

City of Ramsey
Agenda
Regular Planning Commission
Thursday May 3, 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 meeting minutes dated April 5, 2012
- 5. Public Hearing/Commission Business**
 1. PUBLIC HEARING: Consider Request for a Conditional Use Permit to Process Demolition Concrete in the E-2 Employment District and to Stockpile Sand/Soil on a Property in the E-2 Employment District at 6651 141st Ave NW; Case of Sauter and Sons, Inc.
 2. PUBLIC HEARING: Consider Request for Variance to Platting Requirements at 7040 173rd Ave NW; Case of Makowsky Family Farm, LLC
 3. Staff Update
 4. Zoning Bulletins
- 6. Commission/Staff Input**
- 7. Adjournment**

Regular Planning Commission

4. 1.

Meeting Date: 05/03/2012

By: JoAnn Shaw, Community Development

Information

Title:

Approve the Following Planning Commission Meeting Minutes:

Planning Commission meeting minutes dated April 5, 2012

Background:

n/a

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

Planning Commission 04.05.12

Form Review

| Inbox | Reviewed By | Date |
|-----------------------------|--------------------|---------------------------------|
| Tim Gladhill | Tim Gladhill | 04/26/2012 09:33 AM |
| Form Started By: JoAnn Shaw | | Started On: 04/26/2012 09:27 AM |
| | | Final Approval Date: 04/26/2012 |

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

The Ramsey Planning Commission conducted a regular meeting on Thursday, April 5, 2012, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Chairperson Gary Levine
 Commissioner Ralph Brauer
 Commissioner Joseph Field
 Commissioner Rob Schiller
 Commissioner Gary Van Scoy

Members Absent: Commissioner Randy Bauer

Also Present: Senior Planner Tim Gladhill
 Associate Planner/Environmental Coordinator Chris Anderson
 Planning Consultant Tina Goodroad

CALL TO ORDER

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

CITIZEN INPUT

None.

APPROVAL OF AGENDA

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

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

APPROVE PLANNING COMMISSION MINUTES

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

- 1) Planning Commission public hearing and regular meeting minutes dated March 1, 2012

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

NOTE CITY COUNCIL MINUTES

The City Council minutes were noted.

PUBLIC HEARINGS/COMMISSION BUSINESS

Case #1: Review Draft Zoning Amendments Related to Implementation of the 2030 Comprehensive Plan

Presentation

Senior Planner Gladhill presented the staff report.

Commission Business

Planning Consultant Goodroad reviewed the zoning amendments as they relate to the 2030 Comprehensive Plan. She stated the goal or approach is to make the zoning ordinance clearer and concise. The updates strive to meet economic development objectives of balancing regulations while also seeking ways to reduce costs. The amendments will restructure and consolidate the existing ordinances. She continued reviewing the amendments by Section.

Planning Consultant Goodroad stated the Comprehensive Plan separated parks from other Public/Quasi-Public designations. This district will give the City the ability to rezone park land to this new park district. She continued one new item this section allows for is minimal advertising signs to be installed at ball fields under a master lease agreement with the City. This will also be reviewed with the Park and Recreation Commission at their next meeting.

Senior Planner Gladhill stated this would open up discussion regarding the sign clarification. It allows for more than what we allow for today.

Commissioner Van Scoy stated that part of the discussion we have had regarding signs is the inability to control the content. Can we regulate the content if we allow signs at a Park where there are juveniles?

Planning Consultant Goodroad stated that would be one of the details that would need to be worked out with the City Attorney.

Commissioner Schiller stated it is a great way to pay for bleachers, score boards and to keep the fields updated. Commissioner Brauer agreed.

Commissioner Van Scoy stated he would not be in favor of allowing signage at the parks because of the legal issues of content based signs and he is not in favor of advertising to juveniles.

Planning Consultant Goodroad stated the next section, Sec. 117.116A, Special Requirements and Performance Standards in All Employment and Office Park Districts, is also new. She stated this section is designed to serve as a consolidated section for building and site design standards for all Employment and Office Park districts.

Commissioner Field stated he likes that the expectations are laid out on the front end and the applicants are not surprised. He asked if this came from Staff of what they have observed on areas that can be improved for the consumer, or has there been a process of getting feedback from those consumers who inquire with the City.

Senior Planner Gladhill stated one of Council's strategic planning goals is to streamline the review process. Staff and Council have received feedback from Developers and they want to know the expectations up front.

Discussion ensued regarding landscaping requirements.

Planning Consultant Goodroad reviewed Section 117.116B, E-3 Employment (Office Park) District.

Commissioners discussed whether heavy manufacturing and outside storage should be prohibited in this zoning district.

Planning Consultant Goodroad reviewed Section 117.144A, Special Requirements and Performance Standards for B-1, B-2 and B-3 Zoning Districts.

Planning Consultant Goodroad reviewed Section 117.355 Residential Off-street Parking and Section 117.356 Commercial and Industrial Development Off-street Parking and Loading. She stated that off-street parking has been revised to include broader guidance and requirements for minimum parking requirements in residential districts, including different types of multi-family and senior housing. Parking needs vary between independent and assisted or nursing home facilities. She continued with landscaping requirements for the commercial and industrial districts.

Discussion ensued regarding vision clearance.

Planning Consultant Goodroad stated in an attempt to reduce excessive parking and outdoor storage, one of the alternatives is to allow some of the specific users such as big box retailers, larger warehouse and office users to maximize parking thresholds.

Commissioner Brauer stated he liked the ordinance overall, it has flexibility and yet has perimeters.

Case #2: Staff Update

The Staff Update was noted.

Case #3: Zoning Bulletins

Zoning Bulletins were noted.

COMMISSION/STAFF INPUT

Representative Jim Abeler stated Ramsey is doing great and let the Commissioners know he is happy to help Ramsey in any way he can. He thanked them for their time and efforts they give to the City of Ramsey.

Chairperson Levine stated they appreciate Representative Abeler's work and thanked him for representing Ramsey.

Commissioner Brauer stated he wanted to make a special mention of Northstar and thanked Representative Abeler for his efforts in getting the rail station.

Representative Abeler stated that it was a great collaboration, many people worked on getting the station in Ramsey.

ADJOURNMENT

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

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

The regular meeting of the Planning Commission adjourned at 8:31 p.m.

Respectfully submitted,

Tim Gladhill
Senior Planner

ATTEST:

JoAnn Shaw
Planning Division Secretary

Regular Planning Commission

5. 1.

Meeting Date: 05/03/2012

By: Chris Anderson, Community
Development

Information

Title:

PUBLIC HEARING: Consider Request for a Conditional Use Permit to Process Demolition Concrete in the E-2 Employment District and to Stockpile Sand/Soil on a Property in the E-2 Employment District at 6651 141st Ave NW; Case of Sauter and Sons, Inc.

Background:

Tom Sauter of Sauter and Sons, Inc., owns the property located at 6651 141st Ave NW and the adjacent vacant parcel to the west (14191 Ebony St NW). Sauter and Sons, Inc., is in the excavation and demolition business and is currently stockpiling demolition concrete and asphalt on the property at 6651 141st Ave NW and has multiple stockpiles of sand/soil on the vacant parcel to the west. Staff became aware of the stockpiled concrete and asphalt and informed Mr. Sauter that the demolition concrete and asphalt are considered solid waste (confirmed by the MPCA) and therefore requires a conditional use permit. Section 117-427 of City Code requires a conditional use permit for storage, collection, transportation, treatment, utilization, processing, transfer, intermediate disposal and final disposal of solid waste, recyclable materials, or processed waste product. Mr. Sauter has submitted an application for a conditional use permit to process demolition concrete and asphalt into an aggregate to be used on other job sites. Through this application, Staff saw an opportunity to address the outside storage (sand/soil stockpiles) on the adjacent vacant parcel simultaneously.

Notification:

In accordance with State Statute and City Code, Staff attempted to notify all property owners within 1,000 feet of the Subject Property of the Public Hearing via Standard US Mail. A Notice of Public Hearing was also published in the Anoka County Union.

Observations:

The property at 6651 141st Ave NW is zoned E-2 Employment District and is approximately ten (10) acres in size. The vacant parcel is zoned PUD and is approximately four (4) acres. The surrounding properties are also zoned E-2 Employment District, with the exception of the two parcels to the east of 6651 141st Ave NW, which are zoned E-1 Employment District and PUD. The applicant has stated that they own approximately twenty-one (21) acres of land in this area including the two properties in question as well as a couple other buildings.

6651 141st Ave NW

Sauter and Sons, Inc., is in the excavation and demolition business. Mr. Sauter is requesting the conditional use permit to process demolition concrete and asphalt from their job sites into an aggregate that can be reused for rock entrances to construction sites and as base material for parking lots. Mr. Sauter has stated that this would not be open to the public to dispose of used concrete and asphalt. Mr. Sauter has stated that he is pursuing this in an attempt to be more competitive in the construction field.

Mr. Sauter has stated that the crushing activity would be conducted one time per year. It would take one (1) day to set up the equipment and three (3) days to crush the material. Crushing would occur between the hours of 7:00am and 5:00pm. The processed material would also be stockpiled on the property for use by Sauter and Sons, Inc. on their various job sites.

According to the site plan submitted, the stockpiled demolition concrete and asphalt would be confined to an area that is ninety (90) feet wide by 200 feet deep. The demolition concrete and asphalt stockpile is adjacent to an

existing stockpile of soil. After the material is processed, it would be stockpiled on the other side of the soil stockpile and would also be confined to an area ninety (90) feet wide by 200 feet deep. The existing soil stockpile appears to have been approved as part of the original site plan for the property in 2001. The current site plan indicates that both the demolition concrete and asphalt stockpile and the stockpile of processed concrete and asphalt would be limited to a height of fourteen (14) feet. The total area of the three (3) stockpiles would be approximately one and a half (1.5) acres.

There are some existing, mature deciduous trees scattered along the eastern boundary and some young evergreen trees along that same boundary as well as south of the stockpile areas. The applicant has also indicated that twelve (12) new evergreens would be installed along the western boundary. No screening is proposed along the northern property line. None of the existing or proposed evergreens have reached maturity and therefore, provide only limited screening of the stockpiles.

Staff has contacted the Minnesota Pollution Control Agency (MPCA) regarding this proposed use and was informed that no solid waste permit through the state would be required because, as outlined in MN Rules 7035.2860, there is a Standing Beneficial Use Determination for uncontaminated crushed concrete used as a substitute for conventional aggregate. However, monitoring the material for contaminated concrete and/or asphalt, such as concrete with lead based paint, would be the responsibility of the City and/or County or both. Other permits may also be required, such as a Nonmetallic Mining and Associated Activities permit through the state. Staff has instructed the applicant to contact the MPCA directly to determine what, if any, additional permits are necessary for the concrete/asphalt crushing operation.

14191 Ebony St NW

Sauter and Sons, Inc., is utilizing this vacant parcel, which they own, for stockpiling of soil. There are multiple piles of soil on this property. Since this is a vacant parcel, the outside storage would be considered the primary use of the property. While the property is zoned PUD, the underlying zoning would be E-2 Employment District and within this zoning district, open and outside storage as a principal use requires a conditional use permit.

Stockpiling of soil on this vacant parcel, with certain conditions in place, may be a reasonable use of the property. Again, the owner of the parcel is in the excavation business and this property is directly adjacent to headquarters for Sauter and Sons, Inc. The main concern with this use would be erosion control to prevent sediment from entering the retention pond and storm sewer system. If this use is approved, it would incorporate a site plan showing location and size of stockpiles and any expansion, whether it be a building or additional stockpiles, would require an amendment to the conditional use permit.

Funding Source:

The Applicant is responsible for all City costs incurred in administering and enforcing this Permit.

Staff Recommendation:

Over the past ten to fifteen (10-15) years, the City has expended approximately \$2.3 million on land acquisition, public improvements, site improvements and demolition costs to eliminate blighted conditions in this area as part of the development of Gateway North Industrial Park No. 5. In 2003, this same request for processing demolition concrete was considered by the Planning Commission and due to several concerns, including the investment made in redeveloping this area, lack of adequate screening, uncertainty of environmental aspects associated with the demolition materials and the activity not being compatible with development in the industrial park, was recommended for denial. However, within the vicinity of the subject property are two similar uses, both operating with conditional use permits, and both include stockpiling and processing materials. If sufficient conditions are included in the permit, which may also include erosion control measures for the stockpiles and possibly berming along the western property boundary for screening purposes, this general area may be a logical fit for this type of use. The Applicant shall be required to submit a drainage, grading, and erosion control plan to ensure that the regional stormwater system is not negatively impacted by the proposed use.

Given the nature of the use and concerns raised with the previous review for this same use, the Planning

Commission may want to consider amending the Zoning Code to permit these types of uses as an Interim Use, if the City has the ability to do so under Minnesota Statutes. Many communities use the interim use permit process authorized under Minnesota Statute for permitting these types of uses, as these types of uses may be acceptable in the near term, but may not long term. This is true for the City's grading, filling, and mining process as interim use for mining operations.

Committee Action:

6651 141st Ave NW

Motion to recommend that City Council adopt findings of fact relating to the request for a Conditional Use Permit for processing demolition concrete and asphalt in the E-2 Employment District.

-and-

Motion to recommend that City Council adopt Resolution # _____ approving the request for a Conditional Use Permit for processing demolition concrete and asphalt on the property at 6651 141st Ave NW and declaring the terms of the permit, based on findings of fact.

-or-

Motion to recommend that City Council adopt Resolution # _____ denying the request for a Conditional Use Permit for processing demolition concrete and asphalt on the property at 6651 141st Ave NW, based on findings of fact.

14191 Ebony St NW

Motion to recommend that City Council adopt findings of fact relating to the request for a Conditional Use Permit for open and outside storage as the principal use in the E-2 Employment District.

-and-

Motion to recommend that City Council adopt Resolution # _____ approving the request for a Conditional Use Permit for open and outside storage as a principal use on the property at 14191 Ebony St NW and declaring the terms of the permit, based on findings of fact.

-or-

Motion to recommend that City Council adopt Resolution # _____ denying the request for a Conditional Use Permit for open and outside storage as a principal use on the property at 14191 Ebony St NW, based on findings of fact.

Attachments

Site Location Map

Site Plan

Summary from Applicant

Aerial View of Site

Photos of 6651 141st Ave NW

Photos of 14191 Ebony St NW

Proposed Findings of Fact for 6651 141st Ave NW

Proposed Conditional Use Permit for 6651 141st Ave NW

Resolution to Deny CUP for 6651 141st Ave NW

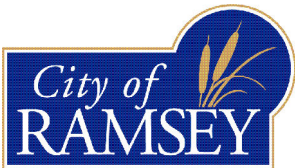
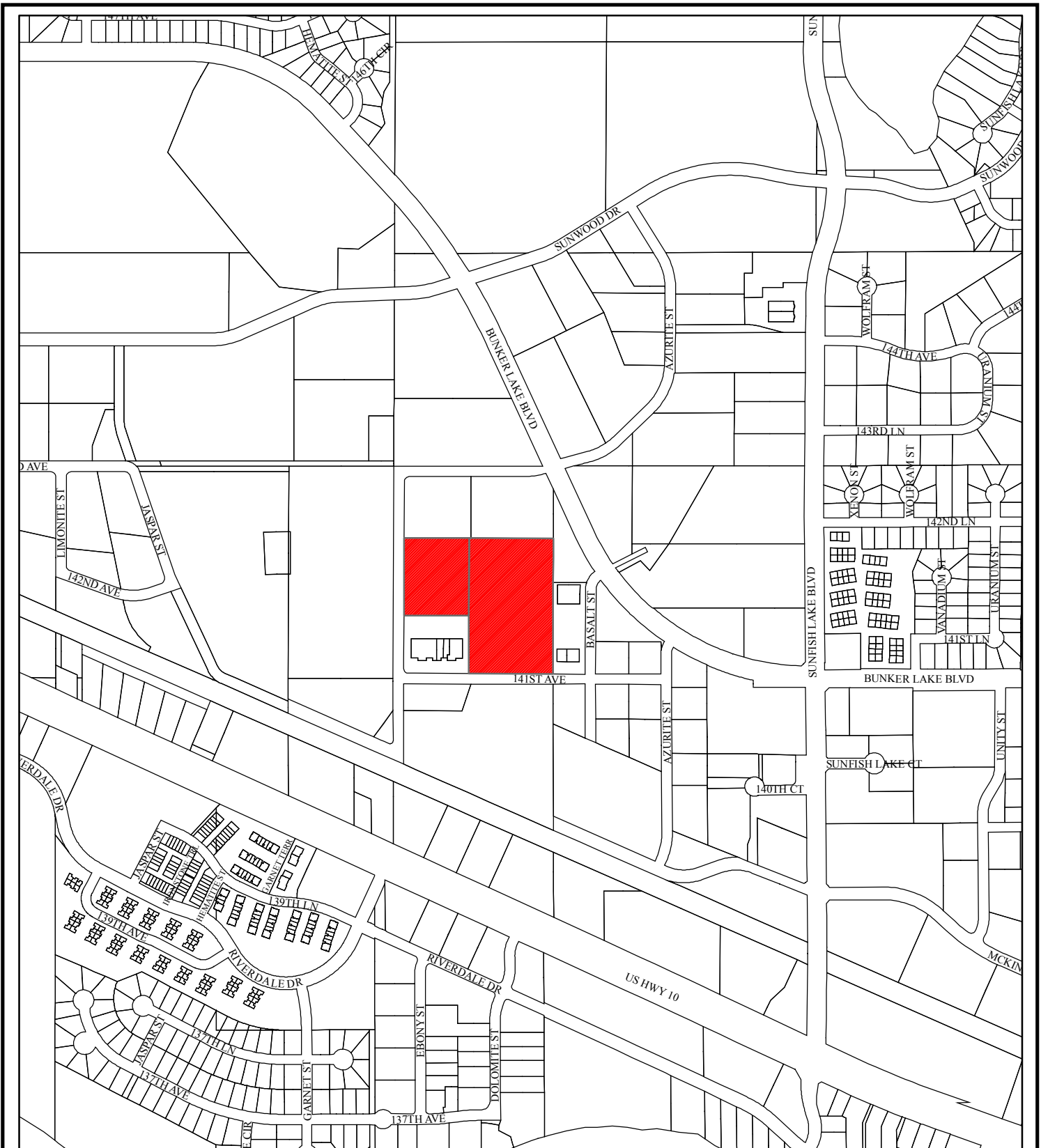
Proposed Findings of Fact for 14191 Ebony St NW

Proposed Conditional Use Permit for 14191 Ebony St NW

Resolution to Deny CUP for 14191 Ebony St NW

Form Review

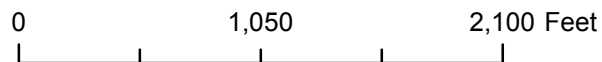
| Inbox | Reviewed By | Date |
|---------------------------------|---------------------------------|---------------------------------|
| Tim Gladhill | Tim Gladhill | 04/26/2012 09:15 AM |
| Chris Anderson (Originator) | Chris Anderson | 04/26/2012 09:50 AM |
| Tim Gladhill | Tim Gladhill | 04/26/2012 10:05 AM |
| Form Started By: Chris Anderson | | Started On: 04/24/2012 03:17 PM |
| | Final Approval Date: 04/26/2012 | |



6651 141st Avenue NW
and
14191 Ebony Street NW

Legend

-  Site
-  Parcels



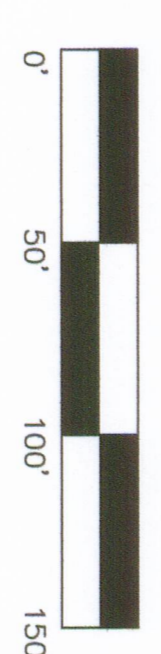
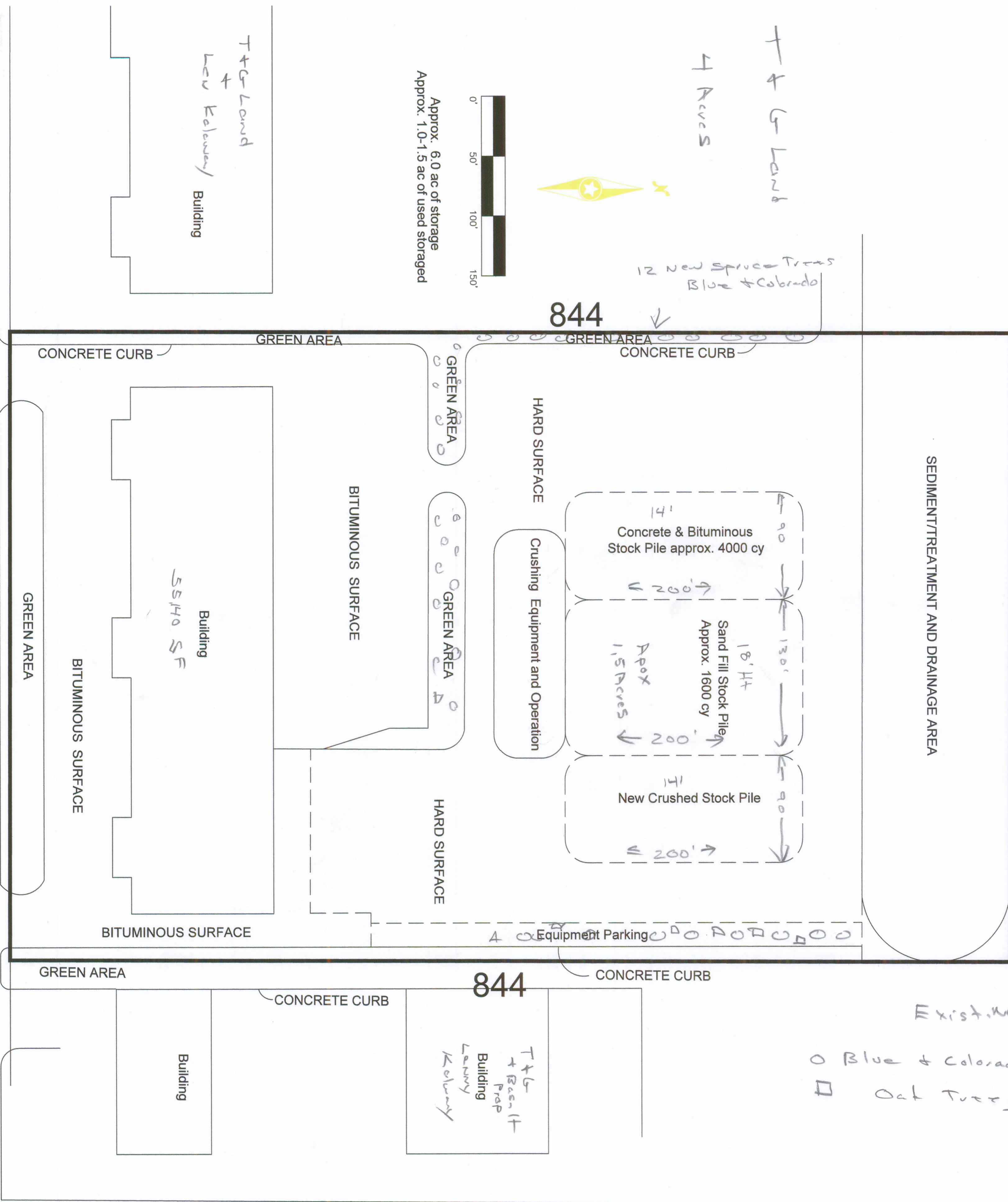
Commercial Asphalt

141st Avenue

525

Basalt Street

525



Approx. 6.0 ac of storage
Approx. 1.0-1.5 ac of used storage

12 New Spruce Trees
Blue + Colorado

Existing
0 Blue + Colorado Spruces
0 Oak Trees

New
12 Spruce Trees



Sauter & Sons, Inc.

Excavating & Grading

6651 141st Ave. NW, Ramsey, MN 55303 • Phone (763) 421-7919 FAX (763) 421-0797

Conditional Use Permit Information

- Present/planned features such as roads, screening, fencing, equipment etc. See Plan
- Location and acreage of stockpiles, including volume and height of stockpiles (both concrete/asphalt and soils) See Plan
- Location of equipment to be used in the crushing operation See Plan
- Duration of crushing activities 1 Day Set up – 3 days Crushing Yearly
- Percentage of lot coverage related to outside storage (which does include both the stockpiled concrete/asphalt and soils) See Plan
- Location and species of vegetation for screening purposes See Plan
- Drainage and erosion control structures Drain North to Sedimentation Treatment Pond
- A plan for dust and noise Supply Water during crushing – Crushing between 7am-5pm
- Anticipated traffic volumes/loads to/from the site related to the aggregate and soils products 300 Loads per Years
- Copies of all information submitted to the Pollution Control Agency (if required by State rule) related to their permitting (if applicable)
 1. Sauter & Sons in the course of a year has approximately 300 loads of concrete & asphalt from our demo & construction jobs.
 2. Sauter & Sons would like to crush & **Recycle** into 2 different materials for use in construction jobs. 3" minus material for rock entrances & 1.5" minus for use in future parking lots.
 3. We would crush materials once a year to limit stockpiling to a minimum and reuse crush material that same year not to accumulate large stockpiling of either.
 4. Sauter & Sons would like to be able to **Recycle** the material to be competitive on our own construction jobs.
 5. Sauter & Sons & T & G Land Owns 21 acres surrounding the Stockpile Area
 6. Please call with questions or concerns.







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

RESOLUTION #12-05-__

A RESOLUTION ADOPTING FINDINGS OF FACT #0__ RELATING TO A REQUEST FROM SAUTER AND SONS, INC. TO PROCESS DEMOLITION CONCRETE IN THE E-2 EMPLOYMENT DISTRICT.

WHEREAS, the City of Ramsey received an application from Sauter & Sons Inc., hereinafter referred to as the “Applicant”, for a conditional use permit to process demolition concrete and asphalt on the property generally known as 6651 141st Ave NW and legally described as follows:

Lot 1, Block 1, Gateway North Industrial Park No. 5, Anoka County, Minnesota

(“Subject Property”)

NOW THEREFORE, BE IT RESOLVED BY THIS CITY COUNCIL OF THE CITY OF RAMSEY (the “City”), ANOKA COUNTY, STATE OF MINNESOTA, as follows:

1. That Sauter and Sons, Inc., hereinafter referred to as "Applicant", has properly applied for a conditional use permit to crush and recycle demolition concrete and asphalt in the E-2 Employment District.
2. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 117-51 of the Ramsey City Code on May 3, 2012, and that the public hearing was properly advertised and that the minutes of said public hearing are hereby incorporated by reference.
3. That the Subject Property is approximately ten (10) acres in size.
4. That the Subject Property is zoned E-2 Employment and the Applicant is in the excavation and demolition business.
5. That the surrounding properties to the north, south and west are also zoned E-2 Employment and the property to the east is zoned E-1 Employment.
6. That the site plan approved in January of 2001 for the development of the Subject Property included an area for stockpiling earth materials (dirt storage as indicated on approved site plan) that would be transported to various job sites.
7. That as part of the approvals process in 2001, permanent erosion control measures, such as concrete bins around the dirt stockpile to contain the stored material, installation of a berm along the north side of the dirt stockpile, sloping the recycled aggregate surface away from the pond and constructing the storm sewer inlets with stormceptors were recommended to improve erosion control on the Subject Property.

RESOLUTION #12-05-__

8. That as part of the demolition aspect of the business, the Applicant is proposing to store and crush demolition concrete and asphalt on the Subject Property for re-use on project sites.
9. That according to Section 117-427 (Solid Waste) of the Ramsey City Code, a conditional use permit is required for the storage, collection, transportation, treatment, utilization, processing, transfer, intermediate disposal, and final disposal of solid waste.
10. That City Staff has determined that the storage and crushing of demolition concrete and asphalt is subject to the conditional use permit requirements established in Section 117-427 of City Code.
11. That the Minnesota Pollution Control Agency (MPCA) has stated that there is a Standing Beneficial Use related to the use of uncontaminated crushed concrete, which states that if the uncontaminated crushed concrete is used for aggregate, no additional Solid Waste permit through the state would be required (as outlined in MN Rules 7035.2860).
12. That the proposed use may be subject to other permitting, such as the Nonmetallic Mining and Associated Activities general permit, through the MPCA.
13. That Staff has instructed the Applicant to contact the MPCA directly to determine what other permits, if any, may be required.
14. That according to the Applicant's submittal information, the demolition concrete and asphalt will be confined to a 90' x 200' area, surfaced with recycled aggregate and that the stockpile will not exceed fourteen (14) feet in height.
15. That according to the Applicant's submittal information, the soil stockpile will be confined to a 130' x 200' area, also on a recycled aggregate surface and that the height of the stockpile will not exceed eighteen (18) feet.
16. That according to the Applicant's submittal information, the processed concrete stockpile will be confined to a 90' x 200' area, also on a recycled aggregate surface and that the height of the stockpile will not exceed fourteen (14) feet.
17. That the Applicant has stated that crushing equipment will be brought onto the site once per year to process the demolition concrete and bituminous into both three (3) inch pieces for use as rock entrances for construction sites and into one and a half (1.5) inch pieces for base material for future parking lots.
18. That the Applicant has stated that it would take one (1) day to set up the crushing equipment and the crushing activity would last a maximum of three (3) days per year.
19. That the Applicant has stated that if necessary, water will be used for dust control during the crushing operations.

20. That the site plan submitted with this application indicates a mixture of evergreen and deciduous trees along the eastern property line and twelve (12) new evergreen trees along the western property boundary for screening purposes. No screening is proposed along the north side of the proposed stockpile areas.
21. That the Applicant has stated that approximately 300 loads of concrete and bituminous material may be generated by the demolition operation of the business per year.
22. That the Applicant has stated that they would utilize all crushed material within the same year that it is produced to limit stockpiling on the site.
23. That in 2003, the Applicant applied for a conditional use permit for this same type of use and at that time the Planning Commission recommended denial of the request due to the following reasons: (1) The City's investment in redeveloping this industrial area; (2) The private investment in developing individual sites; (3) The lack of adequate screening; (4) The uncertainty of environmental aspects associated with demolition materials; and (5) The activity not be compatible with current and proposed development in the industrial park.
24. That over the past 10-15 years, the City expended approximately \$2,318,000.00 on land acquisition, public improvements, site improvements and demolition costs to eliminate blighted conditions in the area where the Subject Property is located and to develop Gateway North Industrial Park No. 5.
25. That all but one of the surrounding properties have been developed since 2001 for office and warehouse uses.
26. That the Applicant owns the vacant parcel to the west of the Subject Property and is part owner of properties to the west and east of the Subject Property as well.
27. That there is one other facility in Ramsey that received a conditional use permit to process demolition concrete into a reusable, for-sale product.
28. That the proposed use will/will not substantially increase traffic to and from the area.
29. That the proposed use will/will not be unduly dangerous or otherwise detrimental to persons working in the vicinity of the use, or to the public welfare.
30. That the proposed use will/will not be harmonious with and in accordance with the specific objectives of the Comprehensive Plan.
31. That the proposed use will/will not be designed, operated and maintained so as to be harmonious and appropriate in appearance with the existing character of the general vicinity and such use will/will not change the essential character of the area.

- 32. That the proposed use will/will not be a substantial improvement to the property in the immediate vicinity and to the community as a whole.
- 33. That the proposed use will/will not be served adequately by essential public facilities and services, such as highways, streets, police and fire protection.
- 34. That the proposed use will/will not create excessive additional requirements at public cost for public facilities and services and it will/will not be detrimental to the economic welfare of the community.
- 35. That the proposed use will/will not involve uses, activities, processes, materials and equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

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

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the ____ day of _____, 2012.

Mayor

ATTEST:

City Administrator

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

A RESOLUTION APPROVING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO SAUTER AND SONS INC. TO PROCESS DEMOLITION CONCRETE IN THE E-2 EMPLOYMENT DISTRICT, BASED ON FINDINGS OF FACT #____, AND DECLARING TERMS OF SAME.

WHEREAS, Sauter and Sons, Inc. (the "Permittee") has properly applied to the City of Ramsey (the "City") for a Conditional Use Permit (the "Permit") to process demolition concrete on the property generally known as 6651 141st Avenue N.W. and legally described as follows:

Lot 1, Block 1, Gateway North Industrial Park No. 5, Anoka County, Minnesota

(the "Subject Property"); and

WHEREAS, The Planning Commission met on May 3, 2012, conducted a public hearing and recommended City Council approval/denial of the request.

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

A conditional use permit for the storage and processing of demolition concrete and bituminous on the **Subject Property** is hereby granted to the **Permittee**.

1. This **Permit** shall remain in effect so long as the conditions imposed herein are complied with.
2. The stockpiled demolition concrete and bituminous materials on the **Subject Property** shall not exceed a footprint of ninety (90) feet by two hundred (200) feet; the stockpiled, processed concrete and bituminous materials on the **Subject Property** shall not exceed a footprint of ninety (90) feet by two hundred (200) feet; at no time shall either stockpile of demolition or processed concrete and bituminous materials exceed a height of fourteen (14) feet, as measured from the existing ground elevation over which the materials are placed.
3. Screening, both proposed and existing vegetation as indentified on the site plan, herein referred to Exhibit 1, shall be installed within one (1) month of approval of the **Permit**. The **Permittee** shall provide the **City** with a financial surety, in a form acceptable to the **City**, in the amount of Four Thousand Five Hundred Dollars and no cents (\$4,500.00), which is 125% of the estimated cost of improvements, to ensure the completion of the screening requirement. Upon total completion of screening requirements and acceptance by the **City**, the **Permittee** may request a release of the financial surety.

4. The **Permittee** shall be responsible for maintaining and replacing all required screening throughout the duration of the **Permit**.
5. The **Permittee** shall be required to conform to the Minnesota Pollution Control Agency standards as to the regulation of noise, odors, dust and any other health and safety issues applicable to the processing of demolition concrete and bituminous materials. The **Permittee** shall provide the **City** with a copy of any permits or correspondence from any regulatory agencies that are applicable to the processing of demolition concrete and bituminous material on the **Subject Property**.
6. The **Permittee** shall be responsible for any necessary testing to verify compliance with state standards upon the premise that an environmental problem may exist.
7. Hours of material crushing shall be limited to 7:00 a.m. through 5:00 p.m. Monday through Saturday. Any variance from these hours of operation shall require prior special approval by the City Administrator or his/her designated representative.
8. Crushing operations will be conducted one (1) time per year. The crushing period shall not exceed three (3) days in duration. Should either an emergency, equipment failure, weather, or any other unforeseen event cause the crushing operation to cease, the crushing operation shall not extend beyond the three (3) day period, except in accordance with procedures as outlined in Condition #6.
9. The **Permittee** shall notify the **City** by letter at least one (1) week prior to each crushing period. The notification shall indicate the dates that the crushing will occur.
10. Should a situation arise pertaining to noise, dust, or any other health, safety, or general public welfare issues, the **City** may contact the MPCA, Anoka County, or other qualified environmental testing companies or agencies to investigate the situation. All testing would be at the **Permittee's** expense.
11. Any permits issued by any other regulatory agencies are hereby incorporated by reference into these conditions and made a part of this **Permit** as if fully set forth herein. However, where the City and other jurisdictional standards conflict, the more stringent standards shall apply.
12. The **Permittee** shall provide written evidence of any and all required permits from other agencies prior to commencing any crushing activity.

Noise standards shall be the same as those set forth in the MPCA standards and within Ramsey City Code Section 30-5 (Nuisances affecting public peace). Dust shall be controlled by the **Permittee** in the following manner:

- a. A water truck will be stationed on the premises at all times. The **Permittee** shall be responsible for wetting down the areas where the trucks are hauling material to lessen the dust caused by the traffic.

- b. The **Permittee** shall locate spray nozzles on the crusher. The water from these spray nozzles will lessen the dust created when old concrete is reduced in the crusher. The **Permittee** shall also install and use spray nozzles on any conveyors to lessen the dust caused by the transportation of the finished product from the crusher to the stockpile.
 - c. To control the possibility of dust and debris escaping the facility during all stockpiling and crushing operations, the **Permittee** will sweep the streets in the area of the proposed use, if necessary, to remove any dust and debris that should escape the site.
12. If site operations cease, this **Permit** becomes null and void and all materials relating to the processing of demolition concrete and bituminous on the **Subject Property** shall be removed by the **Permittee** within thirty (30) days of the date of termination of the **Permit**. The **Permittee** shall provide a financial guarantee at the City, in the amount of Two Thousand Dollars and No Cents (\$2,000.00) to ensure removal of all demolition rubble in the event the **Permittee** fails to perform said removal upon the **Permit** becoming void or revoked. The financial guarantee shall be in a form acceptable to the **City**. This financial guarantee shall be maintained at the **City** as long as the **Permit** remains in full force and effect.
13. The **City** may initiate action to revoke the Permit in accordance with procedures established in the Ramsey City Code.
14. The failure of the City at any time to require the performance of the Permittee of any provisions hereof, shall in no way effect the right of the City thereafter to enforce the same. Nor shall waiver by the City of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.
15. If any provision of this **Permit** shall be declared void or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect.
16. The City Administrator, or his/her designee, shall have the right to inspect the premises for compliance and safety purposes annually or at any time, upon reasonable request.
17. The Permittee shall be responsible for all **City** costs incurred in administering and enforcing this **Permit**. Said expenses shall be paid within fifteen (15) days of billing by the **City** and failure to pay the **City's** expenses within the fifteen (15) day billing period will permit the **City** to drawn upon any of the escrows required by this agreement for payment. The **Permittee** shall maintain a \$1,000.00 balance in an escrow account with the **City**. This escrow shall be used to reimburse the City for expenses incurred in the administration of this permit in the event the permittee fails to pay the City expenses within the fifteen (15) day billing period. The **City** reserves the right to use these funds to pay for testing services as necessary.

T & G LAND, INC.

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

The foregoing was acknowledged before me this _____ day of _____, 2012 by _____, the _____ of T & G Land, Inc., a Domestic Corporation under the laws of the State of Minnesota, on behalf of the corporation.

CITY OF RAMSEY:

ATTEST:

By: _____
Mayor

City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

On this _____ day of _____, 2012, before me a Notary Public personally appeared Bob Ramsey and Jo Ann M. Thieling, to me personally known, who, being each by me duly sworn did say that they are respectively the Mayor and City Clerk of the City of Ramsey, the municipal corporation named in the foregoing instrument, and seal affixed to said instrument is the corporate seal of said municipal corporation, and the said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council and said Bob Ramsey and Jo Ann M. Thieling acknowledge said instrument to be the free act and deed of said municipal corporation.

Notary Public

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

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

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

RESOLUTION #12-05-____

A RESOLUTION DENYING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO SAUTER AND SONS, INC. TO PROCESS DEMOLITION CONCRETE IN THE E-2 EMPLOYMENT DISTRICT.

WHEREAS, Sauter and Sons, Inc., (Applicant) has properly applied for a conditional use permit to stockpile and crush demolition concrete and asphalt on the property generally known as 6651 141st Avenue N.W. and legally described as follows:

Lot 1, Block 1, Gateway North Industrial Park No. 5, Anoka County, Minnesota
(Subject Property).

WHEREAS, the Planning Commission conducted a public hearing on May 3, 2012 and recommended denial of the request.

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

1. That based on Findings of Fact #_____, a conditional use permit to process demolition concrete and asphalt on the Subject Property is hereby denied.

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

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly adopted by the Ramsey City Council on this the ____ day of _____, 2012.

CITY OF RAMSEY:

By: _____
Mayor

By: _____
City Clerk

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

RESOLUTION #12-05-___

A RESOLUTION ADOPTING FINDINGS OF FACT #0___ RELATING TO A REQUEST FROM SAUTER AND SONS, INC. FOR OPEN AND OUTSIDE STORAGE AS A PRINCIPAL USE ON THE PROPERTY LOCATED AT 14191 EBONY ST NW.

1. That the Applicant appeared before the Planning and Zoning Commission for a public hearing pursuant to Section 117-51 of the Ramsey City Code on May 3, 2012, and that the public hearing was properly advertised and that the minutes of said public hearing are hereby incorporated by reference.
2. That the subject property is generally known as 14191 Ebony St. NW and legally described as follows:

Lot 1, Block 1, Basalt Office Park 2nd Addition, Anoka County, Minnesota.
3. That the subject property is approximately four (4) acres in size.
4. That the subject property is zoned PUD, but the underlying zoning district is E-2 Employment.
5. That the surrounding properties are all zoned E-2 Employment District.
6. That City Code Section 117-116 (E-2 Employment District) identifies open and outside storage as principal use of a property as a conditional use.
7. That the subject property is a vacant parcel with no existing improvements.
8. That the Applicant is in the excavation and demolition business.
9. That there are existing stockpiles of soil on the subject property, which would constitute the primary or principal use of the property.
10. That no new accesses are proposed for the subject property presently.
11. That the area height of the existing stockpiles will need to be identified on a exhibit prior to executing a permit for the proposed use.
12. That there is presently no screening of the stockpiles.
13. That the Applicant owns approximately twenty-one (21) acres of land within the vicinity of and including the subject property.

RESOLUTION #12-05-___

14. That the subject property is the lone remaining property in the vicinity yet to be developed.
15. That the proposed use will/will not substantially increase traffic to and from the area.
16. That the proposed use will/will not be unduly dangerous or otherwise detrimental to persons working in the vicinity of the use, or to the public welfare.
17. That the proposed use will/will not be harmonious with and in accordance with the specific objectives of the Comprehensive Plan.
18. That the proposed use will/will not be designed, operated and maintained so as to be harmonious and appropriate in appearance with the existing character of the general vicinity and such use will/will not change the essential character of the area.
19. That the proposed use will/will not be a substantial improvement to the property in the immediate vicinity and to the community as a whole.
20. That the proposed use will/will not be served adequately by essential public facilities and services, such as highways, streets, police and fire protection.
21. That the proposed use will/will not create excessive additional requirements at public cost for public facilities and services and it will/will not be detrimental to the economic welfare of the community.
22. That the proposed use will/will not involve uses, activities, processes, materials and equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

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

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the ____ day of _____, 2012.

Mayor

ATTEST:

City Administrator

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

A RESOLUTION APPROVING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO SAUTER AND SONS INC. FOR OPEN AND OUTSIDE STORAGE ON THE PROPERTY LOCATED AT 14191 EBONY ST NW, BASED ON FINDINGS OF FACT #____, AND DECLARING TERMS OF SAME.

WHEREAS, Sauter and Sons, Inc. (the "Permittee") has properly applied to the City of Ramsey (the "City") for a Conditional Use Permit (the "Permit") for open and outside storage as a principal use on the property generally known as 14191 Ebony St NW and legally described as follows:

Lot 1, Block 1, Basalt Office Park 2nd Addition, Anoka County, Minnesota

(the "Subject Property"); and

WHEREAS, The Planning Commission met on May 3, 2012, conducted a public hearing and recommended City Council approval/denial of the request.

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

A conditional use permit for open and outside storage as a principal use on the **Subject Property** is hereby granted to the **Permittee**.

1. This **Permit** shall remain in effect so long as the conditions imposed herein are complied with.
2. The area and height of the stockpiles shall not exceed those dimensions identified on Exhibit 1, which is hereby incorporated by reference. Any expansion on the **Subject Property**, including buildings and/or additional stockpiles, will require an amendment to this **Permit**.
3. The **Permittee** shall be responsible for erosion and dust control related to the stockpiled material.
4. The **Permittee** will be responsible for sweeping the streets in the area of the proposed use, if necessary, to remove any dust and debris that should escape the **Subject Property**.
12. If site operations cease, this **Permit** becomes null and void and all stockpiled materials on the **Subject Property** shall be removed by the **Permittee** within thirty (30) days of the date of termination of the **Permit**.
13. The **City** may initiate action to revoke the Permit in accordance with procedures established in the Ramsey City Code.

RESOLUTION #12-05-____

Notary Public

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

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

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

RESOLUTION #12-05-____

A RESOLUTION DENYING THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR OPEN AND OUTSIDE STORAGE AS A PRINCIPAL USE ON THE PROPERTY LOCATED AT 14191 EBONY ST NW.

WHEREAS, Sauter and Sons, Inc., (Applicant) has properly applied for a conditional use permit for open and outside storage as a principal use on the property generally known as 14191 Ebony St NW and legally described as follows:

Lot 1, Block 1, Basalt Office Park 2nd Addition, Anoka County, Minnesota
(Subject Property).

WHEREAS, the Planning Commission conducted a public hearing on May 3, 2012 and recommended denial of the request.

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

1. That based on Findings of Fact #_____, a conditional use permit for open and outside storage as a principal use on the Subject Property is hereby denied.

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

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly adopted by the Ramsey City Council on this the ____ day of _____, 2012.

CITY OF RAMSEY:

By: _____
Mayor

By: _____
City Clerk

Regular Planning Commission

5. 2.

Meeting Date: 05/03/2012

By: Tim Gladhill, Community Development

Information

Title:

PUBLIC HEARING: Consider Request for Variance to Platting Requirements at 7040 173rd Ave NW; Case of Makowsky Family Farm, LLC

Background:

On February 28th, 2012, the City received an application for a Variance to Platting Requirements to allow a metes and bounds subdivision at 7040 173rd Ave NW. Please note that this is considered a procedural variance under the City's Subdivision Code, and does not derive its ability from the same enabling statute under the typical Zoning Code. As such, the Planning Commission does have more latitude in granting this type of Variance.

The request is to split an existing fifty-six (56) acre parcel into two (2) parcels. Parcel A will contain all existing structures and the existing dwelling unit. The remaining parcel (Parcel B) will remain vacant until re-platted in the future.

Notification:

Staff attempted to notify all Property Owners within 350 feet of the Public Hearing via Standard US Mail. The Public Hearing was also published in the Anoka County Union.

Observations:

Staff considered the request under the following conditions:

1. No new buildable lots shall be created
 2. All future subdivision shall be completed in accordance with City Code requirements related to Platting
 3. The Subdivider shall provide a thirty-three (33) foot wide perpetual/permanent road easement along the entire northern property line to ensure the capability of future roadway connections to serve future development in the event the two (2) parcels are sold separately
 4. The Subdivider shall enter into a Development Agreement with the City agreeing to the terms above
- The subdivision would create a 7.5 acre parcel that would ensure that all structures are consistent with applicable zoning regulations. The remaining parcel would be approximately 49.5 acres. The required easement shall specify that said easement can also be used for drainage, utility, and trail purposes and shall be all inclusive. In addition, the Subdivider shall be required to dedicate standard perimeter drainage and utility easements internal to Parcel A.

Funding Source:

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

Staff Recommendation:

Staff recommends approval of the request, contingent upon the Subdivider entering into a Development Agreement that restricts the use of Parcel B and requires that any future subdivision is completed in accordance with Platting requirements.

Committee Action:

Motion to adopt the resolution approving the Variance to Platting Requirements, contingent upon the Subdivider entering into a Development Agreement.

Please note, the Planning Commission is acting in a quasi-judicial capacity for this request for a variance. The Development Agreement will be forwarded to City Council for approval.

Finally, as a reminder, this case is a Public Hearing.

Attachments

Site Location Map

Sketch Plan

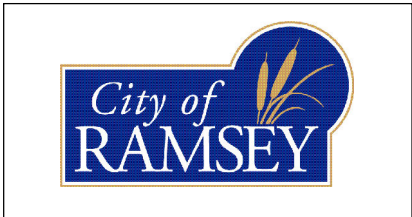
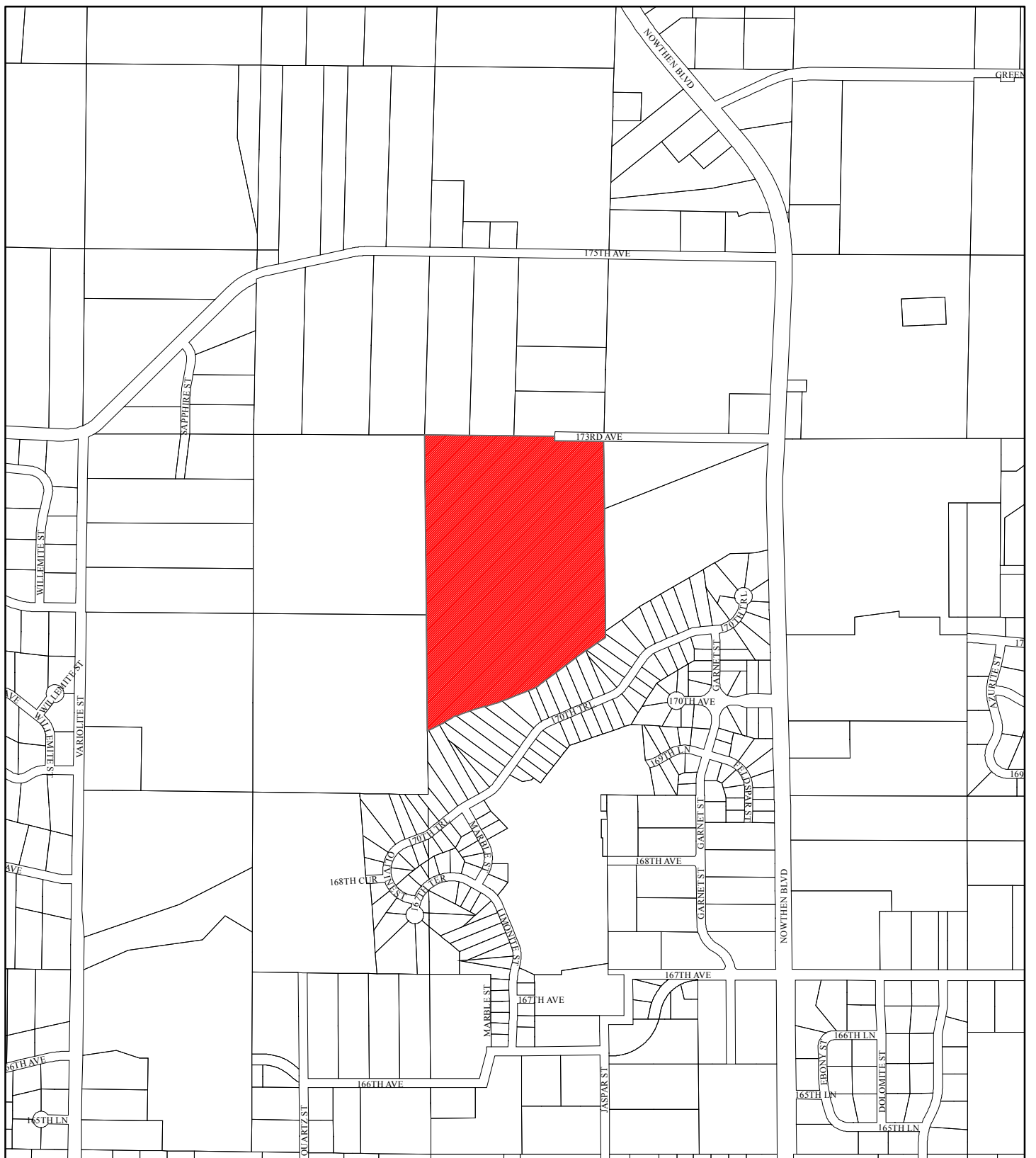
Proposed Findings of Fact

Proposed Variance

Proposed Development Contract

Form Review

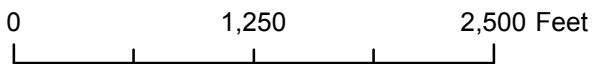
| Inbox | Reviewed By | Date |
|-------------------------------|---------------------------------|---------------------------------|
| Chris Anderson | Chris Anderson | 04/26/2012 09:18 AM |
| Tim Gladhill (Originator) | Tim Gladhill | 04/26/2012 09:22 AM |
| Form Started By: Tim Gladhill | | Started On: 04/25/2012 09:20 AM |
| | Final Approval Date: 04/26/2012 | |



Makowsky Family Farm

Legend

- Site
- Parcels





SKETCH PLAN

PROPOSED PROPERTY SPLIT

EXISTING PROPERTY DESCRIPTION:

That part of the West Half of the Northwest Quarter of Section 10, Township 32, Range 25, Anoka County, Minnesota, described as follows: Beginning at the northwest corner of Section 10, Township 32, Range 25; thence Easterly on said Section line 80 rods; thence Southerly parallel with the west line of said Section to Trott Brook; thence Westerly along the channel of said Trott Brook to where the west line of said Section crosses the same; thence Northerly along said line to the place of beginning.

SURVEYOR'S CERTIFICATION

I hereby certify that this sketch plan was prepared by me or under my direct supervision and that I am a duly licensed land surveyor under the laws of the State of Minnesota.

Craig E. Johnson 03/29/2012
 Craig E. Johnson Date
 License Number 44530

SKETCH PLAN
 7040 173rd AVE. NW



BOLTON & MENK, INC.

Consulting Engineers & Surveyors

7533 SUNWOOD DRIVE, RAMSEY, MN 55303 (763) 433-2851
 MANKATO, MN FAIRMONT, MN SLEEPY EYE, MN BURNSVILLE, MN
 WILLMAR, MN CHASKA, MN RAMSEY, MN AMES, IA

PART OF THE NE 1/4 OF THE NE 1/4
 SECTION 10, TOWNSHIP 32, RANGE 25
 ANOKA COUNTY, MINNESOTA

FOR: WILLIAM J. MAKOWSKY, JR.

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

RESOLUTION #12-05-___

A RESOLUTION ADOPTING FINDINGS OF FACT #___ RELATING TO A REQUEST FOR A VARIANCE TO THE PLATTING REQUIREMENTS IN CITY CODE TO ALLOW A METES AND BOUNDS SUBDIVISION

WHEREAS, Makowsky Family Farm, LLC, hereinafter referred to as "Applicant", has properly applied for a variance to platting requirements established in Chapter 117 Article II (Subdivision) of the Ramsey City Code to permit a metes and bounds subdivision to facilitate the future re-subdivision of property.

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

1. That the Applicant appeared before the Planning Commission for a public hearing on May 3, 2012, and that said public hearing was properly advertised and that the minutes of said public hearing are hereby incorporated as a part of these findings by reference.
2. That the Applicant owns a parcel that is approximately fifty-seven (57) acres in size and desires to separate the dwelling unit and accessory structures from the vacant, agricultural use surrounding said structures.
3. That the Applicant has stated that the nature of the need for a lot split creates a practical difficulty in complying with City Code requirements that require all subdivision be completed through the platting process.
4. That the Applicant has stated that no new buildable lots are intended to be created with the metes and bounds subdivision.
5. That the Applicant has stated that the vacant parcel will be subdivided in the future for development consistent with existing zoning, and will be subdivided in accordance with platting requirements at that time.
6. That Chapter 117 Article II (Subdivision) of City Code requires that any new lots be created through the platting process.
7. That Section 117-561 (Procedural Variances) establishes a process to grant a variance to platting requirements, when strict compliance with these requirements may cause a practical difficulty or undue hardship, provided the variance does not affect the spirit and intent of the Section.
8. That the need for the Variance will be eliminated by the eventual platting of the remnant parcel.

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

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly adopted by the Ramsey Planning Commission this the 3rd day of May, 2012.

Planning Commission Chair

ATTEST:

City Clerk

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

RESOLUTION #12-05-__

A RESOLUTION APPROVING THE ISSUANCE OF A VARIANCE TO THE PLATTING REQUIREMENTS IN CITY CODE TO APPROVE A METES AND BOUNDS SUBDIVISION AND DECLARING TERMS OF SAME.

WHEREAS, Makowsky Family Farm, LLC, hereinafter referred to as "Permittee", has properly applied for a variance to platting requirements established in Chapter 117 Article II (Subdivision) of the Ramsey City Code to permit a metes and bounds subdivision to facilitate the future re-subdivision of property.

WHEREAS, the Planning Commission met on May 3, 2012, conducted a public hearing and adopted findings of fact relating to the request for a variance from platting requirements to facilitate a metes and bounds subdivision.

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

1. The requirements of City Code Chapter 117, Article II (Subdivision) are a practical difficulty in that the metes and bounds subdivision will facilitate the future re-subdivision of property, but will not create any new buildable lots, the parcels are anticipated to be platted in the future, however the exact alignment of those lots is unknown.
2. Based on Findings of Fact #____, a variance to the platting requirements in City Code Chapter 117, Article II (Subdivision), is hereby granted to the Permittee for the parcels shown in the exhibits in Exhibit A prepared by Bolton and Menk, Inc., dated _____, contingent on the conditions contained in this Variance.
3. This Variance shall automatically become null and void if it is not initiated within twelve (12) months of the date of approval, unless an extension is granted at the written request of the Permittee.
4. The Permittee shall be responsible for all City costs incurred in administering and enforcing this variance.
5. The Permittee shall enter into a Development Agreement with the City specifying the terms of this Variance.

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

and the following voted against the same:

and the following abstained:

and the following were absent:

Whereupon said resolution was declared duly adopted by the Ramsey Planning Commission this the 3rd day of May, 2012.

Makowsky Family Farm, LLC hereby acknowledges receipt of this variance and that they have reviewed the terms of the variance and have agreed that they will comply with the terms of the variance.

MAKOWSKY FAMILY FARM, LLC:

By: _____

Its: _____

STATE OF MINNESOTA)

) ss.

COUNTY OF ANOKA)

On this ____ day of _____, _____, before me, a Notary Public, personally appeared Bill Makowsky, to me personally known, who, being each by me duly sworn did say that they are respectively the Chief Manager of Makowsky Family Farm, LLC, a limited liability corporation under the laws of the State of Minnesota, and the said instrument was signed and sealed on behalf of said limited liability corporation.

Notary Public

**CITY OF RAMSEY
DEVELOPMENT CONTRACT
FOR MAKOWSKY FAMILY FARMS METES AND BOUNDS SUBDIVISION**

This CONTRACT dated this ____ day of _____, 2012, and is by and between the **CITY OF RAMSEY**, a Minnesota municipal corporation (the "**CITY**"), and Makowsky Family Farm, LLC, a Minnesota limited liability company ("**PERMITTEE**").

WHEREAS, the **PERMITTEE** is the owner of land legally described as follows:

That part of the West Half of the Northwest $\frac{1}{4}$ of Section 10, Township 32, Range 25, Anoka County, Minnesota described as follows: Commencing at the Northwest corner of Section 10, Township 32, Range 25, thence Easterly on said Section line 80 rods; thence Southerly parallel with the West line of said Section to Trott Brook; thence Westerly along the channel of said Brook to where the West line of said Section crosses the same; thence Northerly along said line to the place of beginning.

-or upon recording-

Description here ("Parcel A")

-and-

Description here ("Parcel B")

(the "Property").

WHEREAS, **PERMITTEE** desires to split the Property into two (2) parcels; and

WHEREAS, on May 3, 2012, pursuant to Resolution No. 12-05-____, the **CITY** approved the subdivision by metes and bounds description (the "**Subdivision**"), which approval is contingent on certain requirements, including **PERMITTEE** and the **CITY** entering into this Contract; and

WHEREAS, **PERMITTEE** understands that the **CITY** will expend no **CITY** funds until **PERMITTEE** has complied with the relevant escrow requirements in the Code of Ordinances of the **CITY**.

NOW, THEREFORE, the **CITY**, **PERMITTEE** agree as follows:

1. Conditions of Approval. The **CITY** hereby approves the Subdivision on condition that **PERMITTEE** provide the necessary security in accordance with the terms of this Contract.
2. Permittee Plans. **PERMITTEE** shall develop the Property in accordance with the Permittee Plans, with changes as required by the City Staff Review Letter April 26, 2012.

The Permittee Plans shall not be attached to this Contract, but are in **CITY** files. The Permittee Plans as they are:

- Sketch Plan prepared by Bolton and Menk. dated March 29, 2012
3. Stage I Improvements. The “Stage I Improvements” are described in the Permittee Plans and consist of the following:
 - a. None.
 4. Stage I Improvement Financial Guarantee. The **PERMITTEE** is not required to submit a Stage I Improvement Financial Guarantee. The **PERMITTEE** is not responsible for installation of Stage I Improvements. The **PERMITTEE** acknowledges that Stage I Improvements shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision.
 5. Inspection Fees. The **PERMITTEE** shall be responsible for all City inspection costs incurred by the **CITY** related to the installation of the Stage I Improvements in the amount of No Dollars and No Cents (\$0.00), which equals 5% of the City Engineer’s estimated cost of the Stage I Improvements. **PERMITTEE** shall deposit said amount as a cash escrow held by the **CITY** at the time of execution of this Contract. **PERMITTEE** agrees that said fees may be used to complete the Improvements in the event of default by the **PERMITTEE**. Upon completion of the Stage I Improvements and final inspection and acceptance by the **CITY**, the remaining balance in the escrow account shall be returned to **PERMITTEE**.
 6. Stage I Improvement Installation. The **PERMITTEE** is not responsible for installation of Stage I Improvements. The **PERMITTEE** acknowledges that Stage I Improvements shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision.
 7. Time of Performance. The **PERMITTEE** is not responsible for installation of Stage I Improvements. The **PERMITTEE** acknowledges that Stage I Improvements shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision.
 8. Stage I Improvement Warranty Financial Guarantee. The **PERMITTEE** is not responsible for installation of Stage I Improvements. The **PERMITTEE** acknowledges that Stage I Improvements shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision.
 9. Maintenance Guarantee for Landscaping. The **PERMITTEE** is not responsible for providing a maintenance guarantee for landscaping, as no landscaping is required. The **PERMITTEE** acknowledges that landscaping shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision.

10. Ownership of Improvements. The **PERMITTEE** is not responsible for installation of Stage I Improvements. The **PERMITTEE** acknowledges that Stage I Improvements shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision.
11. License. **PERMITTEE** hereby grants to the **CITY**, its agents, employees, officers and contractors, a license to enter the Property from time to time in order to perform all work and/or inspections deemed appropriate by the **CITY** during installation of the Improvements. This license shall expire after the Improvements installed pursuant to this Contract have been installed and accepted by the **CITY**.
12. Stage II Improvements. The Stage II Improvements which the **CITY** requires **PERMITTEE** to construct, which are not otherwise included in the Stage I Improvements, are as follows:
 - a. Monument stakes for the Plat

PERMITTEE agrees to construct the Stage II Improvements according to the terms and conditions of this Contract and in accordance with the Permittee Plans, which are subject to revisions per City Staff Review Letter dated April 26, 2012 and which shall be submitted to the City Engineer for review and approval prior to execution by **PERMITTEE** of any such contract and prior to commencement of construction of the Stage I Improvements.
13. Payment for Stage II Improvements. **PERMITTEE** shall be responsible for a financial guarantee for the Stage II Improvements to ensure timely completion of the Stage II Improvements. **PERMITTEE** shall be responsible for a financial guarantee for Stage II Improvements in the amount of 125% of the City Engineer's estimated cost of the Stage II Improvements. **PERMITTEE** shall deposit said amount as a letter of credit or cash escrow at the time of execution of this Contract.
14. Street and Public Property Cleaning. **PERMITTEE** shall clear any soil, earth or debris from the streets, public property and Stormwater facilities resulting from any construction within the Property. From time to time and upon not less than thirty six (36) hours prior notice to **PERMITTEE**, the **CITY** may remove, at the expense of **PERMITTEE**, accumulations of soil, earth and debris from the streets and Stormwater facilities within the Property resulting from construction of the Stage I Improvements, and **PERMITTEE** shall pay each invoice from the **CITY** to **PERMITTEE** for such costs within fifteen (15) days of receipt of the invoice.
15. Default. In the event of default by **PERMITTEE** as to any of the work to be performed by it hereunder, the **CITY** may, at its option, perform the work and **PERMITTEE** shall promptly reimburse the **CITY** for any reasonable expense incurred by the **CITY**, provided **PERMITTEE** is first given written notice of the work in default, not less than 48 hours in advance. This Contract is a license for the **CITY** to act, and it shall not be necessary for the **CITY** to seek a Court Order for permission to enter the Property. When the **CITY** does any such work, the **CITY** may, in addition to its other remedies, assess

the cost in whole or in part to the benefitted portion(s) of the Property. **PERMITTEE** authorizes reimbursement from any of **PERMITTEE**'s escrows held by the **CITY**.

16. Miscellaneous.

- a. Invalidity of Any Section. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Contract is for any reason invalid, such decision shall not affect the validity of the remaining portions of this Contract.
- b. Written Amendments Only. The action or inaction of the **CITY** shall not constitute a waiver of or amendment to the provisions of this Contract. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The **CITY**'s failure to promptly take legal action to enforce this Contract shall not be a waiver or release.
- c. Compliance with Laws and Regulations. **PERMITTEE** represents to the **CITY** that the Plat complies with all **CITY**, County, metropolitan, State, and Federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances and environmental regulations. If the **CITY** determines that the Plat does not comply, the **CITY** may, at its option, refuse to allow any construction or development work in the Plat until **PERMITTEE** cause the Plat to so comply. Upon the **CITY**'s demand, **PERMITTEE** shall cease work until there is compliance.
- d. Recording; Termination and Release. This Contract shall run with the land and shall be recorded in the office of the Anoka County Recorder at the expense of **PERMITTEE**. After **PERMITTEE** has completed the work required of it under this Contract, as to all or any portion of the Property, at the request of **PERMITTEE** the **CITY** will execute in recordable form and deliver either a termination of this Contract or a release of such portion of the Property from the effect of this Contract.
- e. Mailbox Locations. **PERMITTEE** agree that the placement of mailboxes along public streets is subject to the approval by the **CITY**, and location of utilities will be necessary through Gopher State One-Call.
- f. Boulevard and Area Restoration. **PERMITTEE** shall be responsible for the cost of establishing seed in all boulevards, except as otherwise noted, within thirty (30) days after completion of the street improvements included in the Stage I Improvements, and restoring all other areas disturbed by the Stage I Improvements, in accordance with approved Permittee Plans. **PERMITTEE** shall be responsible for the cost of cleaning any soil, earth or debris from wetlands within and adjacent to the Property resulting from grading in connection with the Stage I Improvements.

- g. Construction, Hours and Entrance Signs. The **CITY** restricts construction and delivery hours to Monday through Saturday, 7:00 a.m. to 10:00 p.m. **PERMITTEE** is required to provide a sign at each entrance point stating delivery and construction operation hours. Said signs are not to exceed eighty (80) square feet in size and must be clearly visible at all times during the construction period.
- h. Construction Site Maintenance. **PERMITTEE** shall adhere to all **CITY** ordinances relating to, but not limited to, dumping of garbage, site development, construction debris, open burning, etc.
- i. Estimated Cost. It is understood and agreed that cost amounts set forth in this Contract as to the Stage I and Stage II Improvements, unless qualified as fixed amounts, are estimated. **PERMITTEE** agreeS to pay the entire cost of the Improvements, including interest, engineering and legal fees related thereto.
- j. Subdivision Approval Expenses. **PERMITTEE** shall pay to **CITY** all **CITY** expenses incurred in the approval of the Subdivision, including, but not limited to, administration expenses, and engineering and legal fees. Any such expenses incurred after recording of the Plat shall be paid within fifteen (15) days after receipt of an invoice therefor. Failure to pay the **CITY'S** expenses within that fifteen (15) day period will permit the **CITY** to draw for payment upon any of the escrows required by this Contract. The **CITY** agrees to provide to **PERMITTEE**, promptly upon request, an estimate of all such expenses.
- k. Reimbursement to the CITY. **PERMITTEE** shall reimburse the **CITY** for all costs incurred by the **CITY** in defense or enforcement of this Contract if the City prevails in such action, or any portion thereof, including court costs and reasonable engineering and attorney's fees.
- l. Marketable Title. Prior to recording of the Plat, **PERMITTEE** shall provide the **CITY** with proof of marketable title to the Property, either through a currently certified abstract, registered property abstract or title insurance.
- m. Certificate of Occupancy. The term "Certificate of Occupancy" as used in this Contract shall be defined as a document issued by the **CITY'S** Building Official, which authorizes a structure to be used for its intended purposes.
- n. Proof of Authority. The **CITY** requires **PERMITTEE** to provide proof of authority by its governing board to execute this Contract. This proof of authority may be satisfied by providing the **CITY** with a certified copy of the minutes of the governing board of **PERMITTEE**.
- o. Recording of This Contract. See Section 17(d) above.
- p. Violation of This Contract. If **PERMITTEE** fail to perform any of the terms of this Contract, the **CITY** shall be entitled to recover, from **PERMITTEE** or the issuer of its financial guarantee, the full amount of any and all financial

guarantees or withhold the Certificate of Occupancy as defined in Section 16(m) above. Breach of any of the terms of this Contract by **PERMITTEE** shall be grounds for denial of a building permit for any portion of the Property still owned by **PERMITTEE**.

- q. Contract Binding On Successors and Assigns. This Contract shall be binding upon the parties, and their respective successors and assigns.
- r. Letters of Credit. All letters of credit presented as a financial guarantee, if required prior to issuance of a Certificate of Occupancy, shall be first approved as to form and content prior to acceptance by the **CITY**.

17. Requirements for Building Permit and Certificate of Occupancy.

- a. No building permit for any lot in the Plat shall be issued until: (a) a Class 5 driving surface is installed to within 300 feet of the proposed structure; (b) a Certificate of Survey, including the survey information required by the **CITY**, has been supplied to the **CITY** Building Official; (c) all the financial guarantees required by the **CITY** have been satisfied; (d) a permit from the Lower Rum River Watershed Management Organization has been obtained; (e) a permit from Anoka County Soil Conservation District has been obtained (if necessary); and (f) this Contract has been signed and received by the **CITY**.
- b. No Certificate of Occupancy for any lot in the Plat shall be issued until: (a) vehicular access to the lot is provided, including installation of at least one layer of bituminous surfacing; (b) all utilities are in place, operational and accepted by the **CITY** in accordance with this Agreement; (c) for lots that have a slope of less than 2%, a certificate of grading, prepared by a licensed (State of Minnesota) professional land surveyor, is provided to the **CITY** documenting that the flattest grade on the lot is 1% or greater; and (d) boulevard sod and landscape tree, or escrow for same, have been provided.
- c. All improvements included in the Permittee Plans, including amendment required of the City Staff Review Letter dated April 26, 2012 are completed, or financial guarantee in the amount of 125% the City Engineer's estimate of the cost of said improvements is secured in the form of cash escrow or letter of credit for the parking lot and related items.
- d. Parcel B. The **PERMITTEE** agrees that Parcel B shall not be considered buildable and shall not be eligible for a Building Permit or Certificate of Occupancy until such time Parcel B is subdivided in accordance with City Code requirements to subdivide the parcel by plat. Said platting requirements shall include, but are not limited to, dedicating proper easements, delineating ass floodplain and wetland information, and paying applicable development fees. Parcel B shall be subject to applicable processes, application/review fees, and development fees in effect and at the rate in effect at the time said future plat is approved and required agreements are executed.

18. Park Dedication. The **PERMITTEE** is not responsible for Park Dedication Fees, as the net result of the Subdivision does not create an additional buildable lot. The **PERMITTEE** acknowledges that Park Dedication shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision. The rate in effect the time a development contract is executed for future subdivision shall be collected and paid to the City before release of any future plat.
19. Trail Development Fees. The **PERMITTEE** is not responsible for Trail Development Fees, as the net result of the Subdivision does not create an additional buildable lot. The **PERMITTEE** acknowledges that Trail Development Fees shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision. The rate in effect the time a development contract is executed for future subdivision shall be collected and paid to the City before release of any future plat.
20. Water and Sanitary Sewer Connection (Trunk) Fees. The **PERMITTEE** is not responsible for Trunk Fees, as the net result of the Subdivision does not create an additional buildable lot. The **PERMITTEE** acknowledges that Trunk Fees shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision. The rate in effect the time a development contract is executed for future subdivision shall be collected and paid to the City before release of any future plat.
21. Water and Sanitary Sewer Lateral Fees. The **PERMITTEE** is not responsible for Lateral Fees, as the net result of the Subdivision does not create an additional buildable lot. The **PERMITTEE** acknowledges that Lateral Fees may be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision. The rate in effect the time a development contract is executed for future subdivision shall be collected and paid to the City before release of any future plat.
22. Stormwater Management Fee. The **PERMITTEE** is not responsible for Stormwater Management Fees, as the net result of the Subdivision does not create an additional buildable lot. The **PERMITTEE** acknowledges that Stormwater Management Fees shall be required with future subdivision requests and will be reviewed at the time the **PERMITTEE** submits any request for future subdivision. The rate in effect the time a development contract is executed for future subdivision shall be collected and paid to the City before release of any future plat.
23. Future Development Fees. **PERMITTEE** agrees that none of the above fees are being collected for any of the outlots in the Plat, and therefore said outlots are subject to similar fees at a future date when such outlots are subdivided for development.
24. Trail Construction. The **PERMITTEE** is not responsible for trail construction.
25. Easements. **PERMITTEE** shall be responsible for drafting and recording easement documents for all easements required by this Contract on private property. Said

easements shall be executed prior to the **CITY** releasing the Plat for recording and shall be recorded at the same time as the Plat. The **PERMITEE** shall provide a thirty (30) foot permanent/perpetual road easement along the Northern property line as indicated on the Permittee Plans. Said easement(s) shall be submitted to the **CITY** for review prior to execution of this Contract.

26. Maintenance Agreement. The **PERMITEE** is not responsible for any additional maintenance agreements.
27. Notices. All notices required or permitted by this Contract to be given to a party shall be in writing, and shall be either personally delivered or mailed by certified or registered mail to such party at the following address or such other address as such party shall specify in a notice to the other party:

William Makowsky
Makowsky Family Farm, LLC
7040 173rd Ave NW
Ramsey, MN 55303

City Administrator
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

IN WITNESS THEREOF, the parties have hereunto set their hands and seals, the day and year first written above.

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by William Makowsky, the Chief Manager of Makowsky Family Farm, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

This Document Drafted By:
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

This Document Reviewed By:
Randall and Goodrich
2140 4th Avenue
Anoka, MN 55303

Regular Planning Commission

5.3.

Meeting Date: 05/03/2012

By: Tim Gladhill, Community Development

Information

Title:

Staff Update

Background:

The following is a brief summary of approvals given in April that may be of interest to the Planning Commission :

Consider Interim Development Agreement for Town Center Gardens; Case of Podawiltz Development. The City Council approved an Interim Development Agreement with Podawiltz Development to consider a local contribution in the form of land donation, street vacation, and third-party grant funding for a 50-unit workforce housing townhome project in an uncompleted portion of Town Center Gardens 3rd Addition. The Planning Commission will review the necessary land use application later this year and have an opportunity to comment on the project.

City Owned Land Project. Staff continues to review the status of City-owned lands within the community and potential disposition of surplus/underutilized areas. As the process and policy begins to be finalized, the Planning Commission will begin to see potential review of potential future land uses for parcels declared as surplus.

Comprehensive Utility Plans Update. Upon completion of the 2030 Comprehensive Plan Update, the City began updating it's Comprehensive Water and Sanitary Sewer Plans to match the 2030 Comprehensive Plan. These plans study the necessary infrastructure, costs, and rate structures necessary to service future and current land uses. A copy of the preliminary reports are available upon request and the final report will be available in the near future.

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Form Review

| | | |
|-------------------------------|---------------------------------|------------------------|
| Inbox | Reviewed By | Date |
| Tim Gladhill (Originator) | Tim Gladhill | 04/26/2012 09:33 AM |
| Form Started By: Tim Gladhill | | Started On: 04/26/2012 |
| | Final Approval Date: 04/26/2012 | |

Regular Planning Commission

5. 4.

Meeting Date: 05/03/2012

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 | 04/26/2012 09:59 AM |
| Form Started By: JoAnn Shaw | | Started On: 04/26/2012 09:43 AM |
| | | Final Approval Date: 04/26/2012 |

Zoning Bulletin

in this issue:

Validity of Ordinance—Residents, Town Dispute
Whether Ordinance is Zoning Ordinance
Requiring County Approval 2

Zoning Inspections—Residents Refuse Zoning
Inspection of Property 4

Open Meetings—Site Visit Conducted by Board
of Appeals in Reviewing Special Exception
Application Not Completely Open to Public 6

Substantive Due Process—Flood Control
Regulations Restrict Construction in Floodway 7

Conditional Use Permit—City Ordinance Provides
Height Restrictions can be Waived by Obtaining
Conditional Use Permit 9

Zoning News from Around the Nation 11

Validity of Ordinance—Residents, Town Dispute Whether Ordinance is Zoning Ordinance Requiring County Approval

Ordinance requires permit for “nonmetallic mining”

Citation: *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7, 2012 WL 386392 (Wis. 2012)

WISCONSIN (02/08/12)—This case addressed the issue of whether a town’s “Nonmetallic Mining Ordinance” was a zoning ordinance.

The Background/Facts: The Town of Cooks Valley (the “Town”) had a Nonmetallic Mining Ordinance (the “Ordinance”). The Ordinance required a permit for the operation of nonmetallic mining. “Nonmetallic mining” was defined as including commercial sand and gravel pits, along with their associated activities.

Several residents (the “Residents”) of the Town brought a declaratory judgment action against the Town. They asked the court to declare that the Ordinance was invalid. The Residents contended that the Ordinance was a zoning ordinance, which required county approval. They argued that because the Ordinance did not have county approval, it was invalid.

Contributors

Corey E. Burnham-Howard

For authorization to photocopy, please contact the Copyright Clearance Center at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400; fax (978) 646-8600 or West’s Copyright Services at 610 Opperman Drive, Eagan, MN 55123, fax (651) 687-7551. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

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

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

WEST®

610 Opperman Drive • P.O. Box 64526 • St. Paul, MN 55164-0526
1-800-229-2084 • email: west.customerservice@thomsonreuters.com • west.thomson.com/quinlan
ISSN 0514-7905 • © 2012 Thomson Reuters. All Rights Reserved.
Quinlan™ is a Thomson Reuters brand.

Here, the Town was located in a county that had enacted countywide zoning but the Town had not adopted the county's zoning ordinance. Therefore, under Wisconsin statutory law, Wis. Stat. § 60.62(3), the Town could only adopt a zoning ordinance with approval of the county board. The Town had adopted the Ordinance without county board approval.

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the circuit court issued summary judgment in favor of the Residents. The court agreed that the Ordinance was a zoning ordinance that required county approval. The court concluded that because the Town had not obtained county board approval of the Ordinance, the Ordinance was invalid.

The Town appealed.

DECISION: Reversed.

The Supreme Court of Wisconsin held that the Ordinance was a non-zoning police power ordinance, not a zoning ordinance, and thus county board approval of the Ordinance was not required.

The court explained that all ordinances enacted under a municipality's police power are not zoning ordinances. In determining whether the challenged Ordinance was a zoning ordinance, the court said that there was no bright-line rule governing what constitutes a zoning ordinance. Rather, the court said it must determine whether the Ordinance is a zoning ordinance "using a functional approach." To determine whether the Ordinance should be classified as a zoning ordinance—and thus, here, needing county approval—the court said that it needed to: "compare the characteristics and purposes of the Ordinance to the characteristics and purposes of traditional zoning ordinances."

Here, the court found that "many traditional characteristics of zoning ordinances [were] absent from the Ordinance." Specifically, the court noted that, here, the Ordinance: did not create multiple districts, but applied with equal force to any location in the Town; did not confine nonmetallic mining to any particular area in the Town; did not directly affect where an activity could take place, but rather governed how an activity must be conducted thus limiting where it could be conducted; did not automatically permit or prohibit any land use, but instead operated entirely on a case-by-case basis; and did not comprehensively address a wide range of potential classes of land use, but instead spoke only to a single, specific land use.

Still the court found similarities of the Ordinance to a zoning ordinance: its features included conditional allowance of a land use and exemption of preexisting land uses; it clearly regulated the use of land "in a potentially dramatic way"; and it regulated nonmetallic mining in many respects and in great detail.

However, the court also found that the Ordinance did not seem "even loosely similar to zoning" in its purpose: While the purpose of zoning

was “to separate incompatible land uses, ... [t]he Ordinance [did] not explicitly separate different land uses, nor [did] it explicitly declare any land uses incompatible with any others.”

After examining and comparing the traditional characteristics of zoning ordinances to the characteristics and purposes of the Ordinance, the court concluded that, despite having some similarities to traditional zoning ordinances, the Ordinance was not a zoning ordinance. Thus, the court held that the Ordinance did not need county board approval, and was a valid exercise of the Town’s nonzoning police power.

See also: *Heitman v. City of Mauston Common Council*, 226 Wis. 2d 542, 595 N.W.2d 450 (Ct. App. 1999).

Case Note: In its holding, the court identified, in-depth, the “characteristics that are traditionally present in a zoning ordinance.”

Zoning Inspections—Residents Refuse Zoning Inspection of Property

They argue zoning inspection violates their Fourth Amendment rights

Citation: *Town of Bozrah v. Chmurynski*, 2012 WL 371893 (Conn. 2012)

CONNECTICUT (02/14/12)—This case addressed what burden must be proved before a court may issue an order permitting a zoning enforcement officer to enter and search a particular property. More specifically, the case addressed the following issues: (1) whether the reasonableness requirement of the Fourth Amendment applies to zoning inspections; (2) how that requirement is satisfied; and (3) whether the proper procedural vehicle for determining whether such an inspection should be authorized is seeking a court-ordered injunction.

The Background/Facts: The Chumurynskis resided on property (the “Property”) that they owned in the town of Bozrah (the “Town”). In August 2007, the Town’s zoning enforcement officer (the “ZEO”) was asked to inspect the Property for “unregistered motor vehicles and other junk” in violation of §§ 2.20 and 10.4 of the Town’s zoning regulations. The Chumurynskis refused to allow the ZEO to inspect their property. The Town then brought an action seeking a temporary and permanent injunction to enjoin the Chumurynskis from refusing consent to an inspection of the Property.

The trial court eventually issued an order authorizing the ZEO to inspect the Property.

The Chumurynskis appealed. They claimed that the trial court’s order authorizing the zoning inspection of the Property violated their Fourth

Amendment right to be free from unreasonable searches and seizures. Specifically, they claimed that before conducting an inspection of the Property, the ZEO was required to obtain a warrant supported by a finding of probable cause.

DECISION: Reversed, and matter remanded.

The Supreme Court of Connecticut held zoning inspections are “searches” within the meaning of the Fourth Amendment. As such, administrative searches of residences must comply with the Fourth Amendment. When a proposed search is not part of a periodic or area inspection program, but is a targeted search, the search must be “reasonable” under the Fourth Amendment. This requirement is satisfied “when a judicial officer orders a search upon a showing by municipal authorities that probable cause exists to believe that a zoning violation will be discovered upon inspection of the premises,” said the court.

The court explained that a zoning inspection would not violate the Fourth Amendment so long as it was “reasonable.” While general, routine, area zoning inspections, required only a “relaxed” probable cause showing of a “valid public interest,” the court said that a targeted administrative search—such as in the case at hand—“demand[ed] a more particularized showing of probable cause” The court said this more traditional standard of probable cause was required in targeted zoning inspections “in order to properly ‘safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges’ while simultaneously providing ‘fair leeway for enforcing the law in the community’s protection.’”

The court held that before a court may issue an order permitting a zoning enforcement officer to enter and search a particular property, there must be: “a preliminary showing of facts within the knowledge of the zoning officer and of which that officer has reasonably trustworthy information that are sufficient to cause a reasonable person to believe that conditions constituting a violation of the zoning ordinances are present on the subject property.”

The court also concluded that “an injunction is an appropriate procedural vehicle through which a municipality may seek judicial authorization to conduct a zoning inspection.”

See also: *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967).

See also: *Brinegar v. U.S.*, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949).

Case Note: Because the trial court had not applied the correct standard in making its finding of probable cause, the appellate court reversed the trial court’s judgment.

Case Note: In its discussion, the court noted that there was a “relaxed showing” of a “valid public interest” for area zoning inspections. In the administrative context, zoning inspections that are part of a general administrative plan for the enforcement of a statutory scheme are reasonable within the meaning of the Fourth Amendment if “reasonable legislative or administrative standards for conducting an area inspection” demonstrate “a valid public interest.” “Particularized suspicion for choosing an individual residence within the area searched is unnecessary.”

Open Meetings—Site Visit Conducted by Board of Appeals in Reviewing Special Exception Application Not Completely Open to Public

Opponents contend site visit violated open meetings laws and violated due process

Citation: *Bowie v. Board of County Com’rs of Charles County*, 2012 WL 361987 (Md. Ct. Spec. App. 2012)

MARYLAND (02/03/12)—This case considered the due process and open meetings limitations on a site visit of an affected property by members of a county board of appeals.

The Background/Facts: WSG Holdings, LLC (“WSG”) leased property in Nanjemoy, in Charles County (the “County”) in Maryland. WSG intended to build an office building and other facilities related to personal security training, including: a firing range and a driving track. Because those activities were not permitted uses under the County zoning ordinance, WSG applied for a special exception. The special exception application was opposed by certain residents of Nanjemoy (the “Opponents”).

The County Board of Appeals (the “Board”) held three hearings on the matter. Board members also conducted a site visit on the WSG property. Both WSG and the Opponents were permitted to send representatives to the site visit. However, the Board prohibited others from attending. The Board did not keep minutes or a transcript from the site visit.

Eventually, the Board approved WSG’s special exception.

The Opponents appealed. Among other things, the Opponents argued that the Board’s site visit violated due process and open meetings requirements.

The circuit court rejected the Opponents’ allegations of procedural deficiencies in the site visit. Specifically, the court found the Opponents had not preserved the site visit issue for review.

The Opponents appealed. Again, among other things, the Opponents contended that the Board violated due process and open meetings requirements by conducting a meeting (i.e., the site visit) closed to some members of the public at which the merits of the case were discussed, not made a part of the record, but nevertheless were relied upon by the Board.

DECISION: Reversed, and matter remanded.

The Court of Special Appeals of Maryland first determined that the Opponents' objections to the site visit were preserved for the court's review. Next, the court agreed with the Opponents that, in conducting the site visit, the Board violated the State's Open Meetings statute and the Board's open meetings rule.

In so holding, the Court noted that both Rule III of the Board's Rule and the State Open Meetings Law required all meetings of a board of appeals be open to the public. In the court's view, here, the Board's site visit was a "meeting," even though it occurred in an "unconventional venue" and on private property. Accordingly, because this "meeting" was not completely open to the public, the court determined that it violated the open meeting requirements of the laws.

The court further held that the Board's failure to disclose information obtained during the site visit and to allow the Opponents to challenge evidence gathered from the site visit through cross-examination or other means constituted a denial of due process.

See also: *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 49 A.2d 799 (1946).

See also: *Powell v. Calvert County*, 137 Md. App. 425, 768 A.2d 750 (2001), judgment rev'd, 368 Md. 400, 795 A.2d 96 (2002).

Substantive Due Process—Flood Control Regulations Restrict Construction in Floodway

Landowner argues regulations violate her substantive due process

Citation: *Cradduck v. Yakima County*, 2012 WL 313995 (Wash. Ct. App. Div. 3 2012)

WASHINGTON (02/02/12)—This case addressed the issue of whether flood control regulations restricting construction in a floodway violated a landowner's substantive due process rights.

The Background/Facts: Elizabeth Cradduck ("Cradduck") owned Sun-Tides Mobile Home Park (the "Park") in Yakima County (the "County"). In October 2009, a mobile home on lot 17 in the Park was abandoned and in disrepair. Cradduck had it destroyed. Thereafter, a construction contractor applied to the County for a construction permit

to put a used mobile home on lot 17. The County Building Official denied the permit. The denial was based on a determination that the Park was in a floodway, per a November 2009 revised FEMA map. State law, RCW 86.16.051 (Flood Plain Management Ordinances), prohibited new residential construction in floodways. The County's flood management ordinance, 16A.0520 YCC, adopted the state statute's restrictions on floodway construction.

Cradduck petitioned the court to review the County's decision. Among other things, she argued that the decision violated her rights to substantive due process.

The court agreed, finding the statutes were unduly burdensome to Cradduck. The court reversed the County's denial of the permit.

The County and the State's Department of Ecology appealed.

DECISION: Reversed.

The Court of Appeals of Washington, Division 3, held that the statute and ordinance, prohibiting construction in floodways, did not violate Cradduck's substantive due process rights.

In so concluding, the court applied a three-prong analysis, which asked: (1) whether the regulations were aimed at achieving a legitimate public purpose; (2) whether the regulations used means that were reasonably necessary to achieve that purpose; and (3) whether the regulations were unduly oppressive on the land owner (i.e., Cradduck).

The court found that preventing flood damage was most certainly a legitimate public purpose. The goals of the regulations (i.e., the statute and the County ordinance) were to prevent damages to private property and to protect public health and safety—thus supporting legitimate public purposes.

The court also found that the regulations used means that were reasonably necessary to achieve those purposes. Regulations met this "reasonably related" standard, said the court, if they tended to solve a public problem. Here, found the court, the statute and ordinance tended to solve the problem of reoccurring flood damage to private property with its attendant risk to public health and safety. "Prohibiting new residences from building built and prohibiting repairs to residences that are more than 50 percent destroyed in floodways tends to solve the problem of flood damage ... because there will be less reoccurring flood damage to private property if there are fewer people living in homes in the floodway."

Finally, after balancing the public interest against Cradduck's interest, the court concluded that the regulations were not unduly oppressive on Cradduck. The court found the statute and ordinance "protect[ed] the public against a serious threat on one hand, while trying to minimize burdens to floodway landowners on the other hand." The statute did not "force out those who live or work in the floodplain." Rather, it actually allowed re-

pairs of structures in floodways of up to less than 50% of the structure's value so long as the ground floor area is not increased. So, although the regulations could eventually require Craddock to give up the Park one day, she was now allowed to continue to operate the Park, only losing some income due to the floodway construction prohibition. In other words, noted the court, Craddock was not being required to directly pay for a public problem in the monetary sense. Rather, she was only being required to limit an activity that would likely contribute directly to a public problem.

Having found the regulations' construction prohibitions passed all three prongs of the substantive due process test, the court found they did not violate Craddock's substantive due process rights.

See also: *Presbytery of Seattle v. King County*, 114 Wash. 2d 320, 787 P.2d 907, 21 *Envtl. L. Rep.* 21010 (1990).

See also: *Maple Leaf Investors, Inc. v. State, Dept. of Ecology*, 88 Wash. 2d 726, 565 P.2d 1162 (1977).

See also: *Duckworth v. City of Bonney Lake*, 91 Wash. 2d 19, 586 P.2d 860 (1978).

Case Note: In its decision, the court noted that the County had valid police power to discontinue nonconforming uses: it is reasonable to prohibit the continuance of nonconforming uses after abandonment or amortization. Accordingly, the court found it similarly reasonable to prevent nonconforming uses from being newly constructed.

Conditional Use Permit—City Ordinance Provides Height Restrictions can be Waived by Obtaining Conditional Use Permit

County argues waiver of zoning ordinance requires a variance, not a conditional use permit

Citation: *Burns Holdings, LLC v. Teton County Bd. of Com'rs*, 2012 WL 206010 (Idaho 2012)

IDAHO (01/25/12)—This case addressed the issue of whether a conditional use permit ("CUP") could be used to waive a zoning ordinance requirement.

The Background/Facts: Burns Holdings, LLC ("Burns") owned a 6.5-acre parcel of property (the "Property") in Teton County (the "County")

near the City of Driggs (the "City"). The Property was located in an unincorporated part of the County that was within the City's area of impact. Pursuant to an agreement between the County and the City, the City's zoning laws applied to that area of impact, and thus the Property.

Burns sought to construct a concrete batch plant on the Property. Burns' plans included erection of a structure that was 75 feet high. The City's zoning ordinance provided that "[a]ny building or structure ... erected shall not exceed forty-five (45) feet in height unless approved by [CUP]." Accordingly, Burns applied for a CUP.

The City planning and zoning department approved the CUP to increase the height limitation on Burns' Property to 75 feet. The matter was sent to the County for its approval.

The County denied the CUP.

Burns appealed to court. For the first time, the County argued that Burns' application for a CUP had to be denied because Idaho Code § 67-6516 of the Local Land Use Planning Act ("LLUPA") required a variance in order to obtain a waiver of a zoning provision limiting the height of buildings.

The court rejected the County's argument that Burns should have applied for a variance rather than a CUP because: the ordinance allowed for a CUP; and the County's argument came too late. Nevertheless, the court upheld the denial of the CUP on other grounds.

Burns appealed.

DECISION: Affirmed.

The Supreme Court of Idaho did not address the issues raised by Burns on appeal. Instead, it held that a CUP could not be used to waive a provision of a zoning ordinance limiting the maximum height of buildings and structures. Height restrictions can be waived only by a variance, not a CUP, said the court. It concluded that Burns was required to seek a variance in order to obtain a waiver of the maximum height limitation in the zoning ordinance.

In so holding, the court explained that "[a] variance is a means of obtaining a waiver of certain requirements of a zoning ordinance." Idaho Code § 67-6516 of LLUPA defined a variance as:

"a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots.

Thus, pursuant to the statute, a variance was required to waive requirements limiting the height of buildings.

In comparison, noted the court, a CUP concerns the proposed use of property, not the waiver of zoning ordinance requirements such as the maximum height of buildings. If a proposed use is not conditionally permitted in an ordinance, it is not eligible for a CUP. The waiver of a zoning ordinance restriction is not a proposed use of property, noted the court.

The court concluded that: to the extent the City's ordinance allowed waiver of the height limitations by a CUP, it violated LLUPA, and was therefore void.

The court concluded that because Burns could not obtain a waiver of the height restriction by a CUP, the County did not err in denying the CUP.

See also: *Gardiner v. Boundary County Bd. of Com'rs*, 148 Idaho 764, 229 P.3d 369 (2010).

Case Note: The court found the failure of the County to raise the variance requirement until two years after the CUP application was submitted to it did not authorize the waiver of the height restriction by a CUP. The County had no authority to waive the requirements of Idaho Code § 67-6516, nor did the district court.

Zoning News from Around the Nation

MARYLAND

A measure was recently introduced in the state Senate that "would allow table games like blackjack at casinos and make it possible to build a casino in Prince George's County." Currently, Maryland only allows slot machines at casinos. "The bill ... would put both the table games component of the legislation and the provision allowing a sixth casino in the state before voters in November."

Source: CBS News; <http://www.cbsnews.com>

MASSACHUSETTS

The state's House of Representatives recently passed a bill that allows "all capped municipal landfills to serve as sites for solar projects, even if previous state capping grants had restricted their future use to recreational purposes."

Source: GazetteNet; <http://www.gazettenet.com>

PENNSYLVANIA

The Marcellus Shale Bill—a compromise version of Senate Bill 1100 and House Bill 1950—has been passed by both chambers of the legislature and was expected to be signed by Governor Corbett. Reportedly, among other things, under the new bill, “most oil and gas operations, including frack wells, pipelines and impoundment pits ... will be required to be permitted uses in all districts. Compressor stations, processing plants and some activities at impoundment pits may be restricted from residential zones, but must be allowed as permitted uses in agricultural and industrial zones.” In residential zones, wells and drilling rigs would have to be setback 500 feet from any existing building, and well pad and impoundment pit setbacks would be 300 feet from any existing building. Localities will be prohibited from imposing restrictions on hours of operation on the drilling of wells, “subterranean operations”, or activities at compressor stations or natural gas processing plants. Additionally, an “impact fee” will be imposed on each well.

Source: *Switchboard*; <http://switchboard.nrdc.org/blogs>

WISCONSIN

Reportedly state lawmakers are “readying legislation that would take aim at the state’s regulation of nonconforming structures, principally by allowing unlimited maintenance and repair and moving state shoreland zoning standards from administrative rule rubric to statutory standard.” The legislation is aimed at removing uncertainty as to what can and cannot be done with nonconforming structures. Among other things, the legislation would: allow property owners to perform unlimited maintenance and repair without limitations on the dollar value of such maintenance or repairs; and effectively prohibit local governments from enacting and enforcing regulations that are more restrictive.

Source: *The Lakeland Times*; www.lakelandtimes.com

WYOMING

Sweetwater County now has a nine-month moratorium on Commercial Wind Farms. The moratorium is intended to “bring county regulation on par with state wind farm regulations.”

Source: *The Green River Star*; <http://www.greenriverstar.com>

ZONING PRACTICE

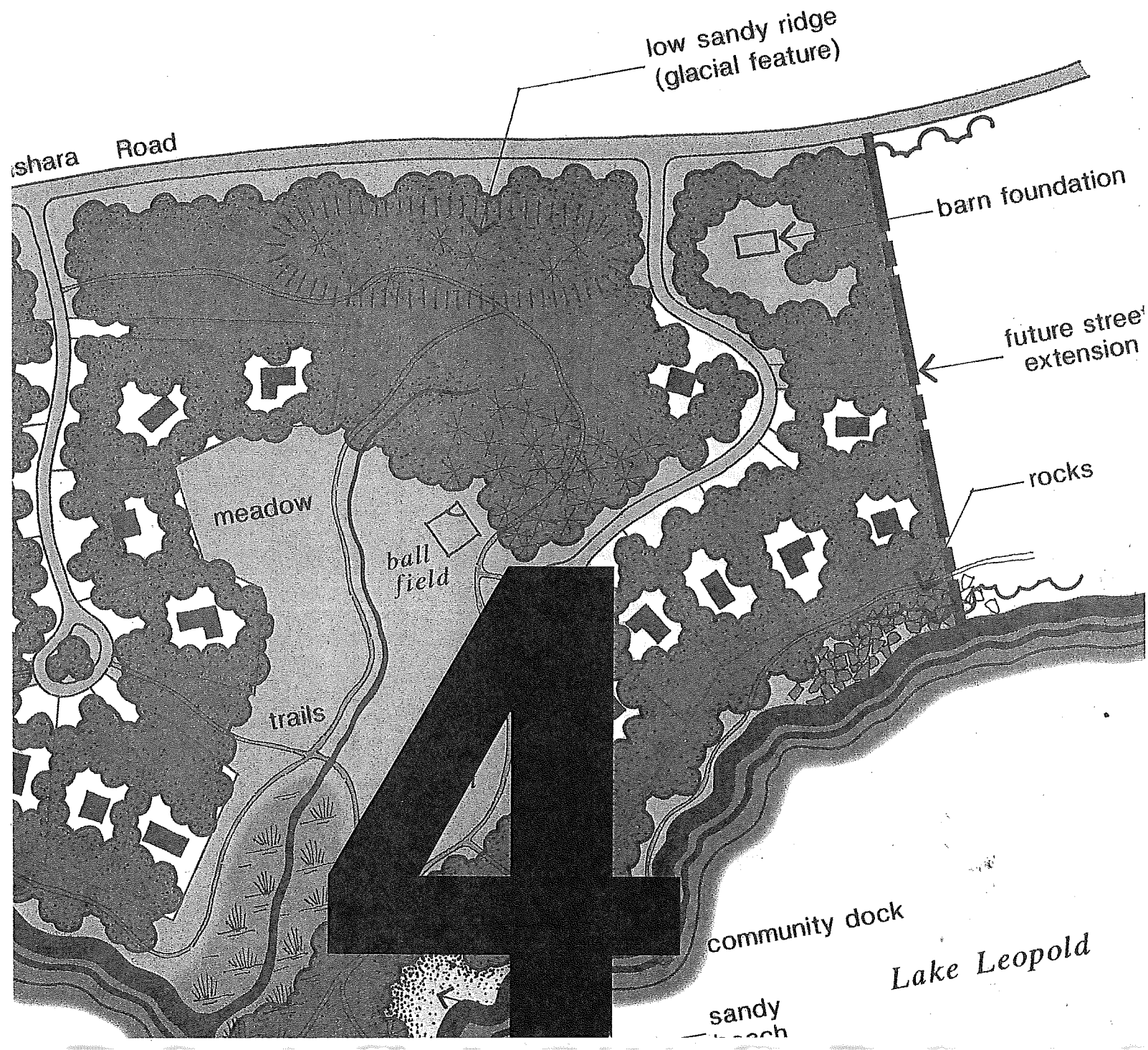
APRIL 2012



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 4

PRACTICE FLOOD RESILIENCY



Promoting Flood Resiliency Through the Regulatory Process

By Terri L. Turner, AICP

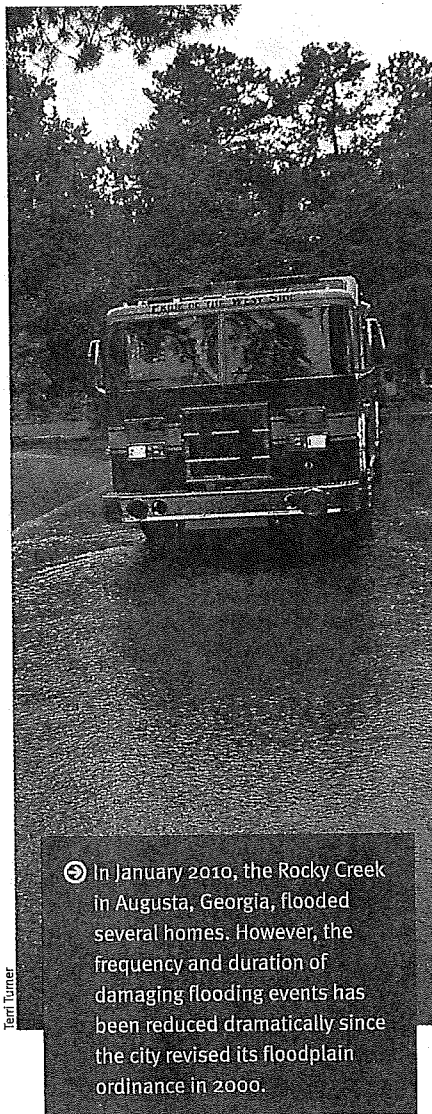
Flooding occurs in all regions of the United States and at all times of the year.

One in three disaster declarations is a result of flooding, and an increase in population, increased development in flood-prone areas, and a predicted increase in intensified rain events due to climate change will only exacerbate those numbers.

Flood resiliency can be defined as the integration of roles, responsibilities, and governance necessary to adapt to the various risks associated with flooding and the ability to withstand and rapidly recover from disruptions in function after a flood event.

Successful flood resiliency should begin at the community level with individuals taking personal accountability for their relationship to the environment around them and the associated risk that this environment can impose. Unfortunately, resiliency is, all too often, viewed by the general public as being the exclusive responsibility of local, state, or federal governments. Many mitigation and planning practitioners attribute this mindset to a lack of public outreach and education about risk and resiliency. In other words, we haven't done enough to foster a culture in which hazards, such as flooding, are identified, planned for, and then mitigated so that the vulnerability to the disaster is lessened and the community's ability to withstand and rapidly recover from the disaster is increased.

The regulatory process is an essential tool in the arsenal of fighting floods and promoting flood resiliency. Zoning, building codes, and other regulatory measures can ensure that fewer vulnerable structures are built in flood-prone areas, fewer lives are put at risk, and fewer losses, to both prop-



Terri Turner

⊕ In January 2010, the Rocky Creek in Augusta, Georgia, flooded several homes. However, the frequency and duration of damaging flooding events has been reduced dramatically since the city revised its floodplain ordinance in 2000.

erty and people, are incurred due to unwise development patterns.

A LOOK AT THE NFIP

The National Flood Insurance Program (NFIP) was developed in 1968 as a part of the National Flood Insurance Act. The NFIP is a voluntary agreement between the federal government and participating communities in which the federal government offers subsidized flood insurance to communities that agree to adopt and enforce a flood ordinance that, at a minimum, meets the federal standards to reduce future flood risk to new construction in floodplains. Flood insurance, now provided to nearly 20,000 communities across the United States through the NFIP, was designed to provide an insurance alternative to disaster assistance and also to reduce the escalating costs of repairing damage to buildings and their contents after a flood event. Buildings constructed in accordance with minimum NFIP building standards suffer approximately 80 percent less damage annually than those buildings not built in compliance with the minimum standards.

Without homes and workplaces that are resilient to natural disasters, there is no chance of a sustainable local economy. While the NFIP has been the most cost-effective hazard mitigation tool in the history of this nation, flood losses in the United States continue to worsen. In fact, these increasing flood losses can be attributed, in part, to federally backed flood insurance that encourages at-risk development in the Special Flood Hazard Area (SFHA). Consequently, there is still a gap in land-use regulation

ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of April to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. Terri L. Turner, 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

Terri L. Turner, AICP, is the development administrator/floodplain manager/hazard mitigation specialist for the Augusta Planning & Development Department in Augusta, Georgia, as well as the No Adverse Impact Committee Cochair and the Region 4 Director of the Association of State Floodplain Managers. She is an ASFPM Certified Floodplain Manager.

that must be filled in order to promote flood resiliency.

PLANNING FOR FLOOD RESILIENCY

The purpose of the local comprehensive plan is to articulate a long-term community vision for growth and change. Consequently, it is important for the comprehensive plan to address the community's propensity to hazards and the likely effects of climate change on the overall makeup of the community. The plan should also include goals and policies to promote community resiliency. While comprehensive plans are not law, most states require local development regulations to be in conformance with the vision presented in the plan.

Another important document for promoting flood resiliency is the climate action plan, which may be a stand-alone plan or adopted as an element of the local comprehensive plan. The purpose of a climate action plan is to outline mitigation and adaptation strategies to help the community cope with changing climate conditions, such as a higher frequency of extreme storm events.

Similarly, hazard mitigation plans form the foundation for a community's long-term strategy to reduce disaster losses. Communities that embrace the mitigation planning process generally recover rapidly from floods and other disasters and thus are found to be more prepared, sustainable, and resilient places to live and work. Furthermore, a 2005 study conducted by the Multihazard Mitigation Council concluded that every dollar spent on mitigation saves

society an average of four dollars on damage and recovery.

FLOODPLAIN MANAGEMENT ORDINANCES

The single most important local regulatory tool for flood resiliency is the floodplain management ordinance. Successful floodplain management ordinances typically exceed the minimum standards of the NFIP and include, but are not limited to, provisions addressing the following:

- Increased freeboard
- Higher protection standards for critical facilities (e.g., hospitals, schools, and government buildings)
- Prohibitions against hazardous materials in the SFHA
- Prohibitions against relocating channels or watercourses or erecting barriers that cause an impact to flood heights both up- and downstream
- Prohibitions against fill in the SFHA
- Requirements for compensatory storage in the floodplain
- Mapping and regulating areas known to flood, or where there is historical evidence of flooding, that are not mapped on the Flood Insurance Rate Map (FIRM)

- Preservation of parts of the community's floodplains as open space
- Higher regulatory standards for riparian areas (riparian buffers)
- Habitat protection
- Designation of Coastal High Hazard Areas and associated regulatory requirements such as planned development requirements or clustering requirements
- Zero-rise (regulatory) floodways

It is important for the comprehensive plan to address the community's propensity to hazards and the likely effects of climate change on the overall makeup of the community.

- Designation of planning areas with special objectives, which may include protection and preservation of fishery and wildlife habitats, scenic and recreational areas, and other natural resources.

Many of these provisions are found in the Community Rating System (CRS)—a voluntary incentive program of the NFIP, which recognizes and encourages floodplain management activities that exceed the minimum standards of the NFIP. The aim of the program is to reduce and avoid flood damage to insurable property, strengthen and support the insurance aspects of the NFIP, and to foster comprehensive floodplain management. The "reward" to those

communities that successfully implement the higher regulatory standards found in the CRS is lower flood-insurance premiums for the property owners in the community. CRS discounts on flood insurance range from five to 45 percent and are based on the classification the community receives based on the effectiveness of their local program. Activities that increase the community's public safety, reduce property damage, avoid economic disruption and loss, and protect the environment may be counted for CRS credit. Additionally, the program encourages innovative ways to prevent or reduce flood damage.

(2000) floodplain areas and the newly projected floodplain, the county discovered there would be an estimated \$333 million in additional damages under maximum build out. In response to these findings, the county revised its zoning code and land-use regulations based on the projected change in the floodplain. A new minimum base flood elevation for future development (one foot above the level to which flood waters are expected to rise) and set of stream setback requirements limit development to areas outside of the floodplain and protects against losses from future flooding.

nances or added to the zoning code as an overlay.

Iowa City, Iowa

Iowa City adopted its current SAO in 2005. With respect to flood hazard areas, the SAO establishes a 50-foot buffer between development activity and the Iowa River floodway; a 30-foot buffer between development and floodways of tributaries to the Iowa River; and 15-foot buffers on either side of an assumed 30-foot-wide stream corridor for blue-line tributaries without a delineated floodway. The SAO increased distances between development activity and bodies of water and remains an effective means of preserving flood storage areas, reducing the likelihood of flood damage to structures, and providing opportunities for recreational trails and open space.

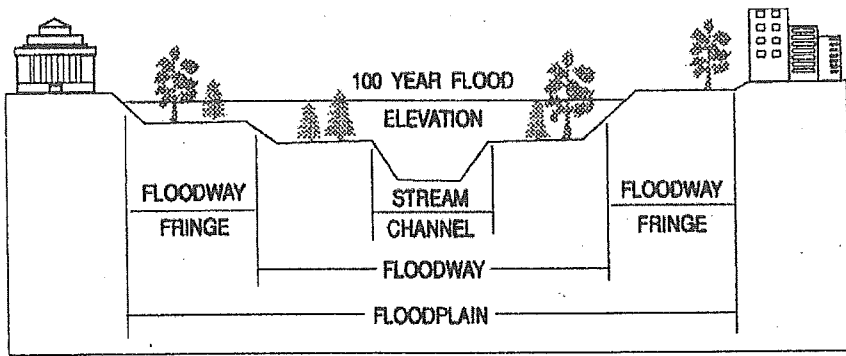
In 2010 Iowa City incorporated new floodplain management standards into its zoning ordinance. According to Julie Tallman, Iowa City's developmental regulation specialist, "having been employed at City Hall since 1993, it is my opinion that the combination of our SAO and the new floodplain regulations have strengthened our ability to preserve the natural functions and beauty of the surrounding landscape, reduce the potential risk to structures, and protect our population."

STORMWATER MANAGEMENT ORDINANCES

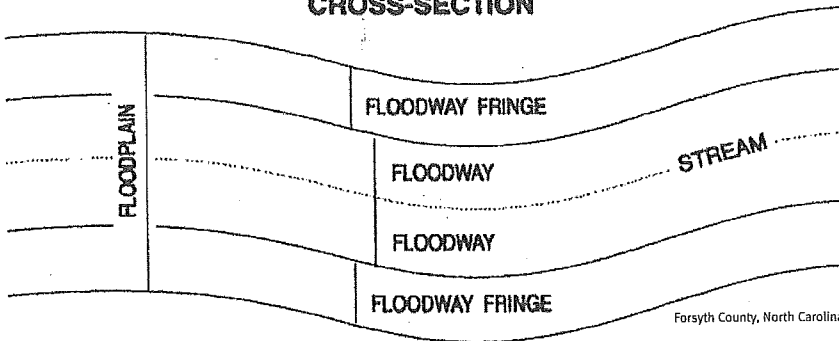
A number of communities use stormwater management ordinances (SWMOs) to regulate the amount of stormwater runoff that can leave new developments. SWMOs often require higher runoff standards in watersheds and basins with a propensity to flood. Additionally, the SWMO may require higher standards for best management practices (BMPs) and higher standards for protecting natural and beneficial functions of water courses that far exceed the state or federal standards. This may include provisions such as stream buffers, which prohibit disturbing vegetation along the banks of a watercourse. In many states this buffer is regulated as part of the state's National Pollutant Discharge Elimination System program.

BUILDING CODES

Communities can also incorporate higher standards into their building codes to promote flood resiliency. Requiring new buildings to be constructed on flow-through



CROSS-SECTION



PLAN VIEW

➡ In order for property owners to be eligible for flood insurance through the NFIP, community floodplain ordinances must restrict all building in the floodway and must require all habitable structures to be raised above the 100-year flood elevation.

Charlotte-Mecklenburg, North Carolina

In Charlotte-Mecklenburg County, North Carolina, planners have used their current land-use zoning regulations to analyze maximum build out of future development and how the potential development will affect current floodplain designations. Comparing the potential flood damages that would likely occur under the maximum build-out scenario with both the current

SENSITIVE AREAS ORDINANCES

Many communities have areas of special environmental sensitivity, such as wetlands, frequently flooded areas, aquifer recharge zones, fish and wildlife habitat corridors, and geologically sensitive areas. To guard these features some communities adopt sensitive area ordinances (SAOs) to limit development on or near sensitive lands. SAOs may be stand-alone ordi-

foundations rather than on fill is useful for floodwater storage. Local building codes may also require an increased elevation standard (freeboard) above the base flood elevation. This ensures that structures are elevated on properly designed and constructed foundations and have the required flood openings and will result in lower flood insurance premiums.

Furthermore, having a Building Code Effectiveness Grading Schedule classification of 5 or better from the Insurance Services Office or having adopted all or part of the higher regulatory standards of the International Building Code may be a vital tool in promoting flood resiliency in the community. Another source for more stringent building code requirements is the American Society of Civil Engineers' (ASCE)

CONSERVATION SUBDIVISION STANDARDS

In a conservation subdivision, the residential density is typically the same or, in some cases, higher than in a conventional subdivision. However, in a conservation subdivision the residential units are clustered together on smaller lots, leaving a large percentage of the total site undisturbed. Steering development away from the floodplain and other environmentally sensitive areas of a site without reducing the potential density of the site can be a politically palatable way to reduce potential flood damage and help maintain flood storage and conveyance capacity. Consequently, many communities have adopted provisions sanctioning conservation design in either their subdivision or zoning ordinances.

Augusta's decisions to accept greenspace from conservation subdivisions are based, in part, on the city's community greenspace plan. The state of Georgia's Community Greenspace Program provides funding to help urban and rapidly developing cities and counties set aside 20 percent of their land as permanent open space. As part of Augusta's participation in this program, the city has adopted a community greenspace plan that includes policies and specific proposals to provide permanent protection of environmentally sensitive areas.

OVERLAY DISTRICTS

Overlay districts superimpose additional regulations on underlying mapped zoning districts. Like conventional zoning districts,



Wikimedia Commons/Phil Guest

Myrtle Beach uses its Coastal Protection zoning overlay to limit new development seaward of the 50-year erosion control line.

Flood Resistant Design and Construction standard (ASCE 24-05). ASCE 24-05 requires a one-foot freeboard for most structures and up to three feet for critical facilities. Compliant building codes also

- account for instability and decreased structural capacity associated with erosion, scour, and shoreline movement as part of foundation design for buildings in coastal areas and
- prohibit construction of structures in certain high-risk areas such as alluvial fans, flash-flood areas, mudslide areas, erosion-prone areas, high-velocity-flow areas, and ice-jam and debris areas.

Augusta, Georgia

Augusta's zoning ordinance permits conservation subdivisions in a number of low-density residential districts by right when all lots are at least 60 percent of minimum district lot sizes and by special exception when one or more lots are less than 60 percent of minimum district lot sizes. To qualify, the minimum tract size must be 20 acres and a minimum of 40 percent of the overall acreage of the tract must be permanently protected as greenspace. The developer may either dedicate the greenspace to a public entity, a home owners' association, or a land trust, subject to approval of a greenspace management plan by the city.

overlays consist of both mapped boundaries and zoning text. The boundaries of an overlay may not correspond to the boundaries of underlying zoning districts or even to parcel boundaries. For example, many communities use zoning overlay districts to protect floodplains and riparian areas whose boundaries seldom follow property lines.

Overlays in Vermont

Communities in Vermont often use flood hazard districts to impose additional site and building standards for development located within a mapped flood hazard area. Similarly, a number of counties in Vermont use fluvial erosion hazard corridor overlay

GLOSSARY

- *Base Flood Elevation (BFE)* is the computed elevation to which floodwater is anticipated to rise during the one percent annual chance flood (the base flood). The BFE is the regulatory requirement for the elevation or the floodproofing of structures, both commercial and residential. The relationship between the BFE and a structure's existing elevation determines the flood insurance premium.
- *Coastal High Hazard Areas (CHHA)* is the area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources. The CHHA is identified as Zone V on Flood Insurance Rate Maps (FIRMs). Special floodplain management requirements apply in V Zones, including the requirement that all buildings be elevated on piles or columns.
- *Compensatory storage* is that area that is required, for storage of floodwaters, to offset the impacts of buildings, fill, and impervious surfaces within the floodplain.
- *Flood Insurance Rate Map* is a map on which the 100-year (one percent annual chance) and the 500-year (0.2 percent annual chance) floodplains, Base Flood Elevations (BFEs), and regulatory floodways are delineated to enable insurance agents to accurately rate flood insurance policies for home owners and business owners in communities participating in the National Flood Insurance Program.
- *Freeboard* is a factor of safety, usually expressed in feet above a known flood level, for purposes of floodplain management, and usually expresses the height above the BFE at which insurable structures must be built.
- *Regulatory floodway* means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Communities must regulate development in these floodways to ensure that there are no increases in upstream flood elevations.
- *Special Flood Hazard Area* is the area subject to inundation by a flood that has a one percent or greater chance of being equaled or exceeded during any given year. This type of flood is commonly referred to as the "100-year flood" or the "base flood".
- *Zero-rise (regulatory) floodways* is a designated regulatory floodway where no increase in flood heights occurs during the base flood, even those increases that are negligible and do not change the BFE. In communities that use a zero-rise floodway, the Federal Emergency Management Agency floodway is generally enlarged to include almost the entire floodplain. Fill and other encroachments are not allowed in the zero-rise floodway.

districts to prohibit new structures and fill in the SFHA. Additionally, in Calais, Vermont, the use of large lot sizes in the city's Upland Overlay District protects sensitive upland areas from the adverse effects of inappropriate or high-density development.

Myrtle Beach, South Carolina

Myrtle Beach uses its Coastal Protection (CP) overlay zone to control erosion, preserve and maintain a recreational beach, safeguard property, and promote public safety. The overlay prohibits seawalls and new structures in an area bound by the top of the primary frontal dune system adjacent to the Atlantic Ocean and marked landward by drawing a line parallel to the primary frontal dune line equivalent to 50 times the annual beach erosion rate (which exceeds the state standards by 10 times the erosion rate). The regulations apply to all oceanfront property, with slight exemptions given to two historic pier structures located in the city limits. According to Allison Hardin, the city's planner and former floodplain manager, "in cases of reconstruction, if retreat is not possible, it is intended that existing buildings may be replaced without exceeding the gross square footage of the existing building and without any portion of the footprint of the building located in the CP district being exceeded."

TRANSFER OF DEVELOPMENT RIGHTS

Transfer of development rights (TDR) is a land preservation tool wherein a property owner yields some or all of the right to develop or use his or her property in exchange for the right to develop or use another parcel of property more intensively. Communities with TDR programs designate sending areas (where development rights can be purchased) and receiving areas (where purchased development rights can be applied).

Kent County, Delaware

Kent County has had a TDR program, administered by its planning department, since 2005. Under the county's program, participants must record an irrevocable preservation easement to memorialize the separation of the development rights from the property. Property owners who have transferred development rights from their land may continue to use the land for any purpose or use permitted by right by their zoning district *except* residential subdivision. While ownership of the land may be transferred, the residential development restriction remains with the land in perpetuity.

ENGINEERING CERTIFICATIONS

Finally, some communities, such as DuPage County, Illinois; Greenville, South Carolina; and Arlington, Texas, require engineering certifications to insure adherence to sound floodplain management standards. Bill Brown of the City of Arlington describes the theory: "Requiring strong technical analysis and establishing technical performance standards goes a long way to facilitate development that is safer from flood risks, while avoiding the takings issues." As Brown explains, the city is not saying *no*, but by imposing this certification requirement, some projects that would otherwise proceed become financially impractical. "The traditional method of zoning has limited liability at best," says Brown. "The strong technical analysis and performance standards that are signed by a licensed professional carry (personal and professional) liability."

THE TAKINGS ISSUE

Obviously, there are many regulatory tools at the community's disposal to oversee development and promote flood resiliency. Sadly, many communities fail to adequately regulate through zoning or other regulatory mechanisms, in relation to flood prevention, for fear of the takings issue. Yet a failure to regulate may set a community up for common law liability suits.

According to a 2008 article by Edward A. Thomas and Sam Riley-Medlock in the *Vermont Journal of Environmental Law*, there have only been a handful of successful challenges to floodplain regulations as a taking. In those cases, a nearly complete prohibition of building on the property was found to have occurred with no clearly demonstrated hazard-related benefit for the community. The Thomas-Medlock research concluded that the trend is for the courts to sustain government regulation of hazardous activities for the prevention of harm.

In communities that fail to adequately administer their own regulations, however, governments have been held liable for negligence or nuisances where the government has issued a development permit that increased flood heights, flood magnitudes, or flood intensity on other property. In research prepared for the Association of State Floodplain Managers (ASFPM) Foundation, Jon Kusler explained that courts have supported regulations that exceed the NFIP standards, provided those regulations were enacted in furtherance of public safety and do not deny all use.

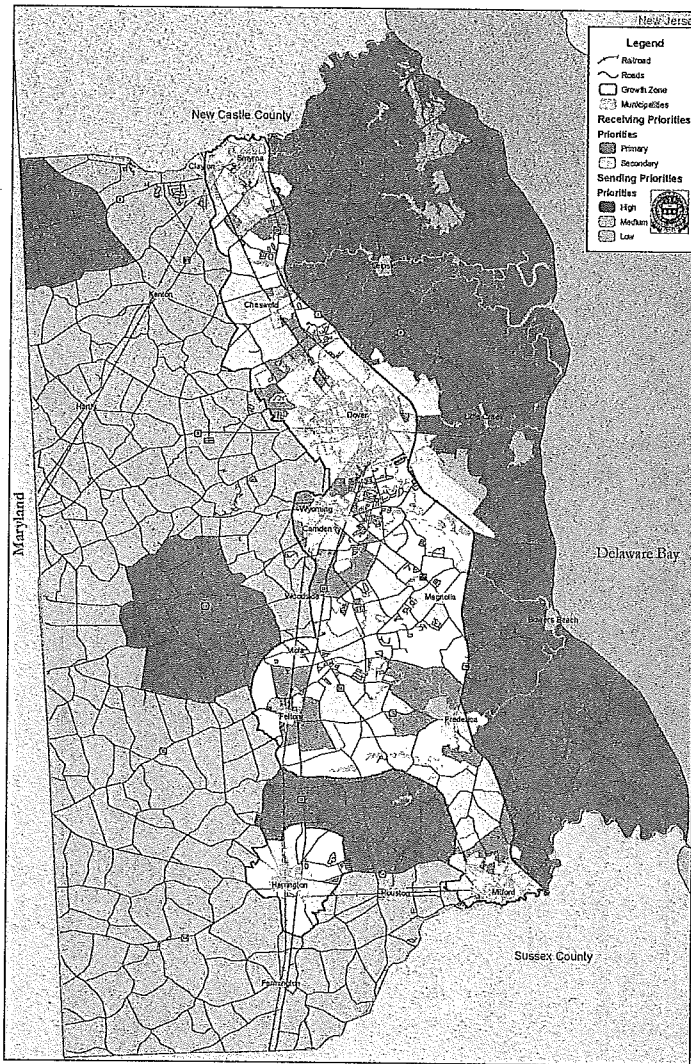
LOOKING FORWARD WHILE LOOKING BACK

Local governments are challenged daily to regulate hazardous locations, while at the same time being sensitive to the deep and abiding concerns of the property-rights movement. Many believe that the answer is in a maxim of ancient Roman law expressed in Latin as *Sic utere tuo ut alienum non laedas*. In English, "Use your own property so that you do not injure another's property." One thing upon which virtually all legal philosophers agree is that nobody possesses a right to use their land to harm others.

ASFPM has developed a philosophy that attempts to capture the concept of managing land use in such a manner as to not harm one's neighbors: No Adverse Impact Floodplain Management (NAI). ASFPM defines NAI as "... an approach that ensures the action of any property owner, public or private, does not adversely impact the property and rights of others." This principle makes a community look at what really needs to be done to prevent damage to people, property, and the environment.

In 1543, when Hernando De Soto's expedition observed the earliest recorded significant flood of the Mississippi River, they noted that the indigenous communities "built their houses on the high land, and where there is none, they raise mounds by hand and here [took] refuge from the great flood." Fast forward from 1543 to modern day, where, in the last 100 years, more than 9,000 people have died as result of inland flooding in the United States.

Obviously, the nation must rethink its basic approach to flood-risk reduction and floodplain management. Roles must be defined, responsibilities must be assigned, and governance, via the regulatory process, must be at the forefront of all we do within the community in order to adapt to the various risks associated with flooding and in order to have the ability to withstand and rapidly recover from disruptions in function after a flood event. What we do today can shape the future of our communities, in terms of flood resiliency, and significantly impact the lives of millions of Americans. We have a conscious choice: Do we take personal responsibility and move forward, carefully and cautiously, adapting our regulations to promote flood resiliency as we proceed, or do we continue on the path of least resistance, perpetuating the cycle of build-damage-rebuild-damage, that far too many communities have traveled on in the past?



➔ Kent County, Delaware, uses a transfer of development rights program to preserve land outside of the county's designated growth zone.

Cover Image: Conservation design encourages the protection of environmentally sensitive areas without reducing residential densities. Source: Randall Arendt

VOL. 29, NO. 4

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for \$95 (U.S.) and \$120 (foreign). W. Paul Farmer, FAICP, Chief Executive Officer; William R. Klein, AICP, Director of Research

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

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

Copyright ©2012 by American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601-5927. The American Planning Association also has offices at 1030 15th St., NW, Suite 750 West, Washington, DC 20005-1503; www.planning.org.

All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the American Planning Association.

Printed on recycled paper, including 50-70% recycled fiber and 10% postconsumer waste.

NON-PROFIT ORG.
U.S. POSTAGE
PAID
CHICAGO, IL
PERMIT# 4342

ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

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

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

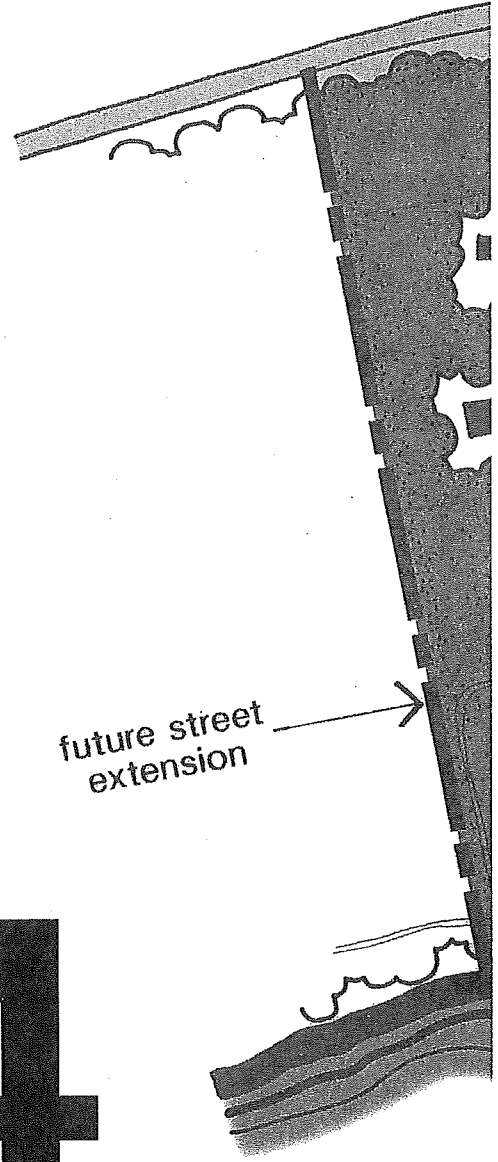


S2 P2 *****AUTO**3-DIGIT 553
Z41-D March
231626
Tim Gladhill
City of Ramsey
7550 Sunwood Dr NW
Ramsey MN 55303-5137

REC'D MAR 30 2012

HOW FLOOD RESILIENT IS
YOUR COMMUNITY?

4



future street extension