City of Ramsey
Agenda
Regular Planning Commission
Thursday January 9, 2014
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 November 7, 2013

5. Public Hearing/Commission Business

1. Review Sketch Plan of O'Shaughnessy Addition Located at 17201 Saint Francis Boulevard NW, Case of Tim O'Shaughnessy

2. PUBLIC HEARING - Consider Ordinance #14-01 Amending City Code Section 117-114 (B-1 General Business District) to allow Indoor Commercial Recreation as a Conditional Use and Creating City Code 117-363 Establishing Performance Standards for Indoor Shooting Ranges; Case of Total Defense, Inc.

3. PUBLIC HEARING - Consider Resolutions #14-01-005 and #14-01-006 Approving a Request for a Conditional Use Permit to Allow an Indoor Shooting Range at 6001 167th Ave NW; Case of Total Defense, Inc.

4. Review Draft Housing Assistance Policies and Forward Recommendation to City Council

5. DISCUSSION: Review Potential Amendments to City Code Section 117-351 (Home Occupations)

6. FOR UPDATE ONLY: Staff Update

- Receive Development Update
- Receive Update on Builder Networking Event
- Receive Update on Citizen Engagement Processes (167/47 Node, Former Municipal Center, Armstrong West/Future Business Park, Lake Ramsey Amenities)
- Discuss Ramsey2040: Citizen Engagement Process to Review Metropolitan Council Preliminary 2040 Forecasts for Household, Population, and Employment and Ramsey's 2040 Comprehensive Plan Update

7. Zoning Bulletins

6. Commission/Staff Input

7. Adjournment

Regular Planning Commission **4. 1.**

Meeting Date: 01/09/2014

By: JoAnn Shaw, Community Development

Information

Title:

Approve the Following Planning Commission Meeting Minutes:

Planning Commission Meeting Minutes Dated November 7, 2013

Purpose/Background:

n/a

Notification:

Observations/Alternatives:

Funding Source:

Recommendation:

Action:

Attachments

11.07.13 Minutes

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	JoAnn Shaw	01/03/2014 02:11 PM
Form Started By: JoAnn Shaw		Started On: 12/30/2013 12:12 PM
Final Approval Date: 01/03/2014		

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a regular meeting on Thursday, November 7, 2013, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Gary Levine Commissioner Randy Bauer Commissioner Ralph Brauer Commissioner Matthew Maul Commissioner Cindy Nosan Commissioner Gary VanScoy
Members Absent:	Commissioner Joseph Field
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 7:01 p.m.

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

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

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

4. APPROVE PLANNING COMMISSION MINUTES

4.01: Approve the Following Planning Commission Minutes:

4.01.1: Planning Commission Meeting Minutes Dated October 3, 2013

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

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

5. PUBLIC HEARINGS/COMMISSION BUSINESS

5.01: Public Hearing: Consider Request for Interim Use Permit to Allow Periodic Temporary Lodging Accommodations at the Property Located 14501 Nowthen Boulevard NW: Case of Family Promise in Anoka County

Public Hearing

Chairperson Levine called the public hearing to order at 7:05 p.m.

Presentation

Associate Planner/Environmental Coordinator Anderson presented the staff report noting the applicant, Family Promise in Anoka County (FPAC), was requesting an Interim Use Permit to allow periodic, temporary lodging accommodations at their day center, which is located on the Lord of Life Lutheran Church campus. He reviewed the request in further detail with the Commission and recommended approving the request for an interim use permit contingent upon the receipt of a permit from Anoka County and the installation of a meter, at the applicant's expense, on the inside of the building to monitor domestic water usage as it relates to the capacity of the septic system.

Citizen Input

Commissioner Bauer questioned why the applicant was required to have an interim use permit.

Associate Planner/Environmental Coordinator Anderson explained this was based on the fact the church was located in an R-1 zoning district. He reviewed the requirements for group homes versus the proposed special use permit.

Dell How, 16471 Sapphire Street, explained that his church Andover Christian Church has been involved with the Family Promise organization for the past three years. He discussed the housing services provided to families in need. He encouraged the Commission to support the interim use permit requested from Lord of Life to meet the emergency needs of the community.

Irene Rodriguez, Family Promise Program of Anoka County, explained the services provided by her organization. She commented the proposed interim use permit would allow Family Promise to provide emergency housing services for twelve weeks out of the year, if a need were to arise. She indicated the families in need were all from Anoka County.

Commissioner Bauer noted the proposed language within the interim use permit allows for Family Promise to provide housing services twelve weeks a year. He recommended that this language not be limited to one week per month.

Development Services Manager Gladhill supported the proposed language change.

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

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

Chairperson Levine closed the public hearing closed at 7:28 p.m.

Commission Business

Commissioner VanScoy questioned if a five-year time limit should be set on the interim use permit.

Development Services Manager Gladhill recommended the five year time period remain in place, as this would allow for review.

Commissioner Brauer suggested the language read that the term will expire five years from November 26, 2013 or until a long-term solution was found.

Commissioner Maul recommended the twelve weeks be changed to fourteen weeks to allow for emergencies.

Chairperson Levine supported this recommendation.

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to recommend that City Council adopt Resolution #13-11-182 adopting Findings of Fact #0918 relating to the applicant's request for an interim permit, changing Paragraph 16 to read, fourteen weeks.

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

Commissioner VanScoy suggested the interim use permit remain contingent upon installation of a meter at the applicant's expense and that language be added to allow Family Promise the option to connect to City sewer or upgrade the septic system.

Motion by Commissioner Bauer, seconded by Commissioner Maul, to recommend that City Council adopt Resolution #13-11-183 approving an interim use permit to provide periodic temporary lodging accommodations in the building generally known as 14515 Nowthen Boulevard NW based on Findings of Fact #0918, amending Paragraph 2 to read, the term of the

permit shall commence on November 26, 2013 and shall expire five years thereafter, November 26, 2018, or upon rezoning or other change in City Ordinance making this a permitted use; amending Paragraph 8, that the interim use permit shall be required to upsize the SSTS within 12 months if water usage exceeds the designated capacity of existing SSTS, or connect to City sewer services; and, amending Paragraph 5 deleting the statement no more than one week per month and changing 12 weeks to for 14 weeks.

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

5.02: Public Hearing: Consider Request for Sketch Plan Review of Diehl Acres and Variance to Allow Private Well and Septic in the R-1 Residential (MUSA) District

Public Hearing

Chairperson Levine called the public hearing to order at 7:38 p.m.

Presentation

Development Services Manager Gladhill presented the staff report stating the applicant is requesting Sketch Plan Review of Diehl Acres. This plat is located on the north side of Green Valley Road across from Green Valley Greenhouse. The Sketch Plan contemplates the creation of one (1) new buildable lot. The existing parcel has a dwelling and multiple accessory structures. The plat would create a buildable lot with the intent to build a second dwelling on the north side of the County Ditch that traverses the property. The proposed Sketch Plan meets or exceeds minimum standards required by City Code. Staff reviewed the plan in further detail and recommended the Commission approve the findings of fact, adopt the Variance and approve Diehl Acres.

Citizen Input

Richard Krier, Midwest Plan and Design, explained he drafted the proposed sketch plan for the Commission to review.

Sam Diehl, 4308 82nd Avenue in Brooklyn Park, stated the proposed lot split would allow him to relocate into the City of Ramsey. He looked forward to coming home as he would be able to live closer to his family.

Commissioner VanScoy thanked Mr. Diehl for the thorough sketch plan. He questioned why the current driveway would be changed.

Mr. Diehl stated the County was requiring that the driveways be 60 feet apart for traffic safety purposes.

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

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

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

Commission Business

Motion by Commissioner VanScoy, seconded by Commissioner Brauer, to adopt a Resolution adopting the Findings of Fact related to the Variance.

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

Motion by Commissioner VanScoy, seconded by Commissioner Brauer, to adopt a Resolution granting the Variance.

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

Motion by Commissioner VanScoy, seconded by Commissioner Brauer, to recommend that City Council approve Diehl Acres.

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

5.03: Consider Request for Sketch Plan Review of Alpine Woods Third Addition; Case of Oakwood Land Development

Presentation

Development Services Manager Gladhill presented the staff report stating the submitted minor subdivision proposes to plat approximately 0.30 acres to create one (1) buildable single-family lot. The proposed plat would not re-configure existing property lines. The proposed subdivision would convert an existing outlot to a buildable lot. Staff reviewed the sketch plan in further detail and recommended the Commission approve the final plat based on sketch plan review.

Commission Business

Brad Ehrler, 15548 Uranium Street, discussed the proposed sketch plan. He was pleased that the cul-de-sac size would be reduced. He commented his son required 24 hour nursing care and

these nurses would be parking in the cul-de-sac at times. He expressed concern about the amount of space available for cars to be parked in the street.

Development Services Manager Gladhill stated the roadway and cul-de-sac would have parking restrictions due to its reduced size. He commented the Commission did not have to approve the sketch plan as presented. Staff could work with the applicant and property owner to the north on another solution, perhaps a hammerhead roadway configuration would better meet the needs of the homeowners along this street.

Chairperson Levine was in favor of staff speaking with the property owner to the north as this would address the roadway restrictions.

Commissioner Bauer agreed.

Commissioner Brauer was not in favor of the City creating a hardship for an existing property owner. He did not find this to be fair.

Commissioner Nosan questioned how long Mr. Ehrler had lived at his address.

Mr. Ehrler commented he purchased his home in 2011, but the home was built in 2007.

Commissioner VanScoy asked what the standard size of a cul-de-sac was.

Development Services Manager Gladhill stated the standard amount of right-of-way was 120 feet.

Mr. Ehrler indicated he would be interested in purchasing the outlot to avoid further development or alteration of his neighborhood.

Chairperson Levine recommended Mr. Erhler speak with staff further.

Development Services Manager Gladhill thanked the Commission for their feedback this evening. He explained he would bring this information back to the applicant.

5.04: Discuss 'Statement of Goals' for the Area new the 167th Avenue and Saint Francis Boulevard (TH 47)

Presentation

Assistant to the City Administrator Brama presented the staff report stating the retail node located at the intersection of 167th Avenue and Trunk Highway 47 was the focus of this discussion. He reported the purpose was to discuss a proposed policy, which outlines the City's position regarding the future development of the 167th retail node. This policy would be known as a "Statement of Goals" and would identify a common goal, vision, working parameters and a

process to garner public input. Staff reviewed the background of this matter in further detail and recommended the Commission adopt the "Statement of Goals" for the 167/47 Node.

Commission Business

Chairperson Levine requested an update on the old supermarket building at 167/47.

Assistant to the City Administrator Brama reported staff visited the site recently and the building was coming along nicely. New electrical and plumbing had been installed, along with a concrete floor. The developer was marketing the property again.

Commissioner Brauer asked if a gun range was still being considered at this property. He did not support this use at the node. He suggested Roman numeral II and II on Page 5 be removed.

Development Services Manager Gladhill explained a potential gun range had been submitted to the City and may come back for reconsideration. He indicated a gun range could be a conditional use, if a zoning code amendment were approved, and would require an applicant to go through the conditional use permit process.

Commissioner Nosan questioned what uses would be allowed in the node.

Development Services Manager Gladhill indicated this would include general retail, or commercial recreation. He stated these uses could be expanded to allow for additional flexibility while redeveloping the node.

Commissioner Bauer asked if the node would allow warehousing and light industrial uses.

Assistant to the City Administrator Brama commented this would not be allowed, based on the majority of the comments gathered by the public. He further discussed the proposed zoning restrictions within the policy.

Development Services Manager Gladhill understood the Commission's hesitancy to proceed with the document as is and stated staff could remove the zoning section from the policy. Staff could instead make the necessary amendments to the Comprehensive Plan in order for the proposed Statement of Goals to proceed.

Chairperson Levine agreed with this recommendation.

Commissioner Bauer wanted to see the property redeveloped while generating traffic and employment.

Development Services Manager Gladhill stated this procedure could be followed by staff. He explained he would bring forward for the Commission's next meeting a Comprehensive Plan Amendment to allow the indoor shooting range component. He also proposed removing Section C II and III from the Statement of Goals.

Chairperson Levine requested that the Commission be allowed to review potential redevelopment requests for this node, even if the zoning was not a proper fit. It was his opinion that a Comprehensive Plan Amendment to allow for the indoor shooting range was not necessary at this time.

Commissioner Brauer agreed with this suggestion.

Motion by Commissioner Brauer, seconded by Commissioner Maul, to recommend that City Council adopt the "Statement of Goals" for the 167/47 Node removing Roman Numerals II and III on Page 5.

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

5.05: Review Preliminary Metropolitan Council 2040 Forecasts

Presentation

Development Services Manager Gladhill presented the Staff Report stating Minnesota Statutes Chapter 473 provides direction to the Metropolitan Council in regard to the foundation for regional planning. This chapter provides guidance for communities within the metropolitan area to prepare Comprehensive Plans. The Regional Planning Cycle updates once every ten (10) years following completion of the US Census. He reviewed the next stage in the Regional Planning Cycle was to prepare the 2040 Regional Development Framework. This task was completed by the Metropolitan Council and was currently underway. He discussed the preliminary forecasts in detail and requested the Commission recommend that the City Council adopt the Preliminary Response to the Metropolitan Council Preliminary 2040 Forecasts.

Chairperson Levine was pleased that this report was a more close reflection to reality with the preliminary forecasts.

Commissioner Bauer requested the Met Council adjust the population and number of households projected within the preliminary forecast.

Development Services Manager Gladhill indicated this discrepancy would be addressed with the Metropolitan Council Council.

Motion by Commissioner Brauer, seconded by Commissioner Maul, to recommend that City Council adopt the Preliminary Response to the Metropolitan Council Preliminary 2040 Forecasts.

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

5.06: Adopt Resolution of Comprehensive Plan Compliance for Tax Increment Finance District No. 2 Modification

Development Services Manager Gladhill explained TIF District 2 was set to decertify on December 31, 2013. The distribution of those tax dollars would then be distributed to three taxing districts. He stated the TIF plan would have to be modified. He requested the Commission make a recommendation that the modification to the TIF plan remains consistent with the Comprehensive Plan.

Chairperson Levine questioned why the Commission had to take action on the TIF District closing.

Development Services Manager Gladhill indicated this would align the estimated and actual revenue generated by the TIF district.

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to recommend adoption of Resolution #13-11-186, finding that the modification to the TIF plan remains consistent with the Comprehensive Plan.

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

The Staff Update was noted.

5.07: Staff Update

The Staff Update was noted.

5.08: Zoning Bulletins

Zoning Bulletins were noted.

6. COMMISSION / STAFF INPUT

None.

7. ADJOURNMENT

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

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

The regular meeting of the Planning Commission adjourned at 8:53 p.m.

Respectfully submitted,

_____
Tim Gladhill
Development Services Manager

ATTEST:

_____
JoAnn Shaw
Planning Division Secretary

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

Regular Planning Commission **5. 1.**

Meeting Date: 01/09/2014

By: Tim Gladhill, Community Development

Information

Title:

Review Sketch Plan of O'Shaughnessy Addition Located at 17201 Saint Francis Boulevard NW, Case of Tim O'Shaughnessy

Purpose/Background:

The City has received an Application for Minor Plat to allow a lot split of the property generally known as 17201 Saint Francis Boulevard. The request does not create a new buildable lot, but does separate a nineteen (19) acre outlot from the larger thirty-seven (37) acre lot. The request also facilitates the construction of a new primary residential dwelling. The site was previously the location of a landscape nursery and tree farm.

Notification:

The City attempted to notify all Property Owners within 700 feet of the Minor Plat of the Sketch Plan Review via Standard US Mail.

Observations/Alternatives:

The request is a simple lot split that does not create a new buildable lot (no net increase in buildable lots). The request facilitates the construction of a new single-family home (the existing primary structure will become an accessory structure to the new primary dwelling). The net effect will be a twenty (20) acre buildable lot and seventeen (17) acre outlot. The outlot is anticipated to be considered for rural residential development sometime in the future. The size of the outlot would facilitate some form of future subdivision, consistent with applicable zoning regulations in effect at that time.

The buildable area is sufficient to facilitate the desired development as single-family residential, meeting all minimum standards of City Code. More detailed analysis will be completed administratively as part of the standard development review process for individual single-family homes.

The request is subject to review and approval by the Minnesota Department of Transportation, as it is adjacent to Trunk Highway 47, with utilization of existing access.

Alternatives

Alternative #1 - Direct the Applicant to proceed to Final Plat. As it appears that all minimum standards are able to be met, this is Staff's recommended action.

Alternative #2 - Direct the Applicant to modify the Sketch Plan before proceeding to Final Plat. Staff has not identified any deficiencies in the request, and therefore does not recommend this alternative.

Alternative #3 - Recommend that the City Council deny the Plat. Based on the information available at this time, Staff does not recommend this alternative.

Funding Source:

All costs associated with processing the Application are the responsibility of the Applicant.

Recommendation:

Staff recommends approval of the Minor Plat, with direction from the Planning Commission to proceed to Final Plat Review.

Action:

No action is necessary. Sketch Plan Review affords the Planning Commission the opportunity to review general layout and minimum standards with the Applicant.

Attachments

Site Location Map

Sketch Plan

Final Plat

Staff Report Dated January 3, 2014

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	01/03/2014 03:43 PM
Tim Gladhill (Originator)	Tim Gladhill	01/03/2014 03:51 PM
Form Started By: Tim Gladhill		Started On: 12/31/2013 09:18 AM
Final Approval Date: 01/03/2014		


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City of
RAMSEY
O'Shaugnessy Addition
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Legend
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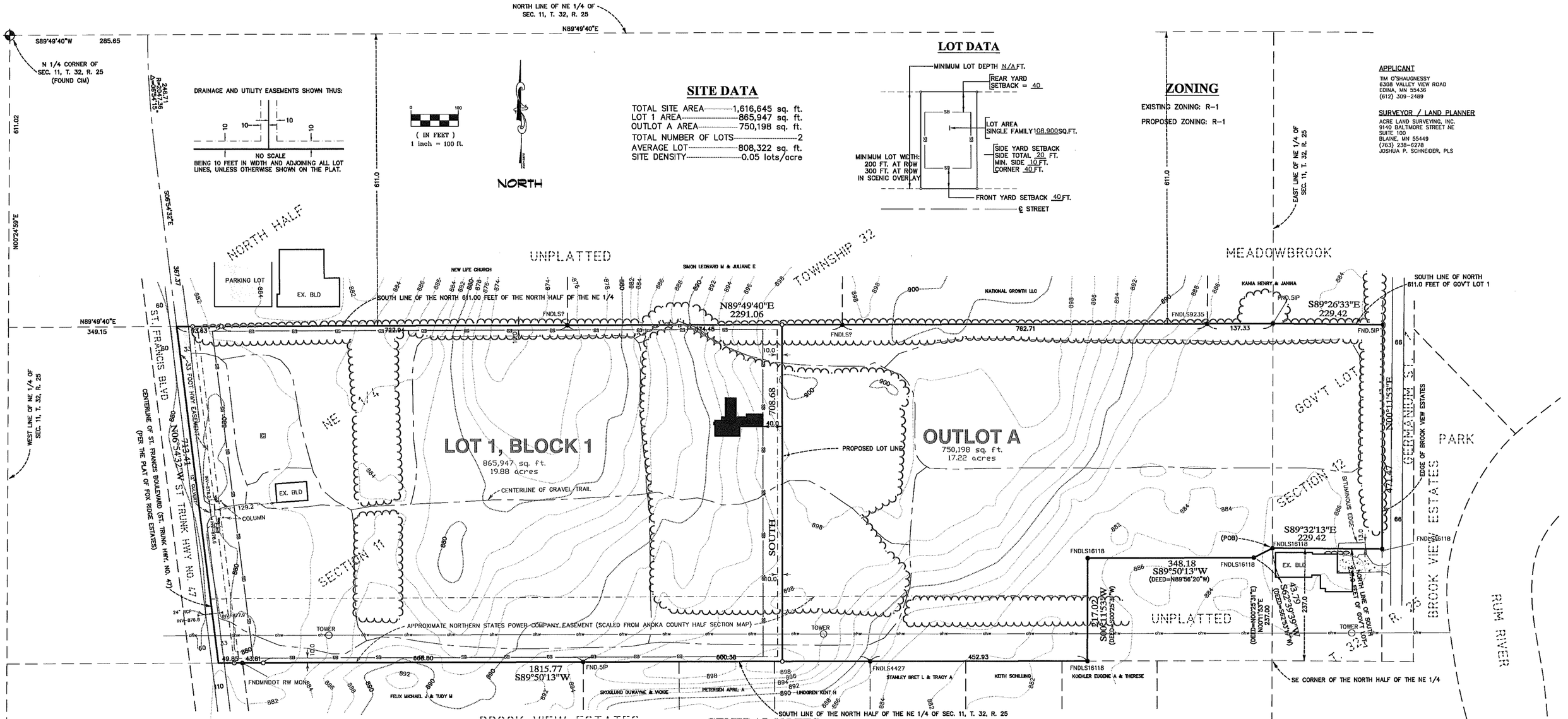
625
1,250 Feet

PRELIMINARY PLAT FOR: "OSHAUGNESSY ADDITION"

FOR: TIM O'SHAUGNESSY

ADDRESS: 17201 ST. FRANCIS BOULEVARD, RAMSEY, MN



EXISTING PROPERTY DESCRIPTION

That part of the North Half of the Northeast Quarter of Section 11, Township 32, Range 25, Anoka County, Minnesota, lying East of the centerline of State Trunk Highway No. 47 and lying South of North 611.00 feet of said North Half of the Northeast Quarter, as measured along the East line of said North Half of the Northeast Quarter and lying Northwesterly of the following described line: Commencing at the Southeast corner of said North Half of the Northeast Quarter; thence North 00 degrees 25 minutes 31 seconds East along the East line of said North Half of the Northeast Quarter a distance of 237.0 feet to the point of beginning; thence South 62 degrees 53 minutes 17 seconds West a distance of 43.79 feet; thence North 89 degrees 56 minutes 20 seconds West parallel with the South line of said North Half of the Northeast Quarter a distance of 348.18 feet; thence South 00 degrees 25 minutes 31 seconds West parallel with the East line of said North Half of the Northeast Quarter a distance of 217.00 feet to the South line of said North Half of the Northeast Quarter and there terminating.

AND

That part of Government Lot 1, Section 12, Township 32, Range 25, Anoka County, Minnesota, which lies South of the South line of the North 611.00 feet and North of the North line of the South 237.00 feet, both measured along the West line of said Government Lot 1, Except that part platted as Brook View Estates.

GENERAL NOTES

1. Fee ownership is vested in: Timothy Earl O'Shaugnessy & Corrin Marie O'Shaugnessy, Husband and wife, as joint tenants. Parcel ID Number: 11-32-25-11-0006.
2. Address of the surveyed premises: 17201 Saint Francis Boulevard, Ramsey, Minnesota, 55303.
3. Bearings shown hereon are based on Anoka County Coordinate System.
4. Boundary area of the surveyed premises: ±1,616,645 sq. ft. (37.1 acres).
5. The City of Ramsey has indicated that the surveyed premises shown on this survey is currently zoned R-1 (Rural Developing) with Wild and Scenic Overlay.
6. The surveyed premises has access to Germanium Street and St. Francis Boulevard, a public street.
7. Utilities shown hereon are observed. Excavations were not made during the process of this survey to locate underground utilities and/or structures. The location of underground utilities and/or structures may vary from locations shown hereon and additional underground utilities and/or structures may be encountered. Contact Gopher State One Call Notification Center at (651) 454-0002 for verification of utility type and field location, prior to excavation.
8. The field survey of this site was completed on December 3rd, 2013..
9. Legal description is based upon information found in the commitment for title insurance prepared by Stewart Title Guaranty Company, Commitment No. 404093, dated effective June 14th, 2013.
10. No wet lands were observed at the time of this survey, wetland areas are to be determined by others.
11. Property is located in Zone X, per Community Panel Number 270681 0010 B, effective date November 1, 1979.

LEGEND

- DENOTES SET IRON MONUMENT #44655
- DENOTES IRON MONUMENT FOUND
- DENOTES EXISTING CONTOURS (2' INTERVAL)
- DENOTES GAS METER/BOX
- DENOTES STORM SEWER

JOB #13442bs

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

JOSHUA P. SCHNEIDER Date: 12-11-13 Reg. No. 44655

ACRE LAND SURVEYING
Blaine, MN 55449
763-238-6278 ja.acrelandsurvey@gmail.com

C:\Land Projects 2008\13442bs-Ramsey\dwg\13442bs.dwg 12/11/2013 10:36:58 AM CST

OSHAUGNESSY ADDITION

CITY OF RAMSEY
COUNTY OF ANOKA
SEC. 11 & 12, T. 32, R. 25

KNOW ALL PERSONS BY THESE PRESENTS: That Timothy E. O'Shaugnessy and Corrin M. O'Shaugnessy, husband and wife, owners, of the following described property:

That part of the North Half of the Northeast Quarter of Section 11, Township 32, Range 25, Anoka County, Minnesota, lying East of the centerline of State Trunk Highway No. 47 and lying South of North 611.00 feet of said North Half of the Northeast Quarter, as measured along the East line of said North Half of the Northeast Quarter and lying Northwesterly of the following described line: Commencing at the Southeast corner of said North Half of the Northeast Quarter; thence North 00 degrees 25 minutes 31 seconds East along the East line of said North Half of the Northeast Quarter a distance of 237.0 feet to the point of beginning; thence South 62 degrees 53 minutes 17 seconds West a distance of 43.79 feet; thence North 89 degrees 56 minutes 20 seconds West parallel with the South line of said North Half of the Northeast Quarter a distance of 348.18 feet; thence South 00 degrees 25 minutes 31 seconds West parallel with the East line of said North Half of the Northeast Quarter a distance of 217.00 feet to the South line of said North Half of the Northeast Quarter and there terminating.
AND
That part of Government Lot 1, Section 12, Township 32, Range 25, Anoka County, Minnesota, which lies South of the South line of the North 611.00 feet and North of the North line of the South 237.00 feet, both measured along the West line of said Government Lot 1, Except that part platted as Brook View Estates.

Have caused the same to be surveyed and platted as OSHAUGNESSY ADDITION and do hereby dedicate to the public for public use the public way and the drainage and utility easements as shown on this plat.

In witness whereof said Timothy E. O'Shaugnessy and Corrin M. O'Shaugnessy, husband and wife, have hereonto set their hands this ____ day of _____, 20____.

SIGNED:

Timothy E. O'Shaugnessy

Corrin M. O'Shaugnessy

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 20____ by Timothy E. O'Shaugnessy and Corrin M. O'Shaugnessy, husband and wife.

Notary Public, _____ County, Minnesota
My Commission expires _____

I Joshua P. Schneider do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 20____.

Joshua P. Schneider, Licensed Land Surveyor
Minnesota License Number 44655

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this _____ day of_____, 20_____ by Joshua P. Schneider.

Notary Public, _____ County, Minnesota
My Commission expires _____

City Council, City of Ramsey, Minnesota

This plat of OSHAUGNESSY ADDITION was approved and accepted by the City Council of the City of Ramsey, Minnesota at a regular meeting thereof held this ____ day of _____, 20____, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council, City of Ramsey, Minnesota

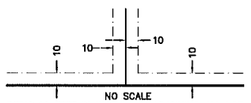
By _____ Mayor By _____ Clerk

COUNTY SURVEYOR

I hereby certify that in accordance with Minnesota Statutes, Section 505.021, Subd. 11, this plat has been reviewed and approved this _____ day of_____, 20____.

Larry D. Holum
Anoka County Surveyor

DRAINAGE AND UTILITY EASEMENTS SHOWN THUS:



BEING 10 FEET IN WIDTH AND ADJOINING ALL LOT LINES, UNLESS OTHERWISE SHOWN ON THE PLAT.

⊕ Denotes Anoka County Cast Iron Monument.
● Denotes Found Iron Monument
○ Denotes 1/2 inch by 14 inch iron monument set and marked by L.S. No. 44655.

For the purposes of this plat, the north line of the North Line of NE 1/4 of Sec. 11, T. 32, R. 25, Anoka County, Minnesota is assumed to bear North 89 degrees 49 minutes 40 seconds East.

OSHAUGNESSY ADDITION

CITY OF RAMSEY
COUNTY OF ANOKA
SEC. 11 & 12, T. 32, R. 25

KNOW ALL PERSONS BY THESE PRESENTS: That Timothy E. O'Shaugnessy and Corrin M. O'Shaugnessy, husband and wife, owners, of the following described property:

That part of the North Half of the Northeast Quarter of Section 11, Township 32, Range 25, Anoka County, Minnesota, lying East of the centerline of State Trunk Highway No. 47 and lying South of North 611.00 feet of said North Half of the Northeast Quarter, as measured along the East line of said North Half of the Northeast Quarter and lying Northwesterly of the following described line: Commencing at the Southeast corner of said North Half of the Northeast Quarter; thence North 00 degrees 25 minutes 31 seconds East along the East line of said North Half of the Northeast Quarter a distance of 237.0 feet to the point of beginning; thence South 62 degrees 53 minutes 17 seconds West a distance of 43.79 feet; thence North 89 degrees 56 minutes 20 seconds West parallel with the South line of said North Half of the Northeast Quarter a distance of 348.18 feet; thence South 00 degrees 25 minutes 31 seconds West parallel with the East line of said North Half of the Northeast Quarter a distance of 217.00 feet to the South line of said North Half of the Northeast Quarter and there terminating.

AND

That part of Government Lot 1, Section 12, Township 32, Range 25, Anoka County, Minnesota, which lies South of the South line of the North 611.00 feet and North of the North line of the South 237.00 feet, both measured along the West line of said Government Lot 1, Except that part platted as Brook View Estates.

Have caused the same to be surveyed and platted as OSHAUGNESSY ADDITION and do hereby dedicate to the public for public use the public way and the drainage and utility easements as shown on this plat.

In witness whereof said Timothy E. O'Shaugnessy and Corrin M. O'Shaugnessy, husband and wife, have hereonto set their hands this _____ day of _____, 20____.

SIGNED:

Timothy E. O'Shaugnessy

Corrin M. O'Shaugnessy

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 20____ by Timothy E. O'Shaugnessy and Corrin M. O'Shaugnessy, husband and wife.

Notary Public, _____ County, Minnesota
My Commission expires _____

I Joshua P. Schneider do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 20_____.

Joshua P. Schneider, Licensed Land Surveyor
Minnesota License Number 44655

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me this _____ day of_____, 20_____ by Joshua P. Schneider.

Notary Public, _____ County, Minnesota
My Commission expires _____

City Council, City of Ramsey, Minnesota

This plat of OSHAUGNESSY ADDITION was approved and accepted by the City Council of the City of Ramsey, Minnesota at a regular meeting thereof held this _____ day of _____, 20____, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council, City of Ramsey, Minnesota

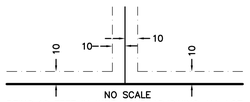
By _____ Mayor By _____ Clerk

COUNTY SURVEYOR

I hereby certify that in accordance with Minnesota Statutes, Section 505.021, Subd. 11, this plat has been reviewed and approved this _____ day of_____, 20_____.

Larry D. Holum
Anoka County Surveyor

DRAINAGE AND UTILITY EASEMENTS SHOWN THUS:



BEING 10 FEET IN WIDTH AND ADJOINING ALL LOT LINES, UNLESS OTHERWISE SHOWN ON THE PLAT.

- Denotes Anoka County Cast Iron Monument.
- ● Denotes Found Iron Monument
- ○ Denotes 1/2 inch by 14 inch iron monument set and marked by L.S. No. 44655.

For the purposes of this plat, the north line of the North Line of NE 1/4 of Sec. 11, T. 32, R. 25, Anoka County, Minnesota is assumed to bear North 89 degrees 49 minutes 40 seconds East.

NORTH
0 100
(IN FEET)
1 inch = 100 ft.

NORTH LINE OF NE 1/4 OF SEC. 11, T. 32, R. 25 — N89°49'40"E

S89°49'40"W 285.65

N 1/4 CORNER OF SEC. 11, T. 32, R. 25 (FOUND CIM)

246.71 R=2007.46 Δ=06°54'15"

611.02

611.0

S06°54'32"E 367.37

N00°24'59"E

NORTH HALF

UNPLATTED

TOWNSHIP 32

EAST LINE OF NE 1/4 OF SEC. 11, T. 32, R. 25

MEADOWBROOK

SOUTH LINE OF THE NORTH 611.00 FEET OF THE NORTH HALF OF THE NE 1/4

N89°49'40"E 2291.06

SOUTH LINE OF NORTH 611.0 FEET OF GOV'T LOT 1

S89°26'33"E 229.42

N89°49'40"E 349.15

60

ST. FRANCIS BLVD

WEST LINE OF NE 1/4 OF SEC. 11, T. 32, R. 25

CENTERLINE OF ST. FRANCIS BOULEVARD (ST. TRUNK HWY. NO. 47) (PER THE PLAT OF FOX RIDGE ESTATES)

33.23 33 ST. FRANCIS BLVD (STATE TRUNK HWY NO. 47)

N06°54'32"W 713.41 ST. TRUNK HWY NO. 47

1231.77

10.0

1026.06

NE 1/4

LOT 1, BLOCK 1

OUTLOT A

708.68

SOUTH

SECTION 11

SECTION 12

GOV'T LOT 1

GERMANIUM ST.

N00°11'53"E 471.47

66

EDGE OF BROOK VIEW ESTATES

PARK

BROOK VIEW ESTATES

S89°32'13"E 229.42

(POB)

348.18
S89°50'13"W
(DEED=N89°56'20"W)

217.02
S00°11'53"W
(DEED=S00°25'31"W)

UNPLATTED

(DEED=N00°25'31"E)
N00°11'53"E
237.00

43.79
S62°39'30"W
(DEED=S62°53'17"W)

237.0

NORTH LINE OF SOUTH 237.0 FEET OF GOV'T LOT 1

APPROXIMATE NORTHERN STATES POWER COMPANY EASEMENT (SCALED FROM ANOKA COUNTY HALF SECTION MAP)

1145.95

636.59

1815.77
S89°50'13"W

SOUTH LINE OF THE NORTH HALF OF THE NE 1/4 OF SEC. 11, T. 32, R. 25

SE CORNER OF THE NORTH HALF OF THE NE 1/4

ACRE LAND SURVEYING
Blaine, MN 55449

CITY OF RAMSEY LAND USE APPLICATION
TECHNICAL REVIEW FILE

DATE	JANUARY 3, 2014
PROJECT TITLE	OSHAUGHNESSY ADDITION
ESCROW #	113966
DEPARTMENT:	Planning
TECHNICAL REVIEWER:	Name: Tim Gladhill Phone: 763-576-4308 Email: tgladhill@ci.ramsey.mn.us

We offer the following comments regarding your request for a Preliminary Plat for Oshaughnessy Addition:

General: The applicant is requesting Sketch Plan Review of Oshaughnessy Addition. This plat is located on the site of the former Wirz Nursey, located at 17201 Saint Francis Boulevard. The Sketch Plan contemplates the creation of one (1) new buildable lot. The existing parcel has an existing primary structure that will become an accessory structure to a planned primary dwelling. The Plat would create an outlot for the remainder of the Property, intended for potential future development. The Application has been forwarded to the Minnesota Department of Transportation, as it is located adjacent to Trunk Highway #47.

The proposed plat is consistent with the Comprehensive Plan, which guides this area as rural residential style development (Rural Developing).

Setbacks: Required	Proposed:
Front yard: 40 feet	Meets/Exceeds Minimum
Side yard: 10 feet	Meets/Exceeds Minimum
Rear yard: 40 feet	Meets/Exceeds Minimum
Minimum Lot Size: 2.5 acres	Meets/Exceeds Minimum
Minimum Lot Width: 200 feet	Meets/Exceeds Minimum

**Note: Minimum Lot Width is measured at front yard setback (40 feet from front property line), not front property line, nor at curb line.*

It appears that the proposed Plat meets or exceeds minimum standards required by City Code related to the above.

Land Use and Zoning: The site is guided LDR on the Comprehensive Plan and zoned R-1, Rural Developing. The minimum lot size in the R-1, Rural Developing zone is 2.5 acres. Each of the proposed lots meets the minimum lot size. *Applicant shall provide total acreage of the proposed preliminary plat.*

Net Density Calculations. The Applicant has provided gross acreage, as well as net acreage. Net acreage is calculated by subtracting wetlands and rights of way from the gross acreage. The Applicant has also provided Net Density Calculations described as number of units per net acre. All calculations meet the minimum standards of City Code.

Landscaping: Two trees per dwelling unit are required. Deciduous trees shall be a minimum of one (1) inch caliper and evergreen trees shall be at least five (5) feet in height. *A landscape plan must be included*

with any Building Permit Application and include a planting schedule that identifies the common and scientific name, root stock and quantity for each proposed species.

- *A planting detail must be included with the landscape plan (another option is to incorporate the City's tree planting detail). At a minimum, it should state:*
    - *Planting depth shall be such that the 1st set of primary roots is at finished grade*
    - *Only prune out dead/broken/deformed branches at time of installation*
    - *Removal of upper portion of wire basket and burlap after being placed in planting hole if using B & B stock.*
    - *2-4 inches of wood chip mulch shall be included around all trees. Mulch shall not be piled against the trunk of trees.*

Density Transitioning: Due to the size of the proposed lots and the adjoining properties' zoning, density transitioning is not required.

Tree Preservation: A detailed tree inventory shall be provided for all significant trees (defined below) within the limits of construction. If trees are intended to be protected from construction, and remain after construction, said trees need not to be inventoried, but appropriate indications on plans and tree save fence construction as outlined below. As there are no public roadways or public utilities being constructed with the Plat, a Certified Arborist is not required to complete the required Tree Inventory (Tree Inventory still needs to be completed). At least forty percent (40%) of the inches of existing significant tree DBH must be preserved on the overall site. The tree preservation plan shall include the following:

- *All oak trees and evergreen trees that are four (4) inches or greater in Diameter at Breast Height (DBH) and all other deciduous trees that are eight (8) inches in greater DBH shall be identified on the tree inventory (cumulatively referred to as significant trees).*
- *Inventory shall include species, DBH, tree condition, whether the tree will be preserved or remove, a tally of total significant tree DBH on site and how many DBH inches will be removed.*
- *Inventory shall also identify location of tree save fencing, which shall be installed at least at the drip line of individual trees or groups of trees and shall be in place prior to any grading or removal work begins.*

Topsoil: The newly created lot will need to have four (4) inches of topsoil meeting the City's topsoil specification across all disturbed areas not otherwise improved with walkways, driveway, and home. A topsoil inspection is required prior to landscaping being installed and copies of the load tickets are required as well. This is reviewed at time of Building Permit Application and request for Certificate of Occupancy for the newly created lots. *Note: any wetlands within the limits of construction will need to be delineated and marked so that the wetland boundary is evident. No topsoil or other fill is permitted within any wetland.*

Building Elevations: No architectural renderings of the proposed home was submitted. No enhanced architecture above the minimum City Code requirements of Section 117-111 (R-1 Residential District) is being proposed.

Streets: The Applicant is not planning on constructing additional public streets. The Applicant is proposing the construction of a new driveway, utilizing an existing connection to Saint Francis Boulevard. The request will need to be approved by the Minnesota Department of Transportation.

Sidewalks and Trails. No sidewalks or trails are being proposed with the Plat. The City's current policy is to require the construction of a public trail on both sides of State Roads. There are no connecting trails along Saint Francis Boulevard. Staff will be reviewing this requirement prior to review by the City Council.

Development Fee Calculations: Development Fees due on the Plat. These fees are attached hereto.

Grading and Drainage: Grading and Drainage Plans are not required for Sketch Plan Review; however, the Applicant did submit said plans. These plans will need to be approved prior to forwarding to the City Council for review.

Development Fees

City of Ramsey

2013 Residential Development Fee Calculator

	Units	Unit Type	Unit Price	Total	Notes
Park Dedication and Trail Development					
Park Dedication					
0-12 Units per acre; or	1	per unit	*$2,600*	$2,600	
12-19 Units per acre; or		per unit	*$2,289*	$0	7.5% Density Bonus
20+ Units per acre; or		per unit	*$2,104*	$0	15% Density Bonus
Assisted Living		per acre	*$4,738*	$0	
Trail Development	1	per unit	*$700*	$700	
Subtotal Park and Trail Development				***$3,300***	
Water and Sewer Fees					
Water Fees					
Trunk/Connection		per unit	*$1,558*	$0	
Lateral		per connection	*$6,143*	$0	If already constructed
Sewer Fees					
Trunk/Connection		per unit	*$1,099*	$0	
Lateral		per connection	*$3,328*	$0	If already constructed
Subtotal Trunk and Lateral				*$0*	
Accessibility Charges					
Accessibility Charge (WAC)		per SAC Unit	*$1,177*	$0	Collected with Building Permit
Accessibility Charge (SAC)		per SAC Unit	*$2,485*	$0	Collected with Building Permit
SAC Handling Fee		per address	*$25*	$0	Collected with Building Permit
**SAC is a Metropolitan Council Environmental Services (MCES) Fee; SAC Unit Determined by MCES*					
Subtotal Water and Sewer Fees				***$0***	
Stormwater Management Fees					
Stormwater Management		per unit	*$459*	$0	
Subtotal Stormwater Management				***$0***	
Street Light Fees					
Street Light Type					
Cobra; or		per light	*$1,300*	$0	
The COR		per light	*$2,600*	$0	
Three (3) Years Operating and Maintenance		per light	*$294*		
Subtotal Street Lights				***$0***	
Sureties and Inspection Fees					
Sureties (to ensure completion; returned when complete)					
Subdivisions/Plats (public improvements)		cost of improvement	*125%*	$0	Cash or Letter of Credit
Site Plans (private improvements)		cost of improvement	*150%*	$0	Cash or Letter of Credit
Subtotal Sureties				*$0*	
Engineering Inspection Fee		cost of improvement	*5%*	$0	Cash Escrow
Subtotal Surety and Inspection Fee				***$0***	
GRAND TOTAL FOR DEVELOPMENT FEES				**$3,300**	
GRAND TOTAL FOR ENGINEERING INSPECTION FEES				**$0**	**Separate from Building Permi**
GRAND TOTAL FOR SURETIES				**$0**	
GRAND TOTAL FOR SAC/WAC				**$0**	**Collected with Building Permi**

Regular Planning Commission **5. 2.**

Meeting Date: 01/09/2014

By: Chris Anderson, Community Development

Information

Title:

PUBLIC HEARING - Consider Ordinance #14-01 Amending City Code Section 117-114 (B-1 General Business District) to allow Indoor Commercial Recreation as a Conditional Use and Creating City Code 117-363 Establishing Performance Standards for Indoor Shooting Ranges; Case of Total Defense, Inc.

Purpose/Background:

The City has received a request from Total Defense, Inc. to allow an indoor shooting range at 6001 167th Ave NW, requiring an amendment to City Code Section 117-114 entitled B-1 General Business District. The effect of amending this section of City Code would impact all parcels within this zoning district. The topic of an indoor shooting range at this location has been discussed at the City level on multiple occasions over the past year, with preliminary indication of some support with the appropriate standards. Details of this review are include in the attached Statement of Goals. The B-1 General Business zoning district is intended to provide a commercial area for goods and services for the surrounding neighborhoods and community on a smaller scale than the B-2 Highway Business district.

Notification:

The Notice of Public Hearing was properly published in the City's official newspaper, the Anoka County Union. Additionally, City Staff attempted to notify all Property Owners within located within the B-1 General Business District and included an invitation to an Open House in advance of the Public Hearing to be held on January 9, 2014. Staff also attempted to hand-delivered notices of the Public Hearing to individual tenants within the 167th Avenue/Highway 47 retail node as well. Additionally, Staff attempted to notify all Property Owners within 700 feet of 6001 167th Ave NW of the Public Hearing via Standard US Mail.

Observations/Alternatives:

Over the past several years, the City has discussed various options to address permitted uses at the 167th Avenue/Highway 47 retail node, which is within the B-1 General Business District. This node has been a focus of City strategic goals due to high vacancy rates and concerns with property maintenance on some of the buildings. Expanding permitted and/or conditional uses would create greater opportunities for new businesses in this area. As part of a public engagement process, a Statement of Goals document was developed and adopted by the City in November of 2013 relating to the 167th Avenue/Highway 47 retail node. Outlined within that document is public input received through a collaborative process held on September 26, 2013 in which surrounding property owners identified, among other desired uses, a gun range.

An indoor shooting range could be categorized either as indoor commercial recreation or listed out specifically as indoor shooting range. Staff recommends classifying the proposed use as indoor commercial recreation, as this language would be consistent with language in other sections of City Code. Other types of uses classified as indoor commercial recreation could include, but is not limited to bowling alleys, laser tag, paint ball, etc. The B-2 Highway Business District as well as the E-1 and E-2 Employment Districts currently include Indoor Commercial Recreation as a permitted use. If the use were identified specifically as indoor shooting range, it would imply that this type of use would not be permissible in those other zoning districts.

The B-1 General Business District is generally more closely interrelated to residential uses then the other three (3) zoning districts listed above. Thus, identifying indoor commercial recreation as a conditional use would provide an additional layer of review to ensure compatibility with the surrounding residential uses. The Conditional Use

provides the City the ability to attach reasonable conditions if it mitigates reasonable concerns and provides an additional enforcement mechanism in the event of non-compliance. It should be noted that there is a wide spectrum of land use types and surrounding conditions within the B-1 General Business District. Major nodes located in the B-1 General Business District include 167th Avenue/Highway 47, River's Bend Plaza (Bunker Lake Boulevard/Highway 47), and Ramsey Towne Square (Bunker Lake Boulevard/Highway 47). Smaller nodes within this district include Alpine Drive/Highway 47, Alpine Drive/Nowthen Boulevard, Bunker Lake Boulevard/Sunfish Lake Boulevard, and Bunker Lake Boulevard/Ramsey Boulevard (undeveloped). While some of these nodes have larger, contiguous tracts of property and multiple retail users, others are single-user nodes intended to service the immediate surrounding area.

City Code already has standards in place for nuisances (noise, glare, odors, etc) and off-street parking requirements. Additionally, Minnesota Building and Fire Codes have standards in place regarding the construction, design, and ventilation requirements for shooting ranges as well as storage, handling, sale or use of ammunition. In order to maximize the effectiveness of enforcing these codes, Staff has developed some minimum standards for incorporation into City Code specifically for indoor shooting ranges. A conditional use permit could then include additional reasonable conditions, if necessary, depending on the specifics of a request/proposal.

Alternatives/Options

Option #1: Recommend that the City Council adopt Ordinance #14-01 Amending City Code Section 117-114 Allowing Indoor Commercial Recreation as a Conditional Use in the B-1 General Business District and Creating City Code Section 117-363 Establishing Performance Standards for Indoor Shooting Ranges as drafted. *This would expand the allowable uses within the B-1 General Business District. This would address comments received from Property Owners within the retail node and adjacent residents that participated in the citizen engagement process. Allowing additional allowable uses may help reduce vacancy rates in the 167th Avenue/Highway 47 retail node area, while maintaining consistency with language in other zoning districts. As previously noted, the B-1 General Business District is generally more closely interrelated to adjacent residential uses. Thus, maintaining the public input process via a public hearing for a conditional use permit, would help address and potentially mitigate questions and/or concerns that may be raised prior to this use commencing.*

Option #2: Recommend that the City Council adopt an amended Ordinance #14-01 Amending City Code Section 117-114 Allowing Indoor Commercial Recreation as a Permitted Use in the B-1 General Business District and Creating City Code Section 117-363 Establishing Performance Standards for Indoor Shooting Ranges. This *would permit Indoor Commercial Recreation 'by-right' in this zoning district (including indoor shooting ranges, bowling alleys, laser tag, indoor playing fields etc.) and would become an administrative process. There would be opportunity for due process for those individuals in opposition; however, this due process would be reactionary in nature versus proactive. Due to the nature of the B-1 General Business District (typically neighborhood scale retail), maintaining the formal review process to ensure that the proposed use would not be in conflict with the intent of the B-1 General Business District could be beneficial. However, if the Planning Commission prefers the use as a Permitted Use, Staff would suggest that a standard be incorporated into the proposed City Code Section 117-363 (Indoor shooting range) that would require a City license to operate an indoor shooting range. Thus, if there were issues with how the facility were being operated or concerns with the quality of owner, the City would retain the ability to revoke the license if necessary.*

Option #3: Recommend that the City Council adopt an amended Ordinance #14-01 Amending City Code Section 117-114 Allowing Indoor Commercial Recreation as a Conditional Use in the B-1 General Business District as an Overlay District and Creating City Code Section 117-363 Establishing Performance Standards for Indoor Shooting Ranges. An overlay district would allow the current zoning of the property to remain but would allow for an expansion of uses only within the overlay district (specific to the 167th Avenue/Highway 47 retail node). *Even though this option would assist with expanding uses within this distressed retail node, it is Staff's opinion that this would add complexity overall to the Zoning Code and that it would be more desirable to either view the use as a conditional or permitted use with appropriate performance standards to ensure compatibility with the surrounding area in all of the B-1 General Business District or not at all.*

Option #4: Recommend that the City Council deny Ordinance #14-01 Amending City Code Section 117-114 Allowing Indoor Commercial Recreation as a Conditional Use in the B-1 General Business District and Creating City Code Section 117-363 Establishing Performance Standards for Indoor Shooting Ranges. *As long as indoor commercial recreation is a conditional use, the City retains the ability to review individual requests on a case by case basis. Furthermore, with a conditional use permit, the City can apply reasonable conditions to mitigate potential concerns or deny a request if it does not seem consistent with the intent of the B-1 General Business District and thus, Staff does not support this option.*

Funding Source:

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

Recommendation:

City Staff recommends approval of Ordinance #14-01 Amending City Code Section 117-114 Allowing Indoor Commercial Recreation as a Conditional Use in the B-1 General Business District and Creating City Code Section 117-363 Establishing Performance Standards for Indoor Shooting Ranges (Alternative #1).

Action:

Motion to recommend that the City Council adopt Ordinance #14-01 amending Section 117-114 (B-1 General Business) to include Indoor Commercial Recreation as a Conditional Use and creating Section 117-363 establishing performance standards for Indoor Shooting Ranges.

Attachments

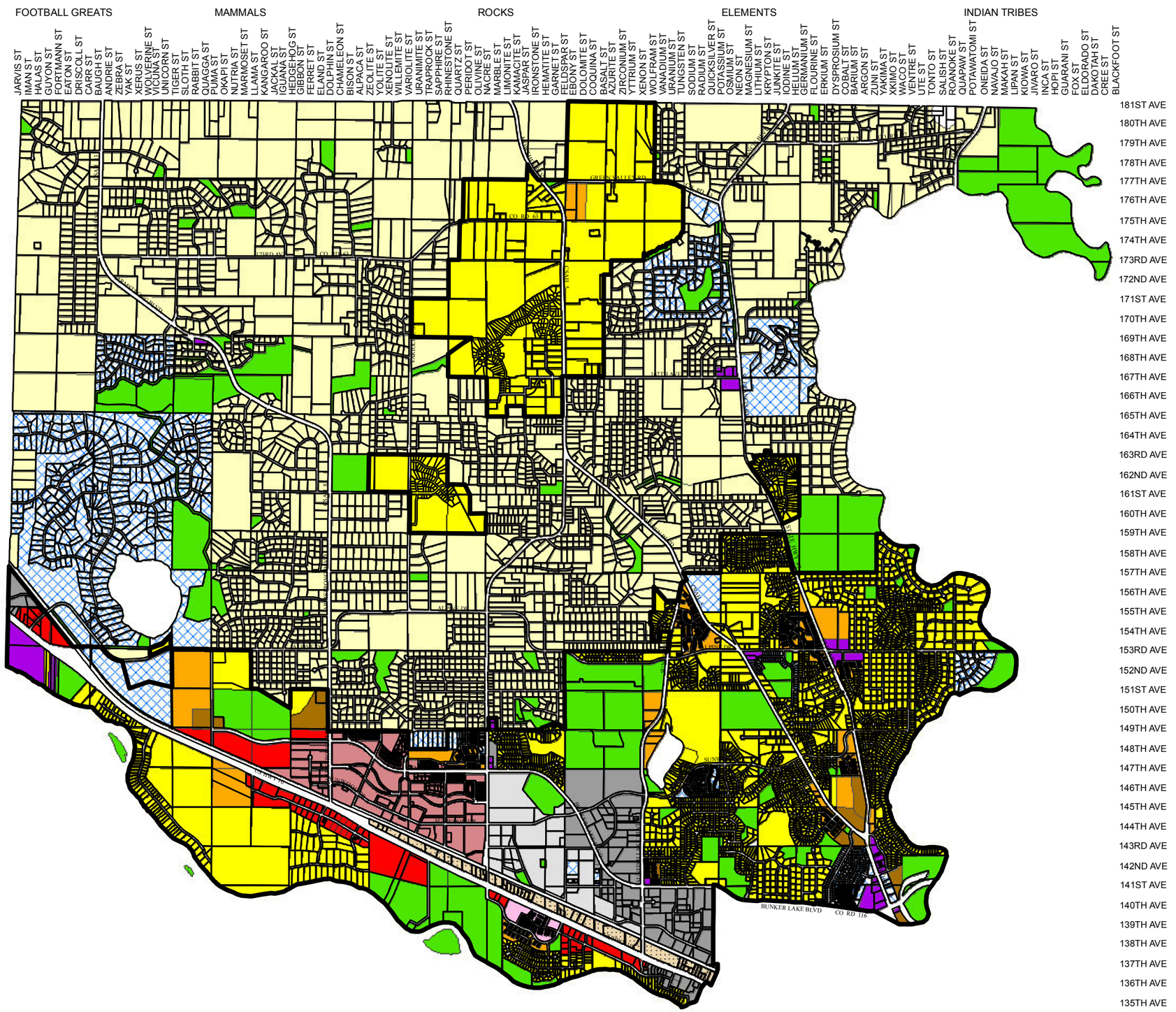
Zoning Map

Adopted Statement of Goals for 167th Retail Node

Proposed Ordinance #14-01

Form Review

Inbox	Reviewed By	Date
Jim Way	Jim Way	01/02/2014 01:54 PM
Tim Gladhill	Tim Gladhill	01/02/2014 04:33 PM
Form Started By: Chris Anderson		Started On: 12/30/2013 09:35 AM
Final Approval Date: 01/02/2014		



Official Zoning Map

- Parcels
- 2030 MUSA

Zoning

- No Designation

Zoning

- R-1: Rural Developing (outside MUSA)
- R-1: MUSA
- R-2: Medium-Density Residential
- R-3: High-Density Residential
- B-1: Business District
- B-2: Business District
- H-1: Business District
- E-1: Employment District
- E-2: Employment District
- MU-PUD: Mixed-Use, Planned Unit Development
- PUD: Planned Unit Development
- COR: The COR
- P: Public/Quasi-Public District

Update: March 2011
Update: April 2011
Amendment: September 2011

N

0 0.5 1 Miles

City of Ramsey

STATEMENT OF GOALS: 167TH AVENUE AND TRUNK HIGHWAY 47 RETAIL NODE

BACKGROUND

The retail node located at 167th Avenue and Trunk Highway 47 has been a topic of discussion with City Councils and EDA boards for several years ("167/47 Node"). The 167/47 Node has struggled to become economically viable for some time, is experiencing high vacancy rates, an increase of blighted building conditions and escalating crime.

The City has received a significant number of inquiries from property and business owners located in the 167/47 Node from 2012 to 2013 requesting assistance to address concerns. Additionally, the City of Ramsey owns an inventory of real property located adjacent to the 167/47 Node totaling 16.52 acres. Said property was identified as surplus City owned land in 2012 and is available for sale.

The EDA, Planning Commission and City Council have expressed interest in addressing the 167/47 Node.

PURPOSE

Guide City participation in the redevelopment of the 167/47 Node; and, specifically identify a common goal, vision, working parameters and garner public input.

The desired outcome of this document is to develop a clear, consistent, transparent and fair process the City, prospective developers, property owners and Staff can rely on as proposals are received. The Ramsey Economic Development Authority (EDA) shall act as first point of contact for City in relation to the 167/47 Node by utilizing this Statement of Goals.

Note: The City Council makes all final policy decisions; which may deviate from this document. This document is not a legally binding agreement.

GOAL

To improve and/or remove blight from *properties-of-concern* and encourage sustainable market-driven redevelopment of the 167/47 Node that will benefit the entire City of Ramsey.

Please reference Appendix A: Primary Area of Concern.

VISION

A mixture of residential and retail uses. Residential users may include single family residential, townhomes, or senior living units as directed by the market. Retail will include a market driven neighborhood commercial node. Redevelopment of the 167/47 Node should include a connection to Elmcrest Park and/or nearby trails where feasible.

PARAMETERS

Listed below are a number of parameters intended to develop a clear, consistent, transparent and fair process the City, prospective developers, property owners and Staff can rely on as proposals and inquiries are received.

A. CITY LAND ACQUISITION: The City does not support purchasing property to redevelop the 167/47 retail node.

B. MARKETING: The Ramsey EDA does support facilitating a professional marketing package for the 167/47 retail node to entice redevelopment/investment; which would include:

I. Information matrix: asking prices, County valuations, tax information, utility information, ownership buy-in, maps, current zoning information, future land use information, etc.

II. An inventory of what City and State financial assistance options exist for a potential redevelopment project.

III. List of desirable uses (i.e. retail and wide range of residential); and, other allowable uses (i.e. compatible to surrounding residential)

IV. Professional material developed in partnership with the City and proactively marketed by a third party broker. Broker will be chosen by ownership group.

V. Marketing material shall be paid for by the ownership group. The Ramsey EDA is willing to considering financially contributing to this effort.

C. ZONING:

I. The City would support a Comprehensive Plan and Zoning Amendment to allow retail or residential (of the appropriate density that balances compatibility of the surrounding area and market viability) land uses at 167/47 Node.

II. The Planning Commission will review requests for additional Permitted or Conditional Uses.

D. CITY FINANCIAL ASSISTANCE:

I. *AVAILABLE TOOLS:*
The City has a number of financial assistance programs potentially available for qualified projects; including

1. Redevelopment Tax Increment Financing District (TIF)
2. Tax Abatement
3. EDA Revolving Loan Fund (RLF)
4. Anoka County HRA Account
5. State Redevelopment Grant and Loan Program
6. Land Write Down (City Owned Parcels)

The City will consider all financial assistance programs listed above only for projects that directly address existing blighted properties; see Appendix A: Primary Area of Concern.

Utilization of financial assistance requires completion and approval of a Business Subsidy Application by the Ramsey EDA and City Council. Consideration will be based on the merits of an individual project and community benefit.

II. EDA REVOLVING LOAN FUND (RLF)

Upon adoption of this Statement of Goals, the Ramsey EDA will review alternatives to utilize the City's existing Revolving Loan Fund (RLF) to stimulate cleanup and revitalization of the 167/47 Node. This *may* include, but is not limited to the following:

i. Storefront Matching grants to help encourage/spark the 'clean-up' or improved 'curb-appeal' of properties. For example, a matching grant with a $10,000 maximum City contribution.
ii. Revitalization Loan Program: low interest loans that are tied to revitalizing properties to a marketable condition.

NOTE: the City has about $275,000 available for these types of programs. This effort would require the creation and adoption of new program polices.

III. PEDESTRIAN UNDERPASS

It has been requested, for the City to consider funding a pedestrian underpass to connect the east and west side of MN trunk Highway 47. A pedestrian underpass would increase public safety, enhance connectivity to and from Elmcrest Park and increase foot traffic to retail businesses.

At this point, the City will not pre-commit a specific funding source, or specific dollar amount, to a pedestrian underpass. The City would react to this specific request at the time of future development; and, would base their response on the merits of a project—and the value it will bring to the community. Examples of potential funding solutions below:

i. Cost Share Agreement with developer (most desired)
ii. Redevelopment TIF District proceeds
iii. Grant Programs (various)
iv. Park/Trail Dedication Fees (from 167/47 area, new development)
v. Land Write Down Contribution (city owned parcels)
vi. Anoka County HRA Account

NOTE: When future development occurs, the City will consider methods beyond a pedestrian underpass for increasing safety at the 167/47 intersection.

IV. SEWER TRUNK FUND

The 167/47 Node is not currently connected to City sanitary sewer service. Extending sanitary sewer service to this node will make properties more attractive for future development and will provide existing property owners with an alternative to the use of septic tanks.

Presently, the City of Ramsey is not willing to *fully* fund a special sanitary sewer service line to the 167/47 Node. However, if a property owner (or developer) was willing to share the cost of extending sewer service, the City would be willing to discuss an agreement.

NOTES:
The cost of extending a special 8" force main sanitary sewer line to the 167/47 Node is estimated to be $1.5M. It is estimated, at full build out, the special 167/47 Node sewer trunk line would recapture $500,000-$750,000 in sewer trunk fees (based on 2012 adopted sewer trunk fees). Therefore, a shortfall of $750,000-$1M in funding would occur.

Additionally, extending an undersized, special, sanitary sewer line to the 167/47 node may result in extra costs (in the long run) if the City ever decided to serve the north east portion of the Ramsey with sanitary sewer service.

Today, the City does have sufficient trunk fund dollars to pay for the 167/47 Node special sanitary sewer line. However, the City is planning for sanitary sewer service in three other future growth locations in Ramsey. Unlike the 167/47 Node, said areas do have sufficient forecasted development capacity to fully recapture the cost of proposed future sanitary sewer trunk lines.

PUBLIC INPUT:
Two levels of public input were critical to this Statement of Goals: (A) Primary Property Owners; and (B) Surrounding Property Owners.

A. Primary Property Owners:
Primary property owners are outlined in Appendix B.

The City does support facilitating an ownership meeting group to brainstorm options, share information and to investigate opportunities for redevelopment and additional uses that are compatible with the surrounding residential area. This effort will be led by the Economic Development Authority (EDA).

The City desires a consistent, collaborative approach with a single voice amongst all property owners. Several separate messages per individual property owner is not a desired nor effective approach.

The City has received direction from surrounding property owners to market the entire 167/47 Node as an opportunity to developers—rather than only marketing properties individually. Through the EDA, the City will explore options to support a joint marketing effort for the 167/47 Node.

B. Surrounding Property Owners:
On September 26, 2013, the City of Ramsey hosted a collaborative public process with residents to discuss opportunities and barriers for redevelopment of the 167/47 Node. The intent of this process was to garner general public input before specific development proposals were crafted and reviewed by the City; and, before this Statement of Goals was adopted. The planning and facilitation of this public input process was led by the Planning Commission. 232 nearby property owners were invited via direct mailing, 26 participants registered and staff estimates over 30 people attended.

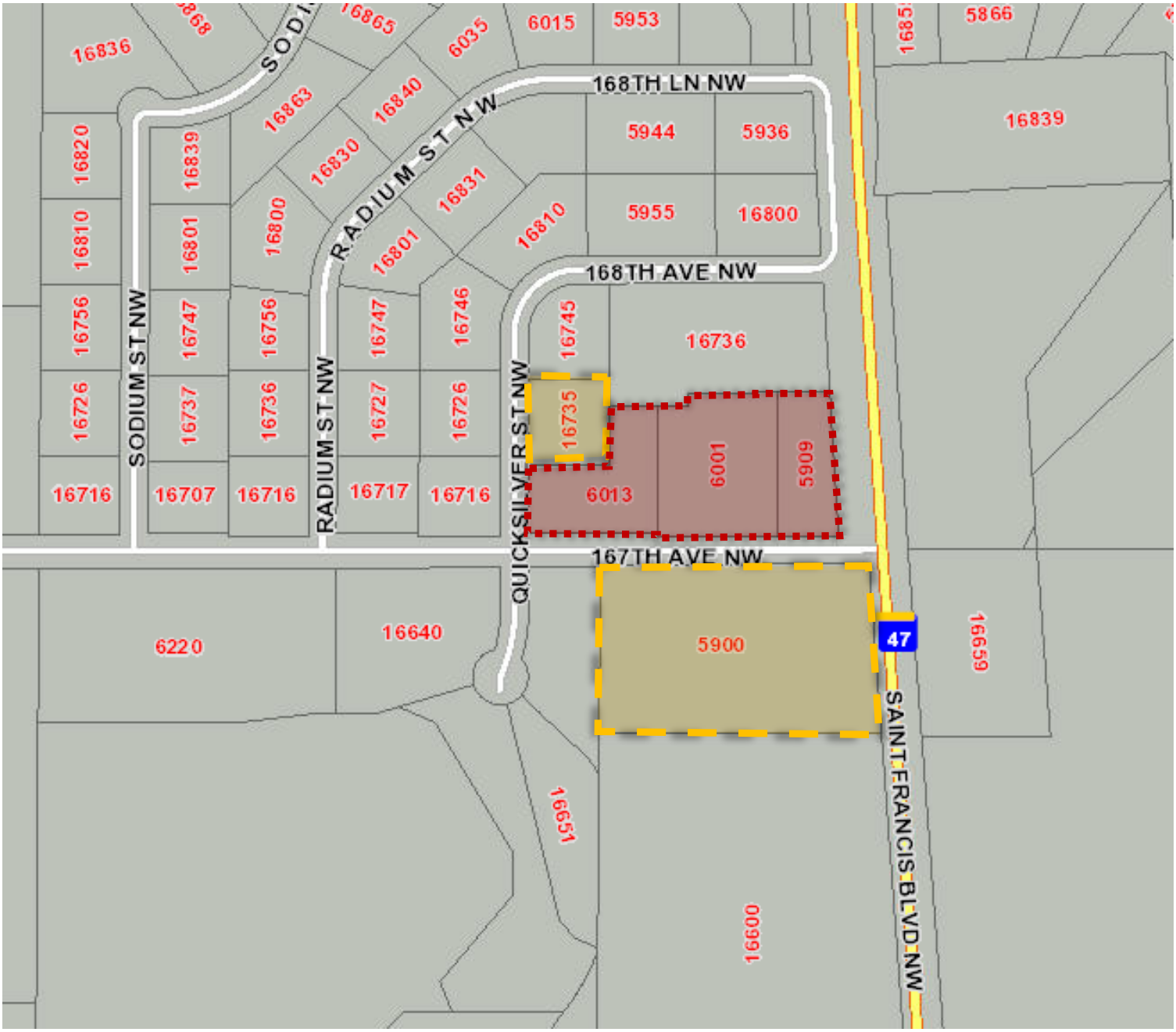
The following summarized public input was received:

I. PUBLIC UN-DESIRED USES
- Manufacturing
- Warehousing (in most cases)
- High density housing

II. PUBLIC DESIRED USES/IMPROVEMENTS
- Grocery store, coffee shop, convenience store, gun range, bar/lounge, hardware store, restaurant
- Anchor businesses
- Single family homes, retirement homes
- Townhomes are acceptable (in most cases)
- City support, light at intersection, address septic/sewer
- More rooftops and population needed

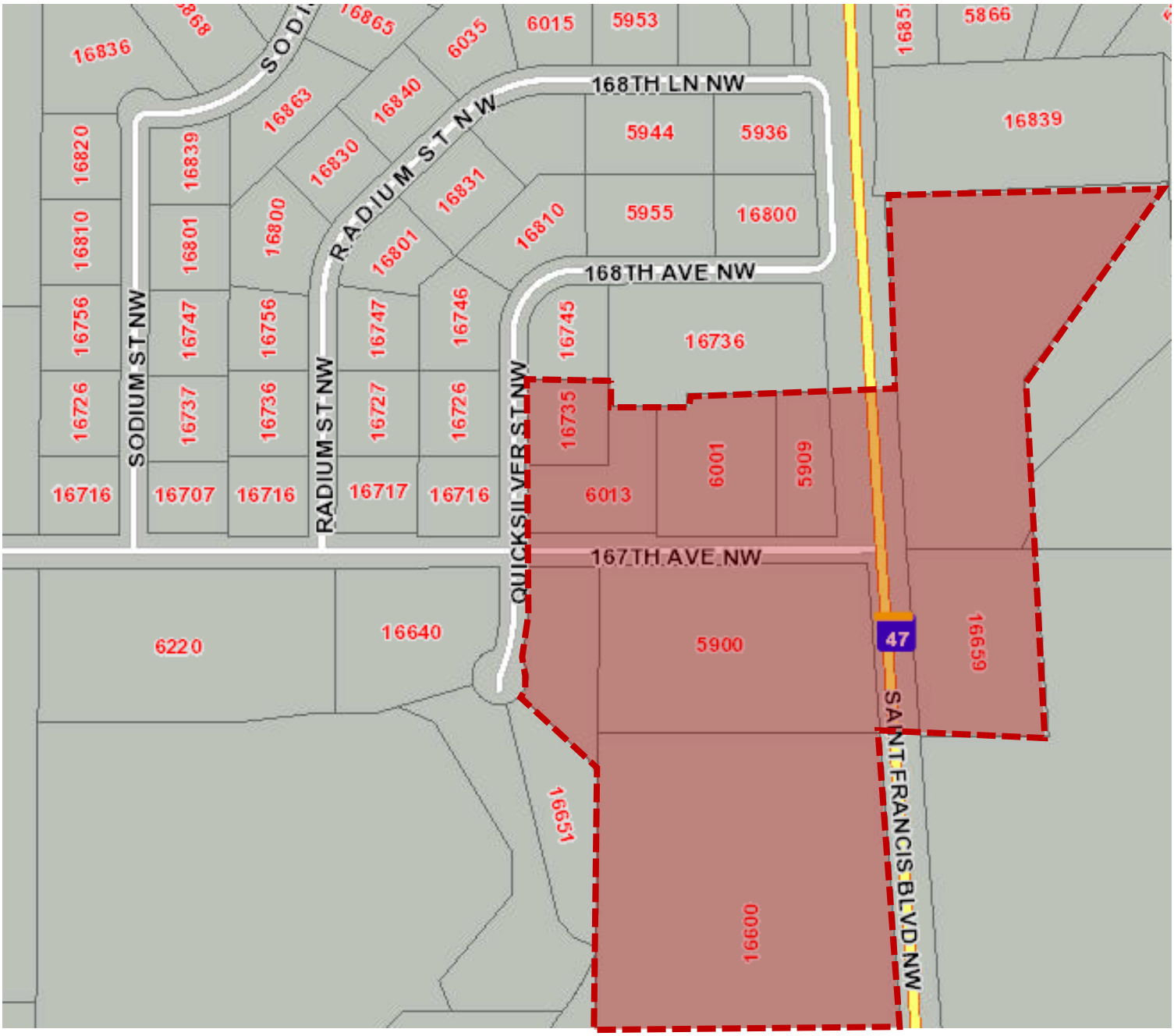
APPENDIX A

RED [Sort Dash]: Primary Area of Concern
YELLOW [Long Dash]: Secondary Area of Concern



APPENDIX B

RED [Sort Dash]: Primary Property Owners



ORDINANCE #14-01

CITY OF RAMSEY

ANOKA COUNTY
STATE OF MINNESOTA

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

AN ORDINANCE AMENDING CITY CODE SECTION 117-114 (B-1 GENERAL BUSINESS DISTRICT) AND ADDING CITY CODE SECTION 117-363 TITLED "INDOOR SHOOTING RANGES"

The City of Ramsey Ordains:

SECTION 1 AUTHORITY

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

SECTION 2 AMENDMENTS

Section 117-114 is hereby amended to include the following (additions indicated as underline, deletions indicated as ~~strike-through~~):

(c) Conditional uses.
- (1) Animal clinics and outside small animal boarding facilities.
- (2) Commercial carwashes (drive through, mechanical, self service).
- (3) Convenience gas (no vehicle service or repair).
- (4) Day care centers.
- (5) On-sale liquor.
- (6) Uses with drive through service.
- (7) Oversizing of signs.
- (8) Expansion or enlargement of lawful nonconforming uses.
- (9) Cell towers.
- (10) Micro-scale WECS.
- (11) Medium-scale WECS.
- (12) Indoor commercial recreation.

Sec. 117-363. – Indoor shooting range.

(a) Indoor shooting ranges shall be considered as indoor commercial recreation.
(b) Any indoor shooting range shall at all times comply with Chapter 30 (Nuisances) of this City Code.
(c) There shall be no outside storage associated with an indoor shooting range.
(d) Outdoor garbage receptacles shall be screened from public view and adjacent lots.

(e) All firearms not in use in firing range lanes/stalls shall be unloaded and properly cased at all times in accordance with Minnesota laws.
(f) Any indoor shooting range shall be constructed in accordance with federal, state and local building codes related to shooting ranges.
(g) Any indoor shooting range shall be equipped with a ventilation system that filters out potential lead contaminants prior exhausting to the exterior of the building.
(h) Hours of operation for any indoor shooting range shall be negotiated through the conditional use permit process and incorporated as a condition of said permit.

SECTION 3. SUMMARY

The following is the official summary of Ordinance #14-01, which has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance.

It is the intent and effect of Ordinance #14-01 to amend Ramsey, Minnesota City Code Section 117-114 to identify indoor commercial recreation as a conditional use and to add Section 117-363 outlining minimum required standards for an indoor shooting range.

SECTION 4. EFFECTIVE DATE

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

Adopted by the Ramsey City Council the XXX day of XXXXXX, 2014.

_____
Mayor

ATTEST:

_____
City Clerk

Introduction Date:
Posting Dates:
Adoption Date:
Publication Date:
Effective Date:

Regular Planning Commission **5. 3.**

Meeting Date: 01/09/2014

By: Chris Anderson, Community Development

Information

Title:

PUBLIC HEARING - Consider Resolutions #14-01-005 and #14-01-006 Approving a Request for a Conditional Use Permit to Allow an Indoor Shooting Range at 6001 167th Ave NW; Case of Total Defense, Inc.

Purpose/Background:

The City has received an application from Total Defense, Inc. requesting a conditional use permit to operate an indoor shooting range on the property located at 6001 167th Ave NW (the "Subject Property"). Total Defense, Inc. has also submitted a Zoning Amendment application to amend the B-1 General Business zoning to identify indoor shooting range as a conditional use, which is being processed concurrently with this application.

Notification:

Staff attempted to notify all Property Owners within 700 feet of the Public Hearing. A Public Notice was also advertised in the Anoka Union.

Observations/Alternatives:

Total Defense, is a Ramsey business currently operating at 14063 St. Francis Blvd NW. Their current operation has two components, retail (firearms, ammunition, accessories, and gunsmithing) and training (self-defense and martial arts). They are looking to relocate their business to 6001 167th Ave (the Subject Property), where they could expand their retail and training components and expand to offer an indoor shooting range as well.

The Subject Property is located within the B-1 General Business zoning district and is just over two (2) acres in size. The existing building (former Supervalu building) on the Subject Property is approximately 18,000 square feet in size and has been vacant for a number of years now. Properties to the west and south are also zoned B-1 General Business, the property to the north is zoned R-1 Residential (Rural Developing) and the property to the east (Rum River Hills golf course) is zoned PUD (Planned Unit Development).

Along with their retail and training offerings, Total Defense is proposing to install one (1) indoor shooting bay with ten (10) lanes and would, in the future, add a second indoor shooting bay with up to another ten (10) lanes. Secured access to the indoor shooting range would be through an industry standard dual door airlock entrance/exit that will not only control access to and from the indoor range but will also maintain sound and air quality in the retail and training areas of the building. Other security measures proposed include cement bollards around the main entrance (prevents a car from driving through entrance to gain access to firearms), barred and reinforced windows, motion/thermal/impact sensors connected to a monitoring service and a closed caption television system as well. Additionally, within the draft conditional use permit, there is a condition that requires all firearms not in use in the shooting range lanes/stalls to be unloaded and properly cased in accordance with Minnesota laws.

The indoor shooting range would essentially consist of a building constructed within the existing building. It will include eight (8) inch solid grout filled concrete masonry units (CMU) as walls, with air space and then the wall of the existing building, which consists of twelve (12) inch insulation filled cement blocks. The combination of the two walls should result in good noise buffering as well as bullet containment. The final construction design of the indoor shooting range would determine the permissible caliber limit.

Due to the nature of indoor shooting ranges, a good ventilation system is critical to move lead particulates away from the breathing zone of the shooters. Furthermore, the ventilation system is also critical to filter out these

particulates prior to exhausting to the exterior of the building. All three (3) of the range manufacturers that Total Defense is considering suggest that the ventilation/exhaust system be equipped with HEPA filtration, which captures the particulates prior to exhausting to the exterior of the building. Staff incorporated that standard into the draft Zoning Amendment that is being considered this evening as well.

As with any proposed use, the indoor shooting range will need to comply with Chapter 30 (Nuisances) of City Code, including the acceptable sound levels. Sound is measured in decibels and the readings would need to be made at the property of where the sound is being heard, not where it is generated. This would be applicable to not only the firing of guns within the indoor shooting range but also to the mechanical ventilation system as well.

There are at least seventy-one (71) parking stalls on the Subject Property, based on a review of aerial photographs. In determining the minimum required parking for the proposed use, Staff based the calculation entirely on a retail use (one space per 200 square feet of retail floor space). However, a large portion of the square footage of the building is excluded in the calculation as there would not be any persons within the shooting lanes themselves. A minimum of fifty (50) parking stalls must be maintained for the proposed use on the Subject Property, which does include the second bay, should it be constructed in the future.

As of the writing of this case, Staff has received two comments on the proposed use (both of which are attached). One supports the proposed use as long as all safety standards are met. The second is from an adjacent property owner concerned about potential impacts to one of his tenants, a child care center. Staff has reviewed state statutes and is not aware of any standard or requirement that would prohibit an indoor shooting range in close proximity to a child care center (although per State Statute 609.66 [Dangerous Weapons], it is unlawful for any person to knowingly possess, store or keep a dangerous weapon while knowingly on school property and a licensed child care center qualifies as school property for the purposes of that Statute). Staff did hand deliver a notice of the public hearing and open house to the child care center on December 31, 2013.

Alternatives/Options

Option #1: Recommend approval of the conditional use permit to operate an indoor shooting range on the Subject Property. The concept of an indoor shooting range was reviewed by the Planning Commission in January of 2013. The response at that time was mostly positive as this unique type of use might help draw traffic and new business to this struggling retail node. Additionally, nearby property owners that participated in a collaborative public process held in September of 2013 identified a shooting range as a desirable use for this site. There are standards in City Code to address noise, odors, and minimum parking requirements and the Building Code, Mechanical Code and Fire Codes have standards for the design and construction of indoor shooting ranges as well as for the storage, handling, sale or use of ammunition. Additionally, proposed use would be essentially in a building within a building, which should provide enhanced containment of both bullets and noise. Staff supports this option contingent upon the B-1 General Business district being amended to identify indoor commercial recreation as a conditional use.

Option #2: After reviewing the proposed conditional use permit and receiving input from the public hearing, identify additional conditions and/or findings related to the request and direct Staff to either incorporate those revisions prior to presenting the information to City Council or bring the revised documents back for Planning Commission review at a subsequent meeting.

Option #3: Recommend denial of the request. Based on the desire to see expanded uses in this retail node, the input received from the collaborative public process related to this retail node, and feedback received previously from the Planning Commission, Staff does not support this option.

Funding Source:

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

Recommendation:

Staff would recommend approving the request for a conditional use permit to operate an indoor shooting range at 6001 167th Ave NW contingent upon the adoption of a zoning amendment to identify indoor commercial recreation as a conditional use in the B-1 district and said ordinance becoming effective.

Action:

Motion to recommend that the City Council adopt Resolution #14-01-005 adopting Findings of Fact #0920 related to a request for a conditional use permit to operate an indoor shooting range at 6001 167th Ave NW

-and-

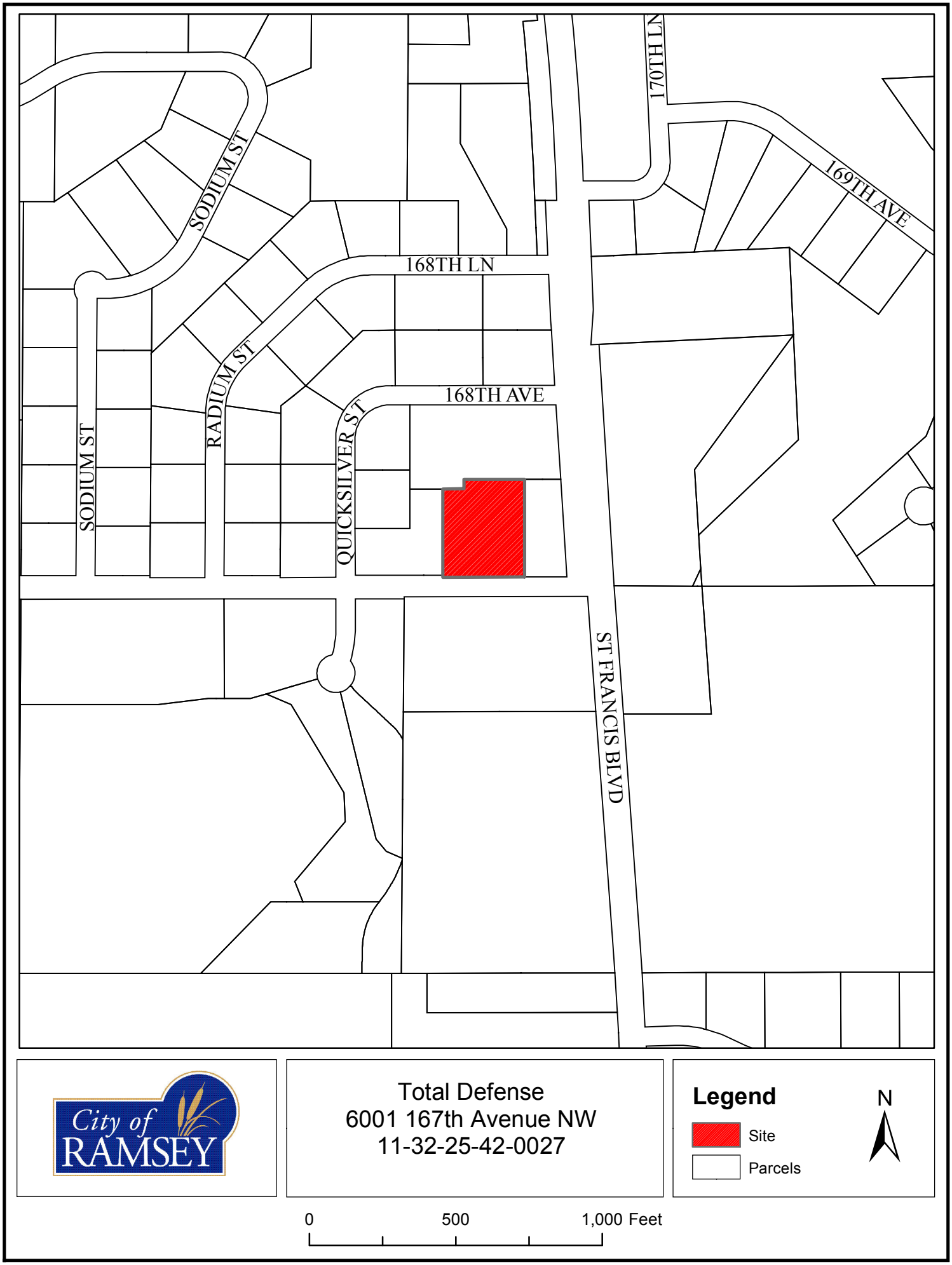
Motion to recommend that the City Council adopt Resolution #14-01-006 approving a conditional use permit to operate an indoor shooting range at 6001 167th Ave NW contingent upon a zoning amendment taking effect that identifies indoor commercial recreation as a conditional use in the B-1 General Business district and outlines minimum requirements for indoor shooting ranges.

Attachments

Site Location Map
Applicant Summary
Additional Information from Applicant
Proposed Layout
Public Comments Submitted by 1.2.14
Draft Findings of Fact
Draft Conditional Use Permit

Form Review

Inbox	Reviewed By	Date
Dean Kapler	Jo Thieling	01/03/2014 09:48 AM
Jim Way	Jim Way	01/03/2014 10:22 AM
Tim Gladhill	Tim Gladhill	01/03/2014 10:59 AM
Kurt Ulrich	JoAnn Shaw	01/03/2014 04:02 PM
Tim Gladhill	JoAnn Shaw	01/03/2014 04:03 PM
Form Started By: Chris Anderson		Started On: 12/31/2013 11:45 AM
Final Approval Date: 01/03/2014		


170TH LN
169TH AVE
SODIUM ST
168TH LN
RADIUM ST
168TH AVE
SODIUM ST
QUICKSILVER ST
ST FRANCIS BLVD
City of RAMSEY
Total Defense
6001 167th Avenue NW
11-32-25-42-0027
Legend
Site
Parcels
N
0
500
1,000 Feet

TOTAL DEFENSE
Firearms, Gear and Training

TOTAL DEFENSE ASPIRES TO BECOME A PREMIER "DESTINATION RETAIL SHOP" OFFERING A FULL SPECTRUM OF DEFENSE RELATED PRODUCTS AND SERVICES TO THE NORTHERN TIER SUBURBS OF THE MINNEAPOLIS / ST. PAUL METRO AREA. THE DEMAND AND NEED FOR SUCH AN INSTRUCTIONAL AND RECREATIONAL FACILITY IN THE RAMSEY GEOGRAPHICAL AREA HAS BEEN TOTALLY VALIDATED BY OUR CURRENT ENDEAVORS. THE BUSINESS NODE LOCATED OFF OF 167TH AVENUE IS IN NEED OF A STRONG, LONG-TERM ENTITY THAT CAN DEMONSTRATE CONTINUED "NEW" CUSTOMER TRAFFIC AND SUSTAINED GROWTH. WE FIRMLY BELIEVE TOTAL DEFENSE IS THAT BUSINESS.

BUILDING USE "SPECS"

- OVERALL BUILDING SIZE – 18,300 SQ. FT.
- OFFICE / CASH AUDIT AREA – 1000 SQ.FT.
- FLOOR PLAN CONSISTS OF :
  - RETAIL SHOWROOM SPACE – 3900 SQ.FT.
    - CLASSROOM (600 X 2) – 1200 SQ. FT.
      - MIXED MARTIAL ARTS/MAT AREA – 1520 SQ.FT.
        - FIREARM RANGE 1 (11 LANES) – 3750 SQ.FT.
        - FIREARM RANGE 2 (9 LANES) – 3072 SQ.FT.
          - ARCHERY RANGE – 1200 SQ.FT.
            - GUNSMITH AREA – 200 SQ.FT.
              - MISC. STORAGE / SUPPLIES – 2000 SQ.FT.

Hours of operation

Sunday = noon – 6pm

Monday = 9am – 9pm

Tuesday = 9am – 9pm

Wednesday = 9am – 9pm

Thursday = 9am – 9pm

Friday = 9am – 9pm

Saturday = 9am – 9pm

Noise levels

Typical speech – around 60 dba

Hair dryer – around 90-95 dba

Ambulance – around 125 dba

Gun shot – around 140-145 dba

Sound transmission class (STC)

FHA requires a minimum STC of 46 to limit sound transmission from unit to unit in multi-family dwellings.

8 inch concrete wall / both sides plain = STC of 45

This construction would consist of "building-within-building" double –leaf wall construction.

"12 inch wall – airspace – 8 inch wall"

Marty Fisher

From: Dan Wellman <dan.wellman@mntotaldefense.com>
Sent: Thursday, December 05, 2013 2:39 PM
To: Marty Fisher
Subject: Fwd: Noise Levels

Marty,

Here is the Sound Transmission Class numbers from the range we are "leaning" towards.....

Thanks - Dan

---------- Forwarded message ----------
From: **Ken** <Ken@shootingrangellc.com>
Date: Wed, Dec 4, 2013 at 9:30 AM
Subject: Noise Levels
To: Dan Wellman <dan.wellman@mntotaldefense.com>

Good Morning Dan,

Here is the info on noise levels.

NIOSH – they say at peak hours the DB levels are at 155 DB to 168 DB. Ear plugs reduce the sound by 24 DB and the ear muffs reduce the sound by 26 DB. They also say the noise from a weapon cannot exceed 140 DB. With the ear plugs and ear muffs the DB will be well below the 140 DB inside.

With a typical construction of 8" CMU solid grout filled, wood truss, R50 insulation in the ceiling you should be around 65 to 75 DB outside during firing.

The only way to measure the DB levels at the curb would have to be done with a meter. There are a lot of things that can reduce the noise level. Tree's, bushes, is your range behind your retail space. Normally the noise from the street is louder the range.

I hope this helps Dan.

Have a Great Day Dan

Ken Cadam

3885 Rockbottom St.

N. Las Vegas, Nevada 89030

ken@shootingrangellc.com

Total Defense

14063 St Francis Blvd

Ramsey, MN 55303

Re: Zoning Amendment and Conditional Use Permit Request

In response to the questions listed in the letter from December 17th, 2013;

A. Gunsmithing operations will include basic cleaning and repair of firearms, scope mounting, bore-sighting, sight installation, etc. Cleaning supplies used and kept on-site will be normal, off the shelf products available at many other retail stores such as Rem-Oil, Gunscrubber, CLP, etc. There will be no toxic or hazardous chemicals utilized in the gunsmithing operations, or stored on-site. Furthermore, no gunpowder to be kept on-site.

B. Total Defense will not purchase/sell or stock any black powder on the premises. Furthermore, there will be no firing of ANY black powder guns on-site.

C. We will not purchase, stock or sell any type of reloading supplies on-site.

D. FPS/velocity limiting factors are determined by the type/construction of the range installed. We are concerned with maintaining the integrity of our range and will be researching excluded calibers such as .50 BMG, and many of the hyper-velocity calibers from .284 caliber and larger.

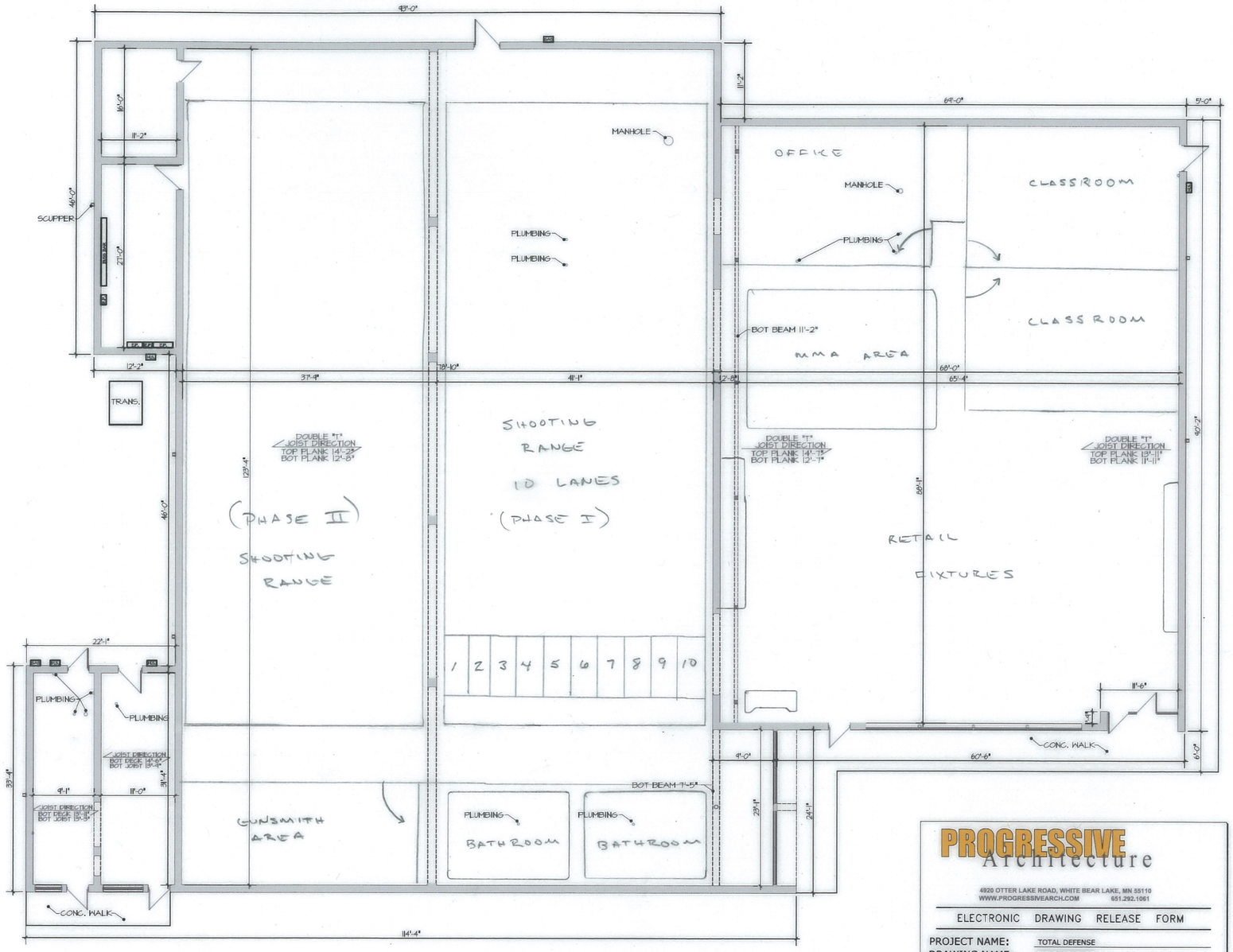
E. Regarding the exterior of the building, the first line of defense will be exterior lighting, steel doors throughout except the main entry which will have ram-proof concrete barriers installed. The only windows in the building will be barred and reinforced. All firearms will be maintained in locked cases or trigger-locked when on the floor. Interior security measure will be further enhanced via motion / thermal / impact sensors notifying a monitoring service if breached. A CCTV system will also capture any activity occurring on the property at all times.

   The shooting range will be constructed with an industry standard dual-door, air-lock entrance that maintains sound and air quality in the retail environment, while containing the aforementioned to the shooting range space.

If additional details or specifics are required regarding any topic, please feel free to contact me at any time. Thank you for your time and consideration.

Sincerely,

Dan Wellman



1 FIELD MEASURE

GENERAL FLOOR PLAN NOTES:

1. ARCHITECT TO VERIFY ALL DIMENSIONS AND LOCATIONS OF FIXTURES PRIOR TO COMMENCING WORK.

PROGRESSIVE Architecture
4920 OTTER LAKE ROAD, WHITE BEAR LAKE, MN 55110
WWW.PROGRESSIVEARCH.COM 651.292.1061

ELECTRONIC DRAWING RELEASE FORM

PROJECT NAME: TOTAL DEFENSE
DRAWING NAME: FIELD MEASURE
RECIPIENT'S NAME: TOM GONYEA
COMPANY NAME: LAND MN

PROGRESSIVE Architecture
4920 OTTER LAKE ROAD, WHITE BEAR LAKE, MN 55110
WWW.PROGRESSIVEARCH.COM 651.292.1061

REVISIONS:

No.	Description	Date

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

11.14.13 18826
SCOTT C. MOWER DATE LICENSE #

Project Number	GUNS
Date	11.14.13
Drawn By	KG

TOTAL DEFENSE

6011 167TH AVE
RAMSEY, MN

SCH

FIELD MEASURE

Chris Anderson

From: Tim Gladhill
Sent: Monday, December 30, 2013 1:22 PM
To: JoAnn Shaw; Chris Anderson
Subject: FW: Permit for shooting range- Yes

Tim Gladhill | tgladhill@ci.ramsey.mn.us
Development Services Manager
City of Ramsey | Community Development
P: 763-576-4308 | C: 763-482-4004 | F: 763-433-9848
7550 Sunwood Drive NW | Ramsey, MN 55303
www.cityoframsey.com

From: Brian Schmitz [mailto:drbrichiroguy@hotmail.com]
Sent: Monday, December 30, 2013 12:27 PM
To: Tim Gladhill
Subject: Permit for shooting range- Yes

Yes, please allow a permit for a shooting range in Ramsey.

As a business owner and believer in capitalism, I would never try to stop any business from operating, given all safety requirements are met.

There are no indoor shooting ranges in this area, and it would be a good draw for Ramsey.

That building could now be used for a productive, tax generating entity rather than sitting empty.

As a individual, I would personally go there and use it myself.

Yes to the indoor shooting range.

Thank you.

Brian

Dr. Brian Schmitz D.C.
14245 St. Francis Blvd. N.W., Suit 104, Ramsey, MN. 55303
Ph: 763-422-1525

Chris Anderson

From: Tim Gladhill
Sent: Tuesday, December 31, 2013 7:28 AM
To: Chris Anderson
Cc: JoAnn Shaw
Subject: FW: Country Crossing Mall
Attachments: RE: Country Crossing Mall

Let's discuss this morning. Perhaps we could hand deliver notices to tenants in the area?

Tim Gladhill

Tim Gladhill | tgladhill@ci.ramsey.mn.us
Development Services Manager
City of Ramsey | Community Development
P: 763-576-4308 | C: 763-482-4004 | F: 763-433-9848
7550 Sunwood Drive NW | Ramsey, MN 55303
www.cityoframsey.com

From: CFO on Call - Alex Bauer [mailto:alexbauer.cpa@juno.com]
Sent: Monday, December 30, 2013 8:52 PM
To: Ted LaFrance; Tim Gladhill
Cc: kirk_corson@msn.com
Subject: RE: Country Crossing Mall

Dear Tim,

Today I have received your notice regarding a hearing for the proposed use of 6001 167th Ave NW as an indoor shooting range.

I am the property owner adjacent to this property (6013-6023 167th Ave NW). I am very happy to see new economic activity in this area. After several years of high vacancies I have now been able to mostly rent my property, in large part by granting very affordable rates, far below my break-even costs.

Since my largest tenant is a day care center (6013 167th Ave NW) located directly next to 6001, I am concerned that parents and my tenant may feel uneasy about a shooting range next door. Given the shootings, including school shootings, we experienced lately, I believe this concern should not be underestimated.

While it appears that precautions are being taken to minimize risks associated with this business, I would greatly appreciate if Total Defense and/or the City would reach out to my tenant prior to granting approval for the proposed use.

I am very concerned loosing her as a tenant.

Regards,

Alex

Alexander Bauer, MBA, CPA, CMA, CFM
CFO on Call
Financial Navigation for Business

408 705 0934

Business, Financial & Tax Consulting for Your Business
www.cfooncallalexbauer.com

Please note: message attached

From: Ted LaFrance <TLaFrance@ci.ramsey.mn.us>
To: KIRK CORSON <kirk_corson@msn.com>, "alexbauer.cpa@juno.com" <alexbauer.cpa@juno.com>
Subject: RE: Country Crossing Mall
Date: Thu, 26 Dec 2013 18:26:58 +0000

How Cruise Lines Fill All Those Unsold Cabins?
(HINT: You will want to book a cruise after you read this...)
LifestyleJournal.com

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

RESOLUTION #14-01-005

A RESOLUTION ADOPTING FINDINGS OF FACT #0920 RELATING TO A REQUEST FOR A CONDITIONAL USE PERMIT TO OPERATE AN INDOOR SHOOTING RANGE

WHEREAS, on December 26, 2013, Total Defense Inc., hereinafter referred to as Applicant, properly applied for a conditional use permit to operate an indoor shooting range on the property generally known as 6001 167th Ave NW and legally described as follows:

Lot 2, Block 1 Muller Addition, Anoka County, Minnesota.

(the "Subject Property")

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

1. That the Applicant appeared before the Planning and Zoning Commission for a public hearing pursuant to Section 117-51 of the Ramsey City Code on January 9, 2014, and that said public hearing was properly advertised and that the minutes of said public hearing are hereby incorporated by reference.

2. That the Subject Property is approximately 2.08 acres in size.

3. That the Subject Property is located in the B-1 General Business zoning district.

4. That the adjacent parcel to the north is zoned R-1 Residential (Rural Developing) and the parcels east, west and south are all in the B-1 General Business zoning district.

5. That the Applicant has also submitted an application for a Zoning Amendment to amend the B-1 General Business zoning district to include indoor shooting range as a conditional use.

6. That the Applicant currently operates its retail and self-defense training business in Ramsey and wants to expand their operation to include an indoor shooting range.

7. That Java Enterprises LLC presently owns the Subject Property.

8. That the Applicant will construct a one (1) bay indoor shooting range with ten (10) lanes initially and if successful, would construct a second indoor bay with up to ten (10) additional lanes.

9. That the indoor shooting range would be constructed within the existing building on the Subject Property.

10. That the exterior walls of the existing building on the Subject Property consists of twelve (12) inch cement blocks filled with insulation and the indoor shooting range would consist

of eight (8) inch solid grout filled concrete masonry units (CMU) with air space between the two walls, providing additional sound buffering and bullet containment.

11. That the Applicant will be installing, at a minimum, the following security measures to protect against theft of guns: cement bollards around main entrance, barred and reinforced windows, motion/thermal/impact sensors connected to a monitoring service, a closed caption television system for additional monitoring and exterior lighting.

12. That all exterior lighting shall be positioned so as to deflect light away from adjacent properties and public roads.

13. That the Applicant will not purchase, sell or stock any black powder on the Subject Property.

14. That the Applicant has stated that there will be no firing of any black powder firearms on the Subject Property.

15. That the Applicant will not purchase, stock or sell any type of reloading supplies on the Subject Property.

16. That the construction design of the indoor shooting range will determine the permissible caliber limits.

17. That the indoor firing range will have a secured entrance/exit through an industry standard dual-door airlock system to maintain sound and air quality in the retail portion of the building.

18. That the hours of operation for the indoor shooting range shall be limited to Monday through Saturday from 9:00 a.m. to 9:00 p.m. and Sunday from 12:00 p.m. to 6:00 p.m.

19. That the Applicant has agreed to work with the Ramsey Police Department on a cooperative use agreement for training purposes.

20. That the Applicant shall comply with City Code Chapter 30 (Nuisances), including sound levels, at all times.

21. That the Applicant shall obtain and provide a copy of any other applicable permits and/or licenses from local, county, state and federal agencies.

22. That the Applicant shall operate the indoor shooting range in compliance with all local, county, state and federal standards relating to indoor shooting ranges.

23. That all firearms on the Subject Property not in use in the shooting range stalls/lanes shall be unloaded and properly cases at all times in accordance with Minnesota laws.

24. That there are seventy-one (71) parking stalls on the Subject Property.

25. That the Applicant shall maintain a minimum of fifty (50) parking stalls on the Subject Property at all times and shall comply with off-street parking standards outlined in Section 117-356 of the Ramsey City Code.

26. That the conditional use permit shall not be valid until such time that the Zoning Amendment identifying indoor commercial recreation as a conditional use in the B-1 General Business zoning district is in effect.

27. That the proposed use will/will not substantially increase traffic to and from the area.

28. That the proposed use will/will not be unduly dangerous or otherwise detrimental to persons working in the vicinity of the use, or to the public welfare.

29. That the proposed use will/will not be harmonious with and in accordance with the specific objectives of the Comprehensive Plan.

30. That the proposed use will/will not be designed, operated and maintained so as to be harmonious and appropriate in appearance with the existing character of the general vicinity and such use will/will not change the essential character of the area.

31. That the proposed use will/will not be a substantial improvement to the property in the immediate vicinity and to the community as a whole.

32. That the proposed use will/will not be served adequately by essential public facilities and services, such as highways, streets, police and fire protection.

33. 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.

34. That the proposed use will/will not involve uses, activities, processes, materials and equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

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

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this the 28th day of January, 2014.

Mayor

ATTEST:

City Administrator

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

RESOLUTION #14-01-006

A RESOLUTION APPROVING THE ISSUANCE OF A CONDITIONAL USE PERMIT TO OPERATE AN INDOOR SHOOTING RANGE IN THE B-1 GENERAL BUSINESS DISTRICT AND DECLARING TERMS OF SAME:

WHEREAS, Total Defense Inc. has properly applied for a Conditional Use Permit to operate an indoor shooting range on the property generally known as 6001 167th Ave NW and legally described as follows:

Lot 2, Block 1 Muller Addition, Anoka County, Minnesota.

("Subject Property")

WHEREAS, the Planning Commission met on January 9, 2013, conducted a public hearing and recommended City Council approve/deny the request, with contingencies.

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

1. Based on Findings of Fact #0920, a Conditional Use Permit ("Permit") to operate an indoor shooting range on the **Subject Property** is hereby granted to Total Defense Inc., hereinafter referred to as the "Permittee".

2. That the **Permittee** shall construct and maintain the indoor shooting range in accordance with all federal, state and local building codes related to indoor shooting ranges.

3. The **Permittee** shall be responsible for obtaining any other applicable permits and/or licenses from local, county, state and federal agencies and providing a copy of each to the **City**.

4. That the **Permittee** shall install and maintain adequate security measures to prevent the theft of guns and ammunition. The security measures shall include, but not necessarily be limited to, cement bollards around the main entrance to the building, barred and reinforced windows, motion/thermal/impact sensors tied in to a monitoring service, and a closed caption television system.

5. Any exterior lighting shall be positioned so as to deflect light away from adjacent properties and public roads.

6. The **Permittee** shall not purchase, sell or stock any black powder on the **Subject Property** nor shall there by any firing of black powder guns on the **Subject Property**.

7. The **Permittee** shall not purchase, stock or sell any type of reloading supplies on the **Subject Property.**

8. **Permittee** agrees to limit gunsmithing to basic activities such as cleaning and repair of firearms, scope mounting, bore-sighting, and sight installation and that there will be no toxic or hazardous chemicals used in the gunsmithing operation or stored on the **Subject Property**.

9. The **Permittee** shall maintain at least fifty (50) parking stalls on the **Subject Property**.

10. The **Permittee** shall at all times remain compliant with Chapter 30 (Nuisances) and Section 117-363 (indoor shooting range) of the Ramsey City Code.

11. There shall be no outside storage allowed on the **Subject Property**.

12. On the **Subject Property**, all firearms not in use in the shooting range stalls/lanes shall be unloaded and properly cased at all times in accordance with Minnesota laws.

13. Hours of operation of the indoor shooting range shall be no earlier than 9:00 a.m. Monday through Saturday, no earlier than 12:00 p.m. on Sunday, no later than 9:00 p.m. Monday through Saturday, and no later than 6:00 p.m. on Sunday.

14. The **Permittee** shall comply with all Minnesota laws relating to lead-contaminated shooting range wastes.

15. The **Permittee** shall enter into a cooperative agreement with the **City** for Police Department training purposes.

16. That no alcohol shall be possessed, consumed or sold on the **Subject Property**.

17. That the construction of the second (future) shooting bay shall not require an amendment to the **Permit** but all other required permits (building, mechanical, electrical etc.) shall be obtained prior to construction.

18. That the **Permittee** shall be responsible for all **City** costs incurred in administering and enforcing this **Permit**.

19. That the City Administrator, or his/her designee, shall have the right to inspect the premises for compliance and safety purposes annually or at any time, upon reasonable request.

20. That this **Permit** shall automatically expire if the use is not initiated by January 28, 2015 and issuance of the building and mechanical permits shall constitute initiation.

21. That the **Permittee** is responsible for notifying the **City** in writing regarding reassignment of the **Permit** due to change of ownership.

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 28th day of January, 2014.

PERMITTEE

Total Defense Inc. hereby acknowledges receipt of this **Permit** and that it has reviewed the conditions of this **Permit** and has agreed that it will comply with the terms of this **Permit**.

By: _____ Its: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

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

_____
Notary Public

PROPERTY OWNER

Java Enterprises LLC hereby acknowledges receipt of this **Permit** and that it has reviewed the conditions of this **Permit** and has agreed that it will comply with the terms of this **Permit**.

By: _____ Its: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

On this _____ day of _____, _____, before me, a Notary Public, personally appeared _____, the _____ of Java Enterprises LLC, a Limited Liability Company (Domestic) under the laws of Minnesota, to me known to be the person described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

_____
Notary Public

CITY OF RAMSEY:

By:_____ By:_____
Mayor City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

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

_____
Notary Public

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

This document reviewed by:
Ratwik, Roszak & Maloney
730 Second Ave. S., Suite 300
Minneapolis, MN 55402

Regular Planning Commission **5. 4.**

Meeting Date: 01/09/2014

Submitted For: Tim Gladhill, Community Development

By: Tina Goodroad, Community Development

Information

Title:

Review Draft Housing Assistance Policies and Forward Recommendation to City Council

Purpose/Background:

The purpose of this report is to update the Planning Commission on the status of the progress on the Housing Assistance Policy since the draft policy and scoring matrix was last presented to the Planning Commission on October 3, 2013.

As a reminder, this effort is a result of a request by the City Council to form an ad-hoc sub-committee of the Planning Commission to formulate a Housing Assistance Policy. The purpose of the policy is to establish a framework in which to review requests for financial assistance (or other forms of assistance) for housing projects. These requests could include, but are not limited to City financing options, third-party financing options, and grant opportunities available to the City. Given the number of requests the City has been receiving related to housing projects and the forecasted housing growth of the community, the City Council felt that a policy was necessary in order to ensure an equitable and fiscally responsible application to housing assistance.

The sub-committee has reviewed the following:

1. Current Housing Plan, Goals, and Implementation Strategies
2. Current housing and population demographics (Census data)
3. Current housing and population forecasts (2030 Comprehensive Plan)
4. Current employment demographics
5. Current employment forecasts

The sub-committee also has completed the following deliverables:

1. Framework of Policy
2. Interim Policy Statement
3. Housing Product Priority List

Framework

The sub-committee agreed to a framework of the policy as follows:

1. Housing Product Priorities
2. Minimum Thresholds
3. Scoring Matrix

Since this meeting, Staff has updated each scoring matrix: (Affordable and Market Rate) by clarifying some of the questions as well as added a table of contents and cover page. Additionally, financial readiness information has also been added to the end of each policy.

Housing Product Priorities

The first effort of the sub-committee was to establish housing product priorities. It is important to note that this priority list is an evolving document that would need to be reviewed and updated on a regular basis and was based on current demographic data (see attachment to this case). With every housing development that is completed, the assumptions that went into formulating this list change, and the list needs to be amended. When the City accomplishes a single housing goal, the priority likely shifts, at least in part, to a different priority.

Minimum Thresholds

The sub-committee agreed to utilize the existing Housing Goals and Implementation Strategies of the Comprehensive Plan as Minimum Thresholds. It is recommended that each development requesting housing assistance identify at least one existing goal/implementation strategy as Step #1. A development requesting assistance would need to be able to prove successful achievement of an implementation strategy in order to move to the formal review.

Scoring Matrix

Since the October 3rd Planning Commission meeting, Staff has updated each scoring matrix: Affordable and Market Rate by clarifying some of the questions that an applicant will be responding to, added a table of contents and cover page.

The scoring matrix is divided between affordable (aimed at units priced below 80% of area medium income) and market rate (units priced above 80% AMI). A Metropolitan Council ownership and rent affordability limits for 2013 is attached to provide example rents and ownership prices that would fall within certain affordability thresholds.

The scoring matrix then provides points based on each individual project. Points can be awarded for additional affordability levels, construction of senior housing, and provision of specialized senior housing, inclusion of development amenities, amount of private financing, redevelopment, architectural standards, development standards and energy efficiency.

Staff has used multiple past projects to ensure that the draft policies will remain market relevant and help the City achieve its housing goals. Staff will present these results as part of the presentation to the Planning Commission.

Notification:

No public hearing is required for this item.

Observations/Alternatives:

Funding Source:

All costs associated with preparing the housing assistance policy are included within the Community Development Department consulting budget.

Recommendation:

City Staff requests approval of the Housing Assistance Policy and scoring matrix.

Action:

Motion to recommend the City Council to approve the Housing Assistance Policy and scoring matrix.

Attachments

Market Rate Housing Policy

Affordable Housing Policy

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	01/03/2014 07:37 AM
Chris Anderson	Chris Anderson	01/03/2014 08:20 AM
Tim Gladhill	Tim Gladhill	01/03/2014 10:54 AM
Form Started By: Tina Goodroad		Started On: 11/25/2013 03:00 PM
Final Approval Date: 01/03/2014		

Housing Assistance Policy

Market Rate Housing

1/3/2014

City of Ramsey

Housing Assistance Policy- Market Rate

Housing Assistance Policy- Market Rate

Background

The City of Ramsey is committed to supporting well planned single family, multi-family development and redevelopment as a necessary element to achieve the goals for well-balanced housing inventory meeting the needs of residents during all life stages. The City Council and the Housing and Redevelopment Authority (HRA) of the City of Ramsey have determined that a policy is necessary to review requests for financial assistance related to housing projects to ensure any financially supported project meets Housing Polices of the Comprehensive Plan and housing priorities established by the City and reviewed on a regular basis.

Housing Priorities

To maximize the impact of City and HRA involvement, a priority list was developed by the Ad-Hoc-Sub-Committee of the Planning Commission and is subject to City Council approval. This is a list of priorities that the City believes would qualify for or is in the highest need of assistance, if available. This is not a reflection of the amount of individual types of housing products that the City believes will develop overall.

This list is based off current market conditions, demographics and financial need for assistance. This list will evolve over time, and will be revisited at least annually. With each project completed, the priority for assistance will change. Priorities are listed below:

1. Senior Independent
2. Affordable/Workforce
3. Redevelopment
4. Energy Efficient
5. Rehabilitation of Existing
6. Amenity Rental (market rate)
7. Three plus bedroom Rental
8. Inclusion of Accessory Dwelling Units
9. Executive Single-Family
10. Senior Skilled Nursing
11. Assisted Living/Memory Care
12. Condominium

Scoring Process

Projects will be scored on a two (2) step process: 1) Minimum Thresholds and 2) Priority Scoring. Priority scoring is divided between *affordable housing projects* (targeting households below 80% of AMI) and *market rate housing projects* (targeting households 80% and above AMI).

Applicants shall meet at least one of the goals and related implementation strategies listed below. Please provide a check mark in the box and on a separate sheet provide a brief explanation as to how the proposed project will meet the goal.

Priority scoring will be used to gauge the quality of the project and used to rank projects in the event of multiple proposals. The City reserves the right to reject any and all applications if it deems necessary.

Housing Assistance Policy- Market Rate

The amount of funds that may be provided will be based on several factors including:

1. Project meets a housing priority.
2. Ability to meet the minimum thresholds.
3. Priority scoring results and the overall quality of the proposed project.
4. Availability of funding. City funding (when available) will be capped at $10,000 per unit. Grant funding will be based on the grant type and related funding.

Housing Assistance Policy- Market Rate

Project Brief

Please briefly describe your project. This section will be used as general background on the project, and is not intended to be a full analysis of the project. This project description will be used for short marketing pieces if assistance is approved.

_____
_____
_____
_____

Project Details

Number of Units

	Market Rate	80% AMI	60% AMI	50% AMI	30% AMI	Total # of Units
# of Units						

Minimum Threshold:

All applicants must meet one of the following minimum thresholds listed below. These are goals and implementation strategies from the City's Master Housing Plan, adopted as part of the City's 2009 Comprehensive Plan update. Check which threshold best matches your project and describe how your project will meet the implementation strategies.

	Applicant	City
Goal 1: Provide a variety of housing options for people at all life stages and income levels to encourage existing residents, and attract new residents, to stay in Ramsey throughout their lives. Housing opportunities should include a mixture of rental and owner-occupied to provide life-cycle housing choices meeting a full spectrum of demographics. [On a separate sheet please describe how your project will use one of the following implementation strategies to achieve this goal. Word limit = 500 words] 1) Work toward developing various senior housing options including independent living, cooperatives, and assisted living facilities, both market rate and affordable. 2) Focus on providing choices for empty-nesters, including aging in place and downsizing, to allow the majority of current residents to stay in Ramsey. 3) Provide opportunities for young adults to continue to live in Ramsey after leaving their parents' homes by supporting the development of quality rental housing.		

4) Provide a balanced housing supply, with approximately 90% ownership housing and 10% rental housing, to expand options for workforce housing and housing for young professionals. 5) Continue to develop more affordable single family housing such as condominiums and small-lot single family homes that includes higher architectural variety and quality. 6) Explore opportunities to attract executive level housing to provide a variety of housing choices and opportunities in the City.		
Goal 2: Revitalize/rehabilitate areas where the housing is aging and in need of repair and where the land is underutilized and/or has potential for future redevelopment consistent with the Comprehensive Plan. [On a separate sheet please describe how your project will use one of the following implementation strategies to achieve this goal. Word limit = 500 words] 1) Encourage residents to upgrade the functionality and marketability of their aging housing, and put quality additions on as they need more space. 2) Provide options for residents to subdivide if consistent with and allowed by the Comprehensive Plan. 3) Encourage redevelopment where land has potential for future development consistent with the Comprehensive Plan.		
Goal 3: Maintain and improve the housing stock to preserve the character and quality of existing neighborhoods. [On a separate sheet describe how your project will use one of the following implementation strategies to achieve this goal. Word limit = 500 words] 1) Encourage the development of homeowner's associations or common interest communities for areas of older multifamily housing and new subdivisions of smaller lot neighborhoods. 2) Ensure that new housing developments provide appropriate density transition with existing established neighborhoods. 3) Update and enhance design standards for new developments and encourage housing construction that incorporates quality and diverse architecture.		
Goal 4: Provide a development environment that increases residential health and reduces energy consumption. [On a separate sheet please		

describe how your project will use one of the following implementation strategies to achieve this goal. Word limit = 500 words] 1) The development incorporates environmentally sensitive site planning, resource efficient building materials and superior indoor environmental quality practices. 2) The development meets sustainability standards, such as Minnesota Green Star Certification or LEED. 3) Use of sustainable development elements such as the use of storm water management BMP's to manage on site storm water 4) The development incorporates connections to existing pathways and creates natural and safe walkable areas.		

Continued on Next Page

Housing Assistance Policy- Market Rate

Project Scoring

Market Rate Project Scoring –Projects targeted to occupants that are above 80% AMI

Development of Senior Housing	Applicant Point Allocation	City Point Allocation
Senior independent (rental or owner-occupied) = 5 points. **Insert total number of age restricted units.**		
Specialized Senior Housing: At least 25% of total units include one (or combination) of specialized services. **Chose 1 (or chose all that apply) and insert total number and percent of total.** Maximum of 5 points		
Assisted Living units = 5 points		
Memory care units = 5 points		
Senior skilled nursing on site= 5 points		

Owner occupied market rate, senior and move up housing (rental or owner-occupied). Points will be awarded for projects containing amenities. **Check all that apply.**	Applicant Point Allocation	City Point Allocation
Community room/gathering area= 1 point		
On-site fitness center= 1 point		
Terrace/Courtyard or Roof top gathering area= 1 point		
Indoor theatre= 1 point		
Outdoor facilities= 1 point per element: (i.e. walking trails, tennis/basketball courts, playground, others as proposed by applicant)		
Indoor or outdoor swimming pool= 1 additional point		
Use of shared parking to reduce total parking installed= 2 points		

Continued on Next Page

Housing Assistance Policy- Market Rate

Mixed Income Development:	Applicant Point Allocation	City Point Allocation
Inclusion of market rate and affordable within a single project (single or multiple buildings). All projects must have at least 50% of units at 80% AMI or above (market rate).		
30% of total units (SF or attached) at 80% of AMI=5 points		
30% of total units (SF or attached) below 80% of AMI= 5 points		
Redevelopment:		
Rehabilitation of existing housing unit(s) for occupants at 80% of AMI= 5 points. **If applicable, insert total number of units:**		

Proximity to Transit	Applicant Point Allocation	City Point Allocation
Within quarter mile (.25) of Northstar Commuter Rail-Ramsey Station: 10 points.	Circle: Yes/No	
Within one-half mile (.5) of Northstar Commuter Rail-Ramsey Station: 5 points.	Circle: Yes/No	
Proximity to Local Employment Within a two-mile radius of area zoned Employment= 5 points	Circle: Yes/No	

Non-Financial Readiness to Proceed:	Applicant Point Allocation	City Point Allocation
Land use and zoning approvals have been obtained = 2 points	Circle: Yes/No	
Site Control: Fee Title Ownership has been obtained= 5 points ***Private Equity Percentage*** Cash equity commitment of at least 5% down payment is secured: 5 points.	Circle: Yes/No Circle: Yes/No	

Housing Assistance Policy- Market Rate

Federal/Local or Philanthropic Partnerships:	Applicant Point Allocation	City Point Allocation
Project funds from the federal government, a local unit of government, area employer and/or a private philanthropic, religious or charitable organization. **If applicable, provide percentage:**		
20.1% and above of the development cost= 10 points		
15.1%-20%= 8 points		
10.1%-10%= 6 points		
5.1%-10%= 4 points		
2.1%-5%= 2 points		

Architectural Standards (check all that apply)	Applicant Point Allocation	City Point Allocation
Use of Hardi-Board or equivalent= 2 points		
Horizontal siding accessory only = 2 points		
Minimum of 30% front elevation-brick or stone= 2 points		
50% brick or stone threshold = 2 points		
Building articulation= 2 points		
Roof articulation= 2 points		
Covered front porch > 50 square feet = 2 points		
Roof < 25% of front façade= 2 points		
2+ dormers (gabled ends to not count) for SF= 2 points		
Multiple dormers if townhome building or apartment building= 2 points		
Use of alley or internal roadway for garage access (not visible from public street HOA maintained) = 2 points		

Use of side loaded garages (SF and TH only) = 2 points		
House forward design (SF and TH only)= 2 points		
Architectural styled garage doors (15% of lots) (SF and TH only) = 2 points		
Anti-monotony elevation/color plan (applicable to developments with multiple buildings that have a minimum of three material colors that vary between buildings) = 2 points		
Four sided architecture (attached or detached) = 2 points		
High speed internet access in all units= 2 points		
Smoke free units/buildings= 2 points		

Development Standards (check all that apply) *Sidewalks, trails and streetscaping*	Applicant Point Allocation	City Point Allocation
Sidewalks to each front door (SF and TH) or main entry (apartment building)= 2 points		
Sidewalks/ trail on both sides of public streets (SF and TH); or sidewalk / trail on one side if project consists of only a single building = 2 points		
Installation of off-road trails within the development = 2 points		
Sidewalk " bump-outs" or "chokers" = 2 points		
Trail connection beyond development (installed by developer)= 5 points		
Boulevard trees at 35 foot spacing (new installation provided by developer= 2 points		
Installation of development wide streetscaping and decorative lighting= 2 points		

Continued on Next Page

Energy Efficient Elements (check all that apply)	Applicant Point Allocation	City Point Allocation
Storm water Best Management Practices= 2 points		
Energy efficient roofing material or colors = 2 points		
Buildings oriented on site to optimize passive solar and cooling= 2 points		
Installation of a green roof occupying a minimum of 30% of the total roof area= 2 points		
Use of resource efficient building materials= 2 points		
Use of Green Star certified mechanical and appliances = 2 points		
Use of energy efficient windows/doors= 2 points		
Other energy efficient new technology as approved by the City= 2 points		

Total Points

	Applicant Point Allocation	City Point Allocation
Total Points Accumulated		

Continued on Next Page

Housing Assistance Policy- Market Rate

FINANCIAL REQUIREMENTS/INFORMATION

Financial award is based on availability of funds. Maximum funding is set at $10,000 per unit or not greater than 15% of entire project cost. Owner equity must be greater than 10%.

Eligible Uses of Funding

Eligible uses of funding include; site acquisition, land improvements, building construction, and payment of development fees

Required Information

1. Sources and Uses Statement (below)
2. Financial Scoring Scorecard (below)
3. Organizational Financial Statements (2 years of P&L and Balance Sheet)
4. Personal Financial Statements of Stakeholders and Tax Returns (2 years)
5. Project Pro forma/Projections (2 year projections)
6. Letter(s) of Commitment from other Funding Sources (terms, conditions)
7. Evidence that the Property is not delinquent in Property Taxes

Sources and Uses

Please attach a Sources and Uses Spreadsheet as outlined below. This shall include all sources of financing for the project and how those funds will be used. The Applicant shall provide a detailed listing of each.

SOURCES	AMOUNT ($)		USES	AMOUNT ($)
Owner Equity			Land Acquisition	
Bank Loan			Site Development	
Other Loan			Construction	
Fed. Grant/Loan			Engineering/Arch. Services	
State Grant/Loan			Debt Service	
TIF			Contingencies	
Tax Abatement			Other	
Revolving Loan Fund			TOTAL	
Other				
TOTAL				

Housing Assistance Policy- Market Rate

Financial Scoring

Please calculate points based on this project's ratio of private to public financing.
Ratio= *Private Financing : Public Financing*

Leveraged Funds	Applicant Point Allocation	City Point Allocation
Ratio of Private to Public Investment • 5:1 = 5 points • 4:1 = 4 points • 3:1 = 3 points • 2:1 = 2 points • Less than 2:1 = 1 point		

Housing Assistance Policy

Affordable Housing

1/3/2014

City of Ramsey

Housing Assistance Policy – Affordable

Housing Assistance Policy – Affordable

Background

The City of Ramsey is committed to supporting well planned single family, multi-family development and redevelopment as a necessary element to achieve the goals for well-balanced housing inventory meeting the needs of residents during all life stages. The City Council and the Housing and Redevelopment Authority (HRA) of the City of Ramsey have determined that a policy is necessary to review requests for financial assistance related to housing projects to ensure any financially supported project meets Housing Polices of the Comprehensive Plan and housing priorities established by the City and reviewed on a regular basis.

Housing Priorities

To maximize the impact of City and HRA involvement, a priority list was developed by the Ad-Hoc-Sub-Committee of the Planning Commission and is subject to City Council approval. This is a list of priorities that the City believes would qualify for or is in the highest need of assistance, if available. This is not a reflection of the amount of individual types of housing products that the City believes will develop overall.

This list is based off current market conditions, demographics and financial need for assistance. This list will evolve over time, and will be revisited at least annually. With each project completed, the priority for assistance will change. Priorities are listed below:

1. Senior Independent
2. Affordable/Workforce
3. Redevelopment
4. Energy Efficient
5. Rehabilitation of Existing
6. Amenity Rental (market rate)
7. Three plus bedroom Rental
8. Inclusion of Accessory Dwelling Units
9. Executive Single-Family
10. Senior Skilled Nursing
11. Assisted Living/Memory Care
12. Condominium

Scoring Process

Projects will be scored on a two (2) step process: 1) Minimum Thresholds and 2) Priority Scoring. Priority scoring is divided between *affordable housing projects* (targeting households below 80% of AMI and *market rate housing projects* (targeting households 80% and above AMI.

Housing Assistance Policy – Affordable

All applicants shall meet at least one of the goals and related implementation strategies listed below. Please provide a check mark in the box and on a separate sheet provide a brief explanation as to how the proposed project will meet the goal.

Priority scoring will be used to gauge the quality of the project and used to rank projects in the event of multiple proposals. The City reserves the right to reject any and all applications if it deems necessary.

The amount of funds that may be provided will be based on several factors including:

1. Project meets a housing priority.
2. Ability to meet the minimum thresholds.
3. Priority scoring results and the overall quality of the proposed project.
4. Availability of funding. City funding (when available) will be capped at $10,000 per unit. Grant funding will be based on the grant type and related funding.

Housing Assistance Policy – Affordable

Project Brief

Please briefly describe your project. This section will be used as general background on the project, and is not intended to be a full analysis of the project. This project description will be used for short marketing pieces if assistance is approved.

_____
_____
_____
_____

Project Details

Number of Units

	Market Rate	80% AMI	60% AMI	50% AMI	30% AMI	Total # of Units
# of Units						

Minimum Threshold:

All applicants must meet one of the following minimum thresholds listed below. These are goals and implementation strategies from the City's Master Housing Plan, adopted as part of the City's 2009 Comprehensive Plan update. Check which threshold best matches your project and describe how your project will meet the implementation strategies.

	Applicant	City
Goal 1: Provide a variety of housing options for people at all life stages and income levels to encourage existing residents, and attract new residents, to stay in Ramsey throughout their lives. Housing opportunities should include a mixture of rental and owner-occupied to provide life-cycle housing choices meeting a full spectrum of demographics. [On a separate sheet please describe how your project will use one of the following implementation strategies to achieve this goal. Word limit = 500 words] 1) Work toward developing various senior housing options including independent living, cooperatives, and assisted living facilities, both market rate and affordable. 2) Focus on providing choices for empty-nesters, including aging in place and downsizing, to allow the majority of current residents to stay in Ramsey. 3) Provide opportunities for young adults to continue to live in Ramsey after leaving their parents' homes by supporting the development of quality rental housing.		

4) Provide a balanced housing supply, with approximately 90% ownership housing and 10% rental housing, to expand options for workforce housing and housing for young professionals. 5) Continue to develop more affordable single family housing such as condominiums and small-lot single family homes that includes higher architectural variety and quality. 6) Explore opportunities to attract executive level housing to provide a variety of housing choices and opportunities in the City.		
Goal 2: Revitalize/rehabilitate areas where the housing is aging and in need of repair and where the land is underutilized and/or has potential for future redevelopment consistent with the Comprehensive Plan. [On a separate sheet please describe how your project will use one of the following implementation strategies to achieve this goal. Word limit = 500 words] 1) Encourage residents to upgrade the functionality and marketability of their aging housing, and put quality additions on as they need more space. 2) Provide options for residents to subdivide if consistent with and allowed by the Comprehensive Plan. 3) Encourage redevelopment where land has potential for future development consistent with the Comprehensive Plan.		
Goal 3: Maintain and improve the housing stock to preserve the character and quality of existing neighborhoods. [On a separate sheet please describe how your project will use one of the following implementation strategies to achieve this goal. Word limit = 500 words] 1) Encourage the development of homeowner's associations or common interest communities for areas of older multifamily housing and new subdivisions of smaller lot neighborhoods. 2) Ensure that new housing developments provide appropriate density transition with existing established neighborhoods.		

3) Update and enhance design standards for new developments and encourage housing construction that incorporates quality and diverse architecture.		
Goal 4: Provide a development environment that increases residential health and reduces energy consumption. [On a separate sheet please describe how your project will use one of the following implementation strategies to achieve this goal. Word limit = 500 words] 1) The development incorporates environmentally sensitive site planning, resource efficient building materials and superior indoor environmental quality practices. 2) The development meets sustainability standards, such as Minnesota Green Star Certification or LEED. 3) Use of sustainable development elements such as the use of storm water management BMP's to manage on site storm water 4) The development incorporates connections to existing pathways and creates natural and safe walkable areas.		

Rank Scoring

Affordable Housing Project Scoring –Projects must target occupants that are below 80% AMI

Affordable Housing - Rental:	Applicant Point Allocation	City Point Allocation
Points will be given for units rented at greater affordability levels. **Chose 1 (or chose all that apply) and insert total number and percent of units at each affordability level:**		
50% of units at 60% AMI = 5 points		
50% of units at 50% AMI= 7 points		
50% of units at 30% AMI= 10 points		

Long-Term Affordability-Rental:	Applicant Point Allocation	City Point Allocation
Projects that demonstrate the ability to serve tenants for longest period of time. **Chose 1 (or chose all that apply) and insert total number of units.**		
30 years or more= 10 points		
15-29 years = 8 points		
10- 15 years = 3 points (Deed restriction will be required for homes constructed with affordability limits in order to earn points)		

Affordable Housing - Ownership:	Applicant Point Allocation	City Point Allocation
Points will be given for homes priced at greater affordability levels. **Chose 1 (or chose all that apply) and insert total number and percent of units at each affordability level:**		
30% of units between 60 and 80% AMI = 5 points		
30% of units at 60 and below 80% AMI=7 points		
30% of units at 30% or less AMI= 10 points (Proposed affordable lots shall be deed restricted and scattered throughout the development)		

Long-Term Affordability-Owner-occupied Housing:	Applicant Point Allocation	City Point Allocation
Projects that demonstrate the ability to serve tenants for longest period of time. **Chose 1 (or chose all that apply) and inset total number of units.**		

5 years or more= 5 points		
10 years or more= 10 points (Deed restriction will be required for homes constructed with affordability limits in order to earn points. Lots shall be scattered throughout the development)		

Number of Bedrooms **If applicable, insert total number of units:**	Applicant Point Allocation	City Point Allocation
At least 25% of units include three + bedrooms = 5 points		
At least 50% of units includes three + bedrooms total units= 10 points		

Development of Senior Housing	Applicant Point Allocation	City Point Allocation
Senior independent (rental or owner-occupied) = 5 points. **Insert total number of age restricted units.**		
Specialized Senior Housing: At least 25% of total units include one (or combination) of specialized services. **Chose 1 (or chose all that apply) and insert total number and percent of total.** Maximum of 5 points		
Assisted Living units = 5 points		
Memory care units = 5 points		
Senior skilled nursing on site= 5 points		

Mixed Income Development:	Applicant Point Allocation	City Point Allocation
Inclusion of market rate and affordable within a single project (single or multiple buildings). All projects must have at least 50% of units at 80% AMI or above (market rate).		
30% of total units (SF or attached) at 60-80% of AMI = 5 points		

30% of total units (SF or attached) at 50% (or below) of AMI= 10 points		

Redevelopment:	Applicant Point Allocation	City Point Allocation
Rehabilitation of existing housing unit(s) for occupants below 80% of AMI= 5 points. **If applicable, insert total number of units:**		
Rehabilitation of existing housing unit(s) 30% of AMI= 10 points. **If applicable, insert total number of units:**		
Infill redevelopment that results in removal of blighted residential and/or commercial buildings/sites that result in new housing units: Occupants must be at or below 80% AMI. Additional points will be given for greater affordability levels. **If applicable, insert total number of units:**		
50% of units at 60% AMI = 5 points		
50% of the units at 50% AMI= 7 points		
50% of the units at 30% AMI= 10 points		

Proximity to Transit	Applicant Point Allocation	City Point Allocation
Within quarter mile (.25) of Northstar Commuter Rail-Ramsey Station: 10 points.	Circle: Yes/No	
Within one-half mile (.5) of Northstar Commuter Rail-Ramsey Station: 5 points.	Circle: Yes/No	
Proximity to Local Employment Within a two-mile radius of area zoned Employment= 5 points	Circle: Yes/No	

Non-Financial Readiness to Proceed:	Applicant Point Allocation	City Point Allocation
Land use and zoning approvals have been obtained = 2 points	Circle: Yes/No	
Site Control: Fee Title Ownership has been obtained= 5 points ***Private Equity Percentage*** Cash equity commitment of at least 5% down payment is secured: 5 points.	 Circle: Yes/No Circle: Yes/No	

Federal/Local or Philanthropic Partnerships:	Applicant Point Allocation	City Point Allocation
Project funds from the federal government, a local unit of government, area employer and/or a private philanthropic, religious or charitable organization. **If applicable, provide percentage:**		
20.1% and above of the development cost= 10 points		
15.1%-20%= 8 points		
10.1%-10%= 6 points		
5.1%-10%= 4 points		
2.1%-5%= 2 points		

Project Amenities **- Check all that apply.**	Applicant Point Allocation	City Point Allocation
Community room/gathering area= 1 point		
On-site fitness center= 1 point		
Terrace/Courtyard or Roof top gathering area= 1 point		
Indoor theatre= 1 point		

Outdoor facilities= 1 point per element: (i.e. walking trails, tennis/basketball courts, playground, others as proposed by applicant)		
Indoor or outdoor swimming pool= 1 additional point		
Use of shared parking to reduce total parking installed= 2 points		

Architectural Standards (check all that apply)	Applicant Point Allocation	City Point Allocation
Use of Hardi-Board or equivalent= 2 points		
Horizontal siding accessory only = 2 points		
Minimum of 30% front elevation-brick or stone= 2 points		
50% brick or stone threshold = 2 points		
Building articulation= 2 points		
Roof articulation= 2 points		
Covered front porch > 50 square feet = 2 points		
Roof < 25% of front façade= 2 points		
2+ dormers (gabled ends to not count) for SF= 2 points		
Multiple dormers if townhome building or apartment building = 2 points		
Use of alley or internal drive for garage access (not visible from public street and HOA maintained) = 2 points		
Use of side loaded garages (SF and TH only) = 2 points		
House forward design (SF and TH only) = 2 points		
Architectural styled garage doors (15% of lots) (SF and TH only) = 2 points		
Anti-monotony elevation/color plan (applicable to developments with multiple buildings that have a minimum of three material colors that vary between buildings) = 2 points		
Four sided architecture (attached or detached) = 2 points		

High speed internet access in all units= 2 points		
Smoke free units/buildings= 2 points		

Development Standards (check all that apply) *Sidewalks, trails and streetscaping*	Applicant Point Allocation	City Point Allocation
Sidewalks to each front door (SF and TH) or main entry (apartment building)= 2 points		
Sidewalks/ trail on both sides of public streets (SF and TH); or sidewalk / trail on one side if project consists of only a single building = 2 points		
Installation of off-road trails within the development = 2 points		
Sidewalk " bump-outs" or "chokers" = 2 points		
Trail connection beyond development (installed by developer)= 5 points		
Boulevard trees at 35 foot spacing (new installation provided by developer= 2 points		
Installation of development wide streetscaping and decorative lighting= 2 points		

Energy Efficient Elements (check all that apply)	Applicant Point Allocation	City Point Allocation
Storm water Best Management Practices= 2 points		
Energy efficient roofing material or colors = 2 points		
Buildings oriented on site to optimize passive solar and cooling= 2 points		
Installation of a green roof occupying a minimum of 30% of the total roof area= 2 points		
Use of resource efficient building materials= 2 points		
Use of Green Star certified mechanical and appliances = 2 points		

Use of energy efficient windows/doors= 2 points		
Other energy efficient new technology as approved by the City= 2 points		

Total Points

	Applicant Point Allocation	City Point Allocation
Total Points Accumulated		

FINANCIAL REQUIREMENTS/INFORMATION

Financial award is based on availability of funds. Maximum funding is set at $8,000 per unit or not greater than 15% of entire project cost. Owner equity must be greater than 10%.

Eligible Uses of Funding

Eligible uses of funding include; site acquisition, land improvements, building construction, and payment of development fees

Required Information

1. Sources and Uses Statement (below)
2. Financial Scoring Scorecard (below)
3. Organizational Financial Statements (2 years of P&L and Balance Sheet)
4. Personal Financial Statements of Stakeholders and Tax Returns (2 years)
5. Project Pro forma/Projections (2 year projections)
6. Letter(s) of Commitment from other Funding Sources (terms, conditions)
7. Proof that the Property is not delinquent in Property Taxes

Sources and Uses

Please use the Sources and Uses Excel Spreadsheet and include as an attachment. This shall include all sources of financing for the project and how those funds will be used. The Applicant shall provide a detailed listing of each.

SOURCES	AMOUNT ($)		USES	AMOUNT ($)
Owner Equity			Land Acquisition	
Bank Loan			Site Development	
Other Loan			Construction	
Fed. Grant/Loan			Engineering/Arch. Services	
State Grant/Loan			Debt Service	
TIF			Contingencies	
Tax Abatement			Other	
Revolving Loan Fund			TOTAL	
Other				
TOTAL				

Financial Scoring

Please calculate points based on this project's ratio of private to public financing.
Ratio= *Private Financing : Public Financing*

Leveraged Funds	Applicant Point Allocation	City Point Allocation
Ratio of Private to Public Investment • 5:1 = 5 points • 4:1 = 4 points • 3:1 = 3 points • 2:1 = 2 points • Less than 2:1 = 1 point		

Regular Planning Commission **5. 5.**

Meeting Date: 01/09/2014

By: Tim Gladhill, Community Development

Information

Title:

DISCUSSION: Review Potential Amendments to City Code Section 117-351 (Home Occupations)

Purpose/Background:

In late 2013, the City Council requested that the topic of home occupations (home-based businesses) be brought to a future Work Session. The direction was based on concerns raised by residents as a result of previous home occupation reviews. Specifically, standards related to noise and outside storage have been raised as a potential policy question to review.

This discussion topic is an opportunity to review the proposed review schedule and for the Planning Commission to identify key topics for Staff to review for future discussions. A decision as to whether the section of City Code requires amendment has not been made. The discussion sets forth a public process for community input to determine if modifications are necessary.

Notification:

Observations/Alternatives:

Funding Source:

Review of the Home Occupation Ordinance is being handled as part of normal Staff duties.

Recommendation:

Action:

No action is being requested at this time. This is an informal discussion topic at this point.

Attachments

No file(s) attached.

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	01/03/2014 02:01 PM
Tim Gladhill (Originator)	Tim Gladhill	01/03/2014 03:36 PM
Form Started By: Tim Gladhill		Started On: 12/31/2013 09:19 AM
Final Approval Date: 01/03/2014		

Regular Planning Commission **5. 6.**

Meeting Date: 01/09/2014

By: Tim Gladhill, Community Development

Information

Title:

FOR UPDATE ONLY: Staff Update

- Receive Development Update
- Receive Update on Builder Networking Event
- Receive Update on Citizen Engagement Processes (167/47 Node, Former Municipal Center, Armstrong West/Future Business Park, Lake Ramsey Amenities)
- Discuss Ramsey2040: Citizen Engagement Process to Review Metropolitan Council Preliminary 2040 Forecasts for Household, Population, and Employment and Ramsey's 2040 Comprehensive Plan Update

Purpose/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:

Development Updates

Seasons of Ramsey. The 50 unit rental townhome development located north of Bunker Lake Boulevard is nearly complete. As of the week of December 30, 2013, work had been completed on all but two (2) buildings. The remainder of the site work will be completed starting this spring.

Stoney River. The 72 unit assisted living, memory care, and senior housing development has commenced construction. Footings and foundation are currently being constructed, a process that is slowed due to winter conditions.

Cullinan Rigging. The expansion of the Cullinan Rigging facility located at 3815 McKinley St NW has been completed, with the exception of final site work.

Molin Concrete. The approved expansion of the Molin Concrete facility will commence this spring.

Diamond Graphics. The expansion of the Diamond Graphics facility located at 14350 Azurite St NW is currently underway. Construction of wall panels and roofing has been completed. Work on interior construction continues.

Funding Source:

Preparation of the monthly updates are being handled as part of regular Staff duties.

Recommendation:

Action:

For update only. No action requested.

Attachments

No file(s) attached.

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	01/03/2014 08:20 AM
Tim Gladhill (Originator)	Tim Gladhill	01/03/2014 10:53 AM
Form Started By: Tim Gladhill		Started On: 12/31/2013 09:24 AM
Final Approval Date: 01/03/2014		

Regular Planning Commission **5. 7.**

Meeting Date: 01/09/2014

By: JoAnn Shaw, Community Development

Information

Title:

Zoning Bulletins

Purpose/Background:

Enclosed are zoning periodicals for your review.

Notification:

Observations/Alternatives:

Funding Source:

Recommendation:

Action:

Attachments

Zoning Bulletins

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	01/02/2014 03:42 PM
Form Started By: JoAnn Shaw		Started On: 12/30/2013 12:11 PM
Final Approval Date: 01/02/2014		

QUINLAN™ October 25, 2013 | Volume 7 | Issue 20

Zoning Bulletin

in this issue:

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Mat #41330021

Use/Adult Entertainment—Theater shows one adult film annually

Theater is found guilty of a criminal zoning violation of a city ordinance prohibiting adult amusement establishments

Citation: *State, City of Albuquerque v. Pangaea Cinema LLC, 2013 WL 4857693 (N.M. 2013)*

Contributors

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NEW MEXICO (09/12/13)—This case addressed the issue of whether an art-house theater that showed one adult film annually was an "adult amusement establishment" within the meaning of the city zoning ordinance that prohibited adult amusement establishments in the zone in which the theater operated.

The Background/Facts: Pangaea Cinema, LLC (the "Guild") did business as the Guild Cinema in the Nob Hill area of Albuquerque (the "City"). The area in which the Guild operated was zoned C-2, or "Community Commercial." The cinema was an art-house theater that usually showed nonpornographic independent films. However, on one November weekend in 2008, the Guild hosted an erotic film festival called "Pornotopia." During the festival, the Guild featured at least one erotic or pornographic film.

Under the City's zoning ordinance, "adult amusement establishments" were not permitted in the C-2 zone. The ordinance defined "adult amusement establishments" as: "[a]n establishment such as [a] . . . theater . . . that provides amusement or entertainment featuring . . . films, motion pictures . . . or other visual representations or recordings characterized or distinguished by an emphasis on . . . specified anatomical areas or . . . specified sexual activities."

Zoning enforcement inspectors characterized the pornographic film that was featured at the Guild as having an "emphasis on . . . specified anatomical areas or . . . specified sexual activities." Based on such a screening, the City determined that the Guild was operating as an adult amusement establishment in an area that was not zoned for adult entertainment.

In December 2008, the State of New Mexico and the City of Albuquerque charged the Guild with a criminal zoning violation in metropolitan court. (For clarity, the prosecuting body is referred to as the "City.") The metropolitan court found the Guild guilty. The Guild appealed. The district court held that the Guild had committed a zoning violation and that the zoning ordinances were constitutional as they applied to the Guild. The district court also imposed a criminal fine of $500. The court of appeals affirmed the Guild's conviction.

The Guild appealed. On appeal, the Guild argued that its conviction violated its state and federal constitutional rights to free speech.

DECISION: Judgment of court of appeals reversed and vacated.

The Supreme Court of New Mexico held that the Guild did not commit a zoning violation because it was not an "adult amusement establishment" within the meaning of the ordinance, as the term "adult amusement establishment" did not include theaters that rarely or only occasionally featured adult entertainment.

In so holding, the court explained that "[c]ities are generally allowed

to impose different zoning requirements on adult theaters than on mainstream theaters." Also, "[e]ven though such zoning ordinances categorize theaters based on the content they exhibit, courts may analyze the ordinances as content-neutral time, place, and manner restrictions." This is based on the concept that the "zoning restrictions target not the content of the films shown, but rather the 'secondary effects' caused by the accumulation of adult amusement establishments in a city." Negative "secondary effects" that zoning restriction seek to avoid, noted the court, include things such as: "an undesirable quantity and quality of transients"; adversely affected property values; an increase in crime, especially prostitution; and adverse effects on neighborhoods.

Since such zoning ordinances are treated by the courts as time, place, and manner restrictions, the court explained that they are valid if: (1) they are content neutral; (2) "they are narrowly tailored to serve a significant governmental interest"; and (3) "they leave open ample alternative channels for communication of the information."

Here, the court noted that the City's ordinance was similar to others that have been upheld as constitutional. Nevertheless, here, the Guild was not challenging the constitutionality of the ordinance generally, but only as it applied to the Guild. On that point, the court found that the Guild was not an adult theater "in function or appearance." Rather, the court found that the Guild was an ordinary-looking art-house theater. Nothing about the Guild appeared "to be seedy, unsavory, or likely to drive down property values." It was undisputed that Pornotopia did not, in fact, result in any negative secondary effects in the Nob Hill neighborhood.

While the City ordinance did not specify exactly how many pornographic films a theater must show to qualify it as an "adult amusement establishment," the court found it could "say with confidence, however, that the ordinance [did] not reach the type of very occasional showing at issue in this case." Further, noted the court, " '[z]oning rules generally only apply to the regular use of a building,' not occasional deviations from those uses." "One weekend of erotic films per year does not an adult theater make," said the court.

Having found that the Guild was not an "adult amusement establishment" under the ordinance, the court concluded that the Guild did not commit a zoning violation when it screened one pornographic film in an area that was not zoned for adult entertainment.

See also: *Tollis, Inc. v. San Bernardino County, 827 F.2d 1329 (9th Cir. 1987)*, modification on other grounds recognized by *Alameda Books, Inc. v. City of Los Angeles, 222 F.3d 719 (9th Cir. 2000)*, reversed on other grounds by *Alameda Books*, 535 U.S. at 429 (plurality opinion).

See also: *People v. Superior Court (Lucero), 49 Cal. 3d 14, 259 Cal. Rptr. 740, 774 P.2d 769, 775, 10 A.L.R.5th 1037 (1989).*

See also: *Executive Arts Studio, Inc. v. City of Grand Rapids, 391 F.3d 783, 796, 2004 FED App. 0425P (6th Cir. 2004).*

See also: *Pensack v. City and County of Denver, 630 F. Supp. 177, 181 (D. Colo. 1986).*

Compare: *BZAPS, Inc. v. City of Mankato, 268 F.3d 603, 607 (8th Cir. 2001)* (upholding city's application of adult zoning ordinance to a single adult amusement performance).

Case Note:

Although the court's reading of the City ordinance eliminated the need for the court to address the constitutional questions of whether the ordinance infringed on the Guild's free speech rights, the court did note that: "[c]ourts have expressed the concern that when municipalities include ordinary, generally non-adult amusement businesses in the sweep of their 'erogenous zoning' ordinances, they risk losing their focus on secondary effects, and may instead unconstitutionally target the content of the adult entertainment." The court noted that several courts have held that it would be unconstitutional for a municipality to place zoning restrictions on businesses that occasionally feature adult entertainment. Still, also noted the court, "[n]ot all courts that have considered the issue agree that it is unconstitutional to zone a business as 'adult' based on a single or occasional instance of adult entertainment."

Proceedings/Telecommunications Act—City denies cell phone tower construction permits in letters that do not detail reasons for denials

Mobile phone service provider contends failure to detail reasons in denial letters violates the Telecommunications Act

Citation: *T-Mobile South, LLC v. City of Milton, Ga., 2013 WL 4750549 (11th Cir. 2013)*

The Eleventh Circuit has jurisdiction over Alabama, Florida, and Georgia.

ELEVENTH CIRCUIT (GEORGIA) (09/05/13)—This case addressed the issue of whether a federal Telecommunications Act provision that requires cell phone tower construction permit denials to be "in writing" requires the decisions to be in a "separate writing," as opposed to simply the writing of the hearing transcript or minutes.

The Background/Facts: T-Mobile South, LLC ("T-Mobile") wanted to build three cell phone towers in Milton, Georgia (the "City") so that it could provide reliable in-home cell phone service for its existing customers in that area. Each of the three properties where T-Mobile wanted to locate its towers was zoned "agricultural." The City zoning regulations required T-Mobile to get a use permit in order to build the towers in the "agricultural" zone. Accordingly, in November 2009, T-Mobile applied to the City for use permits to construct the three towers.

At the conclusion of public hearings on the permit applications, the planning committee voted to recommend denial of the permits. The City Council denied two of the permit applications and conditionally approved the third. The City sent three separate letters to T-Mobile notifying it of the City's decisions. One letter was sent for each application. Two of the letters denying the applications for use permits did not recite the reasons why those applications were denied. Each one simply stated that the application was denied. A third letter informed T-Mobile that one of its applications had been approved subject to several conditions.

T-Mobile then filed a lawsuit against the City. It alleged violations of the federal Telecommunications Act of 1996 (the "Act") and sought injunctive relief. The lawsuit challenged the denial of the applications for two of the cell phone tower construction permits. It also challenged the conditional approval of the third application on the theory that the conditions put on approval effectively made it a denial. T-Mobile claimed that the City's action on each of the three permit applications violated provisions of the Act, including the provision that denials of applications be "in writing and supported by substantial evidence contained in a written record" (47 U.S.C.A. § 332(c)(7)(B)(iii)). Specifically, T-Mobile maintained that the writing requirement of the statute could only be satisfied if the decision was announced or reflected in a written document that contained a statement of reasons and that was separate from any hearing transcript or minutes of a meeting or hearing. Since, the City's denial and conditional approval letters did not detail reasons for the decision in writing, T-Mobile contended that they violated the Act's writing requirement.

The district court agreed. It entered an order concluding that the City had not met the writing requirement of § 332(c)(7)(B)(iii) with its denials of the permit applications for two of the proposed locations

"[b]ecause [the City's] written decisions did not include any reasoning." The court also concluded that the conditional approval of the application for the third proposed location was effectively a denial, which also failed to satisfy the writing requirement because it did not set forth any reasons for imposing the conditions it listed. The court remanded the matter.

Postremand, the City sent letters detailing the reasons for its two denials and one conditional approval.

T-Mobile then asked the court to reconsider the matter. It argued that remanding the matter to the City violated the Telecommunication Act's requirement that these cases be decided on an expedited basis. T-Mobile argued that a permanent injunction requiring the City to grant the permit applications was the only proper remedy for a violation of the § 332(c)(7)(B)(iii) writing requirement.

The court agreed. It concluded that an injunction requiring approval of the applications was the proper remedy for a violation of the Telecommunication Act's writing requirement.

The City appealed.

DECISION: Judgment of district court reversed, and matter remanded.

The United States Court of Appeals, Eleventh Circuit, found that the City's reasons for its denials and conditional approvals of T-Mobile's application were "detailed in the 181-page transcript of the [C]ity [C]ouncil's hearings on the applications and in the sixty-five pages of minutes of the Council's meeting and those hearings." Interpreting the words of the Telecommunications Act provision—that denials of cell tower construction permit applications be "in writing"—the court found it was "sufficient" for the decision to be "contained in a different written document or documents that the applicant is given or has access to"; it need not be detailed in a "separate writing" or in a "writing separate from the transcript of the hearing and the minutes of the meeting in which the hearing was held" or "in a single writing that itself contains all of the grounds and explanations for the decision." Rather, held the court, all of the written documents should be considered collectively, in deciding if the decision, whatever it must include, is in writing. Thus, here, the written documents available to T-Mobile collectively satisfied the writing requirement of the Telecommunications Act, § 332(c)(7)(B)(iii). Those documents included: transcripts of the planning commission's hearings (one on each application), which included the recommendations the planning commission made and the reasons it made them; transcripts of the City Council's hearings (one on each application) recounting the motions that were made and the reasons that were given for denying or conditionally approving each of the applications; and the letters the City sent to T-Mobile stating that

two of the permit applications were denied and that one was approved subject to listed conditions; and the detailed minutes of the City Council hearings, recounting all of the reasons for the action on each application along with the relevant discussion.

See also: *AT & T Wireless PCS, Inc. v. City Council of City of Virginia Beach, 155 F.3d 423 (4th Cir. 1998) (rejected by, PrimeCo Personal Communications, L.P. v. Village of Fox Lake, 26 F. Supp. 2d 1052 (N.D. Ill. 1998))* (similarly holding that a writing requirement was satisfied by a two-page summary of the minutes of a city council hearing along with a letter denying the application).

But compare: *Southwestern Bell Mobile Systems, Inc. v. Todd, 244 F.3d 51, 31 Envtl. L. Rep. 20578 (1st Cir. 2001)* (requiring "a written denial separate from the written record" and one containing sufficient explanation of the reasons to allow "meaningful judicial review," but finding that a zoning board's "short written decision" was enough even though it contained "little explanation and few facts"); *New Par v. City of Saginaw, 301 F.3d 390, 2002 FED App. 0276P (6th Cir. 2002)* (requiring that the written decision be separate from the record, describe the reasons for the denial, and contain a sufficient explanation to allow a court to evaluate it against the evidence in the record); *Omnipoint Holdings, Inc. v. City of Southfield, 355 F.3d 601 (6th Cir. 2004)* (distinguishing the *Todd* decision, which involved a zoning board decision, and holding that a formal city council resolution stating the reasons for denial of the application satisfied the writing requirement); *MetroPCS, Inc. v. City and County of San Francisco, 400 F.3d 715 (9th Cir. 2005)* (requiring a written denial separate from the written record with sufficient explanation to allow for judicial review, and holding that a five-page written decision separate from the record, which summarized the facts, recounted the proceedings, articulated the reasons, and explained the evidentiary basis for the denial, was sufficient); *Helcher v. Dearborn County, 595 F.3d 710, 64 A.L.R. Fed. 2d 661 (7th Cir. 2010)* (requiring "a sufficient explanation of the reasons for the permit denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons," without mentioning whether the written explanation had to be separate from the record, but holding that the 17-page minutes of a zoning board of appeals' meeting met that requirement).

Moratorium—Municipality approves subdivision plat and subsequently enforces sewer connection moratorium against property

Developer contends property's approval for subdivision exempts it from the moratorium, per state statutory law

Citation: *City of Lorena v. BMTP Holdings, L.P., 56 Tex. Sup. Ct. J. 1115, 2013 WL 4730647 (Tex. 2013)*

TEXAS (08/30/13)—This case addressed the issue of whether property approved for subdivision is exempt from any development moratorium based on shortages of public facilities, under Texas statutory law, Local Government Code Chapter 212, or whether exemption is only available to properties approved for construction.

The Background/Facts: BMTP Holdings, L.P. ("BMTP") was a residential real estate developer operating in the City of Lorena, Texas (the "City"). As a developer, BMTP did not construct residences. Rather, it obtained municipal approval of plats to divide property into residential lots and build community infrastructure such as roads, storm drains, curbs, and taps into the municipality's sewer system. BMTP then would sell the subdivided property to builders who would obtain municipal permits and construct houses on the lots. Prior to 2003, BMTP began subdividing the property at issue for a residential subdivision named South Meadows Estates.

In January 2006, the City Council approved the final plat for the final phase (phase five) of South Meadows Estates. The City Manager then executed the plat, indicating the City's acceptance of it and its eligibility for filing with the county clerk's office. In the spring of 2006, BMTP began building the infrastructure for the fifth phase of the development, which it completed in May 2006.

On June 5, 2006, upon engineers' determination that the City's sewage system was over capacity, the City enacted a 120-day moratorium on sewer tap permits. That moratorium was extended seven times. In November 2008, a new, and virtually similar, moratorium was enacted.

The City informed BMTP that it intended to enforce the moratorium against seven remaining unsold lots in South Meadows Estates. BMTP asserted that the City had already approved the plats for the seven lots, thus exempting them by law from any moratorium.

Section 212.135 of the Texas Local Government Code provides that "[a] moratorium is justified by demonstrating a need to prevent the shortage of essential public facilities. The municipality must issue written findings based on reasonably reliable information." One such required finding is "a summary of: . . . evidence demonstrating that the moratorium is reasonably limited to . . . property that has not been approved for development because of the insufficiency of existing essential public facilities." (§ 212.135(b)(2)(B).)

Disputing what constituted "development" exempt from moratorium, the City responded that the seven lots would not be exempted because the City had only approved the lots for subdivision, not construction.

BMTP filed a legal action. It asked the court to declare that the moratorium could not be enforced against its remaining seven lots.

Finding there were no material facts in dispute, and deciding the matter on the law alone, the trial court granted summary judgment to the City.

BMTP appealed, and the court of appeals reversed. The court of appeals held that § 212.135 of the Local Government Code prohibits municipalities from enforcing moratoria against approved development. Also, the court of appeals held that development, as defined by Chapter 212 of the Local Government Code, was defined as subdivision or construction.

The City appealed.

DECISION: Judgment of court of appeals affirmed.

The Supreme Court of Texas also held that development, as defined by Chapter 212 of the Local Government Code, was defined as subdivision or construction. Thus, it concluded that a property need not be approved for both the subdivision and construction aspects of development to be insulated from moratoria regarding shortages of essential public facilities; it is insulated from such subsequent moratoria when the municipality approves either subdivision or construction. (Tex. Loc. Gov't Code §§ 212.131(3), 212.135(b)(2)(B).)

In so holding, the court gave "effect to the statute's plain language." Again, Chapter 212 of Texas' Local Government Code allows municipalities to enact temporary moratoria on "property development" if they can demonstrate the moratoria are needed to prevent a shortage of essential public facilities. That right, however, is subject to certain limitations. One limitation is that a municipality may not enact such a moratorium unless it contains a summary of evidence showing that it is limited to property that has not been approved for development. The statute defines development as: "the construction . . . of residential or commercial buildings or the subdivision . . . of residential or commercial property."

The City contended that because development is defined as subdivision "or" construction, municipalities could place a moratorium on construction for property they have approved for subdivision.

The Supreme Court of Texas disagreed. It noted that the Legislature's use of the disjunctive word "or" is significant when interpreting statutes. Here, it found that by using the word "or" in defining "development," the Legislature indicated that these distinct aspects (i.e., subdivision and construction) were brought within the singular scope of the term development. Thus, the court concluded that, under the plain language of the statute, subdivision constitutes development; and thus, a moratorium may not affect property previously approved for subdivision (or construction).

Here, the court found that the City had approved BMTP's final plat in January 2006—almost two years before it passed the November 2008 moratorium at issue and four months before it passed any moratorium (i.e., the June 2006 moratorium). The court concluded that because the City approved the residential subdivision for the seven lots at issue, the property constituted approved development under Chapter 212, and, accordingly, the moratorium could not validly apply against BMTP's seven lots.

See also: *State ex rel. State Dept. of Highways and Public Transp. v. Gonzalez, 82 S.W.3d 322 (Tex. 2002).*

See also: *Spradlin v. Jim Walter Homes, Inc., 34 S.W.3d 578 (Tex. 2000).*

Case Note:

BMTP had also brought a claim for inverse condemnation. It asserted that the wrongful application of the moratorium amounted to a regulatory taking. The court found that factual disputes persisted that the trial court had to first resolve with respect to the extent of the moratorium's interference with BMTP's use and enjoyment of its property before a court could determine if a taking had occurred.

Zoning News from Around the Nation

ARIZONA

"Concluding state legislators likely violated the Arizona Constitution, the Attorney General's Office has agreed not to enforce some new laws governing homeowner associations. . . . [T]he state agreed to accept a court order that eight separate provisions of SB 1454 were

enacted illegally and are void. These include language that was designed to prohibit cities and counties from requiring developers to establish planned communities as a condition of getting the necessary zoning or permits." The remainder of the measure, which makes various changes in general election laws, will take effect as scheduled.

Source: *Maricopa Monitor;* *www.trivalleycentral.com/maricopa_monitor/*

MISSOURI

The Webster Groves City Council "approved imposing a moratorium of up to six months on the issuing of permits for the development, construction or placement of wireless communications infrastructure, including wireless cell towers, within the city." Reportedly, the City Council determined that "[t]he moratorium was needed to allow the city time to study whether to update its own laws regarding wireless communications infrastructure, in light of new state laws that were to have become effective Aug. 28." Those new laws would have regulated municipal ability to enforce zoning and other regulations regarding wireless communications facilities. However, in response to a lawsuit by some cities, a preliminary injunction has been issued that has temporarily delayed the new laws from becoming effective.

Source: *Webster Kirkwood Times;* *www.websterkirkwoodtimes.com*

PENNSYLVANIA

State Senator Larry Farnese has introduced legislation aimed at protecting neighborhood organizations and community groups from Strategic Lawsuits Against Public Participation ("SLAPPs"). According to Farnese's office, 27 states have thus far adopted anti-SLAPP legislation. Pennsylvania passed a limited SLAPP measure in 2000, but the law only applies to environmental law and regulatory processes.

Source: *The Pennsylvania Record;* *http://pennrecord.com*

A Pennsylvania state representative recently announced that "she intends to introduce legislation eliminating the controversial prohibitions on local regulation of fracking that are currently embroiled in a constitutional challenge in front of the state's high court."

Source: *Law 360;* *www.law360.com*

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Zoning Bulletin

in this issue:

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Proceedings/Telecommunications Act—City denies cell phone tower application in three-sentence letter

Mobile phone service provider contends failure to detail reasons in denial letter violates the Telecommunications Act

Citation: *T-Mobile South, LLC v. City of Roswell, Ga., 2013 WL 5434710 (11th Cir. 2013)*

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The Eleventh Circuit has jurisdiction over Alabama, Florida, and Georgia.

ELEVENTH CIRCUIT (GEORGIA) (10/01/13)—This case addressed the issue of whether a city's three-sentence denial of a mobile phone service provider's request for a permit complied with the "in-writing" requirement of the federal Telecommunications Act provision that requires cell phone tower construction permit denials to be "in writing" and supported by substantial effort contained in a written record.

The Background/Facts: T-Mobile South, LLC ("T-Mobile") submitted an application to construct a 108-foot-tall cell tower on a specific property in Roswell, Georgia (the "City"). The City's Planning and Zoning Division (the "Planning Department") concluded that all ordinance requirements for construction of the cell tower were met. The Planning Department recommended that the Mayor and the City Council approve the application, subject to certain conditions. On April 12, 2010, a public hearing was held on T-Mobile's application. After hearing much opposition to the application, the City Council members concluded that the proposed cell tower would be "incompatible with the natural setting and surrounding structures, particularly due to the proposed tower's height being greater than the surrounding trees." The City Council passed a motion to deny the application.

Two days later, the Planning Department sent a letter to T-Mobile. The letter was three sentences long. It provided as follows:

> Please be advised the City of Roswell Mayor and City Council denied the request from T-Mobile for a 108' mono-pine alternative tower structure during their April 12, 2010 hearing. The minutes from the aforementioned hearing may be obtained from the city clerk. Please contact Sue Creel or Betsy Branch at [phone number].

A month later, T-Mobile filed a legal action against the City. It alleged that the City's denial of its cell tower application was not "in writing" and supported by substantial evidence in the record and would effectively prohibit the provision of wireless service in violation of the federal Telecommunications Act of 1996 ("TCA"). T-Mobile also sought an injunction, asking the court to order the City to grant it the requested permit.

Finding there were no material issues of fact in dispute and deciding the matter on the law alone, the district court issued summary judgment in favor of T-Mobile. The court held that the City's short denial letter failed to satisfy the "in writing" requirement contained in 47 U.S.C.A. § 332(c)(7)(B)(iii) of the TCA.

Section 332(c)(7)(B)(iii) requires that a state or local government's decision denying a request for a permit to erect a cell tower be "in writing and supported by substantial evidence contained in a written record."

The district court held that the "in writing" requirement necessitated that the City provide a separate written document delineating the specific reasons for its decision.

The City appealed. On appeal, the City contended that its denial of T-Mobile's application satisfied the "in writing" requirement in § 332(c)(7)(B)(iii) because the City's decision was reduced in writing in numerous forms, including the denial letter, the hearing minutes, and the hearing transcript.

DECISION: Judgment of district court reversed and matter remanded.

The Court of Appeal, Second District, Division 1, California, agreed with the City. Reiterating its holding in its recent decision in *T-Mobile South, LLC v. City of Milton, Ga., 58 Communications Reg. (P & F) 1590, 2013 WL 4750549 (11th Cir. 2013)* (which was summarized in the previous issue of this *Zoning Law Bulletin*), the court adopted a plain reading of § 332(c)(7)(B)(iii). The court stated that the "in-writing" requirement does not require a municipal decision be "in a separate writing" or in a "writing separate from the transcript of the hearing and the minutes of the meeting in which the hearing was held" or "in a single writing that itself contains all of the grounds and explanations for the decision." Rather, the court found that "to the extent that the decision must contain grounds or reasons or explanations, it is sufficient if those are contained in a different written document or documents that the applicant is given or has access to."

Here, the court found that the collective "writings" that T-Mobile had access to satisfied the writing requirement of § 332(c)(7)(B)(iii). Those collective documents included: (1) the letter explicitly denying T-Mobile's request; (2) the minutes summarizing the April 12, 2010 hearing and recounting the reasons for the denial; and (3) a verbatim transcript of the April 12, 2010 hearing during which the City Council denied the request.

See also: *T-Mobile South, LLC v. City of Milton, Ga., 58 Communications Reg. (P & F) 1590, 2013 WL 4750549 (11th Cir. 2013).*

Case Note:

In reaching its decision, the court rejected the "pragmatic" reading of the "in writing" requirement employed by the district court in the instant case and by several of its sister circuits. Those courts have required that a written denial must be "separate from the written record" and "must contain a sufficient explanation of the reasons for the permit denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons." See, e.g., Southwestern Bell Mobile Systems, Inc. v. Todd, 244 F.3d 51, 60, 31 Envtl. L. Rep. 20578 (1st Cir. 2001); New Par v. City of Saginaw, 301 F.3d 390, 395-96, 2002 FED App. 0276P (6th Cir. 2002); MetroPCS, Inc. v. City and County of San Francisco, 400 F.3d 715, 721-23 (9th Cir. 2005).

Rezoning—State council on affordable housing issues third-round rules, providing growth share approach to meeting affordable housing objectives

Opponents contend growth share approach conflicts with state's Fair Housing Act approach to affordable housing

Citation: *In re Adoption of N.J.A.C. 5:96, 2013 WL 5356807 (N.J. 2013)*

NEW JERSEY (09/26/13)—This case addressed the issue of whether the growth share approach adopted in the New Jersey Council on Affordable Housing's third-round substantive rules for calculating affordable housing needs and criteria for satisfaction of needs was permissible and valid or was invalid and in conflict with the New Jersey Fair Housing Act.

The Background/Facts: In what is known as its *Mount Laurel* decisions, the New Jersey Supreme Court has recognized a constitutional obligation that municipalities, in the exercise of their delegated power to zone, "afford [ ] a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing." In the absence of a legislative response to the constitutional imperative set forth in the court's *Mount Laurel I* decision, the court, in its *Mount Laurel II* decision, fashioned "a remedy that was necessary to meet the urgency of the problem." The court imposed definitive quantitative obligations to be fulfilled within fixed periods. That remedy "was designed to curb exclusionary zoning practices and to foster development of affordable housing for low- and moderate-income individuals."

Then, in 1985, the New Jersey Legislature enacted the Fair Housing Act ("FHA"). (See N.J.S.A. 52:27D-302.) The FHA set forth particularized means by which municipalities could satisfy their obligation, mirroring the judicially crafted remedy. Further, the FHA created the Council on Affordable Housing ("COAH"), and provided it with rule making and adjudicatory powers to execute the provision of affordable housing. (N.J.S.A. 52:27D-305.) The FHA directed COAH to develop criteria establishing municipal determinations of present and prospective fair share of housing that would result in firm, fair share allocations. (N.J.S.A. 52:27D-307.)

In December 2004, and as revised and adopted in October 2008, COAH promulgated its third round of substantive rules for calculating affordable

housing needs and the criteria for the satisfaction of such needs (the "Third Round Rules"). Among other things, in the Third Round Rules, COAH proposed a new approach—a "growth share" methodology—for assessing prospective need in the allocation of a municipality's fair share of the region's need for affordable housing. This growth share approach tied a municipality's affordable housing obligation to its own *actual* rate of growth. Thus, under the growth share methodology, a municipality's constitutional obligation "would be a simple . . . alloca[tion of] a share of whatever growth *actually* occurs to low-and moderate-housing." Municipalities would accrue affordable housing obligations as a percentage of the residential and nonresidential growth that occurred within its borders.

The New Jersey Builders Association and affordable housing advocacy organizations, among others, (the "Opponents") challenged the validity of COAH's Third Round Rules. They maintained that the growth share approach in the Third Round Rules was inconsistent with the *Mount Laurel* directives and the FHA. They argued that the Third Round Rules were inconsistent with the FHA's command to COAH "to develop criteria establishing municipal determinations of present and prospective fair share of housing that results in *firm*, fair share allocations."

The Superior Court, Appellate Division agreed with the Opponents. The Appellate Division expressed doubt about whether any growth share methodology adopted by COAH could be compatible with the *Mount Laurel II* remedy that "appears to militate against the use of" a growth share approach for determining a municipality's affordable housing obligation. The Appellate Division invalidated a substantial portion of the Third Round Rules, including the growth share methodology used by COAH. It remanded the matter to COAH to promulgate a new set of rules.

COAH appealed.

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

The Supreme Court of New Jersey recognized that its judicial remedy imposed in its *Mount Laurel* decisions reflected the conditions of the time, 30 years ago, and emphasized that that remedy "should not now be viewed as a constitutional straightjacket to legislative innovation." Nevertheless, the court also found that the growth share methodology of the Third Round Rules conflicted with the FHA and were therefore invalid.

The court explained that, under the Third Round Rules' growth share methodology, even if a municipality were allocated a large projected growth share obligation—based on COAH projections, if the municipality's actual growth fell below that rate, its growth share obligation would be reduced to reflect that slowed residential and job growth. The court found that result was: facially inconsistent with the FHA's command to COAH "to develop criteria establishing municipal determinations of present and prospective fair share of housing that results in firm, fair share al-

locations" (N.J.S.A. 52:27D-307), against which the municipality's housing element may be designed (N.J.S.A. 52:27D-310), and reviewed for substantive certification purposes (N.J.S.A. 52:27D-313, -314).

The court further explained that the FHA "sets forth the framework of a remedy that precludes COAH from taking the liberty to fashion a new growth share methodology" that: (1) "allows for the devising of residential and commercial affordable housing ratios for projected need that are not tied to a regional need for affordable housing"; and (2) "leaves open-ended how or whether projected need for a housing region will be fulfilled." The court found that the FHA was "replete with references tying affordable housing obligations to a region, not obligations formed on a statewide basis." Also, the court found the FHA "requires a specifically allotted number of units for satisfaction of both present and prospective need based on a housing region."

In sum, the court found that the FHA's language was an impediment to COAH's "unilateral decision to devise a wholly new approach to determining fair share." The court said that "COAH may implement the FHA's scheme, not come up with a wholly new one."

Finding the COAH regulations were not severable, the court found them wholly invalid, and affirmed the Appellate Division's remand to COAH for a "new adoption of regulations to govern the third round municipal obligations consistent with the strictures of the FHA."

See also: *Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158, 456 A.2d 390 (1983).*

See also: *Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 67 N.J. 151, 336 A.2d 713 (1975).*

Case Note:

The court also found the Third Round Rules' growth share methodology was "at odds with the remedy adopted in Mount Laurel II, which imposed definitive quantitative obligations to be fulfilled within fixed periods" because it was not: premised on region-specific housing data evidencing the region's need; or structured to establish a firm obligation in respect of prospective affordable housing need. Still, the court went on to recognize that "the judicial remedy that was fashioned [in the Mount Laurel decisions] based on a record created thirty years ago should not be viewed as the only one that presently can secure satisfaction of the constitutional obligation to curb exclusionary zoning and promote the development of affordable housing in the housing regions of this state." The court stated that, "[a]ssuming that ordered development will continue to be used as a tool in the delivery of affordable housing, the [New Jersey] Legislature should determine how best to utilize that means in the promotion of affordable housing suited for the needs of housing regions" by revising the FHA.

More specifically, the court stated that "the Legislature has to enact an alterna-

tive remedy—such as some version of the one proposed by COAH in the Third Round Rules—in order for that remedy [(i.e., such as a growth share approach)] to be statutorily permissible."

Conditions on approval—planning board approves preliminary plat

Planning Board then imposes additional requirements in conditional final plat approval

Citation: *Nickart Realty Corp. v. Southold Town Planning Bd., 109 A.D.3d 930, 2013 WL 5226146 (2d Dep't 2013)*

NEW YORK (09/18/13)—This case addressed the issue of whether a planning board could impose additional requirements after granting conditional preliminary approval.

The Background/Facts: Nickart Realty Corp. ("Nickart") owned a parcel of property in the Town of Southold (the "Town") in Suffolk County (the "County"). Nickart sought to subdivide the parcel into two lots and build a single-family dwelling on each. Nickart submitted to the Town's Planning Board a subdivision plan. That subdivision plan expressly referenced the grant of a variance Nickart had received from the County Department of Health Services ("DHS"). That DHS variance permitted Nickart to install a private on-site sewage system. That variance was based, in part, on the transfer, from another parcel of real property to the Nickart parcel, of a type of development right known as a "sanitary flow credit."

In April 2010, the Planning Board granted conditional preliminary approval of Nickart's subdivision plan. In June, 2010, the Planning Board deemed substantially complete Nickart's application for final plat approval. However, in July, 2010, the Planning Board adopted a resolution granting a "conditional" final plat approval, requiring, for the first time, that Nickart submit proof of either: (1) its compliance with chapter 117 of the Town's Code, which places strict limits of sanitary-flow-credit development rights; or (2) approval by the DHS for the two-lot subdivision that was not dependent on a transfer of a sanitary flow credit.

Thereafter, Nickart commenced a legal action. It asked the court to declare that the Planning Board's resolution granting a "conditional" final plat approval was invalid insofar as it imposed the new condition.

The supreme court agreed with Nickart.

The Planning Board appealed.

DECISION: Judgment of Supreme Court, Suffolk County, affirmed.

The Supreme Court, Appellate Division, Second Department, New

York, held that although the Planning Board's approval of the preliminary plat in April 2010, did not guarantee approval of the final version, "a planning board may not, in the absence of significant new information, deny final approval if a property owner implements the modifications or conditions required by a preliminary approval."

Here, the court found that the Planning Board had "long known that the [DHS's] approval of a [County] Sanitary Code variance was based on the transfer of sanitary flow credits." In fact, the Planning Board had specifically referenced that transfer in its April 2010 conditional preliminary approval. The court concluded that, inasmuch as no significant new information came to light after the Planning Board gave its approval to the preliminary plat, its imposition of additional requirements in the conditional final approval was arbitrary and capricious.

See also: *Long Island Pine Barrens Soc., Inc. v. Planning Bd. of Town of Brookhaven, 78 N.Y.2d 608, 578 N.Y.S.2d 466, 585 N.E.2d 778 (1991).*

See also: *Bagga v. Stanco, 90 A.D.3d 919, 934 N.Y.S.2d 493 (2d Dep't 2011).*

Rezoning—City denies application for certificate of appropriateness after more than 60 days

Applicant argues a certificate of appropriateness is a "written request relating to zoning" that requires a 60-day approval or denial per statute

Citation: *500, LLC v. City of Minneapolis, 2013 WL 5348308 (Minn. 2013)*

MINNESOTA (09/25/13)—This case addressed the issue of whether an application for a certificate of appropriateness is "a written request relating to zoning," under Minnesota statutory law (Minn. Stat. § 15.99, subd. 2(a)), such that the municipalities evaluating a certificate of appropriateness must comply with the statutory 60-day time line for responding to such "written requests relating to zoning."

The Background/Facts: 500, LLC ("500 LLC") was a real-estate firm that owned a vacant four-story building (the "property") located in Minneapolis, Minnesota (the "City"). 500 LLC sought to develop the property into an office building. 500 LLC sought site plan approval from the City. The City Council approved 500 LLC's site plan application.

However, before the City Council reviewed 500 LLC's site plan ap-

plication, the Minneapolis Heritage Preservation Commission (the "Commission") nominated the property for designation as a local historic landmark. The Commission's action placed the property under "interim protection," which prohibits "destruction or inappropriate alteration [of a nominated property] during the designation process" in the absence of a "certificate of appropriateness."

On May 6, 2009, 500 LLC submitted an application for a certificate of appropriateness to the Commission. Following a public hearing and a series of administrative appeals, the City Council denied the application for a certificate of appropriateness on July 31, 2009. Approximately 10 months later, the City Council approved a resolution designating the property as a local historic landmark. The designation became final and effective on June 5, 2010.

In October 2010, 500 LLC brought a legal action against the City. Among other things, 500 LLC alleged that the City violated Minnesota statutory law—Minn. Stat. § 15.99, subd. 2(a)—because it failed to approve or deny the application for a certificate of appropriateness within 60 days.

Section § 15.99, subd. 2(a), states in relevant part as follows:

> [A]n agency must approve or deny within 60 days a written request relating to zoning . . . for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request.

500 LLC maintained that its application for a certificate of appropriateness was "a written request relating to zoning." As such, it further alleged that the City's failure to approve or deny the application resulted in its automatic approval at the end of the 60-day period. 500 LLC asked the court to declare that, therefore, its "application for [a] Certificate of Appropriateness [was] approved and granted by operation of law."

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the district court granted summary judgment to the City. In so holding, the court concluded that Minn. Stat. § 15.99, subd. 2(a), did not apply to an application for a certificate of appropriateness because "decisions regarding historic preservation are not brought into or linked in logical or natural association with actual zoning decisions."

500 LLC appealed. The court of appeals affirmed. The court of appeals reasoned that a "written request relating to zoning" is "a request to conduct a specific use of land within the framework of the regulatory structure relating to zoning or, in other words, a zoning application." Because an application for a certificate of appropriateness was a request to "make alterations to the property," not to conduct a specific use of the land, the court concluded that an "application for a certificate of appropriateness [was] not a request relating to zoning."

500 LLC appealed. On appeal, the parties agreed that an application for

a certificate of appropriateness was a "written request." However, the parties disagreed as to whether an application for a certificate of appropriateness "relat[es] to zoning" under Minn. Stat. § 15.99, subd. 2(a), and is therefore subject to the 60-day time line for approval or denial.

DECISION: Judgment of court of appeals reversed and matter remanded.

The Supreme Court of Minnesota held that an application for a certificate of appropriateness is a "written request relating to zoning," and is therefore subject to the 60-day review limitation.

Looking at the plain language of the statute (§ 15.99, subd. 2(a)) and the definitions of the phrase "relating to" and the term "zoning," the court interpreted the phrase "a written request relating to zoning" to refer to: "a written request that has a connection, association, or logical relationship to the regulation of building development or the uses of property."

The court noted that: "[i]f a written request has such a connection, association, or logical relationship, then the 60-day time limit in. § 15.99, subd. 2(a), applies."

In so holding, the court rejected the City's argument that a "written request relating to zoning" referred only to those requests that were explicitly authorized by an applicable zoning ordinance or statute. The court said the City's interpretation ignored the phrase "relating to" and added words of limitation (i.e., authorized by statutes or ordinances) that were not in. § 15.99, subd. 2(a).

Having interpreted the meaning of "a written request relating to zoning," the court went on to conclude that an application for a certificate of appropriateness is a written request related to zoning under Minn. Stat. § 15.99, subd. 2(a). The court reached that conclusion upon finding that: (1) heritage-preservation proceedings have a connection, association, or logical relationship to zoning, and certificates of appropriateness involve a particular property and affect specific property rights; (2) Minnesota's historic-preservation-enabling laws recognize a connection, association, or logical relationship between heritage preservation and zoning, and a municipality's powers in historic-preservation matters extend to zoning; and (3) the City's heritage-preservation ordinances identify a connection, association, or logical relationship between an application for certificate of appropriateness and zoning.

Finally, since the City had conceded that it failed to approve or deny 500 LLC's application for a certificate of appropriateness within 60 days, the court reversed the grant of summary judgment to the City; it remanded the matter for further proceedings consistent with its opinion.

See also: *In re Denial of Eller Media Company's Applications for Outdoor Advertising Device Permits in City of Mounds View, 664 N.W.2d 1 (Minn. 2003).*

See also: *Calm Waters, LLC v. Kanabec County Bd. of Com'rs, 756 N.W.2d 716 (Minn. 2008).*

Zoning News from Around the Nation

CALIFORNIA

Two Los Angeles City Council members have introduced a zoning amendment proposal "that would outlaw fracking and related methods such as 'acidizing.' " The proposal has been referred to the City Council's Planning and Land Use Management Committee for review and public hearings.

Source: *Los Angeles Times; www.latimes.com*

The California State Senate has passed a bill, AB 1229, that would "ensure that local governments can require affordable housing set-asides in new developments, if they choose." Reportedly, the bill is intended to address "uncertainty and confusion created by a 2009 appellate court ruling that the state's rent control law, the Costa-Hawkins Act, prohibits such programs for rental housing." The bill now awaits Governor Brown's signature or veto.

Source: *http://sdgln.com/news*

MASSACHUSETTS

The City of Worcester's Planning Board has advanced to the City Council proposed zoning rules for siting medical marijuana dispensaries in the city. Reportedly, two board members support limiting medical marijuana dispensaries to areas zoned for business-general, manufacturing-general and institutional-hospital uses, two other board members favor expanding it to also include areas zoned for light manufacturing. The City Council can accept, amend or reject the board's recommendations. In Massachusetts, "[w]ithout local zoning restrictions, medical marijuana dispensaries could locate anywhere in the city, except for within 500 feet of a school, day care center or facility where children congregate."

Source: *Worcester Telegram & Gazette; www.telegram.com*

RHODE ISLAND

The City of Pawtucket is considering an ordinance that would residents to raise chickens and honeybees. The proposed ordinance would allow one hen per 800 square feet of land, with a maximum of six chickens per lot. It would permit honeybees only on lots of at least 7,000 square feet.

Source: *Providence Journal; www.providencejournal.com*

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Zoning Bulletin

in this issue:

WEST®

Mat #41330023

Discrimination—City enacts ordinance that prohibits group homes in residential areas

Group home operators allege ordinance illegally discriminates against them

Citation: *Pacific Shores Properties, LLC v. City of Newport Beach, 2013 WL 5289100 (9th Cir. 2013)*

Contributors

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

NINTH CIRCUIT (CALIFORNIA) (09/20/13)—This case addressed the issue of whether the only way a plaintiff (i.e., the party bringing the lawsuit) in an antidiscrimination zoning case may survive summary judgment and bring the case to trial is to identify similarly situated individuals who were treated better than themselves, or whether there are other ways they may demonstrate that intentional discrimination has occurred, such as through direct or circumstantial evidence.

The Background/Facts: In 2008, the City of Newport Beach, California, (the "City") enacted an ordinance (the "Ordinance") which had the practical effect of prohibiting new group homes from opening in most residential zones. Group homes are facilities in which recovering alcoholics and drug users live communally and mutually support each other's recovery. Under the Ordinance, even in the few areas where they were permitted to open, new group homes were required to submit to a permit process. Existing group homes also had to undergo the same permit process in order to continue their operations.

Prior to the Ordinance's enactment, the City treated group homes as "single housekeeping units." "Single housekeeping units" were generally permitted to locate in all residential zones without any special permit. The Ordinance's "key innovation" was to amend the definition of "single housekeeping unit" to exclude group homes. This was accomplished in two critical ways: the amended definition added the requirements that (1) a single housekeeping unit must have a single, written lease; and (2) the residents themselves must decide who will be a member of the household. As a result of those amendments, group homes no longer qualified as "single housekeeping units" because the residents did not sign written leases and were chosen by staff (instead of by each other) to ensure the maintenance of a sober environment. Instead, the Ordinance regulated group homes as "residential care facilities" (i.e., facilities in which disabled individuals reside together but not as a "single housekeeping unit"). As "residential care facilities," group homes faced significant restrictions, including on location.

Three group homes operators, as well as several individuals, including a group home owner and former residents of a group home (collectively, the "Group Homes"), sued the City. They alleged that the Ordinance discriminated against them as facilities that provide housing opportunities for disabled individuals recovering from addiction. They alleged that the Ordinance was discriminatory in violation of, among other things, the federal Fair Housing Act ("FHA") and the Americans with Disabilities Act ("ADA").

The FHA renders it unlawful "[t]o discriminate in the sale or rental,

or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap[.]" (42 U.S.C.A. § 3604(f)(1).) Persons recovering from drug and/or alcohol addiction are considered disabled under the FHA and therefore protected from housing discrimination. (See 42 U.S.C.A. § 3602(h).) Group homes such as the ones that were at issue here are "dwellings" under the FHA (42 U.S.C.A. § 3602(b)), and therefore the FHA prohibits discriminatory actions that adversely affect the availability of such group homes. Moreover, it is well established that zoning practices that discriminate against disabled individuals can be discriminatory, and therefore violate § 3604, if they contribute to "mak[ing] unavailable or deny[ing]" housing to those persons.

The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C.A. § 12132.) Like the FHA, the ADA's protections extend to persons recovering from drug or alcohol addiction. Also like the FHA, the ADA prohibits governmental entities from discriminating against disabled persons through zoning.

The Group Homes presented evidence that showed that the City's purpose in enacting the Ordinance was to exclude group homes from most residential districts and to bring about the closure of existing group homes in those areas. The evidence also showed that the Ordinance regulated other types of group residential arrangements primarily for the purpose of maintaining a "veneer of neutrality." For example, while the Ordinance facially imposed restrictions on some other types of group living arrangements as well, the City did not impose similar regulations on properties rented to vacationing tourists, which are similar to group homes in regular turnover of occupants.

The district court acknowledged the evidence that the City acted with a discriminatory motive but found that evidence "irrelevant" because, it stated, the City had not treated group homes any worse than certain other group living arrangements. The court also found that the Group Homes failed to create a triable issue of fact as to whether the losses that they claimed their businesses suffered were caused by the enactment or enforcement of the Ordinance. Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the district court issued summary judgment in favor of the City.

The Group Homes appealed.

DECISION: Judgment of district court reversed and matter remanded.

The United States Court of Appeals, Ninth Circuit, held that where, as here, in a zoning-related matter there is direct or circumstantial evi-

dence that the defendant (i.e., here the City) has acted with a discriminatory purpose and has caused harm to members of a protected class (i.e., here "disabled" recovering addicts), such evidence is sufficient to permit the protected individuals to proceed to trial under a disparate treatment theory.

In so holding, the court found that its cases "clearly establish that plaintiffs [(i.e., here the Group Homes)] who allege disparate treatment under statutory anti-discrimination laws need not demonstrate the existence of a similarly situated entity who or which was treated better than the plaintiffs in order to prevail." Instead, said the court, the plaintiff may "simply produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated" the defendant (i.e., here the City) and that the defendant's actions adversely affected the plaintiff in some way.

The court further explained that having taken the latter "direct or circumstantial evidence" approach, the Group Homes' claim would survive summary judgment and bring the issue to trial if they could show that the City's actions were motivated by a discrimination through evidence of the following factors, among other potential factors: (1) "statistics demonstrating a 'clear pattern unexplainable on grounds other than' discriminatory ones"; (2) "[t]he historical background of the decision"; (3) "[t]he specific sequence of events leading up to the challenged decision"; (4) "the [City's] departures from its normal procedures or substantive conclusions"; and (5) "relevant 'legislative or administrative history.' "

The court found that the Group Homes did establish evidence of those factors. The court found that the Group Homes showed: (1) the legislative history indicated that the Ordinance was enacted for the purpose of eliminating or reducing the number of group homes throughout the City; (2) statistics, provided by the City, indicated the Ordinance had the effect of reducing group home beds by 40%; and (3) evidence that group homes were specifically targeted for enforcement.

The court also held that the Group Homes created a triable issue of fact as to whether the losses that their businesses suffered were caused by the enactment and enforcement of the Ordinance. The court acknowledged that the Group Homes had presented evidence that: they experienced a significant decline in business after the Ordinance's enactment; the publicity surrounding the Ordinance greatly reduced referrals; and current and prospective residents expressed concern about whether the Group Homes would close. Further, the court held that the costs borne by the Group Homes to present their permit applications and the costs spent assuring the public that they were still operating despite the City's efforts to close them were compensable.

The court concluded that the Group Homes had created a triable is-

sue of fact that the Ordinance was enacted in order to discriminate against them on the basis of disability, and that its enactment and enforcement harmed them. The court reversed the district court's dismissal of the Group Homes' claims and remanded the matter.

See also: *Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977).*

See also: *Hunter v. Underwood, 471 U.S. 222, 105 S. Ct. 1916, 85 L. Ed. 2d 222 (1985).*

See also: *The Committee Concerning Community Improvement v. City of Modesto, 583 F.3d 690, 703 (9th Cir. 2009).*

Case Note:

In its decision, the court explained that the case "demonstrates why requiring anti-discrimination plaintiffs to prove the existence of a better-treated equity would lead to unacceptable results": "Plaintiffs in anti-discrimination suits would be unable to demonstrate the discriminatory intent of a defendant that openly admitted its intent to discriminate, so long as the defendant (a) relies on a facially neutral law or policy and (b) is willing to 'overdiscriminate' by enforcing the facially neutral law or policy even against similarly-situated individuals who are not members of the disfavored group. Such a rule presents the 'grotesque scenario where a[ ] [defendant] can effectively immunize itself from suit if it is so thorough in its discrimination that all similarly situated [entities] are victimized,' " said the court.

Interpretation of Zoning Ordinance—After zoning enforcement officer issues zoning permit to build on lot, adjacent lot owners appeal

They argue that in issuing the permit the officer misinterpreted the term "separately owned" in the zoning regulation

Citation: *Cockerham v. Zoning Bd. of Appeals of Town of Montville, 146 Conn. App. 355, 2013 WL 5458814 (2013)*

CONNECTICUT (10/08/13)—This case addressed the issue of

which of two plausible interpretations of the term "separately owned"—in zoning regulations providing that nonconforming lots, which could be used for single-family residences, were lots that were separately owned prior to the enactment of the town's zoning regulations—should be applied.

The Background/Facts: In 1961, Michael Donahue and his wife (the "Donahues") purchased the property at 6 Glen Road in Montville, Connecticut (the "Town"). In 1966, the Donahues acquired the adjacent property, 4 Glen Road. Zoning in the Town became effective on December 6, 1966.

Michael Donahue acquired title to both lots from his wife. After he died, and in November 2003, his estate sold 6 Glen Road to Charles Cockerham and Willmeta Cockerham (the "Cockerhams"). At the time, both properties at 6 Glen Road and 4 Glen Road were not in conformance with the existing zoning regulations. Six Glen Road had the required frontage, but lacked the required area. The house was also in violation of the side yard requirements. Four Glen Road did not have the required frontage or the minimum area required in the zone.

In November 2004, John Bialowans purchased the unimproved property at 4 Glen Road. His purchase and sale agreement was contingent upon obtaining building approval from the town. Since 4 Glen Road failed to meet the area or frontage requirement for a buildable lot in the zoning district in which it was located., a zoning permit to construct a single-family detached residence on 4 Glen Road would only issue if the Town's zoning enforcement officer (the "ZEO") determined that the parcel met the definition of a nonconforming lot in the Town's zoning regulations.

Section 4.13.6 of the Town's zoning regulations provided, in relevant part that: "[l]ots for single family detached residences which meet the definition of nonconforming lot in Section 4.13.5 which have a total area or lot frontage less than the minimum required in the district may be used for single family detached residences . . . ." Section 4.13.5 defined "non-conforming lot" as: "a lot which was separately owned prior to the enactment of the Zoning Regulations or any amendment thereto . . . ." Section 1.3 also defined "lot, non-conforming" as "[a] parcel of land owned individually and separately and separated from any adjoining tract of land on the effective date of these regulations which does not meet the dimensional area, width, or design requirements for the zoning district in which it is located." The terms "separately owned" and "owned individually and separately and separated from any adjoining tract of land" were not defined in the regulations.

On April 14, 2005, the Town's ZEO issued the zoning permit for 4 Glen Road.

The Cockerhams appealed the ZEO's issuance of the zoning permit. They argued that the ZEO misinterpreted the applicable zoning regulation and that the permit should not have issued. The Cockerhams argued that the proper interpretation of "separately owned" in the zoning regulations providing for nonconforming lots, which could be used for single-family residences, were lots that were owned by separate people. The Cockerhams pointed to the fact that 6 Glen Road and 4 Glen Road were owned by the same people—the Donahues—prior to the enactment of the zoning regulations in 1966. Accordingly, they argued that the lot at 4 Glen Road did not meet the zoning regulations definition of "separately owned" nonconforming lot on which single-family residences could be built, and that the ZEO wrongfully issued a zoning permit to Bialowans.

The Zoning Board of Appeals (the "Board") disagreed. It agreed with the ZEO's interpretation of "separately owned" nonconforming lots as meaning lots that had separate legal descriptions and had been conveyed by separate deeds.

The Cockerhams again appealed. The superior court dismissed the appeal. Although it found that the term "owned separately" reasonably could have two meanings, it found persuasive and deferred to the interpretation of the regulations upheld by the Board.

The Cockerhams again appealed.

DECISION: Judgment of superior court affirmed.

The Appellate Court of Connecticut agreed with the ZEO/Board's interpretation of the term "separately owned." It held that term "separately owned," in the Town's zoning regulations providing that nonconforming lots, which could be used for single-family residences, were lots that were separately owned prior to enactment of Town's zoning regulations, meant: lots that had separate legal descriptions and had been conveyed by separate deeds.

In so holding, the court noted that when faced with two equally plausible interpretations of regulatory language, the court must give deference to the construction of that language adopted by the agency charged with enforcement of the regulations (i.e., here the ZEO). Moreover, the court found that interpretation was supported by substantial evidence, including evidence that it had been the custom of the Town's ZEO to construe the "separately owned" language to mean separately described by deed. The court found it irrelevant that nearby towns interpreted similar language in their zoning regulations to mean owned by separate people.

See also: *Bank of America v. Zoning Bd. of Appeals of Borough of Fenwick, 46 Conn. L. Rptr. 430, 2008 WL 4378824 (Conn. Super. Ct. 2008).*

See also: *Doyen v. Zoning Bd. of Appeals of Town of Essex, 67 Conn. App. 597, 789 A.2d 478 (2002).*

Proceedings—City approves institutional master plan for college

Abutters appeal, contending approval process was adjudicatory and subject to state constitutional right to independent judges

Citation: *Alford v. Boston Zoning Com'n, 84 Mass. App. Ct. 359, 2013 WL 5526628 (2013)*

MASSACHUSETTS (10/09/13)—This case addressed the issue of whether the City of Boston's Institutional Master Plan ("IMP") review process, which reviews large-scale educational or health care institutions' expansion projects, is adjudicatory and thus subject to Article 29 of the Massachusetts Declaration of Rights, which requires "an impartial interpretation of the laws, and administration of justice" with trial by "judges free, impartial and independent . . . ."

The Background/Facts: In the spring of 2003, Boston College ("BC") embarked on a strategic planning process to redevelop its Chestnut Hill and Brighton campuses in Boston, Massachusetts (the "City"). BC purchased 65 acres of land and set about developing a long-term comprehensive campus plan.

Under art. 80D of the City's zoning code ("art. 80D"), when educational or health care institutions with more than 150,000 square feet seek to expand by more than 20,000 gross square feet, they must file for review an Institutional Master Plan ("IMP") with the Boston Redevelopment Authority ("BRA"). The purpose of the IMP review "is to provide for the well-planned development of Institutional Uses in order to enhance their public service and economic development role in surrounding neighborhoods." (Art. 80D, § 80D-1.)

In June 2008, BC filed its IMP with the BRA. Among other things, the IMP included the following projects: 790 additional beds for on-campus students; a 285,000-square-foot university center; a 350-space addition to an existing garage; and a 500-space parking facility.

In January 2009, the BRA voted to approve the IMP and send it to the City's zoning commission (the "Zoning Commission") for approval. On June 10, 2009, the Zoning Commission adopted the final IMP and the City mayor signed it. The IMP was expected to produce: $1 billion

in planned construction projects; approximately 12,243 jobs; $737 million in labor income for community residents; and a 10-year economic impact of approximately $1.57 billion.

In July 2009, individuals who owned property that abutted the property owned by BC (the "Abutters"), which was the subject of the IMP, filed a complaint in superior court against, among others, the Zoning Commission and the BRA. BC intervened in the action. Among other things, the Abutters argued that Article 29 of the Massachusetts Declaration of Rights ("art. 29") applied to the IMP process because it was an adjudicatory process. They contended that the Zoning Commission violated art. 29.

Article 29 states:

> "[i]t is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit."

Article 29 has been interpreted to extend beyond judges "to all persons authorized to decide the rights of litigants."

The Abutters maintained that IMPs were not a form of zoning amendment, but rather were akin to special permits and variances. As such, they contended that the IMP approval process was adjudicatory, and subject to art. 29's requirements of "impartial and independent" review. The Abutters alleged that, here, the review of BC's IMP violated art. 29 as it was "infected with bias and ex parte communications." They alleged that: (1) a zoning commission member was a lobbyist hired by BC to work on property issues, master planning, and a campus master plan during its IMP approval process; and (2) the BRA, the zoning commission, and BC communicated outside the public meeting process to reach an agreement to approve the IMP.

Eventually, finding no material issues of fact in dispute, and deciding the matter on the law alone, a superior court judge issued summary judgment for the Zoning Commission, BRA and BC. The judge held that the IMP approval process was a legislative act, not an adjudicatory proceeding, and thus art. 29 did not apply.

The Abutters appealed.

DECISION: Judgment of superior court affirmed.

The Appeals Court of Massachusetts held that art. 29 did not apply to the City's IMP approval process.

In so holding, the court disagreed with the Abutters' argument that BC's IMP was similar to the special permit process, which was adjudicatory in nature. The court found that IMPs were "created specifically to address the shortcomings that the special permit process

posed to health care and educational institutions." The court found that IMPs were intentionally distinct from the special permit in an effort to lessen the burden of the land use development process for institutions that often seek development of multiple projects over noncontiguous parcels of land. Further, the court found that"[a]n adjudicatory or quasi judicial format would not have been well adapted functionally to the type of determination" that the Zoning Commission was to make, as "[a] substantial overlap of responsibilities between the Zoning Commission and BRA renders an adjudicatory format impracticable."

Accordingly, the court concluded that the IMP approval process under the City's zoning code was not quasi adjudicatory, and that summary judgment for the BRA, Zoning Commission and BC was properly entered on that basis.

See also: *Mullin v. Planning Bd. of Brewster, 17 Mass. App. Ct. 139, 456 N.E.2d 780 (1983).*

Case Note:

The Abutters had also alleged that the decision of Zoning Commission and BRA, approving BC's IMP, was arbitrary and capricious. The appellate court disagreed. It found that the decision was "made through a process that required communication and input from multiple sectors of state and local government and private parties in an effort to ensure that the amendment comport[ed] to the standards of the [City's] zoning code."

Zoning News from Around the Nation

CALIFORNIA

Under new law, local municipalities now have "the freedom to lower the assessed value of and offer tax breaks for landowners who can commit to using the land for agricultural purposes for a set time." Under the law, aimed at "urban agriculture," "if landowners [of lots of three acres or less] will pledge to grow crops of food on the land for a period of five years, their property will be assessed at a lower rate, thus giving them significant tax benefits."

Source: *EIN News Desk; http://world.einnews.com*

MASSACHUSETTS

Pending in the state House of Representatives is a bill—An Act Promoting the Planning & Development of Sustainable Communities—which would reportedly give "much more control to communi-

ties in developing zoning ordinances that will encourage the development of more pedestrian, transit, and bike-friendly neighborhoods, and more vibrant, thriving, downtown districts."

Source: *Scituate Mariner; www.wickedlocal.com/scituate*

VIRGINIA

In a nonbinding advisory opinion, Attorney General Ken Cuccinelli concluded that "[l]ocal officials would have little influence over uranium mining if Virginia decided to end a decades-long prohibition." If the General Assembly ended the moratorium, Cuccinelli wrote, "a locality's authority related to uranium mining will depend upon federal and state law in effect at that time, including the enabling legislation for uranium mining enacted by the General Assembly." The opinion adds: "If the General Assembly chooses to establish a permitting program for uranium mining and milling operations within the Commonwealth and provides for related regulation, such legislation will affect local government authority to regulate such operations by ordinance." "On the other hand," he wrote, "the General Assembly could enable concurrent regulatory authority to its appropriate agencies and localities, in which case the locality could exercise such authority so long as such exercises do not conflict with federal or state law." "Even if the legislature allowed local zoning ordinances over mining, the local ordinances could 'not be drafted in such a way as to be arbitrary or capricious either in their terms as written or in their application,' " Cuccinelli wrote. "Further, such zoning ordinances could not be so restrictive as to impose a ban on that otherwise legal activity."

Source: *The Roanoke Times; www.roanoke.com*

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Religious Uses/Civil Rights—Land use regulations that prohibit year-round bible camp on certain property

Religious institution claims those land use regulations violate the federal Religious Land Use and Institutionalized Persons Act

Citation: *Eagle Cove Camp & Conference Center, Inc. v. Town of Woodboro, Wis., 2013 WL 5820289 (7th Cir. 2013)*

The Seventh Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

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SEVENTH CIRCUIT (WIS.) (10/30/13)—This case addressed the issue of whether land use regulations prohibiting a proposed year-round Bible camp on residentially-zoned property violated the Religious Land Use and Institutionalized Persons Act.

The Background/Facts: Eagle Cove Camp & Conference Center ("Eagle Cove") sought to construct a year-round Bible camp on 34 acres of property (the "Property") that it owned on a lake in the Town of Woodboro, Wisconsin ("Woodboro").

The Property was under the zoning authority of Oneida County (the "County"). As of May 2001, Woodboro had voluntarily subjected itself to the County's Zoning and Shoreland Protection Ordinance (the "Ordinance"). According to the Ordinance, religious land uses were permitted throughout the County and Woodboro. Year-round recreational and seasonal camps were permitted on 36% and 72% of the land in the County, respectively. In addition, churches and religious schools were allowed on 60% of the land in the County. Churches and schools were permitted on nearly 43% of the land in Woodboro and campgrounds (religious or secular) on approximately 57%.

A portion of Eagle Cove's Property was zoned Single Family Residential. Another portion of the Property was zoned Residential and Farming.

Eagle Cove believed that their religion mandated that the Bible camp be on the Property. Eagle Cove also believed that they had to operate the Bible camp on a year-round basis. Since the zoning of their Property did not allow for a year-round Bible camp, Eagle Cove petitioned for rezoning of the Property. The County denied the rezoning petition on the grounds that it would conflict with the majority single-family usage around the lake.

Eagle Cove then sought a conditional use permit ("CUP"). The county denied the CUP because the proposed Bible camp did not conform to the goals in the district and was incompatible with the single-family residential use of the land adjacent to the Property.

Eagle cove ultimately filed an action in court in which it asserted, among other things, that the land use regulations of Woodboro and the County deprived Eagle Cove of its rights set forth under various provisions of the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA").

More specifically, Eagle Cove argued that Woodboro had violated RLUIPA's total exclusion provision. That provision prohibits governmental land use regulations from totally excluding religious assemblies from a jurisdiction. (42 U.S.C.A. § 2000cc(b)(3)(A).) Eagle Cove argued that by excluding religious recreational camps within its borders, Woodboro violated this provision.

Eagle Cove also sought relief under RLUIPA's substantial burden provision. Eagle Cove alleged that the County imposed a substantial burden on the exercise of religious rights without having a compelling reason for doing so. (42 U.S.C.A. § 2000cc(a).)

Eagle Cove further argued that the Ordinance violated the equal terms provision of RLUIPA, which prevents governmental land use regulations that treat religious institutions on less than equal terms with similarly situated institutions that do not have a religious affiliation. (42 U.S.C.A. § 2000cc(b)(1).)

Finding there were no material issues of fact in dispute and deciding the matter on the law alone, the court granted summary judgment in favor of the County and Woodboro. The court found that the County and Woodboro did not unreasonably limit religious assemblies in their respective jurisdictions, but rather, Eagle Cove's insistence on locating the year-round camp on the subject property impeded the exercise of their religious beliefs.

Eagle Cove appealed.

DECISION: Judgment of district court affirmed.

The United States Court of Appeals, Seventh Circuit, agreed that the land use regulations did not violate RLUIPA.

The court found that Eagle Cove's argument that Woodboro violated RLUIPA's total exclusion provision by totally excluding religious recreational camps from within its borders failed. The court noted that Woodboro had relinquished its jurisdiction over land use regulations to the County, and that there was ample evidence to suggest that operating a year-round Bible camp would be possible in many parts of the County.

The court also found that, contrary to Eagle Cove's claims, the County did not impose a substantial burden on Eagle Cove's religious rights. The court noted again that there were numerous locations within the County for Eagle Cove to place its Bible camp. Nevertheless, Eagle Cove had insisted that the camp must be built on the subject Property. The court thus found that it was not the land use regulations that created the substantial burden, but rather Eagle Cove's insistence that the expansive, year-round Bible camp be placed on the subject property. The zoning regulations did not seek to inhibit Eagle Cove's religious activity, said the court. Rather, they merely encouraged an area of quiet seclusion for families around the lake.

Finally, the court also found that the Ordinance did not violate RLUIPA's equal terms provision. The court found that the Ordinance did not treat religious land uses, in particular year-round Bible camps, less favorably than their secular counterparts. While the Single Family Residential zoning district, wherein the Subject property lay, permitted certain religious and secular assemblies, recreational camps were prohibited outright, regardless of affiliation.

See also: *Vision Church v. Village of Long Grove, 468 F.3d 975 (7th Cir. 2006).*

See also: *Petra Presbyterian Church v. Village of Northbrook, 489 F.3d 846 (7th Cir. 2007).*

Case Note:

Eagle Cove had also contended that Article 1, § 18 of the Wisconsin Constitution offered it protection from the land use regulations. Article 1, § 18 provides for freedom to worship, and Wisconsin applies a compelling state interest/least restrictive alternative test when a claim is brought challenging a state law that violates an organization or individual's freedom of conscience. The test requires that the organization prove it has a sincere religious belief and that such belief is burdened by the state law at issue. The burden is then shifted to the state to rebut the claim by showing a compelling state interest that cannot be served by a less restrictive alternative. The court found that,

even accepting that Eagle Cove had a sincere belief and that it was burdened by the Ordinance, the County had demonstrated that it had a compelling state interest in preserving the rural nature around the lake achieved by the least restrictive means possible (a neutral zoning ordinance). The court concluded that the Ordinance was generally applicable to all residents and therefore a "normally acceptable" law under which religious organizations could be subject.

Nonconforming Uses—City denies property owner's request for building permit

City says nonconforming use had been abandoned

Citation: *TKO Realty, LLC v. Zoning Hearing Bd. of City of Scranton, 2013 WL 5658780 (Pa. Commw. Ct. 2013)*

PENNSYLVANIA (10/18/13)—This case addressed the issue of whether the use of a certain property as a three-unit dwelling was a lawfully nonconforming use and whether that use had been abandoned. More generally, the cases addresses what constitutes abandonment of a nonconforming use.

The Background/Facts: TKO Realty, LLC ("TKO") owned property in the City of Scranton, Pennsylvania (the "City"). The property was zoned R1-A and permitted single-family or twin semi-detached homes. The structure on the property was condemned on October 6, 2008, and purchased by TKO on May 28, 2009.

TKO sought to rehabilitate the structure on the property into a three-unit dwelling. TKO applied for a building permit and to register the structure as a three-unit dwelling under the City Rental Registration Ordinance. The City zoning officer refused the request, and TKO appealed to the City's Zoning Hearing Board (the "ZHB").

TKO maintained that the use of the property as a multiunit dwelling was a legally nonconforming use. TKO presented tax assessment information showing a "multi-dwelling" on the property, and a 1960 tax assessment card showing the property as a "three-family" dwelling. Moreover, TKO presented evidence that the property had, since at least 1960, continued to be assessed and taxed as a three-unit dwelling to date.

The ZHB denied TKO's request. The ZHB found that the use of the property as a multiunit dwelling had been abandoned and that it was vacant and condemned for more than six months.

TKO appealed.

DECISION: Judgment of court of common pleas reversed.

The Commonwealth Court of Pennsylvania held that use of TKO's property as a three-unit dwelling was a lawfully nonconforming use, which had not been abandoned.

The City had maintained that TKO never established a lawful nonconforming use because it failed to seek a certificate of nonconformance from the City zoning officer or register in accordance with a City ordinance. The City argued that TKO had the burden of proving that since 1993 (the date of the present ordinance), the property had been used as a three-unit dwelling. Although TKO presented tax assessment information showing a "multi-dwelling" on the property, and a 1960 tax assessment card showing the property as a "three-family" dwelling, the City argued that TKO failed to present testimony from any neighbors or tenants that the property had been used as a three-unit dwelling since 1993. Moreover, the City argued that TKO and its predecessors did not register the units under the City's Rental Registration Ordinance and did not seek a written statement of nonconformity from the zoning officer, as required by the ordinance.

The court, however, disagreed with the City. Instead, it found that TKO had proven that since at least 1960, the property has been used as a legal three-unit dwelling and that the use became nonconforming as of 1965. Since use of the property as a three-unit dwelling predated the enactment of the prohibitory zoning restrictions, the court concluded it was a lawful nonconforming use.

Moreover, although TKO did not seek a certificate of nonconformance from the zoning officer, the court said that "[t]he mere absence of a certificate does not deprive the landowner of his right to continue a lawful nonconforming use." Similarly, said the court, the failure to register in accordance with the Registration Rental Ordinance, a nonzoning ordinance, could not deprive a property owner of the right to continue the use.

The court also agreed with TKO that the nonconforming use was not abandoned. The court explained that continuation of a legal nonconforming use "runs with the land, so long as the use is not abandoned." To show abandonment of the use, the court said that the City had to prove both that the landowner intended to abandon the use and that the use was actually abandoned.

The City had argued that a zoning ordinance may establish a presumption of intent to abandon by incorporating a discontinuation provision. A discontinuation provision provides that the lapse of a designated period of time is sufficient to establish the intent to abandon a nonconforming use. Here, a City zoning ordinance did provide a discontinuation provision, providing that the lapse of six months established intent to abandon a nonconforming use.

The court acknowledged that the use of TKO's property had been vacant and condemned for more than six months. Still, although the City showed intent to abandon, the court found that there no actual abandonment occurred. The prior owner of the Property involuntarily vacated the structure due to foreclosure, and the City thereafter condemned it. The court said that where discontinuance of a use occurs because of events beyond the owner's control, such as financial inability, there is no actual abandonment. Moreover, the court said that failure to register a nonconforming use does not constitute an abandonment of that use.

Accordingly, because TKO had established a legal three-unit nonconforming use and there was no actual abandonment of that use, the court reversed the trial court's order affirming the ZHB's decision to deny TKO's requested building permit.

See also: *DoMiJo, LLC v. McLain, 41 A.3d 967 (Pa. Commw. Ct. 2012).*

See also: *Zitelli v. Zoning Hearing Bd. of Borough of Munhall, 850 A.2d 769 (Pa. Commw. Ct. 2004).*

See also: *Metzger v. Bensalem Tp. Zoning Hearing Bd., 165 Pa. Commw. 351, 645 A.2d 369 (1994).*

Time for Proceedings—Developer challenges city requirement that it set aside units as below market rate housing and pay cash to city fund

City and developer dispute whether the statute of limitations of the Mitigation Fee Act or Subdivision Map Act apply to developer's challenge

Citation: *Sterling Park, L.P. v. City of Palo Alto, 163 Cal. Rptr. 3d 2, 310 P.3d 925 (Cal. 2013)*

CALIFORNIA (10/17/13)—This case addressed the issue of whether California's Mitigation Fee Act—and its statute of limitations— applied to a case in which a developer challenged a city requirement that the developer set aside a certain number of units as below market rate housing and make a substantial cash payment to a city fund, or whether the Subdivision Map Act—under which the developer failed to meet the statute of limitations for bringing such an action—applied.

The Background/Facts: Sterling Park, L.P. and Classic Communities, Inc. (collectively, "Sterling Park") owned two lots in the City of Palo Alto (the "City"). Sterling Park planned to demolish existing commercial improvements and construct 96 residential condominiums on the site. The proposed development was subject to the City's below market rate housing program, and thus required Sterling Park to provide at least 20% of all units as below market rate units. Under the program, the City could accept a cash payment to the City's housing development fund in lieu of providing below market rate units or land.

In 2005, Sterling Park submitted its initial application for project approval. In a letter dated June 16, 2006, the City stated the terms of an agreement between Sterling Park and the City's planning staff under which Sterling Park agreed to provide 10 below market rate units on the project site and pay in-lieu fees of 5.3488% of the actual selling price or fair market value of the market rate units, whichever was higher. Classic Communities, Inc.'s vice president executed the letter on June 19, 2006. On that date, the city council approved the project.

Over a year later, when the new units were being finished, the City began requesting conveyance of the below-market-rate designated homes. On July

13, 2009, Sterling Park submitted a "notice of protest" to the City, claiming the prior agreements were signed under duress and arguing that the below market rate requirements were invalid. When the City failed to respond to the protest, Sterling Park filed an action in court on October 5, 2009. Sterling Park sought an injunction and a judicial declaration that the below market rate requirements were invalid and "the City may not lawfully impose such [below market rate] affordable housing fees or exactions as a condition of providing building permits or other approvals for the Project." Sterling Park cited California's Mitigation Fee Act, section 66020, which provides that "[a]ny party may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project . . . by a local agency by [meeting certain requirements]."

The City asked the court to find there were no material issues of fact in dispute and to issue summary judgment in its favor on the law alone. The City argued that Sterling Park's action was untimely under section 66499.37 of California's Subdivision Map Act. Section 66499.37 provides that "[a]ny action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or any of the proceedings, acts, or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, . . . shall not be maintained by any person unless the action or proceeding is commenced and service of summons effected within 90 days after the date of the decision."

It was undisputed that section 66499.37 of the Subdivision Map Act was broad enough to apply here. It was also undisputed that Sterling Park's action would be untimely under section 66499.37 because it was commenced more than 90 days after the decision being challenged. However, Sterling Park argued that section 66020 of the Mitigation Fee Act, and its 180-day statute of limitations, governed the case. It further argued that the action was timely under that statute because the City never provided the statutorily required notice to Sterling Park at the time of approval of the project or imposition of the fees—as required by section 66020.

The trial court agreed with the City and granted its motion for summary judgment in the City's favor.

Sterling Park appealed. The Court of Appeal also held that section 66020 of the Mitigation Fee Act did not apply to the case and that the action was untimely under section 66499.37 of the Subdivision Map Act.

Sterling Park again appealed.

DECISION: Judgment of Court of Appeal reversed, and matter remanded.

The Supreme Court of California held that section 66020 of the Mitigation Fee Act, and its statute of limitations, applied.

In so holding, the court explained that when section 66020 of the Mitigation Fee Act does apply, its time limits govern the case, not those of the more general section 66499.37 of the Subdivision Map Act. In determining that section 66020 applied, the court noted that it would apply if the requirements at issue were "any fees, dedications, reservations, or other exactions" under sec-

tion 66020. Looking to the plain meaning and legislative purpose of section 66020, the court found that "other exactions" included actions that divest the developer of money or a possessory interest in property, but not restrictions on the manner in which a developer may use its property. The court said that section 66499.37 governed the latter.

The court concluded that the requirement that Sterling Park set aside 10 of 96 condominium units as below market rate housing was an exaction such that the 180-day Mitigation Fee Act statute of limitations on "exactions" imposed on a development, rather than 90-day Subdivision Map Act statute of limitations regarding the validity of a condition attached to an agency or appeal board decision, governed Sterling Park's challenge to the requirement. The court also found that the imposition of the in-lieu fees was similar to a "fee," and the requirement that Sterling Park sell units below market rate was similar to a "fee, dedication, or reservation" under section 66020.

See also: *Fogarty v. City of Chico, 148 Cal. App. 4th 537, 55 Cal. Rptr. 3d 795 (3d Dist. 2007).*

See also: *Williams Communications, LLC v. City of Riverside, 114 Cal. App. 4th 642, 8 Cal. Rptr. 3d 96 (4th Dist. 2003).*

Case Note:

In this case, the Supreme Court of California disapproved the holding in Trinity Park, L.P. v. City of Sunnyvale, 193 Cal. App. 4th 1014, 124 Cal. Rptr. 3d 26 (6th Dist. 2011) (disapproved of by, Sterling Park, L.P. v. City of Palo Alto, 163 Cal. Rptr. 3d 2, 310 P.3d 925 (Cal. 2013)), to the extent that it was inconsistent with the opinion in this case.

Jurisdiction—Lakefront property owner seeks to build new dock on lake

Property owner says town lacks jurisdiction over construction since state owns the land under the navigable water

Citation: *Hart Family, LLC v. Town of Lake George, 2013 WL 5745757 (N.Y. App. Div. 3d Dep't 2013)*

NEW YORK (10/24/13)—This case addressed the issue of whether a municipality had jurisdiction over, and thus the authority to grant or deny an application for construction in, a lake where the state owned the land under the navigable waters in its sovereign capacity.

The Background/Facts: Hart Family, LLC (the "Harts") owned Lot 9 in the Trinity Rock Estates subdivision in the Town of Lake George, New York

(the "Town"). Lot 9 had approximately 200 feet of shorefront on Lake George. When the subdivision was established in 1925, easements were granted to numerous other lot owners permitting them to launch and store boats and to swim on Lot No. 9's shorefront. Those easements were subject to the Harts' right to maintain and erect shorefront structures and docks that do not "occupy or obstruct more of the [shorefront] . . . than is occupied or obstructed by the present dock." The dock in existence when the easements were granted was approximately 75 feet wide and was later destroyed by storms. The Harts replaced that dock with two docks that extended from a concrete bulkhead on the shore into the lake in a "U" configuration about 21 feet wide.

In October 2008, the Harts were granted a permit by the Lake George Park Commission to construct a new E-shaped dock with an open-sided boat cover and sundeck that incorporated the existing northernmost pier, replaced the southernmost pier and measured 31 feet wide.

In relation to the planned construction of the new dock, the Harts applied for site plan approval from the Town Planning Board (the "Board"). The Board ultimately denied the application, citing health and safety concerns, among other things.

Thereafter, the Harts brought a legal action in court. They sought to annul the Board's determination on the sole ground that it lacked jurisdiction to review or deny the proposed site plan. The Harts contended that because the state owned land under navigable waters, including Lake George, the state's exclusive authority preempted the Town's local land use laws governing construction in the lake's navigable waters—including construction of the proposed dock.

The supreme court agreed with the Harts, and ruled in their favor.

The Town appealed. The Town first argued that the Harts had waived their jurisdictional challenge by not raising it during the administrative process. The Town also maintained that the state had delegated authority to regulate docks in Lake George to the Town pursuant to state Navigation Law § 46-a. In the alternative, the Town argued that it had authority to regulate construction of the dock pursuant to the State Uniform Fire Prevention and Building Code, which includes structures in navigable waters.

DECISION: Judgment of supreme court affirmed.

The Supreme Court, Appellate Division, Third Department, New York, first held that the Harts had not waived their jurisdictional challenge to the Board's authority. Although the issue of jurisdiction had not been discussed during the Board meetings and public hearing related to the Hart's site plan approval application, the court found that the issue of the Hart's site plan being beyond the Town's authority was "actually raised" in correspondence between the parties attorneys. In any case, the court explained that "a defect in subject matter jurisdiction may be raised at any time by any party or by the court itself, and subject matter jurisdiction cannot be created through waiver, estoppel, laches or consent." Accordingly, the court concluded that the Harts had not waived their jurisdictional challenge by submitting their site plan to the Board for review.

Next, the court agreed with the Harts that the Board lacked jurisdiction to

grant or deny the Harts' site plan application. The court explained that when the state owns land under navigable waters in its sovereign capacity, its exclusive authority preempts local land use laws and extends beyond the regulation of navigation "to every form of regulation in the public interest." Here, the court found that the state held title to the lands under Lake George in its sovereign capacity and, thus, had sole jurisdiction over construction in the lake's navigable waters provided it had not delegated this authority to the Town.

The Town had argued that the state had, in fact, delegated that authority to it. However, the court found otherwise. The court found that the Town was not included among the local governments enumerated in Navigation Law § 46-a (2) (which delegates to municipalities that border or encompass waters owned by the state, the authority to regulate the manner of construction and location of structures those waters). The court also found no such delegation in any other source.

Given that the state had not delegated authority to the Town to regulate or review the Harts' construction of a dock within Lake George, the court concluded that the supreme court had properly annulled the Board's determination.

See also: *Town of Carmel v. Melchner, 105 A.D.3d 82, 962 N.Y.S.2d 205 (2d Dep't 2013).*

See also: *Town of North Elba v. Grimditch, 98 A.D.3d 183, 948 N.Y.S.2d 137 (3d Dep't 2012).*

Zoning News from Around the Nation

ARIZONA

A superior court judge has granted a pretrial verdict in favor of White Mountain Health Center, a prospective medical marijuana dispensary, overturning Maricopa County's zoning ordinance for medical marijuana dispensaries. Reportedly, the judge ruled that the ordinance appeared to be a "transparent attempt" to keep the businesses out of unincorporated areas of the county. The judge acknowledged that the county has zoning powers to protect public health, safety, and welfare, but said the county was not permitted under the Arizona Medical Marijuana Act to use those powers to categorically prohibit dispensaries.

Source: *ABC 15; www.abc15.com*

MICHIGAN

Wyoming City is asking the Michigan Supreme Court to overturn an appeals court decision that found the City's zoning ordinance prohibiting marijuana production in nearly all cases ran against the voter-approved Medical Marijuana Act that allowed limited production and use of marijuana. The City has argued that the Michigan Medical Marijuana Act makes no specific provision saying it overrules local zoning ordinances and therefore, cities can enforce rules that regulate marijuana.

Source: *mLive; www.mlive.com*

WASHINGTON

The Seattle City Council has approved a zoning ordinance, regulating marijuana businesses. The ordinance confines such businesses to industrial land and some commercial areas, and sets the maximum size for marijuana growing operations at 20,000 square feet in some areas.

Source: *Kiro TV; www.kirotv.com*

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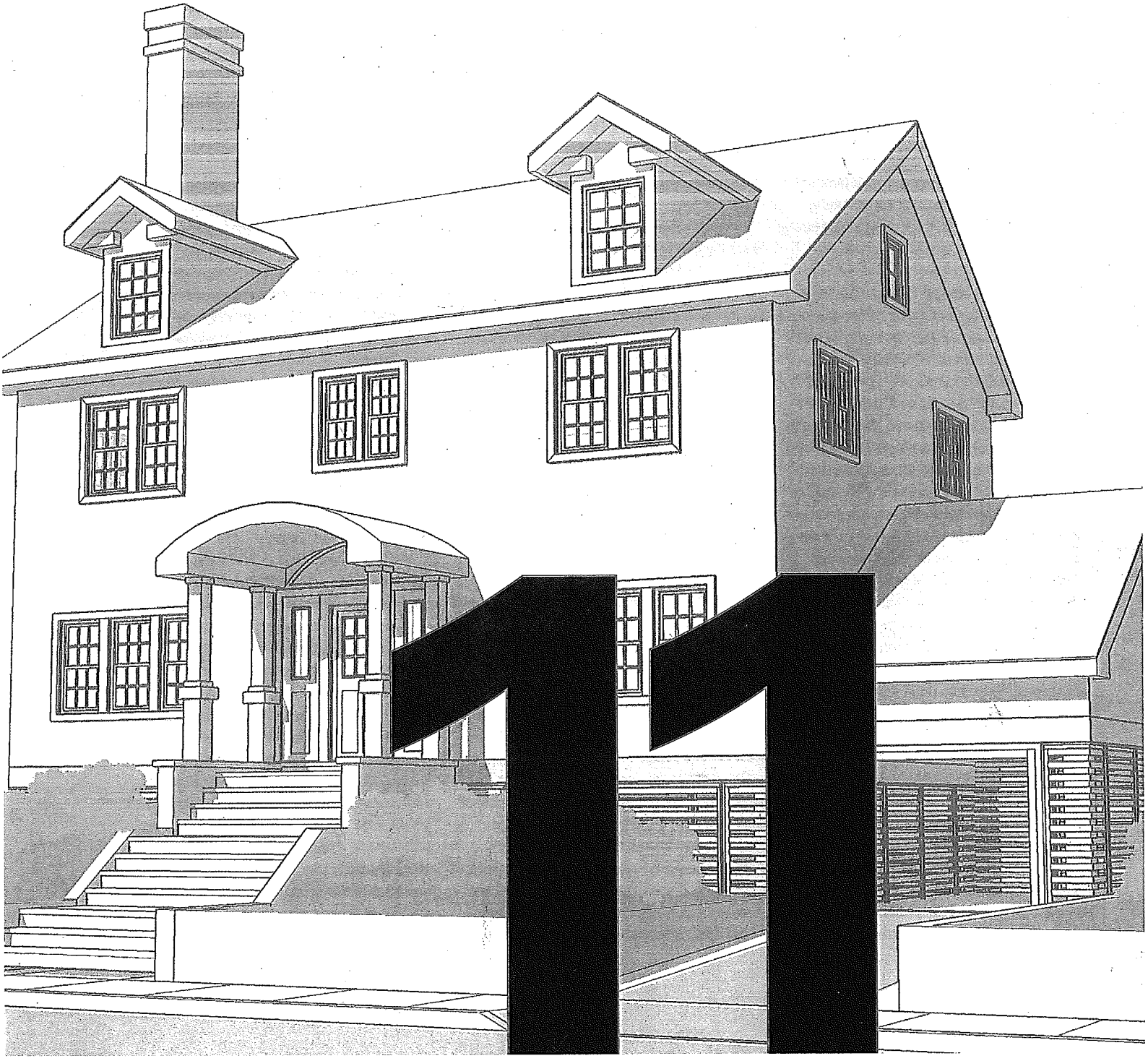
PRACTICE ADAPTIVE DESIGN



High and Dry on the Waterfront

By James C. Schwab, AICP

Just north of New York City, in Rockland County, New York, on the western side of the Hudson River, sits the village of Piermont on a little more than one square mile of land, with about 2,500 people. Within that village lives Klaus Jacob, a seismologist at Columbia University's Lamont-Doherty Earth Observatory, who helped generate remarkably accurate estimates of the likely loss from an event like Hurricane Sandy.

What is equally remarkable is what happened to his home in Piermont. Taking a hint from Hurricane Irene in 2011, Jacob, who had already raised his house in 2003, wanted to avert damage by raising it higher above the base flood elevation established by the Federal Emergency Management Agency (FEMA) before Sandy hit. He soon learned that the town had a 22-foot height limit in its zoning regulations. His eight-foot-high top floor would exceed that limit if he elevated the house, and he chose not to give up the attic. Instead, he and his wife did what they could to elevate their kitchen appliances, including the stove, within the existing structure. That saved some of their property from the flooding from Sandy, but the existing zoning kept them from saving more. For a scientist who had worked with New York planners to estimate correctly the impact of Sandy, this outcome was, to say the least, a bit ironic.

In a YouTube video produced after the storm by the university's Earth Institute, Jacob notes that Sandy produced flooding one to two feet above the 100-year floodplain, "affecting a lot more people than those that normally get flood insurance, including myself." The result in Piermont, he says, was a "microcosm of what happened in New York City."

WHERE TO DRAW THE LINE

Questions such as those that faced Jacob become more likely after almost every natural disaster that involves flooding, whether from hurricane storm surges or from torrential downpours overloading rivers and streams. Those events trigger a process within FEMA's National Flood Insurance Program (NFIP) to reassess existing flood maps based on new flood data, resulting in Advisory Base Flood Elevations (ABFEs) that establish new benchmarks for how high the 100-year flood will rise in specific locations. That base flood elevation is actually the level at which there is deemed a one percent annual chance of a flood occurring. It is a product of engineering calculations taking into account the historic experience with flooding in a community at the time the map is produced. The problem is that such maps are not static. They are influenced over time by the amount of development and impervious surface allowed into the floodplain and even the overall watershed. In the case of New York City, the maps that existed prior to Sandy dated from 1983. The city was well aware that they were outdated and was concerned about their accuracy before the storm.

FEMA released the new ABFEs for New York and New Jersey in February 2013. There are two primary consequences of these maps. The first is a change in flood insurance rates for properties previously located beyond the base flood elevation that now find themselves within the 100-year floodplain. In some cases, that may trigger requirements for flood insurance that did not previously apply to those properties; in others, it may simply mean that flood insurance becomes more expensive. The second consequence is that NFIP regulations require some form of mitigation for properties in the floodplain that are substantially damaged; that is, those that have suffered damage exceeding 50 percent of market value. Mitigation can take a number of forms: wet or dry floodproofing, elevation, and buyouts are the most common. As a result of ABFEs including additional properties within the newly mapped floodplain, the owners are unable to rebuild without taking some appropriate action to reduce risk.

The scope of damage from Sandy gives some indication of the size of the rebuilding challenges that face these communities. According to the National Hurricane Center, Sandy damaged or destroyed nearly 650,000 homes in an arc ranging from Rhode Island to Maryland. It also killed 147 people in New York, New Jersey, and Connecticut.

In New York City, 218,000 residents live within currently mapped floodplains. The city has 520 miles of waterfront, much of it devoted to industrial and commercial uses; it is by far the largest shoreline of any city in the U.S. Approximately 90,000 buildings in New York City were in areas flooded by Hurricane Sandy, and 84 percent of those were built before FEMA produced its first flood insurance rate maps (FIRMs) for the city in 1983. New York thus has a great deal of property that is not compliant with current standards, much of which faces significant costs to upgrade to current codes. Moreover, in an urban area as dense as New York, relocating structures is often simply not an option. Other strategies are needed. The city's study of its urban design options, *Designing for Flood Risk*, notes that 98 percent

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About the Author

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of the buildings destroyed by Sandy, and 94 percent of those severely structurally damaged, were built before 1983.

Thus, the new ABFEs were no small deal for New York. They are laden with physical and economic implications for both property owners and the city itself. The city planning department notes that typical FEMA requirements are based on assumptions that apply to less dense communities with a wider range of options for reorienting land use. As a result, city officials decided even before Sandy that they needed to develop options that would be more applicable to denser urban areas. The city's search for such options also led to another study, funded by HUD and released in June 2013, *Urban Waterfront Adaptive Strategies*. One hope behind these efforts is that they will prove useful not only to New York itself, but to numerous other similarly dense cities across the country.

ADD A DOSE OF REFORM

Communities affected by Sandy face not only the immediate consequences of remapping, but the initial impact of the Flood Insurance Reform Act of 2012, also known as Biggert-Waters, after its two prime sponsors in the U.S. House of Representatives.

Passed a few months before Sandy, Biggert-Waters sought to remedy the long-term insolvency of the NFIP by amending its rate formulas as well as some of its regulations. Historically, the NFIP has offered subsidized, or non-actuarial, rates for flood insurance on properties built before FIRMs were established in any given area. The earliest maps were issued in 1974. Hurricane Katrina left the NFIP laden with nearly $18 billion in debt. By 2012, Congress had decided that reforming the rate structure was the most viable path to solvency for the program. Moreover, critics had argued for years that subsidized rates disguised the actual level of risk associated with many properties, effectively sending ratepayers the wrong signals, according to Samantha A. Medlock, policy counsel for the Association of State Floodplain Managers.

In New York State, just over 75 percent of the 176,000 policies in force are pre-FIRM, with 65 percent paying subsidized rates. As a result of the new law, property owners will see increases of 25 percent yearly until their policies catch up with actuarially established rates, which can be as high as $1,410 yearly for homes at base flood elevation (BFE), and $9,500 for those four feet below BFE, depending on the value of the home. Combine the impact of the new ABFEs with that of Biggert-Waters, and the stage is set for property owners experiencing increases of hundreds of dollars annually in insurance premiums. For instance, according to Medlock, owners of pre-FIRM homes in A zones (see box) could now pay between $1,050 and $2,750, compared to $230 to $540 for homes built at least two feet above BFE, an elevation difference known as freeboard. Freeboard is defined as some safety factor, usually expressed in feet, that is required by state or local government above the BFE defined by FEMA. In other words, local zoning or building regulations might require that a building's ground floor be at least one or two feet above BFE. At the same time, some remedies, such as elevation, that would lower premiums, may become far more economically advantageous in the face of such cost increases. The annualized difference, spread over a number

FEMA FLOOD ZONE DEFINITIONS

The FEMA Map Service Center offers the following definitions on the FEMA website for A, V, and X zones:

A Zone: Areas with a one percent annual chance of flooding and a 26 percent chance of flooding over the life of a 30-year mortgage. Because detailed analyses are not performed for such areas, no depths or base flood elevations are shown within these zones.

V Zone: Coastal areas with a one percent or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26 percent chance of flooding over the life of a 30-year mortgage. No base flood elevations are shown within these zones.

X Zone (if shaded on map): Area of moderate flood hazard, usually the area between the limits of the 100-year and 500-year floods. Are also used to designate base floodplains of lesser hazards, such as areas protected by levees from 100-year flood, or shallow flooding areas with average depths of less than one foot or drainage areas less than one square mile.

Unshaded X Zones extend beyond the 500-year floodplain, but may still be capable of flooding in extreme events.

of years, could in many cases support the cost of elevating the home to achieve the premium reduction.

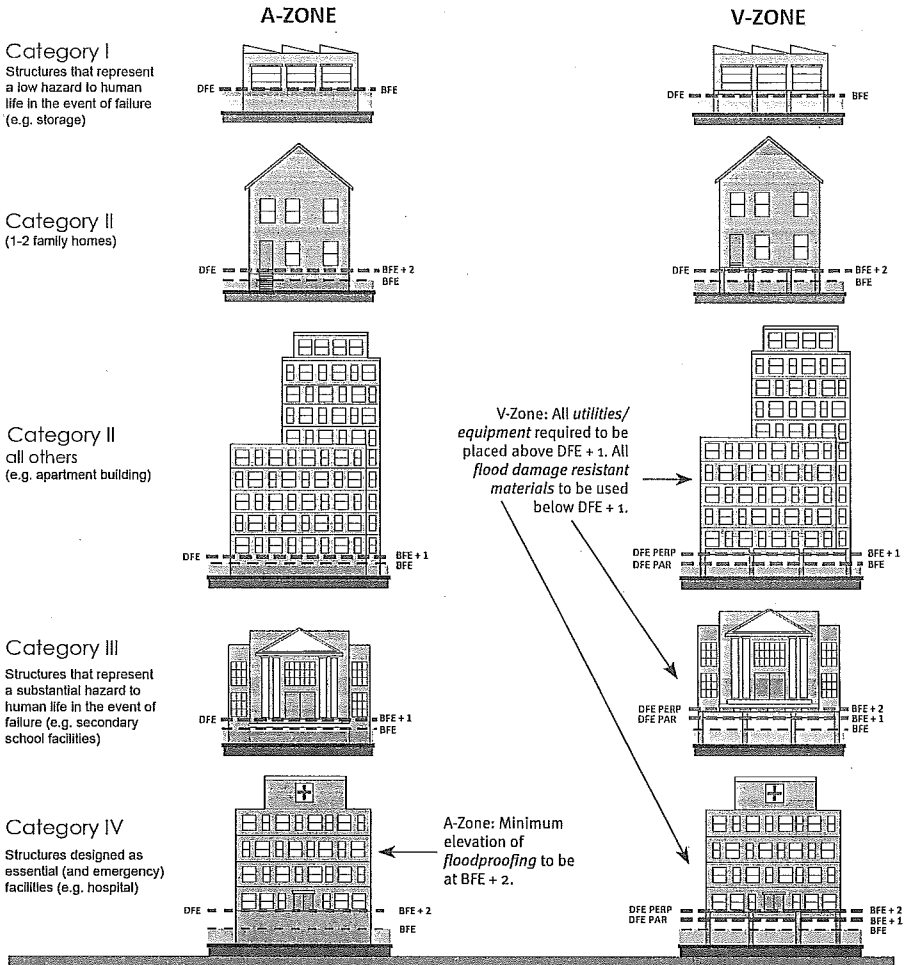
Another provision of Biggert-Waters could also have profound impacts on some urban neighborhoods in flood-prone areas. Once a pre-FIRM property is sold, or its flood insurance has lapsed, the subsidized rates disappear and actuarial rates apply with no transition period. This could well increase the difficulty of selling such properties by making them less attractive.

While the Northeast is the first region to feel the full impact of the Biggert-Waters reforms, it will not be the last. The changes will take effect nationwide, and with each major flood disaster, new ABFEs will compound that impact. What happens now in New York and New Jersey is merely a harbinger of changes to come elsewhere.

RESPONDING TO THE CHALLENGE

New York City officials have unquestionably responded with the most aggressive search for solutions. This effort is driven in large part by the challenge posed by dense urban development and the need to maintain the vibrancy of waterfront neighborhoods in the face of the changes that will inevitably be generated by both the remapping and flood insurance reform. Unlike some coastal communities, New York cannot simply elevate or relocate all its waterfront properties to escape the implications of these changes. In many cases, the neighborhoods would become physically unattractive and economically nonviable as a result. For high rises and many other multistory buildings, elevation is not a viable option; wet or dry floodproofing is more likely (see box).

The first problem facing many home owners in New York City under the new flood maps was the same one facing Klaus Jacob in his modest home in Piermont—the inability under existing zoning to elevate their homes because of height restrictions. Confronted with new flood insurance rates and unable to make adjustments that would reverse those increases, such property owners are caught between a federal rock and a locally regulated hard place. In a city known for high rises, however, planners wasted little time in confronting this dilemma. By January 31, 2013, Mayor Michael Bloomberg signed Executive Order No. 230, suspending the height limits for home owners seeking to comply with NFIP rules. Since then, the planning department has developed a text amendment for the city council to codify the needed changes, while also addressing other issues such as low-grade parking and streetscape mitigations, and took these out for public review at 41 community boards in areas affected by flooding, emphasizing in part how these changes would help residents lower their flood insurance premiums. The community boards offered nearly unanimous approval. The city planning commission approved the changes



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From *Designing for Flood Risk*, this diagram illustrates how New York has differentiated required freeboard (in feet) for various building categories in both A and V flood zones.

TYPES OF FLOODPROOFING

There are basically two kinds of floodproofing: wet and dry. Both are workable options for protecting buildings and contents from flooding, but by design they have very different implications for building use:

Wet floodproofing allows water to enter and leave a structure without the use of mechanical equipment. This cannot work with basements because water would accumulate below the base flood elevation without a means of release. The idea is to equalize water pressure inside and outside through openings in the walls. This effectively renders lower levels unusable for most purposes, as living and working space needs to be above the area where wet floodproofing is used.

Dry floodproofing uses water barriers such as sealant, aquarium glass, or other flood shields to protect a lower level from infiltration by water during a flood. In some cases, this may include the use of removable panels on windows that can be put in place during a flood emergency but otherwise kept in storage. This thus allows the use of floodproofed basements and other below-grade structures and retains building access at street grade, though such access can pose problems during a flood and thus is not allowed in entirely residential buildings.

in September, and city council approval was expected by the end of October (as this issue was going to press).

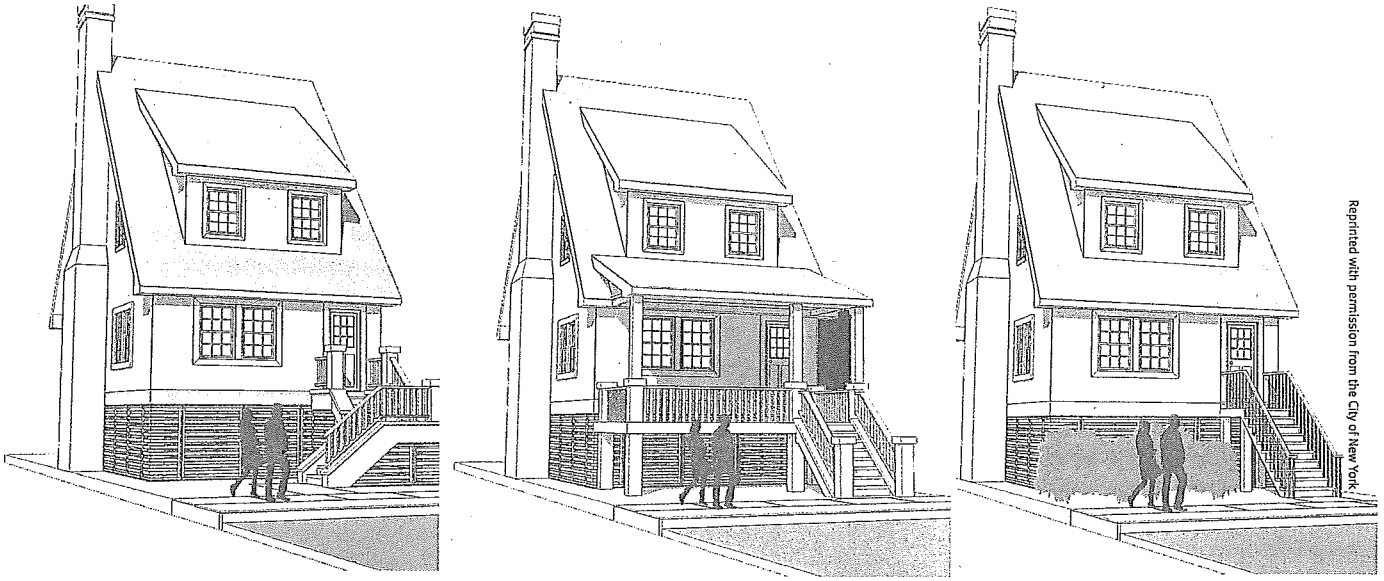
The diagram on page 4 helps to illustrate how New York has chosen to regulate buildings according to both building type and the flood zone in which they are located with respect to its "design flood elevation," defined as the base flood elevation (BFE) plus the required freeboard. Adding one or two feet is a common approach, but New York, with a more complicated development environment, breaks out freeboard requirements by building category.

The issue in New York, however, is more than simply changing the text in the zoning code. The larger issue is that of preserving the quality of the urban fabric by encouraging the kinds of creative design changes in buildings and streetscapes that could maintain the character of waterfront urban neighborhoods. For flood protection, it may be important to elevate living or working space to design flood elevations. New buildings can do this by using street-level space for parking or building lobbies, or by building atop a berm that lifts the building's base above flood level. For instance, some buildings in Baltimore's Inner Harbor use the ground level for an open lobby while placing retail space on the second floor.

Building elevations that simply create blank walls at street level, however, create serious problems for the atmosphere of such a neighborhood or commercial district. New York City needed to make clear that there were better alternatives that could succeed in a dense urban environment, and to explore those options, it had already launched before Hurricane Sandy the studies that produced *Designing for Flood Risk* and *Urban Waterfront Adaptive Strategies*.

"Because of the coastal flood risks New York City faces and changes to the National Flood Insurance Program," City Planning Commissioner Amanda M. Burden, FAICP, explains, "our communities are faced with the need to rebuild and retrofit buildings to withstand the next severe storm. Before Hurricane Sandy, we began our *Designing for Flood Risk* study to articulate principles for resilient buildings and neighborhoods that not only can withstand flooding, but also support lively and pedestrian-friendly streets. This study was crucial to our ability to quickly craft thoughtful zoning changes following the storm to promote flood-resistant construction along with vibrant streetscapes and walkable neighborhoods. We believe these lessons can be applied more broadly to the region and to other coastal communities seeking to foster livable, walkable neighborhoods."

One issue, complicated somewhat by compliance with the Americans with Disabilities Act (ADA), is that of stairways. Ramps are viable in larger buildings but can be problematic for closely built multistory housing, at the same time that elevators at floodable levels are equally problematic. Yet stairways and other design elements can be used, as the diagram above illustrates, to mitigate at least some of the more troubling visual impacts of elevating the living space in single-family homes. Shrubbery, for instance, can soften the otherwise harsh blankness of the empty space beneath elevated ground floors. In new buildings, setbacks from the streetscape, not normally encouraged in a dense urban environment, may provide the needed space to accommodate various access features including ramps and steps while protecting living or working space from flooding. In retail or office locations where only modest elevation is needed, however, the design flood elevation may keep window space at eye level while allowing access through a short series of indoor steps, with a short, solid wall at street level.



Architectural elements can be used to mitigate the visual effects of elevated first floors on the streetscape. (From *Designing for Flood Risk*.)

SMALL BUT DENSE

One common reaction outside New York to almost any land-use regulations in New York is that the city is unique and that little that it does applies elsewhere. While that may often be the case in certain respects, what New York is doing with regard to flood risk may actually prove to be of considerable value for many other smaller cities facing similar design challenges. Density is not unique to New York, nor is the question of maintaining a walkable, visually attractive urban environment in flood-prone areas near waterfronts, whether they are harbors, inlets, rivers, or lakes. New Jersey, for instance, is full of smaller municipalities with comparable densities. What New York is trying to accomplish in response to Sandy may prove useful.

Hoboken, for example, is a city of about 50,000 people living in little more than one and

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Elevated retail use in Soho, New York City (from *Designing for Flood Risk*).

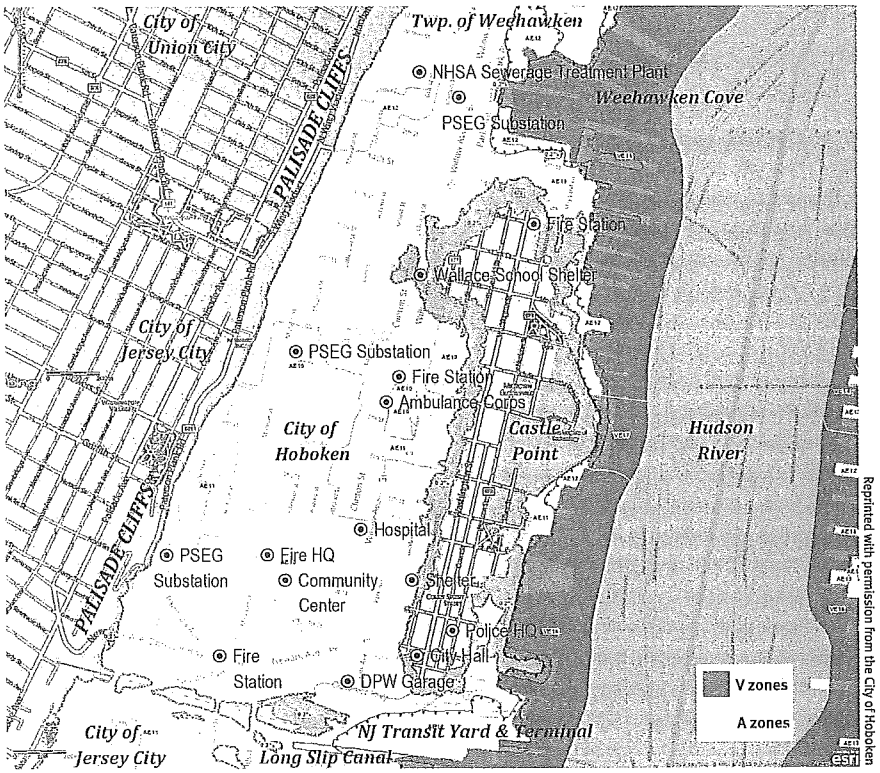
a quarter square miles. Numerous smaller villages along the New Jersey Shore, including most of those on the barrier islands, have little or no land outside the coastal floodplain. There is not much room to move, so it becomes important to use the available land wisely. The volume of damage from Sandy in many of these communities suggests that has not always happened.

Hoboken, however, is anxious to fix those problems. With 521 acres, or nearly 64 percent, of its upland space in the A zone, and 60.5 acres in the V zone, Hoboken faces serious constraints in trying to develop on high ground. The V zone is the area not only affected by coastal wave action in addition to still-water flooding. Another 62.5 acres lie in the X zone, defined as the area between the 100-year and 500-year floodplain boundaries.

In September, the city council undertook consideration of proposed amendments to the city's flood damage protection ordinance. A cover letter from community development director Brandy Forbes, AICP, indicated the city is pursuing qualifications in the NFIP's Community Rating System, which allows communities to accumulate points for activities beyond basic NFIP requirements as a means of lowering flood insurance premiums. Each of nine steps in the program can lower rates by five percent. The new ordinance included adoption of the most recent FIRMs for Hoboken, replacing earlier maps from 2006, themselves much more recent than those in New York. According to Stephen Marks, AICP, the city's assistant business administrator, the city's goal was to act on the ordinance before the first anniversary of Hurricane Sandy, October 29.

The new changes included a reduction in required lot size for variances from a half-acre to 10,000 square feet, better reflecting typical infill lot sizes in the city's dense environment. The ordinance also empowers the newly designated floodplain administrator (formerly "construction official") to "review all development permits in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters the natural coastline so as to increase potential flood damage," as well as to review plans for walls enclosing space below the base flood level. Another new section details freeboard requirements in special flood hazard areas, ranging from one foot for residential structures (except those in V zones, requiring two feet), up to three feet in V zones for buildings handling, storing, using, or disposing of hazardous materials. The ordinance also requires "attendant utilities and sanitary facilities" in new residential construction to be located above the BFE plus the required freeboard.

Looking forward, however, the city has additional issues to consider. The urban design retrofit considerations that have consumed a good deal of planning attention in New York are likely to get serious consideration over the coming year, according to Marks. The city's Department of Administration, using a $200,000 grant from the New Jersey Department of Com-



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FEMA's preliminary floodmap for Hoboken, issued in June 2013, shows V zones in the dark shaded areas and A zones in the light shaded area, along with the locations of critical community facilities.

FREEBOARD REQUIREMENTS FOR AREAS OF SPECIAL FLOOD HAZARD

Building Type	Zones			
	X	A	Coastal A	V
Residential structures	+1'	+1'	+1'	+2'
Building and other structures with school or day care facilities, and other nonresidential structures not itemized below	+1'	+1'	+2'	+2'
Essential facilities including, but not limited to: fire, rescue, ambulance, and police stations and emergency vehicle garages; buildings designated as emergency shelters; other facilities required for emergency response; hospitals and other health care facilities having surgery or emergency treatment facilities; power generating stations and other public utility facilities	+1'	+2'	+2'	+3'
Buildings and other facilities that manufacture, process, handle, store, use, or dispose of hazardous materials	+1'	+2'	+2'	+3'
Temporary structures	n/a	+1'	+2'	n/a

Hoboken's proposed Flood Damage Prevention Ordinance amendments include this new table detailing freeboard requirements based on flood zone and structure type.

munity Affairs, released a request for proposals in October, seeking multidisciplinary consultant teams to develop a series of plans. The package includes development of new community design standards, a hazard mitigation plan, an open space, recreation, and historic preservation plan, and new codes, ordinances, and standards, with an eye toward the sorts of design guidelines that would help Hoboken address those questions.

FACING THE FUTURE

Sandy was not an anomaly, any more than Ike or Katrina or countless other storms and floods have been anomalies. It was a signal that planners need to anticipate such challenges as their communities continue to reinvent themselves in the quest for economic resilience and an urban quality of life. Combining flood protection with an attractive urban environment will require creative design solutions, particularly in an era when climate change may raise the stakes for waterfront neighborhoods and commercial districts. Finding the kinds of adaptive solutions that New York is trying to define in the wake of Sandy is a matter not only of survival, but of restoring value to the urban core.

That said, other cities may well have to undertake exercises similar to that in New York, yet unique to their own history and circumstances. With growing numbers of Americans moving to coastal areas, those cities will need to determine how best to maintain the attractions of the urban shoreline while adequately protecting those areas from coastal storms and flooding. This is no small issue for the future of American urban planning. With hundreds of billions of dollars of urban real estate at stake, it may well become one of the most important.

FURTHER READING ON SANDY AND FLOOD RISK DESIGN

- Hurricane Sandy Rebuilding Task Force. 2013. *Hurricane Sandy Rebuilding Strategy.* Available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2013/HUDNo.13-125.
- New York Department of City Planning, City of. 2013. *Designing for Flood Risk.* New York: NYC Planning. Available at www.nyc.gov/designingforfloodrisk.
- New York Department of City Planning, City of. 2013. *Urban Waterfront Adaptive Strategies.* New York: NYC Planning. Available at www.nyc.gov/uwas.

Landscaping can help mitigate the visual effects of a home that has elevated its first floor as a flood protection measure. Cover image reprinted with permission from the City of New York; design concept by Lisa Barton.

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DOES YOUR ZONING PROMOTE FLOOD RESILIENCY THROUGH DESIGN?

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PRACTICE SHOOTING RANGES

Don't Shoot from the Hip: Plan and Regulate Shooting Ranges

By Erica S. Rocha and Dwight Merriam, FAICP

Planners are caught in the middle of a standoff between gun enthusiasts who value gun clubs and shooting ranges and others, particularly residential neighbors, who consider the clubs and ranges to be a nuisance, or worse, a risk to their safety.

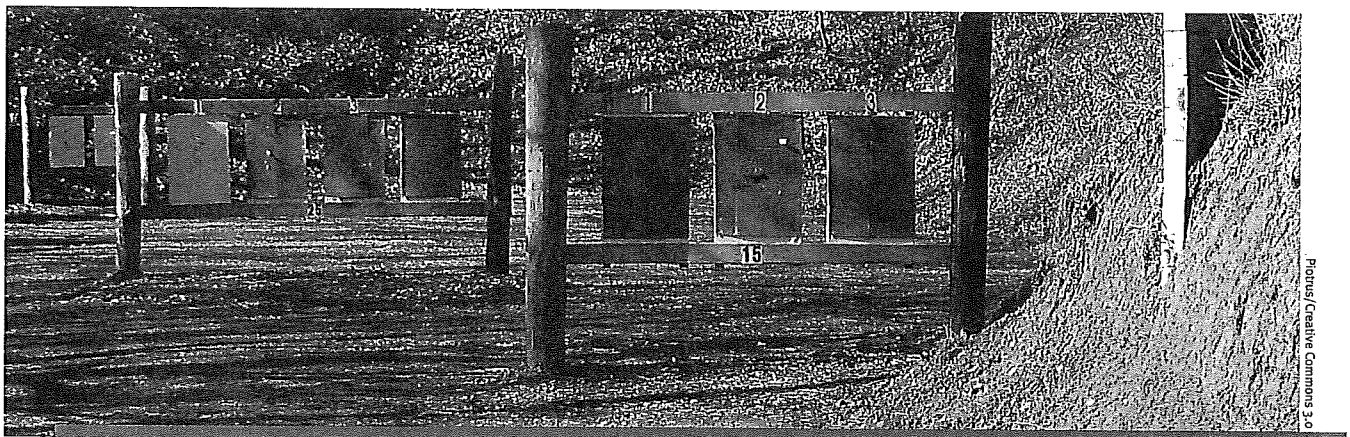
There is an important role for good planning and regulation here, one that can help all concerned find a middle ground that ends the cross fire.

Many shooting ranges and gun clubs either predate zoning or were established as as-of-right uses. In some cases, residential uses crept up on a range or club over time, in what is sometimes characterized as "coming to the nuisance," creating a standoff between those who engage in shooting sports and neighbors who find the off-site impacts intolerable. Zoning is rooted in nuisance avoidance, although we have lost sight of that today in the evolved world of transit-oriented development, new urbanism, and form-based codes. We need only look back to the very first zoning case to make its way to the U.S. Supreme Court, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926), to be reminded of that core principle of zoning with Justice George Sutherland's oft-quoted observation: "A nuisance may be merely a right thing in the wrong place—like a pig in the parlor instead of the barnyard." Planning almost always works best when there is market failure, where natural forces do not efficiently and effectively allocate land use for the benefit of people today and generations not yet born. Zoning and similar land-use regulations earn their keep when they prevent nuisances. Good planning and regulation of shooting ranges and gun clubs can virtually immunize your community from conflict controversy.

GUNS BLAZING

More than 34 million Americans participate in target and sport shooting at shooting ranges and gun clubs across the country (Responsive Management 2010). Outdoor sport shooting is an American tradition, and sporting ranges have existed in the United States for over a century. Shooting ranges provide a venue for games and training using rifles, pistols, and shotguns and various types of targets. Participants generally use rifles and pistols to shoot at paper targets or at metallic silhouettes shaped like animals and shotguns to shoot at clay discs that are launched into the air to simulate bird targets (Cotter 2003). In recent years, however, the traditional American shooting range has undergone a dramatic transformation.

As gun control measures continue to stir debate in America, business is booming for target and sport shooting facilities (Smith 2013). Some ranges have become more community minded and family focused, hosting blood drives, Toys for Tots collections, and "ladies' nights," where women can learn to shoot (Weeks 2013). Other ranges have set their sights on unique (if not eyebrow-raising) ways to capitalize on the growing demand for target and sport shooting. One range in



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Paper targets as seen from the firing line at an outdoor shooting range near Pittsburgh.

ASK THE AUTHOR JOIN US ONLINE!

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

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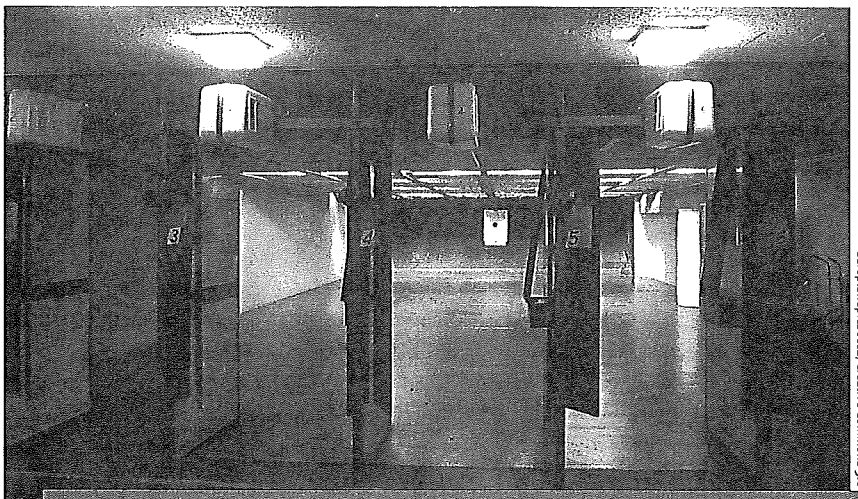

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The view from behind the firing line at an indoor shooting range.

Arizona offers a "Bullets and Burgers Experience," which includes a scenic drive through the desert, shooting a .50 caliber sniper rifle, blasting away with a M249 SAW machine gun, and eating a "world famous cheeseburger." Las Vegas, home to the nation's loosest gun laws, now hosts six machine-gun shooting ranges and offers a variety of shooting packages, such as the kid's package, the mob package, and a zombie apocalypse package (Hernandez 2012).

Despite their popularity, shooting rages across the nation face sharp opposition due to safety, noise, and environmental concerns. Many shooting ranges are no longer isolated in rural environments. As human populations move and expand into the countryside, shooting ranges have acquired new neighbors—many of whom find living near shooting ranges to be noisy and dangerous. Legal, regulatory, and public perception concerns are forcing range operators to take a proactive approach to minimize the potential for adverse impacts. The following sections provide an overview of the most common types of shooting ranges, the main issues and concerns associated with shooting ranges, and planning and regulatory considerations for local governments.

THE SHOOTING SCENE TODAY

Shooting ranges may be public or private, indoor or outdoor. The range operators or owners appoint range masters to oversee the operations and ensure that gun safety rules are followed. Range masters must complete a training process and become certified by the National Rifle Association (NRA).

Currently, there are about 9,000 non-military outdoor ranges in the United States (Kardous and Afunah 2012). Outdoor ranges are built in large, open areas and require less cleaning and maintenance than indoor ranges. However, outdoor ranges also allow for lead and noise to disperse more widely. Outdoor ranges are specially designed to prevent bullets from escaping the range or ricocheting back at shooters. Many ranges are backed by sandbagged barriers, berms, and baffles, which help protect against injury of people and damage to property. These barriers also allow for systematic recovery of lead projectiles (Luke 1996). Indoor shooting ranges typically include rifle and handgun ranges.

Indoor ranges are popular because they offer protection from inclement weather and can be operated under controlled environmental conditions. Environmental and occupational controls are necessary to protect the health of shooters and range personnel from effects of airborne lead and noise (Kardous and Afunah 2012).

PLANNING CONSIDERATIONS AND BEST PRACTICES

As a result of urban expansion into rural areas, some long-established gun clubs and shooting ranges are finding themselves increasingly closer to, if not abutting, residential neighborhoods. Careful planning and government regulation can take certain steps to ensure that shooting ranges are good neighbors. Local governments that are interested in regulating shooting rages should take a realistic approach to addressing noise, safety, and environmental issues.

Shooting Range Protection Statutes

The most common complaint about shooting ranges is noise, and local governments often

regulate the duration and amplitude of sounds emitted from a location. In an effort to protect shooting ranges from nuisance actions and closure, many states have enacted statutes completely barring noise-related nuisance causes of action against shooting ranges. Other states have exempted outdoor shooting ranges from local noise-control laws (Cotter 1999).

A minority of states do not provide absolute immunity from legal action based on noise. For example, the Minnesota Shooting Range Protection Act (MSRPA) requires shooting ranges to comply with state-established performance and safety standards in order to qualify for protection; however, local governments can only close a range if it constitutes a "clear and immediate safety hazard." The MSRPA establishes a noise standard of 63 decibels (natural background noise is about 35 decibels) measured on the A-weighted fast response mode scale. This statute also creates a 750-foot "mitigation area" from the perimeter of a shooting range's property onto adjoining lands. The mitigation area is highly restricted and no changes or improvements can be made within the area without approval of the governing body. Range operators are also required to pay for any mitigation devices required to keep the range in compliance with local ordinances and statutory performance standards (Remakel 2008).

Where state and municipal regulations coexist, preemption may become an issue. Such an issue was raised in Florida, when the attorney general released an advisory legal opinion stating that counties may impose *existing* zoning and land-use regulations upon the siting of proposed sports shooting ranges but not any newly created or amended regulations. The provisions of the Florida statute are specific to the regulation of the use of firearms and ammunition at sport shooting and training ranges but do not address the actual siting of such facilities. The attorney general's plain-meaning interpretation of the statute enables municipalities to exert some control over zoning and land-use regulation of a proposed shooting range (McCollum 2008).

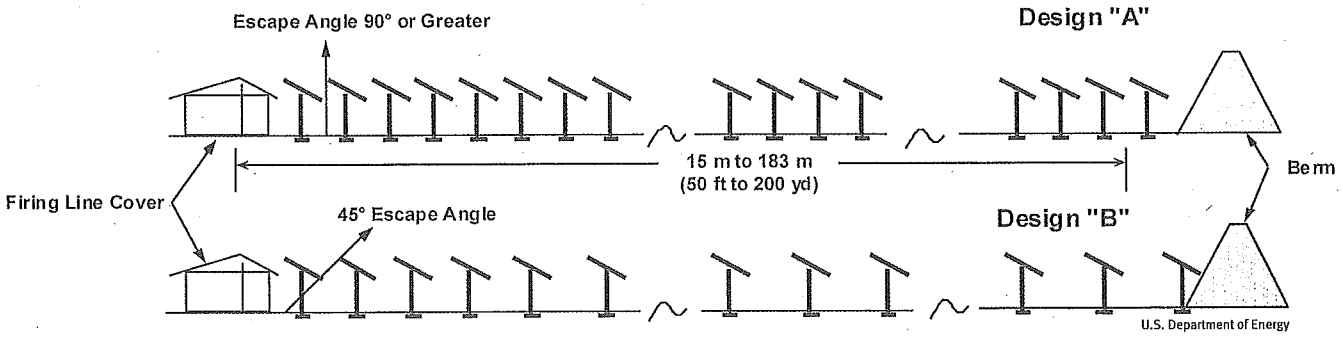
The state of Ohio brought an action against shooting range operators to prevent them from using a portion of their land as a shooting range because of noise and stray bullets. The state alleged that the range obstructed the reasonable use and enjoyment of neighboring properties. Despite overwhelming witness testimony regarding noise and bullets landing on or lodging in nearby properties, the court held that so long as the range substantially complied with shooting range rules, the operators had statutory immunity from legal action (*State ex rel. Fischer v. Hall, Court of Appeals of Ohio*, 6th Dist., Aug. 6, 2004).

Site Planning and Operational Considerations

Planners and local officials should refer to NRA guidelines when considering new regulations for shooting ranges. The NRA recommends a reasonable hours-of-operation schedule to minimize disruption of the surrounding community. Specific suggestions include delaying opening on weekend mornings, offering discounted rates during the least disruptive hours, limiting the use of louder firearms to predetermined times or by appointment, and holding special high-use events during cooler times of the year when fewer people are outdoors and less likely to be disturbed (NRA 2012).

Planners and local officials should also consider natural topography when evaluating appropriate locations for new ranges. For example, valleys and forested hillsides are better at containing sound than hilltops and grassy or bare rocky hillsides, and sound tends to carry long distances over water. Ranges should be oriented so that shooting is away from sound-sensitive areas and residential neighborhoods (NRA 2012).

For indoor ranges, there are various acoustical methods available to control and reduce the sound produced by gunfire. Exposed walls, overhead baffles, safety ceilings, and range floors can be treated with special noise-abatement materials and panels so that they absorb the reverberation of gunfire. By decreasing noise levels within the gun range, the overall safety of the range is improved because members and employees are protected from hearing loss. Moreover, these soundproofing measures improve community relations because less sound leaks from the building (NRA 2012).



Evenly spaced overhead baffles prevent direct fire from exiting a shooting range.

Safety concerns are the most publicized and most serious concerns regarding shooting ranges. Stray bullets that end up near homes present an obvious and major problem for gun ranges. These types of incidents receive a lot of media attention and result in severe limitations or closures for gun ranges. Aside from deaths caused by suicides or intentional killings, deaths caused by stray bullets from shooting ranges are extremely rare (though not unprecedented). In 2010, a stray bullet from an unpermitted backyard range in Burlington, Vermont, hit and killed a St. Michael's College professor. The shooter was convicted of voluntary manslaughter and sentenced to two years in prison (Curran 2012).

Home owners have successfully litigated against shooting ranges where they can show that the range's safety conditions are inadequate. Home owners who lived about a half-mile from a rifle and pistol range in Scituate, Massachusetts, were able to close down and receive damages from the range after proving that four bullets that struck their homes in a five-year period came from the club. The court

held that the existing safety conditions at the club were not adequate to protect the home owners from an unreasonably high risk of injury due to escaping bullets (*Norton v. Scituate Rod & Gun Club, Inc.*, 2012 WL 2335299 (Mass. Super. Apr. 12, 2012)).

One gun club in Michigan recently unveiled a new plan to improve safety after it closed for two years when stray bullets flew into a nearby neighborhood and hit an outdoor worker. The gun club is seeking a special use permit, so it can build a baffle system with a "no-blue sky configuration." This configuration works like a series of window openings. Since the shooter can only see through the openings, he cannot shoot into the sky. This way, errant rounds cannot escape the perimeters of the range (WZZM 13 2013).

Planners and local officials should be aware of the available safety measures to ensure containment of bullets within a shooting range. The most basic and most important safety considerations include control of muzzle direction and direction of fire, prohibition of alcohol and drug use on the premises, coordination of fire and cease-fire when multiple shooters are practicing, and active supervision of minors. Structurally, shooting ranges should be equipped with adequate side berms and backstops in order to prevent stray bullets from escaping the range. It may be necessary to install overhead baffles or guards to ensure that bullets cannot escape (NRA 2012).

Environmental Considerations

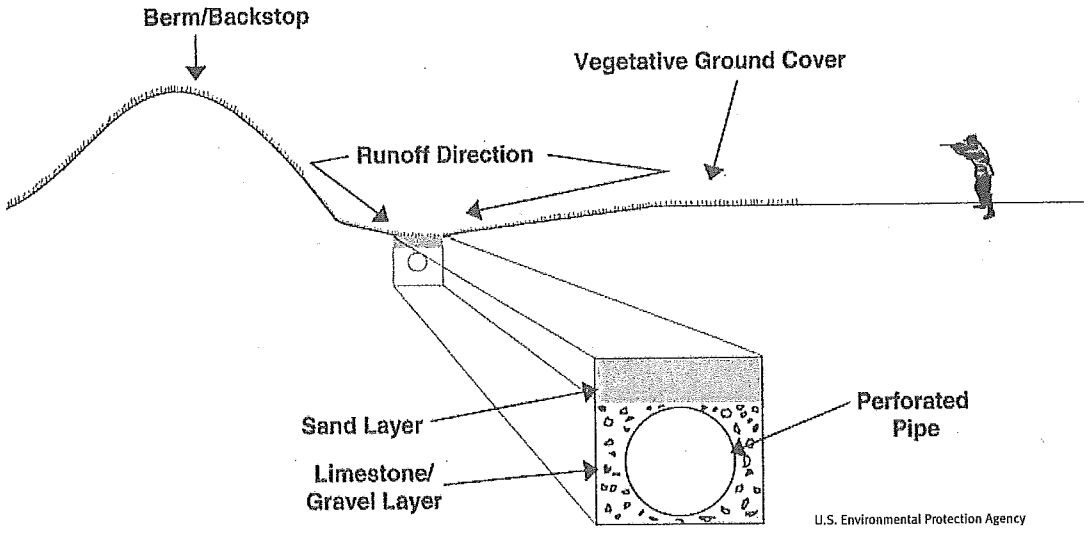
The primary environmental concern related to shooting ranges is the potential for lead contamination. According to a study by the U.S. Environmental Protection Agency (EPA) from the late 1990s, lead leaching from outdoor firing ranges was among the biggest sources of lead in the environment (EPA 2005). The fundamental issue is that when it rains, lead on the ground dissolves and can run into nearby water sources or penetrate the soil and contaminate groundwater. This problem is exacerbated by the sheer size of shooting ranges. The wide distribution of shot that occurs at outdoor shooting ranges results in a relatively large area of the range that can facilitate lead dissolving into surface and groundwater (NSSF 1997). The EPA, the Centers for Disease Control and Prevention, and a large number of states have identified human exposure to all forms of lead as a major health concern in the United States (EPA 2005).

The EPA recommends a four-step approach to lead management: (1) control and contain lead bullets and bullet fragments; (2) prevent migration of lead to the subsurface and surrounding surface water bodies; (3) removal and recycle of lead; and (4) document activities and keep records (EPA 2005).

Local governments can require that a lead-management program be established that makes sense for the individual range's characteristics. To best manage lead, many shooting range owners and environmental agencies recommend periodic lead recovery and recycling. From a design standpoint, it makes most sense to position shooters or targets so that shot-fall areas overlap and concentrate the shot, therefore decreasing the area to be recovered. Range owners and operators should keep a record of the number of rounds shot annually so that lead recovery contractors can know the approximate amount of lead present. Recovery lead should not be stored or accumulated on the premises, but sent to a recycler as soon as possible. The most efficient and cost-effective approach involves addressing the site-specific soil conditions. In some areas, adding lime or phosphate in order to balance out the pH level of the soil can help prevent solubility of lead in water. Adding layers of clay to the soil can act as barriers to control mobility of lead (NSSF 1997).

Since the mid-1980s, citizen groups have rallied against the improper management of lead projectiles. These groups have brought several lawsuits against range owners and have urged federal and state agencies to take action against owners and operators of outdoor shooting ranges. Federal courts have supported claims that require range owners and operators to clean up lead-contaminated areas. However, courts have generally protected ranges that have received approval from or follow practices suggested by environmental agencies (*Simsbury-Avon Preservation Society LLC et al. v. Metacon Club Inc.*, (D. Conn. June 14, 2004); *Cordiano v. Metacon Gun Club, Inc.*, 575 F.3d 199 (2d Cir. 2009); *T&B Ltd. Inc. v. City of Chicago*, 369 F.Supp.2d 989 (N.D. Illinois, Eastern Division 2005)).

In response to environmental concerns, many shooting ranges now use steel shot alternatives. Although more expensive and ballistically different than lead, steel is considered the most viable alternative shot material available today for shotgun target shooting. These alternatives do not fragment and are



A filter bed that collects and filters stormwater runoff is an example of a best management practice for limiting lead contamination at a shooting range.

far less toxic than lead bullets. The transition to steel alternatives dates back to 1991 when federal wildlife authorities ordered steel pellets to replace lead birdshot in waterfowl hunting (Ravindran 2013). In 2013, California lawmakers passed a bill banning lead from bullets in order to protect condors, whose main cause of death is lead poisoning from ammunition and "gut piles" left behind by hunters who clean carcasses in the field (Bernstein 2013).

PLANNING HELPS

Good planning is often the key to ensuring that shooting ranges find locations that meet the demands of shooting sports enthusiasts while avoiding conflicts with other land uses. Planners may benefit by getting out ahead of potential conflicts in making a preliminary assessment of what sites might be acceptable and what areas should be excluded from consideration. Even if planners do not take the initiative to make preliminary site assessments, they will ultimately be required to react to development proposals. Site location is especially important when considering how to minimize adverse environmental and noise impacts. The technical process of selecting an outdoor shooting range site involves screening a site's particular environmental and engineering suitability. First, exclude clearly inappropriate sites, like those that require shooting over or into wetlands, water, and sensitive wildlife areas. Next, evaluate sites based on their environmental characteristics and consider soil type, topography, and drainage. Additional considerations include distance to sound-sensitive areas and natural features that minimize sound. The result could be a map of potentially suitable sites.

FROM PLANNING TO APPROVAL

Local governments have choices when it comes to how much discretion to exercise in the land-use approval process for shooting ranges. There is no constitutional right to have a place to shoot and thus no heightened scrutiny in any review as you might have with a First Amendment free speech or free exercise of religion land use. For shooting ranges, you have no greater burden than the usual rational relationship—as you might have for a car wash or funeral home. Because ranges involve a number of site-specific issues and the potential for serious off-site impacts, few communities permit these uses as-of-right in any zoning district.

More commonly, local governments permit shooting ranges as conditional uses (sometimes called a special exception or special permit use) in one or more zoning districts, requiring approval through a discretionary site-specific review. This approach is appropriate for a use that might be fine in one location in a zone but not on another site in the same zone (e.g., near a school or cluster of homes). Conditions and review criteria for shooting ranges may address minimum land area, site design, lighting, sound limits, testing, hours of operations, and the like.

Given that there are numerous technical aspects of design, as noted above, expert testimony can be helpful in decision making. Some states allow local governments to require that applicants pay for the cost of expert review. Performance standards and periodic reports on operations may help prevent adverse off-site impacts.

COMMUNITIES WITH USE-SPECIFIC STANDARDS FOR SHOOTING RANGES

- Blue Earth County, Minnesota (§24-303(I)): www.municode.com/Library/MN/Blue_Earth_County
- Cowlitz County, Washington (§10.22.01 et seq.): www.codepublishing.com/wa/cowlitzcounty
- Germantown, New York (Zoning & & Subdivision Law §VI.P): http://germantownny.org/wp-content/uploads/2012/12/Adopted-Germantown-Zoning-and-Subdivision-Law.pdf
- Martin County, Florida (Land Development Regulations §§3.99 & 3.99.1): www.municode.com/Library/FL/Martin_County
- Pitt County, North Carolina (Planning & Development Services Ordinance No. 9): www.pittcountync.gov/bcc/ordinance/planning/9.pdf
- Texarkana, Arkansas (§28-21(c)): www.municode.com/Library/AR/Texarkana

Communities looking for additional discretion in the approval process may consider adopting an overlay district with special development or performance standards for shooting ranges. This overlay may be mapped to specific areas of the jurisdiction at the time of initial adoption, or it may be a floating overlay, meaning it is only mapped in coordination with local legislative body approval of a rezoning application for a particular parcel.

Some communities exercise maximum discretion by requiring potential range owners or operators to apply for a base-district rezoning to a special or planned development district. For example, Fort Worth, Texas, uses this approach for shooting ranges (§4-305.C.3). Requiring special or planned development district approval has a number of advantages for all concerned.

Because this approach involves a legislative map amendment, it is easier for the local government to defend its decision. In most states the procedural due process requirement for legislative actions is less than that for an administrative action, such as a conditional use, or a quasi-judicial action, such as a variance.

The applicant provides a conceptual site plan with the map amendment petition, which allows both the government and the neighbors to review and suggest modifications to the project. Because the extent of engineering and design for the conceptual site plan is quite limited, the applicant may be more willing to adjust the plan in order to secure approval.

Once the conceptual site plan is ready for approval and all of the modifications that are needed by the stakeholders have been incorporated, the floating zone is approved to descend and apply to the site. At this point the applicant has a vested right in the map change and approved conceptual plan and can then finance the expensive final engineering and architectural design. In most cases, the details of the plan become the standards for that particular special development district.

Once a site has been approved, local planners need to consider what conditions might be placed on the approval to maintain the range so that it can peacefully exist within a community. The state of Florida recommends that range operators develop a community relations plan, which describes exactly how positive relationships with the surrounding neighborhoods and communities will be established and maintained (Florida DEP 2004). A key component of this plan should be a noise management plan that describes exactly how the impacts of sound and noise potential will be addressed and mitigated.

Finally, planners and local officials may wish to require an environmental plan, which can help evaluate current lead deposits and address cleanup, containment, and recycling issues (Cotter 2003). The plan should delineate exactly what combination of practices will be

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used to achieve optimal lead management. Soil erosion management and wildlife habitat preservation should also be elements of the plan. Although there may be initial increases in cost due to purchasing steel shot alternatives and investing in routine cleanup practices, ranges will be avoiding the long-term costs of litigation and risk of closure.

REACHING THE RIGHT RESULT

Shooting ranges can peacefully coexist in most communities, providing training and sporting opportunities for gun enthusiasts while eliminating virtually all adverse impacts. Planners who take the initiative and plan for shooting ranges and gun clubs, and arm themselves with good regulations, can succeed in providing for such uses while protecting the public. Finally, discretionary review processes can provide a forum for a dialogue that results in a consensus about proper facility design, operations, and environmental protections.

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HOW DOES YOUR COMMUNITY REGULATE SHOOTING RANGES?

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