City of Ramsey
Agenda
Regular Planning Commission
Thursday May 7, 2015
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 Planning Commission Meeting Minutes Dated April 9, 2015 and April 20, 2015

5. Public Hearing/Commission Business

1. PUBLIC HEARING: Request for a Variance to Accessory Building Height Restrictions on the Property Located at 9491 Inverness Lane NW; Case of Allen and Alycia Skogquist

6. Commission/Staff Input

1. Zoning Bulletins

7. Adjournment

Regular Planning Commission **4. 1.**

Meeting Date: 05/07/2015

By: JoAnn Shaw, Community Development

Information

Title:

Approve the Planning Commission Meeting Minutes Dated April 9, 2015 and April 20, 2015

Purpose/Background:

n/a

Notification:

Observations/Alternatives:

Funding Source:

Recommendation:

Action:

Attachments

DRAFT Planning Commission Minutes dated April 9, 2015

DRAFT Planning Commission Minutes dated April 20, 2015

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	04/30/2015 01:08 PM
Form Started By: Tim Gladhill		Started On: 04/30/2015 12:41 PM
Final Approval Date: 04/30/2015		

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a regular meeting on Thursday, April 9, 2015, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Gary Levine Commissioner Andrew Andrusko Commissioner Randy Bauer Commissioner Ralph Brauer (arrived at 7:04 p.m.) Commissioner Matthew Maul Commissioner Cindy Nosan Commissioner Gary VanScoy
Members Absent:	None
Also Present:	Community Development Director Timothy Gladhill City Planner Chris Anderson

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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 Nosan, to approve the agenda as presented.

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

4. APPROVE PLANNING COMMISSION MINUTES

4.01: Approve the Following Planning Commission Minutes:

4.01.1: Planning Commission Meeting Minutes Dated March 5, 2015

Motion by Commissioner VanScoy, seconded by Commissioner Maul, to approve the following minutes as presented: Planning Commission Meeting Minutes dated March 5, 2015.

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

5. PUBLIC HEARINGS/COMMISSION BUSINESS

5.01: Appoint Chairperson and Vice Chairperson

Presentation

Community Development Director Gladhill requested the Planning Commission appoint a Chairperson and Vice Chairperson for 2015.

Commission Business

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

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

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

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

5.02: Public Hearing: Consider Request for a Variance to Side Yard Setbacks for an Accessory Building on the Property Located at 6520 170th Avenue NW; Case of Jeff Rieck

Public Hearing

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

Presentation

City Planner Anderson presented the staff report stating the City has received an application from Jeff Rieck for a variance to the required side yard setback for an addition to an existing, attached garage at the property located at 6520 170th Avenue NW. The proposed addition to the garage would be located five (5) feet from the eastern side property boundary of the property. Staff

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discussed the request in detail and recommendation the Commission approve a variance to the minimum side yard setback for an accessory building addition.

Citizen Input

Jeff Rieck, 6520 170th Avenue NW, the applicant, thanked staff for the thorough report.

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

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

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

Commission Business

Commissioner VanScoy asked if the City had any restrictions with regard to the size of an attached garage. He feared that attached garages would soon become larger than principle structures.

City Planner Anderson stated the City did not have any size restrictions for attached garages. He commented that a three-car garage was not out of the norm.

Motion by Commissioner Bauer, seconded by Commissioner Maul, to adopt Resolution #15-04-077 approving the Findings of Fact.

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

Motion by Commissioner Bauer, seconded by Commissioner Maul, adopt Resolution #15-04-078 approving a variance to the minimum side yard setback for an accessory building addition at 3520 170th Avenue NW.

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

5.03: Public Hearing: Consider Resolution #15-04-092 Granting Preliminary Plat Approval to Harvest Estates, a Major Plat; Case of G S Land, LLC

Public Hearing

Chairperson Levine called the public hearing to order at 7:12 p.m.

Presentation

Community Development Director Gladhill presented the staff report stating the purpose of this case is to review the official Preliminary Plat prepared by G S Land, LLC for the redevelopment of the former municipal campus located at 15153 Nowthen Boulevard NW as a 44-lot single-family residential development. It was noted each of the lots meet or exceed the City's residential lot requirements. The site is currently owned by the City of Ramsey, which has approved a Purchase Agreement to sell the site in two (2) phases to G S Land, LLC. It was noted the Commission has reviewed a previous sketch plan and approved a recommendation to rezone the property from Public/Quasi-Public to R-1, Residential (MUSA) and a land use change from Public/Quasi in the Comprehensive Plan. Staff explained that Fire Station No. 2 currently operates from the existing building on the site. The Final Plat will be proposed in two phases to allow the Fire Department to be located at 5650 Alpine Drive, adjacent to the site until the construction of a new Fire Station 2 is completed. It was noted that a temporary cul-de-sac would be needed and that a connection to Nowthen Boulevard would not be granted. The fill needs for Phase II were discussed. Staff reviewed the plat in further detail and recommended approval of the Preliminary Plat of Harvest Estates.

Citizen Input

Commissioner Bauer requested further information on the purchase agreement.

Community Development Director Gladhill noted that the former municipal campus would be sold in two phases and Phase I would be sold in 2015.

Chairperson Levine asked when the access to Nowthen Boulevard would be closed.

Community Development Director Gladhill explained that the access point will remain open as long as Fire Station 2 remains open. After that time, the access point to Nowthen Boulevard will be cut off and no longer be available.

Commissioner Bauer saw no reason to eliminate this access point.

Community Development Director Gladhill stated the Council had concerns with the cost of the local road connection. He reported that the overall safety of County Road 5 was also a concern. He explained that a study could be completed to address the safety of this roadway but would take a year to complete. He indicated that the Commission could make a recommendation to the Council regarding this access point.

Commissioner Nosan expressed confusion why it would cost the City more money to keep the access point as is.

Community Development Director Gladhill explained the local road connection would require maintenance, noting public road standards would have to be met. In addition, the City would

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need to buy back a parcel through a property acquisition. He indicated that peak traffic may also require turn lanes on County Road 5.

Commissioner Andrusko questioned the expense of leaving the access point open.

Community Development Director Gladhill estimated that the land acquisition would be several hundred thousand dollars plus additional capital maintenance expenses.

Commissioner Brauer asked if a barrier would be placed at the access point during Phase I.

Community Development Director Gladhill stated the turning movement would have a barricade to eliminate traffic from driving through the site.

Further discussion ensued regarding the alignment of an access point to County Road 5.

Commissioner Brauer expressed frustration with how Anoka County was dictating the traffic projections. He felt this was not fair to the City of Ramsey.

Jason Johnson, 5545 152nd Avenue NW, explained he recently moved from St. Paul to Ramsey. He opposed the proposed development and expressed concern with how the additional traffic would impact 152nd Avenue. He suggested that a park be placed on the old municipal campus.

Robert Hartman, 5475 151st Avenue NW, questioned the price range of the new houses. He inquired what the size of two outlots shown on the plan. Mr. Hartman believed that access to Nowthen Boulevard should be maintained as Helium would not provide enough access to the residential traffic. Mr. Hartman questioned how many accidents have occurred at the Nowthen Boulevard access to Ramsey Elementary School. Mr. Hartman also questioned if the closure of Nowthen Boulevard would create a public safety issue on Helium Street.

Community Development Director Gladhill reported zoning code does not dictate the price range of homes, but rather sets regulations on building materials, design and lot sizes. Based on his conversations with the applicant, he believed that the homes would be similar in price to The Meadow development. He then discussed the size of the outlot, which was actually approved with a previous development, not the current request.

Jeanne Hannin, 5545 152nd Avenue NW, stated she moved to Ramsey from St. Paul to get away from the noise and light pollution found in other communities. She did not believe that 44 homes would fit in her backyard. She discussed how the increased traffic would adversely impact her neighborhood. She wanted to live in peace and quiet and feared that she would be living in a construction zone for the next three or four years, noting a concern over potential increased crime due to theft from the construction site. She noted concern about additional maintenance needs for existing roads. She questioned if the City would require streetlights, City water, sewer and sidewalks in the new development. She questioned if sidewalks would be required to construct on existing roads in existing development. She expressed a great deal of

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frustration with how this new development would negatively impact her neighborhood. She noted that she moved out of St. Paul to get away from the noise and she would do the same with Ramsey.

Commissioner VanScoy requested clarification from staff on the process, which led the municipal campus being zoned residential.

Community Development Director Gladhill discussed the history of the municipal campus site. He explained zoning this site for low density residential was made after a great deal of thought after previously considering a data center. He noted that sidewalks were not being considered by the City along existing roads. He indicated that City water and sewer would be provided to the development.

Michael Piza, 15129 Helium Street, asked if homes would be built before or after lot sales. He believed that a large number of houses were being stacked along 152nd Avenue. He feared that this would be a safety concern for children trying to reach the school without proper access.

Community Development Director Gladhill explained there would be a combination of home sales with a buyer and other sales on spec. He reported that the City could not control how the properties were sold. He indicated that a trail connection would be created to Nowthen Boulevard through Alpine Drive to access the school. He then discussed the residential lots sizes within Harvest Estates.

Kent Cunningham, 15211 Helium Street, had hoped that green space would have been included in the development. He questioned how this was being addressed by the City.

Community Development Director Gladhill reported the City has a master park and trail plan that breaks the City into districts. He commented that Solstice Park and Alpine Park were already located within this district of the City. He stated that trail connections would be improved to these parks rather than creating a small tot lot within the development.

Matt Crampton, 5710 152nd Way, asked what the lots behind his home would look like. He was concerned how the elevation difference would impact his property. He recommended that the City police this site while being constructed to ensure that miscellaneous construction debris was not allowed to remain on site. He noted existing construction debris left on site from the previous development.

Community Development Director Gladhill indicated the stormwater pond would remain in place along 152nd Way. He discussed how the new homes would look behind 152nd Way noting the lots were slightly larger which meant the homes would be further apart. He reported that code enforcement officers would react to any complaints received at City Hall.

Phillip Kryzaniak, NIK Management representing the developer, noted the homes would range in price from $250,000 to $350,000, which was similar to the surrounding homes. He did not

believe the proposed neighborhood would be a deterrent as the lot sizes were larger than required by the City. He explained that only one builder was being selected and that he had a long-standing professional relationship with this builder.

Commissioner VanScoy was pleased by the layout of the development. He requested further information on the density for the proposed development.

Mr. Kryzaniak reported that City standards would allow him to have 3 units to the acre or 61 lots on the site. He indicated he was proposing to build 44 homes on larger cul-de-sac lots.

Community Development Director Gladhill discussed how the City calculated net density noting right-of-way was removed from this calculation. He also noted that the City is not proposing to regulate minimum home prices.

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

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

Chairperson Levine closed the public hearing closed at 8:33 p.m.

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Commission Business

Commissioner Bauer expressed concern with how access to Nowthen Boulevard was being lost within this development.

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to recommend the City Council adopt Resolution #15-04-092 granting Preliminary Plat Approval of Harvest Estates – Phase I with no change made to the Nowthen Boulevard access until Phase II was considered by the City.

Further discussion

Commissioner Andrusko asked if it was common to consolidate access points within residential neighborhoods.

Community Development Director Gladhill reported this was the case as this would limit congestion and improved safety.

Further discussion ensued regarding the Nowthen Boulevard access point.

Commissioner Andrusko believed that access management would improve safety along Nowthen Boulevard, given the high level of speed along this roadway. He reiterated that the current access

point to Nowthen Boulevard was not up to code and was not engineered to manage the increase in traffic. It was his opinion that the developer's solution was ideal and should be pursued.

Commissioner Bauer commented the school and church had much higher traffic counts than the new neighborhood would.

Commissioner Nosan did not understand why it was better to force traffic to Highway 47. She was thoroughly against the proposed traffic flow and believed the access point on Nowthen Boulevard should remain open.

Community Development Director Gladhill reported that this was the last opportunity for the Planning Commission to review the request. He noted that the Council would consider the final plats for the two phases separately.

Commissioner Bauer misunderstood how the parcel was being platted. He explained that his motion would be to approve Phase I of the Harvest Estates Plat.

Community Development Director Gladhill explained that this would entitle the developer to 32 lots within the development at this time. It would then be the hope that the remaining 12 lots would be developed at some point in the future, but there was a risk to the developer.

Assistant City Administrator/Economic Development Manager Brama reported that Phase I of the development coincides with the Purchase Agreement and the remaining lots would remain outlots for development in the future. He questioned what the risk to the developer would be on the remaining 12 lots.

Community Development Director Gladhill indicated there would be added risk to the developer, but reiterated that the Planning Commission was a recommending body to the City Council.

Chairperson Levine questioned if the motion on the floor would breach the current Purchase Agreement.

Community Development Director Gladhill stated there was a potential that the motion would conflict with the Purchase Agreement.

Assistant City Administrator/Economic Development Manager Brama reviewed the approval process for the Preliminary and Final Plats of Phase I and II. He noted that this evening the applicant was requesting Preliminary Plat approval for both Phases I and II, while the Commission was suggesting approval of only Phase I. He commented that the Final Plat of Phase II could not be approved until after the property for Phase II was closed. He did not believe the intent of the Purchase Agreement would be broken by approving only Phase I of the Preliminary Plat. The only change would be the entitlement assumed by the developer. He indicated that the Commission was not proposing to change the lot sizes or design of Phase II. He questioned if the developer supported moving forward in this manner.

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Community Development Director Gladhill commented that there would be added costs to hold a second public hearing for Phase II of the Preliminary Plat approval process.

Commissioner Andrusko called the question. There was no second and discussion continued.

Commissioner Brauer was unclear what the existing road would look like if the access point were to remain open.

Community Development Director Gladhill reviewed the alignment of the roadway with Nowthen Boulevard.

Commissioner Brauer was in favor of approving Phase I and II of the development with the stipulation that the access point to Nowthen Boulevard remain open.

Commissioner Bauer noted he could amend his motion to approve the Preliminary Plat for Phase I and II requiring that the Final Plat have 152nd Lane maintain the connection to Nowthen Boulevard.

Friendly Amendment

Commissioner Bauer amended his motion to approve the Preliminary Plat for Phase I and II of Harvest Estates requiring the Final Plat have 152nd Lane maintain the connection to Nowthen Boulevard.

Friendly Amendment

Commissioner Brauer suggested that this amendment also include the following language: That the City maintain existing access to Highway 5 until further study can be made of the traffic consequences with Nowthen Boulevard at which time a decision will be made about the closure of the road.

Commissioner VanScoy questioned how and when a determination would be made. He stated he could support the proposed modification.

Community Development Director Gladhill explained that a determination would be made prior to approving the Final Plat of Phase II.

Commissioner Bauer and Commissioner VanScoy supported this friendly amendment.

Community Development Director Gladhill stated the proposed amendments were consistent with the developer's plans for the project.

Randy Hedlund, Hedlund Engineering, wanted to see the preliminary plat approved for all 44 lots. He explained that the current alignment would allow for a connection to Nowthen Boulevard.

Assistant City Administrator/Economic Development Manager Brama indicated there could be a gap in time between the demolition of the fire station and work on Phase II.

Community Development Director Gladhill believed that this issue could be resolved at a staff level.

Motion by Commissioner Andrusko and seconded by Commissioner VanScoy to call the question.

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

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

5.04: Public Hearing: Consider Resolution #15-04-093 Granting Approvals for COR Parkview Addition and Parkview East

1. **Preliminary Plat for Major Subdivision**
2. **Site Plan for 121 Unit Apartment Building**

Public Hearing

Chairperson Levine called the public hearing to order at 9:08 p.m.

Presentation

Community Development Director Gladhill presented the staff report stating the purpose of this file is to review the official Preliminary Plat and Site Plan Review for the Parkview East Apartment Complex. The subject property is located south of Ramsey Parkway, east of Town Center Drive East and west of Rhinestone Street NW and north of Sunwood Drive. The property is located in COR-1 zoning sub-district. The application includes a plat to be called COR Parkview Addition and development of phase one apartment complex consisting of one (1), four (4) story building with a total of 121 units with tuck under, detached garage and surface parking. Staff reviewed the request in further detail and recommended approval contingent upon conditions in the Development Agreement.

Citizen Input

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Matt Kuker, PSD, appreciated staff's assistance and for providing a thorough report on the preliminary plat and major subdivision. He provided further comment on the design of the apartment complex with the Planning Commission. He noted that parking was not being counted on off site. He indicated the building could be shifted slightly to address staff's concerns. He reported that a community garden green space was located on the site. He explained there would be great color variations on the building.

Commissioner VanScoy reported this building was located in a mixed use zoning district. He questioned what other uses were proposed for the site.

Mr. Kuker indicated he was only proposing to locate an apartment building on the property.

Community Development Director Gladhill clarified that there would be a variety of uses on the block. He noted the Ramsey Office Plaza was located on this block.

Commissioner VanScoy requested further clarification from staff at a future meeting on how the City was defining a block. He believed that the apartment complex was over parked and questioned why the applicant was proposing to have more than two parking spaces per apartment. He recalled that the intent of the COR was to have shared parking.

Community Development Director Gladhill stated the 44 tuck under garages were not included in the surface parking. He discussed the parking situation further and noted the site was just under the City's requirements with its surface lot. Staff was concerned with the level of surface parking within this development and the Commission could make a recommendation regarding this matter.

Mr. Kuker indicated he would be willing to eliminate one row of parking to create additional green space.

Community Development Director Gladhill reported that he would work with the applicant to address the parking issue. He briefly discussed the expense of a parking structure.

Commissioner Bauer believed that this was a fair compromise.

Commissioner Andrusko asked if the developer would be connecting his site to the adjacent park or providing any retail amenities on the property.

Mr. Kuker believed it would be difficult to draw a retailer to his property given the fact it was off the main drive and if a hotel was built, the retailer would have zero visibility. He reported that if the demand was there, he would be open to the possibility.

Commissioner Brauer was in favor of holding a joint meeting with the Council to further discuss The COR and how it was developing. He wanted to see the COR develop successfully.

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Community Development Director Gladhill indicated the Council was currently reviewing a strategic plan for The COR.

Motion by Commissioner Brauer, seconded by Commissioner Maul, to close the public hearing.

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

Chairperson Levine closed the public hearing closed at 9:38 p.m.

Commission Business

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to recommend that City Council adopt Resolution #15-04-03 granting Preliminary Plat and Site Plan Approval for COR Parkview Addition/Parkview East, with the stipulation that the amount of surface parking be reduced and the amount of greenspace be increased.

Commissioner Brauer noted he would be abstaining from this vote as he did not have clear plans from the Council on how The COR should develop.

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

5.05: Consider Approvals Related to Site Plan Review for Sunwood Village; Case of CommonBond Communities

1. **Resolution #15-04-088: Sketch Plan (Minor Plat)**
2. **Resolution #15-04-089: Site Plan Review**

Presentation

City Planner Anderson presented the Staff Report stating the City received an application for a Minor Plat and Site Plan for Sunwood Village, a proposed forty-seven (47) unit, three (3) story apartment building within The COR. The project site is located on Outlot A, COR ONE, or upon recording of the plat, Lot 1 Block 1 Sunwood Village, between Sunwood Drive and Veterans Drive, directly adjacent to the Residence at the COR property. The project proposes to replat Outlot A, COR ONE into a buildable lot to accommodate the proposed apartment building. There is an active Purchase Agreement between CommonBond Communities and the City for this parcel. The Purchase Agreement was entered into on May 20, 2014. Staff reviewed the request in further detail and recommended approval of the Site Plan contingent upon compliance with the Staff Review Letter dated April 3, 2015.

Commission Business

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Justin Eilers, CommonBond Communities, discussed his companies 35 year history with creating high quality housing. He noted that the proposed complex would have 1, 2 and 3 bedroom units, along with a community room.

Commissioner VanScoy asked if any of the units would have ground access to Sunwood Drive.

Community Development Director Gladhill reported that preliminary plans showed access to Sunwood Drive; however, this was altered through later architectural renderings of the building.

Commissioner VanScoy questioned how large the tree trench would be.

Ken Simon, Miller Hanson Partners Architects, reviewed the size of the tree trench on the west side of the parking lot. He noted this trench would be a good way for the site to manage its stormwater. He discussed the energy efficient options that would be pursued for this building.

Commissioner VanScoy was not pleased with the aesthetics of the building and encouraged the architect to improve the design.

Commissioner Andrusko wanted to see enhanced architectural elements around the doorways with access at street level.

Mr. Eilers noted only five units would be served through access at street level.

Chairperson Levine stated he supported the look of the building.

Commissioner Nosan inquired if the new units would be market rate or affordable housing.

Mr. Eilers indicated the units would be affordable.

Motion by Commissioner Andrusko, seconded by Commissioner VanScoy, to recommend that City Council adopt Resolution #15-04-088 Approving the Plat entitled 'SUNWOOD VILLAGE' having staff speak further with the applicant regarding street level access to units on Sunwood Drive.

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

Motion by Commissioner Andrusko, seconded by Commissioner VanScoy, to recommend that City Council adopt Resolution #15-04-089 Approving the Site Plan for Sunwood Village having staff speak further with the applicant regarding street level access to units on Sunwood Drive.

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

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5.06: Public Hearing: Consider the Surface Water Management Plan Update

Public Hearing

Chairperson Levine called the public hearing to order at 10:10 p.m.

Presentation

Civil Engineer II Linton presented the staff report stating the purpose of this case was to review the proposed updates to the Surface Water Management Plan (SWMP). As most of the regulatory provisions outlined within the SWMP are in the Zoning Ordinance, staff thought it appropriate to conduct a public hearing through the Planning Commission. He reviewed State Statute and watershed requirements regarding the SWMP. Staff reviewed the SWMP in further detail with the Commission along with the documents goals and recommended approval of the updated Surface Water Management Plan.

Citizen Input

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

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

Chairperson Levine closed the public hearing closed at 10:12 p.m.

Commission Business

Commissioner VanScoy questioned if the City's infrastructure would be impacted in any way by the proposed changes.

Civil Engineer II Linton did not anticipate this to be a concern, but would be investigated by staff.

Commissioner Brauer and Chairperson Levine commended staff on their efforts on the Surface Water Management Plan Update.

Motion by Commissioner Brauer, seconded by Commissioner VanScoy, to approve the Surface Water Management Plan and direct staff to forward this document to City Council.

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

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5.07: Public Hearing: Consider Ordinance #15-08 Amending Off-Street Parking Regulations

Public Hearing

Chairperson Levine called the public hearing to order at 10:19 p.m.

Presentation

City Planner Anderson presented the staff report stating City Code Section 117-355 (Residential Development Off-Street Parking) currently outlines permissible locations for parking motor vehicles and equipment on residential lots. There are different standards for lots less than two (2) acres in size then there are for lots two (2) acres or larger in size. The purpose of this proposed amendment is to consider a standardized setback for parking motor vehicles and/or equipment in the side and rear yard of residential lots, regardless of their size. Staff reviewed the code amendment further and recommended approval of Ordinance #15-08.

Citizen Input

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

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

Chairperson Levine closed the public hearing closed at 10:22 p.m.

Commission Business

Motion by Commissioner VanScoy, seconded by Commissioner Maul, to recommend that City Council adopt Ordinance #15-08.

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

6. COMMISSION / STAFF INPUT

6.01: Zoning Bulletins

The Zoning Bulletins were noted.

7. ADJOURNMENT

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

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

The regular meeting of the Planning Commission adjourned at 10:26 p.m.

Respectfully submitted,

____
Tim Gladhill
Community Development Director

ATTEST:

____
JoAnn Shaw
Community Development Assistant

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

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PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a special meeting on Monday, April 20, 2015, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Gary Levine Commissioner Andrew Andrusko Commissioner Randy Bauer Commissioner Ralph Brauer Commissioner Matthew Maul
Members Absent:	Commissioner Cindy Nosan Commissioner Gary VanScoy
Also Present:	Community Development Director Timothy Gladhill City Planner Chris Anderson City Council Liaison John LeTourneau

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1. CALL TO ORDER

Chairperson Levine called the regular meeting to order at 8:25 p.m.

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

None.

4. COMMISSION BUSINESS

4.01: Review and Recommend a Response to the Metropolitan Council Regional Housing Policy Plan 2015 Amendment

<u>Presentation</u>

Community Development Director Gladhill explained that the Planning Commission was discussing an amendment to the Metropolitan Council Housing Plan that has been released for public comment. Housing is one of four Metropolitan Council plans (Water Resources,

Transportation, Parking and Housing) that influence the City's Comprehensive Plan. He stated that the Housing Plan was different in that it was not necessarily infrastructure improvements but it does guide some of the investments the Metropolitan Council makes, especially grants that the City works to access through the Livable Communities Program. He stated that the City does participate in the voluntary Livable Communities Program with the Metropolitan Council. With this program, housing performance scores are utilized to help gauge our grant applications in a competitive scoring process against other participating communities. He stated that the City has received several grants through this process and that this is an important document as it relates to regional investments within the City of Ramsey. He stated that the City is not opposed to the amendment as long as these are not required mandates but are voluntary goals that the community aspires to. There would be no penalty for not meeting the affordable housing thresholds published in the document but it gives the City something to strive for. He stated that this has been a controversial document for many of the suburbs in the area. He stated that the City did respond to the preliminary document based on the standards being voluntary and the plan not requiring amendments to the City's current Future Land Use Plan or its Housing Assistance Policy, or the housing chapter of the Comprehensive Plan. He stated that the Council did make minor adjustments to the language as it relates to the land use plan and not wanting to restrict the City from expanding the MUSA or urban service area in the future. He highlighted things that were incorporated from the City's previous comments including trying to normalize the City's housing performance score across years.

Commissioner Bauer spoke about issues not becoming mandates. It is important to have guidelines that the City tries to follow.

Commissioner Andrusko stated it is his understanding that the Metropolitan Council doesn't have the necessary staff to review, in depth, every land use plan submitted to them. So along with that line, these should be guidelines until the Metropolitan Council can fully say, with every page and every policy that each individual municipality recommends. He felt it needs to come full circle before it does become a requirement.

Commissioner Brauer stated he sent an e-mail to Community Development Director Gladhill outlining his issues with the Metropolitan Council document and the City's response omissions. He stated that out of 53 members, there was only one from Anoka County and the document favors rich gated communities over communities like Ramsey because of the criteria it uses.

Chairperson Levine asked if the communities are privately owned property.

Commissioner Andrusko stated that there are community-associated properties but they still have to provide the legal amount for the federal government.

Community Development Director Gladhill stated that the Metropolitan Council's role is to look at how much is necessary and then looks at the various local land use plans. Looking at what the plan could sustain with regard to density was important. He noted that the City's allocation was less than it was in the past.

Commissioner Brauer stated that the criteria they use doesn't take into account the individuality of the communities. Just to use income and population takes out geography and environmental considerations.

Community Development Director Gladhill stated that wetlands and developmental areas are excluded from the calculation. He stated other socio economic factors are involved.

Commissioner Brauer stated that if their figures on the population increase are correct, every city is going to reach a stage where there is no room and the criteria doesn't make allowance for that. He talked about Ramsey Three being implemented as a result of a Metropolitan Council report that thought the City could continue to grow at the rate it had been in the past.

Community Development Director Gladhill stated that that is why the City included the comment that it generally supports the document as long as it is not a required allocation that the City needs to meet and the City doesn't need to change their current/future land use map/vision.

Commissioner Brauer talked about the aging population trend and stated he doesn't see the Metropolitan Council doing anything about it. He talked about Aitkin County's dilemma with their large snowbird population.

Chairperson Levine asked if the scenario is going to play out the same everywhere.

Commissioner Bauer asked about age in Ramsey County.

Community Development Director Gladhill stated that he did not know that information, but that the community will experience the baby boomer bubble and that is seen in the need for senior independent housing. He asked for consensus on including Commissioner Brauer's headers in the document response.

Chairperson Levine stated he is struggling with Commissioner Brauer's point about the gated communities because the property is privately owned.

Commissioner Brauer stated he would not have a problem leaving that header out and that it may not be appropriate in a document like this.

Chairperson Levine could have consensus on the rest of headers.

Commissioner Andrusko stated that he doesn't agree with putting in the 1 out 53 members were from Anoka County header. He would rephrase it as there should be more representation from Anoka County.

Commissioner Brauer stated that Staff could reword the headers.

Community Development Director Gladhill stated that the headers will be reworded before they go to the City Council. He confirmed that there was consensus to include the headers, to take out the section about the gated communities, to reword the header regarding Anoka County representation and to give latitude to Staff to reword the headers as needed.

Commission Business

Motion by Commissioner Brauer, seconded by Commissioner Maul, to recommend that City Council approve the draft response to the Metropolitan Council's Housing Policy Plan with the changes noted.

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

5. COMMISSION / STAFF INPUT

None.

6. ADJOURNMENT

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

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

The regular meeting of the Planning Commission adjourned at 8:44 p.m.

Respectfully submitted,

____
Tim Gladhill
Community Development Director

ATTEST:

____
JoAnn Shaw
Community Development Assistant

Drafted by Denise Berndt
TimeSaver Off Site Secretarial, Inc.

DRAFT

Regular Planning Commission **5. 1.**

Meeting Date: 05/07/2015

By: Chris Anderson, Community Development

Information

Title:

PUBLIC HEARING: Request for a Variance to Accessory Building Height Restrictions on the Property Located at 9491 Inverness Lane NW; Case of Allen and Alycia Skogquist

Purpose/Background:

The City has received an application from Allen and Alycia Skogquist (the "Applicants") for a variance to exceed the allowable mean gable height for a detached accessory building (the "Building") on the property located at 9491 Inverness Lane NW (the "Subject Property"). The Subject Property is approximately 1.71 acres in size and is limited to a mean gable height of sixteen (16) feet for detached accessory buildings. The proposed Building would have a mean gable height of twenty (20) feet.

Notification:

Staff attempted to notify all Property Owners within a 350 foot radius of the Property of the Public Hearing via Standard US Mail. The Public Hearing was also published in the City's official newsletter, the Anoka County Union Herald.

Observations/Alternatives:

The Applicants desire to construct a 2,204 square foot (38' x 58') Building that would replace an existing, smaller, detached accessory building. The proposed Building has a mean gable height of twenty (20) feet, which exceeds the allowable height based on the size of the Subject Property. The purpose of the Building would be to accommodate indoor storage of items owned by the Applicants, including a larger motorhome and a fish house with a rooftop air conditioning unit. The height of these two (2) items in particular result in the need for an overhead door that is at least twelve (12) feet in height, rather than a more typical eight (8) foot overhead door.

The Applicants reside in the Northfork subdivision. The Northfork Homeowners Association (NHA) has restrictive covenants that prohibit the outside storage of motor vehicles and equipment other than for temporary (1 week) timeframes. Additionally, the NHA also has standards for accessory buildings, one of which is to have the roof pitch of an accessory building match that of the home. The home has an 8/12 roof pitch and thus, the proposed Building has an 8/12 roof pitch as well, which increases the mean gable height of the Building.

The Subject Property slopes down from the front of the home to rear yard where the proposed Building would be located, with an elevation difference of about six (6) Feet. Thus, the height of the proposed Building, at least from the street and from the properties on the south side of the street, would appear compatible with the home. The parcel north of the Subject Property is over five (5) acres in size and would be eligible for a mean gable height of twenty-two (22) feet, to which the proposed Building would be compliant. The east side of the Subject Property borders the Links at Northfork Golf Course rather another residential lot. The owner of the parcel west of the Subject Property has submitted comments supporting the requested variance. Finally, the location of the proposed Building would be partially screened from view from the public road by the home on the Subject Property, the home on the parcel to the west, as well as from evergreen trees that are installed around the entire perimeter of the Subject Property.

The proposed Building would comply with the required setbacks from both the side and rear boundaries of the Subject Property. The proposed Building would have an exterior finish consisting of stone work and siding to match the home, consistent with City Code and the NHA architectural standards.

When contemplating a variance request, there is a three (3) factor test for practical difficulties that must be met by the Applicant. The following are the three (3) factors:
1. Is the property owner proposing to use the property in a reasonable manner?
2. Is the landowner's problem due to circumstances unique to the property and not caused by the landowner?
3. If granted, would the variance alter the essential character of the locality?

Detached accessory buildings are a common improvement in residential areas. The Applicants are attempting to comply with the standards of their association by storing items indoors on the Subject Property and having a roof pitch that matches their home, neither of which are requirements throughout the city. While storing the items off site may be an alternative, the use of a detached accessory building to store the items is reasonable. The proposed Building would not appear to alter the essential character of the locality. Several nearby properties already have detached accessory buildings in their rear yards. Also, due to the grade change from the front of the Subject Property to rear, where the Building would be located, the additional height would not be as evident and it would be compatible with the home. The owner of the parcel west of the Subject Property, nearest to the proposed location of the Building, supports the request. Finally, the parcel to the north, based on its size, could have an accessory building with a mean gable height of twenty-two (22) feet, which is a greater height than what is proposed.

Alternatives

Option #1: Adopt Resolutions #15-05-113 and #15-05-114 granting a variance to maximum allowable height for a detached accessory building. The need for the excess height is the result of trying to match the roof pitch of the home per the NHA architectural review committee standards as well as accommodating the inside storage of vehicles/equipment per the NHA's restrictive covenants. The location of the proposed Building is about six (6) feet lower than in front of the home on the Subject Property, which assists in maintaining a compatible appearance with the home. Additionally, the land north of the Subject Property would be eligible for a mean gable height of twenty-two (22) feet and the land east of the Subject Property is part of a golf course rather than another residential property. Thus it does appear that it will not alter the essential character of the immediate neighborhood. Staff supports this option.

Option #2: Approve a modified version of Resolutions #15-05-113 and #15-05-114. This option would be predicated on discussion by the Planning Commission.

Option #3: Do not approve the request for a variance. While the items could potentially be stored off site, it does not appear that the proposed Building would negatively alter the character of the neighborhood based on the reasons previously mentioned. A detached accessory building is a reasonable use on a residential property and it would comply with other standards such as setbacks, square footage allowance and exterior finish. The additional height is an attempt to address provisions of the restrictive covenants and said covenants are unique to this subdivision rather than applicable throughout the community. Staff does not support this option.

Funding Source:

All costs associated with this request are the Applicant's responsibility.

Recommendation:

Staff recommends approval of the variance.

Action:

Motion to adopt Resolutions #15-05-113 and #15-05-114 approving a variance to the mean gable height restriction for a detached accessory building at 9491 Inverness Lane NW.

Attachments

Site Location Map

Site Layout with Aerial

Building Elevation Sketch

Statement of Support from Neighbor

Letter from Northfork Covenants Committee

Resolution #15-05-113: DRAFT Findings of Fact

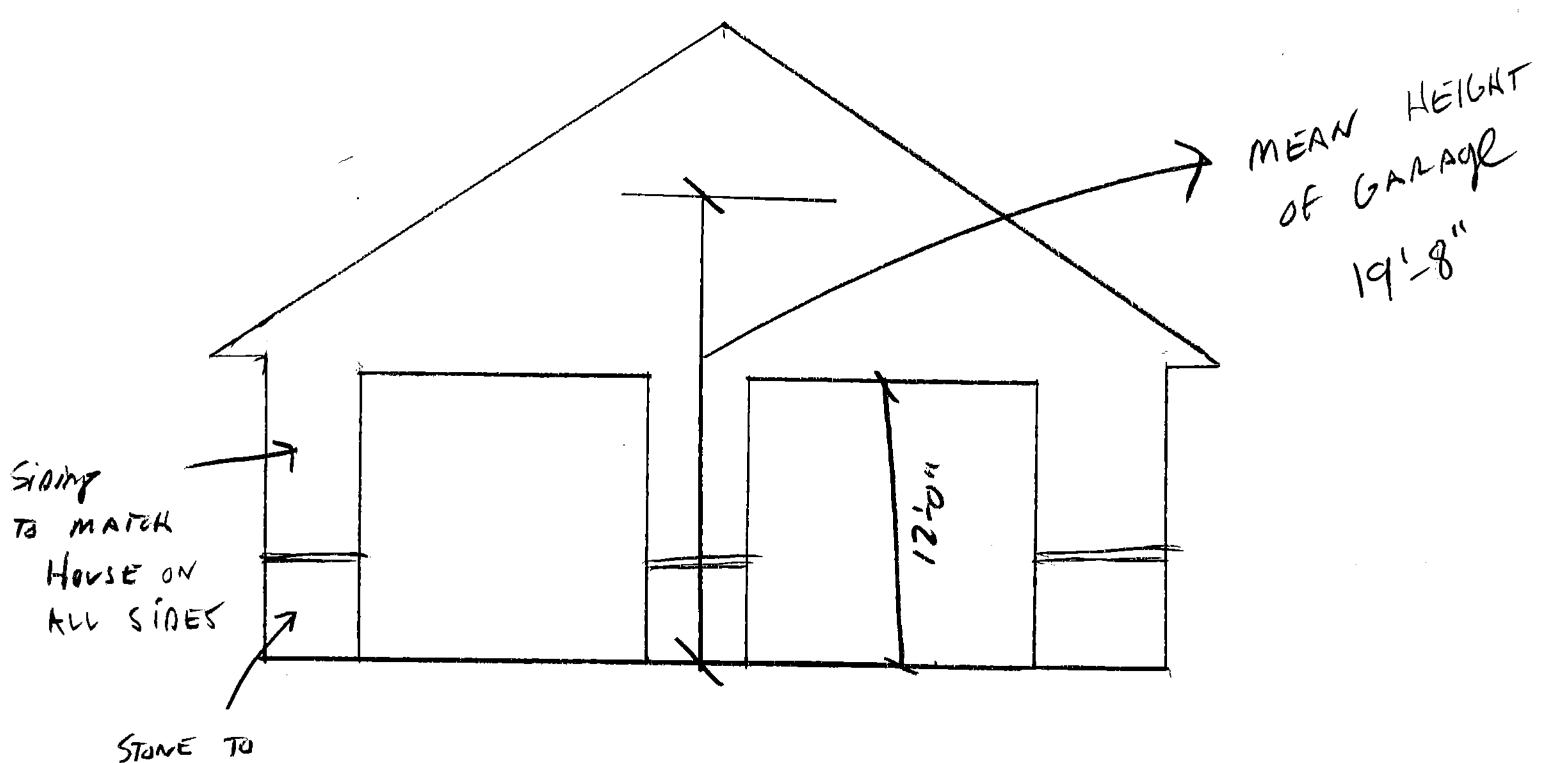
Resolution #15-05-114: DRAFT Variance

Form Review

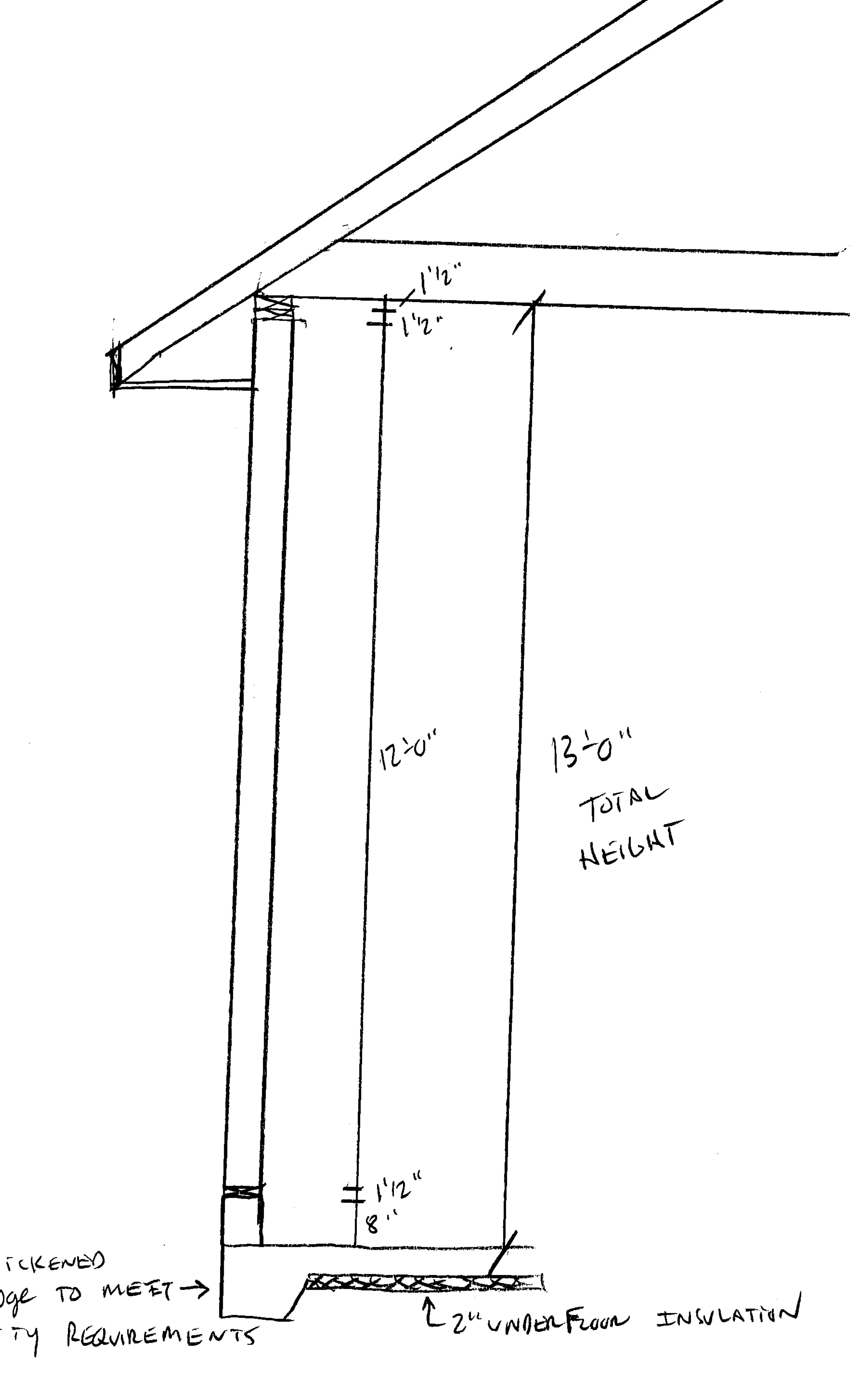
Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	05/01/2015 09:40 AM
Form Started By: Chris Anderson		Started On: 04/29/2015 10:10 AM
Final Approval Date: 05/01/2015		

JARVIS ST
TURNBERRY CT
TURNBERRY
INVERNESS LN
INVERNESS LN
INVERNESS CT
ST ANDREWS LN
ST ANDREWS CT
City of RAMSEY
9491 Inverness Lane NW
18-32-25-32-0002
Legend
Site
Parcels
N
0
415
830 Feet

Proposed building



FRONT ELEVATION 1/8" SCALE



TYPICAL WALL SECTION 1/2" SCALE

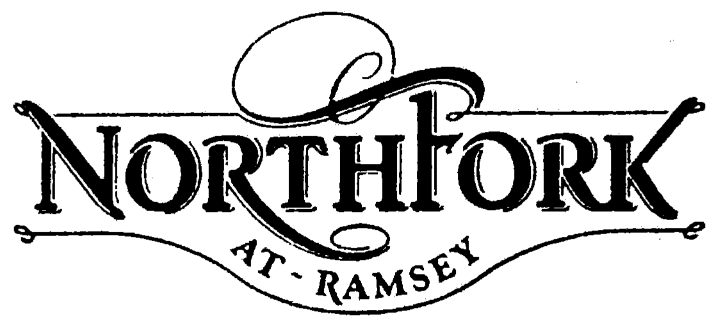
April 9, 2015

To Whom It May Concern:

To the city of Ramsey, I live to the west of Allen Skogquist. My address is 9501 Inverness Lane NW, Ramsey, MN 55303. I approve of Allen's garage plans and total height of the garage. Please approve his variance. Thanks

Sincerely,

Troy Stenerson



NorthFork HOA Board of Directors

Date: April 9, 2015

City of Ramsey/Zoning

To Whom It May Concern,

In regards to accessorial buildings and such in the Northfork Development the Architectural Review Committee would prefer that all accessorial structures have a roof pitch to match the existing home in addition to our current requirements of matching color, same siding and roofing materials and building style.

Regards

Kurt J. Kettner

Covenants Committee Chairperson

Commissioner _________ introduced the following resolution and moved for its adoption:

RESOLUTION #15-05-113

RESOLUTION ADOPTING FINDINGS OF FACT #0945 RELATING TO A REQUEST FROM ALLEN AND ALYCIA SKOGQUIST FOR A VARIANCE TO THE MAXIMUM ALLOWABLE HEIGHT FOR A DETACHED ACCESSORY BUILDING ON A PROPERTY LESS THAN TWO (2) ACRES IN SIZE

WHEREAS, Allen and Alycia Skogquist, hereinafter referred to as "Applicant," have properly applied for a variance from Section 117-349 (Accessory Uses and Buildings) of the Ramsey City Code regarding the allowable height for a detached accessory structure on the property generally known as 9491 Inverness Lane NW and legally described as follows:

Lot 1, Block 1, Northfork Highlands Second Addition, Anoka County, Minnesota, subject to easement as shown on plat

(the "Subject Property").

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

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 117-53 (Variances) of the Ramsey City Code on May 7, 2015, and that said public hearing was properly advertised, and that the minutes of said public hearing are hereby incorporated as a part of these findings by reference.

2. That the Subject Property is zoned PUD (Planned Unit Development) and is approximately 1.71 acres in size.

3. That the properties to the east, west, and south of the Subject Property are zoned PUD (Planned Unit Development) and the parcel to the north is zoned R-1 Residential (Rural Developing).

4. That the properties to the west and south of the Subject Property are a similar size; the parcel to the north is almost six (6) acres in size, and the parcel to the east is part of the Northfork Golf Course.

5. That City Code Section 117-349 (Accessory Uses and Buildings) states that on parcels less than two (2) acres in size, accessory buildings shall not exceed a mean gable height of sixteen (16) feet.

6. That the Applicant is proposing to construct a detached accessory building with a mean gable height of nineteen feet eight inches (19 ft. 8 in.).

7. That the Applicant has stated that they have a large motorhome and fish house with a rooftop air conditioner unit that require a minimum door height of twelve (12) feet.

8. That the Applicant has stated that the Northfork Architectural Committee requires the roof pitch of accessory buildings to match that of the home, which increases the height of the proposed detached accessory building due to the 8/12 roof pitch of the dwelling unit on the Subject Property.

9. That the proposed detached accessory building would be located in the northwest corner of the Subject Property, which is about six (6) feet lower than the grade where the dwelling unit is situated.

10. That the increased height of the proposed detached accessory building will be compatible with the principal building on the Subject Property due to the grade difference and the overall height of the principal building on the Subject Property.

11. That the proposed detached accessory building would comply with all required setbacks.

12. That the proposed detached accessory building would replace an existing, smaller, detached accessory building currently on the Subject Property.

13. That the detached accessory building would not exceed the allowable square footage for accessory buildings on the Subject Property.

14. That the exterior finish of the proposed detached accessory building would match that of the dwelling unit on the Subject Property.

15. That the owner of the parcel west of the Subject Property, adjacent to the proposed location of the detached accessory building, has stated that he supports the request for the additional height.

16. That the parcel north of the Subject Property would be eligible for an accessory building with a mean gable height of twenty-two (22) feet based on its size.

17. That the parcel to the east of the Subject Property is part of a Golf Course, not another residential parcel.

18. That economic circumstances alone do not create the practical difficulties.

19. That the plight is/is not due to circumstances unique to the Subject Property.

20. That the plight was/was not created by the Applicant.

21. That, if granted, the variance will/will not alter the locality's essential character.

22. That, if granted, the variance will/will not impair an adequate supply of light and air to adjacent property.

23. That, if granted, the variance will/will not have the effect of allowing a use that is prohibited in the applicable zoning district.

24. That, if granted, the variance will/will not unreasonably increase the congestion on the public street.

25. That, if granted, the variance will/will not adversely impact the degree of public health, safety and general welfare provided for in the Ramsey City Code.

26. That, if granted, the variance will/will not diminish established property values within the neighborhood.

27. That, if granted, the variance requested is/is not the minimum variance necessary to accomplish the intended purpose of the Applicant.

28. That the unique circumstances on the Subject Property do/do not result from the actions of the Applicant.

29. That, if granted, the variance will/will not grant the Applicant any special privilege that is denied to the owners of other land in the same district.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _______________, 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 adopted by the Ramsey Planning Commission this the 7th day of May, 2015.

____
Chairperson

ATTEST:

____
City Clerk

Commissioner ____________ introduced the following resolution and moved for its adoption:

RESOLUTION #15-05-114

RESOLUTION APPROVING THE ISSUANCE OF A VARIANCE TO EXCEED THE ALLOWABLE MEAN GABLE HEIGHT FOR A DETACHED ACCESSORY BUILDING ON A PROPERTY LESS THAN TWO (2) ACRES IN SIZE.

WHEREAS, Allen and Alycia Skogquist (Permittee) have properly applied for a variance to Section 117-349 (Accessory Uses and Buildings) of the Ramsey City Code regarding the maximum allowable mean gable height for a detached accessory building on the property generally known as 9491 Inverness Lane NW and legally described as follows:

Lot 1, Block 1, Northfork Highlands Second Addition, Anoka County, Minnesota, subject to easement as shown on plat

(Subject Property).

AND WHEREAS, the Planning Commission conducted a public hearing on May 7, 2015, pursuant to Section 117-53 of the Ramsey City Code, and adopted findings of fact relating to the request for a variance.

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

1. That based on Findings of Fact #0945, a variance (the "Variance") to the allowable mean gable height for a detached accessory building (the "Building") on the **Subject Property** is hereby granted.

2. That the mean gable height of the **Building** shall not exceed twenty (20) feet, measured from the mean grade adjacent to the **Building**.

3. That the **Building** shall comply with all required setbacks on the **Subject Property**.

4. That the exterior finish of the **Building** shall be the same as that of the principal building on the **Subject Property**.

5. That the proposed **Building** shall comply with all other applicable Zoning, Building, and Fire Code standards.

6. The **Permittee** shall be responsible for all costs incurred in administering and enforcing this **Variance**.

7. That the **Permittee** shall obtain all necessary permits prior to commencing any construction activity related to the **Building**.

8. That the **Building** shall be used for storage of personal property and that no commercial activity of any type shall be permitted in the **Building** unless in accordance with City Code.

9. That this **Variance** shall automatically expire if the use is not initiated by May 7, 2016, and issuance of the building permit shall constitute initiation. The **Permittee** may petition for an extension of time in which to complete the **Variance**. Such extension shall be requested in writing and filed with the City at least 30 days before the expiration of the original **Variance**.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner __________________, 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 adopted by the Ramsey Planning Commission this the 7th day of May, 2015.

PERMITTEE

Allen and Alycia Skogquist hereby acknowledge receipt of this variance and that they have reviewed the terms of the variance and have agreed that they will comply with the terms of the variance.

___________________________________	___________________________________
Allen Skogquist	Alycia Skogquist

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

On this ______ day of ________________, ____, before me, a Notary Public, personally appeared Allen and Alycia Skogquist, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

____
Notary Public

CITY OF RAMSEY:

By:___________________________________ By:___________________________________
Chairperson, Planning Commission City Clerk

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

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

____
Notary Public

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

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

Regular Planning Commission **6. 1.**

Meeting Date: 05/07/2015

By: JoAnn Shaw, Community Development

Information

Title:

Zoning Bulletins

Purpose/Background:

Enclosed are zoning periodicals for your review.

Notification:

Observations/Alternatives:

Funding Source:

Recommendation:

Action:

Attachments

Zoning Bulletins

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	04/30/2015 12:40 PM
Form Started By: JoAnn Shaw		Started On: 04/27/2015 03:28 PM
Final Approval Date: 04/30/2015		

March 25, 2015 | Volume 9 | Issue 6

Zoning Bulletin

in this issue:

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Telecommunications—Town finds proposed monopine cell tower meets ordinance definition of "Concealed Wireless Communications Facility" 4

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Preemption/Oil and Gas Well Regulation—Energy company argues that city's zoning ordinances are preempted by conflict with state statutory scheme governing oil and gas drilling operations 9

Zoning News from Around the Nation 12

Mat #41675497

Nonconforming Use—Property owner contends recombination of lots restores lots' previous grandfathered status

Adjacent property owner contends grandfathered status was lost forever when lots were illegally separated

Citation: *Day v. Town of Phippsburg, 2015 ME 13, 2015 WL 527846 (Me. 2015)*

Contributors

Corey E. Burnham-Howard

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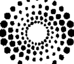

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MAINE (02/10/15)—This case addressed the issue of whether a property owner's recombination of two nonconforming lots resurrected the grandfathered status that the lots had when they had been merged under common ownership by ordinance.

The Background/Facts: In 1956, Joseph Spear ("Spear") acquired lot 114, a beachfront lot in the Town of Phippsburg (the "Town"). In 1987, Spear acquired the adjacent beachfront lot 113. Both lots contained less than 20,000 square feet. In 1989, the Town's Shoreland Zoning Ordinance ("the SZO") required that a beachfront lot consist of at least 40,000 square feet in order to qualify for development. The SZO contained a grandfather clause allowing limited development of a lot that failed to meet the minimum lot-size requirements if the lot: (1) was in existence as of the effective date of the SZO; and (2) was not contiguous with another lot held in common ownership. The SZO also contained a merger clause requiring the combination of lots that were adjacent and held in common ownership at the time of adoption or amendment of the ordinance if all or part of the lots failed to meet minimum lot-size requirements. As a result of that merger clause, lots 113 and 114 (which were contiguous with each other and were commonly owned by Spear) were merged into a single, nonconforming, grandfathered lot in 1989.

Although the merger clause prohibited separation of a merged lot that did not meet minimum lot-size requirements, Spear separated the lots in 1991. Spear conveyed lot 113 to Carol Reece ("Reece") and lot 114 to Mary Kate Izzo ("Izzo").

In 2013, Reece sought to develop lot 113. An adjacent property owner, Jonathan R. Day ("Day"), sued Reece and the Town. Day asked the court to declare that lot 113 was not a grandfathered nonconforming lot within the meaning of the SZO because the lot had lost its grandfathered status by its 1991 separation.

While Day's legal action was pending, Reece acquired lot 114 from Izzo. Reece then argued to the court that any grandfather status lost in the 1991 separation had been restored when the lots returned to common ownership in 2013. The superior court agreed with Reece, concluding that Reece had restored the lots' grandfathered status by recombining them.

Day appealed.

DECISION: Judgment of superior court vacated.

The Supreme Judicial Court of Maine held that lots 113 and 114 permanently lost their grandfathered status when they were unlawfully divided in 1991; the grandfather status was not restored by Reece's recombination of the lots.

In so holding, the court interpreted the SZO. The court found the SZO was ambiguous. It found that the SZO's allowance of preexisting nonconformities to "continue" subject to requirements could mean two different things. It could mean, as advocated by Day, that the grandfathered status of the nonconforming lot created by merger in 1989 could be understood to

"continue" to the present only if lots 113 and 114 remained merged at all times since 1989. On the other hand, the grandfathered status of the nonconforming lot created by merger in 1989 could be understood, as advocated by Reece, to "continue" to the present if the lot that existed in 1989 was identical to a lot that existed today.

To resolve that ambiguity, the court considered relevant zoning objectives and purposes. The court concluded that the stricter interpretation of the SZO advocated by Day promoted land use conformities better than the more relaxed interpretation advocated by Reece. Construing the SZO "to preclude a resurrection of the grandfathered status of the again-merged lot would be in harmony with the purpose of grandfathering," found the court. Grandfathering, noted the court, is designed to protect rights anticipated at the time property is purchased. When Reece acquired lots 113 and 114, each lot was nonconforming and not grandfathered, and thus neither could be developed without a variance. Because Reece did not have the right to develop the lots without a variance when she acquired them, construing the SZO to deny her that right today did not divest her of anything, concluded the court.

See also: *Farley v. Town of Lyman, 557 A.2d 197 (Me. 1989).*

Telecommunications—Town finds proposed monopine cell tower meets ordinance definition of "Concealed Wireless Communications Facility"

Neighboring property owners argue giant monopine was readily identifiable as cell tower, requiring more intensive review

Citation: *Fehrenbacher v. City of Durham, 2015 WL 426058 (N.C. Ct. App. 2015)*

NORTH CAROLINA (02/03/15)—This case addressed the issue of whether a proposed cellular tower to be concealed as a monopine would be "readily identifiable" as a cellular tower under the town zoning ordinance, thus requiring a more intensive permitting process.

The Background/Facts: In January 2012, Philip Post & Associates, Inc., acting on behalf of SprintCom, a telecommunications conglomerate (Philip Post and SprintCom are hereafter collectively referred to as "SprintCom"), sought approval from the City of Durham (the "City") to construct a 120-foot-tall cell tower. The cell tower was to be constructed on a leased portion of a five-acre lot owned by the Greek Orthodox Community of Durham. Also on the property was the St. Barbara Greek Orthodox Church of Durham. The property was in an area zoned Rural/Residential.

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The plans for the proposed cell tower utilized a monopine design. Such a design is intended to give the tower the appearance of a tall pine tree. SprintCom maintained that under that design, the cell tower qualified as a "concealed wireless communications facility" ("WCF") under the City's Unified Development Ordinance ("UDO"). As a WCF, the cell tower would be subject only to an administrative site plan approval process.

The UDO defined a WCF as a structure that is "not readily identifiable" as a wireless communications facility and is designed to be compatible with existing and proposed uses on a site. The UDO gave examples of WCFs, including a "tree." The UDO also defined a nonconcealed WCF as "one that is readily identifiable such as a monopole or lattice tower."

In July 2012, the Durham City-County Development Review Board ("DRB") approved SprintCom's application. In doing so, it concluded that the proposed monopine tower qualified as a WCF.

A group of homeowners (the "Homeowners") whose backyards were across the street from the Church property appealed the DRB's decision. They argued that the proposed monopine tower, which would be twice as high as the surrounding trees on the Church property and would have a base five times wider than the diameter of the largest trees present in the area, did not meet the UDO's definition of a concealed WCF. The Homeowners contended that based on its size and visibilities from their homes, the proposed monopine could not possibly meet the UDO's definition of concealed WCF. Thus, since it did not qualify as a WCF, the Homeowners contended that SprintCom needed a minor special use permit for the tower, which required a quasi-judicial evidentiary hearing.

The City's Board of Adjustment disagreed with the Homeowners. It upheld the interpretation that the proposed monopine met the definition of a concealed WCF under the UDO.

The Homeowners again appealed. They argued that the Board of Adjustment's determination that SprintCom's proposed monopine tower qualified as a concealed WCF as defined by the UDO was "both arbitrary and capricious, and erroneous as a matter of law."

DECISION: Judgment of superior court affirmed.

The Court of Appeals of North Carolina held that SprintCom's proposed WCF met the UDO's definition of concealed WCF, and thus did not require a special use permit.

In so concluding, the court looked at the plain language and intent of the UDO. The court found that the relevant section of the UDO was intended to "incentivize[ ] the construction of concealed WCFs." The court rejected the Homeowners' argument that SprintCom's proposed monopine was "readily identifiable" as a WCF and thus did not meet the UDO definition of "concealed WCF." The court found that just because the monopine tower would be "visible," it did not mean it would be "readily identifiable." Rather, the court found that the monopine would have the appearance of "an unusually tall tree," and that there was no evidence that a typical person's reaction to the site of "an unusually tall tree" would be to conclude it was a WCF.

In any case, the court found that the UDO's plain language made clear that the test was not whether or how quickly an individual would notice the "giant fake pine tree's true nature; rather the test [was] whether SprintCom's proposed monopine design serve[d] a secondary function that help[ed] camouflage the tower's function as a WCF." The court concluded that it did, and thus held that SprintCom's proposed monopine was not readily identifiable as a WCF.

Case Note:

The Homeowners had also argued that the proposed monopine was not "aesthetically compatible" with any existing or proposed uses on the Church property, as required by the UDO to qualify as a concealed WCF. The Homeowners noted that natural trees were not "uses." The court acknowledged that trees were not uses, but noted that the UDO also explicitly stated that a concealed WCF may have a secondary function as a tree. Here, the court concluded that SprintCom's proposed monopine tower's secondary function as a tree was "indeed aesthetically compatible with the Church property's existing use as a church in a developing rural residential neighborhood, surrounded by houses and trees."

Proceedings—City council member appeals land use decision to city council

Land use permit applicant contends its due process rights were violated by council member's bias

Citation: *Woody's Group, Inc. v. City of Newport Beach, 2015 WL 367448 (Cal. App. 4th Dist. 2015)*

CALIFORNIA (01/29/15)—This case addressed the issue of whether an applicant for a land use permit is afforded procedural due process when a member of the adjudicatory body considering the permit is, or may be, biased against the applicant. It also addressed the issue of whether this particular city's municipal code allowed an appeal of a planning commission decision by a city council member to the city council.

The Background/Facts: Woody's Wharf, owned by Woody's Group Inc. ("Woody's"), is a long-established restaurant overlooking the harbor in the City of Newport Beach (the "City"). Woody's sought and obtained from the City's Planning Commission a conditional use permit and variance to allow Woody's Wharf to have a patio cover, remain open until 2:00 a.m. on weekends, and allow dancing in the restaurant. Subsequently, City Council member Mike Henn ("Henn") sent an e-mail to the City clerk in which he

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made an "official request to appeal" the Planning Commission's decision to the City Council because he "strongly believ[ed]" the "operational characteristics requested in the application and the Planning Commission's decision [were] inconsistent with the existing and expected residential character of the area and the relevant policies of the voter approved 2006 General Plan."

At the City Council's hearing on Henn's appeal, Henn gave a long, prepared presentation, arguing why the Planning Commission decision needed to be overturned. The City Council ultimately voted to reverse the Planning Commission's decision.

Woody's appealed, seeking a writ of administrative mandate. The court denied Woody's requested writ. Woody again appealed. Among other things, Woody argued that Henn was biased. Woody also argued that, under the City's municipal code, Henn was not permitted to bring the appeal.

DECISION: Judgment of superior court reversed with directions.

The Court of Appeal, Fourth District, Division 3, agreed with Woody's arguments. It held that Woody's due process right to fair procedure was violated by: (1) the "unacceptable probability of bias" on the part of Henn; and (2) the City Council's consideration of the appeal in light of the fact that, pursuant to the City's municipal code, the City Council had no authority to hear Henn's appeal since he had failed to comply with procedures required by the municipal code.

In so holding, the court noted that the law requires an adjudicatory body—such as the City Council in its capacity in reviewing land use decisions—to be "neutral and unbiased." The court said that a land use permit applicant's due process right to fair procedure would be found to have been violated if it could be shown that there was an "unacceptable probability of actual bias" on the part of the municipal decision maker. Here, the court found that Woody's had shown an "unacceptable probability of actual bias" on Henn's part. The wording in Henn's e-mail appeal showed that Henn was strongly opposed to the Planning Commission's decision on Woody's application. It was Henn who "appealed" the Planning Commission's decision to the City Council on which he was a member, and gave a lengthy, prepared presentation at the City Council's hearing on the appeal in support of overturning the decision.

The court also found that Henn, a City Council member, violated the City's own municipal code—as well as Woody's due process rights to fair procedure—by initiating an appeal to the City Council. Among other things, noted the court, the City's municipal code required that appeals from Planning Commission decisions be: (1) brought by an "interested party"; (2) filed on forms provided by the City clerk; and (3) accompanied by a filing fee. The court found that Henn's appeal did not meet any of those requirements.

Significantly, the court found that the requirement of an "interested party" bringing an appeal simultaneously conveyed that "disinterested" persons were not eligible to bring an appeal. The court noted that California Civil

Code § 170 provides that no judge shall sit or act in any action in which he is a party or in which he is interested. Thus, as fact-finders serving in adjudicatory capacity, the City Council members were required to be "disinterested" for the purposes of affording due process, said the court. Accordingly, since as a member of the council, Henn was to be a disinterested party, he could not simultaneously be an "interested party," for purpose of the appeal. Moreover, if he was, in fact, "interested," the fact that he sat and acted in the proceedings violated the law and Woody's due process rights.

The City Council had contended that it was their "custom" to allow an exception for City Council members to appeal land use decisions "for the benefit" of the residents. The court rejected that argument, finding it was not authorized by the municipal code. In fact, the court found such a practice by the City Council was in direct violation of the code's requirements.

Having found that the City's municipal code never allowed the appeal in the first place, the court concluded that the City Council's decision to reverse the Planning Commission's approval of Woody's permit and variance had to be nullified (not just returned for consideration).

See also: *Cohan v. City of Thousand Oaks, 30 Cal. App. 4th 547, 35 Cal. Rptr. 2d 782 (2d Dist. 1994), as modified on denial of reh'g, (Dec. 21, 1994).*

See also: *Nasha L.L.C. v. City of Los Angeles, 125 Cal. App. 4th 470, 22 Cal. Rptr. 3d 772, 35 Envtl. L. Rep. 20007 (2d Dist. 2004).*

Case Note:

In its decision, the court, in discussing prior case law, noted that a city council member may be able to appeal a land use decision to the city council if: (1) the municipal code explicitly permits an appeal by a council member; (2) the city council member is arguably not committed "to a result" of the appeal; and (3) the city council member does not control the hearing on the appeal. (See, e.g., Breakzone Billiards v. City of Torrance, 81 Cal. App. 4th 1205, 97 Cal. Rptr. 2d 467 (2d Dist. 2000).)

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Preemption/Oil and Gas Well Regulation—Energy company argues that city's zoning ordinances are preempted by conflict with state statutory scheme governing oil and gas drilling operations

City contends Home Rule Amendment to Ohio Constitution gives it power to regulate oil and gas drilling via municipal zoning ordinances

Citation: *State ex rel. Morrison v. Beck Energy Corp., 2015-Ohio-485, 2015 WL 687475 (Ohio 2015)*

OHIO (02/17/15)—This case addressed the issue of whether the Home Rule Amendment to the Ohio Constitution grants to municipalities the power to enforce their own permitting schemes for oil and gas drilling regulation atop the state system. More specifically, the case addressed the issue of whether a particular city's zoning ordinances represented a valid exercise of the city's home-rule power, or whether those ordinances were preempted by conflict with state laws regulating oil and gas drilling.

The Background/Facts: In 2011, Beck Energy Corporation ("Beck Energy"), obtained a permit from a division of the Ohio Department of Natural Resources ("ODNR") for the purpose of drilling an oil and gas well on property within the corporate limits of the city of Munroe Falls (the "City"). Beck Energy obtained its state permit through state statutory law, R.C. Chapter 1509. Under that statute, specifically R.C. 1509.02, regulatory authority of oil and gas wells and production operation is within the "sole and exclusive authority of a division of the ODNR" (except for certain activities regulated by federal laws). R.C. 1509.02 does preserve certain regulatory powers granted to local governments including: (1) the "special power" to control public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts (R.C. 723.01); and (2) the power to grant permits to operate certain heavy vehicles on highways within their jurisdiction (4513.34). However, R.C. 1509.02 expressly prohibits a local government from exercising those powers "in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under [R.C. Chapter 1509]."

Beck began drilling the oil and gas well in the City pursuant to its state permit. Soon thereafter, the City issued a stop-work order and filed a legal action in county court. The City alleged that Beck Energy was violating

multiple provisions of the City's zoning ordinance, including: a general zoning ordinance that prohibits construction or excavation without a "zoning certificate" issued by the City zoning inspector after approvals by the zoning commission and city council; and four zoning ordinances specifically relating to oil and gas drilling. Those four ordinances required payment of fees and the deposit of a performance bond, a public hearing, and the obtainment of a "conditional zoning certificate," and made violation of those requirements a first-degree misdemeanor.

Beck argued that the City's ordinances conflicted with the statewide regulatory scheme in R.C. Chapter 1509 and were thus preempted. The trial court disagreed.

Beck appealed. The court of appeals agreed with Beck. It reversed the trial court. The court of appeals held that R.C. 1509.02 prohibited the City from enforcing the five ordinances.

The City appealed. The City argued that the Home Rule Amendment to the Ohio Constitution granted the City the power to enforce its own permitting scheme atop R.C. 1509.02.

DECISION: Judgment of court of appeals affirmed.

The Supreme Court of Ohio held that the City's five ordinances at issue did not represent a valid exercise of the City's home-rule power under the Home Rule Amendment to the Ohio Constitution.

The court explained that the Home Rule Amendment gives municipalities the authority to "exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." (Ohio Constitution, Article XVIII,§ 3.) The court further explained that given the fact that the Home Rule Amendment does not allow municipalities to exercise their police powers in a manner that "conflict[s] with general laws," a municipal ordinance must yield to a state statute if: (1) the ordinance is an exercise of the police power, rather than of local self-government; (2) the statute is a general law; and (3) the ordinance is in conflict with the statute. Here, the court found that all three of those elements were met and thus the Home Rule Amendment did not allow the City's ordinances to apply concurrently with R.C. 1509.02.

The court found that the ordinances constituted an exercise of police power rather than local self-government. The ordinances did not regulate the form and structure of local government, but rather prohibited—even criminalized—the act of drilling for oil and gas without a permit.

For the purposes of its analysis, the court also found that R.C. 1509.02 constituted a general law in that it: (1) is part of a statewide and comprehensive legislative enactment; (2) applies to all parts of the state alike and operates uniformly throughout the state; (3) sets forth police, sanitary, or similar regulations, rather than purports only to grant or limit legislative power of a municipal corporation to prescribe those regulations; and (4) prescribes a rule of conduct upon citizens generally.

The City had argued that the second of those conditions was not met. The

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City contended that R.C. 1509.02 did not apply to all parts of the state alike. According to the City, R.C. 1509.02 failed the uniformity requirement because only the eastern part of Ohio had economically viable quantities of gas and oil. The court found that argument "unpersuasive." The court said that "a general law can operate uniformly throughout the state 'even if the result . . . is that the statute does not operate in all geographic areas within the state.' " The court said that "[w]hether or not every acre of Ohio constitutes viable drilling land, R.C. 1509.02 imposes the same obligations and grants the same privileges to anyone seeking to engage in oil and gas drilling and production operations within the state." Moreover, the court noted, "the statute applies to all municipalities in the same fashion."

Finally, the court concluded that the City's five ordinances conflicted with R.C. 1509.02 in two ways. The court found that there was a "classic licensing conflict" in that the ordinances prohibited what R.C. 1509.02 allowed—state-licensed oil and gas production within the City, and the court found that the statute did not allow for concurrent regulatory authority or "double licensing." The statute explicitly prohibited municipalities from exercising their municipal powers to regulate infrastructure in a way that "discriminates against, unfairly impedes, or obstructs" the activities and operations covered by R.C. 1509.02.

The City had argued that there was no conflict because the statute and ordinances regulated two different things: the ordinances addressed "traditional concerns of zoning," while the statute related to "technical safety and correlative rights topics." The court disagreed, finding that under the "plain text of the ordinances, as well as the statute," they both regulated "the same subject matter—oil and gas drilling—and they conflict[ed] in doing so." The City's ordinances prohibited "any excavation" or the drilling of a well for oil, gas, or other hydrocarbons without fully complying with local provisions, while the statute prohibited drilling for oil or gas "without having a permit to do so issued by the chief of the [ODNR]." The court concluded that because Beck Energy obtained a valid state permit in accordance with R.C. Chapter 1509, the City could not "extinguish privileges arising thereunder through the enforcement of zoning regulations."

See also: *Clermont Environmental Reclamation Co. v. Wiederhold, 2 Ohio St. 3d 44, 442 N.E.2d 1278, 13 Envtl. L. Rep. 20466 (1982).*

See also: *Auxter v. City of Toledo, 173 Ohio St. 444, 20 Ohio Op. 2d 71, 183 N.E.2d 920 (1962).*

Case Note:

In its decision, the court emphasized that its holding was limited to the five municipal ordinances at issue in this case; it made no judgment as to whether other ordinances could coexist with R.C. 1509.02.

Case Note:

The court was split in its decision, with two justices concurring, one concurring in judgment alone, and three dissenting.

Zoning News from Around the Nation

NEW MEXICO

The State House of Representative's Energy and Environment Committee recently passed a bill "that curtails the ability of local governments to regulate the oil and gas industry." House Bill 366 would have exclusive authority over oil and gas well siting, drilling, processing and storage. The bill now heads to the House Judiciary Committee for consideration.

Source: *Farmington Daily Times;* www.daily-times.com

PENNSYLVANIA

A Penn Township zoning board is reportedly "reviewing plans for a Marcellus Shale gas drilling operation at the eastern end of the township, considering what is the first application for hydraulic fracturing since commissioners started revising their zoning laws late last year." A draft ordinance, which has yet to be formally approved, requires the zoning board to review applications for special exception permits for unconventional drilling operations.

Source: *Pittsburg Post-Gazette;* http://powersource.post-gazette.com

SOUTH DAKOTA

A State House Committee has passed House Bill 1201, which would "allow county zoning boards to issue conditional-use permits on a simple majority vote if that county chooses to change the rules." Currently, such permits require a two-thirds majority. The bill is reportedly "designed to make it easier to permit large-scale feedlots" in the state, but would affect permitting for a wide variety of development projects. The bill now moves to full House for consideration.

Source: *Argus Leader;* www.argusleader.com

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Preemption—Environmental organization seeks to invalidate county's critical areas regulations as incompliant with state's growth management act

County argues that statute authorizing Voluntary Stewardship Program participating

Contributors

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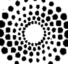

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municipalities to adopt its regulations, reflects legislative determination that regulations are valid

Citation: *Protect the Peninsula's Future v. Growth Management Hearings Bd., 2015 WL 686883 (Wash. Ct. App. Div. 2 2015)*

WASHINGTON (02/18/15)—This case addressed the issue of whether a county that did not elect to participate in the Voluntary Stewardship Program for critical areas protection could comply with the state's Growth Management Act by adopting critical areas regulations in the statutes governing the Voluntary Stewardship Program. In other words, the case addressed the issue of when a county can invoke RCW 36.70A.735(1)(b) and achieve compliance with the Growth Management Act by adopting critical area regulations outlined in the statutes governing the Voluntary Stewardship Program.

The Background/Facts: Under Washington's Growth Management Act ("GMA"), counties are required to designate and protect "critical areas." (RCW 36.70A.060.) "Critical areas" include: wetlands; aquifer recharge areas; natural fish and wildlife habitats; frequently flooded areas; and geologically hazardous areas. (RCW 36.70A.030.) As required, in December 1999, Clallam County ("Clallam") adopted critical areas regulations. As part of those regulations, Clallam exempted preexisting agricultural operations from the critical areas protection requirements.

The organization Protect the Peninsula's Future ("PPF") petitioned the Western Washington Growth Management Hearings Board (the "Board") to invalidate Clallam's agricultural exemption and other parts of the ordinance. The Board invalidated Clallam's agricultural exemption, finding it did not comply with GMA requirements. Clallam then amended its ordinance to limit the agricultural exemption to preexisting agricultural uses on land classified as farm and agricultural land under the open space tax program. PPF again petitioned the Board and the Board again found the exemption was invalid.

PPF again appealed. On appeal, the Court of Appeals agreed with PPF that Clallam could not exempt all preexisting agricultural uses from critical areas regulations. The court remanded to the Board for further proceedings. Among other things, the court directed the Board to determine whether the agricultural exemption complied with the GMA. Before the Board could make that determination on remand, the legislature enacted a moratorium on alteration of GMA critical areas that lasted from 2007 to 2011.

In August 2012, PPF reinitiated the delayed compliance review before the Board.

Clallam moved to dismiss the compliance action. It pointed to the Legislature's 2011 amendments to the GMA. Those amendments estab-

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lished a Voluntary Stewardship Program ("VSP"). Under the statutes governing the VSP, counties electing to participate in the VSP, which are unable to implement a VSP work plan, are authorized to comply with the GMA by instead adopting the critical areas regulations of one of four counties, one of which is Clallam. (RCW 36.70A.735(1)(b).) Clallam argued that through that statute, the Legislature had validated that Clallam's critical area regulations as fully compliant with the GMA.

The Board agreed with Clallam's interpretation and granted Clallam's motion to dismiss.

PPF appealed. The superior court affirmed the Board's decision.

PPF again appealed.

DECISION: Judgment of superior court reversed.

The Court of Appeals of Washington, Division 2, held that RCW 36.70A.735(1)(b) does not reflect a legislative determination that Clallam's regulations unconditionally comply with the GMA's critical areas protection requirements.

Looking at the plain language of that statute, the court found that the statute did not support an interpretation that the Legislature "approved" Clallam's regulations for counties not participating in the VSP. Rather, the court found that the Legislature chose to distinguish alternative pathways to GMA compliance for counties that have elected to participate in the VSP and counties that have not. (Election to participate in VSP had to be made by January 22, 2012.) Under the unambiguous language of the statute, the court found that only VSP participating counties can comply with the GMA by adopting Clallam's regulations. Therefore, concluded the court, counties not electing to participate in the VSP, including Clallam, cannot comply with the GMA by adopting Clallam's critical areas regulations.

The court remanded that matter to the Board to determine whether Clallam's critical areas regulations complied with the GMA under RCW 36.70A.060 and related statutes.

Case Note:

Clallam had also argued that it would be "absurd to allow a county to comply with the GMA by adopting Clallam's regulations while Clallam itself could not rely on those same regulations to comply with the GMA." The court disagreed. The court said that whether a statutory directive implements good or bad policy was immaterial to its analysis.

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Uses—Neighboring property owners allege town violated bylaws by installing wind turbine without special permit

Town maintains wind turbine is a "municipal purpose" allowed as of right

Citation: *Drummey v. Town of Falmouth, 25 N.E.3d 907 (Mass. Ct. App. 2015)*

MASSACHUSETTS (02/26/15)—This case addressed the issue of whether a town-operated windmill on town land constituted a "municipal purpose" such that it fell within the enumerated community services permitted as of right under the town by-law.

The Background/Facts: In 2009, the Town of Falmouth (the "Town") installed a wind turbine known as "Wind 1" on town land at its wastewater treatment facility. Town residents who lived within 3,200 feet of Wind 1 (the "Neighbors") alleged significant distress from sound pressures and noise related to the operation of Wind 1. The Neighbors asked the Town's building commissioner to find that the Town was in violation of the Town's zoning by-law in its operation of Wind 1 without a special permit. Under the Town's zoning by-law, in all zoning districts, including public use districts, windmills were classified as an accessory use by special permit.

The building commissioner determined that Wind 1 was a "municipal purpose[ ]" that fell within the enumerated community service uses permitted as of right under the zoning by-law. The building commissioner therefore denied the Neighbors' request for an enforcement action.

The Neighbors appealed to the Town's zoning board of appeals ("ZBA"), which affirmed the building commissioner.

The Neighbors again appealed and the superior court affirmed the decision of the ZBA. The court found that the special permit requirement of the by-law did "not apply in the limited circumstance where the Town itself desire[d] to construct and operate a windmill for municipal purposes in a district where all such [municipal] purposes [were] permitted as of right."

The Neighbors again appealed.

DECISION: Judgment of superior court reversed.

Agreeing with the Neighbors, the Appeals Court of Massachusetts held that the Town, under its zoning by-law, was required to obtain a special permit from the ZBA for the installation of the wind turbine on town land.

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In so holding, the court found that the interpretation of the by-law to include Wind 1 as a permitted community service was error. Looking at the language of the by-law, the court noted that windmills were specifically designated in the public use district as an accessory by special permit. The court found no exceptions in the by-law for the Town. The court found that it therefore "logically follow[ed] that windmills could not have been intended to fall within the more general municipal purpose as of right . . . ." The court also pointed to another section of the zoning by-laws that stated that where an activity might be classified under more than one of the within uses, "the more specific classification shall govern," and "if equally specific, the more restrictive shall govern." Emphasizing that provisions of a zoning by-law must not be looked at in isolation, the court concluded that the classification of windmills as a permitted municipal purpose failed to consider the comprehensive scheme that included wind turbines in the by-law and controlled their placement and impact in the town.

See also: *Sinn v. Board of Selectmen of Acton, 357 Mass. 606, 259 N.E.2d 557 (1970) (involving zoning by-law that did contain an exemption for the municipality).*

Historic Property—Property owner seeks to remove property from historic property designation per state statute

Local preservation society contends that only original owner at time of designation can seek such removal

Citation: *Lake Oswego Preservation Society v. City of Lake Oswego, 268 Or. App. 811, 2015 WL 469341 (2015)*

OREGON (02/04/15)—This case addressed the issue of whether ORS 197.772(3), which allows "a property owner" to remove from the property a historic property designation, applies only to the property owner at the time of the historic designation, or whether it also applies to subsequent owners of the property.

The Background/Facts: In 1990, the City of Lake Oswego (the "City") placed a historic designation on a specific parcel of property (the "Property"). Marjorie Hanson, Trustee for Wilmot Trust ("Hanson"), is now the current owner of the Property. In 2013, Hanson asked the City to remove the historic property designation. Ultimately, the City Council determined that Hanson was "entitled per ORS 197.772(3) to require the City to remove the historic designation from the subject [P]roperty."

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ORS 197.772(3) provides as follows: "A local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government."

Lake Oswego Preservation Society ("LOPS") appealed the City Council's determination to Oregon's Land Use Board of Appeals ("LUBA"). LUBA concluded that the City had erroneously interpreted ORS 197.772(3). LUBA concluded that the phrase "a property owner" did not include "persons who become owners of the property after it is designated." Thus, because Hanson was not the property owner at the time of the Property's historic designation, LUBA reversed the City's decision applying ORS 197.772(3) to Hanson's Property.

Hanson appealed. On appeal, Hanson contended that LUBA lacked jurisdiction to hear LOPS' appeal because the City's decision under ORS 197.772(3) was not a "land use decision." Hanson contended that the statute only required the City to determine whether a historic designation was imposed on a property, a decision which did not concern planning goals or land use regulations. Hanson also contended that LUBA's interpretation of the statute was erroneous; she argued that "a property owner" applied to all owners of property with historic designation, including those property owners that took ownership subsequent to the designation.

DECISION: Judgment of LUBA affirmed in part and reversed in part.

The Court of Appeals of Oregon first held that the City's decision to remove the historic designation under ORS 197.772(3) was a land use decision, subject to LUBA jurisdiction. In rejecting Hanson's argument that LUBA lacked jurisdiction, the court noted that Hanson failed to account for the City's actions that occurred as a consequence of its conclusion that ORS 197.772(3) applied to Hanson's Property. The City "did more than just determine the applicability of state law," found the court. The City then removed Hanson's Property from its Landmark Designation List—a land use regulation. Amending that list placed the City's actions "squarely within the definition of 'land use decision,' " concluded the court.

The court also held that LUBA's interpretation of ORS 197.772(3) was correct. The court found that the text and context of ORS 197.772(3) did not "shed much light" on the proper interpretation of "a property owner." Thus the court looked to the legislative history of the statute. Analyzing the legislative history of the statute, the court concluded that the legislature, in adopting the statute, "intended to allow any property owner that had a local historic designation forced on their property to remove that designation." The court found that the legislature was "focused on correcting imposition of unwanted designations, and not on the identity of the property owner that might be now stuck with that designation." The court found no legislative text narrowing the definition of "a property owner." Thus, the court concluded that Hanson, as a successor property owner, was entitled to have the historic property designation removed under ORS 197.772(3).

See also: *Leupold & Stevens, Inc. v. City Of Beaverton, 226 Or. App. 374, 203 P.3d 309 (2009).*

Sexually Oriented Business—In prosecuting owner of sexually oriented business for operating within 1,000 feet of residential zone, state instructs jury that there only need be proof of business owner's knowledge of business

Business owner argues proof for indictment had to include knowledge of business proximity to residential zone

Citation: *State v. Eldakroury, 2015 WL 519058 (N.J. Super. Ct. App. Div. 2015)*

NEW JERSEY (02/10/15)—This case addressed the issue of whether when seeking conviction for the crime of operating a sexually oriented business within 1,000 feet of a residential zone, the State of New Jersey must prove both that the defendant "knowingly" operated a sexually oriented business *and* "knew" the business was located within 1,000 feet of a residential zone.

The Background/Facts: Ibrahim J. Eldakroury ("Eldakroury") was accused of operating a sexually oriented business, known as Hott 22, within 1,000 feet of a residential zone. New Jersey criminal law, N.J.S.A. 2C:34-7(a), provides in relevant part that: "[N]o person shall operate a sexually oriented business . . . within 1,000 feet of any area zoned for residential use." In prosecuting the crime of such operation against Eldakroury, the State of New Jersey (the "State") prosecutor instructed the grand jury that the State was only required to prove that Eldakroury knowingly operated a sexually oriented business. The prosecutor instructed that the State did not have to prove that Eldakroury knew the business was within 1,000 feet of a residential zone.

After a grand jury indictment, Eldakroury asked the court to dismiss the indictment. He argued that the instructions given to the grand jury were in error. The judge agreed, concluding that the business' prohibited

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location (within 1,000 feet of a residential zone) was a material element of the offense, and that the State had to also prove that Eldakroury acted knowingly with respect to that element.

The State appealed.

DECISION: Judgment of superior court affirmed.

The Superior Court of New Jersey, Appellate Division, agreed with the superior court judge. It concluded that the location of the business was a material element of the offense and that the State had to also prove that Eldakroury acted knowingly with respect to that element.

In so concluding, the court noted that the statute concerning sexually oriented businesses, N.J.S.A. 2C:34-7(a), did not include a strict liability provision like statutes concerning illegal drug activity or assault by auto in protected zones. Since it was not a strict liability statute, the mens rea (knowingly) standard applied "to each material element." (N.J.S.A. 2C:202(a).) Finding the location of a sexually oriented business was a material element of the offense under N.J.S.A. 2C:34-7(a), the court concluded that the State was required to prove that Eldakroury not only knew he was operating a sexually oriented business, but also that he knew that the business was within 1,000 feet of a residential zone. Since the instructions to the grand jury on proof lacked that requirement, the court determined that dismissal of the case was proper.

Case Note:

In its decision, the court had also noted that even if it "found the statute hopelessly ambiguous" as to whether strict liability or the knowingly standard applied, it would have to invoke the rule of lenity, with any ambiguity with respect to the mens rea requirement having to be resolved in Eldakroury's favor.

Proceedings—At hearing on zoning amendments, commission allegedly prohibits discussion on specific property and owner

Opponents of amendments argued that prohibition resulted in a legally insufficient public hearing

Citation: *Campbell v. County Commission of Franklin County, 2015 WL 468225 (Mo. 2015)*

MISSOURI (02/03/15)—This case addressed the issue of what consti-

tutes a legally sufficient hearing for zoning amendments, as required by Missouri statutory law, Mo. Ann. Stat. § 64.875.

The Background/Facts: The Franklin County Commission (the "Commission") proposed and adopted zoning amendments allowing Union Electric Company, d/b/a Ameren Missouri ("Ameren") to build a coal-ash landfill adjoining Ameren's Labadie power plant. After the amendments were adopted, several individuals and the Labadie Environmental Organization (collectively, "LEO") challenged the legality of the adoption of the zoning amendments. They filed a writ of certiorari in the circuit court of the county challenging the Commission's amendment of the Franklin County Unified Land Use Regulations to permit the construction of coal-ash landfills "contiguous to the boundary of the property upon which a public utility power plant is situated." Among other things, LEO alleged that the Commission's adoption of the amendments was unlawful because the Commission failed to conduct a valid public hearing as required by Missouri Annotated Statutes § 64.875.

Section 64.875, in pertinent part provides as follows: "[N]o amendments shall be made by the county commission except after recommendation of the county planning commission, or if there be no county planning commission, of the county zoning commission, after hearings thereon by the commission."

LEO alleged that: (1) that the proposed zoning amendments authorized the presence of coal-ash landfills next to and under common ownership with an existing power plan, without mentioning Ameren by name; (2) Ameren's Labadie plan was the only power plant in Franklin County and Ameren had publicly proposed to build a new coal-ash landfill on their property adjacent to the plant; (3) during hearings on the zoning amendments, the Commission announced that the public could not speak regarding Ameren's landfill proposal and that the limitation on discussion had a "chilling" effect on discussion at the hearing.

The Commission and Ameren asked the court to dismiss the action, arguing that LEO failed to state a claim upon which relief could be granted.

The circuit court dismissed the action.

LEO appealed.

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

The Supreme Court of Missouri held that the circuit court erred in dismissing LEO's petition, which had asserted that the Commission failed to conduct a legally sufficient hearing prior to adopting the zoning amendments.

In so holding, the court assessed the requirements for a legally sufficient hearing and then whether LEO's allegations stated a viable claim that the zoning amendments had been enacted without a legally sufficient hearing.

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In analyzing § 64.875, the court found that the statute did not define the term "hearing" or prescribe the requirements for a valid hearing. The court also found no guidance from judicial interpretation of the "hearing" requirement (in prior decisions issued by Missouri courts on the issue). Thus, the court looked to the plain language of the statute. Since the statute required public notice of such hearings, the court concluded that a legally sufficient hearing must be public. Looking at the dictionary definition of "hearing," the court found that its meaning included "an opportunity to be heard, to present one's side of a case . . . ." Thus, the court concluded that "while the specific procedures for conducting the hearing can be tailored to meet logistical necessities, at a minimum, the hearings required by § 64.875 must be public and give an opportunity for the public to present its views about the subject matter of the proposed zoning amendment."

Analyzing LEO's petition against that standard, the court found that LEO stated a valid claim for relief. The court remanded the matter to the circuit court to try the merits of the claim.

See also: *State ex rel. Freeze v. City of Cape Girardeau, 523 S.W.2d 123 (Mo. Ct. App. 1975).*

See also: *Yost v. Fulton County, 256 Ga. 324, 348 S.E.2d 638 (1986).*

See also: *Appeal of Kurren, 417 Pa. 623, 208 A.2d 853 (1965).*

Case Note:

LEO had also alleged that the zoning amendments were unlawful because they did not promote the health, safety, and general welfare of the citizens of the Franklin County. The circuit court had also dismissed that count of LEO's petition. The appellate court determined that it was "unnecessary" for it to determine whether the zoning amendments promoted public health, safety, and welfare because the circuit court first had to determine whether the Commission conducted a legally sufficient hearing.

Zoning News from Around the Nation

NEW HAMPSHIRE

The Concord City Council was expected to consider a draft zoning ordinance that would allow two new uses in an industrial zone: an alternative treatment center for both growing and selling medical marijuana, and a center only for growing medical marijuana. The draft zoning code would also allow a center only for distribution to operate in an institutional zone.

Source: *Concord Monitor;* www.concordmonitor.com

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NEW JERSEY

In early February, Governor Chris Christie signed a "controversial bill that would fundamentally change planning and development in the Meadowlands district, merging two regional agencies and placing the new entity in charge of Liberty State Park." "The Hackensack Meadowlands Agency Consolidation Act (S2490) combines the New Jersey Meadowlands Commission and New Jersey Sports and Exposition Authority. The merged agency will be called the Meadowlands Regional Commission. The legislation also effectively eliminates a regional tax-sharing plan . . . , replacing it with a hotel tax."

Source: *NJ.com;* www.nj.com

SOUTH DAKOTA

The state House of Representatives have approved House Bill 1201, which would reduce the threshold for conditional-use permit decisions, allowing approval by a majority of board members present (simple majority) rather than a majority of the full board (two-thirds vote). The bill would also allow a county or municipality to adopt a certification process for conditional uses. Reportedly, HB 1201 would make it easier for counties with zoning ordinances to allow confined livestock operations that have over 1,000 head of livestock and other conditional uses. The Senate Agriculture and Natural Resources Committee was expected to debate the measure.

Source: *Rapid City Journal;* http://rapidcityjournal.com

TENNESSEE

State Representative Bill Beck has filed "legislation that would prohibit private clubs from within 1,000 feet of schools, churches, parks and residences."

Source: *The Tennessean;* www.tennessean.com/

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