

City of Ramsey
Agenda
Regular Planning Commission
Thursday May 2, 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 April 4, 2013
- 5. Public Hearing/Commission Business**
 1. PUBLIC HEARING: Request for an Extension of Existing Interim Use Permit for Grading and Mining Activities on Outlots A & B Elmcrest Sanctuary; Case of Oakwood Land Development Inc.
 2. PUBLIC HEARING: Consider Amendments to the Tree Preservation Ordinance
 3. Request for Site Plan Approval for an Expansion of an Outdoor Patio and Covered Bar at 6415 Highway 10 NW; case of Willy McCoys
 4. FOR DISCUSSION ONLY: Receive Update on Former Municipal Center Land Use Open House
 5. FOR UPDATE ONLY: Receive Report on Monthly Activities
 6. Zoning Bulletins
- 6. Commission/Staff Input**
- 7. Adjournment**

Regular Planning Commission

4. 1.

Meeting Date: 05/02/2013

By: JoAnn Shaw, Community Development

Information

Title:

Approve the Following Planning Commission Meeting Minutes:

Planning Commission Meeting Minutes Dated April 4, 1013

Background:

n/a

Notification:

Observations/Alternatives:

Funding Source:

Staff Recommendation:

Action:

Attachments

04.04.13 Planning Commission Minutes

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	04/26/2013 10:01 AM
Form Started By: JoAnn Shaw		Started On: 04/26/2013 09:36 AM

Final Approval Date: 04/26/2013

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

The Ramsey Planning Commission conducted a regular meeting on Thursday, April 4, 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 7:03 p.m.)
 Commissioner Joseph Field
 Commissioner Matthew Maul
 Commissioner Cindy Nossen
 Commissioner Gary VanScoy

Members Absent: None

Also Present: Development Services Manager Timothy Gladhill
 Assistant Planner/Environmental Coordinator Chris Anderson

1. CALL TO ORDER

Chairperson Levine called the regular meeting to order at 7:01 p.m.

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

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

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, VanScoy, Field, Maul, and Nossen. Voting No: None. Absent: Commissioner Brauer.

4. APPROVE PLANNING COMMISSION MINUTES

4.01: Approve the Following Planning Commission Minutes:

4.01.1: Planning Commission Meeting Minutes Dated January 3, 2013

4.01.2: Planning Commission Special Meeting Minutes Dated January 31, 2013

4.01.3: Planning Commission Work Session Minutes Dated March 14, 2013

Motion by Commissioner VanScoy, seconded by Chairperson Levine, to approve the following minutes as presented: Planning Commission Meeting Minutes dated January 3, 2013, January 31, 2013, and March 14, 2013.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners VanScoy, Bauer, Field, Maul, and Nossen. Voting No: None. Absent: Commissioner Brauer.

Commissioner Brauer arrived at 7:03 p.m.

5. PUBLIC HEARINGS/COMMISSION BUSINESS

5.01: Appointment of Chairperson and Vice Chairperson

Presentation

Development Services Manager Gladhill requested the Planning Commission appoint a Chairperson and Vice Chairperson to the Planning Commission for 2013.

Commission Business

Motion by Commissioner Bauer, seconded by Commissioner Brauer, to appoint Gary Levine as Chairperson of the Planning Commission.

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

Motion by Commissioner Bauer, seconded by Commissioner Brauer, to appoint Gary VanScoy as Vice Chairperson of the Planning Commission.

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

5.02: FOR DISCUSSION PURPOSES: Review Status of 167th Retail Node

Presentation

Associate Planner/Environmental Coordinator Anderson updated the Commission on the status of the 167th Retail Node. He explained in January the Commission reviewed several proposals for this site, neither of which fit the site. The first applicant was from Total Defense, a gunsmith/self-defense business that would like to relocate their business with an indoor gun range on the proposed property. The second proposal was from Triangle Recycling currently located in Nowthen. This business collects and recycles clothing.

Associate Planner/Environmental Coordinator Anderson indicated that after the January meeting, the Commission supported the indoor gun range and this information was passed along to the Council. After speaking with the applicant in further detail, they were seeking other options in the City of Ramsey and were no longer interested in the 167th Retail Node.

Associate Planner/Environmental Coordinator Anderson commented the EDA would be discussing this site in detail in an upcoming meeting. He stated tools that could assist with the redevelopment of this site would be discussed, along with the potential of bringing water and sewer to the site.

Commissioner Bauer requested further information on how an overlay district would benefit this site.

Development Services Manager Gladhill explained an overlay district would maintain the underlying zoning district, but would allow for additional uses, or to restrict uses. This could be an interim step to assist with redevelopment.

Commissioner Brauer asked if the EDA has investigated the barrier that has been created due to the fact the parcel did not have City water and sewer.

Development Services Manager Gladhill indicated this would be discussed by the EDA in further detail through the future review of this site. He commented the return on the investment would be investigated, as well as the long term vision for this area.

Commissioner Field was in favor of attracting a retail population to this area of the City.

Commissioner Bauer suggested an interim use be allowed onsite to occupy the building while bringing jobs to the City.

Commissioner Brauer inquired if the developer would support a number of retail uses on the site, or if he was looking for one renter.

Associate Planner/Environmental Coordinator Anderson understood that the property owner would be flexible if a number of retail uses were interested in the site.

Commissioner Field was disappointed the previous Buxton Study's have not provided the City with retail trend information for this retail node. He encouraged the City to hire another vendor for future studies.

Chairperson Levine recommended additional information be brought back to the Commission after this item was discussed by the EDA.

Commission Business

No action was required at this time.

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

Presentation

Development Services Manager Gladhill presented the staff report providing a general background on the zoning and subdivision basics that frame the work completed by the Planning Commission. He stated this item was on the agenda to provide information to the new Commissioner members, as well as for the residents of Ramsey. The vision and values statements of the Commission were reviewed along with the 2013 planning strategy.

Development Services Manager Gladhill provided comment on the City's Comprehensive Plan and its components, while also discussing the future land use map.

Commissioner Brauer was proud of the Ramsey residents for getting involved in the layout of the future land use map.

Development Services Manager Gladhill reported on the importance of the City's Zoning Code noting it was used to guide planning and development. The various land use applications and permit requests that would come before the Planning Commission were reviewed in detail. The 60-day rule was defined. He noted the League of Minnesota Cities website was a great resource, in addition to the City's webpage. He commented the City's Zoning Code and Charter were available on the website.

Chairperson Levine thanked Staff for the detailed report this evening and encouraged the new Commissioners to contact Staff with any comments or questions.

Commission Business

No action was required on this item.

5.04: FOR DISCUSSION ONLY: Review Work Plan and Appoint Ad Hoc Subcommittee to Complete Housing Assistance Policy

Presentation

Development Services Manager Gladhill presented the staff report noting the Council recommended a housing assistance policy be drafted. This policy would then assist Staff when responding to requests for housing assistance. He requested the Planning Commission appoint three members to an ad hoc subcommittee to work with Staff on this policy further.

Chairperson Levine questioned the length of time this subcommittee would need to serve.

Development Services Manager Gladhill anticipated the work of the subcommittee could be completed in the next two or three months.

Commissioners Bauer, Field, and Maul agreed to serve on the Ad Hoc Subcommittee to assist in completing the housing assistance policy.

5.05: Zoning Bulletins

Zoning Bulletins were noted.

5.06: UPDATE ONLY: Receive Report on Monthly Activities

The Staff Update was noted.

6. COMMISSION / STAFF INPUT

There was nothing additional to report.

7. ADJOURNMENT

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

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

The regular meeting of the Planning Commission adjourned at 8:14 p.m.

Respectfully submitted,

Tim Gladhill
Development Services Manager

ATTEST:

JoAnn Shaw
Planning Division Secretary

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

Regular Planning Commission

5. 1.

Meeting Date: 05/02/2013

By: Chris Anderson, Community
Development

Information

Title:

PUBLIC HEARING: Request for an Extension of Existing Interim Use Permit for Grading and Mining Activities on Outlots A & B Elmcrest Sanctuary; Case of Oakwood Land Development Inc.

Background:

In July of 2012, Oakwood Land Development Inc. (Applicant) was granted an Interim Use Permit (IUP) for grading and mining activities on Outlots A & B, Elmcrest Sanctuary (original case attached). The IUP allowed the Applicant to export approximately 60,000 cubic yards of soil from the site to create/expand a wetland for the purposes of a wetland mitigation bank. At the time of approval of the IUP, the Applicant was still working through the permitting process with the Lower Rum River Water Management Organization (LRRWMO) and thus, the IUP was structured to expire on August 1, 2013 or six (6) months following approval by the LRRWMO, but not to exceed beyond December 31, 2013. At the public hearing in 2012, the Applicant was confident that that would provide sufficient time to complete the project.

In September of 2012, the Applicant received permit approval from the LRRWMO. However, the Applicant still needed to find a qualified contractor as well as an end market for the exported soil. That process extended beyond what had originally been anticipated, which has caused some delay in the commencement of the project and thus, the prompted this request for an extension.

Notification:

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

Observations/Alternatives:

The Applicant has now found a contractor, Forest Lake Contracting, which is not only capable of completing the project but has also agreed to be responsible for finding a 'home' for the exported soil. While it's possible that the work may still be completed in 2013, the contractor requested their contract with the Applicant to allow up to two (2) construction seasons to finalize the project, mainly to ensure time to find a home for the exported material. Thus, the Applicant has requested an extension of the existing IUP to December 31, 2014.

The Applicant is not requesting any other revisions to the IUP other than the expiration date. Through internal review of the proposal, several concerns were identified. First, the potential damage to Quicksilver Street from hauling 60,000 cubic yards of material from the site. Secondly, the potential nuisance to neighboring residential properties if the excavation and hauling was done in smaller quantities over time (only as material was needed in other jobs). Finally, the potential conflicts between park patrons and trucks hauling material from the site.

Staff is suggesting that a 'pre-excavation' meeting occur on site with the Applicant, the contractor and City Staff to review existing road conditions. The Applicant has agreed to include a term in the permit that states that at the end of the project, any road damage as a result of the hauling shall be repaired so the road is returned to the same/similar condition at the start of the project. In reviewing the 2012 application submittal, the work was to be conducted in one phase with excavation/grading to take about three (3) months. A term has also been added to the permit that reiterates once excavation begins, it shall be completed within six (6) months time. Finally, Staff has communicated the concerns about conflicts between hauling activities and park patrons, especially during certain tournaments. The Applicant has agreed to work with the City in coordinating efforts to minimize these potential

impacts.

Alternative Options

1) Approve the request for an extension of the IUP to December 31, 2014. Per City Code, interim use permits can be approved for up to five (5) years. Should this request be approved, the total duration of the permit would still be less than the five (5) years allowed by City Code. The creation of a wetland mitigation bank within the community will be an asset for potential future private and public development projects (if they have wetland impacts). Considering that the work has yet to begin, Staff is supportive of extending the the expiration date of the IUP to December 31, 2014.

2) Deny the request for an extension and require the work to be completed in compliance with the terms of the existing IUP. Work has not yet begun on site and it may be somewhat weather dependent in terms of when it could commence this spring. There were no written or verbal comments received at the initial public hearing in 2012 opposing this request and Staff is not aware of any major changes in uses in the area that would be adversely affected by the project. Staff does not believe this option to be desirable.

Funding Source:

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

Staff Recommendation:

Staff recommends approving an extension of the Interim Use Permit to December 31, 2014.

Action:

Motion to recommend that City Council adopt Resolution #13-05-068 adopting Findings of Fact relating to the request for an extension of an existing Interim Use Permit.

-and-

Motion to recommend that City Council adopt Resolution #13-05-069 approving the request for an extension of an existing Interim Use Permit to December 31, 2014 and declaring the terms as proposed.

Attachments

Site Location Map

July 24, 2012 City Council Case Report

Proposed Wetland Creation Plan and Haul Route

Proposed Findings of Fact

Proposed Interim Use Permit with Revisions Highlighted

Form Review

Inbox
Bruce Westby
Tim Gladhill

Reviewed By
JoAnn Shaw
Tim Gladhill

Date
04/26/2013 03:50 PM
04/26/2013 03:55 PM

Form Started By: Chris Anderson

Started On: 04/02/2013 02:57 PM

Final Approval Date: 04/26/2013

CC Regular Session**4. 9.****Meeting Date:** 07/24/2012**By:** Kathy Schmitz, Administrative Services

Information**Title:**

Request for an Interim Use Permit for Grading and Mining Activities on Outlots A & B Elmcrest Sanctuary; Case of Oakwood Land Development Inc.

Background:

The City has received an application from Oakwood Land Development, Inc. for an Interim Use Permit (IUP) for grading and mining activities on Outlots A & B Elmcrest Sanctuary. The Applicant is requesting the IUP to export approximately 60,000 cubic yards of soil to create a wetland on these parcels for the purposes of a wetland mitigation bank. Per City Code Section 117-359, all excavations in excess of 400 cubic yards of material require an interim use permit.

Notification:

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

Observations:

The purpose of creating the wetland is to establish a wetland mitigation bank. A wetland mitigation bank is a wetland, stream, or other aquatic resource area that has been restored, established, enhanced, or (in certain circumstances) preserved for the purpose of providing compensation for unavoidable impacts to aquatic resources permitted under Section 404 or a similar state or local wetland regulation. A mitigation bank may be created when a government agency, corporation, nonprofit organization, or other entity undertakes these activities under a formal agreement with a regulatory agency, in this case the Lower Rum River Watershed Management Organization (LRRWMO), under the requirements of the Wetland Conservation Act (WCA). The Applicant proposes to create the wetland by excavating upland area down to water depths of six (6) feet or less and then re-vegetate the created wetland and adjacent upland with native herbaceous species. The area to be graded is approximately eleven (11) acres. The subject property seems to be an ideal site for a wetland bank due to its challenging development potential. The wetland bank would provide the property owner with some monetary return on the property.

The Applicant is proposing to complete the project in a single phase. The grading is anticipated to be completed within three (3) months, with the restoration (plantings) completed as areas are final graded. Through the wetland bank procedure requirements, maintenance and monitoring is required for a period of five (5) years after project completion. This monitoring will be completed by the LRRWMO. Due to this, Staff does not see any reason to require a landscape surety/guarantee; however, the IUP will be conditioned upon collection of an erosion control escrow of \$1,500 (per the standard rates and charges).

The Applicant provided plans for dust and noise control during excavating activities. Plans call for watering and sweeping of roads as needed to minimize dust. Any associated noise will be from the excavating equipment and trucks hauling soil away. Existing single family residences are located southwest, west and north of the subject property. Due to the proximity to existing residential homes, the IUP stipulates that the

grading/excavating activities be limited to 7:00am and 7:00pm Monday through Friday and 8:00am to 7:00pm on Saturdays.

The Applicant has indicated that the project is currently under review by other agencies, as required by the WCA, and that that review process is taking longer than initially anticipated. The Applicant is hopeful that the wetland bank plan will receive approval from the LRRWMO in August or September of 2012. City Engineering Staff reviewed the application and provided comments to the LRRWMO expressing support for the proposed wetland bank, with a request for some revisions to address potential overflow issues north of 167th Avenue. Properties north of 167th Ave NW and west of Sodium St NW have an unmapped wetland extending across the rear of several properties and they have experienced high water conditions in 2011 and 2012. City Engineering Staff have requested the plans be revised to provide greater separation between the existing homes and the 100 year HWL of the North Wetland. Staff recommends a condition requiring that these existing water issues be addressed in the plans and that no proposed excavation and restoration activity to create the wetland bank shall negatively impact existing drainage patterns. In addition, City Engineering Staff have identified an outlet ditch downstream from the main wetland that will require cleaning to be able to pass the proposed 100 year flow. The City proposes that this could be a joint City and Oakwood Land Development project.

The Planning Commission held a public hearing concerning this request on July 12, 2012 and there were no written or verbal comments received.

Recommendation:

The Planning Commission discussion focused mostly on two elements of the request. First, they discussed the days and hours of operation of the permit, with the one concern being the start time on Saturdays (originally proposed to be 7:00am). Secondly, they discussed the expiration date of the permit with the concern of whether it provided sufficient time to complete the project, considering the uncertainty of when the wetland bank plan would receive approval from the LRRWMO.

The initial draft of the interim use permit identified January 24th, 2013 as the expiration date (6 months); however, with the wetland bank approvals process taking longer than initially anticipated, it appears that the work may not commence until possibly September or October of this year (at the earliest). Therefore, after conferring with the engineering firm that prepared the plans, Staff suggested a revised expiration date of August 1, 2013. The Planning Commission still expressed concern that since the excavating work cannot begin until the wetland bank plan is approved and there is no certainty when that may be, the applicant may still need to possibly come back and request an extension to complete the work, which has added costs for the applicant and takes up more Staff time. Ultimately, the Planning Commission recommended approval of the interim use permit contingent upon the start time on Saturdays be 8:00am and that the term of the permit begin upon approval of the wetland bank plan by the LRRWMO and expire on August 1, 2013 or six (6) months following the LRRWMO approval, whichever occurs later.

Funding Source:

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

Council Action:

Motion to adopt Resolution # _____ adopting Findings of Fact relating to the request for an Interim Use Permit.

-and-

Motion to adopt Resolution # _____ approving the request for an Interim Use Permit and declaring the terms as proposed

Attachments

Site Location Map

Existing Conditions Map

Wetland Construction Plan

End Use Plan

Proposed Haul Route

Proposed Findings of Fact

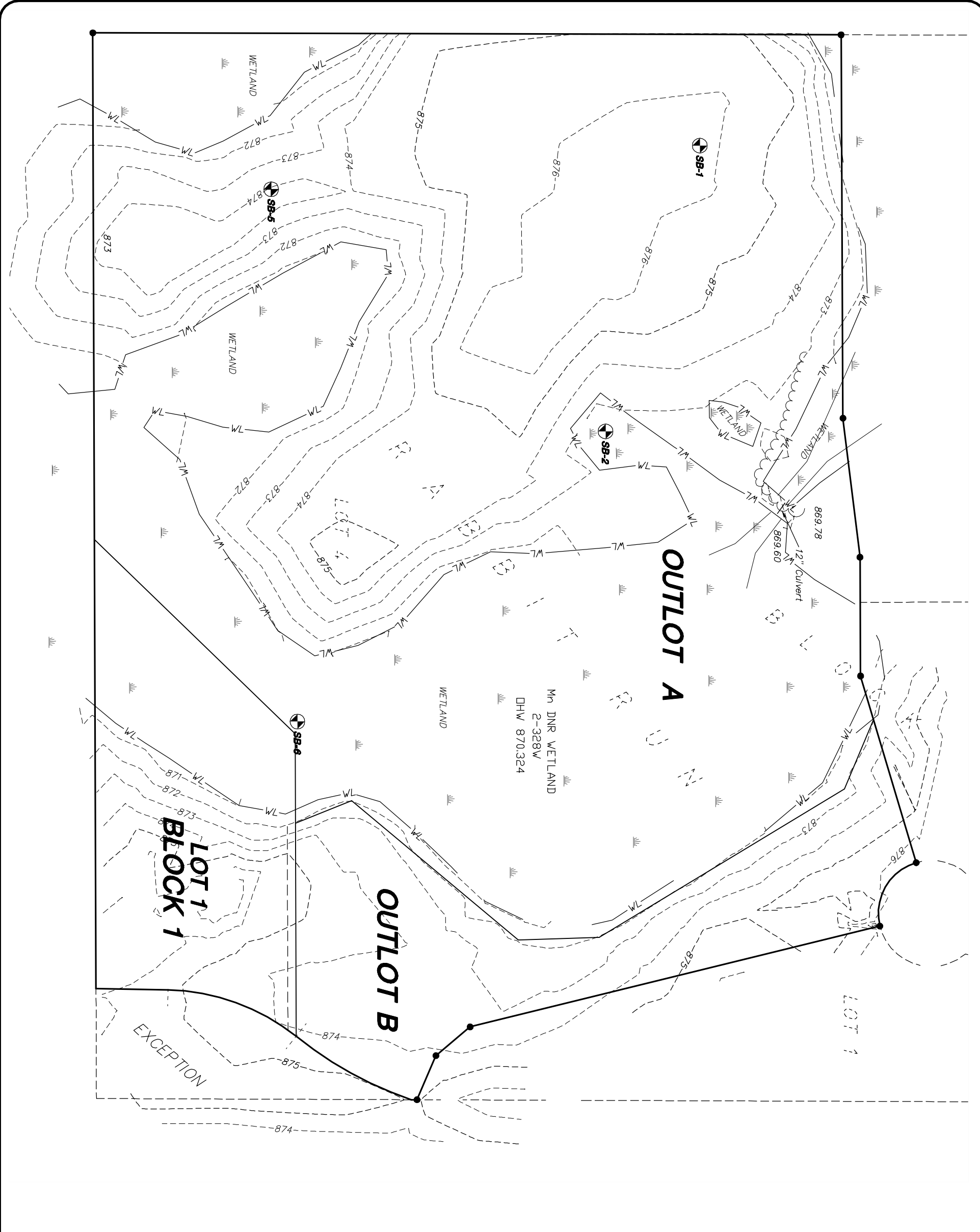
Proposed Interim Use Permit

Form Review

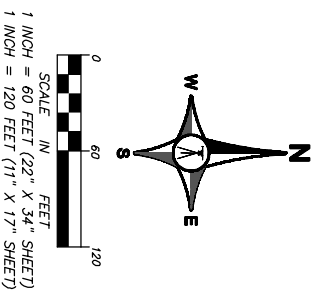
Inbox	Reviewed By	Date
Len Linton	Kathy Schmitz	07/18/2012 12:27 PM
Tim Gladhill	Kathy Schmitz	07/18/2012 12:27 PM
Kurt Ulrich	Kurt Ulrich	07/18/2012 11:35 PM

Form Started By: Kathy Schmitz Started On: 07/18/2012 11:59 AM

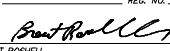
Final Approval Date: 07/18/2012



Mn DNR WETLAND
2-328W
DHW 870.324



MAP 1

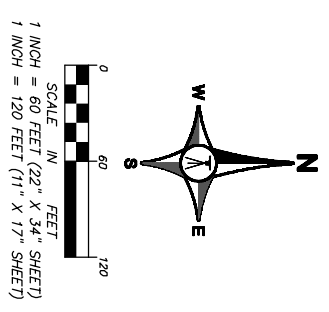
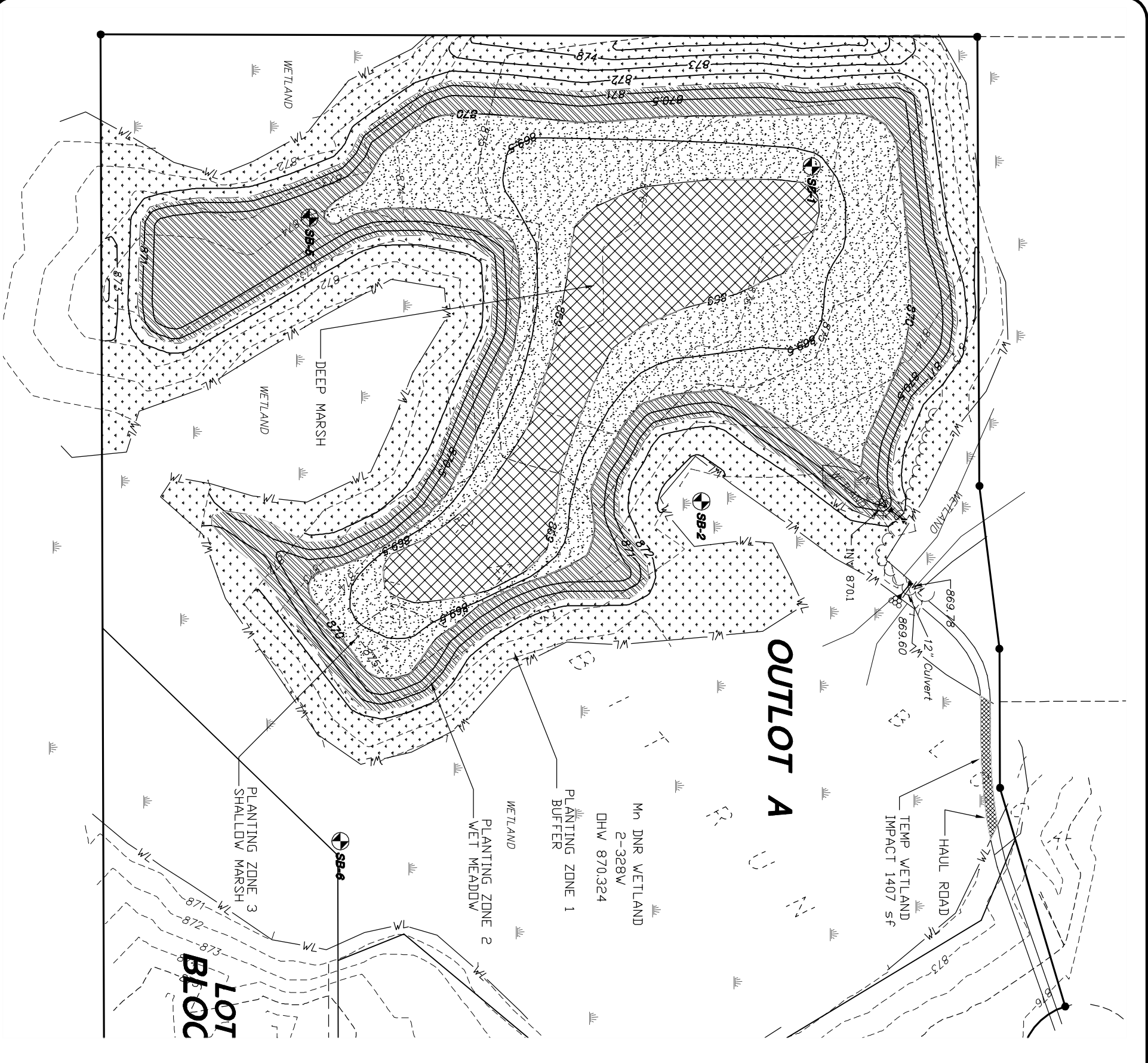
DRAWN	BTR/PAD	<small>I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.</small>
DATE	2/15/12	
SCALE	1"=60'	
PROJECT	523-09	
CHECKED	BTR	
APPROVED	BTR	DATE 5/29/12 REG. NO. 24019  BRENT ROSNELL

ELMCREST SANCTUARY
EXISTING CONDITIONS PLAN
RAMSEY, MINNESOTA



DATE	REVISIONS	BY

RECORD DRAWING



PLANTING ZONE 1 BUFFER	4.07 AC	ABOVE ELEV 871.5
PLANTING ZONE 2 WET MEADOW	2.55 AC	ELEV 870.5 to 871.5
PLANTING ZONE 3 SHALLOW MARSH	3.02 AC	ELEV 869.0 to 870.5
PLANTING ZONE 4 DEEP MARSH	1.26 AC	BELOW ELEV 869.0

ANDERSON PASSE
 & ASSOCIATES

ELMCREST SANCTUARY
 END USE PLAN
 RAMSEY, MINNESOTA

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

DATE 5/29/12 REG. NO. 24019

Brent Roswell
 BRENT ROSWELL

DRAWN BTR/PJD
 DATE 2/15/12
 SCALE 1"=60'
 PROJECT 523-09
 CHECKED BTR
 APPROVED BTR

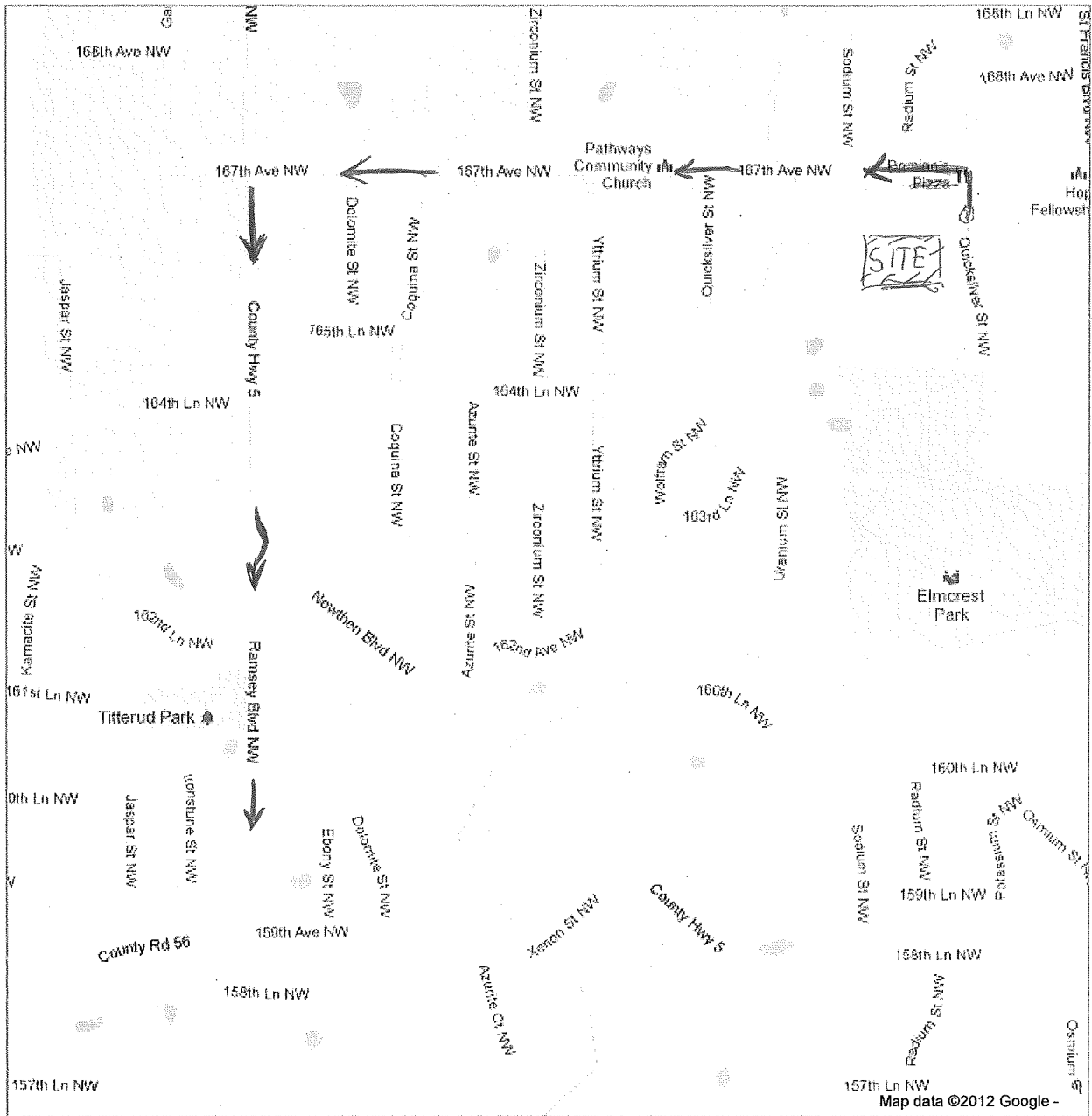
DATE	REVISIONS	BY

RECORD DRAWING

MAP 3

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



MAP 4

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

RESOLUTION #13-05-068

A RESOLUTION ADOPTING FINDINGS OF FACT #0911 RELATING TO A REQUEST FROM OAKWOOD LAND DEVELOPMENT FOR AN EXTENSION OF AN INTERIM USE PERMIT FOR GRADING AND MINING ACTIVITIES AT THE PROPERTIES GENERALLY KNOWN AS OUTLOTS A & B ELMCREST SANCTUARY

Oakwood Land Development, Inc. hereinafter referred to as "Applicant", properly applied to the City of Ramsey (the "City") for an Interim Use Permit for grading and mining activities on the property generally known as Outlots A & B Elmcrest Sanctuary and legally described as follows:

Outlot A, Elmcrest Sanctuary, except road subject to easement of record, Anoka County, Minnesota.

and

Outlot B, Elmcrest Sanctuary, except road subject to easement of record, Anoka County, Minnesota

(the "Subject Property")

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

- 1) That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 117-52 (Interim Use Permits) of the Ramsey City Code on July 12th, 2012 and that the public hearing was properly advertised and that the minutes of said public hearing are hereby incorporated by reference.
- 2) That the Subject Property is approximately eleven (11) acres in size and is zoned R-1 Residential (Rural Developing); the surrounding properties are zoned R-1, Rural Developing.
- 3) That Section 117-52 (Interim Use Permits) of the Ramsey City Code allows for interim uses to allow a use for a limited period of time that reasonably utilizes the property where it is not reasonable to utilize it in the manner provided by the comprehensive plan and to allow a use that is presently acceptable but that, with anticipated development will not be acceptable in the future.
- 4) That Section 117-359 (Grading, Mining and Filling Permits) states that only excavation projects of less than 400 cubic yards of earth material shall be exempt from obtaining an Interim Use Permit.

- 5) That the Applicant submitted an application requesting an interim use permit to excavate and export approximately 60,000 cubic yards of soil from the Subject Property.
- 6) That the purpose of the excavation is to create a Wetland Mitigation Bank.
- 7) That the Subject Property is a good location for development of a wetland mitigation bank due to existing costly development constraints.
- 8) That security fencing or barricades must be in place to secure the areas of excavation and to prevent public access to the project area.
- 9) That the Applicant is required to obtain approvals and permits from the Lower Rum River Watershed Management Organization (LRRWMO) for the excavation and wetland creation. The LRRWMO will require monitoring and maintenance of the site for five (5) years after completion.
- 10) That the excavation work and use of equipment will be limited to the hours of 7:00 AM to 7:00 PM Monday through Friday and 8:00AM to 7:00PM on Saturdays.
- 11) That the Applicant has submitted a proposed haul route indicating the route the trucks shall travel when exiting the Subject Property.
- 12) That on July 24, 2012 the Applicant's request for an Interim Use Permit was approved by the City Council and said permit was to expire on August 1, 2013 or six (6) months after six (6) months following approval by the LRRWMO, whichever occurred first, but not to extend beyond December 31, 2013.
- 13) That the Applicant had some difficulty in locating and securing a capable contractor to complete the proposed project, which significantly delayed when the project could commence.
- 14) That the Applicant has now selected a contractor for the project, but has requested an extension of the Interim Use Permit to December 31, 2014 to complete the work.
- 15) That the proposed interim use will/will not result in adverse effects on the public health, safety and welfare of the residents of the City.
- 16) That the proposed use will/will not adversely impact traffic in the area.
- 17) That the proposed use will/will not be dangerous or detrimental to persons residing or working in the vicinity of the use or to the public welfare.
- 18) That the proposed use will/will not substantially or adversely impair the use, enjoyment or market value of surrounding properties.

- 19) That the proposed use will/will not be operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and such use will/will not change the essential character of the area.
- 20) That the proposed use will/will not create additional requirements at public cost for public facilities and services.
- 21) That the proposed use will/will not be detrimental to the economic welfare of the community.
- 22) That the proposed use will/will not involve uses, activities, processes, materials and equipment and conditions of operation that may be detrimental to any persons, property or the general welfare, by reason of excessive production of traffic, noise, smoke or glare.
- 23) That the proposed use will/will not be in accordance with the objectives of the Comprehensive Plan and the intent of Section 117-52 (Interim Use Permits) of the City Code.

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

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the 14th day of May, 2013.

Mayor

ATTEST:

City Clerk

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

RESOLUTION #13-05-069

RESOLUTION APPROVING THE EXTENSION OF AN INTERIM USE PERMIT FOR GRADING AND MINING PURPOSES ON OUTLOTS A & B ELMCREST SANCTUARY BASED ON FINDINGS OF FACT #0911 AND DECLARING TERMS OF SAME.

WHEREAS, the Ramsey City Council adopted Resolution No. 13-05-068 adopting Findings of Fact #0911 for this use and herein approves an extension of the Interim Use Permit subject to the following conditions.

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

WHEREAS, Oakwood Land Development Inc., hereinafter referred to as "Permittee", has properly applied to the City of Ramsey (the "City") for an interim use permit (the "Permit") for grading and mining activities on the property generally known as Outlots A & B Elmcrest Sanctuary and legally described as follows:

Outlot A, Elmcrest Sanctuary, except road subject to easement of record, Anoka County, Minnesota.

and

Outlot B, Elmcrest Sanctuary, except road subject to easement of record, Anoka County, Minnesota

(the "Subject Property")

WHEREAS, the Planning Commission met on July 12, 2012, conducted a public hearing and recommended that the City Council approve ~~the~~an Interim Use Permit request for grading and mining activities; and

WHEREAS, the City Council met on July 24, 2012, considered the request for an Interim Use Permit and adopted Resolution #12-07-108 approving the Interim Use Permit; and

WHEREAS, the Permittee requested an extension of the approved Interim Use Permit to December 31, 2014.

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

This **Permit** is issued pursuant to Section 117-52 (Interim Use Permits) and 117-359 (Grading, Mining and Filling Permits) of the Ramsey City Code. The conditions of this **Permit** are as follows:

1. This **Permit** shall allow the **Permittee** to excavate and export approximately 60,000 cubic yards of earth material from the **Subject Property** for the purposes of creating a wetland.
2. ~~This **Permit** shall commence upon the date of the Lower Rum River Water Management Organization's (LRRWMO) approval of the wetland bank plan and shall expire on August 1, 2013 or six (6) months following approval by the LRRWMO but not to extend beyond December 31, 2013. This **Permit** shall expire on December 31, 2014 or upon completion of the exporting of materials, whichever occurs first; however, once excavation and hauling begins, that work shall not extend beyond six (6) months.~~
3. That in addition to this **Permit**, the **Permittee** shall be responsible for obtaining and complying with any permits deemed necessary from the LRRWMO, Anoka County, and/or any other applicable agency.
- 3-4. ~~That the **Permittee** shall be responsible for repairing any road damage to Quicksilver Street resulting from the hauling activities such that the road is returned to a same or similar condition as when the project commenced.~~
- 4-5. The **Permittee** shall be responsible for removing any spilled material from the public roads immediately; roads shall be swept daily or as directed by the City Engineer. Must have a sweeper on site or have one available within three (3) hours. Failure to do so shall be cause for the City Engineer to order the necessary work to be done and billed to the **Permittee**. The **City** may require an escrow to ensure the work is completed.
- 5-6. All excavation and mitigation operations shall be conducted in accordance with Figure Map 2, dated May 29, 2012 and submitted by the **Permittee**, incorporated herein as Exhibit 1. The proposed area to be graded is approximately eleven (11) acres in size.
- 6-7. All equipment used for grading and hauling operations shall be maintained and operated in such a manner to minimize noise, dust, and vibrations adversely affecting surrounding properties. All equipment shall be kept in good repair. No maintenance or repair is allowed on City owned property.
- 7-8. The **Permittee** shall deposit an erosion control escrow of \$1,500 with the **City** prior to excavation activities. The escrow may be drawn upon if erosion control measures are not secured throughout the duration of the project. The escrow will be refunded to **Permittee** upon establishment of vegetation in all disturbed areas and removal of silt fence.
- 8-9. Existing water/drainage issues north of 167th Avenue shall be addressed prior to the development of proposed wetland and that no proposed excavation and restoration activity to create the wetland bank shall negatively impact existing drainage patterns.
- 9-10. The **Permittee** and the **City** shall enter into a joint project to clean the existing outlet ditch downstream from the main wetland and ensure it has capacity for the 100 year storm.

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Font: Bold

~~10.11.~~ All grading and excavation activities may occur only between the hours of 7:00 AM and 7:00 PM Monday through Friday and 8:00AM and 7:00PM on Saturdays.

~~11.12.~~ That the project area shall be properly safeguarded to prevent the general public from depositing garbage or other refuse on the work site.

~~12.13.~~ That safety fencing must be installed and maintained around the project area to prevent the general public from entering the project area.

~~13.14.~~ The maximum noise level at the perimeter of the work site shall be within the limits set by the Minnesota Pollution Control Agency and the Environmental Protection Agency of the United States.

~~15.~~ Upon completion of the grading activities, the restoration planting plan shall be completed in accordance with Map 3, End Use Plan herein incorporated as Exhibit 2.

~~14.16.~~ That the **Permittee** agrees to coordinate hauling activities with the **City** during various tournaments to minimize potential conflicts between trucks and park patrons.

~~15.17.~~ That this **Permit** shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the **City** and the **Permittee**.

~~16.18.~~ That the **City** shall have the right to inspect the premises for compliance and safety purposes at any time, upon reasonable request.

~~17.19.~~ That the terms of this **Permit** shall be binding upon its successors and assigns.

~~18.20.~~ In the event the **Permittee**, or its successors, or assigns, violates the terms of this **Permit**, said violation shall be ground for suspension or revocation pursuant to Section 117-52 (d) of the Ramsey City Code.

~~19.21.~~ In the event any part of this **Permit** is declared void or unenforceable by a court or competent jurisdiction, the other provisions shall not be affected but shall remain in full force and effect.

~~20.22.~~ That all costs incurred by the **City** in administering and enforcing this **Permit** shall be the responsibility of the **Permittee**.

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

and the following voted against the same:

and the following abstained:

Formatted: List Paragraph, No bullets or numbering

Formatted: Font: Bold

Formatted: Font: Bold

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the 14th day of May, 2013.

Oakwood Land Development Inc. hereby acknowledges receipt of this Permit and that they have reviewed the conditions of this Permit and have agreed that they will comply with the terms of this permit.

By: _____ Its: _____

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me, a Notary Public, personally appeared _____, the _____ of Oakwood Land Development, Inc, a Domestic Corporation under the laws of Minnesota, on behalf of the Corporation, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public

Regular Planning Commission

5. 2.

Meeting Date: 05/02/2013

By: Chris Anderson, Community
Development

Information

Title:

PUBLIC HEARING: Consider Amendments to the Tree Preservation Ordinance

Background:

In 2003, the City adopted a Tree Preservation Ordinance to establish reasonable protection of the community forest during development. While it is understood that there will be some tree loss associated with development, the intent of the Tree Preservation Ordinance is to guide more sustainable development and encourage, where possible, preservation of existing trees. Preservation of existing trees provide greater ecological services (stormwater retention, air filtering, wildlife habitat, carbon sequestration etc) than young trees that are planted.

One of the action items on the Environmental Policy Board's (EPB) City Council approved work plan was to review the Tree Preservation Ordinance and make suggested revisions, if needed. The intent was not to create more restrictions, but rather to look for opportunities to improve the ordinance. Thus, the EPB's first step was to review Ramsey's current standards along with tree preservation requirements of a number of similar communities to better understand how Ramsey and others approach this subject. The EPB reviewed model ordinances from adjacent and Twin Cities Metropolitan Area communities. This led the EPB to identify several recommended revisions that would improve the current ordinance by removing ambiguity while also incorporating more flexibility for replacement of trees removed during development.

Notification:

The Notice of Public Hearing was properly published in the Anoka County Union.

Observations/Alternatives:

As presently written, only multi-family developments are subject to a removal threshold and replacement standard. If more than sixty percent (60%) of trees are removed as part of a multi-family project, than the developer is responsible for replacing them on a one (1) to one (1) basis. This is in addition to the required landscaping for the applicable zoning district. Additionally, there is no flexibility within the ordinance if this replacement standard cannot be met other than a variance.

The existing ordinance contains definitions of a significant tree, which is important to the analysis below. A significant tree must be:

- At least four (4) inches at Diameter at Breast Height (DBH). DBH, according to City Code, is measured at fifty-four (54) inches from the ground for oak and evergreen trees
- At least eight (8) inches at Diameter at Breast Height (DBH). DBH, according to City Code, is measured at fifty-four (54) inches from the ground for all other deciduous trees

The EPB believes that the removal threshold should be applicable to any type of development, not just multi-family projects. However, the EPB feels there should also be exemptions for other required improvements, such as storm water ponds and public trails and sidewalks. Thus, the proposed revisions clarify that:

- Single-Family and Multi-Family Residential Districts: at least forty percent (40%) of the inches of existing significant tree DBH (see definition above) shall be retained on site
- Business and Employment Districts: at least thirty percent (30%) percent of the inches of existing significant tree DBH (see definition above) shall be retained on site.

The proposed revisions also specify that if removals exceed the allowable threshold, that the developer shall either replace each significant tree inch removed with 1.25 inches (diameter) of new trees or provide the City with \$125.00 in restitution. These funds would be placed into a Community Reforestation Fund for reforestation efforts throughout the community. Finally, the proposed revisions specify that trees removed for water quality treatment ponds, public trails and sidewalks, and arterial and collector streets are exempt from the removal threshold calculation as are the removal of invasive (undesirable) species. All required reforestation plantings would count toward the required landscaping for the applicable zoning district.

Alternative Options

Option #1. The proposed amendments will accomplish several things. First, it eliminates ambiguity by replacing the term Desirable Tree with Significant Tree. Desirable Tree is not defined in City Code and is subjective. Significant Tree is already defined in City Code. Secondly, the amendments clarify that all projects, not just multi-family projects, are subject to removal thresholds (forty percent (40%) for residential projects and thirty percent (30%) for business and employment projects). Finally, the proposed amendments incorporate more flexibility into the standards by identifying exemptions for certain required improvements and by providing multiple options to address excess removals as part of a project. Both the EPB and Staff believe that these amendments align more with the intent of the ordinance (protecting/enhancing the community forest) and support adopting them.

Option #2. Do not amend the current Tree Preservation Ordinance. While the current ordinance provides a measure of protection for the community forest, only multi-family projects are subject to replacement requirements. Presently, if a developer cannot comply with the replacement standards the only option available is a variance. Again, the replacement standards are in addition to the required landscaping standards for new development of the underlying zoning district. The current ordinance also does not provide exemptions for removals due to other required improvements or for removal of invasive (undesirable) species.

Funding Source:

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

Staff Recommendation:

The Environmental Policy Board (EPB) recommends adoption of Ordinance #13-10 amending City Code Article II (Zoning) Division 5 (Tree Preservation).

Action:

Motion to recommend that the City Council adopt/not adopt Ordinance #13-10 amending City Code Article II (Zoning) Division 5 (Tree Preservation).

Attachments

Tree Preservation Ordinance with Mark Ups

Proposed Ordinance #13-10

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	04/26/2013 08:27 AM
Tim Gladhill	Tim Gladhill	04/26/2013 02:29 PM

Form Started By: Chris Anderson Started On: 04/18/2013 05:42 PM

Final Approval Date: 04/26/2013

Sec. 117-324. - Purpose; intent; design and maintenance principles; administration.

Formatted: Left

- (a) *Purpose.* The purpose of this division is to enhance the community and its citizenry, and not to be punitive or to cause hardship to any individual, private or public company.
- (b) *Intent.* The intent of this division is to provide regulations relating to the removal of trees to promote the orderly development of such areas and thereby minimizing public and private losses. Furthermore, this division will establish and maintain appropriate levels of diversity among tree species and age classes to provide a stable and sustainable community forest. The city council finds that the following objectives are important in achieving these goals:
- (1) To continue to seek recognition as a Tree City U.S.A. and to take all reasonable steps to promote planting and conservation of trees throughout the city;
 - (2) To promote good design in new areas and provide sensitive and compatible infill development in existing commercial areas;
 - (3) To control epidemic tree diseases and insect infestations which threaten the health of trees in the community;
 - (4) To provide regulations that ensure the placement of trees along the street right-of-way for the purpose of protecting against excessive noise, heat, and glare, and to enhance the attractiveness and value of property;
 - (5) To ensure that landscaping is an integral part of development, not an afterthought;
 - (6) To foster and support community forest programs and encourage good tree management; and
 - (7) To maintain and preserve the many benefits that trees provide including, but not limited to, the following:
 - a. *Character and aesthetics.*
 1. Trees buffer different land uses for the visual screening, noise, glare and heat abatement in transitional zones;
 2. Trees conserve and enhance the city's quality of life and ecological and aesthetic environment, especially its valuable and rural atmosphere; and
 3. Trees provide important psychological benefits to the persons within the city and neighborhoods.
 - b. *Wildlife habitat.* Trees are essential to maintain wildlife habitat within the city.
 - c. *Energy conservation.* Trees assist in the moderation of climate by providing shade, windbreaks, and the cooling of air; thereby reducing the requirements for air conditioning and heating and the subsequent utilization of energy resources.
 - d. *Air and water quality.*
 1. Trees aid in the filtering of stormwater as it passes through the soil to the groundwater;

2. Trees maintain permeable land areas essential to surface water management and aquifer recharge; and
 3. Trees aid in the purification of the air through the removal of carbon dioxide, the generation of oxygen, and the precipitation of dust and other airborne pollutants.
- e. *Socioeconomic.*
1. Trees enhance property values; and
 2. Trees protect and preserve the unique identity and environment of the city and aid in the development of the economic base attracted to the city by such factors.
- f. *Erosion and flood control.*
1. Trees aid in the stabilization of soil by the prevention of erosion and sedimentation; and
 2. Trees reduce stormwater runoff and the costs associated therewith and aid in the replenishment of groundwater supplies.
- (c) *Creation of the Ramsey Tree Book.* The intent is to provide a set of landscape design and maintenance principles that promote the use of appropriate plant materials, which do not require special attention and which require little supplemental water to grow properly.
- (1) The Ramsey Tree Book will be available for reference and guidelines regarding principles for tree preservation in the city. The book is to be offered, upon request, to the citizens of the city as well as the development community and other interested parties. Copies will be available at city hall.
 - (2) The Ramsey Tree Book will also include lists of desirable and undesirable trees, shrubs, and natural vegetation for the city. The Ramsey Tree Book shall maintain an extensive list of recommended vegetation for planting. The intent is to maintain diversity in the total tree population within the city. The list of recommended species shall be updated periodically to reflect new developments or species that will affect the population of the community forest.
- (d) *Administration.*
- (1) The city shall administer and enforce the provisions of this division. The city is authorized to cause inspections on a scheduled basis when reason exists to believe that a violation of this division has been or is being committed.
 - (2) When the city determines a violation has occurred, the city's written evaluation of the deficiencies shall be considered prima facie evidence in any subsequent litigation

(Code 1978, § 9.24.01; Ord. No. 03-33, 9-15-2003; Ord. No. 06-25, § 2, 8-8-2006)

Sec. 117-325. - Landmark trees.

- (a) A landmark tree shall be any tree, public or private, that has been designated as such by the city council, after public hearing and due notice to the owner of the tree. The criteria of such designation shall include, but not necessarily be limited to, notable historical

interest and value to the city because of its location or historical association with the community.

(Code 1978, § 9.24.02; Ord. No. 03-33, 9-15-2003)

Sec. 117-326. - Public trees.

- (a) *Authority.* The city shall have the right, but does not have the obligation, to plant, prune, maintain and remove trees, plants and shrubs within the public right-of-way of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds.
- (b) *Removal of public trees.* No trees, brush, vines, shrubs and/or ground cover are to be removed by anyone, including adjacent landowners or agents of any landowner, from any city-owned land, greenways or access corridors from greenways without the permission of the city.
- (c) *Storage upon public land.* No person shall deposit, place, store, or maintain upon any public place of the municipality, any stone, brick, sand, concrete, vehicles, equipment, toxins, animals, tree carving, or other materials which may impede the free passage of water, air, or fertilizer to the roots of any tree growing therein, except by written permit of the [environmental specialistcity](#).
- (d) *Signage.* It shall be unlawful for any person, firm, or public utility to attach any sign, advertisement, political endorsement or notice to any public tree.
- (e) *Operation of equipment.*
 - (1) All maintenance equipment, implements, machines and tools shall be used or operated in such a manner as not to damage or destroy any tree, shrub or plant in any public right-of-way or park.
 - (2) During the erection, repair, alteration or removal of any building, house or structure, in the city, any person, firm, or corporation in charge of such work shall protect any tree in any public place within the city in the vicinity of such building or structure with sufficient guards or protectors to prevent injury to such tree.
- (f) *Notifying adjacent property owners of maintenance work.* An attempt may be made to inform adjacent property owners of maintenance work on trees and landscaping along boulevards, city property, and easements. This notification will be left with direct and adjacent property owners. Suitable precautions shall be taken to protect and warn the public that spraying is being done to public trees. Spraying will be done only if following an integrated pest management plan as exemplified under such topic within the state department of agriculture.
- (g) *Adjacent landowners' limited responsibility.* Trees planted along city property lines will be watered by those property owners adjacent to said trees. No one other than city employees or their designee may trim, prune, or remove public trees.

(Code 1978, § 9.24.03; Ord. No. 03-33, 9-15-2003)

Sec. 117-327. - Private trees in new development areas.

- (a) *Requirements for a tree preservation plan.* Prior to any development, land clearing, filling, or any other land alteration, as described in subsection (b) of this section, a tree preservation plan shall be submitted to and approved by the city. The developer shall be required to erect suitable protective barriers around all trees to be preserved and these protective structures, where required, shall remain until such time as they are authorized to be removed by the city or issuance of a final certificate of occupancy.
- (b) *Tree preservation plan.* A tree preservation plan shall be submitted with preliminary plats and/or site plans, drawn to the same scale as the other preliminary plat or site plan submittals. The submitted tree preservation plan must include a buffer, if required, and landscape plan for the project.
- (1) Residential and commercial development plans shall be designed to preserve natural vegetation areas as much as possible. Streets, parcels, structures and parking areas shall be laid out to minimize the destruction of wooded areas or outstanding tree specimens. Developers of land are encouraged to designate wooded areas as park reserves.
 - (2) The city may require either the clustering of dwellings or alternate locations of dwellings to preserve significant trees during the plat approval process.
 - (3) There shall be no movement, clearing, or storage of equipment within a designated tree protection zone. The owner, developer, or agent shall not permit the placement of construction materials, debris, soil deposits, or fill; nor cause or permit disposal of waste materials such as paints, oils, solvents, asphalt, concrete, mortar or any other harmful material within the dripline of any protected tree area.
- (c) *Plan specifications content.* The content of all tree preservation plans submitted shall, for purposes of city staff review, include the following:
- (1) Delineation of all areas located within a 100-year floodplain;
 - (2) A tree survey overlay on the grading plan, which locates all significant trees within the developable areas of the site, identifying both diameter and species. Dead or diseased trees shall be included in the survey. All tree surveys for subdivisions involving the construction of roads or drainage conveyances shall be performed by an International Society of Arboriculture Certified Arborist or a Society of American Foresters Certified Forester. For the purposes of this division, significant trees shall include:
 - a. All species of oak that have a DBH of four inches or greater;
 - b. All evergreen species that have a DBH of four inches or greater; and
 - c. All other trees that have a DBH of eight inches or more;
 - (3) Existing soil conditions throughout the parcel; and
 - (4) Existing contour data for the entire property with vertical contour data consistent with city standards for all areas to be disturbed by proposed tree removal operations, extending for a distance of at least 50 feet beyond the limits of such

areas. Indicated elevations may be based on United States Geological Survey data.

(d) *Tree preservation barriers.*

- (1) All tree protection areas are recommended to be designated as such with "Tree Save Area" signs posted in addition to the required protective fencing. Signs requesting sub-contractor cooperation and compliance with tree protection standards are recommended for site entrances.
- (2) Before any construction or grading takes place, snow fencing or erosion control fencing shall be placed around the borders of woodlots at the dripline of large trees to be preserved. Signs shall be placed along this fence line prohibiting grading beyond the fence line.
- (3) These fences will be orange polyethylene laminar safety fencing or of woven polyethylene fabric (silt fencing).
- (4) Passive forms of tree protection may be utilized to delineate tree save areas outside of the MUSA line with approval of the city. These areas must be completely surrounded with continuous rope or flagging (heavy mil - minimum four inches wide). "Keep Out" or "Tree Save" signage must accompany all passive tree protection methods.
- (5) No construction shall begin until this work has been completed, inspected, and accepted by the city.
- (6) Silt barriers or similarly effective erosion control barriers shall be required in any area where erosion or siltation may cause damage to protected trees.
- (7) All protective tree fencing, staking or continuous ribbon and all erosion control barriers must be installed prior to and maintained throughout the land disturbance and construction process, and should not be removed until acceptable vegetation is established.

(e) *Critical root zone.* The root system within the dripline is generally considered to be the critical root zone. To protect these critical root zones, a tree protection area shall be established around each tree or group of trees to be retained.

- (1) The tree protection area shall include no less than the total area beneath the tree canopy as defined by the dripline of the tree or group of trees collectively.
- (2) Wherein authorized excavations it becomes necessary to expose or cut roots more than one inch in diameter, it shall be the duty of the contractor to protect such root under advice from the city.
- (3) All open trenching is prohibited. Utility installation within the dripline of protected trees, during construction or thereafter, can only occur using trenchless methods.
- (4) The mowing, clearing, and grubbing of brush located within or under the dripline of protected trees may be allowed, provided such mowing, clearing, or grubbing is accomplished by hand or by mowers. The use of heavy equipment for this purpose shall not be allowed.

(f) Removal threshold.

- (1) Within residential developments, at least forty percent (40%) of the inches of existing significant tree DBH shall be retained on site.
- (2) Within business and employment developments, at least thirty percent (30%) of the inches of existing significant tree DBH shall be retained on site.

(g) Reforestation/restitution requirement. If a development exceeds the removal threshold specified in (f) above, the developer shall either reforest areas within the site, pay restitution, or some combination thereof.

- (1) For every one (1) significant tree inch that is removed in excess of the removal threshold, the developer shall replant 1.25 inches (diameter) of new trees or provide the City with \$125.00 in restitution.
- (2) Significant trees removed for water quality treatment ponds, public trails and sidewalks, and arterial and collector streets, **or that are considered invasive species,** are exempt from the removal threshold calculation.

(fh) Protection from disease and pestilence. All clearing in oak stands shall be performed prior to April 15 or after July 15 of each season. Any development involving oak trees on or adjacent to the development area must submit a plan in conjunction with the preliminary plat that identifies what precautionary steps will be taken to protect the trees from oak wilt.

(gi) Encroachment. If encroachment into a tree preservation area occurs that causes irreparable damage to ~~the a~~ tree(s), the tree preservation plan shall be revised to compensate for the loss. Under no circumstances shall the developer be relieved of responsibility for compliance with the provisions of this division, nor shall planned revision activities prevent the city from instituting action for violation of this division.

(hj) Planting requirements. All trees chosen shall be from the acceptable/preferred list (or have approval of the city) and native and/or adaptable to this region and climate as described in the Ramsey Tree Book. The quantity of the required plantings shall be in accordance with the performance standards established for the respective zoning district.

- (1) Size of trees at planting. For all required plantings, deciduous trees shall be a minimum of one-inch caliper at ~~the at~~ time of planting and all evergreen trees shall be a minimum of five feet in height at time of planting. Specifications shall be determined by the American Nurseryman's Standards.
- (2) Type of tree stock. For all required plantings, trees shall be free of insects, diseases, or mechanical injuries and have straight trunk and a form characteristic of the species.
- (3) Spacing at time of planting. The spacing of new trees must be compatible with spatial site limitations and with the responsible consideration toward species size when mature as outlined in the Ramsey Tree Book.
- (4) Planting standards. As outlined in the Ramsey Tree Book.
- (5) Planting standard: soil amendment. As outlined in the Ramsey Tree Book.
- (6) Planting standards: mulch. As outlined in the Ramsey Tree Book.

Formatted: Indent: Left: 1"

Formatted: Indent: Left: 1"

Formatted: Font color: Red

- (7) *Planting distance along rural section streets.* Shall be at the right-of-way unless approved by the city.
- (8) *Planting distance from hydrants.* Trees shall be planted a minimum of ~~15~~ten (10) feet from hydrants.
- (9) *Vision clearance (sight triangle).* Tree plantings should not be within the vision clearance triangle as defined in section 117-348
- (10) *Planting distance from utilities.* Trees shall be planted a minimum of two feet from any joint utility trench whenever practicable.
- (11) ~~Tree preservation tree density standard calculation.~~ Reforestation/restitution plan.
 - a. ~~All multifamily residential developments shall retain 40 percent of the inches of tree DBH existing on the site after subdivision.~~
 - b. ~~If in excess of 60 percent of desirable trees are removed from the plat due to construction, they shall be replaced, on a one-to-one basis, in addition to the required plantings specified within the applicable zoning district.~~
 - ba. If the total number of tree inches exceeds the removal threshold, the developer shall provide a reforestation plan (can be included as part of landscaping plan, but must clearly identify those trees that are intended to satisfy the reforestation requirement), or a calculation of restitution, or a combination thereof.
 - b. Size at the time of planting shall comply with the planting standards outlined in the respective zoning district.
 - c. No more than twenty-five percent (25%) of the trees to be planted shall be from any one species.
 - d. Reforestation trees included in the reforestation plan may count toward the trees required for landscaping purposes within the applicable zoning district.
 - e. Restitution, if applicable, shall be paid in cash to the City prior to the release of the final plat mylars for recording, or prior to approval of a minor subdivision, or prior to the issuance of a building permit subject to site plan review. Any restitution paid shall be deposited in the Community Reforestation Fund and be used for reforestation efforts within the City.

Formatted: Strikethrough

Formatted: Strikethrough

Formatted: Strikethrough

Formatted: Strikethrough

Formatted: Strikethrough

Formatted: Indent: Left: 0.5"

(Code 1978, § 9.24.04; Ord. No. 03-33, 9-15-2003; Ord. No. 06-25, § 2, 8-8-2006)

Sec. 117-328. - Hazardous and/or nuisance trees.

- (a) The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life or property, or harbor insects or disease which constitute a potential threat to other trees within the city. In the event of failure of owners to comply with such provisions, the city shall have the authority to remove such trees and charge the cost of removal to the property owner.

- (1) *Notice to take action.* An order for a "Notice to Take Action" will be issued upon determination by the city, or its designee, that maintenance work requiring the pruning, preservation, or removal of trees or plants upon private property when such action is necessary to ensure public safety and/or to prevent the spread of disease or insects to public trees and places.
 - a. Such notice shall describe the kind of tree, shrub, or other plant or plant part which has been declared to be a public nuisance; its location on the property; and the reason for declaring it a nuisance.
 - b. Proper disposal procedures of wood, bark and debris from said nuisance shall be detailed in said notice. These disposal procedures shall be followed within the time provided in the notice.
 - c. The notice of violation shall state the specific violation and indicate whether immediate enforcement will be sought or if 30 days will be allowed to correct and remove the violation.
 - d. If the owner of the property to whom an order has been issued fails or refuses to take remedial action in accordance with and within the time specified in an order, the city or its designate shall cause the remedial action so ordered to be performed at the expense of the owner. Appeals shall be in accordance with [section 117-55](#)
- (2) *Disease- or pest-infested trees.* Any tree located within the city, which is determined by a certified arborist to be afflicted with any dangerous or infectious insect infestation or plant disease, may be declared a public nuisance. This shall include trees and shrubs harboring injurious insects or pathogens that may cause significant potential danger to the community forest.
 - a. The city or its designate may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is infected with Oak Wilt or Dutch Elm Disease.
 - b. An evaluation of "imminent danger" means that the hazard to the public is immediate. If the property owner cannot be contacted or refuses to remove the hazard, the city will initiate action immediately.
 - c. An evaluation of "potentially dangerous" means that a hazard to the public will exist in the near future. The property owner will be notified and should remove the future hazard as soon as possible.

(Code 1978, § 9.24.05; Ord. No. 03-33, 9-15-2003; Ord. No. 06-25, § 2, 8-8-2006)

Sec. 117-329. - Exemptions.

- (a) Requirements of this division may be waived by the city for a project in which at least 75 percent of the land has already received a permit initiating clearing or grading activities prior to the effective date of the ordinance from which this division is derived.

- (1) The provisions of this division are not intended to prohibit agriculture, silviculture, horticulture, or nursery operations within the city.
- (2) The provisions of this division are intended to prevent the spread of disease or infestation of trees within the city. Authorization may be obtained to remove certain trees to prevent the transmission of disease or infestation and to alleviate potentially hazardous trees that may cause injury to persons or property.

(Code 1978, § 9.24.06; Ord. No. 03-33, 9-15-2003)

Secs. 117-330—117-346. - Reserved.

ORDINANCE #13-10

CITY OF RAMSEY

**ANOKA COUNTY
STATE OF MINNESOTA**

**AN AMENDMENT TO CHAPTER 117 OF THE CITY CODE, WHICH CHAPTER IS KNOWN AS
ZONING AND SUBDIVISIONS OF THE CITY CODE OF RAMSEY, MINNESOTA**

**AN ORDINANCE AMENDING DIVISION 5 (TREE PRESERVATION) OF THE RAMSEY CITY
CODE.**

The City of Ramsey Ordains:

SECTION 1 AUTHORITY

This ordinance is adopted pursuant to and under the authority of the City Charter of the City of Ramsey.

SECTION 2 AMENDMENTS

Section 117-324 (a) is hereby amended as follows (additions indicated as underline, deletions indicated as ~~strike through~~):

- (a) *Purpose.* The purpose of this division is to enhance the community and its citizenry, and not to be punitive or to cause hardship to any individual, private or public company.

Section 117-326 (c) is hereby amended as follows (additions indicated as underline, deletions indicated as ~~strike through~~):

- (c) *Storage upon public land.* No person shall deposit, place, store, or maintain upon any public place of the municipality; any stone, brick, sand, concrete, vehicles, equipment, toxins, animals, tree carving, or other materials which may impede the free passage of water, air, or fertilizer to the roots of any tree growing therein, except by written permit of the environmental specialist ~~city~~.

Section 117-327 is hereby amended as follows additions indicated as underline, deletions indicated as ~~strike through~~):

- (f) *Removal threshold.*

- (1) Within residential developments, at least forty percent (40%) of the inches of existing significant tree DBH shall be retained on site.
- (2) Within business and employment developments, at least thirty percent (30%) of the inches of existing significant tree DBH shall be retained on site.

(g) Reforestation/restitution requirement. If a development exceeds the removal threshold specified in (f) above, the developer shall either reforest areas within the site, pay restitution, or some combination thereof.

(1) For every one (1) significant tree inch that is removed in excess of the removal threshold, the developer shall replant 1.25 inches (diameter) of new trees or provide the City with \$125.00 in restitution.

(2) Significant trees removed for water quality treatment ponds, public trails and sidewalks, and arterial and collector streets, or that are considered invasive species, are exempt from the removal threshold calculation.

(fh) *Protection from disease and pestilence.* All clearing in oak stands shall be performed prior to April 15 or after July 15 of each season. Any development involving oak trees on or adjacent to the development area must submit a plan in conjunction with the preliminary plat: that identifies what precautionary steps will be taken to protect the trees from oak wilt.

(gi) *Encroachment.* If encroachment into a tree preservation area occurs that causes irreparable damage to ~~the a~~ tree(s), the tree preservation plan shall be revised to compensate for the loss. Under no circumstances shall the developer be relieved of responsibility for compliance with the provisions of this division, nor shall planned revision activities prevent the city from instituting action for violation of this division.

(hj) *Planting requirements.* All trees chosen shall be from the acceptable/preferred list (or have approval of the city) and native and/or adaptable to this region and climate as described in the Ramsey Tree Book. The quantity of the required plantings shall be in accordance with the performance standards established for the respective zoning district.

(1) *Size of trees at planting.* For all required plantings, deciduous trees shall be a minimum of one-inch caliper at time of planting and all evergreen trees shall be a minimum of five feet in height at time of planting. Specifications shall be determined by the American Nurseryman's Standards.

(2) *Type of tree stock.* For all required plantings, trees shall be free of insects, diseases, or mechanical injuries and have straight trunk and a form characteristic of the species.

(3) *Spacing at time of planting.* The spacing of new trees must be compatible with spatial site limitations and with the responsible consideration toward species size when mature as outlined in the Ramsey Tree Book.

(4) *Planting standards.* As outlined in the Ramsey Tree Book.

(5) *Planting standard: soil amendment.* As outlined in the Ramsey Tree Book.

(6) *Planting standards: mulch.* As outlined in the Ramsey Tree Book.

(7) *Planting distance along rural section streets.* Shall be at the right-of-way unless approved by the city.

(8) *Planting distance from hydrants.* Trees shall be planted a minimum of ~~45~~ ten (10) feet from hydrants.

- (9) *Vision clearance (sight triangle)*. Tree plantings should not be within the vision clearance triangle as defined in [section 117-348](#)
- (10) *Planting distance from utilities*. Trees shall be planted a minimum of two feet from any joint utility trench whenever practicable.
- ~~(11) *Tree preservation tree density standard calculation*~~. Reforestation/restitution plan.
- a. ~~All multifamily residential developments shall retain 40 percent of the inches of tree DBH existing on the site after subdivision.~~
 - b. ~~If in excess of 60 percent of desirable trees are removed from the plat due to construction, they shall be replaced, on a one to one basis, in addition to the required plantings specified within the applicable zoning district.~~
 - a. If the total number of tree inches exceeds the removal threshold, the developer shall provide a reforestation plan (can be included as part of landscaping plan, but must clearly identify those trees that are intended to satisfy the reforestation requirement), or a calculation of restitution, or a combination thereof.
 - b. Size at the time of planting shall comply with the planting standards outlined in the respective zoning district.
 - c. No more than twenty-five percent (25%) of the trees to be planted shall be from any one species.
 - d. Reforestation trees included in the reforestation plan may count toward the trees required for landscaping purposes within the applicable zoning district.
 - e. Restitution, if applicable, shall be paid in cash to the City prior to the release of the final plat mylars for recording, or prior to approval of a minor subdivision, or prior to the issuance of a building permit subject to site plan review. Any restitution paid shall be deposited in the Community Reforestation Fund and be used for reforestation efforts within the City.

SECTION 3. SUMMARY

The following is the official summary of Ordinance #13-10, which has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance.

It is the intent and effect of Ordinance #13-10 to amend Ramsey, Minnesota City Code Chapter 117, Article II, Division 5 to:

- Replace the term ‘desirable tree’ with ‘significant tree’ as the latter is already defined.
- Clarify that all developments, not just multi-family projects, are subject to removal thresholds (forty percent [40%] for residential projects and thirty percent [30%] for business and employment projects).
- Identify exemptions from the removal threshold calculation when removals are for water quality treatment ponds, public trails and sidewalks, and arterial and collector streets, or include invasive species.
- Identify replacement standards when removals exceed the threshold, which would be either 1.25 inches of planted trees for every one (1) inch of significant tree removed beyond the allowable threshold or \$125.00 in restitution for every one (1) inch of significant tree removed beyond the allowable threshold, or some combination thereof.

- Identify that required reforestation plantings do count toward the required landscaping for the applicable zoning district.

SECTION 4. EFFECTIVE DATE

The effective date of this Ordinance is thirty (30) days after its passage and publication, subject to City Charter Section 5.07.

Adopted by the Ramsey City Council the 28th day of May, 2013.

Mayor

ATTEST:

City Clerk

Introduction Date:

Posting Dates:

Adoption Date:

Publication Date:

Effective Date:

Meeting Date: 05/02/2013

Submitted For: Chris Anderson

By: Tina Goodroad, Community Development

Information

Title:

Request for Site Plan Approval for an Expansion of an Outdoor Patio and Covered Bar at 6415 Highway 10 NW; case of Willy McCoys

Background:

Willy McCoys is proposing an expansion of its outdoor patio area as well as a new outdoor covered bar at their restaurant facility located at the south end of the Sunfish Commons retail center at the intersection of Highway 10 and Sunfish Lake Boulevard. The property originally received site plan approval and a variance to impervious surface restrictions in the Critical River Overlay District in 2001 for the construction of Sunfish Commons retail center.

Notification:

Notification is not required for site plans.

Observations/Alternatives:

The site is zoned H-1 Highway 10 Business District and is part of an officially mapped area for the future expansion of Highway 10. Restaurants and on and off sale liquor establishments in a multi-tenant building are a permitted use in this zoning district. Due to the official map designation, a public hearing, held by the Official Map Board of Appeals and Adjustments, will be required.

As illustrated on the site plan, the development proposal consists of expanding an outdoor patio area at the southernmost portion of the building and adding a covered, outdoor bar in the center of the patio area. The proposed patio will be mainly hard-surfaced with a 266 square foot grass area at the west edge to help off-set impervious surface limits. The entire patio area will be enclosed with fencing that ties in to the south wall of the building. The western portion will be enclosed with a six (6) foot tall privacy fence. The south and east sides of the patio will be enclosed with a more decorative split rail type fence and the north side will be lined with the building. The style will define and enclose the patio area but will maintain visibility into the patio from Highway 10 and the parking lot. The expansion will include approximately forty-four (44) seats. The project proposes to remove ten (10) parking stalls along the southern property line (between the building and Highway 10) to accommodate turning movements but will be adding two (2) parking stalls adjacent to the patio area for a net loss of eight (8) parking stalls.

A portion of the property is within the Critical River Overlay District and thus, there are limitations on the amount of impervious surface area. In 2001, a variance was approved allowing a maximum of sixty-nine percent (69%) impervious area on the portion of the property within this overlay district. The project shall be completed with no net gain of impervious area to avoid needing another variance. The DNR has reviewed the application and has no concerns provided the changes remain consistent with the variance granted in 2001.

The proposed outdoor patio tables will accommodate twenty-four (24) people plus an additional twenty (20) around the bar for a total of forty-four (44) additional seats. City Code requires one (1) parking space for every 200 square feet of floor space for retail uses under 20,000 square feet. The existing retail building is 23,312 square feet and of that, approximately 4,600 square feet is dedicated for Willy McCoys. Based on the retail use square footage (excluding the restaurant area) a total of ninety-four (94) parking spaces are required. Restaurants and drinking establishments are required to provide one (1) space for each three (3) seats. The proposed improvements require fifteen (15) parking spaces. Based on review of aerial photos of the site and the site plan provided, there appear to be 143 existing parking spaces. The proposed patio area results in a loss of eight (8) parking spaces for a total of

135 parking spaces. Staff has requested that the applicant provide the total number of seats within the existing restaurant to determine whether sufficient off-street parking will be provided.

The proposed covered bar will be twelve (12) feet in height, falling below the thirty-five (35) foot high maximum. The proposed elevations indicate that the bar will be constructed primarily of wood but additional details are necessary to determine compliance with state building codes. This structure would be considered accessory and not fall under the requirements for building materials as no walls are associated with the structure.

There are several considerations with outdoor seating related to serving of alcoholic beverages and potential noise conflicts. In order to provide some protection against the serving of alcohol beyond the outdoor patio area staff recommends the following conditions be added to the Site Plan approval:

- No alcoholic beverages or food shall be served to persons outside of the designated outdoor seating area. Signage shall be posted that restricts the consumption of alcohol outside of the designated outdoor seating area as approved by staff.
- Patrons shall access the outdoor seating area through the main entrance or host station and shall be seated by a staff person.

Any proposed lighting and sound associated with the proposed patio shall comply with standards set forth in City Code. City Code Chapter 30 includes standards for sound levels and in order to ensure the use falls within these parameters, Staff recommends a condition that any speaker devices be turned off by 10:00 p.m. to avoid potential disruption to neighboring properties.

Finally, past tenants of the Subject Property have erected temporary structures to act as a “smoking lounge” in winter months. Staff suggests a condition that no additional temporary fixtures (i.e. plastic tarps) are used to further enclose the patio area during winter months.

Funding Source:

All cost associated with processing the application are the responsibility of the Applicant.

Staff Recommendation:

Staff recommends approval of the Site Plan contingent upon compliance with the City Staff Review Letter dated April 26, 2013, and suggested conditions. The conditions include the following:

- 1) No alcoholic beverages or food shall be served to persons outside of the designated outdoor seating area. Signage shall be posted that restricts the consumption of alcohol outside of the designated outdoor seating area as approved by staff.
- 2) Patrons shall access the outdoor seating area through the main entrance or host station and shall be seated by a staff person.
- 3) Any speaker devices used in the patio area shall be turned off by 10:00 p.m.
- 4) No temporary structures, other than those approved under separate permit, shall be erected during the winter months for smoking purposes.

Action:

Motion to recommend City Council approve the Site Plan contingent upon compliance with the Staff Review File dated April 26, 2013 and with the following conditions:

- 1) No alcoholic beverages or food shall be served to persons outside of the designated outdoor seating area. Signage shall be posted that restricts the consumption of alcohol outside of the designated outdoor seating area as approved by staff.
- 2) Patrons shall access the outdoor seating area through the main entrance or host station and shall be seated by a staff person.
- 3) Any speaker devices used in the patio area shall be turned off by 10:00 p.m.
- 4) No temporary structures, other than those approved under separate permit, shall be erected during the winter months for smoking purposes.

Attachments

[Site Location Map](#)

[Site Plan](#)

[Staff Review File dated April 26, 2013](#)

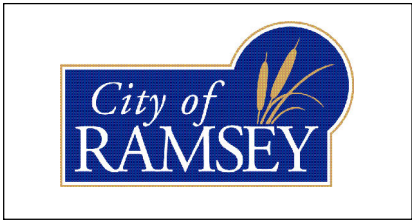
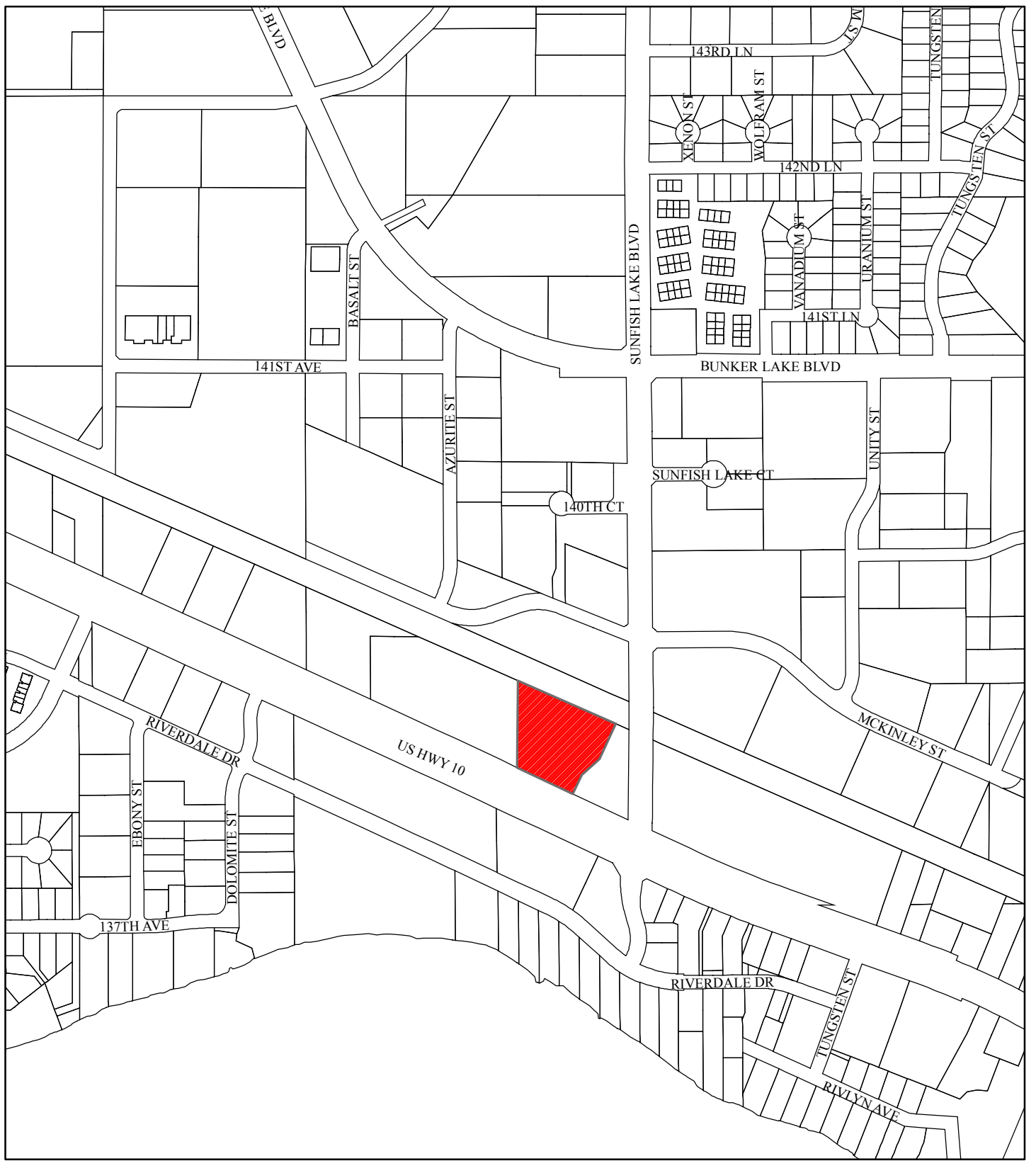
Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	04/22/2013 03:21 PM
Chris Anderson	Chris Anderson	04/22/2013 04:53 PM
Tim Gladhill	Tim Gladhill	04/26/2013 02:39 PM

Form Started By: Tina Goodroad

Started On: 04/18/2013 08:07 AM

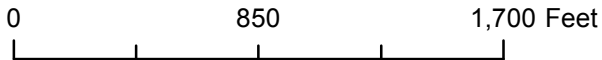
Final Approval Date: 04/26/2013

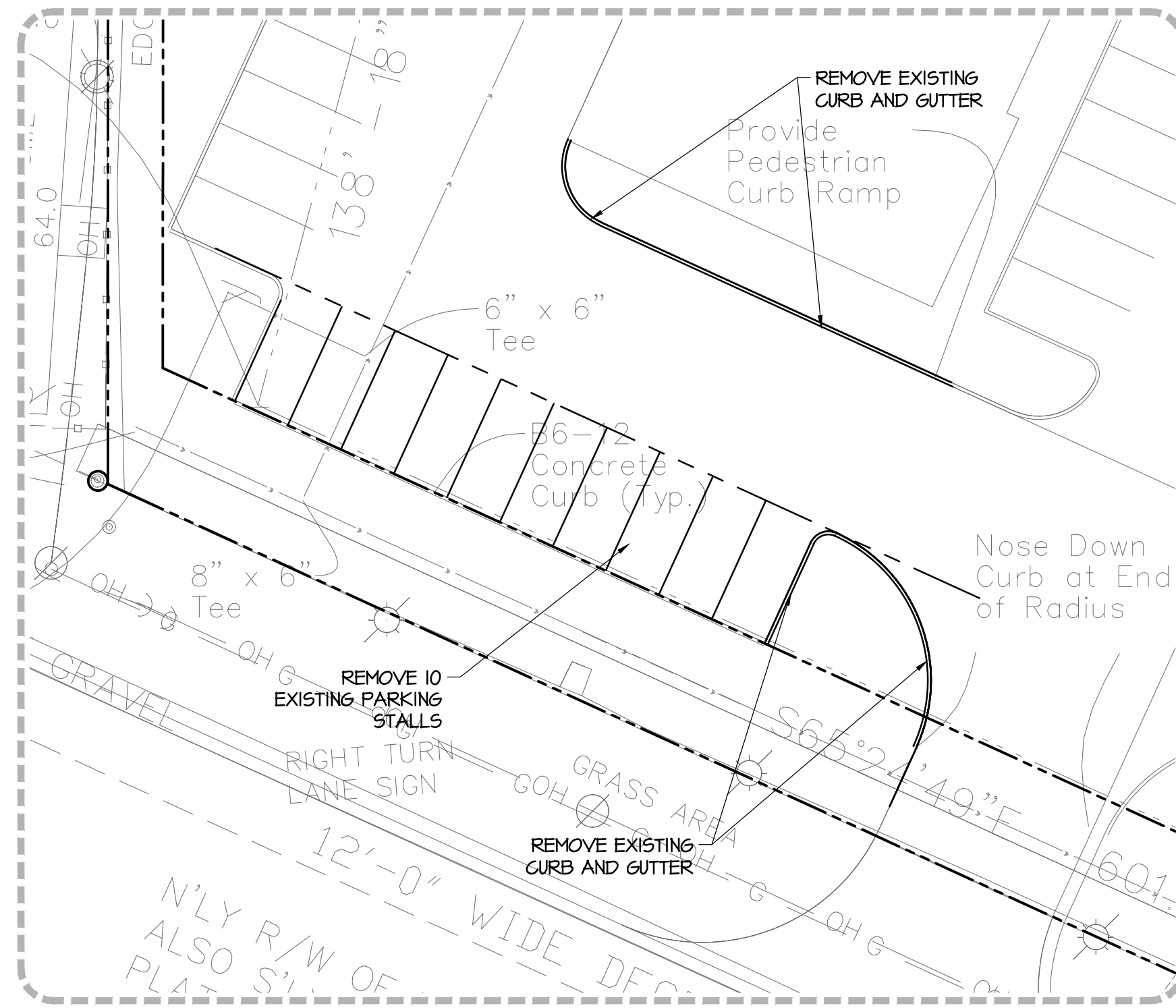


6415 Highway #10

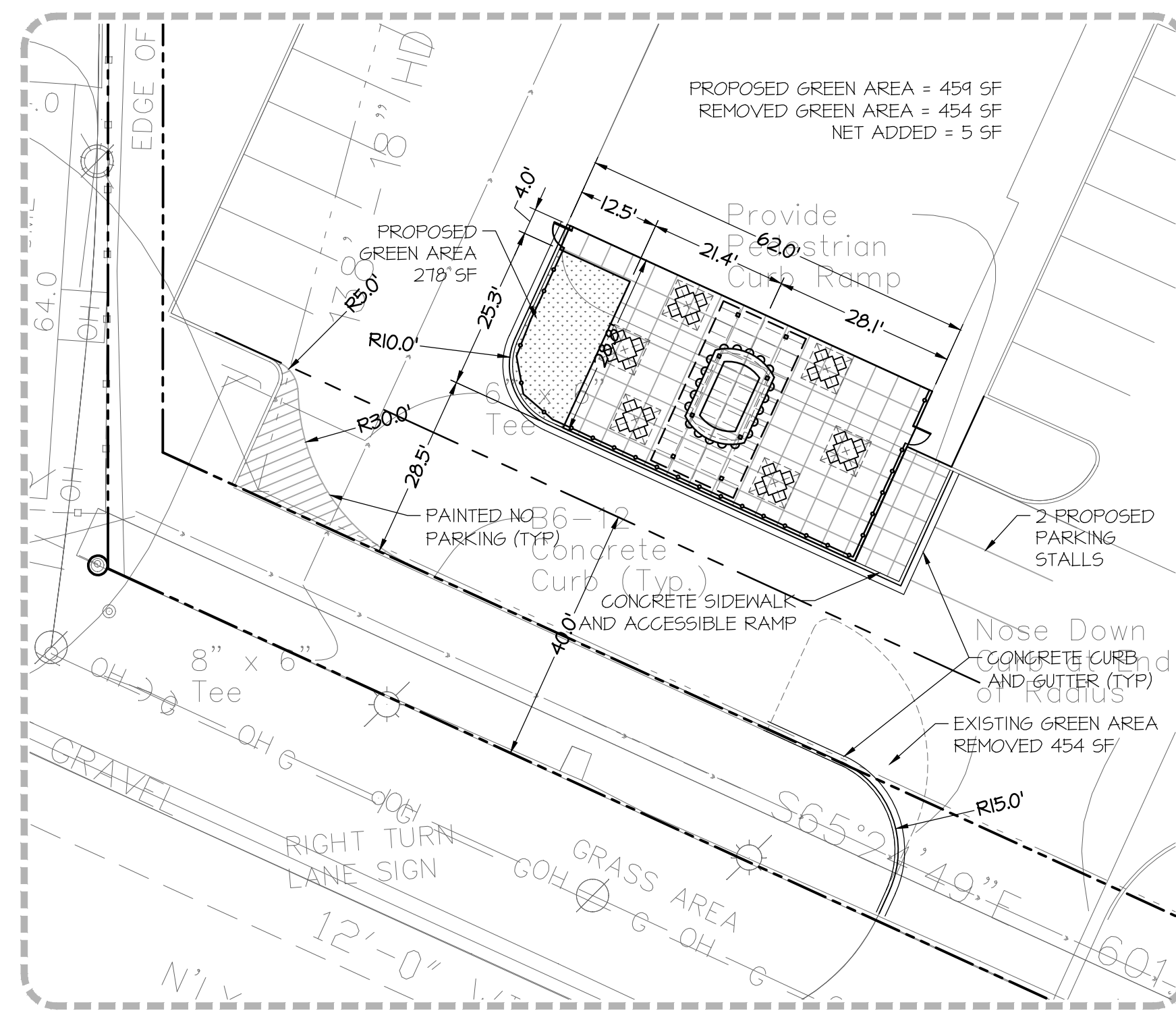
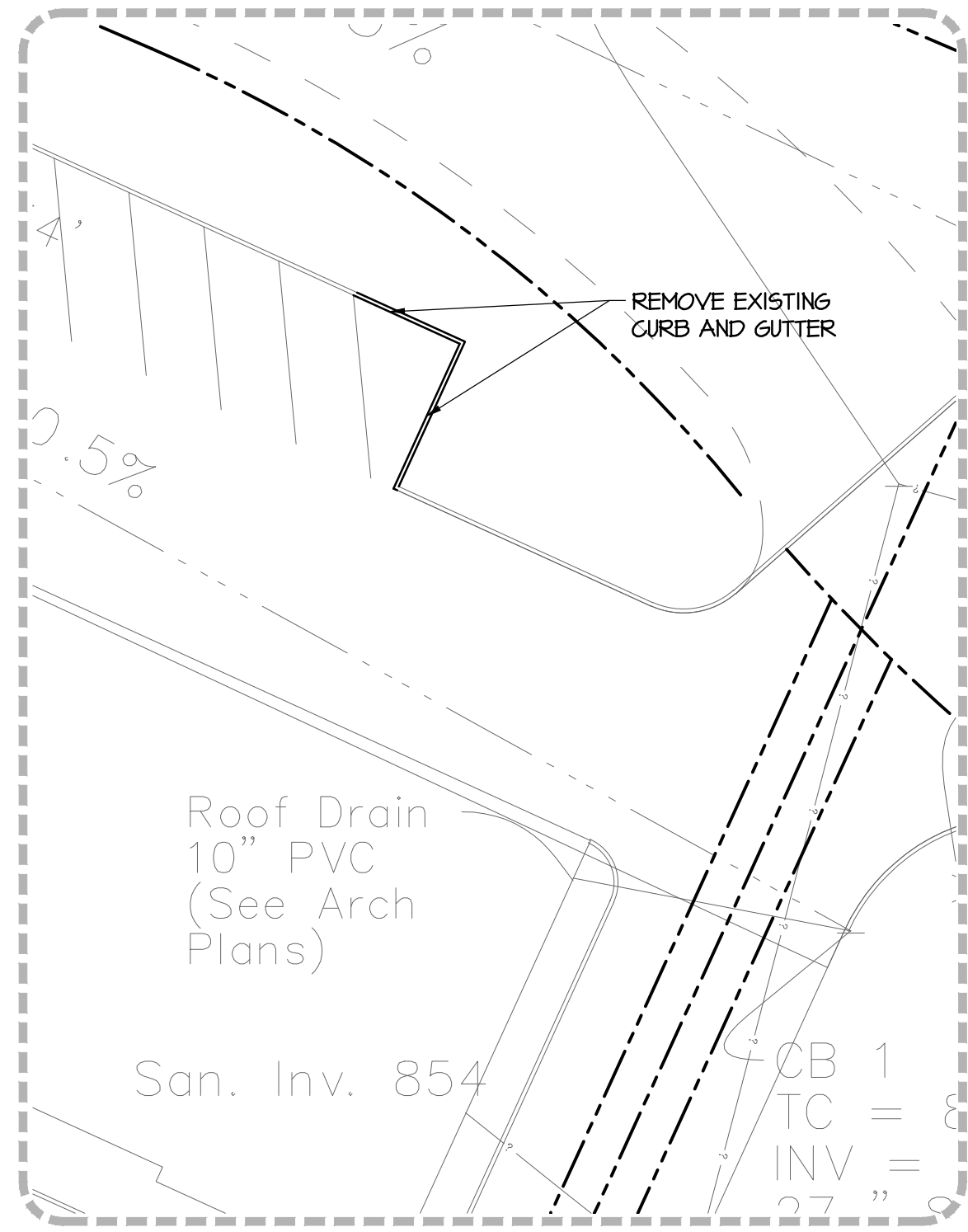
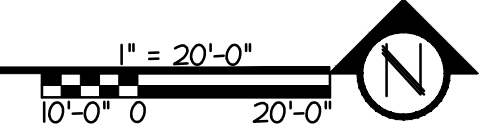
Legend

- Site
- Parcels

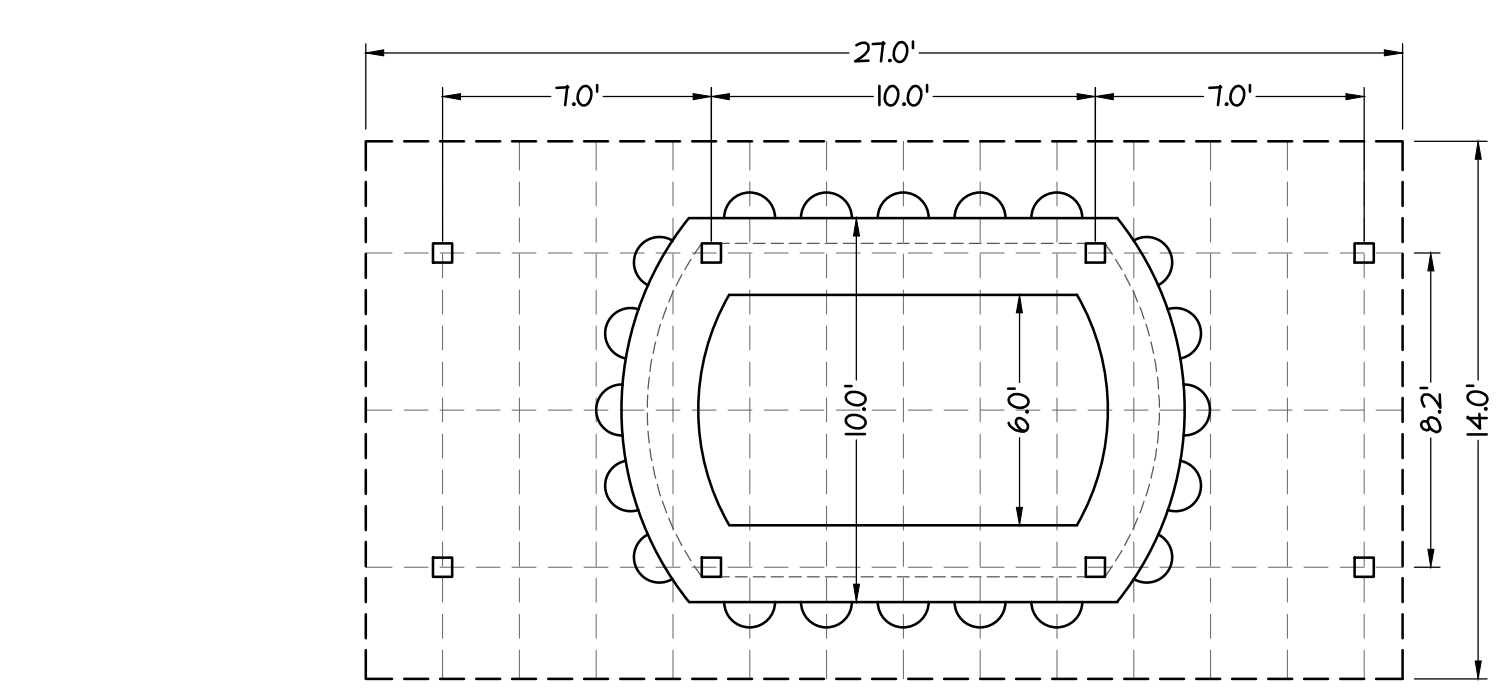
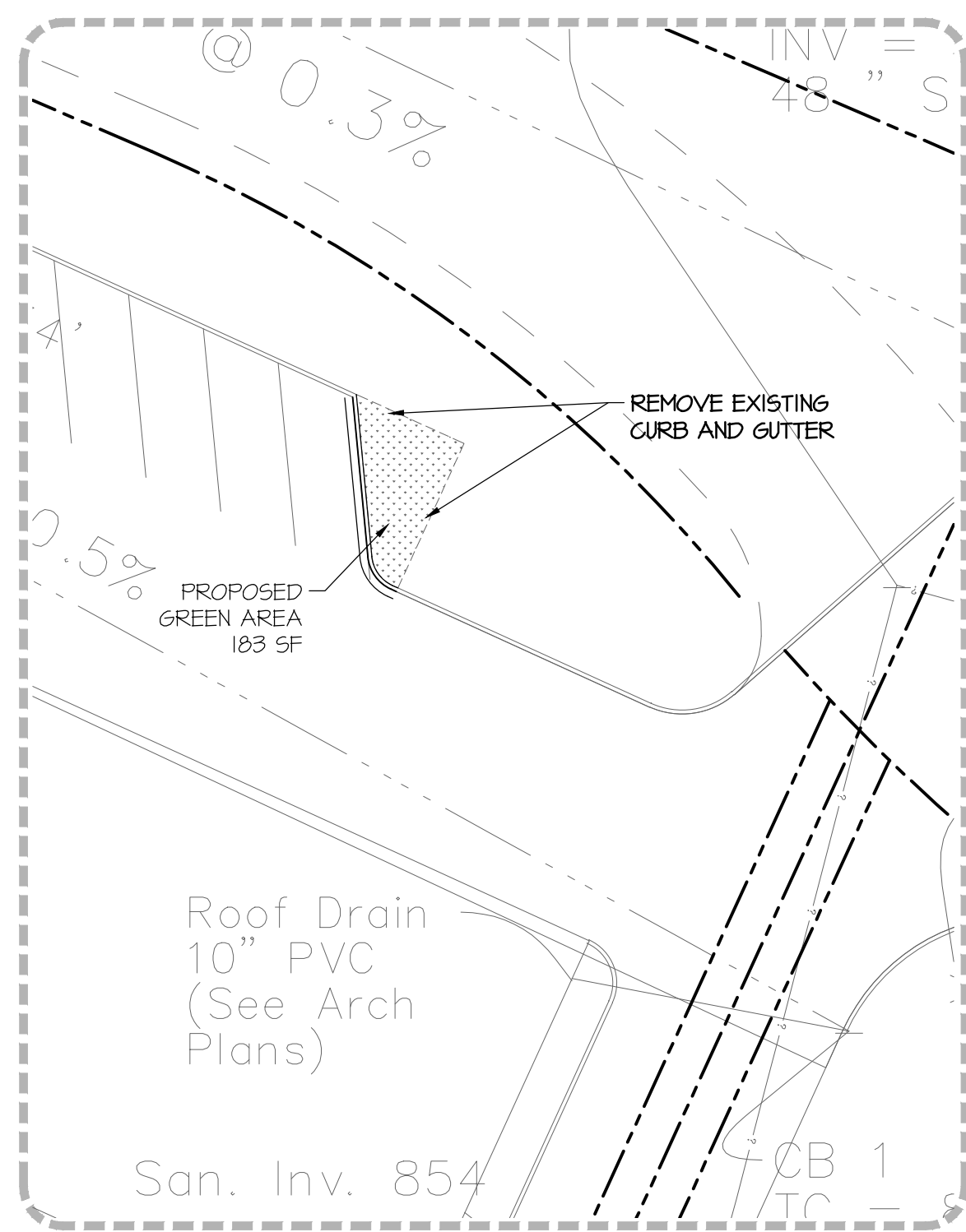
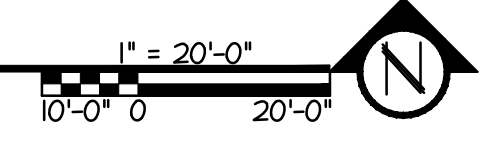




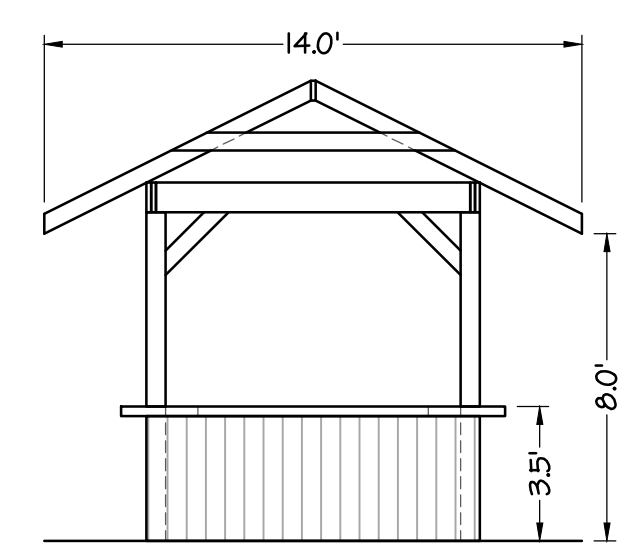
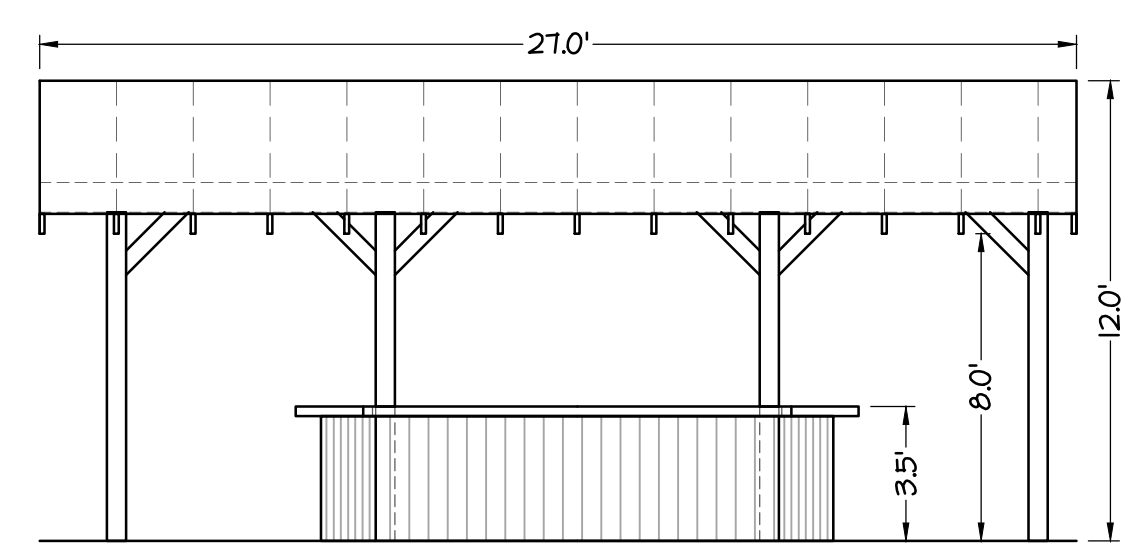
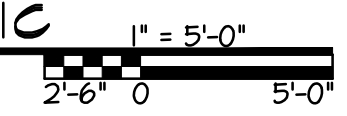
1 REMOVALS PLAN



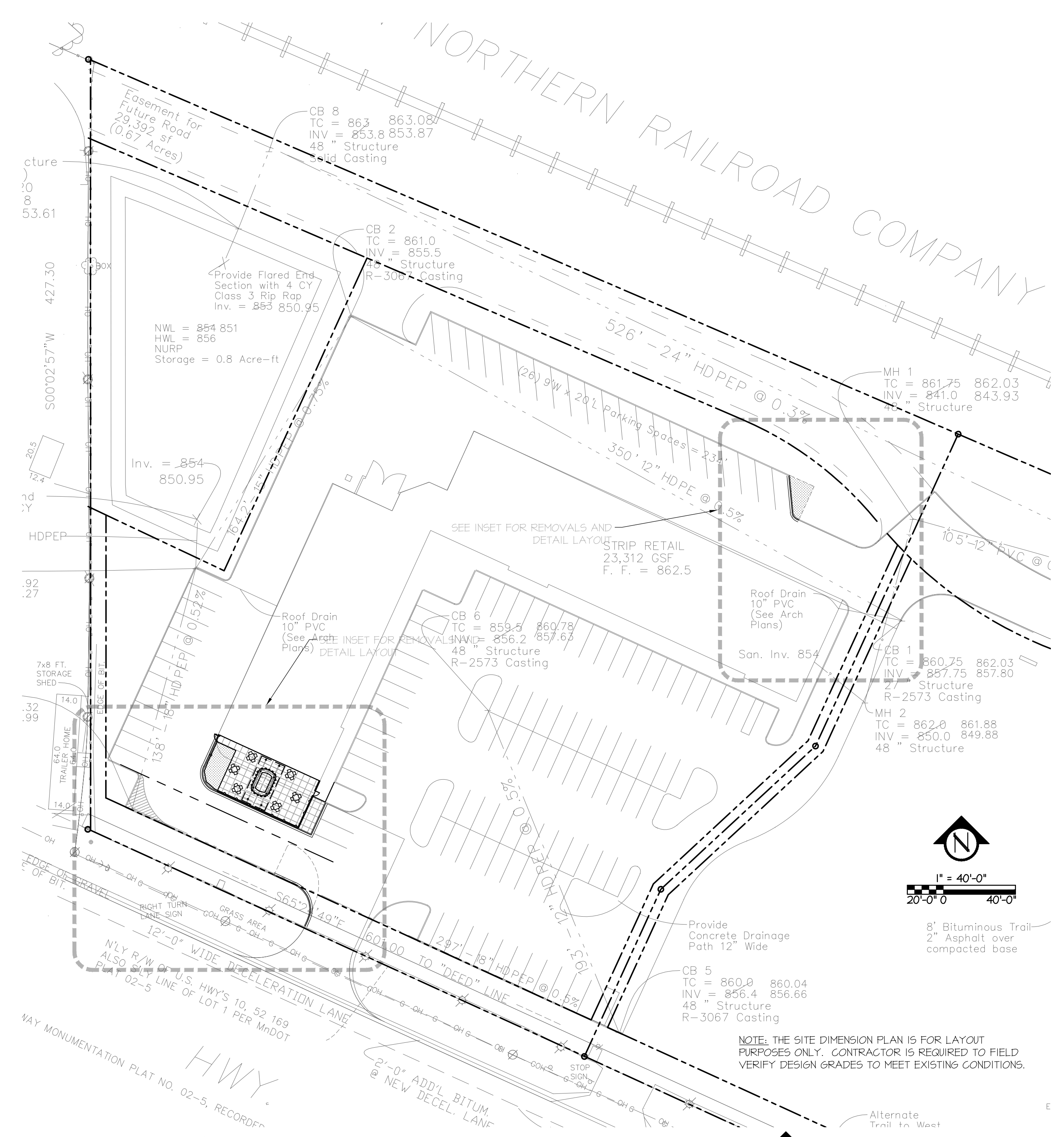
2 SITE PLAN



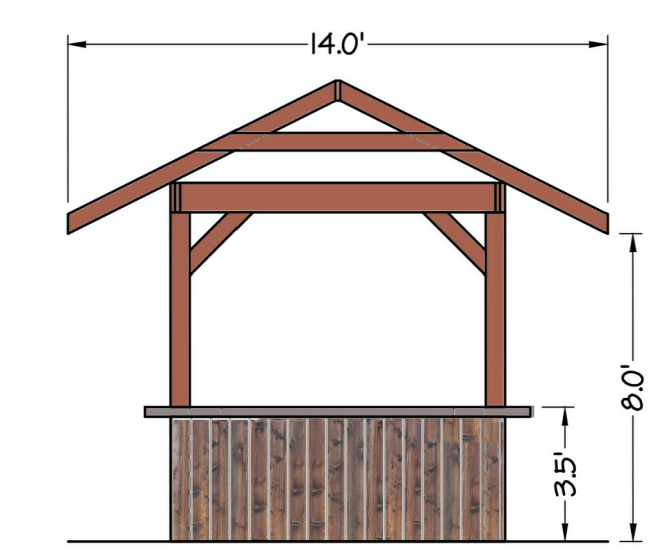
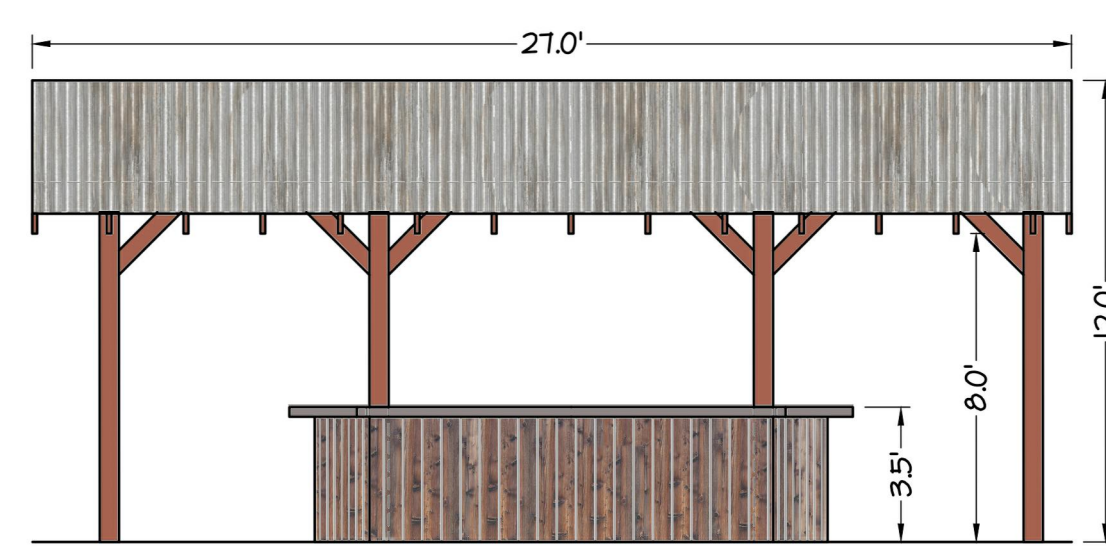
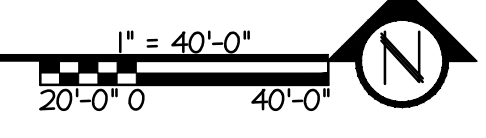
3 BAR LAYOUT & STRUCTURE SCHEMATIC



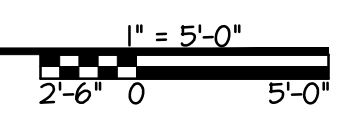
NOTE: LAYOUT OF STRUCTURE IS FOR SCHEMATIC PURPOSES ONLY. CONTRACTOR TO PREPARE CONSTRUCTION PLANS NECESSARY TO CONSTRUCT STRUCTURE.



4 OVERALL SITE PLAN



5 BAR COLOR ELEVATIONS



PATIO AND SITE PLAN
HWY 10 AND SUNFISH LAKE BLVD.

SUNFISH COMMONS, RAMSEY, MN

WILLY MCCOYS

RAMSEY, MN - PH: 612-770-5444

PROJECT

ISSUE/SUBMITTAL SUMMARY	
DATE	DESCRIPTION
03/25/13	CITY SITE PLAN REVIEW
04/08/13	CITY SITE PLAN REVISION

REVISION SUMMARY	
DATE	DESCRIPTION

SITE PLAN,
REMOVALS PLAN AND
DETAILS

C1.0

**CITY OF RAMSEY LAND USE APPLICATION
TECHNICAL REVIEW FILE**

DATE	4/26/2013	PROJECT ADDRESS	6415 HIGHWAY 10 NW
PROJECT TITLE	WILLY MCCOYS		
ESCROW #	113584		
DEPARTMENT:	Community Development, Planning Division		
TECHNICAL REVIEWER:	Name: Chris Anderson Phone: 763-433-9905 Email: canderson@ci.ramsey.mn.us		

We are in receipt of the proposed Site Plan for an outdoor bar and patio expansion for Willy McCoy's. The submittal consists of the following:

- Sheet: C1.0 prepared by Civil Site Group Inc. and dated March 25, 2013, revised April 8, 2013.

(the "Plans")

We offer the following comments regarding your site plan:

Planning and Zoning

Reviewer: Chris Anderson, Associate Planner/Environmental Coordinator

canderson@ci.ramsey.mn.us

(763) 433-9905

General: The development proposal consists of expanding an outdoor patio area and adding a covered, outdoor bar. The expansion will result in an outdoor patio area of about 1,550 square feet and includes approximately forty-four (44) seats. The project proposes to remove ten (10) parking stalls along the southern property line to accommodate turning movements but will be adding two (2) parking stalls adjacent to the patio area for a net loss of eight (8) parking stalls. A portion of the property is within the Critical River Overlay District and thus, there are limitations on the amount of impervious surface area. In 2001, a variance was approved allowing a maximum of sixty-nine percent (69%) impervious area on the portion of the property within this overlay district.

Zoning: The site is zoned H-1 Highway 10 Business District and is part of an officially mapped area for the future expansion of Highway 10. Restaurants and on and off sale liquor establishments in a multi-tenant building are a permitted use in this zoning district. Due to the official map designation, a public hearing, held by the Official Map Board of Appeals and Adjustments, will be required.

Lot Coverage: The property is 165,064 square feet in area (3.78 acres). In the H-1 Highway 10 Business District, lot coverage is limited to thirty-five percent (35%), which equates to 57,772 square feet. Based on the original site plan submittal in 2001, the existing building is 23,312 square feet. The proposed outdoor covered bar will be 378 square feet, resulting in a total lot coverage of 23,690 square feet or about fourteen percent (14%) of the lot area.

Setbacks: The proposed outdoor bar exceeds the thirty-five (35) foot front yard setback and the proposed expansion does not encroach on the existing (and required) twenty (20) foot green space requirement adjacent to all public roads.

Architectural Standards: City Code restricts building height to 35 feet, the proposed outdoor covered bar will be twelve (12) feet in height, which meets City standards. City Code restricts exterior wall finishes to natural or prefabricated brick or stone or pre-cast concrete panels or some other material approved by City Council. *While there are no walls associated with this structure, please provide a description of materials used for the outdoor covered bar, including roofing, as well as a description and sketch of proposed fencing. Please note that temporary, membrane structures to enclose the area will not be allowed, even in winter months.*

Off-Street Parking - Design: In accordance with City Code, all driveways, off-street parking and maneuvering areas shall be surfaced with concrete or asphalt and finished with B-6/12 concrete curbing. *Please verify that all proposed curbing will be B-6/12 concrete curb.*

Off-Street Parking - Spaces Required: City Code requires one (1) parking space for every 200 square feet of retail space and one (1) space for every three (3) seats for restaurants and drinking establishments. Based on a review of aerial photos of the site, there appear to be 143 parking spaces existing currently. With the net loss of eight (8) spaces, that leaves a total of 135 parking spaces. *Please provide the square footage for Willy McCoy's as well as the total number of seats for the establishment, including the proposed outdoor patio seating and bar seating so that Staff can verify if there is sufficient off-street parking available.*

Exterior Lighting and Sound: Any proposed lighting associated with the expansion and any outdoor sound equipment shall comply with standards set forth in City Code.

Critical River Overlay District: A portion of the property is within the Critical River Overlay District and is subject to maximum impervious surface coverage of thirty percent (30%). However, in 2001, a variance was granted permitting up to sixty-nine percent (69%) impervious area. As long as there is no net increase of impervious area, another variance will not be required. Providing additional green space within the portion of the property that is in the overlay district or utilizing pervious pavers for the patio are two options to consider. If pervious pavers are utilized, a maintenance agreement, recorded against the property, outlining the ongoing maintenance to ensure that it continues to act as a pervious surface will be required.

Other Permits/Agency Review: The site plan proposal has been forwarded to both the Minnesota Department of Transportation (MnDOT) and the Department of Natural Resources (DNR) for review due to proximity to Highway 10 and being within the Critical River Overlay District. The approval of the Site Plan will be subject to any comments provided by these agencies.

Vehicle Turning Radius Exhibit: In addition to the Turning Radius Exhibit requested by the Fire Marshal, the same exhibit must also show the turning radius for vehicles, including semi-trucks and fire apparatus, leaving the site and entering onto Highway 10. The exhibit must indicate that vehicles will be able to exit the site without traversing into the inside lanes of Highway 10.

Civil Engineering Comments Pending: You will be responsible for meeting with the City Engineer to ensure positive drainage of the site with the changes to the site plan. It is noted that the approval of the Site Plan is contingent upon successful review of a drainage plan.

**CITY OF RAMSEY LAND USE APPLICATION
TECHNICAL REVIEW FILE**

DATE	4/22/13	PROJECT ADDRESS	TBD - MULTIPLE
PROJECT. TITLE	WILLIE MCCOY'S		
ESCROW #	XXXXXXXXXX		
DEPARTMENT:	Fire		
TECHNICAL REVIEWER:	Name: Matt Kohner Phone: 763-433-9832 Email: mkohner@ci.ramsey.mn.us		

We offer the following comments regarding your site plan and plat submittal:

Fire:

- *Please provide a turning radius exhibit to ensure a fire truck will be able to negotiate the SW corner of the building.*

Meeting Date: 05/02/2013

By: Tim Gladhill, Community Development

Information

Title:

FOR DISCUSSION ONLY: Receive Update on Former Municipal Center Land Use Open House

Background:

On April 18, 2013, the City hosted an Open House to discuss potential future land uses for the former municipal center located at 15153 Nowthen Boulevard NW. It is important to note that the City does not have any current development proposal nor Zoning Amendment under review; this process was an attempt to be proactive in advance of potential official requests. Two potential land uses were presented to analyze compatibility with the surrounding development. The concepts included a 47 lot single-family development and a data center. Based on the preliminary analysis of that Open House, the clear preference focused on the single-family concept. For simplicity, the Open House focused on zoning tools. It is acknowledged with any future development, an Comprehensive Plan Amendment will also likely be necessary. A more in depth summary is provided in the Observations section below. The findings and comments of the Open House are attached to this case.

In September, 2006, the City moved City Hall, the Police Department, and Fire Administration functions to the current Ramsey Municipal Center at 7550 Sunwood Drive NW. Prior to that date, City Hall, the Police Department, and Fire Station #2 operated from the now former municipal center located at 15153 Nowthen Boulevard NW. At that time, Fire Administration was located at Fire Station #1 located 15050 Armstrong Boulevard NW. Fire Station #2 still currently operates at the former municipal center.

Since the decision to relocate the Ramsey Municipal Center to its current location, the City has been reviewing acceptable land uses. As several ideas have been suggested for acceptable future land uses, the City Council directed Staff to host an Open House focused on acceptable land uses as a way to pro-actively engage the surrounding Property Owners prior to any development proposal coming forward for City review.

In addition, two (2) important events occurred in in 2011 and 2012 that assisted in framing the format of the Open House. As part of the 2011 City Council Strategic Plan, one (1) goal and implementation strategy was to perform an inventory of all City-Owned land and its ultimate disposition, if any. This process was completed over several months between 2011 and 2012. The former municipal center was identified as a parcel that the City Council desired to sell for future development of some type. At that time, several ideas for future land uses were discussed, but discussion focused on a single-family development.

In addition, the City Council was approached by Connexus Energy in 2012 in regards to areas eligible for development of a data center. According to Connexus Energy, the former municipal center presented itself as an ideal location due to many factors that are generally accepted as best practices in siting such a facility. These factors include, but not limited to its proximity to redundant fiber-optic, redundant electrical service as well as separation from railroads and rivers.

Given the two (2) concepts that have been most recently discussed, the City Council felt that it was important to pro-actively engage the surrounding community to discuss each concept's compatibility with the surrounding development.

Notification:

No notification is required. Staff attempted to notify surrounding Property Owners via Standard US Mail of the Open House held on April 18, 2013. A notification was also placed on the City's website.

Observations/Alternatives:

The site currently continues to operate as Fire Station #2. The site is approximately twenty (21) acres and is larger than current needs. The current building does not meet the current space needs of the Fire Department, and much of the building remains vacant while still needing to provide utilities to the vacant portion due to the building systems design.

There are a number of outcomes associated with each land use concept. As previously stated, the preference from Open House participants was clearly the single-family concept. A more detailed analysis of the potential outcomes for each concept listed below is attached to this case as 'Data Center Letter'.

A single-family development would be consistent with those parcels immediately adjacent to the site. This concept appeared to be well received by the Open House participants, as it was a similar used that they were accustomed to. Other outcomes of a single-family development are additional needs for public infrastructure (roads, utilities, etc.) and increased traffic. As with the case with any future development, the City would need to review these standards to ensure proper infrastructure was created to support the development. These items would need to be mitigated prior to development.

In terms of a data center, the land use analysis is more detailed to review compatibility with surrounding land uses. Specific outcomes to the community could include access to additional employment, a higher use of the existing property, larger tax base, and a potential funding source for the replacement of Fire Station #2. Data Centers are becoming increasingly important as technology improves and needs for data storage increase. It is anticipated that there would be less public infrastructure needs (i.e. public roads) to service the area. Other outcomes could include aesthetic, noise, and pollution concerns. Many of these items could be potentially mitigated through an effective zoning ordinance. A data center could currently locate in one of the City's existing employment districts. While not formally analyzed by Staff at this point, the City has been told that available employment district parcels are not conducive due to their proximity to the railroad tracks and their impact to the equipment (i.e. vibrations). In addition, available redundant electricity and fiber-optic cables (high speed data) are important factors. Finally, data centers need to be located in close proximity to an electrical substation.

Comments were received from Open House attendees as well as written and verbal comments received outside of the Open House. In total, the City received twenty-six (26) comments. Of those that responded, twenty-three (23) preferred the residential concept (88%) and three (3) preferred the data center (12%). A detailed analysis is included in the attached Power Point. Staff received a petition in opposition of a data center development, and in support of a residential development, from surrounding property owners on April 26. Said petition included 69 signatures and has not been reviewed or analyzed by Staff due to the timing of the submittal. Staff will provide an update at the meeting.

General common inquiries included, but were not limited to the use of the site as a school, park, or renovated Fire Station #2 in place. There were also multiple inquiries as to whether the data center could be sited elsewhere in the community. It should be noted that the Anoka-Hennepin School District does not currently have plans to develop the site as a school for the foreseeable future. The Parks and Recreation Commission has reviewed park needs for the area in the past, and has focused on safe pedestrian connections to other recreation areas in close proximity. The City continues to review future trail and safe pedestrian connection needs for the area.

For those opposed to the data center concept, common comments included concerns with decrease in property value, presence and view of data center being undesirable, compatibility with the character of surrounding properties, noise, and long term risk/potential re-use of the site.

For those accepting of a data center, common comments include traffic impacts for residential uses being undesirable as well as residential development reducing the privacy of surrounding property owners (hours of operation).

The findings of the Open House will also be presented to the Economic Development Authority (EDA). This is tentatively scheduled for May 16, 2013. The findings and feedback from the Planning Commission and EDA is anticipated to be presented to the City Council at the end of May. As previously stated, there is no formal

development or zoning proposal under review at this time. The City Council review at the end of May would determine if any next steps are necessary.

Funding Source:

Preparation of the current land use analysis is being handled as part of Regular Staff duties.

Staff Recommendation:

Based on discussion, Staff would like feedback on a potential second Open House. There was a Winter Storm Warning on April 18, 2013 with many afternoon school closings. With that in mind, Staff still held the Open House but put a notification on the City's website regarding consideration for a second Open House if necessary. The idea was to ensure that participants would attend if they were able to have safe travels. Given the feedback from the Open House and the locations of those participants, Staff recommends that a second Open House may not be necessary at this point, and the City has received sufficient data to prepare a final report. Interested individuals still have the ability to comment on the concepts. Staff would attempt to notify the same mailing list of the update.

Action:

No action is being requested. Staff is seeking general feedback on the findings from the April 18, 2013 Open House. Comments will be forwarded as part of the Final Report to City Council, anticipated for the end of May, 2013. Provide feedback on potential second Open House.

Attachments

[Site Location Map](#)

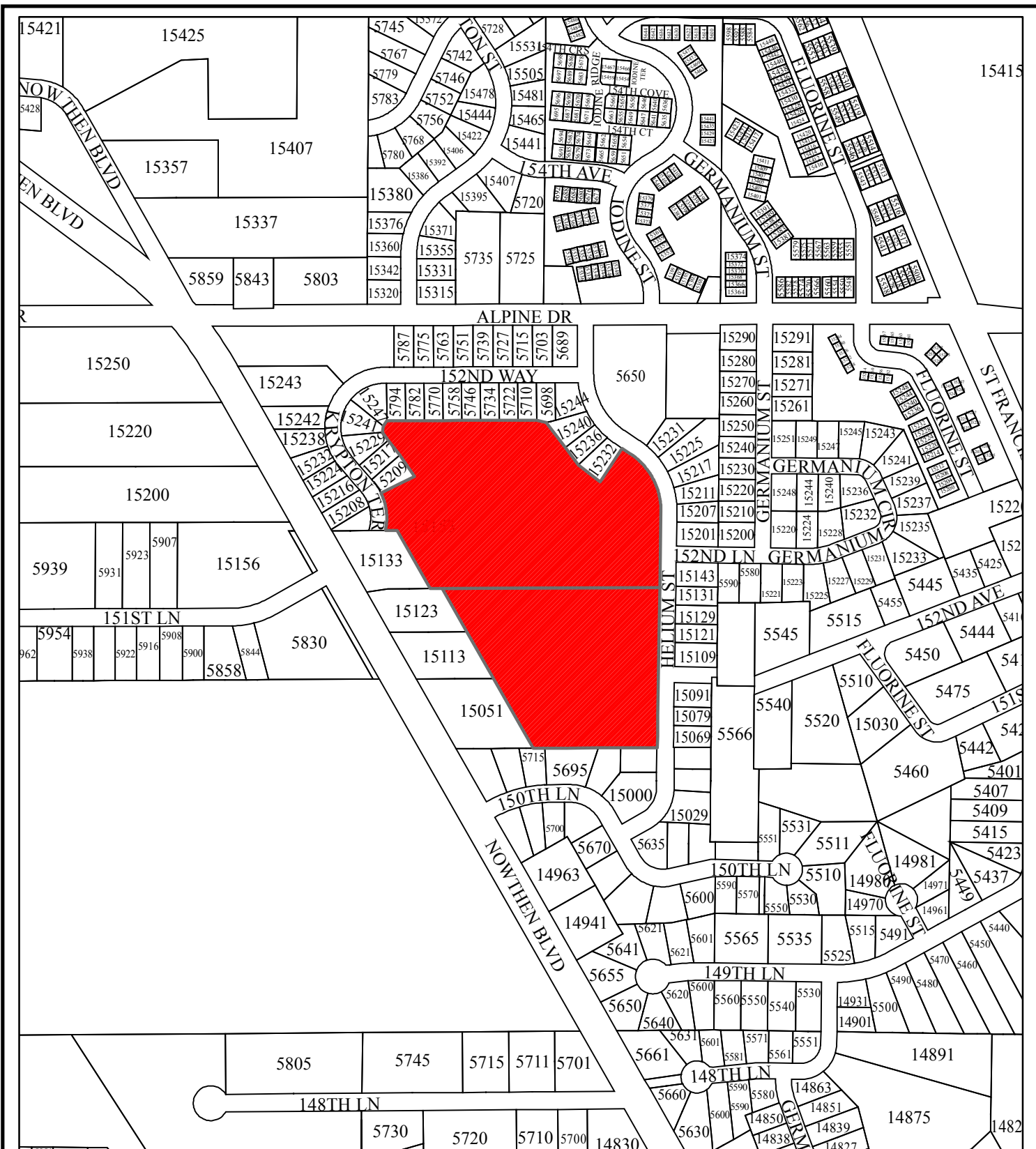
[Open House Invite](#)

[Background Report](#)

[Resident Petition](#)

Form Review

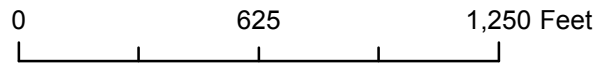
Inbox	Reviewed By	Date
Patrick Brama	Patrick Brama	04/26/2013 02:26 PM
Tim Gladhill (Originator)	Tim Gladhill	04/26/2013 03:00 PM
Tim Gladhill (Originator)	Tim Gladhill	04/26/2013 03:00 PM
Form Started By: Tim Gladhill		Started On: 04/23/2013 03:01 PM
	Final Approval Date: 04/26/2013	

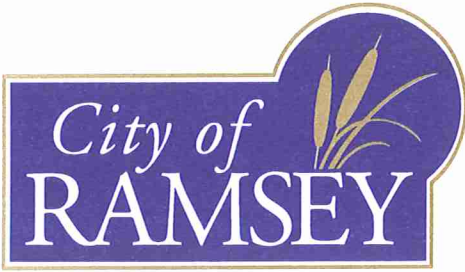


Former Municipal Center
Fire Station #2

Legend

- Site
- Parcels





7550 Sunwood Drive NW • Ramsey, Minnesota 55303
City Hall: 763-427-1410 • Fax: 763-427-5543
www.cityoframsey.com

March 27, 2013

Name, Name
Address
City, MN

Resident Name:

You are being contacted regarding the property known as the *Former Municipal Center Complex* described below and outlined in the enclosed reference map. The City is in the process of considering the future development of the Subject Property; and would like to invite you to attend an open house to discuss this potential development.

Old Municipal Center Complex: (the “Subject Property”): 15153 Nowthen Boulevard, two parcels, PID 23-32-25-41-0019 and 23-32-25-41-0018, 21.28 acres, City of Ramsey ownership.

BACKGROUND

The City of Ramsey completed a municipal owned land inventory exercise in in early 2012. The purpose of this exercise was to identify a list of surplus City owned properties which are no longer needed for current or future City functions. The City reviews said list of surplus properties for consideration of sale. The ultimate goal of this process is to reduce the number tax exempt properties in the City of Ramsey.

The Subject Property was identified as unneeded for current and future City functions; and therefore has been determined as surplus City owned land. The Subject Property is currently zoned Public/Quasi Public.

City offices moved from the Subject Property in 2006. Today, the City’s Fire Station #2 is temporarily located on the Subject Property. The size of the Subject Property and the layout/condition of existing buildings are inadequate (or excessive) for the operations of Fire Station #2. The City is planning to construct a new, smaller, Fire Station #2 northeast of the Subject Property on the south side of Alpine Drive.

BACKGROUND Q&A

TABLE 1

(Q1) Why does the City want to reduce the number of exempt properties?

(A1) Reducing the quantity of tax exempt properties within the City increases the overall tax base; which reduces the tax burden on individual property owners.

(Q2) Why does the City want to sell and develop this particular property?

(A2) In addition to answer above, the City is in need of a new fire station. The sale of this property may provide a funding source for a new fire station; and will reduce the impact of a new fire station on individual tax payers.

The Subject Property is no longer needed for public works, public safety, administrative facilities, drainage and utilities, public right of way, parks/trails, etc.

DEVELOPMENT SCENARIOS

Generally, three options have been considered for the future development of the Subject Property. Please reference the attached development scenarios.

1. **Public Use** (*Public Quasi/Public Zoning District*)

Public use includes parks, trails, facilities, right-of-way, schools, wetlands, etc. The Subject Property is unneeded for any public use now or in the foreseeable future. As indicated, the Subject property has been identified as surplus City owned land.

2. **Single Family Residential** (*R1 MUSA Zoning District*)

Considering the existing parcels surrounding the Subject Property, one option for future development is single family residential. It is estimated the Subject Property could sustain forty-seven (47) single family homes. Said development would require an estimated 1,920 lineal feet of public roadway. The City could also consider a higher density residential development if desired.

3. **Quiet Industrial Development** (*Overlay District*)

Considering surrounding land uses, the Subject Property would be unfit for high traffic or high noise producing retail, commercial or industrial uses. With that in mind, the Subject Property may be fit for a quiet, low traffic, targeted industrial user.

In particular, the City is targeting a *data center development* for the Subject Property. Please see Table 2 for background information on data centers.

The Subject Property could sustain, at a maximum, one (1) 250,000 square foot or two (2) 100,000 square foot data center buildings.

In order to protect surrounding property owners from undesired users (i.e. high traffic, loud or significant noise pollution), the City is proposing a zoning tool known as an Overlay District for the Subject Property.

OVERLAY DISTRICT

An overlay district is a zoning tool that allows the City to address land use and design standards unique to a particular geographic area, while protecting the compatibility of the surrounding area. Unlike standard zoning districts, an overlay district also allows the City to develop a customized set of land use standards and regulations. For example, larger building and parking lot setbacks from property lines than what is normally required. Or, noise, traffic and light pollution standards.

DATA CENTER DEVELOPMENT Q&A TABLE 2

(Q1) What is a data center development?

(A1) A data center is a form of warehouse that is used for the storage of computer servers. In other words, a large building containing a vast number of computers.

(Q2) What product/service does a data center provide customers?

(A2) Computer memory space accessible via the internet. Most major corporations store data (known as computer files) on computer servers; which are often times located in data centers.

(Q3) What does a data center look like?

(A3) Attached are some examples. In general, a data center looks similar to an industrial warehouse.

Considering Ramsey zoning standards, a data center would likely look similar to newer buildings located in Ramsey's industrial parks. For example, Anderson Dahlen, Diamond Graphics and MultiSource

(Q4) In comparison to a residential development, how will a data center development effect my home and my lifestyle?

(A4) Please see the attached development scenarios comparison chart.

Finally, and overlay district allows the City to establish appropriate screening and transition requirements.

Considering the parcels surrounding the Subject Property are single family residential, the City is committed to developing a set of zoning standards that best fit neighboring properties.

MOVING FORWARD

In order for any development scenario to move forward, zoning on the Subject Property would need to be altered from its existing designation (Public Quasi/Public) to allow for a new use. The Planning Commission and City Council would like your feedback and input regarding the proposed Residential and Data Center Development scenarios. Additionally, the City would like to provide you with time to ask questions and request information to ensure you are informed.

It is important to note, today, the City is considering a data center development for the Subject Property. However, your input and feedback is needed before the City moves forward.

The following options exist for you to provide input, ask questions and gather additional information:

- **Neighborhood Open House**
On April 18, 2013 the City will be hosting an open house regarding the proposed development scenarios. The open house will be located at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Council Chambers, 6:00 p.m-9:00 p.m. This is an opportunity to meet with various City Staff, to view illustrations and figures, to ask questions and gather additional information.
- **Contact the City Outside of Open House**
If you cannot make the open house, the City is still interested in your input and would welcome your comments. If you are interested in setting up a meeting, sending an email/letter or having a phone conversation, please contact Patrick Brama, pbrama@ci.ramsey.mn.us, 763-433-9903.

The City appreciates your time, input and consideration regarding this manner.

Best regards,



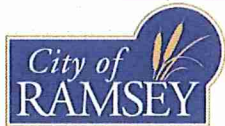
Patrick J. Brama

Assistant to the City Administrator, City of Ramsey

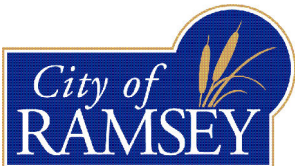
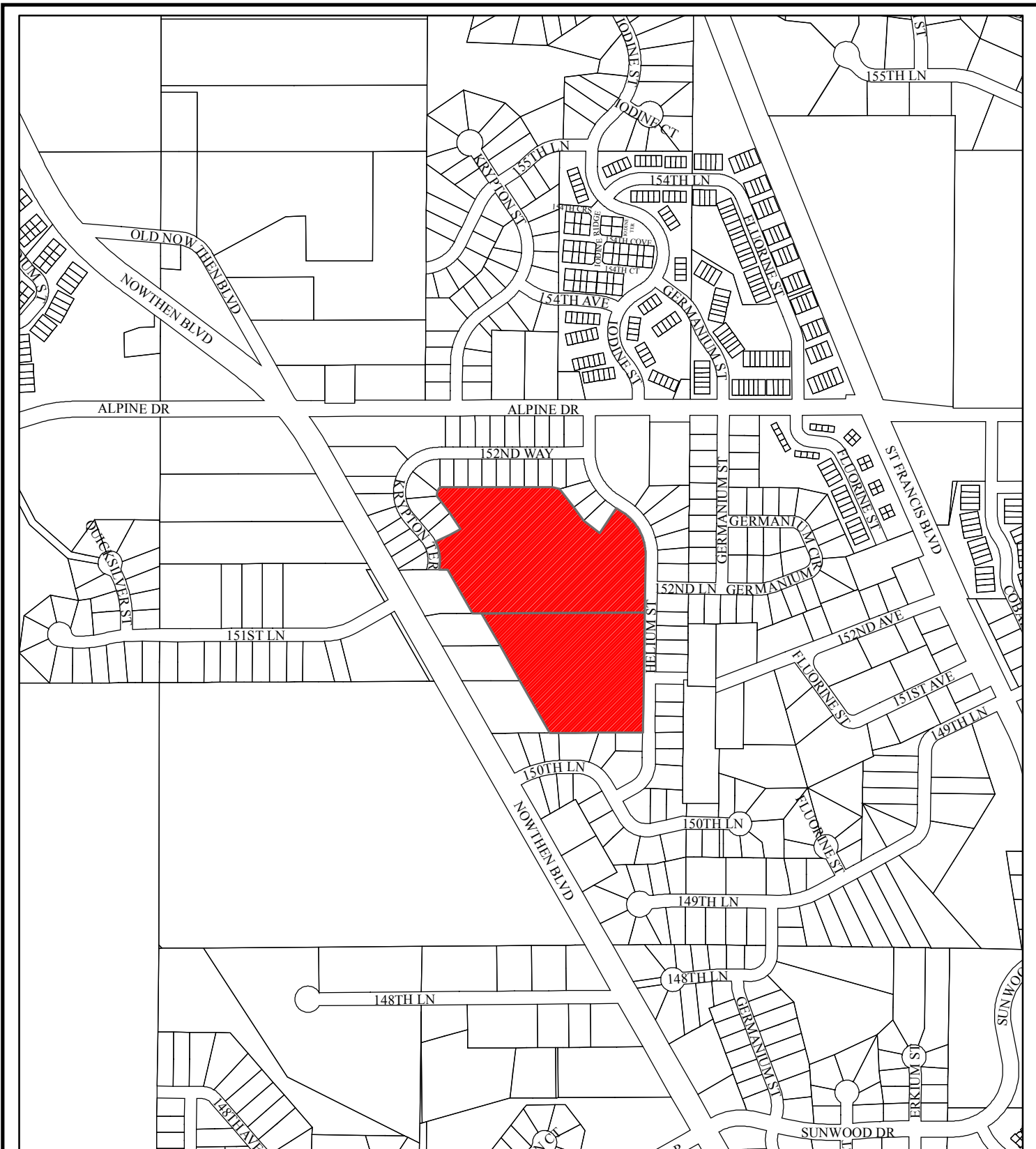
OFFICE: (763) 433-9903 EMAIL: pbrama@ci.ramsey.mn.us

ADDRESS: 7550 Sunwood Drive NW, Ramsey, MN 55303

WEBSITE: www.cityoframsey.com



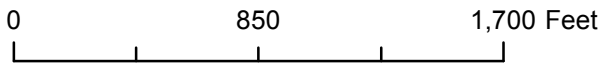
Enclosures (5)



Data Center Parcels

Legend

- Site
- Parcels









Development Scenarios Comparison Chart

Information displayed below are unofficial estimations only.

	Residential Development	Data Center Development
Maximum Size	47 Single Family Homes	One (1) 250,000 square foot or two (2) 100,000 square foot buildings
Residential Population	Approximately 150 persons	---
Employees	---	30-80 persons
Based on zoning, does this scenario fit the character of surrounding properties?	Best Fit. Most compatible; and anticipated.	Acceptable. Partially compatible with appropriate transitions.
Traffic		
Primary entrance	Helium Street (from Alpine, Krypton Terrace, 150 LN NW)	Nowthen Boulevard, subject to approval of Anoka County
Road type	Public	Private
Weekday traffic per day	Medium (estimated 470) based on 10 trips per household	Medium (estimated 240) based on 60 employees
Weekend traffic per day	Medium	Very Low
Minimum Setbacks Distances (from your property line)	10-30 feet	150 feet (pending zoning amendment as proposed)
Screening or berming to block view of neighboring use.	---	Required (vegetation and/or berming)
Noise and light pollution risk	<u>VARIABLE</u> Depends on individual property owners.	<u>PRESENT</u> Data centers have backup generators and like any business, have security lights. City would require strict light and noise pollution standards to mitigate/ minimize effect on surrounding properties.
Effect on overall tax levy for the City; and ability to contribute to a new fire station.	<u>MINOR</u> Provides an incomplete funding solution for a new fire station (15 year bond).	<u>SIGNIFICANT</u> Provides a complete funding solution for a new fire station (15 year bond).
Market Failure Risk: development fails and a new user steps forward	<u>LOW</u> If a single family residential development failed, that would mean a majority of buildable lots remain vacant. Given Ramsey's population growth trends and projections, it is unlikely a single family residential development would not succeed.	<u>SHORT TERM: LOW</u> There is a strong interest in the market today to use the subject property for a data center. <u>LONG TERM: UNKNOWN (FAIR)</u> Data centers, or this specific site, could conceivably become obsolete someday. Meaning, no market demand for a data center. In which case, the City would be requested to make this site compatible for a different user (office, warehouse, etc.).

Data Center Images (1 of 2)



Target Data Center, Brooklyn Park

Source: ReliableResources.com

Retrieved March 19, 2013 < <http://www.relres.com/case/59/target-technology-center> >



Target Data Center, Elk River

Source: Ryan Companies

Retrieved March 19, 2013 < <http://www.ryancompanies.com/projects/target-technology-center-ttce/> >

Data Center Images (2 of 2)



Involta Data Center, Duluth

Source: Minnesota Power, An Allete Company

Retrieved March 19, 2013 < <http://mnpower.com/Company/EconomicDevelopment> >



United Health Group, Chaska

Source: Finance and Commerce

Retrieved March 19, 2013 < <http://finance-commerce.com/2012/11/after-the-election-businesses-may-still-get-some-love/> >

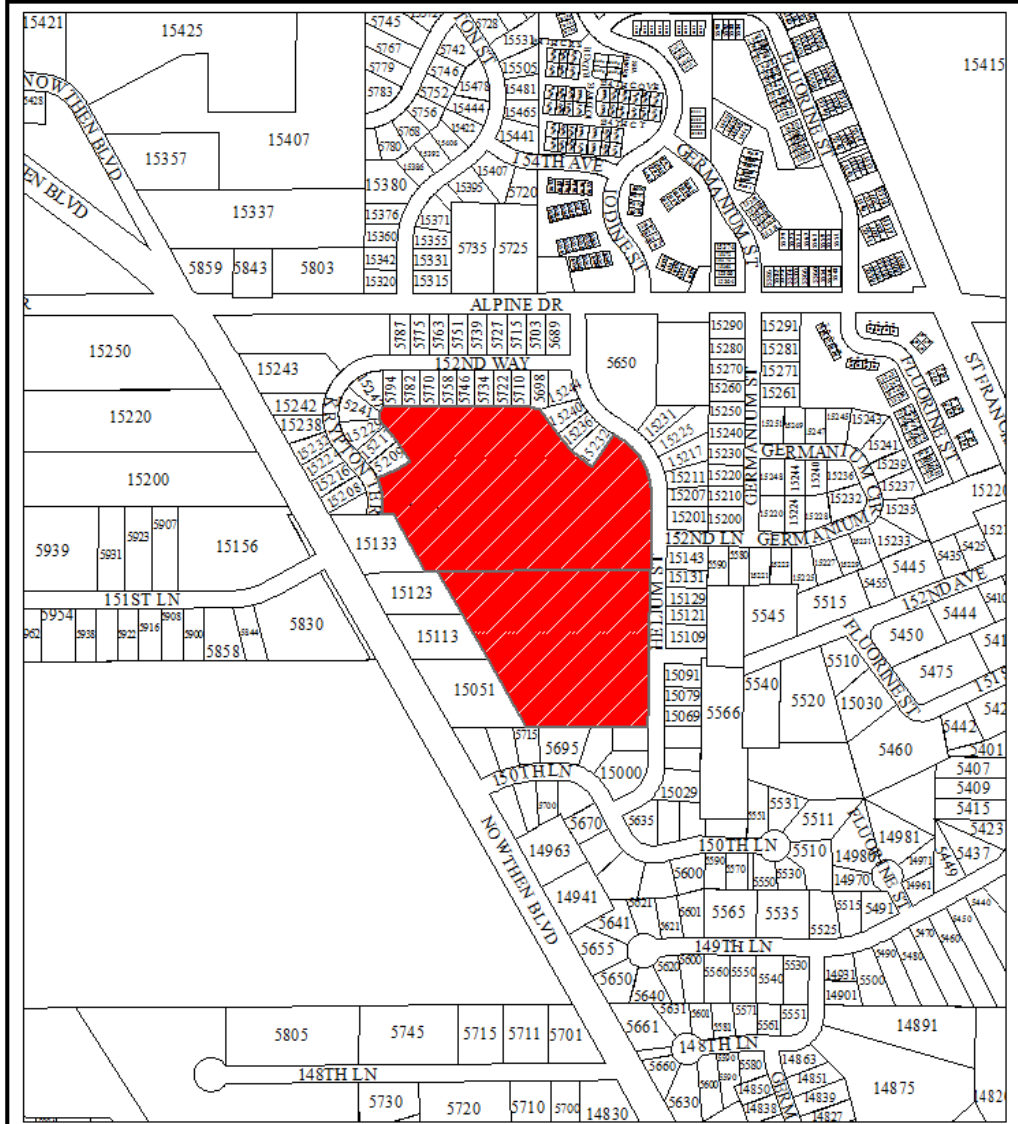
FORMER MUNICIPAL CENTER/FIRE STATION #2

Open House

April 18, 2013

PURPOSE

- Identified as Potential Surplus City Owned Property
 - Site of current Fire Station #2
 - Approximately 20 acres
 - Site larger than current needs
- Zoning Amendment necessary for future non-public uses
 - Included in process is Comprehensive Plan Amendment
- Approached by Connexus Energy to consider as Data Center
 - Development/Developer not identified
 - Shovel Ready Certification
- Proactively engage the surrounding community before any official process
 - Are these appropriate uses for this parcel?



Former Municipal Center
Fire Station #2

Legend

- Site
- Parcels



0 625 1,250 Feet



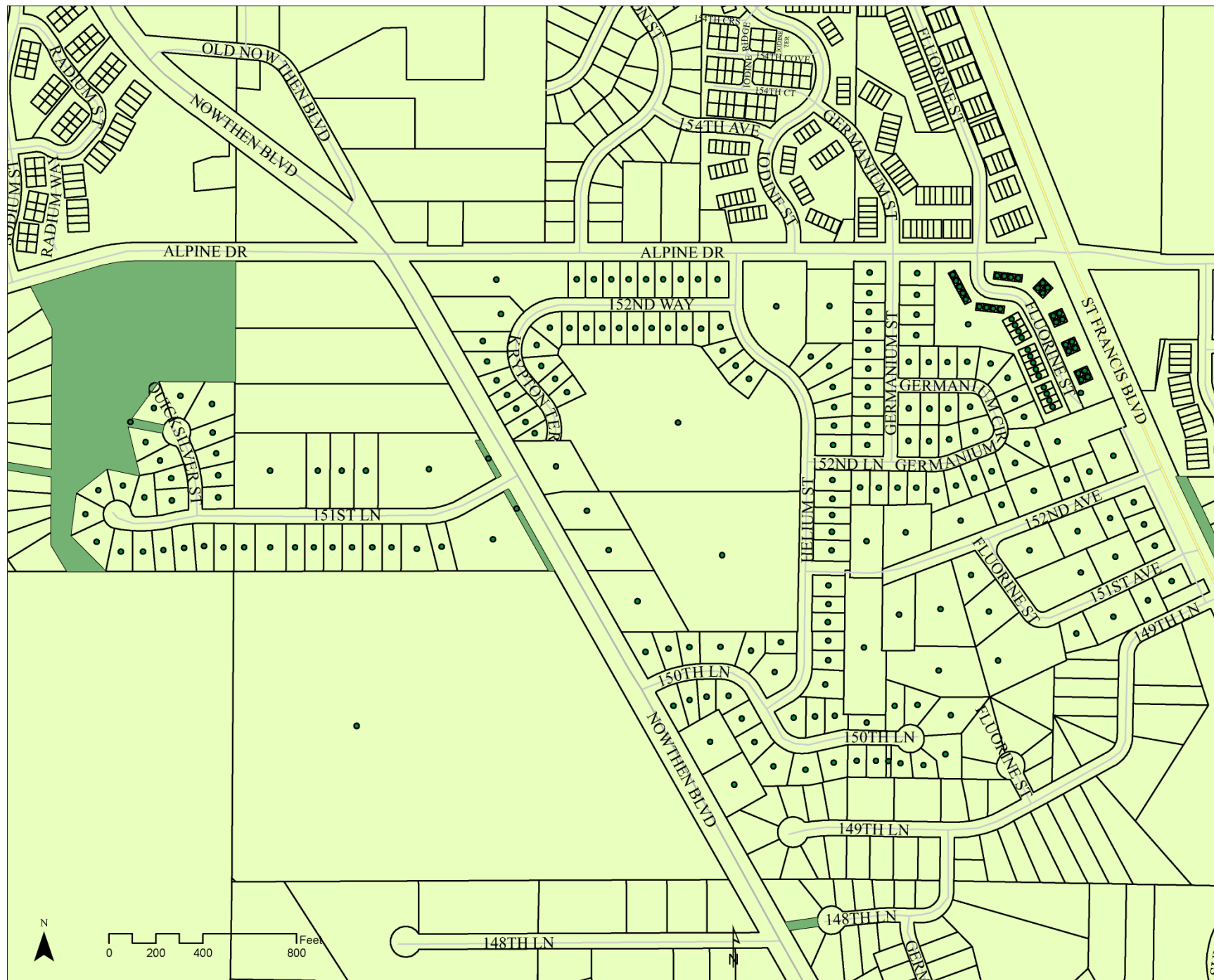


**Former
Municipal Center**
*Land Use Open House
Attendees*

● Invited

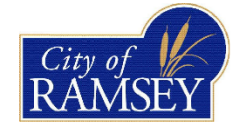
This map has been compiled using information gathered from various governmental offices and other sources and is to be used for reference purposes only. It is neither a legally recorded map nor a survey and is not intended for use as one. The Geographic Information System (GIS) data used to develop this map is not warranted by the City as being error-free. The City does not represent that the GIS data can be used for exact measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found, please contact (763) 427-1410.

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






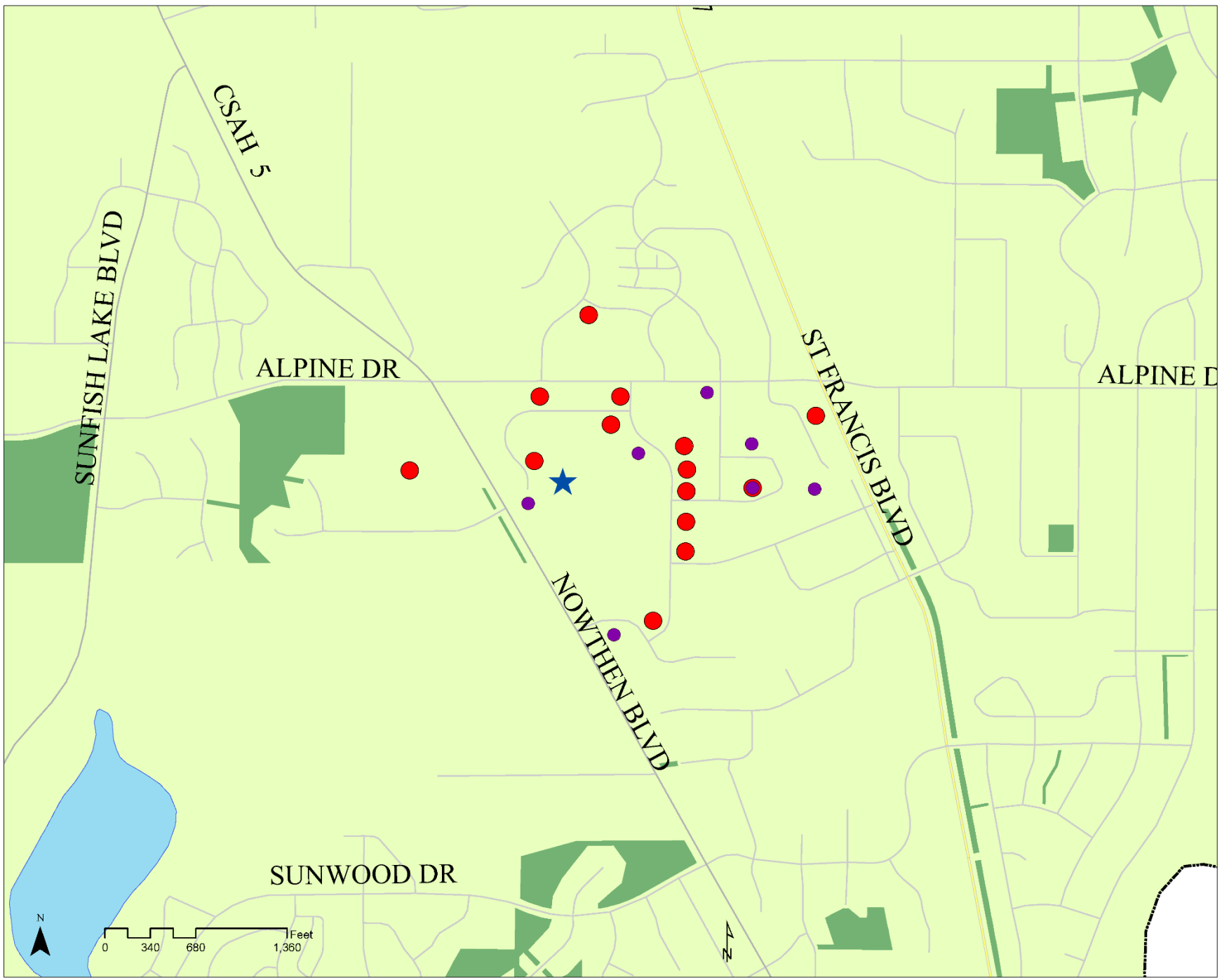
NOTIFICATION

- US Standard Mail to surrounding properties
- 'In The News' section of City website



**Former
Municipal Center**
*Land Use Open House
Attendees*

-  Former Municipal Center
-  Submitted Comments
-  Attended Open House



This map has been compiled using information gathered from various government offices and other sources and is to be used for reference purposes only. It is neither a legally recorded map nor a survey and is not intended for use as one. The Geographic Information System (GIS) data used to develop this map is not warranted by the City as being error-free. The City does not represent that the GIS data can be used for exact measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found, please contact: (763) 427-1410.

The City of Ramsey disclaims any responsibility or liability for the accuracy of the information at any point of initial contact with a GIS to which the public has general access. The preceding disclaimer is provided pursuant to Minnesota Statute 466.03, Subd. 21 (2003), and the use of this map acknowledges that the City of Ramsey is immune from any and all claims brought by User, its employees or agents, or third parties which arise out of the user's access of the data.

WEATHER IMPACT

- Date of Winter Storm Warning
- School Cancellations
- Website Notification
 - Staff available to host Open House as scheduled
 - Consider Second Open House if necessary
 - Based on responses from process, is second offering necessary?
 - Review Next Steps first

FORMAT

MEETING AGENDA

Project: Former Municipal Center Land Use

Meeting Date: April 18, 2013

Facilitator: Community Development (Tim Gladhill)

Place/Room: Council Chambers

6:00 p.m. to 7:00 p.m.	<u>Open House Small Group Stations Open</u> City Staff will be available to provide background, answer questions, and take comments.	Small Group Stations
7:00 p.m. to 7:30 p.m. (or when comments complete)	<u>Presentation and Comment Period</u> City Staff will present background on project and options for zoning tools.	Council Chambers
Immediately following Presentation and Comment Period	<u>Open House Small Group Stations Open</u> City Staff will be available to provide background, answer questions, and take comments.	Small Group Stations

COMMENT FORMAT

- Variety of Options to Comment
 - Verbal (Small Group)
 - Verbal (Large Group)
 - Written Comment Sheet
 - Email
 - Phone
 - Mail
- Interested Parties and Individuals may still comment

MEETING COMMENT SHEET

Project:	Former Municipal Center Land Use Open House	Meeting Date:	April 18, 2013
		Place/Room:	Council Chambers

Question #1: General Comments

	Residential Concept	Data Center Concept
General Comments:	<ul style="list-style-type: none"> I would prefer residential housing over a data center. The additional residential traffic does not concern me. Appropriate. Prefers residential. Must be single family to continue the concept of community. Only single-family homes! I would rather have homes than data center. Would prefer residential over data center. The growth in the last 1-2 years has been huge. Why stop now? It's a great place to live. It would still have a neighborhood feel. My preference would be residential-single family or public space/park. Seems to be the better option. Creates more tax dollars without decreasing existing surrounding home values. This option makes the most sense. The property is already surrounded by houses. This makes sense, entire community agrees. 	<ul style="list-style-type: none"> There is nothing in terms of beam, trees, or barriers that would make me feel that this option is the best for the neighborhood. Spot zoning vs. Bill's which would benefit the neighborhood. Noise. Property values. Eye sore! Brings down property value. Doesn't make sense in an island surrounded by single-family homes. In danger of 'spot-zoning'. Only financial purpose for City. Eye sore. Drop property value. Loud. Lots of traffic in neighborhood & in front of the school. Pollution, water safety. Is it fenced? Danger for kids outside. Stop signs speed limits. I will not send my daughter to Ramsey Elementary if the data center goes in. This will no longer be a neighborhood if the data center goes in. I would rather have homes so the kids have a safe area and for the school. Noise, pollution-water. <u>Not</u> a neighborhood anymore. Noise, traffic, pollution. What benefits do we as home owners gain from this? Spot zoning, totally. I am concerned with damage to my property, specifically value and noise. Lower property value. I didn't buy a home in a residential area to have my kids grow up around warehouses. Air conditioner noises. If the City wants a data center, work with the owner of the property in the NE corner of Alpine/47. North of Bill's is for sale. "Do not want it in proposed location!" Will definitely depreciate surrounding home values. Eye and ear sore. Not appropriate for the area. Very concerned w/ noise pollution, air pollution and decreased property value. It makes [no] sense to put an industrial building in the middle of a residential area. Doesn't flow with surrounding properties. Noise <u>will</u> be an issue. Traffic more of it... Lights will be an issue.

Question #3: How will this use impact your property?

	Residential Concept	Data Center Concept
How will this use impact your property?	<ul style="list-style-type: none"> I feel that this is the only positive option that would preserve my property value. I am speaking in terms of single family homes, not high density housing. [Increased] property value. Consistent with use of the rest of the neighborhood. Increase of traffic and takes away the neighborhood sledding hill. Need traffic light near school. Increase in traffic in neighborhood and in front of school. Drop property value. Need stop signs and speed limits. People <u>speed</u> all the time in neighborhood. This will bring more people into Ramsey. It will boost the economy and will help businesses in Ramsey. Boost the economy and brings more people into the area for families instead of businesses! Better for Ramsey School. Build growth for the community & also city. Positively! Increase value/protect value. We picked our house location based on the land being used for school/park. Would not have moved had light industrial been the plan. I see no way that this will affect it. We will have increased traffic in the area, but it is still the most logical use of this property. Positively. This makes sense! 	<ul style="list-style-type: none"> I feel that due to the existing residential this is a poor choice for a data center and imposes a burden on the residents in terms of noise, potential noise 24 hours a day, and the fact that it would be one or two large structures that would be all I would see out of my living room window. [Increased] traffic in residential area. [Decreased] property value. Decrease value. Brings property values down. Not enough buffering! Uncharacteristic of the basic guide of city planning! Loud generators 24/7. House value decreases. Huge eye sore. We will <u>move</u>-called realtor already. Will have to keep kids out of front yard. Loud. Most people in the area will move. Housing will go down and I am concerned that the data center will attract the wrong people. In 20 years the data center won't be needed anymore. Lower the value of the home. Noise, pollution. Will lower the value of my home. Eye sore. Negatively. Property value [decreases]. Lower property value. Noise. Visual. No sense of neighborhood. I moved to Ramsey to get away from warehouses. Just bought a home 1 yr. ago. This could only decrease property value. Noise/light pollution. HVAC equipment noise 24/7. No doubt this will dramatically decrease all surrounding home values. We will suffer decreased property value, excess noise, pollution and in general a less desirable place to live. Negatively. Property value. Lack of community. Noise. Total eyesore.

Question #2: What could the City provide from a zoning perspective to make this an acceptable use?

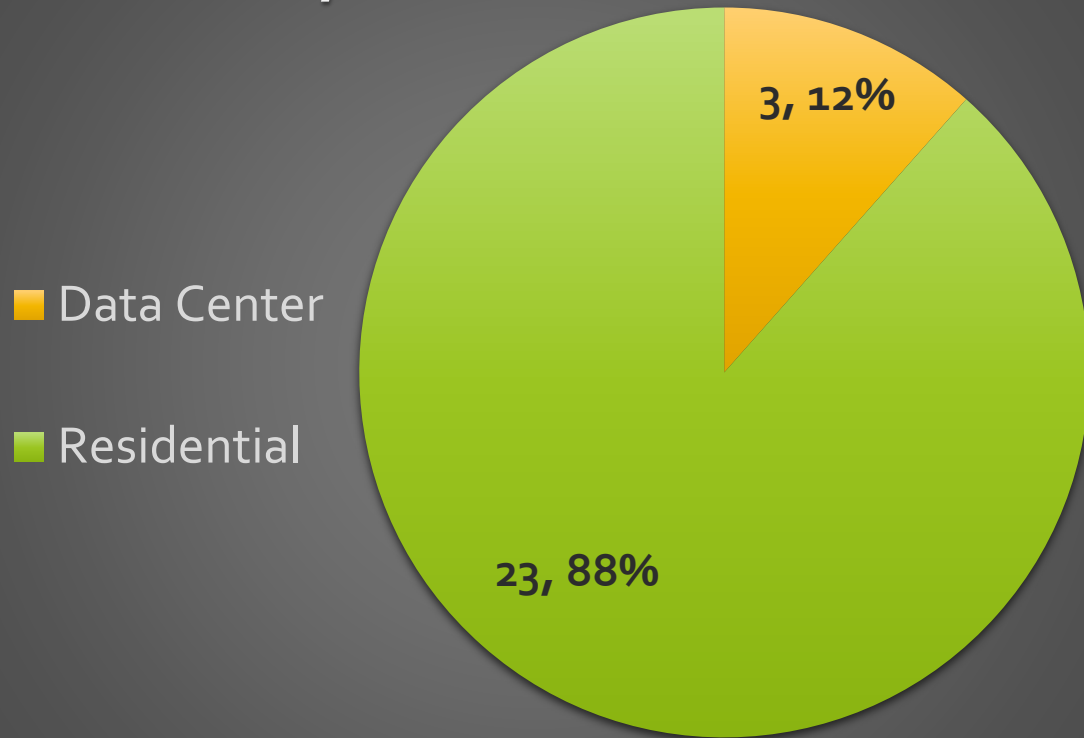
	Residential Concept	Data Center Concept
What could the City provide from a zoning perspective to make this an acceptable use?	<ul style="list-style-type: none"> Zone it for residential so that we are not faced with this issue again. A small park for the additional residents to use. Must remain single family. Small park and or gym for neighborhood use. We need lights at the school. We have tried crossing at times and have had state troopers not even stop! Build homes. Building homes. Park, splash pad. Consider a small park as part of project. More single family homes with possible a park. Will not decrease our property value. 	<ul style="list-style-type: none"> I cannot think of anything that would make me comfortable with this option. I am concerned that my property value would decrease by a large amount. Nothing! You can buy my property back! Buy the land across from Bill's on St. Francis & Alpine instead! Nothing, not acceptable for a growing neighborhood. Not put it in!! Unrelated and unrealistic spot data center. This is a residential area! The main reason we moved to Ramsey! If this happen[s] -10 yr hold/reduction on property taxes -privately funded park from data center owners - must have fences around holding ponds to keep kids out. If this is the only solution for I am not in favor of any data center this close to my property. <u>Absolutely nothing.</u> Nothing. This idea doesn't make sense from any angle.

DATA ANALYSIS AND NEXT STEPS

- Patrick Brama, Assistant to the City Administrator
 - Project Manager for this case

RESULTS

Breakdown, Total



Phone/Voicemail/Email

- Opposed to a data center 9
- Opposed to residential 3*(2)

Open House

- Opposed to a data center 14*(18)
- Opposed to residential 0

Total

- Opposed to a data center 23*(28)
- Opposed to residential 3*(2)

GENERAL FEEDBACK

- General opposition to data center concept
- Preference to single-family concept
- **Common Inquiries:**
 - School
 - Park
 - Renovate Fire Station #2 in place
 - Other available sites

COMMON RESPONSES

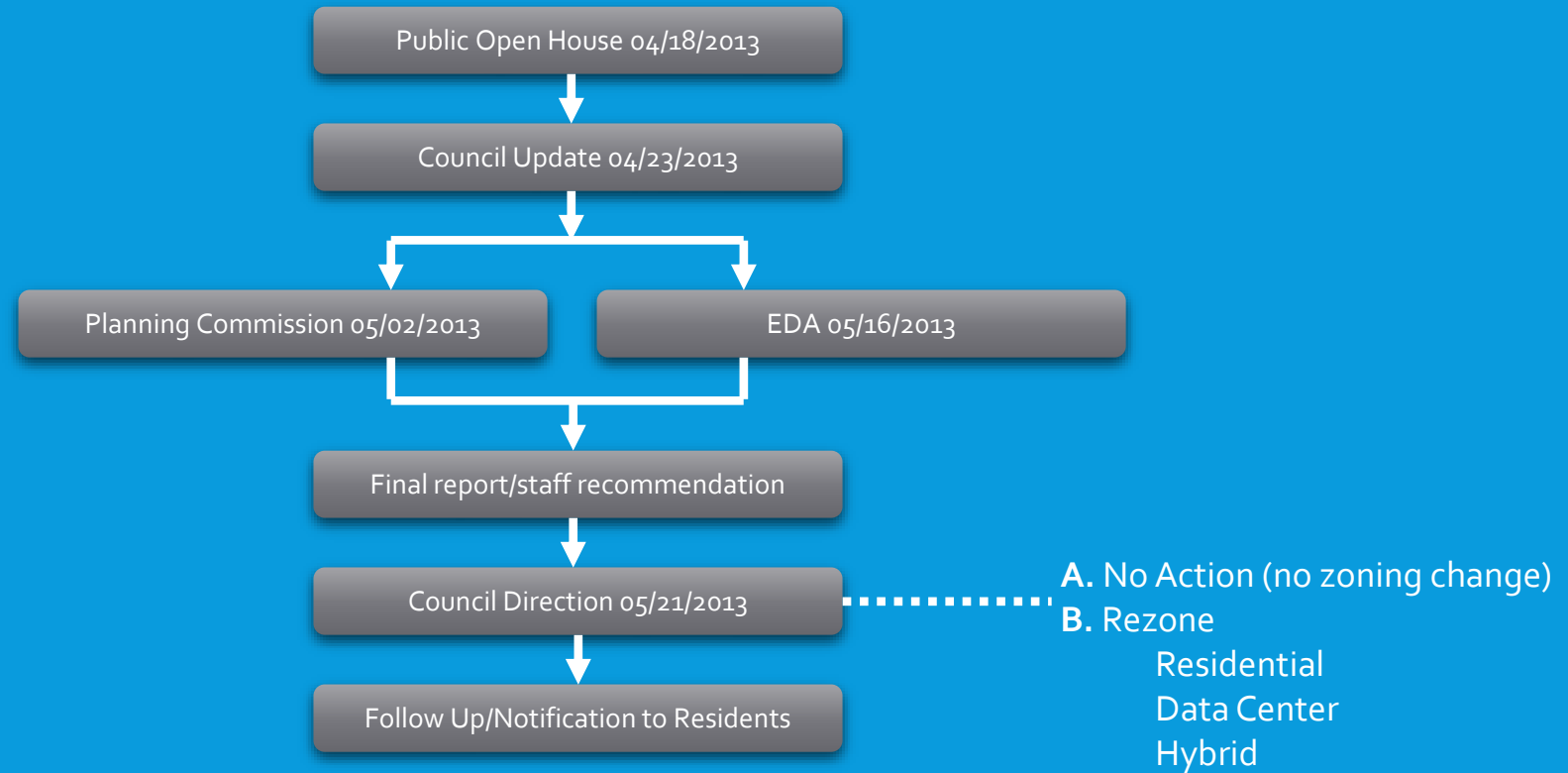
Opposed to a Data Center Development

- Decrease in property values is a major concern
- The presence/view of a data center is very undesirable
- Data Center use does not fit the character of surrounding properties (is this spot zoning?)
- Noise is a major concern (generators and air conditioners)
- Long term risk and potential reuse of property is a major concern

Acceptance of a Data Center Development

- Traffic impacts of a residential development are undesirable
- A residential development would reduce the privacy of surrounding property owners (hours of operation)

NEXT STEPS



SUMMARY

- Staff recommends a second Open House is not necessary based on feedback
 - Appears to be sufficient statistics to complete final report
- Advisory Board Review
 - May 2, 2013 – Planning Commission
 - May 16, 2013 – Economic Development Authority
- City Council Review
 - May 21/28, 2013
- *Please note: there is not a development proposal nor Zoning/Comprehensive Plan Amendment under review at this time*
 - Review Public Input
 - Staff was directed to by the EDA and CC to engage surrounding property owners regarding the future development (rezoning) of the subject property.

PUBLIC VERSION: CONTACT INFORMATION HIDDEN

EMAIL: 01

Good Afternoon,

I am contacting you on behalf of a letter I received from the city regarding Old Municipal Center Complex off of Nowthen Blvd and the possibility of building a data center on this subject property. I will be unable to make the open house meeting, but wanted to address a few concerns/inquiries I have.

My knowledge of data centers is fairly more extensive than the average consumer as my employer treats data centers, specifically the cooling towers which are imperative to data center operation. My concerns surround where the cooling towers will be placed and the treatment of those towers.

In some situations, the cooling towers can be placed at ground level surrounded by concrete parameters or inside the facility itself, which would render my concern invalid if this is the case. However, should the cooling towers be placed on the roof of the data center and be improperly treated, the risk of Legionella and Legionnaire's disease, though minimal since it is rare, would be a concern that I have. This disease has the potential to be lethal and can be carried over small distances by wind if the cooling tower(s) is placed on the roof of the building – putting the surrounding homes at risk for exposure. If properly treated, the risk can be monitored and diminished substantially. However, with some facilities that are newly built, the belief is that since the cooling towers are new, they will not need to be treated. This is a falsehood. All cooling towers should have some level of water management, new or old.

I am not opposed to the data center project, but I do urge you to address these two issues with the firm that may be building this facility on the subject property should this project move forward for the safety of the current residents.

Thank you for your time, and should you have any information or questions, please do not hesitate to let me know. I can be reached at the below information, or on my mobile phone at 763-221-2479.

EMAIL: 02

Good afternoon Patrick,

My first comment regarding the subject property notice is that there is a major error in all the drawings and photos. They all fail to show the extension of 152nd Avenue to Helium Street. That has a major impact on what to do with the property in question.

The idea of housing in that area would put an unbelievable amount of pressure on the 152nd Avenue entry onto Hwy 47. There is a stop sign on 152nd at the frontage road which nobody coming down 152nd stops for now. I can see traffic backing up from 47 totally blocking the intersection at the frontage road. I see cars now pulling out into traffic on 47 when they shouldn't even be thinking about it. It would get much worse after they have waited to get to the highway. Besides that, home coming traffic would all have to use the south entrance to the frontage road which isn't wide enough to handle that kind of traffic. When someone parks a vehicle on the roadway now it barely leaves room to get by. Sometimes vehicles park on both sides which really makes it difficult.

I am definitely in favor of the data center plans. There would be lots fewer vehicles and they would all be contained in the development area. The photos show an attractive campus for the data centers.

Unfortunately I won't be able to attend the April 18th meeting. We will be out of town.

EMAIL: 03

x

Hi Patrick,

We received the letter about the property known as the Former Municipal Center Complex and its possible future development. We will not be able to make it to the open house, so we are sending an email.

Our opinion and what we would strongly support and recommend is for the land to be used for public use, specifically a park, and a nice park that is. When we go to other cities, we see that they have beautiful, colorful, big parks in actual neighborhoods. We've always wished there was a great park that Ramsey was known for.

For example, Eden Prairie has many trails and parks. Brooklyn Center, Brooklyn Park, and Maple Grove have many parks. Andover is known for the park on Bunker Lake. What about Ramsey? Ramsey is like a city for business, buildings, and warehouses.

We would even prefer residential homes over a data center. There are other lands where a data center can be at in Ramsey, not in this neighborhood please. The neighborhood is surrounded by homes and town homes. A park would fit right in the neighborhood, not quiet industrial development or a data center. It just doesn't go together. Put the data center elsewhere where it would fit in with other big buildings.

There are many children living in the area. We see children walking around every day and see many school bus stops around our area. We think a park would be great for the community and children here.

There is no close park nearby. We would love a park within walking distance for the neighborhood children as well as our children.

EMAIL: 04

TO: City of Ramsey

As a 27 year Ramsey resident, I am appalled to hear that the City is contemplating putting an industrial “data center” in a neighborhood of residential property and in my backyard. I cannot believe that one of you would be happy with this type of development in your backyards!!!! We have lived with the City Hall being behind us for as long as we have lived there. However, after discussing this matter with an appraiser, we have been told that a data center will have a much stronger negative impact on our property. A public building like the Ramsey City Hall that only operates 8:00 to 4:30 every day (and basically not at all now) and other than an occasional fire truck or police car, is generally quiet at night is much different than an industrial data center (or whatever other industrial use it would be in the event of the data center becoming “obsolete”). He compared it to 1 train track by your property and now they want to slap 3 train tracks in with more traffic, more noise pollution, etc. Obviously, he said, it will have an impact on the values of the property and lifestyles of the people in the affected neighborhood. This is a building that the City admits will have “noise pollution” issues. See City Council Work Session on February 26, 2013. “Council member Backous (thank you Randy for bringing that up) noted the buildings will require a lot of cooling, which can include fan noise, and asked how sound will be dampened. Management Analyst Brama agreed that noise pollution will be a major component that needs to be addressed through the planning process.” That certainly does not sound like any guarantee that noise would not be a factor. Values would be impacted significantly not only by the noise pollution, the eyesore of the building, but there would also be an increase of traffic on County Road 5 and an entrance next to my property of 30-80 employees, delivery trucks, etc. on a road that is already probably running at capacity.

The appraiser, who is familiar with the area, also stated that there are plenty of opportunities in the City of Ramsey for industrial type buildings. He also stated if this was a private developer asking to do this, the City would laugh them out of the meeting, but because the City owns it and wants to make a ton of money off of the sale of it so they can pay for their fire department, this seems to be okay. This is a dramatic change in use versus the residential area that surrounds the property. There is no other industrial use like that along the entire corridor of County Road 5 other than the school (which is more public than industrial, as was the City Hall), which has been there for 30 years. There is especially no industrial in the middle of a residential area. We have plenty of industrial sites in the City of Ramsey that I can see!!

He said to show him one published article that states that high intensity property next to a low density property (residential) will not have an impact on the residential. My own research also indicates that data centers should be located in non-residential areas. “Locations should be away from residential neighborhoods or other individuals that may be sensitive to noise.” Noise for these climate controlled buildings includes exhaust fan noise, diesel engines running generators in the occasion of a power outage, increased traffic, especially with a road around the perimeter of the building that would bring the traffic next to the residential areas.

My visit to the Elk River facility portrayed in the letter sent to us, shows a much different scenario there. This building is primarily in an industrial area. Everything to the east of the building is industrial (i.e. the Sherburne County Courthouse, Metal Craft business warehouse, Allina Medical Facility, and another warehouse next to this building that has gated access. Houses nearest to it are on a small golf course (Pinewood) and are across a County Road from the building. It is certainly not surrounded by residential property. Not to mention that it is one very huge building, with small pine trees that are about 20 feet apart from each other which could hardly be considered a buffer by any means. And I don't believe that there would be any amount of trees that would buffer your property from the eyesore and the noise pollution of this building.

In addition, a person that I know that lives in Elk River about a ½ of a mile from the data center says her husband can hear the mechanicals (air conditioners and generators) running in the middle of the night. The Ramsey “data center” would be a heck of a lot closer than that to the surrounding residential properties (many of which have just moved into the neighborhood). The Brooklyn Park facility is also a much different scenario. It is on a main highway and is in the middle of nowhere.

I am very concerned with the impact a data center would have on the value of my property and the properties surrounding this area. From my count, there would be at least 46 properties that would be immediately adjacent or looking at the building, with an additional 15 or so that would also be immediately across the street from the adjacent houses with a large majority of them in a new residential development that Ramsey had the influence on where that was built. Many (if not all of them) were shown a drawing, which I have seen, that said there could be a “future middle school” in this location. Ball fields and close location to your kid’s school is a lot different proposal than a huge, industrial, noise polluting warehouse. If one of you voting on this proposal would like to buy our house and live next to the data center, please feel free to contact us. It would be great to get out before our house loses all of its value!!

We cannot attend the open house meeting on April 18th, 2013, due to travel arrangements. Believe me, if I could be there, I would! I have heard that there are other people in the neighborhood riled up about this, so hopefully they will make a presence. I may try to remind them to do that.

EMAIL: 05

Hi Patrick,

I am writing to you in regards to this evenings meeting on the proposed Data Center on County Road 5 in Ramsey. I am unable to attend this meeting but still want my opinion heard.

We purchased our home in 2002 on the premise that this was a residential area and a great place to raise a family. With the elementary school only blocks away from our home, and plans for a middle school on the opposite side of Cty Rd. 5 this was the ideal neighborhood for us. I do NOT approve of re-zoning, or 'spot zoning' of this property!

"Spot Zoning" - the illegal singling out of a small parcel of land within the limits of an area zoned for particular uses and permitting other uses for that parcel for the special benefit of its owners and to the detriment of the other owners in the area and not as a part of a scheme to benefit the entire area. (<http://www.merriam-webster.com/dictionary/spot%20zoning>)

I am appalled to see that the city is even considering putting an industrial building in the middle of a residential neighborhood. This is completely inappropriate! From the research I've done on Data Centers I have learned that they take a considerable amount of electricity to run as well as keep cool. I've learned that backup generators used in a power outage typically run on diesel fuel which in turn adds air pollution to our area. Also, I have heard that Data centers put off a considerable amount of noise pollution. In addition to all of this we are all very well aware that this will drop our property values considerably. A residential neighborhood is NOT the place for an industrial building. The proposed site literally has houses around the entire perimeter- and houses are still being built! If the city believes a data center is necessary they need to look into areas that are NOT residential. There is an industrial park on Sunwood- wouldn't looking at an area like that, or an area near highway 10 make more sense?

If Ramsey goes forward with such an absurd plan it will show that Ramsey is NOT a family orientated community- but a community of greed- selling property to make a quick buck with no regard to the families it will negatively effect. To the city this may seem like the ideal plan to generate revenue- but again, this is inappropriate. Property values will fall, families will move out of the area, and ultimately the city of Ramsey will suffer the consequences of such a ridiculous plan. I have already heard of several neighbors meeting with relators as they WILL NOT live near such a property. Additionally, I have heard others talking of simply walking away from their homes and letting them go into foreclosure as they know they will never recover the loss of value to their homes. We all know what happens to an area overcome with foreclosures. The city of Ramsey does not need this! I know personally I will begin planning to sell my home if this plan is not rejected and taken off the table immediately! I live in a great neighborhood, with great neighbors, but that will all be over if this plan moves forward. I will not only leave my current home but I will leave Ramsey completely- I do not want to live in a city that has such ill-regard for the families living here.

Thank you for your time and please let me know what has been decided after this evenings meeting, as I will want to move forward with my plans as well.

EMAIL: 06

Dear Patrick (and City Council members),

As a new resident of Ramsey, and having just moved into the Meadow Creek neighborhood, I was upset at learning that the proposed use for the fire station property is to build a data center. We were informed when shopping for and purchasing a new house in the area that the City's plans for the fire station were a middle school or residential properties. I strongly prefer and support both of those options to the proposed data center.

It is also my understanding that the proposed re-zoning of the fire station property meets the definition of "spot zoning" (see League of Minnesota Cities Information Memo: Zoning Guide for Cities, 2012, pp. 35-36). It also seems reasonable to expect that the value of my property will significantly diminish if a data center is built. As per state regulations, "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" (League of Minnesota Cities Information Memo: Zoning Guide for Cities, 2012, p. 36). It is hard for me to imagine that city council members would support an illegal practice and face potential legal action over their decision.

It also seems that the primary motivation for supporting this proposal is the funding solution for a new fire station. While on the surface this may seem to justify the re-zoning (i.e., furtherance of public welfare), it is difficult to see how reduced residential property values and the lowered quality of life (significant noise and traffic that will be generated by the data center and the eye sore that the building will be) for those in the neighborhood living next to the data center are in the public welfare. I highly doubt any of the city council members would like to have a data center in their backyard for the same reasons of lowered property values and reduced quality of life. It is also hard to imagine how residential zoning isn't preferable and supportive of the public welfare, particularly over the long term.

We were very excited to move into Ramsey, and were excited about establishing Ramsey as our new community. In less than a week of living here, we are confronted with the possibility of facing reduced property values due to the significant noise and traffic that will be generated by the data center and the eye sore that the building will be in the neighborhood. I therefore ask city council members to vote against the proposed data center and consider zoning the property as residential.

EMAIL: 07

Good Afternoon Mr. Brama,

I am unable to attend the meeting this evening regarding the absurd planning of placing a data center in the middle of a residential neighborhood.

Obviously I am against such an idiotic idea. I chose to live in Ramsey because of the NEIGHBORHOOD not to live next to a warehouse or any other type of facility. There is not one resident in this area who believes this to be a good idea. If such planning proceeds you can be assured that we will fight this with every legal means necessary.

Please feel free to take these plans and place them next to your house or the house of any other "decision maker" in our city. What would you do then? Would you enjoy the fact that your property values would drop significantly or that families would be leaving this city in droves in a "get out while you can" mentality? That is exactly what is going to happen.

The only logical plan is to build additional residential housing in what is a RESIDENTIAL neighborhood.

PHONE CALL/MESSAGE: 01

Against a data center due to the long term risk and diminishing effect on property values.

PHONE CALL/MESSAGE: 02

Lives just NE of the site. Does not want a data center. Desires a park—thinks the area is underserved. Would choose residential over data center.

PHONE CALL/MESSAGE: 03

For a data center over residential in general. However, does have concerns about noise; and would like to learn more before making a decision.

PHONE CALL/MESSAGE: 04

Called on behalf of his son who lives on east side of Helium facing the site. His son is opposed to a data center and would be in favor of a residential development.

MEETING COMMENTS

Project: Former Municipal Center Land Use Open House

Meeting Date: April 18, 2013

Place/Room: Council Chambers

Open House Comments from Chamber Station:

- Could the Fire Station be renovated? [Response provided by Fire Marshal]
- Concerned with tax rate.
- Desire for fencing around Stormwater ponds.
- Concerned with the timing of traffic signals/lights. Mentioned intersection of Alpine Drive and Sunfish Lake Boulevard as an example. [Mentioned Anoka County Highway Department 2014 Improvement Project at Alpine Drive and Nowthen Boulevard].
- Requested traffic signal/stop light at Sunwood Drive and Nowthen Boulevard.
- Concerned with electric capacity. Would the addition of a data center lead to intermittent power outages?
- Requested that the City consider all or a portion of the parcel for public park. [Encouraged respondent to discuss with Park Superintendent and/or Parks and Recreation Commission].
- Stated that single-family residential will result in higher tax revenue when compared to data center.
- Requested that City review the parcel at the northeast intersection of Alpine Drive and Saint Francis Boulevard. [Area located north of Bill's Superette].
- Noted safety concerns of pedestrians crossing Nowthen Boulevard. [Multiple locations].
- Requested tax relief for 20-30 years if data center is developed.
- Noted that air conditional units on rooftops are more concerning than backup generators.



Open House Comments from Lobby Station #1 [specific to data center]

- Home Value
- Visual eye sore
- When I bought they told me it would be a school
- Decreased property values
- Noise
- Noise
- Traffic
- Home value decreased
- Noise, traffic, unsafe for kids, water
- Spot zoning
- Prefers residential
- Traffic for school
- Noise
- Noise
- Property value
- Attracting mischief. Kids doing drugs, etc. around the property after hours
- Property values
- Pollution
- Prefer homes. Decreased property value.
- People who have no value to neighborhood
- Property value down



Public Comment Period-Following Presentation:

- ❖ Is it important to notify school across the street?
 - The school has been informed as has the Anoka County Highway Department
- ❖ Does school get a chance to comment?
 - Yes
- ❖ Why not a park?
 - Very dangerous crossing Nowthen Boulevard
- ❖ Is the City working on budgeting for a fire station other than data center?
 - CIP, grant funding and general levy.
- ❖ Sure seems like spot zoning with residential all around, irrational, inconsistent and devalues properties.
- ❖ Is it Council's vote that determines this? Can Councilmember Riley voice his thoughts?
 - Flattering that City was approached for a data center
 - If in his backyard he would be OK, especially due to setbacks.
 - Definitely concern about future use with building
- ❖ Why not the Ken Niles site? Similar size, at the highway and already commercial.
- ❖ Who decides if it is spot zoning?
 - State Statue 462.357
- ❖ Is the City willing to put moratorium on property tax increases for 10-15 years?
- ❖ Picked residential site due to it being a park/school, never would have built there if this concept was known.
- ❖ School District and principal have stated they have not had plans for a school here for years. Now, why haven't builders/realtors been informed of this?
- ❖ Residential seems most logical.
 - Just because it has good points for a data center, it could also be viewed as a good location for other uses like homes.
- ❖ It's air conditioning, not generators that we raise concerns.
- ❖ Trees won't provide screening for 10-15 years.
- ❖ Spot zoning again seems to be an issue
- ❖ What benefit is there for the residents of the neighborhood?

MEETING COMMENT SHEET

Project: Former Municipal Center Land Use Open House

Meeting Date: April 18, 2013

Place/Room: Council Chambers

Question #1: General Comments

	Residential Concept	Data Center Concept
General Comments:	<ul style="list-style-type: none"> I would prefer residential housing over a data center. The additional residential traffic does not concern me. Appropriate. Prefers residential. Must be single family to continue the concept of community. Only single-family homes! I would rather have homes than data center. Would prefer residential over data center. The growth in the last 1-2 years has been huge. Why stop now? It's a great place to live. It would still have a neighborhood feel. My preference would be residential-single family or public space/park. Seems to be the better option. Creates more tax dollars without decreasing existing surrounding home values. This option makes the most sense. The property is already surrounded by houses. This makes sense, entire community agrees. 	<ul style="list-style-type: none"> There is nothing in terms of berm, trees, or barriers that would make me feel that this option is the best for the neighborhood. Spot zoning vs. Bill's which would benefit the neighborhood. Noise. Property values. Eye sore! Brings down property value. Doesn't make sense in an island surrounded by single-family homes. In danger of 'spot-zoning'. Only financial purpose for City. Eye sore. Drop property value. Loud. Lots of traffic in neighborhood & in front of the school. Pollution, water safety. Is it fenced? Danger for kids outside. Stop signs speed limits. I will not send my daughter to Ramsey Elementary if the data center goes in. This will no longer be a neighborhood if the data center goes in. I would rather have homes so the kids have a safe area and for the school. Noise, pollution-water. <u>Not</u> a neighborhood anymore. Noise, traffic, pollution. What benefits do we as home owners gain from this? Spot zoning, totally. I am concerned with damage to my property, specifically value and noise. Lower property value. I didn't buy a home in a residential area to have my kids grow up around warehouses. Air conditioner noises. If the City wants a data center, work with the owner of the property in the NE corner of Alpine/47. North of Bill's is for sale. *Do not want it in proposed location! Will definitely depreciate surrounding home values. Eye and ear sore. Not appropriate for the area. Very concerned w/ noise pollution, air pollution and decreased property value. It makes [no] sense to put an industrial building in the middle of a residential area. Doesn't flow with surrounding properties. Noise <u>will</u> be an issue. Traffic more of it... Lights will be an issue.

Question #2: What could the City provide from a zoning perspective to make this an acceptable use?

	Residential Concept	Data Center Concept
<p>What could the City provide from a zoning perspective to make this an acceptable use?</p>	<ul style="list-style-type: none"> • Zone it for residential so that we are not faced with this issue again. • A small park for the additional residents to use. Must remain single family. • Small park and or gym for neighborhood use. We need lights at the school. We have tried crossing at times and have had state troopers not even stop! • Build homes. • Building homes. • Park, splash pad. • Consider a small park as part of project. • More single family homes with possible a park. • Will not decrease our property value. 	<ul style="list-style-type: none"> • I cannot think of anything that would make me comfortable with this option. I am concerned that my property value would decrease by a large amount. • Nothing! You can buy my property back! Buy the land across from Bill's on St. Francis & Alpine instead! • Nothing, not acceptable for a growing neighborhood. • Not put it in!! • Unrelated and unrealistic spot data center. This is a residential area! The main reason we moved to Ramsey! • If this happen[s] -10 yr hold/reduction on property taxes –privately funded park from data center owners – must have fences around holding ponds to keep kids out. • If this is the only solution for. I am not in favor of any data center this close to my property. • <u>Absolutely nothing.</u> • Nothing. This idea doesn't make sense from any angle.

DRAFT



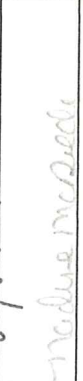
Question #3: How will this use impact your property?

	Residential Concept	Data Center Concept
<p>How will this use impact your property?</p>	<ul style="list-style-type: none"> • I feel that this is the only positive option that would preserve my property value. I am speaking in terms of single family homes, not high density housing. • [Increased] property value. Consistent with use of the rest of the neighborhood. • Increase of traffic and takes away the neighborhood sledding hill. Need traffic light near school. • Increase in traffic in neighborhood and in front of school. Drop property value. Need stop signs and speed limits. People <u>speed</u> all the time in neighborhood. • This will bring more people into Ramsey. It will boost the economy and will help businesses in Ramsey. • Boost the economy and brings more people into the area for families instead of businesses! Better for Ramsey School. • Build growth for the community & also city. Positively! • Increase value/protect value. We picked our house location based on the land being used for school/park. Would not have moved had light industrial been the plan. • I see no way that this will affect it. • We will have increased traffic in the area, but it is still the most logical use of this property. • Positively. This makes sense! 	<ul style="list-style-type: none"> • I feel that due to the existing residential this is a poor choice for a data center and imposes a burden on the residents in terms of noise, potential noise 24 hours a day, and the fact that it would be one or two large structures that would be all I would see out of my living room window. • [Increased] traffic in residential area. [Decreased] property value. • Decrease value. • Brings property values down. Not enough buffering! Uncharacteristic of the basic guide of city planning! Loud generators 24/7. • House value decreases. Huge eye sore. We will <u>move</u>-called realtor already. Will have to keep kids out of front yard. Loud. • Most people in the area will move. Housing will go down and I am concerned that the data center will attract the wrong people. In 20 years the data center won't be needed anymore. • Lower the value of the home. Noise, pollution. • Will lower the value of my home. • Eye sore. Negatively. Property value [decreases]. • Lower property value. Noise. Visual. No sense of neighborhood. I moved to Ramsey to get away from warehouses. Just bought a home 1 yr. ago. • This could only decrease property value. Noise/light pollution. HVAC equipment noise 24/7. • No doubt this will dramatically decrease all surrounding home values. • We will suffer decreased property value, excess noise, pollution and in general a less desirable place to live. • Negatively. Property value. Lack of community. Noise. Total eyesore.

JoDell Seaman Dropped these off on 4-26-13 Callahan

Petition to reject the City of Ramsey's plan to rezone the former Municipal Center Complex at 15153 Nowthen Blvd. and then sell the property and allow 1 or 2 Data Centers to be built on the property.

<p>Petition summary and background</p>	<p>The City of Ramsey notified several residents via mail on March 27, 2013 that they are considering a data center development for this property. This area is surrounded by single family homes. Data centers consume an enormous amount of energy. They generate a lot of heat requiring constant air conditioning, which in turn causes noise pollution. In addition they require constant energy supply- resorting to diesel powered generators in the event of power outage- thus increasing air pollution. Light pollution is also a concern due to the requirement of security lights. Traffic on County Road 5/Nowthen Blvd. will also increase with the addition of a data center(s). Traffic is already an issue on this road in front of the elementary school.</p> <p>Industrial buildings in a residential area lower property values. Homeowners do not want to lose value on their property.</p>
<p>Action petitioned for</p>	<p>We, the undersigned, are concerned citizens who urge our leaders to act now to remove this development scenario from their plans. If this property must be developed we agree with the city's own statement in their comparison chart that residential development of 47 single family homes is the "best fit" and "most compatible."</p>

Printed Name	Signature	Address	Comment	Date
Emily Woodward		15521 Basalt St. NW Ramsey	Need more parking	4/22/13
Craig Woodward		15521 Basalt St. NW Ramsey	No Energy Data Center	4/22/13
Madeline Mende		14321 Neen St NW Ramsey	we do not need the traffic	4/22/13
Ellen Butorac	Ellen Butorac	14310 Tungsten St. NW Ramsey	we don't need the traffic noise	4-22-13
JoDell Seaman	JoDell Seaman	15131 Helium St NW Ramsey	No Data Center	4-22-13
Annette Grabowski	Annette Grabowski	15170 Oneida St NW Ramsey	No Traffic, low Property value	4-22-13
Leigh Scarborough	Leigh Scarborough	15170 Oneida St NW Ramsey	No Data Center	4-22-13

Printed Name	Signature	Address	Comment	Date
Lois Bach	Lois Bach	14801 Radium St NW		4/22/13
F. Van Osman	F. Van Osman	18069 Helium St NW		4/22/13
Dawn Rusled	Dawn Rusled	15091 Helium St. NW		
Julia Giesche	Julia Giesche	15247 Germania St NW		4/22/13
Nichole Johnson	Nichole Johnson	15031 140th Ave NW	MORE PARKS!! we do not need more traffic, Lower, volume down	4/22/13
Mitchell Belenovich	Mitchell Belenovich	15121 Helium St. NW		4/22/13
Kimberly Jacobs	Kimberly Jacobs	Works at Ramsey Elem,		4/23/13
Leslie Bune	Leslie Bune	15201 Helium St NW	Keep Residential	4/23/13
Stew Bune	Stew Bune	15201 Helium St. NW	This is a neighborhood. Let's keep it that way!	4/23/13
Stacey Cunningham	Stacey Cunningham	15211 Helium St NW	Keep Residential!	4/23/13
Leah Van Gorp	Leah Van Gorp	15089 152nd way NW	Absolutely <u>no</u> data center	4/24/13
Amy Kilgath	Amy Kilgath	15225 Helium St NW		4/25/13
JENNIFER KUSWA	JENNIFER KUSWA	15225 Helium St NW	No Data Center! Parks ^{not} Residential	4/25/2013
Tiffany Pearson	Tiffany Pearson	5710 152nd Way NW	NO!!! Property value. Treated	4/25/13
Amy Leavell	Amy Leavell	5090 152nd way NW		4/25/13
DAVID WALTERS	David Walters	5763 152nd way NW	NO PROP VALUE NO DATA CENTER	4/25/13

703-218-8826

Printed Name	Signature	Address	Comment	Date
BRAD MURPHY	<i>Brad Murphy</i>	5787 152 nd NW		4/25
John Jankowski	<i>John Jankowski</i>	15209 Krypton Terrace NW		4/29/13
Peter Jankowski	<i>Peter Jankowski</i>	15209 Krypton Terrace NW		4/25/13
Donna McLain	<i>Donna McLain</i>			4-25-13
Jeff McLain	<i>Jeff McLain</i>	15133 NORTHERN BLVD NW		4-25-13

Jessica McLain *Jessica McLain* " " ↓

15051 Northern Blvd

4-25-13

Chad Chapman *Chad Chapman*

Diane Dalby *Diane Dalby* 5435 152nd St
 David Hickey *David Hickey* 5635 150th Ln NW

4-26-13
4-25-13

David Dark *David Dark* 5590 150th St
 Linda Peterson *Linda Peterson* 5570 150th Lane
Ann D... " " "

4-25-13

5600 150th Ln NW

4-26-13

Jennifer Nissen *Jennifer Nissen* 5550 150th Lane NW

4-26-13

Greg Nissen *Greg Nissen* 5550 150th Lane NW

4-26-13

Jodell Saman Dropped these off on 4-26-13 Colleen Laaker 04-26-13

Petition to reject the City of Ramsey's plan to rezone the former Municipal Center Complex at 15153 Nowthen Blvd. and then sell the property and allow 1 or 2 Data Centers to be built on the property.

Petition summary and background	<p>The City of Ramsey notified several residents via mail on March 27, 2013 that they are considering a data center development for this property. This area is surrounded by single family homes. Data centers consume an enormous amount of energy. They generate a lot of heat requiring constant air conditioning, which in turn causes noise pollution. In addition they require constant energy supply- resorting to diesel powered generators in the event of power outage- thus increasing air pollution. Light pollution is also a concern due to the requirement of security lights. Traffic on County Road 5/Nowthen Blvd. will also increase with the addition of a data center(s). Traffic is already an issue on this road in front of the elementary school.</p> <p>Industrial buildings in a residential area lower property values. Homeowners do not want to lose value on their property.</p>
Action petitioned for	<p>We, the undersigned, are concerned citizens who urge our leaders to act now to remove this development scenario from their plans. If this property must be developed we agree with the city's own statement in their comparison chart that residential development of 47 single family homes is the "best fit" and "most compatible."</p>

Printed Name	Signature	Address	Comment	Date
Michele Murphy	<i>Michele Murphy</i>	15228 Germanium Cr. NW Ramsey	agree w/ above statement. Not a good fit for area.	4/22/13
Susan Trombicy	<i>Susan Trombicy</i>	15143 Helium St. NW Ramsey	agree with above state- ment, the value of a prop- erty, of our properties go down	4/22/13
Rick Helmsokk	<i>Rick Helmsokk</i>	15224 Germanium Circle NW Ramsey	I Agree	4/23/13
Marius Gaudier	<i>Marius Gaudier</i>	15333 Germanium circle Ramsey MN 55303	I agree	4/23/13
Melissa Wilson	<i>Melissa Wilson</i>	15331 Germanium Circle NW Ramsey MN 55303	I agree	4/23/13
Brian Wilson	<i>Brian Wilson</i>	15331 Germanium Circle NW Ramsey MN 55303	I agree	4-23-13
Melissa Hammer	<i>Melissa Hammer</i>	15332 Germanium Circle NW Ramsey MN 55303	AGREE!	4-23-13
Richard Myer	<i>Richard Myer</i>	15123 Nowthen Blvd NW Ramsey MN 55303	Agree	4-24-13
Sheryl Fischer	<i>Sheryl Fischer</i>	15113 Nowthen Blvd Ramsey MN 55303	Agree	4/25/13

Printed Name	Signature	Address	Comment	Date
ASHELY STANBURY	ASHELY STANBURY	15231 GERMANIUM CIR NW CIRCLE	Dont want it	4/23/13
Lance Suby	[Signature]	15241 Germanium Cir NW	Against it	4/23/13
Phil Polucci	Phil Polucci	15240 GERMANIUM CIR NW		4/23/13
Joel Klever	[Signature]	15248 Germanium Cir NW	Against	4/23/13
Amy Klever	Amy Klever	15248 Germanium Cir NW	Against	4/23/13
Jana Tait	[Signature]	15227 Germanium Cir NW	Against	4/24/13
Ron Prosper	[Signature]	15220 Germanium Cir NW	Against	4/24/13
Jana Rife	Jana Rife	15220 Germanium Cir	Against	4/24/13
Jeremy James	[Signature]	15221 Germanium Cir	Against	4-24-13
Pat O'Connell	[Signature]	15590 152nd Way NW	Against	4-24-13
Christina Byrne	Christina Byrne	15210 Germanium St NW	Against	4-24-13
Lisa Dahlager	[Signature]	15251 Germanium Cir NW	Against	4/24/13
Mike Dahlager	[Signature]	15251 Germanium Cir NW	Against	4/24/13
Honnie Murphy	[Signature]	15208 Germanium Cir	Against	4/24/13
DATER YANG	[Signature]	5715 152nd Way NW	Against	4/25/13
Jos Van Stanbury	[Signature]	5751 152nd Way NW	Against	4-25-13
William G. Romo	[Signature]	5-758 15-2nd Way NW	Strongly against	4/25/13
Susan Romo	[Signature]	5-758 15-2nd Way NW	Strongly against	4/25/13

Matthew Krohn



5698 152nd way NW

I Agree 4-25-13

Phillip Van Corp



5689 152nd way NW

NO DATA center 4/25/13

Torey Reynolds



5098 152nd way NW

NO DATA center! 4/26/13



John Seaman

15131 Helium st NW

No Data Center

Parks, Residential

4-26-13

Regular Planning Commission

5. 5.

Meeting Date: 05/02/2013

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

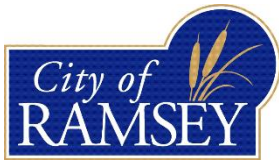
[April 25, 2013 Update](#)

[April 11, 2013 Update](#)

[April 4, 2013 Update](#)

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	04/26/2013 10:01 AM
Form Started By: Tim Gladhill		Started On: 04/26/2013
	Final Approval Date: 04/26/2013	



City of Ramsey Development Update

April 25, 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.

Staff is reviewing revised plan sheets submitted by the Developer. The Developer now expects to commence construction on preliminary grading the week of April 29, 2013, dependent upon final review of the revised plan sheets. [Updated April 25, 2013]

McDonalds (Sunwood Retail in The COR) [Updated]

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 has received an Application for Building Permit.

The Ramsey Housing and Redevelopment Authority (HRA) directed Staff to prepare a case to advertise for bids to complete the City required Stage I Improvements (common improvements). Design Plans have been completed for these improvements, and specifications are being prepared in preparation of a case for the HRA to advertise for bids. Staff anticipates that the Plat will be recorded next week, allowing title work to be completed. Staff continues to review the submitted Building Permit. [Updated April 25, 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.

Staff continues to review the Building Permit and revised plan sheets. Staff met with the Developer on Thursday, April 25, 2013 to review plan review comments. Staff expects final plans next week, with construction to commence soon after. [Updated April 25, 2013]

Super America (Sunwood Retail in The COR) *[No Update]*

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) *[No Update]*

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]

Residence at The COR *[No Update]*

Primary Reviewer: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Planning Commission reviewed the request for Site Plan Review of Residence at The COR, a 230 unit apartment development along Sunwood Drive next to the Ramsey Municipal Center in 2011. The City Council approved the request in November, 2011.

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.

Staff did receive the required Plumbing Plan Review from the State of Minnesota. Staff is still awaiting revised plan sheets, which are assumed to be under development to complete the Building Permit Review. Staff is also awaiting the required Letter of Credit. [Updated April 25, 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.

Staff has received notification that the Developer is now exploring multiple options for sites within Ramsey, other than the site originally identified. Staff will be meeting with the Developer in mid-May to discuss potential options. [Updated April 25, 2013]

Housing Assistance Policy [No Update]

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. The Planning Commission has established an ad-hoc sub-committee to assist in the development of the policy. A meeting schedule will be developed in the coming weeks. [Updated April 11, 2013]

167th Avenue Retail Node [No Update]

Primary Contact: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Planning Commission and EDA have both discussed the status of the retail node located at the intersection of 167th Avenue and Saint Francis Boulevard (TH 47). The City had previously been asked to review two (2) potential users at 6001 167th Ave NW (indoor shooting range and clothing recycling warehouse distribution. Per EDA discussion, Staff will be setting up stakeholder meetings to discuss a comprehensive approach with all property owners of the node in regards to future land uses as well as mechanisms to achieve desired future land uses. A more detailed summary will be provided following the outcomes of these stakeholder meetings. [Updated April 11, 2013]

Former Municipal Center Future Land Uses [Updated]

Primary Contact: Patrick Brama (pbrama@ci.ramsey.mn.us; 763-433-9903)

In 2006, the City relocated the Ramsey Municipal Center from 15153 Nowthen Blvd NW to 7550 Sunwood Dr NW. The former location still operates as Fire Station #2. The City has been exploring options for future use of this campus and relocation of Fire Station #2. To assist in the analysis of acceptable land uses for this campus for future development, an Open House has been scheduled for Thursday, April 18th from 6:00 to 9:00 p.m. in the Council Chambers (7550 Sunwood Dr NW). The Open House will explore options for single-family and data center users. Multiple smaller group stations, with full size maps and ability for written comments, will be available from 6:00 to 7:00 p.m. A brief presentation will be presented, with ability for large group comment, from 7:00 to 7:30 (or until comments are complete). Small group stations will re-convene following the presentation and comment period.

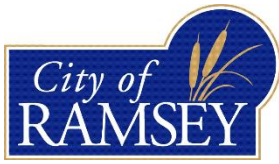
The Open House was held as scheduled despite weather concerns. Staff continues to compile results and comments from that Open House and presented preliminary findings to the City Council on Tuesday, April 23, 2013. Based on the results of that open house, Staff will presenting the detailed results to the Planning Commission, EDA, and City Council in May prior to taking any further steps. It is at this stage that Staff will discuss future direction, if any direction is desired at this time. [Updated April 25, 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

Tim Gladhill, Development Services Manager



City of Ramsey Development Update

April 4, 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.

The City has been informed that the Developer plans to commence construction on April 24, 2013. More details to follow. [Updated April 11, 2013]

McDonalds (Sunwood Retail in The COR) [Updated]

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 has received an Application for Building Permit.

The Ramsey Housing and Redevelopment Authority (HRA) directed Staff to prepare a case to advertise for bids to complete the City required Stage I Improvements (common improvements). Staff will continue to complete the necessary follow to begin the recording of the Plat. [Updated April 11, 2013]

Northgate Performing Arts Center [No Update]

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 Developer has signed the Development Agreement and will be submitted the required Financial Surety. The City continues to work to complete review of the Building Permit, subject to requested revisions of the Developer. [Updated April 4, 2013]

Super America (Sunwood Retail in The COR) *[No Update]*

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) *[No Update]*

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]

Residence at The COR *[No Update]*

Primary Reviewer: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Planning Commission reviewed the request for Site Plan Review of Residence at The COR, a 230 unit apartment development along Sunwood Drive next to the Ramsey Municipal Center in 2011. The City Council approved the request in November, 2011.

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 *[No Update]*

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 *[No Update]*

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 [No Update]

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. The Planning Commission has established an ad-hoc sub-committee to assist in the development of the policy. A meeting schedule will be developed in the coming weeks. [Updated April 11, 2013]

167th Avenue Retail Node [Updated]

Primary Contact: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Planning Commission and EDA have both discussed the status of the retail node located at the intersection of 167th Avenue and Saint Francis Boulevard (TH 47). The City had previously been asked to review two (2) potential users at 6001 167th Ave NW (indoor shooting range and clothing recycling warehouse distribution. Per EDA discussion, Staff will be setting up stakeholder meetings to discuss a comprehensive approach with all property owners of the node in regards to future land uses as well as mechanisms to achieve desired future land uses. A more detailed summary will be provided following the outcomes of these stakeholder meetings. [Updated April 11, 2013]

Former Municipal Center Future Land Uses [Updated]

Primary Contact: Patrick Brama (pbrama@ci.ramsey.mn.us; 763-433-9903)

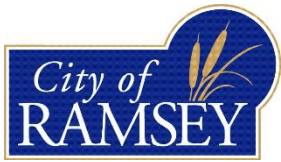
In 2006, the City relocated the Ramsey Municipal Center from 15153 Nowthen Blvd NW to 7550 Sunwood Dr NW. The former location still operates as Fire Station #2. The City has been exploring options for future use of this campus and relocation of Fire Station #2. To assist in the analysis of acceptable land uses for this campus for future development, an Open House has been scheduled for Thursday, April 18th from 6:00 to 9:00 p.m. in the Council Chambers (7550 Sunwood Dr NW). The Open House will explore options for single-family and data center users. Multiple smaller group stations, with full size maps and ability for written comments, will be available from 6:00 to 7:00 p.m. A brief presentation will be presented, with ability for large group comment, from 7:00 to 7:30 (or until comments are complete). Small group stations will re-convene following the presentation and comment period. [Updated April 11, 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

April 4, 2013

Report Background

The following report is updated weekly.

Seasons of Ramsey [No Update]

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) [Updated]

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 has received an Application for Building Permit. The Ramsey Housing and Redevelopment Authority (HRA) will be reviewing a work plan to complete the City required Stage I Improvements (common improvements). A discussion topic has been scheduled for the April 9, 2013 HRA Meeting. [Updated April 4, 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 Developer has signed the Development Agreement and will be submitted the required Financial Surety. The City continues to work to complete review of the Building Permit, subject to requested revisions of the Developer. [Updated April 4, 2013]

Super America (Sunwood Retail in The COR) [No Update]

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) *[No Update]*

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]

Residence at The COR *[No Update]*

Primary Reviewer: Tim Gladhill (tgladhill@ci.ramsey.mn.us; 763-576-4308)

The Planning Commission reviewed the request for Site Plan Review of Residence at The COR, a 230 unit apartment development along Sunwood Drive next to the Ramsey Municipal Center in 2011. The City Council approved the request in November, 2011.

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 *[No Update]*

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 *[No Update]*

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 *[No Update]*

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.



Tim Gladhill, Development Services Manager

Regular Planning Commission

5. 6.

Meeting Date: 05/02/2013

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	04/26/2013 08:02 AM
Form Started By: JoAnn Shaw		Started On: 04/22/2013 10:19 AM
		Final Approval Date: 04/26/2013

Zoning Bulletin

in this issue:

First Amendment—Church erects temporary signs announcing services, is told signs violate town ordinance	2
Nonconforming Uses—City refuses to issue permit allowing nude dancing at nightclub	6
RLUIPA—County zoning ordinance prohibits construction of private institutional facilities in zoning district	8
Zoning News from Around the Nation	11

First Amendment—Church erects temporary signs announcing services, is told signs violate town ordinance

Church contends town's differing restrictions for different types of noncommercial signs is content-based and therefore unconstitutional

Citation: *Reed v. Town of Gilbert, Ariz.*, 2013 WL 474515 (9th Cir. 2013)

Contributors

Corey E. Burnham-Howard

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

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

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

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

WEST®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084

email: west.customerservice@thomsonreuters.com

ISSN 0514-7905

©2013 Thomson Reuters
All Rights Reserved

Quinlan™ is a Thomson Reuters brand

The Ninth Circuit has jurisdiction over Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

NINTH CIRCUIT (ARIZONA) (02/08/13)—This case addressed the issue of whether a town's sign code improperly discriminated between different forms of noncommercial speech and was thus in violation of free speech rights under the First Amendment to the United States Constitution. More specifically, the case addressed whether the differing restrictions between types of noncommercial speech were: (1) "adequately justified without reference to the content of the regulated speech"; and (2) "narrowly tailored."

The Background/Facts: Good News Community Church and its pastor, Clyde Reed (collectively, "Good News"), rented space at an elementary school in Chandler, Arizona, which borders Gilbert, Arizona (the "Town"). Good News placed about 17 signs in the area, announcing the time and location of its services. In 2005, the Town advised Good News that it was violating the Town's sign ordinance (the "Sign Code") because "the signs were displayed outside the statutorily-limited time period."

The Sign Code required a sign permit for the erection of signs in Town, with exceptions. Three of the types of those exceptions were: "Temporary Directional Signs Relating to Qualifying Event"; "Political Signs"; and "Ideological Signs." Temporary Directional Signs directed people to an event. Political Signs were temporary signs that supported candidates for office or urged action on any other matter on the ballot of elections. Ideological Signs were those communicating a "message or ideas for noncommercial purposes that were not construction signs, directional signs, garage sale signs, or signs owned or required by a governmental agency." Under the Sign Code, the town's restrictions on these different types of signs varied by sign type.

Good News' signs were Temporary Directional Signs. As such, they were subject to specified size restrictions and could only be displayed "up to 12 hours before, during and 1 hour after the qualifying event ends." Also, they could not be placed "in a public right-of-way."

Good News brought a legal action challenging the Sign Code as unconstitutional in violation of its free speech rights under the First Amendment to the United States Constitution. Good News argued that the different restrictions for different types of noncommercial speech (such as different restrictions placed on Temporary Directional Signs, Political Signs, and Ideological Signs) were "inherently content-based and thus unconstitutional." In other words, Good News contended that the Sign Code improperly regulated noncommercial temporary signs based on their content. It sought a preliminary injunction barring enforcement of the Sign Code.

The district court denied Good News' motion for the preliminary injunction. The United States Court of Appeals, Ninth Circuit, affirmed in part and remanded in part.

On remand, the district court granted the Town summary judgment. It found that there were no material issues of fact in dispute and decided, on the law alone, that the Sign Code was constitutional.

Good News appealed.

DECISION: Affirmed.

The United States Court of Appeals, Ninth Circuit, held that the Sign Code's different restrictions on the different types of noncommercial speech were not based on the content of the speech. Applying the standard of review for restrictions on content-neutral speech, the court also concluded that the Sign Code's Temporary Directional Sign regulations were narrowly tailored to serve governmental interests, and were therefore constitutional.

The court explained: "The 'government may impose reasonable restrictions on the time, place, or manner of engaging in protected speech provided that they are adequately justified without reference to the content of the regulated speech.' In addition to being justified without reference to content, the restrictions must be 'narrowly tailored to serve a significant governmental interest and . . . leave open ample alternative channels for communication of the information.' "

The court rejected Good News' argument that the Sign Code's different restrictions for different types of noncommercial speech were inherently content-based and thus unconstitutional. Instead, the court held that distinctions based on the speaker or the event are permissible where there is no discrimination among similar events or speakers. "The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys," explained the court.

Here, the court found that the distinctions in the Sign Code's regulations of Temporary Directional Signs, Ideological Signs, and Political Signs were content neutral: The Sign Code placed no restrictions on the particular viewpoints of any person or entity that sought to erect a Temporary Directional Sign and the exemption applied equally to all. The Town did not adopt its regulation of speech because it disagreed with the message conveyed. Each classification and its restrictions were based on objective factors relevant to the Town's creation of the specific exemption from the permit requirement and did not otherwise consider the substance of the sign. The Political Signs exemption responded to the need for communication about elections. The Ideological Sign exemption recognized that an individual's right to express his or her opinion is at the core of the First Amendment. The Temporary Directional Sign exemption allowed the sponsor of an event to put up temporary directional signs immediately before the event. Accordingly, the court found that each exemption was based on objective criteria and none drew distinctions based on the particular content of the sign. It made no difference which candidate was supported, who sponsored the event, or what ideological perspective was asserted.

In short, the court concluded: "[A]s long as the Temporary Directional Signs exemption—which [was] the exemption that was applied to Good News' signs and that Good News challenge[d]—[was] content neutral and reasonable in relationship to its purpose—providing direction to temporary events—its constitutionality would not be affected by the fact that the exemptions for Political Signs or Ideological Signs were different."

The court also concluded that the Temporary Directional Signs exemption was narrowly tailored to serve the Town's significant governmental interests

of safety and aesthetics. Good News had contended that the Sign Code was not narrowly tailored because all temporary signs placed within the public right-of-way implicated safety and aesthetic concerns, but Temporary Directional Signs were more severely limited than Political and Ideological Signs. The court explained that, contrary to Good News' argument, to be narrowly tailored, restrictions on types of noncommercial speech need not be uniform or vary only to the extent that the type of speech affects a town's interests. For several reasons, the court found it was permissible that Political and Ideological Signs infringed on the Town's interests to a greater extent than Temporary Directional Signs: (1) unlike political, ideological, and religious speech which are clearly entitled to First Amendment protection, there does not appear to be a constitutional right to an exemption for Temporary Directional Signs; (2) each exemption reflected a balance between the Town's interests and the constitutional interests of the type of sign covered; (3) the exemptions were not in competition for limited space; the erection of one type of temporary sign did not preclude the placement of another; (4) there was no showing that the restrictions on Temporary Directional Signs interfered with their purpose: directing interested individuals to temporary events; and (5) courts generally defer to a city's determinations of size and duration.

In sum, the court found that: (a) the Town was not required to create an exemption for Temporary Directional Signs; (b) the restrictions on directional signs were rationally related to the purpose of the directional signs; and (c) the restrictions were reasonably designed to promote the Town's interests in aesthetics and safety. Moreover, the Sign Code left open "ample alternate means of communication."

See also: *Reed v. Town of Gilbert, Ariz.*, 587 F.3d 966 (9th Cir. 2009).

See also: *G.K. Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064 (9th Cir. 2006).

See also: *Hill v. Colorado*, 530 U.S. 703, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000).

Case Note:

In its decision, the court acknowledged that it was conceivable that different exemptions for noncommercial speech might improperly restrict speech. However, the court found that was not the case here, since the Temporary Directional Sign exemption was: content neutral; and not in competition with other exemptions from the permit requirement (i.e., this was not a situation where there were a limited number of billboards or maximum number of temporary signs that could be placed in the public right-of-way, nor did the erection of temporary directional signs in any way limit any other person's rights to erect political, ideological, or other signs).

Case Note:

The court also held that amendments made to the Sign Code during pendency of the appeal (i.e., limiting the temporary directional signs' exemption from the permit

requirement for only events held within the Town) did not render moot Good News' lawsuit challenging the constitutionality of the Sign Code.

Nonconforming Uses—City refuses to issue permit allowing nude dancing at nightclub

Nightclub claims nude dancing is a grandfathered, legal nonconforming use

Citation: *600 Marshall Entertainment Concepts, LLC v. City of Memphis*, 2013 WL 379784 (6th Cir. 2013)

The Sixth Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

SIXTH CIRCUIT (TENNESSEE) (02/1/13)—This case addressed the issue of whether nude dancing at a nightclub was entitled to grandfathering.

The Background/Facts: 600 Marshall Entertainment Concepts, LLC (“600 Marshall”) was a nightclub in Memphis, Tennessee (the “City”). It was located within a Central Business District (“CBD”) zoning district. The CBD was created by City ordinance in 1981. Adult entertainment was permitted in the CBD from 1981 to 1993. “Adult entertainment” was defined in the zoning title of the City Code of Ordinances to encompass things such as adult book stores, adult movie theaters, and live performances involving nudity or sexual acts. In 1993, the City and Shelby County issued Joint Ordinance No. 4209 (the “1993 Ordinance”), which eliminated adult entertainment as one of the permitted uses within the CBD.

While the zoning ordinances defined and prohibited adult entertainment, the presentation of “compensated dancers”—whether or not they were engaged in nude dancing—was regulated by the Dance Hall Ordinance. A substantially similar version of the Dance Hall Ordinance was enacted in 1971. The current version required any establishment wishing to present compensated dancers to first obtain a dance permit and pay a \$500 fee.

Various entities operated at the 600 Marshall location as a bar, club, or other similar facility since at least the 1970s. From the 1970s until the early 2000s, operators at the location occasionally presented or allowed various types of adult entertainment. At least through the late 1990s, that adult entertainment included nude dancing. However, no dance permit had been issued for the businesses at the 600 Marshall location since at least 1991.

In 2005, 600 Marshall was purchased by a new owner. That owner wanted to operate an adult nightclub featuring compensated nude dancers. He applied for a dance permit under the Dance Hall Ordinance. Eventually, 600 Marshall received a dance permit with a nudity restriction; 600 Marshall could present compensated dance on its premises, so long as the dance did not involve adult entertainment and it maintained an up-to-date dance permit. It could also pres-

ent adult entertainment, so long as that entertainment did not involve nude dancing.

Then, 600 Marshall appealed. Among other things, it argued that adult entertainment at its establishment was a grandfathered nonconforming use, and that allowing nude dancing would not expand the nonconforming use. It further argued that, under state law, the City lacked the authority to restrict the expansion of a nonconforming use because the ordinance conflicted with state law, Tenn. Code Ann. § 13-7-208(c).

The district court found that allowing 600 Marshall to present frequent nude dancing would expand the nonconforming use in contravention of the City Code.

Again, 600 Marshall appealed.

DECISION: Affirmed.

The United States Court of Appeals, Sixth Circuit, found that the whole dispute as to whether nude dancing at 600 Marshall would illegally expand the nonconforming use was putting “the proverbial cart before the horse.” The bottom line, concluded the court, was that nude dancing was not an activity that could be grandfathered because it was not being legally conducted at 600 Marshall when the 1993 Ordinance changed the zoning laws to prohibit adult entertainment in the CBD.

The court explained: Both state law, Tenn. Code Ann. § 13-7-208(b)(1), and the City Code, § 16-116-2(A), contained grandfather clauses. Such grandfather clauses, explained the court, provide: “an exception to a restriction that allows all those already doing something to continue doing it, even if they would be stopped by the new restriction.” To qualify for grandfathering, 600 Marshall had to prove: “(1) that there ha[d] been a change in zoning[;] and (2) that the use to which [it] put [its] land was permitted prior to the zoning change.” In other words, the grandfather statutes could save only those uses which were legal at the time the change in zoning occurred.

The court found it was undisputed that the owner of the premises at 600 Marshall did not have a dance permit in 1993 when adult entertainment became a prohibited use in the CBD. Thus, any nude dancing that may have been occurring at that time was done without a permit and therefore was illegal under the Dance Hall Ordinance. Again, although “adult entertainment” was permitted under the zoning code until 1993, any compensated “nude dancing” had required a permit under the Dance Hall Ordinance and a similar prior version, since 1971. Although nude dancing had occurred at 600 Marshall thought the late 1990s, it was not occurring legally since no dance permit had been issued for the businesses at the 600 Marshall location since at least 1991. Since illegal activities are not entitled to grandfathering, any illegal nude dancing at 600 Marshall in 1993 was not entitled to grandfathering. The fact that 600 Marshall had since obtained a dance permit in 2005 was irrelevant.

Since nude dancing was not grandfathered at 600 Marshall, the court found it was unnecessary to determine whether frequent nude dancing would constitute an impermissible expansion of a legal nonconforming use; any such nonconforming use was illegal.

See also: *Coe v. City of Sevierville*, 21 S.W.3d 237 (Tenn. Ct. App. 2000).

Case Note:

600 Marshall had also alleged multiple constitutional violations, including that: the Dance Hall Ordinance was unconstitutional as an improper restraint on expressive activities because it did not contain certain procedural safeguards; that the Dance Hall Ordinance was unconstitutionally vague, both facially and as applied; and that 600 Marshall was deprived of a protected due process property or liberty interest when an earlier-issued dance permit was revoked. The United States Court of Appeals, Sixth Circuit, rejected all of these claims. It held that: 600 Marshall forfeited its right to raise its improper restraint argument on appeal; the Dance Hall Ordinance was not unconstitutionally vague but was, in fact, relatively simple, and, in any case, 600 Marshall failed to point to any term or provision in the Ordinance that it believed was vague; and 600 Marshall was not deprived of a protected property or liberty interest when an earlier-issued dance permit was revoked and not reissued because 600 Marshall did not have a legitimate property interest in the dance permit originally issued because that permit allowed adult entertainment and thus was issued erroneously, nor had 600 Marshall sought a permit to present nonnude dancing.

RLUIPA—County zoning ordinance prohibits construction of private institutional facilities in zoning district

Church, which had purchased land in the zoning district to construct place for worship, alleges that prohibition violates RLUIPA

Citation: *Bethel World Outreach Ministries v. Montgomery County Council*, 2013 WL 363620 (4th Cir. 2013)

The Fourth Circuit has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

FOURTH CIRCUIT (MARYLAND) (01/31/13)—This case addressed the issue of whether a county zoning regulation, which prohibited the construction of private institutionalized facilities in a particular zoning district violated the federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”).

The Background/Facts: Bethel World Outreach Ministries (“Bethel”) was a Christian church with two places of worship in Montgomery County, Maryland (the “County”). Facing overcrowding at its places of worship, Bethel purchased a 119-acre property in the County (the “Property”). The Property was within a 93,000-acre area that had been designated as an “agricultural reserve.” It was zoned “rural density transfer zone.” In that zone, property was subject to a transferable development rights system. Under that system,

developers could purchase rights from landowners in the rural density transfer zone to build in other areas of the County. The property of the landowner who sold the development rights would then be subject to an easement, which restricted the density of residential development permitted on that property. Prior to 2007, the easements did not affect institutional use of property in the zone, so a church was a permitted use on Bethel's property.

In October 2007, the County Council adopted an amendment to its zoning provision, ZTA 07-07 (the "Ordinance"). The Ordinance prohibited a landowner from building a private institutional facility on any property subject to a transferable development rights easement. Because Bethel's Property was subject to such an easement, the Ordinance barred Bethel from building even a small-sized church on the Property.

In May 2008, Bethel filed a legal action in federal court. It alleged that the Ordinance violated its rights under RLUIPA, the First and Fourth Amendments to the United States Constitution, and the Maryland Declaration of Rights. More specifically, Bethel had argued that the County violated: (1) the substantial burden provision of RLUIPA (42 U.S.C.A. § 2000cc(a)(1)); (2) RLUIPA's nondiscrimination provision (42 U.S.C.A. § 2000cc(b)(2)); (3) RLUIPA's unreasonable limitation provision (42 U.S.C.A. § 2000cc(b)(3)(B)); and (4) its free exercise and equal protection rights under the United States Constitution and the Maryland Declaration of Rights.

The County moved for summary judgment. It asked the district court to find that there were no material issues of fact and to decide the matter in its favor on the law alone. The district court issued summary judgment to the County on all claims.

Bethel appealed.

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

The United States Court of Appeals, Fourth Circuit, held that: (1) a genuine issue of material fact precluded summary judgment on Bethel's RLUIPA substantial-burden claim; (2) the County did not violate RLUIPA's nondiscrimination provision; (3) the Ordinance did not constitute an unreasonable limitation on a religious institution under RLUIPA; and (4) the Ordinance did not violate Bethel's free exercise rights.

The court explained:

Bethel's principal argument had been that it had bought property reasonably expecting to build a church and the County Ordinance impeding the building of the Church imposed a substantial burden on Bethel's religious exercise in violation of RLUIPA (42 U.S.C. § 2000cc(a)(1)).

RLUIPA's substantial burden provision prohibits the imposition or implementation of any land use regulation in a manner that:

"imposes a substantial burden on the religious exercise [(including the use, building, or conversion of real property for the purpose of religious exercise)] of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution . . . is in furtherance of a compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest."

The Fourth Circuit court found that the district court had applied the wrong

standard when ruling on Bethel's substantial burden provision violation claim. The Fourth Circuit explained that, in the land use context, a plaintiff can succeed on a substantial burden claim by establishing that a government regulation put substantial pressure on it to modify its behavior. However, the plaintiff need not show that the land use regulation targeted the plaintiff since the substantial burden provision protects against both nondiscriminatory and discriminatory conduct that imposes a substantial burden on religion.

Here, the court found that Bethel had, at the very least, offered evidence raising a question of material fact as to whether it had a reasonable expectation of being able to build a church. The court also found it significant that Bethel had shown that its current facilities were inadequate and the construction of even a small church on the Property would alleviate that burden; and the County had completely prevented Bethel from building any church on its Property, rather than simply imposing limitations on a new building.

Still, the Ordinance would violate RLUIPA by imposing a substantial burden on religious exercise only if the Ordinance failed to satisfy strict scrutiny. That is, the Ordinance would not be in violation of RLUIPA if the County could show that it had used the least restrictive means of furthering a compelling governmental interest. The court assumed, without deciding, that the County's claimed interests of preserving agricultural land, water quality, and open space and managing traffic and noise in the rural density transfer zone were "compelling." The court also found that the County had failed to demonstrate that, as a matter of law, the Ordinance was the least restrictive means of furthering that interest. The County had presented no evidence that its interest in preserving the integrity of the rural density transfer zone could not be served by less restrictive means, "like a minimum lot-size requirement or an individualized review process." The court therefore reversed the district court's grant of summary judgment to the County on Bethel's substantial burden claim, and remanded the matter.

Bethel had also claimed that the Ordinance violated RLUIPA's nondiscrimination provision. That provision provides: "No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination." (42 U.S.C.A. § 2000cc(b)(2).) Here, the court found the Ordinance was facially neutral, applying to all private institutional facilities. Moreover, the court could find no evidence that Bethel was prohibited from constructing its church on the basis of religion; rather the court found that the County had expressed concern with the size of the proposed facility. The court affirmed the district court's grant of summary judgment to the County on this claim.

The court also rejected Bethel's claim that the Ordinance violated RLUIPA's unreasonable limitation provision. That provision provides that government shall not impose or implement a land use regulation that "unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." (42 U.S.C.A. § 2000cc(b)(3)(B).) In other words, the provision prevents government from adopting policies that make it difficult for religious institutions to locate anywhere within the jurisdiction.

Here, the court found that the Ordinance merely prohibited religious assemblies, along with other institutional uses, on properties in the rural density

transfer zone that are encumbered by transferable development rights easements. Bethel had failed to produce any evidence suggesting that religious organizations were left without a reasonable opportunity to build elsewhere in the County. Thus, the court held that Bethel's unreasonable limitation claim failed as a matter of law.

Finally, the court also concluded that Bethel's constitutional claims—that the County violated its free exercise and equal protection rights—also failed. Bethel's free exercise violation claim failed because Bethel could not show that the Ordinance was not rationally related to a legitimate governmental interest. Also, Bethel's equal protection rights violation claim failed because Bethel failed to show that the County discriminated against it on the basis of religion and the County's actions were rationally related to a legitimate governmental interest.

See also: *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338, 226 Ed. Law Rep. 595 (2d Cir. 2007).

See also: *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006).

See also: *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004).

See also: *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003).

Zoning News from Around the Nation

CALIFORNIA

In early February, California's highest court heard arguments over whether municipalities can ban medical marijuana dispensaries. "In essence, the court will decide, when it comes to medical marijuana, whether federal or state laws prevail here in California, and whether cities can regulate dispensaries through zoning laws."

Source: *KCET*; www.kcet.org

Several municipalities are reportedly using zoning and health laws to close so-called "maternity hotels," which house immigrants who want to deliver their babies in the United States.

Source: *Diamondbar-Walnut Patch*; <http://diamondbar-walnut.patch.com>

ILLINOIS

State legislators are considering a bill that would allow the production and sale of medical cannabis at special distribution centers throughout Illinois. The legislation would permit a pilot program for growing, harvesting and distributing cannabis to patients diagnosed with a debilitating medical condition from a single facility in each state senate district. The bill failed to make it to a vote during a lame-duck session last year. The bill preempts home rule authority, so municipalities would not be able to "opt out" of the program. The Metropolitan Mayors Caucus has suggested that municipalities adopt regula-

tions in anticipation that the legislation would be approved by the General Assembly.

Source: *Chicago Tribune*; <http://articles.chicagotribune.com>

MARYLAND

State Senator Barry Glassman has introduced Senate Bill 427, which would, reportedly, allow farmers a method to recoup lost value in their land resulting from two recently enacted state environmental mandates. SB 427 would set up a process under which farmers affected by the economic effects of the 2012 Sustainable Growth and Agricultural Act “would be able to have a fair market value evaluation taken of their property prior to the impact of new regulations and one taken after the impact of completed regulations, within a five-year limit. The farmer could then use the diminution of value as a credit against state income taxes for that year, until the total amount of the credit is met.”

Source: *Baltimore Sun*; <http://www.baltimoresun.com>

KANSAS

In an effort to address what can be sold on a farm, House Bills 1430 and 1852 are being considered in the state legislature. House Bill 1430 would add commercial protections for farmers. The House Agriculture Subcommittee has deleted provisions of House Bill 1430 that specified farmers’ constitutional protections. Still opponents say it would leave “local government almost no recourse to have some control over what goes on in their jurisdictions (other) than to change or abolish zoning and/or repeal land use taxation.” House Bill 1852 was introduced as a counter-measure and would, proponents say, “facilitate a ‘major expansion’ of sales of non-meat products such as pickles and dried herbs by farmers.” It has passed the House.

Source: *Watchdog.org*; <http://watchdog.org>

WISCONSIN

The state legislature is considering AB 1, a mining bill. The bill, which was approved on party line votes in Assembly and Senate mining committees, would change the permitting process for ferrous mining. It would set a 420-day deadline, with one 60-day extension, for the state Department of Natural Resources to act on a permit and allows exemptions from some environmental rules for mining companies. Proponents of the bill say it could help to pave the way for 700 jobs over 35 years. Critics say it would ease environmental protections and limit public input. The bill next goes to the Legislature’s Joint Finance Committee, and a vote on a final version.

Source: *Wisconsin State Journal*; <http://host.madison.com>

Zoning Bulletin

in this issue:

First Amendment—Zoning ordinance bans billboards throughout township	2
Constitutionality of Zoning Regulation—County zoning and permit ordinances regulate fortune teller's business	5
Preemption/Constitutionality—Town ordinance prohibits installation of manufactured homes more than 10 years old	9
Zoning News from Around the Nation	11

WEST®

Mat #41329848

First Amendment—Zoning ordinance bans billboards throughout township

Billboard developer contends ordinance violates the First Amendment guarantee of free speech

Citation: *Interstate Outdoor Advertising, L.P. v. Zoning Bd. of Tp. of Mount Laurel*, 706 F.3d 527 (3d Cir. 2013)

Contributors

Corey E. Burnham-Howard

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

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

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

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

WEST®

610 Opperman Drive

P.O. Box 64526

St. Paul, MN 55164-0526

1-800-229-2084

email: west.customerservice@thomsonreuters.com

ISSN 0514-7905

©2013 Thomson Reuters

All Rights Reserved

Quinlan™ is a Thomson Reuters brand

The Third Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the U.S. Virgin Islands.

THIRD CIRCUIT (NEW JERSEY) (02/11/13)—This case addressed the issue of whether an ordinance that prohibited billboards was unconstitutional in violation of the First Amendment guarantee of free speech.

The Background/Facts: Interstate Outdoor Advertising, L.P. (“Interstate”) sought to erect nine outdoor advertising signs along U.S. Interstate-295 in Mount Laurel Township, New Jersey (the “Township”). I-295 is a major transportation corridor with three lanes of traffic running through the Township in each direction. Interstate filed development applications with the Township Zoning Board of Adjustment (the “Zoning Board”).

Since 1988, the Township’s zoning ordinance prohibited in all zoning districts: “[o]utdoor advertising signs (i.e., billboards);” and “[s]igns immediately adjacent to interstate 295 and the New Jersey Turnpike.” While Interstate’s billboard applications were pending, the Zoning Board adopted Ordinance 2008-12 (the “Ordinance”). Among other things, the Ordinance prohibited “Billboards” “within the Township.”

Ultimately, the Zoning Board denied each of Interstate’s applications.

Interstate sued. It alleged that the Ordinance violated the First Amendment guarantee of free speech.

The district court granted the Township’s motion for summary judgment. It found that there were no material facts in dispute and decided the matter on the law alone in the Township’s favor. The court held that: “the Ordinance was a reasonable means of achieving the Township’s substantial interests of traffic safety and maintaining the natural beauty of the Township”; “that the Township enacted [the Ordinance] based upon evidence that it would advance those twin goals”; and “that the [O]rdinance was reasonably related to achieving traffic safety and preserving aesthetic.”

Interstate appealed.

DECISION: Affirmed.

The United States Court of Appeals, Third Circuit, concluded that the Ordinance’s ban on billboards did not violate Interstate’s rights as to commercial speech or noncommercial speech.

The court held that, as to its restrictions on commercial speech, the Ordinance did not violate the First Amendment because it: served a substantial government interest; and was no more extensive than necessary to advance that interest. More specifically, the court found that the Ordinance: advanced the Township’s interests of traffic safety and aesthetics; and that the Township-wide ban on billboards was “perhaps the only effective approach” to address the Township’s concerns for those interests.

In so holding, the court rejected Interstate’s argument that the Township’s concern about preserving aesthetics was “overblown.” Interstate had pointed to the fact that the billboards were to be posted along the

multilane, heavily trafficked, Route I-295 corridor in “heavy industrial zones.” The court found that argument “ignore[d]” the fact that billboards are “real and substantial hazards to traffic safety” and “by their nature, wherever located and however constructed, can be perceived as an esthetic harm.” Accordingly, the court found that “[t]he industrial nature of the highway d[id] not mitigate [the Township’s] concerns about the aesthetics of the highway.” In fact, found the court, “it may well suggest an even greater need to guard against the deterioration of the Township’s character and evoke a greater concern for safety.”

The court concluded that “[t]he fact that the [O]rdinance advances that substantial interest in a manner that, although all inclusive, is nevertheless not overly inclusive given the impact of billboards on a community, is sufficient to allow [the Ordinance] to survive Interstate’s challenge even though it has a very real impact on Interstate’s commercial speech.”

The court also rejected Interstate’s argument that the Township’s goals of traffic safety and aesthetics could be achieved with a less restrictive ordinance that allowed billboards in certain areas under certain conditions. The court reasoned: “[i]f the [Township] has a sufficient basis for believing that billboards are traffic hazards and are unattractive, then obviously the most direct and perhaps the only effective approach to solving the problems they create is to prohibit them.”

The court further held that, as to its restrictions on noncommercial speech, the Ordinance did not violate the First Amendment because it: served the substantial governmental interests of traffic safety and aesthetics; specifically provided that it was to be applied in a content-neutral manner; and left open ample alternative channels for communication of the information.

Interstate had argued that, although various alternative means of communication may be available (e.g., on-premises signs; Internet advertising; radio; newspapers; etc.), those means were not available to the specific target audience of the drivers traveling I-295 that would be reached by the proposed billboards. The court said that “maximizing . . . profit is not the animating concern of the First Amendment.” That Interstate could not reach the distinct audience of travelers on the particular section of I-295 that it desired to target did not mean that adequate alternative means of communication did not exist.

See also: *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341, 6 Media L. Rep. (BNA) 1497, 34 Pub. Util. Rep. 4th (PUR) 178 (1980).

See also: *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800, 16 Env’t. Rep. Cas. (BNA) 1057, 11 Env’t. L. Rep. 20600 (1981).

See also: *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 96 S. Ct. 1817, 48 L. Ed. 2d 346, 1 Media L. Rep. (BNA) 1930, 1976-1 Trade Cas. (CCH) ¶ 60930 (1976).

Case Note:

Throughout its discussion, the court emphasized the United States Supreme Court's acknowledgement that "complete billboard bans may be the only reasonable means by which a legislature can advance its interests in traffic safety and aesthetics."

Case Note:

In its discussion, the court noted that local governments need not generate their own site-specific studies before enacting an ordinance—so long as whatever evidence the local government relies upon is reasonably believed to be relevant to the problem that the local government addresses.

Constitutionality of Zoning Regulation—County zoning and permit ordinances regulate fortune teller's business

Fortune teller claims regulations violate her constitutional rights to free speech, freedom of religion, and equal protection

Citation: *Moore-King v. County of Chesterfield, Va.*, 2013 WL 680683 (4th Cir. 2013)

The Fourth Circuit has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

FOURTH CIRCUIT (VIRGINIA) (02/26/12)—This case addressed the issue of whether a county zoning ordinance, business license tax, and fortune teller permit ordinance violated a fortune teller's: constitutional rights to free speech and free exercise of religion under the First Amendment to the United States Constitution; rights to religious exercise under the Religious Land Use and Institutionalized Persons Act (the "RLUIPA"); and equal protection rights under the United States Constitution's Equal Protection Clause.

The Background/Facts: Beginning in late 2008, Patricia Moore-King ("Moore-King") sought to offer services as a psychic and spiritual counselor in Chesterfield County, Virginia (the "County"), under the name of "Psychic Sophie." She rented office space in an area zoned as a C-3 Community Business District. Other tenants in the office building included

clinical psychologists and licensed professional counselors. Moore-King's primary practice was spiritual counseling involving a psychic reading based on tarot cards and astrological signs.

In August 2009, authorities from the County contacted Moore-King and informed her she needed a business license to operate. When Moore-King sought to register with the County's Commissioner of Revenue as a business likely to earn less than \$10,000 in annual revenue, she learned that the County classified her as a fortune teller as defined in the County Code. The County required any individual seeking to open a business as a fortune teller to acquire a fortune teller business permit, pay the fortune teller license tax, and secure a conditional use permit in certain zoning districts. She then received a letter informing her that she owed the County \$343.75, consisting of the \$300 fortune teller license tax under Code § 6-44 and a penalty and accrued interest for late payment.

Moore-King chose not to pay the license tax but instead to challenge the legality of the County's regulatory scheme (which included the zoning ordinance, business license tax ordinance, and fortune teller permit ordinance). In December 2009, she filed a complaint against the County alleging seven counts under the Constitution and federal statutory law. Among other things, she asserted violations of her First Amendment rights to free speech and the free exercise of religion; statutory claims under the Religious Land Use and Institutionalized Persons Act (the "RLUIPA"), 42 U.S.C.A. §§ 2000cc et seq.; and allegations that the County's regulatory treatment of her violated the Equal Protection Clause under the 14th Amendment.

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

Moore appealed.

DECISION: Affirmed.

The United States Court of Appeals, Fourth Circuit, held that the County ordinances (i.e., the zoning ordinance, business license tax ordinance, and fortune teller permit ordinance) that regulated Moore-King's fortune telling business did not violate the First Amendment expression rights of Moore-King. The court also found that Moore-King's beliefs were a way of life, rather than deep religious convictions, and therefore not entitled to protections offered by the First Amendment or RLUIPA. Also, the court held that the County's regulatory treatment of Moore-King did not violate the Equal Protection Clause under the 14th Amendment because the County could rationally find it proper to place a greater regulatory burden on Moore-King's activities than on licensed counselors and advisors.

On appeal, Moore-King had contended that the County's regulatory scheme for fortune tellers trespassed upon her constitutional right to free expression. The County responded that Moore-King's business involved

“inherently deceptive speech undeserving of any First Amendment protection.” The court rejected the County’s argument. The court recognized that fortune telling is “not necessarily fraudulent or inherently deceptive simply because it involves predictive speech.” Rather, found the court: “[t]he reality that much professional intercourse depends on predictions about what the future may bring suggests that categorical branding of fortune telling as unworthy of First Amendment protection for that same reason is untenable.” The court concluded that whether Moore-King’s specific activities were fraudulent or deceptive was a genuine issue of material fact, unsuitable for decision on a summary judgment basis (but better answered by a jury). The court also noted that “[e]ven when considering some instances of defamation and fraud, . . . falsity alone may not suffice to bring the speech outside the First Amendment. The statement must be a knowing or reckless falsehood.” Here, the County had not specifically argued that Moore-King’s speech was knowingly or recklessly false. Absent such arguments, the court could not agree with the County’s position that inherently deceptive speech necessarily lacks First Amendment protection. Consequentially, the court concluded that the First Amendment Free Speech Clause afforded some degree of protection to Moore-King’s activities.

Next, the court looked to determine the appropriate level of First Amendment protection that should be accorded Moore-King’s counseling activities. The court found that neither commercial speech nor the time, place, and manner doctrine was a perfect fit. Rather, the court determined Moore-King’s activities “fit comfortably within the confines of” analysis under the “professional speech doctrine”—which regulates occupational speech. (A distinction is made between professional speech and protected expression.) The court explained that, under the professional speech doctrine, the government can license and regulate those who would provide services to their clients for compensation without running afoul of the First Amendment. The court went on to find that the County’s regulation of Moore-King’s profession raised no First Amendment problem because it amounted to a generally applicable licensing and regulatory regime for fortune tellers: The County uniformly required any individual seeking to open a business as a fortune teller to acquire a fortune teller business permit, pay the fortune teller license tax, and secure a conditional use permit in certain zoning districts. Thus, the court held that Moore-King’s activities fell squarely within the scope of the professional speech doctrine and that the County’s regulations therefore did not abridge her First Amendment freedom of speech.

Moore-King had also argued that the County’s regulatory scheme interfered with the free exercise of her religion under the First Amendment and the RLUIPA, which in pertinent part prohibits a government from enacting a land use regulation that imposes a “substantial burden on the religious exercise of a person.” (42 U.S.C.A. § 2000cc(a)(1).) The County contended that Moore-King’s set of beliefs did not constitute a religion. The appellate court agreed.

The court explained that whether Moore-King's set of beliefs deserved constitutional protection as a religion, depended on whether they were: (1) sincerely held; and (2) religious in nature under Moore-King's "scheme of things." Because the parties agreed and the record supported the view that Moore-King sincerely held her beliefs, the court focused on the second prong. The court determined that Moore-King's beliefs failed to meet the second prong because they did not amount to "a religious faith as opposed to a way of life." Rather, the court found her beliefs more closely resembled "personal and philosophical choices consistent with a way of life, not deep religious convictions shared by an organized group deserving of constitutional solicitude." Thus, concluded the court, Moore-King could not avail herself of the protections afforded those engaged in religion.

Finally, as to Moore-King's Equal Protection argument, the court explained that the County's zoning or licensing ordinance would violate the Equal Protection Clause only if Moore-King could demonstrate "that she ha[d] been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Moore-King had argued that she had been "irrationally treated differently from those engaged in 'other office uses'; other fortune tellers, like those at church-sponsored fairs or telling fortunes as stage actors; and other 'spiritual readers,' 'prophets,' 'psychics,' or 'advisors.'" The County had contended that Moore-King was not in fact similarly situated to any of those entities, and even if she was, any differential treatment was not without a rational basis. The court agreed with the County.

The court said that, assuming without deciding that Moore-King was situated similarly to the entities she identified, she nonetheless failed to carry her burden of negating "every conceivable basis which might support" the County's zoning and licensing ordinances. The court determined that the County could believe it appropriate to impose higher entry costs or more stringent zoning limitations on those seeking to open a business as a fortune teller than on "other office uses" cited by Moore-King in order to discourage the—in Moore-King's words—"innumerable scam artists." Likewise, the County could rationally suppose it proper to place greater regulatory burdens on Moore-King's counseling activities than on the licensed counselors and advisers to whom she sought to compare herself. Granting the County wide latitude to determine how to regulate those who claim or pretend "to disclose mental faculties of individuals for any form of compensation," the court could not say the County's regulatory scheme lacked any rational relationship to a legitimate governmental interest.

See also: *U.S. v. Alvarez*, 132 S. Ct. 2537, 183 L. Ed. 2d 574, 40 Media L. Rep. (BNA) 1953 (2012).

See also: *Lowe v. S.E.C.*, 472 U.S. 181, 105 S. Ct. 2557, 86 L. Ed. 2d 130, Fed. Sec. L. Rep. (CCH) P 92062 (1985).

See also: *U.S. v. Seeger*, 380 U.S. 163, 85 S. Ct. 850, 13 L. Ed. 2d 733 (1965).

See also: *Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972).

See also: *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 113 S. Ct. 2096, 124 L. Ed. 2d 211, 21 Media L. Rep. (BNA) 1466 (1993).

Preemption/Constitutionality— Town ordinance prohibits installation of manufactured homes more than 10 years old

Landowner contends ordinance is preempted by the National Manufactured Housing Construction and Safety Standards Act

Citation: *Schanzenbach v. Town of Opal, Wyo.*, 706 F.3d 1269 (10th Cir. 2013)

The Tenth Circuit has jurisdiction over Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.

TENTH CIRCUIT (WYOMING) (02/7/13)—This case addressed the issue of whether a local zoning ordinance that prohibited the installation of any manufactured home that was older than 10 years at the time of the permit application was preempted by the National Manufactured Housing Construction and Safety Standards Act. It also addressed whether the ordinance violated a landowner's equal protection and substantive due process rights under the United States Constitution.

The Background/Facts: Roger Schanzenbach ("Schanzenbach") owned several properties in the town of Opal, Wyoming ("Opal"). He sought to install mobile manufactured homes on those properties, and applied for the required permits with Opal. Opal's town council issued several building permits to Schanzenbach. However, shortly thereafter, the town council enacted an ordinance that included a provision banning the installation of any manufactured home that was older than 10 years at the time of the relevant permit application (the "10-Year Rule").

When Schanzenbach's permits were about to lapse, he had not yet started construction on his properties. He requested an extension, and the town council denied his request. It also rejected his applications for new permits because the proposed homes were more than 10 years old and thus violated the 10-Year Rule.

Schanzenbach brought a legal action against Opal and its town council (hereinafter, collectively "Opal"). He argued that Opal's 10-Year Rule was preempted by the National Manufactured Housing Construction and

Safety Standards Act of 1974 (the “Manufactured Housing Act”) (42 U.S.C.A. §§ 5401-5426). He also alleged that the 10-Year Rule violated his constitutional rights to equal protection and due process.

Finding no material issues of fact in dispute, and deciding the matter on the law alone, the district court awarded summary judgment to Opal.

Schanzenbach appealed.

DECISION: Affirmed.

The United States Court of Appeals, Tenth Circuit, held that the 10-Year Rule was not preempted by the Manufactured Housing Act. The court also held that the 10-Year Rule was sufficiently rational to survive the equal protection and substantive due process challenge.

In so holding, the court explained that pursuant to the United States Constitution’s Supremacy Clause, and the United States Supreme Court’s interpretation of that clause, states (including local governments) are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance. Also, state (and local government) laws are preempted when they conflict with federal law.

The court determined that the 10-Year Rule was not preempted by the Manufactured Housing Act and its related regulations (see 24 CFR §§ 3280.101-3280.816) because the Manufactured Housing Act and the related regulations governed only the construction and safety of manufactured homes, and the 10-Year Rule did not regulate “the construction or safety” of manufactured homes but was based on Opal’s interests of aesthetics and property values of its neighborhoods.

Schanzenbach had argued that the 10-Year Rule related to the “durability” of manufactured homes and thus was encompassed by construction and safety. The court disagreed, finding the “durability of the home [was] irrelevant under the [10-Year Rule]” because: “[n]o matter how durable the home, its age may bar it from being moved into town”; and “a home less than 10 years old when moved into town [would be] entitled to remain no matter how ‘undurable’ it may be.”

Schanzenbach had also argued that the 10-Year Rule violated the Equal Protection Clause because it distinguished between manufactured homes older than 10 years and those younger than 10 years without a rational basis for doing so. The court found this argument to be “meritless.” Since Schanzenbach had not suggested that he belonged to a suspect class or that he was asserting a fundamental constitutional right, the 10-Year Rule was “presumed to be valid” as long as it was “rationally related” to a legitimate interest of Opal. The court found the 10-Year Rule was rationally related to Opal’s interest of aesthetics: “In our view, the town council could have rationally believed that a manufactured home more than 10 years old that is being moved onto a lot in the community is likely to be less attractive than the homes in the vicinity of the lot.”

The court also rejected Schanzenbach’s argument that Opal’s 10-Year

Rule violated his right to substantive due process because it was not rationally related to Opal's interest in preserving neighborhood aesthetics. The court explained that "before a zoning ordinance can be declared unconstitutional on due process grounds, the provisions must be clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." Here, the court found that Opal "could have rationally concluded that the 10-Year Rule would help preserve neighborhood aesthetics," and thus the rule was not clearly arbitrary or unreasonable.

See also: *Arizona v. U.S.*, 132 S. Ct. 2492, 183 L. Ed. 2d 351, 115 Fair Empl. Prac. Cas. (BNA) 353, 95 Empl. Prac. Dec. (CCH) P 44539 (2012).

See also: *Georgia Manufactured Housing Ass'n, Inc. v. Spalding County, Ga.*, 148 F.3d 1304 (11th Cir. 1998).

See also: *Texas Manufactured Housing Ass'n, Inc. v. City of Nederland*, 101 F.3d 1095 (5th Cir. 1996).

Case Note:

When analyzing the preemptive scope of the Manufactured Housing Act, the court found the guidance of the Fifth and Tenth Circuits helpful.

Zoning News from Around the Nation

ARKANSAS

The state Senate recently passed Senate Bill 367. "Under the bill, if a state or local law or rule reduces a property value by 10 percent, the property owner—or even a property user such as a lessee—would have a claim to compensation." Critics say "the bill could complicate the ability of local governments to regulate anything, large or small." The bill heads to the House Judiciary next.

Source: *Arkansas Times*; www.arktimes.com

GEORGIA

Pending state legislation, House Bill 176, would reportedly "negate the Federal Telecommunications Act, which authorizes cities to regulate the placement of towers through zoning procedures as long as wireless coverage is not prohibited." The bill would essentially "subvert the [local] zoning process"—with cell phone companies no longer needing to prove things such as a need for the tower or a lack of alternative locations.

Source: *Johns Creek Patch*; <http://johnscreek.patch.com>

HAWAII

State senators recently advanced a bill, Senate Bill 215, which would “create a Public-Private Partnership Authority that would promote development projects.” The authority would not have exemptions from state land use regulations (as does the Public Land Development Corp, which is expected to be repealed), but counties, by ordinance or memorandum of agreement, could waive zoning, land use, and permitting requirements on any project prior to construction. The bill was approved by the Senate Ways and Means Committee and the Senate Education Committee, and now goes to the full Senate.

Source: *Star Advertiser*; <http://www.staradvertiser.com>

MONTANA

A Helena judge is weighing “whether the city can use its zoning authority to regulate the kinds of materials used in building, or if . . . that power rests solely with the state.” A 2008 Helena ordinance established the wildland-urban interface zone, which encompasses the entire city. Among other things, the ordinance regulates building materials. For example, it prohibits new wood shingles—the purpose of which is to resist the spread of fire. A local homeowner sued and has argued that state law prohibits cities from enacting building codes beyond the statewide code established by the Department of Labor and Industry. The city has argued that the state building code law expressly excludes zoning regulations from its prohibition on city rulemaking. It also argued that state law specifically allows municipalities to “regulate and restrict the erection, construction, reconstruction, alteration, repair and use of buildings, structures or land,” and to “enact zoning ordinances that promote the health, safety, morals or general welfare of the community.”

Source: *Independent Record*; <http://helenair.com>

NEW YORK

The Town of Warwick recently passed two zoning laws—“one that prohibits fracking waste byproducts on town roads and the other prohibiting heavy industry altogether.”

Source: *Warwick Advertiser*; <http://warwickadvertiser.com>

ZONING PRACTICE

APRIL 2013



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 4

PRACTICE URBAN LIVESTOCK



Urban Micro-Livestock Ordinances: Regulating Backyard Animal Husbandry

By Jaime Bouvier

While small farm animals never completely disappeared from most cities, a growing number of communities are revisiting their animal control and zoning regulations in response to a renewed interest in chickens, bees, and goats among urban agriculture practitioners and backyard hobbyists.

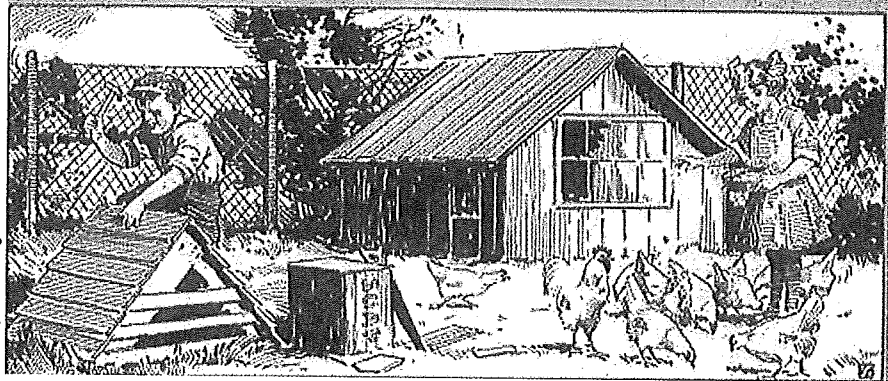
This article explores how small farm animals (i.e., micro-livestock) can and already do coexist in urban environments, and it examines the regulatory tools cities use to sanction and control backyard animal husbandry. The following sections are intended to serve as a guide for local governments considering legalizing and regulating this budding hobby.

WHAT IS MICRO-LIVESTOCK?

There is no universal definition of micro-livestock. It often just means small animals—like chickens, ducks, quail, and rabbits. It can also mean breeds that are smaller than average—such as bantam chickens, Nigerian Dwarf goats, or Red Panda cows. Finally, it can mean an animal of what is normally a large breed that just happens to be small. Many international organizations have long championed raising micro-livestock in cities to provide a secure and safe local food source. Because they require less food and water, are often especially hardy breeds, and their small size makes them ideal for small lots, micro-livestock are especially well suited to urban living.

Right now, most attempts to legalize micro-livestock focus on chickens, goats, and bees. Although rabbits are micro-livestock, they have caused less controversy. Perhaps because they are more accepted as pets, they were never made illegal in many cities. Very small pigs, like the pot-bellied pig, have also been accepted in many cities

Uncle Sam Expects You To Keep Hens and Raise Chickens



➡ During World War II, the U.S. government framed backyard chicken keeping as a patriotic duty.

as a pet; because they are not being raised for bacon, people don't think of them as livestock. There has been some move to legalize miniature horses as guide animals for the blind and disabled. Other animals, like miniature hogs, cows, or sheep, may also be suitable for city life under the right circumstances, but fewer people are advocating for them.

A SHORT HISTORY OF URBAN HENS AND OTHER MICRO-LIVESTOCK.

Although micro-livestock never disappeared from cities altogether, they used

to be an accepted and even encouraged part of urban life. For example, during the Victory Garden campaign, when the U.S. government urged American citizens to grow more of their own food to support the war, the government encouraged people to keep and raise chickens.

As it became cheaper and more convenient to buy food from a grocery store, it became less common to see livestock in the city. While many people believe that livestock became illegal because they were a nuisance, there is little evidence that this was the case—especially when just

ASK THE AUTHOR JOIN US ONLINE!

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

About the Author

Jaime Bouvier is a senior instructor of law and codirector of the Writing and Academic Support Program at Case Western Reserve University School of Law in Cleveland, Ohio. She has also represented state and local governments as well as landowners in zoning and land-use litigation.

a few animals were kept. Instead, exiling livestock was partially a class-based phenomenon. Excluding animals that were seen as productive, that is animals kept for food purposes, was a way to exclude the poor. Animals that came to be viewed as nonproductive, such as dogs and cats, required money to keep and did not have the same associations. By illegalizing behavior associated with the recently rural and poor, a city could present itself as prosperous and progressive.

The desire to exclude the poor is a reason why ordinances making livestock illegal are often found in suburbs and even exurbs where the lot sizes are especially conducive to raising animals. It is also a reason why changing the regulations, even in such suburbs, is often especially contentious.

Now, however, raising livestock is becoming an activity that many young, educated, middle-class people seek out. The association between micro-livestock and poverty is no longer relevant. And distinguishing cities and suburbs from rural occupations is no longer universally seen as a sign of progress. In fact, many view a well-regulated return of micro-livestock to the cities and suburbs as embracing progressive values. And legalizing micro-livestock can actually attract people who seek to live in a place that supports the close-knit communities that this hobby creates.

MICRO-LIVESTOCK COMMUNITIES

Communities are essential to the micro-livestock movement. They provide much-needed support for people to discuss common problems and share interests.

Many communities began as a few people who already raised chickens, or goats, or bees—in violation of city law. They organized to legalize their animals. One of the leading examples of this is a group called Mad City Chickens in Madison, Wisconsin. Members of the group who kept chickens illegally, the self-described "Chicken Underground," were

Many communities began as a few people who already raised chickens, or goats, or bees—in violation of city law.

generally law-abiding citizens uncomfortable with their outlaw status. They did not understand why raising chickens in a way that did not bother their neighbors should be illegal. In 2004, in response to the group's lobbying efforts, Madison amended its zoning ordinance to allow chickens (and, subsequently, bees in 2012). Their lobbying efforts became the focus of a film, also titled *Mad City Chickens*, and have been a model for other groups seeking to legalize micro-livestock, such as the New York City Beekeepers Association and Seattle's Goat Justice League.

These groups' stories show that many people already keep micro-livestock in cities whether or not they are legal. It also shows that once citizens and city leaders are educated about these animals and shown how

they can, and already do, peacefully coexist in cities, they often will legalize these animals. Finally, it shows that cities are better off reasonably regulating micro-livestock, rather than forcing hobbyists out of their cities or underground.

CHICKENS, GOATS, AND BEES: BENEFITS

The main benefits to keeping chickens, goats, and bees is not so much to eat the animal itself, though people do eat chickens and goats. The main benefit is to eat the food they produce: eggs, milk, and honey. There is good research to show that backyard eggs are tastier and have more nutrients than store-bought ones. Milk from backyard goats, moreover, tastes better because goat milk does not store or ship well. It is also, arguably, easier to digest for those who cannot drink cow's milk. Goat hair is a prized material for making cashmere and mohair fabric. Manure from these animals is an excellent, and surprisingly pricey, fertilizer. Many people also value these animals for their companionship and become as close to them as they do any other pet. Finally, backyard and hobbyist livestock keepers ensure a diverse and more robust population of animals, ensuring the propagation of breeds that are not valued commercially but may become important if commercial breeds, because of genetic uniformity, become threatened by disease.

Apart from honey, keeping bees in urban areas has two main benefits: pollination services and ensuring an extant bee population. Honeybees pollinate two-thirds of our food crops and in recent years have suffered devastating losses. Some experts assert that these losses are caused or exac-

erbated by the use of pesticides, the stress of constant travel to different farms to pollinate crops, and the lack of plant diversity in rural environments. Thus, hobbyist beekeepers who do not subject their hives to such stressors may prove to be a haven for the continued existence of honeybees.

CHICKENS, GOATS, AND BEES: CONCERNS

Concerns about chickens and goats generally boil down to three things: odor, noise, and disease. None of these provide a reason to ban hens and does, but roosters can be too noisy and a ratty buck may be too smelly for dense urban environments.

Contrary to popular myth, roosters do not just crow in the morning to greet the rising sun—roosters crow all day. Hens do not need roosters to lay eggs; roosters are only necessary to fertilize the eggs. Hens are generally quiet, but when they do cluck, the resulting noise is about the same decibel level as a quiet human conversation. And, as long as a chicken coop is regularly cleaned and adequately ventilated, a small flock of hens will not be smelly.

Goats, too, are not generally noisy animals. While a goat may bleat, the sound is generally far less than the noise of a barking dog. Some goats, just like dogs or cats, are noisier than others. And, as for odor, female goats (does) and neutered male goats (wethers) do not smell. Male goats (bucks), during the mating season, do smell. The gamy odor of a ratty buck is the smell many associate with goats. While it is necessary for a doe to mate with a buck and deliver a kid to lactate and provide milk, this can be arranged with a stud-buck kept in more rural environs.

Finally, there is the issue of disease. As with any animal, including dogs and cats, disease can be spread through feces. Regular cleaning and straightforward sanitation practices, such as hand washing, can take care of this issue. While concerns about backyard chickens spreading avian flu have surfaced in some communities, the kind of avian flu that can cross over to humans has not yet been found in North America. And neither the Centers for Disease Control nor the Department of Agriculture have asserted that the possibility of bird flu is a reason to ban backyard hen keeping. Public health scholars have concluded that backyard chickens present no greater threat to public health than other more common pets like dogs and cats.

The major objection to honeybees is the fear of being stung. Here, it is important to understand the distinction between bees and wasps. Honeybees are defensive; they will not bother others unless they are threatened. A honeybee's stinger is attached to the entrails, so it will die if it stings. Bees want pollen; they are not interested in human food. Wasps, by contrast, are predatory, can sting repeatedly with little consequence, and are attracted to human food. Many people confuse fuzzy honeybees with smooth-skinned yellow jackets, a kind of wasp that forms papery hives. People do not keep wasps because they are not effective pollinators and do not produce honey.

A connected objection is a fear of a swarm. A swarm is a group of bees traveling to establish a new hive. While a swarm can be intimidating, before bees swarm they gorge on honey to prepare for the trip, which makes them particularly lazy and docile. Unless attacked or bothered, they will follow a scout bee to a new location within a few hours to a day.

Before drafting an ordinance, local governments should be aware that federal and state laws already regulate livestock.

AGRICULTURAL BASICS FOR CITIES CONSIDERING LEGALIZING MICRO-LIVESTOCK

Chickens and goats require companionship. As a consequence, cities should allow a minimum of four hens and two does. This ensures that the city is not interfering with good animal husbandry practices.

And, while bees never lack for companionship, it is a good idea to allow beekeepers to have more than one hive. This allows the beekeeper to better inspect for and maintain hive health. Cities should not be overly concerned that hives kept too close together will compete for food—honeybees fly up to a three-mile radius from the hive to find pollen.

FEDERAL AND STATE LAW CONSIDERATIONS

Before drafting an ordinance, local governments should be aware that federal and state laws already regulate livestock. The federal government regulates the sale, processing, labeling, and transportation of chickens, eggs, and other meats (21 U.S.C.

§451 et seq.; 21 U.S.C., §1031 et seq.; and 21 U.S.C. §601 et seq.). The FDA requires that all milk be pasteurized, including goat milk (21 C.F.R. §1240.61) and regulates nutrition and information labeling of honey (21 U.S.C. §§342–343). Many of these laws have exceptions for animals and animal products raised for home consumption, but someone who wants to raise eggs, milk, or meat for sale or distribution would need to comply.

Most states have laws regulating the movement of livestock, including chickens, goats, and bees, into and out of the state. To track and attempt to control some diseases associated with livestock and bees, some states either require or encourage keepers of livestock and beekeepers, even backyard hobbyists, to register their premises with the state. Other states only ask to be alerted if a particular disease is found. Many states also have laws regulating the slaughter and sale of any animal used for meat, as well as laws regulating the sale of eggs, milk, and milk products. While these, also, generally have exceptions for home consumption, they will apply to sales. Often state agricultural

extension services will have online information pages describing the regulations and exemptions for hobbyists.

For beekeeping, however, a few states have passed laws that interfere with a local government's ability to regulate. Wyoming, for instance, controls how close together apiaries (an area with one or more beehives) may be located (Wyo. Stat. Ann. §11-7-201). In June 2011, Tennessee preempted all local government ordinances regulating honeybee hives (Tenn. Code. Ann. §44-15-124). And in July 2012, Florida also preempted all local government ordinances regulating managed honeybee colonies or determining where they can be located (Fla. Stat. §§586.055 & 586.10).

COMMON ASPECTS OF URBAN MICRO-LIVESTOCK REGULATION

In the cities that have recently passed ordinances regulating micro-livestock, the ordinances are all quite different. No standard ordinance has yet been established.



⊕ Portland, Oregon, allows up to three pygmy goats in a residential backyard without a permit (§13.05.015.E).

There are, however, many common aspects to these regulations. Most of them limit the number and type of livestock that can be kept in the city, establish setbacks for where the animals can be kept on the property, and require a certain amount of space per animal. Some also require a license.

Micro-Livestock Standards

Most cities have not taken a comprehensive regulatory approach to micro-livestock, but appear to allow particular livestock in response to citizen lobbying. Hundreds of cities have legalized chickens in the past few years. And the growing popularity of beekeeping means many cities have also adopted separate ordinances to allow for it. For example, South Portland, Maine (§§3-51 & 3-710; Cary, North Carolina (§5.3.4(I) & (O)); Ypsilanti, Michigan (§§14-13 & 14-171); and Littleton, Colorado (§§10-4-4 & 10-4-14) have recently passed ordinances separately allowing for both chickens and bees.

Some cities make idiosyncratic choices. For example, Ponca City, Oklahoma, allows miniature horses and donkeys, but still bans all other fowl and livestock (§7-3-10). Sebring, Florida, allows two hens and

two pot-bellied pigs (§4-1). And Carson City, Nevada, allows chickens, pigs, rabbits, and bees, but no goats (§§7.02 & 7.13.190).

And some only allow goats. In 2011, Loveland, Ohio, allowed two pygmy goats on residential properties of any size (§505.16). It defines pygmy as a goat no heavier than 60 pounds. The choice of such a light weight is curious, given that many micro-goat breeds weigh more than 60 pounds. Also, many breeds of dogs weigh up to three times as much, but most cities do not restrict the size of dogs. In 2010, Carl Junction, Missouri, allowed just one pygmy goat on a property of any size (§205.200(C)). Because goats are herd animals, this limit encourages poor animal husbandry practices.

Meanwhile, many cities are legalizing a wider variety of livestock. For example, Denver allows up to eight ducks or chickens and up to two dwarf goats and two beehives (§8-91; §11.8.5.1). But it requires 16 square feet of permeable land available to each chicken and 130 square feet for each goat. The city also requires adequate shelter to protect the animals from the elements and from predators. This means that to keep the full complement of eight chickens and two

goats, the yard would have to have approximately 400 square feet of space. For chickens, ducks, and goats, Denver has a 15-foot setback from neighboring structures used for dwelling and requires that the animals be kept in the rear half of the lot. For bees, Denver has a five-foot setback from any property line and requires that hives be kept in the back third of the lot.

Seattle allows up to eight domestic fowl, four beehives, one potbelly pig, and two pygmy goats, or no pig and three pygmy goats, on any lot (§23.42.052). It then employs a step system for additional animals. For lots larger than 20,000 square feet, an additional small animal—which means a dog, cat, or goat, may be kept on the lot. Seattle also allows other farm animals, including cows, horses, or sheep, to be kept on lots that are greater than 20,000 square feet. Seattle allows one of these animals per 10,000 square feet. Also, it has a 50-foot setback from the neighboring property for all farm animals, not including potbelly pigs, fowl, or miniature goats. Finally, Seattle has a separate ordinance that restricts goats to their premises, “except for purposes of transport or when on property other than

that of the miniature goat's owner with the permission of a lawful occupant of that property" (§ 9.25.084(H)).

Cleveland has a slightly more complex ordinance in that it has different regulations for residential and nonresidential districts (§347.02). It also employs a step system, allowing one animal per a certain number of square feet. In residential districts, it allows one hen, duck, rabbit, or similar animal per 800 square feet, and one beehive per 2,400 square feet. The ordinance spells out that a standard residential lot in Cleveland is 4,800 square feet, so most households could keep up to six hens and two beehives. Setbacks for hens are five feet from the side-yard line and 18 inches from the rear-yard line. Setbacks for bees are five feet from the lot line and 10 feet from any dwelling on another parcel. Neither animal is allowed in the front or side yard. Cleveland only allows goats, pigs, sheep, or similar farm animals on lots that have at least 24,000 square feet (i.e., a little more than a half-acre). If a lot is that size or larger, two of these animals will be allowed, with an additional one for each additional 2,400 square feet. Enclosures for these animals must be set back 40 feet from the property line and at least 100 feet from the dwelling of another.

In Cleveland, the nonresidential districts are less restrictive, with one chicken, duck, or rabbit per 400 square feet, one beehive per 1,000 square feet, and one goat, pig, or sheep per 14,400 square feet. This can allow for more intensive operations in less populated areas—and also opens the area to urban farms.

Hillsboro, Oregon, and El Cerrito, California, employ similar step systems. El Cerrito allows three hens as long as the property is at least 4,000 square feet (§7.08.020). Hillsboro allows three hens as long as the property is 7,000 square feet (§6.20.070). Both cities require at least 10,000 square feet to keep goats, but Hillsboro limits goats to two, and El Cerrito does not appear to limit them. El Cerrito, however, does require an administrative use permit to keep goats and allows for a conditional use permit to keep goats on a smaller parcel of land. El Cerrito requires a property of at least 5,000 square feet to keep one beehive. That beehive must be 20 feet from an adjacent dwelling and 10 feet from the property line. Hillsboro allows up to three beehives on any size residential property with a setback of 10 feet from the property line.

Vancouver, Washington, is an example of a less restrictive ordinance (§20.895.050). It allows up to three goats, if they weigh less than 100 pounds, on any size property. It also allows chickens, ducks, geese, or rabbits on any size lot with no numerical restriction. It does provide in the ordinance that the keeping of animals is subject to already existing nuisance requirements.

Roosters and Bucks

Most of these cities prohibit roosters and male goats (or bucks). Hillsboro prohibits roosters and uncastrated male goats with no exceptions. Seattle also prohibits roosters and uncastrated males but has an exception for nursing offspring that are less than 12 weeks old. Denver does the same but only until they are six weeks old. El Cerrito prohibits roosters but does not say anything about the gender of the goats it allows. And Cleveland has a more complicated system, in that it will allow roosters,

the license on those grounds (§205.04). The department also notifies neighbors about the license application and waits at least 21 days to hear back from them. The director can consider any evidence that the neighbors submit concerning nuisance, unsanitary, or unsafe conditions. To determine whether to grant the license, and any time after the license is granted, the department can inspect the property and enforce any penalties for violating sanitation or nuisance regulations.

Ellensburg, Washington, has an interesting ordinance in that it requires a license for dogs and cats, but does not require a license to keep up to two beehives and four hens (§§5.30.260 & 5.30.310). Seattle, likewise, requires a license for dogs, cats, pigs, and goats, but does not require one for chickens or bees (§9.25.050).

After restricting livestock to property with three acres or more, Pittsburgh amended its ordinance to allow chickens

Some cities require a permit or license . . .
[which] are relatively straightforward and do
not allow for much discretion on the part of the
official who issues it.

but only on property that is at least one acre in size with a 100-foot setback from the property line for the coop. Cleveland, like El Cerrito, does not say anything about goat gender.

Licensing

Some cities require a permit or license. Most of these permits are relatively straightforward and do not allow for much discretion on the part of the official who issues it. For instance, Denver requires a livestock or fowl permit to keep chickens or goats but requires no more than the provisions of the ordinance be met and a fee be paid to acquire the license. The city charges \$100 annually for a livestock permit and \$50 annually for a fowl permit.

Cleveland also requires a license. Its health department issues a two-year license to keep any type of livestock, including chickens and bees. In issuing the license the director of public health must consider evidence of "nuisance or conditions that are unsafe or unsanitary" and any "recorded violations" and may deny

and bees in 2011 (§912.07). It allows three hens and two beehives per 2,000 square feet on occupied, residentially zoned lots. It allows one more bird and hive for each additional 1,000 square feet. However, it requires the home owner to seek a special exception to keep livestock as an accessory use (§922.07). The special exception requires the zoning board of adjustment to hold a public hearing, to make findings of fact, and issue a written decision within 45 days of the hearing. This allows it to reevaluate and reweigh all of the concerns with raising chickens and bees in the city, even though the city council had already made the legislative determination and established criteria for when and where it was legal to do so. This puts a substantial burden on each home owner to fully argue the case before each iteration of the board. It also uses up considerable city resources.

COMMON AND LESS COMMON BEE PROVISIONS

Some cities never made keeping bees illegal, and do not regulate the practice.



Michael Adams

Chicago allows up to five bee colonies in a residential backyard without a permit (§17-17-0270.7).

Among cities that do regulate beekeeping, flyway barriers and a source of fresh water are common requirements. Flyway barriers force bees to fly up over the heads of people so that they do not establish flight paths through a neighbor's property or populated sidewalks, streets, or parks. Bees require water; if a beekeeper does not provide it, bees will frequently use a close source, like a neighbor's pool.

Concerning flyway barriers, Cleveland requires a fence or a dense hedge of at least six feet in height within five feet of the hive and extending at least two feet on either side. However, it does not require a flyway barrier if the hive is at least 25 feet from the property line or on a porch or balcony at least 10 feet from the ground. South Portland, Maine, has a similar flyway barrier standard, but requires it to extend at least 10 feet in each direction. And Carson City, Nevada, requires the flyway barrier to "surround" the hive on any side that is within 25 feet of a property line. Neither South Portland nor Carson City has exceptions for balcony or rooftop hives.

Concerning a water source, Ellensburg, Washington, requires "a consistent source of water . . . at the apiary when bees are

flying unless it occurs naturally. The water may be 'sweetened' with mineral salt or chlorine to enhance its attractiveness." Cleveland requires a freshwater source to be maintained "throughout the day." And Carson City requires water only from April 1 to September 30.

As for less common provisions, Ellensburg, Washington, requires that all hives "consist of moveable frames and

combs." Cleveland prohibits Africanized bees. Africanized bees have only been found in a few southern states; beekeepers, moreover, do not seek to keep Africanized bees. Boise, Idaho, prohibits Africanized bees, as well as wasps and hornets (§11-09-11.03). This is peculiar; people do not keep wasps or hornets because they do not provide honey or pollination services. Boise and Carson City require a queen to be removed if the hive shows "unusually aggressive characteristics." And Carson City requires the new queen to be chosen from "stock bred for gentleness and non-swarming characteristics." Carson City only allows honey to be extracted "where there is no access by bees before, during, or after the extraction process." Carson City also requires any hive found to be diseased to be either "treated so as to completely eradicate the disease" or destroyed at the owner's expense. Finally, both Carson City and Ellensburg provide that abandoned hives are to be considered nuisances.

RECOMMENDATIONS

Of the ordinances discussed above, two stand out as potential models: Denver's and Seattle's. These ordinances show that the trend, over time, is to simplify regulations. Local governments seeking to regulate these practices should consider how much they are prepared to spend, in terms of resources, on licensing or monitoring these practices given the relatively small degree of actual nuisance they cause. Governments should also keep in mind that straightforward ordinances following developing norms will be easier to follow and easier to enforce.

Cover image: © iStockphoto.com/Michael Gatewood; design concept by Lisa Barton

VOL. 30, NO. 4

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

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

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

Copyright ©2013 by the American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601-5927. The American Planning Association also has offices at 1030 15th St., NW, Suite 750 West, Washington, DC 20005-1503; www.planning.org.

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

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

Non-Profit Org.
US Postage
PAID
Palatine, IL
Permit No. 1316

REC'D APR 22 2013

ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

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

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

*****AUTO**3-DIGIT 553
TIM GLADHILL
CITY OF RAMSEY
7550 SUNWOOD DR NW
RAMSEY MN 55303-5137

884 S3 P9



HOW DOES YOUR COMMUNITY
REGULATE BACKYARD FARM
ANIMALS?

4