City of Ramsey
Agenda
Regular Planning Commission
Thursday December 3, 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 November 12, 2015 Planing Commission Meeting Minutes

5. Public Hearing/Commission Business

1. PUBLIC HEARING: Consider Ordinance #16-1 Establishing an Administrative Grading Permit

2. Discuss Potential Work Plan Items and Need for Annual Planning Commission Report

6. Commission/Staff Input

1. Zoning Bulletins

7. Adjournment

Regular Planning Commission **4. 1.**

Meeting Date: 12/03/2015

By: JoAnn Shaw, Community Development

Information

Title:

Approve the November 12, 2015 Planing Commission Meeting Minutes

Purpose/Background:

N/A

Notification:

Observations/Alternatives:

Funding Source:

Recommendation:

Action:

Attachments

11.12.15 Minutes

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	11/25/2015 02:51 PM
Form Started By: JoAnn Shaw		Started On: 11/23/2015 12:32 PM
Final Approval Date: 11/25/2015		

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a regular meeting on Thursday, November 12, 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 Commissioner Cindy Nosan Commissioner Gary VanScoy
Members Absent:	None
Also Present:	Community Development Director Timothy Gladhill City Planner Chris Anderson Planning Intern Geoff Solomonson

1. CALL TO ORDER

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

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

Community Development Director Gladhill requested the Commission add Item 5.05 to the agenda to discuss a potential business incubator.

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to approve the agenda as amended adding Item 5.05.

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

4. APPROVE PLANNING COMMISSION MINUTES

4.01: Approve the Following Planning Commission Minutes:

4.01.1: Planning Commission Meeting Minutes Dated October 15, 2015

Motion by Commissioner VanScoy, seconded by Commissioner Nosan, to approve the following minutes as presented: Planning Commission Meeting Minutes dated October 15, 2015.

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

5. PUBLIC HEARINGS/COMMISSION BUSINESS

5.01: Public Hearing: Consider Request for a Variance to the Driveway Setback Requirement on the Property Located at 5581 148th Lane NW

Public Hearing

Chairperson Levine called the public hearing to order at 7:02 p.m.

Presentation

Community Development Director Gladhill presented the staff report stating through the Code Enforcement Program, the City became aware of an existing driveway extension that encroaches into the required five (5) foot driveway setback on the property located at 5581 148th Lane NW. Upon receiving a Notice of Violation from the City, Douglas and Vicky Foyt submitted an application for a variance from the standard driveway setback. Staff reviewed the request in detail with the Commission and recommended approval of the variance contingent upon the driveway extension surface being upgraded to comply with current City Code standards and upon the applicant entering into an Easement Encroachment Agreement with the City.

Commissioner Maul explained he would be abstaining from action on this item.

Citizen Input

Douglas Foyt, 5581 148th lane NW, explained he stored his boat on the side of his garage during the summer months and on the pad during the winter. However, after he purchased a trailer, the trailer now sits on the pad and the boat was stored indoors. He provided further comment on the grade of the storage pad and noted the surface was St. Cloud granite.

Vicky Foyt, 5581 148th Lane NW, commented they have not had any ponding or drainage issues between her and her neighbors from the storage pad.

Commissioner Bauer asked if the storage pad area were to be paved if the drainage would remain the same.

Mr. Foyt reported this was the case. He questioned if pavers could be used on the storage pad.

Community Development Director Gladhill indicated the City would support this type of material on the storage pad. Further discussion ensued regarding the easement on the property.

Commissioner Brauer discussed the encroachment issue from the October meeting and questioned how the Foyt's request differed.

Community Development Director Gladhill reported the homeowner's making the request from October had a very extensive retaining wall with several tiers along with an accessory structure up against a wetland. He noted a stormwater pond and wetlands were not involved in the Foyt's request.

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

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

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

Commission Business

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to adopt Resolution #15-11-270 approving Findings of Fact #0956.

Further discussion

Commissioner Brauer requested the Commission review the Findings of Fact prior to approval.

The Commission reviewed the favorable Findings of Fact.

Commissioner VanScoy requested a Friendly Amendment adding a Finding of Fact stating there was no significant drainage or wetlands on the property. The Commission supported the addition of this Finding.

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

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to recommend adopt Resolution #15-11-271 granting a variance to the standard driveway setback on the Subject Property.

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

5.02: Public Hearing: Request for a Conditional Use Permit to Exceed Sign Size and Height Restrictions at 8035 Riverdale Drive NW, Case of Ramsey-Arbor Properties, LLC.

Public Hearing

Chairperson Levine called the public hearing to order at 7:23 p.m.

Presentation

Planning Intern Solomonson presented the staff report stating the City has received an application from Ramsey-Arbor Properties, LLC requesting a conditional use permit (CUP) to exceed sign size restrictions for their parcel located at 8035 Riverdale Drive NW. The subject property is located directly adjacent to the Armstrong Boulevard Interchange project. The applicant desires to construct a 225 square foot (450 square foot gross aggregate surface area) sign to a height of seventy-five (75) feet without the required monument style base material. Staff discussed the request in detail with the Commission and recommended approval of the conditional use permit contingent upon incorporating a monument style base finish consistent with the exterior finish of the principal building to a minimum height of six (6) feet.

Citizen Input

Commissioner Bauer questioned why staff was recommending a monument base on the sign.

Community Development Director Gladhill reported this recommendation was being made for ground level aesthetics purposes.

Commissioner Brauer asked what the height of the overpass would be.

Community Development Director Gladhill discussed the height of the overpass in further detail with the Commission.

Steve Young, 8035 Riverdale Drive NW, discussed the sign location further and explained he was proposing to remove the existing 25-foot sign and would be replacing it with a multi-use 75-foot sign with a monument style base.

Commissioner Bauer inquired if City Code had any limits as to how many uses could share the sign.

Community Development Director Gladhill reported the City did not have any specific requirements regarding the number of shared users on a sign.

Mr. Young anticipated that he would have three or four tenants on the sign.

Commissioner VanScoy asked if the applicant had a preference with regard to the sign base.

Mr. Young preferred to not be required to have a monument style base given the high volume of traffic that would not see the sign base. He was not opposed to landscaping around the sign base.

Community Development Director Gladhill was not opposed to this suggestion; however he was following City Ordinance.

Commissioner Bauer inquired how tall the monument style base of the sign had to be.

Planning Intern Solomonson reported City Code required the base of the sign to be six feet in height.

Commissioner VanScoy supported staff's recommendation and suggested the monument style base be required.

Commissioner Nosan did not believe the monument base had to be six feet in height.

Chairperson Levine understood the need for consistency across the City with its signs.

Commissioner Andrusko discussed the amount of concrete that would be needed to anchor the sign. For this reason, he recommended the Planning Commission require a decorative monument style base on the sign.

Further discussion ensued regarding the number of existing signs on the property.

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 7:47 p.m.

Commission Business

Motion by Commissioner Bauer, seconded by Commissioner Maul, to recommend that City Council adopt Resolution #15-11-272 approving Findings of Fact #0957.

Further discussion

Commissioner Brauer reviewed the Findings of Fact discussing the proper language in order for the Findings to be favorable.

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, to recommend that City Council adopt Resolution #15-11-273 approving Ramsey-Arbor Properties, LLC's request for a conditional use permit to exceed sign size restrictions established by City Code without requiring the monument style base finish.

Further discussion

Commissioner VanScoy supported the monument style base requirement as recommended by staff.

Commissioner Brauer agreed.

Commissioner Bauer did not believe a six-foot concrete wall constituted a "monument style base". He believed this would detract from the sign.

Commissioner Brauer suggested this request be approved as requested and that staff be directed to review City Code regarding sign bases.

Community Development Director Gladhill recommended that the Commission not require the base and that an Ordinance review be completed in the future separate from action on this item.

Commissioner Nosan questioned when the Planning Commission would revisit this issue.

Commissioner Bauer was in favor of the Commission reviewing the City's entire sign code in December.

Community Development Director Gladhill reported he would bring a work plan to the Commission in December.

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

5.03: Receive Update on Public Works Campus Space Needs Analysis and Consider Policy for a Future McKinley Street Connection.

Presentation

Community Development Director Gladhill presented the staff report and reviewed the campus space needs analysis with the Planning Commission. He requested the Commission consider policy direction on McKinley Street as one of the top concepts for the proposed future public works campus requires the future connection of McKinley Street to be vacated.

Commission Business

Commissioner Bauer questioned how long range the plan was.

Public Works Superintendent Reemer believed the plan was slated for tentative construction in 2018.

Community Development Director Gladhill agreed stating there was three years of planning needed in order to properly complete the project.

Commissioner Bauer inquired when the City's transportation plan would be complete.

Community Development Director Gladhill anticipated that the transportation would be completed late 2016 or early 2017.

Commissioner Bauer was in favor of not making a single sided decision, but rather wanted the Planning Commission to take a look at the overall transportation plan.

Chairperson Levine commented the McKinley issue has been an issue in Ramsey for 30 years. The roadway should have been a through street. He believed this was an important issue for the Commission to address.

Public Works Superintendent Reemer explained there was talk of constructing an underpass under the railroad at Sunfish Lake Boulevard. He indicated this would directly impact and close off McKinley. He did not believe that McKinley would be used enough to push it through.

Further discussion ensued regarding the amount of traffic using McKinley and 143rd.

Commissioner Brauer was in favor of taking McKinley off the table and giving the Public Works Department the green light to proceed with their planning efforts.

Community Development Director Gladhill provided further comment on future rail crossings planned for the City of Ramsey.

Motion by Commissioner Brauer, seconded by Commissioner Maul, to remove future consideration of a connection at McKinley Street.

Commissioner VanScoy requested further information on the proposed frontage road.

Community Development Director Gladhill reviewed the location of the proposed frontage road and discussed how this roadway would assist with directing traffic along the front side of Highway 10.

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

Chairperson Levine recessed the meeting at 8:32 p.m.

Chairperson Levine reconvened the meeting at 8:37 p.m.

5.04: Receive Presentation on Land Use Chapter of the Comprehensive Plan.

Presentation

Planning Intern Solomonson reviewed the Land Use Chapter of the Comprehensive Plan in detail with the Commission.

Commission Business

Chairperson Levine thanked staff for the update.

5.05: Discuss Potential Business Incubator.

Presentation

Commissioner Brauer discussed the importance of encouraging business development in the City of Ramsey. He supported the City pursuing a business incubator that could offer support to local entrepreneurs. He reviewed a series of questions that would need to be addressed by the Commission and staff. He recommended that a pilot program be created along with a planning process to move this program forward.

Commission Business

Community Development Director Gladhill suggested staff create a work plan, conduct initial investigations and proceed in this manner.

Commissioner Andrusko supported the business incubator moving forward.

Motion by Commissioner Andrusko, seconded by Commissioner Maul, to direct staff to move forward with the business incubator initiative and to begin drafting a work plan.

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

6. COMMISSION / STAFF INPUT

The Staff Update was noted.

6.01: Zoning Bulletins

Zoning Bulletins were noted.

7. ADJOURNMENT

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

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 8:55 p.m.

Respectfully submitted,

_____

Tim Gladhill
Community Development Director

ATTEST:

_____

JoAnn Shaw
Community Development Assistant

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

Regular Planning Commission **5. 1.**

Meeting Date: 12/03/2015

By: Michael Healy, Community Development

Information

Title:

PUBLIC HEARING: Consider Ordinance #16-1 Establishing an Administrative Grading Permit

Purpose/Background:

Purpose

The purpose of this case is to consider adopting Ordinance #16-1 establishing an Administrative Grading Permit for certain grading activities.

Background

City Code Section 117-359 (Grading, Mining and Filling Permits) addresses grading activities that excavate 400 or more cubic yards from a site or filling of two (2) feet or greater at any point by requiring an Interim Use Permit (IUP). However, this process is intended for actual mining activities, not grading activities related to improvements of existing uses.

On projects requiring Building Permits, the City already reviews grading plans to ensure protective measures are in place to manage stormwater runoff, erosion control, and water quality. City Code does not currently have a requirement for a Grading Permit for alterations if a Building Permit is not required. As the community continues to develop, and statewide stormwater improvements are amended, Staff believes that it is in the public's best interest to introduce a process that not only 'right-sizes' larger grading activities that are not mining operations, but allow the City Engineer the opportunity to review changes in grading patterns to ensure that flooding issues are not created on adjacent properties and that proper erosion control measures are in place to prevent sedimentation from entering into the regional stormwater systems.

As it relates to current City Code, an IUP would be required for activities resulting in the import or export of more than 400 cubic yards. However, the required submittal information seems excessive for non-mining operations which involve simply improving an existing lot, but not creating a mining operation. Thus, Staff has drafted Ordinance #16-1 to establish an administrative grading permit that would be applicable to projects disturbing forty (40) or more cubic yards of earth material (approximately equivalent to four [4] dump truck loads) or that would potentially occur within a drainage and utility easement, to ensure that a proposed project would not negatively impact drainage patterns for adjacent properties.

Notification:

The Notice of Public Hearing was published in the City's official newspaper, the Anoka County UnionHerald.

Observations/Alternatives:

City Code Section 117-359 (Grading, Mining and Filling Permits) currently regulates grading, mining, and filling by requiring an IUP for any property where these activities will occur. The IUP requirement is intended to regulate mining activities and there are several exceptions to the IUP requirement outlined in Section 117-359 (c). Those exceptions are as follows:

1. Grading can occur without additional permits as part of an approved grading plan in a subdivision plat, site plan, or planned unit development.

2. Grading is permissible in any situation where a public agency needs to move soil, rock, or other natural materials as part of construction or maintenance of streets and utilities.
3. Grading is also allowed without an IUP on individual residential lots as long as it is by less than three (3) feet in depth, fills less than two (2) feet at any point, and does not interfere with surface drainage in the area.
4. Excavations that require the removal of less than 400 cubic yards of earth material are exempted from the IUP requirement.

The phrasing of the final exception has caused some ambiguity in terms of enforcement and fee collection. While a project may impact less than 400 cubic yards of material, it may still negatively impact drainage patterns.

The City has long employed an administrative permitting process because these excavations still involve a significant amount of earth moving and can have impacts on drainage and erosion control. There are fees that accompany this permit due to the staff time that is used in reviewing the erosion control plan and determining whether the change in contours would negatively impact neighboring parcels. Language supporting the use of administrative permitting occurs in other sections of City Code, but the permit is never expressly established in City Code. The intent of this ordinance is to more clearly articulate the requirement for a Grading Permit.

The Engineering Department believes it is appropriate and acceptable to allow small-scale grading projects (less than forth [40] cubic yards) to proceed without a permit, but that any grading project disturbing forty (40) or more cubic yards of earth material should be subject to review by City Staff. Projects larger than 40 cubic yards can have a tangible effect on erosion and runoff patterns and may result in damage to neighboring parcels if not carefully planned. The goal is to make the application process simplistic for the Applicant by requiring base data for square footage of impacted area and changes to contours. Staff can then use this information to better aide the Applicant and calculate cubic yards of disturbance.

The draft Ordinance establishes Section 117-58 (Administrative Grading Permits) and outlines the conditions that trigger the permit requirement. It also establishes exemptions to the permit requirement and outlines the basic submittal requirements to accompany the Administrative Grading Permit Application.

Alternatives

Alternative #1: Recommend City Council adopt Ordinance #16-1 establishing an Administrative Grading Permit for activities disturbing forty (40) or more cubic yards of earth material. The intent of this Ordinance is to eliminate any ambiguity regarding whether a permit and review by the City is required for certain grading activities. The Ordinance formally establishes the Administrative Grading Permit and provides the City an opportunity to review proposed projects prior to commencement to ensure that there are not unintended, negative impacts on drainage patterns and that proper erosion control measures are in place. The City Council has already adopted the fee as part of Rates and Charges. Staff supports this alternative.

Alternative #2: Recommend City Council adopt Ordinance #16-1 establishing an Administrative Grading Permit for activities, but with a different threshold. After review of several other metro communities, the threshold of forty (40) cubic yards appears to be a common threshold without being overly restrictive. Alternative thresholds could be considered if the Planning Commission desired.

Alternative #3: Do not recommend approval of Ordinance #16-1. There is some ambiguity in City Code presently about whether any permit or review is necessary for activities that disturb less than 400 cubic yards of material. Staff believes that grading activities disturbing forty (40) or more cubic yards of material should be reviewed for the welfare of adjacent properties to verify that the proposed alterations would not result in detrimental drainage patterns and that appropriate erosion control measures are in place prior to the project beginning. Staff does not support this alternative.

Funding Source:

This case is being handled as part of Staff's normal duties.

Recommendation:

Staff recommends adopting Ordinance #16-1 establishing an Administrative Grading Permit for grading activities that will disturb forty (40) or more cubic yards.

Action:

Motion to recommend City Council adopt Ordinance #16-1 establishing an Administrative Grading Permit for activities disturbing forty (40) or more cubic yards of earth material.

Attachments

Existing Code-Grading,Mining, and Filling

DRAFT Ordinance #16-1

Form Review

Inbox	Reviewed By	Date
Bruce Westby	Bruce Westby	11/24/2015 02:47 PM
Chris Anderson	Chris Anderson	11/25/2015 12:09 PM
Tim Gladhill	Tim Gladhill	11/25/2015 01:38 PM
Tim Gladhill	Tim Gladhill	11/25/2015 01:38 PM
Form Started By: Michael Healy		Started On: 11/24/2015 08:56 AM
Final Approval Date: 11/25/2015		

Sec. 117-359. - Grading, mining and filling permits.

(a) Purpose. The purpose of this section is to safeguard life, limb, property and the public welfare by controlling grading, mining, and filling operations so as to minimize conflicts with adjacent land uses, to preserve good soils and to regulate the type of materials used in filling operations, and to ensure that disturbed areas are restored upon completion of the operation.

(b) Scope. This section sets forth rules and regulations to control grading, mining, excavation, and earthwork construction including fills and embankments, establish the administrative procedure for issuance of permits, and provides for approval of plans and inspection of grading construction.

(c) Exceptions. This section shall not apply to:

(1) The excavation, removal, or storage of rock, sand, dirt, gravel, clay, black dirt, peat, or other like material for the purpose of compliance with a grading plan approved as part of a subdivision plat, site plan, or planned unit development, if said plat, site plan or planned unit development does not require the exporting of earth material, or for the purpose of the yard, foundation, or basement of a building in the process of being erected, built, or placed thereon contemporaneously with, or immediately following, such excavation, removal or storage.

(2) The excavation, removal, or storage of rock, sand, dirt, gravel, clay, black dirt, peat, or other like material by a public agency incidental to the construction or maintenance of streets or utilities.

(3) Grading of individual residential lots by less than three feet in depth, filling of less than two feet at any point and which does interfere with surface drainage in the area.

(4) Excavations that require removal of less than 400 cubic yards of earth material.

(d) Administration.

(1) An interim use permit shall be required for all grading, mining and filling operations as required herein. Said permit shall be applied for pursuant to section 117-52 and issued for a maximum period of three years, after which a permit renewal is required. Permit renewal requests shall be processed as an original request for an interim use permit.

(2) The following operations shall be covered by this section: the removal, crushing, borrowing, filling and excavation of earth material.

(3) The costs to the city of the continuous administration of any interim use permit issued herein shall be paid by the permit holder. In order to insure payment, the operator shall deposit with the city an escrow sum in an amount specified by the city engineer. Said escrow deposit will then be used to defray the city's expenses in the continuing administration of the interim use permit. In the event the escrow fund is not properly funded, as described in this subsection (d)(3), the operator shall cease and further operations and the interim use permit will be deemed suspended until the proper sums have been deposited into the escrow fund. These costs are in addition to any security requirements of the interim use permit.

(4) Application for the interim use permit shall be made in writing to the council on such form as the council may from time to time designate, and shall include the following information:

a. Names and address of the applicant, operator and owner of the land.

b. The purpose of the permit.

c. The exact legal description and acreage of the property to be graded, mined or filled.

d. The following maps of the entire work site and including all areas within 350 feet of the work site. All maps shall be drawn at a scale of one inch to 100 feet unless otherwise stated below:

1. Map 1: existing work site conditions to include:

(i) Contour map (two-foot intervals);

(ii) Existing vegetation;

(iii) Existing drainage and permanent water areas;

(iv) Existing structures;

(v) Existing wells; and

(vi) Water table elevations.

2. Map 2: proposed operations to include:

(i) Location of work sites to be graded, mined or filled showing elevations of each stage of proposed operations;

(ii) Location of storage of mined materials, showing maximum height of storage deposits;

(iii) Location of vehicle parking, and access roads;

(iv) Location and description of erosion and sediment control structures;

(v) Location of any proposed dewatering operations.

3. Map 3: end use plan to include:

(i) Final grade of proposed work site showing elevations and contour lines at two-foot intervals;

(ii) Location and species of vegetation to be planted;

(iii) Phasing plan; and

(iv) Stormwater drainage plan.

4. Map 4: location of designated hauling roads from work site to a state or federal highway.

e. A soil erosion and sediment control plan.

f. A plan for dust and noise control.

g. A full and adequate description of all phases of the proposed operation to include an estimate of duration of the grading, mining or filling operation, location and approximate acreage of each stage and schedule for restoration.

h. A rehabilitation or restoration plan providing for the orderly and continuing rehabilitation of all excavated land. Such plan shall illustrate, using appropriate photographs, maps, and surveys drawn to a scale of one inch equals 100 feet and with a two-foot contour interval satisfactory to the engineer, the following:

1. The final or planned contours of the land when the mineral removal operations are completed.

2. Those areas of the work site that will be used for storage of top soil and overburden.

3. The elevation and location of all water bodies.

i. Location of any and all existing wells and the size and depth thereof located on the work site.

j. Location and description of any proposed dewatering operations.

k. An analysis of the earth material to be used in the filling, which analysis shall include the following:

1. pH content.

2. Organic material content.

3. Determination of the presence or lack of hazardous substances as defined by the Minnesota Pollution Control Agency.

l. The analysis as required herein shall be certified by a qualified testing laboratory.

m. Any other information requested by the city staff, planning commission or council.

(e) Performance standards.

(1) General provisions.

a. Weeds and other unsightly or noxious vegetation shall be cut or trimmed as may be necessary to preserve a reasonably neat appearance of the work site and to minimize seeding on adjacent property.

b. All equipment used for grading mining or filling operations shall be maintained and operated in such a manner as to minimize, as far is practicable, noises, dust and vibrations adversely affecting surrounding properties. In addition, all machinery shall be kept in good repair and painted regularly. Abandoned machinery and rubbish shall be removed from the work site regularly.

c. All hauling operations shall be completed so as to minimize noise, safety and dust concerns to adjacent residential properties.

d. All grading, mining and filling work sites shall be properly safeguarded to prevent the general public from depositing garbage or other refuse in the work site.

e. All structures that are not being used shall be removed from the work site.

f. Existing tree and ground cover shall be preserved to the extent feasible, maintained and supplemented by selective cutting, transplanting and replanting of trees, shrubs and other ground cover along all setback areas.

(2) Water resources.

a. The grading, mining or filling operation shall be conducted in such a manner as to minimize interference with the surface water drainage outside of the boundaries of the operation.

b. Excavation occurring below groundwater elevation may require an analysis performed by a hydrologist or other qualified professional. Such analysis shall address whether the proposed excavation shall have a significant impact on the adjacent groundwater quantity and quality. In general, excavations less than 15 acres shall be exempt from this requirement unless there is evidence of clay lenses or perched water table adjacent to the excavation, in which case some analysis may be required.

(3) Safety fencing. Safety fencing may be required around all or portions of the grading, mining or filling operation at the discretion of the council. Fencing may be ordered by the council or city engineer any time the permit is in force and shall be installed within 24 hours' written notice.

(4) Access roads.

a. The location of the intersection of mining, grading or filling access roads with any public roads shall be selected such that traffic on the access roads will have sufficient distance of public roads in view so that any turns onto the public road can be completed with a margin of safety as determined by the city engineer.

b. All access roads from grading, mining or filling operations to public highways, roads or streets shall be maintained in order to minimize dust considerations.

(5) Fill materials. An analysis of all fill materials must be provided to and approved by the city engineer prior to commencing any filling activities. No filling materials shall be permitted which in the opinion of the city engineer would be undevelopable or create substandard soils.

(6) Screening barrier. To minimize problems of dust and noise and to shield operations from public view, a screening barrier may be required between the work site and adjacent properties. A screening barrier may also be required between the work site and any public roads located within 500 feet of any grading, mining or filling operations. The screening barrier shall be planted with a

species of fast growing trees, and where practical, stockpiles of overburden materials shall be used to screen the operation work site.

(7) Slopes. The maximum permitted slope for any grading, mining or filling operation other than the working face shall be sloped on all sides at a maximum ratio of two feet horizontal to one foot vertical, unless a steeper slope shall be approved by the engineer. In no case shall the slope of the working face of the operation be left unattended with a slope greater than two feet horizontal to one foot vertical. Where excavations are adjacent to a public roadway or other right-of-way, the excavation shall have a maximum four to one slope. Slopes adjacent to or contiguous to bodies of water shall be sloped at a maximum of five to one.

(8) Setback. Grading, mining or filling operation shall not be conducted closer than 30 feet to the right-of-way line of any existing or platted street, road or highway, except that excavating may be conducted within such limits in order to reduce or raise the elevation thereof in conformity to the existing or platted street, road or highway.

(9) Security agreement. Prior to commencing any grading, mining or filling operations, a performance bond, cash escrow or irrevocable letter of credit, in such form and amounts as the city may require, shall be deposited with the city. The amount of this deposit shall vary according to the scope and duration of the project and shall be established by the council. This deposit may be used by the city to: pay for the cost and expense of repairing any public rights-of-way due to the grading, mining or filling operation; pay for any costs associated in administering the requirements of this chapter; and to pay for any restoration of the work site not properly restored upon completion. This security shall be used by the city only in the event that the permit holder fails to pay bills submitted for costs incurred by the city.

(10) Earth material. No earth material shall be imported to or exported from the work site until the haul road has been officially designated as a haul road by the city and all materials hauled from the source shall be hauled over that road. The haul road designation process shall be pursuant to section 2051.3 of the state department of transportation's Standard Specifications for Construction, 1983 Edition.

(f) Insurance. The applicant shall file with the administrator a liability insurance policy or certificate of such insurance acceptable to the city and issued by an insurance company authorized to do business in the state.

(1) The policy shall be an all-perils or general liability insurance policy in the minimum amount of $1,000,000.00. The policy shall name the city as an additional insured. The policy shall require that the city be notified 30 days in advance of cancellation of the policy.

(2) Said policy shall be for the full period of the permit and shall provide for the giving of ten days prior notice to the administrator by registered mail of termination, cancellation, or amendment of the policy.

(3) In the event said policy is terminated for any reason, the permit shall be automatically suspended upon the day the policy terminates, unless a new policy complying with this section is obtained and filed with the administrator prior to the termination of the policy in force.

(g) Regulations and requirements and operating standards.

(1) The council as a pre-requisite to the granting of said permit or after such permit has been granted, may impose such further restrictions and requirements as may be reasonable and necessary under the particular circumstances of each application. Such restrictions and requirements may be in contract form with the applicant or any other person interested directly or indirectly in the issuance of such permit.

(2) No excavation or digging shall be made beyond the limits for which the particular permit is granted and in no case shall any excavation or digging be made within 30 feet of any adjoining road right-of-way or structure as may be in the area without obtaining specific approval by the council.

(3) Where excavations are made within 30 feet of a public roadway or other right-of-way, the permittee shall erect either a suitable guard rail along said right-of-way or roadway or construct a dirt berm not less than 30 inches in height and six feet in width at the base.

(4) All reasonable means shall be employed by applicant to reduce dust, noise and nuisances.

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

(6) Hours. All mining operations shall be conducted between 7:00 a.m. and 8:00 p.m. on weekdays only unless otherwise specifically approved by the city engineer or their agent.

(7) Explosives. The use and handling of explosives shall be coordinated with the city police department. Blasting shall occur only at hours specified by the police department and at no other time.

(8) Dust. Operators shall utilize all practical means to reduce the amount of dust caused by the operation. In no case shall the amount of dust or other particulate matter exceed the standards established by the MPCA. No operations shall be allowed when wind gusts exceed 30 miles per hour.

(9) Water pollution. Operators shall comply with all applicable Minnesota Pollution Control Agency regulations and federal and Environmental Protection Agency regulations for the protection of water quality. No waste products or process residue, including untreated washwater, shall be deposited in any lake, or natural drainage system, except that lakes or ponds wholly contained within the extraction site may be so utilized.

(10) Top soil preservation. All top soil shall be retained at the work site until complete rehabilitation of the work site has taken place according to the rehabilitation plan.

(11) Designated haul routes shall be maintained by the operator in accordance with state department of transportation's Specification 2051.4 as found in the state department of transportation Standard Specifications for Construction, 1983 Edition.

(h) Dangerous operations. The operators shall change, alter or modify immediately any excavation or operation therein deemed by the council to be unsanitary or dangerous or polluted or contrary to the general health and welfare of the community.

(i) Designation of haul roads and traffic law compliance. Material of the kinds and for the purposes described herein shall not be hauled from any source until the haul road from that source has been officially designated as a haul road and all materials hauled from the source shall be hauled over that road.

(1) The operator shall select a haul road over which it is proposed to haul the materials, as previously described, and notify the city engineer as to the road so selected. Within 15 calendar days after being notified of the haul road selection, the city engineer will, if the road so selected is a practicable route, approve that road as a designated haul road.

(2) After a haul road has been officially designated, the operator may select a different road for official designation under the same conditions as previously stated. However, any changes made in haul road designation shall not relieve the operator of their obligation of restoring the previously designated haul road if any of the above-described materials were hauled over that road.

(3) While hauling operations are in progress, the operator shall maintain the haul road in a condition satisfactory to the city engineer. This work shall include application of water, bituminous material, or calcium chloride to the road surface as may be necessary to alleviate dust nuisance and eliminate traffic hazards. This work shall also include the removal of spillage of any material on the haul road.

(4) When hauling operations over any haul road are completed, the operator shall (at their option):

a. Restore that haul road to a condition at least equal to that which existed at the time the hauling operations were started; or

b. Compensate the local road authority in an amount satisfactory to that road authority and concurred in by the city engineer for the restoration of that haul road by the city.

(5) The fact that other traffic has used the haul road concurrently with the hauling of the above-described materials shall not relieve the operator of their obligation to maintain and restore the haul road as above provided.

(6) The city engineer's determination as to the kind and amount of maintenance and restoration work required to restore the haul road to a condition equal to that which existed at the time the hauling operations were started shall be final, binding and conclusive.

(7) When hauling over any designated haul road has been completed and the operator has restored that road or has compensated for that restoration as required, the city engineer will accept such restoration or concur in such financial settlement for the restoration of the haul road (as the case may be) in writing, and such acceptance will relieve the operator of any additional obligation in connection with the restoration of that road.

(8) If the operator fails or refuses to perform haul road restoration or to make satisfactory financial settlement for such restoration as required within the period specified in a written notice by the city engineer, the city will cause the restoration work to be done and require reimbursement therefor from the operator's surety.

(9) Operators shall obey all state, county and municipal road limits and other applicable traffic regulations in hauling to and from the work site. Operators shall also restrict trucks hauling to and from the work site to the use of those public highways designated by the permit.

(j) Site restoration. All grading, mining and filling sites shall be restored immediately after operations cease. Restoration shall be complete within 60 days of the cessation of operations. The following standards shall apply to restoration:

(1) The peaks and depressions of the work site shall be graded and backfilled to a surface which will result in a gently rolling topography in substantial conformity to the land area immediately surrounding the work site and which will minimize erosion due to rainfall. No finished slope shall exceed 12 percent in grade.

(2) Restoration shall begin after the grading, mining and/or filling of 25 percent of the total area to be mined or five acres, whichever is less. Once these areas have been graded, mined or filled, they shall be sloped and seeded as per the restoration plan.

(3) Restored areas shall be surfaced with a soil of a quality at least equal to the topsoil of land areas immediately surrounding the work site, and to a depth of at least six inches. The topsoil shall be seeded, sodded, or planted with grasses. Trees and shrubs may also be planted but not as a substitute for grasses. Such planting shall adequately retard soil erosion.

(4) The finished grade shall be such that it will not adversely affect the surrounding land or future development of the work site and shall be consistent with the end use plan.

(5) Within 30 days after the deposit of approved fill materials, the filled area shall be covered with a minimum of six inches clean fill, and the depth of the fill shall be controlled to blend with the surrounding ground conditions.

(k) Existing operations. Existing grading, mining and filling operations shall comply with these provisions within 180 days following the effective date of the ordinance from which this subsection is derived.

(Code 1978, § 9.11.12; Ord. No. 87-9, 1-11-1988; Ord. No. 97-15, 12-1-1997; Ord. No. 01-15, 7-30-2001; Ord. No. 03-30, 9-15-2003)

ORDINANCE #16-1
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

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

AN ORDINANCE AMENDING SECTION 117-58 (RESERVED) OF THE RAMSEY CITY CODE.

The City of Ramsey Ordains:

SECTION 1 AUTHORITY

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

SECTION 2 AMENDMENTS

Section 117-58 is hereby established to read as follows:

Sec. 117-58 Administrative Grading Permit

(a) *Administrative Grading Permit.* An Administrative Grading Permit shall be required for any grading project that will disturb forty (40) or more cubic yards of earth material or for any grading activity that would occur within a drainage and utility easement.

(b) *Exemptions*

(1) Grading projects subject to the Interim Use Permit requirements established in Section 117-359.

(2) Grading projects that meet the criteria established in Section 117-359(c)(1) and (2).

(3) Grading activities that will disturb less than forty (40) cubic yards of earth material and are not within a drainage and utility easement.

(c) *Submittal Requirements.* The following information shall be submitted to the City along with the applicable application:

(1) Scaled Site Plan that includes:

a. Limits of disturbance.

b. Proposed contours.

c. Any other information deemed necessary by the City.

(d) *Application Fee and Escrow*. An application fee and escrow payment, as established in the Rates and Charges, shall be required.

SECTION 3. SUMMARY

The following is the official summary of Ordinance #15-19, which has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance.

It is the intent and effect of Ordinance #15-19 to amend Ramsey, Minnesota City Code Section 117-58 to clearly establish an Administrative Grading Permit for grading activities disturbing forty (40) or more cubic yards of earth material.

SECTION 4. EFFECTIVE DATE

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

Adopted by the Ramsey City Council the 26th day of November, 2016.

_____
Mayor

ATTEST:

_____
City Clerk

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

Regular Planning Commission **5. 2.**

Meeting Date: 12/03/2015

By: Tim Gladhill, Community Development

Information

Title:

Discuss Potential Work Plan Items and Need for Annual Planning Commission Report

Purpose/Background:

Purpose

The purpose of this case is to introduce a discussion about the possibility of creating an annual Work Plan for policy topics for the Planning Commission. No work plan has been drafted at this point. The intent of this case is to review topics previously raised by the Planning Commission and brainstorm additional topics to review. Ultimately, Staff would request that the Planning Commission prioritize these topics for Staff to develop a reasonable and achievable work plan.

Background

Traditionally, the Planning Commission has not prepared an annual work plan and focused on the Commission's primary role of reacting to land use applications. However, over the past several months, the Planning Commission has identified several topics that need attention. It will be important to prioritize and establish acceptable completion dates in order to achieve some of these goals. Topics raised include, but are not necessarily limited to the following.

1. Review The COR Development Plan
2. Comprehensive Plan Update
3. Revise Sign Code
4. Cell Tower Code
5. Conditional Use Permit and Variance Streamlining
6. Business Incubator Program

Notification:

Observations/Alternatives:

Funding Source:

Recommendation:

Action:

No action being requested. For discussion only.

Attachments

No file(s) attached.

Form Review

Inbox	Reviewed By	Date
Chris Anderson	Chris Anderson	11/25/2015 02:37 PM
Tim Gladhill (Originator)	Tim Gladhill	11/25/2015 02:51 PM

Form Started By: Tim Gladhill Started On: 11/25/2015 01:39 PM
Final Approval Date: 11/25/2015

Regular Planning Commission **6. 1.**

Meeting Date: 12/03/2015

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	11/25/2015 01:24 PM
Form Started By: JoAnn Shaw		Started On: 11/23/2015 12:31 PM
Final Approval Date: 11/25/2015		

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Zoning Bulletin

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Mat #41675522

Rezoning—County rezones property from agricultural to industrial for proposed nuclear power plant

Neighboring landowners argue rezone constituted illegal spot zoning

Citation: *Neighbors for Preservation of Big and Little Creek Community v. Board of County Com'rs of Payette County, 2015 WL 5655521 (Idaho 2015)*

IDAHO (09/25/15)—This case addressed the issue of whether the rezoning of a parcel of land from agricultural to industrial in connection with a project to build a nuclear power plant was illegal spot zoning.

Contributors

Corey E. Burnham-Howard

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The Background/Facts: Alternate Energy Holdings, Inc. ("AEHI") sought to locate a nuclear power plant on a 5,000-acre parcel of property in Payette County (the "County"). The property was zoned Agricultural. Because the property needed to be rezoned to Industrial for the proposed nuclear power plant, AEHI: (1) submitted an application to amend the County's comprehensive plan to change the designation of the property "from Agriculture 1, 2, and Mixed to Industrial"; and (2) submitted a Rezone and Development Agreement Application to the County's Planning and Zoning Commission (the "PZC") proposing the rezone "of approximately 500 acres from A (agricultural) to I-2 (heavy industrial) zoning."

The County amended the comprehensive plan, designating the subject property as Industrial and adding general language that energy producers wishing to locate in the County would have their applications considered on an individual basis.

The PZC recommended approval of AEHI's rezone application. Opponents of the project, including a neighboring landowner—H-Hook, LLC ("H-Hook") appealed the PZC's decision to the County Commissioners. The County Commissioners approved AEHI's application. They found that the proposed zoning was compatible with surrounding land uses and that the 500-acre parcel that would be rezoned would be contained within a larger 5,000-acre parcel, resulting in a buffer zone from neighboring properties.

A number of parties, including H-Hook, sought judicial review of the County Commissioners' decision. They argued that the rezone of the property constituted illegal spot zoning.

Among other things, the district court determined that the County Commissioners' approval of the rezone did not constitute spot zoning because the rezone was in accordance with the County's amended comprehensive plan.

H-Hook appealed.

DECISION: Judgment of district court affirmed.

The Supreme Court of Idaho also held that the rezone did not constitute illegal spot zoning.

In so holding, the court explained that "[a] claim of 'spot zoning' is essentially an argument the change in zoning is not in accord with the comprehensive plan." The court further explained that there are two types of "spot zoning":

> "Type one spot zoning may simply refer to a rezoning of property for a use prohibited by the original zoning classification. The test for whether such a zone reclassification is valid is whether the zone change is in accord with the comprehensive plan. Type two spot zoning refers to a zone change that singles out a parcel of land for use inconsistent with the permitted use in the rest of the zoning district for the benefit of an individual property owner. This latter type of spot zoning is invalid."

H-Hook had contended that the rezone was impermissible type one spot zoning. H-Hook argued that "under the amended comprehensive plan, power plant siting does not have to follow any sort of comprehensive planning analysis." "Instead," maintained H-Hook, "the Commissioners are permitted to use an ad hoc approach."

The court concluded that the rezone was not invalid type one spot zoning. The court found that the rezone was in compliance with the comprehensive plan's designation of the land due to the amendment of the comprehensive plan to des-

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ignate the property as Industrial. Because the rezone was in accord with the comprehensive plan, the court concluded that it was not impermissible type one spot zoning.

H-Hook had also contended that the rezone was "quintessential type two spot zoning because it single[d] out the proposed site for an industrial nuclear power use when the proposed site [was] surrounded by mostly agricultural land."

The court concluded that the rezone was also not invalid type two spot zoning. In so concluding, the court noted that there were five industrial uses within five miles of the proposed site, including a confined animal feeding operation and a county landfill.

Case Note:

H-Hook had also argued that the rezone was invalid because the County's amended comprehensive plan did not contain the statutorily required "analysis" for "power plant sites" and "utility transmission corridors" as required in Idaho Code § 67-6508(h). The Supreme Court of Idaho concluded that the amended comprehensive plan satisfied the statute's "general plan" requirement.

Constitutionality of Zoning Ordinance—Zoning ordinance defines "family" as not including more than three unrelated persons

Landlords challenge ordinance as unconstitutional

Citation: *Schwartz v. Philadelphia Zoning Bd. of Adjustment, 2015 WL 5601248 (Pa. Commw. Ct. 2015)*

PENNSYLVANIA (09/24/15)—This case addressed the issue of whether a zoning ordinance that limited single-family residential use based on a definition of "family" as "group of persons living as a single household unit using housekeeping facilities in common, but not to include more than three persons unrelated by blood, marriage or adoption" was unconstitutional either on its face or as applied.

The Background/Facts: Sheldon Schwartz ("Schwartz") and Paul Abeln ("Abeln") were landlords of properties in Philadelphia, Pennsylvania (the "City"). (Hereinafter, Schwartz and Abeln are collectively referred to as the "Landlords.") Their properties were zoned for single-family and two-family residential use. Their properties were located near Drexel University campus, and they each rented their property to a group of University students.

The City's Department of Licenses and Inspections ("L & I") issued citations to the Landlords. They were cited for violating a section of the City's Zoning Code (the "Code") that prohibited an unauthorized change in the zoned use or occupancy of a property based on the presence of more than three unrelated individuals residing in a property zoned for single-family residential use. The Code defined a "family" as:

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> "A person living independently or a group of persons living as a single household unit using housekeeping facilities in common, but not to include more than three persons unrelated by blood, marriage or adoption."

The Landlords each rented their properties to a group of students that contained more than three persons unrelated by blood, marriage or adoptions.

The Landlords each appealed their citations. The City's Zoning Board of Appeals ("ZBA") denied each of their appeals. They then each appealed to the trial court. The trial court consolidated the appeals.

The trial court affirmed the ZBA's denial of the appeals.

The Landlords again appealed.

On appeal, the Landlords argued that the Code provision defining "family" was unconstitutional both on its face and as applied to them. They argued that the Code impermissibly burdened an individual's First Amendment (to the United States Constitution) right to association and the right to privacy. They also contended that the use of their properties by more than three unrelated persons was functionally equivalent to use of the properties by a "family," and that therefore the Code was unconstitutional as applied to their use of the properties.

DECISION: Judgment of Court of Common Pleas affirmed.

The Commonwealth Court of Pennsylvania held that the Code's definition of "family" was not unconstitutional on its face or as applied to the Landlords.

In so holding, the court first reviewed the level of scrutiny applied by courts to the review of zoning ordinances. The court noted that Pennsylvania courts have consistently utilized the rational basis test to examine the constitutionality of zoning ordinances limiting the composition of households in single-family residential districts. In other words, if the Code's definition of "family" had a rational basis, then it would be constitutional on its face.

Here, the court found that the Code did not prohibit more than three persons unrelated by blood, marriage or adoption from cohabitating within the municipality; instead the Code prohibited groups that did not fit within the definition of "family" from cohabitating by right in a property zoned for single-family residential use. The court found that the Code provided for a diversity of residential uses by right. The court further found that the Code struck a balance in its provision of uses by right in single-family residential districts between the fundamental rights surrounding related or legally bound families, and the rights of those who are unrelated but desire a similar residential use without having to seek a variance or special exception.

The court concluded that the Code's provision limiting single-family residential use based on a definition of "family" that permitted an unlimited number of persons related by blood, marriage, or adoption to cohabitate in a single-family residence, while restricting the number of unrelated persons who may do so, was a permissible intrusion when rationally related to the use of land rather than the people using it. In "dense urban areas," noted the court, such an intrusion on land use may be a "practical necessity." Thus, held the court, zoning ordinances, such as the one here, defining "family" using biological and legal bonds are not facially unconstitutional.

The Landlords had argued that the use of properties by unrelated groups of students was functionally equivalent to the use of the properties by a "family."

The Landlords pointed to the fact that each of the occupants had access to the full house and worked together in housekeeping. The court did find that the individual residents had formed a single-household unit, but the court also noted that the Code capped the number of unrelated people who could compose such a unit in a property zoned for single-family residential use at three. Therefore, the court found that the evidence that the group was "living as a single household unit using housekeeping facilities in common," was insufficient to meet the Landlords' burden to show the Code was unconstitutional as applied to them. Instead, explained the court, "when a zoning ordinance utilizes the term 'family' to define single-family residential use based upon how the household is composed rather than on how the residents within the household function, the burdened party must produce substantial evidence to show that the use of the property will be equivalent to the use of the property by a group that does fit within the strict definition of 'family' found in the ordinance."

Here, the court found that the group of unrelated students was not legally bound to one another, as are individuals related by blood, marriage or adoption. The court also found that the Landlords failed to show that the groups of students were a stable permanent unit, since some of the student residents moved out while others moved in each year. Concluding that the Landlords had failed to produce substantial evidence to demonstrate that their use of the properties was equivalent to use of the property by a group of persons related by blood, marriage or adoption, the court held that they failed to demonstrate that the Code was unconstitutional as applied to their use of the properties.

Accordingly, the citations against the Landlords for violation of the Code were upheld.

See also: *Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797, 6 Env't. Rep. Cas. (BNA) 1417, 4 Envtl. L. Rep. 20302 (1974).*

See also: *Appeal of Miller, 511 Pa. 631, 515 A.2d 904 (1986).*

See also: *Children's Aid Soc. v. Zoning Bd. of Adjustment, 44 Pa. Commw. 123, 402 A.2d 1162 (1979).*

See also: *Wengert v. Zoning Hearing Bd. of Upper Merion Tp., 51 Pa. Commw. 79, 414 A.2d 148 (1980).*

Authority/Preemption—City says school district must obtain zoning approval for construction of stadium bleachers

Board of Education argues school district's construction on property used for school purposes is not subject to local zoning

Citation: *Gurba v. Community High School Dist. No. 155, 2015 IL 118332, 2015 WL 5608249 (Ill. 2015)*

ILLINOIS (09/25/15)—This case addressed the issue of whether municipal

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zoning ordinances govern a school district's construction of football stadium bleachers on school property. More generally, it addressed whether a school district is subject to local zoning and land use regulations in the course of exercising its statutory powers to construct new facilities on school property.

The Background/Facts: Crystal Lake South High School ("Crystal Lake South") is located in the city of Crystal Lake, Illinois (the "City"), a municipal corporation with home rule authority situated in McHenry County (the "County"). The area surrounding the school was zoned "R-2 residential single family," and the school constituted a legal, nonconforming use. The Crystal Lake South campus was owned by Community High School District No. 155 (the "District") and operated by the Board of Education of Community High School District No. 155 (the "Board").

In 2013, the Board decided to replace the bleachers at the Crystal Lake South football stadium after a failed structural inspection. The proposed new bleachers were to be larger, higher, and closer to the property line than the existing bleachers abutting the residential property next to the school. The Board applied for a permit for the project from the County Regional Superintendent of Schools. The Superintendent approved the plans and issued a building permit pursuant to section 3-14.20 of the Illinois School Code (105 ILCS 5/3-14.20.). The District began work on the project without notifying the city of Crystal Lake or seeking a building permit, zoning approval, or storm water management approval from the City.

Upon learning of the project, the City informed the Board that it was required to comply with the provisions of the Crystal Lake Unified Development Ordinance (the "Zoning Ordinance"), which regulates zoning and land use, as well as the City's storm water management ordinance. The City ordered the Board to stop construction of the bleachers until it obtained a special-use permit, a storm water permit, and zoning variances. The Board disregarded the order and continued construction. The Board took the position that a school district's construction on property used for school purposes was not subject to the zoning authority of the local municipality.

Owners of residential properties adjacent to the school filed a lawsuit against the Board and the District, seeking to privately enforce the City's zoning restrictions. They alleged that the new bleachers failed to comply with the Zoning Ordinance and negatively affected their property values.

The Board filed a third-party complaint. It asked the court to decide whether the City had authority over the District to enforce its Zoning Ordinance and storm water ordinance.

Finding there were no issues of material fact in dispute, and deciding the matter on the law alone, the circuit court awarded summary judgment in favor of the City. The court determined that the City did have authority over the District to enforce its zoning and storm water ordinances. On appeal, the appellate court affirmed.

The Board and the Superintendent appealed. The Supreme Court of Illinois consolidated their appeals.

DECISION: Judgment of Appellate Court affirmed.

The Supreme Court of Illinois held that the City had home rule authority to enforce the Zoning Ordinance and storm water management ordinance on school

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property. Thus, the court held that school districts are subject to local zoning and land use regulations in the course of exercising school districts' statutory powers to construct new facilities on school property.

In so holding, the court explained that, in the absence of express statutory exclusions, municipalities are empowered by the Illinois Municipal Code to regulate all land uses within their territory. The court found that although the General Assembly had chosen to exempt certain entities from municipal zoning regulations under the Municipal Code, there was no statutory provision restricting the authority of a municipality to regulate zoning or storm water management on school property. Thus, under the plain terms of the Municipal Code, the court found that school property is subject to municipal zoning laws.

The court further noted that, as a home rule municipality, the City had broad powers to perform any function pertaining to its government and affairs, including, but not limited to, zoning ordinances. (Ill. Const.1970, art. VII, § 6.) Although the General Assembly could restrict a home rule unit's powers, the court found that the General Assembly had not enacted any statute expressly preempting or limiting a home rule unit's zoning powers over public school property. The court concluded that it was therefore within the City's home rule authority to impose its Zoning Ordinance on the District and the Board.

Despite the lack of any statutory provision expressly exempting school property from municipal or home rule zoning authority, the Board nevertheless had argued that the City's zoning powers did not extend to property owned by a school district. The Board had contended that the City's Zoning Ordinance and storm water ordinance unduly interfered with the General Assembly's constitutional authority to regulate the public education system. The court disagreed, finding that, to the contrary, section 10-22.13a of the School Code "evince[d] the General Assembly's intent that school districts are subject to local zoning laws," including zoning laws regulating school property used for "school purposes." More expressly, the court found that the City's zoning ordinances did not unduly interfere with the educational goals of the General Assembly because the City's regulation of school-owned property for the benefit of the community as a whole was not equivalent to the regulation of public education activities such as school curricula, administration and staffing.

See also: *Wilmette Park Dist. v. Village of Wilmette, 112 Ill. 2d 6,96 Ill. Dec. 77, 490 N.E.2d 1282 (1986).*

Case Note:

The Board had also argued that the Health/Life Safety Code for Public Schools (i.e., the school "building code") preempted or limited the City's authority over zoning and land use issues within its jurisdiction. The court disagreed, finding that "[n]either the building code itself nor the statutes referencing the code mention[ed] zoning, land-use, or storm water management." Those issues, said the court, are local matters ordinarily regulated by counties and municipalities, and the issues involving zoning are not addressed by a building code. Thus, the court concluded that the Health/Life Safety Code did not preempt or limit the City's authority over zoning and land use issues within its jurisdiction.

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Case Note:

In this case, briefs as amici curiae (i.e., friends of the court) were filed in support of the Board and Superintendent by: the Illinois Association of School Boards, the Illinois Association of School Administrators, and the Illinois Association of School Business Officials. Amicus curiae briefs were filed in support of the City by the Illinois Municipal League and Professor Laurie Reynolds.

Variance—Hotel owner seeks variance to renovate hotel that would encroach by 74% into setback

Opponents contend hotel owner cannot meet showing of unnecessary hardship required for variance

Citation: *Surfrider Foundation v. Zoning Bd. of Appeals, 2015 WL 5597179 (Haw. 2015), as corrected, (Oct. 6, 2015)*

HAWAI'I (09/23/15)—This case addressed the issue of whether a variance granted for a proposed 26-story hotel and residential tower that permitted a 74% encroachment into the coastal height setback along the Waikiki shoreline was properly issued.

The Background/Facts: Kyo-ya Hotels & Resorts LP ("Kyo-ya") owned the Moana Surfrider hotel complex along the Waikiki shoreline in the City of Honolulu (the "City"). The complex contained three hotel buildings: the Surfrider Tower, the Banyan Wing, and the Diamond Head Tower ("DHT"). The complex was located in the Waikiki Special District ("WSD"). In the WSD, the "the City Council recognized the need to step back buildings from the shoreline in order to optimize 'the sense of open space and public enjoyment along the beach.' " ROH § 21-9.80-4(g)(2). To accomplish that objective, the City Council had established the minimum setbacks that applied "to all zoning lots along the shoreline" within the WSD (the "Coastal Height Setbacks").

In 2010, Kyo-ya submitted a land use permit to redevelop the existing eight-story DHT with a 26-story, 282-foot hotel and residential tower (the "Project"). Due to the Project's size, location, and design, the Project required several permits and approvals, including a variance to allow the Project to encroach into the Coastal Height Setback. In total, about 74.3% of the proposed building would encroach into the Coastal Height Setback.

In March 2010, Kyo-ya submitted a variance application to the City's Department of Planning and Permitting (the "Department"). The City's Land Use Ordinance (the "LUO") allowed for an area variance if the applicant could show unnecessary hardship. In order to establish unnecessary hardship, the applicant had to show:

> "(1) the applicant would be deprived of the reasonable use of such land or building if the provisions of the zoning code were strictly applicable;

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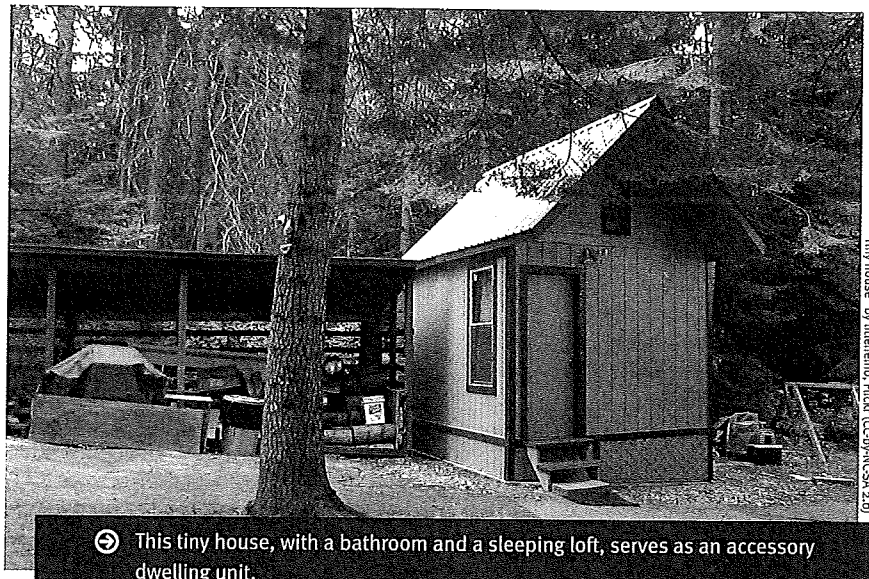
- The ADU may not be allowed to have its entrance door facing the street.
- The part of the lot containing the ADU cannot be carved off and sold as a separate lot.
- If the tiny house can meet these requirements, it may be acceptable as an ADU, even if it would not be approved as a primary home on the same lot. In some cases, however, ordinances that allow detached ADUs limit them to existing structures like carriage houses, garages, or barns, which would prohibit tiny-house ADUs.

Finally, it is important to realize that most communities apply the same building, foundation, and utility requirements to ADUs that they do to primary structures. So if the question is, "can I park my tiny house in my parents' backyard and live in it without installing a foundation or hooking up to utilities?" the answer is probably *no*. Long-term occupancy of a recreational vehicle in a residential zone district (say, for more than 30 days) is usually illegal regardless of whether you have the property owner's consent or you are related to them.

So tiny-house owners need to be thoughtful about where they intend to install the unit, and need to read the zoning ordinance carefully to ensure it is allowed in the area where they want to live. The good news (for planners) is that it is fairly easy to review the existing zoning code and see whether the code permits tiny houses as primary units or ADUs in those locations where the community wants to allow them. Planners might also want to promote more permissive regulations if the community is ready to remove a potential housing barrier.



"Tiny house" by ilitienemo, Flickr (CC-by-NC-SA 2.0)

This tiny house, with a bathroom and a sleeping loft, serves as an accessory dwelling unit.

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OTHER POTENTIAL BARRIERS

OK. So you have decided that your community wants to allow long-term occupancy of a tiny house, and you have modified the zoning ordinance to clarify where they are allowed. There are still three other potential barriers to think about.

First, unless you want to install the tiny house in a very rural area, the parcel of land where the tiny house will be located generally needs to be a subdivided lot. Subdivision regulations ensure that each parcel of land that will be developed with something other than open space or agriculture has access to a street and has utilities in place (if utilities are required in that location). This could be an issue if the tiny-house owner wants to buy 1,000 square feet of land from a property owner—just enough to accommodate the tiny house and a "livin' small" lifestyle—but the subdivision regulations require a minimum lot size of 5,000 square feet. Or it could be an issue if the tiny house must be connected to utilities but the land in question does not yet have utilities in place to connect to.

Second, the community should probably advise the tiny-house owner to check that private restrictive covenants attached to the land do not prohibit tiny houses in that area. Again, *tiny house* will probably not be listed by name, but it is not uncommon to find private covenants that contain minimum house size requirements even if the zoning ordinance does not. While it is generally not the city or county planner's job to check on the existence of private covenants when issuing a zoning approval or a building/installation permit, and local governments are generally not responsible for enforcing those covenants, advising the tiny-house owner to check on this is just good customer service. In the end, the fact that the city or county issues a permit to install a tiny house with a foundation does not protect the owner against a suit from other property owners pointing out that the tiny house does not meet restrictive covenant minimum-size requirements.

Third, even if neither the zoning ordinance nor private restrictive covenants prohibit the tiny house because of its size, many communities have residential occupancy codes to prevent overcrowding. While occupancy codes vary, it is not uncommon to find a requirement that the unit contain 125 square feet of living area per occupant, or that it not contain more than two occupants per bedroom. That could be a problem if the owner intends to house his or her family of four in a 400-square-foot tiny house, no matter how well they get along. Since occupancy of the unit may change in the future (the owner's out-of-work cousin may move in), it is hard to ensure against overcrowding when the installation permit is issued, but making the owner aware of these requirements is good customer service.

WHAT ABOUT A TINY HOUSE COMMUNITY?

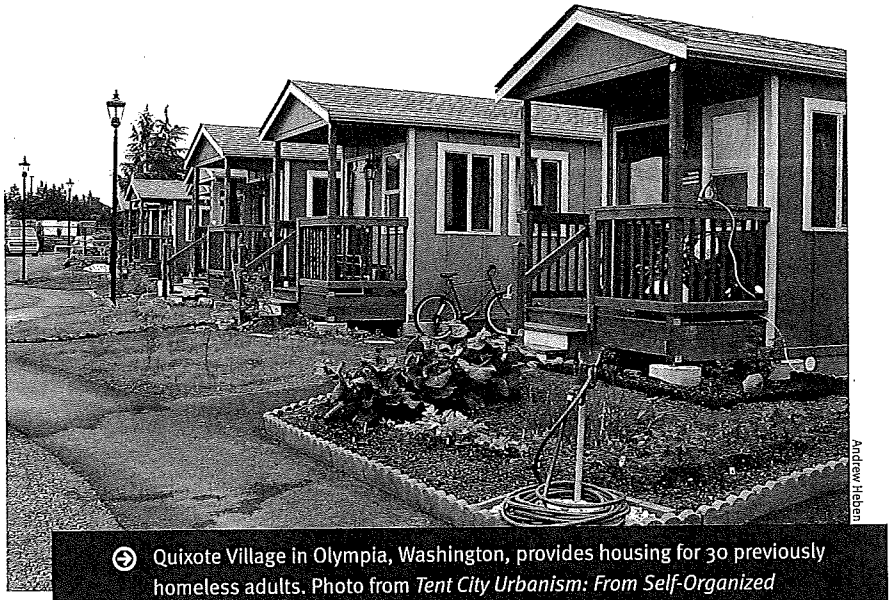
What about a whole group of folks (or a developer) who want to create an entire neighbor-

hood of tiny houses as a source of affordable housing, or just to accommodate a different lifestyle?

That is a bit tougher. While the Internet has many stories of individuals or property owners intending to create tiny house communities, it seems that few if any have been created to date. And some of the existing communities have been created for unique reasons and through "one-off" procedures.

For example, places like Opportunity Village in Eugene, Oregon, or Quixote Village in Olympia, Washington, have been created as alternatives to homeless camps in or near the same location. In both cases, it appears that the local government adopted a contract or resolution approving the use of land for tiny houses without requiring it to comply with some standard utility or construction requirements precisely because it would house very low-income households under better living conditions than the occupants had previously. While inspiring as initiatives to address the challenges of housing affordability and homelessness, both of these examples required individualized negotiations and agreements to vary from normally applicable public health and safety standards—flexibility that might not have been approved for a market-rate housing development.

However, there are at least three different ways in which a tiny-house community for the general public could be created—each modeled on an existing form of land-use approval. The choice of an appropriate tool turns heavily on the question of whether you intend the occupants to be able to sell the house and the piece of land it occupies to someone else in the future.


Andrew Heben

Quixote Village in Olympia, Washington, provides housing for 30 previously homeless adults. Photo from *Tent City Urbanism: From Self-Organized Camps to Tiny House Villages* by Andrew Heben.

A Tailored Zoning and Subdivision of Land

If tiny-house owners are going to be able to sell their lots and homes to others, then the community will need to be subdivided into individual lots, and those lots will need to meet the minimum size and dimension requirements of the zone district where they are located. If you want to allow tiny house community developers to create very small lots (say 1,000 to 2,000 square feet), it is likely that your city or county does not have a residential zone district allowing lots of that size. So the local government will have to create a zone district allowing that type of lot. If the roads within the community are going to be narrower or more lightly constructed than those in stick-built subdivisions, then the community will have to adopt subdivision standards (or exceptions to the current standards) allowing those types of construction. In many cases, the local government is only willing to allow "lower-than-normal-standard" infrastructure if the property owners agree to own and maintain it over time (i.e., the city or county will not accept it as dedicated infrastructure for public maintenance), so the developer will likely have to create a home owners association to do so. These types of specialized standards have been adopted before, however, for unique forms of housing like manufactured home subdivisions or cottage home subdivisions, and those types of standards are good places to look for guidance.

A PUD for a tiny-house community should be drafted assuming that conditions will change in the future, and to avoid locking in an overly specific development plan.

A Planned Unit Development

If the community expects that there will be only one of these communities or it does not want to create a new zone district or subdivision regulations to address tiny houses in general, the tailoring of zoning and subdivision standards described above could be accomplished through a planned unit development (PUD) tailored to a single development and a single developer. While single-project PUDs are relatively easy to adopt, they often reflect a very specific picture of the approved development that is hard to amend over time as conditions change. A PUD for a tiny-house community should be drafted assuming that conditions will change in the future, and to avoid locking in an overly specific development plan. For example, it may not be wise to require a community building of a certain size, or a park or storage area of a specific design in a specific location, because those items may need to be moved or resized in the future.

Similarly, if the home owners association is responsible for roads and utilities, it may be wise to offer some flexibility to relocate or resize those facilities in the future as needs change. The Greater Bemidji Area of Minnesota has thought through these issues and adopted a PUD approach for tiny-home subdivisions (§1101.F).

A Condominium or Cohousing Development

If the occupants of tiny houses in the community do not need to have the right to sell individual lots to others in the future, then a tiny house community could be structured as a condominium or cohousing development. Under this model, the land remains unsubdivided. Instead, a development plan is approved allowing many tiny houses, and perhaps support facilities like community buildings or shared parking areas, to occupy a single parcel of land. Instead of owning individual lots, residents own shares in the development as a whole. If structured as a condominium, each resident's share includes the exclusive rights to occupy their individual tiny house and a parking space, and also a proportionate share in the land, community buildings, roads, and infrastructure serving the area. As with a nontraditional subdivision described above, the local government may well require that the roads and utilities be owned and maintained by the condominium association. Under this approach, residents who decide to sell their tiny house in the future are actually selling their package of rights in the development (and the maintenance obligations that go along with them)—they are not selling the land. Again, it is usually wise to avoid overregulating or "zoning to a picture" in ways that may require additional governing body approval for minor changes in the future.

CONCLUSION

At this point, most city and county zoning and subdivision ordinances are unprepared for tiny houses. Answers to questions about what tiny houses are, where they can be installed, and under what conditions can be found if you search hard enough—but they are not clear or obvious. The good news is that there are several examples of how land-use controls can be developed or modified to accommodate new and creative forms of housing and land development. RV park, manufactured home park, and subdivision, cohousing, and cottage development standards provide a deep pool of content from which tiny-house regulations can be tailored and developed.

As with most land-use questions, however, the appropriate tools cannot be crafted until some policy questions have been answered. To prepare for the arrival of tiny-house owners and community developers in the future, local governments should be prepared to answer these questions:

- Do we want to allow the installation of tiny houses for long-term occupancy, and if so, in what parts of our community?
- Do we want to accommodate only those tiny houses that meet our current building code or the federal manufactured home standards, or do we want to create exceptions for other tiny houses that can be made safe for long-term occupancy in other ways?
- Do all tiny houses need to be installed on foundations and with connections to our electric, water, and sewer systems, or are there some areas (maybe rural areas) where we would allow them under other circumstances?
- Are there areas of the community where they should be permitted as primary dwelling units?
- Are there areas of the community where they should not be permitted as primary dwelling units, but would be acceptable as accessory dwelling units?
- What changes to our building code, zoning ordinance, and subdivision regulations need to be made to achieve those results?
- With a little forethought, you can be prepared for the day a tiny-house owner shows up with some or all of the questions discussed above—and avoid that "deer-in-the-headlights" look that so annoys the town council.

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Tumbleweed Tiny House Company: tumbleweedhouses.com.

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