City of Ramsey
Agenda
Regular Planning Commission
Thursday April 4, 2013
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 January 3, 2013
Planning Commission Special Meeting Minutes Dated January 31, 2013
Planning Commission Work Session Minutes Dated March 14, 2013

5. Public Hearing/Commission Business

1. Appointment of Chairperson and Vice Chairperson

2. FOR DISCUSSION PURPOSES: Review Status of 167th Retail Node

3. FOR PRESENTATION AND DISCUSSION ONLY: Present New Member Orientation and Review Current Zoning and Subdivision Code Basics

4. FOR DISCUSSION ONLY: Review Work Plan and Appoint Ad Hoc Sub-Committee to Complete Housing Assistance Policy

5. Zoning Bulletins

6. FOR UPDATE ONLY: Receive Report on Monthly Activities

6. Commission/Staff Input

7. Adjournment

Regular Planning Commission **4. 1.**

Meeting Date: 04/04/2013

By: JoAnn Shaw, Community Development

Information

Title:

Approve the Following Planning Commission Meeting Minutes:

Planning Commission Meeting Minutes Dated January 3, 2013
Planning Commission Special Meeting Minutes Dated January 31, 2013
Planning Commission Work Session Minutes Dated March 14, 2013

Background:

n/a

Notification:

Observations/Alternatives:

Funding Source:

Staff Recommendation:

Action:

Attachments

01.03.13
01.31.13 Special
03.14.13 Work Session

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	03/29/2013 09:32 AM

Form Started By: JoAnn Shaw Started On: 03/12/2013 02:33 PM

Final Approval Date: 03/29/2013

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a regular meeting on Thursday, January 3, 2013, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Gary Levine Commissioner Randy Bauer Commissioner Ralph Brauer (arrived at 7:07 p.m.) Commissioner Robert Schiller Commissioner Gary Van Scoy
Members Absent:	Commissioner Joseph Field Commissioner Jessica Perez
Also Present:	Development Services Manager Timothy Gladhill Associate Planner/Environmental Coordinator Chris Anderson

1. CALL TO ORDER

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

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

Motion by Commissioner VanScoy, seconded by Commissioner Bauer, to approve the agenda as presented.

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

4. APPROVE PLANNING COMMISSION MINUTES

4.01: Approve the Following Planning Commission Minutes:

4.01.1: Planning Commission Meeting Minutes Dated December 6, 2012

Motion by Commissioner Bauer, seconded by Commissioner Van Scoy, to approve the following minutes as presented: Planning Commission Meeting Minutes dated December 6, 2012.

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

5. NOTE CITY COUNCIL MINUTES

5.01: Note the Following City Council Meeting Minutes:

5.01.1: City Council Meeting Minutes Dated November 13, 2012
5.01.2: City Council Meeting Minutes Dated November 23, 2012

Informational; no action required.

6. PUBLIC HEARINGS/COMMISSION BUSINESS

6.01: Public Hearing: Consider Ordinance to Amend City Code Section 117-118 Entitled The COR Related to Twenty Four (24) Hour Drive-thrus

Public Hearing

Chairperson Levine called the public hearing to order at 7:03 p.m.

Presentation

Development Services Manager Gladhill presented the staff report. He explained that as part of The COR Zoning Code, including the reformat of the original Design Guidelines to the Design Framework, zoning code standards related to design were shifted from the actual text of the City Code to the new Design Framework document. The intent was to create a more flexible, yet better defined design document for developers to plan their developments.

Development Services Manager Gladhill indicated there appears to have been some sort of formatting issue that dropped drive-thru uses with twenty-four (24) hour operations as a conditional use, and only keeping drive-thrus as a permitted use (when using audible speakers) between the hours of 7:00 a.m. and 10:00 p.m. Staff recommended the Ordinance amendment as presented.

Citizen Input

There was not citizen input for this item.

Commissioner Brauer arrived at 7:07 p.m.

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

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

Chairperson Levine closed the public hearing closed at 7:07 p.m.

Commission Business

Commissioner Bauer requested information on the differences between The COR 2 and COR 3 zoning districts. Development Services Manager Gladhill discussed this in detail with the Commission explaining The COR 2 zoning district was more auto oriented and retail. He noted COR 3 was an office park/employment district.

Commissioner Van Scoy requested to see a zoning map showing the location of The COR and COR-2b zoning districts. Development Services Manager Gladhill reviewed a map with the Commission.

Commissioner Van Scoy inquired if there would be any screening along Bunker Lake Boulevard. Development Services Manager Gladhill was uncertain of the proposed screening for this area.

Chairperson Levine stated this information would be included in the site plan.

Commissioner Bauer questioned if The COR district, being mostly commercial, should have restricted business hours. He suggested the existing Ordinance not be modified and allow the use to remain a permitted use.

Commissioner Schiller agreed stating he was in favor of allowing drive-thrus to remain a permitted use.

Development Services Manager Gladhill commented Staff was recommending the use of audible speakers in The COR at a drive-thru from 11:00 p.m. to 7:00 a.m. through issuance of a Conditional Use Permit, and that the current ordinance was to allow use where not currently allowed under current ordinance.

Motion by Commissioner Bauer, seconded by Commissioner Schiller, to recommend that City Council adopt the Ordinance amending City Code Section 117-118 relating to twenty-four hour drive-thru operations, revising Line 1 and deleting everything in Paragraph 3 after "…beyond the property being served".

Further discussion

Chairperson Levine asked if this motion made sense to Staff. Development Services Manager Gladhill indicated this was a policy decision and if the Planning Commission was comfortable with allowing drive-thrus to operate 24 hours a day Staff would support this decision.

Commissioner Van Scoy questioned if there were current drive-thru businesses operating in The COR. Development Services Manager Gladhill noted there were drive-thru operations in the Coborn's development, a pharmacy lane and a Caribou Coffee.

Commissioner Van Scoy inquired if these businesses hours of operation were restricted. Development Services Manager Gladhill explained the hours were restricted by City Code.

Commissioner Bauer suggested the hours not be restricted as this was a commercial business district.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, Schiller. Voting No: Van Scoy. Abstain: Commissioner Brauer. Absent: Commissioners Field and Perez.

6.02: Public Hearing: Request for Site Plan and Conditional Use Permit Approval for McDonald's Located on Lot 4 Block 1 CORE TWO; Case of McDonald's USA LLC

Public Hearing

Chairperson Levine called the public hearing to order at 7:16 p.m.

Presentation

Associate Planner/Environmental Coordinator Anderson presented the staff report. He explained the City received an application for Site Plan and Conditional Use Permit review for a proposed 4,600 square foot McDonald's restaurant located in the COR-2b subdistrict. The proposed building is a single tenant space located at the southeast corner of Sunwood Drive and Armstrong Boulevard NW, adjacent to the recently approved Super America site. The proposal includes a drive-thru and the applicant has requested to utilize and operate electronic speaker devices associated with the drive-thru twenty-four (24) hours per day. A conditional use permit is being processed along with the site plan to address the use of electronic speaker device outside the hours of 7:00 a.m. and 10:00 p.m. as permitted by City Code.

Associate Planner/Environmental Coordinator Anderson reviewed the site plan renderings in further detail and recommended the Commission adopt findings of fact favorable to the applicant and to approve the request for a Conditional Use Permit for the use and operation of electronic speaker devices associated with the drive-thru twenty-four (24) hours per day, contingent upon compliance with the Staff Review Letter dated December 28, 2012 and upon adoption of an Ordinance amendment related to the expanded use of electronic speaker devices. Staff requested the Commission also recommend approval of the proposed site plan, contingent upon compliance with the Staff Review Letter dated December 28, 2012.

Chairperson Levine requested staff to review how traffic would flow through this property. Development Services Manager Gladhill reviewed the traffic flow in detail with the Commission.

Chairperson Levine asked how many lanes would be provided in the drive-thru. Associate Planner/Environmental Coordinator Anderson commented there would be two drive-thru lanes that would merge into one for food pickup.

Citizen Input

Brian Smith, McDonald's USA, 1650 West 82nd in Bloomington, thanked the Commission for consider his request this evening. He noted he was available to take questions or comments.

Eric Kellogg, Landform, 105 South Fifth Avenue in Minneapolis, noted he too was available to take questions or comments from the Commission.

Commissioner Van Scoy asked if McDonald's had provided any alternative placement plans to City staff. Mr. Kellogg stated many options were discussed for this site given the number of cars anticipated. He noted the provided plan best met the needs of the restaurant with a drive-thru. He explained it was extremely important to separate the pedestrian traffic from the drive-thru traffic for safety purposes.

Commissioner Bauer questioned why Staff had requested the building layout alternatives. Development Services Manager Gladhill explained that this assured Staff had done their due diligence in reviewing the layout of this site, the flow of traffic and that the best plan was before the Commission for approval.

Chairperson Levine commented the proposed layout worked well, as has been demonstrated in other communities.

Commissioner Brauer inquired who was awarded the franchise for this McDonald's location. Mr. Smith stated this had not yet been determined.

Commissioner Brauer asked how much leeway McDonald's had to deviate from the standard site plan. Mr. Kellogg stated the submitted layout would differ from any in the metro area, given the proposed trellis and windows on the rear of the building. Mr. Smith explained that deviating from the site plan too greatly would require assistance from corporate. He noted that full circulation around the site was key.

Commissioner Brauer questioned how much McDonald's could deviate prior to involving corporate comment. Mr. Smith stated safety issues would arise if the building did not have full circulation.

Commissioner Brauer commented the proposed site plan deviated from the current zoning guidelines. He was pleased that McDonald's has been willing to work with the City thus far and questioned how much further McDonald's could go to meet the zoning code. Mr. Smith stated his main concern would be meeting McDonald's safety requirements.

Chairperson Levine supported the site plan as submitted.

Commissioner Bauer asked where the golden arches would be located. Mr. Kellogg indicated the building would have arches along with the proposed signage off of Highway 10.

Commissioner Bauer questioned where the garbage receptacles would be located. Mr. Smith noted these would be fully enclosed to the rear of the building.

Commissioner Bauer asked how many seats the restaurant would have. Mr. Carlisle commented the restaurant would have 90-100 seats and would have 51 parking stalls.

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

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

Chairperson Levine closed the public hearing closed at 7:47 p.m.

Commission Business

Commissioner Brauer requested an additional Finding of Fact be added stating that given McDonald's corporate policy on how sites are to be designed and for safety reasons, the proposed site plan was the only way to layout this site.

Chairperson Levine questioned why this was necessary.

Commissioner Brauer stated this would allow for deviation from the recommended zoning standards with regard to the site layout, addressing also the safety concerns of the proposed use on this site.

Associate Planner/Environmental Coordinator Anderson recommended this finding state the proposed site plan minimizes the potential pedestrian/motor-vehicle conflicts and safety concerns. The Commission agreed with this suggestion.

Commissioner Bauer asked how the Conditional Use Permit would proceed given the previous action taken by the Planning Commission. Development Services Manager Gladhill suggested the reference to the Conditional Use Permit be omitted as the drive-thru would be a permitted use.

Motion by Commissioner Schiller, seconded by Commissioner Brauer, to recommend that City Council adopt findings of fact (with the addition noted above) favorable to the applicant and to approve the request for the use and operation of electronic speaker devices associated with the drive-thru twenty-four (24) hours per day, contingent upon compliance with the Staff Review Letter dated December 28, 2012 and upon adoption of an ordinance amendment related to the expanded use of electronic speaker devices.

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

Motion by Commissioner Schiller, seconded by Commissioner Brauer, to recommend that City Council approve the proposed site plan, contingent upon compliance with the Staff Review Letter dated December 28, 2012.

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

6.03: Discussion on Dissemination of City Council Minutes

Presentation

Development Services Manager Gladhill presented the staff report. He indicated the Planning Commission was the only Board within the City that notes City Council minutes. He explained that all Council minutes are currently attached to the Planning Commission agenda. In addition to noting all City Council Minutes, staff additionally prepares a Staff Update that highlights and summarizes key actions made by the Council that may be of interest to the Commission. With the new agenda software system and online records retention system, all City minutes are much more easily accessible than in the past. Staff recommended that the City Council minutes be disseminated through the City's online records retention system rather than attaching them to the Planning Commission agenda.

Commissioner Bauer supported Staff's recommendation.

Chairperson Levine agreed and directed Staff to disseminate City Council Minutes through the City's online records retention system rather than attaching to the Planning Commission Agenda.

7. COMMISSION / STAFF INPUT

7.01: Special Planning Commission Meeting

Development Services Manager Gladhill commented Staff was working to hold a Special Planning Commission meeting during the week of January 14th. However, this was not possible given the required public hearing notifications. He would be following up with the Commission to possibly hold a special meeting on January 22nd, 23rd or the 28th or 29th to discuss the Preliminary Plat and Site Plan Review for the Seasons of Ramsey.

8. ADJOURNMENT

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

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

The regular meeting of the Planning Commission adjourned at 8:02 p.m.

Respectfully submitted,

_____
Tim Gladhill
Development Services Manager

ATTEST:

_____
JoAnn Shaw
Planning Division Secretary

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

SPECIAL PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a special meeting on Thursday, January 31, 2013, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Gary Levine Commissioner Randy Bauer Commissioner Joseph Field Commissioner Robert Schiller Commissioner Gary VanScoy
Members Absent:	Commissioner Ralph Brauer Commissioner Jessica Perez
Also Present:	Development Services Manager Timothy Gladhill Associate Planner/Environmental Coordinator Chris Anderson Civil Engineer II Linton

1. CALL TO ORDER

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

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

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

Motion Carried. Voting Yes: Chairperson Levine, Commissioners VanScoy, Field, Bauer, and Schiller. Voting No: None. Absent: Commissioners Brauer and Perez.

4. APPROVE PLANNING COMMISSION MINUTES

4.01: Approve the Following Planning Commission Minutes:

4.01.1: Planning Commission Meeting Minutes Dated January 3, 2013

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to approve the following minutes as presented: Planning Commission Meeting Minutes dated January 3, 2013.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, VanScoy, Field, and Schiller. Voting No: None. Absent: Commissioners Brauer and Perez.

5. PUBLIC HEARINGS/COMMISSION BUSINESS

5.01: Public Hearing: Request for Preliminary Plat and Site Plan Approval of SEASONS OF RAMSEY Located at the North East Intersection of Bunker Lake Boulevard NW and Town Center Drive NW; Case of The Seasons of Ramsey Limited Partnership

Public Hearing

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

Presentation

Development Services Manager Gladhill presented the staff report. It was noted the applicant is requesting preliminary plat and site plan approval for the 50-unit townhome development named SEASONS OF RAMSEY. The preliminary plat was discussed in detail and staff noted the applicant would be vacating 147th Circle, while extending the right of way connection of 147th Lane NW. The site plan with the private roadways and architectural designs were reviewed and staff noted additional architectural elements were requested from the applicant. Staff recommended approval of the site plan and preliminary plat contingent upon revisions to the front and rear renderings.

Citizen Input

Bill Kemp, Podawiltz Development Corporation, thanked staff for the presentation this evening. He commented he would be meeting with staff on February 5th to discuss the renderings in further detail.

Commissioner Bauer questioned why the renderings were modified from the original plans.

Mr. Kemp noted some of the issues were cost related, along with other issues concerning the width of the units. He requested the Commission provide feedback on the desired amenities on the exterior of the units.

Commissioner VanScoy asked if the applicant had any other questions or concerns based on the comments made by staff.

Mr. Kemp did not have any other concerns on the project.

Commissioner Bauer indicated the three-bedroom units had a smaller kitchen than the other units, which was inconsistent with the number of occupants.

Mr. Kemp commented the architect would be able to better address this concern.

Lonnie Kornovich, Kornovich & Company, explained he has been working on these plans for the past six weeks. He stated he would continue to work with the City to address the site design requirements.

Commissioner Bauer inquired if the applicant was willing to meet the City's landscaping requirements.

Mr. Kemp reported he was aware of the need for additional top soil and trees and both of these concerns would be addressed with staff.

Commissioner Bauer asked if the Fire Marshal had reviewed the proposed plans.

Development Services Manager Gladhill commented the plans were reviewed and approved by the Fire Marshal.

Motion by Commissioner VanScoy, seconded by Commissioner Schiller, to close the public hearing.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners VanScoy, Schiller, Bauer, and Field. Voting No: None. Absent: Commissioners Brauer and Perez.

Chairperson Levine closed the public hearing closed at 7:23 p.m.

Commission Business

Commissioner VanScoy commented the revised renderings were less desirable than the original designs. He recommended porches be added to the front of the building.

Motion by Commissioner Field, seconded by Commissioner Bauer, to recommend that City Council adopt a Resolution granting Preliminary Plat Approval for SEASONS OF RAMSEY contingent upon approval of the site plan.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Field, Bauer, Schiller, and VanScoy. Voting No: None. Absent: Commissioners Brauer and Perez.

Commission Business

Motion by Commissioner Field, seconded by Commissioner Schiller, to recommend that City Council approve the Site Plan for Seasons of Ramsey, contingent upon compliance with the City Staff Review File dated January 25, 2013 and subject to revised architectural renderings that

comply with The COR Design Framework and previous City Council direction to the Developer and subject to revisions to the architectural renderings that would be consistent with Design Framework and previous renderings.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Field, Schiller, Bauer, and VanScoy. Voting No: None. Absent: Commissioners Brauer and Perez.

5.02: For Discussion Only: Discuss Acceptable Land Uses at 167th Avenue Commercial Node and Provide Feedback on Potential Shooting Range and Recycling Warehouse/Transfer at 6001 167th Lane NW

Presentation

Associate Planner/Environmental Coordinator Anderson explained over the past several years, the City has discussed various options to address permitted uses at the 167th Avenue/St. Francis Boulevard retail node. The node currently experiences a high vacancy rate and concerns with property maintenance on some of the buildings have been expressed. The property is zoned B-1 General Business District, which is intended to provide a commercial area for goods and services for the surrounding neighborhoods and community on a smaller scale than the B-2 Business District.

Associate Planner/Environmental Coordinator Anderson stated the intent of this evening's discussion was to introduce two proposed uses, both of which likely will necessitate an amendment to the Zoning Code, for the property located at 6001 167th Avenue NW (former Supervalu site) and the type of regulatory tools that would be necessary if either were to proceed. The proposed uses were:

1. Indoor shooting range/fitness center with classroom space and a retail component.
2. Metal/clothing recycling center/warehouse with a small retail component.

Associate Planner/Environmental Coordinator Anderson reviewed the first proposal for the indoor shooting range/fitness center with classroom space and a retail component in detail. He noted the request was from an existing business in Ramsey called Total Defense. He explained Total Defense is proposing to have a retail store, gunsmithing and provide self-defense training courses. In addition, Total Defense was proposing to have an indoor shooting range. This was currently not a permitted use in the B-1 General Business District. He indicated that Staff contacted Blaine and Robbinsdale to discuss their indoor shooting ranges. The Robbinsdale range operates in a commercial district while the Blaine range is in an industrial district. Neither has any known complaints associated with them. Staff requested the Commission discuss the matter in further detail, determine the category for the suggested use and provide staff with direction on how to proceed.

Commissioner Bauer commented there were not enough residential homes in the area to keep this commercial development flourishing. He indicated a long-range plan should address the potential for more residential homes in the future.

Development Services Manager Gladhill indicated this commercial area was struggling at this time and the Commission needed to consider both the short-term and long-term goals for this area.

Commissioner VanScoy questioned how the long-term goals of the area would be managed if this use were to proceed in the short-term.

Associate Planner/Environmental Coordinator Anderson stated an interim use could be approved to establish a timeline framework. He indicated the applicants may not be willing to proceed given the expense that would be invested into the buildings.

Development Services Manager Gladhill noted the short-term goals could be written into the long-term vision for this area.

Commissioner Bauer requested additional information from staff on the differences between a licensed use and conditional use permit.

Associate Planner/Environmental Coordinator Anderson indicated a conditional use permit would allow the shooting range to be a permitted use with conditions addressing exterior concerns of the site. The conditional use permit would be tied to the land and would require a public hearing. A licensing procedure would be completed via staff, would be tied to the user and could be revoked if standards were not met within City Code. A license would have to be received on an annual basis.

Commissioner Bauer questioned if both a conditional use and license could be required.

Associate Planner/Environmental Coordinator Anderson commented this would require a Zoning Code Amendment to add the need for a license and/or a conditional use permit for the suggested use.

Chair Levine stated the current property was vacant and he wanted to see the site more viable.

Development Services Manager Gladhill indicated by expanding the allowed uses in this commercial area to match the market the site would be more viable. However, this would have to be considered with the appropriateness of the area in the City of Ramsey.

Commissioner Bauer stated an interim use permit for the shooting range would not benefit the applicant due to the financial investments they would have to make in the building. He commented the applicant may not proceed if the City only gave them a five-year approval.

Commissioner Schiller was in favor of allowing the range as a permitted use as it would draw people to the area. He did not support the additional licensing procedure.

Commissioner VanScoy suggested the proposed shooting range go through the conditional use permit process.

Commissioner Field supported the sporting use and thought this use would become a magnet to draw users from the entire community to this commercial area. He recommended the range proceed as a permitted use so long as Zoning Code requirements were met.

Associate Planner/Environmental Coordinator Anderson stated parking and noise regulations would have to be addressed based on the size of the shooting range, training space and retail component size.

Development Services Manager Gladhill thanked the Commission for their input on this item and stated from the comments received thus far, it appears the shooting range could be considered at a future meeting as a permitted use.

Commissioner Bauer was in favor of having the shooting range be licensed with the City as well.

Development Services Manager Gladhill commented the licensing procedure would allow for the use to be tied to the business owner and not the property.

Commissioner Schiller asked if Blaine or Robbinsdale required their shooting ranges to be licensed.

Associate Planner/Environmental Coordinator Anderson indicated he did not believe either required a license, but the City of Blaine required a CUP.

Commissioner VanScoy stated the safety and security of the proposed business would also have to be addressed. He questioned who controlled these standards.

Development Services Manager Gladhill recommended the applicant be allowed to speak to the Commission.

Marty Fisher, Premier Commercial Properties, discussed the growth of the Total Defense business and noted they were currently leasing space at River Bend Plaza, which was located at the corner of Bunker Lake Boulevard and Highway 47. He indicated the owners were now proposing to expand their business to the 167th Avenue Commercial Node.

Dan Wellman, 2745 131st Avenue in Zimmerman, co-owner of Total Defense, thanked the Commission for their time this evening. He stated over the past 18 months his business has grown significantly and he has outgrown the size of his current space. For that reason, he has been looking for new space to allow for the expansion of his business to include a shooting range. He explained the construction of the range would be quite unique, as it would have a double concrete wall to minimize and suppress the noise.

Mr. Wellman reviewed the proposed floor plan for Total Defense in detail with the Commission. He indicated the proposed use, complete with gun range, archery range and self-defense classes would draw people to the site from the entire northwest metro area. He reviewed the location and demographics of previous clientele.

Commissioner Bauer requested comment on the language within the proposal regarding the "cool toys" sold by Total Defense.

Curt Oaks, 6723 116th Circle in Champlin, co-owner of Total Defense, explained this would include holsters, sites, flashlights and other accessories. He apologized for the poor choice of word and would make a change. Mr. Oaks then discussed the building security given the proposed use.

Associate Planner/Environmental Coordinator Anderson indicated the police department would review this application further regarding security and safety prior to approval.

Commissioner VanScoy asked if fire suppression would be necessary for the proposed use.

Associate Planner/Environmental Coordinator Anderson stated that the Building Official and Fire Marshall did review the two proposed uses and based on the preliminary information received, it did not appear that it would be required for this use but that it may possibly be necessary for the second proposed use.

Chair Levine asked if there were any additional comments or questions from the public in attendance.

Art Collinbach, 15940 Sodium Street, stated he currently drove to the Metro Gun Club in Blaine and he welcomed the proposed use to the City of Ramsey. He stated the range would draw a large number of people to Ramsey. It was his opinion the proposed use would assist in keeping Ramsey a safe community given the level of training that would be provided.

Russ Pawman, 17831 Vanadium Street, noted he was an avid outdoorsman and he was excited about the proposed use coming to the City of Ramsey. He explained he was a member of a gun range outside of the City. He thought the range would draw business into the City throughout the entire year.

Mike Bjorn, 6250 178th Lane, noted he shot at different ranges and would be pleased to see the proposed establishment move into the commercial area.

Chair Levine thanked the public for their comments this evening.

Development Services Manager Gladhill indicated staff would work with the applicant to frame a permitted use with a public forum for citizen dialogue to take place at a future meeting.

Associate Planner/Environmental Coordinator Anderson reviewed the second proposal, which is for a metal/clothing recycling center/warehouse with a small retail component. He explained Triangle Recycling was an existing business operating in the City of Nowthen. The business recycles clothing through a network of clothing collection boxes strategically placed throughout the state. The applicant has expressed an interest in expanding the recycling program to accept electronics, small metals, mattresses and plastics, which would be implemented as Phase II of its operation. This process may be subject to permitting by the Minnesota Pollution Control Agency (MPCA) and possibly a conditional use permit through the City.

Associate Planner/Environmental Coordinator Anderson indicated the proposed use most closely matches warehousing, which is an allowed use in both E-1 and E-2 Employment Districts, but is not allowed in the B-1 Business District. The applicant, upon understanding the current zoning, did state a small retail portion could be added, however, this would not be the primary use. In order for the use to be considered as proposed, either the B-1 Business District would have to be amended to allow warehousing, either as a permitted, conditional or interim use, or the site would need to be rezoned to either E-1 or E-2 Employment District.

Associate Planner/Environmental Coordinator Anderson stated concerns at this time were if the use were compatible with the surrounding uses along with the amount of truck traffic and potential outside storage. He requested the Commission discuss the matter in further detail and provide direction to staff.

Chair Levine expressed concern with outside storage in this area.

Bill Erhart, 4740 154th Lane, representative of Triangle Recycling, commented that the site had enough square footage to ensure that all storage would be conducted inside. He stated the traffic flow to this site would be no more than the grocery store and the proposed use would benefit the residential neighborhood as a recycling facility. He encouraged the Commission to consider the request to bring life back into this commercial area.

Commissioner Schiller asked how much truck traffic was anticipated to be flowing in and out of this site.

Jerry Bauer, 21226 Highway 47 in Zimmerman, indicated he had six box trucks, which would be leaving the site in the morning and returning in the evening. He noted the site would also have one semi-truck visit per week. This could increase over time as his business expands.

Commissioner Field questioned how many drop-off boxes were associated with Triangle Recycling at this time.

Mr. Bauer stated he had approximately 400 boxes throughout Minnesota that he was responsible for. This number would be increasing by another 100 boxes in the near future.

Development Services Manager Gladhill asked if any clothing containers would be stored outside.

Mr. Bauer explained he currently had some containers stored outside prior to being relocated. He stated this was very short-term until the units could be refurbished and replaced.

Commissioner VanScoy inquired how electronics and metal materials would be handled at this site. He asked if the box trucks would be stored onsite overnight.

Mr. Bauer stated these items would be sorted and stored indoors and then be brought to Schwartzman's. He then discussed how he proposed to have the rear of the building to be fenced to house the box trucks.

Commissioner VanScoy asked if the box trucks could be stored onsite overnight.

Associate Planner/Environmental Coordinator Anderson indicated the storage of the trucks onsite could be seen as an accessory component. He stated buffering may be required to allow for the outdoor storage adjacent to the residential neighborhood.

Commissioner Bauer recommended the Commission consider this request carefully as he did not support a rezoning of this commercial property. He stated this area would continue to develop in the future and would require additional commercial development.

Associate Planner/Environmental Coordinator Anderson commented another option that could be considered would be to consider an overlay district.

Development Services Manager Gladhill discussed that an overlay district would allow for the original zoning to remain in place and allow for an expansion of uses.

Joe Haag, Community Pride Bank in Ham Lake and property owner, stated his goal would be to fill the building. He indicated he had no retail opportunities for this area and he encouraged the Commission to increase the permitted uses for this area. He was not in favor of a temporary fix as this could limit future tenants.

Chair Levine supported the use of an overlay district for this property.

Development Services Manager Gladhill explained staff could review the warehousing component as a conditional use for this site with an overlay district.

Commissioner Field stated the applicant had a great business, however, this was the wrong location. He wanted to see uses at this site that would attract traffic to the area.

Commissioner Schiller agreed stating the existing building was becoming an eyesore and was in need of redevelopment.

Development Services Manager Gladhill commented the EDA was aware this retail area was in need of revitalization.

Mr. Erhart reiterated that the two proposals before the Commission this evening were mutually exclusive. He added that a great deal of retail had been moved to The COR and the City may have to reevaluate the needs at this site.

Chair Levine thanked the Commission, applicants and public for their input this evening.

5.03: Public Hearing: Consider Ordinance Amendments to Chapter 117 Related to Stormwater Controls and Illicit Discharges

Public Hearing

Chairperson Levine called the public hearing to order at 9:06 p.m.

Presentation

Associate Planner/Environmental Coordinator Anderson presented the staff report. He explained the City is required by the Minnesota Pollution Control Agency (MPCA) to maintain a Municipal Separate Storm Sewer System (MS4) permit, which outlines stormwater pollution control standards for new development. A requirement of the MS4 permit is incorporating into City Code illicit discharge standards, which means having regulations in place prohibiting the discharge of any substance other than stormwater into the storm sewer system.

Associate Planner/Environmental Coordinator Anderson stated The City is also a member of the Lower Rum River Watershed Management Organization (LRRWMO) which in 2012 adopted their 3rd Generation Watershed Management Plan, which includes certain new standards related to water quality and volume control that are presently not in City Code. Staff discussed the plan in further detail, the proposed ordinance amendments to Chapter 117 and recommended the Commission approve the proposed ordinance amendments related to stormwater management.

Chair Levine requested comment from the Civil Engineer Linton.

Civil Engineer II Linton recommended the Commission proceed with the proposed ordinance amendments to assure the City was in compliance with all stormwater management requirements both at the state and local levels. He discussed the amount of runoff from rainstorm events along with the current management of infiltration basins throughout the City.

Citizen Input

Commissioner Field requested further information on the definition of illicit discharge. He read the current definition for the Commission along with the numerical reference.

Associate Planner/Environmental Coordinator Anderson noted there was a typo in this section and he would correct the referenced numerical mistake.

Motion by Commissioner VanScoy, seconded by Commissioner Schiller, to close the public hearing.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners VanScoy, Schiller, Bauer, and Field. Voting No: None. Absent: Commissioners Brauer and Perez.

Chairperson Levine closed the public hearing closed at 9:25 p.m.

Commission Business

Commissioner Field expressed concern that the "type" and volume of illicit discharge was not clearly defined within the ordinance. He questioned if the document could be delayed to allow for further clarification.

Associate Planner/Environmental Coordinator Anderson explained this could impact development requests before the City at this time.

Civil Engineer II Linton discussed how the new stormwater regulations required that the runoff from a property could be no more after redevelopment than it was prior to the redevelopment.

Development Services Manager Gladhill described that the proposed revisions were funneled down to the City through new state regulations. He indicated that until the City was in compliance, there is a potential that no new building permits could be approved.

Commissioner Field requested that the violation portion within this Ordinance be revisited by the Commission at a future date to allow for further discussion on this matter.

Civil Engineer II Linton discussed how illicit discharge concerns were addressed by staff with homeowners. He commented education was a large portion of the MS4 permits charge. He stated penalties were not the first step.

Associate Planner/Environmental Coordinator Anderson commented that repeat offenders could potentially be dealing with fines or penalties.

Development Services Manager Gladhill indicated there was always a right to appeal any charges of illicit discharge on behalf of the residents. This would then be reviewed by the City Engineer.

Commissioner Field thanked staff for clarification on this issue.

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to recommend that City Council adopt the Ordinance amending Subdivision II and adding Subdivision II to Chapter 117, Article II, Division of City Code, as amended.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, VanScoy, Field, and Schiller. Voting No: None. Absent: Commissioners Brauer and Perez.

5.04: Zoning Bulletins

Zoning Bulletins were noted.

6. COMMISSION / STAFF INPUT

6.01: New Development

Development Services Manager Gladhill discussed several new developments that were before the City at this time. He commented a work session meeting was proposed for February 11th or February 21st. He requested the Commission review their schedules and respond back to staff.

7. ADJOURNMENT

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

Motion Carried. Voting Yes: Chairperson Levine, Commissioners VanScoy, Schiller, Bauer, and Field. Voting No: None. Absent: Commissioners Brauer and Perez.

The special meeting of the Planning Commission adjourned at 9:41 p.m.

Respectfully submitted,

_____

Tim Gladhill
Development Services Manager

ATTEST:

_____

JoAnn Shaw
Planning Division Secretary

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a Work Session on Thursday, March 14, 2013, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Gary Levine Commissioner Gary Van Scoy Commissioner Ralph Brauer (arrived at 7:15 p.m.)
Members Absent:	Commissioner Randy Bauer Commissioner Joseph Field Commissioner Jessica Perez Commissioner Robert Schiller
Also Present:	City Administrator Kurt Ulrich Development Services Manager Timothy Gladhill Assistant Planner/Environmental Coordinator Chris Anderson

1. CALL TO ORDER

Chairperson Levine called the Work Session to order at 7:00 p.m., noting a quorum of the Planning Commission was not present.

Development Services Manager Gladhill shared Commissioner Perez's apologies for missing her last meeting due to an illness.

2. PUBLIC HEARINGS/COMMISSION BUSINESS

2.01: FOR DISCUSSION ONLY: Receive Presentation by Mary T., Inc. on Potential Housing Development on Outlot A, RAMSEY TOWN CENTER 13TH ADDITION

Development Services Manager Gladhill stated the City has received a request from Mary T., Inc. and PSD, LLC for a land use proposal on Outlot A, Ramsey Town Center 13th Addition, for a housing development. The site is currently owned by PSD, LLC. He indicated that Mary T., Inc. is currently based in Coon Rapids, Minnesota, and provides a variety of housing options in a number of locations. Development Services Manager Gladhill reviewed the proposal by outlining the proposed development and housing types, tax implications, and potential TIF funding sources. He stated that should this project move forward a Comprehensive Plan Amendment would be required along with site plan review for orientation of buildings. He said that staff is in favor of this project and outlined the benefits of the variety of housing types that a project such as this would create.

Chairperson Levine asked what is planned for the southeast corner of Ramsey Boulevard and Sunwood Drive.

Development Services Manager Gladhill said the City has a purchase agreement with SuperAmerica for the site and while there is no site plan yet, they have addressed the retail component as part of development. He said they have also been approached by the charter school group on some possibilities, adding there are no agreements or official requests to date.

Chairperson Levine asked about a recent inquiry for an online school.

Development Services Manager Gladhill stated the PACT Charter School was inquiring about the former Diamonds restaurant parcel for a separate school. He noted they are only in preliminary discussions.

Commissioner Van Scoy asked staff to outline the half-mile radius for the Commission.

Mary Tjsvold, Mary T., Inc., asked how many acres are on that site.

Development Services Manager Gladhill said the site is approximately 240 acres, adding the master plan boundary was 322 acres.

Commissioner Van Scoy said this area is zoned for a business park and asked if we have another area that has similar zoning on the south side of Highway 10.

Development Services Manager Gladhill said this is a unique business park and would be a corporate campus designation based off employment. He said the Commission may be referring to a future land use map south of Highway 10 and west of Armstrong Boulevard, adding that we desire to have more employment opportunities the area is not zoned appropriately yet.

Commissioner Van Scoy asked if there is another similarly-zoned area.

Development Services Manager Gladhill said there is an area 1-2 miles away south of Highway 10 with similar uses but not exact.

Commissioner Van Scoy asked if we move ahead are we limiting the future use of the parcel.

Development Services Manager Gladhill said we would be taking away areas of employment but added the EDA is looking at the next stage for more employment base, such as light manufacturing and office or the single users. He said the City has areas of undeveloped land should the Commission wish to consider another area for a business park, adding if the vision of this site remains for an office park is acceptable, but noted that it may take longer for the vision to be achieved.

Matt Kuker, Mary T., Inc., noted the Class A office space market is very slow but that Class B is in demand.

Ms. Tjsvold asked where there are other open spaces with the necessary density for the proposed residential product.

Development Services Manager Gladhill indicated other potential areas but noted the Veterans Administration Clinic and Northstar Commuter Rail are the driving factors of this project.

Ms. Tjsvold shared their initial proposal of 68 villas containing one or two bedrooms that are totally accessible. She said their target user would be veterans that would be integrated into the community and with their families. She said Mary T., Inc. has been in business for 37 years, adding that they offer assisted technology to allow people to live the way they want. She outlined assisted technology examples that feature sensors for doors, air-conditioning, emergency calls for when someone falls or wanders, along with pillow sensor options. Ms. Tjsvold shared communication options with items such as medical records, which would be an added benefit for Ramsey. She stated they also have a long history working with people with brain injuries and that this project has the potential to offer other types of housing, such as apartment buildings with different levels of service, home health, therapies, and hospice. Ms. Tjsvold said they are good at taking care of people through a wide breadth of health care and that they would be a good match for Ramsey. She stated that they were looking for agreement in concept before they move forward with more detail.

Commissioner Brauer said the land parcel includes the main T-1 line for the internet, adding there is currently 30% of black fiber not being used so this parcel may be a good match for them as well. He said this line would allow Mary T. to tie into many different things.

Ms. Tjsvold said their program of SmartCare helps provide a safe environment in the home but also provides communication with the outside world.

Development Services Manager Gladhill noted the broader fiber optic project is going on as well.

Commissioner Van Scoy inquired about the different levels of need.

Ms. Tjsvold said they have 50 villa units in Coon Rapids that are rented and offer services in the home, which is similar to what they are proposing for Ramsey. She said this would be the start of a continuum of service should more services be needed over time. Ms. Tjsvold said they could contract with a commercial kitchen such as the Falls Café for food service, adding that being family-owned she predicts these villas will rent quickly and that no phases will be needed.

Chairperson Levine asked how this project compared with their Coon Rapids campus.

Ms. Tjsvold shared the elevation proposals, noting the campus has small catered service, two villas that serve four men with brain injuries their own private space, and 39 more one-level villas with services. She added that the project is 100% occupied and is financially sound.

Commissioner Brauer said he liked what they did in Coon Rapids and that he would like to see this in Ramsey as it would be visible from the highway and will attract attention to the development.

Ms. Tjsvold said the rental aspect is working well.

Chairperson Levine agreed that the Coon Rapids location is a nice project.

Commissioner Brauer inquired about landscaping plans.

Ms. Tjsvold said they are still in the preliminary stages and will answer that once they know if this site works better than another.

Chairperson Levine said this site seems to fit what you are trying to accomplish because of the rail, size, and location.

Ron Nordlin, Mary T., Inc., said the perception has been that these projects are low-income and subsidized but said this is a premier product and people are well within their financial standards, making these projects long-term with low turnover.

Ms. Tjsvold added that if veterans' vouchers are needed they will work to assist for that.

Ruth Dahl, Mary T. Inc., stated that home health care is Medicare certified for veterans.

Mr. Kuker said that is important because the VA has placed a freeze on any new contractors in the VA system.

Ms. Tjsvold stated veterans will choose to move here because of the clinic.

Commissioner Brauer asked how they overcome an objection to railroad tracks.

Mr. Nordlin said that once people realize the horns do not sound there is not a problem.

Ms. Tjsvold noted wetlands are between which helps with horns in Coon Rapids and flows into the park.

Ms. Dahl shared that when the windows are closed there is not much concern.

Commissioner Brauer referred to the continuum of care and asked if they had ever thought about becoming a service provider for the whole area such as in private-owned homes. Ms. Tjsvold said they do that already with catered programs and assisted technology.

Commissioner Brauer said Town Center could be a technology showplace for people to remain in their homes with the best technology available.

Ms. Tjsvold explained the medication box technology features and notification processes.

Mr. Nordlin said the SmartApartment features can be incorporated into a private home.

Commissioner Brauer referred to Google's national grant program technology for these types, adding this would be a great thing to have in Town Center.

Ms. Dahl said the mobile technology is available too and can be taken with when a person moves.

Commissioner Brauer said Mary T brings three things for the COR: 1) technology; 2) variety of housing options available similar to Coon Rapids that would be better than a big box user; and 3) integration into the community and continuity because Town Center was intended to have a variety of housing and people all within walking distance.

Mr. Nordlin said the one-level villas work great for this goal.

Ms. Dahl added this age group is growing quickly.

Development Services Manager Gladhill provided three handouts to Commissioners regarding land use applications, Comprehensive plan/zoning amendment, and policy change. He asked if the proposal is acceptable to the Commission and if so, is it scale, either site special or broader. He added that staff would like to see this project in Ramsey.

Commissioner Van Scoy said he liked the concept but did not see integration into the pedestrian portion and assumed that will occur.

Development Services Manager Gladhill shared a revised plan with expanded sidewalks, adding they will decide on the scope and scale of public streets through the site plan process.

Mr. Kuker noted that shuttle buses are an option as well.

Chairperson Levine asked how one would access the other side to the VA

Development Services Manager Gladhill said those details will be worked out in the master plan, adding they will have an appropriate trigger for a sidewalk on the west side.

Commissioner Brauer said his only concern is the way Town Center was envisioned which was a small downtown with minimal frontage so this will take more creativity to maintain that feel. He said it will have to be different than the Coon Rapids site as 10-feet in the front yard may not be appropriate.

Chairperson Levine said asked if they are planning on more of the north side look.

Development Services Manager Gladhill said staff will map out the process accordingly should the Commission move forward.

Commissioner Brauer said this site is perfect for a PUD.

Development Services Manager Gladhill said a transit-oriented PUD is common for this type of project.

Chairperson Levine said consensus of the Planning Commission was positive and asked if amendments will be site specific or broader area as they do not want to create small zoning for one site. He said there is common ownership between the two parcels and that they will have to work with the HRA, adding a single parcel only could open up some disagreements.

Commissioner Brauer said they could end up with a 10-story office next door so it makes sense to plan the entire area. He likened it to density transition, which will be needed to make this work well.

Chairperson Levine asked how we do that by utilizing a land use we do not anticipate. He said it is difficult to anticipate the future.

Commissioner Brauer said they could take the entire parcel and rezone it, adding we have the flexibility with density transition before anything else comes forward. He said the entire area could be unified.

Chairperson Levine asked how we do that.

Development Services Manager Gladhill said staff will offer the tools, which may just be a PUD on the site but will spend the time to review this first.

Ms. Tjsvold said it. would be helpful to know what the other two parcels will contain. She said they may have some suggestions or want to develop the entire parcel as they always look at what is around their projects.

Mr. Kuker said if the 68 villas fill they could be go between the VA and Mr. Alberts' building as an another option.

Development Services Manager Gladhill said the zoning would allow for that possibility.

Ms. Tjsvold said the campus concept could get even better.

Chairperson Levine said the concept seemed good and that they would like to see this work. He asked staff to work with the applicant on site plan review.

Councilmember Backous said he liked the concept, including the technology and ala carte options. He said he toured the villas in Coon Rapids and liked the larger campus. He stated the project could reach a large community and will be a great amenity to our citizens.

Commissioner Brauer said this concept reinforces the way we have been marketing the COR, from Jim Deal to Falls Café to Coborns. He said they are all high quality local businesses and Mary T. Inc., would fit in better than a big box retailer as they are local, innovative and important.

Ms. Tjsvold said Coborns is working with General Mills on a take-out meal option.

Mr. Kuker said it is great working with quality people.

Ms. Tjsvold thanked the Commission for meeting with them.

3. COMMISSION / STAFF INPUT

None.

4. ADJOURNMENT

Chairperson Levine adjourned the Work Session at 8:22 p.m.

Respectfully submitted,

_____

Tim Gladhill
Development Services Manager

ATTEST:

_____

JoAnn Shaw
Planning Division Secretary

Drafted by Cathy Sorensen
TimeSaver Off Site Secretarial, Inc.

Regular Planning Commission **5. 1.**

Meeting Date: 04/04/2013

By: JoAnn Shaw, Community Development

Information

Title:

Appointment of Chairperson and Vice Chairperson

Background:

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

Notification:

Observations/Alternatives:

Funding Source:

Staff Recommendation:

Action:

Motion to appoint _____ as Chairperson of the Planning Commission.

-and-

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

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	03/29/2013 08:00 AM

Form Started By: JoAnn Shaw Started On: 03/12/2013 02:35 PM

Final Approval Date: 03/29/2013

Regular Planning Commission **5. 2.**

Meeting Date: 04/04/2013

By: Tim Gladhill, Community Development

Information

Title:

FOR DISCUSSION PURPOSES: Review Status of 167th Retail Node

Background:

As the Planning Commission may recall, in January of this year, two proposals regarding potential new uses in the retail node at 167th Ave and St. Francis Blvd were presented (specifically at 6001 167th Ave NW, the "Subject Property"). This entire retail node has been struggling for some time now (pre-dating the recession), continues to experience high vacancy rates, and concerns have also been raised regarding property maintenance as well. Neither of the two proposals fully met the standards of the B-1 General Business District and therefore, Staff brought each forward for review, consideration and direction from the Planning Commission. The case that was prepared for the Planning Commission in January is attached for background information and more specific details.

Notification:

No notification is required. However, the Subject Property owner was notified to provide them an opportunity to listen and/or participate in this discussion.

Observations/Alternatives:

Following is a brief recap of the two proposals previously reviewed and discussed by the Planning Commission:

Proposal 1

Total Defense, a current Ramsey business (14031 St. Francis Blvd), had proposed to relocate its current operation to the Subject Property. Their current location has the same underlying land use as the Subject Property. Total Defense currently operates a retail store, gunsmithing (repair), and provides self-defense training courses. Total Defense had proposed a similar operation on the Subject Property with the addition of an indoor shooting range. The indoor shooting range component did not comply with the current permitted or conditional uses in the B-1 General Business District.

Proposal 2

Triangle Recycling, presently operating in the city of Nowthen, had proposed to relocate its operation to the Subject Property. The business recycles clothing through a network of clothing collection boxes strategically placed throughout the state. Clothing is collected from the boxes by a fleet of trucks and would be brought back to this site for baling and transport to end markets. The business owner expressed an interest in expanding the recycling program to accept electronics, small metals, mattresses, and plastics, which would be implemented as Phase II of its operation. The proposal was primarily warehousing in nature, which isn't identified as a permitted or conditional use in the B-1 General Business District.

Both proposals were also reviewed by the EDA, who also has a strong interest in seeing not only the Subject Property but also this entire retail node to be evaluated. Both the Planning Commission and EDA expressed their desire to see this area remain retail oriented rather than shifting to more of an employment type of setting. The Planning Commission felt that an indoor shooting range would ultimately be more compatible with other permitted uses in this zoning district and likely more compatible with the surrounding residential area while the recycling/warehousing use was better suited for one of the employment districts. This information was forwarded to the City Council for confirmation, which was confirmed at their February 12, 2013 meeting.

Recently, Staff met with the Subject Property owner again regarding this site. The Subject Property owner informed Staff that the indoor shooting range proposal was no longer moving forward on the Subject Property. It is Staff's understanding that Total Defense is pursuing other options in an employment district that permits indoor commercial recreation. The Subject Property owner again suggested that the warehousing/recycling user be considered and reiterated that it is their opinion that retail isn't working in this area. Staff had recommended that the Subject Property owner contact the parcel owners to the east and west of the Subject Property to discuss their thoughts on what could be done to improve the success of the retail node. Staff feels that a broader approach is necessary, rather than focusing on individual parcels.

Funding Source:

This update is being handled as part of Staff's regular duties.

Staff Recommendation:

This retail node has been identified by both the Planning Commission and EDA as a priority area. Staff will be bringing forward this same information to the EDA at their April meeting as well. It is Staff's opinion that both the Planning Commission and the EDA were clear that there was no desire to see the land use in this area change to an employment type of district. At this point, the logical next steps may be to consider other land uses that are compatible with the long term vision of the area as well as the surrounding area. Other variables to consider include analyzing the cost of certain infrastructure components (utilities), and what financing tools may be available. Staff recommends that the Planning Commission await direction of the EDA as it relates to their Work Plan component for the 167th Avenue Retail Node.

Action:

There is no specific action required at this time, this is for informational and discussion purposes only.

Attachments

Site Location Map

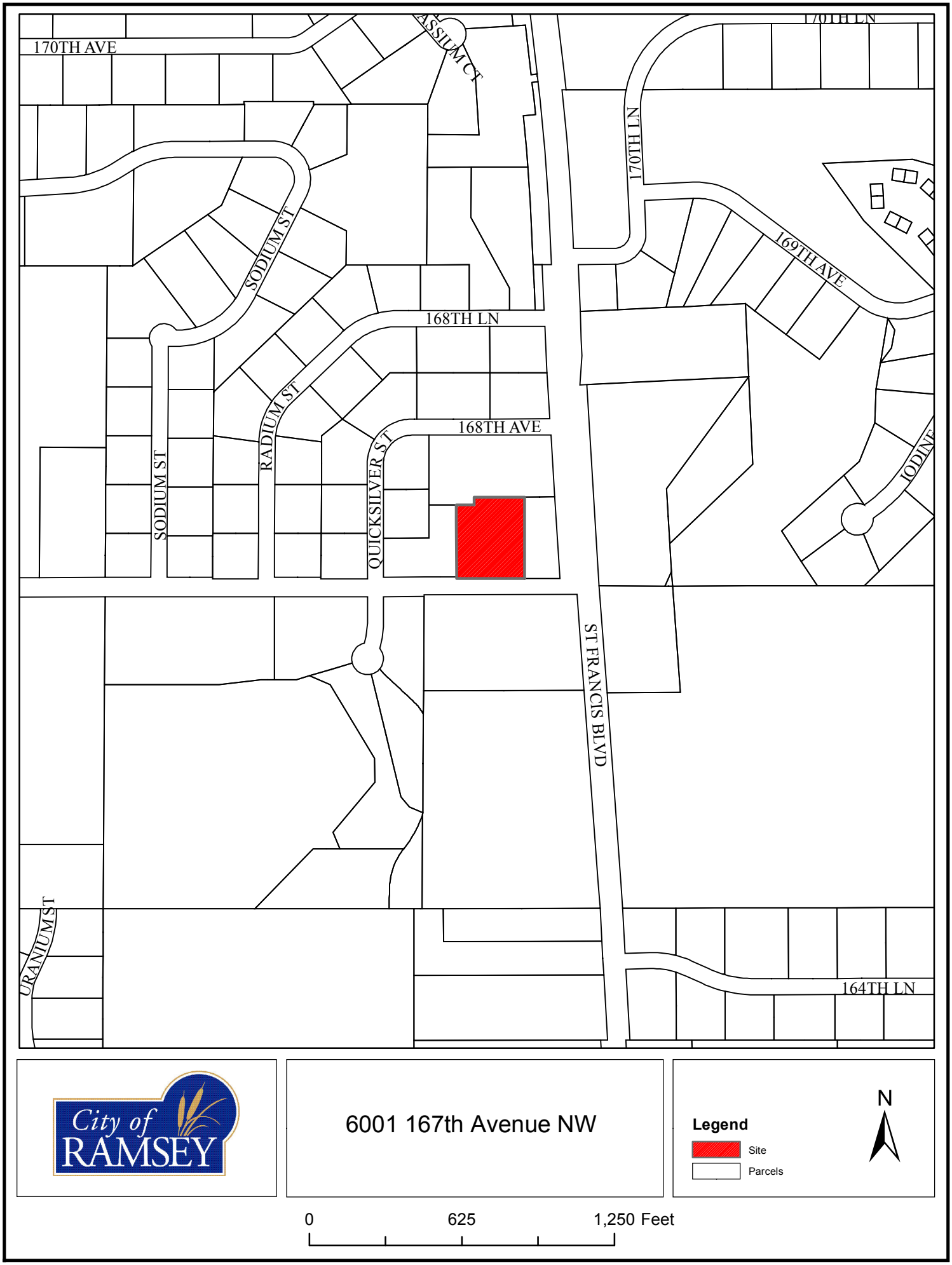
January 31, 2013 Planning Commission Case

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	03/29/2013 08:10 AM
Tim Gladhill (Originator)	Tim Gladhill	03/29/2013 08:10 AM

Form Started By: Tim Gladhill Started On: 03/21/2013 01:42 PM

Final Approval Date: 03/29/2013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170TH LN
170TH LN
SODIUM ST
169TH AVE
168TH LN
RADIUM ST
168TH AVE
SODIUM ST
QUICKSILVER ST
IODINE
ST FRANCIS BLVD
URANIUM ST
164TH LN
City of RAMSEY
6001 167th Avenue NW
Legend
Site
Parcels
N
0
625
1,250 Feet

Special Planning Commission **5. 2.**

Meeting Date: 01/31/2013

Submitted For: Chris Anderson By: Tina Goodroad, Community Development

Information

Title:

FOR DISCUSSION ONLY: Discuss Acceptable Land Uses at 167th Avenue Commercial Node and Provide Feedback on Potential Shooting Range and Recycling Warehouse/Transfer at 6001 167th Ln NW

Background:

Over the past several years, the City has discussed various options to address permitted uses at the 167th Avenue/Saint Francis Boulevard retail node. The node currently experiences a high vacancy rate and concerns with property maintenance on some of the buildings have been expressed. The property is zoned B-1 General Business District, which is intended to provide a commercial area for goods and services for the surrounding neighborhoods and community on a smaller scale than the B-2 Business District.

The intent of this discussion is to introduce two proposed uses (preliminary discussion), both of which likely will necessitate an amendment to the Zoning Code, for the property located at 6001 167th Ave NW (former Bob's Supervalu) and the type of regulatory tools that would be necessary if either were to proceed. The proposed uses are:

1. Shooting range/fitness center with classroom space and a retail component.
2. Metal/Clothing Recycling Center/warehouse with a small retail component.

Notification:

As this case is for discussion purposes only, notification is not required. Notification will be provided in accordance with Minnesota Statute and Ramsey City Code for any Zoning Amendment. In addition, Staff has recommended some sort of public open house to meet with adjacent property owners if Staff is directed to begin an Ordinance Amendment Process. A public process will be important to identify potential concerns and has the benefit of open communication between user and neighbors, which may help answer questions or concerns early in the process.

Observations/Alternatives:

Proposal #1: Shooting range/fitness center:

Total Defense, a current local business in Ramsey, (14031 St. Francis Blvd) is proposing to relocate its current operation to the subject property. The current location has the same underlying zoning district as the proposed location. Total Defense currently operates a retail store, gunsmithing (repair) and provide self-defense training courses. Total Denfense is proposing a similar operation with the addition of an indoor shooting range. The applicant has provided detailed information on their business, training courses and preliminary floor plan. The retail portion will serve as the primary space while the indoor shooting range and training areas will occupy about equal square footage.

The proposed use of retail and the professional self-defense courses are considered permitted uses in the B-1 General Business District. The proposed indoor shooting range is not listed as a permitted or conditional use within said district. When a use is not specifically identified within a zoning district, City Code states the use is considered prohibited and therefore, this proposed use would require an amendment to the zoning ordinance.

There are two general issues that would need to be addressed when considering a possible amendment. The first is whether to consider an indoor shooting range as 'indoor commercial recreation' or whether to identify it as a separate, specific use. The second is whether it should be considered a permitted or conditional use. If the uses in the B-1 Business District be amended, it will affect all properties zoned B-1, not just the property directly linked to

this request. The key nodes of the B-1 General Business District are Saint Francis Boulevard/Bunker Lake Boulevard, Saint Francis Boulevard/Alpine Drive, and Saint Francis Boulevard/167th Avenue. In reviewing a determination of permitted use or conditional use, Staff recommends that the Planning Commission determines if any concerns realted to the use are physical, or exterior concerns or concerns with the actual operation of the business. If the concerns are in regards to the physical environment, and the Planning Commission desires additional review and reasonable standards, that a conditional use permit would be appropriate. If the Planning Commission has concerns with how the business is operated, or the quality of the user, then City licensing provisions may be more appropriate.

In review of the zoning ordinance, an indoor shooting range may fall under 'indoor commercial recreation', which is currently permitted in the B-2 Highway Business District and the E-1 and E-2 Employment Districts. Due to certain aspects associated with the use, such as transporting of firearms into and out of the facility, qualifications of owners/operators, etc, there may be some merit to identifying it specifically rather than grouping it in with 'indoor commercial recreation'.

Adding an indoor shooting range is a very specific use, while 'indoor commercial recreation' is a broader term that includes other uses such as bowling alleys, laser tag, indoor go-carts, indoor play fields, etc. As a permitted use, it would be allowed by right and could be added to the ordinance with standards. A conditional use (also with standards) is another option that allows additional review and opportunities to add reasonable conditions that would mitigate any potential issues or concerns. In addition, as a conditional use, the City has the ability to review and or revoke the permit if safety or other conditions are compromised. A final option is to add the use as an interim use, which is similar to a conditional use but with a limited term.

In reviewing these options, it is important to consider the issues and concerns that the City may want to mitigate through standards (either as a permitted or conditional use). During a recent Development Review Committee meeting, staff from several departments discussed this use and developed a short list of potential issues. Present at the meeting included representatives from the Fire and Police Departments. Broad categories of discussion topics include (but are not limited to):

- Safety/security
- Retail portion to protect against theft of guns
- Safety of employees- due to the gunsmithing portion of the operation, there are environmental and general air pollution concerns with the gun powder, etc.
- Safety of ammunition and gun powder stored on site (refilling purposes)
- Caliber limit for the range
- Controlled access to shooting range
- Requirement for use of gun case when leaving the premises

Additional information from the applicant regarding their security plan for both the retail and indoor shooting range would be necessary for review and development of appropriate standards/conditions.

- Noise-the applicant provided information on the installation of the shooting range bays and stated there is potential to hear a slight “popping” sound outside the building. Setting hours of operation can mitigate the effects on neighboring properties. Additional information related to decibel levels outside the building and at property lines would be beneficial in understanding potential noise nuisances for the adjoining residential properties.
- Parking- as this use is proposing three different functions (retail, training, range) it will be important to set parking standards to ensure adequate parking is provided for all uses.
- Outdoor storage- not permissible in the B-1 Business District, would want to continue prohibiting.
- Others may be developed with further input from staff and Commissioners.

There are several indoor shooting ranges in surrounding communities. Staff spoke with both staff from the cities of Robbinsdale and Blaine, where Bill’s Gun Shop has a similar store and indoor shooting range operation. The site in Robbinsdale is located in a shopping mall, but the shooting range component is with the basement/underground parking garage portion of the shopping center. The store has been in operation since the 1980’s with no CUP (currently zoned for commercial use). Robbinsdale staff stated that it’s a very well-run business and widely

embraced by the community with no known complaints. The business has a lot of control over accessing the range (no separate entry), has well trained staff and requires gun cases for all guns when leaving the store. The facility has bars on the retail portion of the business and you cannot see the range from the outside.

Blaine city staff reported that the use has been in Blaine since 1997 and is operating under a CUP in an I-1 district (industrial district) as an indoor commercial recreation use. The conditions do not really relate to the specific operation but to the site and building design. Blaine staff stated that there are no known issues or complaints.

Proposal #2: Metal/Clothing Recycling Center/warehouse with a small retail component:

Triangle Recycling has also expressed a desire to operate out of the same subject property. This is an existing business operating in the city of Nowthen. The business recycles clothing through a network of clothing collection boxes strategically placed throughout the state. Clothing is collected from the boxes by driver and truck and would be brought back to this site for baling and transport to end markets. The applicant has expressed an interest in expanding the recycling program to accept electronics, small metals, mattresses and plastics, which would be implemented as Phase II of its operation. This process may be subject to permitting by the Minnesota Pollution Control Agency (MPCA) and possibly a conditional use permit through the City. Additional information from the applicant would be needed along with review and coordination with the MPCA and Anoka County to determine if either or both may be applicable.

This proposed use most closely matches warehousing, which is an allowed use in both the E-1 and E-2 Employment Districts, but not allowed in the B-1 Business District, except as potentially accessory to a primary warehouse use. The applicant, upon understanding the current zoning, did state a small retail portion could be added, however, this would not be the primary use. For this use to be more closely related to a “thrift store” or “second hand store”, and therefore be allowed as a retail use, the retail aspect should be the primary component with the warehousing being accessory.

In order for this use to be considered as proposed, either the B-1 Business District would have be amended to allow warehousing, either as a permitted, conditional or interim use, or the site would need to be rezoned to either E-1 or E-2 Employment District. Rezoning would also likely result in a need for a comprehensive plan amendment as the site is shown as Commercial on the Future Land Use map. The property is surrounded by other commercial and residential uses and thus, rezoning to an employment district may not be preferable. The City would need to be mindful of not violating 'spot-zoning' statutes and regulations.

In reviewing these options, it is important to consider the issues and concerns that the City may want to mitigate through standards (either as a permitted or conditional use). Again, during a recent Development Review Committee meeting, staff from several departments discussed this use and developed a short list of potential discussion topics including, but not limited to:

- The proposed warehouse use may be incompatible with surrounding uses.
- Vehicle traffic generated by trucks and customer drop offs.
- Outside storage - this is fairly common with warehousing and would not be desirable in this proximity to residential areas.
- Potential for recycling of solid waste - there are potential challenges with this type of use due to proximity to residentially zoned property and may be subject to permitting by MPCA and conditional use permit through the City.
- Drop–off - potential for items left outside when “drop-offs” occur after hours.

Staff is seeking input from the Planning Commission on these two proposed uses and options to consider for various amendments. Staff has provided these options as an attempt to approach potential users for this node under the context of short term goals and uses as well as long term goals and ultimate permitted uses. If these uses are considered unacceptable, then next steps could involve a broader strategic planning process to determine the highest and best use for this property.

Action Options and Alternatives to Consider:

Alternative #1: Identify which proposed use is believed to be more appropriate for this commercial node and direct Staff to proceed with developing applicable zoning amendments for consideration. This option creates an opportunity re-invigorate this commercial node by allowing a new use into the area. This also provides both Staff and the Planning Commission an opportunity to development any standards that are deemed needed to ensure the health, safety and welfare of the community prior to either use being implemented.

Alternative #2: Determine that neither use is appropriate for this commercial node and direct Staff not to pursue any zoning amendments. This commercial node has struggled for a number of years now and if the Planning Commission is not in favor of either these uses, it may wish to direct staff to explore a broader strategic planning exercise to determine the highest and best use(s) for this property.

Funding Source:

Preparation of the discussion topic is being handled as part of regular Staff duties and the Professional Services account of the Planning Division (Business Unit #191).

Staff Recommendation:

Provide direction to staff on proposed uses and if deemed acceptable, direction on preferred regulatory tool to permit said use. In addition, the City's Economic Development Authority (EDA) has discussed this topic on a number of occassions as recently as January, 2013. General feedback from the EDA included the following:

At their regular January meeting, the EDA discussed the commercial node located at 167th Ave and Trunk Highway 47 ("Subject Node") in relation to a number of inquiries that have recently been submitted to the City.

In summary, the EDA would like to provide the City Council with the following comments:

- The long term success of the Subject Node is a priority for the EDA. Taking a look at the Subject Node from a long-term approach is very important. The EDA is interested in any such effort supporting said notion. For example, a master planning and/or comprehensive planning effort; which would involve attaining public input from surrounding neighborhoods and from property owners located within the Subject Node.
- Rezoning and/or an overlay district (to expand the use of select properties within the Subject Node) will have an effect on the remaining properties located within the Subject Node. Specifically, the EDA does not want to diminish the value and/or hinder the success of one property located in the Subject Node for the economic gain of another. The EDA recommends the City engage all property owners and surrounding neighborhoods before approving any rezoning or zoning overlay district within the Subject Node.
- The EDA understands the history of the Subject Node and it's struggle to remain economically viable. Master Planning/Comprehensive Planning efforts take time and do not guarantee success and prosperity for the Subject Node. Getting users to occupy the Subject Node will drive increased traffic and improve ascetics; and subsequently, support the overall success of the Subject Node in the short-term. Therefore, the EDA is in support of the City considering options that would allow prospect users to occupy the Subject Node (which may require zoning code amendments, overlay district, CUP, etc.). Any short-term uses allowed in this area should not undermine the long-term vision for the area.
- When considering prospect users coming before the City (gun range, daycare center and metal/clothing recycling), the EDA has concerns regarding their compatibility. The EDA recommends the City not approve conflicting uses. For example, a daycare center and a gun range.

Committee Action:

Based on discussion.

Attachments

Site Location Map

Indoor Shooting Range Proposal

Background Information on Total Defense (Indoor Shooting Range Proposer)

Warehousing/Recycling Center Proposal

Zoning Map

2030 Future Land Use Map

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	01/24/2013 02:50 PM
Tim Gladhill	Tim Gladhill	01/25/2013 10:44 AM
Tim Gladhill	Tim Gladhill	01/25/2013 10:44 AM

Form Started By: Tina Goodroad Started On: 01/18/2013 09:07 AM

Final Approval Date: 01/25/2013

Regular Planning Commission **5. 3.**

Meeting Date: 04/04/2013

By: Tim Gladhill, Community Development

Information

Title:

FOR PRESENTATION AND DISCUSSION ONLY: Present New Member Orientation and Review Current Zoning and Subdivision Code Basics

Background:

Staff will present the attached New Member Orientation, which provides general background on zoning and subdivision basics that frame the Planning Commission's work.

Notification:

No notification required.

Observations/Alternatives:

The Planning Commission will find the content of the presentation in the attached slideshow handout.

Funding Source:

No funding is required. Preparation of the presentation is being handled as part of regular Staff duties.

Staff Recommendation:

No recommendation is required.

Action:

No action is required.

Attachments

Presentation

LMC Zoning Guide

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	03/27/2013 02:43 PM
Form Started By: Tim Gladhill		Started On: 03/13/2013 11:28 AM

Final Approval Date: 03/27/2013

Planning Commission

Welcome!

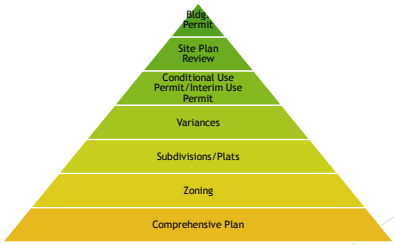
The Basics

- Intent
  - Very broad overview
  - Identify needs for additional focused, specialized future training
- Resources
  - League of Minnesota Cities Zoning Guide for Cities
  - Metropolitan Council Local Planning Handbook
  - GTS (Government Training Services)-John Shardlow and Joel Jamnik

Overview

- The Planning Process
- Planning Commission and Board of Adjustment roles and responsibilities
- Planning Division Staff
- Comprehensive Plan
- Zoning
- Subdivision
- Review Timeframe
- Legalities
- Meeting Format
- Other resources

Planning & Zoning Discretionary Pyramid



Source: GTS; Jaminek and Shardlow

Planning Commission

- Advisory/Recommending body to the City Council
- "The Planning Commission recommends…"

Board of Adjustment

- Quasi-judicial authority
- "The Board of Adjustment approves…"
- Subject to appeal to the City Council

Community Development

- Development Services Manager
  - Planning Division
    - Associate Planner/Environmental Coordinator, Community Development Secretary
    - Also includes Environmental Services
  - Building Division
    - Building Official [Contracted], Permit Technician, Building Inspections [Contracted], Electrical Inspections [Contracted]
- Coordination with Economic Development Division
  - Economic Development Manager [Future], City Administrator, Assistant to the City Administrator

Planning Division [Pre-Development Activities]

- Tim Gladhill-Development Services Manager
  - Planning Commission/Board of Adjustment Liaison, coordinate planning and zoning activities
- Chris Anderson-Associate Planner/Environmental Coordinator
  - Assist in implementation of zoning and subdivision ordinance
  - Coordinate environmental policy review
- JoAnn Shaw, Community Development Secretary
  - Administrative support for division
  - Minutes for PC/BOA and EDA
  - Agendas
- Patrick Brama, Assistant to the City Administrator
  - Assist with review and studies
- Consulting Services
  - Supplement existing staff as needed
- Economic Development Manager [Current recruitment]
  - Business and Economic Development

Building Division [Construction Activities]

- Tim Gladhill/Development Services Manager
  - Leadership of Division
- Lee Gladitsch/Building Official [Contracted]
  - Building Code Administration
- Katy Okerstrom/Permit Technician
  - Administration of Permit process
- Rick Jarson/Building Inspector [Contracted]
- Peter Tokle/Electrical Inspector [Contracted]

Vision and Values Statement

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

- This vision is accompanied by seven (7) values and a checklist to review zoning alternatives and future planning

2013 Strategic Planning-"A New Day, A New Beginning"

- 3-5 Year Vision and Mission
- Surveys
- Strategic Initiatives
- Strategic Imperatives
- Department Work Plan
- Metrics for Success

Authority to Plan and to Zone

- US Constitution
- State Enabling Statutes
- Local Zoning Ordinances

Source: GTS; Jaminek and Shardlow

US Constitution

- Gives Police Powers to states
  - Due Process
    - Procedural
    - Substantive
  - Equal Protection
- Other Federal mandates

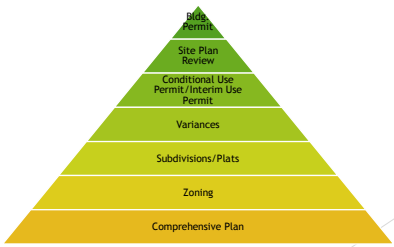
Source: GTS; Jaminek and Shardlow

Authority for Zoning & Subdivision

- The "Planning Statute"-Enabling Statute
  - MN Chapter 462
  - Gives cities authority to zone
  - Comprehensive planning requirement
  - How to handle non-conforming uses
- Zoning for Cities
  - MN Statute Section 462.357
- Subdivision of Land
  - MN Statute Section 462.358

Source: GTS; Jaminek and Shardlow, League of Minnesota Cities

Planning & Zoning Discretionary Pyramid



Source: GTS; Jaminek and Shardlow

Comprehensive Plan

- Minnesota Statute Chapter 473
  - "Metropolitan Land Planning Act"
- Administered by the Metropolitan Council
  - Other areas of state divided into other Regional Planning Organizations (RPO)
- System Statement
- 20 Year Land Use Plan
- Current Plan
  - 2030 Comprehensive Plan
- Will dive into more detail at future date

Source: Metropolitan Council

Regional Plans

- Transportation Policy Plan (TPP)
- Water Resources Management
- Regional Parks
- Comprehensive Plan must be in harmony
  - System Statements

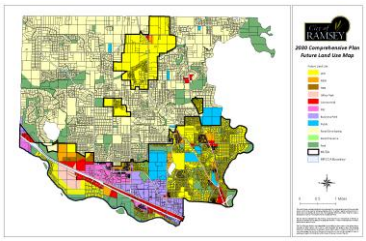
Source: Metropolitan Council

Comprehensive Plan Components

- Land Use Plan
- Transportation Plan
- Regional Parks and Open Space
- Water Resources
  - Water
  - Waste Water
  - Surface Water
- Implementation

Source: Metropolitan Council

Future Land Use Map [Sample]



Questions on Comprehensive Plan?

From Comp Plan to Zoning Ordinance

- Zoning Code is tool to implement the Comprehensive Plan

Zoning

- MN Statute Section 462.357
  - Planning Commission
    - City Council has delegated this authority to you
  - Zoning Administrator
  - Planning Department
  - Specific standards as listed in Zoning Guide pg. 13
- City Code Chapter 117 Article II

Source: League of Minnesota Cities

Purpose of Zoning

- Divide community by land use types or 'zones'
- Guiding private development
- Health, safety, welfare

Source: Metropolitan Council

Types of Zoning Regulations

- Building location, height, width, bulk
- Type of building foundation
- Number of stories, size of buildings and other structures
- The percentage of lot space which may be occupied
- The size of yards and other open spaces
- The density and distribution of population
- Soil, water supply conservation
- Conservation of shorelands
- Access to direct sunlight for solar energy systems
- Flood control

Source: Metropolitan Council

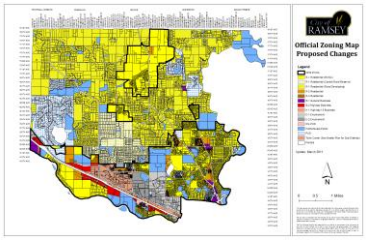
Ramsey's Zoning Code

- Definitions
- Administration
- Zoning Districts
- Performance Standards

Zoning Districts

- Permitted Uses
- Conditional Uses
- Accessory Uses
- Bulk Standards
  - Lot Size, lot width, lot depth, setback, building coverage, building height, floor areas, etc.

Zoning Map [Sample]



Ramsey's Zoning Districts

- R-1 Residential (MUSA, Rural Developing)
- R-2 Residential
- R-3 Residential
- The COR
- B-1 General Business
- B-2 Highway Business
- H-1 Highway 10 Business
- E-1 Employment
- E-2 Employment
- E-3 Employment (pending)
- Planned Unit Development; Mixed-Use PUD
- Public/Quasi-Public
- Park (pending)

Ramsey's Overlay Districts

- Critical Area Overlay
- Wild and Scenic River Overlay
- Shoreland Overlay
- Floodplain Overlay
- Tower
- Closed Landfill (pending)
- Official Map

Questions on Zoning Code?

Types of Land Use Applications

- Subdivisions/Plats (Planning Commission)
- Conditional/Interim Use Permits (Planning Commission)
- Site Plan Review (Planning Commission)
- Zoning Amendment (Planning Commission)
- Variances (Board of Adjustment)

Public Hearing Requirements

- Zoning Ordinance Adoption and Amendment
- Conditional and Interim Use Permits
- Home Occupation Permits (processed as CUP)
- Major Plat

Site Plan Review

- Commercial
- Industrial
- Multi-family
- Streamlined process

Conditional Use Permit

- Acceptable use with certain conditions
  - Attach reasonable conditions
- Conforms to Comprehensive Plan
- Compatible with adjacent neighborhoods
- Periodic review
- Revocation for violation
- Perpetual in duration
- Nexus requirement
  - Cure tied to problem

Source: League of Minnesota Cities

Interim Use Permit

- Similar to CUP
- Time limit (up to five [5] years)
- Allow for particular use for limited time when not provided for in Comp Plan
- Acceptable use currently; not compatible with future/anticipated development

Source: League of Minnesota Cities

Home Occupation Permit

- Home based businesses
- Commercial/retail activity in residential zoning district
- Level I Permit
  - Customers, clients, non-resident employees
- Level II Permit
  - Exterior evidence
  - Motor vehicles
  - Excessive traffic
- Home Occupations not requiring permit
  - Home offices
  - Minimal traffic
  - No exterior evidence

Zoning Amendment

- Change in Official Zoning Map (change zoning district)
- Change in Zoning Ordinance text
- Rezoning residential property
  - 2/3 majority vote of City Council

Source: League of Minnesota Cities

Variance

- Board has Quasi-judicial authority
  - Subject to appeal to City Council
  - Beware of 60 day rule (more info later)
- Area Variance vs. Use Variance
- Undue Hardship
- Reasonable Use
- Krummenacher v. City of Minnetonka
  - Changed long-standing interpretation of statute
- Recent Legislative Changes

Source: Jaminek and Shardlow; League of Minnesota Cities

Questions on Applications?

Subdivision

- MN Statute 462.358
- City Code Chapter 117 Article III
- Minor Subdivision
  - 3 lots or less
  - No public infrastructure
- Major Subdivision
  - 4 or more lots
  - Public infrastructure
- Administrative Subdivision
  - Re-aligning common lot lines

Source: League of Minnesota Cities

Subdivision Code

- Process
- Required data
- Required improvements
- Sureties and development impact fees
- Subdivision design standards
  - Better place for lot size, width, and depth?
    - Density?

Subdivision Review Process

- Sketch Plan
  - Conceptual
  - Reviewed by PC
- Preliminary Plat
  - Public Hearing at PC
  - Reviewed by PC and CC
  - Vested rights
- Final Plat
  - Reviewed by CC
  - Substantial compliance with Preliminary Plat
  - Submit within one (1) year of Preliminary Plat approval
  - Record within two (2) years of Final Plat approval

Questions on Subdivision Standards

60 Day Rule

- MN Statute Section 15.99 states that a City must act within 60 days of receiving application
- Extensions
  - 1 administrative
- Exhaust all City processes
  - Appeals included
  - Include written findings within 60 days
- For subdivisions…
  - 120 days

Source: League of Minnesota Cities

Questions on 60 Day Rule?

Findings of Fact

- Document reason for decision
  - When entering into agreement
  - For all denials of requests
- Future training opportunity
  - League of Minnesota Cities Attorney

Robert's Rules of Order

- Presiding Officer
- Motion, Second
  - Simple majority vote
- Motion stops discussion until second
- Call the question
- Amending the motion
  - Friendly
  - Motion to amend
- Public Hearings

Other Resources

- League of Minnesota Cities Land Use Loss Control

Agendas and Minutes

- AgendaQuick
- www.cityoframsey.com
- 'Agendas & Minutes'
  - NOTE: LaserFiche is for archive purposes. Use AgendaQuick for quality navigation

City Meetings Televised on Web

- www.qctv.org
- Archive of most recent
- Live stream

Questions?

INFORMATION MEMO

Zoning Guide for Cities

Learn the framework of municipal zoning and basics of other land use controls available to cities that may complement or be used separately from zoning controls. Find guidance on zoning ordinance drafting, adoption, administration and enforcement. Links to sample zoning provisions and maps from other Minnesota cities.

RELEVANT LINKS:

I. Basic zoning concepts

A. The purpose of zoning

Zoning allows a city to control the development of land within the community – both the type of structures that are built and the uses to which the land is put. Most building in a community is done by private individuals and businesses seeking to develop property for their own private use – whether this is residential, commercial or industrial. Zoning is one important tool for guiding this private development, so that land is used in a way that promotes both the best use of the land and the prosperity, health and welfare of the city's residents. Local zoning control over other governmental entities acting or owning property within a city, such as the State of Minnesota and local school districts may be more limited depending on the circumstances.

Minn. Stat. § 462.351.

Town of Oronoco v. City of Rochester, 293 Minn. 468, 197 N.W.2d 426 (Minn. 1972).

Zoning is normally accomplished by dividing the land in the city into different districts or zones and regulating the uses of land within each district. Generally, specific districts are set aside for residential, types of commercial and various industrial uses. The city can also use zoning to further agricultural and open space objectives.

Minn. Stat. § 462.357, subd. 1.
Sample Zoning District Section.

By creating zoning districts that separate uses, the city assures that adequate space is provided for each use and that a transition area or buffer exists between distinct and incompatible uses. Adequate separation of uses prevents congestion, minimizes fire and other health and safety hazards, and keeps residential areas free of potential commercial and industrial nuisances such as smoke, noise and light.

Zoning regulations may also constrain the types and location of structures. The regulations must be the same within each district, but may vary from district to district. These regulations often control:

Minn. Stat. § 462.357, subd. 1.

145 University Ave. West
Saint Paul, MN 55103-2044
www.lmc.org
(651) 281-1200 or (800) 925-1122
9/10/2012

RELEVANT LINKS:

- Building location, height, width, bulk.
- Type of building foundation.
- Number of stories, size of buildings and other structures.
- The percentage of lot space which may be occupied.
- The size of yards and other open spaces.
- The density and distribution of population.
- Soil, water supply conservation.
- Conservation of shore lands.
- Access to direct sunlight for solar energy systems.
- Flood control.

B. Legal authority to zone

Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114 U.S., 1926. *Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App.2002). Minn. Stat. § 462.352, subd. 2. Minn. Stat. § 462.351.

Statutory and Home Rule Charter Cities are granted the authority to adopt a zoning ordinance by the Minnesota and US Supreme Court cases and by the Municipal Planning Act found in Minnesota Statutes. The Municipal Planning Act establishes a uniform and comprehensive procedure for adopting or amending and implementing a zoning ordinance.

Minn. Stat. § 473.851.

Cities in the metropolitan area are governed by the Metropolitan Land Planning Act. The metro area is defined as the cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding New Prague) and Washington. The Metropolitan Planning Act also imposes certain mandatory zoning and regulatory requirements on metropolitan cites.

Minn. Stat. § 103F. Minn. Stat. §§ 103F-103F.155. Minn. Stat. § 103F.335. Minn. Stat. § 40A.01. Minn. Stat. § 138.71.

Cities are also granted additional authority by state statute to impose land use controls on development through the Minnesota Water Laws, the Floodplain Management Laws, the Minnesota Wild and Scenic Rivers Act, the Agricultural Land Preservation laws and the Minnesota Historic District Act to name only a few.

C. Role of comprehensive planning in zoning ordinance adoption

Minn. Stat. § 462.351.

All cities have the authority to adopt zoning regulations, though cities may follow different paths to adoption of an ordinance. Some cities may engage in extensive formal planning, including the drafting of a comprehensive plan, prior to ordinance adoption, while others may need to follow a more immediate process.

RELEVANT LINKS:

1. Comprehensive planning

See LMC Information Memo, *Planning Commission Guide*.
Minn. Stat. § 462.353.
Roselawn Cemetery v. City of Roseville, 689 N.W. 2d 254 (Minn. Ct. App. 2004).

Minn. Stat. § 462.352, subd. 5.

Minn. Stat. § 462.355, subd. 1a.
Minn. Stat. § 473.121, subd. 2.
Minn. Stat. § 473.864, subd. 2.
Amcon Corp. v. City of Eagan, 348 N.W.2d 66 (Minn. 1984).

Minn. Stat. § 462.357, subd. 1h.
Minn. Stat. § 462.355, subd. 1.
Minn. Stat. § 103G.005, subd. 10b.

The adoption of a comprehensive plan is a common first step in the development of a zoning ordinance. Minnesota statutes grant all cities authority to adopt a formal comprehensive plan for their community. A comprehensive plan is a lengthy document that formally establishes a blueprint for the city's long-range (usually between five and 15 years) social, economic, and physical development.

In metropolitan area cities, including cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague) and Washington, the adoption of a comprehensive plan is mandatory under the Metropolitan Land Planning Act. All other cities have the option of adopting a comprehensive plan, but are not required to do so.

Non-metropolitan cities located in counties or watersheds that contain 80 percent of their presettlement wetlands are subject to the President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land (hereinafter the "T. Roosevelt Memorial Preservation Act"). These cities are not required to engage in comprehensive planning, but must meet the requirements of the T. Roosevelt Memorial Preservation Act by adopting certain findings of fact when adopting a comprehensive plan.

a) Reasons to adopt a comprehensive plan

See LMC Information Memo, *Planning Commission Guide*. For more information on Comprehensive Planning see *Under Construction* by MN Department of Administration.

While not all cities are required to adopt a comprehensive plan, a plan is still a good practice for a couple of reasons.

First, the comprehensive planning process helps a city develop a plan for creating and maintaining a desirable environment and safe and healthy community. Once a plan is adopted, it guides local officials in making their day to day decisions and becomes a factor in their decision making process.

Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804 (Minn. Ct. App. 2005).
Larson v. Washington County, 387 N.W.2d 902 (Minn. Ct. App. 1986).

Second, preparing a comprehensive plan prior to the adoption of a zoning ordinance also affords the city additional legal protections, if a particular ordinance provision is challenged in court. Zoning ordinances must be reasonable and have a rational basis. Comprehensive plans assist a city in articulating the basis for its zoning decisions. Usually the courts will not question the policies and programs contained in a comprehensive plan adopted by a local community, or the ordinances based upon the plan, unless the particular zoning provision appears to be without any rational basis or clearly exceeds the city regulatory authority.

RELEVANT LINKS:

If a city is not able to develop a comprehensive plan prior to adopting a zoning ordinance, the zoning ordinance should be adopted in conjunction with written finding of facts, stating the policy reasons that necessitate the ordinance's adoption.

b) Relation of the comprehensive plan to zoning

See LMC Information Memo, *Planning Commission Guide*.

Zoning and planning are not the same thing. Municipal planning is a lengthy process of collecting and analyzing economic, social and physical data about a city and organizing this information into a formal set of goals and standards for community development. The comprehensive plan is a document that embodies the city's vision for the future, including its aspirations and plans for future development that may not appear for many years to come.

Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162 (Minn.2006).

Once a comprehensive plan is adopted, the city needs a means of attaining its development goals as stated in the comprehensive plan. Zoning is one tool for implementing a comprehensive plan. In cities subject to the Metropolitan Planning Act, zoning directives must harmonize with and not contradict the city's comprehensive plan.

See Part VII, Other land use controls available for cities.

It is important to emphasize that zoning is merely one of the tools available to a city to assist implementing a comprehensive plan. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs and official map in conjunction with its zoning ordinance to achieve its goal of orderly development.

II. Drafting a zoning ordinance

Minn. Stat. § 462.357, subd. 1.

Zoning regulations can only be imposed by a local ordinance adopted in accordance with the Municipal Planning Act. A zoning ordinance consists of both text and maps.

A. Typical zoning ordinance provisions and concepts

The zoning ordinance is usually a lengthy document that consists of three major sections, an administrative section, a performance standards section and a zoning district section.

1. The administrative section

Sample Definitions Section.

The administrative section sets forth administrative procedures for implementing the zoning ordinance, including the grant or denial of requests for zoning permits and variances. The administrative section usually contains a fee schedule, an expansive definition section to help interpret and apply the ordinance, a procedure section and a penalty section.

RELEVANT LINKS:

2. The performance standards section

Sample Performance Standards Section.

The performance standard section sets forth regulations that are uniformly applicable to all districts, such as noise, property maintenance, parking, fencing and signage standards.

3. The zoning district section

Sample Zoning District Section.

The zoning district section establishes the different types of districts, for example residential, commercial or industrial/manufacturing, and sets the regulations for each district. Districts may also be designated reflecting desired density in addition to use, such as residential-1 (usually low density single family homes), residential-2 (usually single family homes and twin homes), residential-3 (usually apartment buildings), etc. Modern zoning may also feature "mixed-use" or "hybrid" districts where traditional use categories are mixed, for example a downtown residential/commercial district. The district section is often the lengthiest section of the zoning ordinance, depending on the number of districts established in the city. This section usually also contains the following concepts for each district:

a) Use designations

Sample Permitted and Conditional Uses.

Use Designations are text (usually in a list form) that specify the permitted, conditionally permitted and prohibited uses for a district or zone. There are several types of uses generally found in a zoning ordinance:

- Permitted Uses: Uses that are allowed in a district as a matter of right without further need for review or approval of the city
- Prohibited Uses: Uses that are not permitted in a district under any circumstances. An explicit listing of prohibited uses is rare. Many ordinances will simply provide that any uses not specifically listed are deemed prohibited.

Minn. Stat. § 462.3595.

- Conditional Uses: Uses that are permitted, after approval of the city, if conditions listed in the ordinance are met. Some zoning ordinances use the term "special use" instead of conditional use. The Municipal Land Use Planning Act does not recognize special use permits, and the courts would likely apply the same requirements for their issuance as those for conditional uses specified above.

Minn. Stat. § 462.3597.

- Interim Uses: Uses that are permitted for a limited amount of time (contain a sunset provision), after approval of the city, if conditions listed in the ordinance are met.

RELEVANT LINKS:

- Accessory Uses: Uses that are permitted or conditionally permitted to serve a permitted or conditionally permitted use. Generally the accessory use will not be permitted absent the primary use. For example, a tool shed is a standard accessory use in a residential zone.

b) Setbacks, height and density requirements

Sample Setback Requirement Diagram.

- Setbacks requirements: Establish the minimum horizontal distance between a structure and the lot line, road, highway or high-water mark (if the property abuts shore land).

Sample Height Requirement Diagram.

- Height requirements: Establish maximum and/or minimum height requirements for structures and/or their attachments (such as antennas, cupolas, etc).
- Density requirements: Establish the number of structures or units allowed per lot or area.

4. Additional provisions

Some ordinances may contain, depending upon the individual needs of the city, additional provisions, though the quality of a zoning ordinance does not depend upon the quantity or complexity of the provisions it contains (nor the number of districts established).

Cities should strive for a zoning ordinance that meets their goals as simply and efficiently as possible. Above all, a zoning ordinance should be a practical document that is as enforceable as possible.

Depending on the individual needs of the city, a zoning ordinance may also contain provisions for the following:

- Mixed use or hybrid districts. Districts that do not neatly meet the traditional district categories of residential, commercial or industrial use, but may contain a blend of uses. For example, a “downtown mixed use district” that features a blend of commercial uses and multifamily residences.
- Planned Use Development (PUD) or cluster development: A development of contiguous land area that contains developed clusters intermixed with green space or commercial or public development. Often the cluster development allows greater density than normally permitted in the development, in exchange for some other benefit, such as green space or open space.

RELEVANT LINKS:

Sample Overlay District.

- Overlay districts: A district that is developed to be imposed over or "overlay" one or more existing zoning districts, which impose additional zoning requirements. Overlay districts may be developed with a specific land area in mind or they may be developed to "float" until they are anchored to a suitable development proposal. In some cities, overlay districts may be structured as conditional uses.

5. Natural resource protection and flood plain provisions

In cities that contain certain natural resources such as lakes and rivers, or are located in a floodplain, the zoning ordinance may also contain the following:

Minn. Stat. § 103F.121.
Minn. R. 6120.5000l.
See MN DNR sample floodplain management ordinances.
See also MN DNR for more information and resources on floodplain management.

- Floodplain requirements: Floodplain management ordinances are required by state law. Flood plain ordinances regulate the use of land in the floodplain in order to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.

Minn. Stat. § 103F.335.

See also MN DNR website for more information on MN Wild and Scenic Rivers.

- Wild and scenic rivers development requirements: Wild and Scenic Rivers development ordinances are required by state law for cities that have shore land located within the Minnesota Wild and Scenic Rivers System. These ordinances must comply with state standards set by the Commissioner of Natural Resources.

Minn. Stat. § 103F.221.
Minn. R. 6120.2500 – 3900.
See MN DNR sample shoreland management ordinance.
See also MN DNR website for more information and resources on shoreland management.

- Shoreland development requirements: For cities that contain shore land, these zoning regulations control the use and development of its shorelands. City shore land regulations must be at least as restrictive as State standards and are subject to the review of the Commissioner of Natural Resources.

Minn. Stat. § 462.355, subd. 1.
Minn. Stat. § 103G.005, subd. 10b.

- President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land. Non-metropolitan cities subject to the T. Roosevelt Memorial Preservation Act when adopting or amending a zoning ordinance, must consider restricting new residential, commercial, and industrial development in a manner consistent with the Act's goal of preserving land from development sprawl. Cities are not required to adopt zoning practices consistent with the T. Roosevelt Memorial Preservation Act, but must demonstrate (possibly through findings of fact), that their decision process considered the Act's stated goals.

RELEVANT LINKS:

B. Drafting a readable zoning ordinance

Zoning ordinances can be lengthy documents, but from the first to last page, emphasis should be placed upon drafting a well organized ordinance that communicates clearly. A good zoning ordinance:

- Makes information easy to find.
- Is easy to administer and amend.
- Uses plain, well-defined language that reduces the potential for erroneous or controversial interpretations.

1. Suggestions for drafting a readable zoning ordinance:

- Use graphics, tables, maps and illustrations wherever possible.
- Use a consistent numbering system or other system of organization.
- Define terms, words, and phrases, preferably in a separate "definitions" section, so that there is minimal need for interpretation of the text.
- Pick terms and use terms consistently. For example do not interchange the word "residence," with "house," "dwelling" and "single-family home." Instead, pick your preferred term, define the term in your definitions section and use the same term throughout the ordinance.
- Avoid legalese such as "aforesaid," "hereby," and "herewith."
- Avoid archaic and/or potentially offensive terms. For example using, "trailer court" instead of "manufactured home park" or "old folks home" instead of "residential living facility."
- Avoid establishing too many districts and other impractical complexity.
- Be careful about copying neighboring cities' zoning provisions, especially in a piece-meal manner. A zoning ordinance fitting one community may be a bad fit for another. When only portions of an ordinance are copied and utilized, terms and definitions may not remain consistent.

2. The importance of clear, unambiguous ordinance language

The unfortunate consequence of unclear or ambiguous language in a zoning ordinance is public controversy and loss of efficiency. In some instances, a city may find itself in court simply on the issue of whether the city interpreted its own ambiguous ordinance correctly. In the past the courts have been asked to resolve controversies over such undefined terms in an ordinance as:

RELEVANT LINKS:

Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604 (Minn. 1980).
Lowry v. City of Mankato, 231 Minn. 108, 42 N.W.2d 553 (Minn. 1950).
Village of St. Louis Park v. Casey, 218 Minn. 394, 16 N.W.2d 459 (Minn. 1944).

- "lawn and garden center,"
- The words "accessory", "subordinate," "incidental," and "main,"
- "structure"

Frank's Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604 (Minn. 1980).

When a court is called upon to resolve a controversy over an undefined or ambiguous word or phrase in a city ordinance, the court may not always interpret the ordinance in the manner the city would prefer. The court may, but is not required, to give deference to the city's interpretation of the ordinance.

In interpreting zoning ordinances, the court will attempt to find the plain and ordinary meaning of the terms. The court will interpret any doubtful language against the city and in favor of the landowner.

Amcon Corp. v. City of Eagan, 348 N.W.2d 66 (Minn. 1984).

Only in limited circumstances, where the language is so ambiguous on its face that a plain meaning cannot be understood, will the court consider evidence of the city's intent in drafting the ordinance.

Sample Definitions Section.

The best way to avoid the time and expense of a lawsuit over basic terms in a zoning ordinance is clear drafting from the outset. A definition section is essential to any zoning ordinance. Terms and concepts that may be reasonably subject to more than one interpretation should be explicitly defined in this section.

C. Drafting a legally defensible zoning ordinance

In drafting a zoning ordinance, cities must also draft an ordinance that conforms to the requirements of state and federal law. In addition, cities must draft ordinances that are consistent with state and federal court rulings.

1. The Municipal Planning Act

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757, (Minn. 1982).
DI MA Corp. v. City of St. Cloud, 562 N.W.2d 312 (Minn. Ct. App. 1997).
Minn. Stat. §§ 462.351 - 462.365.
Minn. Stat. §§ 473.851 - 473.871.
Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002).

Cities have a wide range of discretion in developing a zoning ordinance. City zoning requirements can range from very complex to minimal. However, all city zoning authority is granted to cities by and subject to the Municipal Planning Act. Ordinances may vary from city to city, but all must comply with both the substantive and procedural requirements contained in the Municipal Planning Act.

It is important to note that the Municipal Planning Act has specific provisions related to local zoning control of:

RELEVANT LINKS:

Minn. Stat. § 462.357, subds. 1a, 1b.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 1e.
Minn. Stat. § 462.357, subd. 1g.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 7.
Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 8.

Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 6.

Northshor Experience, Inc. v. City of Duluth, MN, 442F.Supp.2d 713 (D. Minn. 2006).
Costley v. Caromin House, Inc., 313 N.W.2d 21 (Minn. 1981).
A.G. Op. 59-A-32 (Jan. 25, 2002).

- Manufactured home parks
- Manufactured homes
- Existing legal nonconformities at the time of zoning ordinance adoption
- Feedlots
- Earth sheltered construction as defined by MN Stat. 216C.06
- Relocated residential buildings
- State licensed residential facilities or housing services registered under MN Stat. 144D serving six or fewer persons in single family residential districts
- Licensed day care facilities serving 12 or fewer persons in single family residential districts
- Group family day care facilities licensed under Minnesota Rules 9502.0315 to 9502.0445 to serve 14 or fewer children in single family residential districts
- State licensed residential facilities serving 7-16 persons in multifamily residential districts
- Licensed day care facilities serving 13-16 persons in multifamily residential districts
- Solar energy systems

Cities cannot adopt local ordinances which contradict the explicit provisions of the Municipal Planning Act.

2. Additional state law requirements

Cities must also draft their zoning ordinances to meet the requirements of state law outside of the Municipal Planning Act. The following is not a comprehensive list of state laws that effect city zoning, but discusses some of the most common limitations of city zoning authority.

a) Flood plains, shoreland and wild and scenic rivers

See also Section III-D, Zoning to protect natural resources or preserve open spaces and green space.

Some land is subject to special protection under state law because it contains important natural resources, such as lakes and rivers. Cities are generally required to adopt standards for development of these types of land areas that meet established state standards. Generally such ordinances are subject to the review of the State through the Commissioner of Natural Resources.

RELEVANT LINKS:

b) Manufactured homes

Minn. Stat. §§ 327.31 - 327.35.
Minn. Stat. § 462.357, subd.1.
For more information on manufactured homes and parks see the LMC Information Memo, *Manufactured Homes and Zoning: Comprehensive Advice*.

No city zoning regulation may prohibit manufactured homes built in conformance with the manufactured home building code and which comply with all other zoning ordinances promulgated pursuant to state law.

Minn. Stat. § 327.32, subd. 5.

Cities can apply architectural and aesthetic requirements to manufactured homes, but only if the same architectural and aesthetic requirements also apply to all other single-family homes in the zoning district, not just to manufactured homes.

c) Manufactured home parks

Minn. Stat. § 462.357, subds. 1a, 1b.
See Section III-A, Establishing permitted and conditional uses.

A manufactured home park must be allowed as a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Standards for granting the conditional use should be explicitly stated in the city ordinance.

Cities cannot enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home set back requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements, if any.

3. Federal law considerations: The Religious Land Use and Institutionalized Persons Act

42 U.S.C. § 2000cc.

See LMC Information Memo, *Zoning for Religion*.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 provides that no government entity shall impose or implement a land use regulation in a manner that puts a substantial burden on the religious exercise of a person, religious assembly or religious institution, unless the government can show the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. This means that a religious use may be, in some circumstances, exempted from city zoning requirements if the regulation substantially burdens the religious organization or person's exercise of religion.

RLUIPA also provides that no government may impose or implement a land use regulation in a manner that:

RELEVANT LINKS:

- Treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. For example, a zoning ordinance that allows community centers and fraternal organization centers in a particular district, but not a religious center (such as a church, mosque or synagogue), whose use would be strikingly similar to the other allowed uses.
- Discriminates against any assembly or institution on the basis of religion or religious denomination.
- Totally excludes religious assemblies from their jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

City of Woodinville v. Northshore United Church of Christ, 211 P.3d 406 (Wash. 2009).
McGann v Inc. Vill. Of Old Westbury, 719 N.Y.S.2d 803 (N.Y. Sup. 2000).

Activities beyond worship services for religious institutions may potentially be protected by the RLUIPA, including schools and childcare. However, this is an unsettled area of the current law.

Williams Island Synagogue, Inc. v. City of Aventura, 358 F.Supp.2d 1207 (S.D. Fla. 2005).
Guru Nanak Sikh Society of Yuba City v. County of Sutter, 326 F.Supp.2d 1140 (E.D. Cal. 2003).
Cottonwood Christian Center v. Cypress Redevelopment Agency, 218 F.Supp.2d 1203 (C.D. Cal. 2002).
Civil Liberties for Urban Believers v. City of Chicago, 342 F.3d 752 (C.A.7 (Ill.) 2003).

Since RLUIPA was adopted in 2000, numerous cases have been brought in federal court concerning the law's application to various city zoning requirements. However, federal courts in the 8th Circuit (which includes Minnesota) have not ruled on many RLUIPA cases. If a city has concerns about RLUIPA, the city should consult its attorney for specific guidance.

4. Federal law considerations: Telecommunications Act of 1996

47 U.S.C. § 332(c)(7).

The federal Telecommunications Act of 1996 influences local zoning regulation of wireless telecommunications towers and antennas. Under the Act, local governments may generally regulate the placement, construction, and modification of cell towers through zoning ordinances and land use regulations. However, local zoning regulations may not unreasonably discriminate among providers of functionally equivalent services. Local zoning regulations also may not prohibit or have the effect of prohibiting the provision of wireless services. Under the Act any decision to deny a request to place, construct or modify cell towers must be in writing and supported by substantial evidence in the written record.

RELEVANT LINKS:

In addition, cities may not regulate the placement, construction or modification of cell towers on the basis of the environmental effects of radio frequency emissions to the extent they comply with the Federal Communication Commission's regulations. To avoid conflicts with federal law, the city should consult the city attorney before adopting zoning provisions that regulate telecommunication towers and antennas.

47 U.S.C. § 303 (v).
47 C.F.R. § 25.104.

The Federal Communications Commission has exclusive jurisdiction over direct to home satellite dishes. Its regulations preempt local ordinances that prohibit or regulate satellite dishes of one meter or less in all areas and two meters or less in commercial areas. Cities may apply to the FCC for a waiver to allow local regulation of satellite dishes upon a showing by the applicant that local concerns of a highly specialized or unusual nature create a necessity for local regulation

5. Federal and state constitutional concerns

Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114 (1926).
Kiges v. City of St. Paul, 240 Minn. 522, 62 N.W.2d 363 (Minn. 1953).
State ex rel. Berndt v. Iten, 259 Minn. 77, 106 N.W.2d 366 (Minn. 1960).

Zoning regulations limit the ability of landowners to use their property in any manner they wish. While both the state and federal constitutions provide protections to landowners from government seizures of land (takings), the courts have long upheld zoning regulations as a reasonable use of a government's police power to protect the health, safety and welfare of the public. However, there are still some federal and state constitutional restraints on city zoning authority.

State, by Rochester Ass'n of Neighborhoods v. City of Rochester 268 N.W.2d 885 (Minn. 1978).
Amcon Corp. v. City of Eagan, 348 N.W.2d 66 (Minn. 1984).

The adoption or amendment of a zoning ordinance is considered a legislative decision of the city council. Courts normally give legislative decisions great deference and weight, but the court will on occasion set aside or intervene in city zoning decisions if two important constitutional restraints in the federal and state constitution are violated. First, the courts may overrule a city zoning decision, when it determines that a zoning ordinance is unsupported by any rational basis related to promoting public health, safety, morals, or general welfare. Usually, in these cases the court finds that the city's actions were arbitrary and/or capricious. Second, when a zoning ordinance denies the landowner practically all reasonable use of the land, resulting is a "taking" of the land without just compensation; the court may order the city to pay compensation to the affected landowner.

RELEVANT LINKS:

a) Legislative authority must be reasonable

Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162 (Minn. 2006).
State v. Northwestern Preparatory School, 37 N.W.2d 370 (Minn. 1949).
County of Morrison v. Wheeler, 722 N.W.2d 329 (Minn. Ct. App. 2006).
See Section V-C, Standards for reviewing zoning applications: limits on city discretion.

Under the federal and state constitution, zoning authority must be used in a manner that is reasonable and free from arbitrariness or discrimination. A city zoning decision is reasonable (not arbitrary), when it bears a reasonable relationship to the purpose of the zoning ordinance.

State v. Northwestern Preparatory School, 37 N.W.2d 370 (Minn. 1949).

Zoning ordinances may be found to be unreasonable when they appear arbitrary. When a zoning classification treats similarly situated individuals differently, there must be rational reason for the unequal treatment that bears a relation to the purposes of the ordinance (protection of the health, safety and welfare of the public). If no such reasonable or rational justification can be found, the court may decide that the city has been arbitrary.

State v. Northwestern Preparatory School, 37 N.W.2d 370 (Minn. 1949).

For example, the Minnesota Supreme Court invalidated provisions of one zoning ordinance that allowed public schools, but not private schools, to be located in a residential zone. The court ruled, in that instance, that the ordinance was arbitrary, because "the distinction between the different kinds of schools, upon which the classification made in the ordinance rests, is not based upon alleged evils which it is claimed exist in the case of private schools and do not exist in the case of public or parochial schools." In the courts view two very similar entities (public and private schools) were being treated differently under the law. This difference was not reasonably related to protecting the health, safety and welfare of the public. As a result, the distinction was ruled to be arbitrary.

b) A zoning designation may not be so restrictive as to deny all reasonable use of the land

U. S. Const. Amend. V.
Minn. Const. art. I § 3.
Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S. Ct. 158 U.S. 1922.
See House Research Memo, *Eminent Domain: Regulatory Takings*.

Both the U.S. Constitution and the Minnesota Constitution forbid taking private property for public use without just compensation. Zoning regulations may be considered "takings" if a regulation goes too far. This is generally termed a "regulatory taking."

RELEVANT LINKS:

Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 (Minn. 2007).
Czech v. City of Blaine, 253 N.W.2d 272 (Minn. 1977).
Pearce v. Village of Edina, 118 N.W.2d 659 (Minn. 1962).

Generally, a zoning scheme will constitute a regulatory taking only if it denies a landowner all economically viable or beneficial use of property or, stated differently, all reasonable use of property. However, not all diminution of property values will be considered a taking. Zoning often has the side effect of increasing the value of some property while decreasing the value of other property. To be ruled a regulatory taking, the regulation must be so severe as to render the property practically useless for the purpose for which it is zoned. For example, a regulation that would prohibit a residence in a strictly residential zone. In these cases, the court will order the city to pay the affected landowner compensation for the land lost to the regulatory taking.

D. Obtaining technical assistance in ordinance drafting

The Municipal Planning Act grants cities the authority to hire staff, including professional planners and attorneys, to assist in the drafting of a zoning ordinance. Local city officials and staff often have in-depth knowledge regarding the community and its needs, but lack expertise in the many technical and legal aspects of zoning. Professional planners and the city attorney can contribute this needed information to the zoning ordinance adoption process and, while not required, are highly recommended. Because zoning is regulated by numerous diverse state and federal laws and court cases, at a minimum, the assistance of the city attorney is necessary to help the city evaluate whether its ordinance complies with all applicable laws.

III. Common issues in ordinance drafting

Zoning ordinances can accomplish a great deal of good for a community. Drafting a zoning ordinance seemingly opens up many possibilities for dealing with concerns or even outright problems and challenges faced by a particular community. However, cities must be careful not to exceed their authority in drafting a city zoning ordinance. Below are some common concerns raised by cities in relation to an initial drafting of a zoning ordinance.

A. Establishing permitted and conditional uses

Sample Permitted and Conditional Uses.

See LMC Information Memo, *Conditional Use Permits: Frequently Asked Questions*.

In drafting a zoning ordinance, cities often struggle to decide what their permitted and conditional uses should be for each zoning district. For each district created by the zoning ordinance, the ordinance typically provides a list of the permitted and conditional uses. Appropriate uses will change from district to district. Uses designated as “permitted” will be automatically allowed with no need for further application or review (related to zoning) by the city. Therefore, the list of permitted uses should only contain uses about which the city has no reservations.

RELEVANT LINKS:

Conditional uses are also a form of authorized permitted use, provided that the applicant can meet the conditions specified in the ordinance. Uses specified as conditional are uses which are generally favorable and desired, but may also pose potential hazards that need to be mitigated (for example a gas station on a corner in a residential neighborhood). As a result of these potential hazards, council review is necessary.

It is important to stress that conditional uses, like permitted uses, must be allowed if the applicant can prove that the application meets all of the conditions and requirements of the city's ordinance and will not be detrimental to the health, safety and welfare of the public. As a result, the list of conditional uses should only contain uses that the city is certain should be allowed once appropriate conditions are met.

B. Aesthetic zoning requirements

Aesthetic zoning seeks to create a pleasant appearance in a district or community. Advocates for aesthetic zoning assert that it confers a beneficial effect on property values and on the well-being of its residents. For example, many cities address a host of aesthetic concerns through "design standards" section(s) in their zoning ordinance. Design standards often specify the type of building materials (such as brick or stone) that should be used in that district.

Naegele Outdoor Advertising Co. of Minn. v. Village of Minnetonka, 162 N.W.2d 206 (Minn. 1968).

Pine County v. State, Dept. of Natural Resources, 280 N.W.2d 625 (Minn. 1979).

Traditionally aesthetic zoning has been criticized as not adequately related to the protecting the health and safety of the public. However, the Minnesota Supreme Court has ruled that "mere fact that adoption of zoning ordinance reflects desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance." Furthermore, the courts recognize that local city officials are in the best position to determine whether aesthetic regulations promote the community's well-being. Generally, zoning ordinances that contain aesthetic regulations will be upheld if the council has made findings that they are reasonably tied to promoting a community's health safety and welfare in addition to mere aesthetic concerns.

C. Performance standards

Sample Performance Standards Section.

Performance standards are a common feature of zoning ordinances. Typically, the performance standard section of the ordinance sets forth regulations governing the uses within districts, such as noise, vibration, smoke, property maintenance (i.e. outdoor storage), parking, fencing and signage standards. Proposed uses that cannot meet the performance standards are not allowed in the district. Performance standards typically are adopted to apply to all districts. However, particular districts, such as industrial districts, may call for specific standards.

RELEVANT LINKS:

D. Zoning to protect natural resources or preserve open spaces and green space

Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 (Minn. 2007).
Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162 (Minn. 2006).
Pine County v. State, Dept. of Natural Resources, 280 N.W.2d 625 (Minn. 1979).
Minn. Stat. § 103F.335.
Minn. Stat. § 103F.221.
See Section V-E-1-c Applicability for more information on regulatory takings.

The Minnesota Supreme Court has ruled that a municipality has legitimate interests in protecting open, green and recreational space for the public through comprehensive planning and zoning. City ordinances use a variety of methods to promote open space and green space. A common zoning tool is cluster zoning. Cluster zoning groups new homes onto part of the development parcel, so that the remainder can be preserved as unbuilt open space. However, it is important to note that zoning regulations (including regulations mandating green or open spaces) that deny an owner all practical use of their property may be considered a regulatory taking.

E. Parking requirements

Sample Parking Requirements.

Cars are ubiquitous to American life and off-street parking requirements are a common feature of city zoning ordinances. Off-street parking requirements may reduce congestion on city streets, thereby improving safety and aesthetics.

Typically a city zoning ordinance will require a certain number of off-street parking space for each type of use. For example, an ordinance may require a landowner in a commercial district to provide four parking spaces per 1,000 sq ft of useable floor space. Many zoning ordinances find it helpful to use a table to illustrate the city's parking requirements.

F. Historic Preservation

Minn. Stat. § 138.74.

Historic preservation ordinances seek to protect and maintain buildings and sites of significance to history and pre-history, architecture and culture. Certain cities, which contain historic districts established by state statute, are specifically empowered by state law to create zoning regulations for their historic districts that:

- regulate the construction, alteration, demolition and use of structures within the district.
- prevent the construction of buildings of a character not in conformity with that of the historic district.
- allow the city to remove blighting influences, including signs, unsightly structures and debris, incompatible with the maintenance of the physical well-being of the district.
- allow the city "to adopt other measures as necessary to protect, preserve and perpetuate the district."

Minn. Stat. § 138.73.

Currently there are 25 official historic districts designated by state law.

RELEVANT LINKS:

State, by Powderly v. Erickson, 285 N.W.2d 84 (Minn. 1979).

Cities that do not contain official historic districts, as designated by state law, may also preserve their historic properties and districts through local zoning ordinances. Often this is accomplished by establishing a standalone district or an overlay district with specific design standards. The Minnesota Supreme Court has upheld historic preservation ordinances as a reasonable use of the city's police powers to protect the health, safety and welfare of the public.

G. Zoning regulation of adult uses

See LMC Information Memo, *Strip Clubs: The Bare Essentials*.
See LMC Information Memo, Adult Use Packet for more information and ordinance samples.

Adult uses typically refer to bookstores, theaters, bars, and other establishments where sexually explicit books, magazines and videos are sold or sexually explicit films or live performances are viewed. Cities can control the location of adult uses through zoning ordinances to reduce the negative secondary effects of adult uses.

Minn. Stat. § 617.242.

Northshor Experience, Inc. v. City of Duluth, MN, 442 F.Supp.2d 713 (D. Minn. 2006).

A state law, enacted in 2006, requires that anyone intending to open an adult use business provide notice, 60 days in advance, to the city where the business will locate. The law includes numerous other provisions focused on regulation of adult uses businesses. The new law is the subject of an injunction issued by a federal district court; the court finds that questions about the law's constitutionality are valid and rules that the city may not enforce the new law. Until the constitutional questions regarding the new law are resolved, cities probably should not rely on it as the sole mechanism for regulating adult entertainment establishments.

Instead, cities may consider taking proactive measure to adopt local adult use regulations. However, adopting any regulations of adult uses is legally complex and the city attorney should be involved in the drafting of any adult use ordinances.

H. Restricting Feedlots

Minn. Stat. § 462.357, subd. 1g.

Zoning ordinances that regulate feedlots must comply with certain procedures outlined in the Municipal Planning Act. When a city considers adopting a new or amended feedlot ordinance, it must notify the Minnesota Pollution Control Agency and commissioner of Agriculture at the beginning of the process.

A local zoning ordinance that requires a setback for new feedlots from existing residential areas must also require that new residential areas have the same setbacks from existing feedlots in agricultural districts. This requirement does not pertain to a new residence built to replace an existing residence. A city may grant a variance from this requirement.

RELEVANT LINKS:

At the request of the city council, the city must prepare a report on the economic effects from specific provisions in the feedlot ordinance. Assistance with the report, in the form of a template, is available from the commissioner of Agriculture, in cooperation with the Department of Employment and Economic Development. Upon completion, the report must be submitted to the commissioners of Employment and Economic Development and Agriculture along with the proposed ordinance.

I. Extra-territorial zoning and joint planning

1. Extra-territorial zoning

Minn. Stat. § 462.357.
A.G. Op. 59-A-32 (Aug. 18, 1995).

A city's zoning authority may be extended by ordinance to unincorporated territories within two miles of its boundaries, unless that area falls within another city, county or township that has adopted its own zoning regulations. Where zoning is extended, ordinances may be enforced in the same manner and to the same extent as within the city's corporate limits.

2. Joint planning

Minn. Stat. § 462.3585.

Joint planning may also assist cities in coordinating their land use efforts with neighboring townships. State statute authorizes the creation of a joint planning board, when requested by a resolution of a city, or county or town board.

The joint planning board exercises planning and land use control authority in the unincorporated area within two miles of the corporate limits of a city. Members of the board are appointed by each of the participating governmental units to equally represent the governmental units that comprise the board.

J. Zoning ordinances that limit competition or protect local business from being displaced by new business

Dobbins v. City of Los Angeles, 195 U.S. 223, 25 S. Ct. 18, 49 L. Ed. 169.
Pacific Palisades Assn. v. City of Huntington Beach, 196 Cal. 211, 237 P. 538.
Charnofree Corp. v. City of Miami Beach (Fla.), 76 So.2d 665.
State ex rel. Killeen Realty Co. v. City of East Cleveland, 108 Ohio App. 99, 153.E.2d 177.
Linden Methodist Episcopal Church v. City of Linden, 113 N.J.L. 188, 173 A. 593.

A city's zoning authority is based upon its police power to protect the public's health, safety and welfare. Zoning to protect private economic interests is problematic, because it is not generally perceived to be related to the public's health and welfare. In general, the federal courts have ruled that cities should not adopt zoning regulations with the sole intent to protect enterprises from competition in a particular district or to create monopolies or to make certain areas subservient to others.

RELEVANT LINKS:

Cities may encounter this issue in the zoning drafting process, when specifying permitted and conditional uses for a district. More commonly, the issue will arise in the context of reviewing a particular zoning application. For example, a city may wish to not grant a CUP for a new bank in the city, because officials perceive that there are too many banks in an area or that the a new bank may put long-established businesses out of business. This type of economic favoritism is not permitted in zoning ordinance drafting or application.

IV. Zoning ordinance adoption and/or amendment

A.G. Op. 59-A-32 (Jan. 25, 2002).
Pilgrim v. City of Winona, 256 N.W.2d 266 (Minn. 1977).

The Municipal Planning Act mandates a procedure for the adoption or amendment of zoning ordinances for both statutory and charter cities.

A. Public hearings and adoption

Minn. Stat. § 462.357, subd. 3. For information on conducting hearings, see LMC Information Memo, *Public Hearings*.

A public hearing must be held by the council or the planning commission (if one exists) before the city adopts or amends a zoning ordinance.

1. Notice and hearing

Minn. Stat. § 462.357, subd. 3.
See LMC Information Memo *Newspaper Publication*.

A notice of the time, place and purpose of the hearing must be published in the official newspaper of the municipality at least ten days prior to the day of the hearing.

If an amendment to a zoning ordinance involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least ten days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies. However, failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided that a genuine attempt to comply with this subdivision has been made.

Following the public hearing, the planning commission (if one exists) must review the proposed zoning ordinances and any comments from the public hearing, and make any appropriate and reasonable revisions. The planning commission must then present the zoning ordinance and any amendments in final draft form and a report to the council.

RELEVANT LINKS:

Minn. Stat. § 462.357, subds. 2, 5.
A.G. Op. 59-A-32 (Jan. 25, 2002).

If there is no planning commission, the city council itself should review and address comments from the public hearing and make any appropriate and reasonable revisions. Zoning ordinances must be adopted by a majority vote of all of the members of the council. For example, this would mean three votes on a five member council. One Minnesota attorney general opinion has found that charter cities may not provide for different voting requirements in their city charter, because the Municipal Planning Act supersedes inconsistent charter provisions.

2. Publication

Minn. Stat. § 412.191, subd. 4.
Minn. Stat. § 331A.02.
Minn. Stat. § 331A.04.
See Handbook, Chapter 7 for more information on publishing ordinances in summary form.

After adopting or amending a zoning ordinance, the council must publish or summarize it in the official newspaper.

V. Zoning ordinance administration

A. The 60-Day Rule

See LMC Information Memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*.

Most importantly in administering a zoning ordinance, cities must remember that they generally have only 60 days to approve or deny a written request relating to zoning, including rezoning requests, conditional use permits, and variances. This requirement is known as the "60-Day Rule."

Minn. Stat. § 15.99.
Manco of Fairmont v. Town Bd. of Rock Dell Township, 583 N.W.2d 293 (Minn. Ct. App. 1998).
Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007).

The 60-Day Rule is a state law that requires cities to approve or deny a written request relating to zoning within 60 days or it is deemed approved. The underlying purpose of the rule is to keep governmental agencies from taking too long in deciding land use issues. Minnesota courts have generally demanded strict compliance with the rule.

1. Scope of the rule

Minn. Stat. § 15.99, subd. 1(c).
Minn. Stat. § 15.99, subd. 2(a).
Minn. Stat. § 462.358, subd. 3b.
Advantage Capital Mgmt, v. City of Northfield, 664 N.W.2d 421 (Minn. Ct. App. 2003).

The rule applies to a "request a related to zoning." The courts have been rather expansive in their interpretation of the phrase "related to zoning," and many requests affecting the use of land have been treated as subject to the law. The statute creates an exception for subdivision and plat approvals, since those processes are subject to their own timeframes. The Minnesota Court of Appeals has ruled that Minn. Stat. § 15.99 does not apply to building permits.

RELEVANT LINKS:

2. Applications

Minn. Stat. § 15.99, subd. 1(c).

A request must be submitted in writing on the city's application form, if one exists. A request not on the city's form must clearly identify on the first page the approval sought. The city may reject as incomplete a request not on the city's form, if the request does not include information required by the city. The request is also considered incomplete if it does not include the application fee.

Minn. Stat. § 15.99, subd. 3(a).

The 60-day time period does not begin to run if the city notifies the landowner in writing within 15 business days of receiving the application that the application is incomplete. The city must also state what information is missing.

Minn. Stat. § 15.99, subd. 3(c).

If a city grants an approval within 60 days of receiving a written request – and the city can document this - it meets the time limit even if that approval includes certain conditions the applicant must meet. Subsequently, if the applicant fails to meet the conditions, the approval may be revoked or rescinded. An applicant cannot use the revocation or rescission to claim the city did not meet the 60-day time limit.

Tollefson Dev., Inc. v. City of Elk River, 665 N.W.2d 554 (Minn. Ct. App. 2003).

When a zoning applicant materially amends their application, the 60-day period runs from the date of the written request for the amendment, not from the date of the original application. However, minor changes to a zoning request should not affect the running of the 60-day period.

3. Denials

Minn. Stat. § 15.99, subd. 2(a).
Johnson v Cook County, No. A08-1501 (Minn. 2010) (unpublished decision).
Minn. Stat. § 15.99, subd. 2(c).
Hans Hagen Homes, Inc. v. City of Minnetrista,728 N.W. 2d 536 (Minn. 2007).

If an agency or a city denies a request, it must give written reasons for its denial at the time it denies the request. When a multimember governing body such as a city council denies a request, it must state the reasons for denial on the record and provide the applicant with a written statement of the reasons for denial. The written statement of the reasons for denial must be consistent with reasons stated in the record at the time of denial. The written statement of reasons for denial must be provided to the applicant upon adoption.

Minn. Stat. § 15.99, subd. 2(b).

State statute provides that the failure of a motion to approve an application constitutes a denial, provided that those voting against the motion state on the record the reasons why they oppose the request. This situation usually occurs when a motion to approve fails because of a tie vote, or because the motion fails to get the required number of votes to pass.

RELEVANT LINKS:

4. Extensions

Minn. Stat. § 15.99, subd. 3(f).

The law allows a city the opportunity to give itself an additional 60 days (up to a total of 120 days) to consider an application, if the city follows specific statutory requirements. In order to avail itself of an additional 60 days, the city must give the applicant:

- Written notification of the extension before the end of the initial 60-day period;
- The reasons for extension; and
- The anticipated length of the extension.

American Tower, L.P. v. City of Grant, 636 N.W.2d 309(Minn. 2001).

Northern States Power Co. v. City of Mendota Heights, 646 N.W.2d 919 (Minn. Ct. App. 2002).

The courts have been particularly demanding on local governments with regard to this requirement and have required local governments to meet each element of the statute. An oral notice or an oral agreement to extend is insufficient. The reasons stated in the written notification should be specific in order to inform the individual applicant exactly why the process is being delayed. Needing more time to fully consider the application may be an adequate reason. As demonstrated in one Minnesota Supreme Court case, the written notification should not take the form of a blanket statement on the zoning application that the city will need the extension.

Minn. Stat. § 15.99, subd. 3(g).

An applicant may also request an extension of the time limit by written notice. If a city receives an applicant request for an extension, this should be thoroughly documented.

Minn. Stat. § 15.99, subd. 3(g).

Once the city has granted itself one 60 day extension, additional extensions must be negotiated with the applicant. A city can only go beyond 120 days if it gets the approval of the applicant. The city must initiate the request for additional time in writing and have the applicant agree to an extension in writing. The applicant may also ask for an additional extension by written request.

Minn. Stat. § 15.99, subd. 3(d), (e).

Minn. Stat. ch. 116D.
Minn. R. ch. 4410.

The 60-day time period is also extended if a state statute requires a process to occur before the city acts on the application if the process will make it impossible for the city to act within 60 days. The environmental review process is an example. If the city or state law requires the preparation of an environmental assessment worksheet (EAW) or an environmental impact statement (EIS) under the state Environmental Policy Act, the deadline is extended until 60 days after the environmental review process is completed. Likewise, if a proposed development requires state or federal approval in addition to city action, the 60-day period for city action is extended until 60 days after the required prior approval is granted from the state or federal entity.

RELEVANT LINKS:

Minn. Stat. § 15.99, subd. 2(a), (e).

See LMC Information Memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute.*

On occasion, a local city zoning ordinance or charter may contain similar or conflicting time provisions. The 60-Day Rule generally supersedes those time limits and requirements.

Cities should adopt a procedure or set of procedures to ensure planning staff, the planning commission, and the city council follow the 60-Day Rule. City staff should develop a timetable, guidelines and forms (checklists for each application may be helpful) to ensure that no application is deemed approved because the city could not act fast enough to complete the review process.

B. Organizational structure for review of zoning applications

The pressures posed by the 60-Day Rule mandate that any city with a zoning ordinance have in place an efficient system of zoning administration. Generally, this system is composed of both staff and city officials, who ensure that zoning applications are reviewed and answered in a timely manner and that zoning ordinance provisions are enforced.

1. The zoning administrator

Typically, a city will have a staff person who acts as the "Zoning Administrator" who is the first point of contact with the public on zoning matters and provides and receives zoning application forms. Generally, this person will also perform a preliminary review of the application, refer the application to the Planning Commission (if one exists) or City Council for review and offer one or both bodies a staff report reviewing the adequacy of the application. Depending on the size of the city and the number of zoning applications the city typically receives, the position of zoning administrator may be a full-time position or a part-time position. In some cities, the city clerk simply bears the additional title of zoning administrator.

2. The planning commission

See LMC Information Memo *Planning Commission Guide*.

Cities may choose to establish planning commissions to assist in zoning administration, but are not required to do so. (However, if a city has adopted a comprehensive plan, a planning commission is mandatory). Usually, it is a good idea to create a planning commission, because city council officials have multiple budgeting, legislative and administrative duties that they must perform in addition to their land use responsibilities. Planning commissions, on the other hand, are usually composed of people who focus solely on zoning and development and, thus, can devote their full attention.

RELEVANT LINKS:

Minn. Stat. § 462.354, subd. 1.

Planning commissions are created by ordinance or charter and may vary in size. City council members may be appointed to serve as commission members. Once formed, planning commissions, with city council consent, may adopt bylaws or their own rules of procedure. The city may provide the planning commission with staff, including legal counsel, as necessary.

Minn. Stat. § 462.357, subd. 3.

In many cities all zoning applications for conditional use permits, rezoning and variances are submitted to the planning commission for review. If a planning commission exists, state law requires that the planning commission must review zoning ordinance amendments and amendments to the official map. With limited exceptions, the planning commission's role in reviewing all types of zoning applications is generally advisory. The City Council usually gives the planning commission recommendations great weight in their considerations, but is not bound by them.

Minn. Stat. § 462.357, subd. 3.

The planning commission may hold required public hearings on behalf of the city council, such as a hearing for a zoning ordinance amendment.

3. Planning departments

Minn. Stat. § 462.354, subd. 2.

Cities may also form a planning department. In cities that chose this option, the planning commission becomes advisory to the planning department while the planning department takes on the role of advising city council.

4. The city council

Minn. Stat. § 462.3595.

In many cities the city council makes the final determination on all applications for rezoning, conditional use permits and interim use permits after consulting the zoning administrator, planning commission and City Attorney as needed. However, the Municipal Planning Act allows cities to delegate final decision making authority concerning conditional use permits to a "designated authority" (presumably the Planning Commission). The City Council cannot delegate its authority to grant rezoning applications and interim use permits.

5. Board of zoning adjustment and appeals

Minn. Stat. § 462.354, subd. 2. Minn. Stat. § 462.357, subd. 6.

State law requires all cities that have adopted a zoning ordinance to create a Board of Appeals and Adjustments. The Board of Appeals and Adjustment must be created by ordinance. The council may designate itself as the Board of Appeals and Adjustments, or appoint a separate board or the planning commission to serve the city in this capacity. If the board is a separate body, the council can provide in its ordinance that board decisions are:

- final and subject only to judicial review;
- final subject to appeal to the council and judicial review; or
- only advisory to the council, who will makes the final determination.

RELEVANT LINKS:

The board hears requests for variances from the zoning code and makes the determination to grant or deny the variance. In addition, the Board of Appeals and Adjustment hears requests for reconsideration of zoning applications (usually denials), where it is alleged there has been an error in the administration of the zoning ordinance.

Minn. Stat. § 462.354, subd. 2.
Minn. Stat. § 15.99.

The ordinance establishing the board must provide notice and time requirements for hearings before the board. All orders by the board are due within a reasonable time. Requests before the board are subject to the 60-day rule.

C. Standards for reviewing zoning applications: limits on city discretion

State, by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 (Minn. 1978).

When drafting and adopting a zoning ordinance, cities have enormous discretion in choosing their language and specifying uses as permitted, prohibited or conditional in particular districts. When drafting and adopting a zoning ordinance, the city is said to be utilizing its legislative (or law-making) authority. When using its legislative authority, the only limits on the city's zoning authority are that action must be constitutional, rational and in some way related to protecting the health, safety and welfare of the public. This is known as the "rational basis standard" and is generally a very friendly standard for cities to meet.

For more information on applications for re-zoning see Section V-C Standards for reviewing zoning applications: limits on city discretion.

The varying discretion available to cities in making zoning decisions has been described as following a pyramid diagram.

In contrast, when administering an existing zoning ordinance (for example when reviewing specific zoning applications for conditional use permits), the city's discretion is much more limited. Generally, when reviewing a zoning application (with the exception of rezoning applications), the city is no longer acting in its legislative capacity. When reviewing zoning applications, the city is said to be exercising a quasi-judicial function. Rather than legislating for the broad population as whole, the city is making a quasi-judicial (judge-like) determination about an individual zoning application regarding whether the application meets the standards of the city ordinance.

In quasi-judicial circumstances, the city must follow the standards and requirements of the ordinance it has adopted. If an application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial must all relate to the applicant's failure to meet standards established in the ordinance. In sum, the city has a great deal of liberty to establish the rules, but once established, the city is as equally bound by the rules as the public.

A city is acting is a quasi-judicial manner when it reviews applications for:

RELEVANT LINKS:

- Conditional use permits.
- Interim use permits.
- Variances.

Northwestern College v. City of Arden Hills, 281 N.W.2d 865 (Minn. 1979).

In quasi-judicial situations, a reviewing court will closely scrutinize the city's decision, to determine whether they city has provided a legally and factually sufficient basis for denial of an application.

In quasi-judicial situations, due process and equal protection are the main reasons for the more stringent scrutiny. Due process and equal protection under the law demand that similar applicants must be treated uniformly by the city. The best process for insuring similar treatment among applicants is to establish standards in the ordinance and to provide that if standards are met, the zoning permit must be granted. An application may generally only be denied for failure to meet the standards in city ordinances.

A reviewing court will overrule a quasi-judicial city zoning decision if it determines that the decision was arbitrary (failed to treat equally situated applicants equally or failed to follow ordinance requirements).

1. Standard of review for re-zoning applications

State, by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 (Minn. 1978).

See Section V-C, Standards for reviewing zoning applications: limits on city discretion.

An application for a rezoning is a request for an amendment to the zoning ordinance. When reviewing applications for re-zoning, the court has ruled that the city continues to act in a legislative capacity, even though the re-zoning application may only relate to one specific parcel owned by one individual. The existing zoning ordinance is presumed to be constitutional, and an applicant is only entitled to a change if they can demonstrate that the existing zoning is unsupported by any rational basis related to the public health, safety and welfare.

2. Making a record of the basis for zoning decisions

Minn. Stat. § 15.99, subd. 2(a).
See Section V-A, The 60-Day Rule.

The 60-Day Rule requires the city to provide reasons for its denial of a zoning request. These reasons for denial must be stated on the record. In addition, the city must provide the applicant with a written statement of the reasons for denial. The reasons for denial or approval, whether written or stated on the record are considered the city's "findings of fact" on the application if later court review of the city's decision is necessary.

RELEVANT LINKS:

SuperAmerica Group, Inc. v City of Little Canada, 539 NW 2d 264 (Minn. Ct. App. 1995).
Swanson v City of Bloomington, 421 NW 2d 307 (Minn. 1988).
Larson v Washington County, 387 N.W.2d 902 (Minn. Ct. App 1986).
See also LMC Information Memos, *Taking the Mystery Out of Findings of Fact.* and, *Findings of Fact: Elected Officials as Policymakers*.

Findings of fact are also essential to the zoning process, because they enable a reviewing court to sustain a city's zoning decisions. When a land use decision is challenged in court, the standard of review used by the court is very limited. The city's decision will be upheld if the findings of fact demonstrate a rational and legally sufficient basis for the decision that is not arbitrary or capricious.

Zylka v. City of Crystal, 167 N.W.2d 45, (Minn. 1969).

See Sections V-3-c, conditional use permits and V-3-d, requests for variances from the zoning ordinance, for more information on the standards of review for conditional use permits and variances.

Findings of fact should state all of the relevant facts the city considered in making its decision on the zoning application. A fact is relevant if it proves or disproves that the application meets the legal standards of the city ordinance and state law for granting the zoning request. For example, applications for conditional use permits and variances are all subject to particular standards that are or should have been spelled out in city ordinances, or have been defined by state law or court decision. In evaluating any particular zoning request, the reviewing body should apply the relevant facts to the particular standards that govern the specific type of decisions being made. The basis for reviewing specific types of zoning applications is discussed more extensively later in this memo.

a) Neighborhood opposition

Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee, 226 N.W.2d 306 (Minn. 1975).

Certain zoning applications may generate vocal public opposition. Frequently, cities struggle with handling vocal neighborhood opposition in their findings of fact. However, general statements of public opposition should not be a finding of fact listed as a basis for denying a zoning application. Nor should the official record intimate that public opposition is the underlying basis for the city's findings of fact. If a zoning application meets the requirements of the ordinance, it must be granted, despite the disapproval of the neighbors.

Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee, 226 N.W.2d 306 (Minn. 1975).

However, this does not mean that all statements of the public must be disregarded. A significant part of the zoning process is generally the public hearing mandated by the Municipal Planning Act. The Municipal Planning Act requires that all parties interested in an application, including the applicant and neighbors, be granted an opportunity to speak and present their views on the application. While general statements of opposition may not be used as a finding of fact, statements made by the public that are concrete and factual relating to the public welfare are acceptable findings.

RELEVANT LINKS:

For example, a finding of fact should not be "public opposition to the project is strong." But a finding of fact can be, "numerous statements were made at the public hearing by neighbors in the vicinity of the project that streets in the area are already highly congested. The addition of a shopping mall would significantly increase congestion on streets that are at capacity." Where possible, findings of fact that refer to statements by the public should be corroborated by studies and/or expert testimony or opinions.

b) Conducting a public hearing

Public hearings are required prior to the city taking action on numerous types of zoning issues. A public hearing must be held for:

Minn. Stat. § 462.357, subd. 3.
Minn. Stat. § 462.3595, subd. 2.
Minn. Stat. § 462.357, subd. 3.

- Zoning ordinance adoption or amendment.
- Conditional use permits.
- Rezonings.

City ordinances may also require additional hearings for certain matters. Since variances are considered in the nature of a zoning amendment, some cities hold hearings for variance requests as well. As this is an unsettled area of law, please consult your city attorney on the practice of holding hearings for variances.

See Sample Public Hearing Notice.

Notice of the hearing must be published in the official newspaper at least 10 days prior to the hearing, and notice must be mailed to property owners within a 350-foot radius of the land in question (including landowners within the 350 foot radius who may live outside the city).

Public hearings should include a complete disclosure of what is being proposed, and a fair and open assessment of the issues raised. A public hearing must include an opportunity for the general public and interested parties to hear and see all information and to ask questions, provide additional information, express support or opposition, or suggest modifications to the proposal.

For more information on conducting public hearings see LMC Information Memo, *Public Hearings*.

Public hearings should be conducted with a goal of developing findings of fact to support the city's decision to grant or deny a zoning application. As a result, it may be helpful for the city to provide the public with guidelines for the procedure of the hearing and to encourage the public to present only factual evidence for public consideration.

RELEVANT LINKS:

3. Review of specific types of zoning applications

Cities who have adopted a zoning ordinance need procedures to help them review the different types of zoning applications they receive. Cities typically receive applications for conditional use permits, interim uses, variances and requests for rezonings. As discussed above, all of these applications are subject to the 60-Day Rule. However, this is where the similarities among the review procedures for each type of application ends. Each type of application requires a different standard of review, because state law (and likely local ordinance as well) establishes specific requirements for granting each type of application.

a) Permitted uses

Cities may vary in their administrative procedures for handling permitted uses. For example, some cities will have their building inspector confirm that a use is permitted and meets all applicable zoning rules at the time a building permit is issued with no other formal action from the city. Other cities, that may not enforce the State Building Code, may require all landowners seeking to develop or build to apply for a formal zoning permit. The permit is issued to confirm that that the use is permitted and/or meets all other applicable zoning standards.

Chase v. City of Minneapolis, 401 N.W.2d 408 (Minn. 1981).
Rose Cliff Landscape Nursery v. City of Rosemount, 467 N.W.2d 641 (Minn. Ct. App. 1991).

Regardless of the administrative procedures used, it is important to remember that a city may not impose additional conditions on a permitted use that fits the standards of city ordinance. Such actions are likely to be seen as arbitrary or denying the landowner equal protection and due process. Generally, a landowner is entitled to engage in the permitted use provided they have met all applicable requirements.

See Section III-A, establishing permitted and conditional uses.

Cities should regularly review their permitted uses to be certain that the listed permitted uses fit current city needs and circumstances. Permitted uses that may have previously been standard (such as carriage houses in residential districts), may be inappropriate on a modern city, residential block. As time passes, permitted uses may need to be reclassified as prohibited uses or transformed into conditional uses, where conditions may be imposed to prevent any negative secondary effects.

RELEVANT LINKS:

See Section V-C, standards of reviewing zoning applications: limits on city discretion.
Minn. Stat. § 462.357, subd. 6.
Sunrise Lake Ass'n v. Chisago County Bd. of Comm'rs, 633 N.W.2d 59 (Minn. Ct. App. 2001).
See Section V-C-3-d, requests for variances from the zoning ordinance.

b) Prohibited uses

Cities may receive applications requesting permission to engage in uses explicitly prohibited under the city's zoning ordinance. For example, a request to engage in industrial activities in a commercial zone. When a use is prohibited, the city cannot allow the use unless an amendment to the city's zoning ordinance is adopted in accordance with the procedures of the Municipal Planning Act. Cities are prohibited from granting variances or conditional use permits to engage in prohibited uses.

c) Conditional use permits

Amoco Oil Co. v. City of Minneapolis, 395 N.W.2d 115 (Minn. Ct. App.,1986).

Zylka v. City of Crystal, 167 N.W.2d 45 (Minn. 1969).

See Sample resolution granting a CUP.

See Sample resolution denying a CUP.

The concept of a conditional use permit (CUP) was created to give cities more flexibility in zoning ordinance administration. Generally, conditional uses are uses that are often too problematic to be permitted uses as of right in a district. However, since the use is still generally favorable or necessary, outright prohibition of the use is generally not practical or desired. A classic example of such a mixed positive/negative use is a gas station in a residential area. Conditional uses seek to strike a middle ground between outright, unchecked permissive establishment and complete prohibition. Conditional uses are uses that will be allowed if certain conditions (that minimize the problematic features of the use) are met.

Minn. Stat. § 462.3595.

Zylka v. City of Crystal, 167 N.W.2d 45, (Minn. 1969).

Cities must specify conditional uses in a city ordinance. Generally, a list of conditional uses will be found alongside the permitted uses in a city ordinance. The ordinance must also establish what conditions or standards must be met to allow the conditional use. Ordinances that fail to establish standards for granting the listed conditional uses are problematic and potentially invalid.

Minn. Stat. § 462.3595.
Minn. Stat. § 462.3595, subd. 2.
Schwardt v. County of Watonwan, 656 N.W.2d 383 (Minn. 2003).
Yang v. County of Carver, 660 N.W.2d 828 (Minn. Ct. App. 2003).
Citizens for a Balanced City v. Plymouth Congregational Church, 672 N.W.2d 13 (Minn. Ct. App. 2003).
Trisko v. City of Waite Park, 566 N.W.2d 349 (Minn. Ct. App. 1997).

The city must grant the CUP if the applicant satisfies all the conditions established in the ordinance.

A city may deny a CUP if the proposed use:

RELEVANT LINKS:

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757 (Minn. 1982).
See Section I-C Role of comprehensive planning in zoning ordinance adoption.
SuperAmerica Group, Inc. v. City of Little Canada, 539 N.W.2d 264 (Minn. Ct. App. 1995).

- Does not meet the specific standards or conditions established in the zoning ordinance;
- Is not consistent with the city's officially adopted comprehensive plan;
- Endangers or is not compatible with the health, safety and welfare of the public.

In re Livingood, 594 N.W.2d 889 (Minn. 1999).

When a local government denies a landowner a CUP without sufficient evidence to support its decision, a court can order the issuance of the permit subject to reasonable conditions.

Minn. Stat. § 462.3595, subd. 4.

Once a CUP is granted, a certified copy of the CUP (including a detailed list of all applicable conditions) must be recorded with the county recorder or the registrar of titles, and must include a legal description of the land.

Northpoint Plaza v. City of Rochester, 465 N.W.2d 686 (Minn. 1991).
Snaza v. City of St Paul, 548 F 3d 1178 (8th Cit. 2008).
Minn. Stat. § 462.3597.
A.G. Op. 59-A-32 (February 27, 1990).

CUPs are considered property interests that run with the land—that is, they pass from seller to buyer when the land is sold or transferred. For this reason, time restrictions on a CUP are potentially invalid. In one instance, however, the courts have supported the city's decision to issue a time-limited CUP. If the city wishes to issue a time-limited CUP, the city attorney should be consulted.

Upper Minnetonka Yacht Club v. City of Shorewood, 770 NW 2d 184 (Minn. Ct. App. 2009).

Once issued, a CUP's conditions cannot be unilaterally altered by the city, absent a violation of the CUP itself.

d) Requests for variances from the zoning ordinance

See LMC Information Memo, *FAQs on Variances*.

Variances are an exception to rules laid out in a zoning ordinance. They are permitted departures from strict enforcement of the ordinance as applied to a particular piece of property if strict enforcement would cause the owner "practical difficulties." Variances are generally related to physical standards (such as setbacks or height limits) and may not be used to allow a use that is prohibited in the particular zoning district. Essentially, variances allow the landowner to deviate from the rules that would otherwise apply.

Minn. Stat. § 462.354, subd. 6.
See Section V-B-5 Boards of Adjustment and Appeals.

The law provides that requests for variances are heard by the board of adjustment and appeals. In many communities, the planning commission serves this function. Generally, the board's decision is subject to appeal to the city council. Under the statutory practical difficulties standard, a landowner is entitled to a variance if the facts satisfy the three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character.

RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 6.
See also LMC Information Memo, *2011 Variance Legislation* for sample ordinance language.
Krummenacher, v. City of Minnetonka, 783 N.W.2d 721 (Minn. 2010).

Note! "Undue hardship" was the name of the three-factor test prior to a May 2011 change of law. Effective May 6, 2011 Minnesota Laws, Chapter 19, amended Minn. Stat. § 462.357, subd. 6 to restore municipal variance authority in response to the Krummenacher v. City of Minnetonka, case. In Krummenacher, the Minnesota Supreme Court interpreted the statutory definition of "undue hardship" and held that the "reasonable use" prong of the "undue hardship" test was not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance.

See LMC Information Memo, *2011 Variance Legislation.*

The 2011 law changed the first factor back to the "reasonable manner" understanding that had been used by some lower courts prior to the Krummenacher ruling. The 2011 law renamed the municipal variance standard from "undue hardship" to "practical difficulties," but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character. The 2011 law also provides that: "Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan."

The practical difficulties factors are:

Krummenacher, v. City of Minnetonka, 783 N.W.2d 721 (Minn. 2010).
Rowell v. Board of Adjustment of the City of Moorhead, 446 N.W.2d 917 (Minn.App.1989).

- The property owner proposes to use the property in a reasonable manner. This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance. It does not mean that the land cannot be put to any reasonable use whatsoever without the variance.
- The landowner's situation is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone cannot create practical difficulties.
- The variance, if granted, will not alter the essential character of the locality. This factor generally contemplates whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

Myron v. City of Plymouth, 562 N.W.2d 21 (Minn. Ct. App. Apr. 15, 1997), aff'd, *581 N.W.2d 815 (Minn. 1998)* overruled on other grounds by *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623 (Minn. 2007).

Variances are to be granted only if strict enforcement of a zoning ordinance causes practical difficulties. A landowner who purchased land knowing a variance would be necessary in order to make the property buildable is not barred from requesting a variance on the grounds the hardship was self-imposed.

City of Maplewood v. Valiukas, (Minn. Ct. App. Feb 11, 1997).

In granting a variance, the city may attach conditions, but the conditions must be directly related and bear a rough proportionality to the impact created by the variance. For example, if the variance reduces side yard setbacks, it may be reasonable to impose a condition of additional screening or landscaping to camouflage the structure built within the normal setback.

RELEVANT LINKS:

Mohler v. City of St. Louis Park, 643 N.W.2d 623 (Minn. Ct. App. 2002).
Nolan v. City of Eden Prairie, 610 N.W.2d 697 (Minn. Ct. App. 2000).
Graham v. Itasca County Planning Comm'n, 601 N.W.2d 461 (Minn. Ct. App. 1999).

Broad discretion is permitted when denying a request for a variance, but there must be legally sufficient reasons for the denial. The board must make findings concerning the reasons for the denial or approval and the facts upon which the decision was based. The findings must adequately address the statutory requirements. Best practice suggests seeking specific legal advice from the city attorney before making decisions on requests for variances.

Stotts v. Wright County, 478 N.W.2d 802 (Minn. Ct. App. 1992).

An applicant for a variance is not entitled to a variance merely because similar variances were granted in the past, although in granting variances, the city ought to be cautious about establishing precedent.

Mohler v. City of St. Louis Park, 643 N.W.2d 623 (Minn. Ct. App. 2002).

Error by city staff in approving plans does not entitle a person to a variance. While the result might be harsh, a municipality cannot be estopped from correctly enforcing a zoning ordinance even if the property owner relies to his or her detriment on prior city action.

Minn. Stat. § 462.357, subd. 6.
Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minn. 2000).

As discussed above, the most common requests for variances relate to physical conditions on the property. For example, setbacks and height restrictions. On occasion a city may receive requests for variances related to uses. For example, a request to use the property for a landscaping business out of a home in a residential district. This is commonly known as a use variance.

A use variance may not be granted if the use is prohibited in a zoning district. This may occur when the local zoning ordinance specifically lists prohibited uses (such as industrial uses in a residential zone) or when a zoning ordinance lists permitted uses and states that all uses not specifically listed are considered prohibited.

Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minn. 2000).

A city may grant a use variance when a use is not prohibited in the zoning district. For example, the zoning ordinance is silent on the issue or when the use is explicitly allowed, but limited by another portion of the city ordinance. For example, when a permitted use cannot meet performance standards elsewhere in the ordinance (such as parking or screening). The requirements of unusual hardship and other statutory requirements still apply to use variances.

Minn. Stat. § 462.357, subd. 6(2).

Finally, state statute creates two use variances that a city may always choose (but is not required) to permit through a variance. State statute specifically empowers cities to grant use variances for solar energy systems where a variance is needed to overcome inadequate access to direct sunlight and for the temporary use of a single family residence as a two-family residence.

RELEVANT LINKS:

e) Requests for rezoning or zoning ordinance amendments

Minn. Stat. § 462.357.
Minn. Stat. § 462.358, subd. 2a.
Minn. Stat. § 15.99.

Cities have the authority to rezone (change a designation from residential to mixed commercial) or otherwise amend the zoning regulations governing a particular parcel of property (such as adding a permitted or conditional use). Note however, that rezoning is an amendment to the actual zoning ordinance and therefore all the procedures for amendments to the zoning ordinance apply.

Minn. Stat. § 462.357, subd. 4.
See Part III, The 60-day rule.

Rezoning may be initiated by the planning commission, council, or a petition by an individual landowner. If a request for rezoning does not come from the planning commission, the matter must be referred to the planning commission for study and report. Care should be taken so that the 60-Day Rule discussed previously is not violated, resulting in an automatic granting of the rezoning.

Sun Oil Co. v. Village of New Hope, Minn. N.W.2d 256 (Minn. 1974).

Rezoning is a legislative act and needs only to be reasonable and have some rational basis relating to public health, safety, morals, or general welfare. A rezoning decision must be supported by findings of fact that indicate the city's rational basis for the rezone. If the city has followed a comprehensive planning process, the findings of fact should also indicate that the decision is consistent with the city's comprehensive plan.

(1) Rezoning residential property

Minn. Stat. § 462.357, subd. 2.

When property is rezoned from residential to commercial or industrial, a two-thirds majority of all members of the city council is required. (This means there must be four affirmative votes on a five-member council, in most cases.) For other rezoning decisions, a simple majority vote of all members is all that is required.

A.G. Op. 59-A-32 (Jan. 25, 2002).

The Minnesota attorney general has issued an opinion that charter cities may not alter this voting requirement in their charter. The purpose of state law is to provide a uniform set of procedures for city planning and such procedures apply to all cities, charter or statutory.

(2) Spot zoning

Amcon Corp. v. City of Eagan, 348 N.W.2d 66 (Minn.1984).
Olsen v. City of Hopkins, 178 N.W.2d 719 (Minn. 1970).
Three Putt, LLC v. City of Minnetonka, No. A08-1436 (Minn. Ct. App 2009) (unpublished decision).

The general rule is that property owners to do not acquire any vested rights in the specific zoning of their parcel. Cities may exercise their legislative discretion to rezone property in furtherance of the public, health, safety and welfare. Cities should, however, avoid a type of rezoning known as "spot zoning."

Spot zoning usually involves the rezoning of a small parcel of land in a manner that:

RELEVANT LINKS:

State, by Rochester Ass'n of Neighborhoods v. City of Rochester. 268 N.W.2d 885 (Minn. 1978).

- Is unsupported by any rational basis relating to promoting public welfare.
- Establishes a use classification inconsistent with surrounding uses and creates an island of nonconforming use within a larger zoned district (for example one lot where industrial uses are permitted in an otherwise residential zone).
- Dramatically reduces the value for uses specified in the zoning ordinance of either the rezoned plot or abutting property.

Alexander v. City of Minneapolis, 125 N.W.2d 583 (Minn. 1963).

Spot zoning that results in a total destruction or substantial diminution of value of property may be considered a form of regulatory taking of private property without compensation. In these rare instances, a property owner may be entitled to compensation for damages related to a legislative rezoning.

D. Environmental review

See Handbook, Chapter 16 for more information on environmental review.
Minn. Stat. § 116D.
Minn. R. ch. 4410.
Minn. Stat. § 16D.02.

Minnesota has adopted a comprehensive and detailed environmental review program to determine the significant environmental effects of private and governmental actions. The idea behind the program is that if governmental bodies require documents that identify the environmental consequences of a proposed development and those documents are available to the public, decision-makers can incorporate environmental protection into the proposed development. The law prohibits the issuance of permits or development prior to completion of necessary documents.

Minn. Stat. § 15.99, subd. 3(d), (e).
Minn. Stat. § 116D.
Minn. R. ch. 4410.
See Section V-A The 60-Day Rule.

The state-mandated environmental review process usually occurs in conjunction with the city's administration of its zoning ordinance. The environmental review process may require the city to delay consideration of an application. The 60-Day Rule allows an extension for these purposes.

E. Fees and escrow

Minn. Stat. § 462.353, subd. 4(a).
Minn. Stat. § 462.353, subd. 4(b).

Proper zoning administration may require significant financial commitment from a city. However, a city may establish land use fees under the Municipal Planning Act sufficient to defray the costs incurred by the city in reviewing, investigating, and administering an application for an amendment to an official control, or an application for a permit or other approval required under the zoning ordinance.

Fees are required by law to be fair, reasonable, proportionate, and be linked to the actual cost of the service for which the fee is imposed. All cities are required to adopt management and accounting procedures to ensure fees are maintained and used only for the purpose for which they are collected. Upon request, a city must explain the basis of its fees.

RELEVANT LINKS:

Minn. Stat. § 462.353, subd. 4(d).
Minn. Stat. § 462.361.

If a dispute arises over a specific fee imposed by a city related to a specific application, the person aggrieved by the fee may appeal to district court provided the appeal is brought within 60 days after approval of the application and deposit of the fee into escrow. An approved application may proceed as if the fee had been paid, pending a decision on the appeal.

Minn. Stat. § 462.353, subd. 4(a).

Generally, cities must adopt fees by ordinance. However, there is a statutory exception to this general requirement. The exception authorizes cities that collect an annual cumulative total of $5,000 or less of land use fees to simply refer to a fee schedule in the ordinance that governs the official control or permit. These cities are authorized to adopt a fee schedule by ordinance or by resolution, either annually or more frequently, after providing notice and holding a public hearing. Notice must be published at least 10 days before the public hearing. The exception also authorizes cities that collect an annual cumulative total in excess of $5,000 of land use fees to adopt a fee schedule if they wish, but they may only do so by ordinance, after following the same notice and hearing procedures.

Minn. Stat. § 462.353, subd. 4(c).

January 1 is set by statute as the standard effective date for changes to fee ordinances, but a city may set a different effective date as long as the new fee ordinance does not apply to a project for which application for final approval was submitted before the ordinance was adopted.

Minn. Stat. § 326B.145.

Cities that collect over $10,000 in fees annually must report annually to the Department of Labor and Industry all construction and development-related fees collected or face penalties. The report must include information on the number and valuation of the units for which fees were paid, the amount of building permit fees, plan review fees, administrative fees, engineering fees, infrastructure fees, other construction and development related fees, and the expenses associated with the municipal activities for which the fees were collected.

F. Updating and maintaining the city's zoning ordinance

The last, but perhaps most important topic to discuss in zoning administration is on-going maintenance of the zoning ordinance itself, both its actual text and maps. City zoning authority is created and regulated by statutes and court decisions. Both are changed or are amended frequently, making it imperative that cities remain abreast of current developments in the law and, with the assistance of legal counsel, amend their zoning ordinances accordingly.

RELEVANT LINKS:

Any city that has adopted a zoning ordinance should regularly review it to make sure it is consistent with current law. In addition, cities should also review their ordinances to make sure they are consistent with past staff and council interpretation and to make sure they are consistent with the city's comprehensive plan.

Finally, the zoning ordinance should be reviewed to ensure that it is consistent with the city council's current goals and visions for the community. Changes in the city's economic situation, population changes and surges in development interest may quickly make a zoning ordinance outdated with current city realities. Regulations that are inconsistent with what the staff and council see as the future of the community can only cause conflicts when particular applications have to be evaluated.

1. Interim Ordinances (Moratoria)

Minn. Stat. § 462.355, subd. 4).
Pawn America Minnesota, LLC v. City of St Louis Park, 787 N.W.2d 565 (Minn. 2010).

Adoption of an interim ordinance (more commonly known as a moratorium) may aid cities in the zoning ordinance amendment process, by allowing a city to study an issue without the pressure of time generated by pending applications. Cities may use a moratorium to protect the planning process, particularly when formal studies may be needed on a particular issue. Cities must follow the procedures established in state statute to initiate a moratorium.

a) Procedure for interim ordinance adoption

Minn. Stat. § 462.355, subd. 4(a).

Cities must initiate a moratorium by adopting an ordinance (interim ordinance). The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the city or a portion of the city for a period not to exceed one year from the effective date of the ordinance. An interim ordinance may only be adopted where the city:

- Is conducting studies on the issue.
- Has authorized a study to be conducted.
- Has held or scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or other official controls, including the zoning code, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.
- Has annexed new territory into the city for which plans or controls have not been adopted.

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted.

RELEVANT LINKS:

Minn. Stat. § 462.355, subd. 4(b).
Duncanson v. Board of Supervisors of Danville Tp., 551 N.W.2d 248 (Minn. Ct. App. 1996).

No notice or hearing is generally necessary before an interim ordinance is enacted. However, a public hearing must be held if the proposed interim ordinance regulates, restricts or prohibits livestock production (feedlots). In such case, the notice of the hearing must be published at least ten days prior to the hearing in a newspaper of general circulation in the city.

b) Procedure for interim ordinance extension

Minn. Stat. § 462.355, subd. 4(c).

An interim ordinance may be extended only in limited circumstances if the procedures of state statute are followed. An interim ordinance may be extended if the city holds a public hearing and adopts findings of fact stating that additional time is needed to:

Minn. Stat. § 462.355, subd. 4(c)(3).

- Complete and adopt a comprehensive plan in cities that did not have comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.

Minn. Stat. § 462.355, subd. 4(c) (1).

- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city's official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd. 4(c) (2).

- Complete "any other process" required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd. 4(c).

- Review an area that is affected by a city's master plan for a municipal airport. This allows for an additional period of 18 months.

The required public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing.

c) Applicability

Minn. Stat. § 462.355, subd. 4(c).
Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. App. 2003).

An interim ordinance or moratorium may not delay or prohibit a subdivision that has been given preliminary approval, nor extend the time for action under the 60-day rule with respect to any application filed prior to the effective date of the interim ordinance.

RELEVANT LINKS:

Woodbury Place Partners v. Woodbury, 492 N.W.2d 258 (Minn. Ct. App. 1993).
Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 122 S. Ct. 1465 (2002).

According to the Minnesota Court of Appeals, the use of an interim ordinance prohibiting or limiting use of land is generally not compensable if there is a valid purpose for the interim regulation. In evaluating whether an interim ordinance is a temporary taking in the nature of a regulatory taking, courts will look to the parcel as whole. There is no bright-line rule for regulatory takings; rather, they must be evaluated on a case-by-case basis.

VI. Zoning ordinance enforcement

A.G. Op. 477b-34 (July 29, 1991).

The Municipal Planning Act authorizes cities to enforce their zoning ordinance through criminal penalties. In addition, civil remedies, such as an injunction, are available to cities to cure on-going violations. The Minnesota Attorney General has ruled that it is a general duty of a city to enforce its zoning ordinance and that a city cannot refuse to enforce zoning requirements by ignoring illegal land uses. In enforcing city ordinances, however, a city must be aware that certain landowners may have specific rights as existing non-conformities; if their non-conforming use pre-dated the city's zoning regulation.

A. Legal nonconformities predating the adoption of the zoning ordinance

1. Legal nonconformities

Minn. Stat. § 462.357, subd. 1c.

Jake's, Ltd., Inc. v. City of Coates, 284 F.3d 884 (8th Cir. 2002).

Minn. Stat. § 462.357, subd. 1d.

Legal nonconformities are legal uses, structures, or lots that predate current zoning regulations and thus do not comply with the current zoning ordinance. In most cases, nonconformities cannot be amortized or phased out. A municipality must not enact, amend or enforce an ordinance that eliminates a use which use was lawful at the time of its inception. Similar protections do not exist for nonconformities that were not lawful, or prohibited by state law or city ordinance, at the time of their inception. This prohibition also does not apply to adults-only bookstores, adults-only theaters or similar adults-only businesses, as defined by ordinance. Nor does it prohibit a municipality from enforcing an ordinance providing for the prevention or abatement of nuisances, or eliminating a use determined to be a public nuisance.

SLS P'ship v. City of Apple Valley, 511 N.W.2d 738 (Minn. 1994).
Halla Nursery v. Chanhassen, 763 NW 2d 42 (Minn. St. App. 2009).

Legal nonconformities are those uses, structures or lots that legally existed prior to the creation of the zoning district and, in recognition of the landowner's property rights, are allowed to continue even though they are now illegal. Besides being allowed to remain in effect, legal nonconformities also escape requirements subsequently enacted, such as setback requirements. The state statute on legal nonconformities supersedes any conflicting language in a zoning ordinance.

RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 1e.

While legal nonconformities must be allowed to continue, a zoning ordinance may prohibit them from being expanded, extended or rebuilt in certain situations. However, nonconformities, including the lawful use or occupation of land or premises existing at the time of an amendment to the zoning ordinance, may be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion, unless:

- The nonconformity or occupancy is not used for a period of more than one year.
- Any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case a municipality may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property or bodies of water.

Minn. Stat. § 462.357, subd. 1e (c).

Cities can also regulate nonconforming uses and structures to maintain eligibility in the National Flood Insurance Program. State law specifically authorizes city regulation of nonconforming uses to mitigate potential flood damage or flood flow.

Minn. Stat. § 462.357, subd. 1f.

Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.

2. Shoreland legal nonconformities

a) All shoreland lots

Minn. Stat. § 462.357 subd. 1e(2).

When a nonconforming structure in a shoreland district, as defined by local ordinance, with less than 50 percent of the required setback from the water, is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased by the city if practicable and reasonable conditions may be placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

In addition, nonconforming shoreland lots of record in the office of the county recorder, on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width have additional state law protections.

The city may (but is not required to) allow this type of lot to be used as a building site if:

RELEVANT LINKS:

Minn. R. ch. 7080.

- All structure and septic system setback distance requirements can be met.
- A Type 1 sewage treatment system, consistent with Minn. R. ch. 7080, can be installed or the lot is connected to a public sewer.
- The impervious surface coverage does not exceed 25 percent of the lot.

In evaluating all variances, zoning and building permit applications, or conditional use requests related to nonconforming shoreland lots, the city must require the property owner to address, when appropriate:

- Stormwater runoff management.
- Reducing impervious surfaces.
- Increasing setbacks.
- Restoration of wetlands.
- Vegetative buffers.
- Sewage treatment and water supply capabilities.
- Other conservation-designed actions.

A portion of a conforming shoreland lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

b) Contiguous lots without habitable residential dwellings

In a group of two or more contiguous shoreland lots of record under a common ownership, the city must allow an individual lot to be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

Minn. R. ch. 6120.

Minn. R. ch. 7080.

- The lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minn. R. ch. 6120.
- The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minn. R. ch. 7080, and local government controls.
- The lot's impervious surface coverage does not exceed 25 percent of each lot.
- The development of the lot is consistent with the city-adopted comprehensive plan (if any).

RELEVANT LINKS:

c) Contiguous lots with habitable residential dwellings

Minn. Stat. § 115.55. Minn. R. ch. 7080.

Two or more contiguous nonconforming shoreland lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minn. R. ch. 7080, or are connected to a public sewer.

B. Violations of the zoning ordinance: criminal penalties

Minn. Stat. § 462.362.
Minn. Stat. § 169.89, subd. 2.
Minn. Stat. §§ 609.02, subds. 3, 4a.
Minn. Stat. § 609.0332.
Minn. Stat. § 609.034.
See Handbook, Chapter 7 for information on prosecution responsibilities for violations of local ordinances.

Cities may provide for criminal penalties for violation of the city zoning ordinance. In an ordinance, cities may designate ordinance violations as misdemeanors or petty misdemeanors. Cities may impose maximum penalties for misdemeanors of a $1,000 fine or 90 days in jail, or both. In addition, the costs of prosecution may be added. The maximum penalty for a petty misdemeanor is a fine of $300.

C. Violations of the zoning ordinance: civil remedies

Minn. Stat. § 462.362.

City of Minneapolis v. F and R, Inc. 300 N.W.2d 2 (Minn. 1980). *Rockville Tp. v. Lang*, 387 N.W.2d 200 (Minn. Ct. App. 1986).

Hall Nursery v Chanhassen, 763 NW 2d 42 (Minn. Ct. App. 2009).

In many instances, criminal sanctions will not cure a zoning violation. Where the city desires removal of building or use that violates the zoning ordinance, civil remedies may be more effective than even repeated criminal fines. A city may enforce its zoning ordinance through requesting an injunction (a court order requiring someone to stop a particular activity or type of conduct) or other appropriate remedy from the court. These remedies can be used to compel owners to cease and desist illegal uses of their property or even to tear down structures that have been built in violation of the city's zoning ordinance

D. Violations of the zoning ordinance: conditional use permit revocation

Minn. Stat. §462.3595, subd. 3.

Where a conditional use permit has been issued, a city may have an additional method of compelling compliance with city zoning ordinances. Conditional use permits may be revoked if the permit holder violates the conditions of the permit. For example, if the permit requires installation of traffic calming measures, but the permit holder fails to do so.

RELEVANT LINKS:

Northpoint Plaza v. City of Rochester, 465 N.W.2d 686 (Minn. 1991).

However, it is important to emphasize that conditional use permits, once granted, are a property right. A city seeking to revoke a conditional use permit should provide the permit holder with due process, an opportunity to be heard and respond to allegations, prior to permit revocation. Procedures for revocation should be established in the zoning ordinance.

VII. Conclusion: other land use controls available to cities

It is important to emphasize that zoning is merely one of the tools available to a city to assist in creating a well-planned, even thriving community. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs and official map in conjunction with its zoning ordinance to achieve its planning goals and assure the social, economic and cultural future of the community.

A. Subdivision ordinances

Minn. Stat. § 462.358.

See LMC Information Memo, *Subdivision Guide for Cities*.

See Handbook, Chapter 14 for more information on city subdivision ordinances.

Municipalities have the authority to regulate subdivisions of land for many reasons including but not limited to encouraging orderly development and planning for necessities such as streets, parks and open spaces. Cities have the authority to adopt a subdivision ordinance setting out the standards, requirements and procedures to review, approve or disapprove an application to subdivide tracts of land in the city.

Minn. Stat. § 462.358, subd. 2b.
Minn. Stat. § 462.353, subd. 4.

Cities have the authority to require, as part of the subdivision regulations, that a reasonable portion of buildable land in any proposed subdivision be dedicated to the public or preserved for public use as some or all of the following:

- Streets, roads.
- Sewers.
- Electric, gas, and water facilities.
- Stormwater drainage and holding areas or ponds and similar utilities and improvements.
- Parks, recreational facilities, playgrounds, trails.
- Wetlands.
- Open space.

Minn. Stat. § 462.353, subd. 4.

In the alternative, city ordinance may require money instead of land; state law refers to this as “cash fees.”

Subdivision regulations may be as extensive as city zoning regulations. Subdivision regulations, in addition to the dedication requirements discussed above, may address:

RELEVANT LINKS:

- The size, location, grading and improvement of lots, structures, public areas, streets, roads, trails, walkways, curbs, gutters, water supply, storm and drainage, lighting, sewers, electricity, gas and other utilities.
- The planning and design of sites.
- Access to solar energy.
- The protection and conservation of floodplains, shore lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features.
- Consistency of the subdivision with the official map (if one exists) and other local controls such as zoning and the comprehensive plan (if one exists).

Finally, subdivision regulations may require the installation of sewers, streets, electric, gas, drainage, water facilities and similar utilities and improvements.

1. Platting requirements

See LMC Information Memo, *Subdivision Guide for Cities*.

Minn. Stat. § 505.01, subd. 3(f).

All platting is governed by the state Platting Act at Minn. Stat. ch. 505. A plat is a scale drawing of one or more existing parcels of land that depicts the location and boundaries of lots, blocks, outlots, parks, and public ways and other data required by the Platting Act.

Minn. Stat. § 462.358, subd. 3a.
Minn. Stat. ch. 505.

City subdivision regulations may require plats where any subdivision creates parcels, tracts, or lots. Cities must require plats if any subdivision creates five or more lots or parcels which are 2-1/2 acres or less in size. City subdivision regulations must not conflict with state platting laws but may address the same or additional subjects.

B. The official map

Minn. Stat. § 462.359.
Minn. Stat. § 462.357, subd. 1.
For more information on the official map see Handbook, Chapter 14.

Cities have authority to adopt an official map. As a planning tool, official maps ensure that land the city needs for street widening, street extensions, future streets, local airports and other public purposes will be available at basic land prices by reserving these areas on a map. The official map is not the map adopted with the city's comprehensive plan or zoning code.

Minn. Stat. § 462.359, subd. 3.

Official maps do not give a city any right to acquire the areas reserved on the map without payment. When the city is ready to proceed with the opening of a mapped street, the widening and extension of existing mapped streets, or acquisition for aviation purposes, it still must acquire the property by gift, purchase, or condemnation. It need not, however, pay for any building or other improvement erected on the land without a permit or in violation of the conditions of the permit.

RELEVANT LINKS:

C. Safety and maintenance codes

In conjunction with the zoning requirements, cities may promote the city's development by enforcement of the State Building Code and local nuisance and/or property maintenance ordinances. All three types of regulation ensure that the structures allowed within zoning districts are well-maintained and safe for the public, by preventing and combating blight.

1. The State Building Code

State Building Code.
For more information on the State Building Code see Handbook, Chapter 13.

The State Building Code is a series of standards and specifications related to the type of building materials, spacing and other dimensions of building materials and structures designed to establish minimum safeguards in the construction of buildings, to protect the general public and people who live and work in them from fire and other hazards.

Minn. Stat. § 326B.121.

The State Building Code is the standard that applies statewide for the construction, reconstruction, alteration, and repair of buildings and other structures of the type governed by the code. The State Building Code supersedes the building code of any municipality.

Minn. Stat. § 326B.121.

Minn. Stat. § 326B.121.

If, as of Jan. 1, 2008, a municipality has in effect an ordinance adopting the State Building Code, the municipality must continue to administer and enforce the State Building Code within its jurisdiction. The municipality is prohibited by state statute from repealing its ordinance adopting the State Building Code. However, this provision does not apply to cities that have a population of less than 2,500, according to the last federal census, and that are located outside of a metropolitan county. These cities may repeal an ordinance adopting the State Building Code and they are not required to administer and enforce the code (although the State Building Code will remain in effect). These cities may, however, opt to enforce and administer the State Building Code by adopting a local ordinance.

Minn. Stat. § 326B.121.

A city must not, by ordinance or through a development agreement, require building code provisions regulating components or systems of any structure that are different from any provision of the State Building Code. However, a city may, with the approval of the state building official, adopt an ordinance that is more restrictive than the State Building Code where geological conditions warrant a more restrictive ordinance.

Minn. Stat. § 326B.16.
Minn. Stat. § 326B.112.
Minn. Stat. § 326B.175.

Requirements regarding accessibility, elevator safety, and bleacher safety apply statewide, with no exception.

RELEVANT LINKS:

2. Nuisance ordinances

Minn. Stat. § 412.221, subd. 23.
Minn. Stat. § 561.01.

See LMC Information Memo, *Public Nuisances*.

With or without zoning, cities may prevent and abate nuisances through the passage of a local ordinance that defines nuisances and provides for their regulation, prevention and/or abatement. Generally a "nuisance" is anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property.

3. Property maintenance ordinances

Wessman v. Mankato, No. A08-0273 (Minn. Ct. App. 2008)(unpublished decision).

Cities may choose to deal with the specific nuisance posed by dilapidated buildings through the adoption of a property maintenance ordinance. Such ordinances typically establish standards for exterior maintenance related to painting, siding, roofing and broken windows. City property maintenance ordinances should be drafted and enforced in a manner that is consistent with the State Building Code. Property maintenance ordinances should generally not attempt to regulate construction issues already regulated by the State Building Code, because such regulation may be pre-empted.

4. Hazardous and Substandard Buildings Act

Minn. Stat. § 463.15.
See LMC Information Memo, *Dangerous Properties*.

Cities that have not adopted a local ordinance regarding nuisances or property maintenance may still abate the public safety threat posed by dangerous dilapidated buildings through the Hazardous and Substandard Building Act in state statute The Hazardous Buildings Act allows cities to order landowners to abate (through repair or razing) hazardous conditions on their property or to abate hazardous conditions itself and then seek compensation for the property owner.

D. City land acquisition

For more information on city acquisition of property see the LMC Information Memo, *Purchase and Sale of Real Property*.
Minn. Stat. § 282. 01.
City of St Paul v State, 754 NW 2d 386, (Minn. Ct. App. 2008).

Cities may also control development through the planned acquisition, development and potentially the resale of land by the city itself. Through purchase and acquisition programs cities can acquire the land they need for present and future public purposes such as parks, streets, public buildings, such as police and fire halls, and to reserve land for future residential and commercial development. Cities may also acquire land through the tax forfeiture process.

Regular Planning Commission **5. 4.**

Meeting Date: 04/04/2013

By: Tim Gladhill, Community Development

Information

Title:

FOR DISCUSSION ONLY: Review Work Plan and Appoint Ad Hoc Sub-Committee to Complete Housing Assistance Policy

Background:

The following case is to consider a work plan and ad-hoc sub-committee to complete a Housing Assistance Policy. This case does not request action or recommendation related to the content of the Policy. To make effective use of meeting time and create an appropriate forum to draft a detailed policy, the sub-committee format is recommended at this time. These sub-committee meetings would also be open to anyone willing to participate.

In 2012, the City Council directed Staff to begin drafting a Housing Assistance Policy. As the City continues to receive requests for assistance related to housing developments, a policy would benefit in reviewing whether these projects meet the goals and implementation strategies of the City. The policy does not create new funding for housing programs, but establishes a policy for reviewing housing assistance requests.

Notification:

Notification is not required.

Observations/Alternatives:

Attached to the case are proposed agendas for an ad-hoc sub-committee of the Planning Commission. This sub-committee is intended to assist in drafting the policy requested by the City Council. The request for action this evening is to establish the sub-committee and appoint three (3) Commissioners to the sub-committee. The request for action does not include a recommendation on format or content of the policy. Staff has included some of the basic framework and alternatives to consider as background to assist in developing the work plan.

The proposed work plan includes the following:

1. Meeting #1-Background, Interim Policy Statement, and Minimum Thresholds
2. Meeting #2-Ranking Thresholds
3. Meeting #3-Project Priorities and Final Draft

Minimum Thresholds

In terms of minimum thresholds, this category provides a baseline review that all Applications must successfully meet. The minimum thresholds are recommended to be tied to the City's Housing Action Plan, which is part of the 2030 Comprehensive Plan. Within the plan, there are multiple goals and several implementation strategies. It is intended that the Applicant must describe how the project will successfully achieve one or more of the existing implementation strategies adopted by the City Council.

Staff understands that this is an iterative process, and housing policy may have changed since the original development of the Comprehensive Plan, which is why a review on a policy level is desired at this time. In addition, market conditions have changed since the plan was adopted and the City has seen a number of projects move forward that may change the original assumptions that went into the plan. This exercise in developing the Assistance Policy will help formulate necessary amendments to the current Comprehensive Plan as the City looks to update this plan in the coming years.

Ranking Thresholds

The second part of the policy could include a list of quantitative scoring metrics in an attempt to provide for an objective review. In addition, this provides applicants direction as to whether they feel the goals of their project meet the goals of the City.

Next Steps

Following completion of the draft, Staff would recommend review by members of the Economic Development Authority (EDA) and Housing and Redevelopment Authority (HRA). Furthermore, Staff would recommend reviewing the draft policy with area builders and developers to ensure that the policy remains viable from a market standpoint. Once the sub-committee and full Planning Commission approve the draft policy, it would be forwarded to the City Council to consider for final adoption.

Funding Source:

Preparation of the Housing Assistance Policy is being handled as part of regular staff duties and professional services budget. Depending on the final work plan, Staff may forward an additional financial statement.

Staff Recommendation:

Staff recommends that the Planning Commission establish an Ad-Hoc Sub-Committee consisting of three (3) members to complete a draft Housing Assistance Policy per the attached proposed Work Plan.

Action:

Motion to establish an Ad-Hoc Sub-Committee consisting of three (3) members to complete a draft Housing Assistance Policy per the attached proposed Work Plan, appointing the following members to the sub-committee:

1. Commissioner _____.
2. Commissioner _____.
3. Commissioner _____.

Attachments

Meeting #1 Agenda

Meeting #2 Agenda

Meeting #3 Agenda

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	03/29/2013 03:54 PM
Tim Gladhill (Originator)	JoAnn Shaw	03/29/2013 03:55 PM

Form Started By: Tim Gladhill Started On: 03/21/2013 02:38 PM

Final Approval Date: 03/29/2013

Planning Commission Housing Assistance Policy Sub-Committee

Agenda for Meeting #1

Sub-Committee Purpose Statement

The Planning Commission has established an ad-hoc sub-committee to complete a draft Housing Assistance Policy directed by the City Council. The Policy will be considered for adoption by the City Council upon completion of the draft.

Background

The City Council has directed City Staff to prepare a Housing Assistance Policy to proactively guide review of requests for assistance related to housing developments. The Policy is intended to provide a framework for review to ensure that proposals meet the City's goals and implementation strategies related housing and makes good use of the limited resources available to the City. These resources include, but are not limited to, grants, levies, tax increment financing (TIF), etc.

Review of Current Plans, Policies, Goals, and Implementation Strategies

Staff will present the current version of the Housing Action Plan adopted in 2007. This plan also serves as the Housing Chapter of the Comprehensive Plan.

Establishment of an Interim Policy Statement

As the City has been approached by multiple housing developers with requests for assistance, Staff would like to discuss the merits of an Interim Policy Statement as a baseline for review of these current projects. This Interim Policy Statement could specify programs, proposals, or funding types that the City is not willing to consider at this time.

Establishment of Policy Framework

Staff will review a potential framework for the Policy. Generally speaking, it is suggested that the framework include a two-step process:

1. Minimum Thresholds
2. Ranking Thresholds

Minimum thresholds would be categories that all proposals would need to meet. It is suggested that the Goals and Implementation Strategies from the Housing Action Plan serve as the baseline for discussion for the minimum thresholds. As time has progressed and variables have changed, this is an appropriate time to review the effectiveness of these goals and strategies. This process can help guide the next update to the Housing Action Plan. Staff recommends that proposals must indicate how their development will help achieve one of the agreed upon implementation strategies referenced above.

Ranking thresholds would be used to review quality of proposals as well as assist in prioritizing multiple requests. These thresholds could include a number of technical variables. These thresholds will be discussed in Meeting #2 of the Sub-Committee.

Establishment of Minimum Thresholds

The Sub-Committee is requested to establish a draft Minimum Threshold Criteria. These thresholds are discussed in the Policy Framework Section above.

Deliverables

1. Interim Policy Statement
2. Housing Assistance Policy Framework
3. Minimum Thresholds

Planning Commission Housing Assistance Policy Sub-Committee

Agenda for Meeting #2

Sub-Committee Purpose Statement

The Planning Commission has established an ad-hoc sub-committee to complete a draft Housing Assistance Policy directed by the City Council. The Policy will be considered for adoption by the City Council upon completion of the draft.

Background

The City Council has directed City Staff to prepare a Housing Assistance Policy to proactively guide review of requests for assistance related to housing developments. The Policy is intended to provide a framework for review to ensure that proposals meet the City's goals and implementation strategies related housing and makes good use of the limited resources available to the City. These resources include, but are not limited to, grants, levies, tax increment financing (TIF), etc.

Review of Meeting #1 Deliverables

1. Interim Policy Statement
2. Housing Assistance Policy Framework
3. Minimum Thresholds

Establishment of Ranking Thresholds

Ranking thresholds would be used to review quality of proposals as well as assist in prioritizing multiple requests. These thresholds could include a number of technical variables. Staff has prepared a sample scoring matrix to commence discussion. At this stage, the assumption is that each scoring metric carries equal weight. The purpose of today's meeting is to provide policy direction that will include metric weighting/prioritization, addition of missing metrics, and deletion of metrics if needed.

Deliverables

1. Ranking Thresholds

Planning Commission Housing Assistance Policy Sub-Committee

Agenda for Meeting #3

Sub-Committee Purpose Statement

The Planning Commission has established an ad-hoc sub-committee to complete a draft Housing Assistance Policy directed by the City Council. The Policy will be considered for adoption by the City Council upon completion of the draft.

Background

The City Council has directed City Staff to prepare a Housing Assistance Policy to proactively guide review of requests for assistance related to housing developments. The Policy is intended to provide a framework for review to ensure that proposals meet the City's goals and implementation strategies related housing and makes good use of the limited resources available to the City. These resources include, but are not limited to, grants, levies, tax increment financing (TIF), etc.

Review of Meeting #2 Deliverables

1. Ranking Thresholds

Establishment of Project Priorities

Staff recommends establishing project-type priorities. This section is intended to be fluid and flexible in order to react to current market conditions and changing variables. The intent of establishing project-type priorities is to ensure that the City is able to achieve its goal of a variety of housing types and ensure that one type is not over-represented or under-represented.

Deliverables

1. Project Priorities
2. Draft of Full Policy for Review

Next Steps

Meeting #3 completes the core function of the Sub-Committee. The next steps include a review with area builders and developers to verify the effectiveness of the policy. Staff recommends this step to ensure that the policy is able to provide achievable projects. Following that stage, the draft policy will be presented to members of the Economic Development Authority (EDA) and Housing and Redevelopment Authority (HRA) for review prior to forwarding to the City Council for consideration for adoption.

Regular Planning Commission **5. 5.**

Meeting Date: 04/04/2013

By: JoAnn Shaw, Community Development

Information

Title:

Zoning Bulletins

Background:

Enclosed are zoning periodicals for your review.

Notification:

Observations/Alternatives:

Funding Source:

Staff Recommendation:

Action:

Attachments

Zoning Bulletins

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	03/29/2013 08:00 AM

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QUINLAN™ February 10, 2013 | Volume 7 | Issue 3

Zoning Bulletin

in this issue:

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Mat #41329844

Open Meetings Laws—Zoning board of appeals holds site visit, allowing only two representatives of the public and creating no record

Citizens maintain site visit violated open meetings laws

Citation: *WSG Holdings, LLC v. Bowie, 2012 WL 6604519 (Md. 2012)*

MARYLAND (12/19/12)—This case addressed the issue of whether a county zoning board of appeals violated various open meeting laws by conducting an

Contributors

Corey E. Burnham-Howard

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in-person inspection of the subject property of an application for a special exception, allowing only two representatives from the public opposition and creating no subsequent record of the visit.

The Background/Facts: WSG Holdings, LLC ("WSG") owned land in the community of Nanjemoy, Charles County, Maryland (the "County"). WSG intended to build a "tactical research" facility on the property, comprised of: an office building, gun range, and driving track. Because the property was zoned as an Agricultural Conservation zone, WSG's planned development was not permitted except by special exception. Accordingly, WSG applied to the County's Board of Appeals (the "Board") for the required special exception.

The Board held three public hearings on WSG's application for the special exception. At these hearings, more than 22 people testified in opposition to WSG's proposed facility.

The Board also conducted one trip to WSG's property. For this "site visit," the Board allowed representatives from WSG, as well as two representatives of the citizens who opposed the proposed development. However, the Board prohibited any other members of the public from attending and kept no transcript or other record of that which transpired at the site visit.

The Board eventually granted WSG's application for the special exception.

Subsequently, various individuals (the "Opponents") jointly filed a petition for judicial review in the Circuit Court for Charles County. Among other things, they contended that the Board conducted the visit to the subject property in a manner that was closed to the public in violation of various open meeting provisions, including: Maryland Code Article 66B, the Charles County Code, and Rule III of the Board's Rules of Procedure.

Section 4.07 of Article 66B required that "[a]ll meetings of a board of appeals shall be open to the public." Section 4.07(c)(5) of Article 66B required that the Board "shall make a transcript of all proceedings" which "shall be a public record."

Section 297-415(G) of the Charles County Code contained a notice and public meetings provision related to consideration of special exception uses. Section 297-411 required notice to adjoining property owners, posted signs on the property, and, for special exceptions specifically, publication in a local newspaper of the time and place of a meeting and information regarding the special exception sought.

Rule III of the Board's Rules of Procedure required: "all hearings shall be held in open public session"; "[a]ll evidence shall be presented to the [Board] in hearings open to the public"; and hearings shall be "electronically recorded."

WSG contended that the Opponents' objections to the site visit were not preserved for appellate review. WSG maintained this was because no one objected to the visit when it was proposed at one of the hearings, and no one attending the visit objected to the way in which the visit was conducted. WSG further contended that the site visit was not subject to open meetings requirements because it was limited to observation alone.

The Circuit Court agreed with WSG that the Opponents had failed to preserve the open meetings issue for appellate review.

The Opponents appealed. The Court of Special Appeals disagreed with the Circuit Court and WSG. It held that the Opponents had preserved the issue, and

that the Board had violated the open meetings provisions of § 4.07(c) of Article 66B and Rule III of the Board's Rules of Procedure.

WSG filed a Petition for a Writ of Certiorari, which was granted by the Court of Appeals.

DECISION: Judgment of court of special appeals affirmed.

The Court of Appeals of Maryland held that the Opponents had preserved their objections to the site visit under the public meetings provisions of § 4.07 of Article 66B, §§ 412 and 415E of Chapter 297 of the Charles County Code, as well as Rule III of the Board's Rules of Procedure. In so holding, the court noted that the burden was on the Board to enforce the open meetings mandates; it was not on the representatives of the public opponents to raise it. Moreover, two weeks before the Board's final hearing on WSG's special exception application, one of the Opponents had filed a Motion for Appropriate Relief, objecting to the fact that the public was not permitted to attend the site visit, citing violations of open meetings provision, and calling for the creation of a record of the site visit. That Motion was denied by the Board.

The court further held that the site visit constituted a "meeting" which was required to be open to the public by § 4.07(c)(4) of Article 66B, as implemented in the Charles County Code, and Rule III of the Board Rules of Procedure. Because the Board violated the open meeting provisions of Article 66B, the Charles County Code, and Rule III of its own Rules of Procedure, the court remanded the matter to the Board for a new hearing.

In its decision, the court acknowledged that: "It may be true that site visits without observance of the nuances of public meetings strictures are permitted if the board limits itself to observation alone." The site visit here, however, explained the court, was elevated beyond mere "observation" and required compliance with the open meetings provisions. The site visit constituted a meeting under the provisions of Article 66B and a hearing under the Charles County Code and the Board's Rules of Procedure. The court found that: "The Board was conducting a meeting when it was transacting public business as it visited the property under review. Board members interacted with WSG representatives and gathered information pertaining to the special exception at issue. The Board also was conducting a 'hearing,' because discussions occurred among Board members and WSG representatives, in contravention of the Board's own Rule that 'no evidence, argument, or other matter shall be received by the Board in closed session.' "

Moreover, said the court, because the Board relied upon information obtained from the site visit, it was required to create a record informing the parties and a reviewing court of the evidence gathered from the site visit that led the Board to credit WSG's testimony and approve its site plan. The Board's failure to keep a record of that which occurred at the site visit violated the requirements of Article 66B as well as that of § 297-412(E) of the Charles County Code and Rule V of its own Rules of Procedure, concluded the court.

The Board's violation of the mandatory open meeting provisions resulted in the Board's decision being "void ab initio" (i.e., to be treated as invalid from the outset).

See also: *Bowie v. Board of County Com'rs of Charles County, 203 Md. App. 153, 36 A.3d 1038 (2012), cert. granted, 426 Md. 427, 44 A.3d 421 (2012) and judgment aff'd, 2012 WL 6604519 (Md. 2012).*

See also: *White v. North, 121 Md. App. 196, 708 A.2d 1093 (1998), judgment vacated on other grounds, 356 Md. 31, 736 A.2d 1072 (1999).*

See also: *von Lusch v. Board of Com'rs of Queen Anne's County, 268 Md. 445, 302 A.2d 4 (1973).*

Case Note:

Section 4.07(c) of Article 66B of the Maryland Code has been repealed. See now, Maryland Land Use § 3-303.

Nonconforming Use—Legal nonconforming restaurant use seeks to change from seasonal to year-round

Town says change is an impermissible expansion of the legal nonconforming use, but restaurant argues it is merely an "intensification"

Citation: *Woodbury Donuts, LLC v. Zoning Board of Appeals of Town of Woodbury, 2012 WL 6571452 (Conn. App., Dec. 25, 2012)*

CONNECTICUT (12/25/12)—This case addressed the issue of whether a proposed year-round use of property as a restaurant was an impermissible expansion of a preexisting, legal nonconforming use established by a seasonal fast food restaurant.

The Background/Facts: EYRE, LLC ("EYRE") owned property in Woodbury, Connecticut (the "Town"). From 1995 or 1996 until the fall of 2006, Corey's restaurant, a tenant, operated a 3,000 square foot seasonal, mostly eat-in, restaurant on a portion of EYRE's property. The building housing Corey's restaurant was a preexisting, legal nonconforming structure, and the use as a seasonal fast food restaurant was a preexisting, legal nonconforming use.

In 2006, EYRE sought to construct a 42,000 square foot commercial retail center on the property. As part of this plan, EYRE intended to relocate Corey's restaurant into a conforming building to be constructed on the site. In furtherance of its proposed plan, EYRE filed a special permit application with the Town's zoning commission. The zoning commission approved the application (the "2006 special permit"), including the relocation of the existing legal nonconforming use within the same portion of the lot and subject to certain conditions.

EYRE and Corey's restaurant were unable to agree on terms for a new lease in the new retail center. In September 2008, Woodbury Donuts, LLC ("Woodbury Donuts") applied for a zoning permit to operate a Dunkin Donuts franchise at the location originally planned for Corey's restaurant.

The zoning enforcement officer denied Woodbury Donuts' permit. The zon-

ing enforcement officer found that the proposed use was "not permitted" under the Town's zoning regulations and was "significantly different in character from[,] and [was] an impermissible expansion of[,] the previous non-conforming use."

Woodbury Donuts appealed to the Town's zoning board of appeals (the "ZBA"). After a four day public hearing, the ZBA agreed with the zoning enforcement officer's findings and denied Woodbury Donuts' appeal.

Woodbury Donuts appealed to the trial court. The trial court affirmed the ZBA's decision.

Woodbury Donuts again appealed. It argued that the proposed use as a fast food restaurant was a vested nonconforming use. It noted that the 2006 special permit did not contain any seasonal restrictions. It also noted that the Town's zoning regulation did not distinguish between seasonal and year-round use of properties. Woodbury Donuts argued that the expanded hours and months of operation for the proposed Dunkin Donuts franchise (compared to the seasonal Corey's restaurant) represented "an intensification, not an expansion, of the previous legal nonconforming use." Accordingly, it contended that the ZBA should have approved its zoning permit application.

DECISION: Judgment of superior court affirmed.

The Appellate Court of Connecticut held that Woodbury Donuts' proposed year-round use of the property as a Dunkin Donuts restaurant was an impermissible expansion of the preexisting, legal nonconforming use established by Corey's restaurant as a seasonal fast food restaurant.

In so holding, the court acknowledged that "a mere increase in the amount of business done pursuant to a nonconforming use is not an illegal expansion of the original use. . . ." However, "[a] change in the character of a use. . . does constitute an unlawful extension of the prior use." Thus, explained the court: "In deciding whether the current activity is within the scope of a nonconforming use[,] consideration should be given to three factors: (1) the extent to which the current use reflects the nature and purpose of the original use; (2) any differences in the character, nature and kind of use involved; and (3) any substantial difference in effect upon the neighborhood resulting from differences in the activities conducted on the property." The court further explained that: "[t]o be illegal, an extension of a permitted use need not necessarily consist of additional uses of a different character. It may consist of uses of the same character carried on over a substantially additional period of the year. . . ."

Relying on Connecticut case law, the court concluded that the proposed change of a nonconforming use from seasonal to year-round would constitute a change in character of the previous use. Therefore, it would be an impermissible expansion of that use.

Here, under Woodbury Donuts' proposal, the Dunkin Donuts restaurant business would: expand the restaurant use into additional months of the year; change the restaurant use from primarily eat-in to primarily take-out; and potentially adversely impact nearby residents with truck deliveries prior to 5:00 a.m.

The court concluded that the ZBA's determination that the proposed year-round use as a Dunkin Donuts franchise was significantly different in character from the previous seasonal use as Corey's restaurant and was an impermissible expansion of the previous nonconforming use had support in the record, in the town's zoning regulations and in Connecticut case law.

See also: *Helicopter Associates, Inc. v. City of Stamford, 201 Conn. 700, 519 A.2d 49, 61 A.L.R.4th 789 (1986).*

See also: *Zachs v. Zoning Bd. of Appeals of Town of Avon, 218 Conn. 324, 589 A.2d 351 (1991).*

See also: *Planning and Zoning Com'n of Town of Lebanon v. Craft, 12 Conn. App. 90, 529 A.2d 1328 (1987).*

Case Note:

Woodbury Donuts had also argued that the ZBA should have been estopped from prohibiting the operation of a Dunkin Donuts franchise at the proposed location. It maintained that the 2006 special permit expressly authorized the continuation of a fast food restaurant. The appellate court disagreed. It found that the 2006 special permit more specifically allowed the relocation of the existing legal nonconforming use of the seasonal fast food restaurant. Accordingly, the court determined that EYRE should have known that only seasonal fast food restaurants were permitted in the complex that it constructed subsequent to the issuance of the 2006 special permit.

Rezoning—Under settlement agreement with city, billboard companies are exempted from zoning regulations

Competitor billboard company challenges settlement agreement as beyond the powers of the city and void

Citation: *Summit Media LLC v. City of Los Angeles, 211 Cal. App. 4th 921, 2012 WL 6126868 (2d Dist. 2012)*

CALIFORNIA (12/10/12)—This case addressed the issue of whether a settlement agreement between a city and certain billboard companies, exempting those billboard companies from certain zoning regulations, was ultra vires (i.e., "beyond the powers" of the city) and void. It also addressed whether, if the settlement agreement was ultra vires and void, zoning permits already issued pursuant to the settlement agreement were also void.

The Background/Facts: In December 2000, the City of Los Angeles (the "City") passed an ordinance imposing an interim prohibition on the issuance of permits for the construction or placement of new off-site signs. That ban became permanent in April 2002 when the City amended the Los Angeles Municipal Code (LAMC or municipal code) to establish a permanent, general ban (with exceptions not relevant to this case) on new off-site signs throughout the city (the 2002 sign ban). The 2002 sign ban also applied to "alterations or enlargements of legally existing off-site signs."

Also, in February and July 2002, the City passed two ordinances amending

the municipal code to establish an off-site sign periodic inspection fee and an inspection program.

Litigation over the inspection program and sign fee ordinance ensued. Eventually, in September 2006, the City entered a settlement agreement with CBS Outdoor Inc. and Clear Channel Outdoor, Inc. (the "Billboard Companies") (the "Settlement Agreement"). Among other things, the Settlement Agreement granted the Billboard Companies exemption from the City's 2002 sign ban, the off-site sign inspection program, and numerous other zoning and building laws regulating signs in the City. The Settlement Agreement also required the City to issue new permits to allow the Billboard Companies to modernize up to 840 of their off-site signs without having to comply with at least 10 separate City laws in undertaking the modernizations. This latter provision of the Settlement Agreement allowed the Billboard Companies to, among other things, convert existing static, wood, and vinyl signs to LED digital displays, even though a municipal ordinance expressly prohibited "alterations or enlargements" of such signs.

A third billboard company, which was not part of the Settlement Agreement, Summit Media LLC ("Summit"), challenged the Settlement Agreement by filing a lawsuit for a writ of mandate. It asked the superior court to order the City to set aside the Settlement Agreement and withdraw all permits issued under it. It contended that the Settlement Agreement was ultra vires (i.e., beyond the powers of the city) and void. Additionally, it contended that because the Settlement Agreement was void, any permits issued under it should be revoked.

The superior court agreed that the Settlement Agreement was illegal and void because it allowed the alteration of billboards in violation of municipal ordinances. However, the court declined to revoke the permits that had been issued pursuant to the Settlement Agreement. The court concluded that permit revocation was an administrative issue for determination on an individual basis.

The Billboard Companies appealed, and Summit cross-appealed.

DECISION: Judgment of superior court affirmed in part, reversed in part, and remanded.

The Court of Appeal, Second District, Division 8, California, agreed that the Settlement Agreement exempting the Billboard Companies from billboard regulations was ultra vires (i.e., "beyond the powers" of the City) and void. The court also held that the permits issued to the Billboard Companies pursuant to the Settlement Agreement were void.

The court explained that "land use regulations involve the exercise of police power, and 'the government may not contract away its right to exercise the police power in the future.' " Thus, even agreements by the government that promise zoning laws thereafter enacted will not be applicable to a particular tract of land or party are invalid and unenforceable as contrary to public policy, said the court.

The Billboard Companies had argued that the Settlement Agreement was not a surrender of the City's police power. They had contended that, so long as the Settlement Agreement reserved the City's right to enact new laws in the future and apply them to the settling party (here, the Billboard Companies), the City had not "surrender[ed] its control over its police power." In other words, they argued that an agreement by a city is not ultra vires, so long as it does not "contractually exempt a private property from all future legislative and regulatory control." The court rejected that argument, concluding that it was "simply

wrong." Rather, the court found that the caselaw was clear that "an agreement to circumvent applicable zoning laws is invalid and unenforceable." In other words, an agreement is ultra vires when it contractually exempts settling parties from ordinances and regulations that apply to everyone else and would, except for the agreement, apply to the settling parties.

Here, the court found that the City, under the Settlement Agreement, did, in fact, contract away its right to exercise its police power in the future because under the Settlement Agreement the City and the Billboard Companies "circumvent[ed] the general ban on municipal code alterations to existing off-site signs." Accordingly, the Settlement Agreement was ultra vires (i.e., "beyond the powers") and void, concluded the court.

Summit had argued that because the Settlement Agreement was unlawful, the permits issued to the Billboard Companies pursuant to the Settlement Agreement—which could not have been issued if the City had enforced the 2002 sign ban against the Billboard Companies—must, like the Settlement Agreement, be void. The appellate court agreed. It held that, "[i]n short, permits issued in contravention of municipal ordinances are invalid."

See also: *Avco Community Developers, Inc. v. South Coast Regional Com., 17 Cal. 3d 785, 132 Cal. Rptr. 386, 553 P.2d 546 (1976).*

See also: *Trancas Property Owners Assn. v. City of Malibu, 138 Cal. App. 4th 172, 41 Cal. Rptr. 3d 200 (2d Dist. 2006).*

Case Note:

The Billboard Companies had argued for equitable estoppel against the City's revocation of the permits issued under the Settlement Agreement. In other words, they argued that they had relied in good faith on the City's issuance of permits and made expenditures on new signs that should not now be revoked. The court rejected that argument. It noted that equitable estoppel is available against the government "in only 'the most extraordinary case where the injustice is great and the precedent set by the estoppel is narrow.' "

Spot Zoning—County adopts special zoning district and regulations prohibiting mining in district

Mining company alleges adoption of district and regulations constitutes illegal reverse spot zoning

Citation: *Helena Sand and Gravel, Inc. v. Lewis and Clark County Planning and Zoning Com'n, 2012 MT 272, 2012 WL 5986785 (Mont. 2012)*

MONTANA (11/30/12)—This case addressed the issue of whether a county's adoption of a zoning pattern and regulations prohibiting mining in a special district constituted illegal reverse spot zoning. The case discusses the framework that courts use in evaluating whether a county has engaged in illegal spot zoning.

The Background/Facts: Helena Sand and Gravel, Inc. ("HSG") owned ap-

proximately 421 acres located north of East Helena, Montana. In June 2008, HSG obtained a permit from the Montana Department of Environmental Quality ("DEQ") to mine gravel on 110 acres of its property. (Those 110 acres are not at issue in this case.) Before DEQ granted the permit, a group of citizens living north of East Helena submitted to the Lewis and Clark County (the "County") Board of Commissioners (the "Board") a petition seeking to create Special Zoning District Number 43 ("District 43"). The proposal delineated an area which encompassed the property owned by HSG, and its purpose was: "to accommodate and protect the use of single-family dwelling units and associated agricultural land uses while promoting and preserving the rural residential atmosphere of the area and enhancing the aesthetic character and property values of the area." It proposed to prohibit industrial and mining activities in District 43, including any sand and gravel operations to be performed by HSG on the remaining 311 acres of its property. The petition was signed by approximately 70% of the property owners within the proposed district.

The establishment of local zoning districts is governed by statute in Montana. A district may be created in one of two ways—by citizen petition to the board of county commissioners under § 76-2-101, MCA, known as "Part 1 zoning," or directly by the board of county commissioners under § 76-2-201, MCA, known as "Part 2 zoning." This case involved Part 1 zoning. The statutory provisions for Part 1 zoning authorize the board of county commissioners, "whenever the public interest or convenience may require," to create a planning and zoning district "upon petition of 60% of the affected freeholders," unless "50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation." (Section 76-2-101, MCA (2007).)

On April 1, 2008, following a public meeting, the Board voted to create District 43. On May 8, 2008, the Board adopted a resolution creating the boundaries of District 43.

The matter then proceeded to the County Planning and Zoning Commission (the "PZC"), which, pursuant to statutory requirements, adopted a development pattern for the new district. (Sections 76-2-104 and -107, MCA.) That development pattern and related zoning regulations prohibiting sand and gravel mining in the district were approved by the Board in July 2008.

HSG immediately filed a legal complaint in district court, challenging the County's decision to adopt the citizen-initiated proposal to configure District 43, which favored residential uses and prohibited mining. Among other things, it alleged that the County's adoption of the zoning regulations prohibiting sand and gravel mining in the newly created District 43 constituted illegal reverse spot zoning.

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the District Court entered summary judgment in favor of the County. The court concluded that the zoning regulations did not constitute illegal reverse spot zoning because the zoning regulations substantially complied with the County's growth policy and did not single out HSG for disparate treatment since "the County's prohibition on sand and gravel operations applie[d] to all of the land within [District 43], not only to the property owned by HSG."

HSG appealed.

DECISION: Judgment of district court affirmed in part, and matter remanded.

The Supreme Court of Montana agreed with the district court: the County's adoption of District 43 and the regulations prohibiting sand and gravel mining in District 43 did not constitute illegal reverse spot zoning.

The court explained that reverse spot zoning is defined as: "a land-use decision which arbitrarily singles out a particular parcel for different, less favorable treatment than the neighboring ones." The court further explained that, in determining whether a county has engaged in illegal spot zoning, the court applies a three-part framework, evaluating whether: "(1) 'the requested use is significantly different from the prevailing use in the area' "; "(2) 'the area in which the requested use is to apply is rather small' "; and "(3) 'the requested change is more in the nature of special legislation.' " While "[t]here is no single, comprehensive definition of spot zoning applicable to all fact situations," "usually all three elements are present" when illegal spot zoning has occurred, said the court.

Here, HSG was able to establish that the second factor of the test had been met. HSG showed that it was the only landowner to be adversely affected by the zone change in the creation of District 43. However, the court noted that "zone changes for property owned by one person are not always spot zoning pursuant to the [three-part] test." Rather, emphasized the court, zoning will be held invalid as spot zoning "when it is not in accordance with a comprehensive plan." That is because compliance with a comprehensive plan, or growth policy as in this case, is especially relevant to the third factor of the analysis. The zoning is not "in the nature of special legislation" if it substantially complies with the growth policy. Here,also, the court determined that the adoption of District 43 and the regulations prohibiting mining did comply with the County's growth policy—which did not recommend development of mining in transitional areas but suggested such activity occur in the rural areas. Thus, the court concluded that HSG did not satisfy the third factor of the three-part analysis.

For similar reasons, the court also concluded that HSG did not satisfy the first part of the three-part test (i.e., HSG failed to show that the new zoning use designation was significantly different from the prevailing use in the area). The court found that, in adopting the zoning regulations prohibiting mining in District 43, the County did not unlawfully depart from the prevailing "rural residential" use in the surrounding area. Rather, the court found that the zoning pattern and regulations substantially complied with the prevailing land use, as expressed in the County's growth policy.

Accordingly, the court determined that HSG therefore could not demonstrate that its property was singled out for "a use classification totally different from that of the surrounding area." HSG's property was therefore not subjected to illegal spot zoning.

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

See also: *Little v. Board of County Com'rs of Flathead County, 193 Mont. 334, 631 P.2d 1282 (1981).*

See also: *Greater Yellowstone Coalition, Inc. v. Board of County Com'rs of Gallatin County, 2001 MT 99, 305 Mont. 232, 25 P.3d 168 (2001).*

. See also: *Liberty Cove, Inc. v. Missoula County, 2009 MT 377, 353 Mont. 286, 220 P.3d 617 (2009).*

Case Note:

HSG had also alleged that the County's zoning decision constituted a taking of HSG's property. The court rejected these allegations, finding that HSG did not have the necessary element of a constitutionally protected property interest in its right to apply for a mining permit or permit amendment because DEQ retained discretion as to permit issuance.

Zoning News from Around the Nation

MASSACHUSETTS

Multiple communities have requested, by letters to the governor and other state representatives, a delay in the implementation of the Commonwealth's new medical marijuana law, "until proper rules and regulations have been set forth by the Department of Public Health (DPH)." Under the new law, "standards and regulations must be adopted through the DPH within 120 days" from when the law went into effect—which was January 1, 2013. The municipalities contend that without a delay in implementation of the new law, they would be obligated to "manage the medical marijuana dispensary process for four months without any guidance from the state."

Source: *Tri-Town Transcript; www.wickedlocal.com*

NEW HAMPSHIRE

State Representative, Katherine Rogers, reportedly plans to introduce "a bill for next year that would require projects by the state and other governments, such as cities and school districts, to conform to local land-use rules." Currently, under state law, "projects don't need to comply with local land-use rules as long as they represent a 'governmental use' by the state or a city, town, county, school district, public university, community college or village district. Projects that aren't a governmental use but are located on public land don't enjoy that exemption."

Source: *Concord Monitor; www.concordmonitor.com*

NEW JERSEY

State Assemblyman Peter Barnes reportedly plans to introduce a bill that would establish a state agency charged with assuming much of the authority for rebuilding shore towns battered by super-storm Sandy. Such an agency would purportedly "take over planning and zoning for all coastal communities, rendering their own planning and zoning boards moot." Local officials are concerned that such a commission would usurp the power of local officials, and "add another layer of bureaucracy and compliance on top of existing rules, regulations and compliance standards."

Source: *NJ.com; www.nj.com*

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Zoning Bulletin

in this issue:

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Public and Low-Income Housing—Local zoning board denies developers' permit application for affordable housing construction

State agency says board should not have included unsubsidized low-cost market rate housing when calculating the need for

Contributors

Corey E. Burnham-Howard

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affordable housing

Citation: *Zoning Bd. of Appeals of Lunenburg v. Housing Appeals Committee, 464 Mass. 38, 2013 WL 58183 (2013)*

MASSACHUSETTS (01/08/13)—This case addressed the issue of whether low-cost market-rate housing that is not subsidized by the federal or state government can be considered in calculating the regional need for low-and-moderate income housing, on the application for a comprehensive permit under Massachusetts statutory law, c. 40B.

The Background/Facts: Under the Massachusetts Comprehensive Permit Act (sometimes referred to as the "anti-snob zoning act," G.L. c. 40B, §§ 20-23 (the "Chapter 40B" or the "Act"), the legislature has attempted to "provide relief from exclusionary zoning practices which prevented the construction of badly needed low and moderate income housing' in the Commonwealth." Chapter 40B allows "a public agency, or a limited dividend or nonprofit organization, that wishes to construct low or moderate income housing 'to circumvent the often arduous process of applying to multiple local boards for individual permits and, instead, to apply to the local board of appeals for issuance of a single comprehensive permit.' " If the board denies an application for a comprehensive permit, the developer may appeal to the Massachusetts housing appeals committee ("HAC"). The HAC then determines whether the decision of the local zoning board of appeals to deny the comprehensive permit, "was reasonable and consistent with local needs." (G.L. c. 40B, § 23.)

Local requirements and regulations of affordable housing construction are considered "consistent with local needs" if they are "reasonable": in view of "the regional need for low and moderate income housing"; "considered with the number of low income persons in the city or town affected"; and considered with "the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town"; and "to promote better site and building design in relation to the surroundings, or to preserve open spaces"; and "if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing."

Requirements and regulations on affordable housing construction will also be considered "consistent with local needs" where low or moderate income housing comprises: more than 10% of the housing units in the municipality; or is on sites comprising 1.5% or more of the total land area zoned for residential, commercial or industrial use."

In this case, Hollis Hills, LLC ("Hollis Hills") sought to build 146 affordable housing condominium units in attached townhouses (the "Project"). Under Chapter 40B, Hollis Hills filed with the board of appeals of the Town of Lunenburg (the "Board") an application for a comprehensive permit. The Board denied the application.

Hollis Hills appealed the Board's denial to HAC. HAC set aside the Board's decision and directed the Board to issue a comprehensive permit.

The Board appealed to the superior court. The superior court affirmed the HAC's decision.

The Board again appealed. Among other things, on appeal, the Board argued that in calculating the regional need for low and moderate income housing in the town of Lunenburg (the "Town"), low-cost market-rate housing that is not subsidized by federal or state government should be considered. In reviewing Hollis Hills' appeal and determining whether a comprehensive permit should have issued to Hollis Hills, the HAC had excluded housing that was unsubsidized by the federal or state government in weighing the regional need for affordable housing.

DECISION: Judgment of superior court affirmed.

The Supreme Judicial Court of Massachusetts rejected the Board's argument. It held that low-cost market-rate housing that is not subsidized by federal or state government is not to be considered in calculating the regional need for low and moderate income housing when reviewing an application for a comprehensive permit.

The court found this conclusion was required by the plain language of Chapter 40B and was in harmony with the purpose of Chapter 40B.

Under G.L. c. 40B, § 20, the factor that is to be considered in determining whether local requirements or regulations are "consistent with local needs" is the "housing need." The statute effectively defines "housing need" as "the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected." Also, under the Act, "[l]ow or moderate income housing" is defined as meaning "any housing *subsidized by the federal or state government* under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization." (G.L. c. 40B, § 20.)

Looking at this plain text of the Act and the governing regulations, the court found that HAC, in weighing the housing need, was required to exclude from consideration any affordable housing that is not subsidized under a qualifying government-sponsored program. The court determined that this interpretation of the statutory language was in harmony with the purpose of Chapter 40B: to address "an acute shortage of decent, safe, low and moderate cost housing" throughout the Commonwealth. As the court noted: some market-rate housing may be affordable because the units are neither decent nor safe; and other affordable market rate housing units may be both decent and safe, but may be affordable only temporarily because of a weak housing market. Regarding the latter, the court emphasized that there was no way to ensure that affordable market-rate homes would be limited in availability to low or moderate income

households. In contrast, noted the court, housing that is subsidized by a Federal or State government or agency under a program to assist the construction of affordable housing, typically: must satisfy minimum requirements designed to ensure the quality of the housing and the reasonableness of the sale and resale price; and is restricted to "income eligible households" that meet maximum income thresholds. Without the use restriction, noted the court, there would be no guarantee that housing currently priced within the range targeted to income eligible families would be ultimately occupied by them or that it would remain affordable. In light of those differences between subsidized affordable housing units and unsubsidized market-rate units, the court concluded that: "evidence of low cost market-rate housing cannot be factored into the consideration of the regional need for affordable housing."

Here, the court found there was substantial evidence to support the HAC's finding that the existing subsidized housing in the region did not adequately address the regional need for housing.

See also: *Zoning Bd. of Appeals of Wellesley v. Housing Appeals Committee, 385 Mass. 651, 433 N.E.2d 873 (1982).*

Change of Regulations as Affecting Right—While a challenge to the validity of county regulations is being weighed, developer obtains permits under regulations

After regulations are found to have been adopted partly in violation of state law, opponents to development argue permits issued under regulations are invalid

Citation: *Town of Woodway v. Snohomish County, 291 P.3d 278 (Wash. Ct. App. Div. 1 2013)*

WASHINGTON (01/07/13)—This case addresses the issue of whether a property owner's development permit application vests to the county's regulations at the time the permit application is filed, despite the fact that the county's regulations are later found to be adopted partly in violation of state environmental law. More generally, it addresses the issue of what happens to development permit applications filed with

counties and cities relying on recently adopted GMA enactments (comprehensive plan provisions and development regulations) that are being challenged in an administrative appeal before the state's Growth Management Board.

The Background/Facts: BSRE Point Wells, LP ("BSRE") owned a 61-acre site (the "Property") on Puget Sound in unincorporated Snohomish County (the "County") in the state of Washington. BSRE's Property had been used for industrial purposes. In 2007, BSRE sought to redevelop the site with residential and commercial uses. It sought a redesignation of the Property on the County's comprehensive plan map.

The County council granted BSRE's redesignation request in two separate actions in 2009 and 2010. In 2009, under the authority of the state's Growth Management Act ("GMA"), the County adopted ordinances redesignating the Property as an "urban center" on the County's comprehensive plan map. In 2010, the County council rezoned the Property to an "urban center" zone and adopted development regulations accommodating the mixed-use development at the site.

The neighboring Town of Woodway ("Woodway"), the neighboring City of Shoreline ("Shoreline"), and the neighborhood group Save Richmond Beach, Inc. ("SRB") (collectively, the "Neighbors"), together challenged to the state's Growth Management Board (the "Growth Board") the County's comprehensive plan amendments and the development regulations adopted for the urban center zone. Among other things, the Neighbors argued that the County's enactments were adopted partly in violation of the GMA and partly in violation of the State Environmental Policy Act ("SEPA").

In the meantime, following the Growth Board hearing on the challenges, but before the Growth Board issued its final decision and order, BSRE applied to the County for several development permits. The County published notices indicating that BSRE's applications for these various permits were complete.

Then, in April 2011, the Growth Board issued a final decision and order ruling that the County's challenged enactments were adopted partly in violation of the GMA and partly in violation of SEPA. The Growth Board also found the challenged comprehensive plan provisions, but not the development regulations, invalid under the GMA. The Growth Board remanded to the County, directing it to bring its comprehensive plan amendments into compliance with the GMA and SEPA. As to the regulations, the Growth Board found them noncompliant with SEPA and remanded for remedial action.

In September 2011, Woodway and SRB filed a complaint in superior court. They asked the court to declare that BSRE's development permit applications had not vested to the County's urban center designation or development regulations in effect at the time of filing. They argued that BSRE acquired no vested rights because SEPA noncompliance rendered

the County's urban center ordinances ultra vires (i.e., "beyond the powers" of the County) and/or void and thereby incapable of supporting vested rights.

The County and BSRE maintained that BSRE had a vested right to have its development permit applications processed under the urban center designation and development regulations in effect at the time of the filing—despite the fact that the Growth Board later determined the regulations had been partly adopted in violation of SEPA.

The superior court agreed with Woodway and SRB. Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the superior court granted summary judgment in favor of Woodway and SRB.

The County and BSRE appealed.

DECISION: Judgment of superior court reversed, and matter remanded.

The Court of Appeals of Washington, Division 1, agreed with the County and BSRE. It held that BSRE's development permit applications vested to the County's urban center regulations at the time the application was filed, despite the Growth Board's later determination that the County did not fully comply with SEPA in developing the regulations.

In so holding, the court reviewed both Washington's rule on vested rights and the "invalidity provision" of the GMA.

The court explained that Washington's rule on vested rights entitles developers to have a land development proposal processed under the regulations in effect at the time a complete building permit application is filed, regardless of subsequent changes in zoning or other land use regulations. In other words, "[v]esting 'fixes' the rules that will govern the land development regardless of later changes in zoning or other land use regulations." Washington thus recognizes a "date certain" standard. Moreover, under Washington statute (RCW 19.27.095(1)), development rights vest upon the filing of a "valid and fully complete building permit application."

The court also analyzed the "invalidity provision" of the GMA—RCA 36.70A.302. Under the invalidity provision, if a local government's comprehensive plan provision or development regulation is deemed invalid by the Growth Board (because it is noncompliant with the GMA or SEPA and that noncompliance substantially interferes with the fulfillment of the GMA goals), the Growth Board can issue a determination of invalidity as to the challenged comprehensive plan provision or development regulations, but a development permit application filed prior to that determination of invalidity vests to the development regulations under which it was submitted. (RCA 36.70A.302.)

Here, Woodway and SRB had argued that under the GMA, "invalidity" only related to ordinances found to substantially interfere with the

GMA goals. In essence, they contended that the County's development regulations were void and the legislature left a "loophole" to be filled in by common law: There were a certain class of cases, of which they claimed this was one, where a procedural violation of SEPA would not result in a violation of the GMA goals, and in those instances, the prospective invalidity provisions of RCA 36.70A.302 would not apply. Instead, they argued, the pre-Regulatory Reform rule that vested rights cannot be obtained in an invalid ordinance applied and prevailed.

The appellate court rejected this argument. It concluded that RCW 36.70A.302(2)'s invalidity provision controlled the present dispute. The court found the invalidity provision "unambiguously describes what happens to development permit applications that are filed with counties and municipalities relying on recently adopted GMA enactments—comprehensive plan provisions and development regulations—that are challenged in a Growth Board administrative appeal": "those complete and filed applications vest to those challenged plan provisions and regulations, regardless of the Growth Board's subsequent ruling in the administrative appeal."

Thus, here, even if the urban center development regulations had violated the GMA's requirements (which they had not) and were later declared invalid, all development permit applications submitted prior to the County's receipt of the invalidity determination would remain vested to the invalidated development regulations, said the court.

See also: *Abbey Road Group, LLC v. City of Bonney Lake, 167 Wash. 2d 242, 218 P.3d 180 (2009).*

See also: *Weyerhaeuser v. Pierce County, 95 Wash. App. 883, 976 P.2d 1279 (Div. 2 1999).*

Case Note:

Washington's rule on vested rights is the minority rule. The majority rule on vested rights, which is applied in many other jurisdictions, provides that: "development is not immune from subsequently adopted regulations until a building permit has been obtained and substantial development has occurred in reliance on the permit."

Rezoning—Town rezones golf course property, limiting permitted uses

Property owner argues rezone violates several of its constitutional rights

Citation: *Dunes West Golf Club, LLC v. Town of Mount Pleasant, 2013 WL 90419 (S.C. 2013)*

SOUTH CAROLINA (01/09/13)—This case addressed the issues of: whether the denial of a rezoning request violated a property owner's equal protection rights; whether the town's criteria for determining the boundaries of a new zoning designation were arbitrary and capricious, thus violating a property owner's substantive due process rights; and whether the rezoning of a property amounted to an unconstitutional taking of the property.

The Background/Facts: The Dunes West Development (the "Development") was located on 4,518 acres of land within the Town of Mount Pleasant (the "Town"). Within the Development, was the Dunes West golf course, which consisted of 256 acres (the "Golf Course Property"). In 2002, Dunes West Golf Club, LLC (the "Golf Club") purchased the undeveloped residential lots and the master developer rights to the Development. The Golf Club acquired the Golf Club Property in 2005. At that time, the Golf Course Property was subject to the zoning requirements of the Dunes West Planned Development ("DWPD"), which permitted flexible land use at the developer's discretion.

In 2006, the Town adopted an ordinance which created a new Conservation Recreation Open Space ("CRO") zoning district. The CRO zoning designation permitted only recreation and conservation uses. By way of either direct rezoning or an amendment to the relevant planned development, each of the parcels in the Town comprising part of any one of the Town's five golf courses was designated a CRO district, including the Golf Club Property.

In 2009, the Golf Club submitted a rezoning petition to the Town. It sought residential development of 16.48 acres of the Golf Course Property. Ultimately, the Town Council denied the Golf Club's rezoning petition.

Thereafter, the Golf Club brought a lawsuit. Among other things, it claimed that the Town's actions in designating the entirety of the Golf Course Property as a CRO district had violated the Golf Club's equal protection rights. It contended that the Town had granted another substantially similar rezoning petition for another golf course in town.

The Golf Club further contended that the rezoning violated its due process rights because the CRO zoning boundary—which was based on tax map parcels—was arbitrary and capricious, sweeping too broadly. The Golf Course also contended that the rezoning of the Golf Course Property amounted to an unconstitutional taking of the property.

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 Town.

The Golf Club appealed.

DECISION: Judgment of circuit court affirmed.

The Supreme Court of South Carolina first held that the rezoning of the Golf Course Property did not violate the Golf Club's equal protection rights. The court explained that the Equal Protection Clause of the United States Constitution provides: "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const. amend XIV, § 1.) Since the claim here did not implicate a suspect class or abridge a fundamental right, the court applied the "rational basis test." Under that rational basis test, the Court had to determine: (1) whether the rezoning treated the similarly situated golf courses differently; and (2) if so, whether the Town had a rational basis for the disparate treatment; and (3) whether the disparate treatment bore a rational relationship to a legitimate government purpose.

Here, the court found that there were significant differences between the two rezoning petitions—one from the Golf Club, which the Town denied, and the other from another golf course, Snee Farm, which the Town approved. The court found that the Town had a rational basis for granting Snee Farm's proposal and denying the Golf Club's proposal. Specifically, the court found that the two rezoning petitions were not "similarly situated." Snee Farm's proposal presented "a compact, contiguous, unified site design that caused little alteration to the areas of play of the golf course." The Golf Club's proposal contemplated "spattering new lots throughout the Golf Course Property that caused multiple alterations to the areas of play." Moreover, the court found that the Golf Club failed to produce any evidence that the denial of its rezoning petition was motivated by discriminatory goals.

The court next held that the rezoning of the Golf Course Property did not violate the Golf Club's substantive due process rights. The court explained that "[i]n order to prove a denial of substantive due process, [the Golf Club had to] show that [it] was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." The court found that the Golf Club failed to meet that burden; rather the court found that the CRO ordinance "substantially advance[d]" numerous legitimate Town purposes. The court found that the Town's decision to base the CRO zoning boundaries on tax map parcels was not unreasonable. "Indeed, the rezoning of the Golf Course Property tracts

was part of a unified plan which applied to all golf courses in the Town, and the Town's use of tax map parcels as zoning district boundaries for each golf course [was] consistent with the stated tax-assessment purposes set forth in the CRO Ordinance."

Finally, the court also held that the rezoning of the Golf Course Property did not amount to a categorical taking or a regulatory taking (under the Fifth Amendment to the United States Constitution) of the Golf Club's property. The court found it was not a categorical taking because it did not deprive the Golf Club of "all economically beneficial uses" of its land; rather, the CRO designation permitted numerous recreation and conservation uses—which the Golf Club had failed to show were not economically beneficial. The court further found that the rezoning was not a regulatory taking because: the Town provided "legitimate and substantial public purposes" sought to be achieved in enactment of the CRO ordinance; the CRO designation did not eliminate all development potential, or "disadvantage" the Golf Club in a "constitutionally significant way"—since the CRO restrictions applied to all golf courses throughout the Town; and the Golf Course Property remained a valuable property, even if the rezoning denied the Golf Club its ability to exploit a property interest that it had believed was available for development.

See also: *Ed Robinson Laundry and Dry Cleaning, Inc. v. South Carolina Dept. of Revenue, 356 S.C. 120, 588 S.E.2d 97 (2003) (addressing equal protection rights).*

See also: *Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798, 34 Env't. Rep. Cas. (BNA) 1897, 22 Envtl. L. Rep. 21104 (1992) (addressing categorical takings).*

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

Zoning News from Around the Nation

CALIFORNIA

"Two medical marijuana cases going before the state Supreme Court could determine whether dispensary bans by dozens of California cities are legal." The case of the *City of Riverside v. Inland Empire Patient's Health and Wellness Center* was scheduled to begin February 5. That case addresses the city's legal authority to ban marijuana dispensaries. In another upcoming case, *City of Upland v. G3 Holistic Inc.*, a city's authority to ban medical marijuana dispensaries will also be argued, with lawyers for a dispensary "expected to argue that cities can't ban the

dispensaries because they're allowed under Proposition 215, the Compassionate Use Act, which legally allows doctors to prescribe marijuana to patients." The cities maintain that they have the authority to ban dispensaries under their zoning powers.

Source: *Daily News; www.dailynews.com*

CONNECTICUT

A state task force, the Shoreline Preservation Task Force, which studied the impact of damage from storms in shoreline communities, recently issued a report concluding that "towns along the shoreline need to adopt zoning laws accounting for rising sea levels." While the report does not offer specific regulations, it does provide "concepts and ideas that need to be fleshed out." Recommendations include: rules on where septic tanks can be located; streamlined state permits for seawalls and other coastal structures; increased financial help to towns, cities and nonprofit land conservation groups to acquire open space and watershed land recreation, tidal wetland preservation and habitat conservation; and requiring the state Department of Energy and Environmental Protection to map vulnerable shoreline areas.

Source: *Greenwich Time; www.greenwichtime.com*

FLORIDA

Lake Placid Town Council has asked that Highlands County legislators "carry proposed legislation to Tallahassee allowing municipal councils to meet outside their jurisdiction with the county commission." Under current law, " '[a] municipality has no authorization to exercise its legislative and governing powers' outside its borders. . . 'and ha[s] no authority to hold meetings at which official business is conducted outside the municipal boundaries.' "

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

VIRGINIA

State Delegates Ben Cline and Scott Lingamfelter have each proposed a bill that "would prevent the state, and local governments, from adopting policies that 'restrict private property rights without due process,' especially if they can be traced to the U.N.'s "Agenda 21." Agenda 21 calls for "sustainable development." Cline's bill, HB 2223, for example, provides that: "The Commonwealth and its political subdivisions shall not adopt or implement policy recommendations that deliberately or inadvertently infringe upon or restrict private property rights without due process, as may be required by policy recommendations originating in, or traceable to, Agenda 21."

Source: *The News & Advance; www.newsadvance.com*

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Zoning Bulletin

in this issue:

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Mat #41329846

Standing—Individual residents challenge approval of PUD

Developer maintains that residents lack standing because they lack proximity to PUD

Citation: *Ray v. Mayor and City Council of Baltimore, 2013 WL 216298 (Md. 2013)*

MARYLAND (01/22/13)—This case addressed the issue of whether individual residents of neighborhoods within a half mile of a planned unit development ("PUD") had standing to challenge the city's decision to approve the PUD.

Contributors

Corey E. Burnham-Howard

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The Background/Facts: On November 22, 2010, the Baltimore City Council passed Ordinance 10-397 (the "Ordinance"). The Ordinance approved a planned unit development ("PUD") for an 11.5-acre tract of land known as the "25th Street Station." The PUD authorized a mixed-use development located in the Remington and Charles Village neighborhoods of Baltimore City. It was anticipated that the PUD would "bring approximately 20 national retailers . . ." including a super Wal-Mart store.

Benn Ray ("Ray") and Brendan Coyne ("Coyne") (collectively, the "Opponents") filed a Petition for Judicial Review of the PUD's approval. Ray lived 2,212.39 feet, or approximately 0.4 miles, away from the PUD. He claimed that he could see the PUD site from his second-floor bathroom during the winter months of the year, and that he could hear noise from the PUD site when his second-floor bathroom window was open. He also believed that the PUD would "directly and dramatically increase traffic . . . in front of [his] home," which would "make it more dangerous for [him,]" given that his street was "a narrow residential road . . . ." Ray also believed that "the Wal-Mart planned to be part of the project [would] change the character of [his] neighborhood."

Coyne lived 2,002.18 feet, or approximately 0.4 miles, away from the PUD. Coyne believed that the PUD, and specifically the planned Wal-Mart store, would adversely change the character of his neighborhood, forcing out many local businesses that he frequented and resulting in vacant buildings in his neighborhood.

The circuit court judge concluded that the Opponents lacked standing to challenge the PUD. The judge said this was because: they were "not 'adjoining, confronting or nearby' property owners and thereby d[id] not enjoy prima facie [(i.e., "at first appearance")] aggrieved status"; and had not "shown any special interest or damage unique to [themselves] that would distinguish them from the general public."

The Opponents appealed. The Court of Special Appeals affirmed.

The Opponents again appealed. The Court of Appeals of Maryland granted a writ of certiorari to determine the issue of the Opponents' standing.

On appeal, the Opponents advanced two arguments: (1) the entire neighborhoods in which Ray and Coyne lived were impacted by the PUD and thus should be considered an aggrieved class, therefore allowing the Opponents, as residents of those neighborhoods, standing; and (2) Ray and Coyne's own claims for special aggrievement—including their proximity to the PUD, a change in the character of the neighborhood, increased traffic, and visibility of the PUD—were sufficient to establish standing.

DECISION: Affirmed.

The Court of Appeals of Maryland concluded that Ray and Coyne did not have standing to challenge the City Ordinance, approving the PUD.

The court explained that Maryland statutory law defines who may appeal a zoning decision or zoning action of Baltimore City: "any person,

taxpayer, or officer, department, board, or bureau of the City aggrieved" by the decision or zoning action. (Md. Code Article 66B, § 2.09(a)(1)(ii).)

The court further explained that a "person aggrieved" included: "one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally." Generally, "[a]n adjoining, confronting or nearby property owner is deemed, prima facie, to be specially damaged and, therefore, a person aggrieved." However, "[a] person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved . . . [unless] he meets the burden of alleging and proving . . . that his personal or property rights are specially and adversely affected." The standard for determining whether a party is aggrieved so as to have standing is "flexible in the sense that it is based on a fact-intensive, case-by-case analysis."

Addressing the Opponents' arguments, the court held first that the creation of a class of aggrieved persons is done on an individual scale and not based on delineations of city neighborhoods; unless prima facie aggrieved, the requirement that an individual prove special aggrievement has been well-established. The Opponents' argument that the entire neighborhood should be considered an aggrieved class depended, found the court, on subtracting individual special aggrievement from the analysis; it assumed that every member of the neighborhood was automatically specially aggrieved. The court declined to create such "a bright-line rule, under which each person in the entire neighborhood qualifies as a member of the specially aggrieved class in every PUD case." Instead, the court said it would, on a case-by-case basis, continue to examine the specific facts alleged to show aggrievement and compare that injury to harm suffered by the general public.

Thus, here, since the Opponents could not claim standing based on being residents of an "aggrieved" neighborhood, Ray and Coyne each had to show: (1) he was "[a]n adjoining, confronting or nearby property owner" who was prima facie aggrieved; or (2) his "personal or property rights were specially and adversely affected."

Both Ray and Coyne conceded that they were not prima facie aggrieved as both resided approximately 0.4 miles, or 2,000 feet, from the PUD. Therefore, the court said that in order to establish special aggrievement through proximity, the Opponents had to show they resided close enough to the rezoning action to be considered "almost" prima facie aggrieved and then show some additional evidence of harm. While the court found there was no bright-line rule for who qualifies as "almost" prima facie aggrieved, the court found that standing is usually given to those who live 200 to 1,000 feet away from the subject property, while those living more than 1,000 feet from a rezoning site are generally denied standing. Since Ray and Coyne lived more than 2,000 feet from the PUD, the court concluded that they were not "almost" prima facie aggrieved. In so concluding, the

court rejected the Opponents' argument that "the urban nature of the PUD" expands the proximity factor so that individuals challenging a large urban development are permitted to reside farther away from the PUD than nonurban protestants.

The court also found that the Opponents had failed to show that the PUD produced a harm directly and specifically impacting their property. Ray and/or Coyne had attempted to argue they would suffer harm from the PUD in three ways: (1) a change in the character of the neighborhood as a result of the PUD; (2) increased traffic, and (3) the PUD's visibility. The court found that generally claims of change in the character of the neighborhood by protestants who lack proximity are insufficient to prove special aggrievement. More specifically, the court found that, here, the Opponents' allegations of change in the neighborhood were not sufficient to show special aggrievement because the Opponents failed to identify a harm that directly impacted their properties; while they had complained that the commercial establishments now existing in their neighborhood would become vacant buildings, they failed to show that any of those businesses, whether open or closed, affected them in a manner distinct from the general public.

The court also found that generally claims of increased traffic, by protestants who lack close proximity, are insufficient to prove special aggrievement. More specifically, here, the court found that Ray's claim of increased traffic was not sufficient to show special aggrievement because any increased traffic from the PUD would have a common affect upon the public and would produce only a general aggrievement—not a specific aggrievement needed for standing.

Finally, the court also found that generally claims of limited visibility, by protestants who lack close proximity, are insufficient to prove special aggrievement. Thus, more specifically, here, the court found that Ray's argument that he had standing because he could see the PUD from his second-floor bathroom window during the winter months was insufficient. Special aggrievement needed for standing required "much more than . . . [this] *de minimis*" kind of visibility. "When one practically has to use a telescope to prove his harm from a rezoning, he has failed to show special aggrievement based on that harm," noted the court.

The court concluded that: "The aggrieved class continues to be limited to those individuals who can show by specific facts that they have been specially aggrieved in a manner different than the public generally." Here, the Opponents failed to allege such facts.

See also: *Bryniarski v. Montgomery County Bd. of Appeals, 247 Md. 137, 230 A.2d 289 (1967).*

See also: *Marcus v. Montgomery County Council, 235 Md. 535, 201 A.2d 777 (1964).*

See also: *Wilkinson v. Atkinson, 242 Md. 231, 218 A.2d 503 (1966).*

See also: *DuBay v. Crane, 240 Md. 180, 213 A.2d 487 (1965).*

Case Note:

Coyne had also argued that he had standing because the development of the PUD would adversely affect the value of his property. The circuit court judge ruled that Coyne's lay opinion testimony about future fluctuations in the value of his property was inadmissible. The Court of Appeals of Maryland agreed. It held that, in this case, such an argument required expert testimony.

First Amendment—Sign ordinance exempts public art and holiday decorations from residential sign restrictions

Resident contends those exemptions make the sign ordinance restrictions content based and subject to strict constitutional scrutiny

Citation: *Brown v. Town of Cary, 2013 WL 221978 (4th Cir. 2013)*

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

FOURTH CIRCUIT (NORTH CAROLINA) (01/22/13)—This case addressed the issue of whether a town's sign ordinance, which exempted public art and holiday decorations from residential sign restrictions, should be analyzed for constitutionality under a standard of strict scrutiny or intermediate scrutiny. It further addressed whether the ordinance was constitutional under that scrutiny.

The Background/Facts: William Bowden ("Bowden") lived in the Town of Cary (the "Town") for many years. Bowden had a quarrel with the Town over damage to his house allegedly caused by water discharge from municipal road-paving projects. Dissatisfied with the Town's efforts to resolve the dispute, Bowden responded by painting the words "Screwed by the Town of Cary" across a 15-foot swath of the facade of his home. The letters of the sign varied in height from 14 to 21 inches and were painted in a bright fluorescent orange paint.

The Town eventually issued to Bowden multiple notices of zoning violation. In those notices, the Town referenced Chapter 9 of its Land Development Ordinance (the "Sign Ordinance"). Specifically, the Town notified Bowden that he was in violation of the Sign Ordinance's: size limitation for residential signs; size limitations for wall signs; and violation of color restrictions for signs.

Bowden refused to remove or modify the sign. Instead, he sued the

Town. He asserted that the Sign Ordinance was unconstitutional both facially (i.e., on its face) and as applied (to him), violating his rights under the First Amendment to the United States Constitution.

Finding there were no material issues of fact in dispute, and deciding the matter based on the law alone, the district court ruled for Bowden. It held that since the Sign Ordinance exempted public art and holiday decorations from the restrictions that applied to all other types of signs, the Sign Ordinance was a content-based regulation, which had to be reviewed under a strict scrutiny standard. Under that standard, the court invalidated the Ordinance as being unconstitutional.

The Town appealed. On appeal, the Town argued that the district court erred in applying the strict scrutiny standard. The Town argued that its regulations may distinguish speech based on content so long as its reasons for doing so are not based on the message conveyed. In other words, it argued that the Sign Ordinance was content neutral despite the exclusion of public art and holiday decorations from the restrictions that applied to all other signs because its reasons for the exclusion were not content based. Accordingly, the Town contended that the content-neutral Sign Ordinance should be analyzed under an intermediate scrutiny standard. Also, the Town maintained that the Ordinance was constitutional under that standard.

DECISION: Reversed, and matter remanded.

The United States Court of Appeals, Fourth Circuit, agreed with the Town's argument. The court held that the Sign Ordinance was constitutional.

In so holding, the court "reject[ed] any absolutist reading of content neutrality, and instead orient[ed] [its] inquiry toward why—not whether—the Town ha[d] distinguished content in its regulation." The court said the purpose of content neutrality was to prevent a government from supervising the "marketplace of ideas . . . [by] choos[ing] which issues are worth discussing or debating." A regulation is not a content-based regulation of speech, said the court, if: "(1) the regulation is not a regulation of speech, but rather a regulation of the places where some speech may occur; (2) the regulation was not adopted because of disagreement with the message the speech conveys; or (3) the government's interests in the regulation are unrelated to the content of the affected speech." In other words, if a regulation is "justified without reference to the content of regulated speech," that regulation is deemed content neutral "even if it facially differentiates between types of speech."

Thus, here, in determining whether the Sign Ordinance was content based or content neutral, the court looked at: "whether the Sign Ordinance ha[d] distinguished content from whether it ha[d] distinguished *because* of content." (Emphasis in original.) In other words, the court refused to "mechanically 'scour the ordinance' to see if it omit[ted] some categories of signs," but instead focused on "whether the restriction was adopted because of a disagreement with the message conveyed."

The court found it clear that, while the Sign Ordinance distinguished

content (exempting public art and holiday decorations from its restrictions), the distinctions themselves were justified for reasons independent of content: "public art and holiday decorations enhance rather than harm aesthetic appeal, and . . . seasonal holiday displays have a temporary, and therefore less significant, impact on traffic safety." The court concluded that the Sign Ordinance placed "reasonable time, place, and manner restrictions only on the physical characteristics of messages—including those voicing political protest—and exempt[ed] certain categories of signs from those restrictions solely on the basis of the Town's asserted and legitimate interests of traffic safety and aesthetics." In other words, the Town exempted the public art and holiday decorations from its restrictions simply because the Town determined such "signs" posed less traffic safety and aesthetic concerns, not because of any preference for content. Accordingly, the court held that the Sign Ordinance was content neutral.

Having found the Sign Ordinance was content neutral, the court proceeded to examine its constitutionality under intermediate scrutiny. The court explained that the Sign Ordinance would be constitutional if it: was found to further a substantial government interest; was narrowly tailored to further that interest; and was found to leave open ample alternative channels of communication.

The court found that the Town's stated interests in promoting aesthetics and traffic safety were substantial. Next, the court found the Sign Ordinance was narrowly tailored and did not burden substantially more speech than was necessary to further those stated interests because: the Sign Ordinance's size, color, and positioning restrictions did "no more than eliminate the exact source of the evil it sought to remedy." Finally, the court found that the sign Ordinance '' '[left] open ample alternative channels of communication' by generally permitting residential signs subject to reasonable restrictions"; within the Sign Ordinance's reasonable restrictions, a sign could contain any message the speaker wished to convey.

Having concluded that the Sign Ordinance survived intermediate scrutiny, the court held that the Sign Ordinance was constitutional and did not violate the First Amendment.

See also: *Hill v. Colorado, 530 U.S. 703, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000).*

See also: *Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800, 16 Env't. Rep. Cas. (BNA) 1057, 11 Envtl. L. Rep. 20600 (1981).*

See also: *Wag More Dogs, Ltd. Liability Corp. v. Cozart, 680 F.3d 359 (4th Cir. 2012).*

See also: *Covenant Media Of SC, LLC v. City Of North Charleston, 493 F.3d 421 (4th Cir. 2007).*

Case Note:

Bowden died during the pendency of the appeal. Dawn D. Brown, the administratrix of his estate, was substituted as the Plaintiff-Appellee in the case.

Case Note:

The court recognized that a nativity scene or an elaborate work of art could implicate traffic safety no less than an ordinary residential sign, but the court emphasized that "the content neutrality inquiry is whether the Sign Ordinance's exemptions have a reasonable, not optimal, relationship to these asserted interests."

Case Note:

Bowden had also contended that the Sign Ordinance exemptions were unconstitutionally vague. The court disagreed, noting that the Town had defined "public art" and "holiday decorations," which themselves were concepts that "do not lend themselves to easy definition."

Case Note:

Several other circuits do apply an absolutist reading of content neutrality, including the Fifth Circuit (See Service Employees Intern. Union, Local 5 v. City of Houston, 595 F.3d 588, 596, 187 L.R.R.M. (BNA) 3167, 159 Lab. Cas. (CCH) P 10178 (5th Cir. 2010)), the Eighth Circuit (See Neighborhood Enterprises, Inc. v. City of St. Louis, 644 F.3d 728, 736 (8th Cir. 2011), cert. denied, 132 S. Ct. 1543, 182 L. Ed. 2d 163 (2012)), and the Eleventh Circuit (See Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1263 (11th Cir. 2005)). Other circuits apply the "more practical test for assessing content neutrality" used by the Fourth Circuit here, including: the Third Circuit (See Melrose, Inc. v. City of Pittsburgh, 613 F.3d 380, 389 (3d Cir. 2010), cert. denied, 131 S. Ct. 1008, 178 L. Ed. 2d 828 (2011)); the Seventh Circuit (See American Civil Liberties Union of Illinois v. Alvarez, 679 F.3d 583, 603, 40 Media L. Rep. (BNA) 1721 (7th Cir. 2012), cert. denied, 133 S. Ct. 651 (2012)); the Sixth Circuit (See H.D.V.-Greektown, LLC v. City of Detroit, 568 F.3d 609, 622 (6th Cir. 2009)); and the Ninth Circuit (See G.K. Ltd. Travel v. City of Lake Oswego, 436 F.3d 1064, 1079 (9th Cir. 2006)).

Mobile Homes/Special Use Permit—County Board imposes 180-day limitation-of-stay condition on RV park use

RV park owners contend there is no authority for the imposition of such a condition

Citation: *Schlotfeldt v. Benton County, 292 P.3d 807 (Wash. Ct. App. Div. 3 2013)*

WASHINGTON (01/22/13)—This case addressed the issue of whether a zoning board had the authority to impose a limitation-of-stay condition on a special use permitted recreational vehicle ("RV") park.

The Background/Facts: David and Charlotte Schlotfeldt applied for a special use permit to construct and operate a RV park in Benton County, Washington (the "County"). The site of the proposed RV park was zoned light industrial with surrounding properties zoned agriculture. The Benton County Board of Adjustment (the "Board") conditionally approved their application. One of the conditions of the approval was that RVs could not remain in the RV park for more than 180 days in any calendar year period.

The Schlotfeldts appealed. The superior court affirmed the Board's condition on the approval.

The Schlotfeldts again appealed. They argued that the Board improperly imposed the limitation-of-stay condition because there was no authority to impose such a limitation and the Board lacked authority to impose such a limitation.

DECISION: Affirmed.

The Court of Appeals of Washington, Division 3, held that the limitation-of-stay condition was justified and supported by substantial evidence. The court concluded that the Board had inherent authority to impose the condition.

In so holding, the court noted that under the state's Land Use Petition Act ("LUPA"), the Schlotfeldts could obtain relief from the Board's land use decision if they could establish one of six standards, including showing that the imposed condition was: an erroneous interpretation of the law; not supported by evidence; and a clearly erroneous application of the law to the facts.

Here the court found the limitation-of-stay condition was justified by the law. The County Code allowed the Board to impose conditions on proposed uses to, among other things, insure the use: was compatible with other uses in the surrounding area; and would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning

district. Here, the proposed site was in a light-industrial zoned area with the surrounding properties zoned agricultural. Here, the court found that restricting the time RVs could stay in one area "would relate to protecting the compatibility of uses in the surrounding area . . . , and not hindering the development of permitted uses on neighboring properties." There were concerns that, with year-round lengths of stays, the RV park would become a residential subdivision, which would be inconsistent with a light industrial and agricultural area. Thus, concluded the court, "a conditional use permit is appropriate."

The court also found that an imposition of a limitation-of-stay condition was supported by evidence: Other property owners were worried about the RV Park becoming a mobile home park and becoming a residential subdivision. The Board noted unfavorable conditions when RVs stay in one location for extended periods of time. State statutory law, RCW 43.22.335(7), defined an "RV" as a vehicle-type unit primarily designed as temporary living quarters for recreational camping, travel, or seasonal use. Likewise, the County Code defined an "RV" as a motorized or nonmotorized vehicle for recreational use. Since RVs are not considered as permanent dwellings, the court found that "substantial evidence" supported the Board's decision to conditionally limit the length of stay in the proposed RV Park.

Finally, the court also found that the Board had the inherent authority to impose the length-of-stay condition on the RV park. The court reasoned: "[A] board with authority to grant a special permit has inherent power to attach conditions designed to carry out the purposes for which the permit requirement was imposed." "If the conditions imposed were reasonably calculated to achieve the purposes set forth in the comprehensive plan and were not unnecessarily burdensome, the court should not set them aside." Thus, "[r]easonably calculated conditions to protect adjacent land and to achieve legitimate zoning goals are permitted." "[L]egitimate concerns in zoning decisions are to 'stabilize the value of property, promote the permanency of home surroundings, and add to the happiness and comfort of the citizens.' " Here, the court found, the Board had inherent authority to impose conditions in harmony with those concerns, ensuring the RV park use met the county's zoning goals as set forth in the County Code.

See also: *State ex rel. Standard Mining & Development Corp. v. City of Auburn, 82 Wash. 2d 321, 510 P.2d 647 (1973).*

See also: *Phoenix Development, Inc. v. City of Woodinville, 171 Wash. 2d 820, 256 P.3d 1150 (2011).*

Zoning News from Around the Nation

CONNECTICUT

State Senator Paul Doyle and Representative Antonio Guerrera have

introduced legislation that would bar nursing home facilities from housing state prison inmates and mental patients without prior local approval. In the meantime, the Town of Rocky Hill is seeking a temporary restraining order to prevent state prison inmates and mental patients from being moved into a private nursing home in the town. Reportedly, since 2011, Governor Malloy's administration has been "looking for a way to move very sick and terminally ill patients out of its facilities and into private nursing homes to reduce long-term care costs."

Source: *The Hartford Courant; http://articles.courant.com*

FLORIDA

The Florida League of Cities, an organization of more than 400 cities, is lobbying for state legislation that would define transition homes (i.e., homes for recovering addicts), require them to be licensed, more than 1,000 feet apart, and registered with local governments.

Source: *TCPalm; www.tcpalm.com*

NEW YORK

New York City's Board of Standards and Appeals recently ruled that the Metropolitan Transportation Authority ("MTA") must comply with local zoning regulations and take down signs on its property that run afoul of city rules. The MTA had argued that as a state agency it was exempt from local zoning laws that ban billboards within 900 feet of arterial highways.

Source: *Crain's New York; www.crainsnewyork.com*

NEVADA

The Nevada Supreme Court has ruled as unconstitutional state legislation that prohibited Clark County from changing zoning laws to allow for more development on property adjacent to conservation areas. The court ruled that the law violated a provision of the Nevada Constitution that prohibits the Legislature from passing local laws that regulate county business.

Source: *Las Vegas Review-Journal; www.lvrj.com*

NEW HAMPSHIRE

State Representative Katherine Rogers introduced legislation that "would give local planning and zoning boards the power to approve or veto building projects by the state and local governments." Representatives from four state agencies—the Department of Resources and Economic Development, the Department of Administrative Services, the Community College System of New Hampshire, and the Fish and Game Department—reportedly have opposed the legislation, saying that requiring projects to go through local review and obtain local approval would cause delays and cost overruns.

Source: *Concord Monitor; www.concordmonitor.com*

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PRACTICE COMPLETE STREETS

Completing the Streets

By Carol Gould, AICP, and Mike Morehouse

The responsibility for establishing a congruent interface between private land development and the public right-of-way is often hidden within a regulatory "twilight zone."

This lack of clarity presents one of the greatest challenges to planners and policy makers striving to balance access with mobility and create a prosperous and livable community. This conundrum is especially vexing as many places are now looking for ways to reprioritize how transportation serves communities, switching from conventional mobility goals to those emphasizing safety, modal balance, healthy choices, environmental sustainability, character of place, and economic growth to name a few. The paradigms of the past must evolve in order to facilitate the needs of today's towns and cities.

The term "complete streets" encompasses street design practices collectively aimed at the safety, mobility, and accessibility needs of users of all ages and abilities. With contemporary zoning practice focused increasingly on community character, land-use regulations need to address the concept of complete streets at the same time that they address how transportation serves as an element of that elusive "sense of place" often sought by municipalities. In the United States, municipal and state agencies typically build the public streets, and private developers build to the street line, inclusive of structures, access drives, and other frontage elements. Nonetheless, many private developers also construct what become new public streets as part of subdivisions, or new neighborhoods (such as new urbanist enclaves). So who is responsible for the design of what is or ultimately will be public rights-of-way? And who is responsible for the transition area between the public travel ways and private land both for new and upgraded infrastructure, where sidewalks, bicycle routes, and transit stops are meant to meet the pavement? The answer isn't always clear.

To complicate matters, state and regional departments of transportation, local public works and engineering offices, and planning and zoning commissions traditionally have all had different mandates for the design and function of public ways. Their decision making is commonly done in isolation from one another and, as a result, can be counterproductive. With the exception of buffer requirements, conventional zoning has historically had little to say about what happens in the legal gray zone between private property and the public right-of-way. In recent years, zoning requirements for access management and parking have been evolving as an increasing number of communities seek to address the need to control how travel on private property links to travel on the public way. Other contemporary zoning techniques, such as traditional neighborhood development (TND) and transit-oriented development (TOD) districts, emphasize the form of development and routinely include language requiring contributions to the public realm, including sidewalks and streets. Yet these techniques often fail to discuss transportation infrastructure in the context of a larger community mobility network.

If we, as planners, agree that how streets look, feel, and function impacts a person's experience and impression of a place, then land-use regulations are an important tool to help manage the design and functionality of public streets, not only in terms of traffic, but in terms of balancing all modes of travel for improved connectivity and accessibility. According to the National Complete Streets Coalition, hundreds of communities nationwide have adopted complete streets policies and programs. The question becomes how best to mesh those local programs with private site design, where development meets the road.

This article looks at what it means to complete the streets and provides some examples of how communities are doing this. It then explores how zoning can be used as a means to help communities facilitate the complete streets process. It concludes with some thoughts about zoning and implementation of an effective complete streets approach to roadways.

PROBLEMS WITH THE STREET DESIGN STATUS QUO

Conventional traffic engineering for streets emphasizes capacity and safety for car and truck travel. Leading engineering organizations such as the American Association of State Highway and Transportation Officials (AASHTO) and the Institute of Transportation Engineers (ITE) publish guidance on the design and operation of public streets. Level of Service (LOS), a long-standing performance measure in the traffic engineering community, is often cited in these publications. LOS corresponds to a letter grade, A through F (with A being the best and F the worst), for the amount of delay a vehicle experiences on a road or intersection. It is a basic measure of congestion that only considers car and truck traffic. Conventional LOS determinations are based on subjective criteria; namely, what level of frustration (delay) is the average driver willing to tolerate? The problem with LOS is that it is biased against walking and bicycling and promotes sprawl by increasingly pointing to the need to add car capacity to roads to "improve" conditions. Relying on LOS to plan and design the street network limits opportunities to complete our streets. This is because car capacity is often provided at the expense of sidewalks and dedicated bicycle and transit infrastructure. Car capacity is quickly consumed, peak period congestion returns, and the demand for more capacity increases.

ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of February to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. *Carol Gould, AICP, and Mike Morehouse 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 authors will reply, and* Zoning Practice *will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of* Zoning Practice *at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA* Zoning Practice *web pages.*

About the Authors

Carol Gould, AICP, is a senior project manager at Fitzgerald & Halliday Inc. Her 18 years of experience at FHI has been in the area of community planning with a focus on livable communities, transportation/land-use connections, public involvement, parking, and access management.

Mike Morehouse is a licensed professional engineer who leads FHI's Mobility Service line, which focuses on multimodal transportation planning and engineering. In his work, Morehouse offers a comprehensive perspective of transportation engineering that values the relationship between vehicular mobility and placemaking.

Additionally, streets are organized into a functional classification system, which is required for municipalities to be eligible for federal funding for road projects. In the federal-aid classification system, arterials, collectors, and local roads are defined to describe the purpose, or function, of these roads in terms of mobility and access. Often, roadway design standards are tied to functional classification and many design manuals tend to favor optimizing the public right-of-way for automobile mobility. Since functional classification does not take context, non-auto modes, and a number of other factors into consideration, the incorporation of design elements for bicycles, pedestrians, and transit take a back seat to creating space for cars.

Even as many communities look to better integrate land use with the transportation system as part of defining what community character and mobility means for them, transportation funding is still predominantly awarded to projects for physical upgrades to the safety and capacity of roadways as measured in LOS terms. So, even though more and more communities want public ways that are easily accessible, well connected by a variety of modes, and welcoming to pedestrians, bicyclists, and transit users and to create neighborhoods that are places for people more so than cars, federal and state monies that have been the mainstay for funding public infrastructure have not been readily available to help communities meet those goals. Zoning, the primary means communities have to integrate private land use into the fabric of the community, is a significant opportunity to create public-private partnerships and make more holistically designed streets possible.

THE COMPLETE STREETS CONCEPT

In the most basic sense, complete streets are streets for everyone. They are streets that are designed for people first and foremost. This includes people driving in cars, walking on sidewalks and crossing the

Dan Burden, Walkable and Livable Communities Institute, Inc.

Motorists, pedestrians, bicyclists, and transit riders share complete streets in Santa Barbara, California.

street, riding on buses, pedaling bicycles, rolling in wheelchairs, and so on. These people consist of children, men, and women of all ages and abilities carrying out daily activities of all types. A complete street is one that accommodates each of these unique users safely and comfortably. There is no one-size-fits-all approach to developing the ideal complete street, as every place has its own specific context and unique set of needs; however, all complete streets share the common goal of creating a safe environment for all users of the road, regardless of age, ability, or mode of travel.

COMPLETE STREETS: POLICY TO DESIGN

The first step to achieving complete streets in a community is to develop a policy. Complete streets (CS) policies establish a set of principles emphasizing safe access for all users that guide the planning and development of the public right-of-way. A typical CS policy should

- establish a vision for the community;
- address all modes and users;
- consider context;
- set standards of performance;
- create flexible design standards;
- detail how CS is integrated into projects; and
- set up a process for measurement.

CS policies can range from brief statements to lengthy reports, but they all should, at a minimum, prompt a change in how municipalities approach the planning and design of their streets. This can include revising their design manuals, developing design guidelines based on best practices, using performance metrics that address all modes, training staff to think about context during planning and design, and establishing a process for public input. The National Complete Streets Coalition is a good resource for a list of communities with complete streets policies.

In New Haven, Connecticut, a CS policy was developed as a result of two tragic pedestrian fatalities that claimed the lives of a Yale medical student and an 11-year old girl. These incidents occurred within two months of each other, and a coalition of residents, civic leaders, city officials, community organizations, and Yale University representatives formed to coordinate community activity and accelerate the pace of change with regard to improved traffic safety. In 2008, the New Haven Board of Aldermen unanimously passed an order creating a nine member Complete Streets Steering Committee to guide the development of a CS policy document and a design manual. The order also included the creation of a public process, an educational campaign, and increased traffic enforcement in the city.

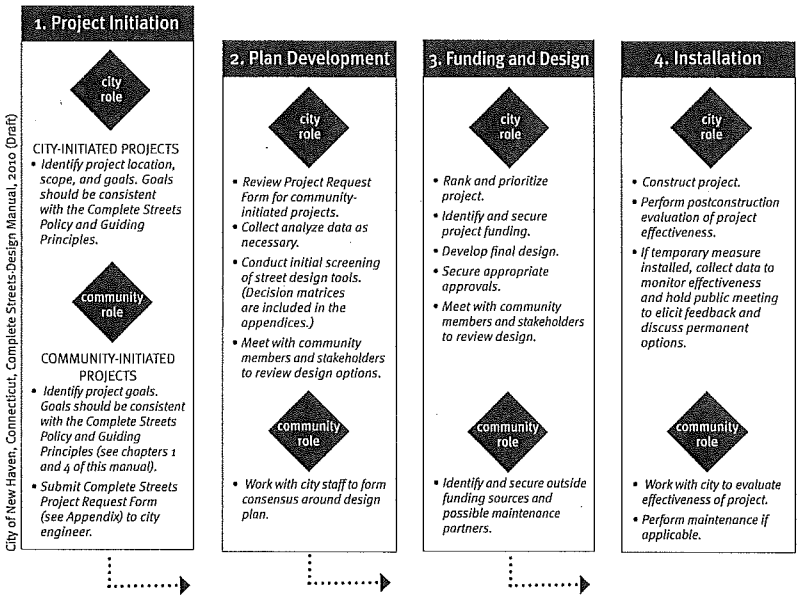
The New Haven policy was guided by the following mission: "To develop and promote a safe, context-sensitive transportation network that serves all users and integrates the planning and design of complete streets that foster a livable, sustainable and economically vibrant community." One might ask how policy leads to practice. In the case of New Haven, a city ordinance mandated the application of the policy, through adherence to principles of the Complete Streets Design Manual, to any new or improvement project affecting the public streets and sidewalks (including resurfacing, restoring, and rehabilitation projects).

Once a municipality has a clear policy on complete streets, and an approved process for delivering these projects, it then has an opportunity to engage the private development community on the value of site design that supports and enhances the improvements to the public ROW. Creating a strong set of design guidelines can be an effective mechanism for engaging a developer early in the project development cycle to establish a set of expectations for how the project will interface with the public realm.

WHO IS RESPONSIBLE FOR COMPLETING THE STREETS?

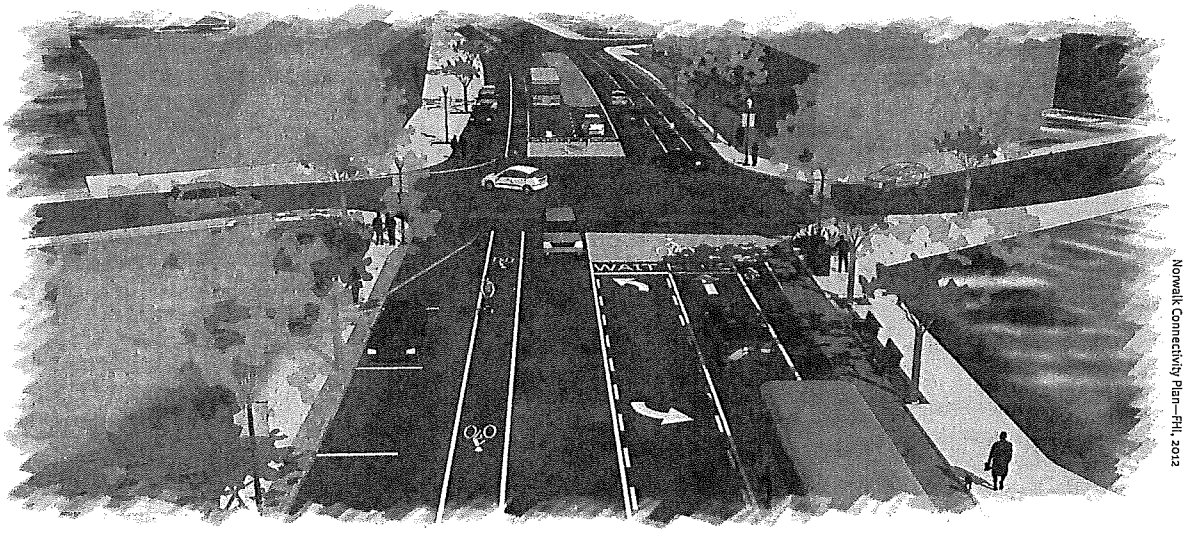
Under the status quo, state, regional, and local governments are fundamentally responsible for public ways. Street construction and maintenance are considered part of the suite of services a municipality provides for its residents. Nonetheless, state enabling acts for zoning generally authorize local governments to require streets, sidewalks, and bicycle facilities along with other essential services to occupants within or internal to a proposed development. As many as 26 states also authorize local governments to employ exactions or impact fees to pay for traffic impacts to existing, abutting public roadways. In addition, many states authorize zoning commissions to accept a fee in lieu of parking, which monies can be used to enhance transit services. At a minimum, through zoning, property owners can be held responsible for safe ingress and egress to a site. This has been interpreted to include improvements to abutting streets with requirements for traffic impact mitigation in the form of turning lanes, signals, and medians, but only when the development is expected to generate significant traffic.

Zoning requirements can also include street elements, such as lighting, stretches of sidewalk, and crosswalks at the property line to serve public-safety objectives for pedestrians and bicyclists. At the same time, in the absence of measurable adverse effects to traffic on the adjacent roadway system, there are limited options for requiring a developer



Steps in the complete street design process.

to improve the public way for broader goals of mobility, connectivity, and accessibility. The exception to this is for comprehensive master planned developments where the developer proposes a system of streets internal to the development as part of the site concept as a whole and will ultimately be dedicating those to the community as public streets. These types of developments commonly take the form of a planned unit development (PUD), TND, TOD, or occur within a form-based regulating plan area. In these cases, zoning language regulates street design within the confines of the development area and may require that design facilitate connections to transportation networks off-site. The challenge with such design provisions is to effectively achieve synergies between the internal circulation elements within that defined area and a system of complete streets on the connected and surrounding public roadway system. Private development does have an impact, not only on traffic volumes on public streets but on access to the full range of modes by which people travel. If zoning is intended to manage private development in pursuit of implementing community-wide goals, including those for complete streets, then those elements should be part of any regulations package.



Norwalk Connectivity Plan—FHI, 2012

Visualizing a complete street for downtown Norwalk, Connecticut.

INCORPORATING CS PROVISIONS INTO DEVELOPMENT REGULATIONS

Just as a community's comprehensive plan establishes a legal standing for zoning, provisions for completing the streets are most sound when associated with a documented community-wide complete streets policy encompassing all public ways. Any language requiring complete streets elements in zoning or subdivision regulations should be cross-referenced with a broader transportation policy. Where a community adopts not only a CS policy but a well-detailed design-guidance manual, then that can serve as a basis for comparable design language in the regulations.

In New Haven, along with the adoption of the city's CS complete streets policy and design manual into the code of ordinances, the zoning regulations were updated to include more comprehensive requirements for bicycle and pedestrian access internal to a development. Similarly, Charlotte, North Carolina, adopted an Urban Street Design Guidelines Policy Summary in 2007. The city subsequently added a subdivision ordinance amendment requiring all new streets in proposed subdivisions to meet those urban street design guidelines and adopted zoning language to require connectivity as part of its six distinct TOD overlay zones. The TOD regulations have the following guiding statement of intent: "Transit oriented development uses shall be integrated with the surrounding community, easily accessible, and have a good internal circulation system for a variety of travel modes." This statement of intent is followed by specific standards addressing the location and design of sidewalks, streetscapes, bicycle parking, urban open spaces, access/entrances, and consistency with station-area plans as well as other site features (§9.1201–1213).

It is worth noting that communities can take two overall approaches to incorporating CS principles into development regulations: as guidelines and as requirements. Each approach has its place. While requiring features such as sidewalks and bicycle parking guarantees inclusion on a site plan, the drawback is that requirements tend to be rigid and need qualification. Conversely, street elements phrased as guidelines can leave their application open to interpretation, and it may be more challenging for a planning or zoning commission to get what they deem best for a site. In both cases, carefully drawn graphics depicting the desired design are extremely beneficial to making the regulations' intent clear.

Complete streets, by their very nature, are context sensitive. For example, it is not uncommon for an urban site within a TOD district to be essentially landlocked, with limited connectivity to existing public streets and where design flexibility for the interface with that street is desirable. Flexibility in design, written as guidelines as opposed to requirements, gives the zoning commission and developer room to negotiate the most effective means to ensure access by many modes in the specific context of the site.

CRAFTING REGULATORY AMENDMENTS FOR COMPLETE STREETS: TWO METHODS

There are many communities that have adopted zoning and subdivision provisions requiring individual CS elements such as sidewalks and bicycle parking as part of design for new developments. Many have also taken a fresh look at their parking regulations as a means to consider better accommodations for pedestrians and bicyclists. Consequently, communities commonly have incorporated language regarding mobility

and access either within the section on parking and loading, as an aspect of parking facility design, or in a subsection focused on design for internal circulation and streetscape character within a special district, such as a TOD zone. Few communities, however, have expressly tied those requirements to a community-wide CS policy or to connectivity goals for the transportation system as a whole. The Charlotte ordinances provide one example linking a municipal CS policy with subdivision site design as well as special district design. For a comprehensive approach to incorporating CS directives into zoning, two complementary methods should be considered: (1) CS-supportive provisions in special district regulations and (2) CS-supportive provisions in citywide design standards. Both should be linked to a communitywide CS policy.

For specialized zones, including TOD, TND, PUDs and form-based districts, design guidance in the regulations is intended to create a specific type of place with a defined character, where travel by auto is intended to be balanced with other transportation modes. The table above provides a sampling of special zone types and how street design requirements have been used to promote complete streets.

Alternately, communities may elect to create a stand-alone section on CS design within an article or chapter of design standards or so-called "supplemental regulations." Although few communities have done this, the compendium *21st Century Land Development Code* offers a comprehensive model zoning subsection (Section 5.23) on street design standards and transportation (bicycle parking standards are included in a separate section on parking).

As noted with the examples above, some municipalities go beyond roadway classification to categorize streets into broader "typologies" that account for nonmotorized road users (pedestrians, bicyclists, and transit) as well as land-use context and environmental factors. These typologies can be part of a separate design manual (as was done for Austin) or codified in the zoning regulations (as was done in Sarasota County). In either case, the typologies lay the foundation for considering which CS design elements are desirable in each context. New York City's *Street Design Manual* includes the following common street typologies:

- General Streets are the most prevalent street design and can be tailored to serve both local and through street contexts. This design frequently emphasizes motor vehicle access and movement, but the street may also include dedicated facilities for other users, such as pedestrians and bicyclists.
- Boulevards are wide streets with multiple roadways and medians and an emphasis on greening and design quality. The medians sometimes include pedestrian and bicycle paths.
- Slow Streets are local streets that make extensive use of traffic calming measures to discourage vehicular through traffic, reduce vehicle speeds, green and beautify the streetscape, and create a comfortable environment for bicycling and walking.
- Pedestrian Streets usually involve the full-time restriction of vehicle access to a street, though delivery access may be allowed in off-hours. Bicyclists can either be allowed to ride through or be required to dismount and walk.
- A Transit Street exists for exclusive or near-exclusive surface transit (bus) use, or where transit operations are given priority.

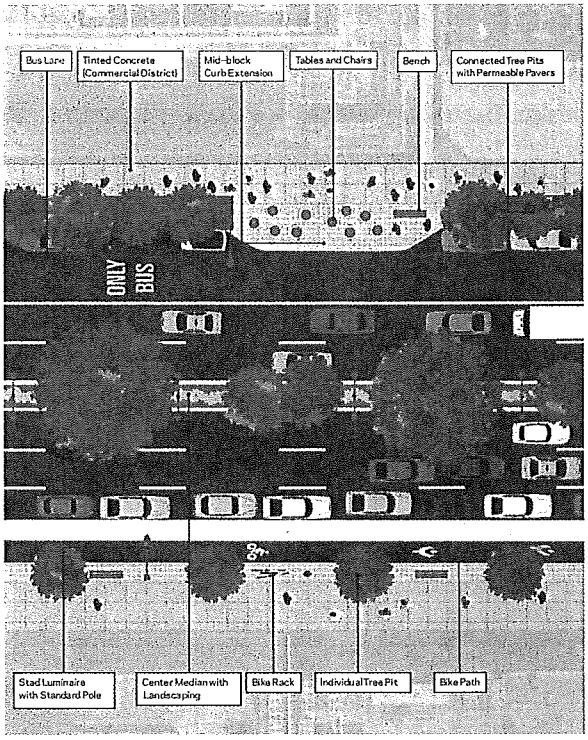
Even the best conceived CS designs are hampered if land development doesn't do its part. The *Model Design Manual for Living Streets*, published in 2011 by Los Angeles County, includes the following land-development design principles to facilitate the successful application of complete streets:

- The distribution of land uses should be designed to allow everyday destinations (e.g., schools, parks, and retail shops) to be located within a comfortable walking distance of most residences.
- All buildings should contribute to the character of the streetscape, face the street with attractive entrances that welcome pedestrians, and have windows that overlook the street to create a sense of security.
- The setback between buildings and the sidewalk should be designed to enhance the pedestrian experience, whether setbacks are attractive landscaped yards that provide privacy for building occupants or shop fronts at the sidewalk that display merchandise to passing pedestrians. In no cases should cars, parked or moving, be placed between the sidewalk and the buildings.
- Off-street parking and service access and their driveways should be designed to disrupt the pedestrian experience as little as possible.
- The mix and intensity of land uses should be designed to support and be supported by efficient transit systems whenever possible.

JURISDICTION	DISTRICT TYPE	STREET DESIGN PROVISIONS OVERVIEW
Seattle	Pedestrian overlay	Section 23.34.086 of Seattle's Land Use Code provides for a 'P' designation as an overlay to a number of commercial zones with the intent to "preserve or encourage an intensely retail and pedestrian-oriented shopping district where non-auto modes of transportation to and within the district are strongly favored." Design criteria include the use of building setback areas for sidewalks, lighting, and other pedestrian safety features.
Austin, Texas	TND	Chapter 25-3 of Austin's Land Development includes standards for TND. The regulations refer to the Traditional Neighborhood District Criteria Manual for guidance on innovative street design. This manual includes six street types with associated sketches of preferred design as well as separate specifications for pedestrian paths.
Aurora, Colorado	TOD	Section 146-728 of Aurora's zoning code addresses TOD District development standards, including those for pedestrian-friendly streets. It refers to the urban street standards in Section 126-36-5 of the city's code, which specifies street design standards, including layout, according to street typology.
Sarasota County, Florida	Form-based code	Sarasota County's Village, Hamlet and Settlement Area regulations include 14 acceptable street typologies, with three-dimensional sketches of acceptable street cross-sections and specified widths for sidewalks, planting strips, parking, and travel lanes (§11.2.8).

INCENTIVES FOR COMPLETING THE STREETS

Any discussion of zoning must include not only how to require developers to provide desired site design and function, but how to encourage them to do so. In an ideal world, the most successful developments are, from a community-form perspective, always those where a



Street Design Manual, New York City Department of Transportation, 2009

⊖ The graphic-rich New York City *Street Design Manual* shows potential appropriate complete streets elements by street typology.

mutually beneficial site design is achieved as a public-private partnership between the developer and the zoning authority. There are several ways a developer can be encouraged to contribute to completing the streets including

- expedited permitting processes;
- easing of other requirements—such as parking reductions if elements to complete adjacent streets are constructed;
- tax abatement for construction of improvements; and
- public-private partnerships for maintaining CS elements once constructed.

Finally, as with any addition to a set of zoning regulations, new language for completing the streets must be correlated, reconciled, and cross-referenced to other design requirements. For example, parking provisions that allow for shared parking within walking distance of a use should be cross-referenced with design guidelines for sidewalks to note that sidewalks should be located and designed with connectivity in mind to facilitate use of off-site spaces.

CONCLUDING THOUGHTS

Beyond ensuring that developers provide CS elements within a site, zoning authorities can also both require and encourage sites to be designed to integrate well with a network of public complete streets. While there are limited examples out there today of communities that have done this through their development regulations, it is a worthwhile objective that, hopefully, will be pursued more in the future. The goal is not only connectivity and multimodal access both within and among developments, but to create lasting partnerships between the private development community and local governments for providing complete public streets.

As with all zoning provisions, the impacts of CS standards will be most apparent in the long term. That is, the pace of private development is uneven and as such, only contributes to the evolution of community character, including the street network, over the course of many years. Furthermore, zoning regulations are just one of a range of tools that communities can use to achieve their mobility goals. Yet, as a community evolves, over time the contributions of private land development to the overall public realm, including complete streets, do add up incrementally and can become a substantive factor in enhancing mobility and access. The ultimate challenge is to take a truly context-sensitive look at each place where complete streets would be applied, identify the role that public agencies and private developers can and should play, and then craft CS policies accompanied by a practical program, including targeted zoning provisions, to see them implemented.

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DO YOUR DEVELOPMENT REGULATIONS PROMOTE COMPLETE STREETS?

2

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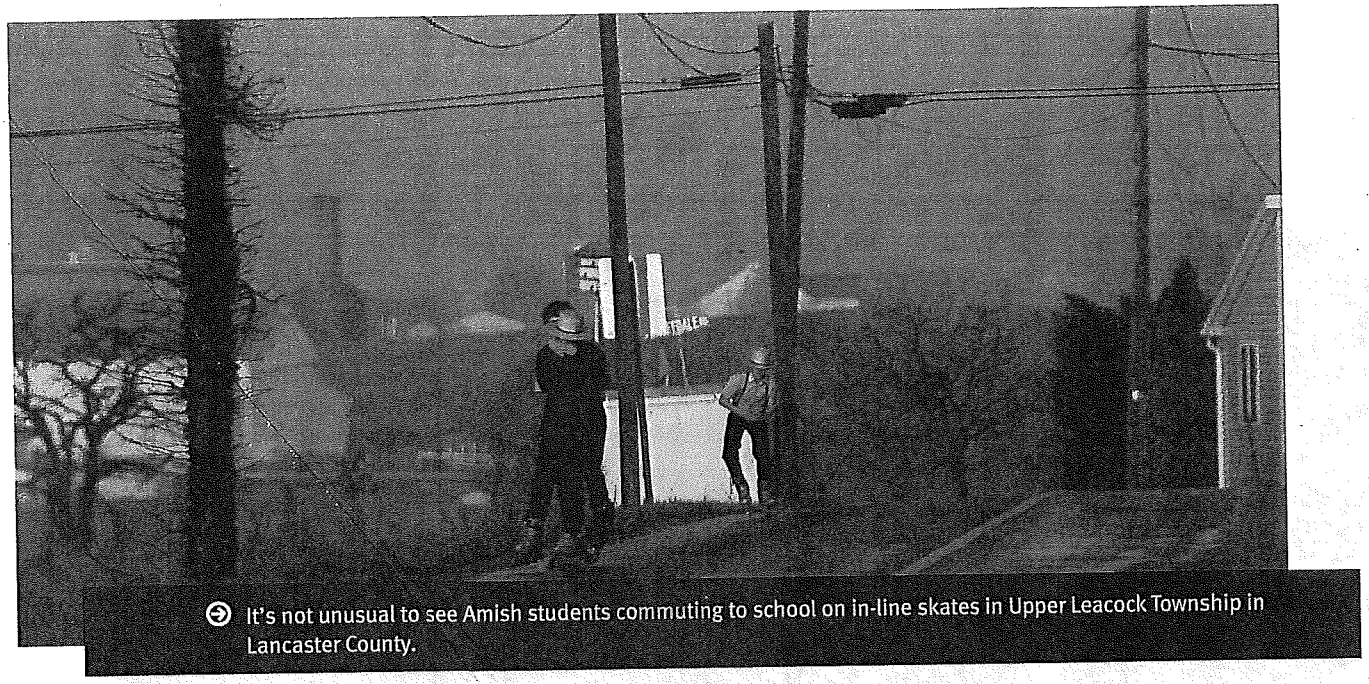
PRACTICE RURAL PROTECTION

Planning Outside the Growth Boundary

By Dean S. Severson, AICP

What is a rural area, and how do you know when you get there? Planners have attempted to define and label rural in a number of ways.

All photos courtesy Lancaster County Planning Commission



It's not unusual to see Amish students commuting to school on in-line skates in Upper Leacock Township in Lancaster County.

One of the most common is to indirectly define these areas as "not urban." Implicit in this indirect definition is that rural areas are those places beyond the suburbs that we haven't subjected to close scrutiny. These areas have been called the urban fringe, exurbia, or even the hinterlands.

Lancaster County, Pennsylvania, has adopted a strategy intended to define the rural character of the county and to sustain and connect the rural community, resources, and economy. The rural strategy is based on three basic principles: minimize the amount of new residential development and employment growth and direct appropriate forms of development to existing rural centers; maintain the viability of the traditional rural economy; and protect rural resources.

The key to this strategy is the creation of designated rural areas, which are equivalent to and complement the county's designated growth areas where future growth is to be directed and managed.

The following sections will detail the policies and implementing actions Lancaster County has adopted, as well as provide examples from around the country of other places that have also adopted a more fine-grained approach to rural planning.

RURAL AREA PLANNING IN LANCASTER COUNTY, PENNSYLVANIA

Lancaster County has long been a leader in agricultural production. The value of agricultural products produced in the county is the highest among all nonirrigated counties in the United States, and its total output would place it among the top 15 states in many agricultural categories. This productivity, combined with the county's large population of Amish and other Plain Sect communities, creates an instantly identifiable image of Lancaster County.

What's not so readily apparent to county visitors is the more intricate, varied, and interconnected rural landscape supporting these agricultural activities. There are numerous unincorporated small towns, some dating back to the Revolutionary War, that were initially laid out as railroad stops, mill locations, or markets for the surrounding farms. The county also has exceptional resource areas, admittedly greatly reduced over the last three centuries, reflecting the original Penn's Woods. Postwar residential subdivisions and rural economic centers dot the landscape as well.

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About the Author
Dean S. Severson, AICP, is a principal agricultural and rural planning analyst for the Lancaster County (Pennsylvania) Planning Commission. He has spoken at APA national and chapter conferences on a variety of rural planning issues. Severson is also a member of APA's Small Town and Rural Planning division. He holds a bachelor's degree in agricultural economics and master's degree in urban and regional planning, both from the University of Wisconsin at Madison.

It is in this context that the Lancaster County Planning Commission (LCPC) created its Rural Strategy in an update to its comprehensive plan in 2006. The goals of the Rural Strategy are to protect natural and agricultural resources, focus growth in rural centers, and support the rural economy.

The county was among the first in Pennsylvania to adopt a growth management strategy in the early 1990s focusing on the adoption of urban growth boundaries (UGBs) centered on the City of Lancaster, the incorporated boroughs, and suburbanizing portions of incorporated townships. These early growth management efforts did not focus on areas outside of the UGBs.

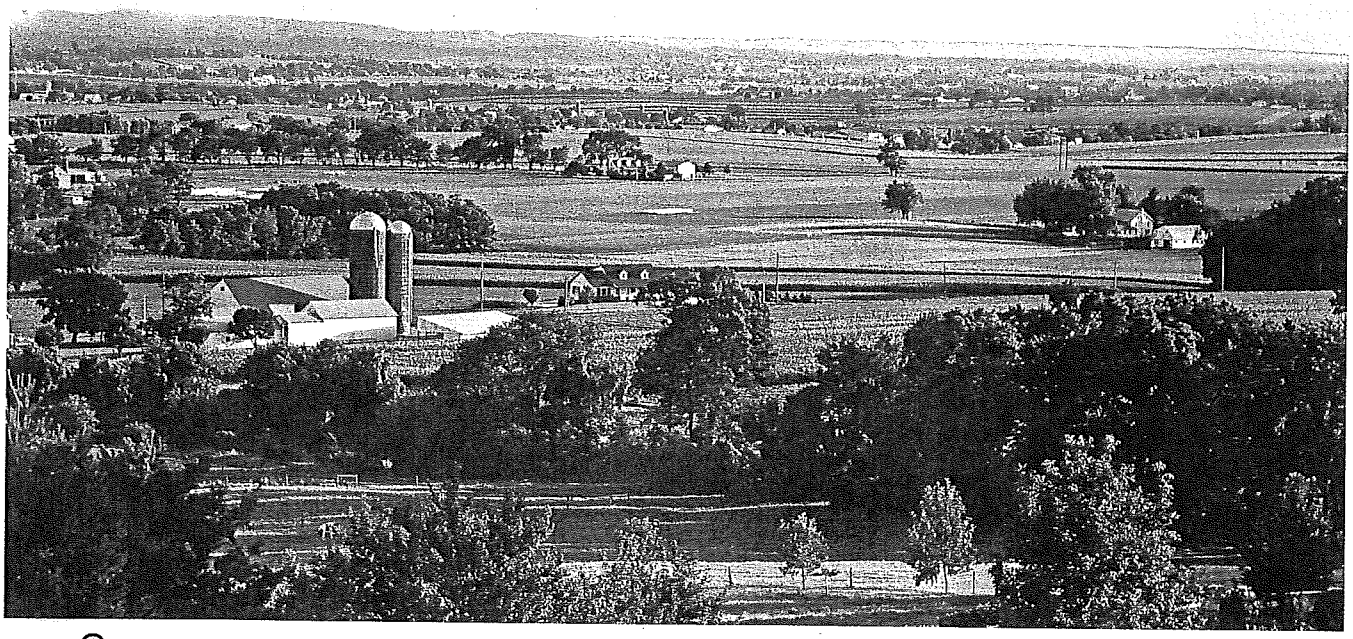
The updated comprehensive plan recognizes the need to look closer at the other side of the land-use coin and calls for the creation of both Designated Growth Areas (DGAs) and Designated Rural Areas (DRAs). DGAs are the successors to the UGBs, but DRAs are a new concept that formally recognizes rural areas as worthy of planning attention. These new designations are intended to address a concern often expressed by the public that planners only look at rural areas, and particularly farmlands, as holding areas for future expansions of the DGAs. Designating an area of a municipality for long-term rural use, whether agricultural, resource, or rural center, connotes a sense of permanence in both policies and actions.

DESIGNATED RURAL AREAS

In order to implement the vision for the county's rural areas, the LCPC has established a three-step planning process for each component of the DRA—agriculture, natural lands, and rural centers—to be implemented by the municipal planning partners. In Pennsylvania, local municipalities are enabled to adopt their own land-use regulations, and all 60 of the county's municipalities have adopted a local zoning ordinance, while 41 have adopted a municipal subdivision and land-development ordinance.

AGRICULTURAL AREAS

The first step is to identify agricultural resources with GIS mapping. Because much of

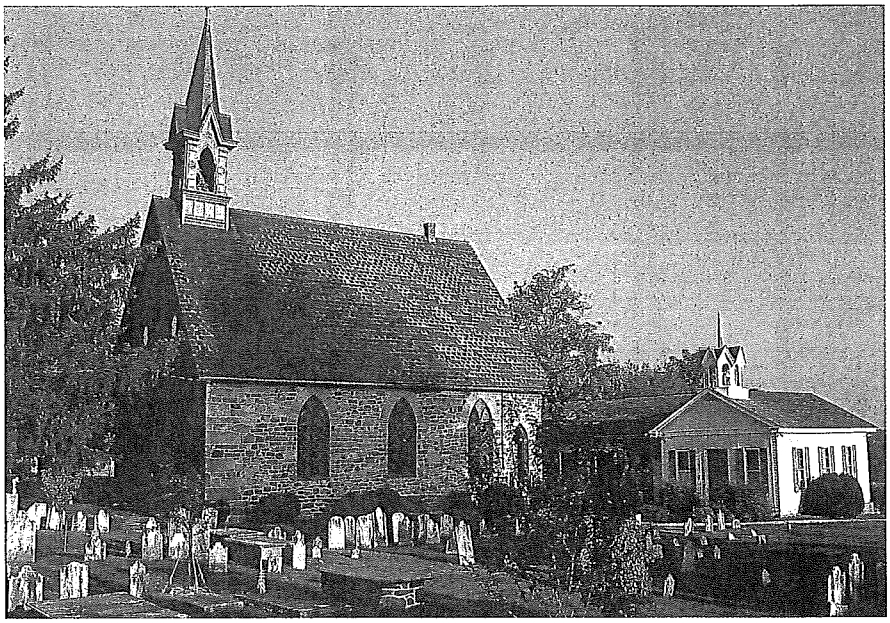


Approximately 75 percent of Lancaster County has soil classified as prime farmland or farmland of statewide importance.

Lancaster County contains prime agricultural soils, this cannot be the sole determining factor for an Agricultural Area designation. Other factors considered during the analysis include the size of farms in the study area and whether or not these farms are included in a block of currently farmed parcels, permanently preserved for agricultural use through conservation easements, or included in the locally designated Agricultural Security Area.

Lancaster County's Agricultural Preserve Board and the private, nonprofit Lancaster Farmland Trust have jointly permanently preserved over 90,000 acres of farmland, often in large contiguous blocks. These preserved farms have been mapped and form much of the foundation of Agricultural Areas at the municipal level.

Other resources that should be considered are the presence of agricultural support businesses that can be identified through economic census data and local land-use inventories. The goal is to identify an area where the long-term sustainability of agriculture as a thriving economic enterprise can be maintained.



Many rural centers in Lancaster County include historic resources such as the Bangor Episcopal Church in unincorporated Churchtown, listed on National Register of Historic Places in 1978.

Natural Areas

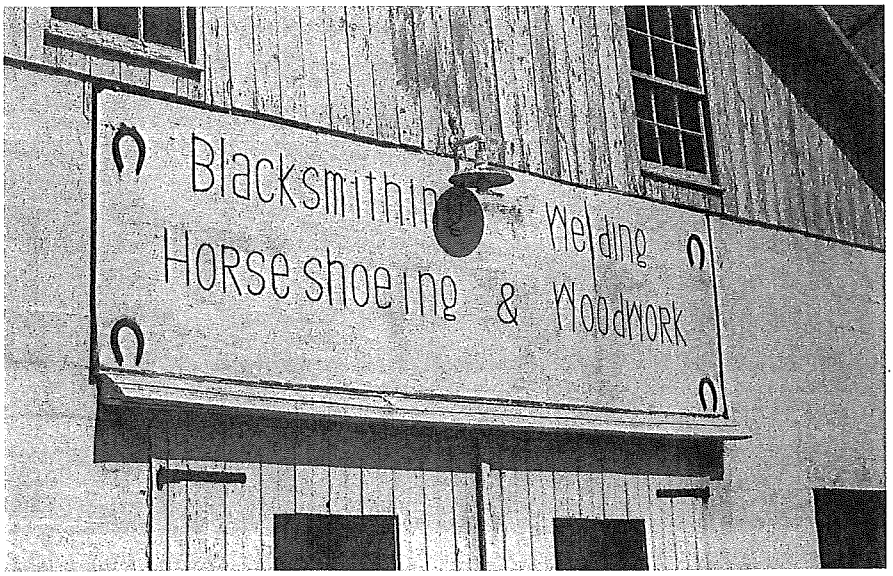
Delineation of Natural Areas at the municipal level in Lancaster County has been greatly assisted by the creation of the county's first green infrastructure plan, Greenscapes. This element of the county's comprehensive plan seeks to establish a network of natural areas, conservation lands, and working landscapes. The Natural Areas component of the DRA, like the Agricultural Areas, looks to identify and protect large blocks of resource lands while accommodating appropriate forms of rural development at appropriate scales.

A vital part of Greenscapes is the Natural Heritage Inventory of Lancaster County completed at the same time. The inventory is based primarily on a "hubs and corridors strategy" identifying the highest priority natural habitats in the county and the greenways that connect them. Greenscapes includes a goal to preserve the most exceptional natural resources in the county, including large forest blocks, high-quality streams and riparian buffers, and unique geologic features, as well as supporting natural features such as wetlands, floodplains, and groundwater and wellhead protection zones.

Rural Centers

Rural Centers are an important part of the heritage and identity of Lancaster County. These are primarily unincorporated small towns, centered around mills, railroad stops, and post offices, which were some of the earliest areas of permanent European development in the county. Many of these communities still exist today.

The county's comprehensive plan identifies four types of Rural Centers. The first are villages, communities with well-defined edges typically consisting of 50 or more dwellings. Villages are usually designated as Village Growth Areas (VGAs) by the local municipality and the county and may be



Many rural centers in Lancaster County also include agricultural-support businesses, such as this blacksmith in unincorporated Churchtown.

suitable for additional development if public sewer service and water supply are available. However, the county's comprehensive plan calls for 85 percent of new dwellings and 66 percent of new employment in the county to be located in the county's Urban Growth Areas (which includes the City of Lancaster and the 19 incorporated boroughs). Therefore, VGAs are only intended to capture a portion of the development that would otherwise occur in rural areas and are not meant to spur new areas of rural residential growth.

Crossroads communities are, like villages, historical in character but smaller than villages and are not usually appropriate for additional growth. The final two types of Rural Centers are rural neighborhoods and rural business areas. Typically, these areas have been developed post-World War II, prior to effective planning and zoning controls. The rural strategy for these areas is generally to acknowledge the development that has occurred and to permit some limited additional development to occur only on undeveloped infill lots. Once again, the intent of these areas is not to attract additional rural residential and business development but to acknowledge their existence and plan for any utility or infrastructure needs.

Designated Rural Area Adoption

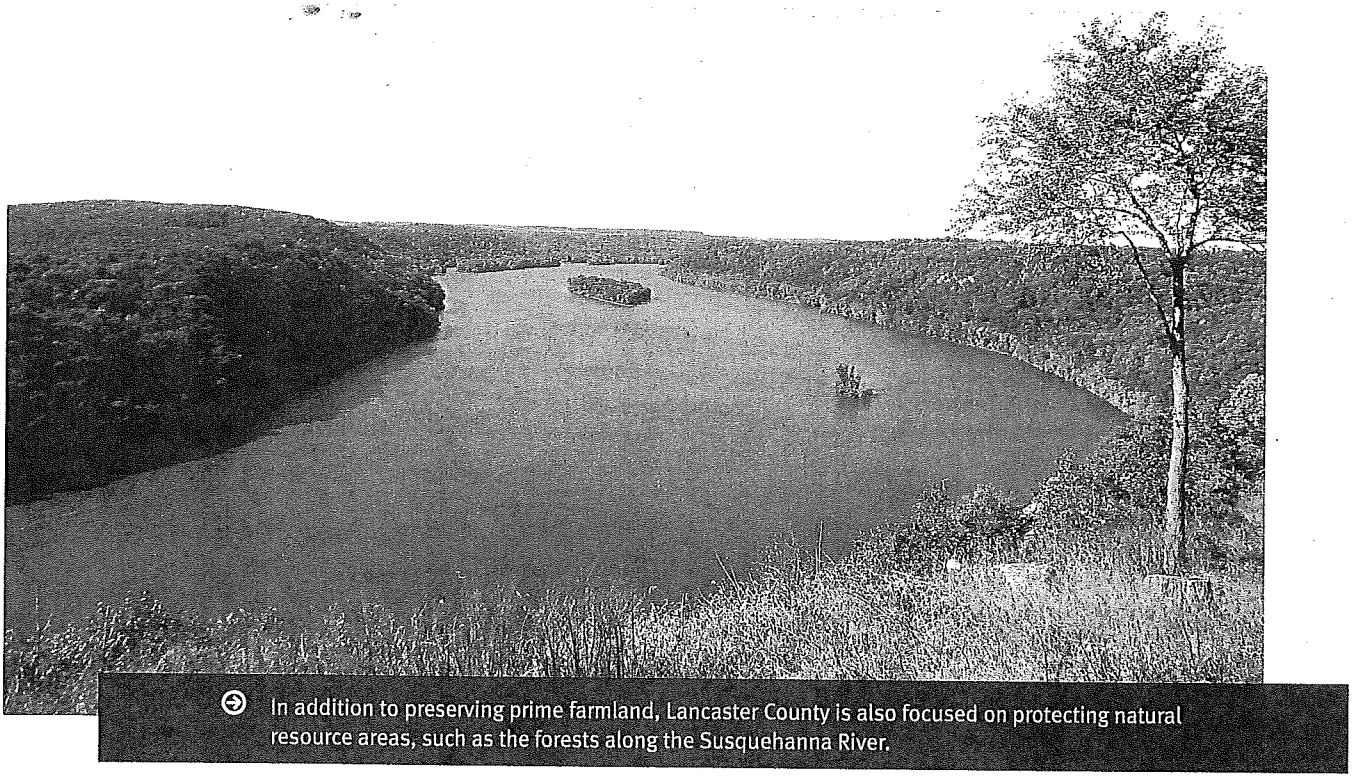
Once a community's rural resources have been identified and delineated, the second step is to formally adopt a DRA. The DRA concept, while similar to a future land-use designation found in all comprehensive plans, is intended to convey a longer-term perspective for rural land use. There is a sense of permanence to the rural resource and historical development patterns that won't be affected with the next update of the comprehensive plan. Ultimately, the intent is to assure citizens that agricultural and natural resources aren't on hold until something better comes along.

However, this doesn't mean that a community can't include areas for future development in their DRA. These areas may lack a concentration of higher-value natural or agricultural resources. They may be located next to an existing DGA and be a logical place if future expansion of the DGA is warranted. Alternatively, lands located next to rural centers may be appropriate to accommodate some of the future residential needs of the DRA. The undesignated area may also be determined to be appropriate for expansion of neighboring farm uses. At present, however, the preferred future use is undetermined.

IMPLEMENTATION OF THE DESIGNATED RURAL AREA

Once the resources in the DRA have been identified, delineated, and adopted by a municipality as part of its comprehensive plan update, the next step is to take action on policies that will sustain and support these resources. The Lancaster County Planning Commission has created a series of implementing tools to provide guidance to municipal planning commissions and governing bodies. These tools have been placed on the commission's website (www.co.lancaster.pa.us/planning) and have also been distributed via CD-ROM to each of our municipal planning commissions with a sampling of model ordinances, comprehensive plan elements, and links to the website.

Two examples of local planning assistance prepared by the LCPC are (1) the Natural Resource Protection Standards and Model Conservation Zoning District and (2) Planning Strategies for Lancaster County's Rural Centers. The protection standards and model zoning district are a direct outgrowth of Greenscapes discussed above. Once a municipality has identified the hubs and corridors of natural resources within its community, the model ordinance provides defin-



In addition to preserving prime farmland, Lancaster County is also focused on protecting natural resource areas, such as the forests along the Susquehanna River.

The overarching goal is to protect Lancaster County's individual resources in addition to entire landscapes through a holistic approach to conservation.

ing criteria, performance standards, and mitigation standards for each of the specific resources. The overarching goal is to protect Lancaster County's individual resources in addition to entire landscapes through a holistic approach to conservation.

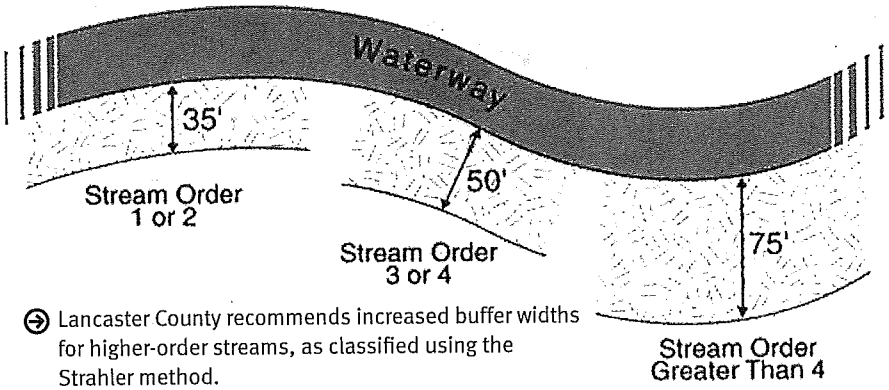
The protection standards and model zoning district go far beyond what is typically included within municipal zoning ordinances, which primarily address federally designated floodplains, wetlands, and areas with steep slopes. The guide also includes recommended protections for forest blocks and interior forests, areas with karst topography, riparian corridors, and unique geologic features.

As an example, the guidelines use the Strahler method to categorize streams. First-order streams are the smallest streams that typically feed into larger streams. First-order streams have no tributaries or branches. When two first-order streams merge, a second-order stream is created. Any stream ordered higher than six is considered a river. Streams ordered one and two together represent the headwaters of the stream. The recommended protected riparian corridor widths are based on the stream order (see illustration). Riparian corridors shall, at a minimum, encompass the entire 100-year floodplain and any wetland areas.

The Rural Centers guide was created to help local communities define, plan for, and better regulate the historical unincorporated communities within their municipal boundaries. One of the unique characteristics of Lancaster County is that, by and large, these rural communities are still recognizable places. Too often in communities across the nation these places have been swallowed up in the ever-expanding creep of highway commercial development.

The first part of the guide helps local communities research why a place came into being and investigate the spatial form of its early development. The second—and perhaps most important—part of the guide assists with a community inventory. Municipal officials and citizens are advised to form teams and walk the streets observing the development pattern. A community inventory cheat sheet is included in the guide for team members to check boxes and write notes while they are walking. The guide also includes an identification guide to illustrate key concepts, such as good and bad examples of on-street parking, a strong and poor gateway presence, and complete or incomplete sidewalk connections. The guide recommends that team members take time to sit down for coffee or lunch immediately following the walking inventory to compare notes. This allows team members a chance to discuss the findings of the walking tour while it is still fresh in their minds.

The final step in the creation of the rural center guide is to take all of the assessment information gathered in the second step and answer some basic questions: Do we want our rural center to grow? If so, should it expand outward or only through infill and redevelopment? Questions for municipalities with older small towns include the following: Do we have the infrastructure to permit additional development? Do we already have existing problems with failing on-lot sewer systems or inadequate well water quantity? Finally, what will the new development look like? For instance, if the original form of the rural center is characterized by one-third- or one-quarter-acre lots with houses built up to the road, the municipality may wish to use architectural form or lot dimensional standards in conjunction with lot size requirements to maintain the distinct character of the town. The municipality should only permit commercial and industrial uses that serve the needs of the surrounding community. Because these rural centers are often located on roads that have evolved into major thoroughfares, the municipality should avoid permitting highway strip nonresidential uses that detract from the local orientation of the rural center. In addition, the municipality needs to coordinate the delineation of the rural center with planning for existing or future infrastructure needs. In many areas of the country, rural centers are characterized by older homes with older, often deficient on-lot sewage disposal systems on lots too small to adequately provide an alternative.



Lancaster County recommends increased buffer widths for higher-order streams, as classified using the Strahler method.

Too often in the past, rural communities have adopted "off the shelf" zoning ordinances and other land-use regulations that were written primarily for post-World War II rural subdivisions. The building setback and density requirements, street widths, and accessory building standards bear little resemblance to the actual communities that were built prior to the adoption of zoning ordinances. Communities have to identify the specific elements of the community they have and ensure they don't get a community they don't want.

OTHER EXAMPLES OF RURAL AREA PLANNING

The state of Washington's Growth Management Act (GMA) has also focused on providing direction for counties in plan-

ning for existing rural areas with more intensive development, such as unincorporated hamlets and villages, shoreline developments, and resorts built or vested prior to the adoption of comprehensive plans prepared under the GMA. Aptly titled Limited Areas of More Intensive Rural Development (LAMIRDs) generally allow a greater amount of rural development than is ordinarily permitted outside of planned growth areas. The GMA states that measures controlling rural development should, among other objectives, be visually compatible with the surrounding rural area, reduce sprawling, low-density development, and protect critical resource areas.

However, many counties in Washington, as elsewhere in the United States, have areas of existing rural residential development and rural nonresidential land uses that play an important role in the local economy. Therefore, the GMA permits LAMIRDs in three separate scenarios. The first is for the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed use areas. The other two instances are for the intensification or expansion of residential, tourism, or nonresidential uses on existing lots. For instance, LAMIRD designation allows rural businesses to expand on existing lots.

King County, Washington, has established a Rural Economic Strategies (RES) program to support rural businesses that are compatible with the rural character of the region. They have created six rural economic clusters and recommended specific strategies to strengthen each cluster's economic base. These clusters are agriculture, forestry, home-based businesses, tourism and recreation, rural towns and neighborhoods, and rural cities. Recommended strategies include reviewing county regulations and procedures governing agriculture-related businesses, exploring options to prepare business plans for farm and forest businesses, and creating a model to promote tours of working farms, heritage sites, and habitat restoration sites.

Scott County, Minnesota, has also faced the question of defining what is rural. Its comprehensive plan identified roughly one-quarter of the county's land base as permanently rural. County planners and the Center for Rural Design at the University of Minnesota then engaged the public in a series of public meetings using visual preference surveys and roundtable discussions to create a more fine-grained description of the elements of a rural landscape. A rural character map was then created to identify four rural character areas: mixed land rural residential, natural land cover residential, lake country residential, and farm country. Finally, these maps were used, along with visual preference surveying, to garner the community's feelings on the appropriate types and patterns of development in each of these rural character areas as well as how planning and design guidelines could be useful in directing development in these areas.

CONCLUDING THOUGHTS

The rural areas of your community should not be viewed simply as "those areas outside of where we plan to grow." Too often in the past planners have principally focused on houses, industry, and civic institutions within adopted growth boundaries and viewed the areas outside the growth line as static, monolithic areas of natural resources and agriculture. Even worse, they looked at these places as merely holding areas until development arrived. The following points should be considered by communities as they plan for their rural areas' community character and economic health:

> Too often, planners have looked at rural areas as merely holding areas until development arrived.

Identify the specific components of your rural areas. What is the form and character of existing villages as well as postwar residential development? Identify all of the small businesses and the associated tax base and employment that exist in your community. Inventory all of the various farm-support businesses in your community. Work with a local university or state geographic information office to map all of the natural resources in your community. Assess the agricultural economy in your community: What is the average size of farms? What are they growing? What is the average age of farmers in your community?

Craft plans and land-use regulations that reflect and recognize the unique development patterns of your rural area. Don't borrow someone else's suburban residential zoning regulations or economic development plan. Engage your citizens in identifying how your community first came about and how it evolved to what it is today. Obviously, a town founded as a mill center in the 1800s is most likely no longer serving that function. However, if it was laid out in a linear pattern parallel to a major stream, future development should reflect this pattern.

Foster existing economic activities that benefit and are compatible with the local community. Washington's LAMIRD provisions illustrate the importance of locally based commerce and industry. In Lancaster County, many of the farm-based businesses operated by the county's Plain Sect Amish and Mennonite farmers provide goods and services used by their Plain neighbors. Examples include blacksmiths, farm equipment manufacturing, and small machine repair.

Cover image: © iStockphoto.com/Michael Gatewood; design concept by Lisa Barton

VOL. 30, NO. 3

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

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

HOW DOES YOUR COMMUNITY MANAGE GROWTH IN RURAL AREAS?

3

Regular Planning Commission **5. 6.**

Meeting Date: 04/04/2013

By: Tim Gladhill, Community Development

Information

Title:

FOR UPDATE ONLY: Receive Report on Monthly Activities

Background:

The attached reports provide an update on development review and land use policy activities completed by City Council, Boards and Commissions, and City Staff. The attached reports provide the most recent updates on development projects within the community.

Notification:

Observations/Alternatives:

Funding Source:

Preparation of the monthly updates are being handled as part of regular Staff duties.

Staff Recommendation:

Action:

For update only. No action requested.

Attachments

March 28, 2013 Update

March 21, 2013 Update

March 14, 2013 Update

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	03/29/2013 10:03 AM

Form Started By: Tim Gladhill Started On: 03/14/2013 10:49 AM

Final Approval Date: 03/29/2013

City of Ramsey Development Update

March 28, 2013

Report Background

The following report is updated weekly.

Seasons of Ramsey [Updated]

Primary Reviewer: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Seasons of Ramsey is a 50 unit rental townhome development located in the Town Center Gardens plat at the northeast intersection of Bunker Lake Boulevard and Town Center Drive (also known as Center Street). The Planning Commission reviewed the Sketch Plan of the Plat on December 6, 2012. The Planning Commission held a Public Hearing on the Preliminary Plat and reviewed the Site Plan on January 31, 2013. The City Council approved the Preliminary Plat, Final Plat, Site Plan, and associated requests of February 12, 2013. The Developer has submitted an Application for Building Permit.

The Developer was able to successfully close on the Property on Tuesday, March 19, 2013. The Developer anticipates to complete the entire project by December 31, 2013. The City is awaiting a request from the contractor to issue the Building Permit. Leasing information is available at www.essenceproperties.com, 320-255-9910, or info@essenceproperties.com. [Updated March 21, 2013]

McDonalds (Sunwood Retail in The COR)

Primary Reviewer: Chris Anderson (canderson@ci.ramsey.mn.us; 763-433-9905)

The Planning Commission reviewed a Request for Site Plan Review for McDonalds on January 3, 2013. The City Council approved the site plan and associated requests on January 22, 2013. The project is now eligible to submit a Building Permit.

The City is awaiting said submittal of the Building Permit, and anticipates said submittal in the coming weeks. [Updated March 14, 2013]

Northgate Performing Arts Center [Updated]

Primary Reviewer: Consulting Planner (Contact: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Planning Commission reviewed a Request for Site Plan Review and Conditional Use Permit for Northgate Performing Arts Center located at 7295 Sunwood Drive NW (northeast intersection of Sunwood Drive and Peridot Street NW on October 4, 2012. The City Council approved the request on October 23, 2012.

The Developer has submitted an Application for Building Permit and anticipates to commence construction at the end of March or early April, 2013. The City Council approved an assignment of the original Development Agreement to Northgate Church, Inc. as well as approve the required surety amount on March 26, 2013. [Updated March 28, 2013]

Super America (Sunwood Retail in The COR)

Primary Reviewer: Chris Anderson (canderson@ci.ramsey.mn.us; 763-433-9905)

The Planning Commission reviewed a Request for Site Plan Review for Super America located in the Sunwood Retail Center of The COR, along the realigned Sunwood Drive on October 4, 2012. The City Council approved the request on October 16, 2012.

The City is awaiting said submittal of the Building Permit. [Updated March 14, 2013]

North Commons (COR THREE)

Primary Reviewer: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Planning Commission reviewed a Request for Minor Plat Review of COR THREE, a seventeen (17) lot single-family development located north of Bunker Lake Boulevard in The COR on June 19, 2012. The City Council approved the request on July 10, 2012.

Preliminary grading and utility work commenced at the end of 2012. The Plat will need to be recorded prior to any Building Permit issuance. [Updated March 14, 2013]

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Primary Reviewer: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

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The project is currently under construction. The Developer anticipates the opening of a leasing office on a temporary basis in the coming weeks. The Developer desires to open a portion of the project (approximately 50 units) in early May, at which time an existing unit will take the place as the leasing office until the actual leasing/management office is complete. For more information, visit www.corapts.com or call 763-208-5931. [Updated March 14, 2013]

Stoney River [Updated]

Primary Reviewer: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Planning Commission reviewed the request for Site Plan Review of Stoney River, a 72 unit assisted living and memory care development at the northwest intersection of Nowthen Boulevard and Saint Francis Boulevard in August, 2011. The site is adjacent to the Lord of Life Lutheran Church Campus. The City Council approved the request in August, 2011.

The City has reviewed the Building Permit, and is awaiting final revisions as requested. According to Anoka County Property Records, the site is now owned by First Phoenix Ramsey, LLC. The Developer has stated they anticipate to close on the financing package sometime on in mid-April and has now agreed to submit the required financial surety in the form of the City's standard Letter of Credit [Updated March 28, 2013]

Mary T, Inc. Housing [Updated]

Primary Reviewer: Consulting Planner (Contact: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The City has requested Planning Commission review of a concept plan for housing for disabled veterans on a parcel located within The COR.

The Planning Commission held a work shop to receive a presentation from Mary T., Inc. on Thursday, March 14, 2013. The Developer must now submit the required land use applications. Staff anticipates said applications in the spring of 2013. The Developer has stated they desire to start construction in 2013. [Updated March 21, 2013]

Housing Assistance Policy

Primary Contact: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The City Council has directed Staff to complete a Housing Assistance Policy. The intent of the policy is to provide a framework for which to review requests for housing assistance and provide a mechanism to review proposals for compatibility with the City's housing goals.

The Policy was forwarded to the Planning Commission for development. A proposed work plan will be presented to the Planning Commission at their Regular Meeting on Thursday, April 4, 2013. [Updated March 28, 2013]

Detailed Report Information

For more information regarding the project listed above, please contact the Tim Gladhill at 763-576-4308 or visit www.cityoframsey.com/planning-division.

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Tim Gladhill, Development Services Manager

City of Ramsey Development Update

March 21, 2013

Report Background

The following report is update weekly.

Seasons of Ramsey [Updated]

Primary Reviewer: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

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The Developer was able to successfully close on the Property on Tuesday, March 19, 2013. The Developer anticipates to begin construction the week of March 25, 2013 and complete the entire project by December 31, 2013. Leasing information is available at www.essenceproperties.com, 320-255-9910, or info@essenceproperties.com [Updated March 21, 2013]

Indoor Shooting Range Proposal [Updated]

Primary Reviewer: Chris Anderson (canderson@ci.ramsey.mn.us; 763-433-9905)

The Planning Commission reviewed a proposal and received a presentation for a potential indoor shooting range at 6001 167th Avenue NW (former grocery store). The Planning Commission provided feedback to the potential owner and instructed the potential owner to submit an Application for Zoning Amendment.

The City has been informed that the indoor shooting range proposal will not be moving forward on this site. The City was informed in person, verbally by Mr. Joe Haag representing Community Pride Bank. It is anticipated that a discussion topic will be added to the Planning Commission Agenda for April 4, 2012 and Economic Development Authority for April 11, 2013. [Updated March 21, 2013]

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The Developer has submitted an Application for Building Permit and anticipates to commence construction at the end of March or early April, 2013. The City Council will need to approve an assignment of the original Development Agreement to Northgate Church, Inc. as well as approve the required surety amount. This request is scheduled to be considered by the City Council on March 26. [Updated March 21, 2013]

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The City has reviewed the Building Permit, and is awaiting final revisions as requested. According to Anoka County Property Records, the site is now owned by First Phoenix Ramsey, LLC. The Developer has stated they anticipate to close on the financing package sometime on April 1, 2013. Staff is reviewing Letter of Credit requirements with the Developer, per the Developer's request. [Updated March 14, 2013]

Mary T, Inc. Housing [Updated]

Primary Reviewer: Consulting Planner (Contact: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The City has requested Planning Commission review of a concept plan for housing for disabled veterans on a parcel located within The COR.

The Planning Commission held a work shop to receive a presentation from Mary T., Inc. on Thursday, March 14, 2013. The Developer must now submit the required land use applications. Staff anticipates said applications in the spring of 2013. The Developer has stated they desire to start construction in 2013. [Updated March 21, 2013]

MWF Workforce Housing [New]

Primary Reviewer: Consulting Planner (Contact: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The City has received a request to review a concept plan and potential local contribution for a 47-unit apartment development located within The COR. The local contribution is related to the Developer's potential application to the Minnesota Housing Finance Agency (MHFA) for Housing Tax Credits. More information on the Housing Tax Credit can be found at www.mnhousing.gov/housing/tax-credits.

The City Council is scheduled to review the concept plan and request for Local Contribution on Tuesday, March 26, 2012. At this time, this is for discussion purposes only, as a funding source has not yet been identified. Following that review, the Developer will decide whether or not to proceed forward with a formal request. [Updated March 21, 2013]

Detailed Report Information

For more information regarding the project listed above, please contact the Tim Gladhill at 763-576-4308 or visit www.cityoframsey.com/planning-division.

Tim Gladhill, Development Services Manager

City of Ramsey Development Update

March 14, 2013

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A closing was originally scheduled for Wednesday, March 13. However, due to a change in contractors, the closing has been re-scheduled to either Friday, March 15 or Monday, March 18. The Developer anticipates to begin construction immediately thereafter. [Updated March 14, 2013]

Indoor Shooting Range Proposal

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The City has not received an Application for Zoning Amendment to date. [Updated March 14, 2013]

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Mary T, Inc. Housing

The City has requested Planning Commission review of a concept plan for housing for disabled veterans on a parcel located within The COR. A Planning Commission Workshop has been scheduled for Thursday, March 14th to receive a presentation from Mary T., Inc. and PSD, LLC. [Updated March 14, 2013]

Detailed Report Information

For more information regarding the project listed above, please contact the Ramsey Planning Division at 763-433-9824 or visit www.cityoframsey.com/planning-division.

Tim Gladhill

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Tim Gladhill, Development Services Manager