uses at appropriate locations (i.e., at corners). Neighborhood design incorporates many traditional single-family neighborhood features such as alleys, carriage houses (secondary units), front porches, and traditional street lighting. Neighborhoods shall be designed with suitable transitions between different housing types, and with well-integrated open space and natural amenities within walking distance of all homes. Traditional neighborhood design of streets, sidewalks and paths provide easy pedestrian mobility throughout the subdistrict. Protection of natural areas and corridors that link the natural environment to everyday life is emphasized in this area. The **TCCOR-4** subdistrict is further defined into three categories according to the residential net density:

- a. The **TCCOR-4a** subdistrict is the lowest density area in the **TCCOR-4** District allowing up to ten dwelling units per acre.
- b. The **TCCOR-4b** subdistrict is the medium density area in the **TCCOR-4** District allowing up to 15 dwelling units per acre. This area is located along higher volume roadways within the ~~Town Center~~**COR** and along its perimeter.
- c. The **TCCOR-4c** subdistrict shall provide the highest densities in the **TCCOR-4** District requiring a minimum of 15 dwelling units per acre. This area is adjacent to the mixed-use core.

(5) **TCCOR-5 Park and Open Space Subdistrict.** The Park And Open Space Subdistrict is intended to preserve environmental features, provide amenities and create focal points and community gathering places within easy access of all areas of the ~~Town Center~~**COR**. ~~A minimum of ten percent of the gross acreage of the Town Center shall consist of open space that is improved for public use as guided by the master plan and any other subsequent agreements between the city and developer. Areas designated within the TC-5 subdistrict, however, are restricted from other types of development, with the exception of certain civic uses, as shown in Table 1.~~

(c) ~~Town Center~~**The COR** development regulations.

(1) Uses. Table 1 specifies permitted and conditional uses within each subdistrict of the ~~Town Center~~**COR** District. Any use may be combined within buildings (vertically) or in separate buildings (horizontally), unless otherwise specified.

Table 1: Permitted, Conditional and Prohibited Uses

Use List	<u>COR</u> TC-1		<u>COR</u> TC-2		<u>COR</u> TC-3 and 3a		<u>TCCOR</u> -4a, b and c			<u>COR</u> TC-5
	<u>2</u>	<u>2b</u>	3	3a	a	b	c			
RESIDENTIAL										
Single-family detached	N	N	<u>N</u>	N	N	P	N	N	N	
Twinhomes	N	N	<u>N</u>	N	N	P	N	N	N	
Duplexes	N	N	<u>N</u>	N	N	P	N	N	N	

Row houses/townhouse	P	N	<u>N</u>	N	N	P	P	P	N
Multistory apartments/condominiums	P	N	<u>N</u>	N	N	N	P	P	N
Secondary units	N	N	<u>N</u>	N	N	P	N	N	N
Live-work units	P	C ^N	<u>N</u>	P	N	P	P	H	N
PERSONAL SERVICES such as laundry, barbershops and beauty shops									
;lt;2,500 sq. ft.	P	P	<u>P</u>	P	N	H			N
;gt;2,500 sq. ft.	P	P	<u>P</u>	P	N	N			N
PROFESSIONAL AND MEDICAL OFFICES AND CLINICS									
;lt;5,000 sq. ft.	P	P	<u>P</u>	P	N	H			N
;gt;5,000 sq. ft.	P	P	<u>P</u>	P	N	N			N
GENERAL OFFICES									
;lt;5,000 sq. ft.	P	P	<u>P</u>	P	N	C			N
5,000 - 35,000 sq. ft.	P	P	<u>P</u>	P	N	N			N
;gt;35,000 sq. ft.	N	P	<u>P</u>	P	N	N			N
ACCOMMODATION AND FOOD SERVICE USES									
Bed and breakfast residence	P	P	<u>P</u>	N	N	H			N
Lodging facilities	P	P	<u>P</u>	C	N	N			N
Restaurant, café (including seasonal)	P(a)	<u>P</u>	<u>P</u>	<u>P</u>	N	<u>P</u>	<u>C</u>	<u>C</u>	<u>C</u> ;lt;2,500 sq. ft.
Tavern, bar						<u>P</u>	<u>P</u>	<u>P</u>	
Outdoor Seating for food services uses meeting the requirements in "d" below.	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>
ENTERTAINMENT AND RECREATION USES									
Theater, cinema	P	P	<u>P</u>	C	N	N	N	N	N
Health club, fitness center	P	P	<u>P</u>	P	N	N			N
Health club, fitness center ;lt;5,000 sq. ft.	P	P	<u>P</u>	P	N	N			N
GENERAL RETAIL AND SERVICES (including grocery, etc.)									
;lt;2,500 sq. ft.	P	P	<u>P</u>	P	N	C	C	P	N
;lt;35,000 sq. ft.	P	P	<u>P</u>	C	N	N			N
;gt;35,000 sq. ft.	C	C	<u>P</u>	C	N	N			N
Uses with drive-thrus	<u>N</u>	<u>P</u> <u>(e)</u>	<u>P</u> <u>(e)</u>	<u>P</u> <u>(e)</u>	<u>N</u>	<u>N</u>			<u>N</u>
Accessory car washes	<u>N</u>	<u>C</u>	<u>C</u>	<u>N</u>	<u>N</u>	<u>N</u>			<u>N</u>
Gas stations	<u>N</u>	<u>A</u> (b)	<u>C</u> <u>(c)</u>	<u>N</u>	<u>N</u>	<u>N</u>			<u>N</u>
RESTRICTED USES									
Private clubs and lodges	N	N	<u>N</u>	N	N	N			N
Motor vehicle implement, and recreation equipment sales and service	N	N	<u>N</u>	N	N	N			N
Adult uses - principal principle and accessory	N	N	<u>N</u>	N	N	N			N
Uses with drive-thrus	<u>N</u>	<u>C</u> <u>(e)</u>	<u>P</u> <u>(e)</u>	<u>P</u> <u>(e)</u>	<u>N</u>	<u>N</u>			<u>N</u>
Accessory car washes	<u>N</u>	<u>C</u>		<u>N</u>	<u>N</u>	<u>N</u>			<u>N</u>
Gas stations	<u>N</u>	<u>N</u> (b)		<u>N</u>	<u>N</u>	<u>N</u>			<u>N</u>

<u>Convenience Store with Motor Fuel Sales</u>	<u>N</u>	<u>N</u>	<u>C</u> <u>(e)</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>
Open and outdoor services, sales, display or rental	N	N	<u>N</u>	N	N	N	N
PUBLIC USES AND SERVICES							
Municipal buildings	P	N	<u>N</u>	N	N	N	C
Post office - service no distribution facility	P	N	<u>N</u>	N	N	N	N
Museums/cultural centers	C	N	<u>N</u>	N	N	N	C
Religious institutions	C	<u>PC</u>	<u>P</u>	C	N	C	N
Commercial day care centers	P	P	<u>P</u>	P	N	C	N
Hospitals	N	C	<u>P</u>	P	N	N	N
Libraries	P	P	<u>P</u>	P	N	C	N
Educational facilities (excludes daycares)	N	N	<u>N</u>	N	C	N	N
Essential public services	P	P	<u>P</u>	P	P	P	P
INDUSTRIAL							
Manufacturing	N	N	<u>N</u>	N	N	N	N
Warehousing	N	N	<u>N</u>	N	N	N	N
Outside storage	N	N	<u>N</u>	N	N	N	N

Key:

P - Permitted Use

C - Conditionally Permitted Use

A - Permitted Accessory Use

N - Use Not Permitted

H - Permitted with home occupation permit

- a. In the TC-1 subdistrict, one story restaurants are allowed when the facade cornice height is a minimum of 22 feet in height.
- b. In the TC-2 subdistrict, accessory gas uses are allowed under the following conditions:
 1. Gas operations that are accessory to a permitted principal use.
 2. Gas and convenience item sales shall not comprise more than 25 percent of the gross receipts of the principal use business.
 3. Payment for sale of gas must be paid at the pump or inside the principal building. No accessory structures are allowed as part of the gas operations.
 4. No more than five percent of the square footage of the principal use building may be dedicated for the gas operations and convenience item sales.
 5. No franchise food operations can be contained in the area designated within the principal building for gas operation and convenience item sales
 6. Gas operations located in the side or rear of the principal use building.
 7. Gas operations are located within 100 feet of principal use building
 8. Gas islands and canopy are architecturally harmonious and contain the same exterior building materials as the principal use building.

9. Gas operations shall constitute no more than four islands with a limit of eight individual dispensers.

10. Gas operations that are located in the city's wellhead protection area must meet the following standards:

- (i) Double walled storage tanks with corrosion protection.
- (ii) Spill protection to catch spills that may occur during delivery of products.
- (iii) Overfill protection including automatic shutoff devices, overfill alarms and ball float valves or approved equal.
- (iv) Leak detection, including interstitial monitoring of the double walled tank.
- (v) Product release monitoring, including installation of groundwater monitoring wells and monthly monitoring of these wells will be required only after a reportable leak or spill has been detected.
- (vi) Tank tightness testing on an annual basis.
- (vii) Annual reports summarizing monthly monitoring results, monthly inventory control, and tank tightness testing.

c. In the TC-2b subdistrict, convenience store with motor fuel sales/car wash are a conditional use under the following conditions:

1. Convenience/deli food is of the take out type only and that no provision for seating or consumption on the premises is provided. Furthermore, that the enclosed area devoted to such activity shall not exceed fifteen (15) percent of the gross floor area.

2. The storage, preparation and serving of food items are subject to the approval of the Zoning Administrator who shall provide specific written sanitary requirements based upon the applicable State and County regulations.

3. Gas operations shall constitute no more than four islands with a limit of eight individual dispensers.

4. Canopy Height. The total height of any overhead canopy or weather protection shall not exceed twenty feet (20') in height. All canopies shall be architecturally harmonious and contain the same exterior building materials as the principle use.

5. Goods For Sale: All goods for sale by a motor fuel station convenience store other than commercial freezers for ice and petroleum based products required for the operation and maintenance of motor vehicles shall be displayed within the principle motor fuel structure. No displays shall be permitted in required parking or driveway areas, landscape areas, required setback areas, or any right of way or other public property. Displays may be permitted on sidewalks, only if they leave at least four feet (4') of sidewalk width available to pedestrians.

6. Motor Fuel Dispenser Location: Motor fuel dispensers shall be located at least thirty feet (30') from a property line, and one hundred feet (100') from a residential structure.

7. The off-street loading space(s) and building access for delivery of goods shall be separate from customer parking and entrances and shall not cause conflicts with customer vehicles and pedestrian movements.

8. The hours of operation shall be limited to 6:00 AM to 11:00 PM, unless extended by the Council as part of the conditional use permit.

9. Accessory car wash uses shall be allowed subject to the following requirements:

(i) Car wash stacking spaces shall accommodate a minimum of three waiting vehicles.

(ii) No more than one car wash shall be permitted.

(iii) The car wash shall be designed to be an integral part of the principle building or if freestanding shall be designed with the same materials as the principle structure.-

(iv) Neither the car wash or accessory vacuum shall be located within three hundred feet (300') of any residential use unless completely screened or located across an arterial or major collector roadway from the residential use.

9. Gas stations are only permitted by conditional use on parcels that are located at intersections of both Destination and Arterial roadways as defined by the Development Framework.

d. Outdoor Seating for Food Service Uses are an accessory use under the following conditions:

1. The seating shall be located on private property (or could allow on joint/abutting open space/plaza area owned and managed by association).

2. The seating shall be of good patio or café type furniture that enhances the appearance of the business.

3. The outdoor seating area shall be defined with the use of landscaping, temporary fencing or other means that contains the tables and chairs for the use as demonstrated on a site plan and approved by city staff.

4. No alcoholic beverages or food shall be served to persons outside of the designated outdoor seating area. Signage shall be posted that restricts consumption on alcohol outside of the designated outdoor seating area as approved by staff.

5. Patrons shall access the outdoor seating area through the main entrance or host station and shall be seating by a staff person.

6. Seating shall be located so as not to compromise safety. Seating shall not obstruct the entrance or any required exits or be located on landscaping or parking areas. If located on private sidewalks or walkways, it shall be located so as to leave a minimum of a four foot (4') wide passageway for pedestrians.

7. No additional parking is required for thirty (30) seats or less. If public parking is available either in a ramp or adjacent on street, then no additional parking is required. Any additional seating over thirty (30) seats shall provide required parking based on one space per three (3) seats. Shared parking will be considered and may be approved by city staff.

8. Any proposed outdoor seating plan over fifty (50) or more seats shall be by conditional use permit.

9. All exterior sound equipment shall be shut off at ten o'clock (10:00) P.M.

10. Lighting shall be permitted provided it only illuminates the designated area. Lighting cannot shine or cause a glare upon other public or private property outside the designated area.

(e) Drive-thrus serving permitted and conditional uses are a permitted use under the following conditions:

1. Drive-thru lands are not permitted in the front yard or within the front build-to-line.

2. Adequate stacking distance of not less than five (5) vehicles shall be provided. A site plan shall be prepared to demonstrate provision for stacking space does not interfere with other drive areas, parking spaces, sidewalks or pedestrian access to the main entry of the building.

3. Electronic speaker devices, if used, shall not be audible beyond the property being served and shall not be operated between the hours of ten o'clock (10:00) PM and seven o'clock (7:00) AM.

4. Screening shall be provided of automobile headlights in the drive-thru land to windows and doors of adjacent uses. Such screen shall be at least three feet (3') in height at installation and fully opaque, consisting of a wall, fence, dense vegetation, berm or grade change.

5. A bypass lane shall be provided for each drive-thru use, allowing cars to leave the drive-thru land from the stacking area.

6. Within the TC-2 and TC-3 subdistricts there shall be no more than one drive-thru land serving a given use.

7. Within the TC-2b subdistrict there shall be no more than two (2) drive-thru lands serving a given use.

(2) Development standards.

Development Standard	TC-1	TC-2	TC-3 and 3a		TC-4a, b and e	TC-5
Minimum lot size	None	None	None	None	None	0.5-acre
Minimum lot width (if lotted)	20 feet	80 feet	40 feet	40 feet	20 feet	n/a
Minimum lot depth (if lotted)	80 feet	100 feet	80 feet	80 feet	80 feet	n/a
Allowable residential density in dwelling units per acre ^(a)	>15 DU/AC	>15 DU/AC	None	None	4a—up to 10 4b—up to 15 4c—min. of 15	n/a
Minimum floor area ratio (FAR) for nonresidential uses/vertically mixed buildings/sites	.75	.25	.25	.25	n/a	n/a
Setbacks/Build to Line						
Front yard (min.—max)	0—5 feet as measured from building front to right-of-way ^(b) (60% of front facade w/in max.)	0—15 feet as measured from building front to right-of-way ^(b)	0—15 feet as measured from building front to right-of-way ^(b)	30 feet min., 60 feet max as measured from building front to right-of-way ^(b)	0—25 feet ^(b)	n/a
Side yard	no req.	10 feet if separate bldgs.	10 feet if separate bldgs.	10 feet if separate bldgs.	no req. unless req. by Building Code	n/a
Rear yard	no req.	no req.	no req.	30 feet minimum	no req. unless req. by Building Code	n/a
Driveway length (minimum)	2 feet for residential units	20 feet for residential units	20 feet for residential units	20 feet for residential units	20 feet for residential units	n/a
Building height	2—5	1—4	2—4	2—4	1—4	1—2

(min.—max.)	stories	stories	stories	stories	stories	stories
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~~a. Residential density is based on the net area of the parcel in question for parcels. In the event that public open space that is not dedicated to the city is developed independently of any particular residential project, the land area of the open space shall be divided equally among those abutting projects for purposes of density calculations.~~

~~b. Setbacks for residential units located within the TC-1 Zoning District shall be measured from building front to edge of right of way, or edge of sidewalk easement as defined by the City and said sidewalk must be encumbered by a sidewalk easement recorded with the office of the Anoka County Recorder. Setbacks for residential units located within the TC-4 Zoning District shall be measured from building front to edge of sidewalk, edge of right of way, or to back of street curb, whichever is appropriate.~~

(d) *General development standards.* All development within the ~~Town Center~~COR District shall meet the ~~Ramsey Town Center~~COR Development Guidelines-Framework that are is incorporated into this chapter by reference. These standards will be used by the city as the minimum requirements for evaluating development proposals and site plans. However, the standards are not intended to restrict creativity in design. An applicant may request modification or waiver of any standard in favor of an alternate approach that will achieve the same design objective.

(e) *Parking standards.* ~~Parking in the Town Center District is intended to be shared to the greatest extent practicable in all mixed-use areas. The parking standards are intended to provide a practical basis for providing adequate parking within the Town Center District through a careful analysis of uses, shared parking arrangements, use of public street parking and reduction allowances for the proximity to the transit station. A parking plan shall be prepared as part of the development plan to address the number, location, sharing arrangements, and public use when applicable. The parking plan shall also attempt to anticipate to the extent possible, how to address longer term parking arrangements if the possibility of use conversion or building expansion exists. Parking shall be provided under any of the following arrangements:—~~

~~(1) Off street parking in the TC-1 and TC-2 subdistricts shall be secured for public use through parking easements and other appropriate conveyances. Shared parking arrangements between nearby uses are encouraged in both subdistricts.~~

~~(2) On street parking adjacent to buildings may be used for the purposes of calculating parking requirements for street level, nonresidential uses.~~

~~(3) Within the TC-4 subdistrict, parking on individual parcels serving individual uses may be provided if designated and approved as part of the master plan.~~

~~In order to ensure the pedestrian orientation of the Town Center Districts, maximum parking standards are set based on the following:—~~

Retail	4 per 1,000 sq. ft.
Restaurants	5 per 1,000 sq. ft.
Offices	3 per 1,000 sq. ft.
Medical offices, clinics	4 per 1,000 sq. ft.
Health clubs	3 per 1,000 sq. ft.
Theaters, places of assembly	1 per 4 seats
Residential	
	Attached or detached Required: 2 per unit
	Multifamily units Required: 2 per unit

~~(4) Maximum required parking. If a parking structure is provided on site, maximum parking stalls do not apply. If additional parking is sought that does not meet these maximum requirements, a conditional use permit can be sought to increase maximums up to 25 percent.~~

~~(5) The city may require payment of an amount equal to the value of the required parking on a per-stall price basis. Funds collected by the city shall be deposited in a special fund used only to acquire and/or develop off-street parking facilities for the Town Center. The city will determine the appropriate contribution.~~

~~(6) A development agreement is completed that specifies that each property in the Town Center shall be financially responsible for its proportionate share of a shared parking facility. The proportionate share shall be determined on the basis of the property's off-street parking needs, as determined by the parking study. Financial responsibility shall cover the construction and continuing maintenance of the parking facility. The parking facility may be constructed and maintained by the city or by a private management entity acceptable to the city.~~

~~(f) *Signage.* Signage in this district is allowed as prescribed in this subdivision. Signage as prescribed by other sections of this Code is not applicable.~~

~~(1) Permitted signs for personal and professional services, retail commercial, and public uses and services in TC 1, TC 3, TC 4 and TC 5 districts:~~

~~a. Wall-mounted or painted signs, provided the following standards are met:~~

~~1. The sign shall be affixed to the front facade of the building, and shall project outward from the wall to which it is attached no more than six inches.~~

~~2. The area of the signboard shall not exceed five percent of the ground floor building facade area or 24 square feet, whichever is less.~~

~~3. The height of the lettering, numbers, or graphics shall not exceed 12 inches.~~

~~4. The sign shall be granted to commercial uses occupying the ground floor of buildings facing public streets only and shall not be allocated to other uses.~~

~~5. Limited to one sign per business.~~

~~b. The area of signboard shall not exceed five percent of the ground floor building facade area.~~

~~c. Wall-mounted building directory signs identifying the occupants of a commercial building, including upper story business uses, provided the following standards are met:~~

~~1. The sign is located next to the entrance.~~

~~2. The sign shall project outward from the wall to which it is attached no more than six inches.~~

~~3. The sign shall not extend above the parapet, eave, or building facade.~~

~~4. The area of the signboard shall not exceed three square feet, with each tenant limited to one square foot.~~

~~5. The height of the lettering, numbers, or graphics shall not exceed four inches.~~

~~6. One such sign is allowed per public building entrance.~~

~~d. Applied letters may substitute for wall-mounted signs, if constructed of painted wood, painted cast metal, bronze, brass, acrylic or black anodized aluminum. The height of applied letters shall not exceed 12 inches.~~

~~e. Projecting signs, including graphics or icon signs, mounted perpendicular to the building wall, provided the following standards are met:—~~

~~1. The signboard shall not exceed an area of six square feet.~~

~~2. The distance from the ground to the lower edge of the signboard shall be ten feet or greater.~~

~~3. The height of the top edge of the signboard shall not exceed the height of the wall from which the sign projects, if attached to a single-story building, or the height of the sill or bottom of any second-story window, if attached to a multistory building.—~~

~~4. The distance from the building wall to the signboard shall not exceed six inches.~~

~~5. The width of the signboard shall not exceed three feet.~~

~~6. Limited to one sign per business. Projecting signs are not permitted in conjunction with wall-mounted, free-standing, or applied letter signs.—~~

~~7. Granted to ground floor commercial uses only.~~

~~f. Awning signs, for ground floor uses only, provided that the following standards are met:~~

~~1. If acting as the main business sign, it shall not exceed 24 square feet in area, and the height of the lettering, numbers, or graphics shall not exceed 12 inches.—~~

~~2. If acting as an auxiliary business sign, it shall be located on the valance only, shall not exceed four square feet in area, and the height of the lettering, numbers, or graphics shall not exceed four inches.—~~

~~3. Limited to two such signs per business.~~

~~4. If acting as the main business sign, it shall not be in addition to a wall-mounted or applied letter sign.~~

~~g. Window or door signs, provided that the following standards are met:~~

~~1. The sign shall not exceed ten percent of the window or door area or four square feet, whichever is less.~~

~~2. The sign shall be silk-screened, hand-painted, applied letters/graphics, neon tubing or other sign technologies that meet these standards.—~~

~~3. Limited to one sign per business, applied on either the window or the door, but not on both.~~

~~4. The sign shall not have an opaque backing of any type although smoked glass is allowed.~~

~~5. May be in addition to only one of the following: a wall-mounted sign, a freestanding sign, an applied letter sign, a projecting sign or a valance-awning sign.—~~

~~h. One freestanding sign, provided that the following standards are met:~~

~~1. The building in which the advertising business is located, shall be set back a minimum of six feet from a public street right-of-way.~~

~~2. The area of each face of the signboard shall not exceed six square feet and the signboard shall not have more than two readable faces.—~~

~~3. The height of the top of the signboard, or of any posts, brackets, or other supporting elements shall not exceed six feet from the ground.~~

~~4. The signboard shall be constructed of wood, acrylic, aluminum or metal and shall be architecturally compatible with the style, composition, materials, colors and details of the building.~~

~~5. No part of the sign shall encroach on the right of way and its location shall not interfere with pedestrian or vehicular circulation.~~

~~6. Limited to one sign per building and shall not be in addition to wall mounted, applied letter or projecting signs.~~

~~7. The readable faces of the sign shall be perpendicular to the adjacent street.~~

~~i. Businesses with frontage on more than one public street are allowed the permitted sign criteria for each street frontage.~~

~~j. Businesses with service entrances may identify these with one wall mounted or applied letter sign not exceeding two square feet.~~

~~k. One directional sign, facing a rear parking lot. This sign may be any type of permitted sign other than a freestanding sign, but shall be limited to three square feet in area.~~

~~l. In addition to other signage, restaurants and cafes shall be permitted one wall mounted display featuring the actual menu as used at the dining table, to be contained within a shallow wood or metal case and clearly visible through a glass front. The display case shall be attached to the building wall, next to the main entrance, at a height of approximately five feet, shall not exceed a total area of two square feet, and may be lighted.~~

~~(2) Permitted signs for personal and professional services, retail commercial, and public uses and services in TC 2 districts:~~

~~a. Wall, canopy or marquee sign. Total sign area may not exceed 15 percent of the front building facade. At least 50 percent of the signage area must be placed on the measured wall with remaining signage area, if desired, distributed on any other wall. Sign height shall not exceed the top of the parapet wall or, if no parapet wall, sign height shall not exceed the height of the eaves. The gross surface area of a wall, canopy or marquee sign may be increased by ten percent if such wall sign:~~

~~1. Consists only of individual, outlined alphabetic, numeric and/or symbolic characters without background except that provided by the building surface to which the sign is to be affixed;~~

~~2. Illumination, if any, is achieved through shielded illumination, shielded silhouette lighting, or shielded spot lighting but not any lighting where the light source is visible or exposed on the face or sides of the characters; and~~

~~3. A wall, canopy or marquee sign may be located on the outermost wall of any principal principle building but shall not project more than 16 inches from the wall to which the sign is to be affixed. A wall sign shall not project higher than the parapet line of the wall to which the sign is to be affixed.~~

~~b. Ground sign. There shall not be more than one ground sign for each parcel. The gross surface area of a ground sign shall not exceed 100 square feet for each exposed face nor exceed an aggregate gross surface area of 200 square feet.~~

~~c. Menu board. One on site menu board per drive up or walk up lane of a drive in restaurant up to a maximum of 32 square feet each. Menu boards are allowed a message on one side only and cannot contain~~

~~an advertising message.~~

~~d. Directional signs.~~

~~1. Directional or instructional signs are permitted in accordance with section 117-463(1).~~

~~2. Parking lot directional signs designating parking area entrances and exits are limited to one sign for each entrance and/or exit and shall not exceed four square feet for each exposed face. Parking lot directional signs shall not project higher than five feet in height, as measured from the established grade of the parking area to which such signs are accessory.~~

~~3. Parking lot instructional signs designating the conditions of use or identification parking areas shall not exceed eight square feet and shall not project higher than ten feet in height for wall signs and seven feet in height for ground signs, as measured from the established grade of the parking area to which such signs are accessory.~~

~~4. Window signs are restricted to 30 percent of the area of the window in which the sign is to be displayed.~~

~~(3) Prohibited signs (except as allowed in subsection (f)(2) of this section):~~

~~a. Signs employing mercury vapor, low pressure and high pressure sodium and metal halide lighting; plastic panel rear lighted signs.~~

~~b. Signs on roofs, dormers, and balconies.~~

~~c. Billboards.~~

~~d. Signs painted or mounted upon the exterior side or rear walls on any principle or accessory building or structure, except as otherwise permitted hereunder.~~

~~e. Free standing pylon signs over six feet in height.~~

~~f. Back lit awnings.~~

~~g. Interchangeable letter boards or panels.~~

~~h. Flashing signs.~~

~~i. Off premises signs.~~

~~(4) Real estate signage. Real estate signs advertising that a particular property is for sale, rent, or lease are limited to one sign per property.~~

~~(g) Development review process within The COR District. The review process for The COR shall follow the standard review process for site plan review and subdivision found in this Chapter and shall include subdivision and site plan review. Development review process within Town Center Districts. Development within the Town Center will generally consist of a subdivision and site plan. In these cases, the applicant will follow the normal subdivision and site plan requirements of the city subject to the submittal requirements contained herein. For subdivisions, the review process will include sketch plan review, preliminary plat, and final plat. For site plans, the review process will include a preliminary site plan and final site plan.~~

~~(1) Sketch plan review.~~

~~a. Pre meeting with city staff. Prior to making an official subdivision application to the city for development of a parcel within the Town Center District, the applicant shall meet with city staff to present the~~

~~proposed development. City staff shall review the development with all relevant ordinances and ensure compatibility with the Town Center District intent, master plan and development guidelines Design Framework for the town center.~~

~~b. A sketch plan shall be prepared in accordance with the regulations of this chapter and the applicant shall submit the plan to the zoning administrator for review and comment, to ensure compliance with the town center master plan and development guidelines Design Framework, the Town Center District and other city codes and regulations.~~

~~c. The sketch plan shall be submitted to the town center review board for its review and comment. The town center review board shall review the proposed project for its compatibility with the town center master plan and development guidelines and make a recommendation to the planning commission and city regarding the proposed development.~~

~~d. The planning commission shall review the sketch plan for its consistency with the town center master plan and development guidelines Design Framework and make a recommendation to the city council as to the appropriateness of the sketch plan.~~

~~e. The sketch plan shall be scheduled for a council meeting within 30 days after the submittal of the planning commission meeting.~~

~~f. The city council shall approve, postpone, or disapprove the sketch plan.~~

~~(2) *Preliminary plat and site plan.*~~

~~a. *Requirements for preliminary plans.*~~

~~1. *Preliminary site plan.* The preliminary site plan shall be drawn at a scale of one inch equals 50 feet, 100 feet, or 200 feet. The submission may be composed of one or more sheets and drawings and shall include:-~~

~~(i) Location of all proposed buildings and their proposed uses;~~

~~(ii) Location of driveways and parking areas (all driveways and parking areas must include curbing);~~

~~(iii) Indicate front, side and rear yard setbacks proposed;~~

~~(iv) Indicate square footage and dimensions of all proposed lots; and~~

~~(v) Location of all easements, width and purpose.~~

~~2. *Landscape plan.* The landscape plan shall be prepared at a scale of one inch equals 50 feet and shall contain the following information:-~~

~~(i) Indicate areas for berming and sodding;~~

~~(ii) Indicate the location of proposed plantings, identify plant materials;~~

~~(iii) Indicate any existing vegetation; and~~

~~(iv) Indicate any trees to be removed.~~

~~3. *Grading and drainage plan.* The grading and drainage plan shall be drawn at a scale of one inch equals 50 feet, 100 feet or 200 feet and shall contain the following information:-~~

~~(i) Existing and proposed grades with a minimum of two-foot contour intervals to a known sea-level datum;~~

~~(ii) Sufficient spot elevations on all proposed hard surface areas;~~

~~(iii) Estimated runoff of the area based on ten- and 100-year storm events;~~

~~(iv) Provisions to carry runoff to the nearest adequate outlet, such as storm drain, natural drainageway, or street;~~

~~(v) Location of proposed ponding areas, indicating the size and depth of the pond and amount of acre feet of water to be stored;~~

~~(vi) Finished floor elevations of all buildings;~~

~~(vii) Identify soils by type and location, including identification of the water table, and suitability of soil for the proposed development; and~~

~~(viii) Identify any areas located in a flood hazard zone as identified by the department of natural resources.~~

~~4. *Topographic map.* The topographic map shall be drawn at a scale of one inch equals 100 feet and shall contain the following information:~~

~~(i) Two-foot contour intervals;~~

~~(ii) Indicate watercourses, rock outcroppings, and other significant land features; and~~

~~(iii) Use U.S. Geological Service datum for mapping.~~

~~5. *Floor plans and elevations.* All floor plans and elevations shall be drawn to a legible scale and include the following information:~~

~~(i) Floor plans indicating square footage and dimensions of all proposed rooms and areas within the structures; and~~

~~(ii) Elevations of the proposed building, identifying exterior treatment, materials to be used, and paint color.~~

~~6. *Preliminary plat.* If a subdivision is required, the preliminary plat shall be prepared in accordance with article III of this chapter.~~

~~b. *Preliminary plat and site plan review process.*~~

~~1. *Pre-meeting with city staff.* Prior to making an official application to the city, the applicant shall meet with city staff. City staff shall review the development with all relevant ordinances and ensure compatibility with the town center master plan and development guidelines Design Framework.~~

~~2. A preliminary plat and site plan shall be prepared in accordance with the regulations of this chapter and shall submit the plan to the zoning administrator 30 days prior to the public hearing.~~

~~3. The preliminary plat and site plan shall be submitted to the city staff for review and comment, to ensure compliance with other city codes and regulations.~~

~~4. The preliminary plat and site plan shall be submitted to the town center review board for its review and comment. The town center review board shall review the proposed project for its compatibility~~

~~with the town-center master plan and development guidelines and make a recommendation to the planning commission and city regarding the proposed development.~~

~~5. The planning commission shall hold a public hearing on the preliminary plat and site plan. The notice for public hearing shall be published in the official newspaper at least ten days, but not more than 30 days, prior to the public hearing, at which time the item will be heard. Notices will also be sent to property owners within 350 feet of the subject property.~~

~~6. A written evaluation from the city staff shall be forwarded to the planning commission and the applicant prior to the public hearing.~~

~~7. The planning commission shall simultaneously hold a public hearing on the preliminary plat and site plan. Following the public hearing, the planning commission shall submit in writing to the city council its recommendation as to the appropriateness of the preliminary plat and site plan in relation to the town-center master plan and development guidelines. Design Framework.~~

~~8. The preliminary plat and site plan shall be scheduled for a council meeting within 30 days after the submittal of the planning commission meeting.~~

~~9. The city council shall approve, postpone, or disapprove the preliminary plat and site plan.~~

~~(3) Final plat and site plan.~~

~~a. Requirements for final plan.~~

~~1. Final site plan. The final site plan shall be prepared at a scale of one inch equals 50 feet, 100 feet or 200 feet, and shall contain the following information:~~

~~(i) Location of proposed structures;~~

~~(ii) Location of proposed driveways and parking areas (all driveways and parking must have curbing);~~

~~(iii) Indicate front, rear and side yard setbacks.~~

~~2. Final landscape plan. The final landscape plan shall be drawn at a scale of one inch equals 50 feet and shall contain the following information:~~

~~(i) Plant types (botanical and common names), number, location, and size;~~

~~(ii) Areas to be sodded;~~

~~(iii) Indicate existing vegetation; and~~

~~(iv) Indicate trees to be removed.~~

~~3. Final grading and drainage plan. The grading and drainage plan shall be drawn at a scale of one inch equals 50 feet, 100 feet or 200 feet and shall contain the following information:~~

~~(i) Existing and proposed grades with a minimum of two-foot contour intervals to a known sea level datum;~~

~~(ii) Sufficient spot elevations on all proposed hard surface areas;~~

~~(iii) Estimated runoff of the area based on ten and 100-year storm events;~~

~~(iv) Provisions to carry runoff to the nearest adequate outlet;~~

~~(v) Location of any proposed ponding areas, indicating the size and depth of the pond and amount of acre feet of water to be stored;~~

~~(vi) Finish floor elevations of all buildings;~~

~~(vii) Identify soils by type and location, including identification of the water table, and suitability of soil for the proposed development; and~~

~~(viii) Identify any areas located in a flood hazard zone as identified by the department of natural resources.~~

~~4. *Floor plans and elevations.* All floor plans and elevations shall be drawn to a legible scale and shall include the following information:~~

~~(i) Floor plans indicating square footage and dimensions of all proposed rooms; and~~

~~(ii) Elevations of the proposed building, identifying exterior treatment, material, and paint color.~~

~~5. *Final plat.* If a subdivision is required, the final plat shall be prepared in accordance with this Code. With the final plans, the developer shall submit, for approval by the city, a development schedule for construction of all structures, open space, and recreational facilities.~~

~~b. *Final plat and site plan review process.*~~

~~1. Upon approval of the preliminary plat and site plan, a final plat and site plan shall be prepared in accordance with the regulations of this chapter and submit it to the zoning administrator 30 days prior to the public hearing.~~

~~2. The final plat and site plan shall be submitted to the city staff for review and comment, to ensure compliance with the preliminary plan, site plan and other city codes and regulations.~~

~~3. The final plat and site plan shall be submitted to the town center review board for its review and comment. The town center review board shall review the proposed project for its compatibility with the preliminary plat, site plan, town center master plan and development guidelines Design Framework and make a recommendation to the city council regarding the proposed final plat and final site plan.~~

~~The city council shall approve, postpone, or disapprove the final plat and site plan based on its appropriateness and conformance with the preliminary plat and site plan and the town center master plan and development guidelines Design Framework.~~

~~4. *Major changes.* If the applicant proposes major changes in the final site plan that are inconsistent with the preliminary site plan, these changes can only be made by re-submission of a new preliminary site plan and rezoning application to the zoning administrator, and re-scheduling of a new public hearing before the planning commission and review again by the council. The following constitute major changes:~~

~~(i) Increase in density;~~

~~(ii) Change in architectural design or style;~~

~~(iii) Change in type of ownership, private, condominium, or rental;~~

~~(iv) Change of more than ten percent in total floor area;~~

- ~~(v) Increase in height of any building;~~
- ~~(vi) Major modification in the landscape plan;~~
- ~~(vii) Reduction in the proposed open space;~~
- ~~(viii) Change in the development schedule;~~
- ~~(ix) Change in the road location or standards; and~~
- ~~(x) Any changes determined to be major by the council.~~

~~5. Minor changes. The council may, in its discretion, permit minor deviations from the preliminary site plan which do not change the concept or intent of the proposed development as previously approved.~~

~~6. Denial. The council shall deny any application if it finds the final plans do not substantially conform to the preliminary plat and site plan as previously approved by the council as well as the town center master plan and development guidelines Design Framework. If the final plans are subsequently modified to conform to the approved preliminary plan, the applicant may resubmit said final plans to the council for approval.~~

~~7. No development shall occur nor shall any building permits be issued for any construction that is not in accord with the approved final plans.~~

(h) *Relationship to other Code sections.* The ~~Town Center~~COR District is structured to establish a regulatory framework intended to be administered separate from certain sections of this chapter. In order to prevent overlapping development regulations, the following portions of this chapter are not applicable to the ~~Town Center~~COR District: article II, divisions 3 (Zoning Districts), 6 (Performance Standards), and 8 (Signs), unless it is determined by the city that provisions from these sections are better suited to address any particular aspect of a development proposal. The provisions contained in article III of this chapter shall regulate land subdivision of ~~the Town Center~~The COR District.

SECTION 2. SUMMARY

The following official summary of Ordinance #12-__ has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance.

It is the intent of this Ordinance to amend the standards in Section 111-118 of Chapter 117 of the Ramsey City Code to amend architectural standards for all structures constructed within The COR District, amend the framework and standards for bulk standards including, but not limited to, setbacks and build-to lines, establish a hierarchy of street classifications to base bulk standards, clarify street and sidewalk design standards, and amend permitted, accessory, and conditional uses within The COR District. The intent of this Ordinance is also to relocate bulk standard requirements for The COR District from the Zoning Code to the Design Framework, which is adopted by reference as part of Section 117-118 of the City Code and shall have the effect of being part of the Zoning Code.

SECTION 3. EFFECTIVE DATE

The effective date of this ordinance is thirty (30) days after its passage and publication, subject to City Charter Section 3.9.

Adopted by the Ramsey City Council the ___ day of _____, 2012.

|

ATTEST:

Mayor

City Administrator

Introduction Date: _____

Posting Dates: _____

Adoption Date: _____

Publication Date: _____

Effective Date: _____

DRAFT

Regular Planning Commission

6.3.

Meeting Date: 02/02/2012

By: Tim Gladhill, Community Development

Information

Title:

Discuss 2030 Comprehensive Plan Assumptions Related to Pending Updates to the City's Comprehensive Sanitary Sewer and Water Plans

Background:

The City Council recently approved a contract with Bolton and Menk to update the City's Comprehensive Sanitary Sewer and Water Comprehensive Plans, last completed in 2004 following the completion of the 2020 Comprehensive Plan. This is part of the regular cycle of plan updates.

It should also be noted that this update of the Comprehensive Sewer and Water Plans will advise staff in addressing a 2011/2012 City Council Strategic Goal regarding analysis of fees for development and building in Ramsey. The Planning Commission may recall that a Development Cost Study was completed in 2011, resulting in the adjustment of several rates and fees charged by the city to developers and builders. The update of these plans will help to inform staff and the Council as changes to the rate structure for infrastructure are considered.

Notification:

No notification required; for discussion purposes only.

Observations:

On Monday, February 6th, the City Council will be discussing Chapter 4 of the 2030 Comprehensive Plan as it relates to sanitary sewer and water infrastructure. Chapter 4 contains population, household, and employment forecasts in addition to general assumptions related to growth patterns.

Even during the process of the 2030 Comprehensive Plan Update, concern was raised by several individuals regarding the forecasts. In essence, the forecasts showed that all future growth shown on the Future Land Use Map could develop by 2030; however, based on current market conditions, it seems unlikely that this will occur. Staff has had discussions with the Metropolitan Council staff, who agree amendments will likely be needed to the forecasts, with the City experiencing ultimate build-out of the Future Land Use Map beyond 2030.

As previously discussed with the Planning Commission, the Metropolitan Council has begun working on the 2040 Framework, which will provide the City an official opportunity to comment on forecasts, among other items. It is expected that the Metropolitan Council will begin providing communities with updates on the process in October or November of this year. Official comment periods will begin in 2013.

Please note that the City has processed multiple Comprehensive Plan Amendments that have changed the forecasts published in Chapter 4. Staff will present updated information at the meeting. In addition, it is not expected that the Planning Commission develop a new Future Land Use Map or staging plan at this time. This is an opportunity for the Planning Commission to provide Staff with some general guidance to comment on the 2040 Framework and assumptions based on the current Comprehensive Plan and Future Land Use Map.

Funding Source:

Preparation of the discussion is being handled as part of regular Staff duties.

Staff Recommendation:

Based on discussion.

Committee Action:

For discussion only. Provide Staff with feedback on Chapter 4 (Assumptions) of the 2030 Comprehensive Plan in preparation for updates to the City's sanitary sewer and water plans.

Attachments

Chapter 4 (2030 Comprehensive Plan)

Future Land Use Map

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	01/25/2012 02:08 PM
Heidi Nelson	Heidi Nelson	01/26/2012 02:10 PM
Tim Gladhill (Originator)	Tim Gladhill	01/26/2012 02:12 PM
Tim Gladhill (Originator)	Tim Gladhill	01/26/2012 02:12 PM
Form Started By: Tim Gladhill		Started On: 01/25/2012 08:49 AM
	Final Approval Date: 01/26/2012	

4. ASSUMPTIONS AND PROJECTIONS

The following is a list of assumptions that were considered when projecting future population, household and employment figures for Ramsey.

1. Due to its location at the edge of the region, the automobile will continue to be the primary means of transit for Ramsey residents.
2. Travel demand by personal automobile will continue to grow faster than Ramsey's population unless there is a significant increase in the cost of gasoline. Traffic volumes will continue to grow no matter how fast or how much the City of Ramsey grows or regardless of whether a new bridge over the Mississippi River is built.
3. Due to the nature of soils in the City (the Anoka sandplain) rural residential development can be supported indefinitely with on-site sewage treatment systems, provided sufficient land is available to accommodate two drain fields. Ultimately, such areas may require public water service.
4. The expansion of the schools that serve Ramsey students will be necessary whether or not urban growth occurs in Ramsey in any significant amount.
5. The public sanitary sewer and water systems have ample capacity and/or expansion capability to accommodate all of the urban development possible in Ramsey.
6. The Metropolitan Council may not support the expansion of rural residential development at densities of less than one unit per 10-acres unless a meaningful system of rural open spaces and more urban housing at higher densities result. More urban density housing will require MUSA expansion.
7. The Metropolitan Council will not compel the City to expand MUSA into rural residential areas where substantial subdivision has already occurred that is not conducive to resubdivision.
8. Northwest Ramsey will not be allowed to connect to Elk River's public utility systems.
9. Metropolitan sewers will not be extended northerly through Ramsey to provide services to City of Nowthen.
10. Urban growth will generally occur in a westerly direction along Highway 10 if MUSA expansion is authorized.
11. Ramsey's persons per household figure currently estimated at 3.1 persons per household in 2000 will likely decline to 3 persons per household or less by 2010. By 2030, the household figure is expected to decline to 2.67 persons per household.

The future growth of Ramsey depends on several factors. It depends on the recent charter amendments, which limit the ability of expanding MUSA, particularly for residential development and the ability to manage congestion levels on Highways 10 and 47 at safe and operable levels. It depends on regional and local pressures and cooperation on deciding whether to build another bridge over the Mississippi River. It also depends on the ability of the community to diversify its employment base by attracting business other than manufacturing. These are only a few factors that impact future growth, all of which are interrelated.

In order to plan for growth in the Twin Cities Metropolitan region, the Metropolitan Council has prepared population, household and employment projections for metropolitan cities. These projections are not requirements imposed on the community; rather they are projections that provide a framework or base to plan. One purpose of the legislation that requires metro communities to submit comprehensive plans to the Metropolitan Council is to allow local governments the opportunity to determine how their community will grow and to tell the Metropolitan Council what regional infrastructure needs will result from the chosen growth plan. After reviewing Ramsey's plan, the Metropolitan Council must evaluate how that plan fits into the regional plan and how regional infrastructure needs are to be met. Tables 4-1 and 4-2 outline the Metropolitan Council projections for the City of Ramsey and provides a comparison of the City's own growth projections based on growth trends, available land supply. The City projections are based on projections completed while analyzing the future growth according to Traffic Analysis Zones (TAZ) and according to the development staging plan as shown in Chapter V. "Land Use".

The 2030 Land Use Plan and accompanying staging plan were developed through a citizen-driven process which culminated in October of 2008 with a day-long land use planning workshop. This citizen process began in January of 2007 with the Ramsey3 process, a unique program in which the citizens of Ramsey were asked to define what they wanted "in their backyard". This process included a public participation effort using the "Open Space Technology" process to allow citizens to develop the agenda for each meeting and guide the direction of discussion without staff or consultant involvement. The outcome of the Ramsey3 process was a series of Vision and Values statements that are presented in Chapter II of this plan. From the Vision and Values, Goal and Strategies were also developed for many of the Comprehensive Plan topics. These Goals are presented within each chapter.

The culmination of the citizen-driven process was a day-long planning workshop during which participants were asked to develop the final 2030 Land Use Plan for the City of Ramsey. Participants were guided through a discussion of available land supply in Ramsey, as well as Metropolitan Council requirements for comprehensive plan updates. Participants then split into groups to work on land use maps. Each group was given chips representing various land use types and densities and groups were asked to develop a land use plan which met all planning requirements while also meeting the Vision and Goals of the community. After discussion of each group's plan, similarities and differences were identified between plans. The design and discussion process was repeated until a consensus on one land use plan was reached. That consensus plan is shown in Chapter V, "Land Use".

Table 4-1 Metropolitan Council Published Forecasts

	2000	2010	2020	2030
Population	18,510	31,300	45,000	44,000
Households	5,906	10,900	16,200	16,500
Employment	4,008	6,700	9,100	11,300

Table 4-2 City of Ramsey Forecasts Pending Approval

Population	2000	2010	2020	2030
Sewered	7,810	21,522	29,356	36,373
Unsewered	10,700	6,599	6,883	7,088
TOTAL	18,510	28,121	36,239	43,461

Households	2000	2010	2020	2030
Sewered	2,492	7,495	10,568	13,640
Unsewered	3,414	2,298	2,478	2,658
TOTAL	5,906	9,793	13,046	16,298

Employment	2000	2010	2020	2030
Sewered	4,008	6,039	8,621	11,723
Unsewered	0	661	479	215
TOTAL	4,008	6,700	9,100	11,938

Note: Over the 2008-2030 time period, steadily increasing employment density estimates are used for each decade to forecast anticipated increase in employment density as the community grows.

Met Council HH Size 2.87156 2.777778 2.666667

The primary concern regarding growth at the regional level is that land within the Metropolitan area is used efficiently and wisely from the standpoint of maximizing the effective use of regional infrastructure and by making environmentally conscious land use decisions. The ability for growth to occur in the City of Ramsey heavily depends on the regional investment made to the transportation infrastructure that connects Ramsey with the Metropolitan Area. These improvements are not limited to highway improvements, but also investments in transit (the ability to reduce vehicle trips) and economic development (the ability to get jobs closer to homes).

Throughout the planning process, residents and elected and appointed officials have voiced concern with the Metropolitan Council’s growth projections. Particularly in 2008, there was concern that given the weak national and local economy, growth could never meet the original estimates provided in the Metropolitan Council system statement. Throughout the planning process, City staff, elected and appointed officials and planning consultants worked with Metropolitan Council staff and representatives to reach consensus on the planning requirements for Ramsey. Although Ramsey’s final plan shows fewer total households and a lower population than the original system statement (see Tables 4-1 and 4-2), as of the time of this writing, it is the City’s understanding that the final land use plan and corresponding growth projections developed

by the City will ensure the integrity and efficient operation of Metropolitan Council's regional infrastructure.

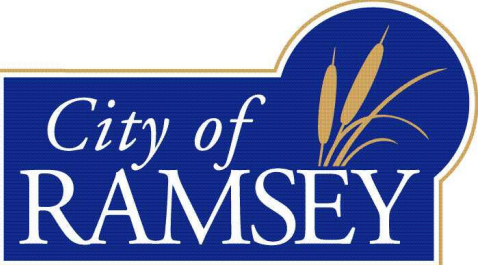
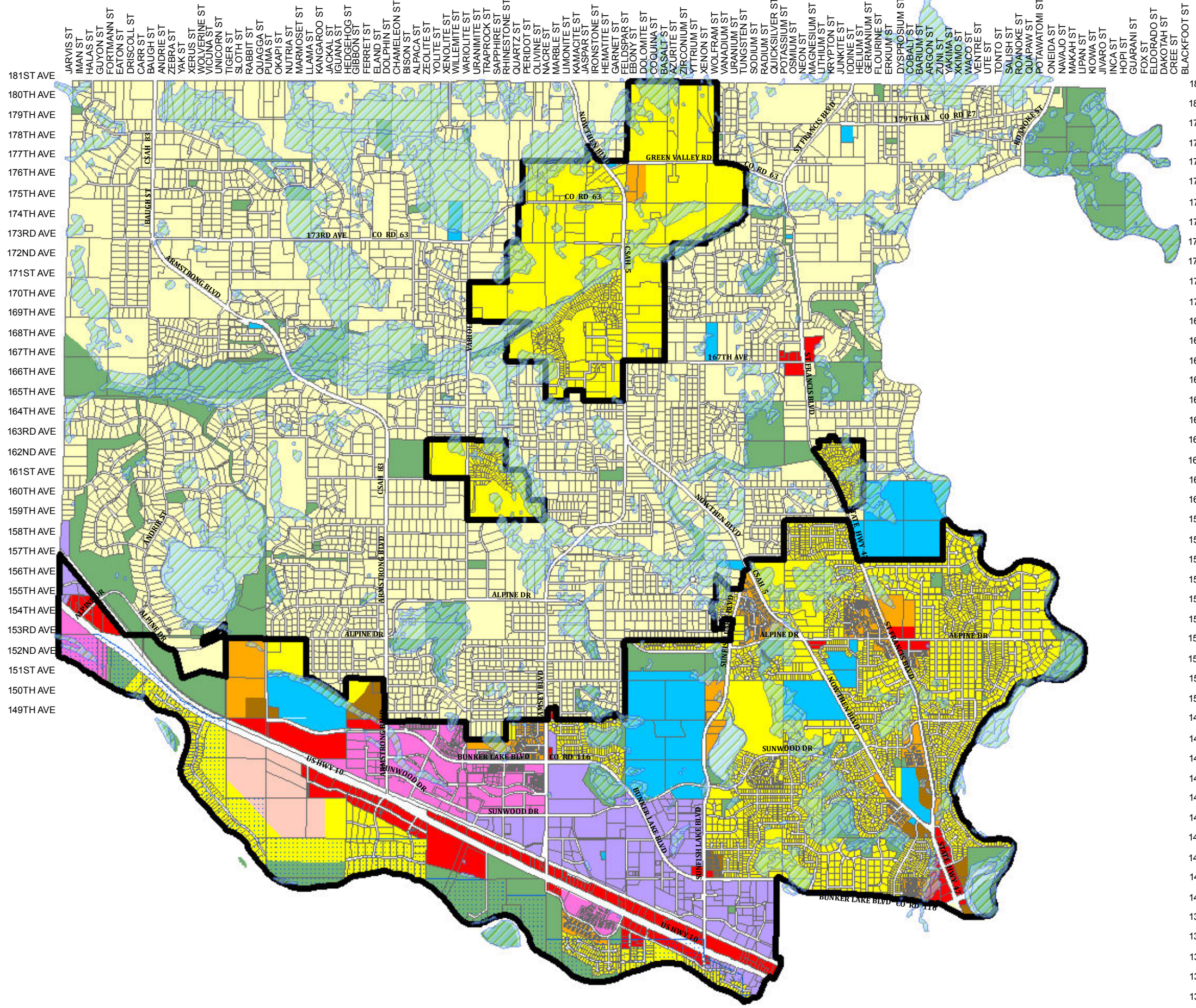
FOOTBALL GREATS

MAMMALS




ROCKS

ELEMENTS

INDIAN TRIBES

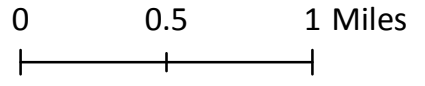


2030 Comprehensive Plan Future Land Use Map Amendment 11-02

-  NWI
-  MUSA
-  MRCCA Boundary

Future Land Use

-  LDR
-  MDR
-  HDR
-  Office Park
-  Commercial
-  MU
-  Business Park
-  Public
-  Rural Developing
-  Rural Preserve
-  Park



This map has been compiled using information gathered from various governmental offices and other sources and is to be used for reference purposes only. It is neither a legally recorded map nor a survey and is not intended for use as one. The Geographic Information System (GIS) data used to develop this map is not warranted by the City as being error-free.

The City does not represent that the GIS data can be used for exact measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found, please contact (763) 427-1410.

The City of Ramsey disclaims any responsibility for or liability for the accuracy of the information at any point of initial contact with a GIS to which the public has general access. The preceding disclaimer is provided pursuant to Minnesota Statute 466.03, Subd. 21 (2000), and the user of this map acknowledges that the City of Ramsey is immune from any and all claims brought by User, its employees or agents, or third parties with access to the user's access of the data.

Regular Planning Commission

6. 4.

Meeting Date: 02/02/2012

By: Tim Gladhill, Community Development

Information

Title:

Discussion of Pending Zoning Code Amendments

Background:

Staff and Tina Goodroad, consulting planner with Stantec, will provide an update and general work plan for completing Zoning Code amendments over the next several months. Attached to the case are the approved goals and strategies from the 2030 Comprehensive Plan that have been guiding the focus of the necessary and optional amendments to the Zoning Code. Staff is looking for feedback from the Planning Commission on the status of these goals and strategies. Also attached is a Work Plan list developed by Staff and Stantec to summarize necessary and optional amendments based on information and direction from the Comprehensive Plan. In order to maximize Staff resources and focus efforts on desired amendments, Staff is looking for feedback and prioritizing of the proposed amendments.

Notification:

Observations:

Funding Source:

Staff Recommendation:

For discussion only.

Committee Action:

For discussion only. Provide feedback on preferences on completing necessary Zoning Code Amendments.

Attachments

2030 Comprehensive Plan Goals and Strategies

Working List

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	01/25/2012 02:08 PM
Tim Gladhill (Originator)	Tim Gladhill	01/25/2012 03:03 PM
Form Started By: Tim Gladhill		Started On: 01/20/2012 11:44 AM
	Final Approval Date: 01/25/2012	

2. VISION, VALUES AND GOALS

In 2006, Ramsey community members formed Ramsey3, a grassroots organization dedicated to imagining the future of Ramsey. Through a series of community meetings the Ramsey3 process completed a Vision and Values statement with a Checklist for future decision making, summarized in the Introduction chapter. A set of Goals and Strategies, based on comments from the numerous community meetings, was compiled by consultants and City staff. The Goals and Strategies for each chapter of this plan are also repeated within those chapters. The Goals and Strategies were compiled before the final completion of the Vision and Values, so it is the intent of the City that where conflicts arise the Vision and Values will guide city policy decisions.

A. THE VISION:

- 1) Without compromising private property rights and needs of future generations, Ramsey will evolve through citizen driven, collaborative processes that respect the balance and connectivity between its unique urban, rural and natural environments.

B. THE VALUES:

- 1) Encourage walkability through pedestrian friendly neighborhoods and transportation.
- 2) Maintain land owner rights.
- 3) Employ careful foresight in city planning that includes citizen review, reliance on peer-reviewed science, and comprehensive data collection and analysis.
- 4) Involve all citizens in decisions that impact their lives, property and neighborhoods through the use of a facilitated process such as collaborative decision-making.
- 5) Embrace a people-centered, long-term perspective that nurtures neighborhood and community interactions and with flexibility to meet future needs without compromising the needs and interests of current residents.
- 6) Preserve unique natural resources for the community and its current residents.
- 7) Attract and sustain businesses that should serve the whole community.

C. CHECKLIST TO GUIDE REVIEW OF ZONING ALTERNATIVES AND FUTURE PLANNING

- 1) Component I: Commercial/Economic Development
 - a) Attract and retain high-quality industrial and commercial businesses that create higher paying jobs for local residents and increase Ramsey's tax base.
 - b) Concentrate larger commercial/industrial development within MUSA while encouraging smaller neighborhood commercial nodes in more rural areas.
 - c) Plan business development for maximal use of rail and highway arteries with minimal residential, environmental and traffic impacts.

- 2) Component II: Environment
 - a) Balance protection of environmental resources with property rights while providing just compensation.
 - b) Allow for identifying and maintaining open/green space and preservation of unique natural resources.
 - c) Ensure that residents have access to parks and open space within walking distance.
- 3) Component III: Transportation
 - a) Create vehicular and non-vehicular linkages to neighboring communities and between city neighborhoods, trails, recreation, work and shopping.
 - b) Emphasize consideration of non-vehicular modes of transportation in the development process.
 - c) Stress the efficient movement of persons, goods and services over the movement of vehicles.
 - d) Place a high priority on transportation safety.
- 4) Component IV: Administration
 - a) Guide development through reliable zoning that is based on collaborative community input.
 - b) Information on zoning and development process should be easily understandable and available to all.
 - c) Regulate transition requirements between changes in density and differing land uses.
 - d) Create a monitoring and reporting system on growth, development and other planning data.
- 5) Component V: Public Visioning/Involvement
 - a) Provide for a periodic collaborative forum to assess its continuing vision and relevance.
 - b) Supplement such forums with other accessible technologies to inform and collect opinions from residents.

- 6) Component VI: Residential Development
 - a) Maintain and provide a range of housing types to have a variety that encourages people to choose Ramsey as a place to live.
 - b) Include consideration of and attention to architectural and site planning details.
 - c) Allow for the application of appropriate density transitioning techniques that respect the integrity of existing neighborhoods.
 - d) Orient development toward sustainable centers.
 - e) Encourage land uses that can meet essential services and recreation needs within walking distance.

- 7) Recommendations To Council For Changes In Ramsey Not Covered By The Grant Charge
 - a) Any changes to the comprehensive plan shall require a 2/3 majority of Council.
 - b) Focus on Highway 10 redevelopment and Northstar for east-west travel, redesign Highway 47 for north-south travel, and construct additional trails and sidewalks for walkability and connectivity.
 - c) Ramsey absolutely needs a Chamber of Commerce to find and develop diverse businesses.

D. GOALS AND STRATEGIES

1) Land Use

- a) The needs and rights of existing residents are balanced with the needs and rights of those who wish to develop**

STRATEGIES:

- 1. Encourage a developer-led public involvement process for new development that solicits feedback from the public at the beginning of the process
- 2. Develop a meaningful density transition ordinance that incorporates lot size, transitioning, screening, space, berms, landscaping, or buffers
- 3. Protect Ramsey's rural character while providing opportunities for urban growth

- b) A variety of housing densities and types**

STRATEGIES:

- 1. Develop dense, mixed-use environments in Town Center and other key locations served by sewer and water
- 2. Assess the market for various housing types and densities and have the Land Use Plan reflect appropriate opportunities to match market demand

c) Fair and consistent land use regulations

STRATEGIES:

1. Develop a policy for processing comprehensive plan amendments
2. Establish a rational, logical staging plan for extension of MUSA consistent with the Comprehensive Sewer Plan and tied to Comprehensive Plan Amendment Policy
3. Re-assess the value of 4 in 40 (rural preserve and rural reserve)

d) Walkable neighborhoods

STRATEGIES:

1. Include a review of infrastructure, including parking for walking and other non-motorized transportation modes when reviewing any transportation improvement projects
2. Explore options for revising the City's sidewalk policy, including requiring sidewalks or trails on both sides of some new public streets, different standards for public versus private roads, high-volume versus low-volume roads, and issues related to long-term maintenance
3. Locate residential development at appropriate densities near services to encourage walking

e) Efficient growth

STRATEGIES:

1. New development should use existing infrastructure where possible
2. New development should be built close to existing or proposed services such as commercial, employment, and government, where possible.

f) Ramsey Town Center is constructed in accordance with its vision

STRATEGIES:

1. Concentrate the highest density residential development in or near Town Center and at other key locations as shown on the future land use map
2. Encourage residential and commercial development in the Town Center before other parts of the City
3. Continue to work to secure a stop on the Northstar Commuter Rail Line for Ramsey
4. Develop incentives for the Town Center to enhance its marketability
5. Maintain high quality design standards for the Town Center

g) Adequate retail and commercial services

STRATEGIES:

1. Locate other neighborhood commercial nodes with basic services available close to existing and future residential neighborhood concentrations
2. Assess the supply of commercial and industrial land available for development

h) New development is well-integrated with existing development

STRATEGIES:

1. New development should protect natural resources, make trail connections, and blend in with surrounding development
2. Use clustering and/or conservation development practices to protect existing neighborhoods and natural resources
3. Develop form-based codes
4. Develop a meaningful density transition ordinance that incorporates lot size, transitioning, screening, space, berms, landscaping, or buffers

i) The rights of property owners are respected and protected within the planning and development process.

STRATEGIES:

1. Private property owners will be allowed the maximum use and enjoyment of their property, as free as practical from excess taxation, assessment, or intrusion consistent with good planning and the well-being of the larger community.
2. The rights of private property owners will be balanced with the need to protect and enhance natural resources in the community.
3. The rights of private property owners will be balanced with the need to provide a safe and efficient transportation system in the community.
4. The rights of private property owners will be balanced with the needs of future development.

j) Property rights are protected along with natural resources

STRATEGIES:

1. Explore options to compensate property owners for development rights to protect natural resources
2. Regularly assess outcomes of ordinances related to natural resources and make changes as necessary
3. Provide incentives to homeowners for the permanent protection of high-value natural resource areas

2) Housing

a) A variety of housing types for all life stages and income levels.

STRATEGIES:

1. Investigate programs and policies to increase affordable housing opportunities in the City
2. Partner with affordable housing developers
3. Use incentives (such as density bonuses) to meet affordable housing goals
4. Explore options for providing higher end housing as well as affordable housing.
5. Implement the city's Housing Plan.

b) High-quality housing.

STRATEGIES:

1. Adopt city-wide design and sustainable standards for new construction
2. Promote green building standards and technologies
3. Enforce existing standards for housing maintenance
4. Investigate options for additional property maintenance policies and ordinances
5. Explore programs to revitalize or rehabilitate aging housing
6. Facilitate the redevelopment of underutilized land
7. Encourage the use of green building systems and technologies in new and remodeled housing.

c) Safe neighborhoods

STRATEGIES:

1. Promote Crime Prevention Through Environmental Design (CPTED) and other techniques
2. Encourage and support neighborhood watch groups

3) Economic Development and Marketing

a) A diverse economic environment where a variety of businesses can grow and thrive

STRATEGIES:

1. Foster communication between the City and the business community
2. Explore programs and activities to attract larger employers and employers that provide high-paying jobs
3. Continue to monitor options for a community-wide technology plan to meet business technology needs (fiber-optic and/or wi-fi)

4. Promote redevelopment of underutilized parcels within industrial areas and along major transportation corridors
5. Explore opportunities for additional city-sponsored business events
6. Enhance communication between City and business community
7. Continue business retention and subsidy programs
8. Continue partnerships with neighboring cities and local chambers of commerce

b) New development in Ramsey Town Center

STRATEGIES:

1. Encourage and assist with new development in Town Center
2. Explore programs and activities to improve the image of Ramsey Town Center
3. Promote Northstar Commuter Rail and commuter bus service as economic development tools

c) A positive community image

STRATEGIES:

1. Explore the opportunity to develop a local chamber of commerce or marketing team to market the unique qualities of Ramsey
2. Consider options for increasing or improving signage at City gateways and other strategic locations
3. Continue to pursue Revolving Acquisition Loan Fund (RALF) for the Highway 10 corridor
4. Purchase land south of the MPCA landfill for industrial park development
5. Identify, acquire and redevelop underutilized and blighted properties, especially within industrial areas and along major transportation corridors
6. Strengthen commercial and industrial development standards in City Code
7. Maintain high standards for citywide property maintenance, including City-owned properties

4) Natural Resources

a) Natural resources are protected

STRATEGIES:

1. Identify and prioritize natural areas in the City based on the Natural resource Inventory (NRI)
2. Use cluster ordinances, density credits, and conservation development practices to minimize impact on identified natural resources
3. Explore ways to put an economic value on habitat and other natural areas
4. Provide incentives to homeowners for the permanent protection of high-value natural resource areas

5. Establish a revenue stream dedicated to the permanent protection of natural resource areas such as a dedicated City tax enacted through referendum
6. Manage invasive species and promote the use and protection of native species for private and public development
7. Develop educational materials, such as kiosks, Ramsey Resident article, and maps to inform public about the value of natural resources

b) Recreation opportunities are integrated into protected natural areas

STRATEGIES:

1. Coordinate protection and enhancement of natural corridors with neighboring communities
2. Develop a suitability analysis method for reviewing new development that measures both environmental suitability and efficiency of infrastructure use
3. Prioritize the preservation of large, contiguous natural areas (greenways) that provide the greatest opportunities for animal and plant habitat, as well as a contiguous trail system

c) Clean water and clean air for the current and future generations of Ramsey citizens and businesses

STRATEGIES:

1. Preserve existing tree canopy and promote additional tree planting in new development, both public and private
2. Explore options other than ground water for municipal water supply
3. Manage stormwater on site by using alternative stormwater treatment systems, as described in the Storm Water Management Plan
4. Monitor the quality and quantity of groundwater in aquifers and adopt measures to ensure long-term sustainability
5. Seek out alliances and partnerships with non-profit and governmental agencies to assist in securing funding and other resources to assist in achieving this goal
6. Continue to participate in the North Metro Water Supply Group organized by the Metropolitan Council

d) Reduce waste that goes to the landfill from both private and public sources

STRATEGIES:

1. Continue to improve upon the City's award-winning recycling program
2. Seek out alliances and partnerships with non-profit and governmental agencies to assist in securing funding and other resources to assist in implementing this goal
3. Develop educational materials, kiosks, Ramsey Resident articles and maps to inform public about the value of natural resources

5) Parks, Trails, and Recreation

- a) A comprehensive, balanced park and trail system consisting of large and small scale parks, active and passive parks, natural preserves, and recreational facilities.**

STRATEGIES:

1. Incorporate planned parks and trails into all new development where appropriate
2. Design for connectivity with local and regional parks
3. Improve coordination of park and trail planning within City and adjacent communities
4. Establish a regional trail along the Mississippi River
5. Develop a Trott Brook Trail Corridor
6. Explore providing pedestrian access from the Mississippi River to the north side of Highway 10
7. Design trails with a variety of surfaces appropriate for different uses
8. Seek out alliances and partnerships with non-profit and governmental agencies to assist in securing funding and other resources that will assist in implementing the park and trail plan
9. Improve quality of existing parks, through careful planning, continued maintenance and adequate funding
10. Explore options for an additional community park
11. Where appropriate, consolidate existing parks to improve quality and provide more efficient service
12. Explore options for a revenue source for permanent protections of parks, trails and open space

- b) A system of safe parks and trails**

STRATEGIES:

1. Promote Crime Prevention Through Environmental Design CPTED and other techniques
2. Locate trails where appropriate in greenway corridors and natural areas
3. Where appropriate, use existing power/utility easements for the trail system
4. Provide adequate signage and pavement markings to warn automobile traffic of park and trail traffic
5. Explore use of pedestrian-activated signals, continuous flashing signage, and mid-block crossings where safe and appropriate, to further increase park and trail safety
6. Minimize at-grade crossings of trails and roads and other interactions between trail users and automobiles, with underpasses or overpasses

c) A variety of park facilities and programs that meet the life cycle needs of residents.

STRATEGIES:

1. Work with the schools and community organizations to plan for athletic fields and facilities that will accommodate the growing community
2. Explore options for a revenue source for recreational facilities and programming
3. Study the need for a Community Center that offers a variety of recreational uses for all age groups

6) Transportation

a) A safe and efficient motorized transportation system throughout the community

STRATEGIES:

1. Complete planning stages for Highway 10 interchanges & Highway 47 expansion/re-alignment improvements
2. Update the access management plans
3. Complete interchange designs
4. Complete RTC AUAR roadway improvement projects
5. Successfully complete turn-back of CR 63 between Nowthen Blvd & Armstrong Blvd
6. Secure funding for transportation projects
7. Assess the need for local traffic control and access improvements
8. Consider roundabouts where appropriate
9. Secure funding for transportation projects
10. Pursue additional east/west collector in the northern portion of the city

b) A safe and efficient non-motorized transportation system throughout community

STRATEGIES:

1. Explore options for revising the City's sidewalk policy, including requiring sidewalks or trails on both sides of some new public streets, different standards for public versus private roads, high-volume versus low-volume roads, and issues related to long-term maintenance
2. Encourage design choices in new and existing development that enhance neighborhood walkability
3. Examine the ability of transportation network to handle pedestrians, bicyclists, and automobiles through design of streets (complete streets policy)
4. Ensure future roadway improvement include sufficient right of way for pedestrian and bicycle paths

5. Secure funding for transportation projects such as additional trails, bike paths, and pedestrian connections
6. Include a review of infrastructure, including parking for walking and other non-motorized transportation modes when reviewing any transportation improvement projects
7. Advocate affordable, dependable and efficient means of public transit in the community
8. Complete the master trail plan
9. Continue efforts to establish the Mississippi River regional trail
10. Explore options for constructing a pedestrian bridge over Highway 10 and the Mississippi River
11. Ensure trail connections to transit stops, employment centers, shopping and other services

c) Connectivity with regional transportation corridors and transit

STRATEGIES:

1. Consider officially mapping the remainder of the Mississippi River bridge crossing corridor
2. Collaborate with adjacent communities and county, state, and federal agencies on the planning, design and construction of regional transportation projects
3. Secure a stop on the Northstar Commuter Rail line
4. Establish numerous, efficient, affordable transportation connections, both within and Ramsey and connecting to other communities, that include multi-modal transportation choices
5. Continue involvement in the Northstar Corridor Development Authority (NCDA)
6. Market the municipal parking facility as a park-and-ride opportunity
7. Develop an affordable, efficient, and reliable transit system that includes commuter rail and bus capabilities
8. Secure funding for transportation projects

7) Urban Services

a) A clean and protected water supply for drinking and recreation for the current and future generations of Ramsey citizens and businesses

STRATEGIES:

1. Use Best Management Practices (BMPs) for managing stormwater on-site to reduce infrastructure costs and protect local groundwater supplies, including alternative stormwater management techniques such as rain gardens and rain barrels, pervious pavement, gray water systems, native landscaping or other BMPs to supplement existing storm water management techniques, and explore the long-term maintenance issues related to these techniques
2. Explore ways to minimize ground water loss

3. Explore alternative sources for water supply, including completion of the study of a new surface water supply/treatment plant on the Mississippi River
4. Coordinate with other agencies to monitor the quality and quantity of groundwater aquifers
5. Explore cost-sharing and/or joint operation of utility systems with adjoining jurisdictions to reduce cost or realize other efficiencies
6. Ensure on-site septic systems are operating within State and local rules and are adequately maintained
7. Implement the surface water management plan
8. Educate homeowners on Individual Sewage Treatment Systems (ISTS) in the Ramsey Resident and other methods of communication

b) Efficient availability of sanitary sewer and water to interested property owners

STRATEGIES:

1. Establish a staging plan for extension of urban services consistent with the Comprehensive Sewer Plan and tied to Comprehensive Plan Amendment Policy
2. Existing residents will not bear the costs of new infrastructure without realizing a benefit that is equal to or greater than those costs
3. Explore cost-sharing and/or joint operation of utility systems with adjoining jurisdictions to reduce cost or realize other efficiencies
4. Manage infiltration & inflow (I & I) into the sanitary sewer system
5. Plan growth that is contiguous to existing development wherever possible and that makes the most efficient use of existing infrastructure
6. When planning and building new infrastructure or replacing systems, use the best technology available

8) Public Facilities

a) Quality public service provision at a reasonable cost

STRATEGIES:

1. Continue to plan for public facility needs into the future
2. Analyze the feasibility and demand for a community center in Town Center

b) Accommodate an increasing demand for public services and facilities

STRATEGIES:

1. Engage residents in assessing need for specific services
2. Work with school districts and surrounding communities to determine the need for additional school facilities
3. Advocate for full-service Post Office and Zip Code in Ramsey

4. Plan adequately for expansion of the fire department (Fire Station #3), schools, post office, public works campus, and the possible construction of a community center.

9) Community Health & Wellness

a) Healthy and active Ramsey residents and a built environment that supports them

STRATEGIES:

1. Use land use and zoning tools, such as planned location of housing, commercial areas, and parks and trails, and appropriate densities, to encourage walking and bicycling
2. Promote physical activity by increasing access to public open space, parks and trails through pedestrian improvements and additional open space connections
3. Use a research-based methodology to quantify and improve public health

b) Fresh healthy food conveniently available to all Ramsey residents

STRATEGIES:

1. Promote a local farmer's market in Ramsey
2. Encourage the location of neighborhood-level supermarkets offering fresh fruits and vegetables, and other fresh foods and goods, beyond Town Center

c) Improved air quality through land use and development decisions

STRATEGIES:

1. Identify opportunities to increase the tree canopy along Highway 10 and other major roadways
2. Locate schools, daycare facilities and outdoor recreational facilities at least 1/3 mile from Highway 10
3. Identify significant point sources of pollution, such as heavy industrial uses, and locate new residential, school, daycare, and other sensitive uses away from them

d) Reduced exposure to lead and other toxic substances

STRATEGIES:

1. Continue to implement the adopted standards on mitigating exposure to lead in existing structures and for eliminating lead and other toxic substances from new construction

e) An environment that promotes better mental health

STRATEGIES:

1. Review all development design approvals to increase views of green spaces from buildings
2. Provide an environment with green space and tree cover near all buildings in public and private development

f) A safe environment for all Ramsey residents

STRATEGIES:

1. Provide adequate outdoor lighting where appropriate along all streets, sidewalks and trails to increase safety
2. Balance the needs of transportation modes and provide design features, including traffic calming, to protect pedestrians and bicyclists

City of Ramsey: Zoning Ordinance Updates

Comprehensive Plan related items:

- Create Office Park District ordinance- support office and office showroom uses
- Create density transition ordinance- where new development abuts rural zones. Is buffering ordinance effective?
- Rural preserve district- not mapped, remove?
- B-3 not mapped- replaced by Town Center District?
- Prepare architectural design standards for all residential districts
- Create policy/procedures for Comprehensive Plan Amendments
- Create a park zoning district to separate from public/quasi-public
- Fix mapping inconsistencies between zoning and comprehensive plan- review with Tim
- Greenway Corridor Protection and other areas call for cluster, conservation development standard to protect greenway corridor lands. Need to develop an approach for urban areas that might have density or other incentives- could be overlay, addition to subdivision ordinance or stand alone ordinance. Also need to discuss approach for rural areas- any interest in community septic to allow lots below 2.5 acres but overall 2.5/acre density? Any desire for clustering in rural areas?
- Update in zoning ordinance text on MUSA to 2030.
- Allow geothermal heating in all residential districts
- Housing chapter discusses promoting upgrades to existing housing- consider setback reductions to support room additions.
- Review and update Housing Maintenance Code
- Broaden tree preservation/protection or reforestation- part of Greenway Corridor effort
- Building, architectural, landscaping and signage for businesses along Hwy 10 and highly visible areas. Improved identity along Hwy 10.
- Park dedication- review in compliance with comp plan- allows open space/greenway corridor areas to qualify.

General Updates

- Look at merging Board of Adjustment duties into Planning Commission duties
- Create Administrative site plan review process
- Signs- discuss with Tim issues with ordinance, create exemption for real estate signs from temporary sign provisions
- Variances- legislative updates
- Update definition section
- Residential districts- look at setbacks and opportunities for reductions for room additions
- Business districts- update list of uses; incorporate conditions for conditional uses. Create expanded building and site design standards for all business, employment districts.
[Screening requirements.](#)
- Update off street parking- general requirements, minimum and maximum space requirements for uses, parking lot design and landscaping standards in parking areas.
- Landscaping ordinance- create consolidated landscaping ordinance for all districts . Look at provisions for canopy requirements for parking, building perimeter landscaping, open areas requirements. Alternative and native landscaping, pervious pavers, etc.
- [Submittal info sheets- development review process overview](#)
- [Heliports](#)
- [Group quarters/dormitory style residential units](#)
- [Religious institutions-RLUIPA, CUP standards](#)

- Portable storage containers
- Car ports
- Fences

- Others:
 - Sustainability: Review with Tim: six themes related to zoning: land use, site design; water quality/conservation; alternative energy; urban forestry and landscaping, community health/local food production.

Regular Planning Commission

6. 5.

Meeting Date: 02/02/2012

By: Tim Gladhill, Community Development

Information

Title:

Staff Update

Background:

The following is a brief summary of approvals given in December that may be of interest to the Planning Commission :

- Consider Request for CUP for Motor Vehicle Sales in the B-2 Highway Business District at 8175 Riverdale Dr NW; Case of Quality RV.
- Consider Request for HOP for Youth Camp in the R-1 Residential (Rural Developing) District at 7202 181st Ave NW; Case of Robin Veach Fitzgerald (Second Chance Youth Ranch).
- Consider Request for Vacation of Drainage and Utility Easement and Right-of-Way at 14241 Fluorine St NW; Case of the City of Ramsey.
- Consider Modifications to Tax Increment Financing Districts (TIF) #1 and #2.
- Adopt Ordinance Establishing 2012 Rates and Fees (including land use application and development fees).

Metropolitan Council Announces Creation of Transit Oriented Development (TOD) Grants as part of the Livable Communities Act (LCA) Program. The Metropolitan Council has created a new grant category as part of the LCA program open to certain areas near transit facilities. With the approval of the Northstar Commuter Rail-Ramsey Station, areas within one-half (1/2) mile of the station are eligible for this new grant opportunity. The first round of applications are now open and due on February 15th. Planning Staff is in the process of preparing three (3) applications approved by City Council (Sunwood Drive realignment, Center Street constructions, and Highway 10 Pedestrian Overpass plan preparations).

The American Planning Association Minnesota Chapter Announces Special Membership Rate for Planning Commissions. APA/Mn has provided the following announcement. Please direct Staff to explore further if the Planning Commission is interested. This will open up special rates for training sessions and additional resources for the Planning Commission with a membership.

Do you have a need to know what is going on with planning in Minnesota? Do you wish the opportunity to attend seminars or Brown Bag Lunches or conferences at a reduced rate to help you with your work as a commissioner? As we have done in the past few years, APA Minnesota is again offering a reduced membership fee for your entire planning commission or board. The usual fee of \$150 dollars is being reduced until February 29, 2012, and instead, the fee will be only \$100 dollars for the registration of your entire planning commission. (Or an individual Planning Commissioner can become a member for \$30 dollars.) This limited membership will also give our Minnesota Citizen Planners a chance to attend our educational events and conferences. In addition, if your commission is new to our chapter, you will receive free a CD with the latest version of our Citizen Planner Handbook. If you are a returning commission, you will receive any updates from 2011 to add to the Handbook you received last year. Anyone interested in this membership, please contact the APA Minnesota office at mnapa@buffleheadweb.net or call 1-888-882-5369 for an application.

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	01/25/2012 10:27 AM
Form Started By: Tim Gladhill		Started On: 01/25/2012
	Final Approval Date: 01/25/2012	

Regular Planning Commission

6. 6.

Meeting Date: 02/02/2012

By: JoAnn Shaw, Community Development

Information

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	01/23/2012 11:55 AM
Form Started By: JoAnn Shaw		Started On: 01/23/2012 10:19 AM
		Final Approval Date: 01/23/2012

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Zoning Bulletin

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Freedom of Speech—Zoning Code's "Sign" Definition Has Exclusions

Sign permit applicant argues definition is impermissibly content-based in violation of Free Speech rights

Citation: *Neighborhood Enterprises, Inc. v. City of St. Louis*, 2011 WL 2694571 (8th Cir. 2011)

The Eight Circuit has jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

EIGHTH CIRCUIT (MISSOURI) (07/13/11)—This case addresses the issue of whether a sign ordinance's definition of "sign" violated freedom of speech rights provided by the First Amendment to the United States Constitution.

The Background/Facts: Jim Roos was the founder of a nonprofit organization, Sanctuary In The Ordinary ("SITO") (collectively, Roos and SITO are hereinafter referred to as "Sanctuary"). Roos described himself as a critic of the use of eminent domain for private development by the City of St. Louis (the "City"). He was also the coordinator and

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spokesperson for the Missouri Eminent Domain Abuse Coalition (“MEDAC”). In early 2007, Roos and MEDAC commissioned a sign/mural for the south side of a SITO-owned building. The sign/mural was approximately 363 or 369 square feet in area. It was visible from nearby interstates. The sign/mural consisted of the words “End Eminent Domain Abuse” inside a red circle and slash.

In April 2007, the City issued a citation to SITO. It declared the sign “illegal” because no sign permit had been obtained.

SITO applied for a sign permit. The City denied the permit application, saying: the sign was larger than that allowed by the City’s Zoning Code; and the sign was located on the side of a building in contravention of Zoning Code requirements.

SITO appealed. The City’s Board of Adjustment (the “Board”) upheld the denial of SITO’s sign permit application.

Sanctuary filed suit in court. Among other things, Sanctuary argued that the City Zoning Code’s definition of “sign” impermissibly burdened its free speech rights under the First Amendment to the United States Constitution.

“Sign” was defined under the Zoning Code as: “any object or device ... situated outdoors which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business project, service, event, or location” The definition for “sign” specifically excluded certain things, including: “[n]ational, state, religious, fraternal, professional and civic symbols”; and “works of art.”

Sanctuary argued that the Zoning Code’s sign restrictions were unconstitutionally content-based because they were not supported by “compelling” public interests.

Finding there were no material issues of fact in dispute and deciding the matter on the law alone, the district court granted summary judgment in favor of the City and Board.

Sanctuary appealed.

DECISION: Reversed and matter remanded.

The United States Court of Appeals, Eighth Circuit, agreed with Sanctuary and reversed the district court’s holding. The court of appeals held that the Zoning Code’s definition of “sign” was impermissibly content-based, subjecting it to strict scrutiny under the First Amendment free speech analysis. The court further held that the City’s asserted interests for the “sign” restrictions were not narrowly drawn to accomplish those ends.

The court explained that the Free Speech Clause of the First Amendment provides that: “Congress shall make no law ... abridging the freedom of speech” This clause is applicable to municipalities. The Free

Speech Clause protects signs, as they are “a form of expression.” Signs may be regulated to protect public interests, but the constitutionality of the sign regulations depends on whether the sign restrictions are content-based or content-neutral. If content-neutral, the restrictions are subject to intermediary scrutiny. If content-based, the restrictions are constitutionally permissible only if they withstand strict scrutiny.

Here, the Court of Appeals found the Zoning Code’s definition of “sign” was “impermissibly content-based because ‘the message conveyed determines whether the speech is subject to the restriction.’” Here, under the City’s Zoning Code, whether an object is a “sign” or is exempt from the sign regulations, depended on its content. An object of the same dimensions of Sanctuary’s “End Eminent Domain Abuse” sign/mural would not have been subject to the City Zoning Code sign regulations if it were a “[n]ational, state, religious, fraternal, professional and civic symbol” Thus, the regulations were content-based because they made impermissible distinctions based solely on the content or message conveyed in the sign.

Because the definition of “sign” was found to be a content-based restriction, strict scrutiny applied. The regulations would only be constitutional and enforceable if the City could show they were necessary to serve a compelling state interest that was narrowly drawn to achieve that end.

Here, the City asserted interests of traffic safety and aesthetics as reasons for the sign restrictions. The court noted these interests “have never been held to be compelling.” Moreover, the court said that even assuming they were adequate justification for the content-based sign-regulations, “the sign code [could] not withstand strict scrutiny because it [was] not narrowly drawn to accomplish those ends.” The Zoning Code did not explain how the interests of traffic safety and aesthetics were served by the sign regulations, nor did it offer reasons for applying its sign regulations to some types of signs but not others. In other words, the City “fail[ed] to demonstrate how th[ose] interests [were] served by the distinction it [drew] in the treatment of exempt and nonexempt categories of signs.”

See also: *Whitton v. City of Gladstone, Mo.*, 54 F.3d 1400, 23 Media L. Rep. (BNA) 1910 (8th Cir. 1995).

See also: *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 103 S. Ct. 948, 74 L. Ed. 2d 794, 9 Ed. Law Rep. 23, 112 L.R.R.M. (BNA) 2766 (1983).

Case Note: The Court of Appeals remanded to the district court the issue of whether the unconstitutional portion of the sign or-

dinance could be severed from that chapter of the Zoning Code or whether the entire chapter with those provisions had to be “[struck] down.”

Public and Low-Income Housing—Town Ordinances Allow Developers to Pay Fee-In-Lieu of Affordable Housing Construction

Developer argues fee-in-lieu is illegal because it is not authorized by the State General Assembly

Citation: *North End Realty, LLC v. Mattos*, 2011 WL 2670227 (R.I. 2011)

RHODE ISLAND (07/08/11)—This case addresses the issue of whether Rhode Island municipalities can charge developers a fee-in-lieu of undertaking the construction of affordable housing.

The Background/Facts: North End Realty, LLC (“North End”) was a developer. It owned real property in the Rhode Island town of East Greenwich (the “Town”). In February 2007, North End filed with the Town’s planning board both “master” and “preliminary” plans for the development of a proposed five-lot subdivision.

Town ordinances required that developers either designate 15% of the units in any subdivision or major residential land development as affordable housing or pay the sum of \$200,000 (per affordable unit) as a fee-in-lieu of constructing the required number of affordable housing units.

Because North End indicated that it did not intend to include any affordable housing units as part of the subdivision, the Town, citing its related ordinance, mandated that North End pay a \$200,000 fee-in-lieu before North End would be allowed to record subdivision approval or begin property development.

Subsequently, North End filed a complaint in superior court. Among other things, North End argued that the Town did not have the requisite authority to impose the \$200,000 fee-in-lieu, required by the Town’s ordinances. North End maintained that before the Town could impose “a fee of such a substantial and burdensome nature,” the State General Assembly must enact legislation that explicitly grants the Town that authority. In other words, North End argued that the fees-in-lieu were illegal because the Town had no authority to impose them. North End asserted that only the General Assembly had the power to enact laws that had a statewide impact.

The Town responded that it had such authority: The Town had adopted a comprehensive plan in order to attain its General Assembly-mandated affordable housing goal, pursuant to the Rhode Island Low and Moderate Income Housing Act (“LMIHA”). That comprehensive plan specifically stated the option to pay a fee-in-lieu of the required number of affordable housing units. The state director of administration approved that comprehensive plan. The Town then had adopted the subject ordinances to implement the state-approved plan.

A hearing justice entered final judgment in favor of the Town.

North End appealed.

DECISION: Vacated and matter remanded.

The Supreme Court of Rhode Island held that the Town “may not legally impose a fee-in-lieu in the absence of enabling authority from the General Assembly.” Although the General Assembly had authorized analogous development impact fees and open space fees, it had not authorized a fee-in-lieu of undertaking the construction of affordable housing. The court found that the LMIHA was “completely silent with respect to the subject of fees-in-lieu.” Accordingly, the court directed the superior court to issue an order enjoining the Town from imposing, assessing, or collecting the fee-in-lieu of construction of affordable housing.

In reaching its conclusion, the court explained that a municipality that had adopted a home rule charter could exercise its own authority over purely local concerns. In this case, fees-in-lieu of affordable housing construction affected state concerns, not just local concerns. This was because “[t]he development of affordable housing is a critical statewide need.” Therefore, as with the analogous development impact fees and open space fees, specific enabling legislation first had to be enacted by the General Assembly before municipalities in Rhode Island could impose such fees-in-lieu, said the court. This, explained the court, allows for the “desirability and possible effects of the imposition of such fees-in-lieu [to be] evaluated in the context of statewide affordable housing policy.”

In short, the court concluded that: Rhode Island municipalities cannot impose fees-in-lieu of affordable housing construction because the State General Assembly must first authorize them to do so and it has not.

See also: *Town of East Greenwich v. O’Neil*, 617 A.2d 104 (R.I. 1992).

Case Note: The court acknowledged “the need for municipalities to have some degree of flexibility in enacting local legislation

that will help municipalities to design and implement the most effective strategies to bring them into compliance with LMIHA.” However, the court further noted the necessity for there to be “a statutory framework that provides specific guidance with respect to the calculation, imposition, and use of such fees-in-lieu in order to ensure that the fees-in-lieu are reasonable and rationally related to local needs, as is the case with development impact fees and open space fees.”

Public and Low-Income Housing—Town Denies Affordable Housing Site Plan Application

Town cites safety concerns, but applicant says those concerns do not outweigh affordable housing need

Citation: *AvalonBay Communities, Inc. v. Zoning Com’n of Town of Stratford*, 130 Conn. App. 36, 2011 WL 2622396 (2011)

CONNECTICUT (07/12/11)—This case addressed the issue of whether a town zoning commission’s safety concerns were sufficient so as to outweigh the need for affordable housing in town and deny a developer’s application to construct affordable housing units.

The Background/Facts: AvalonBay Communities, Inc. (“AvalonBay”) sought to construct an affordable housing development in the town of Stratford, Connecticut (the “Town”). AvalonBay submitted to the Town’s zoning commission (the “Commission”) applications seeking approval to construct the affordable housing development. Ultimately, the Commission voted to deny AvalonBay’s site plan application based on the following public health and safety concerns: “(1) failure to provide adequate, safe and timely emergency access; (2) probable destruction of wetland and watercourse resources; and (3) reasonable likelihood of unreasonable pollution of the waters of the state.”

AvalonBay appealed to superior court. It argued that the reasons for the denial were not supported by sufficient evidence in the record and did not constitute substantial public interests that clearly outweighed the Town’s need for affordable housing.

The superior court agreed with the Commission that its denial of the affordable housing application was proper on the emergency access ground. It disagreed with the Commission’s reasons for denial on the other two grounds.

AvalonBay appealed. The Commission and the Town also cross appealed.

DECISION: Reversed and matter remanded.

The Appellate Court of Connecticut held that evidence was insufficient to support the Commissions' denial of AvalonBay's applications based on safety concerns over emergency vehicle access. The court also held that the Commission's concerns about emergency access and regarding environmental issues were insufficient to outweigh the need for affordable housing in the Town so as to preclude granting AvalonBay's applications.

In reaching its conclusion, the court explained that in order for a municipality to deny an affordable housing site plan application, "[t]he record must establish more than a mere possibility of harm to a substantial public interest"; rather, "[t]he record must contain evidence as to a quantifiable probability that a specific harm will result if the application is granted" In other words, "[m]ere concerns alone" are insufficient to support the denial of an affordable housing application in Connecticut (pursuant to Conn. Gen. Stat. § 8-30g(g)).

Here, the court found evidence was insufficient to support the Commissions' denial of AvalonBay's affordable housing application on the basis of safety concerns. The Commission's concerns focused on whether aerial fire trucks could fit under a parkway underpass. The court found all evidence showed that all aerial fire trucks could fit under the underpass without delay.

The Commission had also expressed concern about the width of an adjacent public street as an adequate secondary emergency route. The court found this was an insufficient basis for denial of AvalonBay's affordable housing application because the street would be used only if the primary route could not be accessed; and for the concerns to have merit, three chance occurrences would have to manifest simultaneously.

Finally, the court also concluded that perceived concerns regarding environmental issues (the court found the record insufficient to support the concerns), including negative impact to natural resources and wetlands, did not outweigh the need for affordable housing in the Town.

In conclusion, the court found that: the Commission "rested on speculation to support its safety concerns," and "the record [did] not contain 'evidence as to a quantifiable probability that a specific harm [would] result if the application [was] granted.'"

The court remanded the matter to the trial court. The appellate court directed the trial court to render judgment sustaining AvalonBay's appeal and directing the Commission to approve AvalonBay's affordable housing site plan application.

See also: *River Bend Associates, Inc. v. Zoning Com'n of Town of Simsbury*, 271 Conn. 1, 856 A.2d 973 (2004).

See also: *Avalonbay Communities, Inc. v. Planning and Zoning Com'n of Town of Wilton*, 103 Conn. App. 842, 930 A.2d 793 (2007).

Case Note: The Connecticut statute governing affordable housing land use appeals—Conn. Gen. Stat. § 8-30g—explicitly provides that the burden is “on the commission to prove, based upon the evidence in the record ...” that the commission’s decision is: “(1) supported by evidence in the record; and (2)(a) is necessary to protect substantial public interests in health, safety, or other matters which the commission may legally consider; (b) such public interests clearly outweigh the need for affordable housing; and (c) such public interests cannot be protected by reasonable changes to the affordable housing development.”

Short-Term Rentals—Owners of Home in Town’s Residential District Rent Home Out for Short-Term Rentals

Town says homeowners’ commercial use of the property is in violation of ordinance

Citation: *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825 (Ind. 2011)

INDIANA (06/29/11)—This case addresses the issue of whether a zoning code restriction of a dwelling’s use to a “single-family dwelling” in a Residential District prohibits the use of homes in the district for short-term rentals.

The Background/Facts: Steven and Lauren Siwinski (the “Siwinskis”) owned a home in the town of Ogden Dunes, Indiana (the “Town”). The Town is “a small, quiet, lakeshore town on Lake Michigan.” Their home was located in an “R-Residential District.”

Pursuant to the Town’s Zoning Code, in an R-District, buildings and premises could only be used for: (1) single-family dwellings; (2) accessory buildings or uses; (3) public utility buildings; (4) semi-public uses; (5) essential services; and (6) special exception uses permitted under the Zoning Code. The Zoning Code defined a “single-family dwelling” as: “[a] separate detached building designed for and occupied exclusively as a residence by one family.”

The Siwinskis advertised their home for rent on the Internet Web site "Vacation Rentals by Owner," utilizing the domain name VRBO.com. In April 2007, the Town sent the Siwinskis a cease and desist letter. The letter advised the Siwinskis that renting their property was prohibited by the Zoning Code. Nevertheless, on five different occasions in 2007, the Siwinskis rented their home to people for stays of between two and 11 days.

In August 2007, the Town filed suit against the Siwinskis for violating the Zoning Code. The Town noted that the Zoning Code permitted the Siwinskis to only use their home "exclusively as a residence by one family." The Town argued that the Siwinskis rental of their home for profit violated this restriction.

The Siwinskis disagreed that the phrase "exclusively as a residence" prohibited them from renting their home to multiple families. They argued that the home was still used for "eating and sleeping and other things typically associated with a family residence." Furthermore, they interpreted the phrase "by one family" to mean one family at a time, as opposed to multiple families living in a home at the same time.

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

The Siwinskis appealed.

DECISION: Affirmed; matter remanded as to damages.

The Supreme Court of Indiana held that "the Siwinskis impermissibly rented their dwelling in violation of the Town's ordinances."

In so holding, the court interpreted the language of the Zoning Code. The court found it clear that, by designating a Residential District and a Commercial District, the Town intended to have certain classes of uses in designated areas. Of the applicable uses in the Residential District where the Siwinskis' home was located, the court found the only relevant use of the Siwinskis' home was as a single-family dwelling. The court interpreted the Zoning Code's definition of single-family dwelling. The court found the ordinance was clear: it facially stated that the Residential District shall have single-family dwellings, which were dwellings occupied exclusively as a residence by one family. On this alone the court found the ordinance clearly forbid the renting of a home in the Residential District. The court concluded that the Siwinskis' rental of their dwelling was not a single-family use as allowed in the Residential District because the dwelling was not occupied exclusively by one family.

Still, the court also looked to the Zoning Code as a whole in order to assist its analysis. The Town had a Commercial District, which allowed "commercial activity." "Commercial activity" was defined as "[a]ny ac-

tivity conducted for profit or gain.” The court found that the rental activity undertaken by the Siwinskis was conducted for profit or gain. Their rental activity was “commercial activity,” which was allowed only in the Commercial District, not in the Residential District.

See also: *Ragucci v. Metropolitan Development Com’n of Marion County*, 702 N.E.2d 677 (Ind. 1998).

Case Note: The court also concluded that, under Ind. Code § 36-1-3-8, the Siwinskis were liable for a maximum fine of \$32,500 for their five violations of the ordinance. (A fine of not more than \$2,500 for the first offense, plus fines of not more than \$7,500 for the second and each subsequent offense.)

Zoning News from Around the Nation

DISTRICT OF COLUMBIA

The D.C. Council recently amended its zoning laws to “help re-establish a federal firearm licensee (FFL) dealer in the district.” Under D.C.’s zoning laws, gun-related businesses must be at least 300 feet away from schools, libraries, playgrounds, and other locations. The new amendment allows for a licensed gun dealer to register and process gun sales at Metropolitan Police headquarters.

Source: *Fox News*; www.foxnews.com

ILLINOIS

A proposed ordinance that is “intended to force banks and other financial institutions to better maintain their vacation properties” is now under the consideration of Chicago’s full council. Among other things, the ordinance “includes language that expands the definition of a property owner in the city code to include ‘any person who alone, jointly or severally with others is a mortgagee who holds a mortgage on the property, or is an assignee or agent of the mortgagee.’” This expanded class of owners would be required to follow existing vacant building rules. The proposed ordinance essentially “ratchet[s] up banks’ requirements under the law by effectively establishing mortgage holders as owners of vacant property.”

Source: *ChicagoNow*; www.chicagonow.com

WASHINGTON

Seattle's City Council recently passed a new ordinance that "establishes a regulatory framework for the growing number of medical marijuana dispensaries in Seattle." The new ordinance requires medical marijuana dispensaries to: obtain a business license; pay taxes and fees; and meet city land use codes. It also subjects dispensaries to the requirements of the city's "Chronic Nuisance Property Law" and prohibits the "open use and display of cannabis" at the dispensaries. Reportedly, questions exist as to whether the new ordinance would stand up in court since the sale and use of marijuana violates federal law.

Source: *Seattle Post Intelligencer*; www.seattlepi.com

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Zoning Bulletin

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Enforcement of Regulations—Property Owner Appeals Four Zoning Citations

At hearing, city requires property owner to prove citations were incorrectly issued

Citation: *Daily v. City of Sioux Falls*, 2011 SD 48, 2011 WL 3759925 (S.D. 2011)

SOUTH DAKOTA (08/24/11)—This case addresses the issue of whether a municipal administrative appeals process which requires an individual who appeals a zoning citation to bear the burden of proving it was incorrectly issued—violates the individual's constitutional due process rights.

The Background/Facts: In the summer of 2004, Daniel Daily ("Daily") hired a contractor to construct a concrete extension to the east side of his driveway. The contractor had laid concrete extension to the driveways of various homes in Daily's neighborhood, and informed Daily that a permit was not required. Daily's completed extension spanned approximately seven feet from the edge of the existing driveway and ran the length of the driveway. The extension also

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ran up to a fire hydrant in the right of way, allowing Daily to use a snow-blower to clear snow from the hydrant.

In April 2006, the City of Sioux Falls' (the "City") code enforcement officer told Daily he would need a variance for the concrete driveway extension. The City's Board of Adjustment denied Daily's application for a variance.

Over the next two years, the City issued Daily four citations for the concrete driveway extension. Daily appealed each of the citations. He alleged selective enforcement of the City's municipal code. A hearing was held only on the final two citations he received. At that hearing, Daily was informed that he bore the burden of proving that the City incorrectly issued the citations. A hearing examiner ultimately upheld the final two citations.

Daily then brought an action in court. He maintained that the City's administrative appeals process, including the enforcement of its zoning ordinances, violated his constitutional rights to procedural due process. Specifically, Daily argued that the City's administrative appeals process violated the 14th Amendment to the United States Constitution and article VI, § 2 of the South Dakota Constitution—both of which provide that no person shall be deprived of "life, liberty, or property without due process of law."

The circuit court agreed with Daily. The City appealed.

DECISION: Judgment of circuit court affirmed.

The Supreme Court of South Dakota held that the City's administrative appeals process deprived Daily of a protected property interests without due process of law because Daily was required to bear the burden of proving that the City incorrectly issued the citations (instead of the City bearing the burden of proving the alleged violations).

The court explained that "the requirements of due process apply to adversarial administrative proceedings of local units of government." Daily could show a due process violation here if he could demonstrate that he had a protected property or liberty interest at stake and that he was deprived of that interest without due process of law, said the court.

Each of the citations issued to Daily assessed a civil fine. Assessment of a civil fine "deprives an individual of a protected interest," said the court. As such, the court found that Daily had a protected interest.

The court then analyzed whether the City's administrative appeals process deprived Daily of that interest without due process of law. Here, the City took the position that the issuance of a citation by a

City code enforcement officer established noncompliance and that an individual who appealed a citation bore the burden of proving that the City incorrectly issued it.

The court said that determining what process is due in a particular case requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest though the procedures used, and the probable value, if any, of additional or substitute safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Weighing these three factors here, the court found: "demonstrates that holding the City to its burden of proof [of proving Daily violated the City code] was constitutionally required in this case." Here, "Daily ha[d] a significant private interest in avoiding the assessment of a fine," said the court. "On the other hand, the City ha[d] an interest in ensuring that its residents compl[ie]d with its zoning ordinances and municipal code." In this case, the court found it clear that "properly allocating the burden of proof [to the City] would reduce the risk of erroneously depriving individuals of protected property interests without placing substantial fiscal or administrative burdens on the City." Because the hearing examiner did not hold the City to its burden of proof (having to prove Daily violated City zoning ordinances), the court concluded that the City's administrative appeals process deprived Daily of a protected property interest without due process of law.

See also: *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

See also: *City of Pierre v. Blackwell*, 2001 SD 127, 635 N.W.2d 581 (S.D. 2001).

Case Note: Daily had also argued that the City violated his procedural due process rights by issuing multiple citations for a single violation of its zoning ordinances and municipal code. As a matter of policy, the City repeatedly cited individuals for violations until they finally complied with its zoning ordinances. The court found that while this practice was not a "technical violation of Daily's procedural due process rights," it was a "relevant consideration in evaluating the fairness of the City's administrative appeals process."

Variance—BZA Approves 241 Variances for a Proposed Development on a Single Property

Opponent argues BZA exceeded its authority by essentially rezoning the property

Citation: *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 2011 WL 3715032 (D.C. 2011)

DISTRICT OF COLUMBIA (08/25/11)—This case addresses the issue of whether a board of zoning appeals exceeds its authority when it grants such a number of variances for a single property that it impacts nearly every applicable zoning requirement of the property.

The Background/Facts: In June 2008, Hillcrest Homes Association LP (“HHALP”) filed an application with the District of Columbia Board of Zoning Adjustment (the “BZA”) to construct a residential development containing 54 one-family detached dwellings in a residential zoning district on a 12.59-acre triangle-shaped property. HHALP sought to cluster the development, leaving 4.69 acres of the property undeveloped. HHALP’s application sought necessary variances to cluster the development. The principal variance requested was to reduce the minimum lot area. Variances related to the reduced lot size were also sought for the minimum required front, rear, and side yards. HHALP also sought variances to build 23 of the houses to four stories, instead of the allowed three, but without an increase in the allowed overall height. In all, given the number of individual lots, a total of 241 variances were approved by the BZA.

Julius Fleischman, another local builder, filed a motion asking the BZA to reconsider. That motion was denied. Fleischman then appealed to court. Fleischman contended that the BZA exceeded the scope of its authority under the D.C. Code (§ 6-641.07(e)). Section 6-641.07(e) of the D.C. Code provides that the BZA “shall not have the power to amend any regulation or map.” Fleischman noted that the BZA’s approval impacted almost every applicable zoning requirement of the property. Fleischman maintained that the net effect of approving all of HHALP’s requested variances was a de facto rezoning of the property, and such a rezoning could only be done by the Zoning Commission, not the BZA.

DECISION: Judgment of Board of Zoning Adjustment affirmed.

The District of Columbia Court of Appeals disagreed with Fleishman's argument and upheld the BZA's granting of the variances.

In so concluding, the court analyzed whether the BZA exceeded its powers in granting the variances. The court found that the BZA was authorized, under the D.C. Code, to "make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent." According to those terms, the court found no reason why the variances requested by HHALP were not properly before the BZA. The court found that "the size of the property [and] the number of the variances requested" did not—by themselves—impact the analysis of whether the BZA had authority to preside over HHALP's application.

In other words, as long as the BZA properly applied the "three-part test" for determining whether a variance should issue, each variance was properly granted—no matter the total number of them granted for the single property. The court explained that three-part test. In order for HHALP to obtain area variance relief, it had to show: (1) there was an "extraordinary or exceptional condition affecting the property"; (2) "practical difficulties" would occur if the zoning regulations were strictly enforced; and (3) the requested relief could be granted "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan." For a variance to issue, "the difficulties or hardships [must be] due to unique circumstances peculiar to the applicant's property and not to the general conditions in the neighborhood," further explained the court.

The court concluded that, here, the three-part test was met. First, the court found that the BZA "properly applied the uniqueness test when it concluded that 'the difficulties or hardships' cited by HHALP were 'unique circumstances peculiar to the applicant's property.'" The property: was irregularly shaped and wooded; had extreme topography; had significant grade differential; had minimal street frontage in comparison to its perimeter; had no public street infrastructure; and was encumbered on its southern boundary by a private parking lot which reduced the property's buildable area.

The court also found that the record contained "sufficient factual findings supporting the BZA's conclusion that HHALP was presented with practical difficulties warranting the area variance[s]." HHALP had demonstrated the two necessary elements to show "practical difficulty": (1) compliance with the area restrictions would be unnecessarily burdensome; and (2) the practical difficulties were unique

to this particular property. This was because, found the court, here, several extraordinary and exceptional conditions were inherent to the property: its extreme topography and challenging slope; the acreage devoted to the extension of an avenue and the infeasibility of extending streets; the lack of public street infrastructure; the parking lot, which reduced the property's buildable area; the remaining wooded open space, which would serve as a buffer; and the fact that denying variances would have prompted a need for other variances.

In summary, the court found that the BZA "reasonably concluded that the 'clustering of the development' ... [was] a reasonable response to the property's topographical constraints as well as to the community's desire to open space along the northern boundary of the property."

See also: *Washington Canoe Club v. District of Columbia Zoning Com'n*, 889 A.2d 995 (D.C. 2005).

See also: *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990).

Rezoning—Members of Public Ask to Receive Copies of Documents at Public Hearing

After PZC denies those requests, those who made document requests file complaint with Freedom of Information Commission

Citation: *Planning and Zoning Com'n of Town of Pomfret v. Freedom of Information Com'n*, 130 Conn. App. 448, 23 A.3d 786 (2011)

CONNECTICUT (08/02/11)—This case does not address a "zoning" issue, but does address an issue that affects planning and zoning commissions. This case addresses the issue of whether, under Connecticut statutory law, public meeting attendees' requests to receive copies of documents must be in writing, rather than be made orally. It also addresses the issue of whether, under Connecticut statutory law, a planning and zoning commission has a duty to reduce to writing its denial of a request for copies of documents—even when the request for copies is not properly made.

The Background/Facts: On January 9 and 15, 2008, the Planning and Zoning Commission of the Town of Pomfret (the "PZC") con-

ducted meetings to review and debate draft proposed amendments to the Town's zoning regulations concerning home occupation uses. At the January 9 meeting, the PZC had copies of, planned to discuss, and in fact did discuss two documents: (1) a four-page draft memorandum from the town planner entitled "Home Occupations Retail Sales," dated January 8, 2008; and (2) a letter from the town counsel to the town planner regarding the proposed zoning amendments. At the January 15 meeting, the PZC had copies of, planned to discuss, and in fact did discuss an updated version of the "Home Occupations Retail Sales" draft memorandum, dated January 15, 2008.

At the January 9 meeting, Ford Fay, a member of the public, orally requested a copy of both documents. The PZC denied his request. At the January 15 meeting, Charles A. Boster, a member of the public, orally requested a copy of both documents. The PZC also denied his request.

Two or three days later, Fay and Boster requested and received the two documents from the town hall. Nevertheless, in February 2008, Fay and Boster filed a complaint with Connecticut's Freedom of Information Commission (the "Commission"). They alleged that the PZC's denial of their oral requests for the documents at issue violated the Connecticut Freedom of Information Act (Conn. Gen. Stats. § 1-210(a)). Section 1-210(a) of the Act provides, in relevant part: "[E]very person shall have the right to (1) inspect such [public] records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212" Here, Fay and Boster had not requested to inspect or copy the documents, but had asked to receive a copy of the documents. Section 1-212(a) provides that: "Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record...."

The Commission concluded that the PZC violated the "promptness requirement" of § 1-212(a) by failing to provide to Fay a copy of the documents at issue at the time he requested them. The Commission made a similar finding with respect to Boster's request.

The PZC appealed to court. The superior court overturned the decisions of the Commission. The court found that the PZC did not violate the "promptness requirement" of § 1-212(a). The court noted that the Freedom of Information Act "only requires agencies to respond to requests for copies promptly during regular office or business hours, not during evening meetings in progress." Because

Fay and Boster's requests were made after regular office or business hours, the court concluded that the PZC's denial of the requests did not violate the promptness requirement of § 1-212(a).

The Commission appealed.

DECISION: Judgment of superior court affirmed (on other grounds).

The Appellate Court of Connecticut concluded that the PZC properly denied Fay and Boster's requests because their requests were not reduced to writing as required by § 1-212(a). The court analyzed the statutory language of §§ 1-210(a) and 1-212(a). Again, § 1-212(a) provides that: "Any person applying *in writing* shall receive, promptly upon request, a plain or certified copy of any public record" (Emphasis added.) The court found that Fay and Boster, by making oral requests for the documents at issue, failed to satisfy the express requirement of § 1-212(a). Because those requests did not comport with the legal requirements, the court concluded that the PZC did not violate the promptness requirement of § 1-212(a).

The court acknowledged that the PZC had not reduced to writing its denial of Fay and Boster's requests. Section 1-206(a) of the Act provides: "Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing" The court concluded that because Fay and Boster did not properly make a request to receive a copy of the documents pursuant to § 1-210 (i.e., because their requests were not in writing, as required by § 1-210), the PZC's "obligation to reduce to writing its denial of the requests was never triggered."

See also: *State v. DeFrancesco*, 235 Conn. 426, 668 A.2d 348 (1995).

Case Note: Another member of the public, Paul Hennen, also joined Fay and Boster in bringing the complaint to the Commission.

Case Note: Because the appellate court affirmed the superior court's decision on an alternate ground, the appellate court did not address the Commission's argument as to whether the Freedom of Information Act requires agencies to promptly respond to requests for copies only during regular office of business hours.

Nonconforming Use—Motocross Operator Fails to Apply for Grandfathered, Prior Nonconforming Use Status under Zoning Law

Operator later asks court to declare it with such status

Citation: *Town of Plattekill v. Ace Motocross, Inc.*, 87 A.D.3d 788, 928 N.Y.S.2d 151 (3d Dep't 2011)

NEW YORK—This case addressed the issue of whether an operator of a nonconforming use, who had failed to apply to the zoning commission for nonconforming use authorization following an amendment to the municipal code that eliminated the nonconforming use but allowed for an “amortization period” of operation, could subsequently seek nonconforming use status in court.

The Background/Facts: Ace Motocross, Inc. (“Ace”) operated a commercial motocross racetrack in the Town of Plattekill (the “Town”). In 2005, the Town enacted Chapter 110 of its Municipal Code. Part of that chapter prohibited the use of land for the operation of off-road motorized vehicles. The new law did include a “grandfather” provision, which allowed property owners who permitted such operations on their land to apply to the Town’s Zoning Board of Appeals (the “ZBA”) within 90 days of the law’s enactment for a determination that such use was a preexisting nonconforming use prior to February 18, 1987. If so, the owner could receive authorization to continue the nonconforming operations for up to 10 years.

Ace, who claimed that its racetrack had been in operation since before 1987, did not apply to the ZBA for “grandfathered” prior nonconforming use status.

In early 2006, the Town’s Code Enforcement Officer issued citations to Ace for its use of the property for commercial motocross racing in violation of the zoning law. When Ace did not cease its activities, the Town filed an action in court. The Town asked the court to permanently enjoin Ace from operating the racetrack. The Town asked the court to find that there were no material issues of fact in dispute and to decide the matter in its favor on the law alone.

The court granted the town’s motion for summary judgment. The court permanently enjoined Ace from operating a commercial motocross track in violation of the zoning law.

Ace appealed. It asked the court to declare its racetrack a grandfathered, prior nonconforming use.

DECISION: Judgment of Supreme Court affirmed.

The Supreme Court, Appellate Division, Third Department, New York, held that Ace's failure to first apply to the ZBA for nonconforming use authorization precluded their counterclaim (i.e., their request that the court declare that the racetrack was a nonconforming use and could continue operating for at least ten years from enactment of the municipal code provision).

In so holding, the court noted that a municipality "may enact a zoning law that eliminates prior nonconforming uses in a 'reasonable fashion,' such as by providing for an 'amortization period' to allow a party to recoup expenditures by continuing the nonconforming use for a designated period of time." The Town's zoning law included such a provision. That provision allowed Ace an opportunity to apply for prior nonconforming use status. Nevertheless, Ace failed to do so. As such, they cannot seek such relief through the courts, concluded the court.

See also: *550 Halstead Corp. v. Zoning Bd. of Appeals of Town/Village of Harrison*, 1 N.Y.3d 561, 772 N.Y.S.2d 249, 804 N.E.2d 413 (2003).

See also: *Village of Valatie v. Smith*, 83 N.Y.2d 396, 610 N.Y.S.2d 941, 632 N.E.2d 1264 (1994).

See also: *Suffolk Outdoor Advertising Co., Inc. v. Hulse*, 43 N.Y.2d 483, 402 N.Y.S.2d 368, 373 N.E.2d 263, 8 *Env'tl. L. Rep.* 20185 (1977).

Zoning News from Around the Nation

CALIFORNIA

Governor Jerry Brown recently signed into law legislation "that will allow local governments to count foreclosed property toward meeting their requirement for creating affordable housing."

Source: *Marin Independent Journal*; www.marinij.com

Approved by the state assembly and now being considered by Governor Jerry Brown is legislation "that would require [big box stores of more than 90,000 square feet that dedicate 10 percent of that space to nontaxable items such as food] ... to include an economic analysis as part of the routine local permitting process." Reportedly, the analysis required would be "similar to an environmental review but focused on fiscal impacts, [and] would account for a number of collateral costs in contrast to direct benefits created by the stores." Opponents, including Wal-Mart, ar-

gue the legislation would “stifle economic development” and “create another layer of bureaucracy.” Proponents of the bill dispute these claims, noting that local officials could approve a store’s application, even if the analysis proves economic costs outweigh benefits.

Source: *Sign On San Diego*; www.signonsandiego.com

Effective January 1, 2012, is a new law that allows local governments to regulate medical marijuana collectives and cooperatives. More specifically, Assembly Bill 1300 “establishes that local governments can enact and enforce local ordinances regulating the location, establishment, and operations of medical marijuana collectives or cooperatives.”

Source: *The Van Nuys News Press*; <http://www.vannuysnewspress.com>

ILLINOIS

Governor Pat Quinn recently signed into law legislation “which allows municipalities with less than 500,000 people to adopt their own public hearing rules for zoning cases.” The new law is meant to make the public hearing process more efficient. Opponents of the new law say it could allow municipalities “to institute undemocratic and unfair rules.”

Source: *Chicago Daily Herald*; www.dailyherald.com

MICHIGAN

Among the several bills related to medical marijuana that are pending in the state legislature is a bill that would subject dispensaries to zoning guidelines

Source: *Port Huron Times Herald*; www.thetimesherald.com

PENNSYLVANIA

On July 1, 2011, Allentown created a Neighborhood Improvement Zone. Reportedly, “[t]he 130-acre Neighborhood Improvement Zone was primarily created to help pay for [a] hockey arena.” Businesses in this new zone will not have to pay “additional state or local taxes, but the taxes they do pay will be deposited in a special fund overseen by the state treasurer [who will then] ... transfer those funds to the Allentown Commercial and Industrial Development Authority.”

Source: *The Morning Call*; www.mcall.com

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Zoning Bulletin

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Validity of Ordinance (RLUIPA)—Zoning Ordinance Prohibits Religious Institutions but Allows Parks, Playgrounds, Recreation Centers

Church argues ordinance violates equal terms provision of RLUIPA

Citation: *Covenant Christian Ministries, Inc. v. City of Marietta, Georgia*, 2011 WL 3903432 (11th Cir. 2011)

The Eleventh Circuit has jurisdiction over Alabama, Florida, and Georgia.

ELEVENTH CIRCUIT (GEORGIA) (09/07/11)—This case addressed the issue of whether a zoning ordinance that prohibited all religious institutions in a number of residential districts, but permitted private parks, playgrounds, and neighborhood recreation centers in those districts, violated the equal terms provision of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). In addressing that issue, the case addresses whether private parks, playgrounds, and neighborhood recreation centers are “assemblies” within the meaning of RLUIPA.

The Background/Facts: Covenant Christian Ministries, Inc. (“Covenant”) is a nondenominational church that conducts worship services and oper-

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ates a private school. Covenant planned to build a larger church, a school, a gymnasium, and an activity field. In furtherance of those plans, in October 2004, Covenant entered into a contract to purchase approximately eight acres of property in an R-2 residential zone in the City of Marietta, Georgia (the "City"). Covenant closed on the purchase of that land in November 2005. It then sought a development permit from the City. At that time, the City informed Covenant that under a November 2004 zoning ordinance (the "2004 Ordinance"), religious institutions were prohibited in R-2 zones. Covenant then applied for rezoning, which the City denied.

Eventually, Covenant filed a lawsuit against the City. Among other things, Covenant alleged that the 2004 Ordinance, on its face, violated the equal terms provision of RLUIPA (42 U.S.C.A. § 2000cc(b)(1)).

RLUIPA's equal terms provisions states 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." (42 U.S.C.A. § 2000cc(b)(1).) A finding of a violation of this provision requires: (1) the party challenging the ordinance must be a religious assembly or institution that is (2) subject to a land use regulation that (3) treats the religious assembly on less than equal terms with (4) a non-religious assembly or institution.

Covenant argued that since the 2004 Ordinance prohibited religious institutions in the R-2 zone but allowed private parks, playgrounds, and neighborhood recreation centers, the 2004 Ordinance facially differentiated between religious and nonreligious assemblies or institutions.

The district court agreed with Covenant.

The City later appealed.

DECISION: Affirmed.

The United States Court of Appeals, Eleventh Circuit, held that the 2004 Ordinance violated the equal terms provision of RLUIPA.

In so holding, the court rejected the City's contrary arguments.

The City had first argued that the 2004 Ordinance did not violate RLUIPA's equal terms provision because private parks, playgrounds, and neighborhood recreation centers did not qualify as "assemblies" under RLUIPA. The City argued they were not "assemblies" because those who attended such places were not assembling for a common purpose, but were there for differing reasons: some sought exercise, others sought relaxation or solitude. Thus, the City maintained it could treat those entities differently than religious assemblies without violating RLUIPA.

The court disagreed. It said: "That some individuals have different purposes for meeting in a particular place does not mean the place fails to qualify as an 'assembly' under RLUIPA." Rather, the court found that private parks, playgrounds, and neighborhood recreation centers were "assemblies" within the meaning of RLUIPA. The court said this was because they were "places where 'groups or individuals dedicated to similar purposes—whether

social, education, recreational, or otherwise—can meet together to pursue their interests.”

The City also argued that, in any case, the 2004 Ordinance passed a strict scrutiny analysis since the prohibition on religious assemblies in residential areas was a narrowly tailored means of achieving the City’s compelling interest in preserving residential neighborhoods and protecting those areas from traffic, crowds, and disruption.

Again, the court disagreed. The court concluded that the 2004 Ordinance did not pass strict scrutiny. The court said that “a complete prohibition of religious assemblies in residential zones [was not] a narrowly tailored means of achieving the City’s interests” The court found that recreation centers, parks, and playgrounds had a similar potential for community disruption, increased traffic, and encroachment into residential neighborhoods. Yet, the 2004 Ordinance permitted those such uses. The City was not protecting those interests from nonreligious conduct. Moreover, said the court, those interests “could be achieved by narrower ordinances that do not improperly distinguish between similar secular and religious assemblies.”

See also: *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004).

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

Case Note: The district court had remedied the 2004 Ordinance’s facial violation of RLUIPA by striking private parks, playgrounds, and neighborhood recreation centers from the list of permitted uses in residential zones. On appeal, Covenant had argued that the court erred and that the remedy should have been to add language allowing churches in residential zones. The court of appeals found the district court’s remedy was “consistent with the purposes of the zoning restrictions in the R-2 zone.” “By striking private parks, playgrounds, and neighborhood recreation centers, the district court remedied the unequal treatment problem while maintaining the residential character of the R-2 zone,” said the court.

Case Note: Covenant had also argued that it had a vested right to a building permit because the 2004 Ordinance had been ruled to be partially invalid. The court of appeals rejected this vested rights argument. Covenant could not invoke a vested rights “equitable” argument since Covenant “did not reasonably rely on any act or omission by the City ... and did not investigate the zoning status of its property until after closing.”

Enforcement—Landowner, ZBA Enter into Stipulated Judgment over Alleged Zoning Violations

After court finds landowner in contempt of judgment, he appeals arguing activities on his property were permitted

Citation: *Przekopski v. Zoning Bd. of Appeals of Town of Colchester*, 131 Conn. App. 178, 26 A.3d 657 (2011)

CONNECTICUT (09/06/11)—This case addresses the issue of whether after entering into a stipulated judgment in response to an allegation of a zoning violation, a landowner can later raise arguments that his activities were not in violation of zoning laws.

The Background/Facts: Leonard Przekopski, Jr. (“Przekopski”) and his wife Karen Przekopski owned real property in the Town of Colchester, Connecticut (the “Town”). Przekopski used the property for a variety of industrial activities, including: the excavation and processing of sand and gravel; soil manufacturing; recycling of earth materials; and the bulk storage of manure.

In May 2006, the Town’s zoning enforcement officer ordered Przekopski to cease and desist “any and all excavation, recycling activities, and build storage of manure” on the property until a zoning permit for such activities had been obtained. Przekopski appealed to the Town’s Zoning Board of Appeals (the “ZBA”). The ZBA upheld the enforcement order.

Przekopski then appealed to the superior court. Eventually, Przekopski and the ZBA entered into a stipulation regarding the property. They agreed that judgment would be rendered in favor of the ZBA. They also agreed that Przekopski was required to file an application for a special exception from the zoning regulations for the excavation activities, and an application for a variance from the zoning regulations for the processing and recycling of earth materials. Under the stipulation, Przekopski was permitted to continue his activities “until the earlier of August 21, 2007, or April 23, 2007 [if Przekopski did not submit the applications, as stipulated].”

The Przekopskis submitted a special exception application to the Town’s Planning and Zoning Commission (the “PZC”). On November 28, 2007, the PZC denied the application. However, Przekopski thereafter continued to conduct excavation and recycling activities on the property.

On February 25, 2008, the ZBA filed a motion for contempt. The court ordered the excavation and recycling activities on the Przekopskis’ property to cease. The court also provided that if such operations did not cease by March 17, 2008, a fine of \$1,000 per day would be ordered. Under a March 19, 2008, order, the court extended the deadline to cease operations to March 26, 2008, with the fine retroactive to March 19, 2008, if operations did not cease.

In April 2008, the court issued an order of judgment of \$28,000 against Przekopski for 28 days of their violation of its order.

Przekopski appealed. Among other things, Przekopski argued that he could not be found in contempt of the stipulation because: (1) his activities constituted preexisting, nonconforming uses of the property protected by the laws of Connecticut; and (2) his activities constituted uses permitted as of right under the zoning regulations.

DECISION: Affirmed in relevant part.

The Appellate Court of Connecticut held that Przekopski, by entering into the stipulated judgment, waived his right to claim that his operations were permitted.

The court explained that a stipulated judgment is defined “as a contract of the parties acknowledged in open court.” The court said that, “in the absence of language evidencing an intent to preserve specific issues or claims for further litigation, it is presumed that the parties intended for the stipulated judgment to resolve all contested issues and claims raised in the record.” In other words, in a stipulated judgment, the parties “waive their right to litigate issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation.” In exchange for the saving of cost and elimination of risk, the parties “each give up something they might have won had they proceeded with the litigation.”

Both the arguments raised by Przekopski on appeal—that his activities constituted preexisting, nonconforming uses of the property and/or uses permitted as of right—were contested issues prior to the stipulated judgment. Rather than pursue these claims that the activities qualified as such uses, Przekopski entered into the stipulation and elected to have the court render the stipulated judgment. After reviewing the stipulation and the stipulated judgment, the appellate court found neither contained any language evidencing the parties intended to preserve the issues as to whether the activities qualified as preexisting, nonconforming uses or uses permitted as of right.

The court concluded by upholding the trial court’s conclusion that Przekopski performed nonpermitted activities on his property in violation of the court’s order.

See also: *Bank of Boston Connecticut v. DeGroff*, 31 Conn. App. 253, 624 A.2d 904 (1993).

See also: *Albert Mendel and Son, Inc. v. Krogh*, 4 Conn. App. 117, 492 A.2d 536 (1985).

Variance—Court Says Issuance of Special Permit under State Statute is All That is Needed for Project to Proceed

City and neighbor maintain local zoning ordinance requirements also apply

Citation: *Gale v. Zoning Bd. of Appeals of Gloucester*, 80 Mass. App. Ct. 331, 952 N.E.2d 977 (2011)

MASSACHUSETTS (09/02/11)—This case addresses the issue of whether the application of a local ordinance (such as a requirement to obtain a variance) is precluded by an affirmative finding under Mass. Gen. L. c. 40A, § 6, by a local zoning board, that changes to an existing, nonconforming structure would not be “substantially more detrimental” to the neighborhood and a special permit should issue. In other words, is such an affirmative finding alone sufficient to proceed with the proposed project?

The Background/Facts: The Footes owned land on Squam Rock Road in Gloucester, Massachusetts (the “City”). It was located in an R-2 residential zoning district, and situated on the coastal peninsula of Annisquam, on Cape Ann, with ocean views of Ipswich Bay. The Foote property contained a 1,000-square-foot seasonal cottage. The property did not conform to the requirements of the City’s zoning ordinance (the “ordinance”) regarding: lot area; side yard setback; front yard setback; and rear yard setback. Those nonconformities predated the enactment of the ordinance, rendering the Foote cottage a preexisting nonconforming structure.

In 2008, the Footes sought to replace the cottage with a larger year-round residence. They planned a new 2,700-square-foot, two-bedroom structure, which would exceed the bounds of the existing footprint.

In furtherance of the planned new construction, the Footes petitioned the City’s Zoning Board of Appeals (the “ZBA”) for: (1) a special permit pursuant to Mass. Gen. L. c. 40A, § 6; and (2) a variance pursuant to § 2.4.5(d) of the ordinance.

Under G.L. c. 40A, § 6: a preexisting nonconforming structure or use may be changed, extended, or altered if it is not “substantially more detrimental” to the character of the neighborhood than the original structure or use, as determined by the local permit granting authority.

Under § 2.4.5(d) of the ordinance, portions of a replacement structure must meet the dimensional requirements of the ordinance, unless a variance is granted by the ZBA.

The ZBA eventually granted the Footes a special permit, finding that: “even if there is an intensification of any nonconformities, the house as reconstructed ... will not be substantially more detrimental to the neighborhood than the existing nonconforming structure” The ZBA also granted the variance, finding that because of the shape and grade of the lot, the Foo-

tes would face a unique personal and financial hardship if the dimensional requirements of the zoning ordinance were enforced.

Abutting property owners of the Footes, the Gales, appealed the ZBA's decision to Land Court. They argued that the variance was granted in error. They contended that the topography and shape of the Footes' lot were not extraordinary. They also argued that lot shape was not a proper legal consideration in determining whether a variance should be granted.

The Land Court affirmed the ZBA's decision. The judge held that a finding under G.L. c. 40A, § 6 would have been sufficient to allow reconstruction of the structure; a variance was not legally required.

The Gales appealed. They argued that "the local requirement of seeking a variance pursuant to § 2.4.5(d) of the ordinance, in addition to the G.L. c. 40A, § 6, finding, [was] not precluded by the language of the statute." In other words, the Gales argued that the language of G.L. c. 40A, § 6 did not allow for reconstruction of a structure based only on the findings that the structure would not be "substantially more detrimental" to the character of the neighborhood than the original structure or use; rather, argued the Gales, if a local ordinance additionally required a variance—as here—then that too must be obtained. Here, the variance was improperly granted, argued the Gales.

The ZBA also filed a brief, maintaining that the City had the authority to require certain variances under § 2.4.5(d). The ZBA also argued that the variance here was properly granted.

DECISION: Affirmed.

After analyzing the statutory language, the Appeals Court of Massachusetts held that if there is a finding of "no substantial detriment" under G.L. c. 40A, § 6, that finding alone is "sufficient to proceed with the proposed project"—and the applicant is entitled to issuance of a special permit; when there is such an affirmative finding, the statute precludes the application of a local by-law or ordinance as an additional step.

The court concluded that, here, the ZBA's finding of "no substantial detriment" was all that was required; no variance under the ordinance was needed to proceed with the Footes' proposed reconstruction.

See also: *Bransford v. Zoning Bd. of Appeals of Edgartown*, 444 Mass. 852, 832 N.E.2d 639 (2005).

See also: *Willard v. Board of Appeals of Orleans*, 25 Mass. App. Ct. 15, 514 N.E.2d 369 (1987).

Case Note: The court noted that its interpretation of the statutory language was "in keeping with special treatment explicitly afforded to single or two-family residential structures under the statute."

Rezoning—Permit Recipient Says Opponent's Appeal is Untimely under LUPA

Parties dispute whether LUPA's time limit for appeal is tolled by the filing of a motion for reconsideration

Citation: *Mellish v. Frog Mountain Pet Care*, 172 Wash. 2d 208, 257 P.3d 641 (2011)

WASHINGTON (07/28/11)—This case addresses the issue of whether a motion for reconsideration filed by a landowner with a county hearing examiner tolls the running of the 21-day time limit under Washington's Land Use Petition Act ("LUPA") for the landowner to file a land use petition in superior court until such time as the motion for reconsideration is decided.

The Background/Facts: Harold and Jane Elyea owned Frog Mountain Pet Care ("Frog Mountain") in Jefferson County, Washington (the "County"). Frog Mountain applied to the county for a conditional use permit and a variance to expand their dog and cat boarding facility. On June 18, 2007, a County hearing examiner granted Frog Mountain's application. A land use permit issued to Frog Mountain on June 20, 2007.

Frog Mountain's neighbor, Martin Mellish ("Mellish"), opposed the expansion of the animal boarding facility. He asserted that the proposed expansion would increase noise from the facility. On June 28, 2007, Mellish filed a motion for reconsideration with the hearing examiner.

On July 20, 2007, the hearing examiner denied Mellish's motion for reconsideration.

On August 10, 2007, Mellish filed a land use petition in superior court pursuant to LUPA. This filing occurred 20 days after the County mailed notice of the hearing examiner's decision denying Mellish's motion for reconsideration, and 50 days after entry of the hearing examiner's decision granting Frog Mountain's application.

Frog Mountain moved to dismiss Mellish's land use petition as untimely.

Under LUPA (RCW 36.70C.040(3)), the applicant or any aggrieved party may appeal the final decision to superior court "within twenty-one days of the issuance of the land use decision." A "land use decision" is defined as "a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination." (RCW 36.70C.020(2)).

Frog Mountain asserted that the 21-day time-limit on filing the petition ran from the date of the hearing examiner's original decision.

Mellish and the County (though on opposite sides of the underlying lawsuit) contended that the time limit for filing the lawsuit ran from the date Mellish's motion for reconsideration was denied. As such, they argued that Mellish's land use petition was timely.

The superior court agreed with Mellish and the County. It denied Frog Mountain's motion to dismiss. It then reached the merits of Mellish's land use petition and reversed the County's decision to grant the permit.

Frog Mountain appealed, arguing the superior court erred in denying its motion to dismiss. The Court of Appeals reversed the trial court. Agreeing with Frog Mountain, it held that the hearing examiner's original decision was the "final determination" that triggered the time limit for filing a land use petition. Accordingly, it held that Mellish's motion for reconsideration did not toll the filing deadline, and Mellish's land use petition was untimely.

Mellish appealed.

DECISION: Reversed.

The Supreme Court of Washington held that the motion for reconsideration Mellish filed with the county hearing examiner tolled the finality of the examiner's initial decision for the purposes of filing a land use petition in superior court. Accordingly, Mellish's land use petition was timely.

The court so held based on its determination that the hearing examiner's decision on the reconsideration motion was a "final determination" from which the 21-day period of time to file an appeal is triggered. The court noted that a decision is "final" if it "leaves nothing open to further dispute and which sets at rest cause of action between parties."

The court found that, here, after Mellish filed his motion for reconsideration, Frog Mountain's "entitlement" to the permit was once again "open to ... dispute." Thus, the court found "the action was only 'conclude[d]' when the hearing examiner issued a decision on the reconsideration motion on July 20."

Moreover, the court noted the "practical problems" with interpreting LUPA differently. If Mellish filed a land use petition without waiting for the hearing examiner's decision on the reconsideration motion, Mellish would lack standing because he would not have exhausted administrative remedies yet—as required by LUPA (RCW 36.70C.060(2)(d)). On the other hand, if Mellish were to wait, and the original hearing examiner's decision was considered the "final determination" that triggered the filing period, then the 21-day deadline could expire before the hearing examiner issued a decision. Given this practical problem under such an interpretation, the court found it clear that the "final determination" from which the 21-day period of time to file an appeal was triggered was the hearing examiner's decision on the reconsideration motion.

See also: *Samuel's Furniture, Inc. v. State, Dept. of Ecology*, 147 Wash. 2d 440, 54 P.3d 1194 (2002).

See also: *Skinner v. Civil Service Com'n of City of Medina*, 146 Wash. App. 171, 188 P.3d 550 (Div. 1 2008), review granted, 165 Wash. 2d 1040, 204 P.3d 215 (2009).

Case Note: The State of Washington legislature has since amended LUPA (under House Bill 2740 in 2010) to clarify that, when a timely motion for reconsideration of a local land use decision is filed, the date of the land use decision triggering the 21-day time limit for filing a land use petition in superior court is the date the local jurisdiction's decision on a motion for reconsideration is entered. RCW 36.70C.020(2)(c) now includes this provision:

Where a local jurisdiction allows or require a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

Case Note: Because the Supreme Court held that a motion for reconsideration filed with a county hearing examiner tolled the finality of the hearing examiner's initial decision, the court found it "unnecessary" for it to consider whether House Bill 2740 applied retroactively.

Zoning News from Around the Nation

MARYLAND

The Baltimore County Council recently adopted regulations for "accessory apartments" in single-family homes. "Accessory apartments" are now limited to such apartments for relatives of homeowners and to size standards. Opponents reportedly fear the "bill could potentially allow neighborhoods to become much more densely populated than zoning rules now allow."

Source: *The Baltimore Sun*; <http://articles.baltimoresun.com>

MICHIGAN

The Huron County Board of Commissioners was recently expected "to vote on a resolution that would impose a moratorium on any new wind overlay districts until the State of Michigan makes a determination regarding the various proposals to eliminate the personal property tax." Under county ordinance, any wind development requires the creation and approval of a wind overlay district. Personal property taxes are "the only tax local units of government receive from wind developments."

Source: *Huron Daily News*; www.michigansthumb.com

NEW YORK

The town of Dryden has been sued by a natural-gas company, Anschutz Exploration, “in an effort to strike down a recent zoning law prohibiting gas drilling [in Dryden].” “More than a dozen municipalities in New York have enacted gas-drilling bans or restrictions amid controversy over hydraulic fracturing, or ‘fracking.’” In the lawsuit against Dryden, Anschutz reportedly contends that the state of New York has the power to regulate the oil-and-gas industry, and local governments only have the power to regulate the industry’s use of roads.

Source: *Bloomberg Businessweek*; www.businessweek.com

NORTH CAROLINA

A new state law has broadened the definition of “farm.” The new law “increases the number of ways landowners can prove they operate a farm. One new way is by having a farm number, which is issued by the Farm Service Agency of the U.S. Department of Agriculture.” Reportedly, local officials fear that “in a rapidly urbanizing area, the new state law could cause a problem because of the zoning exemption”—particularly when nontraditional farming may now meet the “farm” definition and thus be exempted from certain zoning laws.

Source: *StarNews Online*; www.starnewsonline.com

WASHINGTON

The Western Washington Growth Management Hearings Board recently upheld Whatcom County’s “one house per two acres” zoning regulation. An “anti-sprawl group,” Futurewise had challenged the zoning regulations, arguing that it allowed for “too dense of development, precluding rural land uses.” The Board found that because the zoning areas were “limited,” then “[c]ontained in [that] manner,” the zoning did “not pose a threat to the County’s rural character.” Had the regulation covered “an extensive area,” the Board reportedly agreed with Futurewise that it would have violated state law.

Source: *The News Tribune*; www.thenewstribune.com

WISCONSIN

The Wisconsin Supreme Court recently heard oral arguments “regarding a much-anticipated challenge to the state’s livestock siting law.” “[T]he Court’s decision is expected to establish a precedent as to how the state’s livestock facility permitting process interacts with local zoning authority. The law was designed to create uniform rules for siting livestock operations in the state and was enacted with bipartisan support.” It is expected that the court’s decision will issue in a few months.

Source: *Dairy Herd Network*; www.dairyherd.com

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Validity of Regulation—Ordinance Prohibits “Formula Fast-Food Restaurants” in Business District

Property owner says ordinance unconstitutionally regulates land-use based on the owner

Citation: *Mead Square Commons, LLC v. Village of Victor*, 2011 WL 4537068 (N.Y. Sup 2011)

NEW YORK (09/30/11)—This case addresses the issue of whether an ordinance prohibiting “Formula Fast-Food Restaurants” is unconstitutional.

The Background/Facts: Mead Square Commons, LLC (“Mead”) owned real property in the Central Business District in the Village of Victor (the “Village”). Mead proposed a new mixed use building for its property. One of the potential tenants for that proposed building was a Subway restaurant.

The Village Code § 170-13 prohibited “Formula Fast-Food Restaurants” in the Village’s Central Business District. “Formula Fast-Food Restaurants” (“FFFRs”) were defined as any establishment that is re-

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quired by “contract, franchise or other arrangements” to offer two or more of the following: standardized menus, food preparation and/or uniforms; prepared food in ready to consume states; food sold over the counter in disposable containers and wrappers; food selected from a limited menu; food sold for immediate consumption on or off premises; and customer payment before eating.

Because its potential tenant, Subway, was an FFFR prohibited from the Village’s Central Business District, Mead challenged the validity of § 170-13. Mead alleged that the ordinance was “unconstitutional and illegal under New York State law and the United States Constitution.” Mead argued that the ordinance was illegal because its prohibition on FFFR was “based, not upon the characteristics of the restaurant, but upon whether or not the owner or operator is under some contractual or franchise arrangement to utilize FFFR criteria.” Zoning regulations can only deal with land use, not with the people who own or occupy the land, argued Mead.

The Village asserted that § 170-13 had a legitimate purpose “to maintain the unique village character and vitality of the commercial district.” The Village maintained the ordinance was not based on who owned or operated the restaurant; rather it applied to all types of owners equally and it merely prohibited everyone from operating an FFFR within that district, said the Village.

Both parties filed motions for summary judgment, asking the court to find that there were no material issues of fact in dispute and to decide the matter in their favor on the law alone.

DECISION: Village’s motion granted.

The Supreme Court, Ontario County, New York, held that § 170-13 was not an improper regulation of a specific entity. The ordinance was not unconstitutional. The FFFR ordinance, found the court, was not based simply upon who owned or operated the restaurant. All land-use laws relate to the owner to some extent, noted the court. The court found that this ordinance was not unconstitutional in that it was not “plainly personal” and did not seek to regulate a specific entity. The court found that the ordinance treated all similarly situated owners identically and was based on “neutral planning and zoning principles.” Section 170-13, found the court, “applie[d] to the entire business district and addresse[d] conduct that affect[ed] the character of the community.”

See also: *Dexter v. Town Bd. of Town of Gates*, 36 N.Y.2d 102, 365 N.Y.S.2d 506, 324 N.E.2d 870 (1975).

Preemption—City Ordinance Regulates the Location of Video Lottery Machines

Business operator challenges ordinance, saying it is preempted by state's video lottery scheme

Citation: *Law v. City of Sioux Falls*, 2011 SD 63, 2011 WL 4395979 (S.D. 2011)

SOUTH DAKOTA (09/21/11)—This case addresses the issue of whether the State of South Dakota intended to fully occupy the field of video lottery, to the exclusion of municipal regulation—including zoning regulation of the placement of video lottery machines.

The Background/Facts: Rick Law (“Law”) sought to operate on-sale alcoholic beverage establishments with video lottery machines in the City of Sioux Falls (the “City”). The City’s Ordinance 60-80 required that an on-sale alcoholic beverage business seeking to place video lottery machines in the establishment must meet certain location requirements and apply for a conditional use permit with the City Planning Commission. Law did not apply for a conditional use permit because he believed each of this proposed locations would fail under the requirements of Ordinance 60-80. Instead, Law brought a declaratory action against the City. He asked the court to determine the constitutionality of Ordinance 60-80. He alleged that the Ordinance was unconstitutional because the City had exceeded its authority in enacting the ordinance. He said this was because the State of South Dakota (the “State”) had fully occupied the field of video lottery regulation, preempting any municipal regulation.

The City countered that Ordinance 60-80 did not regulate video lottery, but was a zoning ordinance, enacted through a valid exercise of the City’s police powers.

The South Dakota Lottery intervened in the action, agreeing with Law’s position.

The circuit court also agreed with Law.

The City appealed. The City argued that Ordinance 60-80 was valid because South Dakota law authorized the adoption of zoning ordinances that restrict the location and use of buildings for the “purpose of promoting health, safety, or the general welfare of the community.” The City maintained that, among other things, Ordinance 60-80 did not regulate video lottery, but controlled, through zoning, the location and use of buildings housing video lottery machines in order to protect the health, safety, and general welfare of City residents.

DECISION: Affirmed.

The Supreme Court of South Dakota rejected the City’s argument and held that Ordinance 60-80 was preempted by South Dakota’s legislative

lottery scheme. In so holding, the court found that the state intended to fully occupy the field of video lottery, to the exclusion of municipal regulation.

The court explained that “[a] municipality may exercise any power or perform any function not prohibited by [state or federal] constitution or laws.” While municipalities clearly have the power to enact zoning ordinances, “no municipality may enact a law regulating a subject where the State has wholly occupied the field of that subject, to the exclusion of any local regulation.”

Here the court found no express legislative directive controlling video lottery to the exclusion of local regulation. However, the court found that “the scope and power exerted by the Legislature and the character of the obligations imposed by its statutes reflect[ed] legislative intent to be exclusive in the field [of video lottery regulation].”

Having found that the state intended to fully occupy the field of video lottery, to the exclusion of municipal regulation, the court found it “immaterial that the City is governed by a home-rule charter or empowered to enact zoning regulations. ... Once the City enacted Ordinance 60-80, regulating the placement of video lottery machines, the City exceeded its authority.”

See also: *Minnesota Agr. Aircraft Ass’n v. Township of Mantrap*, 498 N.W.2d 40 (Minn. Ct. App. 1993).

See also: *Sarasota Alliance For Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010).

Case Note: The South Dakota Lottery had noted that although control of video lottery was delegated to the Lottery, municipalities maintained their zoning authority to control the location of alcoholic beverage establishments.

Conditions—Board Approves Site Plan Application with Condition that Size of Proposed Structure be Reduced

Applicant argues Board exceed its authority since structure met code’s dimensional requirements

Citation: *Greencove Associates, LLC v. Town Bd. of Town of North Hempstead*, 929 N.Y.S.2d 325 (App. Div. 2d Dep’t 2011)

NEW YORK (09/20/11)—This case addressed the issue of whether a town’s board of approval had the power to impose a condition that re-

duced the size of a proposed structure, even when that structure met dimensional code requirements.

The Background/Facts: Greencove Associates, LLC (“Greencove”) owned a 5.26 acre parcel of property (the “Property”) in the Town of North Hempstead, New York (the “Town”). The Property was improved by a commercial shopping center. When the shopping center had first been constructed in 1959, a restriction was imposed requiring the maintenance of a landscaped buffer (the “Buffer”) along a portion of the property. Following a 1999 expansion of the shopping center, the Buffer measured, on average, 22 feet in width.

In 2010, Greencove sought to expand the shopping center. It submitted to the Nassau County Planning Commission (“NCPC”) an application for approval to construct a new 10,000-square-foot structure in the southwest corner of the property. As proposed, the structure would encroach on the Buffer, reducing it to a width of four or five feet.

The NCPC recommended approval of the site plan application with a modification reducing the size of the new structure to approximately 6,800 square feet. The NCPC said this would “enable the structure to better fit into the irregular-shaped site ... while maintaining the existing [B]uffer.”

Eventually the Town Board of the Town of North Hempstead (the “Board”) approved Greencove’s site plan application, with the condition that the size of the proposed structure be reduced to 6,800 square feet.

Greencove appealed. Greencove noted that the proposed 10,000-square-foot building was dimensionally code compliant. Greencove argued that the condition requiring a reduction in the size of the building exceed the Board’s powers.

DECISION: Greencove’s petition denied.

The Supreme Court, Appellate Division, Second Department, New York, held that the challenged condition was within the Board’s power to impose.

The court pointed to Town Law § 274-a(2)(a), which authorized the Board to review site plans based on certain land use elements, including “screening,” “landscaping,” and “dimension of buildings.” The Town Code provided that in making its considerations as to whether or not to approve a site plan, the Board must consider, among other things, “[o]verall impact on the neighborhood, including compatibility of design considerations and adequacy of screening from residential properties.” The court also noted that the Board could impose a condition upon property so long as there was a “reasonable relationship between the problem sought to be alleviated and the application concerning the property.”

Citing the Town Law and Town Code, the court found that the Board had authority to impose the contested condition. The court also found

that the contested condition “was a reasonable means of assuring that the existing landscaped buffer, which was designed to screen the adjacent residential neighborhood from the effects of the shopping center, would be preserved.” Thus, although the 10,000-square-foot proposed structure was dimensionally code compliant, it could not be placed on the Property without encroaching on the existing Buffer. The Board’s condition of reduction in the size of the proposed structure had a reasonable relationship to ensuring the shopping center remained screened from the residential neighborhood.

See also: *International Innovative Technology Group Corp. v. Planning Bd. of Town of Woodbury*, 20 A.D.3d 531, 799 N.Y.S.2d 544 (2d Dep’t 2005).

Uses—Village Orders Property Owners to Cease and Desist Commercial Horse Boarding Use

Owners argue commercial horse boarding is agricultural use permitted in their zoning district

Citation: *LeCompte v. Zoning Bd. of Appeals for Village of Barrington Hills*, 2011 IL App (1st) 100423, 2011 WL 4436247 (Ill. App. Ct. 1st Dist. 2011)

ILLINOIS (09/21/11)—This case addresses the issue of whether property owners’ commercial boarding of horses was an “agricultural” use, and thus permitted in their zoning district. The case involved statutory analysis.

The Background/Facts: Dr. Benjamin LeCompte and Cathleen LeCompte (the “LeComptes”) owned approximately 130 acres of property in an R-1 (residential) district in the Village of Barrington Hills, Illinois (the “Village”). The LeComptes’ property consisted of a single-family residence, as well as a stable and a riding arena which was approximately 30,000 square feet. Of the 45 horses boarded at the LeComptes’ “Oakwood Farm,” 35 were owned by third parties. In addition to commercially boarding horses, the LeComptes raised, trained, and sold horses.

In January 2008, the Village’s attorney delivered a cease and desist letter to the LeComptes. The letter stated that the LeComptes’ property, Oakwood Farm, was being used as a commercial horse boarding facility in violation of the Village’s Zoning Code. The letter ordered the LeComptes to cease and desist using the property for the nonpermitted use.

Under § 5-5-2 of the Village’s Zoning Code, “agriculture” was a permitted use in an R-1 zoned district. Section 5-2-1 of the Code defined “agriculture” as: “[t]he use of land for agricultural purposes, including

farming, dairying, pasturage ... and animal ... husbandry (including the breeding and raising of horses as an occupation.”

The LeComptes appealed. They argued that commercial horse boarding was a permitted agricultural use under the Code. They argued that the terms “breeding and raising of horses” encompassed the boarding of horses. The LeComptes also focused on the term “including” that was used in § 5-5-1’s definition of “agriculture.” They argued that the use of the term “including” meant that the list of agriculture uses was illustrative not exhaustive. They contended that since the Village referred to the “breeding and raising of horses,” the Village intended for the commercial boarding of horses to be a use included in that list of permitted “agriculture” uses. The LeComptes further argued that their operation of a commercial boarding facility was permissible because § 5-3-4(A) of the Code restricted the Village from “impos[ing] regulations or requir[ing] permits with respect to land used ... for agricultural purposes.”

The Village disagreed. It maintained that the commercial boarding of horses was not a permitted use in an R-1 zoned district. It further maintained that the LeComptes’ commercial boarding facility was not compatible with the other single-family residences in the R-1 zoned district.

The Village’s Zoning Board of Appeals (the “ZBA”) found: (1) that the LeComptes were operating a commercial boarding facility in an R-1 zoned district; (2) that the commercial boarding of horses was not a permitted agricultural use in an R-1 zoned district; and (3) that because the commercial boarding of horses was not a permitted agricultural use, § 5-3-4(A) did not apply.

The LeComptes appealed.

The circuit court affirmed the ZBA’s decision.

The LeComptes again appealed.

DECISION: Affirmed.

The Appellate Court of Illinois held that the LeComptes’ commercial boarding of horses was not “agriculture” and thus was not permitted in their R-1 district.

The court agreed with the LeComptes’ argument that the use of the term “including” in the Code’s definition of “agriculture” meant the list was only partial and not exhaustive. However, the court said that unless the boarding of horses was “similar to other uses in the definition,” the boarding of horses could not be said to be a use meant to be included in that list. Analyzing dictionary definitions of “breeding and raising” (uses specifically listed as “agriculture” under the Code) and “boarding,” the court found that “a person who boards horses engages in different acts from a person who breeds and raises horses.” The court also found that the Code’s definition of “animal husbandry”—a use permitted as an agriculture use under the Code—did not include the commercial boarding of horses as part of its definition. The court thus concluded that the

drafters of the Code did not intend for the commercial boarding of horses to be included in the definition of agriculture as a use for agricultural purposes.

The court also rejected the LeComptes argument that § 5-3-4(A) of the Code applied. Again, § 5-3-4(A) of the Code restricted the Village from “impos[ing] regulations or require[ing] permits with respect to land used ... for agricultural purposes.” The court concluded that because the LeComptes’ property was used primarily for the commercial boarding of horses, which was not a use for agricultural purposes, § 5-3-4(A) did not apply.

See also: *People v. Perry*, 224 Ill. 2d 312, 309 Ill. Dec. 330, 864 N.E.2d 196 (2007).

See also: *Cosmopolitan Nat. Bank v. Cook County*, 103 Ill. 2d 302, 82 Ill. Dec. 649, 469 N.E.2d 183 (1984).

Determination—Planning Board’s Written Denial of Application Fails to Enumerate Reasons for Denial

Applicant says denial is inadequate, but Board says meeting minutes detailed reasons

Citation: *Limited Editions Properties, Inc. v. Town of Hebron*, 2011 WL 4398544 (N.H. 2011)

NEW HAMPSHIRE (09/22/11)—This case addresses the issue of what is required for a local planning board’s statement of the grounds of disapproval of an application to be “adequate” under New Hampshire statutory law.

The Background/Facts: Limited Editions Properties, Inc. (“LEP”) owned 112.5 acres of property in Hebron, New Hampshire (the “Town”). LEP applied to the Town’s Planning Board (the “Board”) for approval to develop a 20-lot subdivision on the property. The Board voted to deny the application. LEP appealed to superior court.

On appeal, LEP argued, among other things, that the Board, in disapproving LEP’s application, failed to provide an adequate record “capable of meaningful review.”

New Hampshire statutory law, RSA 676:4, I(h) requires: “In case of disapproval of any application submitted to the planning board, the ground for such disapproval shall be adequately stated upon the records of the planning board.”

The superior court found the Board’s record was sufficient and upheld the Board’s decision.

LEP appealed.

DECISION: Affirmed.

The Supreme Court of New Hampshire held that the Board adequately stated on the record the grounds for disapproval of LEP's application.

The court explained that the adequate record requirement of RSA 676:4, I(h) "anticipates an express written record that sufficiently apprises an applicant of the reasons for disapproval and provides an adequate record of the board's reasoning for review on appeal." The court said the statutory requirement could be satisfied by "[a] written denial letter combined with the minutes of a planning board meeting."

Here, the Board's written letter of denial did not enumerate the reasons for denying LEP's application. Accordingly, the court looked to see whether the Board's meeting minutes adequately stated the reasons for disapproval.

Minutes from a January 6, 2010, meeting showed that: one Board member voted against approval for aesthetic reasons; another member voted against approval for safety and aesthetic reasons; and a third member voted against approval for environmental concerns.

LEP argued that because the votes cast to deny the application reflected "individual sentiments rather than collective consensus," the Board's "general denial" of the application was not adequate. The court disagreed, finding the record "adequately reflect[ed] the Board's reasons for denying the application." The record showed that the Board had discussed many aspects of the proposed plan during the deliberative session. The record also showed that the Board "identified concerns and unresolved issues regarding the proposed subdivision's impact on aesthetics, the environment, and the safety of persons and property." Moreover, the Board discussed the need to provide reasons for the denial. The meeting transcript detailed three Board members' positions, and it revealed that the Board's further discussion indicated that it agreed that the recitation of those positions described its reasons for denial. The court concluded that the Board's denial of LEP's application based on "aesthetics ... , safety concerns, and environmental concerns" was sufficient.

See also: *Motorsports Holdings, LLC v. Town of Tamworth*, 160 N.H. 95, 993 A.2d 189 (2010).

Case Note: LEP had made other arguments in appealing the denial of its application. The court also rejected those arguments.

Zoning News from Around the Nation

ALABAMA

The City of Birmingham is considering zoning restrictions for methadone clinics. A proposed zoning law would prohibit methadone clinics within 1,000 feet of a home, school, or church.

Source: *WBRC*; <http://www.myfoxal.com>

The City of Northport is considering proposed zoning rules related to group homes. Among other things, the proposed amendments would: “[m]andate that no more than three unrelated people can live in the home, while allowing caretakers who don’t live there”; and “[r]equire that group homes be at least one mile away from one another.” Reportedly, the Alabama Disabilities Advocacy Program has lodged a complaint of housing discrimination with the federal Department of Housing and Urban Development over the proposed rules.

Source: *Tuscaloosa News*; www.tuscaloosaneews.com

CALIFORNIA

Santa Barbara County recently approved a permanent ban on storefront medical marijuana dispensaries in the county’s unincorporated areas.

Source: *The Santa Ynez Valley Journal*; www.santaynezvalleyjournal.com

ILLINOIS

DuPage County was expected to vote recently on a proposed set of zoning amendments that were “geared toward reducing the impact of new religious facilities on unincorporated residential neighborhoods.” Proposed amendments would “address infrastructure, traffic and building size issues related to churches, mosques and other places of assembly in residential areas.”

Source: *Chicago Daily Herald*; www.dailyherald.com

MARYLAND

Seven community associations, along with nine residents, recently filed a lawsuit against Anne Arundel County. The lawsuit contends that the County violated state laws when, in adopting 11 zoning amendments, it allegedly ignored the County’s General Development Plan that called for “limited residential and commercial development.”

Source: *The Capital*; <http://www.hometownannapolis.com>

NEW YORK

Four Tompkins County towns at the south end of Cayuga Lake have recently passed zoning amendments “affirming the inappropriateness of natural-gas drilling and support activities as land uses within their borders” (i.e., “anti-fracking” laws).

Source: *The Ithaca Journal*; www.ithacajournal.com

NORTH CAROLINA

New Hanover County’s industrial zoning ordinance has been amended to now “require heavy industry to acquire a special-use permit before locating in the region.” The new 60-day special use permitting process requires: (1) a \$400 application fee; (2) planning board review; and (3) planning board recommendation to the county commissioners.

Source: *Lumina News*; www.luminanews.com

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Time for Proceedings—Neighbor Appeals Issuance of Building Permit to Abutting Landowner

He argues his appeal is timely under “alternative” path offered by state statutory law

Citation: *Connors v. Annino*, 460 Mass. 790, 2011 WL 5042220 (2011)

MASSACHUSETTS (10/26/11)—This case addressed the remedies and timeframe for seeking remedies that are available under Massachusetts statutory law—the Zoning Act, G.L. c. 40A—to one who is aggrieved by the issuance of a building permit to another person.

The Background/Facts: Anthony Annino, II, trustee of 89-91 Overland Road Realty Trust (“Annino”), planned to demolish and replace an existing two-family structure on his property in Waltham, Massachusetts. Annino filed applications for two building permits with the city’s building department. Two days later, on July 30, 2008, Annino’s neighbor, Robert E. Connors, Jr. (“Connors”), learned about them.

On August 20, Connors sent a letter to the building commissioner. In that letter, he laid out a legal argument opposing Annino’s requested building permits. Connors asked the building commissioner to deny the applications or alternatively forward them to the city’s zoning board of appeals

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(the “board”). The building commissioner did not respond immediately to the letter.

On September 15, 2008, the building inspector issued two building permits to Annino. Connors learned that the permits were issued on September 25. On September 29, at Connors requests, the building inspector responded to his letter, saying the building permits were properly issued under the city’s zoning code.

On October 20, 2008, 35 days after the building permits had issued, Connors filed a petition of appeal with the board. The board dismissed Connors’ petition, concluding that he had “failed to bring the appeal within the time frame required by statute.”

Connors appealed to Land Court. The Land Court judge agreed that Connors had failed to timely appeal.

Connors again appealed. On appeal, he argued that the statutory scheme set out under Massachusetts’ Zoning Act, G.L. c. 40A, §§ 7, 8, and 15, provided him with two independent ways to appeal from the building department’s issuance of the permits to Annino. Section 7 requires the appropriate municipal building official (here, the building commissioner) to enforce zoning ordinances or bylaws by withholding a “permit for the construction, alternation or moving of any building or structure” if the proposed building or structure violates any relevant municipal zoning ordinance or bylaw. Section 8 provides in relevant part that “[a]n appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain ... [an] enforcement action [under § 7] ... or by any person ... aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision” of G.L. c. 40A or the pertinent zoning ordinance or bylaw. Finally, § 15 prescribes the time in which the administrative appeals in § 8 must be taken: “within thirty days from the date of the order or decision which is being appealed.” With respect to an appeal from an “inability to obtain [a § 7] enforcement action” the date from which the 30-day period of appeal is measured is the date of the written response of the municipal building official to the aggrieved person’s request for enforcement.”

Connors argued that: (1) under §§ 8 and 15, he could have filed a petition of appeal with the board from the decision to issue the building permits within 30 days of the permits’ issuance; and (2) under §§ 7, 8, and 15, he was entitled to submit—at any time within six years—a written request to the building commissioner to “enforce” the zoning ordinance by refusing to issue the building permits Annino was seeking. Connors contended that he had taken the second approach. He maintained that under § 7, he had until October 29, 2008 (30 days from the commissioner’s September 29, 2008, letter) to file his petition of appeal with the board.

DECISION: Judgment of land court affirmed.

The Supreme Judicial Court of Massachusetts held that the “alternative” remedy offered in § 7 of requesting the enforcement of the zoning

ordinance was only available where the aggrieved party does not have adequate notice of the building permit's issuance in time to challenge it within 30 days. Otherwise, if the aggrieved party does have adequate notice, the party must challenge it within 30 days of the issuance of the permit, in accordance with §§ 8 and 15.

The court said that to read the statute otherwise—allowing an appeal under § 7 after the time for an appeal from the issuance of the building permit under §§ 8 and 15 has run—would essentially render § 8's 30-day limitation period superfluous.

The court found that, in this case, Connors had notice of the issuance of the building permits 20 days before the 30-day period for bringing an appeal under §§ 8 and 15 expired. Since he had such notice, Connors could not pursue an enforcement action under § 7 (absent a zoning or permit violation by Annino).

See also: *Gallivan v. Zoning Bd. of Appeals of Wellesley*, 71 Mass. App. Ct. 850, 887 N.E.2d 1087 (2008).

See also: *Fitch v. Board of Appeals of Concord*, 55 Mass. App. Ct. 748, 774 N.E.2d 1107 (2002).

Case Note: Francis W. Connors also joined Connors in bringing the legal action.

Case Note: In its decision, the court emphasized that an enforcement request under § 7, and a subsequent appeal from a denial of said request under §§ 8 and 15, remained a valid procedural path for aggrieved parties to follow in appropriate circumstances. Such circumstances, explained the court, included: (1) when an aggrieved party can establish that he or she was without adequate notice of the order or decision being challenged; or (2) where an aggrieved party alleges that an abutter failed to obtain proper building permits, and therefore seeks an enforcement request to stop the abutter from proceeding with their unauthorized activity.

Validity of Zoning Regulations—Zoning Law Prohibits Commercial Wind Farms in County

Wind farm proponents argue law is an unconstitutional taking and violates the dormant Commerce Clause

Citation: *Zimmerman v. Hudson*, 2011 WL 5008547 (Kan. 2011)

KANSAS (10/21/11)—This case addressed the issue of whether a zoning law that prohibited the placement of commercial wind farms in a

county: (1) was an unconstitutional taking under the Fifth Amendment to the United States Constitution; or (2) violated the "dormant" Commerce Clause of the United States Constitution.

The Background/Facts: Wabaunsee County is located in the Flint Hills of Kansas, "which contain the vast majority of the remaining Tallgrass Prairie that once covered much of the central United States." In the fall of 2002, the Board of County Commissioners of Wabaunsee County (the "Board") heard that a company was looking to build a wind farm in the county. At that time, the county had no zoning regulations specifically related to wind farms. However, under Agricultural District Regulations, the establishment of a wind farm would have required the granting of conditional use permits ("CUP"s) under Board discretion to allow for the height of wind turbine structures.

In November 2002, the Board adopted a resolution placing a temporary moratorium on the acceptance of applications for CUPs for wind farm projects. Eventually, on July 12, 2004, the Board adopted a resolution amending its zoning regulations to: (1) permit Small Wind Energy Conversion Systems ("SWECS"); and (2) prohibit Commercial Wind Energy Conversion Systems ("CWECS," i.e., commercial wind farms) in the county. SWECSs were defined as those consisting of a wind turbine: with a capacity of not more than 100 kilowatts; less than 120 feet in height; and intended solely to reduce on-site consumption of purchased utility power. CWECSs were defined as wind turbine systems: exceeding 100 kilowatts capacity; exceeding 120 feet in height; or consisting of more than one turbine apparatus and related infrastructure of any size proposed and/or constructed by the same person or group of persons on the same or adjoining parcels or as a unified or single generating system.

Owners of land in the county (the "Landowners") sued the Board in district court, challenging this zoning amendment. Owners of purported wind rights concerning other properties in the county intervened in the action. (Collectively, the "Landowners" and the owners of wind rights are hereinafter referred to as the "Landowners.")

Among other things, the Landowners argued that the Board's decision to amend the zoning regulations: (1) constituted a compensable taking under the Fifth Amendment to the United States Constitution; and (2) violated the "dormant" aspect of the Commerce Clause of the United States Constitution.

The Fifth Amendment provides that no person's property should be taken without just compensation.

The Commerce Clause empowers Congress to "regulate Commerce ... among the several states." Within that grant of power is a negative command called the "dormant Commerce Clause." In essence, the dormant Commerce Clause prohibits "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors."

The district court judge held: (1) that no taking occurred; and (2) that there was no dormant Commerce Clause violation.

The Landowners appealed.

DECISION: Judgment of district court affirmed in part, reversed in part, and remanded.

The Supreme Court of Kansas held that the Board's decision to amend the zoning regulations did not constitute a compensable taking under the Fifth Amendment to the United States Constitution because interests in developing wind farms were not vested rights, necessary to support a takings claim. The court also held that, although the zoning amendment was not facially discriminatory, remand was required for determination as to whether the amendment violated the dormant Commerce Clause.

The court explained that to prevail on a takings claim, the Landowners would have to first establish that the "property" in question (i.e., the interest in developing wind farms) was one in which a vested interest existed. The Board had argued that whatever interests the Landowners purportedly possessed before the moratorium, those interests were conditioned upon the Board's discretionary issuance of a CUP. Accordingly, argued the Board, interests such as developing, constructing, or operating CWECSSs were not vested rights. The court agreed, reiterating that an applicant would have no vested rights in a CUP when its issuance depended upon the discretionary approval of the Board. The court noted that in this case, at all material times, the county zoning regulations granted absolute discretion to the Board for issuing CUPs. Accordingly, the court concluded that no vested property right of any type had been taken from the Landowners by the Board.

As to the dormant Commerce Clause claim, the court explained that it asks two questions to determine if a zoning regulation violates the dormant Commerce Clause. First, it asks whether the challenged law discriminates (i.e., treats in-state and out-of-state economic interests differently by benefiting the former and burdening the latter) on its face against interstate commerce. If so, it is invalid unless it "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." If not, then the court engages in a balancing test (known as the *Pike* test) to determine if the burden imposed on interstate commerce is "clearly excessive in relation to the putative local benefits."

Here, the court found that there was no facial discrimination—as there was no "differential treatment of in-state and out-of-state economic interests that benefited the former and burdened the latter." The court found that the county's amended zoning regulations prohibited all CWECSSs in the county, regardless of whether the producer wished to sell the wind-generated electricity in other states, in other Kansas counties, or within Wabaunsee County itself.

The court said that absent discrimination, the balancing test need be applied next—to see whether the burden imposed on interstate commerce would be clearly excessive in relation to the putative local benefits (if so the amendments would be invalid; if not they would be upheld). The court remanded the matter to the district court to conduct this balancing test.

See also: *Kansas Racing Management, Inc. v. Kansas Racing Com'n*, 244 Kan. 343, 770 P.2d 423 (1989).

See also: *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970).

Case Note: In its opinion, the court also made note that: the Federal Power Act did not permit states to regulate the generation of electric energy free from Commerce Clause restraint; and the Energy Policy Act did not affirmatively permit states to regulate the generation of electric energy free from Commerce Clause restraint.

Validity of Zoning Regulations—Zoning Ordinance Prohibits Construction over a Certain Height above the Side of a Specific Road

Building permit applicant contends ordinance is unconstitutionally void-for-vagueness

Citation: *Cunney v. Board of Trustees of Village of Grand View, N.Y.*, 2011 WL 4953061 (2d Cir. 2011)

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

SECOND CIRCUIT (NEW YORK) (10/19/11)—This case addressed the issue of whether a provision of a village zoning law was unconstitutionally vague as applied.

The Background/Facts: Brendan Cunney (“Cunney”) owned a half acre of property adjacent to the Tappan Zee Bridge within the Village of Grand View-on-Hudson (the “Village”) in Rockland County, New York. The property was bounded by the Hudson River to the east and River Road to the west.

In 2006, Cunney sought to improve his property. He applied to the Village for the requisite permits to construct a single-family residence. Because of the location of Cunney’s property, his proposed development triggered section E of the Village zoning law. Section E provided that to preserve the remaining views of the Hudson River from River Road, “no building shall be erected ... which shall rise more than two stories in height nor more than four and one-half (4 ½) feet above the easterly side of River Road.”

Cunney sought clarity from the Village’s Zoning Board of Appeals (the “ZBA”) as to where measurements should be taken to ensure section E compliance. However, the ZBA declined to interpret section E.

Eventually, in September 2006, the Village Planning Board approved Cunney’s revised site plan. The site plan included road elevation levels and house height measurements from five different stations on Cunney’s lot—to show compliance with section E.

In October 2006, the Village building inspector issued Cunney a building permit.

Following completion of the construction of his house, in August 2007, Cunney applied to the Village for a certificate of occupancy ("CO"). In December 2007, Cunney's CO application was denied. The denial was based on a compliance determination by the Village engineer, which found that from one station on Cunney's lot, Cunney's roof height was "greater than allowed."

Cunney appealed to the ZBA, arguing among other things that section E was ambiguous. The ZBA concluded that section E was not ambiguous and that Cunney's house exceed section E's restrictions. The ZBA did grant Cunney a conditional variance.

Cunney then filed a complaint in court. He asserted that section E was "void for vagueness both as applied to his property and on its face." He also contended that the Board of Trustees of the Village of Grand-View-on-Hudson, the ZBA and the building inspector (collectively, the "Village Defendants") violated his substantive due process rights by denying his application for a CO.

Finding there were no material issues of fact in dispute and deciding the matter on the law alone, the district court issued summary judgment in favor of the Village on the void-for-vagueness and substantive due process claims.

Cunney appealed. On appeal, Cunney again argued that section E was void-for-vagueness as applied because it did not provide adequate guidance as to the elevation point on River Road adjacent to his property from which he should measure the height of his house. He also argued that section E was unconstitutionally vague because it authorized arbitrary and discriminatory enforcement by the Village. Cunney further argued that his substantive due process rights were violated by the Village's "post hoc interpretation of section E to justify the denial of his CO."

DECISION: Judgment of district court reversed in part, vacated in part, and remanded.

The United States Court of Appeals, Second Circuit, agreed with Cunney. The court held that section E was unconstitutionally vague as applied to Cunney's property because: (1) it provided inadequate notice of the elevation point on River Road from which Cunney should measure the height of his house to determine compliance; and (2) it authorized arbitrary and discriminatory enforcement. Since the district court had denied Cunney's substantive due process claim based on its denial of his void-for-vagueness claim (which was now overturned by the Second Circuit court), the court also remanded the substantive due process claim to the district court to decide.

In so concluding, the court explained that the 14th Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law." For the protection of such due process, "[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of ... statutes." A statute's language may be so vague as to deny due process if: (1) it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits; and (2) it authorizes or even encourages arbitrary and discriminatory enforcement.

The court found section E afforded a reasonable person adequate notice of what it generally prohibited (e.g., three-story buildings). However, the court also found it “remarkably unclear” with respect to how the four and one-half limitation was defined. More specifically, the court found that the ordinance failed to describe from what adjacent elevation point on River Road the height of a building must be measured to determine the building’s compliance with section E’s height restriction. The court found this left the permit applicant with no notice of how he or she should design his or her site plan. It also left the Village without objective standards it could apply in determining a project’s compliance.

Still, noted the court, even in the absence of clear standards, if the conduct at issue fell within the core of the ordinance’s prohibition, it would not be unconstitutionally vague. This is because if the conduct at issue falls so squarely in the core of what is prohibited by the ordinance, there is no substantial concern about arbitrary enforcement “because no reasonable enforcing officer could doubt the [ordinance’s] application in the circumstances.”

Here, the court found that the ordinance as applied to the design and construction of Cunney’s house was “not saved by resort to a clear core”; the height of Cunney’s house did not fall so squarely within the core of section E’s prohibition as to allay concerns regarding the risk of arbitrary enforcement. This, said the court was because, under a reasonable interpretation of the statute, Cunney’s house, as built, did comply with section E.

See also: *Hill v. Colorado*, 530 U.S. 703, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000).

See also: *Grayned v. City of Rockford*, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).

Successive Variance Applications—Property Owner Applies for a Variance in 1994, Which is Denied

When property owner applies for same variance in 2009, the zoning board refuses to consider the application on the merits

Citation: *Brandt Development Co. of New Hampshire, LLC v. City of Somersworth*, 2011 WL 4844422 (N.H. 2011)

NEW HAMPSHIRE (10/12/11)—This case addressed the issue of whether the facts and circumstances surround an identical variance application 15 years later constituted material changes in circumstances requiring the zoning board of appeals to conduct a full review of the variance request on the merits.

The Background/Facts: Brandt Development Company of New Hampshire, LLC (“Brandt”) owned a house and attached barn in a residential multifamily district in the city of Somersworth, New Hampshire (the “City”). In

November 1994, Brant applied for a variance form size and frontage requirements to convert the property from a duplex into four dwelling units.

Under New Hampshire statutory law, RSA 674:33, I(b), in order to obtain a variance, Brandt was required to satisfy a five-part test, showing: (1) the variance would not be contrary to the public interest; (2) special conditions existed such that literal enforcement of the ordinance would result in unnecessary hardship; (3) the variance was consistent with the spirit of the ordinance; (4) substantial justice was done; and (5) the variance did not diminish the value of the surrounding properties.

The City's zoning board of adjustment (the "ZBA") denied Brandt's application. It found that Brandt's property failed to satisfy all five of the criteria for a variance set out under RSA 674:33, I(b).

Brandt did not appeal the ZBA's 1994 denial of its variance application. However, 15 years later, in December 2009, Brandt again applied to the ZBA for a variance from the City's area, frontage, and setback requirements. Brant again proposed to convert the dwelling into four units.

The ZBA declined to consider Brandt's application on the merits. The ZBA based this decision on the basis that "circumstances [had] not changed sufficiently [since the 1994 variance application] to warrant acceptance of the [2009] application."

Brandt appealed to the superior court. The superior court affirmed the ZBA's decision.

Brandt again appealed.

DECISION: Judgment of superior court reversed, and matter remanded.

The Supreme Court of New Hampshire held that material changes in circumstances occurred during the 15 years between Brandt's filing of the successive variance applications such that the ZBA was required to consider Brandt's second application on the merits.

The court explained that it was "well settled that a zoning board having rejected one variance application, may not review subsequent applications absent a 'material change of circumstances affecting the merits of the application.'" In New Hampshire, said the court, successive variance proposals must demonstrate either: (1) material changes in the proposed use of the land; or (2) material changes in the circumstances affecting the merits of the application.

On appeal, Brandt argued the latter. It maintained that the ZBA was required to review its 2009 variance application on the merits even though it asked for essentially the same relief as the 1994 application. Brandt contended that material changes in circumstances occurred during the 15 intervening years. Although the governing statute, RSA 674:33, I(b), had not changed, Brandt noted that case law interpreting the five criteria for granting a variance had changed. Brandt maintained that the standards it needed to meet to obtain a variance were therefore now different.

The court agreed. In 1994, the unnecessary hardship prong of the five-part test for obtaining a variance required applicants to show: "a deprivation 'so great as to effectively prevent the owner from making any reasonable use of the land.'" By 2009, that standard had changed. In 2009,

an applicant seeking a use variance could show unnecessary hardship by demonstrating: (1) a zoning restriction as applied to its property interfered with its reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship existed between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others. An applicant seeking an area variance could show unnecessary hardship by demonstrating that: (1) an area variance was needed to enable the applicant's proposed use of the property given the special conditions of the property; and (2) the benefit sought by the applicant could not be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.

The City had countered that the ZBA had acted reasonably in denying the application, for even with a material change in circumstances under the unnecessary hardship prong of the five-part test, the other four prongs were unchanged and the ZBA had denied the 1994 application on those other four grounds as well.

The court said that although only that one criterion was "uprooted," that major shift in the doctrine of unnecessary hardship constituted a material change in circumstances with respect to Brandt's 2009 application. Although it is only one of the five factors, unnecessary hardship is "central to the very concept of a variance," said the court. The five criteria are interrelated concepts. Although the changes taking place in the 15-year period between Brandt's application did not create an "absolute certainty of a different outcome from that obtained in 1994," they did "create a reasonable possibility" of a different outcome—and that was sufficient for the ZBA to have to review Brandt's 2009 application on the merits.

See also: *Simplex Technologies, Inc. v. Town of Newington*, 145 N.H. 727, 766 A.2d 713 (2001).

See also: *Boccia v. City of Portsmouth*, 151 N.H. 85, 855 A.2d 516 (2004).

Case Note: In its decision, the court had also noted that although the other four criteria of the variance test under RSA 674:33 have not changed (from 1994 to 2009) as much as the unnecessary hardship criterion, they have still been "refined and clarified" by case law.

Zoning News from Around the Nation

CALIFORNIA

In an attempt to qualify for a referendum aimed at repealing San Jose's "new pot club rules," medical marijuana advocates have submitted 48,598 petition signatures. The "pot club rules" would "limit the number of medical marijuana collectives to 10—less than a tenth of the number

now believed to operate throughout the city.” Once the county Registrar of Voters verifies the number of signatures, if there are “enough to qualify a referendum, the city would have 30 days to either repeal the ordinance, put the referendum on the ballot for the next regularly scheduled municipal election or call a special election.”

Source: *Mercury News*; www.mercurynews.com

MICHIGAN

Union Township recently adopted an ordinance regulating garage and yard sales. Residents must now obtain a permit before hosting a yard or garage sale and are limited to three such sales per year.

Source: *The Morning Sun*; www.themorningsun.com

MINNESOTA

Four homeowners have sued the city of Winona over a rental cap law. Under the law, homeowners are prohibited from converting their houses to rental units if there is already a concentration of 30% rentals on that city block. The suing homeowners argue the rental cap law is a violation of the Minnesota Constitution’s equal protection clause because “one person’s property rights should not be limited by the previous actions of his or her neighbors.”

Source: *KARE 11*; www.kare11.com

NEW YORK

The Anschutz Exploration Corporation has filed a lawsuit against the town of Dryden (Tompkins County). The lawsuit is in response to the Town’s enactment of zoning laws aimed at preventing hydrofracking because of concerns about its negative effect on drinking water and air quality. Reportedly, Anschutz argues in the suit that the subject zoning law is inconsistent with New York’s Oil, Gas and Solution Mining Law—which, Anschutz argues, overrides local ordinances involving natural-gas drilling except those involving local roads and property taxes.

Source: *Legislative Gazette*; www.legislativegazette.com

PENNSYLVANIA

Reportedly, five environmental advocacy groups—Clean Water Action, Delaware Riverkeeper Network, the Sierra Club’s Pennsylvania branch, Earthworks, and PennEnvironment—have sent a letter to state senators voicing opposition to language in SB 1100, which would tie receipt of revenue from a natural gas impact fee to municipality adoption of a “model” zoning ordinance. The groups also support a greater setback for private and public drinking water supplies.

Source: *NPR*; <http://stateimpact.npr.org>

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Procedure—Town Fails to Timely Act on Application for Special Permit

Applicant argues permit must be approved by default

Citation: *Troy Sand & Gravel Co., Inc. v. Town of Nassau*, 2011 WL 5221262 (N.Y. App. Div. 3d Dep't 2011)

NEW YORK (11/03/11)—This case addressed the issue of whether a town's alleged failure to act on a special permit application within a reasonable period of time resulted in the application being approved by default.

The Background/Facts: In 2004, Troy Sand & Gravel Company, Inc. ("Troy") planned to establish a quarry in the Town of Nassau (the "Town"). In furtherance of those plans, Troy submitted to the Town applications for a special permit and site plan approval for the quarry.

After the town passed successive moratoria on new mining applications, in 2008, the Town passed a zoning law that permanently banned commercial excavation.

Troy subsequently sued the Town. It asserted that the Town's actions were taken in bad faith to prevent the operation of the proposed quarry. It argued the Town's failure to act in a reasonable period of time on its special use permit application rendered the application approved by default. It

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also argued that under the state's Mined Land Reclamation Law, the Town's delay in reviewing its permit application necessarily resulted in the Town's relinquishment of its right to review the application. Troy moved for partial summary judgment. It asked the court to find that there were no material issues of fact in dispute and to decide the matter in its favor on the law alone.

The Supreme Court denied Troy's motion. Troy appealed.

DECISION: Affirmed.

The Supreme Court, Appellate Division, Third Department, New York, held that the Town's failure to act on the application in a reasonable period of time did not render the application approved by default.

Town laws did provide specific time periods in which the Town was required to hold a hearing and decide on Troy's application for a special use permit. However, the court found that the laws did not provide for a default approval of a special use permit application in the event that the Town did not comply with those time periods. Rather, the court said that the proper remedy for the Town's alleged failure to act was for there to be a special proceeding to compel the Town to issue a decision on Troy's application.

The court also concluded that the Mined Land Reclamation Law did not require that the Town relinquish its right to review Troy's application because of the Town's delay in reviewing the application. While the Mined Land Reclamation Law supersedes all local laws and ordinances regulating mining and reclamation activities in New York, the law, found the court, "does not prevent local government from enacting local laws having the effect of banning mining, nor does it govern the manner in which decisions on special use permits must be made or the time within which those decisions must be made."

See also: *Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668, 642 N.Y.S.2d 164, 664 N.E.2d 1226 (1996).

See also: *Tinker Street Cinema v. Town of Woodstock Planning Bd.*, 256 A.D.2d 970, 681 N.Y.S.2d 907 (3d Dep't 1998).

Variance—Board Approves Mining Company's Use Variance Request to Mine in a Single-Family Residential Zone

Neighboring property owners argue mining company failed to show "unnecessary hardship," as required for a variance

Citation: *Harrison v. Mayor and Board of Alderman of City of Batesville*, 2011 WL 5222895 (Miss. 2011)

MISSISSIPPI (11/03/11)—This case addressed the issue of whether a city erred in granting a variance to allow mining in an area zoned single-family residential and community business. In a matter of first impression

(i.e., the first time the court ruled on the issue), the case clarifies the standards that should apply when a zoning ordinance uses the language “practical difficulties or unnecessary hardships” for granting a variance.

The Background/Facts: Memphis Stone & Gravel Company (“Memphis Stone”) sought to mine sand and gravel from 18 acres of land that it leased from various property owners in the city of Batesville, Mississippi (the “City”). That land was contiguous to Memphis Stone’s existing plant operation, and was zoned single-family residential and community business. Under the City’s Code, mining was only allowed as a conditional use in areas zoned agricultural and industrial. Therefore, Memphis Stone applied to the City’s Planning Commission for a use variance.

The Planning Commission approved the use variance. The City’s mayor and Board of Aldermen (collectively, the “Board”) upheld the variance with conditions.

Neighboring property owners of Memphis Stone’s leased land, the Harrisons, appealed the variance to the circuit court. Among other things, they argued that in order to obtain a variance, Memphis Stone needed to show “hardship” by submitting evidence that a unique condition of the property prevented Memphis Stone from making full use of the land. The Harrisons maintained that Memphis Stone had failed to show any hardship and that therefore the Board should not have granted Memphis Stone’s variance request.

Memphis Stone and the Board argued that “unnecessary hardship” took into account “public need.” Memphis Stone had stated that 10 tons of aggregate was needed locally for construction and infrastructure and that those minerals would be lost if the land was developed as it was zoned.

The Harrisons countered that increased profitability and convenience of location do not establish hardship.

The circuit court affirmed the Board’s decision to grant the variance. In so holding, the court found that Memphis Stone had provided “ample evidence” to justify the variance: Memphis Stone had presented “evidence of a public need for a good source of local aggregate and the project would be a good asset for the local community’s economy that [would] likely be lost to future residential development based on the location of the property.”

The Harrisons appealed. The Court of Appeal reversed.

The Board appealed. The Supreme Court of Mississippi granted certiorari “to clarify the standards that should apply when a zoning ordinance uses the language ‘practical difficulties or unnecessary hardships’ for granting a variance.”

DECISION: Vacated, and decision of circuit court reversed (on different grounds than Court of Appeals had reversed), and matter remanded.

The Supreme Court of Mississippi held that the Board erred in granting Memphis Stone’s variance request because there was no evidence of the required “unnecessary hardship.”

In so holding, the court explained that there were two types of variances: A “nonuse” or “area” variance allows a landowner to build or maintain

physical improvements that deviate from the nonuse/area limitations of a zoning ordinance. A “use” variance allows a landowner to engage in a use of the land prohibited by the zoning ordinance. The variance at issue in this case was a “use” variance.

Under the City’s Code, the Board could grant a variance “where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of th[e] ordinance.” However, the Code did not define “practical difficulties” or “unnecessary hardship.”

As a matter of first impression (i.e., the first time the Mississippi Supreme Court ruled on the issue), the court held that the phrases “practical difficulties” and “unnecessary hardship” apply to nonuse and use variance respectively. Since this case involved a use variance, Memphis Stone was required to show “unnecessary hardship” in order to obtain the variance it sought.

As a matter of first impression, the court adopted a definition of “unnecessary hardship.” It said that a landowner seeking a use variance must show “unnecessary hardship” by showing that:

- (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone;
- (2) that the plight of the owner is due to unique circumstances [of the land for which the variance is sought] and not to the general conditions of the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and
- (3) that the use to be authorized by the variance will not alter the essential character of the locality.

The court also said that in determining whether to grant a use variance, a board must: determine whether the hardship is self-created (e.g., such as determining whether the applicant had actual or constructive knowledge of the land’s zoning when entering into the lease or purchase of the land); and ensure that the variance complies with “the spirit of [the] ordinance” and that “public wellness and safety [be] secured and substantial justice done.”

Because the court’s decision was a matter of first impression, the court remanded the case to the Board so the parties could have an opportunity to present it with evidence in compliance with the court’s opinion.

See also: *Matthew v. Smith*, 707 S.W.2d 411 (Mo. 1986).

See also: *Otto v. Steinhilber*, 282 N.Y. 71, 24 N.E.2d 851 (1939).

Case Note: The Harrisons had argued that the variance granted to Memphis Stone constituted spot zoning. The Court of Appeals had agreed. It found the variance was not a minor departure from the applicable zoning ordinance, but was a dramatic departure which could be obtained only through rezoning and not a variance request. The Supreme Court of Mississippi said that: “[t]he grant of a variance ... that has the same effect as a small parcel rezoning cannot be attacked

as spot zoning” because the granting of a variance does not involve a zone change but is permitted when certain conditions exist. Therefore, said the court, the proper question was not whether the variance was “spot zoning,” but whether the Board acted within its scope and power under the applicable zoning ordinances. Connected to that was whether substantial evidence supported the Board’s decision to grant the variance.

Case Note: In its decision, the court rejected (without much explanation) Memphis Stone’s argument that “unnecessary hardship” takes into account the public need. Instead, said the court, the focus should be on whether there is a “public detriment” to the granting of the requested variance.

Case Note: In its decision, the court noted that some other jurisdictions view the terms “practical difficulty” and “unnecessary hardship” as interchangeable.

Standing—Landowner, Seeking Denial of Neighbor’s Permit Application, Appeals Decision Denying Permit

Permit applicant contends landowner lacked standing to bring such appeal because it had no particularized injury

Citation: *Witham Family Ltd. Partnership v. Town of Bar Harbor*, 2011 ME 104, 2011 WL 5187954 (Me. 2011)

MAINE (11/01/11)—This case addressed the issues of whether: (1) a neighboring landowner—who appeared before a municipal zoning board of appeals through its attorney—sufficiently appeared before the board so as to provide it with standing to challenge the board’s decision to issue a permit; and (2) whether a neighboring landowner’s claimed injury from findings that an applicant complied with some, but not all, criteria necessary for a permit had a particularized injury sufficient to provide standing to appeal from the decision denying the application for a permit—which was the relief the neighboring landowner was seeking.

The Background/Facts: In 2009, North South Corporation (“North South”) applied to the Planning Board of the town of Bar Harbor (the “Town”) for a permit to construct a hotel. The Planning Board denied North South’s application on the single ground that it exceeded the applicable ordinance height limitations; the Planning Board found that the proposed hotel complied with ordinance requirements in all other respects.

North South appealed the Planning Board's denial to the Town's Board of Appeals (the "BOA").

The BOA concluded that the Planning Board had misinterpreted the ordinance provision relating to height requirements. It reversed the Planning Board's denial, and remanded the matter to the Planning Board with instructions to issue North South's requested permit. The Planning Board issued the permit on May 19, 2010.

The Witham Family Limited Partnership (the "Partnership") owned land abutting the location of North South's proposed hotel. The Partnership's attorney had appeared at public hearings on North South's permit application. While North South's appeal to the BOA was pending, the Partnership filed its own appeal to the BOA. The Partnership challenged that portion of the Planning Board's decision that found that North South's proposed hotel did conform to other criteria for obtaining a permit—namely parking and street width requirements.

The BOA affirmed the Planning Board's decision with regard to the Partnership's appeal.

The Partnership then appealed the BOA's decisions—in both North South's appeal and in the Partnership's appeal—to superior court.

North South argued that the Partnership lacked standing to bring the appeals. North South contended that the Partnership had not "appeared" before the Planning Board in relation to North South's permit application because the Partnership's attorney failed to specifically announce that he was speaking on behalf of the Partnership when he spoke at public hearings on the permit application. North South also argued that since the Partnership's own appeal was based on BOA findings that North South complied with certain permit criteria—rather than an appeal of the denial itself—the Partnership did not have a particularized injury necessary for standing to seek review of the BOA's decision to issue the permit.

The superior court agreed with North South and dismissed the Partnership's complaint. The court found that the Partnership lacked standing to seek review of either of the BOA's decisions.

DECISION: Vacated, and matter remanded.

The Supreme Judicial Court of Maine held that: (1) the Partnership had sufficiently opposed North South's appeal as a party through representation by its attorney at related public hearings, such that it had standing to seek court review of the BOA's decision to issue the permit; and (2) the Partnership had a particularized injury from the findings that North South complied with other criteria for the permit sufficient to provide standing to the Partnership to appeal the Planning Board's denial of North South's permit application.

The court explained that for the Partnership to have standing to appeal the BOA's decision to court, it had to be a "party," meaning: (1) one who had "appeared" before the BOA; and (2) one who was "able to demonstrate a particularized injury as a result of the [BOA]'s action." "Appearance," further explained the court, meant: "participation"—formal

or informal, whether personally or through an attorney—in the municipal proceedings by, for example, ‘voic[ing] ... concerns for traffic, noise and aesthetics,’ or ‘express[ing] opposition’ at a municipal hearing.” “Particularized injury” occurs when a judgment or order adversely and directly affects a party’s property, pecuniary, or personal rights. When the appealing party is an abutting landowner, it need only assert a “reasonable allegation of a potential for particularized injury”

The court found that the Partnership “appeared” before the Board through its attorney, even though its attorney failed to specify that he was representing the Partnership. The court found that it could be “inferred that [the attorney] appeared on behalf” of the Partnership. Thus, as to the Partnership’s appeal of the BOA’s decision to issue the permit in response to North South’s appeal, the court held that the Partnership had standing because: it both appeared (through its attorney) before the BOA and would suffer a particularized injury by the BOA’s decision.

As to the Partnership’s appeal of the Planning Board’s denial of North South’s permit application, the court found that the Partnership did have a particularized injury—despite the fact that the permit was denied. The court acknowledged that a party is usually not aggrieved by a judgment granting the relief requested in his pleadings (such as here, where the Partnership was appealing a decision to deny North South grant of the permit—which is the relief the Partnership was seeking). However, the court said that an exception to that general rule is: when “an essential finding on which the judgment is based might otherwise prejudice the party through the use of collateral estoppel in the future proceeding.” Here, the court found, “continuing adverse collateral consequences to the Partnership would result from its failure to challenge the basis of the Planning Board’s denial of North South’s permit.” This was because “[a]lthough the Planning Board did initially deny North South’s application, had North South’s subsequent appeal to the [BOA] been successful and had the Planning Board been ordered to issue the requested permit [—which is what consequently happened—], collateral estoppel would have barred the Partnership from challenging the bases on which the permit was granted.” Thus, North South’s pending—and ultimately successful—appeal created a continuing opportunity for injury to the Partnership, which is all that was necessary to confer standing on the Partnership.

See also: *Sahl v. Town of York*, 2000 ME 180, 760 A.2d 266 (Me. 2000).

See also: *Friends of Lincoln Lakes v. Town of Lincoln*, 2010 ME 78, 2 A.3d 284 (Me. 2010).

See also: *Norris Family Associates, LLC v. Town of Phippsburg*, 2005 ME 102, 879 A.2d 1007 (Me. 2005).

See also: *Great Cove Boat Club v. Bureau of Public Lands*, 672 A.2d 91 (Me. 1996).

Validity of Zoning Regulations—After Billboard Company Modernizes Billboard, Township Claims Billboard is a Nuisance

Billboard company challenges portion of zoning ordinance limiting modernization of nonconforming billboards

Citation: *Township of Blair v. Grand Lamar OCI North Corp.*, 2011 WL 5108510 (Mich. Ct. App. 2011)

MICHIGAN (10/27/11)—This case addresses the issue of whether a Michigan township could restrict the modernization of a nonconforming use that reduces nonconformities. It also analyzed whether a zoning requirement that billboards have a specified distance between them violated the First Amendment to the United States Constitution.

The Background/Facts: Grand Lamar OCI North Corporation (“Lamar”) leased property in the township of Blair, Michigan (the “Township”) on which it maintained commercial billboards. One of Lamar’s billboards was a “double decker” billboard (i.e., a two-level sign). It had been installed prior to the Township’s Zoning Ordinance (the “ZO”). The billboard was a nonconforming use under the ZO because it exceeded: (1) display area requirements; (2) height requirements; and (3) requirements related to the distance between the signs.

In December 2008, Lamar removed the upper portion of the sign and installed an LED display face on the remaining board. These changes eliminated the nonconformities in display area. However, the nonconformities related to height requirements and requirements for space between signs did not change.

The Township sued Lamar. It claimed that the billboard, which was a preexisting nonconforming use, constituted a nuisance per se because it violated § 20.08.3 of the ZO. Section 20.08.3 restricted the modification of a nonconforming uses—including those that reduced nonconformities. Modifications to nonconforming signs and billboards were restricted to those that “do not exceed an aggregate cost of thirty (30) percent of the appraised replacement cost of the sign or billboard, as determined by the Zoning Administrator,” unless the modifications change the sign or billboard to a conforming structure.

Lamar counter-complained. It argued that Michigan law prohibited the Township from restricting the modification of a nonconforming use that reduces nonconformities. It also alleged that the requirement in § 20.07.3 that billboards be located 2,640 feet apart violated the First Amendment to the United States Constitution.

The circuit court found in favor of the Township.

Lamar appealed.

DECISION: Affirmed.

The Court of Appeals of Michigan found that Lamar's argument that case law prohibited a township from barring modernization of a nonconforming use if it reduces the nonconformity was without merit. Modernization of a nonconforming use may be allowed dependent on the facts of the case, said the court. Modernizations of nonconforming uses are not to be allowed carte blanche just because they may reduce nonconformities.

Here, the court found that the ZO's restrictions on modernization of nonconforming signs and billboards to 30% of replacement value still allowed a property owner to maintain, modernize, and use the billboard. The ZO did not prevent Lamar's billboard from being used, nor did it destroy Lamar's investment. It merely limited changes that could be made to it. Accordingly, the Township had the authority to abate the nuisance (in Lamar's changed billboard). Consequently, Lamar was not entitled to relief from the ZO under which its modernized billboard was declared a nuisance per se.

The court also rejected Lamar's argument that the ZO's required space between billboards violated the First Amendment. The court noted that the First Amendment protects commercial speech only if that speech concerns lawful activities and is not misleading. A restriction on protected commercial speech is constitutional so long as it: (1) seeks to implement a substantial government interest; (2) directly advances that interest; and (3) reaches no further than necessary to accomplish the given objective.

Applying that test here, the court found that the ZO's 2,640-foot spacing between signs requirement passed constitutional muster. Lawful commercial speech was involved, found the court. As to the ZO's restrictions on that speech (in the form of the spacing requirements), the court found: (1) that the ZO's goals of promoting aesthetic desirability of the environment and reducing hazards to life and property in the Township were of substantial government interest; (2) the restrictions directly advanced those interests; and (3) went no further than necessary to accomplish those objectives.

Lamar had argued that the spacing requirements served no aesthetic or public safety purpose. The court disagreed. It concluded that the ZO's spacing requirements were valid.

See also: *Austin v. Older*, 283 Mich. 667, 278 N.W. 727 (1938).

See also: *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800, 16 Env't. Rep. Cas. (BNA) 1057, 11 Env't. L. Rep. 20600 (1981).

Case Note: The circuit court had found another portion of the ZO was an unconstitutional restraint on free speech because it granted unbridled discretion to the Zoning Administrator to grant or deny permits for modifications to nonconforming billboards which did not bring those billboards into full compliance. The trial court had severed that portion of the ZO from the ZO. Lamar had challenged that remedy. The appellate court found that section of the ZO was severable, as no other section relied upon it and its removal did not

defeat the ZO's goal of eventually eliminating nonconforming uses; standards remained in place for allowing modernization and repair of billboards. The court held that the valid portion of the ZO could therefore be read and enforced independently of the invalid portion.

Zoning News from Around the Nation

CALIFORNIA

A state appeals court recently held "that California law allows cities and counties to ban [medical marijuana dispensaries]." "In the case, a three-judge panel in the 4th District Court of Appeal in Riverside ... concluded that the state's medical marijuana laws do not prevent cities and counties from passing regulations on dispensaries, including bans."

Source: *Los Angeles Times*; www.latimes.com

INDIANA

State Representative Matt Ubelhor (Republican-Bloomfield) recently announced plans to introduce a zoning referendum bill that will be specific only to Greene County. If successful in the general assembly, voters in Greene County will have a chance to voice their opinion on a county-wide zoning/land use management ordinance in a referendum vote on the November 2012 election ballot.

Source: *Greene County Daily World*; <http://gcdailyworld.com/>

MARYLAND

The Howard County Council has voted to "table a controversial bill that would have streamlined the county zoning appeals process." The bill "would have allowed the Board of Appeals to hear zoning cases appealed from the hearing examiner 'on the record,' meaning neither side would be allowed to present new evidence." The council reportedly tabled the bill to "allow more time to study the process and come up with efficiencies that satisfy everyone."

Source: *Baltimore Sun*; <http://www.baltimoresun.com>

PENNSYLVANIA

The state legislature is considering House Bill 1950 and Senate Bill 1100, which would "eliminate or severely restrict the ability of local governments to enact zoning ordinances applicable to Marcellus Shale gas drilling operations and establish a standard 'model' ordinance that all townships would have to follow."

Source: *Pittsburgh Post-Gazette*; www.post-gazette.com

VIRGINIA

The York County Planning Commission recently removed agriculture and aquaculture from two of the county's residential zoning districts. Reportedly, the changes were made as a way to "preempt possible state legislation that could include aquaculture in the Right to Farm Act, which would restrict local governments from regulating commercial aquaculture operations."

Source: *Daily Press*; <http://articles.dailypress.com>

Zoning Bulletin

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Use Variance—Landowner Applies for Variance for Residential Use in Industrial Zone

Board denies variance, finding no unnecessary hardship

Citation: *Oxford Corp. v. Zoning Hearing Bd. of Borough of Oxford*, 2011 WL 5599663 (*Pa. Commw. Ct.* 2011)

PENNSYLVANIA (11/18/11)—This case addressed the issue of whether a landowner had proven unnecessary hardship so as to obtain a use variance.

The Background/Facts: Oxford Corporation (“Landowner”) owned a 10.5-acre parcel of property in the borough of Oxford (the “Borough”). The parcel was zoned industrial. Landowner sought to develop the property as a residential use, which was not a permitted use in the industrial zone. Landowner filed an application with the Borough’s Zoning Hearing Board (the “Board”) to obtain a use variance for a residential use. In seeking the variance, Landowner alleged that the property could not be used “in any reasonable or economically viable manner as currently zoned.”

The Board denied Landowner’s request. The Board concluded that Landowner failed to demonstrate by substantial evidence that it was entitled to any variance relief. Specifically, the Board found, among other

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things, that there was no hardship peculiar to Landowner's parcel that prevented it from being developed as it was zoned.

Landowner appealed to the trial court. The court affirmed the Board's denial of the use variance.

Landowner again appealed.

DECISION: Affirmed.

The Commonwealth Court of Pennsylvania held that the industrial zoning of landowner's property did not create an unnecessary hardship, as required for Landowner to obtain a use variance.

The court explained that in order to qualify for a variance, an applicant must establish: "(1) an unnecessary hardship stemming from unique physical circumstances or conditions of the property will result if the variance is denied; (2) because of such physical characteristics or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the ordinance; (3) the hardship has not been created by the applicant; (4) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (5) the variance sought is the minimum variance that will afford relief." As for the requisite "unnecessary hardship" element, an applicant must prove either: "(1) the physical characteristics of the property are such that it could not in any case be used for any permitted purpose, or that it could only be used for such purpose at prohibitive expense; or (2) the characteristics of the property are such that the lot has either no value or only distress value for any purpose permitted by the ordinance."

Thus, here, in order for Landowner to obtain a use variance, it had to show that compliance with the zoning ordinance (i.e., using the property for a use allowed in an industrial zone) could render the property practically useless. Landowner was required to show that either: (1) the physical characteristics of the property precluded its use for a permitted purpose in the industrial zone or that such use would be prohibitively expensive; or (2) that the characteristics of the property are such that it either has no value or only distress value for any permitted purpose in the industrial zone.

The court found that Landowner failed to meet that burden. A number of witnesses had "credibly testified that the property could be put to [uses permitted in the industrial zone—such as professional and business office use, or a warehouse or similar use]." Landowner could not obtain a variance simply because the zoning of its property deprived it of the most lucrative or profitable uses of the property.

See also: *Com. By and Through Dept. of General Services v. Zoning Hearing Bd. of Susquehanna Tp.*, 677 A.2d 853 (Pa. Commw. Ct. 1996).

Case Note: Landowner had actually applied for "a use variance, as well as a substantive validity variance." The court explained that a validity variance is based on the theory that an otherwise valid zoning ordinance is confiscatory when applied to a particular property and

that a variance is necessary to permit a reasonable use of the land. A party seeking either a use variance or a validity variance must comply with the same variance requirements, said the court.

Conflict of Interest—Despite Recusing Himself, City Council’s Attorney Gives Generic Advice on Resolution of Variance Request

Variance applicant says attorney’s participation tainted resolution and required it be vacated

Citation: *Kane Properties, L.L.C. v. City of Hoboken*, 2011 WL 5554361 (N.J. Super. Ct. App. Div. 2011)

NEW JERSEY (11/10/11)—This case addressed the issue of whether the participation of the city council’s attorney in regard to the council’s resolution on variance requests, despite the attorney’s conflict of interest, required vacation of the city’s decision and a remand for reconsideration.

The Background/Facts: Anthony Rey (“Rey”) owned property located in an industrial zone in the city of Hoboken (the “City”). Kane Properties, L.L.C. (“Kane”) sought to construct a 12-story, 72-unit residential building with a parking garage and on-premises day care center on Rey’s property. Kane applied to the City’s Board of Adjustment (the “Board”) for use and area variances.

While considering the application, the Board heard testimony from members of the public, including Skyline Condominium Association (“Skyline”). Skyline operated a 15-story residential building near Rey’s property. Skyline, which was represented before the Board by its attorney, Michael Kates (“Kates”), objected to Kane’s variance requests.

The Board granted the variances.

Two weeks after the Board granted the variances, Kates was appointed Corporation Counsel for the city, thus becoming the City Council’s legal advisor. Kates remained employed as a partner in the law firm that had represented Skyline.

Skyline, represented by a new attorney—Edward J. Buzak (“Buzak”)—from another law firm, challenged to the City Council (the “Council”) the Board’s grant of the variances to Kane. Kates recused himself in regard to the appeal.

Thereafter, Kates sent the Council a memorandum containing generic advice about how to handle zoning appeals in general. Buzak, Skyline’s new attorney, also sent Kates’ advice memo to the Council as part of his own advice on handling appeals. Later, the Council voted to deny Kane’s requested variances at a meeting where Buzak was not present to advise them, but Kates was present. At that meeting, Kates provided the Coun-

cil some procedural advice concerning their vote on the resolution denying the variances. Kates signed the resolution.

Kane filed an action in lieu of prerogative writs challenging the Council's decision. Among other things, Kane contended that the decision was tainted by Kates' participation.

The Law Division disagreed with Kane and affirmed the Council's decision.

DECISION: Reversed, and matter remanded.

The Superior Court of New Jersey, Appellate Division, held that the participation of Kates despite his conflict of interest required that the city's decision on Kane's variance requests be vacated and remanded for reconsideration.

The court said that "[t]he essential question" it had to answer was "whether, in the mind of a reasonable citizen fairly acquainted with the facts, this scenario would create an appearance of improper influence." In other words, the question was "whether, in this situation, a municipal decision-maker that receives advice, directly or indirectly, from an attorney with a conflict of interest, and that allows the attorney to participate in a Council meeting at which he should not even have been present, taints its resulting decision."

The court answered that question in the affirmative. Here, Skyline was the objector, and Skyline's former attorney was the Council's attorney. The court found "[t]hat scenario would give any reasonable citizen cause for concern."

The court noted that an attorney having such a conflict must "withdraw completely from representing both the municipality ... and the private client with respect to such matter." Here, "Kates should have been absolutely and completely screened from this application," said the court. "No advice with his name on it should have gone to the Council Kates should not have been in the room when the Council was voting on the resolution, and he certainly should not have given any advice about it, procedural or otherwise. ... Finally, Kates should not have signed the resolution."

Taking all of Kates' participation together, the court concluded that the Council's resolution on Kane's variance requests must be vacated and the matter remanded to the Council for reconsideration *ab initio* (i.e., from the beginning).

See also: *In re A. and B.*, 44 N.J. 331, 209 A.2d 101, 17 A.L.R.3d 827 (1965).

See also: *Randolph v. City of Brigantine Planning Bd.*, 405 N.J. Super. 215, 963 A.2d 1224 (App. Div. 2009).

Notice—Landowner Challenges City's Published Notice of Public Hearings on Adoptions of Ordinances

Landowner says notices should have identified new zones being created

Citation: *Rockaway Shoprite Associates, Inc. v. City of Linden*, 2011 WL 5515222 (N.J. Super. Ct. App. Div. 2011)

NEW JERSEY (11/14/11)—This case addresses the issue of the sufficiency of a published notice for a public hearing on the adoption of an ordinance and an amendatory ordinance that rezoned 47.5 acres in a city.

The Background/Facts: Linden Development, LLC purchased a 105-acre parcel of property in the city of Linden (the "City"). The parcel was the site of a former General Motors ("GM") assembly plant. The parcel was zoned heavy industrial and light industrial. Linden sought to create a combination of retail and commercial uses, multifamily residential use, and industrial and warehouse uses. Accordingly, Linden sought a change in zoning for 45 acres to allow retail and commercial uses. Linden applied to the City for the zone changes.

Eventually, the city drafted an ordinance, Ordinance 52-71, to implement the proposed zoning changes. The City published in the local newspaper notice of Ordinance 52-71 for public hearing and possible adoption. The notice read in pertinent part: "AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXXI, ZONING, OF AN ORDINANCE ENTITLED 'AN ORDINANCE ADOPTING AND ENACTING THE REVISED GENERAL ORDINANCES OF THE CITY OF LINDEN, 1999 ...'" The notice further stated the block and lot numbers of the site of the proposed zoning. It also noted that the ordinance would amend regulation for the use of the site of the former GM facility.

Ordinance 52-71 was eventually adopted.

After its adoption, the City determined that certain limited revisions were necessary as to the newly created Planned Commercial Development ("PCD") zoning district. The City introduced a new Ordinance 53-10 to enact those revisions. The notice for the public hearing for Ordinance 53-10 did not identify the property affected by the proposed ordinance, but simply read: "AN ORDINANCE TO AMEND ORDINANCE NO. 52-71, ENTITLED 'AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXXI, ZONING', OF AN ORDINANCE ENTITLED 'AN ORDINANCE ADOPTING AND ENACTING REVISED GENERAL ORDINANCE FO THE CITY OF LINDEN, 1999' ...'"

Ordinance 53-10 was eventually adopted.

Rockaway Shoprite Associates, Inc. ("RSA") operated a supermarket near Linden's property. After adoption of Ordinance 53-10, RSA filed a lawsuit against the City and the City Council, seeking reversal of the adop-

tion of the ordinances. Among other things, RSA challenged the ordinances on procedural grounds. RSA maintained that, in accordance with New Jersey statutory law—N.J.S.A. 40:49-2.1—, the notices should have identified more information, including the new zones being created.

Section 40:49-2.1 requires the publication of a notice citing a municipal land use ordinance to contain a “brief summary of the main objectives or provisions of the ordinance.” The statute also requires that amendments to ordinances include “a summary of the objectives or provisions of the amendment or amendments.”

The City, City Council, and Linden as intervenor, maintained that it was sufficient if the notice, as here, identified the property by common name and by block and lot number, and informed the public that the permitted use of the property would change.

The Law Division judge concurred with the latter view. The judge concluded that the public notices for Ordinances 52-71 and 53-10 conformed to statutory requirements.

RSA appealed.

DECISION: Judgment of Law Division reversed.

The Superior Court of New Jersey, Appellate Division, held that the public notices for the ordinances were legally deficient in apprising the public of the substantive changes to the municipality’s zoning effected by the proposed ordinances.

The court stated that the “summary” required by N.J.S.A. 40:49-2.1 must apprise interested readers throughout the municipality of the zoning changes contemplated as well as their nature and import. In other words, notice of proposed changes in the zoning laws “must be reasonably sufficient and adequate to inform the public of the essence and scope of the proposed change.” A mere reference to the objective of the ordinance does not satisfy the statute, said the court. Rather, the notice must alert property owners of the possibility that the proposed amendment may affect the zoning of their properties or nearby properties. The notice must identify the subject property and inform the reader that the ordinance would result in substantive changes to the municipality’s zoning. Thus, at a minimum, New Jersey law requires that published notice of a zoning ordinance creating new zones and uses applicable to an area identify and briefly describe those new zones and uses. It must provide sufficient detail of what is projected to inform the interested public whether to participate or object. It must provide “an accurate description of what the property will be used for” It should “focus on the substantive effect of the amendment”

Here, the court found that the public notice of Ordinance 52-71 “merely advised that the zoning [was] being amended as to the properties identified... .” This general, standardized language “provide[d] no real notice apprising the public of what exactly [was] being proposed.” Indeed, the changes to be effectuated by Ordinance 52-71—including the changing of previous zone boundary lines, changes in allowable uses and densities in the area rezoned, and the creation of new zones that previously did not ex-

ist—were totally absent from the public notice in this case. While the published notice alerted the public that some type of zoning amendment was being considered regarding the GM site, the court found that “nothing therein informed interested persons of the nature or extent of the change or whether it was consequential enough to warrant their attendance at, and participation in, the ensuing public hearing.”

The court found that the notice of amendatory zoning ordinance, Ordinance 53-10, fared no better. It did not alert the public that the amendment involved the former GM site, much less the nature of the zoning changes it was proposing.

The court noted that the notices did not need to be exhaustive or detailed; they only need to reasonably inform of the substance of the proposed changes. At a minimum, the published notices should have identified and summarized the new zones and new uses, concluded the court.

Because the notices were insufficient, the court concluded that the ordinances were invalid.

See also: *Pond Run Watershed Ass'n v. Township of Hamilton Zoning Bd. of Adjustment*, 397 N.J. Super. 335, 937 A.2d 334 (App. Div. 2008).

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: *Cotler v. Township of Pilesgrove*, 393 N.J. Super. 377, 923 A.2d 338 (App. Div. 2007).

See also: *Wolf v. Mayor and Borough Council of Borough of Shrewsbury*, 182 N.J. Super. 289, 440 A.2d 1150 (App. Div. 1981).

Case Note: The City, City Council, and Linden had argued that RSA waived its right to challenge the ordinances because it had attended the public hearing on Ordinance 52-71 and did not then object to the lack of proper notice. The court rejected that argument. The court said that the entire public was entitled to notice in full compliance with N.J.S.A. 40:49-2.1. Further, said the court, the public's entitlement to such notice could not be waived by those individual members of the public who actually attend the improperly noticed public hearing. Failure to provide proper notice deprived the City of jurisdiction and rendered null any subsequent action.

Preemption—Medical Marijuana Dispensary Operator Challenges Municipal Ban on MMDs

Operator argues state statutes preempt municipalities from enacting such bans

Citation: *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc.*, 200 Cal. App. 4th 885, 2011 WL 5386590 (4th Dist. 2011)

CALIFORNIA (11/09/11)—This case addressed the issue of whether state medical marijuana statutes preempt municipal zoning ordinances banning medical marijuana dispensaries.

The Background/Facts: Larry Swerdlow (“Swerdlow”) leased property in the city of Riverside (“Riverside”) on which he operated Inland Empire Patient’s Health and Wellness Center Inc. (the “Center”). The Center was a nonprofit medical marijuana dispensary (“MMD”).

Riverside’s zoning code specifically prohibits MMDs. It also prohibits any use which is prohibited by state and/or federal law. Any violation of Riverside’s municipal code is deemed a public nuisance under the code.

In January 2009, Riverside advised Swerdlow that Riverside’s zoning code prohibited MMDs. Nevertheless, Swerdlow continued to operate the Center.

Riverside then brought a legal action against Swerdlow and others (including the owners of the property and a board member and manager of the Center). Riverside alleged public nuisance, and asked the court to enjoin the Center from operating its MMD in the city.

The trial court found that Riverside could use zoning regulations to prohibit MMDs. It entered an order enjoining the Center from operating its MMD in the city.

The Center appealed. Among other things, the Center argued that, while cities and counties could zone where MMDs may be located, Riverside could not lawfully ban all MMDs from the city. The Center argued that Riverside’s ordinance banning MMDs throughout the city was preempted by state law—specifically, the Compassionate Use Act of 1996 (“CUA”) (Health & Saf. Code § 11362.5) and the Medical Marijuana Program (“MMP”) (§§ 11362.7-11362.83).

DECISION: Affirmed.

The Court of Appeal, Fourth District, Division 2, California, held that local governments, such as Riverside, are not preempted by the CUA and MMP from enacting zoning ordinances banning MMDs. Because Riverside’s ordinance banning MMDs was not preempted by state law, it was valid and enforceable.

The court explained that Riverside’s zoning ordinance banning MMDs would be preempted by state law if it: (1) duplicated state law; (2) contradicted state law; or (3) entered into an area fully occupied by state law, either expressly or by legislative implication.

Here, the court found that Riverside's zoning ordinance regulating MMDs did not "mimic" or duplicate state law; rather, it could be reconciled with the CUA and MMP. This was because Riverside's zoning ordinance differed in scope and substance from the CUA and MMP.

The court explained that the CUA provides limited criminal immunity to medical marijuana users and caregivers for use, cultivation, and possession of medical marijuana. The MMP merely implements the CUA and also provides immunity for those involved in lawful MMDs. Neither the CUA nor the MMP provide individuals with inalienable rights to establish, operate, or use MMDs, nor do they preclude local governments from regulating MMDs through zoning ordinances. The CUA and MMP do not expressly mandate that MMDs shall be permitted within every city and county, nor do they prohibit cities and counties from banning MMDs, said the court.

The Center had argued that Riverside's ordinance banning MMDs was invalid because it was inconsistent with the MMP. The MMP, noted the Center, provides immunity for a nuisance claim arising from a violation of a section of the MMP that encompasses operating an MMD. Because § 11362.775 of the MMP exempts an operator of an MMD from liability for nuisance, the Center argued that Riverside's zoning ordinance, banning MMDs and declaring them a nuisance, was preempted by state law. The court disagreed. It said that although § 11362.775 allowed lawful MMDs, a municipality could limit or prohibit MMDs through zoning regulations and prosecute such violations by bringing a nuisance action and seeking injunctive relief. The MMP provides immunity only as to lawful MMDs. An MMD operating in violation of a zoning ordinance prohibiting MMDs is not lawful. Because the legislature did not expressly prohibit cities from enacting zoning regulations banning MMDs or from bringing a nuisance action enforcing such ordinances, Riverside's zoning ordinance banning MMDs did not duplicate or contradict the CUA and MMP statutes.

The court also found that the CUA and MMP do not fully occupy—either expressly or impliedly—the area of regulating, licensing, and zoning MMDs, to the exclusion of all local law. Neither the CUA nor the MMP address the areas of land use, zoning, and business licensing. Moreover, found the court, the CUA and MMP express "an intent to permit local regulation of MMD's." The CUA expressly provides that it does not "supersede legislation prohibiting a person from engaging in conduct that endangers others." The MMP expressly states that it does not "prevent a city or other local governing body from adopting and enforcing laws consistent with [the MMP]."

The court concluded that because Riverside's ban of MMDs was not preempted by the CUA or MMP, Riverside's prohibition of MMDs in the city through enacting a zoning ordinance banning MMDs, was a lawful method of limiting the use of property by regulating and restricting the location and establishment of MMDs in the city.

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

See also: *Qualified Patients Ass'n v. City of Anaheim*, 187 Cal. App. 4th 734, 115 Cal. Rptr. 3d 89 (4th Dist. 2010), review denied, (Dec. 1, 2010).

Case Note: The Center had also argued that local municipalities cannot enact a total ban on MMDs based solely on federal law preemption. The court agreed, holding that federal preemption of state medical marijuana law is not a valid basis for upholding a city's ordinance banning MMDs.

Zoning News from Around the Nation

IDAHO

The Washington County Planning and Zoning commission has passed a proposed ordinance that would restrict gas and oil company activity. Among other things, the ordinance would require a written agreement that the company will repair any damage, excluding ordinary wear and tear, to the county roadways including bridges, road alignments, culverts, and surfaces. The ordinance also would require general liability insurance of \$10 million for bodily injury; \$20 million for blowouts or explosions; coverage for underground reservoirs, including resources; environmental impairment; and workers' compensation. The ordinance further would require "that the company repair any and all damage to the property caused by the operation within 30 days after the project for that operation is complete. This includes leaks or spills and must be approved by the fire chief."

Source: *The Argus Observer*; www.argusobserver.com

MICHIGAN

Fruitport Township has proposed an ordinance that would restrict medical marijuana growing. Under the ordinance, "marijuana can be grown and dispensed by a registered primary caregiver to up to five patients for medicinal purposes." The ordinance restricts medical marijuana home occupation to single-family dwellings only. It also "calls for only one primary caregiver per household, and the operation must register with the police and fire departments and be more than 1,000 feet from any school or day-care facility, to ensure compliance with federal Drug-Free School Zone requirements."

Source: *Muskegon Chronicle*; www.mlive.com

State Senator Virgil Smith has introduced legislation that would exempt Detroit from a provision in the state's Right to Farm Act, which restricts municipalities from exercising regulatory authority over agriculture. Reportedly, "[t]he Michigan Farm Bureau is fighting any changes to the Right to Farm Act, not because they are opposed to urban farming, but because the law was designed to protect farmers engaged in accepted practices

from the whims—or sensitive noses—of local residents and their elected representatives.” Smith counters that Detroit “needs the ability to zone farms and fine-tune regulations because urban areas are not an appropriate venue for all types of agriculture.”

Source: *MLive.com*

PENNSYLVANIA

On November 17, the State House of Representatives approved a bill to enact an impact fee on drillers in the Marcellus Shale. “House Bill 1950 permits counties impacted by drilling in the Marcellus Shale to enact an impact fee with a sliding scale structure. The fee would be split with 75 percent going to the county enacting the fee and 25 percent to the state for infrastructure improvements, environmental protection and public health and safety initiatives. A bill passed in the Senate Nov. 15 imposing an impact fee on natural gas drillers would split revenues 55 percent to impacted municipalities and 45 percent to statewide infrastructure and environmental programs.”

Source: *The Times Herald*; www.timesherald.com

ZONING PRACTICE

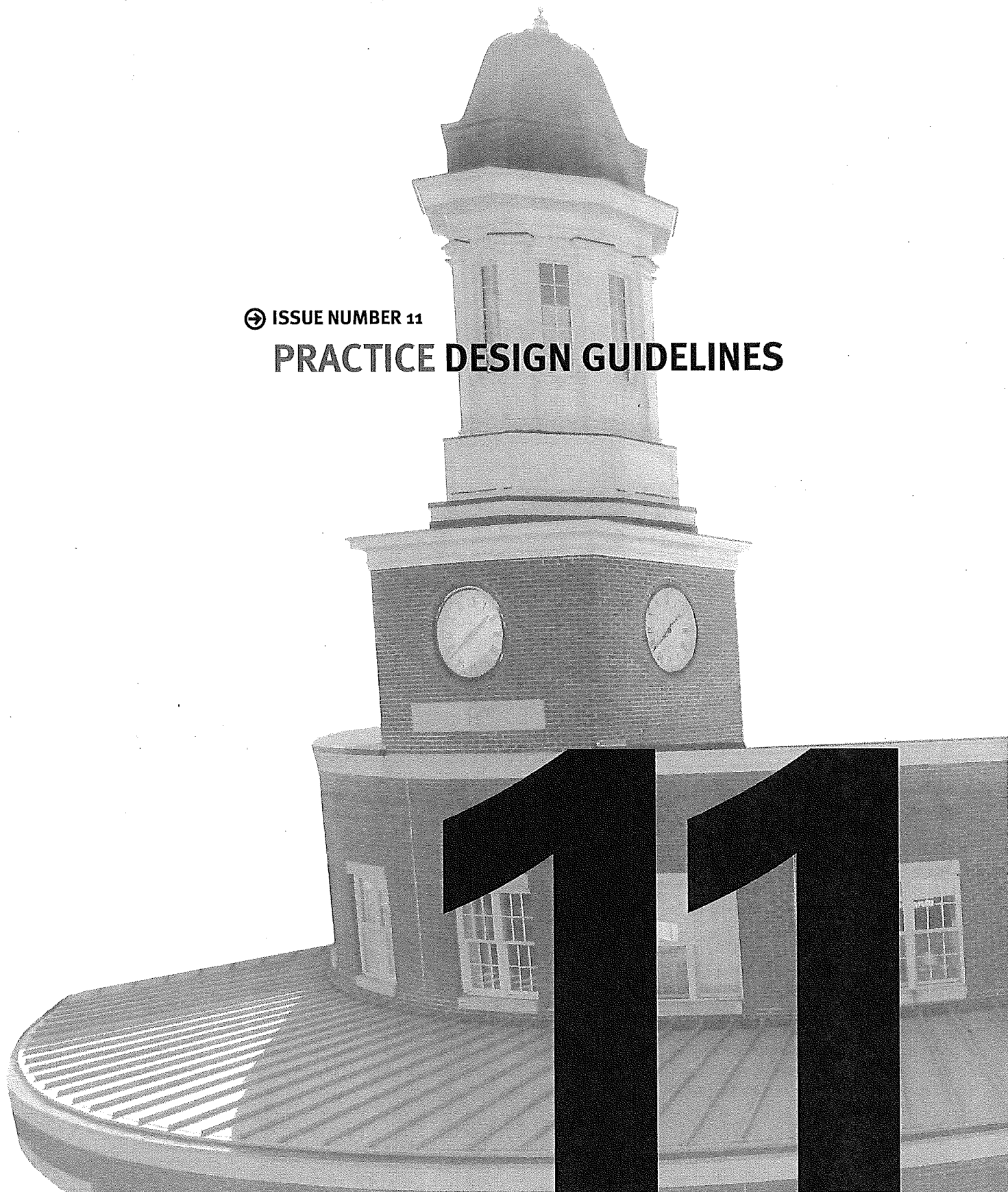
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PRACTICE DESIGN GUIDELINES



Controlling Strip Development with Design Guidelines

By Ross A. Moldoff, AICP

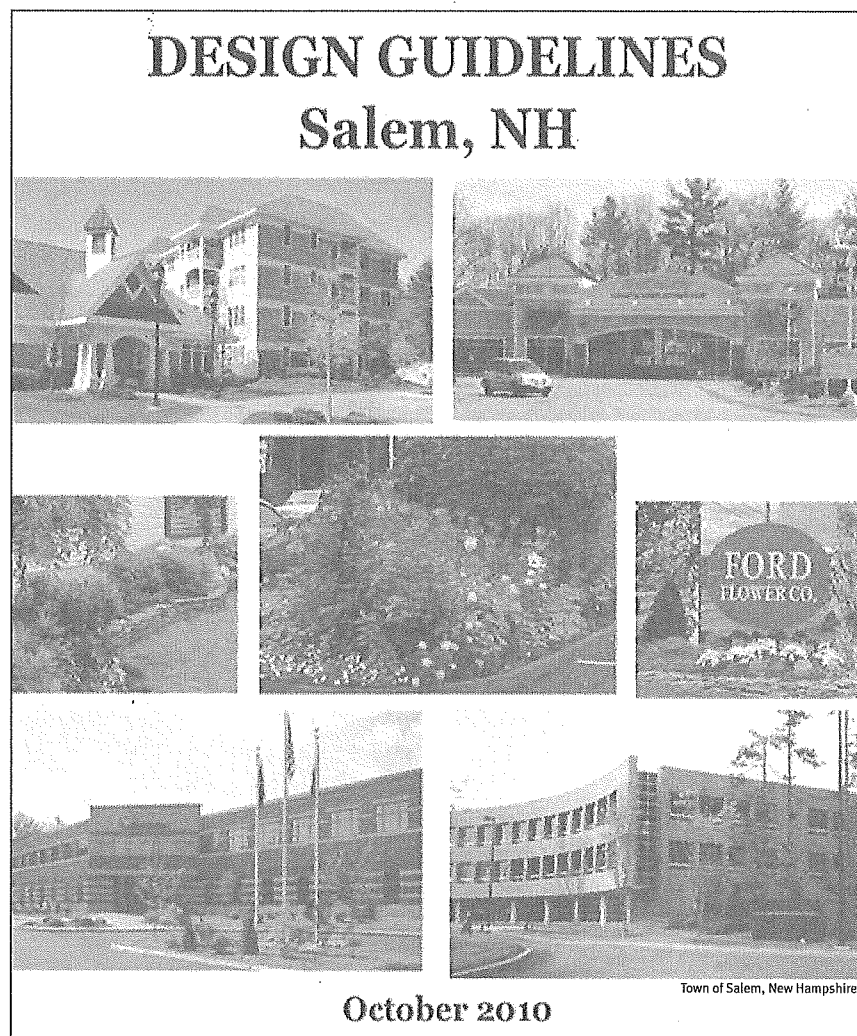
Design guidelines are a relatively new tool for controlling the appearance of development.

Many communities have regulations for the architectural design of retail or big box buildings, along with requirements for landscaping, signage, lighting, and other similar topics. Design guidelines take these regulations a step further by focusing on illustrations and photographs to clarify what the desired type of development looks like. Pictures eliminate much of the guesswork about what a regulation means. A visual depiction of a regulation is much easier for staff, planning board members, and applicants to understand. The great benefit of design guidelines is to allow all parties involved in the preparation or review of a development proposal to see what is required or preferred with photographs and illustrations, thereby reducing wrong interpretations that can lead to costly delays in the approval process.

The following article is based on a presentation at the American Planning Association's National Planning Conference in Boston in April 2011. It highlights the experiences of Salem, New Hampshire, and Cape Cod, Massachusetts, using design guidelines to control strip development.

SALEM, NEW HAMPSHIRE'S ROUTE 28 STRIP

Salem, New Hampshire, is a bedroom community of 30,000 people located 32 miles north of Boston. Salem is home to Rockingham Racetrack (horse racing), Canobie Lake Park (amusement park), and a six-mile-long commercial strip along NH Route 28 known as South and North Broadway. Strip development as used here is defined as a linear pattern of retail businesses and other uses along a road corridor characterized by one-story commercial buildings surrounded by parking lots, with a



- ③ The purpose of Salem's new design guidelines is to guide the appearance of new projects, to illustrate and expand current design regulations, and to help applicants understand what the town wants. The document includes chapters on site planning, architecture, landscaping, lighting, and signage.

ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of November to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. Ross Moldoff, AICP, and Sarah Korjeff 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

Ross Moldoff, AICP, has been the planning director for Salem, New Hampshire, for 28 years and provides staff support for the Planning Board and Conservation Commission. Moldoff has extensive experience in subdivision and site plan permitting as well as writing and enforcing regulations and zoning ordinances. He has taught courses on Controlling Strip Development, Managing Residential Growth, and Evaluating Development Proposals for the University of New Hampshire Continuing Education Program. He holds a bachelor's degree in Economics and Environmental Studies from Colby College and a master's degree in Regional Planning from the University of Massachusetts.

Sarah Korjeff is a planner and historic preservation specialist at the Cape Cod Commission, a regional planning and regulatory agency serving the 15 towns in Barnstable County, Massachusetts. She works with communities to develop bylaws and design guidelines that protect the region's distinctive character, referencing historic architectural forms and past development patterns. Korjeff coordinated production of the Cape Cod Commission's *Designing the Future to Honor the Past*, and was a principal author of the commission's latest design guidelines publication, *Contextual Design on Cape Cod: Design Guidelines for Large-Scale Development*. She holds a bachelor's degree in History from Middlebury College and a master's degree in Historic Preservation from the University of Pennsylvania.

significant amount of pavement visible from the roadway, multiple driveway openings, large signs, and a dependency on automobiles for access and circulation.

Salem's Route 28 strip contains more than 300 retail businesses, including big box retailers, several large shopping centers, and dozens of smaller strip malls and individual stores. Just off the strip sits the 1.1-million-square-foot Mall at Rockingham Park, the largest enclosed mall in New Hampshire. Since 1984 more than 3.6 million square feet of retail space has been approved in Salem.

The strip in Salem was originally developed in the 1950s and 1960s with little regard for design. Retailers wanted to be in Salem because of its location and the lack of a sales tax in New Hampshire. The town wanted tax revenue to support the services needed for a growing residential population. Property owners wanted to develop sites at the lowest possible cost. The dominant development style along the strip was cement-block and sheet-metal buildings with flat roofs, massive parking lots, little if any landscaping, giant signs, and multiple curb cuts.

PREVIOUS ATTEMPTS TO IMPROVE THE STRIP

Over the years we tried many different techniques to control strip development and improve the aesthetic character along

Route 28, including rezoning commercial lots to noncommercial districts, limiting the size of retail stores, reducing the allowable size and height of signs, requiring more landscaping and buffers, imposing impact fees, and regulating traffic management and architectural design. Although all these regulations improved the quality of new development, many applicants and planning board members did not understand what the town actually wanted. The design regulations were simply words in a long document filled with many other requirements. Various people interpreted the text in different ways. It was not unusual to have applicants negotiate specific design features with the planning board at public meetings, which usually took lots of time and left both sides uncomfortable with the result. I began to realize that the text-based regulations were not good enough to deal with complex design issues.

GOOD EXAMPLES OF DESIGN GUIDELINES

For many years, I felt design guidelines were the missing link in our quest to improve the aesthetic character of Route 28. Guidelines use photographs and drawings to illustrate the desired form of development. One of the early design guideline documents that influenced my thinking was *Designing the Future to Honor the Past: Design Guidelines for Cape Cod*, prepared by the Cape Cod Commission in

1994. It uses photographs, drawings, and text to present detailed guidelines for open spaces, roadways, architecture, adaptive reuse, infill construction, landscaping, accessibility, parking, outdoor lighting, and signage. A unique feature of these guidelines is a model case study for commercial strip development with sequenced illustrations of existing conditions and phased redevelopment.

Another document I consulted was *Design Guidelines for the Route One Corridor in Falmouth, Maine*, produced by Terrence DeWan and Associates in 1997. This booklet is about 50 pages long and contains large (4-inch by 4.5-inch) photographs with brief explanations. Guidelines for architectural design and signage are presented as brief bullet-points. The format of the document and the simplicity of the messages make it very easy to understand.

INTRODUCING DESIGN GUIDELINES TO SALEM

In 2010 the Town of Salem received a grant from the New Hampshire Department of Transportation to prepare design guidelines as part of the Community Technical Assistance Program for the Interstate Route 93 expansion project.

We started this project with a meeting to get input from the businesses and property owners who would be affected by

design guidelines, such as engineers and architects. We purposely held the meeting before putting any guidelines together. Our consultant made a general presentation with questions for the audience about design concepts that might be acceptable for Salem. We found that improving the character of the Route 28 strip was a shared goal of most of the participants, but there were concerns about adding costs to comply with new design guidelines and overregulating signs in particular.

Armed with feedback from this meeting, our consultant prepared a document using many photographs of local sites and

lines were adopted by the planning board in March 2011 as part of the town's site plan review regulations. The guidelines apply to new development as well as expansions or redevelopment of existing buildings and sites. They are applied to each development that requires site plan approval from the planning board, but can be waived if the board finds they are not applicable due to project size.

One critical decision was to adopt the guidelines as voluntary recommendations, not mandatory regulations. The planning board felt that the level of detail in the guidelines would take some time for everyone to

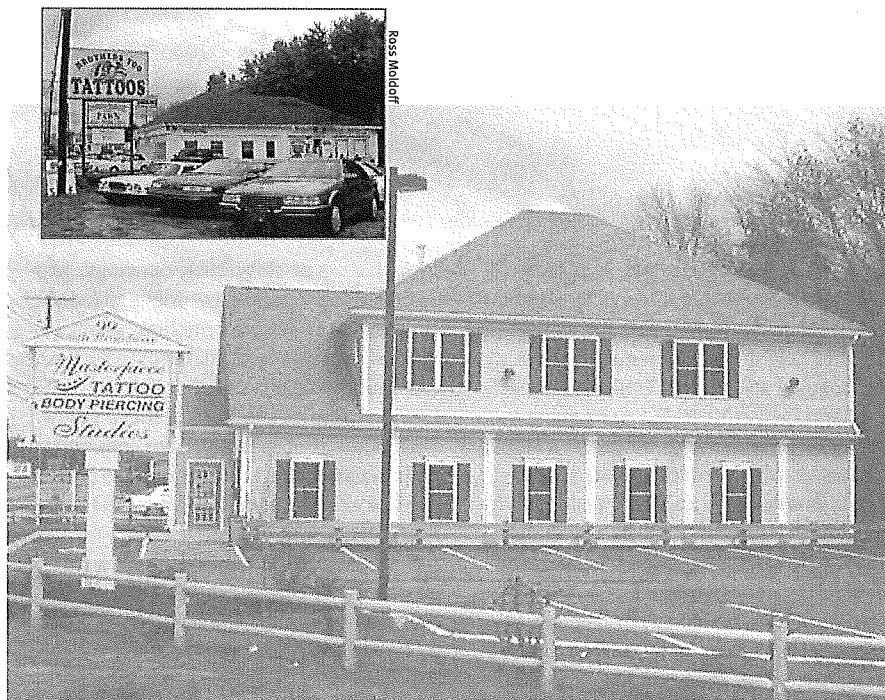
get used to, and they wanted to gauge the community's experience with them for a few years before making them mandatory.

LESSONS

Adopting design guidelines in a pro-development community with an existing commercial corridor is no easy task. In Salem, it helped to invite the development community to participate in the process at an early stage, not just to comment on a finished document. Keeping the public informed by posting draft versions of the guidelines on the town website and televising all discussions on them created a climate of openness. We were fortunate to hire an experienced consultant who was able to smoothly deal with concerns after having done so many times before in other communities. We were able to overcome any remaining objections by adopting the guidelines as voluntary. I also prepared a checklist to summarize the 90-page document in just a few pages, which made it easier to convey to property owners.

Several new projects have been reviewed under the design guidelines so far, and the experience has been positive. The planning board requested architectural upgrades and increased size of plantings in accordance with the guidelines. I expect that, as they are used more often, both the development community and the planning board will find the photographs in the guidelines to be beneficial and easy to use. Ultimately, I have no doubt this tool will help us better control the appearance of new development in Salem.

- ➡ Newer projects demonstrate what the town was trying to accomplish with design guidelines, including more attractive buildings and improved signage and landscaping.



➡ These before-and-after photos demonstrate the power of aesthetic improvements to change a retail strip.

buildings. We posted everything on the town website and, after several revisions and review by the planning board and myself, a final document was produced.

This document, *Design Guidelines for Salem, New Hampshire*, includes chapters on site planning, architecture, landscaping, lighting, and signage. It covers all new commercial (retail, office, and industrial) and multifamily residential development projects. Each chapter contains goals, objectives, and guidelines, which take the form of brief sentences with accompanying photographs. There are about 250 separate guidelines in 90 pages. The design guide-



Design Guidelines in Barnstable County, Massachusetts

By Sarah Korjeff

The Cape Cod Commission has used design guidelines since the early 1990s.

As a regional planning and regulatory agency—one of only two in Massachusetts—we identified the need for design guidelines both to direct development in the local communities and also to guide the design of projects undergoing review by our own agency.

DESIGNING THE FUTURE TO HONOR THE PAST

Designing the Future to Honor the Past: Design Guidelines for Cape Cod was our first effort. Because the Cape Cod Commission is a regional agency, we first developed design guidelines to apply to the region as a whole. That could be challenging given the variation in neighborhood character throughout the Cape's 15 towns, so we focused on the distinctive, traditional characteristics that were most common across those communities—the things that make the Cape unique and draw people there. Our initial publication included guidelines ranging from big-picture issues like site design down to more specific details like signage. We incorporated graphics as much as possible to help interpret the guidelines for the reader. The underlying principle of the publication was always to guide development to be consistent with the Cape's traditional character.

We developed *Designing the Future to Honor the Past* with help of a consultant and with numerous public meetings and opportunities for comment. The design guidelines

were adopted as a technical bulletin by the Cape Cod Commission and are used to illustrate how to comply with minimum performance standards in the commission's review of large-scale developments. In addition, the guidelines are used informally by several town planning boards, town planners, and architectural review boards in their site plan review and other local development reviews.

In one town, Yarmouth, the planning board formally adopted the design manual for guidance during project reviews in their commercial business district.

The manual, which won an Outstanding Planning Award from the Massachusetts Chapter of APA in 1995, has two key sections that make it more likely to be implemented. The first is a section titled "Case Studies," where we explored four typical development scenarios from the region: commercial strip redevelopment, compact residential development, historic village centers, and large-scale commercial development. We then applied the guidelines to each development scenario and illustrated how they could affect design there.

The strip redevelopment scenario was perhaps the most complicated, and it begins by acknowledging key problems with existing conditions: curb-cut conflicts, lack of consistent architecture, residential isolation, and visual clutter. The manual then attempts to address these issues in phases: first, laying the groundwork by creating a plan for the

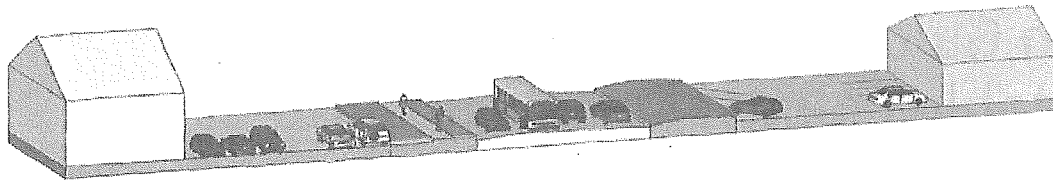
area and amending zoning, then focusing on "Green Intervention" by consolidating curb cuts, installing sidewalks and street trees, and providing open space. The third phase introduces housing to the area through back-lot development and makes connections to surrounding residential neighborhoods. Finally, the fourth phase looks at infill construction along the street edge, as well as introducing public transportation and improving signage.

The second key section of the manual is titled "Making it Happen," which helps facilitate the changes discussed in the case studies. It acknowledges that zoning changes are not always easy to accomplish but recognizes they are a critical piece in guiding commercial zones to follow a more traditional surrounding context.

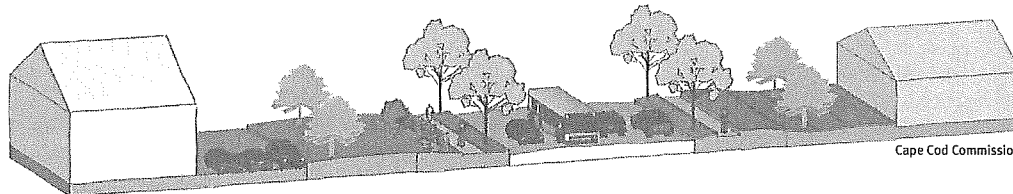
In strip commercial areas we have worked with towns individually and discussed those zoning changes that are needed to support the design guidelines—things like adjusting building setbacks, requiring building transparency, adopting mixed use zoning, and amending parking location requirements. But "Making it Happen" goes beyond zoning. It addresses the need to work with property owners to identify incentives that will guide development to desired locations and in the desired forms. It covers options like streamlined review processes, transfer of development rights, and density



➡ As shown in this sketch, lower roof heights on attached masses reduce the apparent scale of the building.



⊕ This cross section shows existing development setbacks along Route 132 (above) and proposed changes following the design guidelines (below). In the future cross section, the taller building on the left remains where it is and parking is shielded by a 30-foot landscape buffer on the property. The shorter building on the right is moved closer to the street, and landscaping fills the front setback area.



Cape Cod Commission

bonuses. It also acknowledges the need for local investment in infrastructure improvements, whether they are public transit, pedestrian and bicycle facilities, or design assistance for facade improvements.

CONTEXTUAL DESIGN ON CAPE COD

After using *Designing the Future to Honor the Past* for 10 years, we found that historic districts and village centers were often subject to design review or design standards, but outlying areas in the region were not. Larger commercial zones, mostly located outside village centers, were seeing development of chain stores and other large commercial buildings. Towns were requesting assistance in how to review these structures, and it became apparent that further guidance was needed in the design of large-scale buildings. That led to development of the commission's second design manual, *Contextual Design on Cape Cod: Design Guidelines for Large Scale Development*, which won an Outstanding Planning Award from the Massachusetts Chapter of APA in 2009.

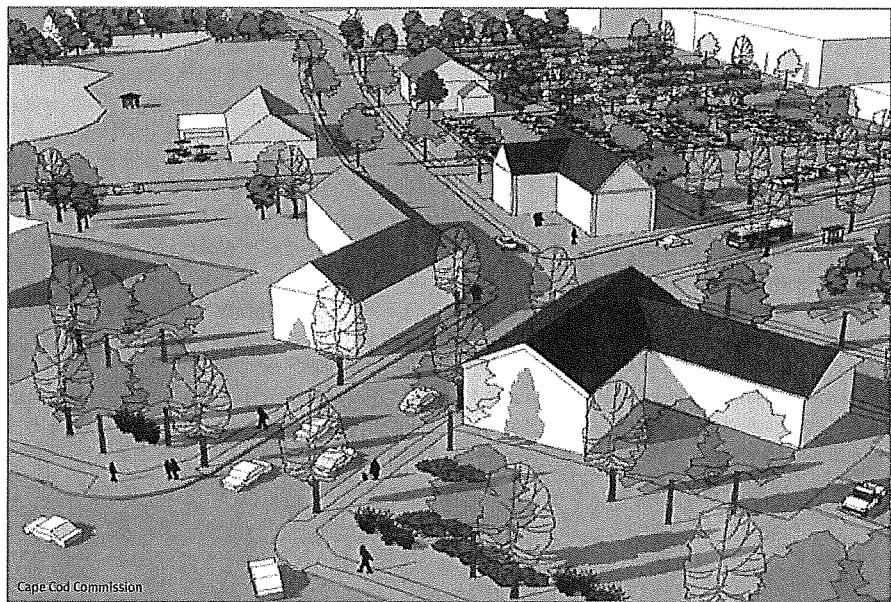
Contextual Design on Cape Cod focuses on large buildings, which the commission sees most in its development reviews and which arguably have the greatest visual impact on region. As with the first design manual, this was developed on a regional scale in an effort to provide a starting point for all towns and for the commission. Unlike the first manual, we developed it in-house with a group of architects that served as an advisory panel. In usage, it is very similar to the first manual. The commission has adopted it as another technical bulletin that provides guidance in how to comply with our regula-

tions, and we are encouraging communities to adopt it too. The Yarmouth Planning Board has formally adopted a slightly modified version as a minimum requirement in certain commercial districts, but other towns are using it informally to guide their review.

The importance of contextual design—guiding development to be consistent with the Cape's traditional character—is explained in this manual. It focuses on two main concerns: ways to site large buildings and ways to break down large building

masses into smaller elements that are more consistent with the region's traditional scale. In looking at siting strategies, the guidelines address two different scenarios—siting buildings in centers and siting buildings in outlying areas—acknowledging that different techniques are appropriate for each situation.

In strip development areas, it is necessary to determine whether an area should be treated as center or as an outlying area. If a strip area is adjacent to a village center



⊕ This rendering of proposed development, looking north from the intersection of Route 28 and the Cape Cod Mall rear entrance, illustrates how the area could look with enhanced landscape buffers along Route 28 and a series of pedestrian-scale buildings fronting on a revised internal road/sidewalk network. The buildings are set close to the street and oriented to take advantage of visual access to the nearby ponds and green space.

or established neighborhood, it may be best to follow the historic patterns. Defining the street edge is perhaps one of the most important strategies, illustrated by moving buildings closer to the street, using landscape features to continue the building line, and using street trees to further define the street edge. Relocating buildings or entire parking lots may not be possible, so the guidelines offer alternative means of meeting the design goals through buffers and landscaping, always in an effort to maintain the traditional character of the region.

In the "Building Strategies" section, the manual explores various ways to break down large building masses, whether it is several smaller buildings grouped around a small courtyard or green or a series of smaller, attached massings. Articulating buildings by incorporating changes in building setback, height, roofline, and facades is a key element of this section. It also discusses the concept of bringing down the building edges with smaller attached masses that are more pedestrian oriented and scaled.

Both siting strategies and building strategies are illustrated with a combination of photographs and simple figures. Using graphics is critical to helping people understand the intent of the guidelines, and also to making the document user friendly.

APPLYING DESIGN GUIDELINES ALONG ROUTE 132

After producing the two regional design manuals, it has been a welcome challenge to apply these guidelines to specific areas in the region. The Route 132 commercial corridor in Hyannis, developed originally in the 1970s, is a good illustration of the challenges surrounding a commercial strip. The town and property owners want to change the character of the corridor to make it safer for pedestrians and other users and also to make it more attractive for businesses and their users.

We began our work by looking at the length of the corridor; cataloging its users; and studying building footprints, development patterns, and roadway characteristics. In doing that we were able to define discreet segments that could be recognized for their unique character. We defined the distinct areas on a map and created different goals and separate design guidelines for each area so the corridor would seem less like a long, consistent strip. Breaking it down into smaller parts also seemed to make unique development patterns more visible and potential solutions more manageable to implement.

A main feature of the Route 132 report was establishing a scale of building at the street frontage—essentially changing the relationship between the building and the street—either by moving parking to the rear of buildings or by establishing a wide, landscaped buffer. We found that offering two possible solutions is a useful tool that recognizes that it's not always possible to relocate a building in the short term. Those options—moving the building forward or improving landscaping—are then illustrated with simple graphics.

Another main feature of the report was the focus on streetscape design. For each segment of the corridor we identified ways to define the road edge with consistent landscape treatments and pedestrian amenities, and presented them in illustrated design guidelines. Street trees and landscape buffers were proposed in some areas; consistent building setbacks in others. Hard-edge buffers such as fences or low walls were proposed in places where parking is visible or buildings are set too far back to create a sense of enclosure.

We also identified areas where development could be added—either to provide a pedestrian focus that connects existing activity areas to residential areas, to act as a shield for large parking lots, or to draw attention to underappreciated resources. As one example, we suggested additional pedestrian-scale buildings at the main access to one of the malls to provide linkage to a nearby residential neighborhood, to take advantage of hidden ponds, and to screen mall buildings and parking. We developed illustrations and graphics using SketchUp to help people understand how the area could look with these changes and to help sell the idea to various property owners and community officials.

FINAL THOUGHTS

In developing guidelines for specific areas, it's important to recognize the potential shrinking retail market and also competition from other areas of the community that are involved in revitalization efforts—village centers, main streets, etc. Guidelines should make an effort to differentiate these areas, both in design and in activities or uses, in an effort to help them all succeed. But perhaps most important is to get guidelines out there. It is hard to influence change without them. To see the full design guidelines and reports discussed in this article, visit the Cape Cod Commission website at www.capecodcommission.org.

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Cover image: Mashpee Commons, on Cape Cod, is built in the style of traditional New England town centers. It includes a mix of businesses and housing. Paul Blackmore/*Cape Cod Times*; design concept by Lisa Barton.

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HOW DOES YOUR COMMUNITY
GUIDE THE DESIGN OF
COMMERCIAL CORRIDORS?

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ZONING PRACTICE

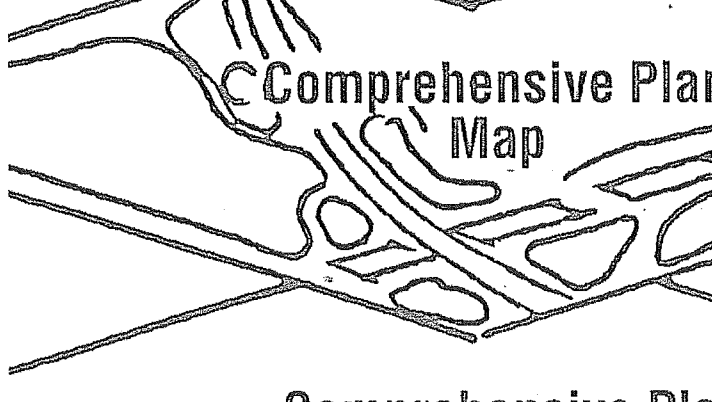
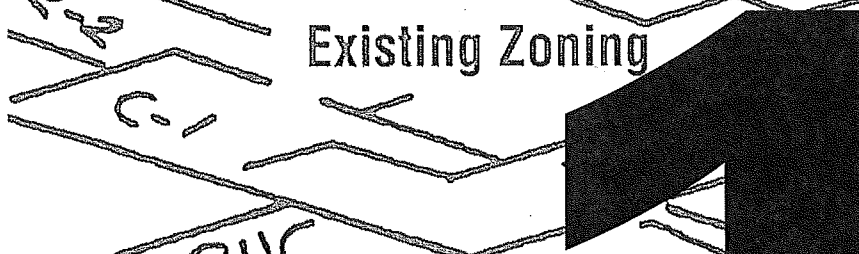
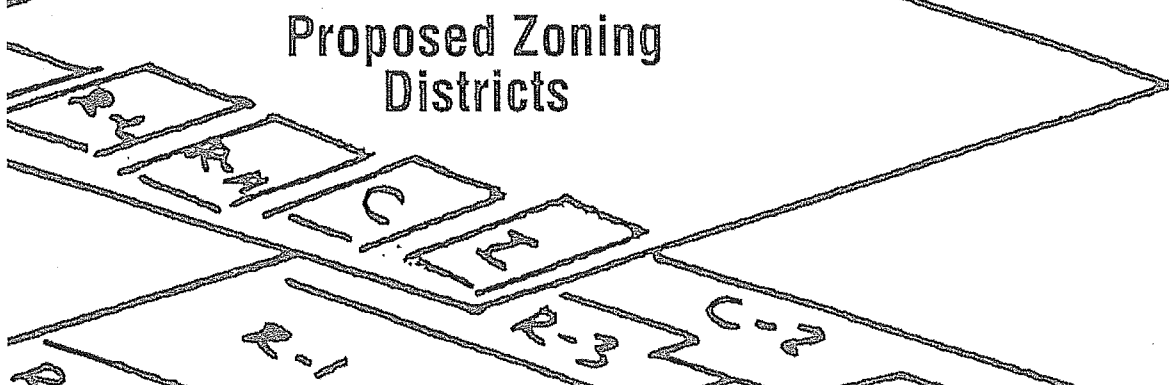
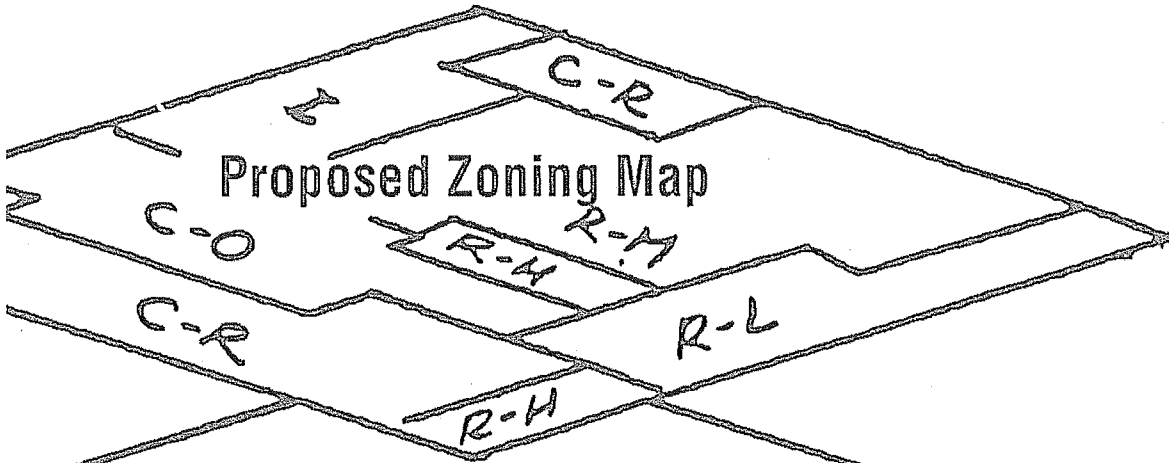
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PRACTICE REMAPPING



12

Mapping Principles for Rezonings

By Arista Strungys, AICP

When a municipality takes on comprehensive zoning reform, rewriting the text is only half the story.

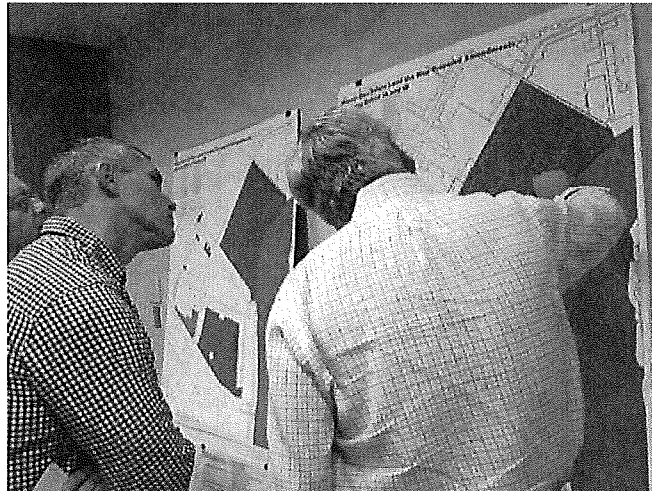
In order to implement redevelopment goals—particularly those identified in a comprehensive plan—and ensure that the new zoning matches the reality of the existing physical environment, a revision of the zoning map is also needed. This task can be daunting, as zoning map revisions typically pique the interest of various property owners, including those that may not have been involved with the text revision process. To make this process more manageable, the following mapping principles can serve as both a guide for planners to make the process less intimidating and as a way to explain the rationale behind map changes to the larger constituency.

WHY DOES THE ZONING TEXT COME FIRST?

It is typical in a zoning ordinance update to make revisions to the text before undertaking any remapping. The purpose of this is to make necessary changes to the procedures and content of regulations so that it reflects current policy, especially as articulated in recently adopted plans. Key changes include adjustments to existing or drafting of new zoning districts. Once district regulations are drafted, tested, and approved—and principles for mapping are in place—the remapping process can begin.

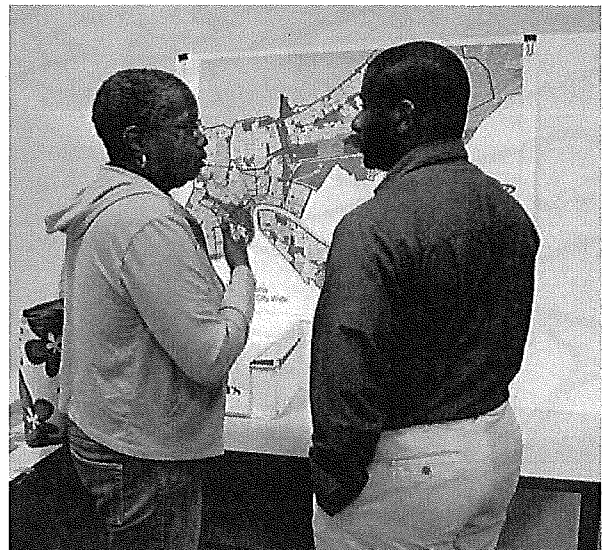
MAPPING PRINCIPLES

In order to identify where to map the districts proposed by the new zoning ordinance, the municipality must first agree on principles for mapping decisions. These principles need to reflect existing development realities, applicable land-use policies, and tenets of good urban planning. When evaluation of the zoning map begins,



Jeanne Nathan

☞ Public forums provide an opportunity for citizens to review proposed zoning maps and ask questions to gain a better understanding of the changes.



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Go online during the month of December to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. Arista Strungys, AICP, 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 Author

Arista Strungys, AICP, is a principal consultant at Camiros, Ltd. Her area of expertise is zoning and development regulations, and she has worked with communities across the country in drafting development regulations. She is experienced in all types of regulatory techniques, including traditional controls, hybrid and form-based coding, design guidelines, and sustainable development.

the following suggested principles are intended help decision makers evaluate potential zoning changes. Typically, much of the current zoning map will not change drastically during remapping. Many of the current zoning districts will be retained, with only minor modifications to bulk, setback, and design standards, to better address existing development patterns and conditions.

Maintain current zoning districts in their present locations where controls are appropriate for current development patterns and there is no desire for change. Many of the current zoning districts likely provide the desired level of control regarding the type of development, form, and design character of the area, as well as the uses desired. While there may be some text adjustments to fine-tune the district, the current mapped location of these districts serves the development goals of the long-term future and, therefore, should not be adjusted.

Often, as part of the fine-tuning process, district names are changed to reflect modern zoning conventions. For example, older ordinances may have named districts sequentially by letter (A, B, C, etc.). An ordinance revision will usually rename these new districts by major land-use category, such as R1 for residential districts, C1 for commercial districts, and so forth. In this case, the remapping should present these renamed districts as "equivalenced" districts to ease concerns over changes. In equivalencing, the new zoning districts are equated to the old districts (e.g., A District

= R1 District). The map should be redrawn to illustrate the equivalenced districts, including a legend that shows these equivalences. This will illustrate the areas where zoning will not change in content, only name, and will put many community members' minds at ease.

dential areas, but development proceeded in accordance with the density established by the lots of record. Thus, many properties in these areas are nonconforming in regard to lot area, lot width, or some other

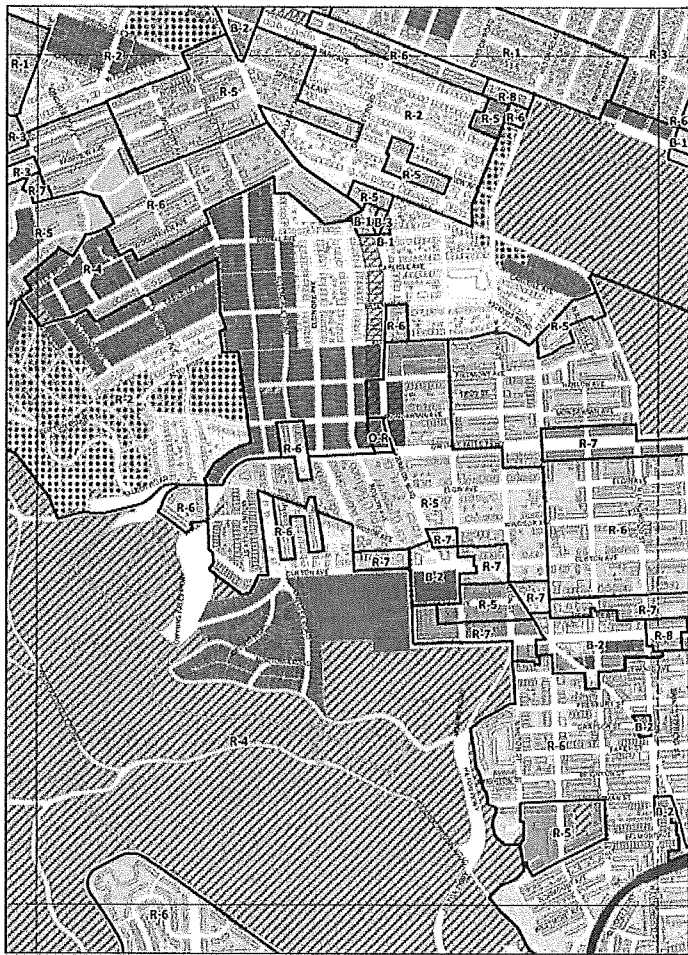
Newer mapping and data-gathering techniques such as GIS make it possible to remap areas to bring them into conformity, either by amending criteria to make them more responsive to existing conditions, mapping to a different district, or by creating a new district.

Remap areas of the municipality to reduce nonconformities.

Certain areas of a municipality may have been inappropriately mapped or developed differently over time than currently zoned, creating nonconformities. One of the goals of a comprehensive zoning revision, for both text and map, is to reduce nonconformities, which confirms the integrity of the zoning ordinance and map, creates predictability and consistency in the application of the ordinance, and reduces the need for variances.

Certain areas may have been mapped so that they do not actually reflect the details of development in that area. In some communities, an older land-use policy may have tried to reduce the density of resi-

factor affecting density. Newer mapping and data-gathering techniques such as GIS have allowed for a more rigorous and cost-effective assessment of these types of conditions. This makes it possible to remap areas to bring them into conformity, either by amending the criteria within existing zoning districts to make them more responsive to existing conditions, mapping to a different district, or by creating a new district that reflects such conditions. This can also be the case with nonconforming uses. An established commercial area may be zoned residential, making the commercial uses nonconforming. A rezoning to the appropriate commercial district would allow these areas to continue as a business district.



⊕ Highlighting the areas of change and graying out areas where no rezonings are proposed (as shown here) can clearly communicate where district changes are planned.

Remap applicable portions of the municipality to implement development policies.

A comprehensive plan often contains numerous land-use policies that describe how areas should redevelop. In areas where policies describe a plan for redevelopment that differs from what is permitted now, new districts may be appropriate. The following mapping principles will assist in identifying how these zoning map changes should occur.

1. The process should begin by identifying key areas where change is desired, noting the relationship of current zoning to the proposed land-use or redevelopment policy. If the current zoning is able to accommodate such redevelopment, then there is no need for the zoning map to change. If the plan does not contain specific land-use recommendations, or if the recommendations

are too vague to be mapped, additional area-based planning may be necessary. It is essential to understand the type of use and form desired in order to identify appropriate zoning.

2. Where current zoning districts do not achieve or accommodate the desired change, the most appropriate new districts for such land-use or redevelopment policy should be identified. In some cases, remapping may be a mix of zoning districts.

3. To start the mapping process, the general location of new districts should be placed on the zoning map. While a plan may provide some general guidance regarding location, eventually the zoning map will need to be refined to specifically identify the parcels to which these districts will be applied. Comparison of the existing land-use pattern with the land-use directions provided or implied by the plan will help to define and

refine the boundaries of the re-map area. Studies of aerial photography or site inspection should also be conducted.

4. Finally, two key implications of remapping should be considered. The first is the creation of nonconformities. The second is the timing related to achieving the redevelopment potential. Not all zoning map changes should occur immediately upon the adoption of new zoning text. In some cases, where there is a policy or desire to have an area redevelop differently over time, it may not be appropriate to change the zoning immediately because the market and other development conditions may not be in place to bring about that change. Remapping is based on redevelopment potential, including factors outside of the zoning ordinance. If current or anticipated market conditions are not yet in place, remapping could lead to extensive nonconformities and discourage reinvestment and maintenance, thus creating more, rather than less, blight conditions. In this case a zoning change is better reserved for a later time when that redevelopment potential begins to be demonstrated by requests for rezoning.

Apply policy-specific districts when remapping to resolve specific conditions or achieve specific purposes.

There may be a need to draft new districts to achieve specific purposes; consequently, these require special considerations in their mapping. Examples of some of these types of districts include transit-oriented development, mixed use, campus districts, and overlay districts.

Transit-Oriented Development Districts:

Transit-oriented development is a specific type of mixed use development that increases density and allows for a mix of pedestrian-oriented commercial and residential uses around transit stops in order to encourage the use of transit and reduce reliance on the automobile. Generally, the accepted planning principle for TOD is to consider the area within a quarter-mile radius around the transit stop as the geography for a TOD district. However, when applied to the zoning map, a TOD district cannot be applied as that circle. Instead, mapping should use the quarter-mile rule as a reference point to assess the character of existing development in that area.

A TOD district should be mapped in those areas that can accommodate higher density and a mix of uses. In more urban areas, where a natural mix of commercial

and residential uses may exist, it is generally easier to apply the TOD district within a general quarter-mile radius. In more suburban areas, mapping of the district will need to take into account the existing conditions. For example, where stable residential neighborhoods abut the transit stop, the district should “jog” along the boundaries of these existing neighborhoods. In these cases, it may be mapped only along corridors adjacent to the transit station.

Mixed Use Districts: Many land-use plans acknowledge the benefits of mixed use development and contain numerous policies that encourage such redevelopment. These can also range from districts that mix residential and commercial uses to an industrial and commercial mix. In response, a zoning ordinance will need the proper districts to foster this type of development. Because mixed use development allows for a variety of uses, the creation of nonconformities is less of an issue during remapping.

First, existing mixed use areas should be identified. Remapping these areas to a mixed use district will encourage continued investment by allowing such development by-right. Areas where abutting districts have begun to blend together should also be considered for mixed use zoning. This

frequently occurs, for example, when a commercial district abuts a light industrial district and the two types of uses coexist peacefully. In these cases, mixed use development often serves as a good transition between districts.

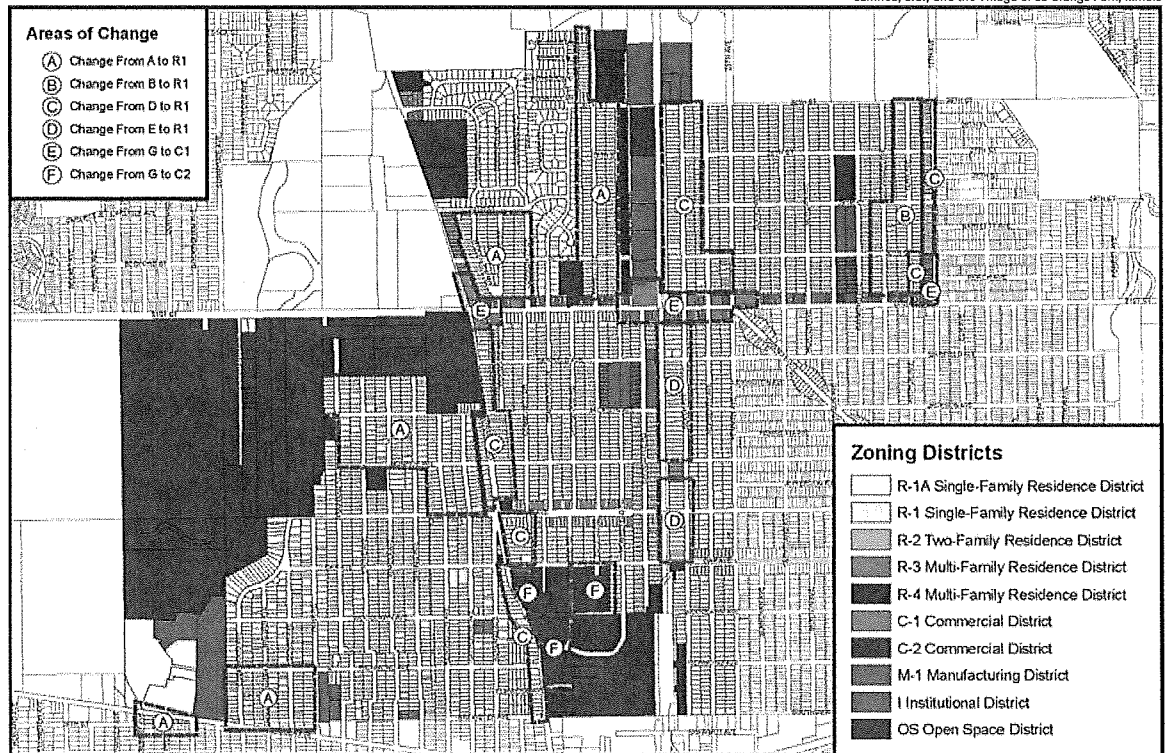
Also, mixed use development does not have to be encouraged only by remapping to one specific district. In some cases, a mixed use environment is created by careful mapping of different residential and nonresidential districts. For example, in certain areas there may be neighborhoods of residential development that directly abut a small-scale, local commercial corridor, creating a mixed use environment where residents walk to the local grocery store. In these instances, the mixed use environment is created by mapping the commercial corridor as a local commercial district and the residential area as residential.

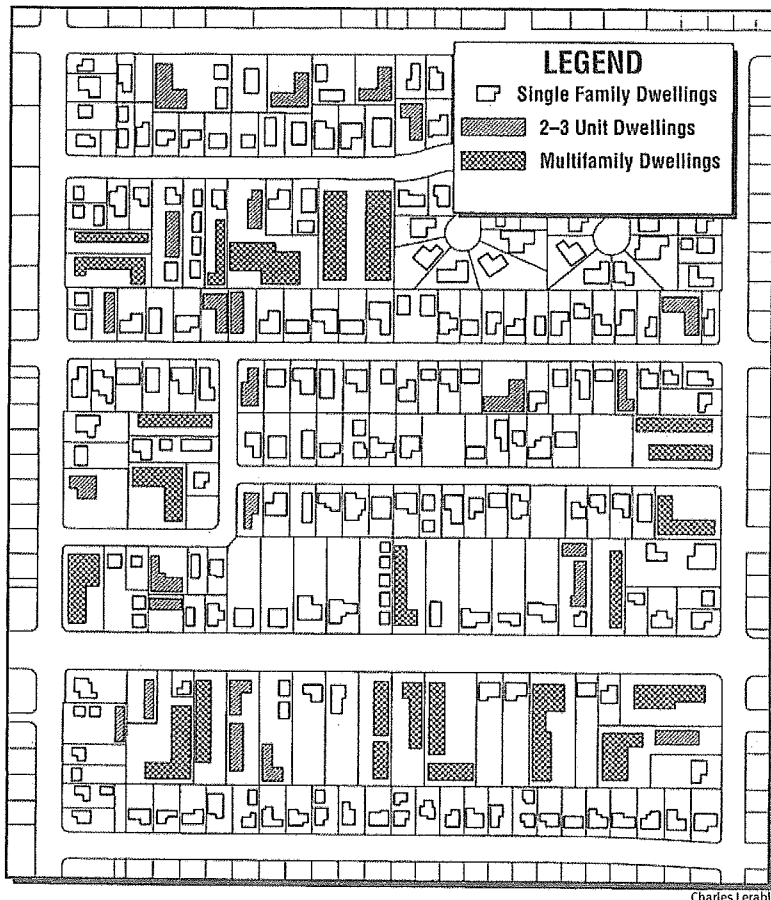
Campus Districts: When a community has significant institutional uses, such as a university or major medical center, a common zoning technique is to create a campus district for the use. Because of the numerous activities and uses that take place within such a large institution, a special zoning district can make regulation easier for both the institution and the municipality. This approach gives the institution more

flexibility in development and frees the municipality from having to process special uses or variances for simple changes to the campus. Rezoning to these districts should be coterminous with the boundaries of the campus and only permitted for properties owned by the institution. If additional property is purchased after the district is mapped, the map will need to be amended to incorporate that area.

Overlay Districts: In older ordinances overlay districts have frequently functioned as a way to address immediate concerns in specific geographic areas. In many ways, they are a fast-and-dirty solution to a hot-button issue. However, as part of a comprehensive zoning update, overlay districts should be carefully evaluated for their usefulness. While the intent of an overlay district is important to a neighborhood this can get lost in the myriad regulations that now apply to a zoning lot once overlay districts are in place. This makes the ordinance difficult to use and interpret. The first step is to see if the regulations within the overlay district can be consolidated into one or more base districts or perhaps made into a new base district. Then the area should be rezoned to the appropriate base district, whether a revised district or a newly drafted one.

➔ Showing the equivalences on zoning maps helps the public understand that district renamings do not necessarily affect district regulations.





➔ Mapping new district boundaries can be especially challenging in areas with existing development of different use types or densities.

On the other hand, a true overlay district is one that regulates certain specific elements common to a geographic area and responds to the uniqueness of that area, which is appropriately zoned with a number of different districts. Environmental issues are one type of condition that are often best addressed through an overlay district, as the overlay districts impose restrictions that promote environmental sensitivity but allow the area to develop as the appropriate mix of districts and intensities. While overlay districts are a useful zoning tool, their application should be limited so that they specifically address a particular issue that applies over a larger geography. From a mapping perspective, the specific elements that the overlay district is trying to regulate should guide the location of the district's boundaries.

Remap existing planned unit developments and other large-scale developments. Many municipalities have used planned unit developments as a way to accommodate new development within the framework

of an outdated ordinance. The goal of a comprehensive zoning update is to create a development environment where modern development types can take place by-right, without having to go through a series of approvals. Once a new ordinance is adopted, older adopted planned unit developments will remain in place, so it is good policy to try to integrate the requirements of planned unit developments into the zoning ordinance. This will allow each PUD to be evaluated against the underlying zoning, and remapping can occur where new districts better align with the intent of the land-use and design requirements contained within the planned unit development ordinance. This can encourage the repeal of PUDs, where appropriate, as the approved conditions contained within these regulations can be continued under zoning.

As a general rule, if the owner of a planned unit development is in compliance with all requirements and conditions, the PUD cannot be repealed by the municipality because it is a special approval granted to

the property owner. Therefore, these approvals will remain in place unless a change is requested by the owner. For planned unit developments, typically three options are available to the owner:

1. If the new districts and regulations match the PUD regulations, making the PUD unnecessary, that planned unit development can be repealed at the owner's request. This offers a benefit to the property owner, because any changes to the development that comply with the zoning ordinance can occur without special approvals.
2. If the owner would like to retain the PUD but link to the new zoning ordinance, the planned unit development can be repealed and replaced with a new PUD that links to the new zoning ordinance.
3. Finally, the PUD can be maintained as is, in which case the municipality must keep the original zoning ordinance on file as a reference point for the planned unit development regulations, since it is tied to zoning regulations in place at the time of approval.

Ensure consistency with the future land-use plan.

Some municipalities are required to maintain consistency with an future adopted land-use plan. Even when consistency is not required, general alignment with the future land-use plan is recommended so that land-use policies reinforce zoning regulations. The following principles are useful for ensuring consistency:

1. Consistency requires synchronization between land-use categories and zoning districts. It is important to understand that land-use categories are, by nature, more general than zoning districts. An apt analogy is that any land-use category is generally a basket that holds a variety of zoning districts. For example, a future land-use map will identify areas as single-family residential; however, those areas may contain a number of single-family districts of different densities. It will be important, once an area is identified as single-family, to determine exactly which single-family district is appropriate.
2. Properties should be assigned a zoning district that best fits the current use of the property unless the future land-use plan indicates an alternative land use. In this case, the municipality may choose to either rezone the lot now or wait until a rezoning is more appropriate. In some cases, because a comprehensive rezoning looks at a municipality on a parcel level, this more specific

analysis may reveal that changes to the future land-use map, rather than the zoning map, are needed to create consistency between land use and zoning.

3. If a lot is vacant, the lot should be assigned a zoning district similar to adjacent lots unless the future land-use plan states that an alternative land use is more appropriate.

4. While the chosen zoning district should be consistent with the future land-use map, it is important to catalog nonconforming uses during the zoning revision process. Documenting these uses may reveal a common development pattern not recognized in the current zoning ordinance and not accounted for in the more general land-use categories of the plan. For example, in many older cities residential neighborhoods routinely contained corner stores. However, ordinances adopted 20 or 30 years ago often made these uses nonconforming with the goal of preserving residential character. Now that a growing number of municipalities recognize the value of mixed use development at a variety of scales, corner stores are often seen as a valuable component of predominantly residential neighborhoods. If, during the mapping process, it is discovered that certain areas have a significant number of nonconforming corner stores, it is a signal that the zoning text should be reevaluated to allow them as special uses or that a special district may need to be drafted to address them.

It is important to keep in mind that zoning occurs in the realm of current development realities and property rights. While a future land-use plan typically projects a vision forward 20 years, zoning has to deal with current conditions on the ground. Therefore, unless consistency is required by city charter or state statute, most zoning maps are not carbon copies of a future land-use map, and zoning changes to align with such plan are undertaken incrementally.

WHERE DO YOU DRAW THE LINES?

As a municipality undertakes a rezoning, it is important to keep in mind where district boundaries are drawn. As a basic rule, district boundary lines should be drawn along existing streets and lot lines. This prevents split-lot zoning, where one lot is given two zoning designations.

However, even with a future land-use plan as a guide, drawing the boundaries between districts can be complicated. For example, a future land-use plan will designate a corridor as commercial but typically

does not make this designation on a parcel-by-parcel basis but rather as a broad stroke of red along a commercial street. Pedestrian-oriented commercial corridors often abut lower-density residential districts. If a municipality is lucky enough to have alleys, these are natural boundary lines between districts. However, many municipalities have not developed with alleys, so drawing the boundary becomes trickier. In this example, there are two concerns that must be balanced. First, sufficient land area must be remapped to encourage commercial development. Typically, for commercial development, some zoning in depth is required, which may require rezoning residential lots located behind the commercial lots that front the corridor. Therefore, a prime consideration in mapping is determining if and where commercial zoning should intrude upon established residential zoning patterns.

This brings up the second concern: if the reduction of residential zoning may result in nonconformities when existing residential areas are placed within a commercial district. Specific site analysis will need to be undertaken to determine which replacement zone works best for areas that are currently zoned residential but need to change to accommodate the implementation of this land-use policy. The result may be a new district that allows both commercial and residential uses.

Similarly, with many municipalities becoming more comfortable with form-based code techniques, regulating plans have become a common part of ordinances. Often, these regulating plans designate various controls, such as height or use, by street frontage. These designations should cover the entire lot, especially on corner lots. Again, this is to prevent layering contradictory controls on the same lot.

I THOUGHT THE TEXT WAS DONE?

Going back and revising text once mapping has started is not uncommon. The mapping process is just another way to test the drafted districts and often you will find that the text needs further tweaking to make the districts work realistically. Other times, you may discover that some of the districts that have been retained are no longer needed. Because of this, there are often numerous iterations of both the zoning map and text. It is important to remember to continue to show the public the reasoning behind the changes between the drafts of the text and map so that they can follow the logic behind the revisions.

THE END RESULT

A comprehensive zoning map revision is no easy task. It requires balancing a number of factors that include addressing current development patterns, implementing goals for future redevelopment, and maintaining sensitivity to the concerns of property owners. However, by moving forward in a transparent fashion that lays out the reasons for changes, remains consistent in the application of guiding principles, and is flexible enough to accommodate new findings during analysis, this balance can be achieved. In the end, striking this balance will result in a new zoning ordinance and map that create a predictable development environment for property owners across the city.

Communities must consider a host of factors when remapping, including existing land uses, approved development, comprehensive plan policies, the future land-use map, existing zoning districts, and proposed new districts. Jo Evans; cover design by Lisa Barton.

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HOW DOES YOUR COMMUNITY
PUT ZONING ON THE MAP?

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