City of Ramsey
Agenda
Special Planning Commission
Thursday January 31, 2013
7:00 pm
Council Chambers, 7550 Sunwood Drive NW

1. Call to Order

2. Citizen Input

3. Approve Agenda

4. Approve Minutes

1. Approve the Following Planning Commission Meeting Minutes:

Planning Commission Meeting Minutes Dated January 3, 2013

5. Public Hearing/Commission Business

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

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

3. PUBLIC HEARING: Consider Ordinance Amendments to Chapter 117 Related to Stormwater Controls and Illicit Discharges

4. Zoning Bulletins

6. Commission/Staff Input

7. Adjournment

Special Planning Commission **4. 1.**

Meeting Date: 01/31/2013

By: JoAnn Shaw, Community Development

Information

Title:

Approve the Following Planning Commission Meeting Minutes:

Planning Commission Meeting Minutes Dated January 3, 2013

Background:

n/a

Notification:

Observations/Alternatives:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

1.3.13 Minutes

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	01/25/2013 10:44 AM

Form Started By: JoAnn Shaw Started On: 01/24/2013 02:17 PM

Final Approval Date: 01/25/2013

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

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

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

1. CALL TO ORDER

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

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

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

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

4. APPROVE PLANNING COMMISSION MINUTES

4.01: Approve the Following Planning Commission Minutes:

4.01.1: Planning Commission Meeting Minutes Dated December 6, 2012

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

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

5. NOTE CITY COUNCIL MINUTES

5.01: Note the Following City Council Meeting Minutes:

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

Informational; no action required.

6. PUBLIC HEARINGS/COMMISSION BUSINESS

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

Public Hearing

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

Presentation

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

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

Citizen Input

There was not citizen input for this item.

Commissioner Brauer arrived at 7:07 p.m.

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

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

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

Commission Business

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

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

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

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

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

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

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

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

Further discussion

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

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

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

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

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

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

Public Hearing

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

Presentation

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

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

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

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

Citizen Input

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

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

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

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

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

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

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

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

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

Chairperson Levine supported the site plan as submitted.

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

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

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

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

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

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

Commission Business

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

Chairperson Levine questioned why this was necessary.

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

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

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

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

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

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

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

6.03: Discussion on Dissemination of City Council Minutes

Presentation

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

Commissioner Bauer supported Staff's recommendation.

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

7. COMMISSION / STAFF INPUT

7.01: Special Planning Commission Meeting

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

8. ADJOURNMENT

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

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

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

Respectfully submitted,

_____
Tim Gladhill
Development Services Manager

ATTEST:

_____
JoAnn Shaw
Planning Division Secretary

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

Special Planning Commission **5. 1.**

Meeting Date: 01/31/2013

By: Tim Gladhill, Community Development

Information

Title:

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

Background:

The City has received the following applications for SEASONS OF RAMSEY, a Major Plat for the development of fifty (50) townhome units in the TOWN CENTER GARDENS 3RD ADDITION:

1. Preliminary Plat
2. Final Plat
3. Site Plan Review
4. Request to Vacate Drainage and Utility Easements
5. Request to Vacate Right of Way for 147th Circle NW
6. Request to Convey Outlot C, RAMSEY TOWN CENTER 8TH ADDITION (City of Ramsey Housing and Redevelopment Authority [HRA])

The following case requests a recommendation from the Planning Commission only on the following applications, although said recommendation will have impacts on each of the other applications as well:

1. Preliminary Plat
2. Site Plan Review

The Planning Commission reviewed the Sketch Plan for SEASONS OF RAMSEY at the December 6th, 2012 Planning Commission Meeting and directed the Applicant to prepare a Preliminary Plat for review.

Notification:

Staff has attempted to notify all Property Owners within 700 feet of the Subject Property via Standard US Mail of the Public Hearing for the Preliminary Plat. In addition, the Public Hearing Notice was properly advertised in the Anoka County, the City's Official Newsletter for Public Hearings.

Observations/Alternatives:

The proposed development is actually a reconfiguration of an existing platted, yet undeveloped portion of TOWN CENTER GARDENS 3RD ADDITION. The style of townhomes proposed varies from the original approval of the previous plat, involving wider units and a net decrease in the number of forecasted units over the entire development area for the project. Currently, approximately fifty-two (52) units are platted, yet only over a portion of the entire eight (8) acre development area. The entire development area originally forecasted closer to seventy (70) units.

As part of the proposed development, a critical east-west connection of 147th Lane NW is created and constructed by the Developer; a proposal that the City previously recommended with the TOWN CENTER GARDENS Plat. The net result is that the existing circle, or loop, is no longer necessary. The existing 147th Lane will no longer terminate before connecting to another public street. As such, 147th Circle NW is proposed to be vacated, and converted to a private street. This connection provides necessary connectivity between Town Center Gardens and The COR. Said connection should improve safety and mobility for the entire area north of Bunker Lake Boulevard. A drainage and utility easement shall still be necessary for the public infrastructure in this location (sanitary sewer and municipal water lateral lines).

The design of the private roadway on the western edge of the development has some tight turning radii. The Developer has provided verification in the form of a turning exhibit to ensure public safety apparatuses have adequate turning movements.

Grading, Drainage, and Utility Plans are generally acceptable, with amendments outlined in the Staff Review File. It is hereby re-enforced that individual services will be provided to each unit, rather than a single service for each building. A revised utility plan has been submitted, with a revision date of December 29, 2012, but is not attached to this case. Final utility plans will be presented to the Planning Commission at the meeting.

The Landscaping Plan is generally acceptable, with amendments outlined in the Staff Review File. Staff would like to call out the topsoil requirements, as noted in the Sketch Plan Review File, to ensure that the Developer fully understands said requirements.

As it relates to development fees, the number of units previously platted exceeds the number of units proposed in the new plat. The original plat created fifty-two (52) units within the same geographic area as the proposed Plat. The SEASONS OF RAMSEY Plat proposes fifty (50) units. Staff has calculated all development fees using the fee schedule established by ordinance for 2013. It is important to note that Staff is using evidence of actual payment being made as basis for the following calculation. This is important to note to establish a finding that development fees are not being reduced. Staff is applying full payment of required development fees. The result of the analysis indicates 'credits' being made available for sanitary sewer trunk, water trunk, and stormwater management. However, additional fees are due for Park Dedication and Trail Development. The credits will be applied to the fees due on these two accounts.

The Developer has been successful in acquiring financing from the Minnesota Housing Finance Agency (MHFA) from the Section 42 Tax Credit account. As part of that financing, the Developer received points for local contribution. The City Council previously agreed in concept for a land donation in the form of vacated right of way (previously mentioned) and conveyance of a small, remnant parcel currently owned by the City of Ramsey Housing and Redevelopment Authority (HRA). This remnant parcel does not have development potential on its own, and the only logical use is to combine with this proposed development. The HRA adopted a resolution on January 22nd, 2013 to convey Outlot C, RAMSEY TOWN CENTER 8TH ADDITION to The Seasons of Ramsey Limited Partnership. In addition, the City Council introduced an ordinance on January 22nd, 2013 to vacate drainage and utility easements as well as right of way for 147th Circle NW.

The City has sent the Application to the Anoka County Highway Department for review and comment, as the proposed development is located adjacent to a County-State Aid Highway (Bunker Lake Boulevard [CSAH 116]). Staff is currently awaiting a response. However, Anoka County did comment on the COR TWO/North Commons Plat in regards to improvements to Bunker Lake Boulevard required of the Alternative Urbanwide Area Review (AUAR) and Joint Powers Agreement (JPA) with Anoka County. Each project that is approved by the City adds additional volume to Bunker Lake Boulevard. This project is included in the City's five-year Capital Improvement Program (CIP). The CIP is a financial planning document and does not give approval to requested projects. The Bunker Lake Boulevard project is proposed to be funded by Tax Increment Financing (TIF) District #14. However, there is not sufficient increment created to commence the project at this time. This is not necessarily directly related to the Zoning Code review, still an important note for future planning and project viability. Staff has forwarded the tentative project timeline and funding to Anoka County. In addition, Staff noted that the project is actually a reduction in number of units from previous approvals.

Alternatives

Alternative #1: The Planning Commission could recommend approval of the proposal in its current form, with amendments as requested by the Staff Review File. This will provide the City with a development with current zoning requirements. In addition, the proposed development will bring other effects, such as additional connectivity by the connection of 147th Lane NW and bring fifty (50) workforce housing units.

Alternative #2: The Planning Commission could recommend approval of the proposal as presented. Staff

recommends that the proposal generally conforms with zoning standards; however, additional modifications should be made as a contingency of approval. Without modification, there would be minor non-conforming standards and therefore, Staff does not recommend this alternative (refer to Staff Review File for concerns).

Alternative #3: The Planning Commission could recommend denial of the request. If this is the preferred action, the Planning Commission would need to draft Findings of Fact to support the denial. There are some positive effects, as noted above, that would be delayed. In addition, the existing infrastructure (roadway and utilities) would continue to go un-utilized, creating some maintenance issues.

Funding Source:

All costs associated with review of the Application are the responsibility of the Applicant. An escrow has been set up for the benefit of the review and sufficient funds deposited by the Applicant.

Staff Recommendation:

Staff recommends approval of the Preliminary Plat. Please note that Preliminary Plat approval provides certain entitlement to proceed with the project. The Final Plat is an approval of that Plat as to form for recording, and is not reviewed by the Planning Commission. If the Planning Commission has concerns about the layout or standards of the Plat, it should voice those concerns at this time.

Additionally, Staff recommends approval of the Site Plan, contingent upon revisions to the architectural renderings consistent with The COR Design Framework and previous City Council direction.

Committee Action:

Due to Staff recommendations to add contingencies for recommendation for approval, Staff recommends that the following motions be made separately:

Motion #1

Motion to recommend that the City Council adopt a resolution granting Preliminary Plat Approval for SEASONS OF RAMSEY.

Motion #2

Motion to recommend that the City Council approve the Site Plan for Seasons of Ramsey, contingent upon compliance with the City Staff Review File dated January 25th, 2013 AND subject to revised architectural renderings that comply with The COR Design Framework and previous City Council direction to the Developer.

Attachments

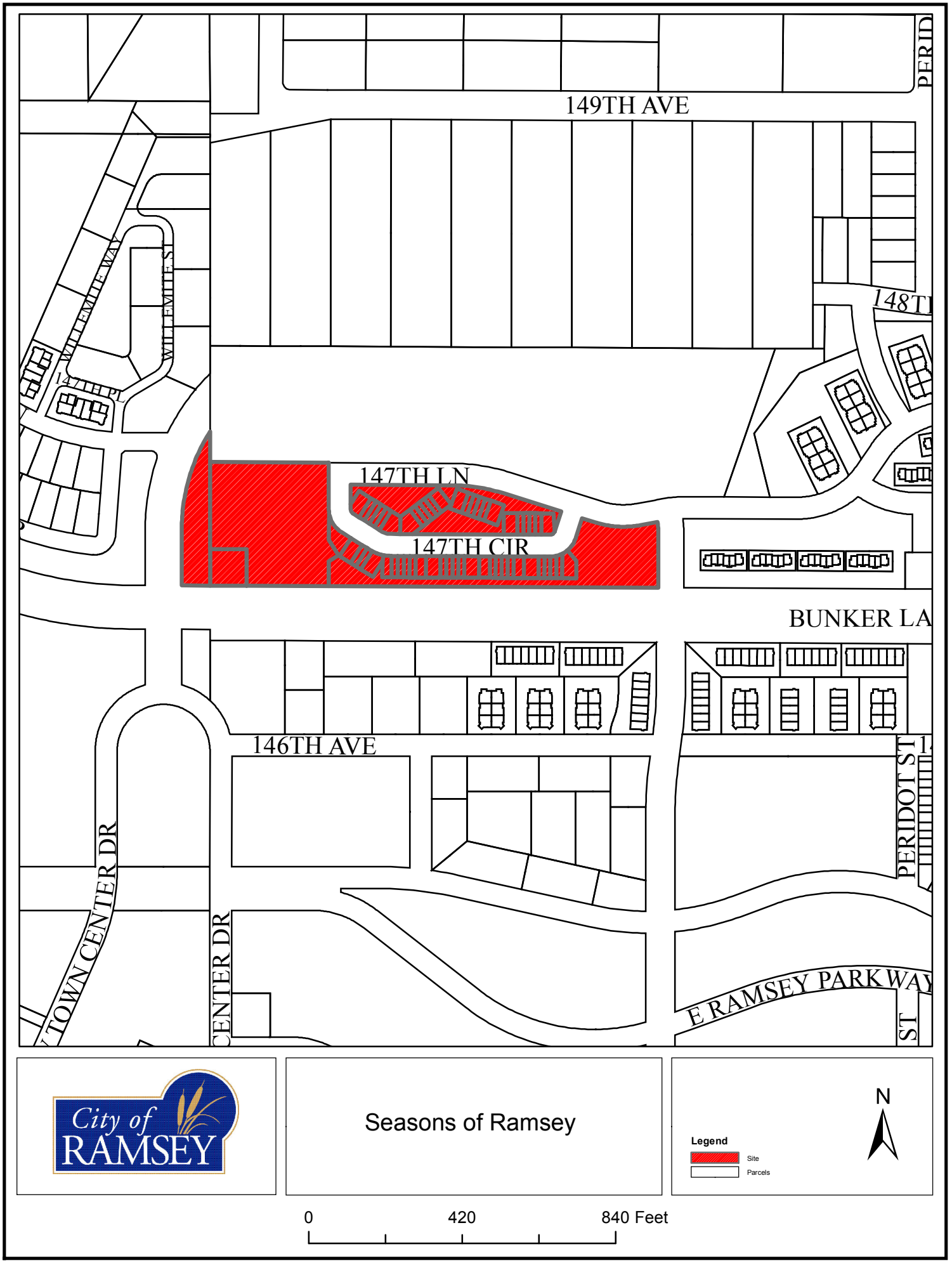
Site Location Map
Site Plan
Landscape Plan
Floor Plan
Architectural Elevations
Front (Private Street) Elevation
Rear (Public Street) Elevation
Preliminary Plat
Turning Exhibit
Grading Plan
Resolution Granting Preliminary Plat Approval
Staff Review File

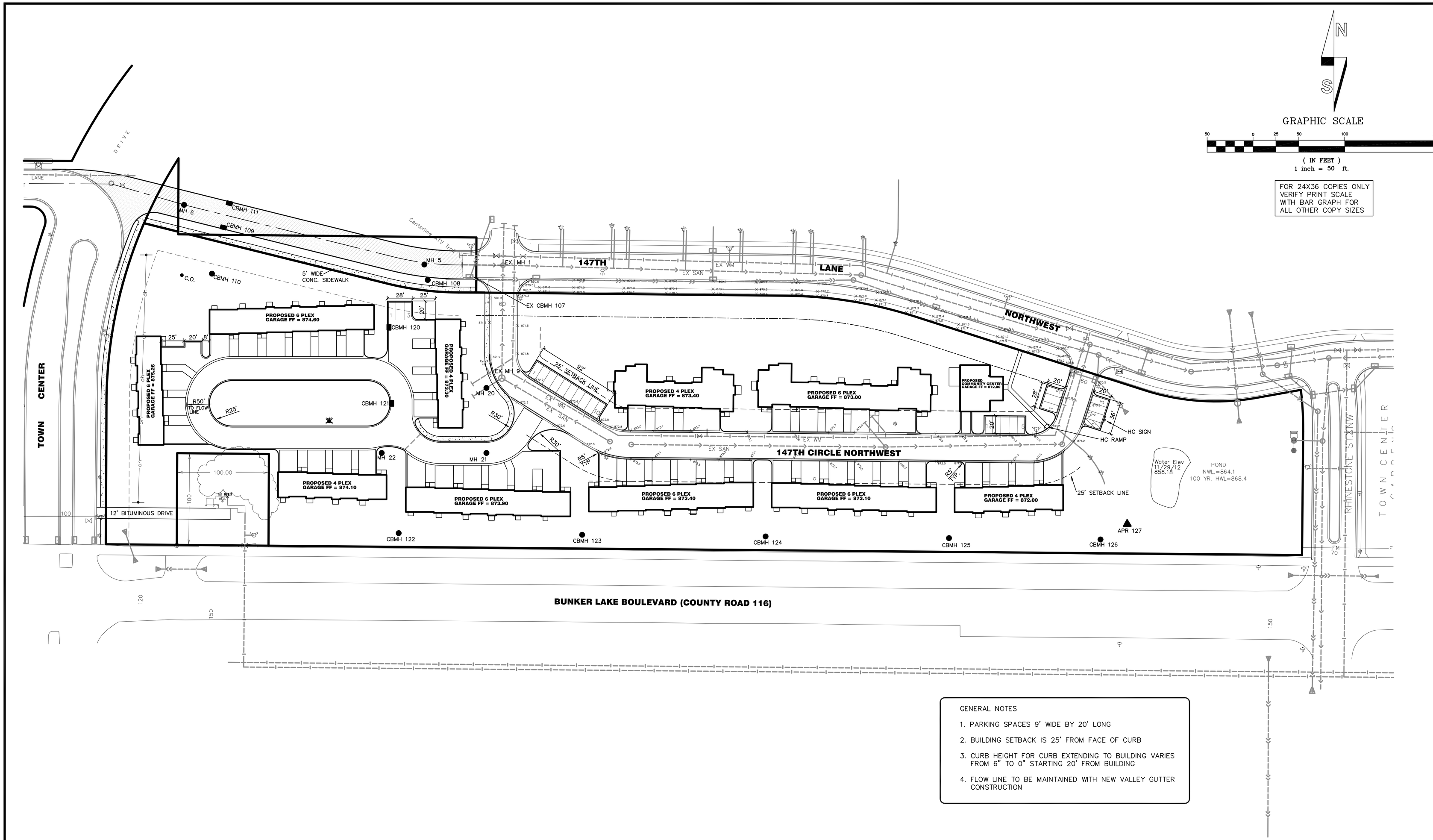
Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	01/25/2013 12:13 PM
Tim Gladhill (Originator)	Tim Gladhill	01/25/2013 01:18 PM

Form Started By: Tim Gladhill Started On: 01/08/2013 10:40 AM

Final Approval Date: 01/25/2013


149TH AVE
148TH
147TH PL
WILLEMITE WAY
WILLEMITE ST
147TH LN
147TH CIR
BUNKER LA
146TH AVE
TOWN CENTER DR
CENTER DR
PERIDOT ST
E RAMSEY PARKWAY
City of RAMSEY
Seasons of Ramsey
Legend
Site
Parcels
N
0
420
840 Feet



GENERAL NOTES

1. PARKING SPACES 9' WIDE BY 20' LONG
2. BUILDING SETBACK IS 25' FROM FACE OF CURB
3. CURB HEIGHT FOR CURB EXTENDING TO BUILDING VARIES FROM 6" TO 0" STARTING 20' FROM BUILDING
4. FLOW LINE TO BE MAINTAINED WITH NEW VALLEY GUTTER CONSTRUCTION

CALL 48 HOURS BEFORE DIGGING:
GOPHER STATE ONE CALL
TWIN CITY AREA 454-0002
MINNESOTA TOLL FREE 1-800-252-1166

REVISIONS:

DATE	
12/17/12	PRELIMINARY PLAT SUBMITTAL

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

Gary D'Heilly

DATE: _____ REG. NO. 22426

DESIGNED: GLD
DRAWN BY: LCD
CHECKED BY:

D'Heilly Engineering Inc.
625 Lake Dr. W
P.O. Box 1123
Annandale, MN 55302
Phone (320) 224-1169

SEASONS TOWNHOMES OF RAMSEY

RAMSEY, MINNESOTA

SITE PLAN

PRELIMINARY CONSTRUCTION PLANS

PROJECT NO. 121004

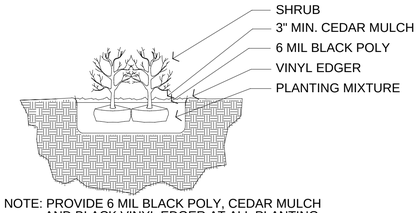
SHEET NO. **C1**

D:\Projects\121004\dwg\121004SITE.dwg, 12/17/2012 10:21:06 AM

PLANTING SCHEDULE

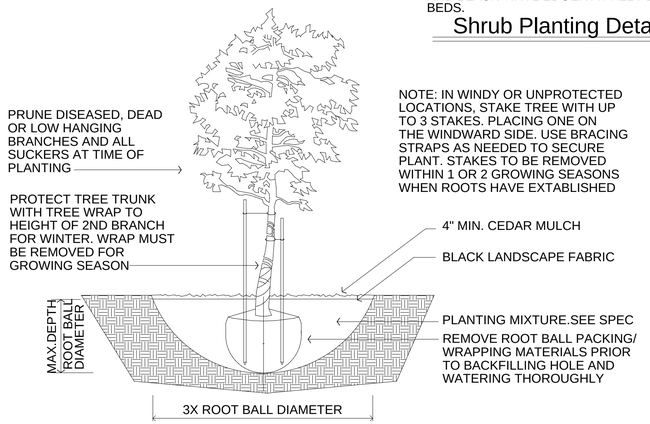
QTY	SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	TYPE	COMMENTS
9	BF	ABIES BALSAMEA	BALSAM FIR	6'	BB	
22	SM	ACER, SACHARUM	SUGAR MAPLE	1-3/4"	BB	
19	H	CELTIS OCCIDENTALIS	HACKBERRY	1-3/4"	BB	
10	S	AMELANCHIER INTERIOR	INLAND SERVICEBERRY	1-3/4"	BB	
18	MM	ACER SPICATUM	MOUNTAIN MAPLE	1-3/4"	BB	
15	MR	ROSA BLANDA	MEADOW ROSE	5#	POT	
40	C	VIBURNIUM TRILOBUM	HIGH BUSH CRANBERRY	5#	POT	
72	J	JUNIPERUS COMMUNIS	OLD FIELD JUNIPER	5#	POT	

1. ALL AREAS TO BE SODDED UNLESS NOTED OTHERWISE. ONLY LOW MAINTENANCE LAWNS APPROVED
2. ALL AREAS WITH SLOPE GREATER THAN 3:1 TO HAVE EROSION CONTROL MAT
3. ALL AREAS WITH SLOPE GREATER THAN 3:1 TO BE PLANTED WITH 'PRAIRIE' TYPE GRASSES. SPACING AS REQUIRED TO PROVIDE FULL COVERAGE. SEPARATE FROM SODDED AREAS WITH VINYL EDGING
4. PROVIDE 6 MIL POLY LINER, CEDAR MULCH AND BLACK VINYL EDGER AT ALL PLANTING BEDS UNLESS NOTED DIFFERENTLY
5. PROVIDE 6 MIL POLY LINER, CEDAR MULCH AND BLACK VINYL EDGER AT 2' WIDE PERIMETER OF ALL BUILDINGS
6. PROVIDE LAWN IRRIGATION SYSTEM WITH APPROVED BACKFLOW DEVICE AND A RAIN SENSOR TO MEET THE APPROVAL OF CITY ENGINEER



NOTE: PROVIDE 6 MIL BLACK POLY, CEDAR MULCH AND BLACK VINYL EDGER AT ALL PLANTING BEDS.

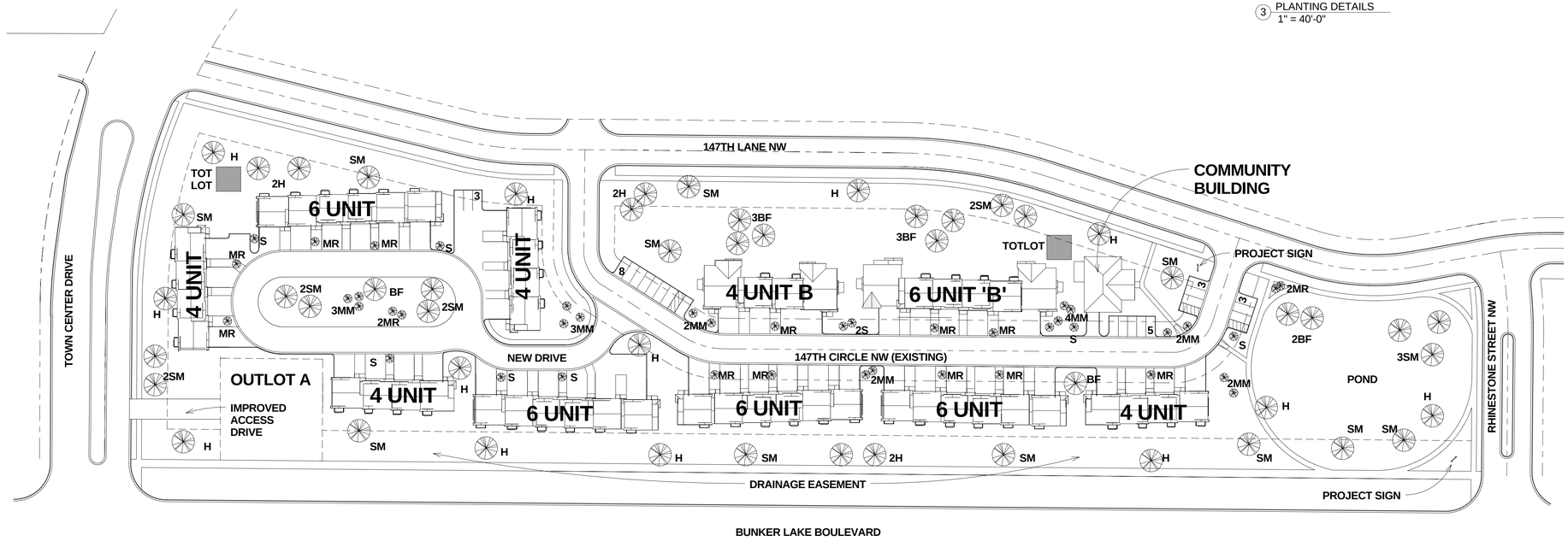
Shrub Planting Detail



Tree Planting Detail

2 LANDSCAPE SCHEDULE
1" = 1'-0"

3 PLANTING DETAILS
1" = 40'-0"



1 LANDSCAPE PLAN
1" = 60'-0"

ARCHITECTS

PBA ARCHITECTS, INC.
1851 BIRCH LANE NE
LONGVILLE, MN. 56655
TEL.: (612)353-4753
FAX: (612)353-4782

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

REGISTRATION NO. *10600*

STRUCTURAL ENGINEERS:

CIVIL ENGINEER:

MECHANICAL/ELECTRICAL ENGINEER:

Consultant
Address
Address
Phone
Fax
e-mail

Consultant
Address
Address
Phone
Fax
e-mail

No.	Description	Date

THE SEASONS TOWNHOMES

PODAWILTZ DEVELOPMENT CORP

LANDSCAPE PLAN/ DETAILS

Project number	1111
Date	12/12/2012
Drawn by	Author
Checked by	PSB

A-1.1

Scale: As indicated

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12/12/2012 2:57:08 PM



3 Level 3
3/16" = 1'-0"

2 Level 2
3/16" = 1'-0"

1 Level 1
3/16" = 1'-0"

ARCHITECTS

PBA ARCHITECTS, INC.
1851 BIRCH LANE NE
LONGVILLE, MN. 56655
TEL.: (612)353-4753
FAX: (612)353-4782

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

REGISTRATION NO. *10600*

STRUCTURAL/CIVIL/MECHANICAL/ELECTRICAL:
DUFFY ENGINEERING & ASSOCIATES, INC.
350 HWY 10 SOUTH, STE 101
ST.CLOUD, MINNESOTA 56304
PHONE: 320-259-6575
FAX: 320-259-6991
e-mail

Consultant
Address
Address
Phone
Fax
e-mail

Consultant
Address
Address
Phone
Fax
e-mail

No.	Description	Date

©copyright by PBA ARCHITECTS, INC 11/15/2011

THE SEASONS
RAMSEY, MINNESOTA

FLOOR PLANS-4 UNIT BLDG

Project number	1111
Date	12/5/2012
Drawn by	Author
Checked by	PSB

A-2.1

Scale 3/16" = 1'-0"

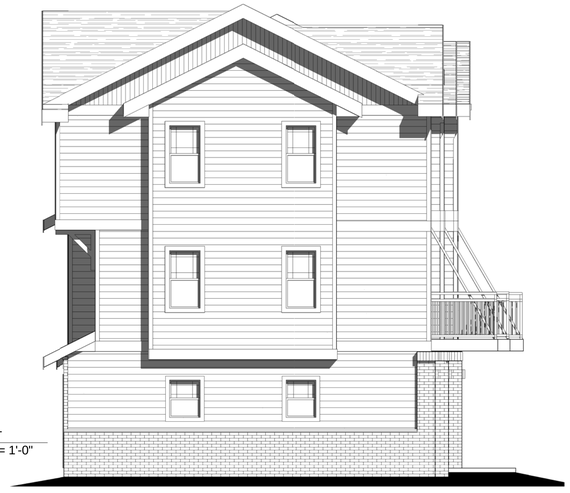
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4 REAR
3/16" = 1'-0"



2 LEFT
3/16" = 1'-0"



3 RIGHT
3/16" = 1'-0"



1 FRONT
3/16" = 1'-0"

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e-mail

Consultant
Address
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Consultant
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Address
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e-mail

No.	Description	Date

THE SEASONS

RAMSEY, MINNESOTA

ELEVATIONS-4 UNIT BLDG

Project number	1111
Date	12/5/2012
Drawn by	Author
Checked by	PSB

A-3.1

Scale 3/16" = 1'-0"

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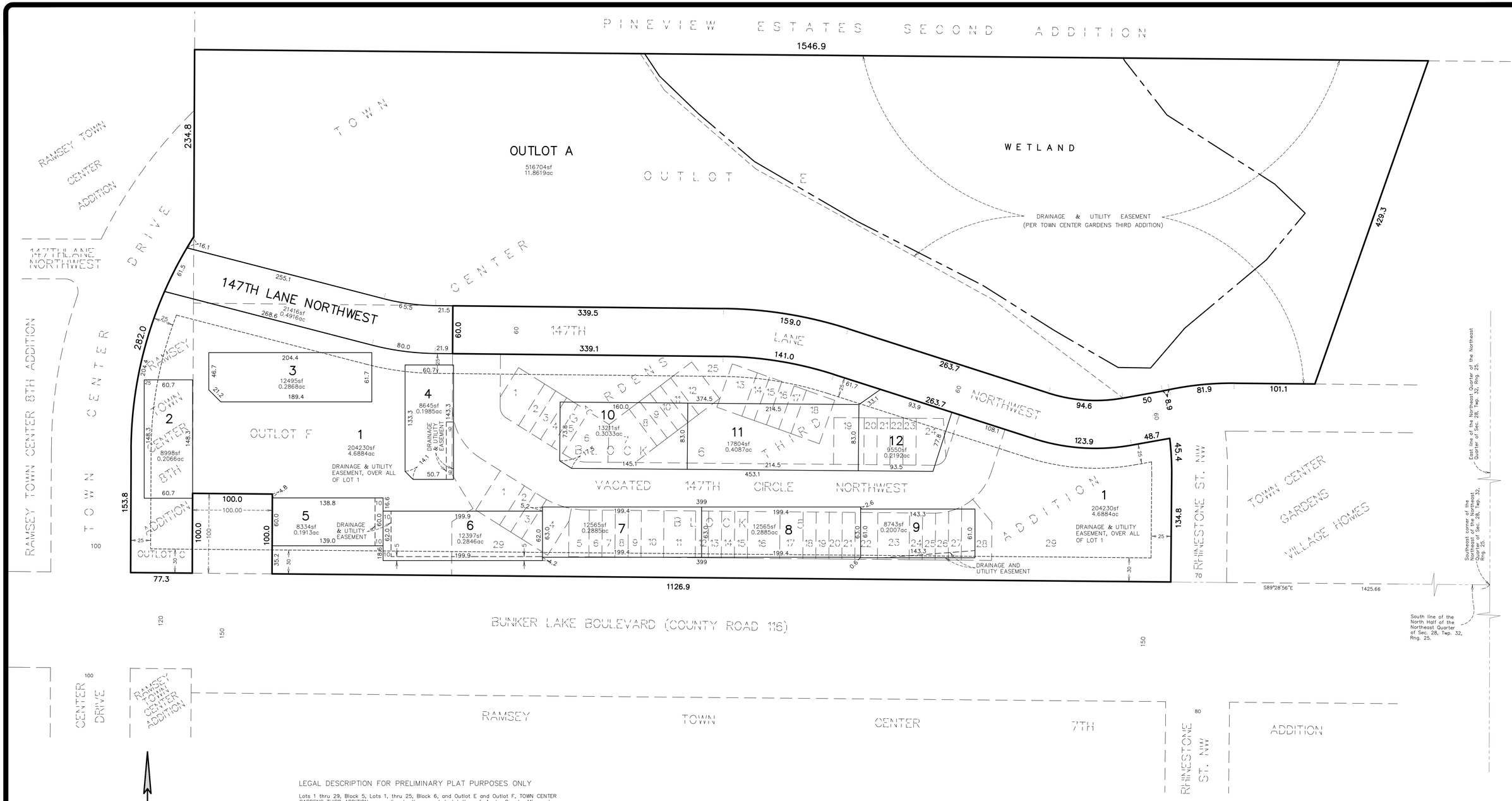
THE SEASONS

Date: 12/06/2012



THE SEASONS

Date: 12/06/2012



60 30 0 60

Scale in Feet

LEGAL DESCRIPTION FOR PRELIMINARY PLAT PURPOSES ONLY

Lots 1 thru 29, Block 5, Lots 1, thru 25, Block 6, and Outlot E and Outlot F, TOWN CENTER GARDENS THIRD ADDITION according to the recorded plat thereof, Anoka County, Minnesota.

Together with:

Outlot C, RAMSEY TOWN CENTER 8TH ADDITION according to the recorded plat thereof, said Anoka County.

SETBACKS

FRONT–MIN. DRIVEWAY LENGTH	25 FT
PERIMETER–BUILDING TO RHINESTONE STREET NE, 147TH STREET NW., AND TOWN CENTER DR.	25 FT
REAR–BUILDING TO COUNTY RD. 116	30 FT

TOTAL AREA	19.9187	ACRES	TOTAL OUTLOTS	1	GROSS DENSITY (EXCLUDES OUTLOTS)	6.5059	UNITS/ACRE
TOTAL R.O.W. AREA	0.4916	ACRES	TOTAL NUMBER OF LOTS	12	NET DENSITY (EXCLUDES OUTLOTS & R/W)	6.6092	UNITS/ACRE
TOTAL LOT AREA	7.5652	ACRES	NUMBER OF COMMUNITY LOTS (LOTS 1 & 12)	2	NET DENSITY (EXCLUDES OUTLOTS, R/W & COMMUNITY LOTS)	18.8146	UNITS/ACRE
TOTAL TOWNHOME LOT AREA	2.6575	ACRES	NUMBER OF TOWNHOME LOTS	10			
TOTAL COMMUNITY LOT AREA (LOTS 1 & 12)	4.9076	ACRES	NUMBER OF TOWNHOME UNITS	50	ZONING (PROPOSED)	COR	
TOTAL OUTLOT AREA	11.8619	ACRES	UTILITIES	AVAILABLE	ZONING (EXISTING)	COR	

00-SURV-112304-PREPLAT

PIONEER engineering
CIVIL ENGINEERS LAND PLANNERS LAND SURVEYORS LANDSCAPE ARCHITECTS
2422 Enterprise Drive
Mendota Heights, MN 55120
(651) 681-1914
Fax: 681-9488
www.pioneereng.com

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota

Name

Reg. No. 42299 Date 12-17-12

Revisions

Date 12-13-12
Designed
Drawn NJK

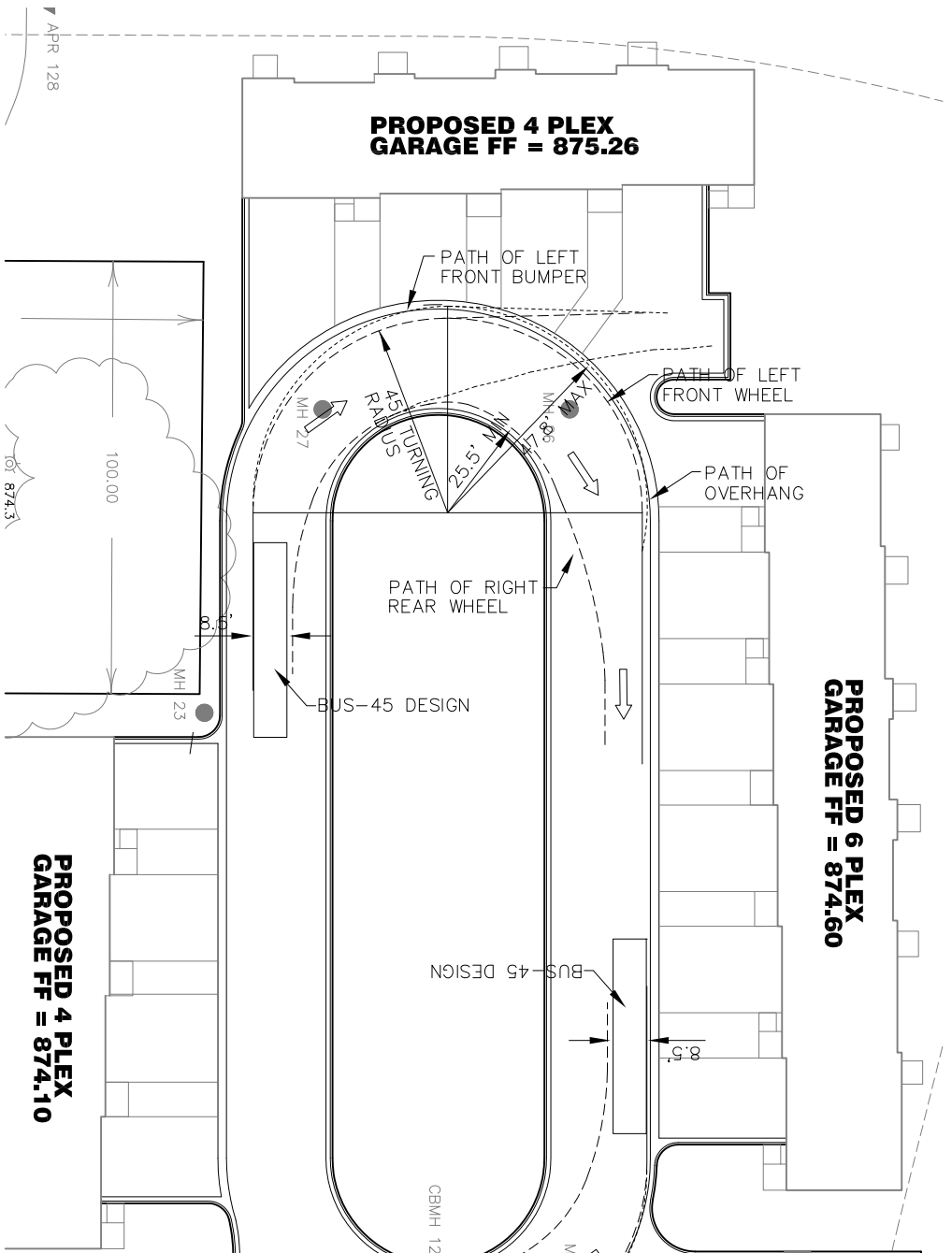
PRELIMINARY PLAT

The Seasons Townhomes of Ramsey Limited Partnership
3601 18th Street South, Suite 117
ST. CLOUD, MINNESOTA 56301

SEASONS OF RAMSEY
RAMSEY, MINNESOTA

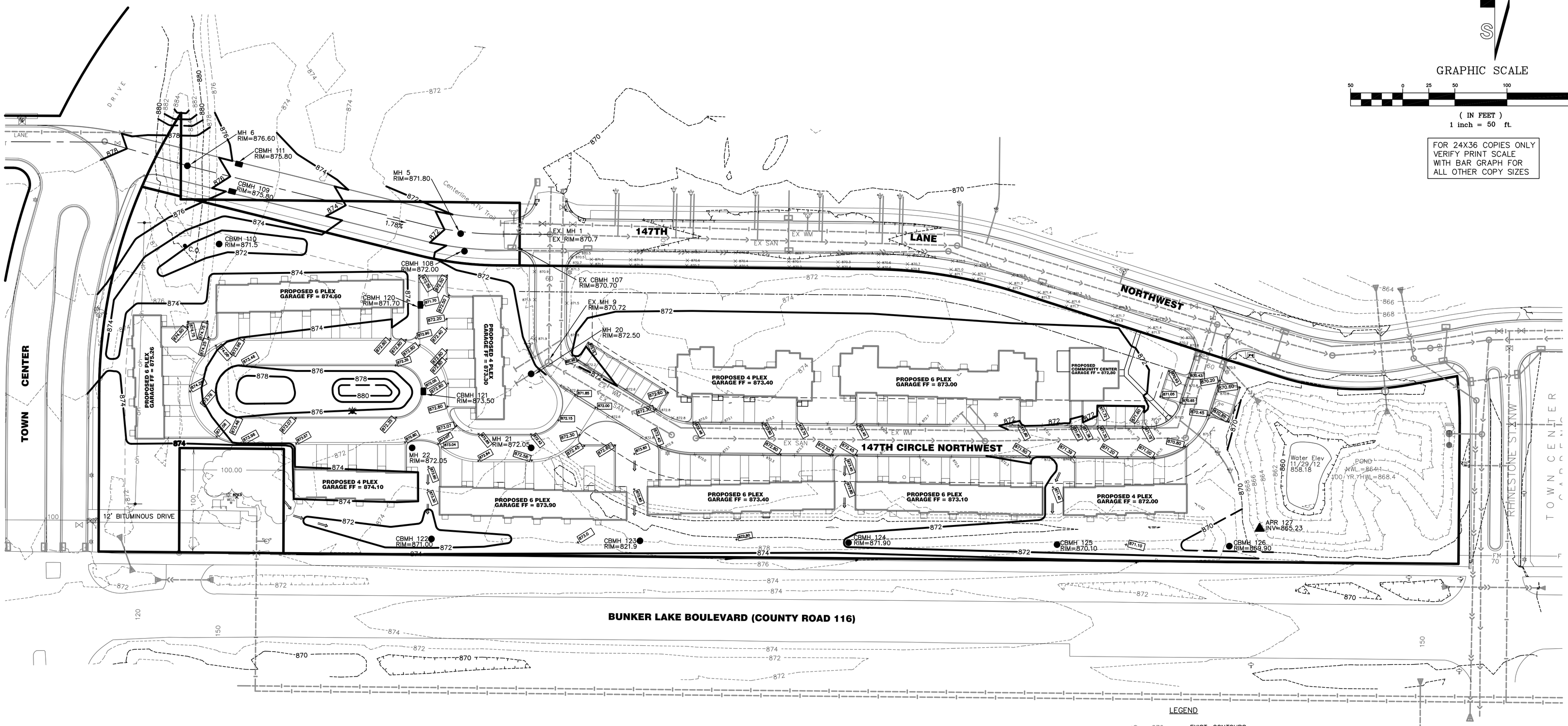
1 OF 1

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SHEET NO. 1 of 1	PROJECT NO. 121004	**SEASONS TOWNHOMES OF RAMSEY** **RAMSEY, MINNESOTA** **BUS-45 TURN RADIUS** **PRELIMINARY CONSTRUCTION PLANS**	D'Heilly Engineering Inc. 625 Lake Dr. W P.O. Box 1123 Annandale, MN 55302 Phone (320) 224-1169	DESIGNED: GLD DRAWN BY: LCD CHECKED BY:	I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA. Gary D'Heilly DATE: _____ REG. NO. 22426	DATE	REVISIONS:



GRAPHIC SCALE

(IN FEET)
1 inch = 50 ft.

FOR 24X36 COPIES ONLY
VERIFY PRINT SCALE
WITH BAR GRAPH FOR
ALL OTHER COPY SIZES

GENERAL NOTES

1. POND ORIGINALLY SIZED FOR THIS DEVELOPMENT PLUS AREA NORTH OF 147 LANE NORTHWEST. WHEN AREA NORTH OF 147 LANE NORTHWEST IS DEVELOPMENT POND SIZE TO BE CHECKED AND ENLARGED IF NEEDED.

LEGEND

- EXIST. CONTOURS
- PROP. CONTOURS
- EXIST. SPOT ELEV..
- PROP. SPOT ELEV.
- DRAINAGE ARROW
- EXIST. CB
- PROP. CB
- EXIST. STORM SEWER
- PROP. STORM SEWER
- EXIST. FES
- PROP. FES
- EXIST. MH
- PROP. MH
- EXIST. SAN. SEWER
- PROP. SAN. SEWER
- EXIST. WATERMAIN
- PROP. WATERMAIN
- SILT FENCE
- D&U EASEMENT
- FIBER LOGS
- FILTER LOGS

CALL 48 HOURS BEFORE DIGGING:
GOPHER STATE ONE CALL
TWIN CITY AREA 454-0002
MINNESOTA TOLL FREE 1-800-252-1166

REVISIONS:

DATE	
12/17/12	PRELIMINARY PLAT SUBMITTAL

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

Gary D'Heilly

DATE: _____ REG. NO. 22426

DESIGNED: GLD
DRAWN BY: LCD
CHECKED BY:

D'Heilly Engineering Inc.
625 Lake Dr. W
P.O. Box 1123
Annandale, MN 55302
Phone (320) 224-1169

SEASONS TOWNHOMES OF RAMSEY
RAMSEY, MINNESOTA

GRADING PLAN

PRELIMINARY CONSTRUCTION PLANS

PROJECT NO. 121004

SHEET NO. C2

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

RESOLUTION #13-02-025

A RESOLUTION GRANTING PRELIMINARY PLAT APPROVAL OF SEASONS OF RAMSEY.

WHEREAS, The Seasons of Ramsey Limited Partnership, hereinafter referred to as "Applicant", has properly applied for preliminary plat approval of Seasons of Ramsey on the following described property located in the City of Ramsey:

Lots 1 through 29, inclusive, Block 5, and Lots 1 through 25, inclusive, Block 6, and Outlot F, Town Center Gardens, Anoka County, Minnesota

and

Outlot C, Ramsey Town Center 8th Addition, Anoka County, Minnesota

(the "Subject Property")

WHEREAS, on November 7, 2012, the City of Ramsey received an application and sketch plan from the Applicant for a plat to be named Seasons of Ramsey; and

WHEREAS, on December 6, 2012, the Planning Commission reviewed the sketch plan and recommended that the Applicant proceed to the preliminary plat stage; and

WHEREAS, on December 27, 2012, the City of Ramsey received an application and preliminary plat from the Applicant for a plat to be named Seasons of Ramsey; and

WHEREAS, on January 31, 2013, the Planning Commission conducted a public hearing and recommended the City Council approve the preliminary plat of Seasons of Ramsey; and

WHEREAS, on February 12, 2013, the City Council reviewed the preliminary plat for Seasons of Ramsey.

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

That the Ramsey City Council hereby grants preliminary plat approval to Seasons of Ramsey in accordance with relevant codes and contingent upon compliance with the City Staff Review File dated November 30, 2012, revised January 25, 2013, and the Developer entering into a Development Agreement with the City.

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 12th day of February, 2013.

_____
Mayor

ATTEST:

_____
City Clerk

January 25, 2013

The Seasons of Ramsey Limited Partnership
Attn: J. Michael Podawiltz
3601 18th Street South, Suite 117
St. Cloud, MN 56301

Re: Preliminary Plat and Site Plan Review
Seasons of Ramsey

Dear Mr. Podawiltz:

The City of Ramsey has received your application for a Minor Plat to construct a 50 unit townhome development on approximately 8.08 acres within the TOWN CENTER GARDENS 3RD ADDITION. City Staff has recommended that you proceed with preparation of the Final Plat contingent upon the following:

- Required amendments as outlined in the attached Staff Review File dated November 30, 2012, *revised* January 25, 2013

Please note: this is only a recommendation that is subject to approval by the City Council.

Copies of the review file and staff report are attached for your review. The Planning Commission will review the request on Thursday, January 31st at 7:00 p.m. in the Council Chambers. You, or a representative of the development, are highly encouraged to attend this meeting. Please contact me at your earliest convenience prior to the meeting to verify if you will be attending. Please let me know if you have any questions or concerns. I can be reached at 763-576-4308 or by email at tgladhill@ci.ramsey.mn.us.

Sincerely,

CITY OF RAMSEY

Tim Gladhill
Development Services Manager

Enclosures

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CITY OF RAMSEY LAND USE APPLICATION
TECHNICAL REVIEW FILE

DATE	1/25/13	**PROJECT ADDRESS**	TBD - MULTIPLE
PROJECT. TITLE	SEASONS OF RAMSEY		
ESCROW #	113355		
DEPARTMENT:	Planning Division		
TECHNICAL REVIEWER:	Name: Tim Gladhill Phone: 763-576-4308 Email: tgladhill@ci.ramsey.mn.us		

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

General: The Subject Property is located north of Bunker Lake Blvd. and east of the extension of Town Center Drive. A total of 8.08 acres are contained within the proposed plat. The proposed development consists of 50 townhome units. This is a re-plat of a portion of TOWN CENTER GARDENS 3rd ADDITION. The result of the Plat is a net decrease in the number of units originally forecasted for the entire 8.08 acres.

Zoning/Density: The project area is located in the COR-4 Neighborhood District, which is intended to include a full range of housing types. The District allows for residential uses at a net density of up to 10 units per acre. The Sketch Plan indicates a net density of 6.25 units per acre.

Lots: The plat is proposing to re-subdivide portions of RAMSEY TOWN CENTER 3RD ADDITION into 50 units. City Code requires that units intended for separate ownership shall be subdivided individually through the platting process. In this case, the development is proposed to be under single-ownership. Nonetheless, each individual unit shall still have a separate municipal utility connection; that being that one single water service cannot service an entire building, unless otherwise approved by the previous plat approval.

Please note that the current version of the Preliminary Plat indicates a single lot per building, not per individual lot. You have indicated you agree to follow the recording of the current Plat configuration with a Common Interest Community (CIC) Plat upon construction. The CIC Plat will create individual lots of individual units, thus creating unique Property Identification Numbers (PID) for each address and water/sanitary sewer service, consistent with City Code Requirements. The CIC process is administered by Anoka County. You shall agree to these terms within the Development Agreement noted below.

Setbacks: There are three (3) components to bulk standard requirements within The COR Zoning District:

1. Sub-District Boundaries
2. Street Hierarchy
3. Development Plan 6.1

The COR-4a Zoning District requires the following setbacks:

Front yard 0 to 25 feet as measured from building front to edge of sidewalk;

Side yard	None, unless required by building code;
Rear yard	None, unless required by building code.

It appears that the proposed Plat generally conforms with setback requirements.

Public Streets: The plat will derive access from 147th Lane. The plat also contemplates vacating 147th Circle, converting that section of public roadway to a private street. Staff finds this generally acceptable, as the plat also proposes to extend 147th Lane westerly to connect to Town Center Drive. The net result is the elimination of a dead-end street and provides connectivity and circulation north of Bunker Lake Boulevard between the Town Center Gardens and North Commons areas.

The street names must be aligned with the Anoka County Street Name Grid and must be reflected on all future submittals.

Private Streets: The table below indicates City Code requirements for private street lengths:

Maximum private street length without a turnaround provided	200 feet
Maximum private street length with a turning provision provided	300 feet
Maximum private street length with a cul-de-sac provided	600 feet, when exceeding the 300 foot length requirement, the private street width must be 32 feet.

The private streets as shown on the site plan comply with the length restrictions.

All of the private streets are 24 feet wide. City Code prohibits on-street parking on 24 foot wide private streets. The Development Contract will require all private streets to be signed for "No Parking". The Developer will be responsible for the cost of the signs, including installation, as a Stage I Improvement in the Development Contract. The Owner will be responsible for the ongoing maintenance costs associated with the signs.

Sidewalk and Trails. Sidewalks are required on both sides of all public streets. Staff requests that additional connections to the public sidewalk system be provided from individual units. The City is open to ideas and alternative scenarios to address this request. In addition, it is requested that you provide a trail easement along the east side of Town Center Drive to allow for a future trail connection. Sidewalk construction along this segment shall still be required at this time.

Open Space: The Town Center Development Review Guidelines encourage the integration of private courtyards and pocket parks within the COR-4 Neighborhood District. These small green areas provide important breathing space, contribute to stormwater management, and offer additional recreational amenities to serve the building tenants. The preliminary site plan complies with the development guidelines and provides green spaces for recreational and stormwater management purposes on each block.

Permits: The applicant is responsible to secure all required permits for this project; including but not limited to an MPCA NPDES construction permit, a Lower Rum River Watershed Organization permit,

and Anoka County and MnDOT right-of-way permits. Additionally, the contractor performing the work will be required to get a City license and right-of-way permit.

Development Fees. As part of the approval for TOWN CENTER GARDENS 3RD ADDITION, development fees (Park Dedication, Trail Development, Stormwater Management, Sanitary Sewer Trunk, and Water Trunk) were paid for fifty-two (52) units. Past payment serves as adequate evidence of credit availability. It is important to note that there is not a reduction of development fees being provided for the development. The City is applying previously paid fees. The net result appears to indicate that additional development fees shall not be required for the Development. Please note that this analysis does not extend to Sewer Availability Charge (SAC) and Water Availability Charge (WAC), which are collected with Building Permits and have not been collected for this development. 'Credits' are made available due to re-calculation of sanitary sewer trunk, water trunk, and Stormwater management fees. However, additional Park Dedication and Trail Development Fees are due on the proposed Plat. The Credits will be applied to these additional fee requirements. The City's Finance Department will handle the accounting and journal entry to facilitate the application of credits.

You have requested that the City provide third-part verification of previously paid development fees as part of the TOWN CENTER GARDENS 3RD ADDITION. This review file shall serve as the requested verification that it appears that fees were paid for ***fifty-two (52) residential units within this geographic area.*** *A spreadsheet has been prepared as additional verification, and is available upon request, in addition to the previous Development Agreement.*

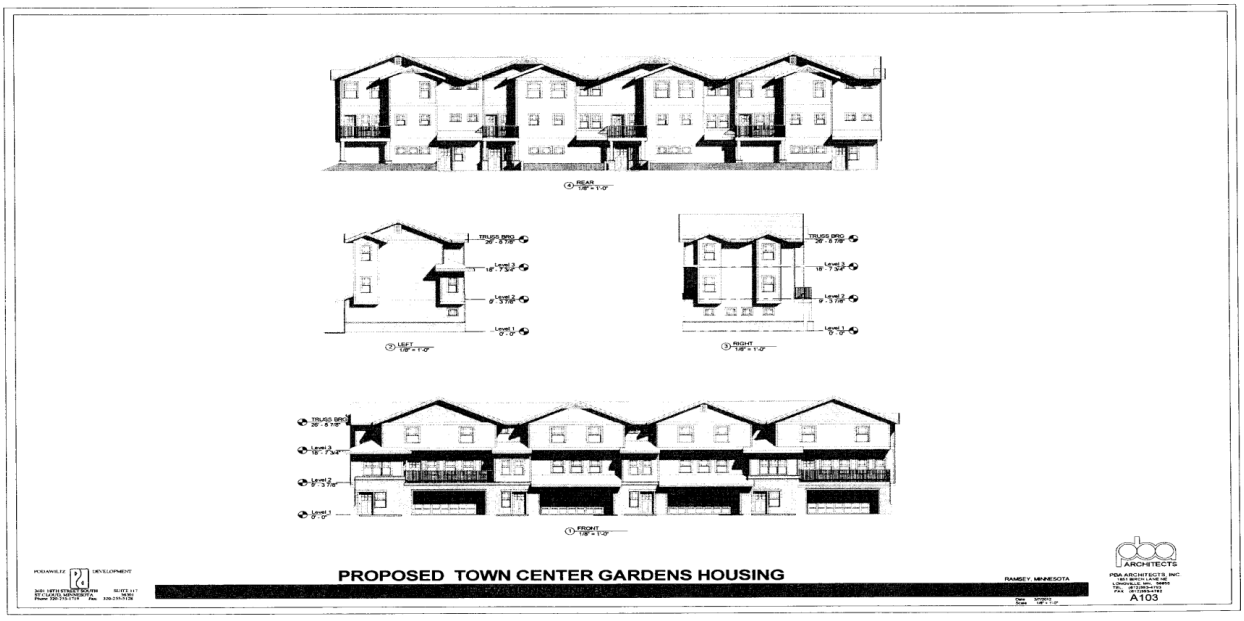
Townhouse Design/Architectural Standards: The development is proposing one townhouse style (row house units). The COR Design Framework establishes a brick enhancement threshold of 35% of the non-glazed area of the front facing wall, unless the building design is enhanced through other means such as covered porch areas, broken roof lines, articulated façade and material or color changes. Although not part of the official Sketch Plan Submittal, architectural elevations have been submitted for all the units along with one color elevation. Staff understands that there will be some color variation between the buildings. Color elevations are needed that indicate building materials and colors that are proposed for all of the units. The minimum/maximum building height in this district is 2-4 stories. All of the dwelling units are 2 stories and comply with the height requirements.

Report continued on next page.

Conceptual architectural renderings were provided to the City as part of the request for a Preliminary Agreement to Develop. Said Agreement was necessary to facilitate a successful application to the Minnesota Housing Finance Agency (MHFA) for Section 42 Tax Credits. At that time, the City Council provided general feedback on architectural standards, and found that the proposed renderings were generally acceptable, but desired additional architectural elements due to the City involvement in the MHFA Application.

EXHIBIT: Previous Renderings





Report continued on next page.

You have submitted revised architectural renderings with the Site Plan and Preliminary Plat Application. Staff finds that these new renderings need further revision. Some of the core elements of the original submittal appear to have been eliminated, such as front porches, balconies, 'four-sided' architecture, and recessed garages. Four-sided architecture shall especially be interpreted as to requiring additional revisions to the elevation noted as 'rear' elevation. Said rear elevations are facing public streets. Additional articulation, emphasis on vertical breaks, and color variation shall be required. Please refer to The COR Design Framework for additional guidance.

EXHIBIT: Current Proposed Renderings





Please submit revised architectural renderings prior to review by the City Council.

Off-Street Parking Requirements: The COR-4 District requires 2 off-street parking spaces for each unit; this requirement is exceeded with the 2-car garages and 25 foot wide driveways. Some parking is allowed on public streets, however, this may not be adequate for overflow parking. There is additional off-street parking provided within the plat.

Driveway Length/Width: Under the COR-4a Zoning Code, driveways for the row townhomes must be at least 25 feet in length. All of the proposed units meet this requirement.

Mailbox Location: The placement of mailboxes for the townhome units should be located along the private streets when possible. Location of mailboxes along public streets will need to be clustered and is subject to the review and approval of the Streets Supervisor.

Address Signage: The City will be requiring an address location sign (specifying the units addresses) to be placed at the entrance of all private streets. The required signage will assist emergency services in locating a specific unit when called to the site. In order to assist Staff in review of the placement of signs and to ensure an orderly look of the site, please revise the signage and striping plan to show address signs. The address signage is subject to the review and approval of the City Engineer and Police Chief. It should be noted that signs identifying the development will require a separate sign permit.

Financial Surety for Required Improvements. A Financial Surety shall be required to ensure the timely completion of all Required Improvements. The Surety shall be in the form of Letter of Credit or Cash Escrow. A sample Letter of Credit was included in your application packet. The Letter of Credit must be reviewed and approved to as form by the City's Finance Director prior to releasing the Plat for recording. A surety in the amount of 125% the cost of Stage I and Stage II Improvements, as defined in City Code Section 117-615, shall be collected. A surety in the amount of 150% the cost of improvements required by the City's Zoning Code shall be collected, unless otherwise required for issuance of a Certificate of Occupancy.

Engineering Inspection Fees. The Stage I and Stage II Improvements are proposed to be constructed by the Developer, without City participation or construction. It will be necessary for the City to inspect the Stage I and Stage II Improvements to ensure their proper installation. Stage I and Stage II Improvements that will be inspected in the proposed project include, but are not limited to:

1. The extension of 147th Lane NW,
2. The installation of lateral sanitary sewer and municipal water lines in 147th Lane NW,
3. The installation of lateral sanitary sewer and municipal water lines in the extended private road (extension from 147th Circle NW),
4. The installation of private services to the property line from the lateral lines
5. Stormwater facilities

Development Agreement. You shall be required to enter into a Development Agreement with the City outlining the terms above related to approval and recording of the Plat. A preliminary draft has been submitted for your review. This is a preliminary draft, and the final draft will be made available prior to City Council review, scheduled for February 12th, 2013. Please note that this time is tentative.

A meeting between the City and Developer has been scheduled for Friday, January 25, 2013. However, the terms of that discussion are not available in time for preparation of this report. Staff will provide a verbal update to the Planning Commission on January 31st. The Development Agreement will be considered for approval by the City Council.

Development Permit. You shall be required to enter into a Development Permit with the City outlining the terms above related to site plan approval, which is essentially the private improvements.

Easement Vacation. The City Council introduced an Ordinance on January 22nd, 2013 to vacate drainage and utility easements as well as right of way for 142nd Circle NW, as requested. Final approval will be considered on February 12th, and will include a Public Hearing.

Donation of Outlot C, RAMSEY TOWN CENTER 8TH ADDITION. The City's Housing and Redevelopment Authority (HRA) adopted a resolution to convey Outlot C, RAMSEY TOWN CENTER 8TH ADDITION to the Developer to assist facilitate the development. You shall be responsible for drafting the necessary deed transfer documents for review by the City Attorney.

In addition, related to the conveyance of Outlot C, your title company issued multiple title objections to resolve as part of the transfer. It is Staff's understanding that said title company is currently working with HRA counsel. We further understand that many of the objections have been resolved. Please outline any further action necessary, in your recommendation, to complete marketable title review for Outlot C.

Private Playground Equipment. The proposed site plan indicates two (2) 'tot-lots', or private playground areas. The COR Design Framework certain encourages private gathering areas such as this. Staff also notes that the City's Capital Improvement Program (CIP) currently contemplates partial construction of North Commons, a public park facility. The proposed construction also includes playground equipment. The Park Dedication Fees secured as part of this Plat will assist in facilitating this project in 2013.

CITY OF RAMSEY LAND USE APPLICATION
TECHNICAL REVIEW FILE

DATE	01/25/13	**PROJECT ADDRESS**	TBD - MULTIPLE
PROJECT. TITLE	THE SEASONS OF RAMSEY		
ESCROW #	113355		
DEPARTMENT:	Engineering		
TECHNICAL REVIEWER:	Name: Shane Nelson / Leonard Linton Phone: 763 433-9825/ 433-9834 Email: haengineering@ci.ramsey.mn.us/ llinton@ci.ramsey.mn.us		

Plans Reviewed: Final Utility & Street Construction Plan prepared by Pioneer Engineering dated 1-18-13 consisting of 5 pages and Preliminary Construction Plans prepared by D'Heilly Engineering, Inc. dated 12-29-12 consisting of 7 pages.

We offer the following comments regarding the submitted plans:

PRELIMINARY CONSTRUCTION PLANS – D'Heilly Engineering

Removal Plan: This project proposes removing existing pavement between 147th Circle and 147th Lane NW. Removal of existing utilities is also proposed. A removal plan for this work must be prepared and submitted.

Grading and Drainage: The grading plan generally conforms to City Standards. Areas that need revision are noted below:

- The 4 plex immediately west of 147th Circle is less than 1 foot above the high point for the emergency overflow route from the oval driveway. The lowest building elevation must be at least 1 foot above the emergency overflow elevation.
- Several of the buildings adjacent to the infiltration area are less than 1 foot above the adjacent high point between catch basins. Minimum separation of 1 foot must be provided as noted above.
- The infiltration area currently is covered by a berm constructed as part of the previous development. Infiltration is generally not recommended where soils have been impacted by construction. Documentation must be provided indicating the soils under the infiltration practice can provide the required infiltration capacity for the project.
- These plans show catch basins in 147th Lane NW while the Pioneer Engineering plans do not.
- The plans call for 18" and 24" perforated pipe in the infiltration area. This must be coordinated with the stormwater model.

The stormwater calculations for the project must be revised as follows:

- Provide calculations for the 10 and 100 year events for the oval driveway area and the infiltration area. The maximum water depth at the high points between catch basins must be provided.

This project has received a permit from the Lower Rum River Water Management Organization (LRRWMO). The permit has 6 conditions that must be followed during construction of this project:

1. Erosion control measures shall be installed prior to commencement of construction.

2. Upon completion of construction and restoration of disturbed areas, the permit applicant is responsible for the removal of all erosion control measures installed throughout the construction site.
3. Street sweeping must be undertaken and completed on an as needed basis.
4. Compliance with the stormwater management requirements of the Lower Rum River Watershed Management Organization are to be administered for this project by the City of Ramsey.
5. Information must be submitted to the LRRWMO showing that a minimum of 3 feet of separation is provided between the bottom of the proposed infiltration/ rainwater basin and on-site groundwater.
6. In all cases where the doing by the permittee of anything authorized by this permit shall involve the taking, using, or damaging of any property, rights or interests of any other person or persons, or of any publicly owned lands or improvements or interests, the permittee before proceeding shall obtain the written consent of all persons, agencies, or authorities concerned and shall acquire all necessary property rights and interest.

The following notes must be added or amended on the plan set:

- The contractor shall have a sweeper on site or available within 3 hours. All material tracked onto City streets must be removed immediately upon discovery, or as directed by the City Engineer.
- Installation of silt fence and other down gradient sediment protection measures shall be completed and inspected by City prior to commencement of any site activities.

Street and Building Access: The plan proposes extension of 147th Lane NW west to connect with Town Center Drive. This street will be public and must be constructed to City Standards. Sidewalks will be required on both sides of the street The private drive west of the private road must be able to accommodate fire truck access. Our standard is a minimum radius of 30 feet on all inside curves along the access route.

- Any impacts to City streets (wet tap and curb cut locations) should be brought to grade with class 5 by the end of the work day and paved within 24 hours.

A pavement/ site plan must be provided showing pavement dimensions and sections.

Utilities:

- The watermain in the oval driveway area must be connected to 147th Lane to provide a loop.
- Sanitary sewer manholes along the south side of the oval driveway shall be moved into the paved area.
- All ductile iron watermain 6" in diameter and smaller requires class 53 material.
- The sewer and water north of the private road must be removed to allow construction of the proposed buildings. The mains must be removed back to the Tee or Manhole and capped securely.
- Water services shall be abandoned by digging down and removing the service riser and capping the stub.
- Sanitary sewer services shall be abandoned by digging down and gluing a cap on the pipe to remain.
- All removal work shall be shown on the removal plan.
- Clear differentiation must be provided to identify services to remain vs. new service installations.
- All hydrants must be hand painted.

- The detail sheet must include the current City Details for any improvements proposed within the right-of-way. The manhole details should be updated to include language for a water tight wrap around the adjusting rings and include carsonite markers for any manhole or gate valve that is located in unpaved areas.
- Drainage and utility easements will be required over the private roads to allow access for flushing hydrants.
- Existing small utilities (electric, telephone, gas and cable) must be shown on the plans.

FINAL UTILITY & STREET CONSTRUCTION PLAN – Pioneer Engineering

Grading and Drainage: Grading in this plan set must be coordinated with the D'Heilly Engineering plans. Storm sewer shown in these plans does not match the Preliminary Construction plans as noted above.

Street and Building Access: Removal notes are required for the connections to existing pavement. Traffic control and signage must be called out in the plan set.

An access to the existing municipal well site must be provided from Town Center Drive. The existing access to Bunker Lake Boulevard will then be removed. The new access is shown on the plans, a turnaround to accommodate a well servicing truck must be provided south of the well.

Utilities:

- Watermain is proposed to be extended to connect to Town Center Drive along 147th Lane NW.
- The developer should consider extending sanitary sewer along 147th Lane NW to provide service to the area north of 147th Lane. Not extending sanitary sewer at this time could limit development options in the future.
- Hydrant spacing along 147th Lane NW shall match current standards.
- The storm sewer stub shall be bulkheaded in a water tight manner.
- Spread calculations shall be provided for the storm sewer system in the street.

Sidewalk and Trails. A five foot wide sidewalk is shown on both sides of the proposed extension of 147th Lane NW. Curb ramps shall conform to current MNDOT standards.

OVERALL PROJECT

Permits: The applicant is responsible to secure all required permits for this project; including but not limited to an MPCA NPDES construction permit, a Lower Rum River Watershed Organization permit (completed), and Anoka County right-of-way permits. Additionally, the contractor performing the work will be required to get a City license and right-of-way permit.

Lighting: The City has received a lighting plan for review. City standards require that the luminaire (light source) must not be visible from beyond the property line. Any lighting used to illuminate an off-street parking area, sign, or structure shall be arranged to deflect away from Bunker Lake Boulevard (CR 116). The Applicant is responsible for the installation, and three (3) years of operations and maintenance, of all boulevard lighting.

REU Number: This property will be subject to a storm water utility charge based upon the amount of impervious surface on the site. Townhouse units are considered single family units and each unit will be billed at the residential rate.

CITY OF RAMSEY LAND USE APPLICATION
TECHNICAL REVIEW FILE

DATE	11-27-12 *REVISED 1-25-13*	**PROJECT ADDRESS**	TBD - MULTIPLE
PROJECT. TITLE	THE SEASONS OF RAMSEY		
ESCROW #	113355		
DEPARTMENT:	Landscape Review		
TECHNICAL REVIEWER:	Name: Chris Anderson Phone: 763-433-9905 Email: canderson@ci.ramsey.mn.us		

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

Landscaping: While the property is zoned COR-4a, the landscaping standards for multifamily districts are used as a baseline for determining acceptable quantities of materials. Based on the submitted information and utilizing the Canopy Cover Formula, approximately 75,000 square feet of canopy would be appropriate for this site. The landscaping should be a diverse mixture of species and include both deciduous and coniferous overstory plantings along with some ornamental trees and shrubs. We are in receipt of a landscaping plan, prepared by PBA Architects Inc. and dated December 12, 2012, and offer the following comments:

- As previously stated, the Canopy Cover Formula is used to determine a baseline of appropriate canopy cover. The proposed plantings comprise approximately 56,000 square feet of canopy, which is about 19,000 square feet less than desired. However, there are existing street trees that were previously installed and those have not been included in this calculation. *Additional plantings must be incorporated into the site or additional information must be provided regarding existing street trees (quantity) to determine the actual proposed/provided canopy cover.*
- Plantings shall consist of not less than twenty-five percent (25%) deciduous or coniferous species and no more than twenty-five percent (25%) of the required canopy cover shall consist of shrubs and ornamental trees. *As proposed, approximately eighteen percent (18%) of the plantings are coniferous. Additional coniferous species (trees) must be incorporated into the planting schedule to ensure that at least twenty-five percent (25%) of the plantings are coniferous.*
- Minimum plant size at time of installation shall be as follows: deciduous trees shall be at least one (1) inch diameter, coniferous trees shall be at least five (5) feet in height, and shrubs shall be at least twenty-four (24) inches in height or width, depending on growth characteristics of each species. *Please add a note to the landscaping plan that all shrubs must be either twenty-four (24) inches in height or width at time of installation.*
- Incorporating additional shrub species would be preferable to protect against failure due to disease and/or insect pests
- The City requires four (4) inches of MnDOT Premium Topsoil Borrow over all disturbed areas of a project. Please add the following note to the landscaping plan: *Four (4) inches of MnDOT Premium Topsoil Borrow shall be applied to all areas not otherwise improved with buildings and impervious surfaces. Copies of load tickets shall be provided to the City to verify source of material. If amending on site material or receiving material from a supplier other than one that*

is pre-certified by the City, testing of material must be provided to confirm that it meets the MnDOT Premium Topsoil Borrow specification. Should existing trees on site be preserved, areas within tree save fencing (must be placed no closer to tree than dripline) shall not be subject to the topsoil requirement.

- All landscaped areas shall be irrigated and the irrigation system shall include rain sensors and a backflow preventer device.
- All areas not otherwise improved with buildings, streets, sidewalks, or other impervious areas, shall be finished with sod. Any deviation from sod shall require approval by the City Council. The landscaping plan has a note that states all areas with slopes greater than 3:1 will be planted with 'prairie' type grasses. *Please identify all areas that are proposed to be planted with materials other than sod. All proposed grasses must also be included in the planting schedule.*
- Tree planting detail(s) must include the following:
    - *Planting depth shall be such that the first set of primary roots (root flare) is at final grade when installed.*
    - *Only broken, deformed or dead branches shall be pruned at time of planting.*
    - *The top portion of the wire basket and burlap shall be removed after the tree is set in planting hole.*

Tree Preservation: This site appears to be devoid of any significant tree cover and therefore, no tree preservation plan is necessary. However, as noted in the Landscaping section, there are existing street trees within the project site that could be credited toward the landscaping requirements if additional information is provided (quantity, size, species).

Special Planning Commission **5. 2.**

Meeting Date: 01/31/2013

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

Information

Title:

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

Background:

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

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

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

Notification:

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

Observations/Alternatives:

Proposal #1: Shooting range/fitness center:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Action Options and Alternatives to Consider:

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

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

Funding Source:

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

Staff Recommendation:

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

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

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

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

Committee Action:

Based on discussion.

Attachments

Site Location Map

Indoor Shooting Range Proposal

Background Information on Total Defense (Indoor Shooting Range Proposer)

Warehousing/Recycling Center Proposal

Zoning Map

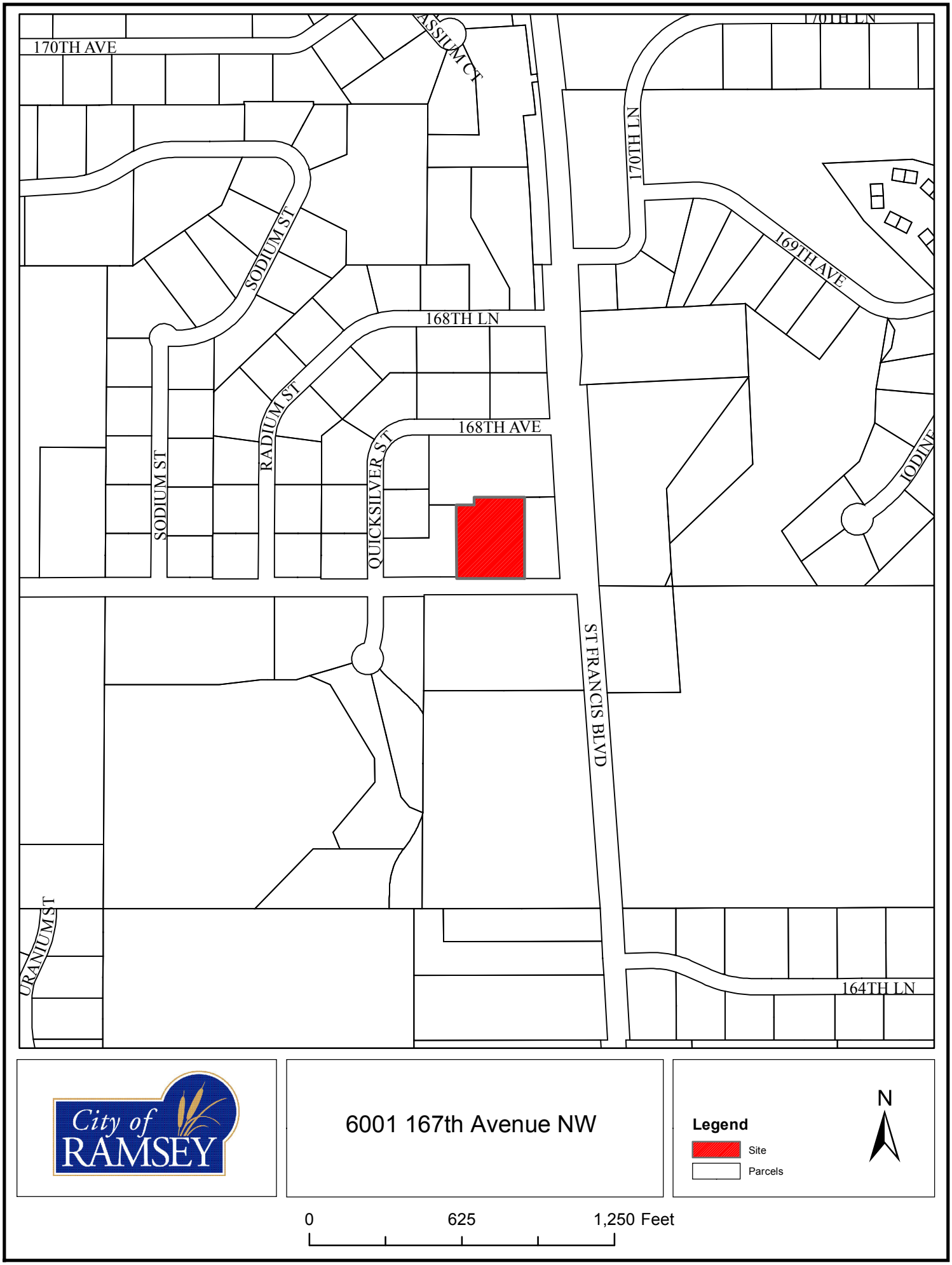
2030 Future Land Use Map

Form Review

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

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

Final Approval Date: 01/25/2013


170TH AVE
ASSIUM CT
170TH LN
170TH LN
SODIUM ST
169TH AVE
168TH LN
RADIUM ST
168TH AVE
SODIUM ST
QUICKSILVER ST
IODINE
ST FRANCIS BLVD
URANIUM ST
164TH LN
City of RAMSEY
6001 167th Avenue NW
Legend
Site
Parcels
N
0
625
1,250 Feet

Total Defense, Inc.

14031 St Francis Blvd. NW

Ramsey, MN 55303

(763) 432-6134

Bob's SuperValu Building Proposal

Square Footage Breakdown

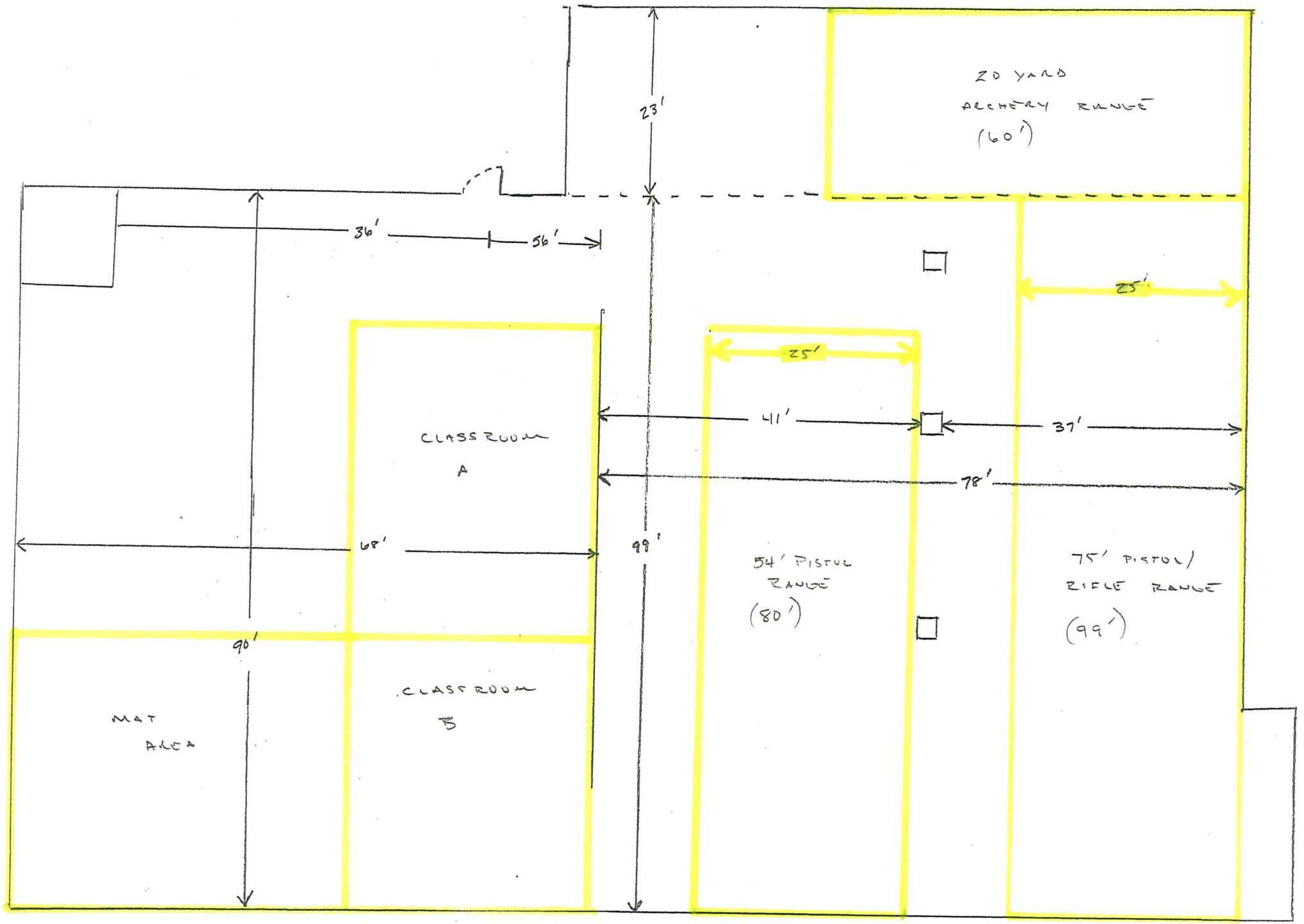
18,300 Total Square Feet

Retail Floor Space = 8000 - 9000 sq. ft.

Indoor Shooting Range = 4500 sq. ft.

Indoor Archery Range = 900 sq. ft.

Training Areas Combined = 3000 - 4000 sq. ft.


20 YARD
ARCHERY RANGE
(60')
23'
36'
56'
25'
25'
41'
37'
78'
CLASS ROOM
A
68'
99'
54' PISTOL
RANGE
(80')
75' PISTOL/
RIFLE RANGE
(99')
90'
MAT
AREA
CLASS ROOM
B

TOTAL DEFENSE

Firearms, Gear and Training

Service – Centered. Personal. Protection.

***Conceal Carry Classes**

***Personal Self Defense Training**

***Buy/Sell/Trade/Consign New and Used Firearms**

***Exclusive Dealer in the Twin Cities area for various CCW / Self-Defense product lines.**

***Gunsmith / Dura-Coat Services**

***Women's Self Defense**

Total Defense offers a multi state concealed carry course for those interested in obtaining their MN permit to carry a concealed weapon. This course stresses the basics of personal defense with a firearm.

Our 4 Hour self defense training will teach you how to fight full-force against a padded mock attacker. As you learn in an adrenalized state, it creates "muscle memory" so your body will remember in a crisis situation. Other traditional self defense classes don't offer this.

Total Defense can offer you all the latest firearms you're looking for at a great price due to our low overhead. Once you've picked out that great new gun we can find you all the cool toys to go with it.

*Your one stop shop for
Emergency Preparedness / Bug-Out Bags (BOB), and all essential gear to stock your BOB.

*Home/Disaster Preparedness Items

*Survival Guides

*Custom Knives

*Woolrich/Condor/5.11 Tactical Apparel

*Full line of holsters and leather goods

Our extremely knowledgeable and professional instructors will guide you in all your self defense needs.



Total Defense

Firearms, Gear and Training

14031 St. Francis Blvd. NW
Ramsey MN 55303

Phone: 763-432-6134
Website:mntotaldefense.com

TOTAL DEFENSE
Firearms, Gear and Training

Service – **C**entered. **P**ersonal. **P**rotection.

Self Defense Classes

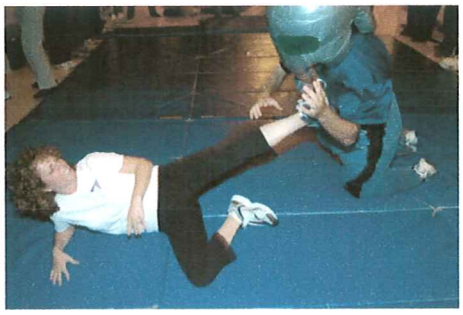
Our 4 Hour self defense training will teach how to fight full-force against a padded mock attacker. As you learn in an adrenalized state, it creates "muscle memory" so your body will remember in a crisis situation. Other traditional self defense classes don't offer this.

After our class, you will be able to defend yourself against verbal and physical assaults. Regardless of sex, age, size or physical strength you can learn to effectively defend yourself.

Come in and sign up for a class today, learn these skills in a safe and supportive environment with one of our highly trained instructors.







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14031 St. Francis Blvd. NW
Ramsey MN 55303
Phone: 763-432-6134
Website:
www.mntotaldefense.com



TRAINING PRODUCTS: QuickRange

QuickRange is the best live fire shooting solution for you.

For live fire training, acquisition of a new shooting range, or replacement of an existing range, QuickRange is the answer! QuickRange is a pre-engineered, modular live fire shooting range, complete with 2 shooting lanes, shooting stalls, target retrieval systems, bullet traps, lighting and HVAC. Each QuickRange module is 100% complete. All you need is a power supply and an installation pad!

Environmentally Friendly



OSHA, NIOSH and EPA regulations for safety, noise reduction and air-quality are not only met, but exceeded in every QuickRange delivered. The HVAC system maintains negative airflow pressure to ensure that lead, smoke and airborne particulate are moved downrange, away from the shooter. It then passes through a 95 - 99.97% HEPA filter rack before it's exhausted outside the range. Lead collection for recycling is as easy as changing collection containers. QuickRange is the environmentally safe solution for range users and the environment.

Safe

QuickRange has proven ballistic and sound dampening composites which carry an independent 3rd party certification for safety and effectiveness. We guarantee 100% containment of all properly fired rounds due to our patented layered ballistic lining. With QuickRange, you are assured a Zero SDZ (Surface Danger Zone) so placement of the range can be accomplished nearly anywhere, creating a safe shooting environment.

Convenient

With the ability to install a QuickRange almost anywhere, with little site preparation, you can train right in your own backyard. Relying on inconvenient range locations, restricted times of operation or weather, are no longer obstacles in your training. QuickRange is the unlimited, anytime, all-weather solution.

Expandable

QuickRange exceeds today's qualification and tactical training requirements, regardless of your agency's size. The pre-engineered modular design allows expansion from 40 to 200-feet in length, and 2 to 24 or more shooting positions wide. QuickRange can be customized and configured to grow with your budget and training needs.

Affordable

Our lease program makes QuickRange affordable. Available for federal, state and local law enforcement agencies, it allows funding to be spread out over multiple years. Now you can have the range you want, right now!

PRISim Suite® LiveFire Trainer™

Installed within QuickRange, the PRISim Suite LiveFire Trainer allows the utilization of all PRISim Suite software in a live fire shooting range. PRISim Suite LiveFire Trainer provides the ideal enviroment for marksmanship, tactical decision-making and qualification training.

More>>

Training Products

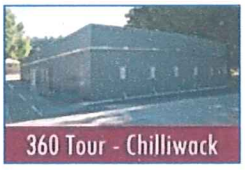
PRISim Suite®
SVS®
QuickRange
M-SATS™

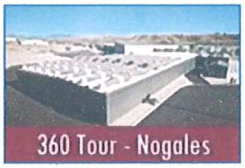
Shooting Ranges

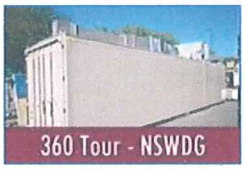
Alpha Range™
Bullet Traps
Shooting Stalls
Target Retrieval Systems
HVAC
Building Design/Blue Prints
Ceiling Guards
Metal Fabrication



QuickRange Video Overview









SHOOTING RANGES: Alpha Range™

SHOOTING RANGES INTERNATIONAL
A division of Advanced Interactive Systems™, Inc.

Shooting Ranges

QuickRange®
Alpha Range™
Bullet Traps
Shooting Stalls
Target Retrieval Systems
HVAC
Building Design/Blue Prints
Ceiling Guards
Metal Fabrication



Reduce time lines and save cost with the AIS Alpha Range™



Alpha Range™ being installed on-site

- Modular
- Flexibile
- Scalable
- Versatile
- Affordable
- Ease of Installation
- Ease of Acquisition
- 100% bullet containment
- Environmentally-friendly solution
- Climate controlled
- Patented integration and assembly process

Alpha Range™ Features

Equipped with or without shooting stalls/booths for safety and organization of the firing line, with a fold down shooting tray allowing for shooter movement down range if desired.

Complete self-contained range with negative HVAC system pressure to ensure that no lead, smoke or air born particles get back to the shooter or exit the facility. All air moves the full length of the AR and is exhausted in front of the bullet traps through the ceiling. The air passes through a HEPA filter rack and then an exhaust fan. All air is exhausted out side the AR after being filtered through a 99.9% HEPA filter.

Meets all Commercial and Military Range Safety Criteria:

- National Shooting Sport Foundation, Inc. " Lead Management OSHA Compliance for Indoor Shooting Ranges" CFR 29 1910.1025
- Immigration and naturalization Dept. Division of the Dept, of Justice - INS/NFU Firing Range Design Standard
- EPA
- UFC (Unified Facilities Criteria) – US Navy NEHC-TM6290-99-10
- US NIOSH "Lead Exposure and Design Considerations for Indoor Firing Range, 1975."

Exterior vertical surfaces treated with KYNAR 500 providing a 20 year limited warranty.

AR is SimReady, allowing for easy installation of a judgmental use-of-force or marksmanship simulator at a later date.

All walls, floors and ceilings in each AR are AR500 steel-lined for rifle rating to handle munitions up to and including 3300 fps or 3600 ft.lbs. of kinetic energy (up to 7.62mm with and optional 50 Cal. capability).

Ceiling plates are configured to protect down range lights from direct bullet contact from the firing line.

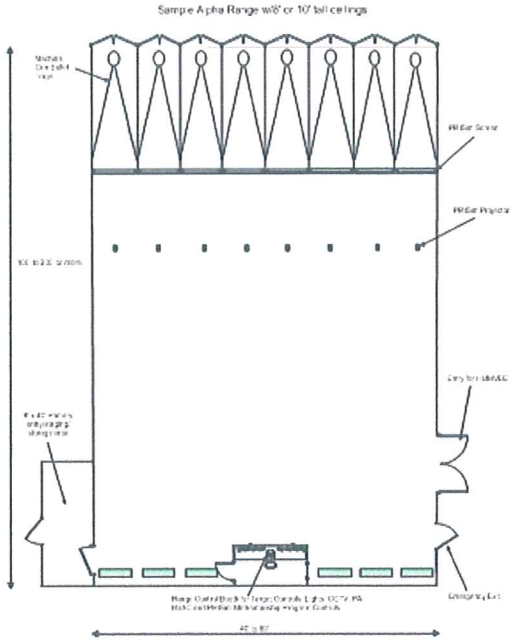
All AR's have complete lighting systems, including an outside electrical main panel and

interior sub panel, and all electrical disconnects and breakers.

All lights, target systems, accessories and HVAC system can be controlled.

Each AR comes with an appropriately rated bullet trap for the type and size of the ammunition required.

Our patented bullet trap design allows for easy collection at the rear of each module via rear access doors. The collection helical at the rear of trap will decelerate the bullet until it has lost its velocity and fall out the bottom of a funnel into a typical 5 gallon bucket. The bullet and spent lead content can be removed without coming in contact the hazardous material and then easily sealed. The Bullet Trap helical will also have a 6" exhaust port putting the trap itself under negative pressure to pull any air born particles up into the HEPA filtration system.



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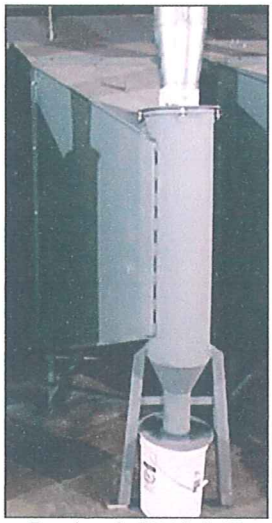
SHOOTING RANGES: Bullet Traps

SHOOTING RANGES INTERNATIONAL
A division of Advanced Interactive Systems™, Inc.

Shooting Ranges

QuickRange®
Alpha Range™
Bullet Traps
Shooting Stalls
Target Retrieval Systems
HVAC
Building Design/Blue Prints
Ceiling Guards
Metal Fabrication

SRI's vertical chamber completely traps the bullet when entering the helical forcing bullet velocity reduction. Bullets and ammunition fragments fall harmlessly through a funnel into the bullet storage container, thus eliminating tedious lead collection.



Rearview of a P393 Bullet Trap

Passive in construction, there is no need for separating bullets and ammunition fragments from other materials such as rubber, water or sand. Lead collection for recycling is as easy as changing collection containers.

- Each trap is free standing and modular in design
- Provides superior bullet containment
- Direct air filtration exhaust hook-up
- All materials are angle designed for minimum wear
- Low installation and maintenance costs

As a bullet is fired downrange it is deflected by hardened steel panels and guided into the helical. Once the bullet has entered the helical, bullet velocity dissipates as the bullet spirals along the chamber walls until it harmlessly drops into a bullet storage container.

The SRI trap system has no moving components, which greatly reduces downtime and maintenance costs. The SRI system has eliminated the need to use sand, water or rubber materials and therefore, eliminates the tedious separation of lead from other materials and minimizes lead exposure.

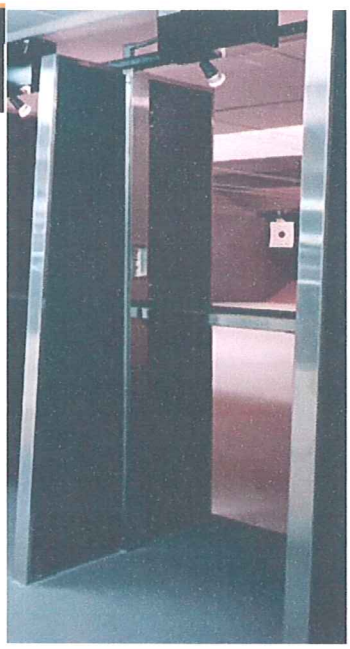
EPA regulations for air filtration are addressed with this system. A direct air exhaust hook-up is offered with each trap. Thus, all airborne particles in the trap are exhausted to and collected in the air filtration system. These features minimize employees' exposure to lead contamination.

Trap Dimensions

Length:	7'
Height:	7' 6" *(At front)*
Width:	42"
Weight:	P393 - 1505 lbs.
	P493 - 1860 lbs.

Each SRI bullet trap is free standing and modular in design. The main body of the trap is a solid welded unit and will fit through a standard 3'0" door. Assembly of extension plates occurs in the final stage of fabrication at the installation site. This will bring the trap to its full height and width.

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SHOOTING RANGES: Shooting Stalls

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Shooting Ranges

QuickRange®
Alpha Range™
Bullet Traps
Shooting Stalls
Target Retrieval Systems
HVAC
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Ceiling Guards
Metal Fabrication

The principal element in the design and construction of every SRI product is shooting safety. Multifaceted space management engineering permits enough room for an instructor and student to shoot while keeping the focus downrange and maintaining the maximum safegards. The innovative design of SRI stalls maximizes the number of lanes an area can facilitate, while dimension design lends to better shooter orientation, comfort and protection. The fabrication of SRI shooting stalls consist of double steel jacketed walls, sportcourt carpeting trimmed with high-tech, durable stainless steel.



SRI stalls offer full shooter protection and fold-down shooting tray

Functionality

SRI has designed a large, flat fold-down shooting tray. This practical design allows ample room for firearms and ammunition reload. Individual target, retrieval motor controls and sight lights are located in each stall. A recessed stainless steel tray and target retrieval is at the shooter's fingertips. For training purposes, SRI offers an optional vertical swing-out barricade.

Durability

Standard shooting stalls are often constructed from wood or plastic and are not able to endure the wear and tear of frequent use and ejected brass. SRI stall walls are a steel jacket covered with a high grade sport-court carpeting. This material is durable and easy to clean. All exposed edges are covered with a durable stainless steel trim. SRI stalls have years of durability, are easy to maintain and operate and give your facility a quality, high-tech look.

Stall Dimensions

Taller than most, this height minimizes ejected brass from traveling over the top of the stall, distracting neighboring shooters. Extra width reduces surrounding muzzle blast noise. And the a wider width comfortably places the shooter's focus downrange.

Dimensions

Height: 84"
Width: 53"*(base width)*
Spacing: 42"*(on center)*

Stall Protection

Maximum height and width is utilized for shooter protection. An inner steel jacket construction, filled with pea gravel, will stop and trap the point blank shot of a 44 magnum. The combination of stall dimensions and fully lined sport-court carpeting greatly reduces surrounding muzzle blast noise. The shooter is shielded from the distractions of neighboring shooters.

Shooting Stall Placement:

From the firing line to the wall behind the shooters we recommend a minimum of 10 feet.

Stall Walls

Along Top: 47"
Along Bottom: 53"



SHOOTING RANGES: Target Retrieval Systems

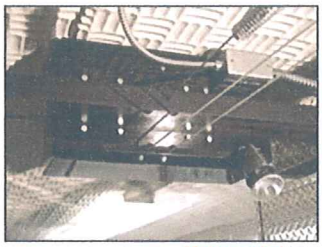
SHOOTING RANGES INTERNATIONAL
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Shooting Ranges

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Shooting Stalls
Target Retrieval Systems
HVAC
Building Design/Blue Prints
Ceiling Guards
Metal Fabrication

The keystone of the SRI Target Retrieval System is the simple design of durable materials.

The motor retrieval system is controlled by each shooter, allowing independent operation of target distance.



Motor control box

The metal facings on retrieval systems take on a great deal of abuse in the line of fire. Special attention has been attributed to all metal facings which are fabricated from hardened steel and cut at less than the standard 45 degree angle iron.

The entire system is designed and fabricated to ensure durable and continuous operation.



Target car and hanger

All retrieval systems come complete with:

- Motor control boxes
- Retrieval ends
- Target cars
- Target hangers
- Stainless steel cable
- Stainless steel drive cord
- Pre-constructed wiring harnesses/switches

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SHOOTING RANGES: HVAC

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Shooting Ranges

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Bullet Traps
Shooting Stalls
Target Retrieval Systems
HVAC
Building Design/Blue Prints
Ceiling Guards
Metal Fabrication

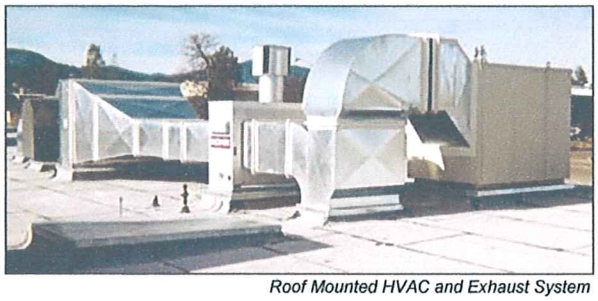


Shooting range air quality is a major concern when it comes to constructing an indoor range. SRI can meet all of your design needs for a full heating, ventilation and air conditioning (HVAC) system.



HEPA Filters

SRI can provide you with a complete CAD design of the recommended air conditioning and heating equipment selections, exhaust fans, blowers, filter racks and filters. Full duct work designs, duct sizing, dampers and register selections are specified as well. Not only is our guaranteed design no additional cost to you, but final systems cost will be a fraction of the cost of other systems. SRI is your one-stop service for complete range and HVAC designs and products.



Roof Mounted HVAC and Exhaust System

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SHOOTING RANGES: Building Design/Blue Prints

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For more information about custom building design and blue prints, please contact us.



Building Design and Blue Printing

Shooting Ranges

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HVAC
Building Design/Blue Prints
Ceiling Guards
Metal Fabrication



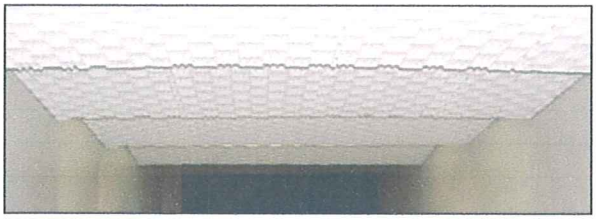
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SHOOTING RANGES: Ceiling Guards

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SRI safety Ceiling Guards are pre-fabricated with pre-punched and welded suspension brackets. CAD-designed plate spacing ensures that projectiles are directed downrange, protecting lighting and HVAC fixtures. Each SRI ceiling plate system is designed and fabricated with slip, adjustable guards to fit the building width requirements. Suspension chain and hardware is included for a fast and simple installation.



Ceiling Guards

Shooting Ranges

QuickRange®
Alpha Range™
Bullet Traps
Shooting Stalls
Target Retrieval Systems
HVAC
Building Design/Blue Prints
Ceiling Guards
Metal Fabrication

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SHOOTING RANGES: Metal Fabrication & Design

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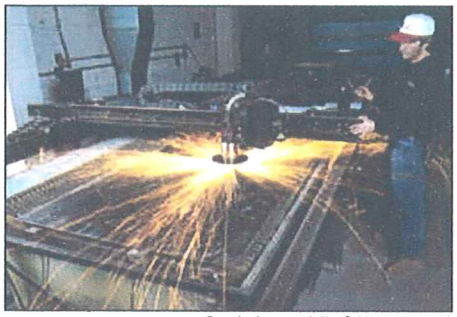
Shooting Ranges

QuickRange®
Alpha Range™
Bullet Traps
Shooting Stalls
Target Retrieval Systems
HVAC
Building Design/Blue Prints
Ceiling Guards
Metal Fabrication

Metal Fabrication and materials are of great importance to the success of your range equipment.

With over 40 years experience in the metal fabrication field, all of SRI's metal fabrication is produced in-house. This flexibility allows us to keep track of quality control and fabrication schedules. All range components are designed and engineered with specialty metals and techniques to meet the toughest standards for range equipment durability and value.

Design of your range layout and equipment size is all completed on our in-house CAD system. Exact building measurements and fabrication is created to your specifications to ensure a proper and timely field installation. SRI has full press break and metal forming capabilities to fabricate a R493 Helical.



Our in-house fully CAD operated dual table plazma cutting system

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TOTAL DEFENSE

Firearms, Gear and Training

Service – **C**entered. **P**ersonal. **P**rotection.

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Minnesota Basic Concealed Carry Permit Class



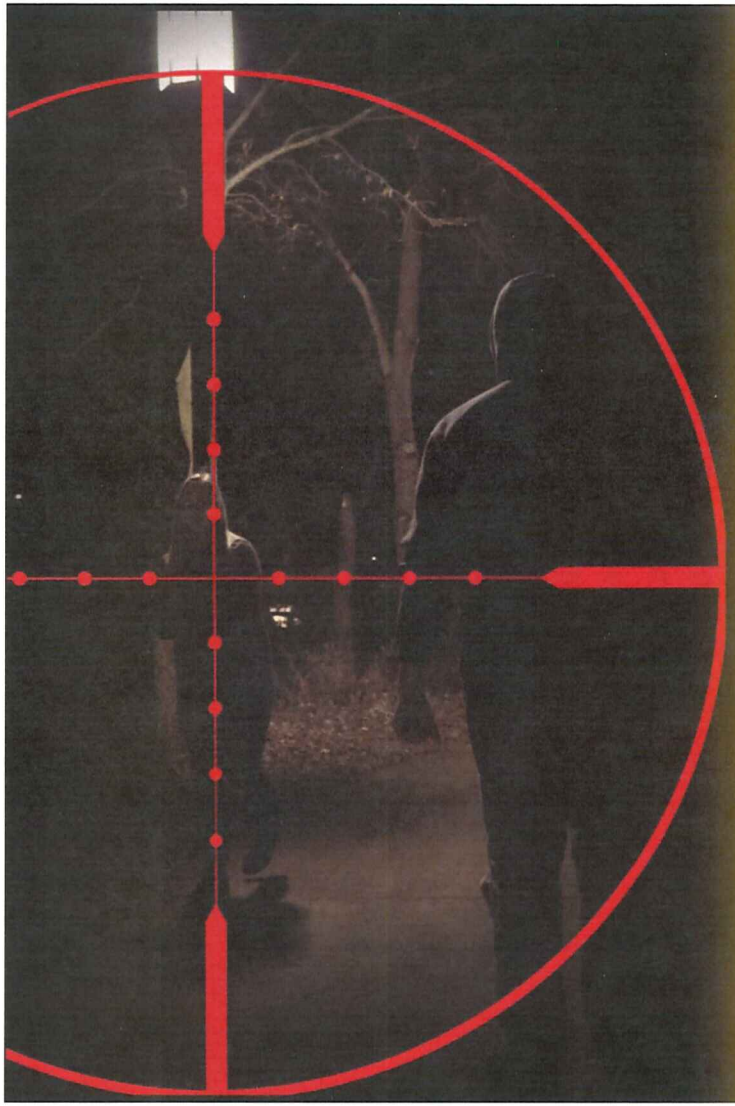
Version 3.0

Introduction

Welcome to Total Defense. You have all come to this class today from various backgrounds and occupations to learn, to better prepare and defend yourself and your loved ones. Our goal is to give you the knowledge, skills and attitude required to make informed decisions about self-defense.

Instructors

- Dan Wellman
  - Owner of Total Defense
  - Gunsmith
  - NRA certified firearms instructor
  - Certified firearms instructor for both the MN DNR and 4-H
  - Certified BAMM instructor
  - Trained in various martial arts styles
  - Competed as a semi-professional kick-boxer
  - Certified instructor and Black Belt in Tae Kwon Do
  - Has a degree in Psychology with an emphasis on Psychology of Victimization
- Kurt Ochs
  - Owner of Total Defense
  - Certified Duracoat technician
  - NRA certified firearms instructor
  - Certified Glock Armorer
- Joe Madison
  - NRA certified instructor
  - CPR and First Aid Certified
- Alex Larson-
  - Black belt in Ruku Kempo
  - Woman's self-defense instructor
- Jim Diehl-
  - Member of the National Concealed Firearms Instructors Association
  - Certified NRA pistol instructor
  - Has been teaching CCW courses since 2000
  - Earned multiple black belts
  - Martial arts instructor
  - Degree in Pistolsmithing
  - USAF Veteran



Do You Know When You're Being Targeted?

Not becoming a victim of violent crime just got easier.

Total Defense is a leader in all-women's self-defense and CCW classes. In our unintimidating and non-judgemental learning environment, we will teach you why some women are targeted by violence while empowering you to take control of your own personal safety.

Call or stop in today and begin living life free of the target.

(763) 432-6134

www.Facebook.com/TotalDefenseMN
http://www.mntotaldefense.com

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Ramsey, Minnesota 55303

TOTAL DEFENSE
Firearms, Gear and Training

Legal Responsibilities

- Discuss Law Handouts
  - Current Conceal Carry Law
  - Historical Conceal Carry Law
  - Laws Related to Firearms and Use of Force

Least Intrusive Method

- Terminal Thinking
- Scenarios
  - Super America
  - St. Cloud

Basic Pistol

- Safety briefing
- Pistol knowledge and safe gun handling
- Revolver and automatics knowledge and use
- Major components
- Operating a revolver/automatic
- Loading and unloading
- Ammunition
  - Minimum adequate caliber .38cal and 9mm
  - +P, +P+, Magnums
  - Cartridge types
  - Premium defensive ammunition
  - Testing ammunition
  - Ammo life, rotation
- Cartridge malfunctions
- Cleaning/disassembly
- Storing your firearms
- Shooting positions
- Aiming, breath control, trigger control, and follow-through
- Focus on front sight
- Consistency
- Natural point of aim (NPA)

Clearing Malfunctions- Immediate Action Drills

- T.I.R.A.
- Cut your losses drill
- Tactical reload

Selecting a Handgun for Self-Defense

- Fit
- Functional reliability (make, quality, imports)
- Caliber, recoil, and controllability
- New vs. used
- Revolvers vs. semi-automatics
- Modifications to firearms grips, enhancements, sights, trigger pull
- Magazine safety- When the magazine is removed it prevents the firearm from firing.
- Concealment

Accessories

- Speed loaders, spare magazines
- Sights, laser, night sights
- Accessories
- Flashlight
- Cell phone

Holsters

- Retention of weapon in and out of holster
- Different holster types
- Holster do's and don'ts

Mental preparation

- Mindset
- Never give up, The will to prevail

Making yourself and your home safer

- Self, command presence, "What if....." Gaming
- Grounds and landscaping (less attractive to intruders)
- Exterior of home
- Emergency plan for responding to a possible break-in
- Call the Police/911

Confronting an intruder or assailant

- Defensive confrontations
- Controlling the encounter
- Psychological reactions
- Physiological reactions (loss of fine motor skills, tunnel vision, tachypsychia)
- Train for stress (at the range and at home during practice)
- Shoot to stop the threat

The use of deadly force in self-defense

- Reasonable person standard
- Least intrusive method
- Non-willing participant
- Use of reasonable force
- Use of deadly force
- Ability of an attacker (are they actually capable of causing death or serious injury)
- The J.A.M Principle (are you in Jeopardy, do they have the Ability, and Means)
- Innocent victim of an attack
- Duty to retreat
- Brandishing
- Cessation of threat

Defensive Accuracy

- Firearm- Tool of last resort
- Balance speed with accuracy- Shoot as fast as possible while staying on target
- Aim for center of mass

Interacting with the Police

You may at some point have to deal with the police while you are carrying your handgun. Remember police are very cautious when it comes to people with guns. Think of their safety as well as your own.

- Move slowly and cautiously- Tell the officer what you are going to do before you do it
- Always keep your hands in the officer's site (he fears what he can't see just like you do)
- Inform him/her that you have a CCW and are carrying a handgun and where it is
- Follow the commands you are given-
  - He may ask you to hand over your handgun, DO IT, it is for their safety as well as yours. When you DO pull your gun out to give to him/her, move very slowly and carefully. Use two fingers to grip the gun and DO NOT TOUCH THE TRIGGER!
- If you are pulled over, keep your hands on the wheel and inform the officer that you have a CCW and are carrying/not carrying a weapon. Let them tell you what to do from there.

- **YOU ARE NOT A COP!!** Do not attempt to "Help" the police. Let them do their jobs.

Non-Violent Dispute Resolution

L.E.A.P.S.

To remember the five techniques to diffuse a situation: Listen, Empathize, Ask, Paraphrase, Summarize.

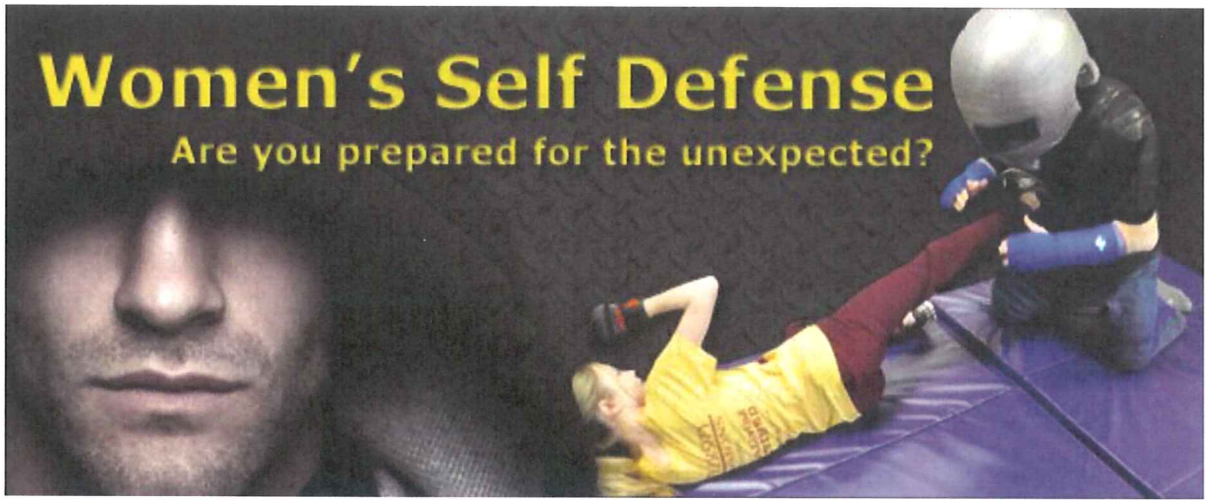
1. Listen- In a conflict, we become very self-centered. We want to talk and force our point of view on the other person. If we listen rather than argue, much of the heat will go out of the situation.
2. Empathize- put yourself in the other person's shoes. See things from their point of view. Be sure to empathize aloud so the other person can hear you doing it.
3. Ask- question the other person about specific facts. Remember the five W's (Who, What, When, Where, and Why). Asking questions builds rapport and solicits input from the other person rather than pushing your perspective on them.
4. Paraphrase- Put the other person's meaning in to your own words and feed it back to them (actively listen). This means that you understand their point of view and giving them a chance to agree with something you have said. You have to listen to them and make an effort to understand their perspective.
5. Summarize- when we summarize, we move towards conclusion. Our tone and words should be shaped with decisiveness and authority without being condescending or demanding. Use the word "We" not "I" or "YOU".

Verbal Judo

- Make someone do what you need them to do by showing them how it benefits them.
- Show them the consequences of their actions both positive and negative.
- Become their pal. Look out for their interests.

Alternative Uses of Force

- Unarmed defensive techniques
- Less-Lethal devices
    - OC (Kimber Guardian, Sabre Defense), Taser, Stun Gun, Baton.



Total Defense | Women's Self Defense

Gain the confidence in knowing that you can defend yourself.

Experience the immediate transformation when you gain the confidence of knowing you can defend yourself in life threatening situations. Our woman's self defense course utilizes an improvised martial arts program designed to cater to women's strengths while minimizing weaknesses. Our instructor Dan Wellman is an accomplished martial artist; a black belt and certified instructor of Tae Kwon Do. He also has a master's degree in clinical psychology and incorporates his knowledge of predatorial behavior and victimization scenarios into your training.

We are available six days a week for training call 763-432-6134 availability and scheduling.

MN Permit Honored In:

Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming

MN Permit Not Honored:

California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Guam, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New Mexico, New York, New York City, Oregon, Puerto Rico, Rhode Island, South Carolina, Virgin Islands, Washington, West Virginia

Right Denied:

American Samoa, Illinois, N. Mariana Islands

Handgun Basics

Four Universal Safety Rules

1. **All** firearms are **always** loaded!

2. **Never** let the muzzle cover anything you are not willing to destroy!

3. Keep your finger **OFF** the trigger until your sights are on the **target!**

4. **Always** be sure of your target and beyond!

Revolvers

Single Action Only (SAO)

Hammer must be cocked prior to every shot.



Double Action/Single Action (DA/SA)

Hammer can be cocked prior to first shot or squeeze the trigger to fire first shot with a longer trigger pull.



Double Action Only (DAO)

Internal hammer- Long trigger pull



Semi-Auto Pistols

Single Action

Hammer must be cocked prior to FIRST shot only.



Double Action/Single Action (DA/SA)

Hammer can be cocked prior to first shot or squeeze the trigger to fire first shot with a longer trigger pull.



Striker Fired Platform/ Safe Action Pistol

A pistol that uses an internal striker mechanism.



Common Pistol Malfunctions

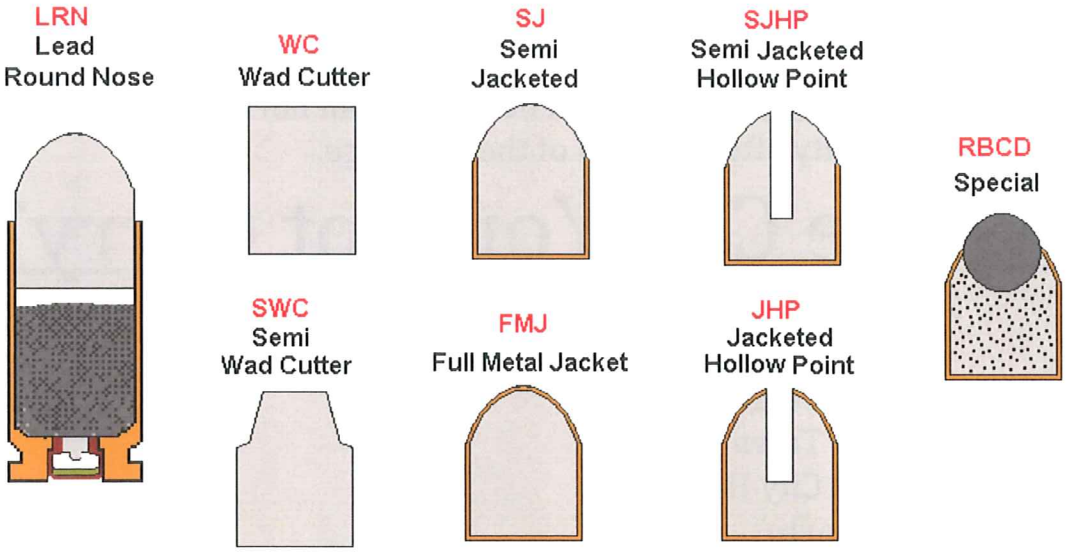
- Double Feed- A double feed happens when two rounds try to enter the chamber of a semi-automatic at the same time.
- Stove Pipe- After the bullet is fired the casing fails to eject fully and gets stuck in the action causing a jam.
- Failure To Feed- This is when a round fails to feed into the breach. Most common cause is bent feed lips on magazine.

Ammunition



.22LR
.25ACP
.32ACP
.380ACP
.9mm
.357SIG
.38 Special
.357 Magnum
.40 S&W
.45ACP
5.56 NATO

Bullet Types



Ammo Care and Storage

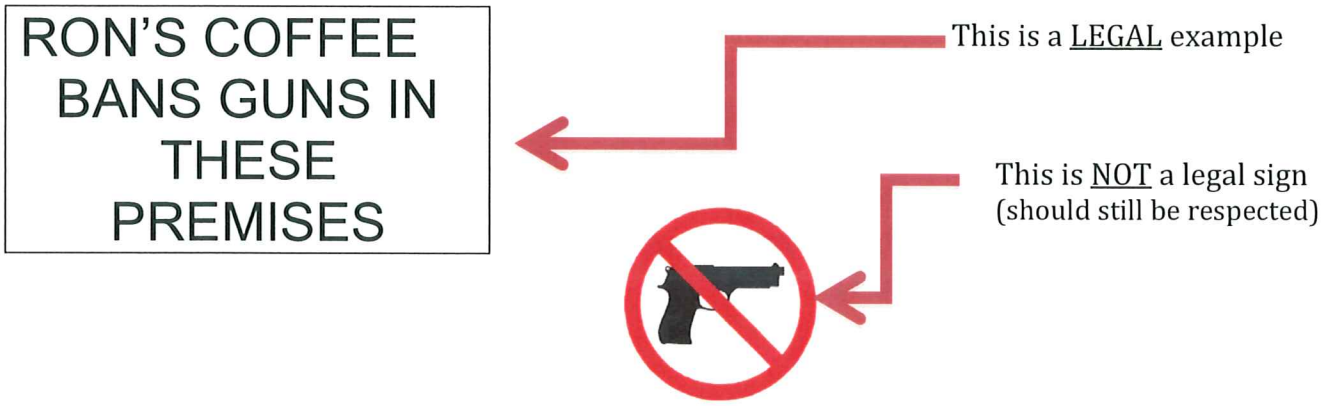
- Store in a cool, dry area.
- Never mix ammunition.
- Store firearms and ammo separately
- Practice at least once a year with your personal protection ammo.
- Replace your personal protection ammo annually.
- Use the correct ammo for what you are doing. (Federal Guard Dog/HST)

Ammunition Malfunctions

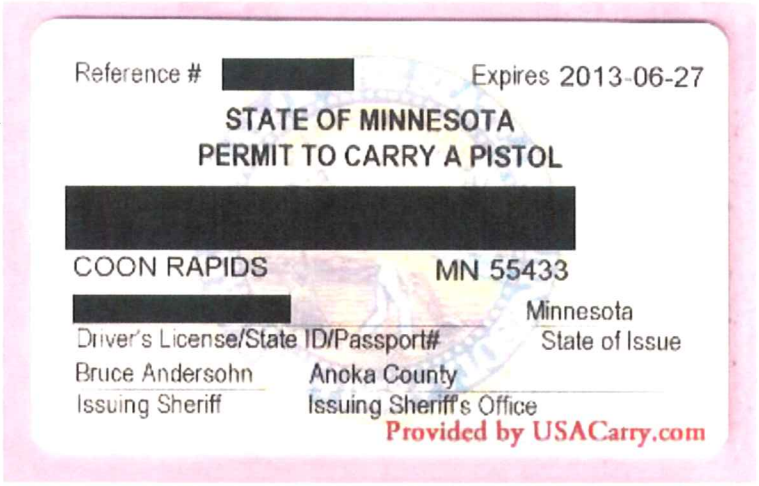
- Misfire- A failure of the cartridge to fire after the primer has been struck by the firing pin.
- Hang Fire- A delay in the ignition of the cartridge after the primer has been struck by the firing pin.
- Squib Load- Development of less than normal pressure or velocity after ignition of the cartridge.

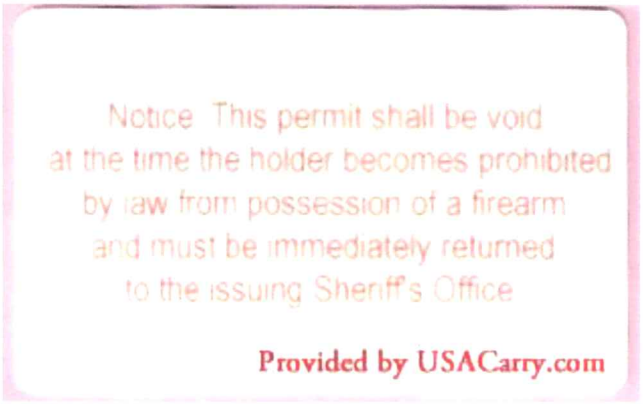
Where Can You Not Carry?

- Government Buildings (State & Federal)
  - Courthouses
  - Post Office
  - Town Hall
  - City Hall
- Airports
  - You can legally travel with firearms in checked baggage. (Check with airlines as many have different rules)
- Licensed Daycare Centers
  - While children are present
- Public and or Private Schools
  - Not only the school but all its property/land
- Anyplace both Public or Private that's POSTED
  - It does not have to be posted if they ask you to leave



Example Minnesota Permit





Things you need to bring to your LOCAL Sheriff

- Completed Application (DO NOT sign until told to)
- Up to $100.00 (Cash for faster processing)
- Completed Course Certificate
- Photocopy of State issued ID or Passport

Why Keep Only Half Your Money?



Other Stores Will Give You Only 50-Cents On The Dollar For Your Used Firearms

We're Here To Change That

Now you can get up to 90% of your firearm's value. Ask us how today.

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Ramsey, Minnesota 55303

www.MNTotalDefense.com
www.facebook.com/TotalDefenseMN

*Firearms subject to current market values

TOTAL DEFENSE
Firearms, Gear and Training

Current Conceal Carry Law

S.F. No. 2259, 2nd Engrossment - 84th Legislative Session (2005-2006)
Posted on May 16, 2005

A bill for an act

relating to public safety; reenacting the Minnesota Citizens' Personal Protection Act of 2003 with certain amendments; recognizing the inherent right of law-abiding citizens to self-protection through the lawful use of self-defense; providing a system under which responsible, competent adults can exercise their right to self-protection by authorizing them to obtain a permit to carry a pistol; providing criminal penalties; amending Minnesota Statutes 2004, sections 609.66, subdivision 1d; 624.714, subdivisions 1b, 2, 2a, 3, 8, 12, 17, as reenacted, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [REENACTMENT OF PERSONAL PROTECTION ACT.]

Laws 2003, chapter 28, articles 2 and 3, are reenacted effective retroactively and without interruption from April 28, 2003.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2004, section 609.66, subdivision 1d, is amended to read:

Subd. 1d. [POSSESSION ON SCHOOL PROPERTY; PENALTY.] (a) Except as provided under paragraphs (c) and (e), whoever possesses, stores, or keeps a dangerous weapon or uses or brandishes a replica firearm or a BB gun while knowingly on school property is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than $5,000, or both.

(b) whoever possesses, stores, or keeps a replica firearm or a BB gun on school property is guilty of a gross misdemeanor.

(c) Notwithstanding paragraph (a) or (b), it is a

misdemeanor for a person authorized to carry a firearm under the provisions of a permit or otherwise to carry a firearm on or about the person's clothes or person in a location the person knows is school property. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(d) As used in this subdivision:

(1) "BB gun" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter;

(2) "dangerous weapon" has the meaning given it in section 609.02, subdivision 6;

(3) "replica firearm" has the meaning given it in section 609.713; and

(4) "school property" means:

(i) a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school;

(ii) a child care center licensed under chapter 245A during the period children are present and participating in a child care program;

(iii) the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, cocurricular, noncurricular, extracurricular, and supplementary activities; and

(iv) that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

(e) this subdivision does not apply to:

(1) active licensed peace officers,;

(2) military personnel, or students participating in military training, who are on-duty, performing official duties;

(2) (3) persons authorized to carry a pistol under section 624.714 while in a motor vehicle or outside of a motor vehicle to directly place a firearm in, or retrieve it from, the trunk or rear area of the vehicle;

(3) (4) persons who keep or store in a motor vehicle

pistols in accordance with section 624.714 or 624.715 or other firearms in accordance with section 97B.045;

(4) (5) firearm safety or marksmanship courses or activities conducted on school property;

(5) (6) possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;

(6) (7) a gun or knife show held on school property;

(7) (8) possession of dangerous weapons, BB guns, or replica firearms with written permission of the principal or other person having general control and supervision of the school or the director of a child care center; or

(8) (9) persons who are on unimproved property owned or leased by a child care center, school, or school district unless the person knows that a student is currently present on the land for a school-related activity.

(f) Notwithstanding section 471.634, a school district or other entity composed exclusively of school districts may not regulate firearms, ammunition, or their respective components, when possessed or carried by nonstudents or nonemployees, in a manner that is inconsistent with this subdivision.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2004, section 624.714, subdivision 1b, is amended to read:

Subd. 1b. [DISPLAY OF PERMIT; PENALTY.] (a) The holder of a permit to carry must have the permit card and a driver's license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card and identification document upon lawful demand by a peace officer, as defined in section 626.84, subdivision 1. A violation of this paragraph is a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) A citation issued for violating paragraph (a) must be dismissed if the person demonstrates, in court or in the office of the arresting officer, that the person was authorized to carry the pistol at the time of the alleged violation.

(c) Upon the request of a peace officer, a permit holder must write a sample signature in the officer's presence to aid in verifying the person's identity.

(d) Upon the request of a peace officer, a permit holder shall disclose to the officer whether or not the permit holder is currently carrying a firearm.

Sec. 4. Minnesota Statutes 2004, section 624.714, subdivision 2, is amended to read:

Subd. 2. [WHERE APPLICATION MADE; AUTHORITY TO ISSUE PERMIT; CRITERIA; SCOPE.] (a) Applications by Minnesota residents for permits to carry shall be made to the county sheriff where the applicant resides. Nonresidents, as defined in section 171.01, subdivision 42, may apply to any sheriff.

(b) Unless a sheriff denies a permit under the exception set forth in subdivision 6, paragraph (a), clause (3), a sheriff must issue a permit to an applicant if the person:

(1) has training in the safe use of a pistol;

(2) is at least 21 years old and a citizen or a permanent resident of the United States;

(3) completes an application for a permit;

(4) is not prohibited from possessing a firearm under the following sections:

(i) 518B.01, subdivision 14;

(ii) 609.224, subdivision 3;

(iii) 609.2242, subdivision 3;

(iv) 609.749, subdivision 8;

(v) 624.713;

(vi) 624.719;

(vii) 629.715, subdivision 2; or

(viii) 629.72, subdivision 2; or

(ix) any federal law; and

(5) is not listed in the criminal gang investigative data system under section 299C.091.

(c) A permit to carry a pistol issued or recognized under this section is a state permit and is effective throughout the state.

(d) A sheriff may contract with a police chief to process permit applications under this section. If a sheriff contracts with a police chief, the sheriff remains the issuing authority

and the police chief acts as the sheriff's agent. If a sheriff contracts with a police chief, all of the provisions of this section will apply.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 5. Minnesota Statutes 2004, section 624.714, subdivision 2a, is amended to read:

Subd. 2a. [TRAINING IN THE SAFE USE OF A PISTOL.] (a) An applicant must present evidence that the applicant received training in the safe use of a pistol within one year of the date of an original or renewal application. Training may be demonstrated by:

(1) employment as a peace officer in the state of Minnesota within the past year; or

(2) completion of a firearms safety or training course providing basic training in the safe use of a pistol and conducted by a certified instructor.

(b) Basic training must include:

(1) instruction in the fundamentals of pistol use;

(2) successful completion of an actual shooting qualification exercise; and

(3) instruction in the fundamental legal aspects of pistol possession, carry, and use, including self-defense and the restrictions on the use of deadly force.

(c) The certified instructor must issue a certificate to a person who has completed a firearms safety or training course described in paragraph (b). The certificate must be signed by the instructor and attest that the person attended and completed the course.

(d) A person qualifies as a certified instructor if the person is certified as a firearms instructor within the past five years by:

(1) the Bureau of Criminal Apprehension, Training and Development Section;

(2) the Minnesota Association of Law Enforcement Firearms Instructors;

(3) the National Rifle Association;

(4) the American Association of Certified Firearms Instructors;

(5) the Peace Officer Standards and Training Board of this state or a similar agency of another state that certifies firearms instructors; or

(6) the Department of Public Safety of this state or a similar agency of another state that certifies firearms instructors an organization or government entity that has been approved by the Department of Public Safety in accordance with the department's standards.

(d) (e) A sheriff must accept the training described in this subdivision as meeting the requirement in subdivision 2, paragraph (b), for training in the safe use of a pistol. A sheriff may also accept other satisfactory evidence of training in the safe use of a pistol.

[EFFECTIVE DATE.] This section is effective the day following final enactment, except for the changes made in paragraph (d), which are effective October 1, 2005.

Sec. 6. Minnesota Statutes 2004, section 624.714, subdivision 3, is amended to read:

Subd. 3. [FORM AND CONTENTS OF APPLICATION.] (a) Applications for permits to carry must be an official, standardized application form, adopted under section 624.7151, and must set forth in writing only the following information:

(1) the applicant's name, residence, telephone number, if any, and driver's license number or state identification card number;

(2) the applicant's sex, date of birth, height, weight, and color of eyes and hair, and distinguishing physical characteristics, if any;

(3) the township or statutory city or home rule charter city, and county, of all states of residence Minnesota residences of the applicant in the last ten five years, though not including specific addresses;

(4) the township or city, county, and state of all non-Minnesota residences of the applicant in the last five years, though not including specific addresses;

(5) a statement that the applicant authorizes the release to the sheriff of commitment information about the applicant maintained by the commissioner of human services or any similar agency or department of another state where the applicant has

resided, to the extent that the information relates to the applicant's eligibility to possess a firearm; and

(5) (6) a statement by the applicant that, to the best of the applicant's knowledge and belief, the applicant is not prohibited by law from possessing a firearm.

(b) The statement under paragraph (a), clause (4) (5), must comply with any applicable requirements of Code of Federal Regulations, title 42, sections 2.31 to 2.35, with respect to consent to disclosure of alcohol or drug abuse patient records.

(c) An applicant must submit to the sheriff an application packet consisting only of the following items:

(1) a completed application form, signed and dated by the applicant;

(2) an accurate photocopy of a the certificate, affidavit, or other document described in subdivision 2a, paragraph (c), that is submitted as the applicant's evidence of training in the safe use of a pistol; and

(3) an accurate photocopy of the applicant's current driver's license, state identification card, or the photo page of the applicant's passport.

(d) In addition to the other application materials, a person who is otherwise ineligible for a permit due to a criminal conviction but who has obtained a pardon or expungement setting aside the conviction, sealing the conviction, or otherwise restoring applicable rights, must submit a copy of the relevant order.

(e) Applications must be submitted in person.

(f) The sheriff may charge a new application processing fee in an amount not to exceed the actual and reasonable direct cost of processing the application or $100, whichever is less. Of this amount, $10 must be submitted to the commissioner and deposited into the general fund.

(g) This subdivision prescribes the complete and exclusive set of items an applicant is required to submit in order to apply for a new or renewal permit to carry. The applicant must not be asked or required to submit, voluntarily or involuntarily, any information, fees, or documentation beyond that specifically required by this subdivision. This paragraph

does not apply to alternate training evidence accepted by the sheriff under subdivision 2a, paragraph (d).

(h) Forms for new and renewal applications must be available at all sheriffs' offices and the commissioner must make the forms available on the Internet.

(i) Application forms must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder is or becomes prohibited by law from possessing a firearm. The notice must list the applicable state criminal offenses and civil categories that prohibit a person from possessing a firearm.

(j) Upon receipt of an application packet and any required fee, the sheriff must provide a signed receipt indicating the date of submission.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2004, section 624.714, subdivision 8, is amended to read:

Subd. 8. [PERMIT TO CARRY VOIDED.] (a) The permit to carry is void and must be revoked at the time that the holder becomes prohibited by law from possessing a firearm, in which event the holder must return the permit card to the issuing sheriff within five business days after the holder knows or should know that the holder is a prohibited person. If a permit is revoked the sheriff has knowledge that a permit is void under this subdivision paragraph, the sheriff must give notice to the permit holder in writing in the same manner as a denial. Failure of the holder to return the permit within the five days is a gross misdemeanor unless the court finds that the circumstances or the physical or mental condition of the permit holder prevented the holder from complying with the return requirement.

(b) When a permit holder is convicted of an offense that prohibits the permit holder from possessing a firearm, the court must revoke the permit and, if it is available, take possession of it the permit, if it is available, and send it to the issuing sheriff.

(c) The sheriff of the county where the application was submitted, or of the county of the permit holder's current

residence, may file a petition with the district court therein, for an order revoking a permit to carry on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall be issued only if the sheriff meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses, including attorney fees.

(d) A permit revocation must be promptly reported to the issuing sheriff.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 8. Minnesota Statutes 2004, section 624.714, subdivision 12, is amended to read:

Subd. 12. [HEARING UPON DENIAL OR REVOCATION.] (a) Any person aggrieved by denial or revocation of a permit to carry may appeal by petition to the district court having jurisdiction over the county or municipality where the application was submitted. The petition must list the sheriff as the respondent. The district court must hold a hearing at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The court may not grant or deny any relief before the completion of the hearing. The record of the hearing must be sealed. The matter must be heard de novo without a jury.

(b) The court must issue written findings of fact and conclusions of law regarding the issues submitted by the parties. The court must issue its writ of mandamus directing that the permit be issued and order other appropriate relief unless the sheriff establishes by clear and convincing evidence:

(1) that the applicant is disqualified under the criteria described in subdivision 2, paragraph (b); or

(2) that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Incidents of alleged criminal misconduct that are not investigated and documented, and incidents for which the applicant was charged and acquitted, may not be considered.

(c) If an applicant is denied a permit on the grounds that

10.26 the applicant is listed in the criminal gang investigative data
10.27 system under section 299C.091, the person may challenge the
10.28 denial, after disclosure under court supervision of the reason
10.29 for that listing, based on grounds that the person:
10.30 (1) was erroneously identified as a person in the data
10.31 system;
10.32 (2) was improperly included in the data system according to
10.33 the criteria outlined in section 299C.091, subdivision 2,
10.34 paragraph (b); or
10.35 (3) has demonstrably withdrawn from the activities and
10.36 associations that led to inclusion in the data system.
11.1 (d) If the court grants a petition brought under paragraph
11.2 (a), the court must award the applicant or permit holder
11.3 reasonable costs and expenses including attorney fees.
11.4 Sec. 9. Minnesota Statutes 2004, section 624.714,
11.5 subdivision 17, as reenacted by section 1, is amended to read:
11.6 Subd. 17. [POSTING; TRESPASS.] (a) A person carrying a
11.7 firearm on or about his or her person or clothes under a permit
11.8 or otherwise who remains at a private establishment knowing
that
11.9 the operator of the establishment or its agent has made a
11.10 reasonable request that firearms not be brought into the
11.11 establishment may be ordered to leave the premises. A person
11.12 who fails to leave when so requested is guilty of a petty
11.13 misdemeanor. The fine for a first offense must not exceed $25.
11.14 Notwithstanding section 609.531, a firearm carried in violation
11.15 of this subdivision is not subject to forfeiture.
11.16 (b) As used in this subdivision, the terms in this
11.17 paragraph have the meanings given.
11.18 (1) "Reasonable request" means a request made under the
11.19 following circumstances:
11.20 (i) the requester has prominently posted a conspicuous sign
11.21 at every entrance to the establishment containing the following
11.22 language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN
THESE
11.23 PREMISES."; and or
11.24 (ii) the requester or its the requester's agent personally
11.25 informs the person of the posted request that guns are
11.26 prohibited in the premises and demands compliance.

(2) "Prominently" means readily visible and within four feet laterally of the entrance with the bottom of the sign at a height of four to six feet above the floor.

(3) "Conspicuous" means lettering in black arial typeface at least 1-1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.

(4) "Private establishment" means a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

(c) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

(d) This subdivision does not apply to private residences. The lawful possessor of a private residence may prohibit firearms, and provide notice thereof, in any lawful manner.

(e) A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests.

(f) Notwithstanding any inconsistent provisions in section 609.605, this subdivision sets forth the exclusive criteria to notify a permit holder when otherwise lawful firearm possession is not allowed in a private establishment and sets forth the exclusive penalty for such activity.

(g) This subdivision does not apply to:

(1) an on-duty active licensed peace officer; or

(2) a security guard acting in the course and scope of employment.

[EFFECTIVE DATE.] This section is effective the day following final enactment.

Sec. 10. Minnesota Statutes 2004, section 624.714, is amended by adding a subdivision to read:

Subd. 24. [PREDATORY OFFENDERS.] Except when acting under the authority of other law, it is a misdemeanor for a person required to register by section 243.166 to carry a pistol whether or not the carrier possesses a permit to carry issued under this section. If an action prohibited by this subdivision is also a violation of another law, the violation may be prosecuted under either law.

Sec. 11. [ADOPTION OF STANDARDS.]

12.29 By October 1, 2005, the Department of Public Safety shall
12.30 adopt and publish minimum standards that organizations and
12.31 government entities must meet to certify individuals as
12.32 certified firearms instructors under Minnesota Statutes, section
12.33 624.714, subdivision 2a, paragraph (d).
12.34 [EFFECTIVE DATE.] This section is effective the day
12.35 following final enactment

2012 Minnesota Statutes

624.714 CARRYING OF WEAPONS WITHOUT PERMIT; PENALTIES.
Subdivision 1.

[Repealed, 2003 c 28 art 2 s 35; 2005 c 83 s 1]
Subd. 1a.Permit required; penalty.

A person, other than a peace officer, as defined in section 626.84, subdivision 1, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place, as defined in section 624.7181, subdivision 1, paragraph (c), without first having obtained a permit to carry the pistol is guilty of a gross misdemeanor. A person who is convicted a second or subsequent time is guilty of a felony.
Subd. 1b.Display of permit; penalty.

(a) The holder of a permit to carry must have the permit card and a driver's license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card and identification document upon lawful demand by a peace officer, as defined in section 626.84, subdivision 1. A violation of this paragraph is a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) A citation issued for violating paragraph (a) must be dismissed if the person demonstrates, in court or in the office of the arresting officer,

that the person was authorized to carry the pistol at the time of the alleged violation.

(c) Upon the request of a peace officer, a permit holder must write a sample signature in the officer's presence to aid in verifying the person's identity.

(d) Upon the request of a peace officer, a permit holder shall disclose to the officer whether or not the permit holder is currently carrying a firearm.

Subd. 2.Where application made; authority to issue permit; criteria; scope.

(a) Applications by Minnesota residents for permits to carry shall be made to the county sheriff where the applicant resides. Nonresidents, as defined in section 171.01, subdivision 42, may apply to any sheriff.

(b) Unless a sheriff denies a permit under the exception set forth in subdivision 6, paragraph (a), clause (3), a sheriff must issue a permit to an applicant if the person:

(1) has training in the safe use of a pistol;

(2) is at least 21 years old and a citizen or a permanent resident of the United States;

(3) completes an application for a permit;

(4) is not prohibited from possessing a firearm under the following sections:

(i) 518B.01, subdivision 14;

(ii) 609.224, subdivision 3;

(iii) 609.2242, subdivision 3;

(iv) 609.749, subdivision 8;

(v) 624.713;

(vi) 624.719;

(vii) 629.715, subdivision 2;

(viii) 629.72, subdivision 2; or

(ix) any federal law; and

(5) is not listed in the criminal gang investigative data system under section 299C.091.

(c) A permit to carry a pistol issued or recognized under this section is a state permit and is effective throughout the state.

(d) A sheriff may contract with a police chief to process permit applications under this section. If a sheriff contracts with a police chief, the sheriff remains the issuing authority and the police chief acts as the sheriff's agent. If a sheriff contracts with a police chief, all of the provisions of this section will apply.
Subd. 2a.Training in the safe use of a pistol.

(a) An applicant must present evidence that the applicant received training in the safe use of a pistol within one year of the date of an original or renewal application. Training may be demonstrated by:

(1) employment as a peace officer in the state of Minnesota within the past year; or

(2) completion of a firearms safety or training course providing basic training in the safe use of a pistol and conducted by a certified instructor.

(b) Basic training must include:

(1) instruction in the fundamentals of pistol use;

(2) successful completion of an actual shooting qualification exercise; and

(3) instruction in the fundamental legal aspects of pistol possession, carry, and use, including self-defense and the restrictions on the use of deadly force.

(c) The certified instructor must issue a certificate to a person who has completed a firearms safety or training course described in paragraph (b). The certificate must be signed by the instructor and attest that the person attended and completed the course.

(d) A person qualifies as a certified instructor if the person is certified as a firearms instructor within the past five years by an organization or government entity that has been approved by the Department of Public Safety in accordance with the department's standards.

(e) A sheriff must accept the training described in this subdivision as meeting the requirement in subdivision 2, paragraph (b), for training in the safe use of a pistol. A sheriff may also accept other satisfactory evidence of training in the safe use of a pistol.
Subd. 3.Form and contents of application.

(a) Applications for permits to carry must be an official, standardized application form, adopted under section 624.7151, and must set forth in writing only the following information:

(1) the applicant's name, residence, telephone number, if any, and driver's license number or state identification card number;

(2) the applicant's sex, date of birth, height, weight, and color of eyes and hair, and distinguishing physical characteristics, if any;

(3) the township or statutory city or home rule charter city, and county, of all Minnesota residences of the applicant in the last five years, though not including specific addresses;

(4) the township or city, county, and state of all non-Minnesota residences of the applicant in the last five years, though not including specific addresses;

(5) a statement that the applicant authorizes the release to the sheriff of commitment information about the applicant maintained by the commissioner of human services or any similar agency or department of another state where the applicant has resided, to the extent that the information relates to the applicant's eligibility to possess a firearm; and

(6) a statement by the applicant that, to the best of the applicant's knowledge and belief, the applicant is not prohibited by law from possessing a firearm.

(b) The statement under paragraph (a), clause (5), must comply with any applicable requirements of Code of Federal Regulations, title 42, sections 2.31 to 2.35, with respect to consent to disclosure of alcohol or drug abuse patient records.

(c) An applicant must submit to the sheriff an application packet consisting only of the following items:

(1) a completed application form, signed and dated by the applicant;

(2) an accurate photocopy of the certificate described in subdivision 2a, paragraph (c), that is submitted as the applicant's evidence of training in the safe use of a pistol; and

(3) an accurate photocopy of the applicant's current driver's license, state identification card, or the photo page of the applicant's passport.

(d) In addition to the other application materials, a person who is otherwise ineligible for a permit due to a criminal conviction but who has obtained a pardon or expungement setting aside the conviction, sealing the conviction, or otherwise restoring applicable rights, must submit a copy of the relevant order.

(e) Applications must be submitted in person.

(f) The sheriff may charge a new application processing fee in an amount not to exceed the actual and reasonable direct cost of processing the application or $100, whichever is less. Of this amount, $10 must be submitted to the commissioner and deposited into the general fund.

(g) This subdivision prescribes the complete and exclusive set of items an applicant is required to submit in order to apply for a new or renewal permit to carry. The applicant must not be asked or required to submit, voluntarily or involuntarily, any information, fees, or documentation beyond that specifically required by this subdivision. This paragraph does not apply to alternate training evidence accepted by the sheriff under subdivision 2a, paragraph (d).

(h) Forms for new and renewal applications must be available at all sheriffs' offices and the commissioner must make the forms available on the Internet.

(i) Application forms must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder is or becomes prohibited by law from possessing a firearm. The notice must list the applicable state criminal offenses and civil categories that prohibit a person from possessing a firearm.

(j) Upon receipt of an application packet and any required fee, the sheriff must provide a signed receipt indicating the date of submission.
Subd. 4.Investigation.

(a) The sheriff must check, by means of electronic data transfer, criminal records, histories, and warrant information on each applicant through the Minnesota Crime Information System and the National Instant Criminal Background Check System. The sheriff shall also make a reasonable effort to check other available and relevant federal, state, or local record-keeping systems. The sheriff must obtain commitment information from the commissioner of human services as provided in section 245.041 or, if the information is reasonably available, as provided by a similar statute from another state.

(b) When an application for a permit is filed under this section, the sheriff must notify the chief of police, if any, of the municipality where the applicant resides. The police chief may provide the sheriff with any information relevant to the issuance of the permit.

(c) The sheriff must conduct a background check by means of electronic data transfer on a permit holder through the Minnesota Crime Information System and the National Instant Criminal Background Check System at least yearly to ensure continuing eligibility. The sheriff may also conduct additional background checks by means of electronic data transfer on a permit holder at any time during the period that a permit is in effect.
Subd. 5.

[Repealed, 2003 c 28 art 2 s 35; 2005 c 83 s 1]
Subd. 6.Granting and denial of permits.

(a) The sheriff must, within 30 days after the date of receipt of the application packet described in subdivision 3:

(1) issue the permit to carry;

(2) deny the application for a permit to carry solely on the grounds that the applicant failed to qualify under the criteria described in subdivision 2, paragraph (b); or

(3) deny the application on the grounds that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit.

(b) Failure of the sheriff to notify the applicant of the denial of the application within 30 days after the date of receipt of the application packet constitutes issuance of the permit to carry and the sheriff must promptly fulfill the requirements under paragraph (c). To deny the application, the sheriff must provide the applicant with written notification and the specific factual basis justifying the denial under paragraph (a), clause (2) or (3), including the source of the factual basis. The sheriff must inform the applicant of the applicant's right to submit, within 20 business days, any additional documentation relating to the

propriety of the denial. Upon receiving any additional documentation, the sheriff must reconsider the denial and inform the applicant within 15 business days of the result of the reconsideration. Any denial after reconsideration must be in the same form and substance as the original denial and must specifically address any continued deficiencies in light of the additional documentation submitted by the applicant. The applicant must be informed of the right to seek de novo review of the denial as provided in subdivision 12.

(c) Upon issuing a permit to carry, the sheriff must provide a laminated permit card to the applicant by first class mail unless personal delivery has been made. Within five business days, the sheriff must submit the information specified in subdivision 7, paragraph (a), to the commissioner for inclusion solely in the database required under subdivision 15, paragraph (a). The sheriff must transmit the information in a manner and format prescribed by the commissioner.

(d) Within five business days of learning that a permit to carry has been suspended or revoked, the sheriff must submit information to the commissioner regarding the suspension or revocation for inclusion solely in the databases required or permitted under subdivision 15.

(e) Notwithstanding paragraphs (a) and (b), the sheriff may suspend the application process if a charge is pending against the applicant that, if resulting in conviction, will prohibit the applicant from possessing a firearm.
Subd. 7.Permit card contents; expiration; renewal.

(a) Permits to carry must be on an official, standardized permit card adopted by the commissioner, containing only the name, residence, and driver's license number or state identification card number of the permit holder, if any.

(b) The permit card must also identify the issuing sheriff and state the expiration date of the permit. The permit card must clearly display a notice that a permit, if granted, is void and must be immediately returned to the sheriff if the permit holder becomes prohibited by law from possessing a firearm.

(c) A permit to carry a pistol issued under this section expires five years after the date of issue. It may be renewed in the same manner and under the same criteria which the original permit was obtained, subject to the following procedures:

(1) no earlier than 90 days prior to the expiration date on the permit, the permit holder may renew the permit by submitting to the appropriate sheriff the application packet described in subdivision 3 and a renewal processing fee not to exceed the actual and reasonable direct cost of processing the application or $75, whichever is less. Of this amount, $5 must be submitted to the commissioner and deposited into the general fund. The sheriff must process the renewal application in accordance with subdivisions 4 and 6; and

(2) a permit holder who submits a renewal application packet after the expiration date of the permit, but within 30 days after expiration, may renew the permit as provided in clause (1) by paying an additional late fee of $10.

(d) The renewal permit is effective beginning on the expiration date of the prior permit to carry.
Subd. 7a.Change of address; loss or destruction of permit.

(a) Within 30 days after changing permanent address, or within 30 days of having lost or destroyed the permit card, the permit holder must notify the issuing sheriff of the change, loss, or destruction. Failure to provide notification as required by this subdivision is a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(b) After notice is given under paragraph (a), a permit holder may obtain a replacement permit card by paying $10 to the sheriff. The request for a replacement permit card must be made on an official, standardized application adopted for this purpose under section 624.7151, and, except in the case of an address change, must include a notarized statement that the permit card has been lost or destroyed.
Subd. 8.Permit to carry voided.

(a) The permit to carry is void at the time that the holder becomes prohibited by law from possessing a firearm, in which event the holder must return the permit card to the issuing sheriff within five business days after the holder knows or should know that the holder is a prohibited person. If the sheriff has knowledge that a permit is void under this paragraph, the sheriff must give notice to the permit holder in writing in the same manner as a denial. Failure of the holder to return the permit within the five days is a gross misdemeanor unless the court finds that the circumstances or the physical or mental condition of the permit holder prevented the holder from complying with the return requirement.

(b) When a permit holder is convicted of an offense that prohibits the permit holder from possessing a firearm, the court must take possession of the permit, if it is available, and send it to the issuing sheriff.

(c) The sheriff of the county where the application was submitted, or of the county of the permit holder's current residence, may file a petition with the district court therein, for an order revoking a permit to carry on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall be issued only if the sheriff meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses, including attorney fees.

(d) A permit revocation must be promptly reported to the issuing sheriff.

Subd. 8a.Prosecutor's duty.

Whenever a person is charged with an offense that would, upon conviction, prohibit the person from possessing a firearm, the prosecuting attorney must ascertain whether the person is a permit holder under this section. If the person is a permit holder, the prosecutor must notify the issuing sheriff that the person has been charged with a prohibiting offense. The prosecutor must also notify the sheriff of the final disposition of the case.

Subd. 9.Carrying pistols about one's premises or for purposes of repair, target practice.

A permit to carry is not required of a person:

(1) to keep or carry about the person's place of business, dwelling house, premises or on land possessed by the person a pistol;

(2) to carry a pistol from a place of purchase to the person's dwelling house or place of business, or from the person's dwelling house or place of business to or from a place where repairing is done, to have the pistol repaired;

(3) to carry a pistol between the person's dwelling house and place of business;

(4) to carry a pistol in the woods or fields or upon the waters of this state for the purpose of hunting or of target shooting in a safe area; or

(5) to transport a pistol in a motor vehicle, snowmobile or boat if the pistol is unloaded, contained in a closed and fastened case, gunbox, or securely tied package.

Subd. 10.False representations.

A person who gives or causes to be given any false material information in applying for a permit to carry, knowing or having reason to know the information is false, is guilty of a gross misdemeanor.

Subd. 11.No limit on number of pistols.

A person shall not be restricted as to the number of pistols the person may carry.

Subd. 11a.Emergency issuance of permits.

A sheriff may immediately issue an emergency permit to a person if the sheriff determines that the person is in an emergency situation that may constitute an immediate risk to the safety of the person or someone residing in the person's household. A person seeking an emergency permit must complete an application form and must sign an affidavit describing the emergency situation. An emergency permit applicant does not need to provide evidence of training. An emergency permit is valid for 30 days, may not be renewed, and may be revoked without a hearing. No fee may be charged for an emergency permit. An emergency

permit holder may seek a regular permit under subdivision 3 and is subject to the other applicable provisions of this section.
Subd. 12.Hearing upon denial or revocation.

(a) Any person aggrieved by denial or revocation of a permit to carry may appeal by petition to the district court having jurisdiction over the county or municipality where the application was submitted. The petition must list the sheriff as the respondent. The district court must hold a hearing at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The court may not grant or deny any relief before the completion of the hearing. The record of the hearing must be sealed. The matter must be heard de novo without a jury.

(b) The court must issue written findings of fact and conclusions of law regarding the issues submitted by the parties. The court must issue its writ of mandamus directing that the permit be issued and order other appropriate relief unless the sheriff establishes by clear and convincing evidence:

(1) that the applicant is disqualified under the criteria described in subdivision 2, paragraph (b); or

(2) that there exists a substantial likelihood that the applicant is a danger to self or the public if authorized to carry a pistol under a permit. Incidents of alleged criminal misconduct that are not investigated and documented may not be considered.

(c) If an applicant is denied a permit on the grounds that the applicant is listed in the criminal gang investigative data system under section 299C.091, the person may challenge the denial, after disclosure under court supervision of the reason for that listing, based on grounds that the person:

(1) was erroneously identified as a person in the data system;

(2) was improperly included in the data system according to the criteria outlined in section 299C.091, subdivision 2, paragraph (b); or

(3) has demonstrably withdrawn from the activities and associations that led to inclusion in the data system.

(d) If the court grants a petition brought under paragraph (a), the court must award the applicant or permit holder reasonable costs and expenses including attorney fees.

Subd. 12a.Suspension as condition of release.

The district court may order suspension of the application process for a permit or suspend the permit of a permit holder as a condition of release pursuant to the same criteria as the surrender of firearms under section 629.715. A permit suspension must be promptly reported to the issuing sheriff. If the permit holder has an out-of-state permit recognized under subdivision 16, the court must promptly report the suspension to the commissioner for inclusion solely in the database under subdivision 15, paragraph (a).

Subd. 13.Exemptions; adult correctional facility officers.

A permit to carry a pistol is not required of any officer of a state adult correctional facility when on guard duty or otherwise engaged in an assigned duty.

Subd. 14.Records.

(a) A sheriff must not maintain records or data collected, made, or held under this section concerning any applicant or permit holder that are not necessary under this section to support a permit that is outstanding or eligible for renewal under subdivision 7, paragraph (b). Notwithstanding section 138.163, sheriffs must completely purge all files and databases by March 1 of each year to delete all information collected under this section concerning all persons who are no longer current permit holders or currently eligible to renew their permit.

(b) Paragraph (a) does not apply to records or data concerning an applicant or permit holder who has had a permit denied or revoked under the criteria established in subdivision 2, paragraph (b), clause (1), or subdivision 6, paragraph (a), clause (3), for a period of six years from the date of the denial or revocation.

Subd. 15.Commissioner; contracts; database.

(a) The commissioner must maintain an automated database of persons authorized to carry pistols under this section that is available 24 hours a day, seven days a week, only to law enforcement agencies, including prosecutors carrying out their duties under subdivision 8a, to verify the validity of a permit.

(b) The commissioner may maintain a separate automated database of denied applications for permits to carry and of revoked permits that is available only to sheriffs performing their duties under this section containing the date of, the statutory basis for, and the initiating agency for any permit application denied or permit revoked for a period of six years from the date of the denial or revocation.

(c) The commissioner may contract with one or more vendors to implement the commissioner's duties under this section.
Subd. 16.Recognition of permits from other states.

(a) The commissioner must annually establish and publish a list of other states that have laws governing the issuance of permits to carry weapons that are not substantially similar to this section. The list must be available on the Internet. A person holding a carry permit from a state not on the list may use the license or permit in this state subject to the rights, privileges, and requirements of this section.

(b) Notwithstanding paragraph (a), no license or permit from another state is valid in this state if the holder is or becomes prohibited by law from possessing a firearm.

(c) Any sheriff or police chief may file a petition under subdivision 12 seeking an order suspending or revoking an out-of-state permit holder's authority to carry a pistol in this state on the grounds set forth in subdivision 6, paragraph (a), clause (3). An order shall only be issued if the petitioner meets the burden of proof and criteria set forth in subdivision 12. If the court denies the petition, the court must award the permit holder reasonable costs and expenses including attorney fees. The petition may be filed in any county in the state where a person holding a license or permit from another state can be found.

(d) The commissioner must, when necessary, execute reciprocity agreements regarding carry permits with jurisdictions whose carry permits are recognized under paragraph (a).
Subd. 17.Posting; trespass.

(a) A person carrying a firearm on or about his or her person or clothes under a permit or otherwise who remains at a private establishment knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested is guilty of a petty misdemeanor. The fine for a first offense must not exceed $25. Notwithstanding section 609.531, a firearm carried in violation of this subdivision is not subject to forfeiture.

(b) As used in this subdivision, the terms in this paragraph have the meanings given.

(1) "Reasonable request" means a request made under the following circumstances:

(i) the requester has prominently posted a conspicuous sign at every entrance to the establishment containing the following language: "(INDICATE IDENTITY OF OPERATOR) BANS GUNS IN THESE PREMISES."; or

(ii) the requester or the requester's agent personally informs the person that guns are prohibited in the premises and demands compliance.

(2) "Prominently" means readily visible and within four feet laterally of the entrance with the bottom of the sign at a height of four to six feet above the floor.

(3) "Conspicuous" means lettering in black arial typeface at least 1-1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.

(4) "Private establishment" means a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose.

(c) The owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.

(d) This subdivision does not apply to private residences. The lawful possessor of a private residence may prohibit firearms, and provide notice thereof, in any lawful manner.

(e) A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests.

(f) Notwithstanding any inconsistent provisions in section 609.605, this subdivision sets forth the exclusive criteria to notify a permit holder when otherwise lawful firearm possession is not allowed in a private establishment and sets forth the exclusive penalty for such activity.

(g) This subdivision does not apply to:

(1) an active licensed peace officer; or

(2) a security guard acting in the course and scope of employment.
Subd. 18.Employers; public colleges and universities.

(a) An employer, whether public or private, may establish policies that restrict the carry or possession of firearms by its employees while acting in the course and scope of employment. Employment related civil sanctions may be invoked for a violation.

(b) A public postsecondary institution regulated under chapter 136F or 137 may establish policies that restrict the carry or possession of firearms by its students while on the institution's property. Academic sanctions may be invoked for a violation.

(c) Notwithstanding paragraphs (a) and (b), an employer or a postsecondary institution may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.
Subd. 19.Immunity.

Neither a sheriff, police chief, any employee of a sheriff or police chief involved in the permit issuing process, nor any certified instructor is liable for damages resulting or arising from acts with a firearm committed by a permit holder, unless the person had actual knowledge at the time the permit was issued or the instruction was given that the applicant was prohibited by law from possessing a firearm.
Subd. 20.Monitoring.

(a) By March 1, 2004, and each year thereafter, the commissioner must report to the legislature on:

(1) the number of permits applied for, issued, suspended, revoked, and denied, further categorized by the age, sex, and zip code of the applicant or permit holder, since the previous submission, and in total;

(2) the number of permits currently valid;

(3) the specific reasons for each suspension, revocation, and denial and the number of reversed, canceled, or corrected actions;

(4) without expressly identifying an applicant, the number of denials or revocations based on the grounds under subdivision 6, paragraph (a), clause (3), the factual basis for each denial or revocation, and the result of an appeal, if any, including the court's findings of fact, conclusions of law, and order;

(5) the number of convictions and types of crimes committed since the previous submission, and in total, by individuals with permits including data as to whether a firearm lawfully carried solely by virtue of a permit was actually used in furtherance of the crime;

(6) to the extent known or determinable, data on the lawful and justifiable use of firearms by permit holders; and

(7) the status of the segregated funds reported to the commissioner under subdivision 21.

(b) Sheriffs and police chiefs must supply the Department of Public Safety with the basic data the department requires to complete the

report under paragraph (a). Sheriffs and police chiefs may submit data classified as private to the Department of Public Safety under this paragraph.

(c) Copies of the report under paragraph (a) must be made available to the public at the actual cost of duplication.

(d) Nothing contained in any provision of this section or any other law requires or authorizes the registration, documentation, collection, or providing of serial numbers or other data on firearms or on firearms' owners.

Subd. 21.Use of fees.

Fees collected by sheriffs under this section and not forwarded to the commissioner must be used only to pay the direct costs of administering this section. Fee money may be used to pay the costs of appeals of prevailing applicants or permit holders under subdivision 8, paragraph (c); subdivision 12, paragraph (e); and subdivision 16, paragraph (c). Fee money may also be used to pay the reasonable costs of the county attorney to represent the sheriff in proceedings under this section. The revenues must be maintained in a segregated fund. Fund balances must be carried over from year to year and do not revert to any other fund. As part of the information supplied under subdivision 20, paragraph (b), by January 31 of each year, a sheriff must report to the commissioner on the sheriff's segregated fund for the preceding calendar year, including information regarding:

(1) nature and amount of revenues;

(2) nature and amount of expenditures; and

(3) nature and amount of balances.

Subd. 22.Short title; construction; severability.

This section may be cited as the Minnesota Citizens' Personal Protection Act of 2003. The legislature of the state of Minnesota recognizes and declares that the second amendment of the United States Constitution guarantees the fundamental, individual right to keep and bear arms. The provisions of this section are declared to be necessary to accomplish

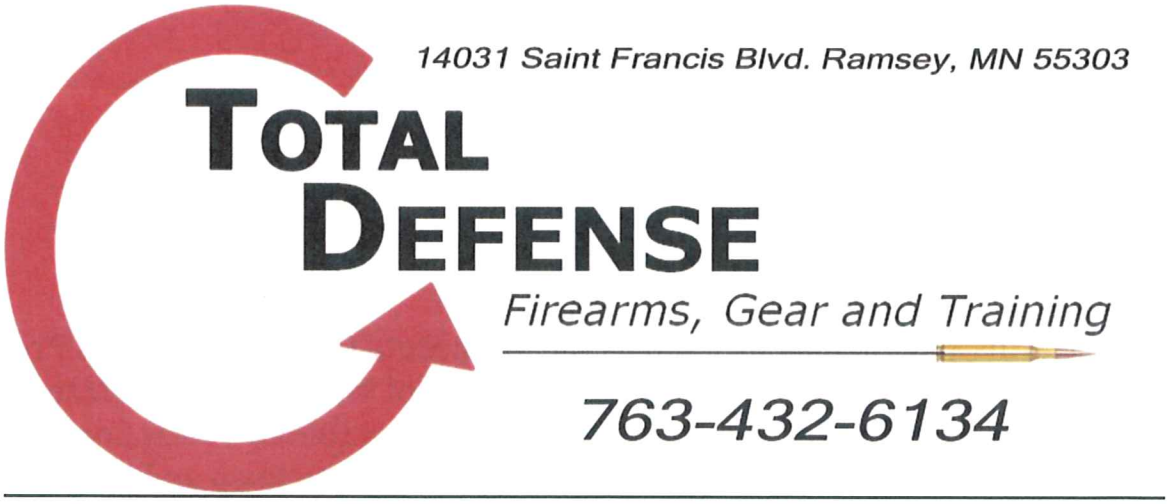
compelling state interests in regulation of those rights. The terms of this section must be construed according to the compelling state interest test. The invalidation of any provision of this section shall not invalidate any other provision.

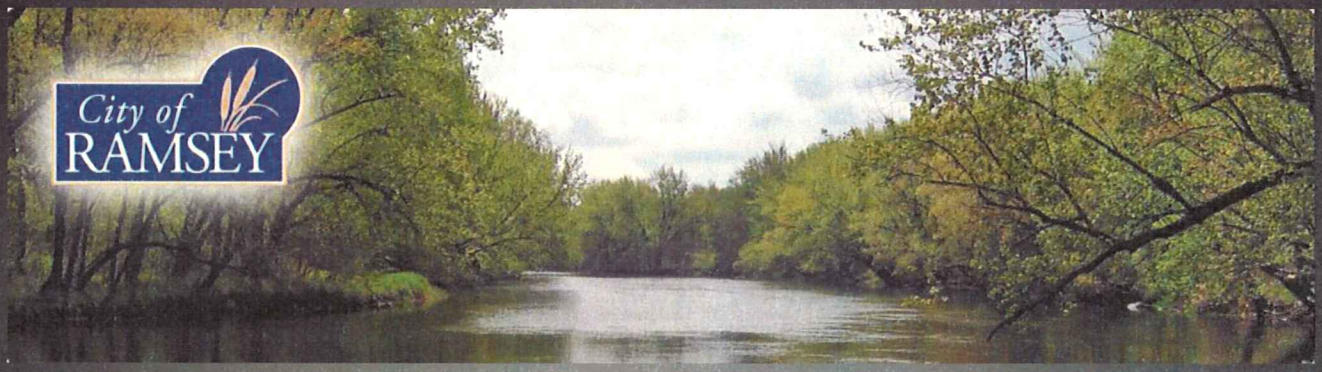
Subd. 23.Exclusivity.

This section sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, government official, government employee, or other person or body acting under color of law or governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.

Subd. 24.Predatory offenders.

Except when acting under the authority of other law, it is a misdemeanor for a person required to register by section 243.166 to carry a pistol whether or not the carrier possesses a permit to carry issued under this section. If an action prohibited by this subdivision is also a violation of another law, the violation may be prosecuted under either law.





Presented To:

CITY OF RAMSEY

GROWING LOCAL ECONOMY

TRIANGLE RECYCLING

21226 St Francis Blvd NW
Nowthen, MN 55303

(763) 753-1164

11/13/2012

MINNESOTA'S CLOTHING RECYCLER
WearEver
Recycling
shoes-pants-shirts-fabrics-towels-dresses-blankets

November 13, 2012

City of Ramsey
7550 Sunwood Drive NW
Ramsey, MN 55303

RE: Moving Clothing Recycling Into the City of Ramsey

Dear City of Ramsey :

Triangle Recycling is pleased to submit its proposal to the City of Ramsey. This proposal requests approval from the City to move my Minnesota-based clothing recycling program, Wear Ever Recycling, into the building located at 6001 – 167th Avenue NW.

Our company has been operating out of Nowthen, MN, for the last four years. Since 1946, the Bauer family has resided in Ramsey. My grandfather, father and brother all have operated their businesses out of Ramsey. I hope to do the same with my company.

The building we are interested in is located in the industrial park off of St Francis Boulevard NW and 167th Avenue NW. The site has been vacant for approximately four years and it is currently zoned for retail operations. Our proposal enhances the overall useage of the location. We intend to improve the esthetics of the location and to bring additional traffic to the industrial park.

I ask that you give this proposal significant forethought when considering the growth of the local economy. If allowed to do so, my family-owned, full service clothing recycling company will relocate from Nowthen, MN. We would be honored to have the opportunity to operate out of Ramsey and this proposal details the community benefits.

Please contact me with any questions. Thank you for your consideration.

Best Regards,

Jerry Bauer
CEO, Triangle Recycling
(763) 464-1140

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COMPANY BACKGROUND



Triangle Recycling is a family-owned company owned by Jerry Bauer. The Bauer family has resided in the City of Ramsey since 1946. Jerry's Grandparents and Father operated businesses out of Ramsey and today his Brother runs his business in Ramsey also It has always been Jerry's vision and dream to create and grow a viable Minnesota business for his family. Jerry has three sons that he hopes to teach the recycling industry and to mentor into taking ownership in the business.

The company's clothing recycling program, known as Wear Ever Recycling, is currently operating in Nowthen, MN. The company was formed in in July of 2007 and it began with one owner, one driver and an inventory of clothing recycling boxes. Over the last four years the company has grown approximately 400%. Customers will find locations across the state of Minnesota convenient for their recycling needs. Our vision is to continue growing and to offer other recycling programs to the community.

PROPOSAL

Triangle Recycling is proposing to purchase and utilize the building located at 6001 – 167th Avenue NW, Ramsey. This site would become a recycling center and a two phase program would apply:

Phase One – Relocate Existing Recycling Program

Move the existing clothing recycling program currently operating in Nowthen to the new Ramsey building. The move would include the entire staff, trucks and the baling system.

Phase Two – Expand Recycling Program

Triangle proposes to expand the number of materials that can be recycled. Items being considered include: Electronics, Small Metals, Mattresses, Plastics.

Once the current clothing recycling program is relocated, we will continue to research the viability of other recycling items. We view the Ramsey location as a recycling center for the community that offers recycling for multiple items.

WHAT WE RECYCLE

If it is wearable or made of fabric, we recycle it:

CLOTHES

- Baby & Kid's Clothes
- Dresses
- Jeans & T-shirts
- Socks & Slippers
- Sweaters
- Swimsuits & Shorts
- Ties & Suits
- Undergarments
- Workout Wear

OUTERWEAR

- Boots
- Coats
- Hats & Caps
- Mittens & Gloves
- Purses & Bags
- Sandals
- Shoes
- Sneakers

HOUSEHOLDS TEXTILES

- Bedspreads
- Bedskirts
- Blankets
- Comforters
- Fabric Curtains
- Pillow Shams
- Sheets
- Towels

CLOTHING COLLECTION

CONTAINERS

Collection containers are placed throughout Minnesota for convenient community drop off.







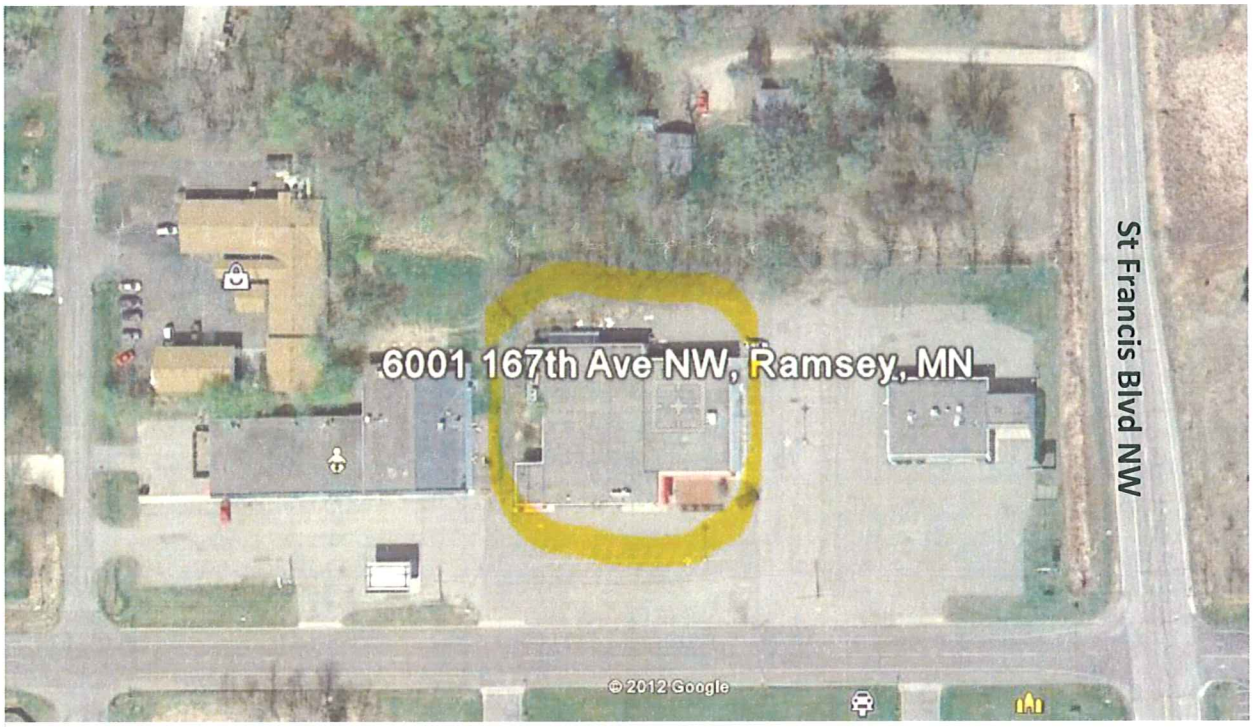
VEHICLES

One of our collection trucks is shown below while assisting the 2012 Twin Cities Marathon team in gathering the clothing discarded from runners throughout the race. This vehicle is also used to empty the collection containers.



LOCATION

6001 – 167TH Avenue NW, Ramsey, MN



The location of interest has been vacant for the last four years. It is an 18,000 square foot building that would provide adequate space for our proposed recycling program.

The building currently provides a loading dock and two doors to assist in receiving and shipping material. The on-site drop off location for customers would be located in the back of the building. All materials collected and baled would be inside of the building to maintain the integrity of the material, as well as, keeping the area esthetically pleasing.

Once in the building, we are committed to cleaning up and maintaining the grounds. Below is a list of items we will take care of with possession of the site:

Plans for Maintenance:

Paint Building
Remove Light Posts
Add Illumination Lights to Building
Clean Up Landscaping
Remove & Trim Tees
Clean Blacktop

COMMUNITY BENEFITS

The Environmental Protection Agency reports in 2010, that Americans generated about 250 million tons of trash. The country recycled / composted over 85 million tons of this material, which is equivalent to a 34.1 percent recycling rate.* With these types of numbers filling our landfills, it is important our country focus on ways to reduce waste and increase recycling.

The environmental footprint specific to clothing and textiles is substantial. Americans throw away a whopping 68 pounds of clothes on average each year, and we only buy 10 pounds of recycled clothes annually.**

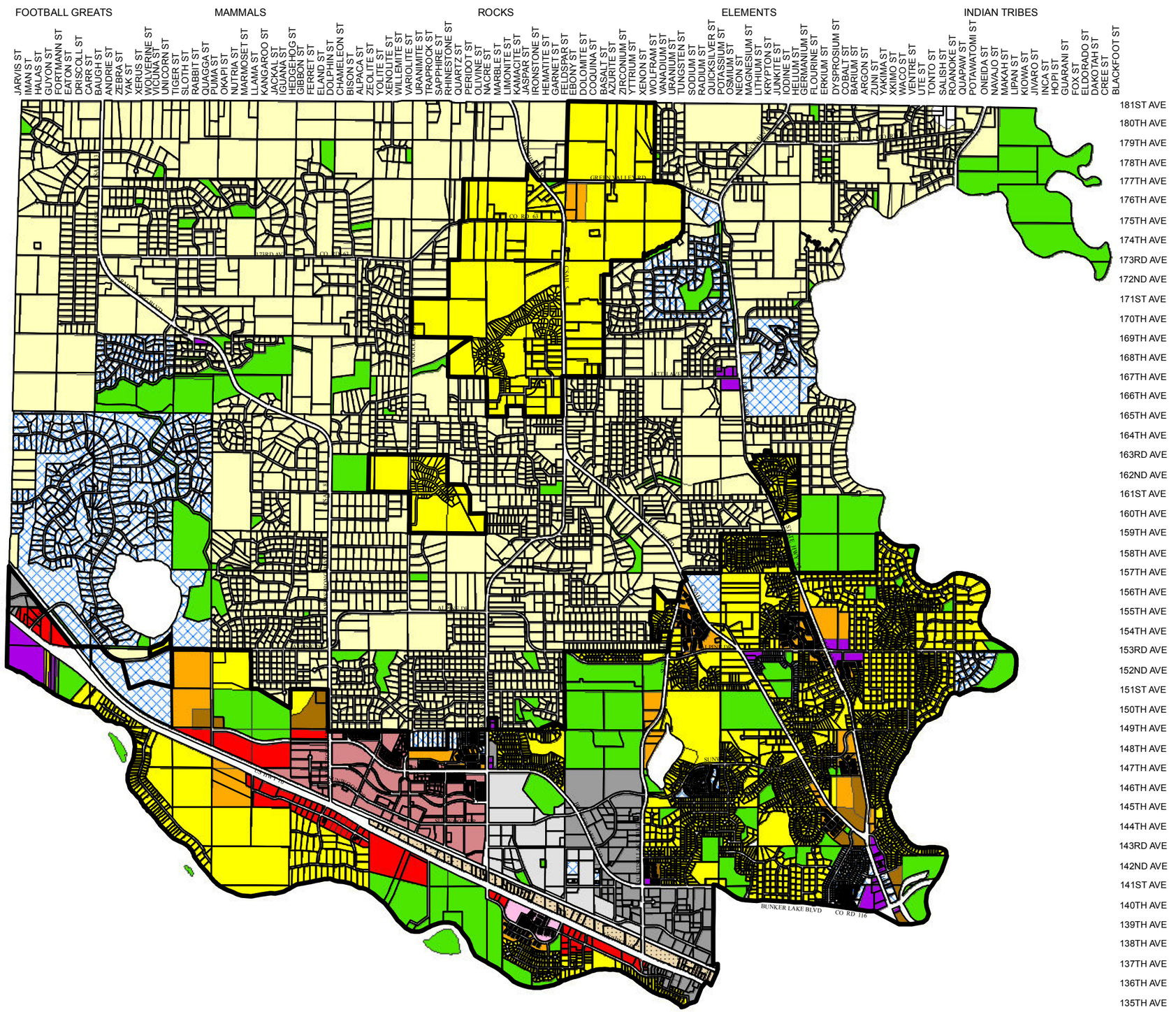
The good news is that reclaiming clothing and textiles for reuse and recycling saves a staggering amount of energy and natural resources. Some studies of this recycling process show remanufacturing or reusing textiles saving up to 85 percent of the energy required to produce the same product from virgin materials.

Specific to the Ramsey community, there are numerous advantages :

- ◊ Adding six jobs at the location initially
- ◊ Longer term, an additional 3 jobs potentially added
- ◊ Increasing the community's opportunity to recycle
- ◊ Reducing the amount of material going into our landfills
- ◊ Boosting traffic into the area to support neighboring businesses
- ◊ Offering a convenient location in the community
- ◊ Providing an efficient and easy drop off program right from the vehicle
- ◊ Personal assistance for customers as they off- load their recycling
- ◊ Improving the esthetics of an existing location that has been vacant

* http://www.epa.gov/osw/nonhaz/municipal/pubs/msw_2010_rev_factsheet.pdf

** http://earth911.com/news/2012/10/17/how-much-energy-water-saved-by-recycling/



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

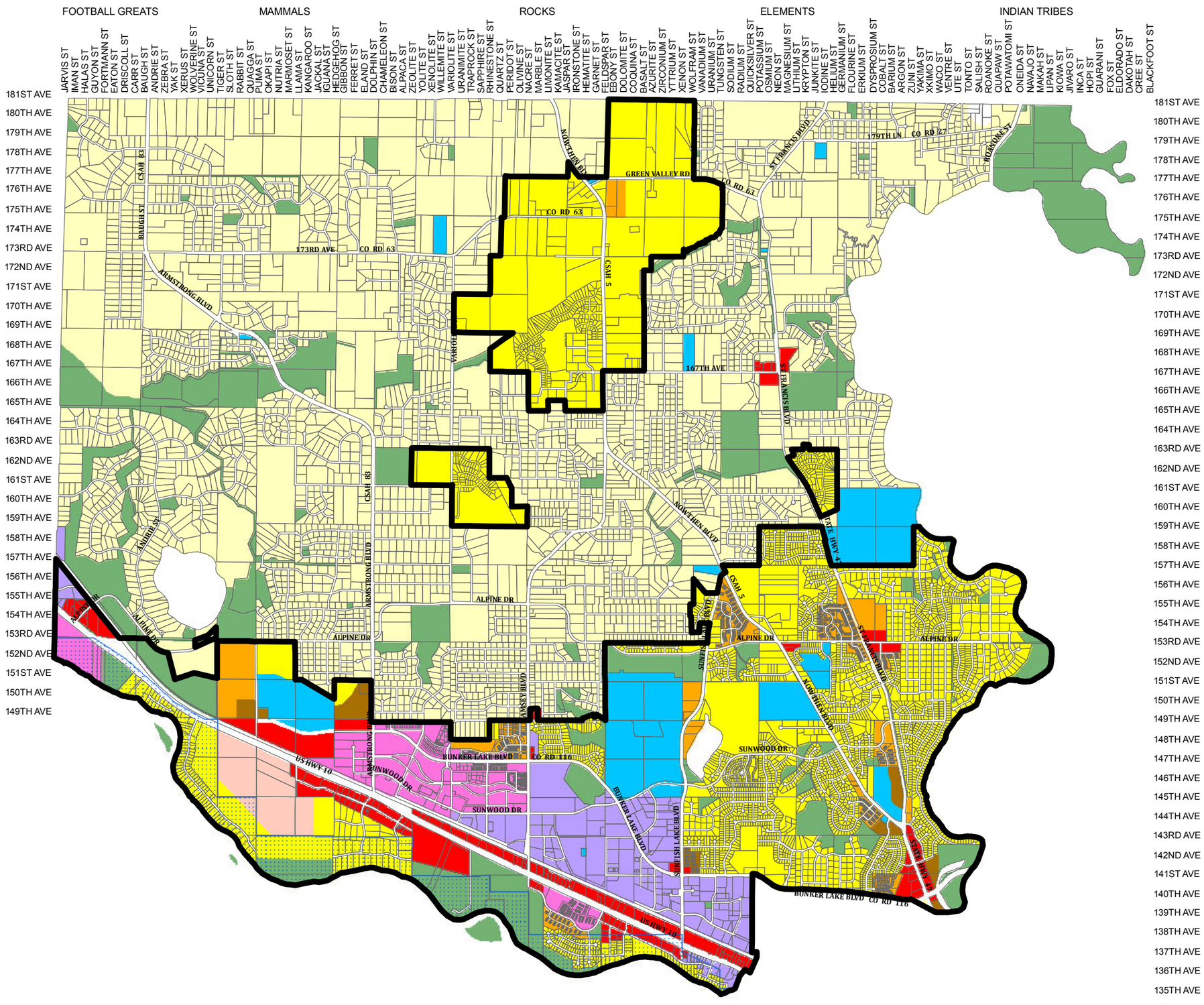
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This map has been compiled using information gathered from various governmental offices and other sources and is to be used for reference purposes only. It is neither a legally recorded map nor a survey and is not intended for use as one. The Geographic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

The City does not represent that the GIS data can be used for exact measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found, please contact (763) 427-1410.

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2030 Comprehensive Plan Future Land Use Map Amendment 11-02

- MUSA
- MRCCA Boundary

Future Land Use

- LDR
- MDR
- HDR
- Office Park
- Commercial
- MU
- Business Park
- Public
- Rural Developing
- Rural Preserve
- Park

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Special Planning Commission **5. 3.**

Meeting Date: 01/31/2013

By: Chris Anderson, Community Development

Information

Title:

PUBLIC HEARING: Consider Ordinance Amendments to Chapter 117 Related to Stormwater Controls and Illicit Discharges

Background:

The City of Ramsey is required by the Minnesota Pollution Control Agency (MPCA) to maintain a Municipal Separate Storm Sewer System (MS4) permit, which outlines stormwater pollution control standards for new development. A requirement of the MS4 permit is incorporating into City Code illicit discharge standards, which in essence means having regulations in place prohibiting the discharge of any substance other than stormwater into the storm sewer system.

The City is also a member of the Lower Rum River Watershed Management Organization (LRRWMO), which, in 2012, adopted their 3rd Generation Watershed Management Plan. Each member community is charged with ensuring their municipal regulations comply with the standards of the Watershed Management Plan. The 3rd Generation Plan includes certain new standards related to water quality and volume control that are presently in City Code.

Notification:

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

Observations/Alternatives:

The City presently has standards in City Code regarding stormwater pollution control. Subdivision II in Chapter 117, Article II, Division 6 outlines the requirements of stormwater management plans associated with proposed development. However, updates to this Subdivision are now necessary to implement the LRRWMO's 3rd Generation Plan. The main components of the ordinance amendment related to stormwater pollution control are water quality and volume control. Water quality standards focus primarily on phosphorous reduction (sixty percent [60%] removal efficiency) and removal of total suspended solids (ninety percent [90%] removal efficiency).

Another component of the ordinance amendment involves removing content that is no longer applicable. Section 117-395 reviews standards related to vegetated buffer protection for water bodies. However, in 2009, the City repealed it's wetland buffer ordinance, and thus, this Section is no longer applicable.

The proposed ordinance amendment adds Subdivision III to Chapter 117, Article II, Division 6. The intent of this Subdivision is to control or eliminate stormwater pollution associated with illicit discharges. The provisions within the Subdivision outline what constitutes an illicit discharge, what may be exempted from enforcement action related to illicit discharges, and emergency and non-emergency suspension of utility service related to illicit discharges. Adoption of this amendment would bring the City into compliance with the MS4 permit standards administered by the MPCA. Finally, in concert with the addition of this Subdivision, several new terms are proposed for inclusion in Section 117-1 (Definitions).

Action Options:

Recommend that the City Council not adopt the proposed ordinance amendments. The proposed ordinance amendments are intended to bring the City into compliance with the requirements of its MS4 permit and the

LRRWMO's 3rd Generation Plan. Failure to adopt these ordinance amendments may create difficulty for future development projects in obtaining required permits, which may stall or prevent a project from moving forward.

Recommend that the City Council adopt the proposed ordinance amendments. The need for amending City Code related to stormwater standards can be likened to updating the Zoning Code as a result of a Comprehensive Plan Update. The standards and goals of the MS4 permit program and 3rd Generation Plan (the LRRWMO's 3rd Generation Watershed Management Plan is their equivalent to a Comprehensive Plan) are implemented through the Zoning Code. Adopting these standards ensure the City is in compliance with both.

Funding Source:

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

Staff Recommendation:

Staff recommends approval of the proposed ordinance amendments related to stormwater management.

Committee Action:

Motion to recommend that the City Council adopt/not adopt the Ordinance amending Subdivision II and adding Subdivision III to Chapter 117, Article II, Division of City Code.

Attachments

Proposed Ordinance

Form Review

Inbox	Reviewed By	Date
Len Linton	Len Linton	01/23/2013 01:41 PM
Tim Gladhill	Tim Gladhill	01/25/2013 09:26 AM

Form Started By: Chris Anderson Started On: 01/23/2013 09:24 AM

Final Approval Date: 01/25/2013

ORDINANCE #13-01

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 DIVISION 6 SUBDIVISION II AND ADDING SUBDIVISION III TITLED "ILLICIT DISCHARGE ELIMINATION"

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 117-1 is hereby amended to include the following definitions (additions indicated as underline, deletions indicated as ~~strike-through~~):

CFR means Code of Federal Regulations

Contaminated means containing a harmful quantity of any substance.

Contamination means the presence of or entry of any substance which may be deleterious to the public health and/or the quality of the water into the public storm water system, Waters of the State, or Waters of the United States.

Cosmetic cleaning means cleaning done for cosmetic purposes to the exterior of buildings, motorized vehicles, parking lots, recreational vehicles or similar activity. It does not include industrial cleaning, cleaning associated with manufacturing activities, hazardous or toxic waste cleaning, or any cleaning otherwise regulated under federal, state, or local laws.

Harmful quantity means the amount of any substance that will cause pollution of waters of the City, State or Nation that will cause lethal or sub-lethal adverse effects on the representative, sensitive aquatic monitoring organisms residing in waters.

Illicit Discharge means any direct or indirect non-stormwater discharge to the storm sewer system except as exempted in Section 117-141 (b) (2).

Mobile commercial cosmetic cleaning means power washing, steam cleaning and any other mobile cosmetic cleaning operation of vehicles and/or exterior surfaces engaged for commercial purposes.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances, including sidewalks, municipal streets, driveways, curb & gutter, ditches, channels, retention basins, catch basins or similar storm water inlets, and/or any other conveyance delivering water to the public storm sewer collection and delivery system.

MS4 Permit means the Minnesota Pollution Control Agency (MPCA) permit issued to the City of Ramsey for monitoring and maintaining water quality in its MS4. The Environmental Protection Agency (EPA) has promulgated the National Pollution Discharge Elimination System (NPDES), Phase II storm water rules. The MPCA has delegated the responsibility to administer the National Pollution Discharge Elimination System, Phase II storm water permit system to MS4 communities.

NOI means Notice of Intent.

Notice of Intent (NOI) means a written notice to the Minnesota Pollution Control Agency that the City plans on meeting the MS4 permit requirements.

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Pollution means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any Waters of the State or the MS4, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into groundwater, subsurface soils, surface soils, the municipal separate storm sewer system (MS4) or the Waters of the State.

Storm Water Pollution Control Plan (also known as Storm Water Pollution Prevention Plan) means a joint stormwater and erosion and sediment plan that is a document containing the requirements of Article II, Division 6, Subdivision II of this Chapter, that when implemented will decrease soil erosion on a parcel of land and off-site nonpoint pollution.

SWPPP means storm water pollution prevention plan.

Section 117-386 is hereby amended as follows (additions indicated as underline, deletions indicated as ~~strike-through~~):

Sec. 117-386. – General Policy on Stormwater Runoff Volume and Rates Control.

~~For rivers and streams stormwater discharge rates must not increase over the predevelopment ten-year and 100-year peak storm discharge rates, based on the last ten years of how that land was used. Also accelerated channel erosion must not occur as a result of the proposed activity. For wetlands volume control is generally more important.~~

(a) All development disturbing one (1) acre or more must provide water quality treatment and runoff rate control for all stormwater.
    (1) Water Quality Treatment.
        a. Water quality treatment shall consist of a stormwater basin (dead storage) below the normal outlet greater than or equal to the runoff from a two and a half (2.5) inch storm over the entire contributing drainage area, assuming full development.
            1. The stormwater basin shall have an annual removal efficiency of sixty percent (60%) total phosphorous and ninety percent (90%) total suspended solids.
            2. The average depth of a stormwater basin shall be greater than three (3) feet.
            3. Skimmers shall be incorporated in the design of the outlet.
        b. Peak flow control shall be provided for the 2, 10, and 100 year storm peak discharges and post development rates shall not exceed pre-development rates.
        c. Stormwater basins shall be designed using an SCS Type 2 100-year return twenty-four (24) hour storm, 5.9 inch event.
    (2) Volume Control.
        a. A volume equal to one (1) inch of runoff from all impervious surfaces shall be infiltrated on site. Infiltration or evaporation from a stormwater basin may not be counted toward this requirement.
            1. Infiltration basing construction must follow the MN Stormwater Manual Chapter 12-INF, Vol. 2, or future updates.
        b. Alternatives will be considered where infiltration may not be achieved on site.
        c. The Lower Rum River Watershed Management Organization (LRRWMO), of which the City is a member, has established a Stormwater Impact Fund for projects that cannot meet the volume reduction requirements. The LRRWMO has also established a Volume Bank of available runoff retention Volume Credits. A sequencing process is outlined in the LRRWMO Third Generation Plan for utilizing the Volume Bank or paying into the Stormwater Impact Fund.

Sec. 117-392 (a) is hereby amended to read as follows (additions indicated as underline, deletions indicated as ~~strike-through~~):

(a) The applicant shall install, construct, or pay the city fees for all stormwater management facilities necessary to manage increased runoff, so that the discharge rates from stormwater treatment basins for the predevelopment 2, 10 and 100-year peak storm discharge rates are not increased. These predevelopment rates shall be based on the last ten years of how that land was used. Accelerated channel erosion must not occur as a result of the proposed land disturbing or development activity. An applicant may also make an in-kind or a monetary contribution to the development and maintenance of community stormwater management facilities designed to serve multiple land disturbing and development activities undertaken by one or more persons, including the applicant.

Sec. 117-392 (d) (2) is hereby amended to read as follows (additions indicated as underline, deletions indicated as ~~strike-through~~):

(2) Flow attenuation of treated stormwater by use of open vegetated swales and natural depressions, infiltration of the first one (1) inch of runoff from all impervious surfaces must be provided.

Sec. 117-392 (e) is hereby added to read as follows (additions indicated as underline):

(e) Permanent stormwater facilities shall be placed in drainage and utility easements. A stormwater facilities declaration and easement agreement shall be executed for all facilities that will be

maintained by the property owner. The form of the agreement shall follow the exhibit prepared by the LRRWMO. Stormwater facilities that will be maintained by the city shall be in drainage and utility easements dedicated to the City.

Sec. 117-395 (Vegetated Buffer Protection for Rivers, Streams and Wetlands) is hereby repealed in its entirety and Sections 117-396 to 117-405 are hereby renumbered as 117-395 to 117-404.

Chapter 117, Article II, Division 6 is hereby amended as follows (additions indicated as underline, deletions indicated as ~~strike-through~~):

Subdivision III - Illicit Discharge Elimination

117-412 - Purpose.

The purpose of this ordinance is to control or eliminate storm water pollution associated with illicit discharges that may occur within the city.

117-413 - Scope. The State of Minnesota requires illicit discharge limitations into surface waters; and the City Council desires to protect its surface waters; and to provide long-term planning to minimize the impact of illicit pollutants on storm water and groundwater; and to encourage "best management practices" for the control of these illicit discharges. This Subdivision outlines regulations to manage illicit storm water discharge within the city.

117-414 - Storm Water Planning and Development

(a) Administration. The City Engineer and authorized representatives shall administer, implement, and enforce the provisions of this Subdivision.

(b) Discharge to MS4 Prohibited.

(1) It is a violation for any person to introduce or cause to be introduced into the MS4 any discharge that is not entirely composed of stormwater.
(2) The following are considered exempt discharge activities from enforcement action for a violation of (b) (1):

a. A discharge authorized by, and in full compliance with a site specific NPDES permit such as a storm water management plan permit for construction activities.
b. A discharge or flow resulting from fire fighting by the Fire Department.
c. Agricultural storm water runoff.
d. A discharge or flow from water line flushing or disinfection that contains no harmful quantity of total residual chlorine or any other chemical used in line disinfection.
e. A discharge or flow from lawn watering or landscape irrigation.
f. A discharge or flow from a diverted stream flow or natural spring.
g. A discharge or flow from uncontaminated pumped groundwater or rising groundwater.
h. Uncontaminated groundwater infiltration.
i. Uncontaminated discharge or flow from a foundation drain, sump pump, or footing drain.
j. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container.
k. A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant.
l. A discharge or flow from a riparian habitat or wetland.

m. A discharge or flow from cold water (or hot water with prior permission of the City Engineer) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance.
n. Drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals. Drainage from swimming pool filter backwash is prohibited.

(3) No exemption shall be allowed under (c) (2):

a. The discharge or flow in question has been determined by the City to be a source of a pollutant or pollutants to the waters of the State or to the MS4; and
b. Written notice of such determination has been provided to the discharger; and
c. The discharge has continued after the expiration of the time given in the notice to cease the discharge.

(4) It is a violation for any person to introduce or cause to be introduced into the MS4 any harmful quantity of any substance.

(c) Connection of Sanitary Sewer Prohibited.

(1) It shall be a violation for any person to connect a line conveying sewage to the MS4 or to allow such a connection to continue.

(d) Nuisances.

(1) An actual or threatened discharge to the MS4 that violates or would violate this Subdivision is hereby declared to be a nuisance.
(2) A line conveying sewage or designed to convey sewage that is connected to the MS4 is hereby declared to be a nuisance.

(e) Emergency Suspension of Utility Service and MS4 Access.

(1) Providing there are State regulations restricting the interruption of service, the City may, without prior notice, suspend water service, sanitary sewer service, and/or MS4 discharge access to a person discharging to the MS4 or Waters of the State when such suspension is necessary to stop an actual or threatened discharge which:
a. Presents or may present imminent and substantial danger to the environment or to the health or welfare of persons; or
b. Presents or may present imminent and substantial danger to the MS4 or Waters of the State.
(2) When the City Engineer determines that City-provided water and/or sanitary sewer service needs to be suspended pursuant to (f) (1), the City Engineer is empowered to order such suspension.
(3) As soon as is practicable after the suspension of service or MS4 discharge access, the City Engineer shall notify the violator of the suspension in person or by certified mail, return receipt requested, and shall order the violator to cease the discharge immediately. When time permits, the City Engineer should attempt to notify the violator prior to suspending service or access.
(4) If the violator fails to comply with an order issued under (f) (3), the City Engineer may take such steps deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.

(5) The City shall not reinstate suspended services or MS4 access to the violator until:
   a. The violator presents proof, satisfactory to the City Engineer, that the noncomplying discharge has been eliminated and its cause determined and corrected; and
   b. The violator pays the City for all costs the City incurred in responding to, abating, and remediating the discharge or threatened discharge; and
   c. The violator pays the City for all costs the City will incur in reinstating service or access.

(6) A violator whose service or access has been suspended or disconnected may appeal such enforcement action to the City Engineer, in writing, within ten (10) days of notice of the suspension.

(7) The City may obtain a lien against the property to recover its response costs.

(8) The remedies provided by this Section are in addition to any other remedies set out in this Subdivision. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.

(f) Non-Emergency Suspension of Utility Service and MS4 Access.

(1) The City may terminate the City-provided water supply, sanitary sewer connection, and/or MS4 access any person discharging to the MS4 in violation of this Subdivision, if such termination would abate or reduce the illicit discharge.

(2) The City Engineer will notify a violator of the proposed termination of its water supply, sanitary sewer connection, and/or MS4 access. The violator may petition the City Engineer for reconsideration and a hearing before the City Council.

(3) The City shall not reinstate suspended services or MS4 access to the discharger until:
   a. The violator presents proof, satisfactory to the City Engineer, that the non-complying discharge has been eliminated and its cause determined and corrected; and
   b. The violator pays the City for all costs the City will incur in reinstating service or MS4 access.

(4) The remedies provided by this Section are in addition to any other remedies set out in this Subdivision. Exercise of this remedy shall not be a bar against, nor a prerequisite for, taking other action against a violator.

(5) It shall be a violation for any person to reinstate water service, sanitary sewer service, and/or MS4 access to premises that were terminated pursuant to this Subdivision without the prior approval of the City Engineer.

(g) The provisions of Section 1-7 (General Penalty; Continuing Violations) are hereby incorporated by reference, as though repeated verbatim herein.

SECTION 3. SUMMARY

The following is the official summary of Ordinance #13-01, 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 #13-01 to amend Ramsey, Minnesota City Code Chapter 117, Article II, Division 6 to:

- Incorporate water quality and volume control standards into the stormwater pollution control regulations.
- Remove vegetated buffer protection standards that are no longer applicable.
- Add Subdivision III, which shall regulate illicit discharges to Ramsey's Municipal Separate Storm Sewer System.

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, 2013.

_____
Mayor

ATTEST:

_____
City Clerk

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

Special Planning Commission **5. 4.**

Meeting Date: 01/31/2013

By: JoAnn Shaw, Community Development

Information

Title:

Zoning Bulletins

Background:

Enclosed are zoning periodicals for your review.

Notification:

Observations/Alternatives:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

Zoning Bulletins

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	01/25/2013 09:25 AM

Form Started By: JoAnn Shaw Started On: 01/24/2013 02:19 PM

Final Approval Date: 01/25/2013

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Zoning Bulletin

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Review of Enforcement of Regulations—Landowner Seeks Declaration on Backyard Internment from Court

Town argues court lacks jurisdiction as landowner failed to appeal letter of zoning enforcement officer

Contributors

Corey E. Burnham-Howard

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Citation: *Piquet v. Town of Chester, 306 Conn. 173, 2012 WL 3600314 (2012)*

CONNECTICUT (08/29/12)—This case addresses the following issue: when does a letter from a town's zoning enforcement officer constitute a "decision" from which a landowner can appeal? In other words, the case addressed: "what constitutes an appealable decision of a zoning compliance officer?"

The Background/Facts: Elise Piquet ("Piquet") owned property in Chester, Connecticut (the "Town"). After her husband died, she interred her husband's remains in the backyard of her property under the supervision of a licensed funeral director. Thereafter, the Town's zoning compliance officer (the "ZCO") issued a cease and desist order with regard to the burial for violation of the Town's zoning regulations. Piquet appealed from the cease and desist order, seeking a variance. A month later, on September 16, 2005, the ZCO informed Piquet by letter (the "September letter") that the burial was not permitted as a principal use or a special principal use in the residential district where Piquet's property was located. In the September letter, the ZCO also withdrew the cease and desist order for the purpose of allowing Piquet to remedy the violation. Piquet then informed the board of appeals (the "Board") that she was withdrawing her objection to the cease and desist order, without prejudice.

Two years later, Piquet commenced an action in trial court against the Town and the Town's planning and zoning commission (hereinafter, collectively, the "Town"). She asked the court to declare that she had the right to use her property for the internment of her husband's remains and, upon her death, for the internment of her remains as well.

The trial court issued judgment in favor of the Town.

Piquet appealed. The Appellate Court found that Piquet withdrew her variance application and did not otherwise appeal from the cease and desist order or the ZCO's September letter. The Appellate Court concluded that the trial court did not have subject matter jurisdiction over Piquet's action because Piquet had failed to exhaust her administrative remedies by not appealing to the Board.

Piquet again appealed. The Supreme Court of Connecticut certified Piquet's appeal, limited to the issue of whether the trial court lacked subject matter jurisdiction over Piquet's action because Piquet had failed to exhaust her administrative remedies.

On appeal, Piquet claimed that the Appellate Court incorrectly concluded that she should have appealed to the Board prior to filing her legal action. Among other things, she argued that there was no decision of the ZCO from which she could appeal since the ZCO had withdrawn the cease and desist order. Both Connecticut General Statutes § 8-7 and § 140G.1 of the Town's zoning regulations provided that the Board

had authority to hear appeals of "any order, requirement or decision" made by the ZCO.

In response, the Town maintained that the cease and desist order and the September letter issued by the ZCO to Piquet represented decisions from which Piquet properly could have appealed to the Board.

DECISION: Affirmed.

The Supreme Court of Connecticut held that the ZCO's September letter to Piquet was a decision from which Piquet could have appealed. The court agreed with the Appellate Court that the trial court lacked subject matter jurisdiction because Piquet had failed to exhaust her administrative remedies prior to filing the declaratory judgment action in court.

Rejecting Piquet's assertions, the court concluded that the ZCO's September letter constituted a decision from which Piquet could appeal to the Board. In so concluding, the court addressed, as a matter of first impression (i.e., the first time that court heard the specific issue): "what constitutes an appealable decision of a zoning compliance officer."

The court held that:

> when a landowner receives notice from a zoning compliance officer that the landowner's existing use of his or her property is in violation of applicable zoning ordinances or regulations, that interpretation constitutes a decision from which the landowner can appeal to the local zoning board of appeals pursuant to [CGS] § 8-7 and, when applicable, pursuant to local zoning regulations. Put differently, when a landowner obtains a clear and definite interpretation of zoning regulations applicable to the landowner's current use of his or her property, the landowner properly may appeal that interpretation to the local zoning board of appeals. Conversely, when a zoning enforcement officer provides an interpretation that is contingent on future events, that interpretation will not be appealable, and the landowner must await a subsequent, final determination following that interpretation—e.g., the issuance of a certificate of zoning compliance—in order to appeal to the local zoning board of appeals.

The court further clarified that: "when a zoning enforcement officer issues a letter notifying a landowner that he or she is in violation of the applicable zoning regulations, the landowner may appeal that interpretation regardless of whether the letter is accompanied by a cease and desist order or other remedial action."

See also: *Stepney, LLC v. Town of Fairfield, 263 Conn. 558, 563, 821 A.2d 725 (2003).*

See also: *Holt v. Zoning Bd. of Appeals of Town of Stonington, 114 Conn. App. 13, 968 A.2d 946 (2009).*

Case Note:

Piquet had also argued that an appeal to the Board would have been futile, as

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would excuse her from failing to exhaust administrative remedies. The court rejected this argument, finding Piquet failed to establish that claim.

Telecommunications—Township Denies Wireless Communications Carrier's Application to Construct Tower

Communications carrier alleges denial violates the federal Telecommunications Act

Citation: *T-Mobile Cent., LLC v. Charter Tp. of West Bloomfield, 2012 WL 3570666 (6th Cir. 2012)*

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

SIXTH CIRCUIT (MICHIGAN) (08/21/12)—This case addressed the issues of: (1) whether a township's reasons for denying a wireless communications carrier's application were not supported by substantial evidence in violation of the federal Telecommunications Act; and (2) whether a township's denial of a wireless communications carrier's application prohibited or had the effect of prohibiting the provision of personal wireless services, in violation of the federal Telecommunications Act. In addressing this second issue, the case addresses, as matters of first impression for the Sixth Circuit (i.e., the first time the Sixth Circuit has addressed these issues): (1) whether the denial of a single application from a wireless communications carrier can constitute an effective prohibition; and (2) whether the "significant gap" in service needed to establish an effective prohibition on the provision of personal wireless services focuses on the coverage of the applicant provider or whether service by any other provider is sufficient.

The Background/Facts: T-Mobile Central, LLC ("T-Mobile"), a wireless communications carrier in Michigan, identified a gap in coverage in West Bloomfield Township (the "Township") that adversely affected customers in that area. To remedy this gap, T-Mobile sought to construct a new wireless facility. After initially considering several possible sites—none of which T-Mobile claimed were technically feasible or practically available—T-Mobile decided that the best option would be to construct a facility at a utility site on a property owned by Detroit Edison. The facility contained an existing 50-foot pole,

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which T-Mobile wanted to replace with a 90-foot pole disguised to look like a pine tree with antennas fashioned as branches (a "monopine"). This site was not located within the two cellular tower overlay zones designated in the Township's Zoning Ordinance, where wireless facilities are considered a use permitted by right, subject only to site approval. Therefore, T-Mobile needed to seek special land-use approval and site-plan approval.

On December 17, 2008, T-Mobile filed an application with the Township to obtain special land-use approval for the proposed site. Ultimately, the Township Planning Commission recommended to the Board of Trustees of the Township (the "Board") that T-Mobile's application should be denied. The Board denied T-Mobile's application.

T-Mobile then sought an injunction in district court that would direct the Board to grant its application. Among other things, T-Mobile argued that: (1) the denial of its application was not supported by substantial evidence, in violation of the Telecommunications Act, 47 U.S.C.A. § 332(c)(7)(B)(iii); and (2) the denial of its application had the "effect of prohibiting the provision of personal wireless services" in violation of the Telecommunications Act, 47 U.S.C.A. § 332(c)(7)(B)(i)(II).

The district court held that the Township's grounds for denial were not supported by substantial evidence. The district court also held that T-Mobile could not feasibly locate the facility elsewhere and that the Township had effectively prohibited the provision of wireless services in violation of the federal Telecommunications Act.

The Township appealed.

DECISION: Affirmed.

The United States Court of Appeals, Sixth Circuit, first agreed that the Township's grounds for denial of T-Mobile's application were not supported by substantial evidence in violation of the Telecommunications Act, 47 U.S.C.A. § 332(c)(7)(B)(iii).

The court explained that pursuant to 47 U.S.C.A. § 332(c)(7)(B)(iii): "Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." The court explained that there must be substantial evidence "in the context of applicable state and local law." Thus, the nature of the evidence relied on by the local zoning board in its decision must be "substantial evidence" that is "substantiated."

Here, the court found the Township's reasons for denial were not based on substantial evidence in the record. The court found the evidence relied upon by the Board—such as general concerns from a few residents—was merely "alleged," not "substantiated."

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Next, the court concluded that the Township's denial of T-Mobile's application violated the Telecommunications Act, 47 U.S.C.A. § 332(c)(7)(B)(i)(II), in that it prohibited or had the effect of prohibiting the provision of personal wireless services.

In so concluding, the court adopted the First Circuit's two-part test to consider whether the denial of an application amounts to an effective prohibition. Under the test, the denial of an application amount to an effective prohibition if there is: (1) a "showing of a 'significant gap' in service coverage and (2) some inquiry into the feasibility of alternative facilities or site locations."

Addressing the first part of this test, as a matter of first impression, the Sixth Circuit held that the denial of a single application from a wireless communications carrier can constitute an effective prohibition of personal wireless services. Also as a matter of first impression, the Sixth Circuit held that a "significant gap" in service coverage exists if "a provider is prevented from filing a significant gap in its own service coverage." The court provided that such a significant gap in coverage need not be shown by customer complaints, but that evidence such as RF propagation maps and drive test data, along with a report by an RF engineer, are "suitable to support a claim for a substantial gap in coverage."

Looking at the record in the case at hand, the court found that the denial of T-Mobile's application "prevented T-Mobile from filling a significant gap in its own service coverage."

Addressing the second part of the two-part test—whether there were feasible alternative facilities or site locations—the Sixth Circuit adopted the "least intrusive" standard (as opposed to the "no viable alternatives" standard followed by the First and Seventh Circuits): The wireless communications carrier is required to show that "the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sough to serve."

Applying that standard here, the court held that T-Mobile satisfied its burden. "T-Mobile made numerous good-faith efforts to identify and investigate alternative sites that may have been less intrusive on the 'values that the denial sought to serve," found the court.

The court concluded that the Township's decisions in denying T-Mobile's application had "the effect of prohibiting the provision of personal wireless services" and thus violated 47 U.S.C.A. § 332(c)(7)(B)(i)(II).

See also: *MetroPCS, Inc. v. City and County of San Francisco, 400 F.3d 715 (9th Cir. 2005).*

See also: *APT Pittsburgh Ltd. Partnership v. Penn Tp. Butler County of Pennsylvania, 196 F.3d 469 (3d Cir. 1999).*

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Proceedings—After Planning and Zoning Commission Recommends Approval of Zoning Request, Board of Aldermen Does Not Notify Applicant of Related Hearing

Board then denies applicant's zoning request, and applicant claims due process violation

Citation: *McKee v. City of Starkville, 2012 WL 3191986 (Miss. Ct. App. 2012)*

MISSISSIPPI (08/07/12)—This case addressed the issue of whether a party that has not been aggrieved by the recommendation of the city engineer or advisory committee is still entitled to notice of a hearing before the governing body of the city where the party's zoning request is considered.

The Background/Facts: George C. McKee ("McKee") owned property in the City of Starkville, Mississippi (the "City"). In order to expand an existing apartment complex McKee owned, McKee sought to rezone.75 acres of his property from R-2 ("single family/duplex") to R-5 ("multi-family/high-density"). He filed an application with the City. The City's Planning and Zoning Commission ("PZC") unanimously recommended approval of McKee's rezoning request to the City's Board of Aldermen (the "Board"). Despite the PZC's recommendation, the Board denied McKee's request based on its belief that McKee had not sufficiently proven a change in the neighborhood's character.

McKee appealed the Board's decision to the Oktibbeha County Circuit Court, which affirmed the Board's decision.

McKee again appealed. Among other things, he argued that his due process rights were violated because he did not have notice of the Board's meeting where his application was denied. The City contended that, based on the plain language of Mississippi Code Annotated § 17-1-17 (Supp.2011), McKee was not entitled to notice of the Board's meeting.

Section 17-1-17 provides, in pertinent part: "any party aggrieved with the recommendation of the city engineer or advisory committee

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shall be entitled to a public hearing before the governing body of the city, with due notice thereof after publication for the time and as provided in this section."

The City maintained that because the PZC recommended approval of McKee's rezoning application, he was not an aggrieved party and was not entitled to a public hearing before the Board under § 17-1-17.

DECISION: Reversed, and matter remanded.

The Court of Appeals of Mississippi held that McKee's due process rights were violated when the Board failed to notify him of the board meeting where it considered, and ultimately denied, his rezoning request.

In so holding, the court noted that: "[w]hile the plain language of [17-1-17] supports the City's position, it produces a result that is inconsistent with . . . existing case law." Pursuant to case law, "in proceedings before city zoning authorities, due process requires notice and 'the opportunity to be heard at all critical stages of the process.' "

The court acknowledged that if the Board had been bound by the PZC's recommendations, then McKee would not have been due notice of the Board's hearing on his zoning request. However, since the Board was not bound by the PZC's recommendation, and the Board could deny McKee's request even where the PZC recommended approval, then McKee was due notice of the hearing, said the court. In other words, held the court: "even where a party has not been aggrieved by the recommendation of the city engineer or advisory committee, he is still entitled to notice of the hearing before the governing body of the city where the rezoning request is considered."

Here, the court concluded that because McKee was not given notice of the Board's meeting where his rezoning request was denied, he was denied due process. Consequently, the court remanded the case to the Board for a properly noticed hearing on McKee's rezoning request.

See also: *Thrash v. Mayor and Com'rs of City of Jackson, 498 So. 2d 801 (Miss. 1986).*

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Use/Interpretation—Retail Store Owner Seeks to Install Gasoline Filling Station as Accessory Use

Township denies request, saying only indoor retail sales are permitted in zoning district

Citation: *In re Costco Wholesale Corp., 2012 WL 3079258 (Pa. Commw. Ct. 2012)*

PENNSYLVANIA (07/31/12)—This case addressed the issue of whether a gasoline filling station was permitted as an accessory use under a township's zoning ordinance, which required accessory uses meet the standards applicable to the permitted use and the standards included being an "indoor facility."

The Background/Facts: Costco Wholesale Corporation ("Costco") owned and operated a retail store in the Expressway Corridor Preservation Overlay District ("Overlay District") in Montgomery Township (the "Township"). Costco proposed to install 16 gasoline fueling pumps in the parking lot next to its existing store. It believed gasoline filling stations were permitted as an accessory use under the Township's Zoning Ordinance.

The Township's Zoning Officer informed Costco that the Overlay District permitted indoor retail sales, but not outdoor retail sales, such as gasoline filling stations. The Zoning Officer also rejected Costco's proffered theory that the outdoor sale of gasoline was a use subordinate and customarily incidental to an indoor retail store.

Costco appealed the Zoning Officer's determination to the Zoning Hearing Board (the "Board"). After a hearing, the Board denied Costco's appeal of the Zoning Officer's determination that Costco's proposed gasoline filling station was not authorized in the Overlay District. The Board's decision was based upon its construction of the Zoning Ordinance. It construed the Zoning Ordinance as not permitting gasoline filling stations in the Overlay District. In regard to Costco's argument that the gasoline filling station was a permitted accessory use, the Board explained that accessory uses were permitted where: (1) the use was subordinate to the permitted Overlay District use; (2) the use was customarily incidental to the permitted Overlay District use; and (3) the use complied "with the standards applicable to the permitted use to which they are accessory." Here, the Board reasoned that the "standard" applicable to the permitted use of retail sales was that the sales be conducted in an "indoor" facility. Because

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the sale of gasoline would take place outdoors, that use would not comply with the standard for a permitted retail use, concluded the Board.

Costco appealed to the trial court. The trial court affirmed. Agreeing with the Board's interpretation of the Ordinance, the trial court found that the Ordinance required a proposed accessory use to comply with the standards applicable to the permitted use to which it was accessory. The trial court held that Costco's proposed sale of gasoline did not meet the standard that retail uses be conducted in "indoor facilities" because a gasoline service station is conducted outdoors.

Costco appealed.

DECISION: Affirmed.

The Commonwealth Court of Pennsylvania held that the sale of gasoline was not a permitted accessory use under the Ordinance because accessory uses were permitted only when "in compliance with the standards applicable to the permitted use to which they are accessory" and those standards required the use be conducted in "indoor facilities," and gasoline filling stations were an outdoor facility.

Analyzing the Ordinance, the court found that the only "[s]tandard retail uses permitted by right" were "[s]hops, stores or other indoor facilities for the retail sale of goods or merchandise to the general public . . . ." The Ordinance provided a "long and varied," "exhaustive" list of examples of retail uses permitted by right. The sale of gasoline was not on that list.

The court noted that "indoor" was not defined in the Ordinance. Looking to the plain meaning of "indoor," the court found it was "something done inside a building." Pumping gasoline, noted the court, does not take place indoors. Moreover, "other indoor facilities" must be interpreted, said the court, to include things of the same type as what is included in the preceding list, i.e., "shops" and "stores." A gasoline filling station is not a "shop" or a "store," said the court. In sum, a gasoline filling station is not a shop, store, or other indoor facility, found the court.

Costco had argued, however, that some of the retail uses in the Ordinance's list of retail uses permitted by right took place outside—such as "drive-through" windows. The trial court had explained that the drive-through window of a restaurant was more indoors than outdoors, and the appellate court found its reasoning to be logical.

The court concluded by acknowledging that, logically, Costco's proposed gasoline filling station appeared to be "a natural adjunct to its retail store." Still, the court found it clear that a gasoline filling station was an outdoor facility, and thus did not meet the standard for retail stores (i.e., an "indoor facility") permitted by right under the Ordinance.

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Because accessory uses were permitted only when "in compliance with the standards applicable to the permitted use to which they are accessory," the sale of gasoline was an impermissible use under the Ordinance, held the court.

See also: *Independent Oil and Gas Ass'n of Pennsylvania v. Board of Assessment Appeals of Fayette County, 572 Pa. 240, 814 A.2d 180, 184, 158 O.G.R. 1019 (2002).*

Zoning News from Around the Nation

NATIONWIDE

Funded by a $1.5 million grant from the National Institutes of Health, researchers at the University of Illinois at Chicago plan to study links between zoning laws and increases in physical activity. The university has said that the study "is one of the first to look at the relationships between land use as dictated by zoning laws and its influence on physical activity among adults." According to the university, researchers have found communities in 36 states that are using zoning laws to make changes intended to increase activity and exercise.

Source: *St. Louis Post-Dispatch; www.stltoday.com*

ARIZONA

State and county prosecutors are challenging Arizona's medical marijuana program. They are reportedly asking a court to rule that the voter-approved law is illegal on grounds that it conflicts with federal drug law. The case pending in Maricopa County Superior Court involves a company applying to operate a medical marijuana dispensary in Sun City. White Mountain Health Center Inc. sued when county officials would not provide zoning clearances needed under the medical marijuana law. Prosecutors are not asking the court to dismiss White Mountain's lawsuit on grounds that Arizona's law is illegal.

Source: *The Republic; www.therepublic.com*

PENNSYLVANIA

The City of Philadelphia recently switched over to a new zoning code, "culminating a four-year effort to simplify the development process and upgrade the city's housing stock for modern tastes." A new 384-page manual now replaces the previous zoning regulations that had been in use since 1962.

Source: *Philadelphia Inquirer; http://articles.philly.com*

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Standing—Through enactment of ordinances, city rezones property from residential to industrial

Adjacent property owners in foreign municipality challenge the constitutionality of the ordinances

Citation: *Moore v. Middletown, 2012-Ohio-3897, 2012 WL 3734455 (Ohio 2012)*

OHIO (08/30/12)—This case addressed the issue of whether property owners whose property is adjacent to property rezoned by a foreign municipality have legal standing (i.e., the legal right to bring the action)to bring a

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declaratory-judgment action and/or a mandamus action to challenge the constitutionality of a zoning action.

The Background/Facts: In August 2008, certain property in Middletown, Ohio—known as the "Martin-Blake" property—was rezoned, through the enactment of two ordinances (the "ordinances"). The property was rezoned from low-density residential use to general industrial.

Lori A. and Matthew E. Moore (the "Moores") owned property in Monroe, Ohio, which was adjacent to the Martin-Blake property in Middletown, Ohio. Following enactment of the ordinances, the Moores sued the City of Middletown (the "City"). The Moores sought both a declaratory judgment and a writ of mandamus. In the declaratory judgment action, they asked the court to declare that the ordinances were arbitrary, capricious, and unconstitutional and in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and the Ohio Constitution, Article I, § 16. In their request for a writ of mandamus, they claimed that the City's action constituted a taking of their private property and unlawfully deprived them of "property rights consistent with their investment backed expectations," and entitled them to compensation for the taking.

The City moved to dismiss the case. Among other things, it asserted that the Moores lacked standing (i.e., the legal right) to bring their claims.

On the issue of standing, the trial court ruled that the Moores had standing to bring a declaratory-judgment action because they were persons affected by the City's ordinances—no matter that their property was in a different municipality. The trial court also ruled that the Moores lacked standing to bring the mandamus action because "even if there had been a taking, mandamus to appropriate the land was unavailable as a matter of law because Middletown could not appropriate land outside its jurisdictional limits." Ultimately, the trial court, dismissed the case, finding the Moores failed to state a claim upon which relief could be granted.

The Moores appealed. The court of appeals affirmed the trial court's ruling. However, in so doing, it held that the Moores lacked standing to bring their claims, but did not distinguish between the declaratory judgment and mandamus claims. The court held that a nonresident contiguous property owner has no standing to bring an action against an adjacent political subdivision seeking compensation for rezoning property located solely within the political subdivision's boundaries.

The Moores again appealed.

DECISION: Judgment of court of appeals affirmed in part, reversed in part, and remanded.

The Supreme Court of Ohio concluded that the Moores lacked standing to bring their partial takings claim seeking mandamus relief, but had standing to bring their declaratory judgment action.

The court concluded that the Moores lacked standing to bring the mandamus action because they could not establish that their mandamus claim would provide them with redress for any injury they suffered. This was because Ohio law holds that a municipality has no authority to appropriate property outside its jurisdictional limits (i.e., mandamus would not lie to compel the City to appropriate property in Monroe, where the Moores lived).

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In finding that the Moores had standing to bring the declaratory judgment action, the court held that: "[P]roperty owners whose property is adjacent to property rezoned by a foreign municipality may use a declaratory-judgment action to challenge the constitutionality of the zoning action if the owner pleads that he has suffered an injury caused by the rezoning that is likely to be redressed." In so holding, the court pointed to the fact that Ohio's Revised Code broadly authorizes plaintiffs to bring actions for a declaration of "rights, status, and other legal relations whether or not further relief is or could be claimed." (R.C. 2721.02.) In other words, property owners whose property rights are directly affected by a statute or ordinance are "entitled to obtain a declaratory determination as to the validity of the statute or ordinance." Declaratory relief would be available to the Moores if they could show that: (1) a real controversy existed between them and the City; (2) the controversy was justiciable; and (3) speedy relief was necessary to preserve the rights of the parties.

Here, the court found that the Moores' allegations of the declaratory judgment complaint based on equal protection and due process theories pleaded a real, justiciable controversy over zoning regulations enacted by the City that affected the Moores' rights. Thus, the court concluded that the Moores had standing to challenge, in a declaratory judgment action, the constitutionality of the City's ordinances. (The court made no opinion on the merit of the Moores' claims.)

See also: *Clifton v. Blanchester, 131 Ohio St. 3d 287, 2012-Ohio-780, 964 N.E.2d 414 (2012).*

See also: *Borough of Cresskill v. Borough of Dumont, 15 N.J. 238, 104 A.2d 441 (1954).*

Case Note:

In its decision, the court made clear that a property owner does not always lack standing to bring a mandamus claim against a municipality when the affected property is outside the municipality's corporate limits.

Case Note:

Also in its decision, the court expressly "decline[d] to limit standing to residents of the municipality that zoned or rezoned the land."

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Use Subject to Regulation—Private sanitary landfill's request for rezoning is denied

Landfill owner then argues landfill is a public utility exempt from local zoning regulation

Citation: *Rumpke Sanitary Landfill, Inc. v. Colerain Twp., 2012-Ohio-3914, 2012 WL 3848391 (Ohio 2012)*

OHIO (09/05/12)—This case addressed the issue of whether a private sanitary landfill is a public utility that is exempt from local zoning regulations pursuant to state law.

The Background/Facts: Rumpke Sanitary Landfill, Inc. ("Rumpke") operated a sanitary landfill in Colerain Township in Hamilton County, Ohio (the "Township"). In March 2006, Rumpke applied to change the existing zoning of its property so that it could expand its landfill. The Hamilton County Regional Planning Commission recommended the rezoning requested by Rumpke. However, the Township's Zoning Commission recommended that the Township Board of Trustees (hereinafter, the Township and the Township Board of Trustees are collectively referred to as the "Township") deny the proposed rezoning. Following public hearings, the Township denied Rumpke's application.

Rumpke then filed a legal complaint against the Township. Among other things, Rumpke asked the court to declare that Rumpke's private sanitary landfill was a "public utility" exempt from zoning under Ohio statutory law, R.C. 519.211. That statute sets forth limitations on zoning powers. It exempts from local zoning restrictions, public utilities, "whether publicly or privately owned," or the use of land by any public utility, for the operation of its business. The statute does not define "public utility."

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the trial court granted summary judgment in favor of Rumpke. It held that Rumpke's sanitary landfill was a "public utility, not subject to the zoning restrictions of [the Township]."

The Township appealed. And, the First District Court of Appeals also declared that Rumpke was a public utility for the purposes of R.C. 519.211.

The Township again appealed.

DECISION: Judgment of court of appeals reversed.

The Supreme Court of Ohio held that "a private sanitary landfill is not a public utility and is therefore subject to township zoning regulations." More specifically, the court held that "a privately owned sanitary landfill cannot be a common-law public utility exempt from township zoning when there is no public regulation or oversight of its rates and charges, no statutory or regulatory requirement that all solid waste delivered to the landfill be accepted for disposal, and no right of the public to demand and receive its services."

In so holding, since R.C. 519.211 did not define "public utility," the court

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looked to case law for guidance as to what constitutes a "public utility" for the purposes of R.C. 519.211. The court found that to qualify as a "public utility" under R.C. 519.211, and thus be exempt from the local zoning restrictions, an entity must: (1) provide a "public service"; and (2) the nature of its operation must be a matter of "public concern." When analyzing whether an entity provides a "public-service," the court looks to whether there: "is a devotion of an essential good or service to the general public which has a legal right to demand or receive this good or service." In other words, "the entity must provide its good or service to the public indiscriminately and reasonably," with an "obligation to provide the good or service which cannot be arbitrarily or unreasonably withdrawn." As for the public-concern factor, there must be an "indiscriminate treatment of that portion of the public which needs and pays for the vital good or service offered by the entity." When determining whether an enterprise conducts itself in such a way as to become a matter of public concern, the court looks to factors such as: the good or service provided; competition in the local marketplace; and regulation by governmental authority.

Analyzing Rumpke under these factors, the court concluded that Rumpke was not a public utility because there was a lack of governmental regulation over the public service and public concern factors. Although Rumpke was subject to environmental regulations, the court found that there was a lack of governmental control over the public-service and public-concern factors. With regard to the public service factor, the lack of other governmental regulation meant that Rumpke had full discretion in determining to whom it provided service and how or when that service was provided. There was no assurance or guarantee that Rumpke would provide its services to the public indiscriminately and reasonably, nor was there anything preventing Rumpke from arbitrarily or unreasonably withdrawing its services. Furthermore, as a private company, Rumpke had the ability to set its own rates without any governmental oversight. With regard to the public concern factor, Rumpke did occupy a monopolistic position in the marketplace and provided an essential service. However, no governmental body regulated Rumpke's rates or methods, allowing Rumpke to treat discriminately and arbitrarily the portion of the public to whom it provides its services.

See also: *Marano v. Gibbs, 45 Ohio St. 3d 310, 544 N.E.2d 635, 107 Pub. Util. Rep. 4th (PUR) 558 (1989).*

See also: *A & B Refuse Disposers, Inc. v. Ravenna Twp. Bd. of Trustees, 64 Ohio St. 3d 385, 1992-Ohio-23, 596 N.E.2d 423 (1992).*

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Validity of Zoning Regulations—County's adequate public facilities ordinance effectively conditions residential development approval on fee payment

Developer challenges ordinance, arguing county lacked authority to adopt ordinance pursuant to its general zoning powers

Citation: *Lanvale Properties, LLC v. County of Cabarrus, 2012 WL 3854857 (N.C. 2012)*

NORTH CAROLINA (08/24/12)—This case addressed the issue of whether a county in North Carolina had the authority, pursuant to its general zoning powers, or, in the alternative, a 2004 law enacted by the General Assembly, to adopt an adequate public facilities ordinance ("APFO") that effectively conditioned approval of new residential construction projects on developers paying a fee to subsidize new school construction to prevent overcrowding in the county's public schools.

The Background/Facts: Concerned about the effect of explosive population growth on its ability to provide adequate public facilities for its citizens, the Cabarrus County Board of Commissioners (the "Board") adopted an initial APFO in January 1998. On August 20, 2007 the Board adopted a revised APFO. The revised APFO was added as a new chapter to the zoning ordinance of Cabarrus County (the "County"). The APFO effectively linked residential development approval to the availability of space for students in the County's public schools. Under the APFO, if there was sufficient unused student capacity to support a proposed development, the Board was required to approve the development without additional APFO conditions. However, if available student capacity was insufficient to support the development, the Board could either deny the developer's application or approve it subject to several "conditions that reduce[d] or mitigate[d] the impacts of the proposed development." Included among those conditions was: entering into a consent agreement involving a monetary contribution; the donation of land; or construction of a school. In practice, those referenced "monetary contributions" were adequate public facilities fees, which became known as "voluntary mitigation payments" ("VMPs"). In 2008 the Board increased the VMP to: $8,617.00 per single family unit; $4,571.00 per townhouse; and $4,153.00 per multifamily unit.

Lanvale Properties, LLC ("Lanvale") planned to construct a residential development on fifty-four acres located within the territorial jurisdiction of the City of Locust ("Locust"). Most of that site was in the County. Lanvale alleged that the County refused to issue a building permit for its development until it complied with the APFO. On April 4, 2008, Lanvale filed a declaratory

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action against the County. It asked the court to declare that the APFO was invalid on various statutory and constitutional grounds. Among other things, Lanvale argued that the County lacked the authority, under the enabling statutes that provided its general zoning powers, to adopt the APFO.

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the trial court issued summary judgment in favor of Lanvale. The court concluded that the County did not have inherent authority to enact its APFO pursuant to North Carolina's general zoning or subdivision statutes.

The County appealed. The Court of Appeals affirmed, agreeing with the trial court.

The County petitioned for discretionary review. Among other things, the County argued that the County was authorized to adopt the APFO pursuant to its "general zoning power" under §§ 153A-340(a) and 153A-341 of the North Carolina General Statutes. Section 153A-121(a) gives counties the general authority to adopt zoning ordinances. Section 153A-340(a) provides that county zoning ordinances may regulate: the height and size of structures, the percentage of lots that may be occupied; the size of yards, courts and other open spaces; the density of population; and the location and use of buildings, structures and land. Section 153A-341 describes the "public purpose" that zoning regulations may address, including to "facilitate the efficient and adequate provision of. . . schools." The County had contended that although §§ 153A-340(a) and 153A-341 did not expressly authorize the County's APFO, they conveyed implied authority for the APFO.

The County had also argued that, in the alternative, the General Assembly's Session Law 2004-39 authorized the County to "adopt and enforce" the APFO as an exception to the general zoning and subdivision-regulation statutes. The Session Law provided: ". . . the County of Cabarrus or any municipality therein may enforce, within its jurisdiction, any provision of the school adequacy review performed under the Cabarrus County Subdivision Regulations, including approval of a method to address any inadequacy that may be identified as part of that review."

DECISION: Judgment of court of appeals affirmed.

The Supreme Court of North Carolina held that the enabling statutes that allowed the County to enact its zoning ordinances did not give the County implied authority to enact the APFO.

In so holding, the court disagreed with the County's contention that §§ 153A-340(a) and 153A-341 conveyed implied authority for the APFO. The court found that the plain language of these enabling statutes did not give the County implied authority to enact its APFO. While § 153A-340(a) authorized the County to divide land into zoning districts and define permitted and prohibited land uses within particular zoning districts, the APFO did none of that. Instead, the APFO linked County approval of residential developments to the availability of space for students in the County's public schools. In short, the court found that the County's APFO could not be classified as a zoning ordinance, authorized under statutes enabling county zoning powers, because "the APFO simply [did] not 'zone.' " As a result, the County could "not rely upon its general zoning authority to enact its APFO."

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The court also rejected the County's argument that it was authorized to "adopt and enforce" the APFO under Session Law 2004-39. The court found the Session Law did not include the word "adopt." And the court found the Session Law was actually an effort to address confusion between the County and several municipalities regarding enforcement of the APFO. Further, the court found that the General Assembly already had rejected requests by another county to authorize imposition of school impact fees when the Session Law was enacted.

Case Note:

In its decision, the court also observed that the APFO's revenue generation characteristics conflicted with North Carolina's "current approach to funding public education." The court noted that the General Assembly has authorized counties to obtain revenue for public schools and other services from various sources, leaving the burden of funding public schools spread among a large number of individuals, including county residents and those traveling through or doing business in that county. Conversely, the court observed that the APFO concentrated the majority of the financial burden for school construction on residential developers. "Without expressing an opinion on the policy merits of APFOs," the court "stress[ed] that absent specific authority from the General Assembly, APFOs that effectively require developers to pay an adequate public facilities fee to obtain development approval are invalid as a matter of law."

Preexisting Use—County rezones property to agricultural, prohibiting uses such as mining

Despite not actively mining the rezoned property, property owner argues its actions established a preexisting use for mining

Citation: *Ready Mix, USA, LLC v. Jefferson County, 2012 WL 3757025 (Tenn. 2012)*

TENNESSEE (08/30/12)—This case addressed the issue of whether a property owner's activities established a preexisting use for mine operations on land, thus qualifying the use of the property for mining for protection under the state's "grandfather" statute—which permits a preexisting nonconforming business to continue to operate despite a zone change.

The Background/Facts: In 1971, American Smelting and Refining Company ("ASARCO") acquired approximately 300 acres of land (the "Property") in Jefferson County, Tennessee (the "County"). At that time, the future aggregate mineral reserves on the Property were estimated at 149 to 150 mil-

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lion tons in weight. Also at that time, no zoning regulations existed in the County. Prior to ASARCO's ownership, various companies had used the Property for both subsurface and surface mining. ASARCO did not engage in any active mining operations on the Property.

In July 1998, American Limestone Company ("ALC"), which was a subsidiary of ASARCO, acquired the Property from ASARCO and immediately began to develop it with the intent to mine and quarry the aggregates, including gravel and crushed stone.

On August 17, 1998, the County Commission passed an ordinance which zoned the Property as agricultural, prohibiting any type of surface mining or quarrying on the Property. ALC continued its operations, however, and did not receive a stop work order until December 9, 1998.

In August 1999, ALC filed a declaratory judgment action against the County. It asked the court to set aside the stop work order. It argued that it had established a preexisting use on the property pursuant to Tennessee Code Annotated § 13-7-208. At the time the County adopted the ordinance, § 13-7-208, a "grandfathering" statute, allowed businesses to continue established operations regardless of any prohibitions in a new zoning classification.

During the course of the litigation, Ready Mix, USA, LLC ("Ready Mix") because a successor entity of ALC and the record owner of the Property.

The trial court eventually concluded that ALC had established a nonconforming use entitled to protection § 13-7-208.

The County appealed.

The Court of Appeals reversed the trial court and dismissed the action, holding that ALC/Ready Mix had failed to exhaust its administrative remedies.

Ready Mix appealed.

DECISION: Judgment of court of appeals reversed.

After first determining that ALC/Ready Mix was not required to exhaust administrative remedies prior to bringing the declaratory judgment action, the Supreme Court of Tennessee held that ALC's activities established a preexisting use for mining operations for the purposes of grandfather protection under § 13-7-208.

In so holding, the court explained that in order to invoke the protections of § 13-7-208(b), ALC/Ready Mix had to establish: (1) that there had been a change in zoning (either adoption of zoning where none existed previously, or an alteration in zoning restrictions); (2) that the use to which they put their land was permitted prior to the zoning change; (3) that the business was operating when the change in zoning took effect; and (4) that the current business was the same business that was being conducted when the change in zoning occurred.

Here, the court focused its analysis on whether ALC's business was in "operation" at the time of the zoning change. "Mere preparation" of the property for operations would not be enough to establish a preexisting nonconforming use, said the court. Normally, for establishment of operation of a business there had to be "substantial steps in ... construction" and "substantial liabilities" incurred. However, the court acknowledged that mining and quarry-

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ing involved a unique land use, to which many other jurisdictions applied the "diminishing assets doctrine." That doctrine provides "that reserves yet to be mined, quarried, or excavated are nonetheless preexisting uses in the event of a more restrictive zoning change." Still, here, the court was "neither prepared to adopt the diminishing assets doctrine in these circumstances nor hold that merely owning property with proven reserves and a history of mining is enough to establish a preexisting use." Instead, the court held that "the evidence of reserves and the nature of the mining industry are appropriate considerations in the factual determination of whether activities prior to a zoning change are sufficient to establish operations and, therefore, invoke the protections of the statute."

The court looked at the record, and found that it established that ALC had: applied for permits necessary for quarrying activities; scouted and cleared the Property; moved equipment onto the Property; and completed a blast shot on the Property, expending approximately $80,000 to $100,000. The court concluded that these measures by the company were "substantial steps" in construction of mining operations. And the court found ALC's actions aimed at turning the Property into an active mine illustrated a commitment or devotion of the Property towards mining. The combination of the measures taken by the ALC, the proven reserves, and the mining history on the property, lead the court to conclude that ALC's mining business was "in operation" at the time the County passed its zoning ordinance. As such, ALC/Ready Mix's mining operations were entitled to the protections of § 13-7-208; it could continue those operations despite the County zoning change.

See also: *Smith County Regional Planning Com'n v. Hiwassee Village Mobile Home Park, LLC, 304 S.W.3d 302 (Tenn. 2010).*

See also: *Rutherford v. Murray, 2004 WL 1870066 (Tenn. Ct. App. 2004).*

Case Note:

In finding that ALC/Ready Mix was not required to exhaust administrative remedies prior to bringing the declaratory judgment action, the court noted that ALC had presented a challenge to the applicability of the zoning ordinance. The court said that an administrative appeal to the board of zoning appeals "would have afforded no review" over that issue. It was a question of law, which did not require the exhaustion of administrative remedies.

Zoning News from Around the Nation

MARYLAND

Under the new Sustainable Growth and Agricultural Preservation Act, which was passed this year by the Maryland General Assembly, by December 31, 2012, Harford County "must create a map with four land use tiers, which are based on specific criteria and identify where major and minor subdivisions can be established, as well as what type of sewage systems can serve them." In

Tier 4, which reportedly covers 175,000 acres, the Harford County will no longer be allowed to have major subdivisions, or anything larger than five lots. Reportedly, "[t]he bill is meant to reduce the impacts of large residential subdivisions with septic systems on farms, forest lands, streams, rivers and the Chesapeake and Coastal Bays."

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

PENNSYLVANIA

The Luzerne County Council recently "approved a set of resolutions introducing amendments to the county's zoning and subdivision ordinances, which were written to meet new [requirements of the National Flood Insurance Program and the state Flood Plane Management Act]. The updates also include increased zoning fees, which will go up about 4 percent, and subdivision and land development fees, which will increase about 5 percent." Under the new requirements, if municipalities that rely on county zoning and planning fail to adopt the amendments, they will be in jeopardy of losing their eligibility for flood insurance and property owners will be rendered ineligible for federal and state disaster aid. Thus, municipalities in Luzerne County that have their own zoning boards will now have to amend their zoning laws to conform to national flood insurance regulations by November 5, 2012, or risk ineligibility for insurance and disaster aid.

Source: *Citizens Voice; http://citizensvoice.com*

Revenue from Act 13's impact fees is higher than expected. Reportedly, as of early September, $205.9 million is owed and $197.6 million has been paid from natural gas companies. Supporters of Act 13 impact fees say: "At a time when budget shortfalls are stretching state and local governments to their limits, responsible American natural-gas production is helping to support tens of thousands of good jobs and providing enormous, much-needed revenues for critical services." Opponents of gas drilling, on the other hand, said the roughly $200 million " 'doesn't look like that much' if all of the potential impacts of gas drilling are taken into account."

Source: *Philadelphia Inquirer; http://articles.philly.com*

WASHINGTON

The City of Seattle is reportedly considering legislation that would establish zoning regulations for growing, processing, and dispensing of medical marijuana in Seattle. The regulations would be meant to "better define appropriate operations for dispensaries" who now "operate in a grey area between city, state and federal law." The proposed legislation would "limit the off-site impact of larger-scale cannabis-related activity in zones where they may have increased impacts on neighborhood character or security, specifically those zones with a predominately residential or historic character."

Source: *West Seattle Herald; http://www.westseattleherald.com*

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Mat #41112579

First Amendment—City Council denies tattoo parlor zoning permit

Tattoo parlor alleges that the Council's discretionary denial violated its free speech rights

Citation: *Coleman v. City of Mesa, 230 Ariz. 352, 284 P.3d 863 (2012)*

Contributors

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ARIZONA (09/07/12)— This case involved the "intersection of municipal zoning regulations and the right of tattoo artists to ply their trade." This case addressed the issue of whether, in Arizona, tattooing is a constitutionally protected expression that is entitled to full First Amendment (to the United States Constitution) and Arizona Constitution protection and can be regulated only through reasonable time, place, and manner restrictions.

The Background/Facts: Ryan and Laetitia Coleman (the "Colemans") sought to operate a tattoo parlor in the City of Mesa, Arizona (the "City"). Under the City's zoning code, tattoo parlors and other specified businesses (including pawn shops and body piercing salons) were required to obtain a Council Use Permit ("CUP") in order to operate in the City. Under the zoning code, a CUP was a "discretionary authorization" that the City Council could issue if the City Council found the proposed use would be "compatible with surrounding uses."

In July 2008, the Colemans applied for the required CUP. The City Council ultimately denied the CUP. In its denial, the City Council cited concerns that the proposed use was "not appropriate for the location or in the best interest of the neighborhood."

The Colemans sued the City and various city officials (collectively, the "City"). Among other things, the Colemans alleged that the City's denial of the CUP violated their rights to free speech under the federal and Arizona Constitutions. The Colemans maintained that because tattooing was "pure speech" protected under the First Amendment and Arizona Constitution, it could only be regulated by a "reasonable time, place, and manner regulation." They argued that the CUP was not such a regulation, and therefore their free speech rights were being violated.

The City asked the court to dismiss the lawsuit. It argued that the Colemans failed to state a claim upon which relief could be granted. The superior court agreed and granted the motion.

The Colemans appealed; the court of appeals reversed. It held that tattooing was "pure speech entitled to the highest level of protection" by the First Amendment and Article 2, § 67 of Arizona's Constitution. The court of appeals further concluded that the Colemans had "sufficiently alleged claims for violations of their free speech . . . ."

The City petitioned for review.

DECISION: Judgment of court of appeals vacated; judgment of superior court reversed and remanded.

As a matter of first impression (i.e., the first time the court ruled on the issue), the Supreme Court of Arizona, agreeing with the Colemans and the court of appeals, held that, in Arizona, tattooing is a constitutionally protected expression that is entitled to full First Amendment protection. The court also held that the process of tattooing is expres-

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sive activity. Determining that tattooing is protected speech also implied that the business of tattooing is constitutionally protected, said the court. As such, the court concluded that tattooing can be regulated only by content-neutral, generally applicable laws (such as taxes, health regulations, and nuisance ordinances) and through reasonable time, place, and manner regulations.

The City had argued that it did not matter whether tattooing was a constitutionally protected expression because, even if it was, "generally applicable zoning laws may apply to otherwise protected activities without presenting free speech issues." The court was not persuaded. The court noted that the City's zoning ordinance effectively prohibited certain uses, including tattoo parlors, unless the City Council issued a discretionary CUP. The City was not, found the court, attempting to impose a generally applicable law (such as a tax or nuisance prohibition) to the on-going operations of businesses engaged in protected speech. Instead, the City was exercising unfettered discretion to deny permission for businesses engaged in protected speech to operate at all. The court rejected the City's argument that it could exercise such discretion because it had similar discretion to deny permission for other, nonprotected uses. The court said that the fact that a permit scheme may also apply to nonprotected activities did not insulate it from constitutional challenge when applied to protected speech.

Having concluded that tattooing is protected speech, the court next considered whether the Colemans' complaint sufficiently stated a claim for relief based on alleged violations of the First Amendment or Article 2, § 6 of Arizona's Constitution. The Colemans had alleged that the City's CUP process was not a reasonable time, place, and manner regulation of their protected expression. The court explained that for a permit system to qualify as a reasonable time, place, and manner regulation, the scheme: must not be based on the content of the message; must be narrowly tailored to serve a significant governmental interest; and must leave open ample alternatives for communication. The Colemans had alleged that the City's "planning and zoning code approval criteria, facially and as applied by the City Council," did not sufficiently guide or limit the City Council's discretion in rendering decisions. (The City, itself, had asserted that the City Council's determinations on CUPs were discretionary and effectively nonreviewable.) The court concluded that the Colemans had alleged sufficient facts to state a claim on which relief could be granted for violations of the freedom of speech.

See also: *Thomas v. Chicago Park Dist., 534 U.S. 316, 122 S. Ct. 775, 151 L. Ed. 2d 783 (2002).*

See also: *Anderson v. City of Hermosa Beach, 621 F.3d 1051, 67 A.L.R.6th 681 (9th Cir. 2010)* (holding that "tattooing is purely expressive activity fully protected by the First Amendment").

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See also: *Hold Fast Tattoo, LLC v. City of North Chicago, 580 F. Supp. 2d 656 (N.D. Ill. 2008)* (finding that "act of tattooing is one step removed from actual expressive conduct").

See also: *Yurkew v. Sinclair, 495 F. Supp. 1248 (D. Minn. 1980)* (finding process of tattooing is not protected speech); *State ex rel. Medical Licensing Bd. of Indiana v. Brady, 492 N.E.2d 34 (Ind. Ct. App. 1986)*) (same); *State v. White, 348 S.C. 532, 560 S.E.2d 420 (2002)* (same).

See also: *Mastrovincenzo v. City of New York, 435 F.3d 78 (2d Cir. 2006)* (extending First Amendment protections to a particular tattoo artist's work if it has a predominantly expressive purpose, requiring a case-by-case inquiry to determine if tattooing is protected by the First Amendment).

Case Note:

In its decision, the court noted that courts in other jurisdictions are divided on the issue of whether tattooing should be characterized as purely expressive activity ("pure speech") or instead as conduct with an expressive component. If characterized as purely expressive activity, then tattooing is entitled to full First Amendment protection and can be regulated only through reasonable time, place, and manner restrictions. If, however, tattooing is instead characterized as conduct with an expressive component, it is protected under the First Amendment only if it is "sufficiently imbued with elements of communication," that is, there is "[a]n intent to convey a particularized message" and "the likelihood [is] great that the message [will] be understood" by viewers. If tattooing is characterized as not "sufficiently imbued with elements of communication," then the regulation need only be rationally related to a legitimate governmental interest. Here, the court concluded that the first of these approaches was "most consistent with First Amendment case law and the free speech protections under Arizona's Constitution"—given that tattoos "are generally composed of words, realistic or abstract symbols, or some combination of these items" and "can express a broad range of messages . . . ."

Case Note:

In the lawsuit, the Colemans had also alleged that the City's denial of the CUP violated their due process and equal protection rights under the federal and Arizona Constitutions. The court held that the same level of scrutiny applied to those claims as to the First Amendment claim. The court found that the Colemans' complaint sufficiently set forth claims for relief for alleged

violations of the Colemans' rights to equal protection and due process.

Variance—County grants lawn care business three area variances

Neighboring property owners charge that self-created business growth cannot constitute unnecessary hardship needed for a variance

Citation: *Hacker v. Sedgwick County, 2012 WL 4039373 (Kan. Ct. App. 2012)*

KANSAS (09/14/12)—This case addressed the issue of whether self-created business growth is an exception to the general rule that unnecessary hardship may not be self-created.

The Background/Facts: For over 30 years, the Heins operated a lawn care business from their rural home in Sedgwick County, Kansas (the "County"). The property on which their home and business was located was zoned RR Rural Residential. In 1990, the Heins had obtained two variances that allowed them: to operate within 220 feet of a nearby residence; and to have up to four employees on the property at any given time. In 2010, the Heins filed a petition with the County Board of Zoning Appeals (the "Board") for three area variances, which would: (1) allow up to 20 employees with no more than 15 on site in excess of one hour per day; (2) allow the use for business purposes of existing outbuildings with a combined floor area exceeding 3,000 square feet; and (3) allow outdoor storage closer to the street than the buildings used for the business and closer than 200 feet from property lines. In their petition, the Heins alleged that these variances were necessary because they had "obtained additional customers and changed the way their employees work." Specifically, the Heins stated that more equipment was stored at the property and employees now met at the property and rode together to job sites.

Eventually, the Board granted all three requested variances. In doing so, the Board concluded that all five criteria under Kansas statutory law, K.S.A. 12-759(e)(1), that must be met before a variance can be granted had been met. As to one of those five criteria—whether strict application of the zoning regulation constituted an unnecessary hardship—the Board found that the hardship was not self-created. The Board reasoned that the Heins had a vested property right in their busi-

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ness and that reasonable growth of an existing business was not a self-created hardship under Kansas case law.

Neighboring property owners filed a petition in district court, challenging the reasonableness of the Board's decision.

The district court found that all three requested variances were the result of the Heins' business growth and that the business growth was the result of the Heins' conscious effort to increase their customer base. Furthermore, the district court found that the Heins grew their business with full knowledge of the zoning regulations under which they were operating. The district court rejected the Board's interpretation of Kansas case law and found that self-created business growth was not a reasonable basis for granting an area variance under K.S.A. 12-759(e)(1). Accordingly, the district court vacated the Board's grant of the three variances.

The Board appealed.

DECISION: Judgment of district court affirmed.

Agreeing with the district court, the Court of Appeals of Kansas held that self-created business growth is not an exception to the general rule that unnecessary hardship may not be self-created.

In so holding, the court explained that Kansas law contemplates two types of variances: (1) use variances; and (2) area variances. Here, all three variances sought by the Heins were area variances. Here, the only criterion for granting an area variance that was at issue was the "unnecessary hardship" criteria. Under K.S.A. 12-759(e)(1)(C), a board may grant a variance upon finding: "that the strict application of the provisions of the zoning regulations of which variance is requested will constitute an unnecessary hardship upon the property owner represented in the application." The court further explained that, under Kansas case law: (1) mere economic advantage or disadvantage to the landowner applying for the variance does not in itself constitute unnecessary hardship; (2) unnecessary hardship may be found where strict application of the zoning regulations would result in the complete loss of an existing business at the location in question, but not where strict application would merely prevent increased profitable use of that land; and (3) where a hardship is self-created (such as where the landowner purchased the property with the knowledge of the zoning restrictions), it cannot be deemed to be an unnecessary hardship.

The Board, in issuing the variances, had reasoned that the Heins had a vested property right in their business and that reasonable growth of an existing business was not a self-created hardship. The court disagreed. It found that: (1) the variances requested by the Heins would be economically advantageous to their business because the variances would allow more equipment storage space and more drivers to transport the equipment, which in turn would allow the Heins to serve

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more customers; and the extent that the Heins would lose existing customers and be required to reconfigure their business operations, could reasonably infer that the Heins would suffer economic disadvantage without the variances; but (2) nonetheless, there was no indication that the Heins would lose their business without the variances, only the business would simply be less profitable; and (3) the Heins hardship was self-created—made necessary by their self-created business growth.

As to that third finding, the court said that "[g]iven that the main purpose underlying self-created business growth is generally to maximize a business' profits, and given that Kansas courts have indicated that mere economic advantage or disadvantage to a landowner is not a sufficient basis for a finding of unnecessary hardship . . . self-created business growth is not an exception to the general rule that unnecessary hardship may not be self-created."

Since the Heins had acknowledged that the requested variances were made necessary by their self-created business growth, the court concluded that the Board's finding of unnecessary hardship was not supported by substantial evidence. The court further concluded that the district court did not err in vacating the variances granted by the Board.

See also: *Stice v. Gribben-Allen Motors, Inc., Parsons, 216 Kan. 744, 534 P.2d 1267 (1975).*

See also: *City of Olathe v. Board of Zoning Appeals, 10 Kan. App. 2d 218, 696 P.2d 409 (1985).*

See also: *City of Merriam v. Board of Zoning Appeals of City of Merriam, 242 Kan. 532, 748 P.2d 883 (1988).*

Case Note:

As to courts of other jurisdictions that have similarly held that self-created business growth cannot constitute an unnecessary hardship for purposes of a variance, see, e.g., Bowman v. City of York, 240 Neb. 201, 482 N.W.2d 537 (1992) (finding no undue hardship where business sought variance from setback requirement in order to expand its facilities and increase its profits); Ken-Med Associates v. Bd. of Tp. Sup'rs of Kennedy Tp., 900 A.2d 460 (Pa. Commw. Ct. 2006) (holding that "expanding the use of a particular property to maximize profitability is not a sufficient hardship to justify the granting of a variance, because such financial hardship is in the form of a self-inflicted hardship").

Case Note:

On appeal, the Board had also challenged the standing (i.e., legal right to

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bring the action) of the neighboring property owners to challenge the Board's decision to grant Heins the requested variances. The court held that the neighbors had standing to appeal the Board's decision as persons "dissatisfied with" the variance decision. In so holding, the court said the "dissatisfied with" standard under K.S.A. 12-759(f) meant the same as the "aggrieved by" standard under K.S.A. 12-760.

Time for Proceedings—After municipal officials fail to respond to residents' complaints, residents bring legal action

Residents argue they could not first exhaust administrative remedies and that justice required an enlargement of time restrictions

Citation: *Mullen v. Ippolito Corp., 428 N.J. Super. 85, 50 A.3d 673 (App. Div. 2012)*

NEW JERSEY (09/10/12)—This case addressed the issue of whether mandamus relief was available to seek enforcement of zoning ordinances where municipal officials failed to respond to complaints of zoning violations, and as such, there was no exhaustion of administrative remedies. The case also addressed whether the failure of municipal officials to respond to complaints of zoning violations warranted the relaxation of time restrictions for actions in lieu of prerogative writs.

The Background/Facts: John Mullen and Howard Levine (the "Residents") purchased their beachfront home in the Borough of Point Pleasant Beach, New Jersey (the "Borough"), in 1998. The Residents' residence was adjacent to the Driftwood Motel (the "Driftwood"), which had operated at that location "since at least the 1960's." Both properties were located in an SF-5 zoning district. That zoning district only permitted single-family residences, schools, and public playgrounds and parks. Because the Driftwood Motel existed at that location before the Borough adopted these zoning restrictions, it was considered a preexisting nonconforming use under New Jersey statutory law (N.J.S.A. 40:55D-68).

Over the past 13 years, the Residents observed allegedly unlawful expansions of the Driftwood's: snack bar by 64.5 square feet; impervi-

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ous concrete patio by 10% of the total lot coverage; number of motel rooms; parking spaces by five spaces; and deck and pool area into the Borough's Boardwalk Right-of-Way. The Residents also observed the construction of outdoor restrooms. The Driftwood did not have any zoning permits authorizing these expansions or additions. The Residents complained of all of these activities to the Borough officials. The Residents also alleged and complained to Borough officials that the Driftwood violated the Borough's parking ordinance in that it had insufficient parking spaces for each rental room, and the Residents alleged and complained to Borough officials that the Driftwood repeatedly violated the Borough's dune ordinance by: allowing motel guests unlimited access to the beach through the dunes; failing to install fencing to protect the dunes; grading the dunes to accommodate a wedding; and hosting "Zumba" exercise classes on the dunes.

The Borough officials failed to take action on any of the Residents' complaints.

Eventually, the Residents brought suit in superior court against the owners of the Driftwood. The Residents also sought declaratory and mandamus relief against the Borough and Borough officers (collectively, the "Borough").

The Borough moved for summary judgment. The Borough asked the superior court to find that there were no material issues of fact in dispute and to decide the matter in its favor on the law alone.

The court granted summary judgment in favor of the Borough. It held that the Residents failed to exhaust administrative remedies as required by New Jersey court Rule 4:69-5. The court also found that the Residents' legal action was untimely under Rule 4:69-6(a) because it was commenced more than 45 days after the occurrence of the events from which relief was sought.

The Residents appealed.

DECISION: Judgment of superior court, law division, reversed and remanded.

The Superior Court of New Jersey, Appellate Division, held that mandamus relief was available to the Residents to challenge the Driftwood's alleged violations of zoning restrictions through their action against the Borough officials; the Residents were not required to first exhaust administrative appeals because there was no administrative "decision" to appeal.

The court explained that both statutes allowing interested parties to seek review (N.J.S.A. 40:55D-70(a) and N.J.S.A. 40:55D-72(a)) "envision[ed] an administrative officer who is acting in some discrete and ascertainable fashion, putting the interested party on notice that his or her right to seek administrative review has accrued" (i.e., through an

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order or decision). Here, the court found that the Residents' action was "grounded on the [Borough's] failure to respond to or act upon their numerous complaints of alleged zoning violates by the Driftwood." "If true, [those] allegations" of a history of municipal inaction rendered the Residents "without a realistic alternative form of administrative relief," said the court.

The court further explained that in rare cases, judicial intervention would be warranted only when:

> 1) the party seeking relief shows there has been a clear violation of a municipal ordinance that has especially affected him or her; (2) appropriate municipal action was not taken despite the matter having been duly and sufficiently brought to the attention of the supervising official charged with the public duty of enforcing the ordinance; and (3) the party seeking judicial relief shows the unavailability of an adequate, realistic alternative form of relief."

The court applied those standards to the case at hand, and found they were met—thus warranting judicial intervention. Accordingly, the court allowed the Residents' mandamus action despite any failure to obtain administrative relief (which, it found, was not possible to obtain given the Borough's "negligent indifference" and "willful disregard" of the Residents' complaints).

The court further held that, although the Residents' action was not brought within 45 days of the complained of zoning violations, the circumstances of the case warranted an enlargement of time restrictions under Rule 4:69-6(a).

The court explained that, under Rule 4:69-6(c), a court may enlarge the time restrictions in Rule 4:69-6(a) "where it is manifest that the interest of justice so requires." The court acknowledged that the circumstances of the case did not fit under "traditional categories" where such enlargement has been allowed (i.e., novel constitutional questions; informal or ex parte determinations of legal questions by administrative officials; and important public interests"). Nevertheless, the court determined that this was a case where the circumstances warranted an enlargement of time under Rule 4:69-6(c): Here the facts "raised questions 'concerning both the vindication of [the Residents'] private property rights and the important public interest in ensuring that public officials perform their official duties diligently and with reasonable dispatch.' "

The court reversed the trial court's order granting the Borough's motion for summary judgment, and remanded the matter "for such further proceedings as may be warranted."

See also: *Garrou v. Teaneck Tryon Co., 11 N.J. 294, 94 A.2d 332, 35 A.L.R.2d 1125 (1953).*

See also: *Hopewell Valley Citizens' Group, Inc. v. Berwind Property Group Development Co., L.P., 204 N.J. 569, 10 A.3d 211 (2011).*

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Zoning News from Around the Nation

CALIFORNIA

Recently, the California State Assembly "passed new legislation that would assure legal status for small-scale cottage industries that sell baked goods and other 'non-potentially hazardous' food items produced in home kitchens." The California Homemade Food Act (AB1616), which takes effect in January, allows home cooks to make and sell a wide range of products "without the need to comply with the zoning and regulatory measures that govern larger producers and producers of meat and dairy products specifically omitted from this law."

Source: *yourolivebranch.org; http://news.yourolivebranch.org*

CONNECTICUT

Effective October 1, 2012, a new state law allows "the medicinal use of marijuana by Connecticut residents 18 or older suffering from cancer, glaucoma, HIV/AIDS, Parkinson's, multiple sclerosis, spinal cord injuries, epilepsy, Crohn's Disease, post-traumatic stress or cachexia (wasting syndrome). It limits the drug's use in public places and in moving vehicles, and around children and teens."

Source: *Norwich Bulletin; www.norwichbulletin.com*

Southington "is the first town in the state to take on the task of passing municipal zoning regulations related to medical marijuana." Among other things, the new regulations: limit the location of medical marijuana production facilities; limit the distribution of marijuana prescriptions to licensed pharmacists within a licensed pharmacy only; and limits by location, pharmacies that can dispense marijuana.

Source: *Southington Patch; http://southington.patch.com*

PENNSYLVANIA

On October 17, the state supreme court is set to hear an appeal of the Commonwealth Court's decision, which declared the zoning provisions in Act 13 to be unconstitutional.

Source: *Pittsburgh Post-Gazette; www.post-gazette.com*

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Preemption—Town ordinance requires variance for all excavations

Landowner argues ordinance is preempted by state statute exempting specific types of excavation from permit requirements

Citation: *Town of Carroll v. Rines, 2012 WL 5458213 (N.H. 2012)*

NEW HAMPSHIRE (11/09/12)—This case addressed the issue of whether a state law regulating local excavation, and distinguishing between excavations that require permits and those that do not, preempted a local ordinance requiring a variance for all excavations.

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The Background/Facts: William Rines ("Rines") owned two lots in the Town of Carroll, New Hampshire (the "Town"). Rines also controlled another two lots in the Town for excavation purposes. In October 2009, the Town filed an action to enjoin Rines from excavating on all four lots. Eventually, in June 2011, the trial court held a final hearing on the Town's petition. The parties disputed the extent to which Rines was required to obtain a variance pursuant to Section VI of the Town's zoning ordinance.

Section VI of the Town's zoning ordinance required a variance for "excavation, grading, filling or removal of any earth, loam, topsoil, sand, gravel, clay or stone on public or private land in the Town of Carroll."

The trial court found that Rines had engaged in two types of excavation on the two lots: (1) excavation for highway purposes; and (2) excavation for purposes incidental to constructing a building.

Rines had argued that both of those types of excavation were exempt from permitting requirements under state statutory law, RSA Chapter 155-E. RSA Chapter 155-E regulates local excavation, and distinguishes between excavations that require permits and those that do not. (RSA 155-E:2,:2-a.) Excavation for highway purposes and for building construction purposes is exempt from the statute's permitting requirements ("permit-exempt" excavations). (RSA 155-E:2, IV,:2-a, I(a).)

As such, Rines argued that since section VI of the Town's zoning ordinance required a variance for those types of excavation, section VI conflicted with RSA Chapter 155-E. Rines contended that section VI of the ordinance was therefore impliedly preempted by RSA Chapter 155-E. Accordingly, Rines contended that his excavations did not require a variance.

The trial court disagreed with Rines. It held that section VI of the zoning ordinance was not preempted by RSA Chapter 155-E. Because RSA Chapter 155-E did not preempt section VI of the zoning ordinance, the court concluded that Rines could not engage in either type of excavation absent a variance.

Rines appealed.

DECISION: Reversed, and matter remanded.

The Supreme Court of New Hampshire disagreed with the trial court; it agreed with Rines' argument.

The court explained that state law impliedly preempts local law when: (1) "the comprehensiveness and detail of the State statutory scheme evinces legislative intent to supersede local legislation"; (2) there is an actual conflict between state law and a municipal ordinance such as when one permits what the other prohibits; and (3) a local ordinance frustrates the statute's purpose.

Thus, further explained the court, section VI of the ordinance would be preempted by RSA Chapter 155E if it: (1) purported to regulate excavations that were permit-exempt pursuant to RSA chapter 155E; and (2) it "frustrated State authority."

As to the first factor, the court noted that RSA Chapter 155E contained only "minimum" requirements for excavations that require a permit. As such, municipalities were not preempted from imposing more stringent regulations upon those types of excavations. However, RSA Chapter 155E did not autho-

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rize municipalities to burden permit-exempt excavations with their own substantive requirements.

As to the second factor, the court said that regulations that would not frustrate state authority under Chapter 155E included local ordinances that related to "traffic and roads, landscaping and building specifications, snow, garbage, sewage removal, signs, and other related subjects."

Here, the court concluded that by imposing substantive requirements on permit-exempt excavations, section VI of the Town's zoning ordinance frustrated the purpose of RSA Chapter 155E and was thus impliedly preempted.

See also: *Arthur Whitcomb, Inc. v. Town of Carroll, 141 N.H. 402, 686 A.2d 743 (1996).*

See also: *Guildhall Sand & Gravel, LLC v. Town of Goshen, 155 N.H. 762, 764, 929 A.2d 199 (2007).*

Validity of Zoning Ordinance—City ordinances rezone properties into manufactured home park districts

Park owners contend ordinances amount to regulatory takings in violation of the federal and state constitutions

Citation: *Laurel Park Community, LLC v. City of Tumwater, 2012 WL 5290306 (9th Cir. 2012)*

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

NINTH CIRCUIT (WASHINGTON) (10/29/12)—This case addressed the issue of whether city zoning ordinances, which rezoned land into manufactured home park districts, and limited the use of property within those districts, amounted to an unconstitutional taking of property under the federal or Washington constitutions. It also addressed whether the ordinances violated property owners' substantive due process rights.

The Background/Facts: The City of Tumwater (the "City") enacted two ordinances which created a new Manufactured Home Park ("MHP") land use designation and new Manufactured Home Park zone districts. Included in the new MHP districts were six of the ten existing MHPs in the City.

Prior to enactment of the ordinances, the zoning code permitted a wide range of uses on the properties where the six MHPs were located. The ordinances restricted those uses by, among other things: (1) specifying certain "permitted uses," which were allowed as of right; (2) specifying 11 "conditional uses," where were allowed via a discretionary conditional use permit; and (3) permitting still other uses if specified criteria were met.

The owners of three of the six MHPs in the newly designated MHP districts,

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along with a nonprofit organization (collectively, the "Owners"), filed an action in federal court. They alleged that enactment of the ordinances violated their constitutional rights under several theories: (1) a federal takings claim (i.e., the City took their property for public use without just compensation in violation of the United States Constitution); (2) a state takings claim (i.e., the City took or damaged their property for public or private use without just compensation in violation of the Washington Constitution); and (3) a state substantive due process claim (i.e., the rezoning of their property into MHP districts was a means that was unnecessary to achieve a public purpose, if any, and was duly oppressive on the Owners).

The City asked the district court to find that there were no material issues of fact in dispute and to issue summary judgment in its favor on the law alone.

The district court granted summary judgment to the City on all claims.

The Owners appealed.

DECISION: Affirmed.

The United States Court of Appeals, Ninth Circuit, rejected all of the Owners' claims.

The court held that the Owners' federal takings claim failed because the ordinances did not go "too far" given: (1) there was a minimal economic effect of the ordinances on the Owners; (2) the ordinances did not affect the Owners' "primary expectation"—of operating a manufactured home park; and (3) although the ordinances required the Owners to bear a greater burden than the general public in providing the public benefit of MHPs, the Owners still had the option of discontinuing that use and using the property for another use permitted under the ordinances.

In so holding, the court explained that the Fifth Amendment to the United States Constitution provides: "nor shall private property be taken for public use, without just compensation."

The Owners had not contended that the ordinances constituted a "per se" taking (i.e., a permanent physical invasion of property, or a deprivation of all economically beneficial use of property). Rather, they had argued that the ordinances constituted a regulatory taking because the ordinances went "too far." While zoning laws do not generally constitute a taking, they will if they go "too far," said the court. Whether a regulation goes "too far," explained the court, depends on three factors: (1) the economic impact of the regulation on the claimant; particularly, (2) the extent to which the regulation has interfered with distinct investment backed expectations; and (3) the character of the governmental action.

Analyzing those three factors, the court first found that the economic impact of the ordinances on the Owners was only a diminishing property value of between 0% (for two of the Owners' properties) and 15% (for one of the Owners' properties). The court said that "[a] small decrease in value, for only one affected property, falls comfortably within the range of permissible land use regulations that fall far short of a constitutional taking." The court also said that "diminution in property value, standing alone, can [not] establish a 'taking.' " In sum, the court concluded that the minimal economic effect of the ordinances did not support the Owners' federal takings claim.

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Looking at the second factor, the court held that although the ordinances affected one of the Owners' expectations—that at some indefinite time in the future they could convert their properties to some other specific uses—the ordinances did not affect the Owners' "primary expectation"—of operating a manufactured home park. Thus, the court concluded that this factor, too, failed to support a federal takings claim.

As to the third factor—the character of government action— the court explained that the government generally cannot " 'forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." The court agreed with the Owners that the character of the City's action here (in enacting the ordinances and establishing the MHP districts) slightly favored their takings claim: "The intent and effect of the ordinances are to require only [the Owners] and the other affected owners of manufactured home parks to continue to provide the public benefit (manufactured home parks), when the benefit could be distributed more widely (for example, by providing relocation assistance to owners of manufactured homes or a larger MHP zone district)." Still, the court noted that the ordinances did not force the Owners to continue operating their properties as MHPs; the Owners could decide to: close their parks; convert their properties to other allowed uses; or sell the properties. The court found that the ordinances had no effect on those other possible uses.

In conclusion, finding the first two factors weighed strongly against a takings claim and the third factor weighed only slightly in favor of a takings claim, the court concluded that, on their face, the ordinances did not constitute a taking under the United States Constitution.

The court also held that the Owners' state takings claim failed because the ordinances did not destroy or limit any fundamental property right. The Owners had argued that the ordinances destroyed "one of the sticks in the bundle representing a fundamental property right, by depriving the [Owners'] of the right to dispose of their property as they choose and effectively conferring control of that right on the tenants." The court disagreed. It found that while the ordinances restricted to some extent the Owners' ability to use their properties, the ordinances did not at all limit the Owners' ability freely to dispose of the property or convert their properties to one of the many permitted uses under the ordinances. Moreover, the court found that the park residents had "no ability—now or in the future—to require the parks' owners to perform any act [or prohibit any change in use or sale of property]."

And, after applying a three-prong test, the court held that the ordinances did not violate the Owners' substantive due process rights because: (1) the ordinances were aimed at achieving a legitimate public purpose of promoting "high density, single family" development and a "choice in land tenancy"; (2) the ordinances used means that were reasonably necessary to achieve that purpose since (3) the ordinances were not unduly oppressive in that "the amount of harm [was] small or nonexistent" given there was little to no decrease in property values and given the fact that the Owners' were still able to use their properties "as they have been used for decades."

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

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See also: *Guggenheim v. City of Goleta, 638 F.3d 1111 (9th Cir. 2010), cert. denied, 131 S. Ct. 2455, 179 L. Ed. 2d 1210 (2011).*

See also: *Manufactured Housing Communities of Washington v. State, 142 Wash. 2d 347, 13 P.3d 183 (2000).*

Case Note:

The Owners brought a facial federal takings claim (i.e., that the ordinances were invalid on their face, not just as applied). The court said that it was not clear that a facial challenge could be made but assumed, without deciding, that it could.

Rezoning—Conditionally permitted use becomes legal nonconforming use

After conditions of permit are violated, city revokes conditional use permit and terminates nonconforming use

Citation: *White v. City of Elk River, 2012 WL 5289878 (Minn. Ct. App. 2012)*

MINNESOTA (10/29/12)—This case addressed the issue of whether a city could terminate a nonconforming use by revoking a conditional use permit after conditions of the conditional use permit were violated.

The Background/Facts: Wapiti Park Campgrounds ("Wapiti Park") operated on approximately 52 acres of property located in Elk River, Minnesota (the "City"). When Wapiti Park opened in 1973, no zoning ordinance governed use of the land. In 1983, the City made campgrounds a conditionally permitted use in the zoning district where Wapiti Park was located. In 1984, the City granted Wapiti Park a conditional use permit with nine conditions, one of which prohibited permanent residents at the campground. In 1988, the City again amended its zoning ordinances, removing campgrounds as a conditionally permitted use in the zoning district in which Wapiti Park was located. As such, Wapiti Park became a legal, nonconforming use.

In 2010, upon the City's investigation of the Wapiti Park property related to an interim-use permit needed for reconstruction of a campground building destroyed by fire, it was discovered that the campground had permanent, year-round residents. The City found that this permanent resident use of the campground violated conditions in the 1984 conditional use permit. Wapiti Park was given several months to show compliance with the conditions of the 1984 conditional use permit. When it failed to do so, the City eventually revoked the 1984 conditional use permit, effective on December 31, 2011.

Wapiti Park sued the city. It asked the district court to find that the

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campground was a legal, nonconforming use and that the city erroneously revoked its permits.

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the district court granted partial summary judgment for Wapiti Park. The court found that: the campground was a legal, nonconforming use; and the City could not eliminate this use by revoking the 1984 conditional use permit.

The City appealed. On appeal, the City contended that because, in 2010, Wapiti Park was no longer in compliance with the 1984 permit conditions (given the campground had year round, permanent residents), the use was no longer "lawful" under state statutory law governing nonconforming uses—Minn. Stat. § 462.357, subdivision 1e(a). As such, the City maintained that Wapiti Park was not allowed to continue the nonconforming use.

DECISION: Reversed.

The Court of Appeals of Minnesota agreed with the City.

The Court held that the 1984 conditional use permit did not expire or terminate when Wapiti Park became a nonconforming use in 1988. Rather, the permit remained in effect, and the campground's nonconforming use of the property was only lawful so long as it complied with the permit conditions. The court further held that the City was entitled to revoke the 1984 conditional use permit, and thereby terminate use of the property as a campground, when Wapiti Park continued to violate the conditions of the 1984 conditional use permit.

To address the issue presented, and in so holding, the court looked to the statutory law governing nonconforming uses—Minn. Stat. § 462.357, subdivision 1e(a). Section 462.357, subdivision 1e(a) provides in relevant part:

> Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion . . . .

The court concluded that § 462.357, subdivision 1e(a) provided that, to be a protected nonconforming use, the use must have been "lawful" at the time it became nonconforming. The court found that, at the time of the 1988 amendment to the zoning ordinance (which removed campgrounds as conditional uses and resulted in the campground being a nonconforming use), Wapiti Park's use of the property as a campground was only lawful because of the 1984 conditional use permit. Thus, under the plain language of § 462.357, subdivision 1e(a), the court determined that Wapiti Park was only entitled to the protections of § 462.357, subdivision 1e(a) if it remained in compliance with the permit that made it a lawful use in the first place.

Moreover, the court found that Wapiti Park's conditional use permit was still in effect in 2010 because it had never been revoked or otherwise terminated. The court said: "A conditional-use permit does not cease to exist when the use becomes nonconforming. Rather, the nonconforming use is then defined by the conditions contained in the conditional-use permit, and any use outside of the permit parameters may be an unlawful expansion of the

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nonconforming use. Conditional-use permits are perpetual, and 'shall remain in effect as long as the conditions agreed upon are observed.' " In other words: "[A] conditional-use permit does not cease to exist merely because the use later becomes nonconforming. Rather, the conditionally permitted use is still allowed, so long as the property continues to comply with the original permit conditions."

In summary, the court found that Wapiti Park was still entitled to operate as a campground after it became a nonconforming use, but only if it remained in compliance with the conditions in the 1984 conditional use permit. The court concluded that, when, in 2010, Wapiti Park was no longer in compliance with the permit conditions (because it had permanent residents), the City properly revoked the permit.

See also: *Lam v. City of St. Paul, 714 N.W.2d 740 (Minn. Ct. App. 2006).*

Case Note:

In its decision, the court said it would be would be inconsistent "to conclude that merely because the [C]ity exercises its broad discretion to amend a zoning ordinance, converting what was a conditionally permitted use into a nonconforming use, it loses the authority to enforce the conditions that it deemed necessary to promote public health, safety, and welfare when it first issued the permit."

Modification of General Plan—City adopts revised housing element of general plan, identifies needed changes to land use elements for implementation

Concerned residents claim failure to first adopt land use element changes creates an unlawful inconsistency in the general plan

Citation: *Friends of Aviara v. City of Carlsbad, 148 Cal. Rptr. 3d 805 (Cal. App. 4th Dist. 2012)*

CALIFORNIA (11/1/12)—This case addresses the issue of whether the adoption by municipalities of revisions to the housing element of their general plans, which require later modifications to the municipalities' land use element, creates an impermissible conflict between the housing element and the land use element in the general plan.

The Background/Facts: California's Housing Element Law declares affordable housing "a priority of the highest order" and requires the general plan of public localities to "include a housing element consisting of several manda-

tory components." Those mandatory components include: identification and analysis of housing needs; identification of adequate sites for housing; a five-year program to implement policies and achieve objectives of the housing element "through the administration of land use and development controls"; and identification of a sufficient number of sites "that will be made available through appropriate zoning and development standards to meet the quantified objectives for housing for all income levels." (Government Code § 65583.)

As required by the Housing Element Law, Government Code § 65583, the City of Carlsbad (the "City") adopted a revised housing element, which identified: an inventory of parcels which would be suitable for low cost housing; and a number of limitations in the land use element of the general plan which the city would change in order to permit the identified parcels to be developed as low cost housing.

Friends of Aviara ("Aviara"), a nonprofit corporation composed of residents concerned about protecting the area near the Batiquitos Lagoon, which is located in the City, filed a timely petition for a writ of mandate. Aviara alleged that the City's adoption of the revision to the housing element of its general plan was unlawful. Aviara said this was because the revision stated that the City would be amending existing land use limitations as they appeared in the land use element of the City's general plan. Aviara alleged that the revision therefore created an improper inconsistency in the general plan.

Government Code § 65300.5 states in pertinent part: "the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." Section 65300.5 has been repeatedly construed as requiring "that the elements of the general plan comprise an integrated internally consistent and compatible statement of policies."

The trial court agreed with Aviara and found the revision as adopted by the City created an impermissible conflict between the housing element and the land use element in the general plan. However, the trial court also found that if the city adopted an appropriate timeline for adoption of the proposed changes, the conflict was permissible.

Aviara appealed. It argued that because the revision to the housing element contained needed, but unadopted, revisions to the land use element, the general plan was unlawfully inconsistent and would remain so notwithstanding adoption of the timeline ordered by the trial court.

DECISION: Affirmed.

The Court of Appeal, Fourth District, Division 1, California, agreed with the trial court. It held that the City's introduction of inconsistency into the general plan to satisfy state-mandated housing obligations was not unlawful. The court declared that § 65583, subdivision (c)(7) is a clear exception to the requirement of § 65300.5 that general plans be facially consistent. Under that exception, found the court, in the case of housing, the Legislature has permitted some inconsistency so long as the means of resolving any inconsistency is also set out (i.e., with timelines for adoption of proposed changes to land use elements).

In so holding, the court found that the Government Code "expressly

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contemplates that in meeting its housing obligations a municipality will need to alter existing land use regulations, including existing limitations in other elements of an adopted general plan." The court found that "inclusion in the revision of a housing element of proposed changes to other land use regulations in a general plan was expressly contemplated by the Legislature and permitted on the condition the municipality sets forth a timeline for adoption of such proposed changes."

The court pointed to Government Code § 65583, subdivision (c), which requires that a housing element contain:

> A program which sets forth a schedule of actions during the planning period, each with a timeline for implementation. . . that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls . . . [which, shall, among other things,] [i]nclude an identification of the agencies and officials responsible for the implementation of the various actions *and the means by which consistency will be achieved with other general plan elements and community goals.* (Italics added.) (Section 65583(c)(7).)

The court found that this language in § 65583 subdivision (c) expressly contemplated that existing land use regulations, including other general plan provisions, would, if left unchanged, prevent municipalities from meeting their allocated housing obligations. Moreover, the court found that the requirement that the housing element set forth "the means by which consistency will be achieved with other general plan elements" directly expressed the Legislature's understanding that, as in the case here, policies adopted in a housing element as a method of providing a defined number of housing units would "almost inevitably create inconsistency with land use limitations set forth in other elements of a general plan." Importantly, noted the court, the Legislature's expression of the understanding that inconsistencies would arise, came within the context of a specific provision that required municipalities to set forth a program, including a timeline, for resolving such inconsistencies.

The court further explained: "Although requiring that consistency be achieved, use of the future tense in the statute plainly expresses legislative recognition that inconsistencies will arise and that it may not be possible to resolve them at the time a housing element is adopted or revised." The court found that there was a "clear legislative preference that municipalities promptly adopt housing plans which meet their numerical housing obligations even at the cost of creating temporary inconsistency in general plans." An interpretation such as that presented by Aviara—by which other elements of a general plan must be made consistent with the housing element immediately—would, declared the court: "no doubt delay the adoption of revised housing elements," which would be inconsistent with the express language of the Housing Element Law or the Legislature's urgent concern that municipalities provide adequate housing for the state's citizens.

The court concluded by finding that the trial court acted properly in requiring that the City adopt the timeline required by § 65583, subdivision (c). The trial court was not, as Aviara had argued, required to order that the City vacate its adoption of the revision and wait until the land use elements could be amended before addressing its housing obligations.

See also: *Concerned Citizens of Calaveras County v. Board of Supervisors, 166 Cal. App. 3d 90, 212 Cal. Rptr. 273 (3d Dist. 1985).*

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Zoning News from Around the Nation

CALIFORNIA

The U.S. Department of Justice has sued the City of San Jacinto, alleging violations of the federal Fair Housing Act and Americans with Disabilities Act. The lawsuit claims the city discriminates against disabled residents by restricting where group homes can operate. The city's residential zoning does not allow group homes anywhere in the city, unless granted a special permit to be in areas zoned for multifamily housing.

Source: *The Press-Enterprise; www.pe.com*

MASSACHUSETTS

On the November 9 ballot, voters legalized medical marijuana under certain circumstances. This raises zoning issues for municipalities in Massachusetts, which now must zone for and designate appropriate places for the marijuana dispensaries.

Source: *BostInno; http://bostinno.com/*

NEW JERSEY

The New Jersey Supreme Court recently heard arguments "involving a 29-year-old landmark ruling on affordable housing." Affordable housing advocates are claiming that the state is not complying with the ruling to prevent discrimination against the poor. They are reportedly asking the court to find that "the state Council on Affordable Housing must resume its practice of giving each town a specific obligation on how many units of housing the town must create." Meanwhile, the state and municipalities are asking for simplification of the requirements, with towns providing the opportunity for subsidized homes for low-income people based on how many new market-rate homes and how many jobs are created in their communities.

Source: *CBS News Money Watch; http://www.cbsnews.com*

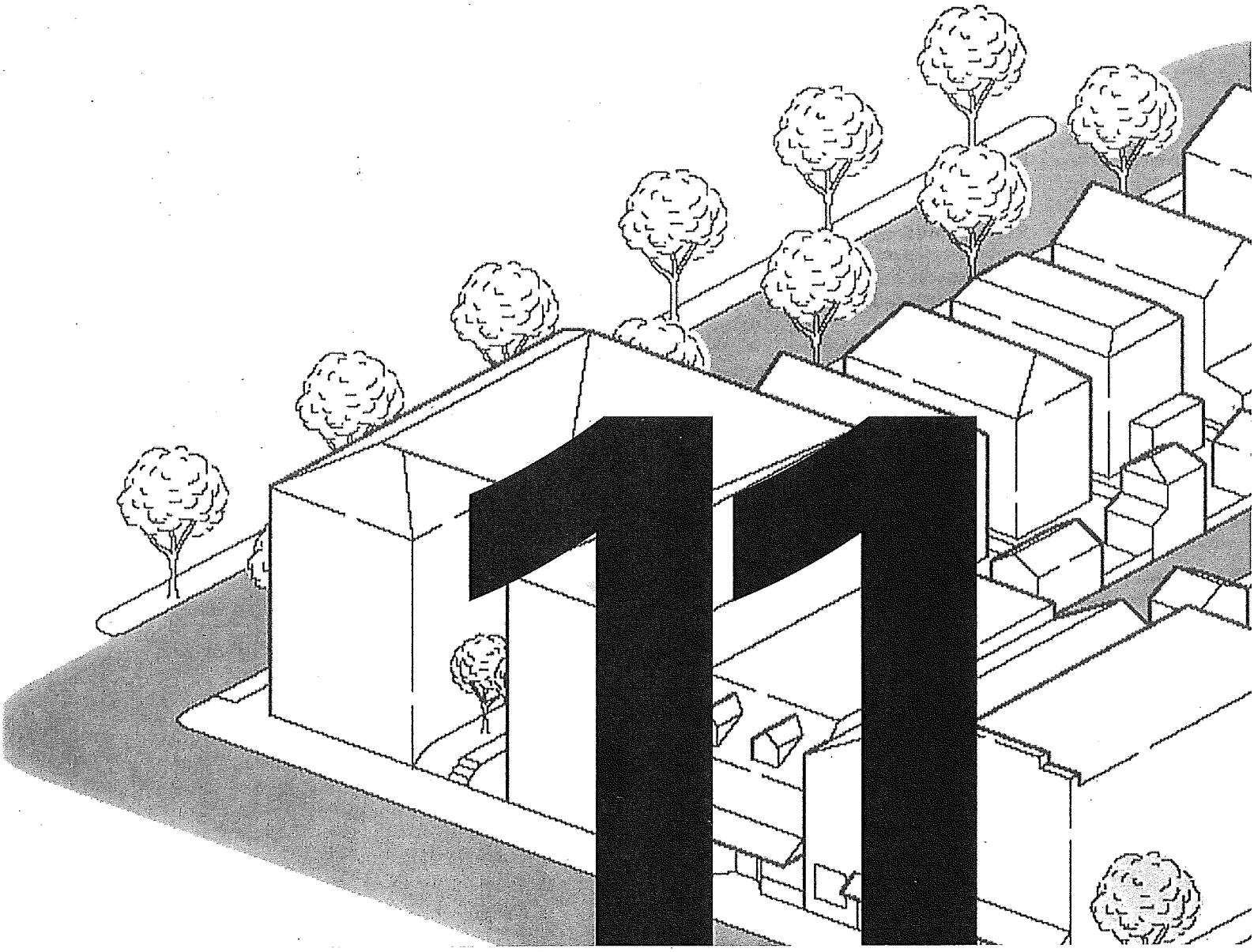
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PRACTICE FORM OVER DENSITY



Beyond the Density Standard

By Norman Wright, AICP

Density requirements are a well-intentioned idea with unintended consequences. Fortunately, there are better solutions available.

For decades, cities have used density as one of the principal means for regulating the built environment. In virtually every instance, from rote limits such as units per acre to more elaborate approaches such as floor area ratio, these standards have dictated much more than just the amount of development that can occur on a given acre of land. And for all the attention that has been directed toward land-use requirements, the use of density standards has largely gone unquestioned in general zoning practice.

While the relationship between the absolute separation of land uses and sprawl is well documented, it is important to note that conventional density requirements also contribute to sprawl. When residential development is artificially limited to a finite number of homes per acre, more land is needed to satisfy residential demand and greater subsidies are required to encourage provision of affordable housing in desirable neighborhoods. The good news is that zoning techniques rooted in the form and character of development can address community concerns about compatibility better than simple density limits.

PERCEPTIONS ABOUT DENSITY

One of the common motivations for regulating density, especially in residential development, is to preserve or improve an area's "quality of life," a term that changes meaning with every new development proposal. The logic is that the number of units allowed is inversely correlated to the "quality of life" for the surrounding area. As density increases, "quality of life" decreases. This argument is familiar to planners, and it is raised by the public in virtually every apartment building or town house proposal. Communities seldom agree on what "quality of life" is other than to suggest that they know it when they see it. In fact, a community's judgment of new development often hinges on aesthetics. A good example of this comes from a recent case in Iowa City, the home of the University of Iowa.

In early 2012 Iowa City received a development proposal that sparked such a public outcry that the entire zoning ordinance had to be reexamined and parts rewritten in reaction to the protest. The controversy surrounded a pair of four-story structures that would be built in a block of town surrounded by single-family neighborhood. The development would feature a mix of commercial and residential space, and the developer would need to demolish three existing structures (including a restaurant and bookstore) to make way for the new construction.

The proposal complied with all zoning regulations at the time, but the community resisted the change. Petitions were circulated and 4,600 residents signed their disapproval. Specific concerns covered the gamut of common arguments where high-density development is involved. For example, like most high-density housing—especially in a university town—the proposal was for rental housing, and some commenters worried that the lack of home ownership would mean a lack of proper maintenance. There were also concerns over the potential for nuisances such as loud noise and vandalism. Others mentioned the likelihood of parking shortages as more people moved into the area.

Weeks after the initial proposal, these concerns and many more continued to grow and crystallize until the city council decided to review its density regulations. The city declared a 60-day moratorium on all projects related to any proposed zoning change in order to give staff time to evaluate regulatory alternatives. The subject development was initially included in this decision until officials discovered that certain permits had already been issued. Even so, the effort to reexamine the city's attitude toward high-density development was under way.

Two months later the city council voted to make three changes to its zoning ordinance. All three changes were designed to limit the density of future developments like the one proposed. First, the number of unrelated persons allowed to live together in a dwelling unit dropped from five to three. Second, the number of parking spaces required for large apartment buildings increased by an additional space per unit, and third, the number of allowable bedrooms for multifamily uses was lowered to a maximum of three.

While the city adopted these amendments in order to preserve the existing fabric of the neighborhood and minimize nuisances associated with new student housing, density regulations may not be the ideal tool to achieve these goals.

For example, residents in the Iowa City case voiced concern over potential nuisances such as noise, vandalism, and late-night activities. The solution was to lower the number of potential habitants in the area. This action assumes that it is the number of people living in the area that determines the likelihood of nuisances, but a visit to any desolate, blighted neighborhood illustrates how fewer people often leads to more nuisances. Though high-density development may increase the potential for nuisances, the better solution for such problems is likely outside the realm of zoning and is found, instead, in the city's actual nuisance ordinance. A well-crafted and well-enforced nuisance ordinance can eliminate the issues of excessive noise not only for high-density development but for all developments in all parts of the city.

ASK THE AUTHOR JOIN US ONLINE!

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

About the Author
Norman Wright, AICP, is the director of development services for Columbia, Tennessee. He holds a master's degree in City and Regional Planning from Clemson University. His recent work includes writing the first adopted plan under the Partnership for Sustainable Communities and the first citywide form-based code for a major town in Tennessee. His writings have been published in *Practicing Planner* and *Planning*. The author extends his appreciation to Charles Marohn, Peter Katz, Steven Price, and the firm Moule & Polyzoides for their contributions to this article.

Meanwhile, the other major concern voiced by project opponents related to potential parking shortages—that greater housing density would attract more residents and more demand for parking spaces. The community's opinion was that the proposed development did not have enough parking spaces to serve its clientele and that all parking should be self-contained within the property. Shared parking or on-street parking was apparently not supported by the community. Thus, the solution in Iowa City was to require more parking spaces for multifamily uses. This standard creates a disincentive for future development, but in cases where new development does occur, the existing neighborhood fabric may be disrupted by large parking areas.

COMPATIBILITY IS THE REAL ISSUE

There was an online petition titled "Save the Red Avocado," a reference to the restaurant that was demolished to make way for the proposed four-story development. The petition is a beautiful, heartfelt entreaty from many residents who love this portion of the city. The second line in the petition's narrative goes to the heart of all anti-density arguments: "The proposed new development building's size, height, and residential density are incompatible with the residential character of the neighborhood."

But in doing so, this same statement points to the real limitations of density regulation. In any instance where the density of a given area is subject to change, the concerns that surround that change are not focused on the plain, numerical shift from three units per acre to five units per acre. They aren't even a concern of multifamily housing versus single-family housing. The true focus of such concerns relate to compatibility, or the perceived impact a proposed change will have on the existing character and form of its surrounding area.

In the December 2010 issue of *Zoning Practice* author Bret C. Keast, AICP, offered the following description of community character: "Community character is based on the relative balance of design elements. This means that, within reason, development may have different uses, mixed housing and building types, varying densities, and different lot and street patterns while being of the same character."

In his article Keast makes a convincing argument that focusing on community character can lead to much greater success in realizing the desired future of a community. As he points out, land use and density do influence traffic, parking, and utility capacity, but these characteristics don't adequately capture the concept of character. Best of all, the concept of "character" and "compatibility" is just as tangible and easily measured as density and land use when proper form-based elements are applied. With such analysis, an area's character can be boiled down to the physical composition of its built environment. Suburban areas can be recognized not solely for the presence of single-family homes on quarter-acre lots, per se, but rather as a collection of buildings set on lots with moderate setbacks, consistent building heights, porches facing the street, and so forth. These physical characteristics are what people use to interpret an area as being a neighborhood versus a downtown. And these characteristics can be defined in

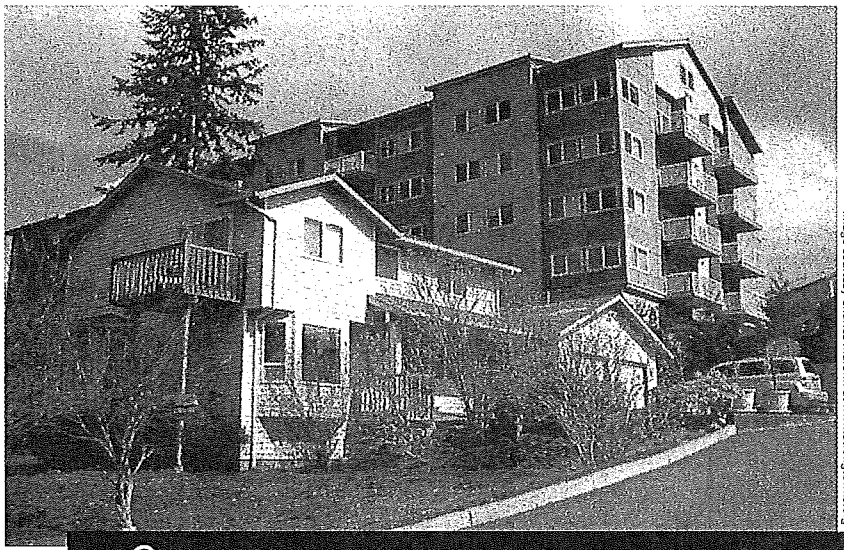


Image courtesy Charles Marohn at www.strongtowns.org

An example where density is the least of the issues at hand. Incompatible development takes many forms, and it is the form itself that makes it so harmful to its surroundings.

clear numerical values, allowing planners and officials to focus on concrete variables instead of wrangling with vague, contextual ideas such as "quality of life."

The citizens of Iowa City, along with countless other cities, would likely agree that their concern is one of community character and compatibility and not solely focused on the number of dwelling units or type of ownership involved. Concerns surrounding traffic, parking, infrastructure, and more are legitimate matters in any proposed development. Nuisance concerns are also prominent and absolutely real. But from all these issues, the central phenomenon that motivates citizens to demand change (and planners to alter their zoning ordinances) is the threat of development that is incompatible to the area.

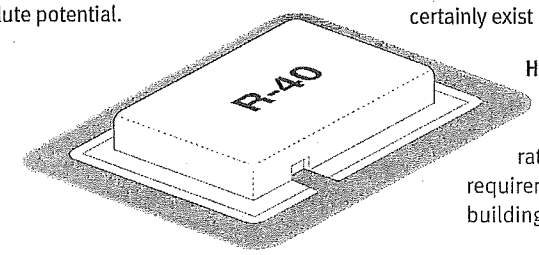
SOLUTIONS FOR INCOMPATIBLE DEVELOPMENT

For a zoning ordinance to better address incompatible development, the first step is to define the existing character of a given area. For example, Columbia, Tennessee, recently wrote a new zoning ordinance in which all districts are first described by their actual physical form and intensity of use (i.e., level of noise, traffic, hours of operation, etc.). Built from the framework of the rural-to-urban transect, this new set of zoning districts focuses on the physical characteristics that make each environment unique. Each element is selected based on the ability to measure them in exact detail. For example, while a suburban neighborhood might be "quiet" and "safe," the elements that dictate the actual character are form based and include components such as the following:

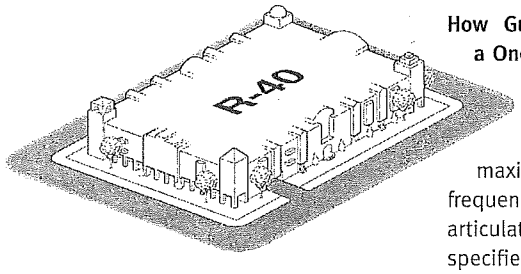
- Setbacks
- Yard types (presence of front, rear, or side yards)
- Building Height
- Block Length
- Lot Coverage
- Frontage Type
- Facade to Lot Frontage Ratio

These measures, which are increasingly common in contemporary zoning ordinances, provide clear, measureable information on the physical traits of any given area. As Dan Parolek, coauthor of the book *Form-Based Codes*, describes, the combination of these numbers constitute the "DNA" of a particular place. Each value is established by measuring the existing features of each zone or "transect." For example, the lot coverage of an urban zone is established by defining the actual lot coverage of the area that will be emulated. This is a critical aspect of form-based standards. The values are not based on vague concepts or arbitrary desires about what looks good. They are instead rooted in plain, detailed numbers based on the ideal environment that the city wants to replicate.

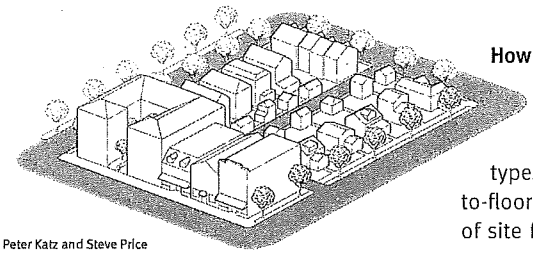
These measures include no mention of density. However, density is impacted, and often controlled, by each of these factors. To extend Parolek's metaphor, our own human DNA doesn't dictate our adult height, but it certainly determines our potential growth. Likewise, the built environment's DNA doesn't dictate density but certainly establishes the absolute potential.



How Zoning Defines a One-Block Parcel
Density, use, floor-are ratio, setbacks, parking requirements, and maximum building heights specified



How Guidelines Define a One-Block Parcel
Density, use, floor-are ratio, setbacks, parking requirements, maximum building heights, frequency of openings, surface articulation, and landscaping specified



How a Regulating Plan and Codes Define a One-Block Parcel
Street and building types, build-to lines, floor-to-floor heights, and percent of site frontage specified

Peter Katz and Steve Price

This notion may seem faulty at first glance. A collection of form-based elements governing setbacks, lot coverage, and building height may not appear to impact density at all, particularly when compared to the ultimate regulation for density potential: the common maximum density standard. Zoning ordinances typically do a terrific job of defining the absolute potential for density by stating that no more than, say, four units per acre may be developed in a given district.

But density aside, what else is known or assured with the future development? The land use is likely restricted, but is there any other regulation that will ensure that the right form of development takes place? For example, if a development is to be single-family residential with a density of four units per acre, it is no exaggeration that a common zoning ordinance would then allow a plain building devoid of any architectural features to be developed so long as it complied with building codes and setbacks. This building would likely be incompatible with the defined character of the area. After all, most single-family residential areas are identified not by the families who live there but by the unique buildings they occupy. These buildings commonly have pitched roofs, front porches, facade widths around 30 to 40 feet, building heights of 25 to 30 feet, side driveways, and rear parking. Variations certainly exist between each individual house but, on the whole, buildings in a neighborhood possess some version of these aesthetic features in a consistent manner. And when one building along the street happens to lack these features, surrounding residents naturally become concerned since the physical character of the area is no longer maintained. In short, it is the lack of these physical features that creates the visual cue that something is amiss. From that initial discovery, discussion often leads to questions about density or land use, but those are secondary to the issue of compatibility.

Without form-based regulations, density standards cannot ensure compatible development. The Iowa City case shows firsthand that a request can meet the zoning



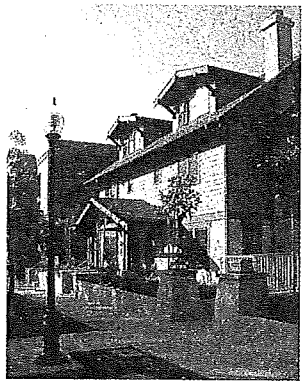
Norman Wright

An image of compatible development as defined by rote density and land-use regulations.

ordinance standard for density and land use and still be unwelcome. But the problems run deeper. Not only does density regulation not ensure compatible development, it often makes great development illegal.

In any scenario where density is completely removed from the picture, form-based elements can provide a more defensible, and understandable, basis for judging good development. A prime example of this is the Mission Meridian South development in South Pasadena, California. Designed by the architectural firm Moule and Polyzoides, the development features 37 dwelling units per acre. If judged solely from a density and land-use perspective, as in any conventional zoning ordinance, this type of development would often be prohibited. Not because of land use (many zoning ordinances embrace mixed use concepts) but because the density appears quite incompatible with its surroundings. Outside of major downtown districts, few ordinances permit 37 dwelling units an acre by right.

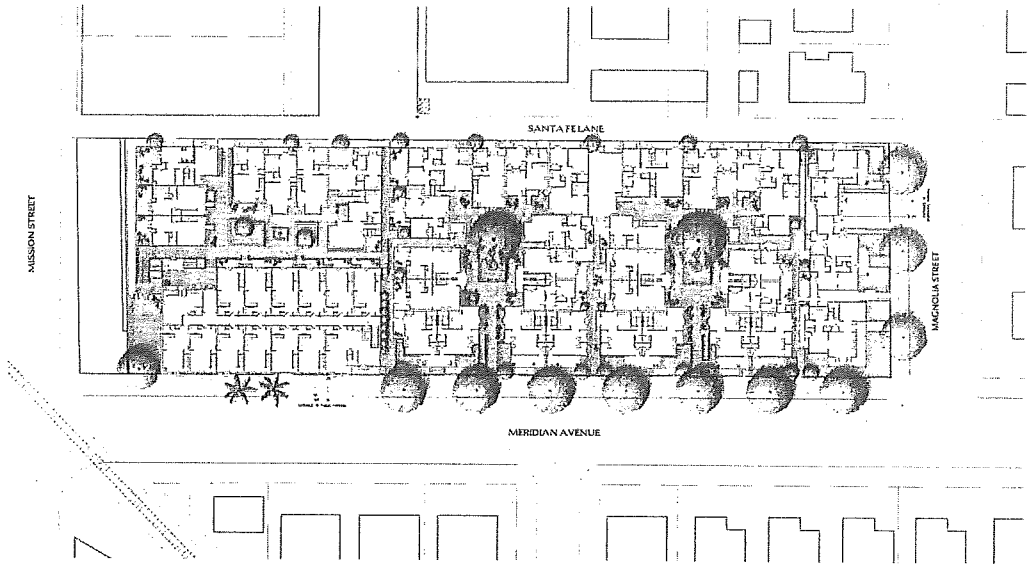
However, with the focus on form alone, this uncommon development is recognized to be fully compatible with the area's character as an urban neighborhood. The scale of development, its footprints and placements, are examples of ways in which the existing form is maintained. There is a great deal of focus on the frontage for the residential buildings. Each frontage features California bungalow architecture with windows, awnings, stoops, and cupolas, all designed to the style of single-family homes. Facade widths and building height, meanwhile, maintain a consistent rhythm that decreases in scale as the development shifts closer to the adjacent blocks of single-family homes.



© Moule & Polyzoides, Architects and Urbanists

When these form-based elements are the focus of a proposed development, the actual density of the site becomes inconsequential. One can't help but imagine that residents of Iowa City would be more welcoming of a project of this density if it was designed with these character elements in mind. The best solutions respect and emulate physical attributes that residents love about their respective neighborhoods.

Real concerns still exist, of course. Aforementioned issues such as traffic, parking, and noise still have potential impacts no matter what type of development is proposed. In these instances, there are better, more direct methods of addressing the issues.



(Center) Street level view of Mission Meridian South's "bungalow" units. Each unit features several dwelling units in a single-family form. (Left) Plan for Mission Meridian South. The image shows a design for attached housing in building footprints that are consistent with the scale of adjacent development.

TRAFFIC AND DENSITY

Congestion and density are often tied together when examining the impacts of growth—the greater the collective density of an area, the greater number of cars on the road. This is true, but the actual relationship to congestion is quite difficult to measure. The entire science of transportation planning constantly searches for the next best predictive tool to define this relationship. But if the goal is to prevent congestion, zoning ordinances and their density limits are not the best solutions. After all, some of the most congested roadways—commercial highway corridors—are notorious for being devoid of residential development at any density. The problem, then, is not the amount of density in any given area but the design of the road network.

Planners are often fully aware that a network that funnels many small roads into a few major collectors and arterials is the true cause of congestion. Local densities are seldom a contributing factor when regional traffic is diverted onto major highways. These common networks should be redesigned to provide more route options, such as grid networks, rather than propose limited density somewhere along the outer reaches of the highway. And when a solution does involve residential densities in some respect, that solution is often not in limiting density in each development but allowing more through urbanized infill development.

After all, each city has a certain amount of market demand for new housing. If that demand is for 4,000 new homes in a given year, but zoning requires these homes to occupy no more than four units an acre, that leads to 1,000 acres of development, with each house placed increasingly further away from destinations. As these houses are placed further away, their dependence on automobiles and limited road networks becomes greater. This is a prime example of how low and medium density (e.g., two to six units per acre) can exacerbate congestion.

When viewed in light of the long history of sprawl development, density regulation to manage traffic congestion is neither a direct, effective solution for the problem or a sustainable practice when an area experiences demand for more growth.

A 2012 study of the Arizona Department of Transportation finds this very condition to be the source of many traffic issues today. The solution? More grid streets and higher density development of the sort proposed in both the Iowa City development and Mission Meridian South. This finding is supported by a careful analysis of four different areas of development. Each area features differing levels of development density and design, and the result is that the highest density areas featuring the best design actually perform better at mitigating congestion when compared to lower density areas.

COMPARATIVE CHARACTERISTICS AND PERFORMANCE OF THE FOUR STUDY AREAS

	Scottsdale	Bell Road	Central Avenue	Tempe
Land use				
Density	High	Low/Medium	High	Medium/High
Mix	Good/Very good	Poor	Fair/Good	Good/Very good
Design	Good/Very good	Poor	Good/Very good	Good/Very good
Road network				
Alternate routes	High	Poor	High	Very good
Manageable grid	High	Poor	High	Good/Very good
Traffic congestion				
Midday	Moderate	Very high	Moderate	High
Peak	Moderate	Severe	Moderate	High
Transit				
Service/Servicability	Good/Good	Low/Poor	Very good	Good/Good
Utilization	Good	Low	Very good	Good/Very good
Through traffic	Moderate	High	Moderate/High	Moderate/High
Internal trip capture				
Work	Moderate	Low	Moderate	Moderate
Nonwork	Very High	High	Low	Moderate/High
Average trip length				
Work	Third shortest	Longest	Shortest	Second Shortest
Nonwork	Shortest	Longest	Third shortest	Second Shortest
Walkability				
Walk/bike trip rates	Second highest	Lowest	Third highest	Highest

Arizona Department of Transportation

Summary Chart from Arizona Department of Transportation study "Land Use and Traffic Congestion," March 2012.

PARKING AND DENSITY

When Iowa City considered the proposal for a new, high-density residential development, opponents raised concerns about a potential parking shortage. This impact can often be very real, but the typical solution is often drafted to the detriment of the community's character. In this respect, there is a fine balance between too much and too little parking. The more parking that a multifamily development is required to build, the larger the parking lots become, creating empty space along street frontages and creating an "island effect" where the multifamily building is often surrounded on all sides by more and more parking. Such requirements often run counter to the established form of an area and add to the incompatibility issue.

Recent publications and advances in parking technology (such as demand pricing for parking meters) indicate that better



Norman Wright

This multifamily development faces single-family homes on the other side of a highway. Poor design creates high degrees of separation between the neighboring areas.

solutions do exist. Unfortunately, many of the best new practices do not necessarily translate into simple changes in a zoning ordinance. Even a straightforward shared parking ordinance requires a comprehensive parking study to be effective. But solutions do exist, and most focus on the actual issue of parking demand, not housing density. Multifamily residents need parking spaces, certainly, but ensuring too many visitor spaces to alleviate any further concerns could lead to even greater issues. Large parking lots, especially in residential settings, create broad, empty gaps in the urban fabric. When multifamily housing is seamlessly integrated into a neighborhood, it is often because the development acquires the same lack of parking and same subdued, consistent building form. Broad expanses of asphalt change that. Large parking lots appear incongruous with the surrounding neighborhoods, so much so that residents often ask for screening and fences, essentially cutting off the multifamily development from the rest of the neighborhood. When a development requires screening, it is an acknowledgment of incompatibility, the very danger that citizens wish to avoid. Furthermore, the desire for larger parking lots runs counter to a neighborhood's character since parking lots require intense lighting at night, leading to nuisance concerns, and reduces or eliminates the iconic lawns that define a neighborhood setting.

NUISANCES AND DENSITY

As I stated before, no density requirements can replace the effectiveness of the enforcement of a good nuisance ordinance. Nonetheless, planners often face pressure to alter density allowances based on the bad experience of neighbors living close to apartment complexes and other high-density residential areas. When such cases arise, and nuisance issues continue despite the best enforcement efforts, the likely second-best solution is to consider greater screening and buffering requirements. Too often, quality residential developments, no matter the density, are hampered by regulation written in reaction to a few unruly tenants.

DENSITY AND RURAL AREAS

Finally, though the provided case studies focus mostly on urban and suburban developments, the classic case of rural land being converted into higher density developments cannot be ignored. As stated before, many density requirements are designed to preserve rural land or, at least, prevent the overdevelopment of such land. Overdeveloping rural land has countless impacts on more than just the character of its surroundings. Rural roads can become overrun with new traffic, crucial habitat can be lost, and city resources can be extended beyond budgetary means.

In these instances, though, rote density maximums are still inadequate to address the potential issues for reasons already stated. Thus, physical form and character elements should be combined with other policies. The best possible means of preventing the negative effects of greenfield development is to forego density maximums and focus, instead, on crafting a strong open space protection policies. Crucial habitats and viable agricultural land will be far better protected by policies that require their preservation rather than allow low-density development intrusions. Great examples of sustainable open space protection programs include conservation subdivision ordinances, which dictate the form of lot sizes and their arrangement around crucial natural lands. Notice in this case that "form" deals with something greater than building design. For conservation subdivisions, form is a matter of lot design, showing that form-based standards have a great deal of versatility. It isn't solely a tool for making sure that front porches are provided for each house. It is also a tool to ensure that site plans are designed to meet conservation needs.

CONCLUSION

The use of density regulations often leads to unintended consequences and is often a symptom of an incomplete zoning ordinance. Density is a very limited tool for long-term, comprehensive planning. When used to address so many of the issues that planners deal with, such as nuisance complaints, traffic and parking concerns, and character compatibility, the consequence is that more effective approaches are ignored. It is important to remember that the underlying issue facing a city's growth and change is not a matter of the number of units allowed on a given acre of land. The true issue, as expressed by citizens of Iowa City and so many others, is one of incompatible development or development that does not respect, conform to, or positively enhance the established character of the places they love.

The result, then, is that the focus on density comes at the cost of less focus on character. When new development fails to respect its surroundings, density is not the primary concern. Incompatible development harms an area—whether it is "high density" or not.

This is to say nothing of the impact density regulations have on housing markets. New studies and publications are showing that areas such as San Francisco and New York City are suffering from distorted housing markets where the demand for more homes is high but the supply is kept deliberately low through density limitations. This phenomenon is still under examination, but the findings from authors such as Matthew Yglesias and Ryan Avent are showing that density regulations carry even deeper impacts that go beyond the scope of this article.

In conclusion, modern zoning practice must acknowledge the limits of density regulation. Whether the goal is to curb traffic congestion or make development more compatible, there is likely a better means to accomplish the goal at hand. The best policies are written to affect the direct relationship between causes and effects. Density is seldom a direct cause of any effect planners hope to manage.

Cover image: Form-based codes control the physical characteristics of development with much greater precision than simple density standards. © Moule & Polyzoides, Architects and Urbanists

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PRACTICE ENERGY EFFICIENCY



12

Powering Down Zoning Regulations

By Jeffrey S. Beiswenger, AICP

Over the past several years there has been a paradigm shift in zoning practice with regard to sustainable planning and development.

Policy makers, civic leaders, planners, architects, builders, and energy companies have started to recognize the link between energy consumption and development regulations. Many outdated zoning codes, in particular, are rife with provisions that lead to more energy consumption than necessary or prevent energy saving development techniques. Conversely, many newer codes already include provisions that promote energy conservation.

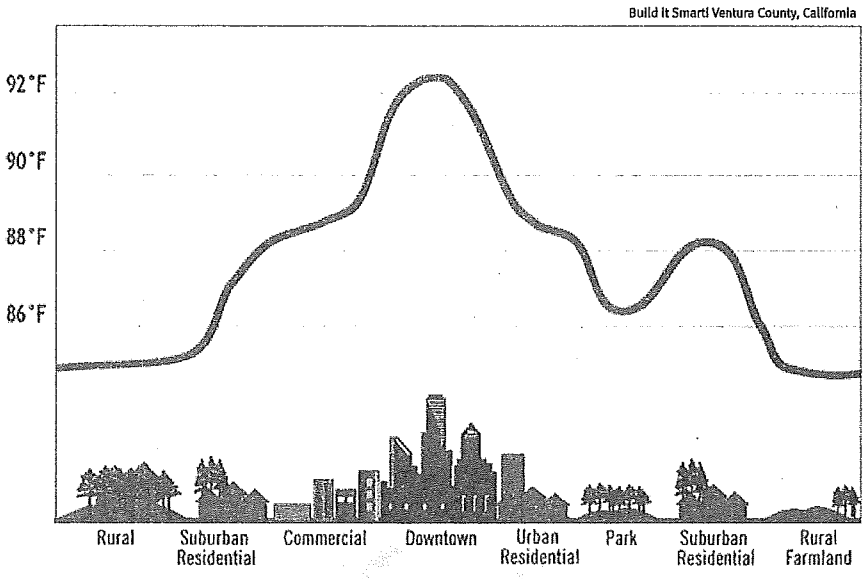
This article explores ways in which energy consumption can be reduced directly or indirectly through zoning and other development regulations. The way that buildings are constructed, neighborhoods are laid out, transportation systems are connected, irrigation systems are designed, parking lots are lit, and even how local produce is grown can help reduce the consumption of electricity and other energy sources. While building codes may be the most direct way to address the energy efficiency of the building envelope, zoning regulations play a particularly important role in accomplishing energy efficiency in the space between buildings. In addition to helping conserve energy, zoning regulations can also play a role in promoting the use of alternative energy sources. Through favorable zoning provisions, communities can facilitate the installation of solar panels, wind turbines, and other renewable energy systems.

UNDERSTANDING THE HEAT ISLAND EFFECT

In order to understand the full impact that zoning regulations can have on energy efficiency it is important to understand the urban heat island effect. Ambient air temperatures in cities are often higher than in surrounding rural areas due to the presence of large expanses of unshaded building and pavement surfaces exposed to direct sunlight. Pavement surfaces exposed to direct sunlight can be 50 to 90 degrees hotter than the air, driving up the ambient air temperature, while shaded or moist surfaces remain close to air temperature.

Peak demand for electricity generally occurs on hot summer weekday afternoons, when offices and homes are running cooling systems, lights, and appliances. The urban heat island effect increases both overall electricity demand and peak demand. During extreme heat events the resulting demand for cooling can overload systems and require a utility to institute controlled, rolling brownouts or blackouts to avoid power outages.

In some hot cities, shading a building can save $5 to $25 per 100m² of roof area annually. If a city were able to eliminate the heat island effect entirely through extensive tree planting, the corresponding air conditioning savings would provide an additional savings of $5 to $10 per 100m² of roof area (Akbari 2005).



This graphic charts the differential between average late-afternoon temperatures over a range of lands—from undeveloped land to downtown—and shows how parks and open lands moderate high temperatures.

THE TOP NINE WAYS TO POWER DOWN YOUR ZONING

There are numerous zoning provisions that affect energy efficiency. These provisions may lead to direct energy savings by reducing lighting levels and the use of furnaces, air conditioners, hot water heaters, and water pumps. And they may

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

About the Author

Jeffrey S. Beiswenger, AICP, is a project manager for PMC, an urban planning and design firm with offices throughout California. He has specialized work experience related to sustainable zoning and development codes and other planning implementation documents. Beiswenger has worked with jurisdictions in 11 states, preparing comprehensive plans, zoning ordinances, development codes, vision plans, master plans, and design guideline documents. He holds a bachelor's degree in architecture from the University of Arizona and a master's degree in urban planning from the University of Illinois at Urbana-Champaign.

affect savings indirectly by improving multimodal transportation systems, facilitating mixed use development, and promoting local food production. Regulations that save energy are too numerous to discuss in full here, so the following are the "Top Nine Ways to Power Down Your Zoning Code."

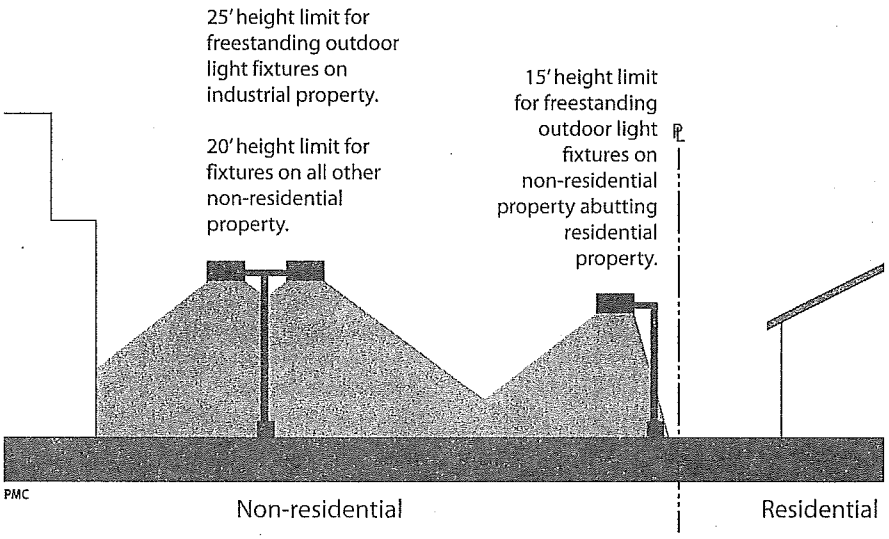
1. Get Smart with Lighting

The low-hanging fruit of energy efficiency is lighting. The amount of electricity used for exterior lighting can be greatly reduced by simply directing the light where needed and by matching the lighting intensity to the need.

The most common zoning provisions related to lighting aim to minimize light spill onto adjacent properties by requiring that light is focused downward or "cut off." Codes may also specify a height limit for light poles and set light intensity levels at property lines. Many communities also set minimum light levels for safety and maximum light levels to reduce excessive light. For an example of common energy-saving outdoor lighting provisions, see §9-5A-6 of Lemoore, California's zoning code.

To maximize energy efficiency gains, communities may consider additional measures such as provisions that encourage or require energy-efficient light fixtures or smart lighting technology (e.g., sensors and timers ensuring that lights only turn on when needed).

Some jurisdictions have adopted strict limits on outdoor lighting levels in order to protect astrological observations. For example, Tucson, Arizona, includes strict shielding and curfew requirements in its Outdoor Lighting Code and sets a maximum light budget (in lumens) for every acre of land, based on proximity to the Kitt Peak Observatory and other factors. However, the code does allow for higher light levels for special circumstances (e.g., a limited exemption for athletic fields).



Outdoor lighting provisions that limit fixture height and require shielding help to minimize wasteful light spill.

2. Avoid Moving Water Around

Providing households with safe drinking water and wastewater disposal is an energy-intensive process, and this can translate into unnecessary expense at wastewater and water treatment facilities. Reducing water consumption saves energy because less water needs to be treated and pumped to end users. In California the water sector is the largest energy user in the state, estimated to account for 19 percent of the total electricity consumed (much of it for agricultural purposes). Nationwide, four percent of electricity goes to this purpose (NRDC 2009).

Codes can play an important role in water conservation. For example, some municipal codes may still require that building storm gutters be connected directly into underground storm-sewer pipes. Modern zoning codes now include requirements or incentives for Low Impact Development (LID) techniques to reduce the amount of stormwater runoff. These techniques include drainage swales planted with native species and rain gutters that flow into landscaped areas (instead of

storm sewers). Pervious pavement can also be allowed, or even required, for parking areas to promote on-site infiltration. To illustrate, in 2011 Los Angeles adopted an LID ordinance requiring that the first 0.75 inch of rainfall be captured on-site (Ordinance No. 181899). The city also provides information on best practices such as rain barrels, permeable pavement, planters, rain gardens, and dry wells through its Stormwater Program (Los Angeles 2012).

Another approach to encourage the reuse of water is requiring that developers install dual pipe systems to allow for the use of nonpotable water for irrigation purposes. A secondary pipe (sometimes called a purple pipe) is used to transport this water in a parallel system separate from the potable water. For example, Windsor, California, requires the installation of purple pipe for landscape irrigation purposes (§12-7-105).


PMC

Requiring bioswales in parking areas helps to decrease the volume of stormwater flowing to water treatment plants.

3. Be Cool

Cooling down buildings, parking areas, and other surfaces that tend to absorb heat from the sun can help reduce energy usage—particularly in climates dependent on air conditioning. Trees, landscaped open space, and landscaped (green) roof areas can help reduce the heat island effect and maximize pervious surfaces in urbanized areas, and zoning codes can play a particularly important role in promoting pervious surfaces.

Trees can play a major role in lowering both site-specific and aggregate ambient air temperatures, and many communities have incorporated tree planting and preservation requirements into their zoning codes. Another effective technique is to require that a certain minimum percentage of a paved parking area is shaded. Rancho Cordova, California, uses this approach (§23.716).

Black asphalt absorbs light (and heat), resulting in 57 percent more electricity use than lighter colored concrete (Adrian and Jabanputra 2005). Requiring highly reflective surfaces (i.e., those with a light color high-albedo index of at least 29) for roofs, parking areas, streets, and other paved areas increases the efficacy of artificial lighting and can reduce heat island effects. California's green building code, CalGreen, includes provisions requiring that buildings and paved areas have a certain solar reflectance to minimize heat gain if they are not shaded (§A5.106.11.2). Austin, Texas, has similar reflectance requirements for flat roofs and also actively encourages the provision of green roofs through code incentives (Austin 2012).

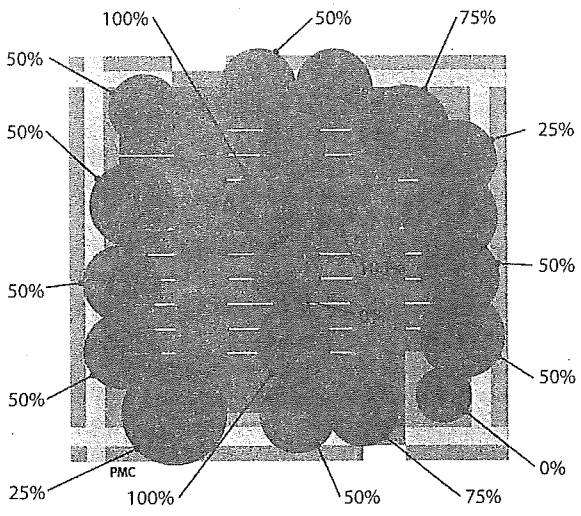
4. Let the Sun Shine

While the previous point focused on how to eliminate solar heat gain to lower air conditioning bills, in certain instances, maximizing solar access increases the opportunity to generate electricity or heat water with a solar energy system. Heating water accounts for 15 to 30 percent of electricity use in homes equipped with electric water heaters, and using a solar water heater can result in a 50 to 80 percent cost savings. Furthermore, many homes have space for a 4kW rooftop solar energy system, which in some circumstances can offset total annual electricity use.

Consequently, some states protect the rights of property owners to receive sunlight. These solar access protections often enable property owners to use solar easements to prevent neighbors from building structures that may block solar panels, garden areas, passive solar heating, or other features that require solar access. A few states even protect solar access without a solar easement. The Database of State Incentives for Renewable Energy includes a state-by-state breakdown of solar rights and access protection laws (www.dsireusa.org).

At the local level, many jurisdictions have a solar access or solar easement provisions in their development regulations. These provisions either enable the recordation of easements or establish a solar envelop by right to ensure that solar systems are not blocked or made less efficient by development on neighboring properties.

Subdivision or zoning provisions can also encourage buildings and neighborhoods to be designed along an east-west access to maximize solar exposure. The percentage of homes that are positioned for optimum solar access could be specified in the code (e.g., 50 percent). This will at least provide the opportunity



Minimum parking lot shade requirements can lessen urban heat island effects.

Notes:
1. This diagram is intended to reflect the manner in which shade is credited under various conditions.
2. Trees may receive 25%, 50%, 75%, or 100% as shown.
3. Shade overlap is not counted twice.

for a certain number of homes within each subdivision the option of installing solar systems in the future.

Beyond just providing for the possibility of future solar systems through solar access and orientation requirements, some jurisdictions are taking the next step of requiring that buildings are prewired (or preplumbed) for solar service. Resources produced by the American Planning Association through its participation in the SunShot Solar Outreach Partnership include examples of all of the strategies discussed above (www.planning.org/research/solar).

5. Reuse Existing Buildings

A common adage in energy conservation circles is that the most energy-efficient (or sustainable) building is the one that you don't build. If the primary goal is to save energy, then a persuasive argument can be made in favor of reusing buildings in more urban settings before constructing new low-density suburban settlements. Allowing a mix of uses within a district or a single building can encourage building reuse by allowing older buildings to be repurposed for new uses.

Many modern zoning codes provide for mixed use districts that allow (or require) combinations of residential, commercial, office, and even light industrial uses. From a utility standpoint, mixed use development maximizes infrastructure efficiency and may even help smooth out peak-period demand. Mixed use districts are often well suited to take advantage of shared parking facilities or available transit service, thereby reducing the need for private off-street parking. Reducing off-street parking can also lessen the impact on the electrical grid since large fields of parking contribute to the heat island effect, spread out the distance between buildings, and increase the distance that electricity has to travel.

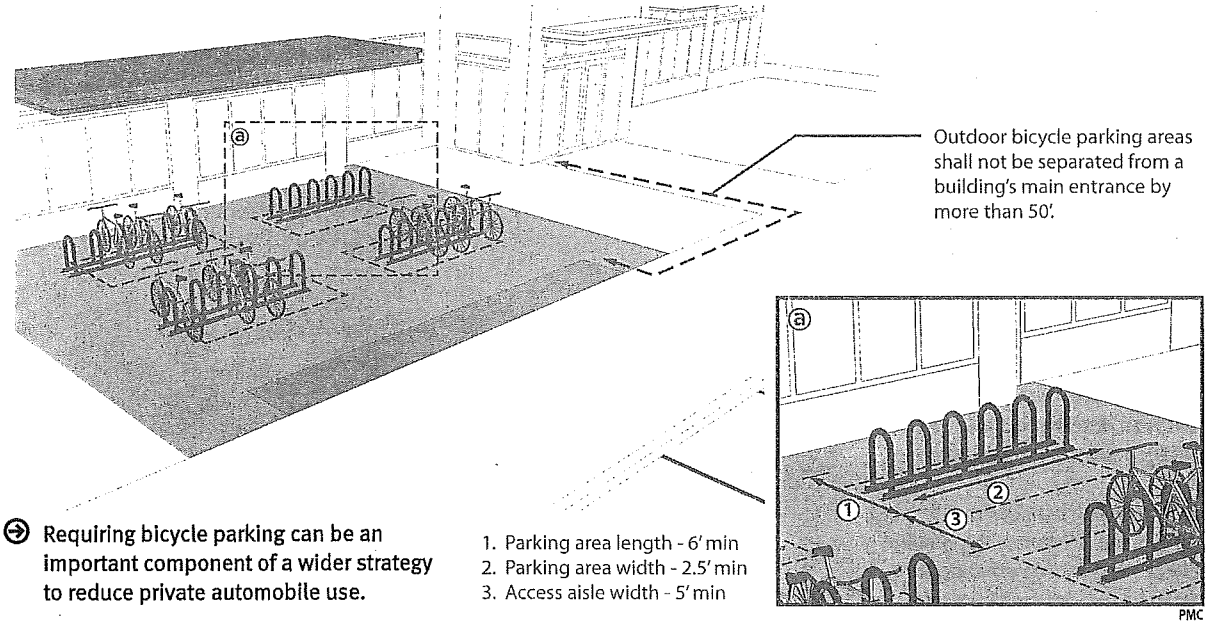
Applying building and zoning codes uniformly throughout the community can lead to the unintended destruction of historic resources. Many older buildings would need to be demolished and replaced in order to comply with strict energy efficiency or minimum off-street parking requirements. For this reason, jurisdictions often exempt downtown and other special areas from off-street parking requirements. Ocala, Florida's parking exempt zone illustrates this approach (§122-981). Similarly, communities may also carve out limited exemptions for historic buildings from energy-efficient building code provisions. For example, Palo Alto, California's green development regulations exempt historic structures from certain requirements (§18.44.10).

6. Reduce Private Automobile Use

While the topic is too large to cover in depth here, the most effective zoning strategy for reducing private automobile use may be mixed use and form-based code provisions aimed at creating more compact, walkable, and transit-friendly areas. Many contemporary zoning codes incentivize or require pedestrian- and transit-oriented development either communitywide or in multiple strategic locations.

In addition to provisions requiring compact, mixed use development in transit-friendly locations, communities can also use zoning to encourage carpooling, car sharing, or the use of more energy efficient vehicles (e.g., motorcycles and electric vehicles). Many communities require bicycle parking in their zoning codes, and these standards are typically based on a ratio related to vehicular parking requirements. CalGreen requires all jurisdictions to provide bicycle parking equivalent to five percent of all vehicle parking spaces (§5.106.4). While carpool spaces have long been required as part of some zoning codes, CalGreen requires parking for "clean air vehicles," which include vanpools, carpools, electric vehicles, and gas-electric hybrids (§5.106.5.2).

Beyond the baseline parking and clean air parking requirements discussed above, communities can also offer off-street parking reductions for sites that provide bicycle lockers, indoor bike rooms, and indoor changing and shower facilities to encourage employees to commute by bicycle. Additionally, communities may consider including separate parking allowances for small vehicles such as motorcycles, mopeds, golf carts, and other energy- (and space-) efficient vehicles.



Requiring bicycle parking can be an important component of a wider strategy to reduce private automobile use.

1. Parking area length - 6' min
2. Parking area width - 2.5' min
3. Access aisle width - 5' min

PMC

A growing number of communities have added zoning provisions in recent years to promote infrastructure for electric vehicles.

7. Prepare for Electric Vehicles
Electric vehicles (EVs) are increasing in popularity, although it is too early to tell if they will be produced in significant enough numbers to compete with their gas-powered cousins. EVs present an interesting set of issues for utilities, but with incentives to encourage off-peak charging (e.g., at night) EVs can avoid undue impact on the grid and allow utilities to sell more electricity at off- hours.

Zoning codes typically do not address EV infrastructure. In general EVs are treated the same in zoning codes that any other vehicle. In a typical scenario these spaces would be part of the parking supply and applied toward the required number of parking spaces. If provided, the Americans with Disabilities Act requires one or more EV spaces to be provided as disabled parking.

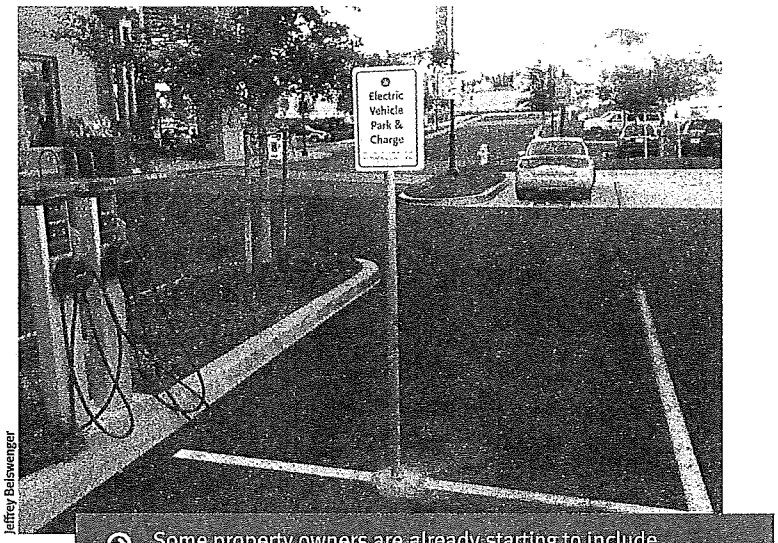
However, a growing number of communities have added zoning provisions in recent years to promote infrastructure for electric vehicles. For example, Sequim, Washington, devotes an entire chapter of its zoning code to EV infrastructure requirements (Chapter 18.50). Sequin does not require the installation of electric vehicle spaces but does include detailed provisions that apply if they are to be installed. Also, CalGreen includes model provisions that could be adopted by jurisdictions to require prewiring for future spaces (§A5.106.5.3).

8. Set the Bar High
A variety of project rating systems can be used by local governments to encourage energy efficiency. These systems may either be incorporated into the zoning code as requirements or used to incentivize more sustainable development.

Jurisdictions may encourage developers to build projects that comply with sustainable development rating systems by offering density bonuses or expedited permitting. For example, Rancho Cucamonga, California, recently adopted a rating system based on CalGreen that qualifies energy-efficient residential and nonresidential projects for an expedited permitting process. While developers are always interested in expedited processing times, the desire to implement energy efficiency often comes down to direct financial benefits: Can the homes be sold for more if a solar system is installed? Jennifer Nakamura, senior planner with Rancho Cucamonga, explains that apartment projects can be especially tricky, since reductions in electricity use benefit future tenants and not the developer.

Requiring provisions for more sustainable development—as opposed to simply providing incentives—is also an option. For example, Duarte, California, has adopted an approach that incorporates a wide range of CalGreen provisions directly into a chapter of its zoning code (Chapter 19.52). Different sustainable development provisions apply based on the size of project.

9. Partner With Your Utilities
Why would utility companies want less consumption of energy? After all, utilities are in the business of selling the stuff. In some markets utilities may be required to refund profits above a certain amount, so they don't necessarily make more if more energy is sold. In other cases, if a utility brings in less revenue than expected due to reduced electricity use, the state compensates them for the difference. This incentivizes the utility to produce less electricity because they get to pocket the savings and are guaranteed a certain profit. Capacity constraints also play a role and may encourage conservation. Since it is extremely costly to permit, construct, and operate a new power plant, it can be more cost-effective to promote conservation as a way to reduce demand.



Jeffrey Beiswenger

Some property owners are already starting to include electric vehicle spaces with charging stations in their parking lots.

As a consequence, cities and counties throughout the United States have launched energy-efficiency programs in cooperation with local utilities. Christina Prestella, a program manager with Pacific Gas and Electric, explains that local government programs are popular politically since they are viewed as ways to save money and use resources more efficiently. In addition to energy-efficiency programs which provide direct energy savings to existing buildings, utilities are also funding efforts to help local governments craft regulations that apply to new construction activities that will lead to

greater energy efficiency throughout a larger geographic area.

Utility-driven programs typically address the energy efficiency of governmental operations (e.g., water treatment, streetlights, and facilities), assistance to local businesses (e.g., lighting retrofits) and community residents (e.g., weatherproofing). The programs are often funded by the local utility and may use ratepayer fees identified for this purpose.

Forming multijurisdictional partnerships, particularly where large utilities are involved, can be a particularly effective way to achieve energy-efficiency gains. In 2009, the California Public Utilities Commission authorized $32 million for local governments to engage in strategic energy efficiency activities. As part of this effort, Southern California Edison is partnering

Forming multijurisdictional partnerships, particularly where large utilities are involved, can be a particularly effective way to achieve energy-efficiency gains.

with 27 member agencies of the San Gabriel Valley Council of Governments (SGVCOG) to prepare energy efficiency plans. In early 2012, SGVCOG elicited assistance from the planning consulting firm PMC to develop a toolkit to help jurisdictions adopt regulations that promote energy efficiency. This Model Energy Efficient Code Toolkit will provide a framework to help local governments address energy-efficiency targets, goals, and policies through development regulations. Although certain provisions are calibrated for Southern California, most of the ideas included in the model are applicable in other states and geographies as well. The full toolkit will be available in late January 2013 at www.sgvenergywise.org.

REFERENCES

Adrian, W. and R. Jabanputra. 2005. *Influence of Pavement Reflectance on Lighting for Parking Lots*. Skokie, Illinois: Portland Cement Association. Available at www.secement.org/PDFs/SN2458.pdf.

Akbari, Hashem. 2005. *Energy Saving Potentials and Air Quality Benefits of Urban Heat Island Mitigation*. Berkeley, California: Lawrence Berkeley National Laboratory. Available at http://escholarship.org/uc/item/4qs5f42s.

Austin (Texas), City of. 2012. "Green Roofs." Available at http://austintexas.gov/department/green-roofs.

Los Angeles, City of. 2012. "Low Impact Development." Available at www.lastormwater.org/green-la/low-impact-development.

Natural Resources Defense Council. 2009. "Water Efficiency Saves Energy: Reducing Global Warming Pollution Through Water Use Strategies." Available at www.nrdc.org/water/files/energywater.pdf.

Sullivan, Colin. 2009. "Will Electric Cars Wreck the Grid?" *Scientific American*, August 13. Available at www.scientificamerican.com/article.cfm?id=will-electric-cars-wreck-the-grid.

Tucson (Arizona), City of. 2012. Outdoor Lighting Code. Available at http://cms3.tucsonaz.gov/pdsd/codes-ordinances.

CONCLUSIONS

Development regulations clearly offer numerous opportunities to promote energy savings, and given the increasing awareness of energy-related issues in many communities, this may be an ideal time to present needed updates to outdated zoning codes. The strategies discussed above are not intended to be an exhaustive list but only a starting point to stimulate conversation. What is particularly interesting about this subject matter is that it allows consideration of a number of past zoning strategies (e.g., smart growth, form-based codes, performance standards, lighting limits, compact development, etc.) through the lens of energy efficiency.

Finally, planners should consider contacting their local utilities for partnership opportunities. Many utilities are operating at or near capacity and may be looking for creative ways to increase energy efficiency and better serve utility ratepayers.

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