

City of Ramsey
Agenda
Regular Planning Commission
Thursday September 5, 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 August 1, 2013
- 5. Public Hearing/Commission Business**
 1. PUBLIC HEARING: Consider Request for a Home Occupation Permit for Matt's Plumbing Solutions Located at 5565 164th Ave NW; Case of Matt Ariola
 2. PUBLIC HEARING: Consider Resolution #13-09-150 Granting Amendment to Planned Unit Development Approval of Town Center Gardens Third Addition
 3. FOR DISCUSSION ONLY: Review Concept Plan for Rum River Hills Housing Development
 4. Review Calendar Upcoming Public Processes Related to Land Use Review
 5. FOR UPDATE ONLY: Staff Update
 6. Zoning Bulletins
- 6. Commission/Staff Input**
- 7. Adjournment**

Regular Planning Commission

4. 1.

Meeting Date: 09/05/2013

By: JoAnn Shaw, Community Development

Information

Title:

Approve the Following Planning Commission Meeting Minutes:

Planning Commission Meeting Minutes Dated August 1, 2013

Background:

n/a

Notification:

Observations/Alternatives:

Funding Source:

Staff Recommendation:

Action:

Attachments

Planning 08.01.13

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	08/28/2013 02:59 PM
Form Started By: JoAnn Shaw		Started On: 08/28/2013 10:39 AM

Final Approval Date: 08/28/2013

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

The Ramsey Planning Commission conducted a regular meeting on Thursday, August 1, 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 Nosan
 Commissioner Gary VanScoy

Members Absent: None.

Also Present: Development Services Manager Timothy Gladhill
 Associate Planner/Environmental Coordinator Chris Anderson
 Assistant to the City Administrator Patrick Brama

1. CALL TO ORDER

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

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

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

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, Field, Maul, Nosan, and VanScoy. 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 July 18, 2013

Motion by Commissioner Bauer, seconded by Commissioner Maul, to approve the following minutes as presented: Planning Commission Meeting Minutes dated July 18, 2013.

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

5. PUBLIC HEARINGS/COMMISSION BUSINESS

5.01: Postponed: Review Sketch Plan of Alpine Woods Third Addition; Case of Oakwood Land Development

Presentation

Development Services Manager Gladhill presented the staff report stating this item would be postponed until September. He explained the proposed plat requests converting an existing outlot to a buildable lot with no adjustment to existing property lines or the creation of additional lots. The parcel is currently encumbered by an easement and constructed cul-de-sac. Staff requested the item be postponed in order to better review an acceptable alternative for the termination point of Uranium Street.

5.02: Public Hearing: Consider Request for an Amended Conditional Use Permit for an Expansion of a Religious Institution at 6341 167th Avenue NW; Case of Pathways Community Church

Public Hearing

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

Presentation

Associate Planner/Environmental Coordinator Anderson presented the staff report stating Pathways Community Church has applied for a conditional use permit to expand their facility with the addition of a 1,344 square foot accessory building for storage space at the property located at 6341 167th Avenue NW. He indicated the subject property was approximately 11.6 acres in size and was zoned R-1 Residential.

Associate Planner/Environmental Coordinator Anderson reviewed the plans in further detail with the Commission and recommended approval of the Findings of Fact and the amended conditional use permit.

Citizen Input

Sharon Compton, 11356 Flintwood Street NW in Coon Rapids, with Pathways Community Church thanked the Commission for considering their request this evening. She indicated the accessory building would assist in storing tables, chairs, outdoor equipment and mowers.

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

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

Chairperson Levine closed the public hearing closed at 7:09 p.m.

Commission Business

Motion by Commissioner Bauer, seconded by Commissioner Maul, to recommend that City Council adopt Resolution #13-08-127 adopting Findings of Fact #0916 relating to the applicant's request for an amended conditional use permit

Further discussion

Commissioner Field questioned if the existing shed would be removed.

Associate Planner/Environmental Coordinator Anderson stated the 12' x 16' existing shed would be removed to make room for the new accessory building.

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

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to recommend that City Council adopt Resolution #13-08-128 approving an amended conditional use permit for an expansion of a religious institution based on Findings of Fact #0916 and contingent upon compliance with the Staff Report dated July 26, 2013.

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

5.03: Public Hearing: Consider Ordinance #13-16 Amending City Code Relating to Surfacing Requirements in the Official Map Overlay District and Other Highway 10 Improvement Impact Areas

Public Hearing

Chairperson Levine called the public hearing to order at 7:13 p.m.

Presentation

Development Services Manager Gladhill presented the staff report stating on July 9, 2013 the Council directed staff to review performance standards along Highway 10, specifically in the Official Map Area (for future freeway expansion). Signage and surfacing requirements were of specific concern. He requested the Commission discuss the matter further and adopt the proposed Ordinance.

Citizen Input

None.

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

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

Chairperson Levine closed the public hearing closed at 7:18 p.m.

Commission Business

Chairperson Levine questioned the length of time that would be allowed for an interim use permits.

Development Services Manager Gladhill explained that interim use permits would be approved for five years and if not followed correctly action could be taken by the City.

Commissioner Bauer asked how the City would address right-of-way issues in the future.

Development Services Manager Gladhill indicated the expanded highway areas would be handled through State Statute, but the property owners would have grandfather rights. For the most part, most properties identified would be complete acquisitions. His hope would be that property owners would build or expand outside of the proposed highway right-of-way.

Commissioner Bauer recommended that staff consider landscaping or screening be considered short-term if completed in the interim within the proposed highway right-of-way.

Commissioner VanScoy inquired if there were plans for a City of Ramsey interchange.

Development Services Manager Gladhill commented a corridor study has been completed for both Sunfish Lake Boulevard and Armstrong Boulevard interchanges.

Commissioner Field recommended a language change to the Ordinance regarding the impacted area.

Motion by Commissioner Bauer, seconded by Commissioner Brauer, to recommend that City Council adopt Ordinance #13-16, with the noted language change.

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

5.04: Consider Recommendation from Economic Development Authority (EDA) for Area Near 167th Avenue and Saint Francis Boulevard (TH 47)

Presentation

Development Services Manager Gladhill presented the staff report stating the retail node located at 167th Avenue and Trunk Highway 47 has been a topic of discussion with City Council and the EDA for several years. This node has struggled to become economically viable for some time, is experiencing high vacancy, an increase of blighted building conditions and escalating crime.

Development Services Manager Gladhill explained the City has received a number of inquiries from property and business owners located in the 167/47 Node requesting assistance to help correct a market failure. He indicated that Staff has worked through a policy that would assist in guiding this property through redevelopment while creating a common goal, vision, working parameters and a process to garner public input. He requested the Commission review the policy and direct Staff to coordinate an Open House.

Commission Business

Assistant City Administrator Patrick Brama discussed the potential redevelopment of some land near the node by Rum River Hills Golf Course. He stated conceptual plans were being reviewed by the City at this time and that the number of units was still uncertain.

Commissioner Bauer commented if the number of residents in this area were to increase, it may create additional interest in the node.

Chairperson Levine expressed concern with bringing in a warehouse use to the node as opposed to retail uses.

Development Services Manager Gladhill explained the original vision for this area was a small neighborhood retail center to serve the adjacent residents.

Assistant City Administrator Brama commented the EDA did not want to see the space opened up for warehouse or industrial uses.

Commissioner Nosan questioned if the City had considered open up market rate apartments in the node.

Development Services Manager Gladhill stated in 2003-2004 the City's Master Plan identified additional housing in this area while reducing the size of the retail space. He explained the City would benefit greatly by gathering feedback from the residents near the node, as to what their needs are.

Commissioner Brauer stated commercial/retail uses has not worked in this area for quite some time. However, if additional housing units were added by the golf course, this may alter the retail needs. He recommended an Open House be framed broadly to assist in gathering interesting ideas from the public.

Development Services Manager Gladhill stated it was his hope to keep the Open House a simple process.

Commissioner Brauer stated the area would not become developed until the City brought sewer and water services.

Development Services Manager Gladhill commented the water lines were near this location but sewer lines were approximately 1-2 miles away.

Commissioner Field cautioned the City from putting in these sewer lines due to the vast expense that would be taken on. He stated the sewer and water lines would still not guarantee retail or commercial success in the node.

Chairperson Levine was in favor of the City holding an Open House to gather feedback from the public as to their wants and needs for this area.

Motion by Commissioner Bauer, seconded by Commissioner Nosan, to table action on the policy and direct Staff to coordinate an Open House/Collaboration after the September Planning Commission meeting to gather input on the area and the creation of a project webpage and online public input forum.

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

5.05: Receive Update on Public Input Process for 15153 Nowthen Boulevard NW: Former Municipal Center

Presentation

Development Services Manager Gladhill presented the Staff Report and discussed the development of City owned land located at 15153 Nowthen Boulevard, known as the Former

Municipal Center Site. The property was approximately 21.24 acres in size and was located in a Public/Quasi-Public zoning district. He noted the site was vacated in 2006, when the City moved its municipal center campus to The COR. The City has been exploring various options for selling the property in conjunction with the construction of a new fire station.

Development Services Manager Gladhill explained the City was considering two general development scenarios for the property: data center and single family residential. It was noted the City completed a feasibility study and the next step was to consider the appropriate land use and zoning for the parcel. He requested the Commission discuss this matter in further detail and provide direction to staff.

Commission Business

Assistant City Administrator Brama commented the feasibility study and public process would allow the residents to provide input on the redevelopment of this property. The City wanted to be sure their concerns and feedback was considered throughout the entire process.

Commissioner Brauer was pleased that the neighborhood was being invited to partake in the planning. He encouraged the City to use this model for other future redevelopment projects.

5.06: Staff Update

- **Development Update**
- **Update on Housing Assistance Policy**
- **Update on EDA Discussion: Future Industrial Park**
- **Update on Minnesota Department of Natural Resources (DNR) Rulemaking for Mississippi River Corridor Critical Area**

Staff provided a monthly update for the Commission.

6. COMMISSION / STAFF INPUT

None.

7. ADJOURNMENT

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

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

The regular meeting of the Planning Commission adjourned at 8:22 p.m.

Respectfully submitted,

Tim Gladhill
Development Services Manager

ATTEST:

JoAnn Shaw
Planning Division Secretary

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

DRAFT

Regular Planning Commission

5. 1.

Meeting Date: 09/05/2013

By: Chris Anderson, Community
Development

Information

Title:

PUBLIC HEARING: Consider Request for a Home Occupation Permit for Matt's Plumbing Solutions Located at 5565 164th Ave NW; Case of Matt Ariola

Background:

Through the code enforcement program, the City learned of a home based business being operated on the property located at 5565 164th Ave NW. Upon receipt of a notice of violation, the business owner submitted a Home Occupation Permit application for Matt's Plumbing Solutions.

Notification:

Staff attempted to notify all Property Owners within 350 feet of the Public Hearing. A Public Notice was also advertised in the Anoka Union.

Observations/Alternatives:

The applicant owns and operates Matt's Plumbing Solutions. The business currently operates out of a 1,596 square foot detached accessory building on the Subject Property and has three (3) non-resident employees. The Subject Property is just under three (3) acres in size (about 2.92 acres) and is in the R-1 Residential (Rural Developing) zoning district.

City Code Section 117-351 (Home Occupations) states that home occupations are permitted in detached accessory buildings as long as there is at least 400 square feet of accessory building space reserved/maintained for the primary residential garage. There is an attached garage on the Subject Property that satisfies this requirement.

Also, per 117-351, on properties less than three (3) acres, there shall be no more than one (1) non-resident employee that works on the Subject Property. The applicant has stated that he has three (3) employees; however, only one (1) employee works on the Subject Property (office/administrative work). The other two (2) employees are plumbers that do not work on the Subject Property, but they do come to the Subject Property up to three (3) times per week to drop off and/or pick up paperwork. Per the Applicant's submittal, all work is conducted off-site with the exception of the administrative/office duties.

In addition to the Home Occupation standards, Section 177-355 (Residential Development Off-Street Parking) states that commercial vehicles and equipment shall be stored in the side or rear yard only and shall be screened to a degree of fifty percent (50%) at ground level view from the public right-of-way and adjacent properties. Motor vehicles and equipment are required to maintain a fifteen (15) foot setback from side and rear property lines. Finally, on parcels two (2) acres or larger but less than five (5) acres, there shall be no more than eight (8) items stored outside on a property.

The property presently exceeds the maximum allowable number of items stored outside. During a site inspection on August 27, 2013, Staff noted fourteen (14) items outside, which included a combination of personal use and commercial use vehicles and equipment. The Applicant has provided a list of items will be removed from the Subject Property no later than September 6, 2013, which would bring the property into compliance with the allowable number of items stored outside. The commercial vehicles/equipment that the Applicant has outside on the property include a twelve (12) foot box truck, an f450 service truck, a sixteen (16) foot trailer, and a twenty (20) foot trailer. There is also a bobcat and a small loader that the Applicant states is stored in the detached accessory building while on the property.

There appears to be sufficient space to park/store both commercial and private use vehicles and equipment in compliance with the off-street parking regulations. However, some corrections are necessary to accomplish this. Commercial equipment and vehicles need to be parked/stored in the side or rear yard of the property and must be at least fifteen (15) feet from the property line. The Applicant has stated that a privacy fence would be installed from the corner of the attached garage to the side lot line that would satisfy the screening requirement.

Much of the materials used for the business are presently stored in a Quonset style detached accessory building. According to the Applicant, the structure was existing when he purchased the property; however, it had a membrane surface that was torn and weather beaten. The Applicant replaced that with steel siding that closely resembles that of the larger detached accessory building and the home. The structure is larger than 120 square feet and thus, a building permit should have been obtained (there is no evidence of a permit for this structure).

Alternatives:

Option #1: Recommend approval of the home occupation permit. There are several matters that need to be address by the Applicant, including reducing the number of items stored outside on the property, obtaining the required permits for work already completed, and relocation of commercial equipment and vehicles to the side/rear yard of the property. However, each of these *could* be fairly easily remedied and done so in a timely matter. While there are three (3) non-resident employees, the intent of City Code is to limit how many non-resident employees work on the site of the home occupation. Only one non-resident employee actually works on site, the other two (2) only come to the property three (3) times a week to drop off and/or pick up paperwork and do not conduct any work on the property. Concerns have been raised regarding noise generated from the business including sawing/cutting and beeping from a truck(s) backing up. The Applicant has disarmed the alarm when the service truck is put in reverse and has reiterated that other than administrative tasks, there is no work related to the business that is conducted on site.

Option #2: Recommend denial of the home occupation permit. This matter was originally brought to the City's attention through the code enforcement program. Concerns have been raised related to noise, commercial vehicles and equipment on a residential property, and allowing commercial operations at all in a residential neighborhood. While Staff has not heard excessive noise being generated on the property, that does not mean it has not or is not occurring (possibly just wasn't occurring at the time Staff inspected the site). The Applicant has reiterated that there is no work related to the business conducted on the property. The City's off-street parking ordinance does allow one to bring commercial motor vehicles and/or equipment to their residential property under certain criteria and while certain corrective actions are needed to comply with this ordinance, it seems like they could be accomplished fairly easily.

Option #3: If the Planning Commission identifies other measures that it believes would help mitigate any concerns related to this request, it could direct Staff to modify the Home Occupation Permit to include those conditions prior to action by the City Council.

Funding Source:

All costs associated with this request are the responsibility of the Applicant.

Staff Recommendation:

While Staff understands come of the concerns that have been raised, based on the ordinances currently in effect, Staff would recommend approval of the request contingent upon compliance with the Staff Report dated August 29, 2013.

Action:

Motion to recommend that the City Council adopt Resolution #13-09-148 adopting Findings of Fact #0917 relating to the applicant's request for a home occupation permit;

-and-

Motion to recommend that City Council adopt Resolution #13-09-149 approving a home occupation permit to operate a plumbing business on the property located at 5565 164th Ave NW based on Findings of Fact #0917 and contingent upon compliance with the Staff Report dated August 29, 2013.

Attachments

Site Location Map

Applicant's Business Summary

Applicant's Site Layout

Aerial View of Site Layout

Photos of Site from Applicant

Staff Report Dated August 29, 2013

Proposed Findings of Fact

Proposed Home Occupation Permit

Form Review

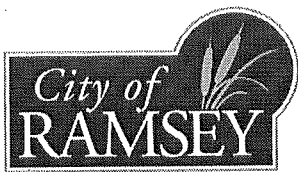
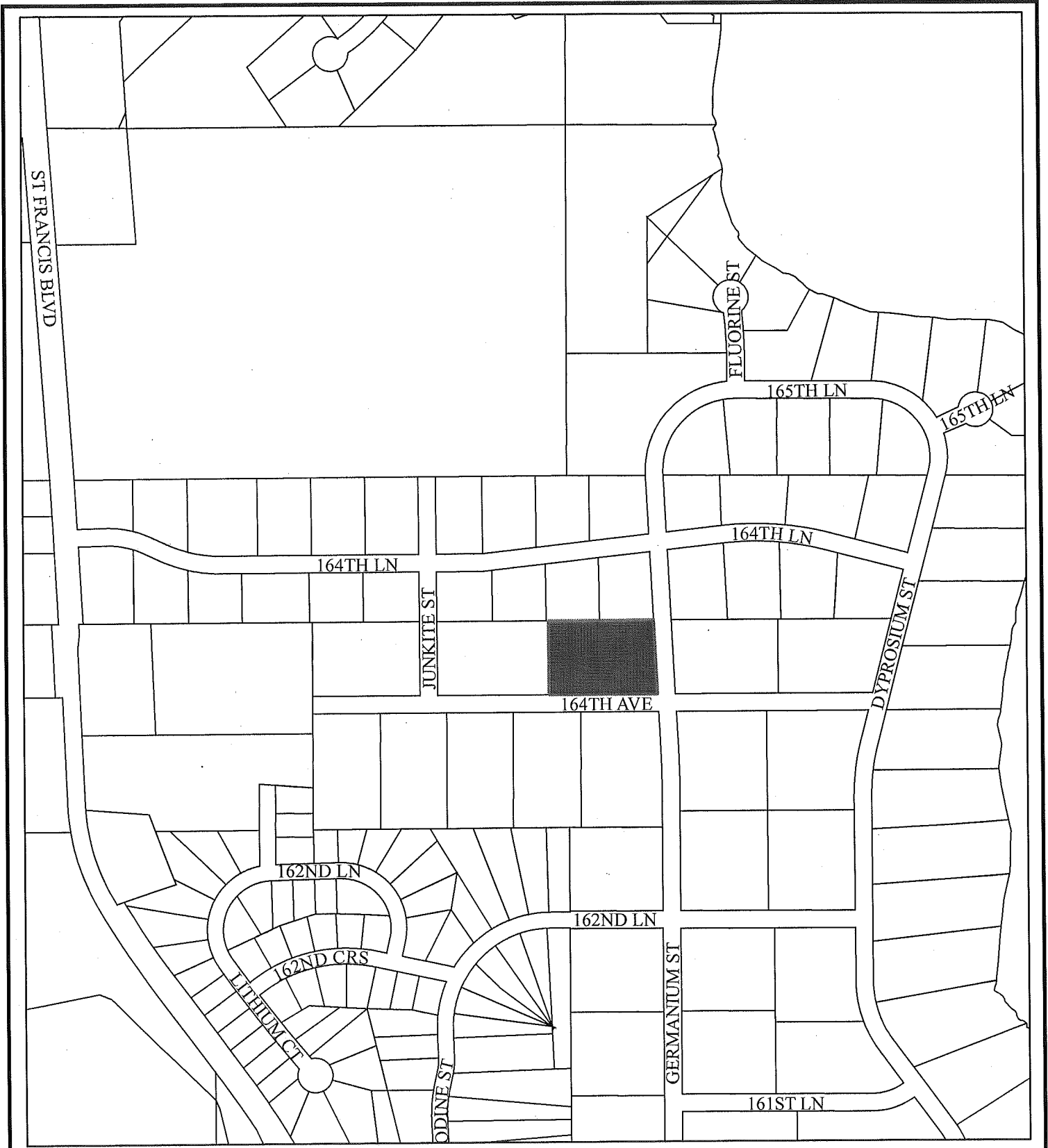
Inbox
Tim Gladhill

Reviewed By
Tim Gladhill

Date
08/29/2013 03:29 PM
Started On: 08/27/2013 08:23 AM

Form Started By: Chris Anderson

Final Approval Date: 08/29/2013



5565 164th Avenue NW

Legend
Site
Parcels



0 625 1,250 Feet

RAMSEY

MATTS PLUMBING SOLUTIONS

Hi my name is MATT ARIOLA I live at 5565 164th ave NW Ramsey mn.

I have been a residence for going on 3 years and owner of matts plumbing solutions.

On 4-1-2013 I received a notice from the city indicating a business is being ran from a residence, with excessive vehicle traffic.

I see on average of 12 different vehicles coming and going from a neighbors house.

It does not matter day or night.

I have 3 employees that work for me.

One of them works 30 hours a week, 4 days a week and she works in the shop that is on site answering phones and doing paper work.

The other 2 employees are plumbers that work completely of site they come into the shop 3 times a week to pick up and drop of paper work.

I would say 95 percent of our material comes from the supply houses, to avoid deliveries to the shop.

There are no customers that come to the shop, 100 percent of are work is done at other locations.

THANKS IF ANY OTHER QUESTIONS OR CONCERNS PLEASE CALL
MATT ARIOLA 

Company vehicle and equipment list:

1999 chevy s10 pick up

2001 chevy 2500 pick up

2003 chevy 12' box truck

2000 f 450 service truck

2002 bobcat 773

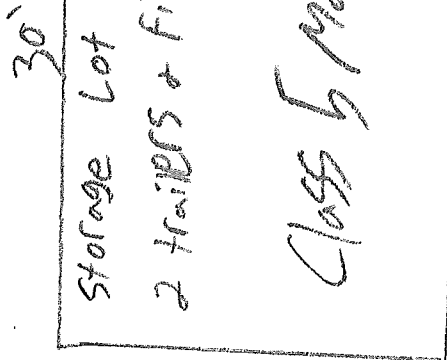
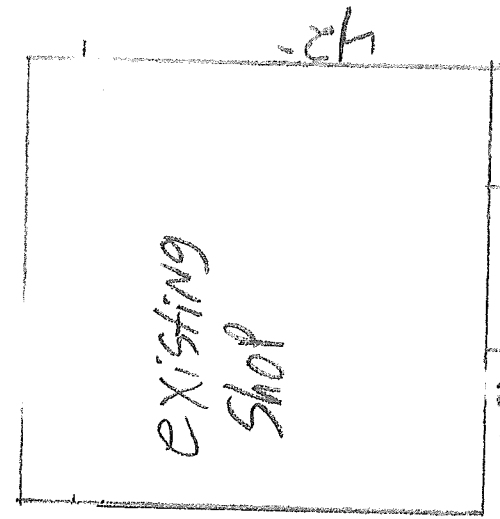
16' dump bed trailer

20' flat bed trailer

Matts plumbing solutions normal business hours

Monday - Friday 8 am - 4 pm

Property is 2.92 Acres



Class 5 Material



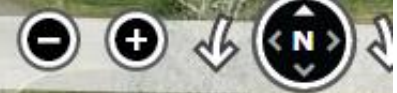
Class 5 Material

Asphalt

Drive way

164th Ave NW

164th Ln NW



Secondary accessory building

Primary Office/Shop

New Class V driveway

Germanium St

164th Ave NW

50 feet 10 m



Shop
←

↑
Lot off
of 164th Ave
NW
Ramsey



House view

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

DATE	AUGUST 29, 2013	PROJECT ADDRESS	5565 164 TH AVE NW
PROJECT. TITLE	MATT'S PLUMBING SOLUTIONS HOP		
ESCROW #	113775		
DEPARTMENT:	Community Development		
TECHNICAL REVIEWER:	Name: Chris Anderson Phone: 763-433-9905 Email: canderson@ci.ramsey.mn.us		

We offer the following comments regarding your request for a home occupation permit:

General: The request is for a home occupation permit to operate Matt's Plumbing Solutions from the property located at 5565 164th Ave NW (the "Subject Property"). The business has three (3) non-resident employees; however, only one (1) of them works on the Subject Property, the other two (2) work at the various job sites and only come to the Subject Property three (3) times per week to drop off and/or pick up paperwork. The business is operated in an existing, detached accessory building. A second detached accessory building is used to store materials related to the home occupation. The property is about 2.92 acres in size and is zoned R-1 Residential (Rural Developing).

Home Occupation Residency and Location: The owner of the home occupation does occupy the dwelling unit on the site of the home occupation. The home occupation is conducted in a detached accessory structure and various materials related to the home occupation are stored in a secondary detached accessory structure. There is an attached garage that provides at least 400 square feet of garage space for the primary residential use.

Exterior Evidence of Home Occupation: There shall not be any exterior evidence of the existence of the home occupation including displays, exterior storage of home occupation equipment, materials, supplies, inventory or merchandise, unless in accordance with City Code Section 117-355 (Residential Development Off-Street Parking). Nor shall there be any interior or exterior business signs or displays unless in accordance with Article II, Division 8 (Signs) of the Ramsey City Code. *There are multiple pieces of commercial equipment and motor vehicles that are presently stored outside on the property (see off-street parking paragraph for more information). A small ground sign advertising the business has been removed from the Subject Property.*

Vehicular Traffic: The home occupation shall not generate excessive vehicular traffic (including customers, employees, deliveries, etc.) in the residential neighborhood, which means not more than two (2) vehicle trips per hour per standard eight (8) hour business day or sixteen (16) vehicle trips within a twenty-four (24) hour period. It appears that the vehicle trips related to the home occupation would not exceed this threshold.

Fire Hazard/Nuisance: The home occupation shall not constitute a fire hazard to neighboring residences or be a nuisance to neighbors because of excessive traffic, light glare, noise, odors, vibration or other circumstances. *While the home occupation does not appear to constitute a fire hazard to neighboring*

residences, concerns have been raised about noise levels resulting from the home occupation. Two specific concerns are related to the beeping sound from a truck(s) backing up and also from sawing/cutting of pipes. It is Staff's understanding the beeping alarm has been disarmed on the commercial vehicle. However, if there is any work related to the home occupation (aside from office/administrative work) being conducted on site, such as prepping of materials (cutting pipe to necessary lengths, etc.), that must be summarized in writing for review and consideration. Additionally, all activities on site, whether related to the home occupation or not, shall be in compliance with Chapter 30 (Nuisances) of City Code, including sound levels.

Type of Home Occupation: The home occupation does not include operations relating to internal combustion engines, body shops, ammunition manufacturing, motor vehicle repairs or sale.

Off-Street Parking: On properties at least two (2) acres in size but less than five (5) acres, a maximum of eight (8) items are allowed to be stored outside. This includes both private use and commercial vehicles and equipment. *As of August 27, 2013, there were at least fourteen (14) items stored outside on the property. Staff has received a list of items that will be removed from the property no later than September 6, 2013, which would bring the Subject Property into compliance with this requirement.*

All commercial use vehicles and equipment are required to be stored in the side or rear yard of a property and shall be screened at ground level view from public right-of-ways and adjacent properties to a degree of fifty percent (50%). *There were at least two commercially used items (trailer and f450 truck) that were stored on a class V driveway/parking pad that was located in the front yard of the Subject Property. All commercial vehicles and equipment must be repositioned such that they are in the side or rear yard of the property. It is Staff's understanding that you are proposing to install a privacy fence from the front corner of the attached garage to the side property line to provide additional screening. All vehicles and equipment, whether related to the home occupation or not, shall be parked at least fifteen (15) feet from the side or rear lot lines. These corrections shall be completed no later than thirty (30) days after City Council takes action on your request for a home occupation permit.*

Accessory Buildings: The home occupation is currently operating out of an existing detached accessory building. Additionally, there is a secondary detached, Quonset style accessory building that is used for storage of business related materials. It appears that there may have been an addition to the detached accessory building completed without the issuance of a Building Permit and there is no Building Permit on file for the Quonset style accessory building. *Use of a detached accessory building for a home occupation is permissible. However, either Building Permits must be secured both for the addition that was done to rear of the primary detached accessory building as well as for the Quonset style detached accessory building or both must be removed from the Subject Property.*

Driveway and Proposed Fence: There are currently two (2) existing driveways serving access to the Subject Property. The primary driveway, which consists of asphalt and an expansion that consists of class V gravel, serves the attached garage as well as the primary detached accessory building. The secondary driveway consists of class V gravel and was recently installed without the issuance of a Zoning Permit. *While it appears that the secondary driveway and expansion of the primary driveway may comply with zoning standards, a Zoning Permit is required and must be obtained. Additionally, you have stated that a privacy fence would be installed to provide some additional screening of commercial vehicles and equipment. Please note that a Zoning Permit would also be required for that work.*

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

RESOLUTION #13-09-148

A RESOLUTION ADOPTING FINDINGS OF FACT #0917 RELATING TO A REQUEST FROM MATT ARIOLA FOR A HOME OCCUPATION PERMIT TO OPERATE MATT'S PLUMBING SOLUTIONS ON THE PROPERTY LOCATED AT 5565 164TH AVE NW.

WHEREAS, the City of Ramsey received an application from Matt Ariola requesting a home occupation permit to operate Matt's Plumbing Solutions in a detached accessory building located on the property generally known as 5565 164th Ave NW and legally described as follows:

Lot 2, Block 2, Barthels Rum River Acres 2nd Addition, Anoka County, Minnesota

(the "Subject Property")

NOW THEREFORE, BE IT RESOLVED BY THIS CITY COUNCIL OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA that the findings of fact relating to the request are determined to be as follows:

1. That on July 29, 2013, Matt Ariola, herein referred to as the "Applicant", properly applied for a home occupation permit to operate Matt's Plumbing Solutions (the "Home Occupation") in a detached accessory building on the **Subject Property**.
2. That the **Applicant** appeared before the Ramsey Planning Commission for a public hearing pursuant to Section 117-51 of the City Code on September 5, 2013, and that said public hearing was properly advertised.
3. That the **Subject Property** is zoned R-1 Residential (Rural Developing), and the surrounding parcels are also zoned R-1 Residential (Rural Developing).
4. That the **Subject Property** is approximately 2.92 acres and is surrounded by lots of similar sizes to the east, west, and south and slightly smaller lots to the north.
5. That the **Subject Property** is guided as Rural Developing on the City's Future Land Use Map.
6. That the **Applicant** owns and occupies the dwelling unit on the site of the **Home Occupation**.
7. That the **Home Occupation** is located in a detached accessory building located on the **Subject Property** that is 1,596 square feet in size.
8. That there will be at least 400 square feet of garage space reserved for indoor residential parking and storage related to the residential use on the **Subject Property**.
9. That there is exterior evidence of the existence of the **Home Occupation** on the **Subject Property** including the parking/storing of commercial vehicles and equipment.
10. That the commercial vehicles and equipment outside on the **Subject Property** include: 12' box truck, f450 service truck, a 2500 pick up truck, a sixteen (16) foot flatbed trailer, and a twenty (20) foot flatbed trailer.
11. That there is also a bobcat and small loader stored in the detached accessory building and an s-10 pick-up truck kept in the attached accessory building on the **Subject Property**.
12. That presently, the combined number of commercial and private use items stored outside on the **Subject Property** exceeds eight (8), which is the maximum number allowed.

13. That the Applicant has purchased a property outside of the City that will be available to store many of the items currently on the **Subject Property**.
14. That there is no interior or exterior business signs or display related to the **Home Occupation** on the **Subject Property**.
15. That there shall be no more than two (2) vehicle trips per hour per standard eight (8) hour business day or sixteen (16) vehicular trips within a twenty-four (24) hour period, as established in City Code Sec. 117-351 (Home Occupations).
16. That the **City** finds the **Home Occupation** does not constitute a fire hazard to neighboring residences.
17. That the **Home Occupation** does not include operations related to internal combustion engines, body shops, ammunition manufacturing, motor vehicle repairs or sale.
18. That the **Home Occupation** does employ one (1) person that does not live in the dwelling unit on the **Subject Property**. Two (2) additional non-resident employees will travel to the **Subject Property** for activities related to paperwork up to three (3) times per week, but will not work at the **Subject Property**.
19. That the **Home Occupation** does not involve operating methods that include transactions with the public (customers, clients, consultants, subcontractors, etc.) on the **Subject Property**.
20. That the **Home Occupation** does not conduct retail sales on the **Subject Property**.
21. That the **Home Occupation** business hours are proposed to be 8:00 a.m. to 4:00 p.m. Monday through Friday. The **Home Occupation** will not operate on Saturdays or Sundays.
22. That all structures shall comply with all applicable codes, including, but not limited to, building, fire and zoning.
23. That the **City** finds the **Home Occupation** operates beyond the parameters of a general and administrative home occupation permit requirements (117-351) and therefore requires Planning Commission and City Council review and approval.
24. That the **City** finds that the **Home Occupation** operates/does not operate beyond the intent and parameters of 117-351 (Home Occupations) and finds that the **Home Occupation** is/is not low-level and is not a use typically found in a residential area.
25. That the proposed use will/will not adversely impact traffic in the area.
26. That the proposed use will/will not be compatible with the residential neighborhood due to density and lot size of the surrounding lots.
27. That the proposed use will/will not be unduly dangerous or otherwise detrimental to persons residing or working in the vicinity of the use or to the public welfare.
28. That the proposed use will/will not substantially adversely impair the use, enjoyment, or market value of neighboring properties.
29. That the proposed use will/will not be hazardous or disturbing to existing or future neighboring uses.

30. That the proposed use will/will not be served adequately by public facilities and services such as highways and streets.
31. That the proposed use will/will not create excessive additional requirements at public cost for public facilities and services, and it will/will not be detrimental to the economic welfare of the community.
32. That the proposed use will/will not involve activities and uses that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember Elvig, 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:

where upon said resolution was declared duly passed and adopted by the Ramsey City Council on this the 24th day of September, 2013.

Mayor

ATTEST:

City Clerk

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

RESOLUTION #13-09-149

A RESOLUTION APPROVING THE ISSUANCE OF A HOME OCCUPATION PERMIT TO OPERATE A PLUMBING BUSINESS ON THE PROPERTY LOCATED AT 5565 164TH AVE NW BASED ON FINDINGS OF FACT #0917 AND DECLARING TERMS OF PERMIT

WHEREAS, the Ramsey City Council adopted Resolution #13-09-148 adopting Findings of Fact #0917 for this use and herein approves the home occupation permit.

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

On September 24th, 2013, a home occupation permit ("Permit") was issued by the City of Ramsey ("CITY") to Matt Ariola ("PERMITTEE") to operate a plumbing business located on the property generally known as 5565 164th Ave NW and legally described as follows:

Lot 2, Block 2, Barthels Rum River Acres 2nd Addition, Anoka County, Minnesota

(the "Subject Property")

This **Permit** is issued pursuant to Sections 117-51 and 117-351 of the Ramsey City Code. The conditions of this **Permit** are as follows:

1. That this resolution shall allow for a plumbing business (the "Home Occupation") to operate in a detached accessory building on the **Subject Property**. The **PERMITTEE** shall be required to reserve at least 400 square feet of accessory structure space for the purposes of the primary residential use.
2. That the **PERMITTEE** shall reside in the dwelling unit of the **Subject Property** and is allowed one (1) non-resident employee (administrative) to work on the **Subject Property**. The **PERMITTEE** may also employ two (2) non-resident employees (plumbers) that may only arrive on site to pick up and/or drop off paperwork. The two (2) non-resident employees (plumbers) may not perform any other function related to the **Home Occupation** on the **Subject Property**. Notification must be given to the **CITY** if the **PERMITTEE** will utilize non-resident employees.
3. That the established business hours on the **Subject Property** are Monday through Friday between 8:00 a.m. and 4:00 p.m. The **Home Occupation** may not operate on Saturdays or Sundays.
4. That the number of vehicular traffic trips per day to the **Subject Property** may not exceed two (2) trips per hour per standard eight (8) hour business day or sixteen (16) vehicle trips per twenty-four (24) hour period and vehicular traffic trips include deliveries, customer, sub-contractor and employee trips.
5. That the **PERMITTEE** may not lease the business portion of the accessory structure located on the **Subject Property** to any person(s) that does not reside on the **Subject Property**.
6. That the **PERMITTEE** agrees to comply with Chapter 117, Article II, Division 6, Subdivision 1 of City Code, titled "Signs".

7. That the **PERMITTEE** agrees to comply with section 117-355 of City Code relating to outside storage and maneuvering of vehicles and equipment on the **Subject Property**; all parking and maneuvering areas on the **Subject Property** must be surfaced with class V gravel, concrete or asphalt.
8. That all private use and commercial vehicles and equipment related to the **Home Occupation** shall be parked on a driveway on the **Subject Property**.
9. That the **PERMITTEE** shall reduce the number of items parked/stored outside on the **Subject Property** to ensure compliance with Section 117-355 of City Code no later than thirty (30) days after approval of this **Permit** by the City Council.
10. That the **PERMITTEE** shall either bring the hoop-style accessory building into compliance with all applicable codes or have the structure removed from the **Subject Property** and the building contents moved inside another accessory building within sixty (60) days of City Council approval of this **Permit**.
11. That the **PERMITTEE** must obtain all applicable permits to ensure that the structures and driveway(s) are compliant with all applicable state and local codes.
12. That should the **PERMITTEE** die or sell the **Subject Property**, the **Permit** shall be automatically terminated, except that in the case of death, should a surviving spouse or child, residing at the same address, desire to continue the home occupation, written notice to that effect shall be given to the City Administrator and the City Council may authorize continuation of the **Permit** without further hearing.
13. The **PERMITTEE** shall reside on the **Subject Property**; if the **PERMITTEE** does not reside on the **Subject Property**, the **Permit** shall be terminated.
14. That adequate water supply and on-site sewage disposal facilities shall be the responsibility of the **PERMITTEE**.
15. The **PERMITTEE** shall be responsible for maintaining any applicable State or County licenses.
16. The **PERMITTEE** shall be responsible for all costs incurred in the administration and enforcement of this **Permit**.
17. That the City Administrator, or his/her designee, shall have the right to inspect the **Subject Property** for compliance and safety purposes annually or at any time, upon reasonable request.

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 24th day of September, 2013.

CITY OF RAMSEY:

By: _____
Mayor

By: _____
City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

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

Notary Public

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

This document reviewed by:
Ratwik, Roszak & Maloney, P.A.
300 U.S. Trust Building
730 Second Avenue South
Minneapolis, MN 55402

Regular Planning Commission

5. 2.

Meeting Date: 09/05/2013

By: Tim Gladhill, Community Development

Information

Title:

PUBLIC HEARING: Consider Resolution #13-09-150 Granting Amendment to Planned Unit Development Approval of Town Center Gardens Third Addition

Background:

On April 12, 2005, the City Council granted Preliminary Plat Approval to Town Center Gardens Third Addition. The Final Plat was approved on August 9, 2005. The Plat was approved as a Planned Unit Development. An integral part of a PUD approval is the approval of a site plan, which includes architectural styles.

The City has received a Building Permit Application for a single-family dwelling that deviates from the original site plan approval. While Staff does not object to approving the model, it does not appear that the PUD approval gave sufficient administrative capacity to approve this split entry model without an amendment to the PUD. Staff recommends approval of the amendment, consistent with the findings below.

Approximately half of the units have been constructed, with an additional eight (8) vacant lots remaining according to 2012 aerial photography.

Notification:

Staff attempted to notify all Property Owners within 350 feet of the Public Hearing. A Public Notice was also advertised in the Anoka Union.

Observations/Alternatives:

The intent of the Planned Unit Development District is to provide a district that will encourage:

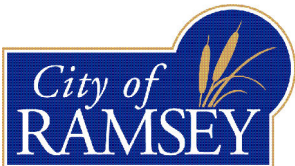
1. Flexibility in land development in order to make better use of new techniques in building design and construction and land development.
2. Housing affordable to all income groups.
3. More efficient use of public infrastructure.
4. Energy conservation through the use of more efficient building designs and through the clustering of buildings and land uses.
5. Preservation of desirable land characteristics and open space and protection of sensitive environmental features such as steep slopes, poor soils and trees.
6. More effective and efficient use of land, open space and public facilities through the mixing of land uses and assembly and development of land in larger lots.

In order to provide maximum flexibility, PUDs are not required to meet typical zoning code standards when specifically approved as a part of the PUD. At the discretion of the city, certain zoning code standards may be used as guidelines when determined appropriate.

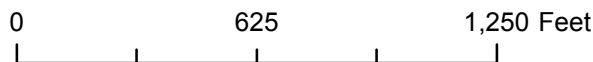
The majority of the housing units in the overall Town Center Gardens development are townhome style units. The introduction of single-family units provided density transitioning from medium density residential portion of the development to the larger-lot single-family area adjacent to the development.

An integral part of a PUD approval is the approval of a site plan that becomes the zoning standard for the area. City Code Section 117-123 requires that the developer submit a preliminary site plan for approval by the City Council after recommendation by the Planning Commission, including a public hearing. City Code Section 117-123 does provide a process to amending site plan approvals for PUD. Subd. (e) states the following:

Final Approval Date: 08/29/2013



Town Center Gardens
Third Addition
Single-Family Dwellings



SUMMERFIELD

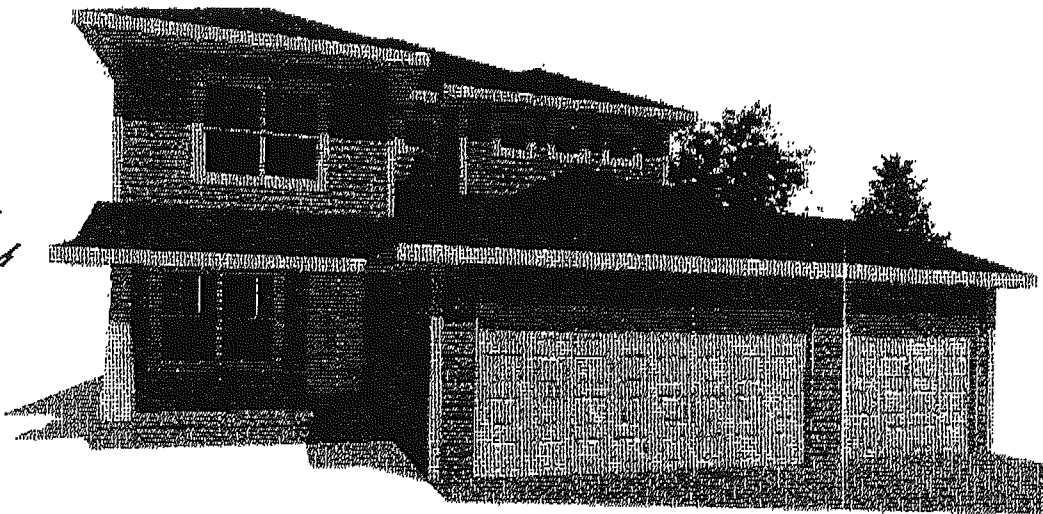
ELEVATION A

B



C

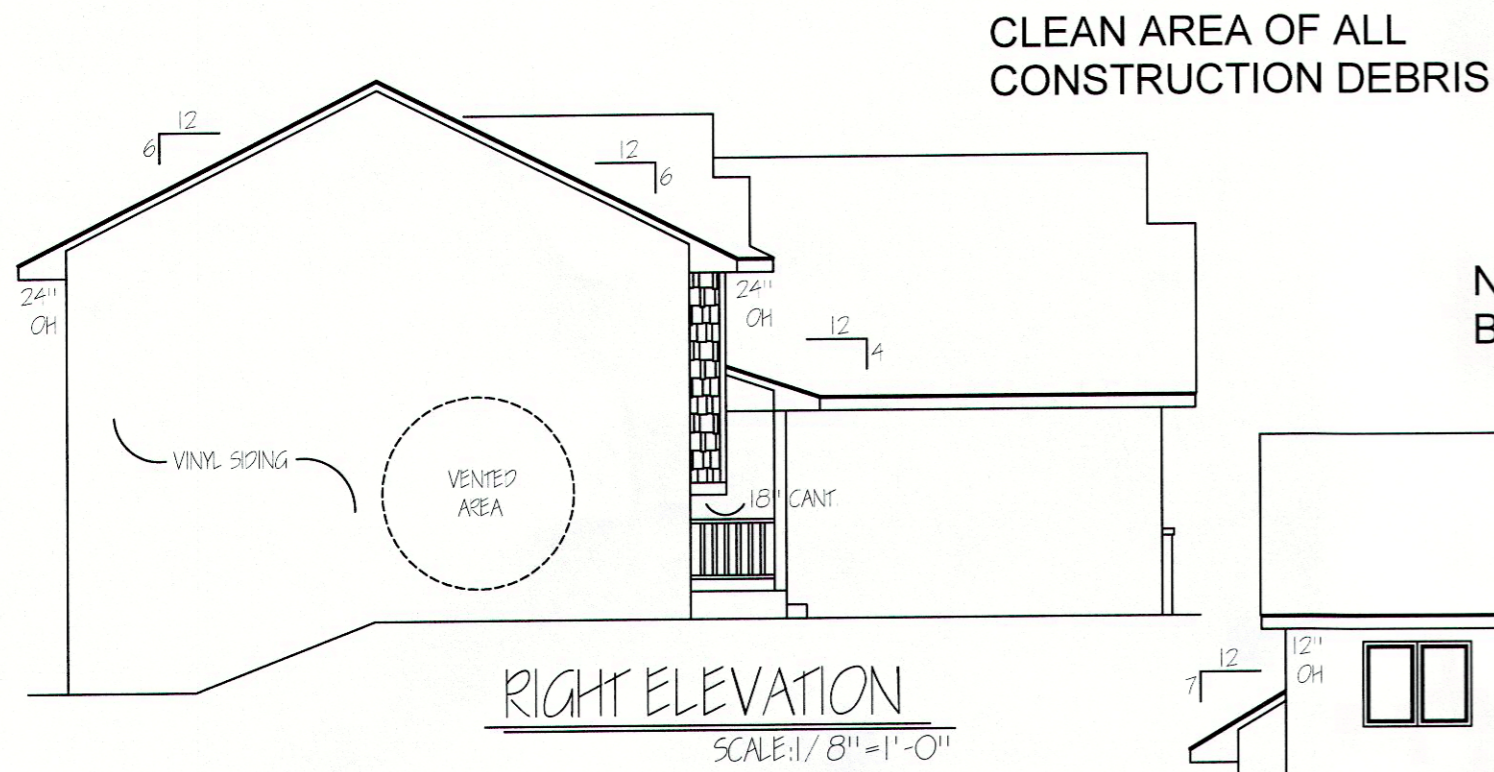
ELEVATION B



A

ELEVATION C

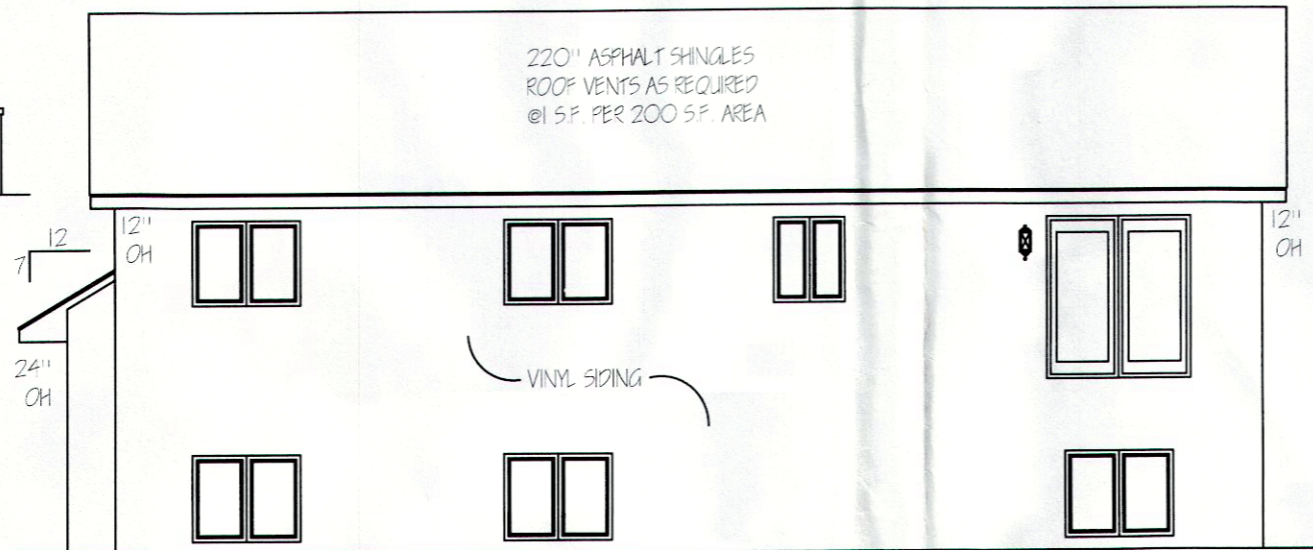




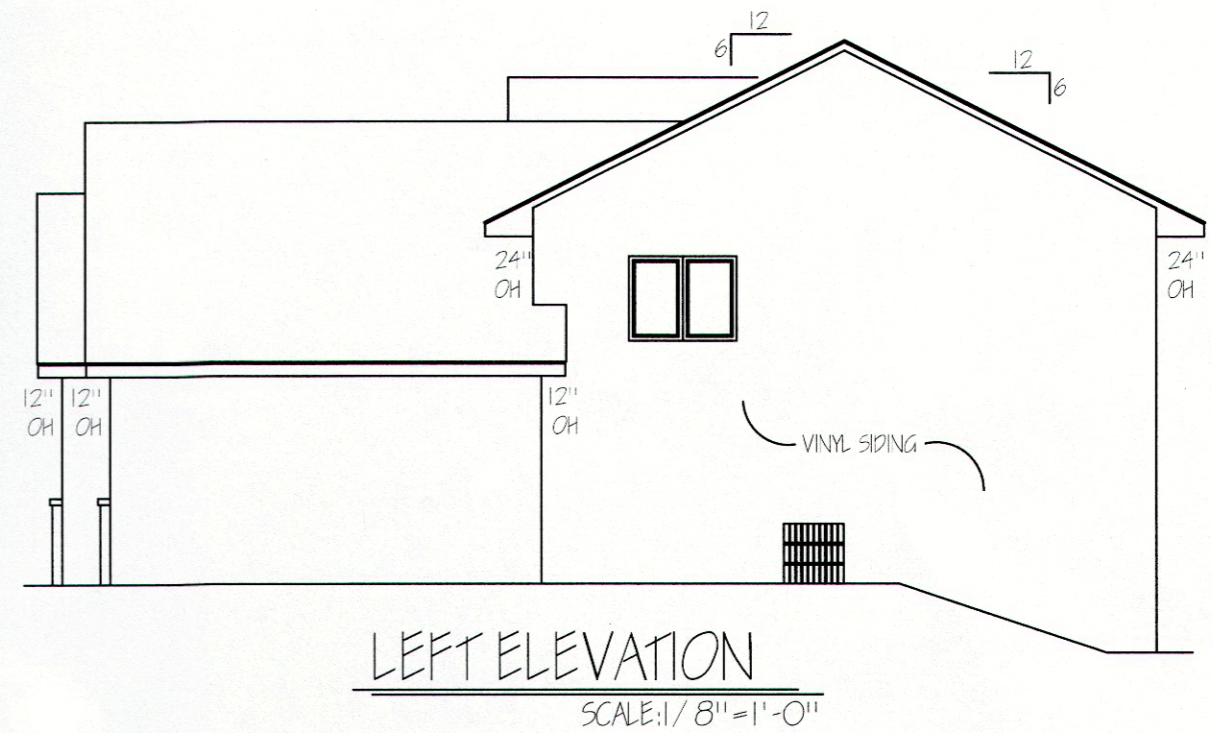
RIGHT ELEVATION
SCALE: 1/8" = 1'-0"

NO OCCUPANCY CERTIFICATE
PRIOR TO WATER METER AND
REMOTE INSTALLATION

NO OCCUPANCY CERTIFICATE
BEFORE FINAL ELECTRICAL INSPECTION



REAR ELEVATION
SCALE: 1/8" = 1'-0"



LEFT ELEVATION
SCALE: 1/8" = 1'-0"

EGRESS WINDOWS REQUIRED
IN EACH BEDROOM AND BASEMENT

Approved by
Ramsey Planning Department
Date: 7/30/13 - TB
Comments: CONTINGENT ON
PVD APPROVAL FINDINGS

SCOTT RIPLEY ASSUMES NO RESPONSIBILITY FOR ERRORS OR OMISSIONS. THIS SET OF PLANS WERE DONE TO THE BEST OF MY ABILITY. THE CONTRACTOR AND/OR BUILDER MUST VERIFY ALL NOTES, DIMENSIONS AND CONDITIONS FROM START TO FINISH AND BE RESPONSIBLE DURING CONSTRUCTION. ELECTRICAL, HEATING AND CABINET LAYOUTS ARE SHOWN FOR EXAMPLE ONLY. PLACEMENT AS BUILT MAY VARY FROM THESE PLANS. ALL BEAM, POST AND FOOTING SIZES SHOULD BE VERIFIED BY BUILDER FOR ADHERENCE TO UNIFORM BUILDING CODE PRIOR TO CONSTRUCTION. DIMENSION LINES REFLECTED BY THIS PRINT ARE DUE TO THE VARIOUS SITE CONDITIONS OF INDIVIDUAL LOTS. DIMENSION LINES REFLECTED BY THIS PRINT ARE FOR ILLUSTRATIVE PURPOSES ONLY, AND DO NOT REFLECT ACTUAL FINISH GRADE OR ELEVATIONS.

ENERGY CODE NOTE:

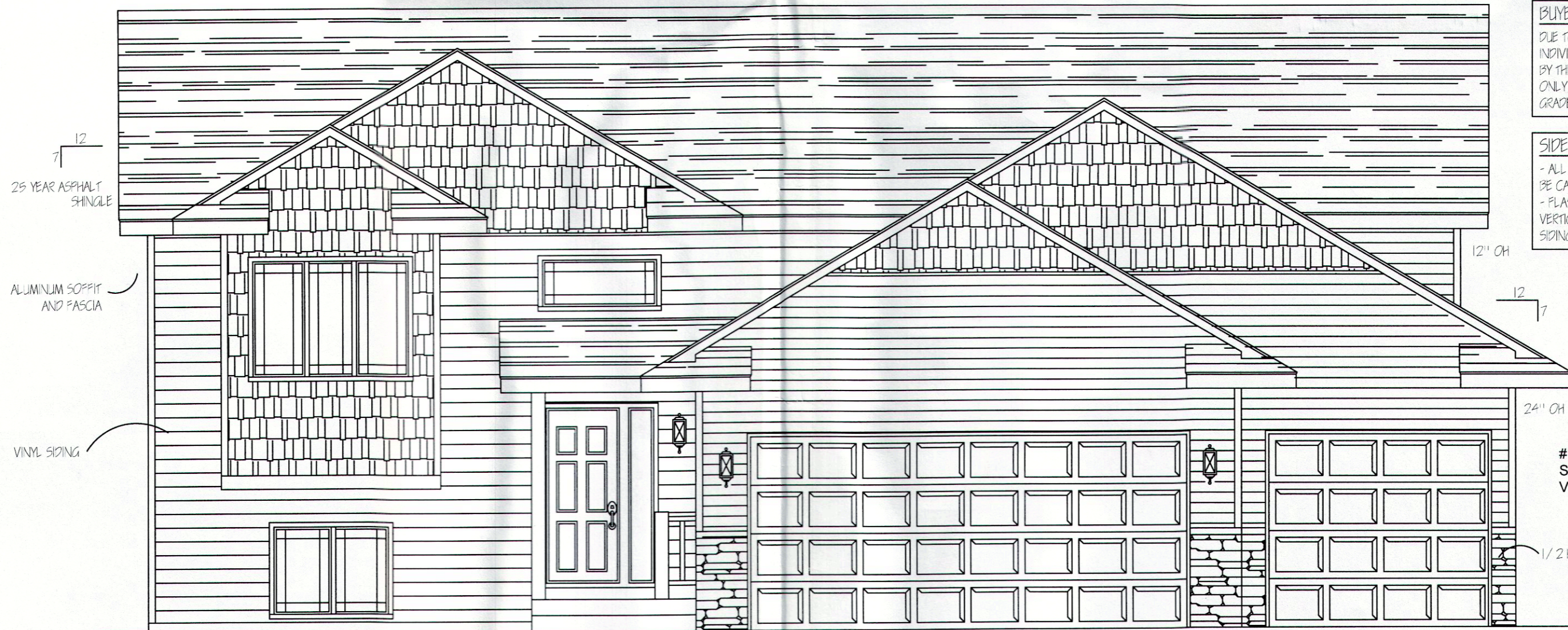
CONTRACTOR AND SUB-CONTRACTORS ARE RESPONSIBLE FOR COMPLIANCE OF THE CURRENT CODE AS REQUIRED.

HOME TO BE BUILT TO ALL CATEGORY 1 REQUIREMENTS INCLUDING BUT NOT LIMITED TO THE FOLLOWING.

1. INTERIOR VAPOR RETARDER ON INSULATED CEILINGS, WALLS & FLOORS.
2. CONTINUOUS AIR BARRIER AT ALL PLUMBING AND HEATING PENETRATIONS.
3. FIRE STOPS MUST BE INSTALLED TO BLOCK AIR MOVEMENT INTO ATTIC.
4. PENETRATIONS IN THE BUILDING ENVELOPE FOR ELECTRICAL AND TELECOMMUNICATIONS EQUIPMENT (EXCEPT FOR ELECTRICAL BOXES AND FAN HOUSINGS) MUST BE SEALED TO PREVENT AIR LEAKAGE.
5. WIND WASH BARRIER REQUIRED AT THE EXTERIOR EDGE OF ATTIC INSULATION.
6. WIND WASH BARRIER REQ'D AT OVERHANGS SUCH AS CANTILEVERED FLOORS & BAYS.
7. WINDOW AND DOOR FRAMES MUST BE SEALED.
8. ALL EXTERIOR JOINTS THAT MAY BE A SOURCE OF AIR INTRUSION MUST BE SEALED.
9. RIM JOISTS MUST BE SEALED TO PREVENT AIR LEAKAGE.
10. TOPS OF INTERIOR PARTITION WALLS MUST BE SEALED TO PREVENT AIR LEAKAGE.
11. ELECTRICAL BOXES AND FANS MUST BE SEALED TO PREVENT AIR LEAKAGE.
12. BETWEEN WALL ASSEMBLIES, RIM JOISTS AND FOUNDATIONS MUST BE SEALED TO PREVENT AIR LEAKAGE.

ADDITIONAL CODE REQUIREMENTS INCLUDE:

1. A MECHANICAL VENTILATION SYSTEM WHICH REPLACES BY DIRECT OR INDIRECT MEANS AIR FROM HABITABLE ROOMS WITH OUTDOOR AIR (THIS WOULD ALLOW EXHAUST ONLY, AIR EXCHANGER, OR HEAT RECOVERY VENTILATOR).
2. DIRECT VENT, POWER VENT, OR SEALED COMBUSTION FURNACE, WATER HEATER, OR GAS FIREPLACE.
3. IF ANY SINGLE EXHAUST DEVICE (E.G. KITCHEN FAN, OR DRYER) OVER 300 CFM IS INSTALLED, A SEALED COMBUSTION FURNACE MUST BE USED OR AN ALTERNATIVE MAKE UP AIR SOURCE MUST BE USED.



FRONT ELEVATION
1260 SQ. FT. SCALE: 1/4" = 1'-0"

HOUSE NUMBERS REQUIRED
DO NOT INSTALL ON GARAGE DOOR

BUYER NOTICE:
DUE TO THE VARIOUS SITE CONDITIONS OF INDIVIDUAL LOTS, THE GRADE LINES REFLECTED BY THIS PRINT ARE FOR ILLUSTRATIVE PURPOSES ONLY, AND DO NOT REFLECT ACTUAL FINISH GRADE OR ELEVATIONS.

SIDERS: (FLASHING NOTE)
- ALL OPENINGS TO EXTERIOR MUST BE CALLED & FLASHED.
- FLASHING IS REQUIRED WHERE ALL ROOF AND VERTICAL SURFACES MEET, OR WHERE SIDING MATERIAL CHANGES.

#15 FELT ON FIBERBOARD SHEATHING BEFORE BRICK, VENEER OR CEDAR/REDWOOD

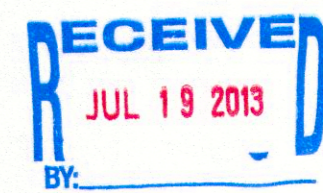
1/2 HIGH STONE

EXTERIOR ELEVATIONS
DRAWN BY: SAR
SCALE: AS NOTED
DATE: 6/3/13

PROJECT NAME & ADDRESS
SPEC
7339 148TH LN
RAMSEY, MN. 55303
LOT # 10 BLOCK #3
TOWN CENTER GARDENS 3RD ADD

SHEET
1 OF 4

PLAN NUMBER
035-13



model: Maplewood

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

RESOLUTION #13-09-150

A RESOLUTION GRANTING AMENDED PLANNED UNIT DEVELOPMENT APPROVAL OF TOWN CENTER GARDENS 3RD ADDITION.

WHEREAS, on July 22, 2004, the City of Ramsey received an application and sketch plan for a plat to be named Town Center Gardens 3rd Addition; and

WHEREAS, on August 5, 2004 and November 11, 2004, the Planning Commission reviewed the sketch plan and recommended that the developer proceed to the preliminary plat stage; and

WHEREAS, on March 10, 2005, the Park and Recreation Commission reviewed the proposed plat and recommended park dedication be satisfied through a cash payment; and

WHEREAS, on February 24, 2005, the developer submitted a preliminary plat for Town Center Gardens 3rd Addition to the City; and

WHEREAS, on March 3, 2005, the Planning Commission conducted a public hearing and recommended the City Council approve the preliminary plat of Town Center Gardens 3rd Addition; and

WHEREAS, on April 12, 2005, the City Council approved the preliminary plat for Town Center Gardens 3rd Addition; and

WHEREAS, on June 2, 2005, the developer submitted a final plat for Town Center Gardens 3rd Addition to the City; and

WHEREAS, on August 9, 2005, the City Council approved the final plat for Town Center Gardens 3rd Addition; and

WHEREAS, the City has received a Building Permit Application for a single-family model that deviates from the three (3) single-family models that were approved as part of the Planned Unit Development.

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

That the Ramsey City Council hereby grants an amendment to the Planned Unit Development of Town Center Gardens Third Addition to permit a modified two-story, split-entry residential dwelling consistent with City Code Section 117-111 (R-1 Residential District).

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 10th day of September, 2013.

Mayor

ATTEST:

City Clerk

Meeting Date: 09/05/2013

By: Tim Gladhill, Community Development

Information

Title:

FOR DISCUSSION ONLY: Review Concept Plan for Rum River Hills Housing Development

Background:

The City has received a request from Rum River Hills Golf Course to review a concept plan to introduce housing units on the golf course property. Based on the current concept plan, there would be approximately 72 housing units created. Two (2) golf course holes would be impacted, but the overall primary use as a golf course would remain. This would not be a complete redevelopment of the golf course.

The proposed model would be a mix of detached and attached medium density residential. See the attached exhibit for a conceptual layout. This would necessitate a Comprehensive Plan and Zoning Amendment. This is intended to be a broad policy discussion, not a specific site plan review. There are a number of site specific review conditions that are not addressed with this case. These items would be reviewed when a refined and updated site plan would be prepared by Rum River Hills.

In addition, Rum River Hills desires to consider relocating two (2) existing holes to the west side of Saint Francis Boulevard as well as review the potential for housing units on this parcel south of the retail corner. This parcel is owned by the City and is the location of Water Tower #3. This would likely necessitate the construction of a pedestrian underpass in some capacity. This parcel is located within the R-1 Residential (Rural Developing) District. This would require a Comprehensive Plan and Zoning Amendment to extend the Metropolitan Urban Service Area (MUSA) boundary to achieve the densities being discussed (primarily detached single-family) as well as guiding the golf course holes as public/quasi-public.

Finally, Rum River Hills is interested in seeing if adjacent parcels are interested in development now or in the future. As the City has not formally contacted these Property Owners yet, Staff has not included these parcels in this discussion at this time.

Staff has scheduled a public process to involve residents and stakeholders in reviewing the overall node comprehensively. This process is tentatively scheduled for September 26, 2013 with the intent to provide findings at the October 5, 2013 Planning Commission Meeting.

Notification:

As this is a preliminary, conceptual land use scenario review and not an official application, notification is not required at this time. Staff will be notifying area Property Owners and stakeholders of the upcoming public process tentatively scheduled for September 26, 2013. In addition, any official application will also include the required notifications and public hearings.

Observations/Alternatives:

Rum River Hills desires preliminary, conceptual feedback before preparing new concept plans. As a matter of policy, the question before the Planning Commission this evening is whether the Planning Commission would 1) entertain a Comprehensive Plan and Zoning Amendment to allow a combination of attached and detached medium density residential on a portion of the existing golf course and 2) entertain a Comprehensive Plan and Zoning Amendment to allow two (2) golf course holes on the current Water Tower #3 Site, as well as residential uses to be served with municipal water and sanitary sewer. This review does not bind the Planning Commission to a particular decision. The intent of this discussion is to provide pre-sketch plan feedback to the Property Owner in order to assist them in preparation of a Sketch Plan, if said Sketch Plan is submitted.

A refined concept plan review will make better use of the public process on September 26. Again, this would be a concept plan prepared by Rum River Hills that Rum River Hills would present as part of the public process on September 26. This will assist the City in gathering feedback from stakeholders and involve them with the development of the future of this node.

Funding Source:

Preparation of this discussion is being handled as part of normal Staff duties. If an application is submitted, all costs associated with processing said application are the responsibility of the applicant.

Staff Recommendation:

Generally speaking, Staff would support further review of the concept of introducing residential uses along the perimeter of the golf course, relocation of existing holes, and residential on the west side of Saint Francis Boulevard, south of 167th Avenue NW. However, without more detailed site plans and the completion of the proposed public process and involvement, Staff would not feel comfortable making a formal recommendation on a Comprehensive Plan and Zoning Amendment at this time.

Staff will schedule a follow up discussion for the October 5, 2013 Planning Commission Meeting, following the September 26, 2013 public process.

Action:

For discussion and feedback only. No motion is being requested.

Attachments

[Site Location Map](#)

[Concept Plan](#)

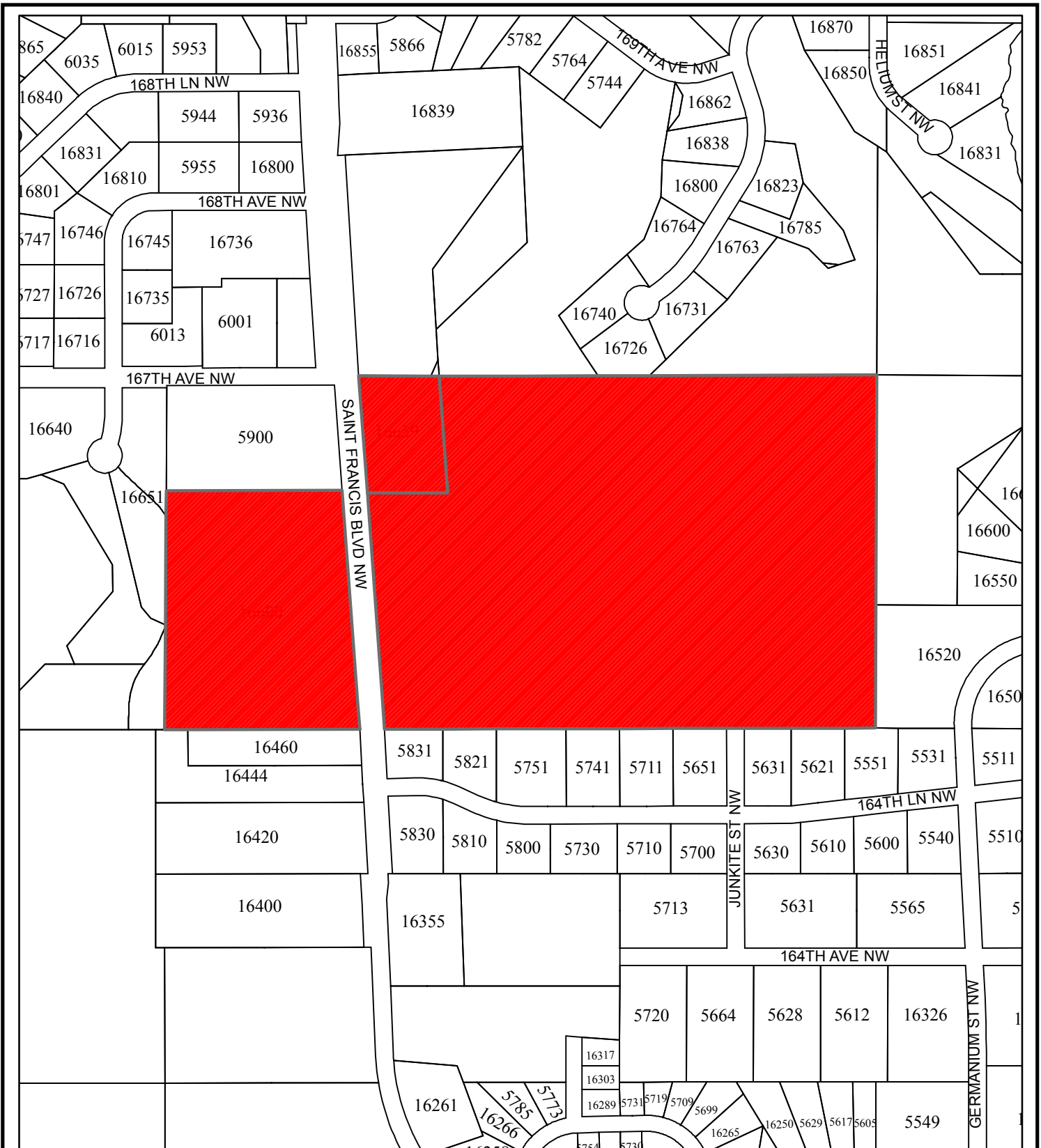
[Water Map](#)

[Sanitary Sewer Map](#)

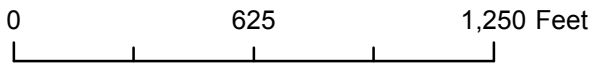
[Area Wetland Map](#)

Form Review

Inbox	Reviewed By	Date
Patrick Brama	JoAnn Shaw	08/29/2013 02:35 PM
Chris Anderson	Chris Anderson	08/29/2013 03:35 PM
Kurt Ulrich	JoAnn Shaw	08/29/2013 03:40 PM
Tim Gladhill (Originator)	JoAnn Shaw	08/29/2013 03:41 PM
Form Started By: Tim Gladhill		Started On: 08/28/2013 01:56 PM
	Final Approval Date: 08/29/2013	



Rum River Hills
Concept Plan Review



Legend



LEGEND:

Total Number of BayHomes	47
BayHomes with 3 car garages ..	20
Urban Style Townhomes	24
Total Units	71
Total Area in Private Drives	2.6868 Acres
Total Area in Walkways	0.4884 Acres
Total Area in 8' Wide emergency walk	0.1877 Acres
Total Area in new Golf Path (8' wide)	0.1736 Acres
Total Area in Clubhouse Parking	1.8282 Acres
Total Rooftop as indicated	3.0412 Acres

Scale: 1" = 60'
 January 31st, 2008
 Used Homescape Design Group
 BayHomes - New Townhomes

Golf Course Expansion Plan
Rum River Hills, Inc.
 16659 St. Francis Blvd.
 Ramsey, MN 55303

Rick Harrison
Site Design Studio
 (763) 595-0055

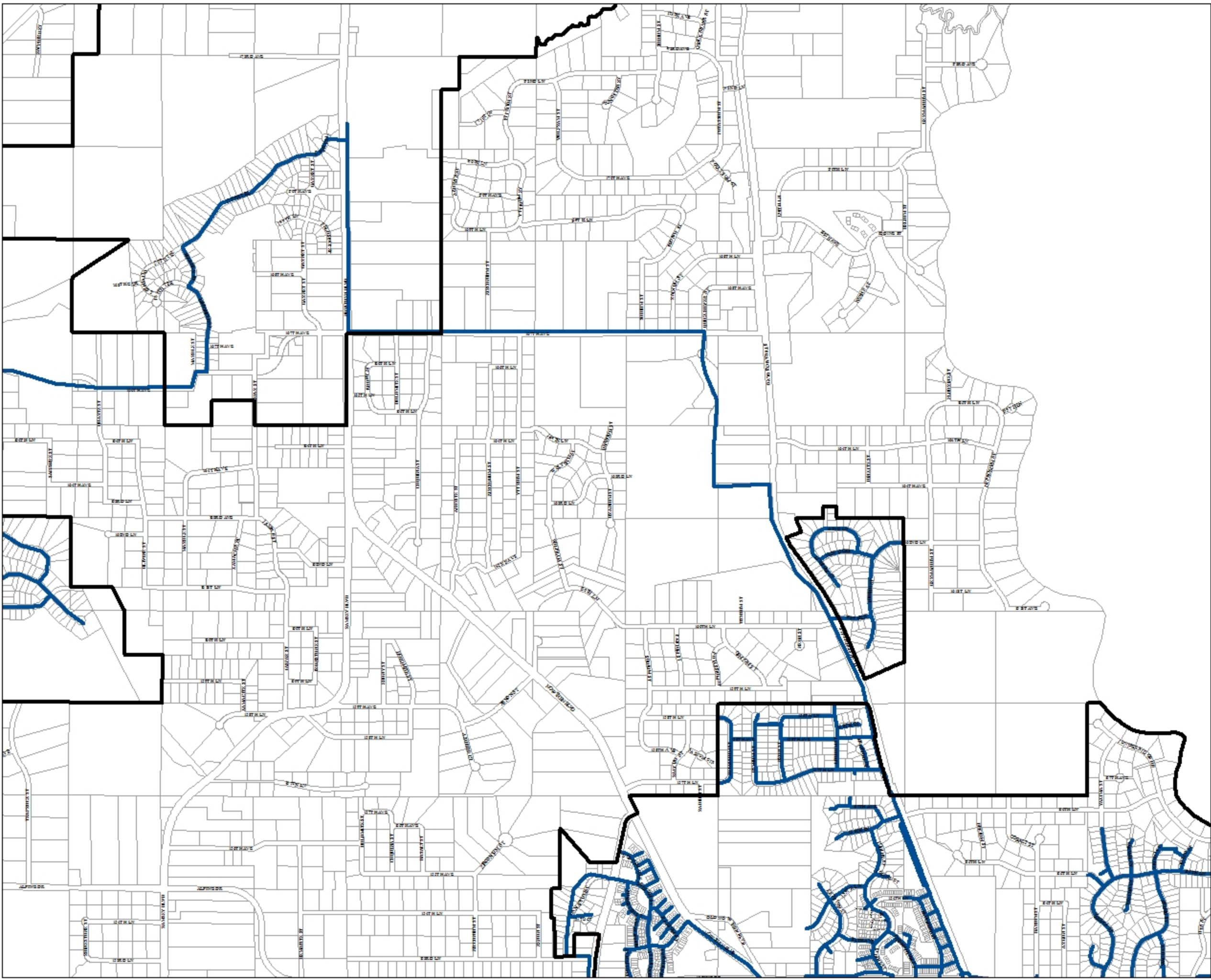
8832 7th Avenue North - Golden valley, MN 55427

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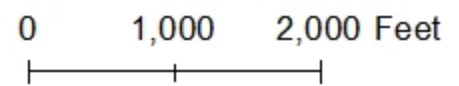


Municipal Water



Legend

-  2030 musa
-  Water Pipes
-  Parcels



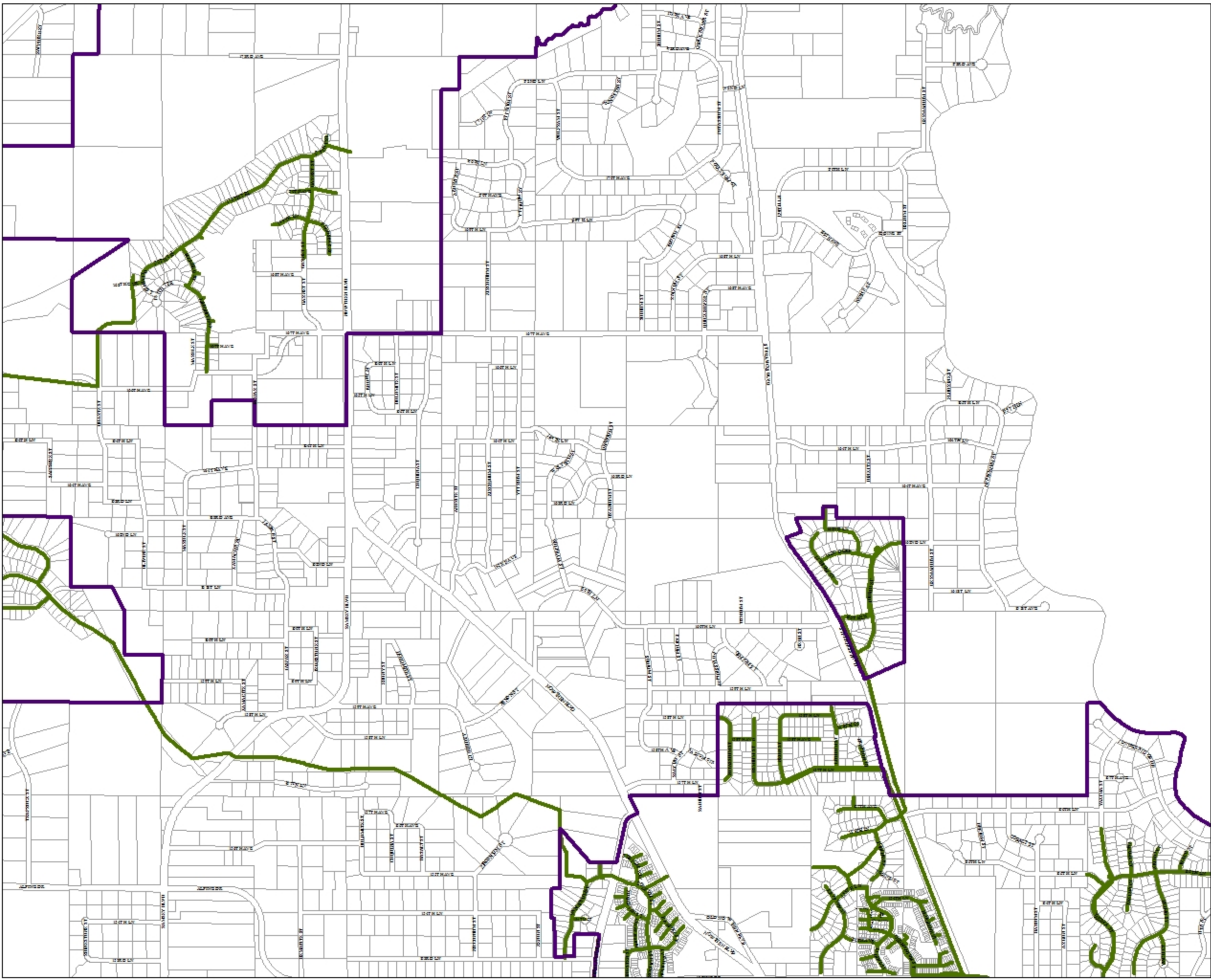
This map has been compiled using information gathered from various governmental offices and other sources and is to be used for reference purposes only. It is neither a legally recorded map nor a survey and is not intended for use as one. The Geographic Information System (GIS) data used to develop this 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 (762) 427-1410.

The City of Ramsey disclaims any responsibility for or liability for the accuracy of the information at any point of initial contact with a GIS to which the public has general access. The preceding disclaimer is provided pursuant to Minnesota Statute 465.02, 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.

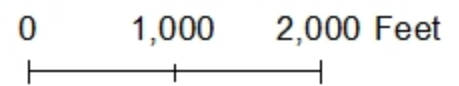


Municipal Sewer



Legend

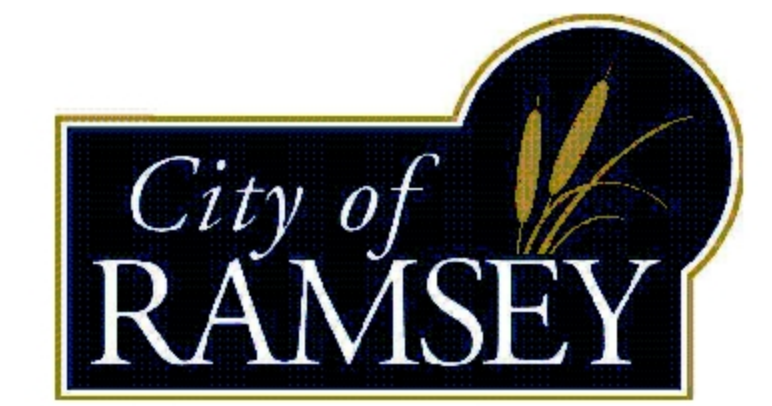
- 2030 musa
- Sanitary Pipes
- Parcels



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.

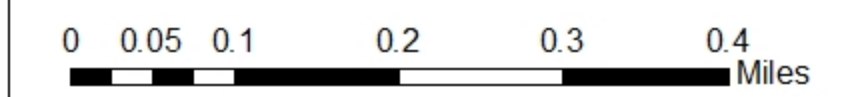
The City does not represent that the GIS data can be used for exact measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found, please contact (762) 427-1410.

The City of Ramsey disclaims any responsibility for or liability for the accuracy of the information at any point of initial contact with a GIS to which the public has general access. The preceding disclaimer is provided pursuant to Minnesota Statute 466.02, 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.



Wetland Map

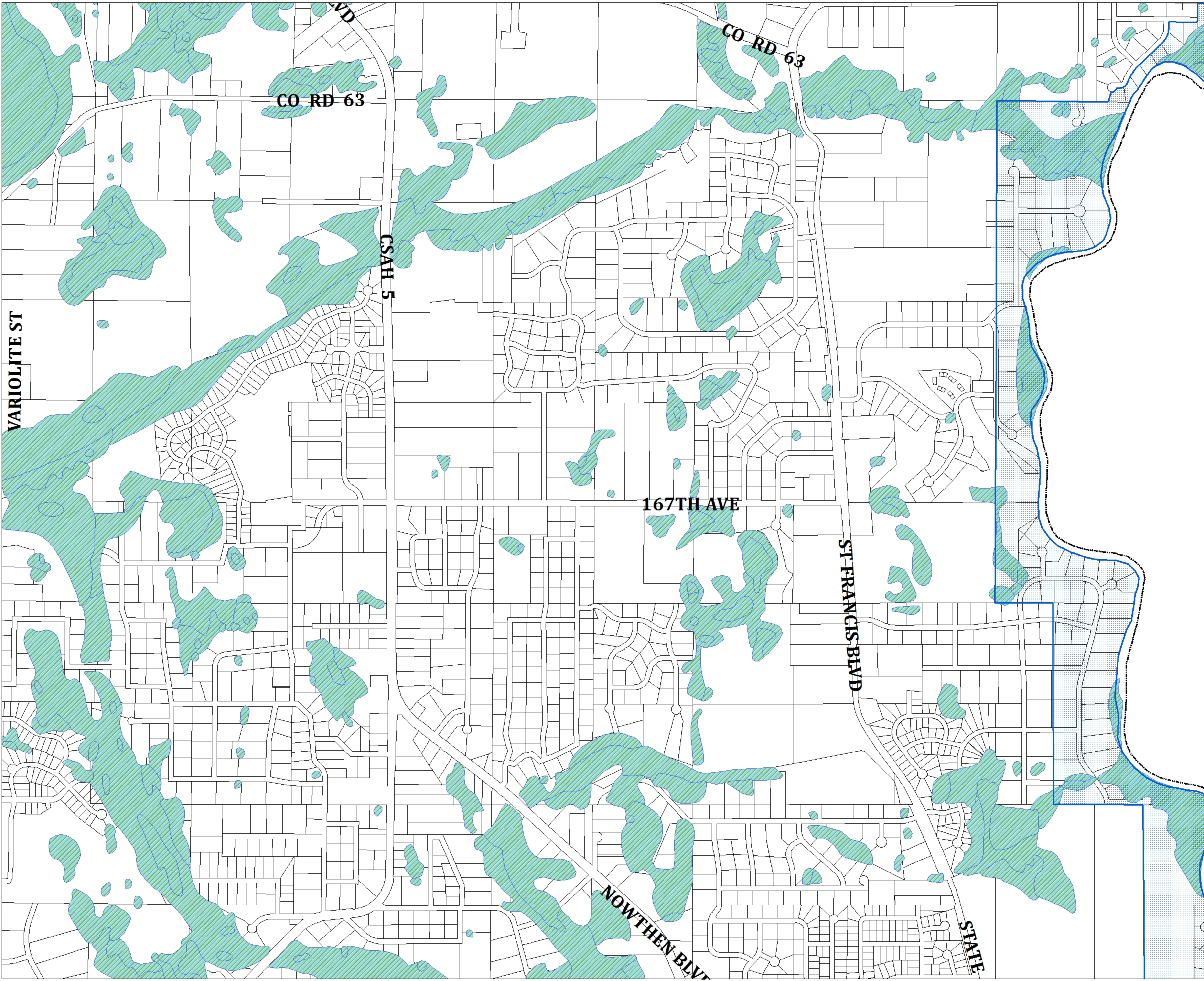
- Ramsey
- NWI
- Parcels



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.

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IGIS/Users/Tim/mxdFiles/Wetland Map.mxd
Created: 02/17/2010



Regular Planning Commission

5. 4.

Meeting Date: 09/05/2013

By: Tim Gladhill, Community Development

Information

Title:

Review Calendar Upcoming Public Processes Related to Land Use Review

Background:

Highway 10 Access Planning Study

The Minnesota Department of Transportation (Mn/DOT) is preparing an Access Planning Study for the Highway 10 Corridor in the cities of Ramsey and Anoka.

According to Mn/DOT:

MnDOT and Anoka County, in cooperation with the Cities of Ramsey and Anoka, are conducting the Hwy 10 Access Planning Study to re-examine and identify the ultimate amount of access, types of access and locations of access to Hwy 10 between the Anoka/Sherburne County line and the Rum River. Based upon traffic volumes and safety concerns along this stretch of Hwy 10, project partners agree a freeway is the proper vision for this corridor. However, considering overall state and federal funding levels, it will be challenging to expand this portion of Hwy 10 to a freeway within the current 20-year planning horizon. Therefore, an alternative approach to incrementally improve safety and mobility on Highway 10 is needed in the short-term.

The intent of this study is to identify high-benefit improvements that are fiscally responsible so that improvements can be funded, programmed and implemented incrementally to improve the corridor's mobility and safety, for motorists and pedestrians, in a timely manner.

To supplement the Mn/DOT problem statement above, the City Council adopted the attached Highway 10 Policy Statements. More information on the project can be found at www.cityoframsey.com/Highway10 and clicking on the 'Highway 10 Access Study' link.

Thursday, September 12, 2013

6:00 p.m. to 8:00 p.m.

Alexander Ramsey Room

Mississippi River Corridor Critical Area (MRCCA/Critical Area) Pre-Process Public Collaborative Process

The 2013 Minnesota Legislature directed the Minnesota Department of Natural Resources (DNR) to update minimum standards in the Critical Area. The City Council directed Staff to host a collaborative process to gather public input before a staff/policy maker meeting with DNR Staff.

The Critical Area is an existing State of Minnesota designation stretching along a 72 mile corridor from Ramsey to Hastings. Ramsey previously adopted an ordinance in order to remain in substantial compliance with the Statute in the 1980s. This upcoming rulemaking could potentially update minimum standards, at which time the City would need to amend its City Code. The intent of the Critical Area is to protect key natural, economic, cultural, and ecological resources and protect the scenic qualities of the river corridor. The purpose of the City's initial public process is to gather feedback on what resources and qualities the community would find important to protect (if any), what standards the community would feel comfortable supporting to protect these resources and qualities (if any), and gather questions and/or concerns from stakeholders to make the most out of the City's initial meeting with the DNR and make sure that stakeholders are involved early in the development of potential standards. Mailings have been sent to Property Owners within the Critical Area.

More information can be found online at www.cityoframsey.com/shoreland.

Monday, September 16, 2013
6:00 p.m. to 9:00 p.m.
Alexander Ramsey Room

167th Avenue Node Future Land Uses

As the Planning Commission is aware, the City's Economic Development Authority (EDA) has been exploring ways to facilitate a reduction of vacancy rates and blighted properties at the land use node at the intersection of 167th Avenue NW and Saint Francis Boulevard (TH 47). At the recommendation of the EDA, the Planning Commission directed Staff to host a public collaborative process for area residents, property owners, and stakeholders. This discussion also includes the recent concept plan review brought forward by Rum River Hills Golf Course for residential development of a portion of their site and reconfiguration of two (2) existing holes.

Staff is proposing a format similar to the preparation of the Future Land Use Map in the 2030 Comprehensive Plan. Participants would use a full-sized, scaled map to identify opportunities and issues as well as arrange land use types that will translate into a land use map and household, population, and employment forecasts.

As this process is early in development, Staff has not yet sent mailings.

Thursday, September 26, 2013
6:00 p.m. to 9:00 p.m.
Alexander Ramsey Room

Former Municipal Center Collaborative Process

As the Planning Commission is aware, the City Council directed Staff to re-engage surrounding Property Owners and key stakeholders in a collaborative process to focus on under what conditions the community would support converting the former municipal center site into a data center site, if the community were to support a data center in that location at all.

Staff has mailed requests for interested parties to participate in the public process. This was the same mailing list that was used for the original open house. Prior to the meeting, the City Council will formalize the focus group as noted in the topic report to City Council.

For more information, visit www.cityoframsey.com/formerrmc.

Thursday, October 24, 2013
6:00 p.m. to 9:00 p.m.
Lake Itasca Room

Future Business Park Location

The City's EDA has also been working on identifying a location for a future business park. The City has all but exhausted its existing inventory of available sites in its existing districts. The EDA has recommended that Staff focus on the area west of Armstrong Boulevard, north of Highway 10. The first step is to involve the public in a collaborative process to better understand the compatibility of this area with surrounding uses.

Staff is proposing a format similar to the preparation of the Future Land Use Map in the 2030 Comprehensive Plan. Participants would use a full-sized, scaled map to identify opportunities and issues as well as arrange land use types that will translate into a land use map and household, population, and employment forecasts.

As this process is early in development, Staff has not yet sent mailings.

Thursday, November 21, 2013
6:00 p.m. to 9:00 p.m.
Lake Itasca Room

Relation to the 2030 Comprehensive Plan and 2040 Comprehensive Plan

These processes focused on smaller geographic areas will also be beneficial in the City's upcoming responses to the Metropolitan Council's draft Regional Framework (ThriveMSP 2040). The Regional Framework is the basis and pre-cursor to the City's 2040 Comprehensive Plan Update. The Regional Framework is anticipated to be completed by the end of 2030, which will then lead to local 'System Statements'. Within the System Statements, items such as household, population, and employment forecasts are included. The above processes will help guide the City's vision for these items and will allow the City to be more proactive in reviewing such forecasts. The Planning Commission may also want to consider preparing a draft Future Land Use Map, following the process used in the 2030 Comprehensive Plan Update, in advance of our System Statement being prepared. This could lead to a System Statement that more closely matches the City's Future Land Use Vision, rather than reacting to the System Statement and developing a Future Land Use Map around the System Statement.

Notification:

Observations/Alternatives:

Funding Source:

Staff Recommendation:

Action:

Attachments

[Highway 10 Access Planning Study Background](#)

[Ramsey Highway 10 Policy Statements](#)

[Critical Area Background](#)

[Former Municipal Center Invite](#)

Form Review

Inbox	Reviewed By	Date
Patrick Brama	JoAnn Shaw	08/29/2013 02:35 PM
Kurt Ulrich	JoAnn Shaw	08/29/2013 02:36 PM
Chris Anderson	Chris Anderson	08/29/2013 03:38 PM
Tim Gladhill (Originator)	JoAnn Shaw	08/29/2013 03:40 PM
Form Started By: Tim Gladhill		Started On: 08/28/2013 04:31 PM

Final Approval Date: 08/29/2013

Highway 10 Access Planning Study

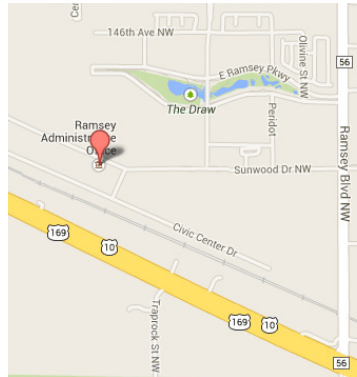


Public Open House

MnDOT and Anoka County invite you to attend a public open house for the Highway 10 Access Planning Study within the Cities of Ramsey and Anoka.

Thursday, September 12, 2013 | 6 to 8 PM
Alexander Ramsey Room at the
Ramsey City Hall (7550 Sunwood Dr, Ramsey)

The meeting will be an open house format. Please plan to stop by any time between 6 PM and 8 PM. There will not be a formal presentation.



Project Contacts:

Paul Jung
MnDOT Project Manager
paul.jung@state.mn.us
651-234-7716

Chris Chromy
Bolton & Menk
chrisch@bolton-menk.com
952-890-0509

Project Website:
<http://www.dot.state.mn.us/metro/projects/hwy10study/index.html>

Background

Highway 10 within the Cities of Ramsey and Anoka has been studied numerous times over the past decade, each time furthering the planning for conversion to a full freeway. Based upon traffic volumes and safety concerns, a freeway is the proper vision for this corridor. The corridor is commonly congested and has much higher than average crash and severity rates than comparable corridors. In addition, the corridor has five signalized intersections and numerous other access points (14.5 per mile) contributing to the degradation of the facility. Over the past 10 years, 13 people have died on the 7-mile corridor. Four of these fatalities were pedestrians, including three in the past 18 months.

Considering current overall state and federal funding levels, it will be difficult to achieve the vision of a freeway facility on this portion of Highway 10 in the next 20 years. To reduce crashes and improve mobility issues, it is reasonable and responsible to implement lower-cost, interim measures that incrementally improve safety and operations for all users of the Highway 10 corridor.

Please see the Issues Map on the back side of this newsletter illustrating the Highway 10 study area and information on existing traffic and safety conditions.

Study Overview

MnDOT and Anoka County, in coordination with the Cities of Ramsey and Anoka, initiated the Highway 10 Access Planning Study in April 2013. The intent of this study is to identify high-benefit improvements that are fiscally responsible so that improvements can be funded, programmed, and implemented incrementally.

The goals for this study include:

- Identify high-benefit, lower-cost improvements along Hwy 10 to:
 - Improve safety for motorists and pedestrians
 - Address mobility and congestion issues to preserve the regional function of the road
- Recommend improvements at a scale that can be funded and maintained
- Prioritize investment recommendations for incremental implementation beginning in the short-term

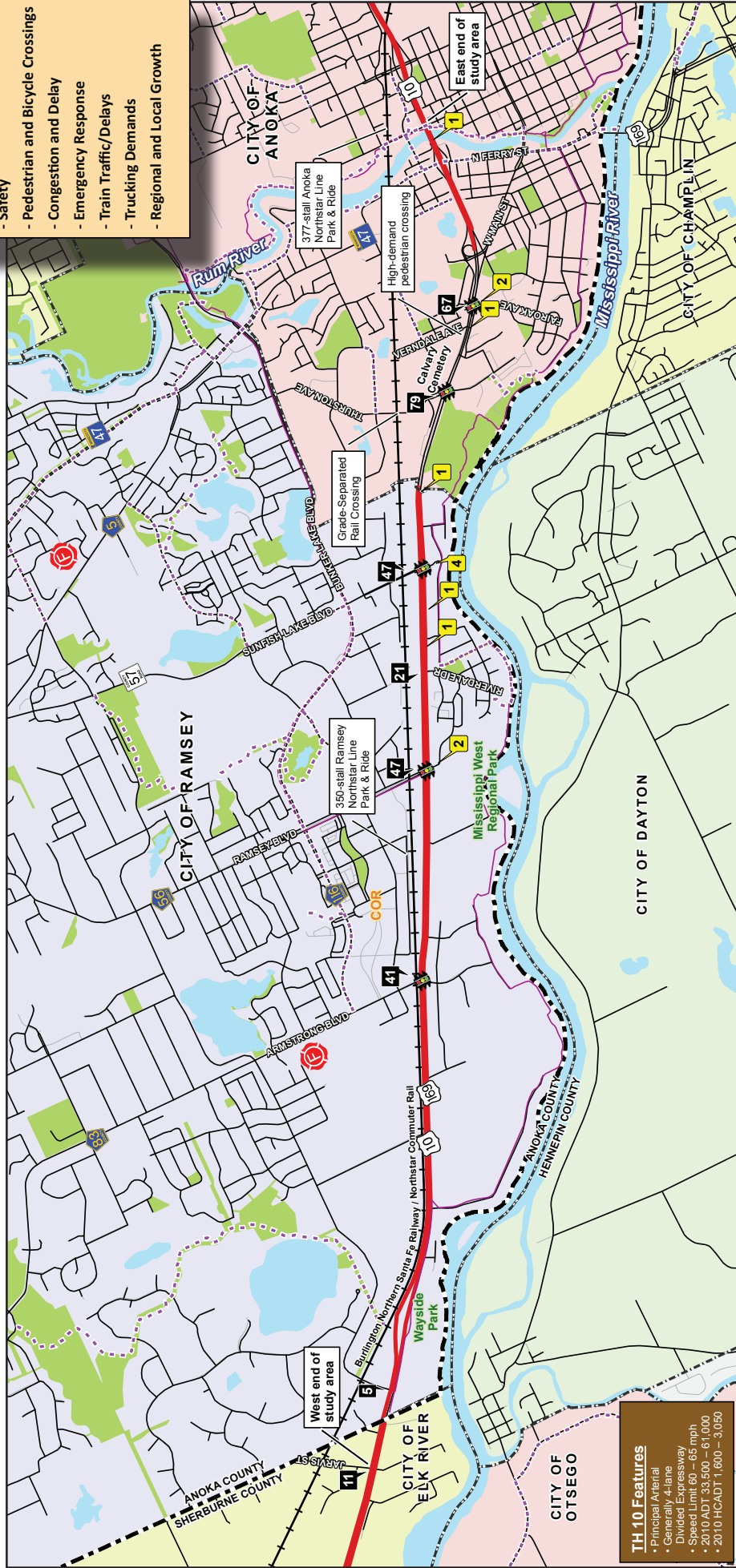
The purpose of the September 12th public open house is to provide an opportunity for you to learn more about the overall study and to solicit your input on existing issues and need in the corridor. Information on existing traffic, rail, transit, pedestrian/bicycle, safety, land use and environmental resources within the study area will be displayed for your review and input.



Highway 10 Access Planning Study



- Key Issues**
- Safety
 - Pedestrian and Bicycle Crossings
 - Congestion and Delay
 - Emergency Response
 - Train Traffic/Delays
 - Trucking Demands
 - Regional and Local Growth



TH 10 Features

- Principal Arterial
- Generally 4-lane
- Divided Expressway
- Speed Limit 60 - 65 mph
- 2010 ADT 33,500 - 61,000
- 2010 HCADT 1,600 - 3,050

Legend

- Fatal Collision¹ (Yellow square with 'F')
- Collision² (Black square with 'C')
- Fire Stations (Red circle with 'F')
- Functional Class Roads (Dashed line)
- Local Road (Solid line)
- Railroad/NorthStar Commuter Rail (Black line with cross-ticks)
- Regional Trails (Pink dashed line)
- Bikeway (Purple dashed line)
- Park, Preserve (Green area)
- Open Water Features (Blue area)

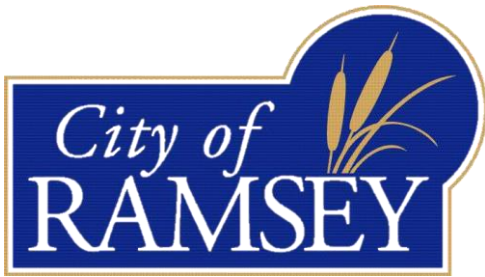
1 - Occurrences from 2003 to present
2 - Occurrences from 2008 to 2012

Highway 10 Access Study (2013)

Ramsey Policy Statements

The City of Ramsey has adopted the following policy statements to guide input on the Highway 10 Access Study (2013) and supports the following:

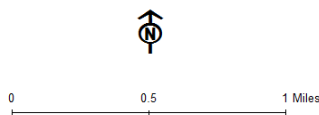
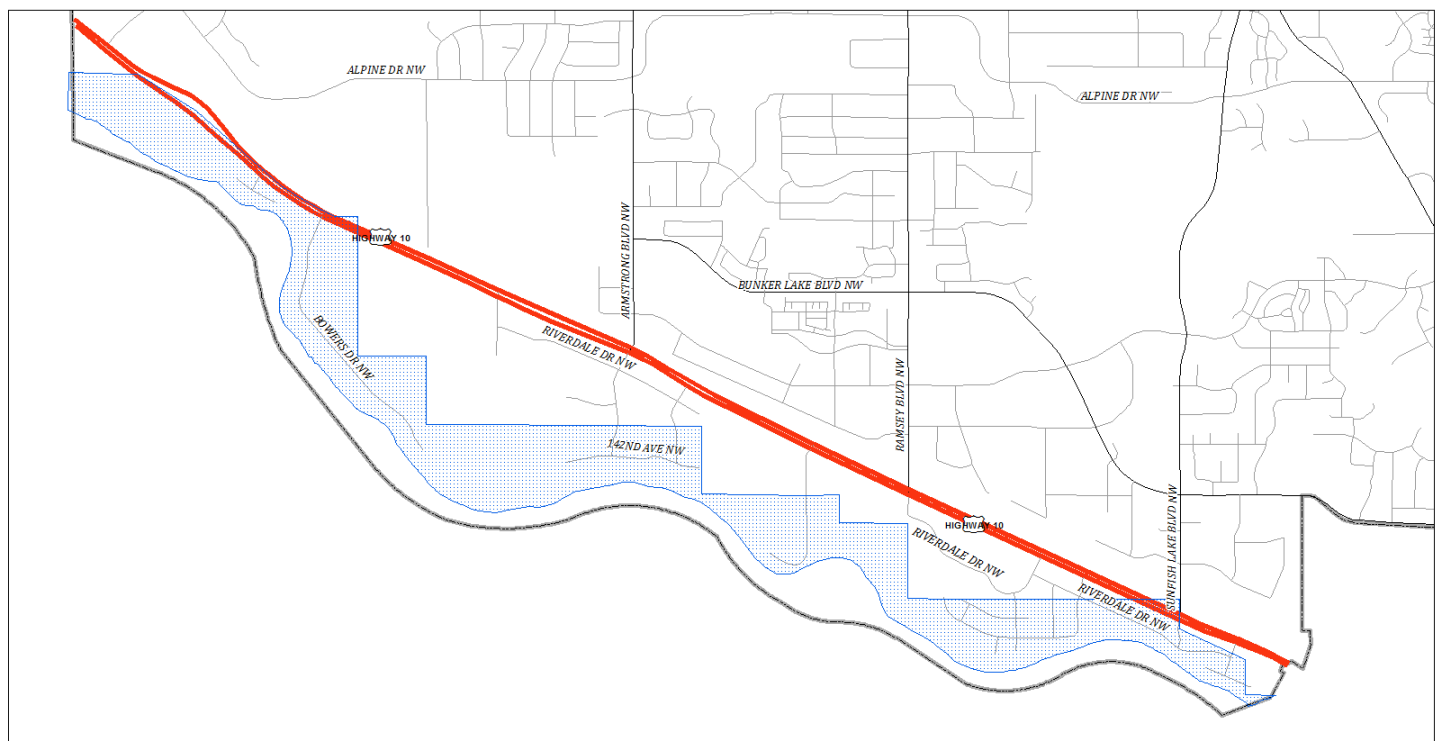
- Ramsey asserts that it is important to acknowledge the fact that the local communities' ultimate vision is to convert U.S. Highway 10 to freeway status.
- Ramsey acknowledges the benefit of this current study and will work collaboratively with agency partners to develop successful implementation to achieve the goals of the study, but desires to continue to work with Mn/DOT beyond this current study to continue to update current development and fiscal plans to advance the conversion to a freeway system.
- Ramsey supports interim improvements that can successfully demonstrate improvements to pedestrian safety, overall mobility, and congestion mitigation, provided that said interim improvements do not negatively impact the ultimate vision of a conversion to freeway status and done so in a fiscally responsible manner.





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

Ramsey wants to invite you to participate in a public process to discuss appropriate standards and be part of the review for the Mississippi River Corridor Critical Area

The City of Ramsey is reaching out to you as a Property Owner near the Mississippi River that is located in the Mississippi River Corridor Critical Area (MRCCA/Critical Area). The Critical Area is a State of Minnesota designation that includes properties along the Mississippi River stretching from Ramsey to Hastings. The intent of this district is to protect key natural, economic, cultural, and ecological resources and protect the scenic quality of the river corridor. The map below indicates areas in Ramsey that are part of the Critical Area.



 Critical Area Boundary
 Ramsey Border



The City invites you to participate in being part of the process and reviewing alternatives (ranging from new and amended standards to no changes at all) related to an upcoming rulemaking project led by the Minnesota Department of Natural Resources (DNR).

*Monday, September 16, 2013 at 6:00 p.m.
Ramsey Municipal Center, Alexander Ramsey Room
7550 Sunwood Drive NW, Ramsey, MN 55303*

During the 2013 State of Minnesota Legislative Session, the Minnesota Legislature approved House File #1183 (Senate File #1051). This bill, also known as the Omnibus Legacy Bill, included direction for the DNR to update standards for the Critical Area. A similar

process was completed in 2009, however the process was not completed by the required deadline, and revised rules were not adopted. The Critical Area is an existing designation, and the City has previously adopted rules consistent with the existing Statute. This process will potentially update these existing rules.

In order for the Planning Commission, Environmental Policy Board (EPB), and City Council to make informed recommendations on potential draft rules, we first want to hear from you as Property Owners, those most impacted by potential changes to standards. You are an integral part of this process, and the City needs your feedback in order to make an informed decision. As the process has yet to formally begin, the City cannot fully analyze the potential impacts to our residents. However, the City desires to hear from you prior to the process beginning so that you can be part of the discussion, process, and ultimate outcome.

The City desires to hear your thoughts on:

- What key resources do you feel the City and State of Minnesota should protect through updated standards, if any?
- What types of standards (i.e. setbacks, limits on impervious [hard] surface, limits on vegetative removal) would you feel important for the City to protect through administration of additional land use controls, if any?
- What general questions or concerns regarding the Critical Area would you like the City to discuss with the DNR?

This initial public forum hosted by the City on September 16th will begin with a short background presentation at 6:00 p.m. followed by an open public forum and process.

The DNR will be meeting with City Staff and policy makers in late September. In order for this meeting to be productive, your participation in providing input is critical. In addition, the DNR will be hosting Open Houses on the process later this fall. The City Council has asked City Staff to reach out to impacted Property Owners prior to that stage to ensure that your feedback is incorporated into preliminary discussion and in preparation for the upcoming Open House sponsored by the DNR.

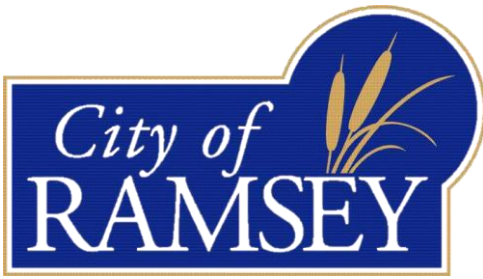
Please consider joining us on September 16, 2013 to be part of the discussion and solution. You may also submit comments to tgladhill@cityoframsey.com or by calling 763-576-4308. For more background information, visit our webpage at www.cityoframsey.com/shoreland under the 'Mississippi River Corridor Critical Area (MRCCA)' section.

Sincerely,

CITY OF RAMSEY



Tim Gladhill
Development Services Manager



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

August 13, 2013

«OWNER»
«OWNERADDY»
«OWNERCITY», «OWNERSTAT» «OWNERZIP»

RE: «PIN»
«LOC_ADDR»
Ramsey, MN 55303

Resident:

You are being contacted regarding the property known as the *Former Municipal Center Complex* described below.

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.

The City is in the process of considering the future development of the Subject Property. The City is considering two general development scenarios for the 20.5 acre site: (1) data center development and (2) residential development.

The purpose of this correspondence is to (A) provide an update and (B) solicit interest in participating in a public process and dialogue on the future of this site. For detailed background information on the future development of the Subject Property, please visit the City’s website: www.cityoframsey.com/formerrmc

A. UPDATE

Today, the *Old Municipal Center Site* is located within the Public/Quasi Public Zoning District. In addition, the Comprehensive Plan also guides the future land use of this parcel as Public/Quasi Public. In order for the Subject Property to be used for either proposed future use, data center or residential, the City will need to approve a Comprehensive Plan Amendment and Zoning Amendment. In June of 2013, the Council requested additional information and input be gathered regarding a data center development before moving forward.

In July of 2013, the City Council directed Staff to formulate a collaborative process consisting of a group of various stakeholders; including: surrounding property owners and at large Ramsey residents. The purpose of the process is to better understand under what circumstances would a data center development be an acceptable use for the Subject Property. The key outcome of this process is a proposal for Council consideration; which will include (1) further documentation/information addressing specific concerns (2) mitigation proposals addressing specific concerns (3) updated site concept maps.

NOTE: The purpose of a study group is *IDENTIFY* and *CONSIDER* compromises/ solutions; it is possible the focus group may conclude certain concerns cannot be mitigated.

B. PUBLIC PROCESS VOLUNTEERS

The City is soliciting interest from nearby property owners to participate in the proposed public process and dialogue. It is estimated, a the group will need to meet four (4) to six (6) times for one (1) to two (2) hours per session and will begin in November/December. Specific meeting times will be determined at a later date. If you, or someone you know, may be interested in serving on this process, please contact Patrick Brama by September 20, 2013.

If you would like assistance, or have questions, I am available to help.

Best regards,



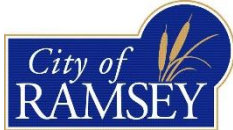
Patrick J. Brama

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



Regular Planning Commission

5. 5.

Meeting Date: 09/05/2013

By: Tim Gladhill, Community Development

Information

Title:

FOR UPDATE ONLY: Staff Update

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:

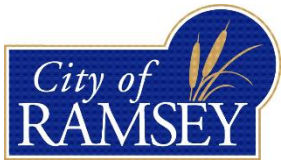
For update only. No action requested.

Attachments

Development Update dated August 29, 2013

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	08/29/2013 12:24 PM
Form Started By: Tim Gladhill		Started On: 08/29/2013
	Final Approval Date: 08/29/2013	



City of Ramsey Development Update

August 29, 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.

Building Permits have been issued for 46 of the 50 planned units. Construction on 147th Lane has commenced (initial grading and staking). Staff continues to complete a number of building inspections on the project.

Project Photos:



Photo taken on August 22, 2013 on the north side of Bunker Lake Boulevard looking west.

A Final Inspection is scheduled for August 29, 2013 on the first building (four [4] units). The Developer desires a Certificate of Occupancy for this first building and potentially the community building within the week. [Updated August 29, 2013]

McDonalds (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 McDonalds on January 3, 2013. The site is located along the re-aligned Sunwood Drive at Armstrong Boulevard, located just north of Northstar Marketplace.

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 Plat (COR TWO) has been recorded.

Staff met with representatives from McDonald's USA on Wednesday, August 22, 2013. Progress continues for both parties on completion of respective obligations. The Stage I Improvements (access and utilities) is substantially complete, subject to verification of correct installation. [Updated August 22, 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.

Construction has officially commenced on the facility. The City has approved a temporary closure of one (1) block on Peridot Street for June 18, 2013 to June 21, 2013 in order to set building panels along Peridot Street. The closure would only be from Sunwood Drive north to 145th Avenue (one [1] block). The closure will also impact traffic patterns for PACT Charter School, which is currently not in regular session. The detour would use 145th Avenue west to Peridot Street, then south to Sunwood Drive. The Contractor will be forwarding Staff a detour plan/map. A sketch provided by the Contractor is shown below. When a more detailed map is provided, Staff will ensure proper communication with the City Council and adjacent property owners. *Below is an updated road closure map.*

Below are recent project photos. [Updated August 1, 2013]



Photo taken August 1, 2013 at Sunwood Drive and Peridot Street looking north west.



Photo taken August 1, 2013 at Sunwood Drive and Peridot Street looking north west.

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) [Updated]

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.

On May 28, 2013, the HRA amended the scope of the project to focus on four (4) of the seventeen (17) lots that are located abutting North Commons (park). The remaining thirteen (13) lots that were approved along Bunker Lake Boulevard could be re-evaluated in the future as market conditions improve.

The Ramsey Housing and Redevelopment Authority (HRA) reviewed a potential purchase offer on all or portions of the four (4) lots along the park. The HRA will be reviewing current market conditions and seeking additional qualified offers on these lots. A more detailed work plan will be provided soon. *Utilities have been installed for the four (4) 'park lots'.*

Staff issued a Notice to Proceed to Hakanson Anderson Associates to revise the approved Final Plat to include only the four (4) lots referenced above. [Updated August 29, 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.

Staff has been informed that the Developer has successfully closed on the construction loan and desires to begin preliminary construction the week of September 9, 2013.

A groundbreaking has tentatively been scheduled for Wednesday, September 25, 2013 at 3:30 p.m., starting at Lord of Life Church. More details to follow. [Updated August 29, 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.

Temporary Certificates of Occupancy have been issued for 177 of 230 units. [Updated August 29, 2013]



Photo taken June 27, 2013 along Sunwood Drive at the Municipal Center looking west.



Photo taken the Municipal Center Plaza in front of the retail space.

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.

The Housing Sub-Committee has met on two (2) occasions to date. Current accomplishments include completion of an Interim Policy Statement (until the final policy is adopted), agreement on the framework of the policy, and establishment of housing-type priorities. All drafts must still be approved by the City Council.

Staff provided an update to the City Council on June 11, 2013, and received positive feedback on direction to continue along the current path for completion.

To date, the sub-committee has completed an initial review of demographic data, established an Interim Policy Statement, and established a framework of the proposed policy (product type priorities, minimum thresholds, and scoring/ranking matrix). The ad-hoc sub-committee met on Tuesday, June 25, 2013 and finished a draft of the Minimum Thresholds. The Minimum Thresholds are based on the Housing Chapter Goals and Implementation Strategies of the 2030 Comprehensive Plan. The final step is to complete a draft of the Scoring/Ranking Matrix. This is anticipated to be completed over two (2) to three (3) sub-committee meetings. At that point, a full draft would be reviewed by Planning Commission, EDA, and City Council.

Staff is actively completing a draft of the final piece of the draft policy and has is currently reviewing the content of the draft. That draft is anticipated to be complete within two (2) weeks. The draft will then be reviewed by the sub-

committee, forwarded to the Planning Commission in September, and then to City Council review at the end of September.

Staff has completed a draft of the scoring matrix and has had reviewed by area experts as to format and content. Staff will be forwarding a full draft for review in the near future. [Updated August 22, 2013]

Cullinan Rigging [Updated]

Cullinan Rigging was granted approval of a Variance and Site Plan Approval for an expansion of their existing facility at 6815 McKinley St NW. The Building Permit has been issued and construction is underway. [Updated August 29, 2013]

Diamond Graphics Expansion [Updated]

Diamond Graphics was granted site plan approval for their existing facility at 14350 Azurite Street. Staff is nearing completion of the review of the Building Permit. [Updated August 29, 2013]

Ramsey Office Plaza Interior Tenant Build-out [Updated]

The City has issued Building Permits to Ramsey Office Plaza located at 7553 Sunwood Drive for multiple tenant build-outs. The tenant build-outs include relocation of PSD, LLC offices, expansion of the 10th Judicial District Administrative Offices, and expansion of Trott Brook Financial Offices. [Updated August 29, 2013]

5300 Alpine Drive NW (Former Allina Clinic) Tenant Build-out [Updated]

The City has issued Building Permits for 5300 Alpine Drive for two (2) new tenants: 1) Weikel Law Firm and 2) Metro Hydro Graphics. [Updated August 29, 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.

Staff has scheduled a Stakeholder/Property Owner Meeting with owners of commercial/retail property in the area for Wednesday, June 5, 2013. The intent of the meeting is to outline options (land use and economic development related) for Property Owners and discuss a unified vision for the future of the current retail node. Staff will provide an update to the Planning Commission, EDA, and City Council following the Stakeholder Meeting.

The EDA discussed the topic at their July 11, 2013 Meeting and a Special Meeting on July 18, 2013 to finalize a recommendation on formulating current policies and recommendations as well as potential next steps. Staff will update the City Council in the near future. [Updated July 18, 2013]

Former Municipal Center Future Land Uses [No Update]

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.

Staff has updated the Planning Commission (5/2/13) and the EDA (5/16/13) on the status of the project.

Staff presented a case to discuss possible next steps at the June 11, 2013 City Council Meeting. The City Council directed Staff to re-engage the surrounding public through a collaborative process utilizing a task force to continue to review options for the site.

Staff met to discuss possible alternatives for the new public process, and anticipates bringing forward alternatives for consideration to the July 9, 2013 City Council Meeting.

The City Council approved the development of a Study Group to begin a collaborative input process to be held at a later date, in order to continue discussions with surrounding property owners as to desired future land uses for the site. Staff will be seeking interested individuals to participate in the process in the near future. Interested names in participating in the process will be brought forward to the City Council at a later date.

Staff has sent a mailing seeking individuals interested in participating in the public process later this year. [Updated August 22, 2013]

Building Permit Update

The City has issued 1,401 permits year to date. Included in that total are 63 new single-family homes, and 62 new townhome units for a total of 125 new households, eight (8) commercial tenant build-outs, one (1) commercial addition, and two (2) new commercial buildings.

September Planning Commission Meeting

The Planning Commission will meet on Thursday, September 5, 2013 at 7:00 p.m. in the Council Chambers. Cases for Review include:

1. PUBLIC HEARING: Consider Amendment to Planned Unit Development Site Plan Approval for Single-Family Area of Town Center Gardens Third Addition
2. PUBLIC HEARING: Consider Home Occupation Permit for Matt's Plumbing Solutions Located at 5565 164th Ave NW; Case of Matt Ariola
3. Review Concept Plan for Rum River Hills Housing Development; Case of Rum River Hills, Inc.
4. Review Upcoming Public Processes Related to Land Use Review

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: 09/05/2013

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	08/28/2013 02:35 PM
Form Started By: JoAnn Shaw		Started On: 08/28/2013 10:35 AM
		Final Approval Date: 08/28/2013

Zoning Bulletin

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Variance/Nonconforming Use— Applicant seeks variance for expansion of nonconforming use

Project opponents maintain a more strict use variance standard applies, rather than a dimensional variance standard

Citation: *Bernotas v. Zoning Hearing Bd. of City of Bethlehem, 2013 WL 2450160 (Pa. Commw. Ct. 2013)*

Contributors

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

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ISSN 0514-7905

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PENNSYLVANIA (06/07/13)—This case addressed the issue of whether an applicant established entitlement to a variance for its requested expansion of a nonconforming use. The case involved the evaluation of whether a use variance standard or a dimensional variance standard applied to the requested expansion of a nonconforming use.

The Background/Facts: Ghassan G. Elias (“Elias”) owned property (the “Property”) in the City of Bethlehem, Pennsylvania (the “City”). There were three buildings on the Property: a main building, and two outbuildings. Since 2006, Elias operated a farmers’ market/grocery store, known as Elias Market, in the main building on the Property. The Elias Market was a preexisting nonconforming use under the City’s Zoning Ordinance (the “Ordinance”).

Prior to Elias’ purchase of the Property, the former owner’s expanded the nonconforming use on the Property by 50% after obtaining special exceptions, pursuant to § 1323.04 of the Ordinance.

Section 1323.04(a) provided that the total building area or total land area occupied by a nonconforming use or structure shall not be increased by greater than 50% beyond the area that existed at the time the use or structure first became nonconforming.

In 2009, Elias sought a variance from the § 1323.04(a) of the Ordinance. Elias proposed to construct an enclosed loading dock, an enclosed ramp, and a warehouse on the lot. Those improvements would increase the existing nonconforming use by another 50% from 14,436 to 19,279 square feet. Because the proposed construction would also increase the total building coverage on the lot to 24.32%, Elias also requested a variance from the 15% maximum building coverage for the R-R zoning district where his property was located.

The City zoning officer denied Elias’ variance requests. Elias appealed. The City’s Zoning Hearing Board (the “Board”) granted the requested variances. The Board concluded that Elias established unnecessary hardship resulting from the unique conditions of the property. The Board found that Elias’ Property was a corner lot and suffered from “severe elevation changes due mainly to the excavation of [the adjacent road].” The Board further found that: the existing loading dock was narrow, steep, insufficient and unusable in the inclement weather; there was no room in the main building for use of forklifts; the proposed loading dock and ramp would enhance the employees’ safety and provide tractor trailers with better access to Elias Market; the proposed warehouse would provide Elias Market with more storage space without increasing the size of the store; the expansion would not adversely impact the neighborhood; and the proposed structures would reduce “eye pollution,” noises, and the number of deliveries made to the store and eliminate an access to the lot from the adjacent road.

Adjacent landowners (the “Objectors”) appealed the Board’s decision. The trial court affirmed the grant of the variances. Among other things,

the trial court concluded that the Board had properly applied a more relaxed dimensional variance standard to Elias' application (rather than a nonconforming use standard). The court also concluded that Elias met all criteria required for the variances.

The Objectors again appealed.

DECISION: Affirmed.

The Commonwealth Court of Pennsylvania agreed that the dimensional variance standard, rather than the nonconforming use standard, applied to Elias' application for variances. The court also agreed that Elias met all criteria required for the variances.

In so holding, the court explained that, pursuant to § 910.2(a) of the Pennsylvania Municipalities Planning Code ("MPC") and § 1325.06(a) of the City's Zoning Ordinance, one seeking a variance must: establish that the zoning ordinance imposes unnecessary hardship resulting from unique physical conditions of the property; a variance is necessary to enable a reasonable use of the property; the asserted hardship was not self-inflicted; a grant of variance will not alter the essential character of the neighborhood, substantially impair appropriate use or development of adjacent properties, or be detrimental to the public welfare; and the requested variance represents a minimum variance and a least possible modification of the regulation that will afford relief.

Here, the court found that a dimensional variance standard applied because Elias was asking only for a "reasonable adjustment of the zoning regulations in order to utilize the [P]roperty in a manner consistent with the applicable regulations." The court explained that, in considering a dimensional variance request, multiple factors may be considered, including: "the economic detriment to the applicant if the variance was denied[;] the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements[;] and the characteristics of the surrounding neighborhood."

The Objectors had not disputed that the relaxed dimensional variance standard applied to the requested variance from the 15% maximum building coverage. However, the Objectors had argued that the Board should have applied the more strict use variance standard to the requested variance from § 1323.04(a) of the Ordinance limiting an expansion of nonconforming use by up to 50%. The court disagreed. It found that the proposed loading dock, ramp, and warehouse would increase the size, extent, and scope of the nonconforming use but would not create a new principle use on the lot. It also found that those structures were incidental and secondary to the principle nonconforming use of the property as a farmers' market/grocery store and constituted accessory structures. Because the proposal would only increase the nonconforming use without creating a new use on the lot, the court concluded that the requested variances had to be evaluated under a dimensional variance standard.

In holding that Elias met all of the criteria for the variances, the court

noted that an applicant seeking a variance to expand a nonconforming use must still establish unnecessary hardship resulting from unique physical conditions of the property and satisfy all the other criteria in § 910.2(a) of the MPC and § 1325.06(c) of the Ordinance. The court also noted that Elias had a “vested constitutional right to a natural expansion of a nonconforming use”—as balanced against the impacts of the proposed expansion on the surrounding area and public interest.

The court found the evidence in the record supported the Board’s finding that: asserted hardship resulted from the unique physical conditions of the property; the requested expansion of the nonconforming use was necessary for a reasonable use of the property; the new proposed structures were necessary to improve and modernize the nonconforming use; and the proposed expansion would not adversely impact the neighborhood. The court concluded that the fact that the proposed expansion was sizable did not render the expansion unreasonable *per se*. Rather, the court found the evidence established that the requested variances represented a reasonable adjustment of the zoning standards necessary to allow a reasonable use of the property without affecting the public health, safety and welfare.

See also: *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 554 Pa. 249, 721 A.2d 43 (1998).

See also: *Jenkintown Towing Service v. Zoning Hearing Bd. of Upper Moreland Tp.*, 67 Pa. Commw. 183, 446 A.2d 716 (1982).

See also: *Silver v. Zoning Bd. of Adjustment*, 435 Pa. 99, 255 A.2d 506 (1969).

See also: *In re Gilfillan’s Permit*, 291 Pa. 358, 140 A. 136 (1927).

Nonconforming Use—City says property use is nonconforming and illegal

Property owner argues city’s tax assessment of property based on nonconforming use precludes enforcement of zoning laws

Citation: *Cigarrilha v. City of Providence*, 64 A.3d 1208 (R.I. 2013)

RHODE ISLAND (05/15/13)—This case addressed the issue of whether a use was grandfathered as a preexisting legal nonconforming. It also addressed whether a city’s assessment of property taxes upon property based on a nonconforming use precluded enforcement of the zoning laws by operation of equitable estoppel or by operation of laches.

The Background/Facts: Cecilia and Manuel Cigarrilha (the “Cigarrilhas”) owned real property (the “Property”) in Providence, Rhode Island (the “City”). The dwelling units at the Property were constructed in 1911. In 1923, the City adopted its first zoning ordinance. Under the zoning ordinance, any uses established prior to the enactment of that ordinance were deemed to be grandfathered unless abandoned.

Pursuant to the City zoning ordinance, the Cigarrilhas’ Property was zoned Residential R-2. That zone allowed for single-family dwelling units and two-family dwelling units. In 2008, the City discovered that the Cigarrilhas’ Property was being used as a three-family dwelling, and therefore was not in compliance with the ordinance.

The Cigarrilhas maintained that their Property was grandfathered as a legal nonconforming use. The Cigarrilhas appealed to the City’s zoning board of appeal (the “Board”).

The Board also determined that using the Property as a three-family dwelling was illegal.

The Cigarrilhas brought a legal action, appealing the Board’s decision. They asked the court to declare that their use of the Property as a three-family dwelling was a legal nonconforming use. In support of their arguments, the Cigarrilhas presented tax assessment records from the 1940s through the present. The Property had been taxed as a three-family dwelling. The Cigarrilhas argued that the doctrines of equitable estoppel and/or laches precluded the City from enforcing its codes.

The trial justice found that the Cigarrilhas had failed to meet their burden of proving that the Property was used as a three-family dwelling prior to the enactment of the City’s first zoning ordinance in 1923. It also ruled that the Cigarrilhas had failed to establish that either equitable estoppel or the equitable doctrine of laches precluded that City from enforcing its zoning ordinance.

Cigarrilhas appealed.

DECISION: Affirmed.

The Supreme Court of Rhode Island also held that the Cigarrilhas had failed to prove that the property was in use as a three-family residence before the enactment of the ordinance in 1923. The court found that all evidence in the record, including the tax assessment records, postdated 1923—the year the ordinance was enacted. Accordingly, the court concluded that the Property did not qualify for legal nonconforming use.

The Cigarrilhas had argued that because the City had benefited from taxing the Property as a three-family dwelling “for an excess of seven decades,” the doctrine of equitable estoppel applied, precluding enforcement of the zoning laws.

The court explained that for equitable estoppel to be potentially applicable, the Cigarrilhas had to show: (1) an affirmative representation or equivalent conduct on the part of the City which was directed to the

Cigarrilhas for the purpose of inducing the Cigarrilhas to act or fail to act in reliance thereon; and (2) that such representation or conduct in fact did induce the Cigarrilhas to act or fail to act to their injury.

Here, the court found no evidence in the record that the City acted or made any representation which induced the Cigarrilhas to act. The tax assessments alone did not show any conduct on behalf of the City that would lead to reliance that injured the Cigarrilhas. Moreover, reliance on the taxes assessed did not result in the equities being balanced in the Cigarrilhas' favor. The Cigarrilhas had benefited from additional rental income, thus negating the injury requirement of equitable estoppel, concluded the court.

The Cigarrilhas had also contended that the equitable doctrine of laches applied to shield them from the City's efforts at enforcement of its ordinances. Here, for the doctrine of laches to apply, the court explained, the Cigarrilhas would have had to prove: (1) there had been negligence that led to "a delay in the prosecution of the case"; and (2) that delay had prejudiced the Cigarrilhas.

The Cigarrilhas had argued that the City had negligently sat on its rights for over 70 years—in taxing the Cigarrilhas as a three-family dwelling unit and not enforcing the ordinance's use restrictions. "To hold [the Cigarrilhas] responsible to try to prove something that occurred more than 70 years ago while the City refused to enforce its own rights, whatever they might be, demand[ed] the use of the concept of laches," argued the Cigarrilhas. The court disagreed. It held that the trial justice was not "clearly wrong" when it found that the City had not "acted negligently" due to the fact that the City took the appropriate steps against the Property in taxing its actual use and in promptly enforcing its codes once it learned of the violations.

See also: *Lichtenstein v. Parness*, 81 R.I. 135, 99 A.2d 3 (1953).

See also: *School Committee of City of Cranston v. Bergin-Andrews*, 984 A.2d 629, 251 Ed. Law Rep. 829 (R.I. 2009).

Comprehensive Plan—City approves planned unit development

Development opponents contend proposal is
irreconcilable with City's comprehensive plan

Citation: *Durant v. District of Columbia Zoning Com'n*, 2013 WL 2102501 (D.C. 2013)

DISTRICT OF COLUMBIA (05/16/13)—This case addressed the is-

sue of whether a planned unit development approval was invalid on its face as irreconcilable with the District's comprehensive plan.

The Background/Facts: In November 2010, 901 Monroe Street LLC (the "Developer") submitted a planned unit development ("PUD") application to the District of Columbia Zoning Commission (the "Zoning Commission"). The Developer proposed to transform a 60,000 square foot parcel into a mixed-use commercial and residential project. Simultaneously, the Developer asked that the entire parcel be rezoned to C-2-B—allowing for "community business centers" of "medium-high density."

At the time of the PUD application, the property was primarily authorized for residential use. The zoning regulations designated a portion of the property R-2 residential, and another portion C-1 commercial. The Future Land Use Map ("FLUM") approved one part of the property for mixed-use moderate-density uses, another part for moderate-density residential uses, and a third part for low-density residential uses. The Generalized Policy Map ("GPM") also contemplated low-density residential use in the area, treating the property as a Neighborhood Conservation Area.

A group of area residents who lived within 200 feet of the proposed development opposed the PUD application (the "Opponents"). Most significantly, the Opponents asserted that the proposal was inconsistent with the District of Columbia's Comprehensive Plan. Specifically, they claimed that the proposed project was contrary to the Comprehensive Plan's Land Use, Upper Northeast Area, and Urban Design Elements. They also argued that the proposal was inconsistent with the FLUM.

Ultimately, the Zoning Commission unanimously approved the Developer's application. The Commission concluded that the proposal would not, as a whole, be inconsistent with the Comprehensive Plan. In particular, the Zoning Commission noted that the Upper Northeast Element of the Comprehensive Plan encouraged moderate-density mixed-use development, and that current zoning was inconsistent with that goal. The requested rezoning, the Zoning Commission found, would bring the property in line. As to the Land Use Element of the Comprehensive Plan, the Commission found that the Developer's proposal would advance a land use policy of using Metro stations as development anchors because the proposal was the area's "most realistic development opportunity." Viewing the proposed development in the context of the Comprehensive Plan "as a whole," the Commission found it to be consistent with the FLUM.

The Opponents appealed the PUD application approval. They raised two primary arguments: (1) on its face, the Developer's proposal was irreconcilable with the Comprehensive Plan, and the Commission therefore had no authority to approve the developer's application; and (2) even if the Developer's proposal was consistent with the Plan, the Zoning Com-

mission failed to make adequate findings as to several material contested issues.

DECISION: Remanded.

The District of Columbia Court of Appeals held that the PUD approval was not invalid on its face as irreconcilable with the Comprehensive Plan. In so holding, the court explained that the Zoning Commission was responsible for balancing the Comprehensive Plan's occasionally competing policies and goals, subject only to deferential review by the court. The court noted that, even if the PUD proposal conflicted with one or more individual policies associated with the Comprehensive Plan, that did not, in and of itself, preclude the Zoning Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.

A Comprehensive Plan, said the court, "is not a code of prohibitions": "it is an interpretive guide," which a zoning commission must consider holistically. It provides a broad "statement of policy to guide future public decision[-] making," and except where specifically provided, it is not "binding"; it is only an interpretive tool. "Its discrete elements 'guide[,] but do not direct' a zoning commission's action," and it "do[es] not impose specific implementation techniques," stated the court. Thus, even if some individual policies are facially at odds with a particular zoning action, that is not necessarily dispositive; the zoning commission must still determine whether a proposed action would be consistent with the Comprehensive Plan as a whole.

Here, however, the court also agreed with the Opponents that the Zoning Commission had failed to resolve certain material issues. The court found that the Zoning Commission had failed to address or explain its resolution of three contested issues. In light of that failure, the court concluded that a remand for further consideration was required to resolve those issues.

See also: *Tenley and Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331 (D.C. 1988).

Residential Facilities—City board classifies homeless shelter as “transient hotel,” thus an allowed use in zoning district

Shelter opponents argue classification is improper and proposed use is actually prohibited

Citation: *Chelsea Business & Property Owners' Ass'n, LLC v. City of New York*, 2013 WL 2396026 (N.Y. App. Div. 1st Dep't 2013)

NEW YORK (06/04/13)—This case addressed the issue of whether a city's board rationally determined that a proposed homeless shelter met the zoning code's definition of “transient hotel.”

The Background/Facts: Bowery Residents' Committee, Inc. (“BRC”) sought to convert a 12-story building in the Borough of Manhattan in the City of New York (the “City”). In the 100,000-square-foot facility, BRC planned to house a 32-bed detoxification unit, a 96-bed reception center, and a 200-bed homeless shelter (the “homeless shelter”).

BRC applied to the New York City Department of Buildings (“DOB”) for all necessary approvals and permits for the proposed homeless shelter. The DOB granted the approvals and permits.

Thereafter, the Chelsea Business & Property Owners' Association, LLC; doing business as the Chelsea Flatiron Coalition (the “Chelsea Coalition”), challenged the DOB's determinations. The building for BRC's proposed homeless shelter was located in an M1-6 light manufacturing zoning district in the City. The DOB had classified BRC's proposed homeless shelter as a “transient hotel,” which was a permitted use in the M1-6 zoning district. The Chelsea Coalition argued that classification was improper. It argued that the BRC's proposed homeless shelter should have been classified as a “non-profit institution with sleeping accommodations” or a “health related facility” under the City's Zoning Resolution—both of which uses were prohibited in the M1-6 district.

The Board of Standards and Appeals of the City of New York (the “BSA”) affirmed the DOB's determinations.

The Chelsea Coalition appealed.

The supreme court denied Chelsea Coalitions' petition and dismissed the proceeding.

The Chelsea Coalition again appealed.

DECISION: Affirmed.

The Supreme Court, Appellate Division, First Department, New York, first noted that the BSA and DOB were responsible for administering and enforcing the zoning resolution. The court said that “their interpretation must therefore be given great weight and judicial deference, so long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute.”

The court held that the BSA had “rationally determined that the definition of ‘transient hotel’ in . . . the Zoning Resolution [was] clear and unambiguous and that the proposed use of the building [as a homeless shelter] [met] the three criteria of the definition.” Specifically, the court found that BRC’s proposed homeless shelter: (1) provided sleeping accommodations used primarily for transient occupancy; (2) had a common entrance to serve the sleeping accommodations; and (3) provided 24-hour desk service, housekeeping, telephone, and linen laundering.

Case Note:

The Chelsea Coalition had also argued that the City should have submitted the proposed homeless shelter to a Uniform Land Use Review Procedure (“ULURP”) review. The court held that ULURP was not required because: (1) the City did not have a lease or the functional equivalent of a lease of the building; and (2) the contract between the BRC and the City’s Department of Homeless Services was not shown to be part of an actual housing and urban renewal plan.

Case Note:

The Chelsea Coalition had further contended that BRC’s homeless shelter operated in violation of the City’s Administrative Code. The Administrative Code stipulated that “[n]o shelter for adults shall be operated with a census of more than [200] persons.” The court said that, even assuming a census in excess of 200 persons, the building was permitted as a grandfathered shelter under the “Camp LaGuardia” exception to the Administrative Code’s 200-bed limit. Under that Administrative Code exception, the Camp LaGuardia Shelter operating with a census of 1,017 persons can be replaced with two shelters each with a maximum census of 400 persons.

Zoning News from Around the Nation

FLORIDA

Governor Rick Scott recently signed into law legislation that “applies

retroactively and prohibits referendums on development issues unless a city's charter expressly grants citizens the right to appeal amendments made to comprehensive plans that affect more than five parcels."

Source: *Sun Sentinel*; www.sun-sentinel.com

IOWA

Cedar Rapids recently became the sixth Iowa city to approve an ordinance that bans short-term loan businesses from certain areas.

Source: *Newton Daily News*; <http://www.newtondailynews.com>

MASSACHUSETTS

The state House of Representatives has passed a \$1.4 billion Housing Bond Authorization Bill, which includes an amendment that would "prohibit any 40B development from being built in an economic opportunity area within a city of town where the town has a tax increment financing, or TIF, agreement." Essentially, the amendment would prohibit developers from using Chapter 40B to overrule local zoning laws if a TIF agreement is in place. The reported purpose of the amendment is to "empower[] communities to accommodate affordable housing while also promoting economic growth." The bill now awaits Senate consideration.

Source: *Norwood Bulletin*; <http://www.wickedlocal.com/norwood/>

Quincy's city council has "approved a new zoning law that aims to keep medical marijuana dispensaries away from homes, schools and bars." The new ordinance "bans the cultivation or sale of medical marijuana within 1,500 linear feet, or five football fields, of a residential district, school, child care center, liquor-selling establishment and other marijuana dispensaries." The ordinance now awaits approval by the mayor.

Source: *Patriot Ledger*; www.patriotledger.com

NEW YORK

Recently, a state judge issued a temporary restraining order "barring the expansion of a group of related recycling and trucking businesses that Smithtown officials say are violating the town zoning code." The town claims the businesses are operating on land that is predominantly zoned for residential housing.

Source: *Newsday*; www.newsday.com

Zoning Bulletin

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Validity of Zoning Regulation/ Procedure—Prior to enacting zoning amendment prohibiting nonconforming use, city notifies interested parties by newspaper posting

Affected property owner claims individual

Contributors

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ISSN 0514-7905

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notice was required, and charges that city violated its due process rights

Citation: *Edelhertz v. City of Middletown, New York*, 714 F.3d 749 (2d Cir. 2013)

The Second Circuit has jurisdiction over Connecticut, New York, and Vermont.

SECOND CIRCUIT (05/08/13)—This case addresses the issue of whether municipal amendment of zoning laws without individual notification to affected property owners violates procedural due process.

The Background/Facts: Since the mid-1990's, the Melvyn Edelhertz and Helaine Edelhertz Revocable Living Trust ("Edelhertz") owned a nonowner occupied, multidwelling building (the "Property") in an R-1 zoning district in the City of Middletown, New York (the "City"). In August 2010, Edelhertz entered into a contract to sell the Property to Composite, LLC. Due diligence related to the sale of the property revealed that, in July 2009, the City had enacted a zoning amendment (the "Zoning Amendment") aimed at eliminating nonowner occupied multiple dwellings in various zoning districts in the City, including the R-1 zone. Prior to enactment, the City had given notice of the proposed enactment of the Zoning Amendment to any interested person through a "Public Hearing Notice" published in the legal classified advertisements of the local paper. Pursuant to the Zoning Amendment, Edelhertz's property was now a legal nonconforming use, which, by July 2014, would become a prohibited and unlawful nonconforming use. Composite eventually withdrew its offer to purchase the Property.

Edelhertz brought a legal action against the City. Edelhertz alleged that the City's action in adopting the Zoning Amendment was adjudicative because it was "based on a host of targeted facts" and was "retrospective in nature looking back over several years of examined activity." As an adjudicative action, Edelhertz maintained that the City was required to provide interested parties (namely all affected multiple dwelling owners) with individual notice (by mail) as to the proposed adoption of the Zoning Amendment. Edelhertz alleged that the City's failure to provide Edelhertz with such individual notice violated Edelhertz's procedural due process rights guaranteed by the 14th Amendment to the U.S. Constitution.

The district court disagreed with Edelhertz. It found that the City's proposed enactment of the Zoning Amendment was a legislative action that did not entitle Edelhertz to due process protection of individual notice prior to the enactment.

Edelhertz appealed.

DECISION: Judgment of district court affirmed.

The United States Court of Appeals, Second Circuit, affirmed the

district court's decision for substantially the same reasons cited by the district court. The Court of Appeals adopted the district court's opinion.

The court explained that to determine whether a procedural due process violation has occurred, courts must engage in a two-step analysis: (1) determine whether there exists a property interest of which a person has been deprived; and (2) if so, determine if the procedures followed by the state were constitutionally sufficient.

Under New York law, further explained the court, a nonconforming use that predates the enactment of a restrictive zoning ordinance is a vested right and is entitled to constitutional protection.

Here, the court found it undisputed that Edelhertz had a vested property right in the nonconforming use of its property as a nonowner occupied multiple dwelling. Although it was unclear when the Property became a nonconforming use, the court found it clear that a nonowner occupied multiple dwelling was a nonconforming use in the City's R-1 zone, and that Edelhertz had maintained the property as such since obtaining title to it in 1993. Moreover, Edelhertz's nonconforming use remained in effect upon enactment of the Zoning Amendment, which mandated its discontinuance within five years. Thus, concluded the court, Edelhertz did have a vested property right in the maintenance of the Property as a nonconforming use.

The court, however, also concluded that Edelhertz's property interest had not been deprived here by the type of notice given by the City prior to the Zoning Amendment. The court explained before a deprivation of a property interest occurs, the Due Process Clause requires, at a minimum, that the government provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." "However, due process protections are not required when the government takes action that is legislative rather than adjudicative." As such, procedural due process claims "must be dismissed when they challenge purely legislative action."

The court explained that in the Second Circuit (governing Connecticut, New York and Vermont), "the test for determining whether official action is adjudicative or legislative focuses on the function performed by the decisionmaker, not on the method of selecting the decisionmaker, or on the form in which the decision is announced." Action is adjudicative when it is: (1) based on "facts about the parties and their activities, businesses, and properties"; and (2) "designed to adjudicate disputed facts in particular cases." Action is legislative when it: (1) considers "general facts which help the tribunal decide questions of law and policy and discretion"; and (2) has "general application and look[s] to the future." In other words, "[a]djudicative decisions apply a statute or legal standard 'to a given fact situation involving particular individuals,' whereas legislative action entails 'the formulation of a general rule to be applied . . . at a subsequent time.'"

Here, Edelhertz had argue that enactment of the Zoning Amendment was adjudicative because it was “based on a host of targeted facts” and was “retrospective in nature looking back over several years of examined activity”—namely the examination of criminal activity related to multiple dwellings in the City. The court disagreed. It concluded that the City’s decision to enact the Zoning Amendment was “legislative” in character because it was prospective and generally applicable. More specifically, the court found the enactment of the Zoning Amendment: “did not attempt to adjudicate particular facts as to any one [landowner] or group of [landowners]”; nor was it enacted to single out any individual “for special consideration based on [her] own peculiar circumstances.” Rather, found the court, the City, acted in a policy-making capacity, considering facts relating generally to nonowner occupied multiple dwellings in the relevant zoning districts, and finding that nonowner occupied multiple dwellings “generally impaired the orderly development and general welfare of certain zoning districts.”

Since the Due Process Clause did not apply to legislative action, the court determined that Edelhertz’s claim of deprivation of due process failed.

See also: *RR Village Ass’n, Inc. v. Denver Sewer Corp.*, 826 F.2d 1197, 8 Fed. R. Serv. 3d 1056 (2d Cir. 1987).

See also: *Interport Pilots Agency, Inc. v. Sammis*, 14 F.3d 133, 1994 A.M.C. 2704 (2d Cir. 1994).

Conformity to Regulations— Adjacent landowner challenges approval of conditional use application

Landowner alleges error in property
identification for hearing notice and improper
calculations related to conditions

Citation: *Northgate Condominium Ass’n, Inc. v. Borough of Hillsdale Planning Bd.*, 2013 WL 1943204 (N.J. 2013)

NEW JERSEY (05/13/13)—This case addressed the issues of: (1) whether a conditional use approval notice that contained an erroneous tax lot designation complied with New Jersey’s Municipal Land Use Law (“MLUL”); and (2) whether a planning board is permitted to round down dwelling units per acre calculations when determining compliance

with New Jersey's Residential Site Improvement Standards (the "RSIS").

The Background/Facts: Caliber Builders, Inc. ("Caliber") sought to develop a 12.5 acre parcel of land, the majority of which was in an R-2 zoning district in the Borough of Hillsdale (the "Borough") (the "Land"). The Land was previously the site of a fruit orchard and was commonly referred to as "Golden Orchards." Caliber's development proposal included thirty-seven age-restricted, single-family houses. Pursuant to the Town's zoning code, single-family detached age-restricted housing developments were permitted in the Borough's R-2 zoning district as a conditional use. Among the numerous conditions that an applicant would need to satisfy in applying for a conditional use permit was that the roadway widths and road improvements in any age-restricted development conform with the RSIS.

The RSIS governs all residential site improvements in New Jersey. Among other things, the RSIS regulates intensity of roadways. The RSIS defines a low intensity development as one that contains "[l]ess than or equal to 4" dwelling units per gross acre. (N.J.A.C. 5:21-4.2(b).) The RSIS defines a medium intensity development as one that contains "[m]ore than 4 and less than or equal to 8" dwelling units per gross acre. (N.J.A.C. 5:21-4.2(b).)

In April 2007, Caliber submitted an application to the Borough Planning Board (the "Board"), seeking a preliminary site plan and conditional use approval for its proposed age-restricted housing development.

Ultimately, the Board voted to approve Caliber's application.

Northgate Condominium Association, Inc. ("Northgate") was a non-profit corporation that managed and operated Northgate Condominiums. Northgate Condominiums were located on land adjacent to the Land on which Caliber proposed development. Northgate objected to Caliber's application. It appealed the Board's decision to approve Caliber's application.

Among other things, Northgate argued that Caliber failed to comply with the notice requirements of the MLUL governing the manner in which property to be developed must be identified. (See N.J.S.A. 40:55D-11.) The relevant section of the MLUL (N.J.S.A. 40:55D-12 and -13) provides that notices must, among other things: "identify the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office." Caliber's published notices of hearings related to its application in the local newspaper mis-identified the tax lot numbers for the Land as being Lots 1.0 and 1.02, when they should have been identified as Lot 1.

Northgate also argued that Caliber had failed to demonstrate that its proposed design complied with certain requirements fixed by the RSIS

for internal roadway widths and improvements. (See N.J.A.C. 5:21-4.1, -4.2, -4.5.) When a municipal ordinance requires subdivision or site plan approval, the planning board must evaluate all such applications for approval to ensure compliance with the RSIS. A failure to abide by the requirements of the RSIS is treated as a violation of the MLUL, and violators may be prevented from constructing or occupying a development that does not comply with the requirements of the RSIS. Northgate challenged how the Board calculated the intensity level of the proposed development's roadway. In Northgate's view, the roadway's intensity level dictated the RSIS requirements that were to be applied. Northgate asserted that the Board's calculations were flawed because they were based on the size of the entire parcel rather than the size of the parcel after excluding environmentally sensitive land. Although the land covered 9.79 acres in the Borough, Northgate argued that, after subtracting wetland acreage, the density was 4.36 dwelling units per acre—resulting in a “medium intensity” roadway designation under the RSIS.

Both the trial court and the appellate court affirmed the Board's approval of Caliber's application. As to the notice issue, both courts regarded the error in the notice as a clerical mistake that was of no significant consequence since other property identifying information had also been provided in the notice. As to the RSIS compliance issue, the trial court concluded that the Board could waive compliance. The Appellate Division instead found that the project complied with the RSIS requirement. Significantly, the Appellate Division determined that the Board could round down the dwelling units per acre calculation, thus supporting the designation of the roadway as being of low intensity.

Northgate appealed.

DECISION: Judgment of superior court, appellate division, affirmed as modified.

The Supreme Court of New Jersey held that Caliber's conditional use approval notice that contained the erroneous tax lot designation complied with the MLUL requirements. The court noted that in the notices, Caliber had not only used the lot numbers to identify the Land on which it proposed development, but had also identified the Land by its commonly known name and by reference to the location as being south of a particular road. The court concluded that there had clearly been no confusion about the location of the Land, as: many interested property owners appeared for the hearings; and after the Board published a notice with the accurate lot designation, no new objector stepped forward. The court held that “a minor, clerical deviation that had no potential to mislead any interested member of the public does not fall short of the statutory requirement for describing the property to be developed.” Accordingly, the court concluded that the minor error in Caliber's notice here did not violate the statute nor deprive the Board of jurisdiction to act.

As to Northgate's argument that the RSIS requirements were not met, the court also found that argument unavailing. Again, Northgate had challenged the accuracy of the Board's roadway density calculation, arguing that it should have subtracted two acres of wetland on the Land in making the calculation. However, the court found that nothing in the record supported Northgate's assertion as to the amount of wetlands on the Land.

Also, although unnecessary to the conclusion reached about RSIS compliance, the court did agree with Northgate that the Appellate Division had erred when it had said that the Board could round down the calculated density of Caliber's proposed development. The Supreme Court held that planning boards are not permitted to round down the dwelling units per acre calculation when determining RSIS compliance.

See also: *Pond Run Watershed Ass'n v. Township of Hamilton Zoning Bd. of Adjustment*, 397 N.J. Super. 335, 937 A.2d 334 (App. Div. 2008).

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

Regulatory Taking—After encouraging development, county halts project and says it cannot proceed under zoning ordinance

Developer says county actions amount to a regulatory taking, entitling it to just compensation

Citation: *Lockaway Storage v. County of Alameda*, 216 Cal. App. 4th 161, 156 Cal. Rptr. 3d 607 (1st Dist. 2013)

CALIFORNIA (05/09/13)—This case addressed the issue of whether a county's temporary suspension of a development project was a regulatory taking, under the Fifth Amendment to the United States Constitution, entitling the developer to just compensation.

The Background/Facts: Lockaway Storage ("Lockaway") owned an 8.45-acre parcel of land in Alameda County (the "County") (the "Property"). Lockaway had purchased the Property in May 2000, with the intent to implement a 1999 Conditional Use Permit ("CUP") to develop a boat and RV self-storage facility on the Property. The 1999 CUP required that it be implemented within three years of issuance, or it would terminate on September 22, 2002.

Six months after Lockaway's purchase of the property, in November 2000, the County voters enacted Measure D, a growth control initiative. Measure D became effective on December 22, 2000. Among other things, Measure D generally prohibited the development of a storage facility in the area of Lockaway's property, except by public vote. Notably, § 22 of Measure D provided that: (a) Measure D did not "affect existing parcels, development, structures, and uses that are legal at the time it becomes effective"; and (b) Measure D applied to "development or proposed development which ha[d] not received all necessary discretionary County and other approvals and permits prior to the effective date of [Measure D]."

Even after Measure D became effective, Lockaway pursued its plan to develop the Property. Throughout the development process, Lockaway had frequent dialogue with County administrators. County administrators never told Lockaway that Measure D use restrictions applied to the Lockaway Project. In fact, County administrators encouraged the Project and acknowledged that Lockaway had already implemented the 1999 CUP. They also assured Lockaway that if grading and building permits were not issued by the CUP's September 22 expiration date, a formal letter would be prepared stating that the CUP had been implemented. Lockaway obtained its grading permit on September 19. However, the County did not issue a building permit for the Project prior to the September 22, 2002, termination date of the 1999 CUP.

After the CUP expiration date passed, the County changed its position: The County took the position that Measure D applied to the Project because Lockaway had not obtained a building permit and commenced construction prior to Measure D's December 22, 2000, effective date. No mention was made of the possible effect of § 22 on Lockaway's right to proceed with the Project.

Lockaway argued that its right to complete the Project was unaffected by Measure D because the 1999 CUP was implemented before it expired. Under protest, Lockaway applied for a new CUP. The County Board of Zoning Adjustment denied the application on the ground that it was inconsistent with Measure D. The County Board of Supervisors affirmed that decision.

Lockaway then filed suit against the County. Among other things, Lockaway alleged that the County's action amounted to a regulatory taking (i.e., inverse condemnation) under the Fifth Amendment to the United States Constitution, and that Lockaway was entitled to damages for the County's suspension of Lockaway's development Project.

The County argued that the Lockaway Project could not proceed because the 1999 CUP was issued pursuant to a zoning provision which was superseded by Measure D. According to the County, when Measure D took effect in December 2000, the zoning ordinance became ineffective and the 1999 CUP issued pursuant to that ordinance was also ineffective.

Lockaway argued that its Project was exempt from Measure D under § 22 of the ordinance. Lockaway argued that this “grandfather clause” applied to its Project because it had obtained all necessary discretionary approvals from the County prior to Measure D’s effective date. It noted, and the County agreed, that the building permit that had not yet issued prior to the expiration of the 1999 CUP was merely ministerial.

The superior court found that Measure D did not apply to the Lockaway Project because the undisputed facts established that the project was “squarely under the protections of Section 22 of Measure D.” The court found that the County’s application of Measure D was a temporary regulatory taking making it liable in damages to Lockaway on its cause of action for inverse condemnation. The court awarded Lockaway \$504,175 in lost profits and \$324,954 in increased construction costs due to the 30-month delay caused by the County’s application of Measure D to the Project, plus attorney’s fees.

The County appealed. The County argued that § 22’s exemptions were more narrow than the superior court had interpreted, and that, in any case, they did not apply to Lockaway because Lockaway had failed to timely obtain all discretionary approvals. The County further argued that even if Measure D did not prohibit Lockaway from completing its Project, the temporary suspension of the Project did not amount to a constitutional taking as a matter of law.

DECISION: Judgment of superior court affirmed.

The Court of Appeal, First District, Division 3, California, held that Lockaway’s Project was exempt under § 22 of Measure D because the CUP had been implemented and all but the ministerial permits had been obtained. The court also held the County’s temporary suspension of Lockaway’s Project development was a regulatory taking under the Fifth Amendment to the United States Constitution, entitling Lockaway to just compensation.

Looking at the plain language of § 22, the court found that it created an exemption from the restrictions and requirements of Measure D for all existing and unaltered development, or proposed development, provided the developer obtained all discretionary County approvals and permits before December 22, 2000. And, the court found that the County had stipulated to the facts that: the CUP for the Lockaway Project was obtained before Measure D went into effect; the grading permit was issued after Measure D went into effect but was a ministerial permit; and the building permits issued after the CUP’s expiration date were ministerial. Thus, the court concluded that the Lockaway Project was exempt from the use restrictions imposed by Measure D, pursuant to § 22.

In determining that the County’s actions amounted to a regulatory taking the court explained: The Fifth Amendment, which applies to the states via the 14th Amendment, prohibits government from taking private property for public use without just compensation.

“[A] regulation may effect a taking requiring just compensation even if it does not deprive the owner of ‘all economically beneficial use’ of his or her property, depending on the particular circumstances of the case Furthermore, a temporary regulatory taking may require payment of just compensation for the period the taking was in effect.” Thus, “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” A government regulation, such as in this case, which neither causes a property owner to “suffer a permanent physical invasion” of his or her property nor deprives the owner of “all economically beneficial use” of the property, may still amount to a regulatory taking dependent upon the weighing of three primary factors: (1) the “economic impact” of the regulation on the claimant; (2) the extent to which the regulation interferes with “distinct investment-backed expectations”; and (3) the “character of the governmental action.”

Here, the court concluded that the County’s actions amounted to a regulatory taking because: (1) the County’s regulatory action “unreasonably impaired both the value and use” of the Lockaway Property—particularly in light of the fact that Lockaway always intended to develop the Property as a storage facility, had invested substantially in that development with no indication from the County administrators that it could not under Measure D, and would have incurred substantial costs to convert the property to another use; (2) the County’s regulatory action interfered with Lockaway’s reasonable investment backed expectation that its Project could proceed, given that the County had confirmed that Lockaway could rely on the CUP and encouraged the development, until the County changed its position in September 2002; and (3) the County’s “regulatory about face was manifestly unreasonable,” not just because of its “devastating” economic impact on Lockaway, but also because it deprived Lockaway of a “meaningful opportunity to attempt to protect its property rights” given that the change of position came at the expiration of the CUP.

The court concluded that the County’s application of Measure D to shut down the Lockaway Project was a temporary regulatory taking that required the payment of just compensation. The court affirmed the damages and attorney’s fees award.

See also: *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631, 11 Env’t. Rep. Cas. (BNA) 1801, 8 Env’tl. L. Rep. 20528 (1978).

See also: *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592, 52 Env’t. Rep. Cas. (BNA) 1609, 32 Env’tl. L. Rep. 20516 (2001).

Zoning News from Around the Nation

ARIZONA

State Senators recently approved legislation that “prohibits cities and counties from requiring home builders to establish ‘planned communities’ as a condition of getting the requisite permits and zoning for a new development.” Nothing in the legislation, HB 2518, would preclude a developer from establishing a planned community.

Source: *Maricopa Monitor*; <http://www.trivalleycentral.com>

COLORADO

With medical marijuana close to legalization in Illinois, municipalities are reviewing zoning ordinances “to ensure that there are very specific and comprehensive conditions that would regulate cannabis related facilities.” The “Compassionate Use of Medical Cannabis Pilot Program Act” awaits Governor Pat Quinn’s signature after it was approved by the Illinois House of Representatives on April 17 and the state Senate on May 17. The bill allows qualifying patients with debilitating conditions to use marijuana without subject to arrest, prosecution or denial or rights. It also allows the state to permit up to 60 distribution facilities.

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

MAINE

Recently, the state legislature’s Energy, Utilities and Technology Committee approved legislation (L.D. 616) that would mandate the state’s Land Use Planning Commission establish a process to allow communities to “have a say in the rezoning that was required for wind towers construction” under the state’s Wind Energy Act of 2008. That Act put some communities in “so-called ‘expedited permitting area[s], where wind development was fast-tracked.” The Act removed a required rezoning of an area in the Unorganized Territory (UT) for wind turbine construction and made turbines a “permitted use” that did not require rezoning. Essentially, L.D. 616 would give communities two years to exit the expedited zone.

Source: *St. John Valley Times*; <http://www.sjvalley-times.com>

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Conditions—Government conditions land-use permits on applicant's funding of offsite mitigation projects on public lands

Applicant says land use permit condition amounts to an unconstitutional taking without just compensation

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ISSN 0514-7905

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Citation: *Koontz v. St. Johns River Water Management Dist.*, 133 S. Ct. 2586, 76 *Env't. Rep. Cas. (BNA)* 1649 (2013)

The Supreme Court of the United States has appellate jurisdiction over all federal courts and over state court cases involving issues of federal law, and original jurisdiction over a small range of cases.

SUPREME COURT OF THE UNITED STATES (FLORIDA) (06/25/13)—This case addressed the issues of whether a government's demand for property from a land-use permit applicant must meet the requirement that the government's demand have a nexus and rough proportionality to the effects of the proposed land use even when: (1) the government denies the permit; and/or (2) the government's demand is for money.

The Background/Facts: Coy Koontz, Sr. ("Koontz") owned an undeveloped 14.9-acre tract of land in the St. Johns River Management District (the "District") in Florida. In 1994, Koontz decided to develop a 3.7-acre section of the property. Because the portion of property that Koontz proposed to develop was largely classified as wetlands by the state, Koontz was required to comply with Florida's Water Resources Act and Warren S. Henderson Wetlands Protection Act (the "Henderson Act"). Under those state laws, Koontz applied to the District for a Management and Storage of Surface Water ("MSSW") permit and a Wetlands Resource Management ("WRM") permit.

Consistent with the Henderson Act, the District also required that permit applicants wishing to build on wetlands offset the resulting environmental damage by creating, enhancing, or preserving wetlands elsewhere. Koontz offered to mitigate the environmental effects of his development proposal by deeding to the District a conservation easement on 11 acres—nearly three-quarters of his property.

The District rejected Koontz's proposal and informed him that it would approve construction only if he: (1) reduced the size of his development to one acre and, among other things, deeded to the District a conservation easement on the resulting larger remainder of his property (a total of 13.9 acres); or (2) hired contractors to make improvements to District-owned wetlands several miles away.

Believing the District's demands to be excessive in light of the environmental effects his proposal would have caused, Koontz filed suit under a state law (Fla. Stat. § 373.617(2)) that provides money damages for agency action that is an "unreasonable exercise of the state's police power constituting a taking without just compensation." Koontz alleged that the District's denial of land use permits unless he funded the offsite mitigation projects on public lands amounted to a taking without just compensation.

The trial court found the District's actions unlawful because they failed the requirements of *Nollan v. California Coastal Com'n*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677, 26 *Env't. Rep. Cas. (BNA)* 1073, 17 *Envtl. L. Rep.* 20918 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374,

114 S. Ct. 2309, 129 L. Ed. 2d 304, 38 Env't. Rep. Cas. (BNA) 1769, 24 Env'tl. L. Rep. 21083 (1994). Those cases held that "the government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a nexus and rough proportionality between the government's demand and the effects of the proposed land use."

The District Court of Appeal affirmed. However, the State Supreme Court reversed on two grounds. It held that the District's demand for property from Koontz did not have to meet the *Nollan* and *Dolan* requirements and have a nexus and rough proportionality to the effects of the proposed land use since: (1) the District denied the permit (unless Koontz met the conditions); and (2) the District's demand was for money (to hire contractors to improve offsite wetlands on public lands).

Koontz appealed. Recognizing that the majority opinion of the Florida Supreme Court rested on a question of federal constitutional law on which the lower courts were divided, the Supreme Court of the United States granted the petition for a writ of certiorari.

DECISION: Reversed, and matter remanded.

The Supreme Court of the United States held that the government's demand for property from a land-use permit applicant must satisfy the *Nollan* and *Dolan* requirements and thus have a nexus and rough proportionality to the effects of the proposed land use even when: (1) the government denies the permit; and (2) the government's demand is for money.

The court explained: The "'unconstitutional conditions doctrine' vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." In the land use context, the unconstitutional conditions doctrine protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits. Pursuant to *Nollan* and *Dolan*, a government's demand for property from a land-use permit applicant is constitutional as long as it has a "nexus and rough proportionality to the effects of the land use." In other words, the government can condition approval of a permit on the dedication of property to the public so long as there is a "nexus" and "rough proportionality" between the property that the government demands and the social costs of the applicant's proposal. Those requirements accommodate two "realities of the permitting process," explained the court: (1) "the broad discretion of a government to deny a permit that is worth far more than property it would like to take"; and (2) the fact that "many proposed land uses threaten to impose costs on the public that dedications of property can offset." Thus, under *Nollan* and *Dolan*, "the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts." Accordingly, in this case, any conditions that the District placed

on Koontz's land-use permit applications had to have a "nexus and rough proportionality" to the effects of Koontz's proposed land use.

The District had argued that the *Nollan* and *Dolan* requirements did not have to be met where the government denies a permit because the applicant refuses to turn over property/meet the conditions. The Supreme Court of the United States disagreed. It found that the "principles that undergird *Nollan* and *Dolan* do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so." "Recognizing such a distinction would enable the government to evade the *Nollan/Dolan* limitations simply by phrasing its demands for property as conditions precedent to permit approval," said the court. Thus, the court held that the *Nollan* and *Dolan* standard applies not only when the government approves a land-use permit conditioned on the landowner's conveyance of a property interest (i.e., imposes a condition subsequent), but also when the government denies a permit until the owner meets the condition (i.e., imposes a condition precedent).

Here, found the court, the District's "[e]xtortionate demands for property" in the land-use permitting context ran "afoul of the Takings Clause not because [the District took] property but because [the District] impermissibly burden[ed] [Koontz's] right not to have property taken without just compensation."

The District had also argued that Koontz's claim failed, and there was no unconstitutional taking of property, in the condition the District placed on Koontz's land-use permit applications that Koontz hire contractors to make improvements to District-owned wetlands. The District had contended that condition would have had Koontz spend money rather than give an easement on his land and that an obligation to spend money can never provide the basis for a takings claim. Again, the Supreme Court of the United States disagreed. It held that "so-called 'monetary exactions' "—such as with "in lieu of" fees—must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan* where the monetary obligation burden's the land-use permit applicant's ownership of a specific parcel of land. *Nollan* and *Dolan* must apply where there is a "direct link between the government's demand and a specific parcel of real property," said the court, because that direct link implicates a central concern: "the risk that the government may use its substantial power and discretion in land-use permitting to pursue governmental ends that lack an essential nexus and rough proportionality to the effects of the proposed new use of the specific property at issue, thereby diminishing without justification the value of the property."

Here, the District's land use permit condition that Koontz hire contractors to make improvements to District-owned wetlands several miles away would, found the court, "transfer an interest in property" from Koontz to the District, amounting to a per se taking similar to the taking of an easement or a lien. Accordingly, the District's condition that Koontz hire

contractors to improve District-owned wetlands in order to obtain land-use permits also had to satisfy the *Nollan* and *Dolan* requirements.

See also: *Nollan v. California Coastal Com'n*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677, 26 Env't. Rep. Cas. (BNA) 1073, 17 Env'tl. L. Rep. 20918 (1987).

See also: *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304, 38 Env't. Rep. Cas. (BNA) 1769, 24 Env'tl. L. Rep. 21083 (1994).

Case Note:

The District had also argued that because it gave Koontz another avenue to obtain permit approval, the court did not have to decide whether its demand for offsite improvements satisfied Nollan and Dolan. The court acknowledged that had Koontz been offered at least one alternative that satisfied Nollan and Dolan, he would not have been subjected to an unconstitutional condition. Here, however, Koontz had sought to develop 3.7 acres, but the District in effect told Koontz that it would not allow him to build on 2.7 of those acres unless he agreed to spend money improving public lands. Koontz claimed that he was wrongfully denied a permit to build on those 2.7 acres. For that reason, the court found that the District's offer to approve a less ambitious building project did not obviate the need to determine whether the demand for offsite mitigation satisfied Nollan and Dolan.

Case Note:

In its decision, the court noted that, while the Nollan and Dolan standard applies not only when the government approves a land-use permit conditioned on the landowner's conveyance of a property interest (i.e., imposes a condition subsequent), but also when the government denies a permit until the owner meets the condition (i.e., imposes a condition precedent), the condition-subsequent and condition-precedent situations differ in an important way. When the government grants a permit subject to the relinquishment of real property, and that condition does not satisfy Nollan and Dolan, then the government has taken the property and must pay just compensation under the Fifth Amendment. However, when the government denies a permit because an owner has refused to accede to that same demand, nothing has actually been taken. The owner is entitled to have the improper condition removed; and he may be entitled to a monetary remedy created by state law for imposing such a condition; but he cannot be entitled to constitutional compensation for a taking of property. Because Koontz brought his claim pursuant to a state law cause of action, the Court had no occasion to discuss what remedies might be available for a Nollan and Dolan unconstitutional conditions violation either here or in other cases.

Case Note:

The District had argued that if monetary exactions are subject to Nollan and Dolan scrutiny, then there would be no principled way of distinguishing impermissible land-use exactions from property taxes. The court disagreed, finding it "beyond dispute that '[t]axes and user fees . . . are not takings.' "

Case Note:

In the case, the dissent had forecasted that the court's decision would "work a revolution in land use law by depriving local governments of the ability to charge reasonable permitting fees" or "unduly limit the discretion of local authorities to implement sensible land use regulations." The majority disagreed, noting that the rule that Nollan and Dolan apply to monetary exactions "has been the settled law in some of our Nation's most populous States for many years, and the protections of those cases are often redundant with the requirements of state law."

Procedure—City council tables resolution authorizing development agreement

Developer argues that action violated its due process rights

Citation: *Northeast Land Development, LLC v. City of Scranton, 2013 WL 2237791 (M.D. Pa. 2013)*

UNITED STATES DISTRICT COURT PENNSYLVANIA (05/21/13)—This case addressed the issue of whether the actions of a city council in tabling a resolution authorizing the city's mayor to enter into a Development Agreement with a landowner—as required for land development, under the city ordinance—violated the landowner's procedural due process rights pursuant to the 14th Amendment of the United States Constitution.

The Background/Facts: In May 2004, Northeast Land Development, LLC ("Northeast") entered into an Agreement for the Sale of Real Estate ("Agreement of Sale") with Lackawanna Energy, Ltd. and Plum Realty, Ltd. for the purchase of a 25-acre parcel of land in the City of Scranton (the "City") (the "Property"). The Property was designated as a Keystone Opportunity Zone ("KOZ"). In a KOZ, there was no or greatly reduced tax burdens for property owners and/or lessees. Northeast sought to purchase the Property to house Phase III of a development project known as "Village at Trip Park."

The land development process in the City involved a multistep process for developers: (1) submit an Application for Subdivision or Land Development; (2) submit a Preliminary Plan, which required the approval of the City Planning Commission and City Engineer; (3) submit a Final Plan for approval by the City Planning Commission; and (4) enter into a Development Agreement with the City.

In October 2004, Northeast submitted to the City for approval a Subdivision Plan for the Property. The proposed development proceeded through step 3 of the development process. In February 2006, a resolution to approve the Phase III Development Agreement was forwarded to the City Council.

Ultimately, the City Council tabled the resolution to approve the Phase III Development Agreement. Northeast alleged that, as a consequence, it was unable to close on the purchase of the Property. Northeast sued, alleging, among other things, that the City violated its procedural due process rights pursuant to the 14th Amendment of the United States Constitution.

On its own, the district court raised an issue for summary judgment: whether the City Council's decision to table the resolution for the land development agreement was a "legislative action" (as opposed to an administrative action), to which no procedural due process rights of Northeast attached. If found to be a legislative activity, then the suit would be dismissed, said the court.

DECISION: Summary judgment entered in favor of City.

The United States District Court, M.D. Pennsylvania, held that the City Council's decision to table the resolution to approve the Phase III Development Agreement was a "legislative action," to which no procedural due process rights of Northeast attached.

In so holding, the court explained that the protections of procedural due process do not extend to legislative actions. On the other hand, adjudicative acts require the provision of procedural due process. The court said that a legislative act is one that "produce[s] policies that a least approximate a fair and equitable distribution of social resources and obligations." Moreover, the court noted that where a rule or action applies to more than a few people that application it is a substantial factor, though not dispositive, weighing in favor of finding the rule or action to be legislative. The court also distinguished adjudicative acts from legislative acts, noting that: adjudicative acts are those that "require[] factual findings on the particular status of a particular individual"; "while legislative decisions are those that 'rest on more general findings requiring analysis and evaluation of factors not uniquely related to any specific individual.' "

Here, the court noted that the City Council's role in voting on a development agreement—or choosing not to vote on that agreement—was the sort of act that has been found to be "in form, quintessentially legislative." The court noted that the City ordinance specifically provided

a “decisive role” for the City Council which required the “exercise of legislative discretion” in determining whether the City would enter into development agreements after all other preliminary prerequisites were met.

Northeast had contended that the action of the City Council in tabling the vote on the Phase III Development Agreement was “targeted at Northeast” and was “therefore too narrowly focused to constitute legislative activity.” The court disagreed. It noted that the reasons cited for tabling the Phase III Development Agreement were: that certain items on a punch list provided to Northeast were not addressed; and the opinion of at least one councilwoman was that support of the project in the KOZ amounted to some form of “corporate welfare” that mired the City in debt. The court found the City Council’s decision to table the Phase III Development Agreement was a legislative action because it affected “far more than just [Northeast].” The court found that it affected the “entire community” in that: the policy considerations related to KOZ developments affected the entire community with regard to taxes, standards of living, and business development; and the Development Agreement implicated the property rights of individual neighbors surrounding the Phase III project. Moreover, said the court, even if the decision to table approval of the Development Agreement was “engendered by concern over [Northeast’s] activities” and directed at Northeast alone, “the City Council’s decision affected the entire community.”

The court concluded that Northeast was not deprived of procedural due process because the City Council’s actions were legislative in nature.

See also: *Rogin v. Bensalem Tp.*, 616 F.2d 680 (3d Cir. 1980).

See also: *L C & S, Inc. v. Warren County Area Plan Com’n*, 244 F.3d 601 (7th Cir. 2001).

Notice—Board fails to provide notice of date of mailing when issuing zoning decision

Applicant contends his appeal period therefore commenced on date he received decision

Citation: *Schmader v. Cranberry Tp. Bd. of Sup’rs*, 67 A.3d 881 (Pa. Commw. Ct. 2013)

PENNSYLVANIA (06/07/13)—This case addressed the issue of whether a recent amendment to § 1002-A(a) of the Pennsylvania Municipalities Planning Code (“MPC”)—which provided that a 30-day appeal period for zoning decisions applied to all cases unless an unconstitutional deprivation of due process would result—effectively relieved an agency

of its obligation to inform a party of the mailing date or otherwise notify a party of the commencement of the appeal period for a zoning decision. The case also addressed the issues of: whether a town zoning board was required to notify the landowner/applicant of the date of commencement of the appeal period for a zoning decision by notifying the landowner/applicant of the actual mailing date of the Board's zoning decision; and whether the Board's failure to provide such notice required the 30-day appeal period be calculated from the date of receipt of the zoning decision by the landowner/applicant.

The Background/Facts: John F. Schmader, Jr. ("Schmader") owned property in Cranberry Township, Pennsylvania (the "Township"). The property was located in an R-1 Residential Zone. At the property, Schmader operated a commercial office.

In October 2011, Schmader received two zoning enforcement orders stating that he was in violation of the Township's Code because he was operating a business on the property, which was not a permitted use or a use allowed by special exception or conditional use in the R-1 district. Schmader was ordered to cease operation of his business on the property.

Schmader appealed to the Township Zoning Hearing Board (the "Board"). In a decision dated March 30, 2012 (the "Board's Decision"), the Board denied Schmader's appeal. It concluded that he was operating a commercial business, which was not permitted by right, special exception, or conditional use in a residential district. The Board also concluded that Schmader had not sought or been granted permission by the Township to conduct his business on the property. The Board's Decision was not accompanied by a transmittal letter or any other document stating the mailing date, or a document notifying Schmader of the commencement of the appeal period.

Schmader received the Board's Decision on April 3, 2012, and filed an appeal in the common pleas court on May 2, 2012. The Cranberry Township Board of Supervisors (the Township) intervened and, along with the Board, filed a joint motion to quash the appeal. They asserted that Schmader's appeal was untimely. They argued that pursuant to § 5572 of the Judicial Code (as amended 42 Pa.C.S. § 5572) and § 1002-A(a) of the Pennsylvania Municipalities Planning Code (MPC) (as amended, 53 P.S. § 11002-A(a)), Schmader was required to file an appeal within 30 days of the March 30, 2011 mailing date of the Board's Decision.

Schmader argued that since the Board failed to notify him of the date of the mailing, the appeal period began on the date of actual notice—April 3, 2012, when he received the Board's Decision. As such, he contended that his appeal was timely filed.

The Court of Common Pleas quashed Schmader's appeal. It pointed to a recent amendment to § 1002-A(a) of the Planning Code. That amendment provided that the 30-day appeal period should apply to all cases unless an unconstitutional deprivation of due process would result. The

Court of Common Pleas noted that Schmader had failed to argue that he suffered an unconstitutional deprivation of due process. The Court of Common Pleas found that the appeal period expired on April 30, 2012, and that therefore Schmader's appeal was untimely.

Schmader appealed.

DECISION: Reversed.

The Commonwealth Court of Pennsylvania held that the Board was required to notify Schmader of the date of commencement of the appeal period.

In so holding, the court rejected the Court of Common Pleas' implicit holding that the amendment to § 1002-A relieved an agency of its obligation to inform a party of the mailing date or otherwise notify a party of the commencement of the appeal period. Rather, the Commonwealth Court of Pennsylvania concluded that the amendment to § 1002-A could "not be construed to completely eradicate an agency's obligation to notify a party of the date of mailing, or in some fashion of the date the appeal period begins." The court affirmed previous judicial decision that it would be "manifestly unjust" to dismiss an appeal where the agency failed to inform the recipient of the mailing date. The court reaffirmed that when the appeal period is triggered by administrative action, the administrative agency has a duty to provide the recipient information essential to calculating the appeal period.

Here, whether the mailing date of the Board's Decision triggered the start of Schmader's appeal period depended on whether, consistent with the applicable statute, the notice sufficiently informed Schmader of the starting date of the appeal period so that Schmader had all the information needed to timely exercise his appeal rights, said the court. Since the Board failed to provide notice to Schmader of the date of the mailing of the Board's Decision, the court concluded that Schmader was justified in filing his appeal within 30 days of receipt of the Board's Decision.

See also: *Schmidt v. Com.*, 495 Pa. 238, 433 A.2d 456 (1981).

See also: *Hanna v. Zoning Bd. of Adjustment of Pittsburgh*, 62 Pa. Commw. 620, 437 A.2d 115 (1981).

Zoning News from Around the Nation

KENTUCKY

The City of Owensboro is considering a new zoning ordinance that would create an entertainment district in its downtown area. Reportedly, the ordinance has been proposed in order to "protect the downtown area from becoming dry if there were a wet-dry election in that precinct."

Source: *14 News*; www.14news.com

NEW MEXICO

The Eddy County Commission has approved an agreement to partner with the City of Carlsbad in “developing the framework for extra-territorial zoning that would include a commission and an autonomous authority governing the [extra-territorial zone].” The proposal for the zone was spurred by the City’s decision to no longer issue building permits and conduct building inspections in the unincorporated areas of the county.

Source: *Carlsbad Current-Argus*; www.currentargus.com

OREGON

The State House of Representatives recently passed a bill legalizing medical marijuana retail establishments. House Bill 3460 was headed to Governor John Kitzhaber’s desk, to be signed into law. The bill “creates a registry of businesses that sell the medical marijuana.” Reportedly, the League of Oregon Cities, which endorsed the bill, noted it does not block municipalities from adopting their own ordinances on medical marijuana outlets.

Source: *The Oregonian*; www.oregonlive.com

WASHINGTON, D.C.

D.C. officials are reportedly working on a proposed zoning law change that would allow developers to “build in high density areas, without having to provide more parking.” Proponents say that the change would let “developers decide if extra parking is worth it” based on the level of car ownership and proximity to high quality transit in a neighborhood. Opponents say it would exacerbate an already “critical parking problem.”

Source: *WJLA*; www.wjla.com

ZONING PRACTICE

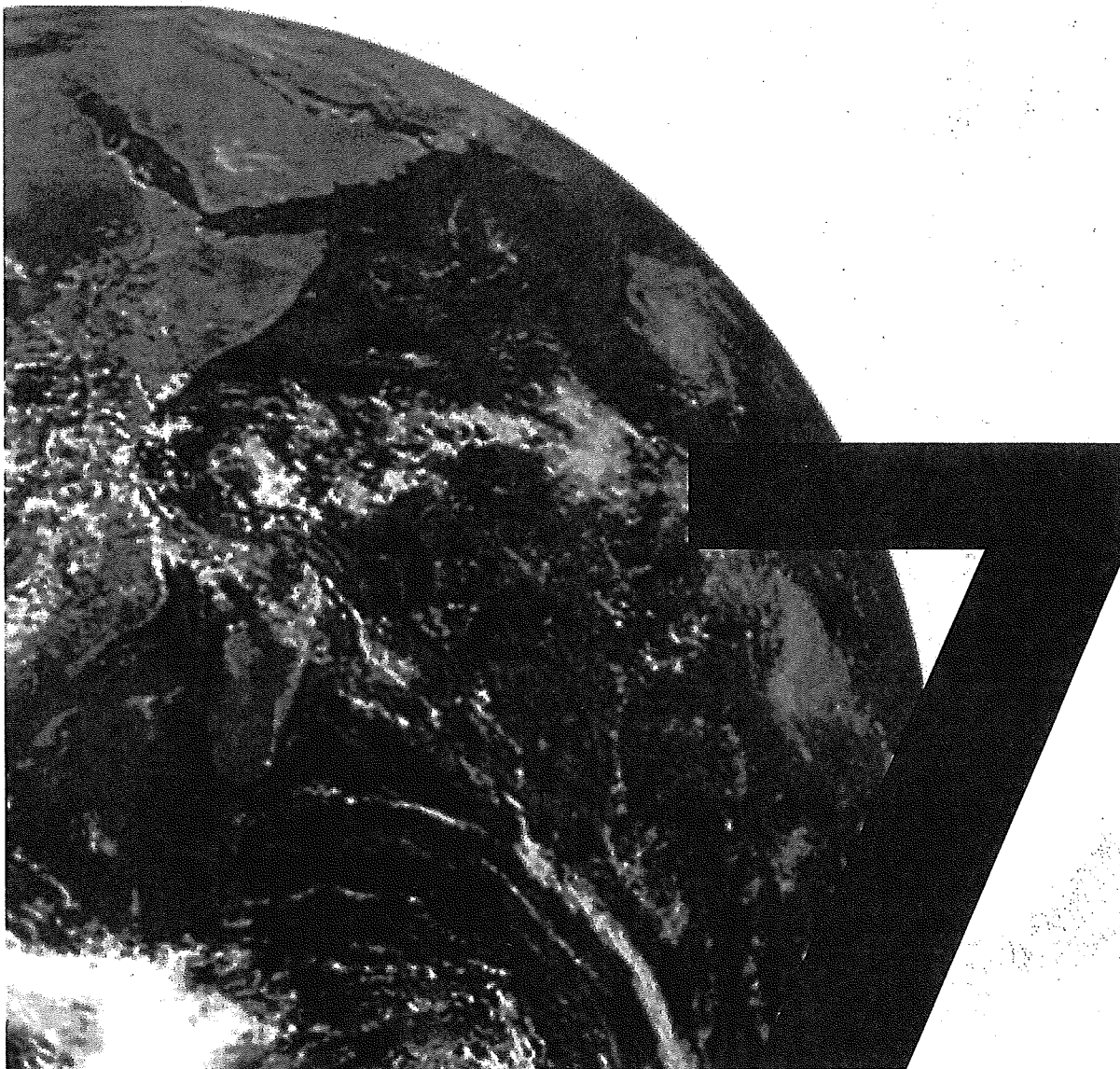
JULY 2013



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 7

PRACTICE SUSTAINABLE ZONING



Putting Sustainable Zoning Into Practice

By Elizabeth Garvin, AICP

This trend is partially attributable to recession-related federal budget reductions, but it's also related to increasing citizen pressure to "act locally." Furthermore, topics historically viewed as best handled by the private sector or left to market-based decisions—such as housing mix or new business development—are more frequently the subject of public meetings and local policy.

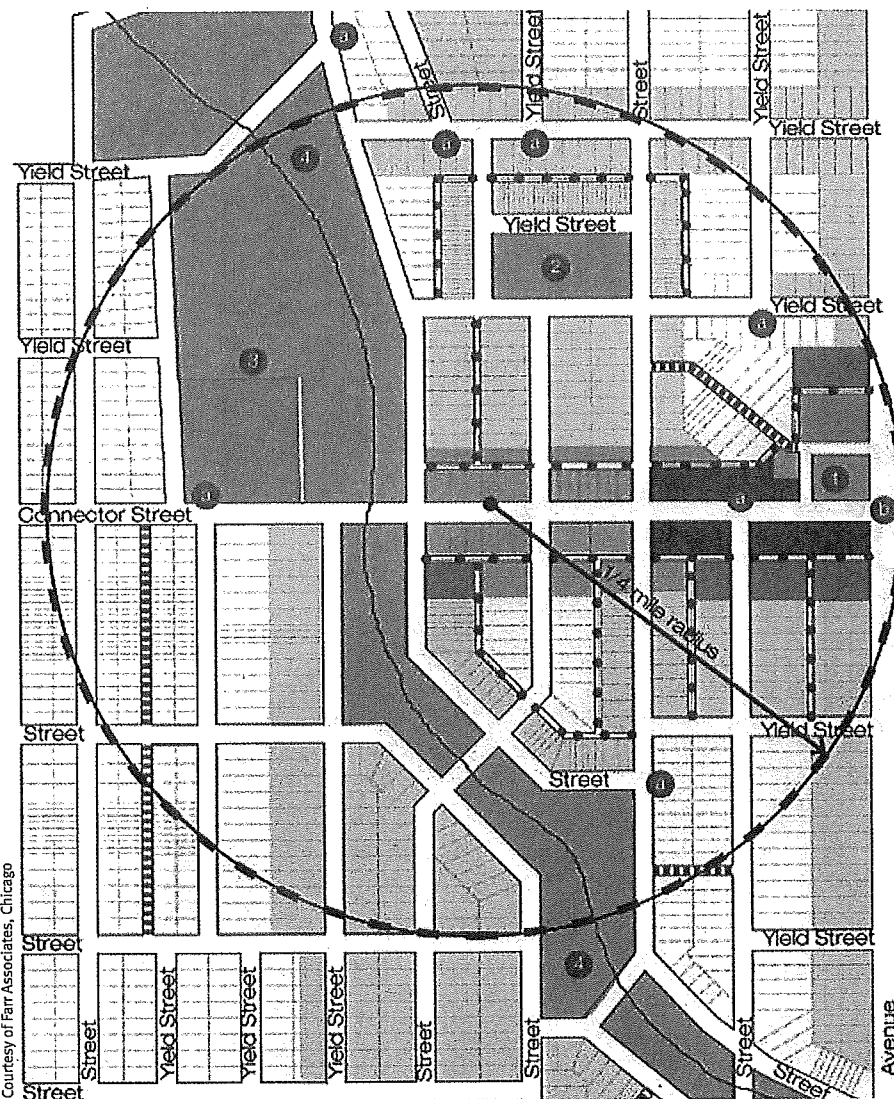
Often, the drive to resolve these issues locally is pushed by residents and businesses who want more sustainable communities; that is, communities that are more resilient in the face of anticipated (and unanticipated) future change. With local budgets and funding sources at a historic low, though, cities and counties are necessarily focused on cost-saving opportunities to make the most of existing facilities and services without committing to expensive new solutions or programs. To meet these demands, many communities are making changes to their local land development regulations so that sustainability is both figuratively and literally built into the process and outcome. To help communities determine where to add sustainable provisions to their regulations, this article provides a survey of current and emerging sustainable zoning provisions available at the local level, with an overview of the purpose and general approach for each category of regulation.

GETTING STARTED

Because there is currently no clear definition or consensus about what constitutes a sustainable approach to zoning, it is important to develop a local definition of sustainability and a policy framework of local preferences that can be used to help guide drafting decisions. In some communities, this is done through a comprehensive sustainability planning process, such as the Miami-Dade County, Florida, GreenPrint or the Fort Collins, Colorado, Action

Plan for Sustainability. In others, it may involve compiling information from a range of existing sources, including regional, comprehensive, climate adaptation, hazard mitigation, and capital improvements plans. Where planning does not precede the creation of new or up-

dated regulations, it is important to establish a sustainability definition and framework through community outreach and the creation of a policy or regulatory framework report. For example, St. Louis County, Missouri, provides an excellent example of blending existing



➔ Form-based codes, corresponding to neighborhood or communitywide regulating plans, are one method for promoting compact, mixed use development patterns through zoning.

ASK THE AUTHOR JOIN US ONLINE!

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

About the Author

Elizabeth Garvin, AICP, is an attorney with Spencer Fane & Grimshaw LLP in Denver. Garvin has more than 15 years of public- and private-sector experience in land development regulations, urban planning, and economic development. She has prepared code update/revision projects for cities and counties across the country; drafted topic-specific code provisions covering topics such as TOD, sustainability, and signs; created plans for redevelopment projects; prepared regional design standards; organized and undertaken public participation processes; and assisted private clients in obtaining development approvals.

planning with new sustainability policy and outreach in its Green and Growing project.

In the absence of a sustainability plan, an effective method to develop a local definition and framework might include working from a series of policy concepts or discussion prompts. Identifying local sustainability preferences from a cohesive list of issues will help to outline the community's preferred approach to sustainable regulations. For example, the American Planning Association's *Policy Guide for Planning for Sustainability* lists a number of specific policy positions that can serve as the starting point for conversations to establish local priorities, such as whether the community wants to encourage any of the following ideas: (1) alternatives to gas-powered vehicles; (2) alternative renewable energy sources and meaningful energy conservation measures; (3) compact and mixed use development that minimizes the need to drive, reuses existing infill and brownfields sites, and avoids the extension of sprawl; or (4) conservation of undeveloped land, open space, and agricultural land. The U.S. Environmental Protection Agency (EPA) report *Planning for a Sustainable Future* and ICLEI—Local Governments for Sustainability USA's Sustainability Planning Toolkit provide similar guidance.

DRAFTING SUSTAINABLE REGULATIONS

With a local sustainability framework in place, it is time for the community to determine how best to implement sustainable priorities and start drafting. The various types of zoning tools and approaches included in sustainable zoning codes, drawn from both new and more familiar approaches, can be categorized into a number of general topics as described below. For reference purposes, in this article I'll refer to zoning, subdivision, and land development

regulations, ordinances, and bylaws as the local "zoning code" or "code." As necessary, I'll distinguish a separate "building code" from these other development regulations.

COMPACT, MIXED USE DEVELOPMENT PATTERN

Many communities have decided that a good place to start implementing sustainability is by encouraging residents and visitors to get out of their cars and walk. According to the Urban Land Institute (ULI), "the transportation sector is key in climate change" (2010). Transportation, the fastest growing source of emissions, collectively generates approximately one-third of the greenhouse gas emissions in the United States (ULI 2010). Moving to a more compact, mixed use development pattern that brings people and destinations (e.g., workplaces, shops, schools, and places of worship) together to reduce the number of vehicle miles traveled (VMT) is an important step toward slowing the growth of the transportation sector. Recent studies indicate that over time compact development may be able to reduce VMT for both suburban and urban development while maximizing local infrastructure investment by making the most use of infrastructure that is already paid for and in place (ULI 2010).

Communities can adapt existing zoning codes to encourage compact development in a variety of ways, primarily through changes to the zoning districts, development standards (i.e., those standards typically applicable across multiple districts, such as parking or landscaping), and administrative approval processes.

Mixed Use Zoning Districts and Uses

Older, more traditional zoning codes may first need the addition of a new mixed use district

(or series of mixed use districts with differing densities and use mixes) that permit both residential and nonresidential uses in the same structure or in closer horizontal proximity than current regulations would allow. If a community is considering incorporating form-based controls, the new district(s) could also be form-based in nature. While many communities have adopted transit-oriented development or downtown districts that encourage compact, mixed use development, mixed use can be more broadly applied than in these limited settings, and some communities have replaced some or all of their traditional zoning districts with mixed use districts.

In traditionally suburban communities, where the zoning standards reflect large-lot residential development, revisions may also need to be made to the dimensional standards (e.g., lot size, yard setbacks, and impervious coverage) in the existing zoning districts to accommodate development on smaller lots. Updates to dimensional standards should be designed to reduce the required spacing between buildings. Specific revisions may include: (1) increasing permitted residential density or nonresidential floor-area ratio or square footage, (2) reducing or eliminating minimum lot sizes, (3) establishing build-to lines at or near the right-of-way or property line or reducing minimum building setbacks, and (4) allowing increased lot coverage. Revisions may also need to be made to the permitted use table to allow residences above the ground floor in commercial districts, prohibit big-box structures in compact development areas, and restrict auto-oriented and drive-through uses to limit the potential for conflict between cars and pedestrians.

Infill Development Standards

Adding new zoning districts should not be the only change a community makes to encourage compact development. Many zoning codes inhibit the creation of compact development through regulatory provisions that inadvertently limit or restrict small-lot or infill development. This may occur because of existing suburban lot-size or dimension requirements in the zoning districts, but it is reinforced by additional regulations applied to the lot, such as design or development standards. Inflexible minimum landscaping or screening buffers, mandatory on-site open space dedications, building frontage or orientation standards, excessive minimum parking requirements, and prohibitions on narrow streets or driveways can all contribute to the prevention of infill development. Communities that want to encourage compact, mixed use development should identify those development standards that make smaller lot, more compact, or infill development more difficult to design or approve and consider replacing those standards with updated standards designed for compact development. Alternatively, communities can establish a review and approval method that permits the easy substitution of appropriate design for small lots.

Administrative Approvals

Developers want predictability in the development process and a product that does well in the local market. According to the National Association of Home Builders, "if each developer must go through a complex and costly process of obtaining special waivers and approvals, special use permits, or planned unit development approval to achieve compact development, the developer will probably find it makes more business sense to keep building conventional large-lot subdivisions" (2012).

While establishing compact, mixed use zoning districts and updating development standards will eliminate some administrative obstacles, communities can further encourage desirable development by establishing an expedited review process for site plans that meet the new standards. If the community engages the public in the process of creating or updating the zoning districts or development standards, the new districts and standards can be adopted as optionally applicable in designated areas of the community, and development applications that conform to the zoning requirements can be reviewed through an expedited administrative process. Some communities take this even further

and offer an expedited building permit approval process for infill or sustainable development.

RENEWABLE ENERGY AND ENERGY EFFICIENCY

The modern concept of energy efficiency in the United States can be traced the "energy crisis" of 1973. This was triggered by an Organization of the Petroleum Exporting Countries oil embargo that caused fuel shortages and a steep increase in petroleum-based fuel prices and led to a growing realization that available energy sources might not always outpace demand. Over the years, communities and citizens alike have looked for ways to control energy use and encourage renewable energy creation to reduce reliance on the use of fossil fuels. While energy efficiency and production may initially seem better addressed by the purchase of alternative fuel municipal vehicles or construction of commercial wind or

ing use standards, while others define the wind and solar regulations as development standards. Either way, the goal is to adopt a uniform set of regulations and avoid negotiating approvals on a case-by-case basis.

Energy Conservation and Production Development Standards

Most zoning code changes necessary to encourage site and structure energy conservation take place in the development standards. Site design standards can be updated to encourage the use of passive solar energy through better building placement in relationship to the sun (solar orientation) as well as passive cooling through building placement in relationship to the wind along with the preservation or placement of trees and landscaping to enhance shade. Unlike some of the sustainability approaches that work practically



Kevin Canavan/UGH

➡ The LEED Platinum Burnside Rocket building in the Lower Burnside neighborhood of Portland, Oregon, is an example of context-sensitive, small-lot commercial infill.

solar farms, there are actually multiple changes that can be made to zoning codes that will encourage energy efficiency as well as remove barriers to renewable energy production.

Use Definitions and Standards

To encourage the use of renewable energy sources such as wind and solar power generation, these uses should be defined in the code and added to the table of uses in appropriate zoning districts either as primary or accessory uses, as determined by the community. Some communities identify all of the regulations associated with wind and solar power as use regulations and include those with the exist-

everywhere, such as reduced parking requirements, the effectiveness of these approaches will range depending on the availability of the natural resource in the area. For example, solar orientation will probably be more efficient in southern Nevada than in northern Michigan. Before investing in the drafting and public education and outreach required for energy-based regulations, the community should determine which approaches work best locally. The National Renewable Energy Lab (NREL) is an excellent resource for solar and wind energy mapping.

Currently, the most commonly requested small-scale forms of renewable energy production are wind power, solar power, and

geothermal pumps. Updating the code to allow geothermal pumps may be easiest. The type of system permitted in the community should be specified (i.e., open or closed loop); location and setback requirements for above-ground and below-ground components should be identified. Screening requirements should also be established. For a more in-depth discussion of issues related to regulating geothermal pumps, see the May 2010 issue of *Zoning Practice*.

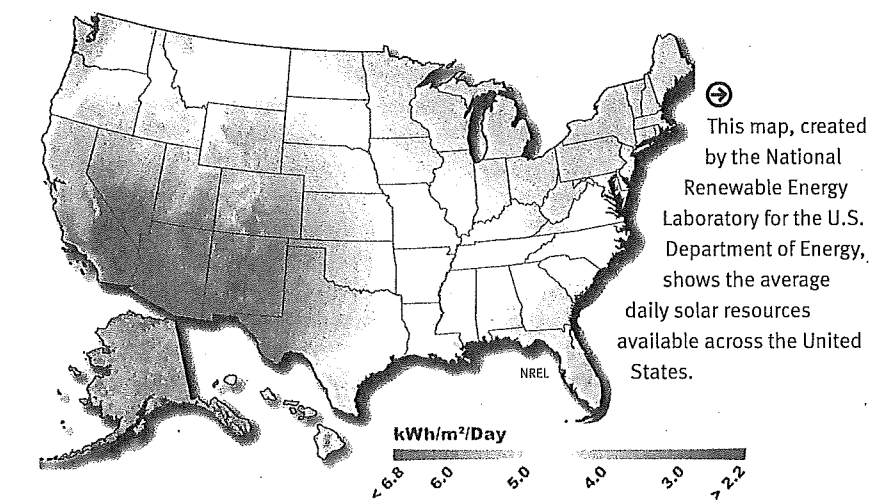
The adoption of wind and solar power regulations draws more attention in some communities when neighboring property owners worry that wind turbines and solar arrays will have an impact on their properties. There are multiple sources of model wind and solar regulations available to local planners, and the big issues to consider for a zoning update include: (1) changing maximum height limits both to allow solar panels on rooftops and to permit wind turbines obstacle-free access to the wind, (2) determining whether wind turbine(s) and solar panels or arrays are a primary or accessory use and whether permitting will be required, and (3) addressing the use of wind and solar systems in conjunction with nonconforming uses. For additional information about regulating wind and solar energy systems, see the July 2008 and November 2010 issues of *Zoning Practice*.

Building Code versus Zoning Code

Another approach to incorporating energy conservation and renewable energy production into the zoning code is to require the construction of solar-ready homes that can be fitted with solar energy generation technology. From a structural perspective, communities can also consider the use of individual building components such as green or cool roofs, shade structures, building insulation and green walls, or a green building rating system such as LEED or Energy Star. When adding these requirements to the zoning code, communities should also examine the potential overlap with existing or proposed building code standards to avoid conflicting regulations and confusion.

STORMWATER MANAGEMENT

In many communities, stormwater management and treatment is overseen by the public works department and is not considered a zoning issue except to the extent that stormwater management infrastructure is shown on final site plans for approval. This approach stems from the National Pollutant Discharge Elimination System permitting framework, established as part of the



1972 Clean Water Act, which identified polluted stormwater as an engineering “problem” best addressed by removing it from a site through a system of sewers and pipes, typically called gray infrastructure, that drained the stormwater to a detention basin or a wastewater treatment plant. As this approach has evolved, both public works and planning officials have moved to a site design model that incorporates green or wet infrastructure. The goal is to provide partial or complete on-site stormwater mitigation that both reduces stormwater runoff and improves the water’s quality, while limiting the size, scope, and public investment in stormwater infrastructure. Incorporating stormwater management into site design also provides quality-of-life benefits such as public spaces and the enhanced aesthetic value of improved landscaping (EPA 2007).

Low Impact and Green Infrastructure Development Standards

The most inclusive approach to establishing on-site stormwater treatment standards is the adoption of low-impact development (LID) and green infrastructure standards. Putting these standards in place and moving to a less engineered stormwater management approach may require a new level of coordination between the local planning and public works departments. A recent trend in addressing this issue is to update the zoning code to incorporate a specific standard for on-site stormwater management, such as “no net increase in stormwater runoff volume, rate, or pollutant loads from new construction and redevelopment that adds more than x amount of impervious surfaces,” and to provide a description of preferred low-impact and green approaches that can be used in the community. Communities then adopt engineering standards and specifica-

tions for the individual techniques and required maintenance as part of the overall local engineering design and review requirements. Given that the sample standard above is fairly strict, it’s important to note that each community will need to determine to what degree it wants to, and is capable of, addressing stormwater on-site. For a more in-depth discussion of how to promote LID and green infrastructure through development regulations, see the September 2012 and 2010 issues of *Zoning Practice*.

Parking and Landscaping Standards

When considering zoning updates for stormwater management, two key related issues for communities to tackle are reducing and redesigning surface parking. This can be done either through specific updates to off-street parking provisions or as part of the overall adoption of LID and green infrastructure development standards. Anecdotally, we know that many parking standards are based on outdated studies, were copied from neighboring communities or older model regulations, or have just been carried forward as long as anybody can remember. This has resulted in the over construction of parking spaces in oversized parking lots. Specific updates should include (1) reductions to required parking ratios, (2) the establishment of a parking maximum (e.g., no more than 110 percent of the minimum requirement), (3) standards for shared parking and including available on-street parking in the total parking count, (4) incentives and requirements to reduce or eliminate impervious surfaces in parking lots, and (5) updated parking lot/landscaping requirements to incorporate green infrastructure that allows stormwater to infiltrate the soil rather than sheet flow across the parking lot. A number of cities,

including Minneapolis, St. Louis, and Washington, D.C., also charge stormwater fees based on how much a property contributes to stormwater runoff (typically through a measurement of impervious surface); the proceeds are generally used for water pollution control efforts.

Communities that want to start slow and build support for LID or green infrastructure may want to first update local landscaping standards. Regional and local sustainable landscaping standards are provided by many state universities across the country and include ideas such as (1) establishing standards that incorporate more native and drought-tolerant landscaping, including replacing all or part of turf grass lawns with groundcovers or low landscaping to reduce the need for fertilizer and pesticide applications that can be washed into waterways; (2) encouraging or requiring the creation of natu-

automobile transportation. Another method is to expand nonautomotive transportation options. In some communities this option is provided through public transit such as commuter rail, light rail, and trolley systems. Not all communities, though, have the funds or the ridership demand to provide a full range of public transit options. These communities still have viable options for multimodal transportation; in many cities and towns, careful site and infrastructure design can be used to move people effectively on foot, on bicycle, and by bus, while reducing greenhouse gas emissions.

Research shows that most people will walk between one-quarter to one-half mile to reach a destination such as work, a park, or a transit stop (Donohue 2011). To encourage people to make this walk or bike ride, it is important to provide a transportation venue

implement a complete streets policy through infrastructure design standards for new development and redevelopment projects. For a more information about the role of the zoning code in promoting complete streets, see the February 2013 issue of *Zoning Practice*.

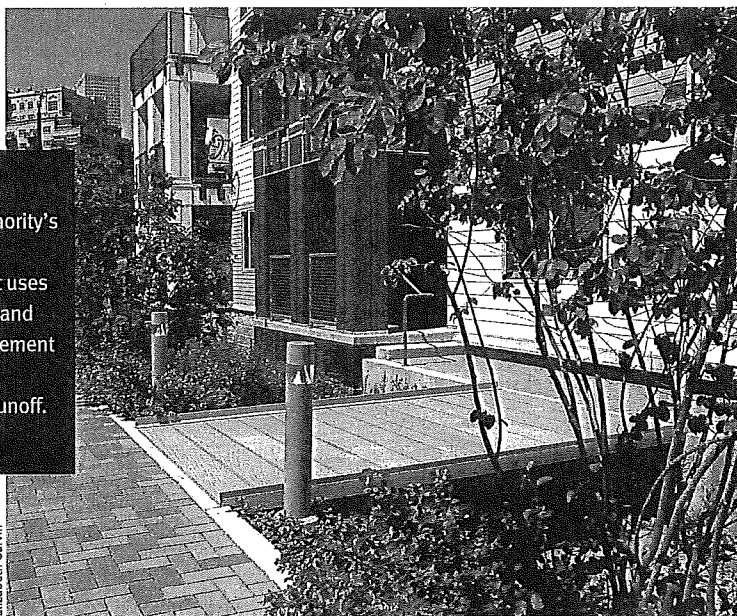
Local zoning codes can also be updated to include development standards that require fully connected sidewalks, bike paths, and trails as well as frontage development standards that require new development or redevelopment to ensure bicycle and pedestrian connections to surrounding properties. In communities with a more suburban layout, zoning codes can require mid-block connections downtown or along corridors with high pedestrian activity and pedestrian connectors from cul-de-sacs to external roads and sidewalks.

NATURAL RESOURCES AND OPEN SPACE

Many of the sustainable zoning tools described in this article are focused on creating sustainability in the built environment. Another important aspect of sustainable design is maintaining and enhancing the natural environment. Parks and open spaces have been shown to enhance surrounding property values, absorb and hold carbon emissions, and help anchor strong neighborhoods (Sherer 2006).

Communities can revise their zoning codes to preserve natural places and encourage the creation of open space in a variety of ways. The site plan review process provides an important avenue for identifying and preserving important local natural resources and environmentally sensitive areas. As part of the site design criteria, the community can identify local natural resource areas or sensitive lands to be protected and request or require that development be designed around that area to the extent possible. Incentives, such as increased density or reduced setbacks elsewhere on the property, can be provided to landowners to further encourage preservation. Many communities use this approach to protect ridgelines and hillsides, along with geologic hazard areas, ecological restoration areas, deserts, streams, and other environmentally sensitive areas.

Additionally, communities can establish standards for new development and redevelopment to provide open spaces, such as parks, trails, or recreation areas, either through private on-site set-asides or public dedication. Park and open space dedication requirements are typically guided by locally created parks master plans or national park level-of-service standards, such



➡ The Denver Housing Authority's Park Avenue development uses rain gardens and pervious pavement to decrease stormwater runoff.

Elizabeth Garvin

ral landscape buffers along lakes and streams (riparian buffers) to filter pollutants before they enter the water and help keep the banks stable; (3) designing driveways, sidewalks, and gutters to drain into well-vegetated areas rather than to pavement; and (4) using improved irrigation systems, such as drip and microspray, combined with regulations that prevent street and sidewalk overspray.

TRANSPORTATION

Moving homes closer to activities through compact, mixed use development, as described above, is one important method of minimizing the quantity of greenhouse gases created by

that is safe and easily accessible. Many communities do this through the construction of complete streets—streets that are designed to provide safe access and use for pedestrians, bicyclists, motorists, and public transportation users of all ages. Some communities have approached streets this way for years, while others are new to this design trend that is nationwide and growing. According to the National Complete Streets Coalition, “In total, 466 regional and local jurisdictions, 27 states, the Commonwealth of Puerto Rico, and the District of Columbia have adopted [complete streets] policies or have made written commitment to do so” (2013). The zoning code can help

as those established by the National Recreation and Parks Association (Penbrooke 2007).

THE ADOPTION PROCESS

Once the community has decided which topics or categories of sustainable regulations to consider for inclusion in the zoning code, the project team will need to determine how to organize the regulatory drafting, public review, and adoption. While there are a few ways to organize the drafting and public review process, factoring in the time needed for good public understanding of the draft regulations may be the best way to guide the process. Where the public is already included in the sustainability discussion and is ready for the code changes—typically following the creation of a sustainable plan just prior to

the code update—the updates can be drafted and discussed simultaneously in a single package. This allows a concentrated focus on the current code, minimal redundant research by staff for editing purposes, and a single public review and adoption process. Where, however, a thorough public outreach and educational process might be helpful with both the adoption process and long-term implementation of the changes, it is probably beneficial to take the code edits forward individually by topic and spend the necessary time helping the community understand the importance of each change. Communities may choose to organize individual edits to move into public discussion and adoption as fast as the community deems appropriate. This might range from one proposed topic of revisions at

a time in a rolling process, where review may overlap depending on the length of the public conversation, to one proposed topic of revisions following the adoption of each previous topic.

AND EVERYTHING ELSE

The techniques listed above are not the exclusive means to incorporating sustainable regulations in the local zoning code. Other examples of sustainable regulations from communities across the country include diverse and affordable housing, local food and agriculture, waste reduction and recycling, climate adaptation, and green construction standards. Because sustainable zoning is still relatively new, there will be more concepts added in the future as well as refinements to the approaches already in use.

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Cover image by NASA; design concept by Lisa Barton

VOL. 30, NO. 7

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; David Rouse, AICP, Managing Director of Research and Advisory Services.

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.

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DOES YOUR ZONING PROMOTE
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ZONING PRACTICE

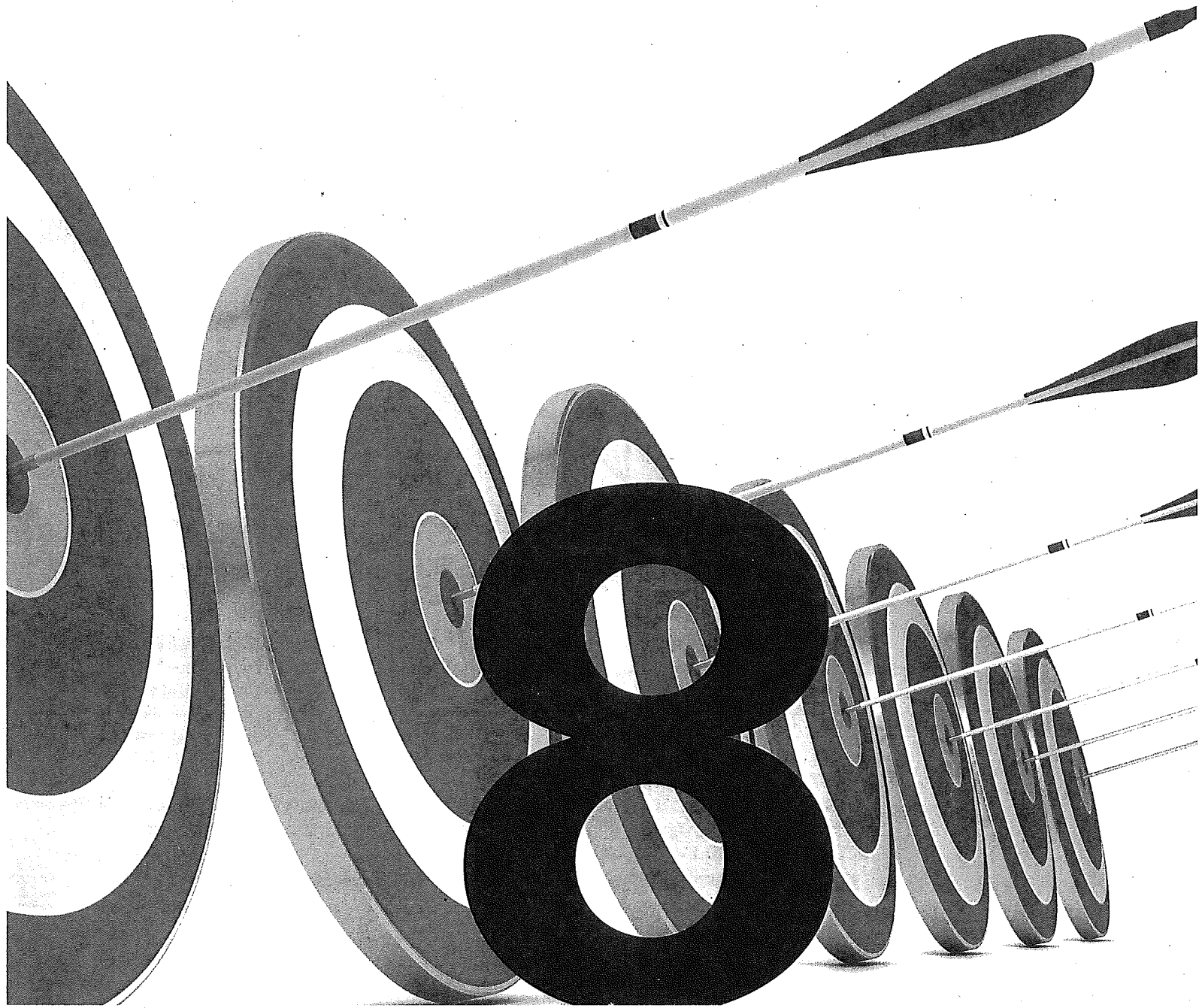
AUGUST 2013



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 8

PRACTICE PLANNING PRECISION



Code-Ready Sustainable Planning: Reducing the Gap Between What Plans Say and What Codes Do

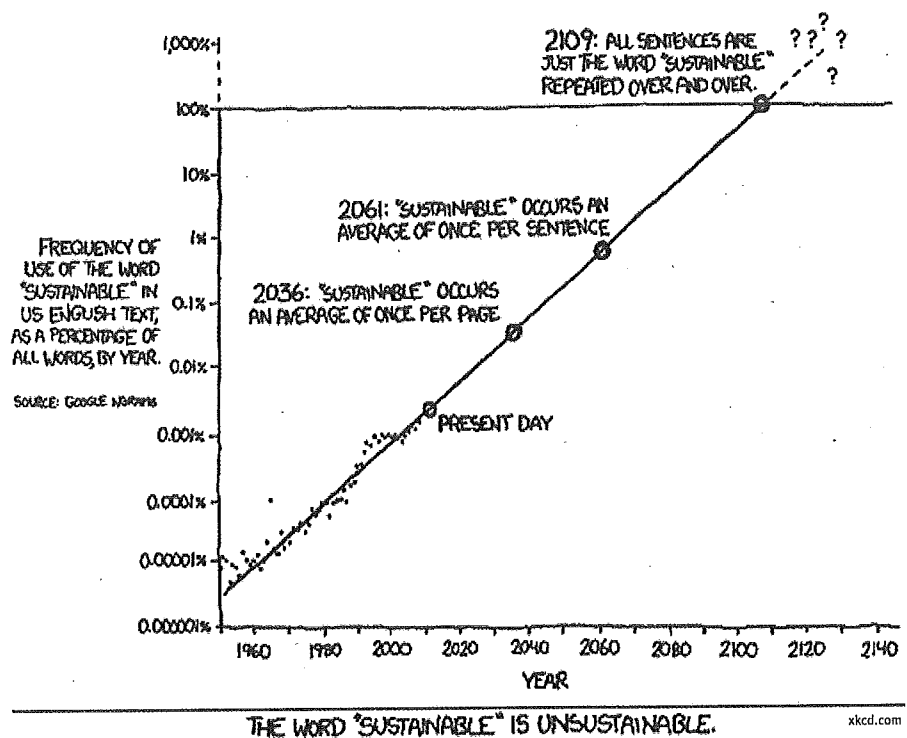
By Douglas Farr

In a time of tight municipal budgets, planning is under pressure to prove that plans produce short- and long-term benefits.

In addition, there are growing expectations that planning has a central role in addressing urgent societal issues related to sustainability, such as active living and obesity, mobility choice and auto dependence, and climate change mitigation, resilience and adaptation. Together these dual trends of low budgets and high expectations exert pressure on the practice of planning to focus on more effective implementation of ever-more-precise outcomes. In order to help planners and code writers respond effectively to these trends, this article focuses on reducing the gap between what plans say and what codes permit and require—the realm in which plan effectiveness often breaks down.

THE CURRENT GAP BETWEEN PLANS AND CODES

The relationship between plans and codes got off to a rough start. Burnham's 1909 Plan of Chicago, long regarded as the model of a comprehensive city plan, referenced neither subdivision nor zoning codes. As most planners know, such codes were first enabled and widely adopted by municipalities long after Burnham's death in 1912. The Burnham plan was widely copied as a model of effective planning despite not relying on codes for its implementation. However, this disconnect between plans and codes was flagged as a concern very early on. Harland Bartholomew, the first full-time planner employed by an American city, was among the first prominent planners to see the benefits of plans-code coordination. As one of the authors of the Standard Zoning Enabling Act (SZA) of 1926 he wrote, "Zoning is an es-



sential part of the city plan and ought never to be considered separately" (Knack et al. 1996).

Despite this vision of a plan-code unity, the final language in the zoning enabling legislation established a relatively weak connection between the emerging fields of planning and zoning: "Such (zoning) regulations shall be made in accordance with a comprehensive plan . . ." In legal terms, "in accordance with" is much less precise and rigorous than a more muscular phrase such as "in strict con-

formity with." Lawsuits brought by real estate interests that were denied permits over the last 90 years have defined the elasticity of the allowable legal gap between plans and codes. Given that this relatively weak language first appeared in the third and final draft of the SZA and that the Standard City Planning Enabling Act wouldn't be written until two years later in 1928, planners should probably be thankful that a legal connection was made between plans and codes at all.

ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of August to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. Douglas Farr 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

Douglas Farr is the founding principal and president of Farr Associates, a Chicago-based firm focused on sustainability in architecture and urban design. He is the author of *Sustainable Urbanism: Urban Design with Nature* (Wiley, November 2007). An architecture graduate of the University of Michigan and Columbia University, Farr is vice chair of the board of the Congress for the New Urbanism and also served as chair of the LEED Neighborhood Development Core Committee (LEED-ND).

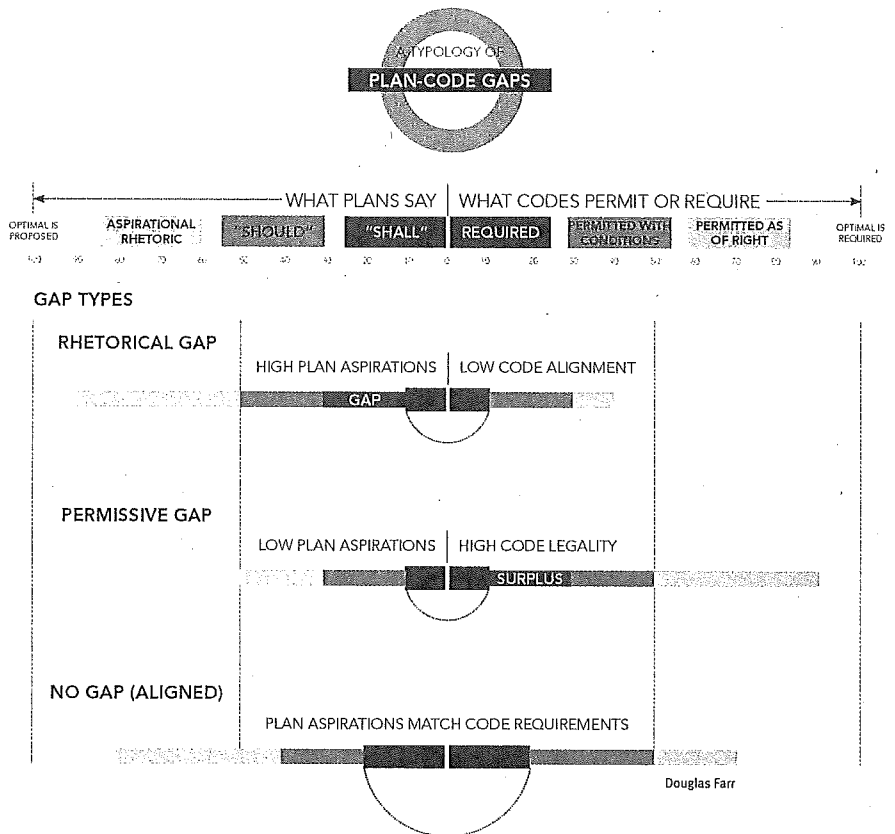
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The Inevitability of a Plan-Code Gap

Given this loose relationship between plans and ordinances and the institutional, political, and professional forces at play, the existence of a gap in what plans say and what codes authorize is inevitable without strategic effort.

While a continuous planning and coding process is an ideal within the land-use arena, this may not be a priority for a municipal government. A code update can often seem like a low priority at a time of layoffs, and spending additional money to develop a better or more complete planning process can also be a hard sell. Some municipalities will wait to learn the results of a plan before budgeting for follow-up work, such as a code update. This can lead to a timing gap between the adoption of a plan and the subsequent code that will implement the plan's policies.

A gap between plans and codes is also inevitable given the complexities and politics associated with regional or citywide master plans and ordinances. Changing codes is a political act that vested interests resistant to change can play to their advantage. Part of what makes powerful political interests effective is the ability to pick their battles and venues. Rather than take a public position in opposition to a popular plan, they may choose to exert influence far from the public eye. Every planner who has developed a plan is familiar with the process of wordsmithing that can go on behind the scenes to satisfy different constituencies. As a consequence, there is often intense pressure to refrain from being specific.



Nevertheless, the profession has driven innovations in land-use planning, mapping, and modeling precision that have made it possible to demand a level of specificity. For example, the U.S. Department of Housing and Urban Development has funded sustainability plans across the country through its Sustainability Communities Initiative that require the tracking of sustainability indicators, and the

California legislature passed AB32 and SB375, two laws that link climate change and land use. These initiatives highlight an increasing demand for strong technical criteria leading to clear outcomes and planning accountability. Only recently, however, have third-party criteria become specific enough to be able to translate sustainability-related words into performance standards suitable for inclusion

in codes and standards. Unfortunately, the application of these emerging tools has not been widely disseminated within the planning profession.

Training Planners to Identify the Plan-Code Gap

This gap between what plans promote versus what codes permit or require can be very hard to detect. In most cases, a word search is of no use in hunting down these disconnects. Consider these real world case studies:

Case Study #1: A suburban comprehensive plan calls for the community to be “safe and walkable,” while the subdivision code requires a minimum street width of 31 feet, a minimum block length of 600 feet, and permits a maximum block length of 1,800 feet. In addition, the residential zoning establishes minimum lot sizes of 8,000 square feet and permits front drive-ways.

Identifying these gaps requires some knowledge about pedestrian safety, street design, and vehicular speed. The severity or lethality of pedestrian-vehicular accidents is proportionate to vehicle speed, with several studies suggesting about a five percent fatality rate at 20 mph and 45 percent at 30 mph (Leaf and Preusser 1999). The minimum street width required in the subdivision code, combined with the presumption that virtually all cars will be parked off-street, invites higher vehicular speeds. Even with a posted speed limit of 20 mph, the speed at which traffic will actually travel based on these design factors, especially if the street is straight, may be closer to 30 mph. Public health research shows that pedestrians strongly prefer to walk in areas with high street connectivity (i.e., shorter block lengths and few dead-end streets) (Brownson et al. 2009). Block lengths of 600 to 1,800 feet do not support a walk-friendly place.

This gap analysis does not end at analyzing street widths and block lengths. Additional information from the zoning and subdivision code including any required parkway widths, minimum sidewalk widths, and the inclusion of on-street parking all affect street design speed, pedestrian safety, and the desire to walk. It is important that planners have a base understanding of how all these elements interact and that they are trained to identify these gaps when they exist.

Case Study #2: A town adopts a complete streets policy that emphasizes the use of streets by bicycles and automobiles. The town also adopts an ordinance governing bicycling.

Identifying this gap requires research. A cursory review via a word search might have concluded that the town had enacted a bicycle ordinance and that no gap existed. However, the first line of the ordinance requires bicyclists to ride on sidewalks and not the roadway, except in business districts or along streets without sidewalks.

Case Study #3: The preamble from a recent comprehensive plan states that one of the primary goals of the plan is to “introduce language to address the trend toward sustainability.” The plan’s objectives and policy statements frequently use soft verbs, such as encourage and promote, without providing specific criteria or metrics.

IMPLEMENTATION METRICS

PLANNING TOPICS	REFERENCE METRICS
Affordability-Comprehensive	H + T Affordability Index
Automobile Independence	Walk Score
Bikability	Bike Score
Complete Neighborhoods	Sustainable Urbanism: Neighborhood Criteria
Reduced Traffic Deaths	Chicago Forward: Department of Transportation Action Agenda
Transit-Support Municipality	Transit Score
Energy Efficient Buildings	Architecture 2030
Vehicle Miles Traveled (VMT) Reduction	Architecture 2030
Affordable Housing	LEED-ND: NPD c4: Mixed Income Diverse Communities: Option 2
Car-Free Housing	Transportation Sustainability Research Center, University of California-Berkely: Car Free Housing Research
Compact Development	LEED-ND: NPD p2: Compact Development
Connected Community	LEED-ND: NPD p3: Connected & Open Community
	LEED-ND: NPD c6: Street Network
LEED-Neighborhood Development	LEED-ND: All NPD Prerequisites
Life-Cycle Housing	LEED-ND: NPD c4: Mixed Income Diverse Communities: Option 1
Mixed Use Development	LEED-ND: NPD c3: Mixed Use Neighborhood Centers
Net-Zero Energy Buildings	Living Building Challenge
Parks, Open Space & Recreation	LEED-ND: NPD c9: Access to Civic & Public Space
Recreational Facilities	LEED-ND: NPD c10: Access to Recreational Facilities
Reduced Auto Dependence	LEED-ND: SLL c3: Locations with Reduced Automobile Dependence
Storm Water Management	LEED-ND: GIB c8: Stormwater Management
Transit-Supportive Development	LEED-ND: NPD p2: Compact Development, Option 1
Density to Support Walk-To Retail	Sustainable Urbanism: Neighborhood Retail Supportive Density
Walkable Streets	LEED-ND: NPD p1: Walkable Streets
Walkability	Hall Walkability Index

The gap here is both passive and glaring. While there is no doubt the author of this plan was well intentioned in wanting to “address” important issues of the day using sustainability language, a plan is a course of action, not simply an introduction of language. Without clear directives for action, there is no plan. If there is no actionable plan, the community will have a big plan-code gap.

STRENGTH OF RECOMMENDATIONS			POLICY OR CODE
Weak		Strong	
POLICY OBJECTIVES			
Max Combined Housing & Transportation Expenses are 50% or less of Income	Max Combined Housing & Transportation Expenses are 50% or less of Income	Max Combined Housing & Transportation Expenses are 45% or less of Income	Policy
Slightly Walkable: 50-69 Score	Highly Walkable: 70-89 Score	Walker's Paradise: 90-100 Score	Policy
Bikeable: 50-69 Score	Highly Bikeable: 70-89 Score	Biker's Paradise: 90-100 Score	Policy
Meets 3 Criteria	Meets 4 Criteria	Meet all 5 Criteria	Policy, Map, & Codes
Goal: Reduce pedestrian & bicycle crash injuries by 50%	Goal: Reduce pedestrian & bicycle crash injuries by 75%	Goal: Zero pedestrian & bicycle deaths	Policy & Subdivision
Good Transit: 50-69 Score	Excellent Transit: 70-89 Score	Rider's Paradise: 90-100 Score	Policy & Map
Building energy use reduced by 50%	Building energy use reduced by 80%	Building energy use reduced by 100%	Policy
VMT reduced by 10%	VMT reduced by 20%	VMT reduced by 35%	Policy
CODE-SPECIFIC PERFORMANCE TARGETS			
1 point: Permit per neighborhood	1 point: Require per neighborhood	2 points: Require per block	Zoning
Permit by Special Permit	Permit by Zone	Permit Citywide	Zoning
1 point: Permit densities citywide	p2: Require densities in some zones	p2: Require densities citywide	Zoning
1 point: Permit street network connectivity level citywide	p3: Require street network connectivity level in some zones	p3: Require street network connectivity level citywide	Subdivision
	c6: Achieve 1 point	c6: Achieve 2 points	Subdivision
Permit citywide	Require in certain zones	Require citywide	Subdivision & Zoning
1 point: Permit diverse housing types per neighborhood	1 point: Require diverse housing types per neighborhood	2 points: Require diverse housing types per block	Zoning
Permit minimum 7 "diverse uses" per neighborhood	Permit minimum 11 "diverse uses" per neighborhood	Require minimum 4 "diverse uses" per neighborhood	Zoning Code & Map
Comply with current IECC EE Code	Require buildings be Net-Zero Ready (Austin, TX)	Require Living Building Challenge Net-Zero certification	Building Code
Require 1 point citywide	Require 1 point in certain zones	Require 1 point citywide	Policy, Map, & Codes
Require 1 point citywide	Require 1 point in certain zones	Require 1 point citywide	Policy, Map, & Codes
1 point: Eliminate parking minimums	5 points: Permit car-free housing	7 points: Require car-free housing	Policy, Map, & Codes
1 point: Require rainfall retention on site	3 points: Require rainfall retention on site	4 points: Require rainfall retention on site	Codes & Public Works
Permit in transit corridors	p2: Require in transit corridors	p2: Require citywide	Policy, Map, & Codes
Permit 1,000 dwelling units within 5 minute walk	Require 500 dwelling units within 5 minute walk	Require 1,000 dwelling units within 5 minute walk	Zoning Code & Map
Permit citywide	Require in certain zones	Require in certain zones	Policy & Map
Score: 30-49 points	Moderate: 50-69 points	Very High: 70 - 100 points	Policy & Map

Douglas Farr

The Plan-Code Gap Devalues Planning

Over the long term, the plan-code gap erodes confidence in the effectiveness of planning. Municipalities prepare plans to address specific opportunities or concerns and to move

their communities forward. The failure to execute on high priority goals and objectives may well result in reduced economic productivity and community well-being. In addition, community members who participate in a master-planning process have a rea-

sonable expectation that the plan will be implemented as written. A delayed or poor implementation devalues their investment of time and energy. Such an outcome further undermines the perceived effectiveness of planning, making planning harder to "sell" and appears to work against many of the aspirational principles of the American Institute of Certified Planners Code of Ethics. Taken together, the plan-code gap should be of great concern to the planning profession and the goal of reducing the gap and increasing plan effectiveness should be the focus of leading practitioners.

Illustrating Plan-Code Gap Types

The graphic on page 3 illustrates a typology of plan-code gaps using three prototypes: the rhetorical, the permissive, and the aligned. While a municipality can have elements of all three types across its regulatory portfolio, this article proposes that the aligned type should be the ideal.

The rhetorical type occurs when a plan uses aspirational language that is not translated into developmental regulations. A symptom of this type is the use of buzz words such as green, sustainable, or walkable that are not translated into performance criteria and only weakly linked to implementation. To non-planners this approach appears to overpromise benefits and under-deliver on results, reinforcing the idea that planning is "pie-in-the-sky" and ultimately ineffective.

The permissive type refers to a laissez-faire-based local planning system where plans are nonexistent or obsolete. The threat posed by this typology is its permissiveness in permitting long-lived and irreversible development practices that are decidedly not in the public's interest, such as a strict separation of land uses and automobile-oriented street and lot designs. This approach can resonate with constituencies who may see all government strictures or interventions as bad.

The aligned type seeks to match plan recommendations with specific development regulations. Using this

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To increase effectiveness, planners can focus on the part they have the greatest control over—the planning process—to increase the depth of support for implementing an ambitious plan.

approach, an objective should appear in the implementation section of a plan only if the planning process has revealed ample support for its implementation, which is a model of planning effectiveness. Specific objectives that fail to garner support may appear as initiatives lacking support.

THE TWO PARTS OF CODE-READY SUSTAINABLE PLANNING

Code-ready sustainable planning is made up of two parts: high performance planning and code-specific recommendations.

High-performance planning describes a planning process rooted in evidence-based sustainability metrics. Given that recent research documents how our land-development patterns contribute to physical activity levels, pedestrian and bike safety, housing and transportation affordability, and climate resiliency, high-performance planning is necessary to quickly increase the planning profession's effectiveness in a time of tight budgets and sometimes strident opposition.

Code-specific recommendations are plan policies and action items written in language strong and precise enough to guide the development of regulatory provisions that will help achieve the plan's goals and objectives. In other words, code-specific recommendations provide clarity about how a particular recommendation will be implemented.

PUTTING CODE-READY SUSTAINABLE PLANNING INTO PRACTICE

In *The Seven Habits of Highly Effective People*, author Steven Covey wrote that in order to be effective, one must "begin with the end in mind." An aspirational "end" to a planning effort can seem hard to attain given the fragmentation in how plans and their implementation are authorized and governed. In order to

increase effectiveness, planners can focus on the part they have the greatest control over—the planning process—to increase the depth of support for implementing an ambitious plan. In this effort, the green building industry may have experience of value to planners.

Use High-Performance Sustainable Planning Criteria

For more than 15 years, the green building movement has applied this "end-in-mind" thinking to the design of sustainable buildings in an approach called "integrated design." This approach has many parallels with the high-performance approach to planning proposed herein. An integrated design approach brings together everyone who will eventually have the responsibility for implementing the plan early in the process. The facilitators present, debate, and commit to a menu of strategic choices, along with their costs and benefits. Think of these as a project's bones. In integrated building design it usually refers to structural or mechanical systems. The analog in planning is a two-stage process: the first involving big policy decisions and the second, the level of performance to be written into code. To illustrate how this approach can work, the table on pages 4 and 5 provides an initial listing of policy objectives and code-specific performance targets.

This table is divided into aspirational policy objectives and code-specific performance targets. Both objectives and targets are proposed at three levels of aspiration: weak, moderate, and strong. In setting up this hierarchy, the expectation is not that municipalities will opt to adopt a strong policy on every topic but rather that the planning process will identify those measures for which the community is most strongly committed. Any municipality that adopts policies from these ambitious targets is likely to earn positive recognition for doing so.

The policy objectives at the top of the chart can be used to structure the visioning phase of any land-use planning process. Many of the references in the table are provided by third-party websites that are currently used to market real estate but, paradoxically, are not conventionally used to plan land use and development. While some communities may have the capacity to develop their own transparent measurement systems and reference targets, many others will not. While these third-party metrics may not be perfect, the fact that they are already in widespread use and freely available to anyone with Internet access makes their performance targets attractive options for policy objectives. However, because these scoring systems have proprietary methodologies that may change without warning, their scores are not suitable to serve as code references.

The policy objectives have a one-to-many relationship with the code-ready references below. For instance, increasing walkability must be approached comprehensively through path and street design, urban design, and the location and clustering of destinations.

Focus on the Strength of Plan Recommendation Language

When it comes to writing recommendations or action items, planners often try to capture one of two sentiments: the consensus of all the parties to the planning process or the lowest level of unanimous agreement of the governing body. This tricky balancing act produces recommendations ranging from those that say and do a lot to those that say and do little or nothing. A plan's action items create the most value when they spur tangible action. The following list of plan recommendation approaches is ordered from weakest to strongest:

1. Mentioning a topic or action (i.e., "a shout-out")
2. Using soft verbs such as *promote* (i.e., non-specific support for action)
3. To allow an action (i.e., permission to take a specific action)
4. To offer incentives for an action (i.e., rewarding a specific action)

5. A firm requirement or mandate (i.e., requiring a specific action)

A Litmus Test for Code-Ready Sustainable Planning

Leading planners may already prepare plans following an approach similar to that described herein. How does the high-performance planning proposed herein differ from good planning? In order to make a market for this high-value approach to planning it needs to draw attention to points of distinction. To facilitate demand, the following checklist can serve as a litmus test for high-performance planning. (Note that this list can be used to help write RFQs and RFPs in exchange for describing the project using the term Code-Ready Sustainable Planning.)

1. During the data collection phase, audit local policy, codes, and public works practices against the policy objectives and code-specific performance targets above (and additional issues of local concern) to identify barriers to adopting these approaches.
2. Throughout the planning process convene all of the parties who will be involved in approving or implementing the recommendations of the plan.
3. At the beginning of the planning process, convene a long-format meeting to
 - introduce high-performance planning and illustrate the idea that a given topic can be effectively addressed with different levels of rigor;
 - introduce code-specific language and present each of the code-specific performance targets along with a best understanding of the order-of-magnitude costs and benefits of each target; and
 - poll the community and stakeholders on each topic to identify information gaps, new topics of local concern, and issues for which there is consensus.
4. Repeat item three above until each topic has arrived at consensus. This may take place later in the same meeting or in a future meeting. (The consensus on a given topic may be that there is no support for a high-performance outcome, in which case the plan should document this outcome.)

5. Prepare studies to test and demonstrate what results these policies achieve on the ground and what level of sustainable performance targets they can achieve.
6. Convene a long-format meeting to review these design and performance alternatives and to arrive at consensus on the level of regulatory performance to be recommended.
7. Draft recommendations that link to specific policy or regulatory actions, organized according to the authority charged with implementing them. Avoid informational recommendations and those using soft verbs.
8. Conduct a broad plan-adoption process so that each authority asked to take action on the plan votes separately to implement their designated responsibilities.

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VOL. 30, NO. 8

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; David Rouse, AICP, Managing Director of Research and Advisory Services.

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.

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

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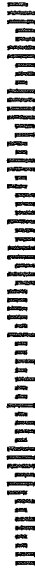
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