

0137-ORD
01/29/98

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5051

AN ORDINANCE regarding the application of Peter and Jean McTavish for a Protected Area Development Exception (PADE) and Planned Unit Development (PUD) for a 48-Unit Multi-Family Development at 1211 Lake Hills Connector; granting in part the appeal of the North Woodridge Crest Association and the Woodridge Community Association; adopting the findings and conclusions of the Hearing Examiner, with exceptions; entering additional findings and conclusions; and approving the application, with conditions.

WHEREAS, Peter and Jean McTavish have applied for a Protected Area Development Exception (PADE) and a Planned Unit Development (PUD) for a 48-unit multi-family development on a portion of a 21.9 acre site located at 1211 Lake Hills Connector; and

WHEREAS, on August 5, 6 and 7, 1997, a public hearing was held before the Hearing Examiner on the application, pursuant to the notice required by law; and

WHEREAS, on September 5, 1997, the Hearing Examiner issued a decision entering findings of fact and conclusions derived therefrom, and approving the PADE and PUD, subject to conditions; and

WHEREAS, on September 16, 1997, the North Woodridge Crest Association and Woodridge Community Association filed an appeal to the City Council of the decision of the Hearing Examiner; and

WHEREAS, on November 17, 1997, the City Council conducted a limited public hearing on the appeal, pursuant to notice required by law; and

WHEREAS, on January 20 and 26, 1998, the City Council further considered the appeal in public meetings; and

WHEREAS, the City Council has determined to grant the appeal in part, to enter findings and conclusions in support of the decision on the appeal, to adopt the findings and conclusions of the Hearing Examiner with exceptions, and to approve the application with conditions; and

WHEREAS, the City has complied with the State Environmental Policy Act and the City Environmental Procedures Code; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

0137-ORD
01/29/98

Section 1. The City Council finds that the Appellants have carried their burden of proof and demonstrated that the decision of the Hearing Examiner is not supported by the preponderance of the evidence to the extent set forth in Sections 2 and 3. Except as set forth in Sections 2 and 3 of this Ordinance, the City Council finds that the Appellants have not carried their burden of proof and that the decision of the Hearing Examiner is supported by the preponderance of the evidence.

Section 2. The City Council makes the following additional findings of fact:

A. Bellevue City Code (Land Use Code) 20.30D.150.H, one of the decision criteria to be considered in regard to a Planned Unit Development application, requires that "The design is compatible with and responds to the existing or intended character, appearance, quality of development and physical characteristics of the subject property and immediate vicinity."

B. The immediate vicinity consists primarily of single-family residential development, with pitched roof-type construction.

C. The maximum height limit for single family development is 30 feet measured from average elevation of finished grade to the mid-point of a pitched roof.

D. As proposed, the buildings would be, respectively, 41 feet 6 inches, 32 feet 6 inches and 33 feet in height measured from average elevation of finished grade to the mid-point of the pitched roofs.

E. The design of the proposal is not compatible with the existing and intended character, appearance and physical characteristics of the immediate vicinity in that the proposed height of Building #1 is greatly disproportional to and out of scale with the existing and intended development in the immediate vicinity as evidenced by the residential structures now in place and those permitted by the underlying zoning.

F. Additional conditions modifying the permitted height of the buildings so that none is higher than 30 feet from average elevation of finished grade, plus an additional ten percent to accommodate pitched roof-type construction, and requiring that the design of the project's buildings be substantially similar to the buildings as shown in the proposal, will make the design of the proposed project compatible with the existing and intended character, appearance, quality of development and physical characteristics of the immediate vicinity.

Section 3. The City Council concludes:

A. The existing and intended character, appearance, development and physical characteristics of the immediate vicinity of the proposal can be described as primarily single-family residential with pitched roof-type construction.

B. At a height of 41 feet 6 inches, Building #1 substantially exceeds the permitted height in a single-family residential area, and is not compatible with and does not respond to the existing or intended character, appearance, development or physical characteristics of the immediate vicinity of the proposal. The proposed heights of Building #2 and Building #3 only moderately exceed the single-family height limit, and to the extent the heights of those buildings do not exceed 30 feet plus an additional ten percent to accommodate pitched roof-type construction, they are compatible with the existing and intended character, appearance, development and physical characteristics of the immediate vicinity of the proposal.

C. A height limit of 30 feet, plus an additional 10 percent in height to accommodate pitched roofs (measured from average elevation of finished grade), will ensure the required compatibility with the immediate vicinity while providing sufficient flexibility for development of the subject property.

D. A requirement that the final design be substantially similar to that contained in the existing proposal before the Council will ensure design compatibility with the existing development in the immediate vicinity of the proposal.

E. As modified and further conditioned herein, the proposal meets the requirements of LUC 20.30D.150 for approval as a Planned Unit Development.

F. Based upon the Council's Findings of Fact and Conclusions, the appeal should be granted in part and denied in part and the proposal should be modified by the further conditions set forth above to achieve compatibility with the immediate vicinity; and as modified and conditioned, the proposal should be approved.

Section 4. In addition to the conditions imposed by the Hearing Examiner and adopted by the City Council under Section 6 hereof, the Council imposes the following conditions:

A. All three buildings shall be limited to 30 feet in height, plus an additional 10 percent of height to accommodate pitched roofs, with the height to be measured from the average elevation of finished grade to the midpoint of the pitched roofs

B. The design of all three buildings shall be substantially similar to that contained in the existing proposal considered by the City Council.

Section 5. In further support of the City Council decision on the appeal and the City Council decision approving the application, as modified herein, the Council adopts the findings and conclusions of the Hearing Examiner as set forth in "Findings, Conclusions and Decision of the Hearing Examiner for the City of Bellevue In the Matter of the Application of Peter and Jean McTavish (McTavish Highlands) For a Protected Area Development Exception and a Planned Unit Development Approval to Build a 48-Unit Multifamily Development of a Portion of a 21.9 Acre Site Located at

0137-ORD
01/29/98

1211 Lake Hills Connector," File Nos. PAI 95-7717 and PPUD 92-10090; Provided, the Council modifies the Hearing Examiner's Findings of Fact and Conclusions as follows:

A. The second sentence of Finding of Fact No.7 is modified to read "This means that the overall area of disturbance would encroach upon a relatively small portion of the area in protected status."

B. Conclusion No. 8 is modified to read "The findings above as modified and supplemented by the City Council support a conclusion that the proposed McTavish Highlands development, as conditioned by the Hearing Examiner and as further conditioned by the City Council, is consistent with the relevant criteria of LUC 20.30D.150."

C. The second sentence of Conclusion No. 14 is modified to read "The modification sought varies from 2.5 feet to 11.5 feet; however, as approved by the Council, the modification to height will be no more than 3 feet, if needed to accommodate a pitched roof."

And Provided, further, the Council does not adopt Hearing Examiner Conclusion No. 21.

In the event of a conflict between a Finding of Fact or Conclusion of the Council adopted under Sections 3 or 4 of this Ordinance and any Finding of Fact or Conclusion adopted under this section, the Finding of Fact or Conclusion adopted under Section 3 or 4 shall control.

Section 6. The City Council approves with conditions the Protected Area Development Exception and the Planned Unit Development to be located at 1211 Lake Hills Connector and more particularly described as:

PARCEL A

That portion of the southwest quarter of the northeast quarter of Section 4, Township 24 North, Range 5 East, W.M., in King County, Washington, lying southwesterly of Richards Road; EXCEPT that portion platted as Woodridge Division No. 7, Woodridge Division No. 8 and Woodridge Division No. 9, according to the plat recorded in Volume 60 of Plats, page 87, Volume 62 of Plats, page 3, and Volume 66 of Plats, page 67, respectively. AND EXCEPT that portion lying west of the northerly production of the west line of said Woodridge Division No. 7; ALSO

Lot 10, Woodridge Division No. 9, except that portion of said Lot 10 and of said southwest corner of northeast quarter, described as follows:

0137-ORD
01/29/98

BEGINNING at the northwest corner of said Lot 10, thence N 72° 58' 00" E 88.00 feet to the northeast corner of said lot; then S 17° 02' 00" E 43.00 feet, to a point of curve; thence along the arc of a circular curve to the right, having a radius of 88.00 feet an arc distance of 91.10 feet to a point of compound curvature; thence along a circular curve to the right, having a radius of 29.73 feet an arc distance of 62.62 feet; thence N 17° 02' 00" W 93.11 feet to the POINT OF BEGINNING.

PARCEL B

The west 75 feet of the southwest quarter of the northeast quarter of Section 4, Township 24 North, Range 5 East, W.M., King, County, Washington.

Subject to easements, restrictions, and reservations of record.

Provided, the approval is conditioned on full compliance by the owner or owners of the property described herein, developer or developers, and their heirs, assigns, grantees and successors in interest with the conditions set forth in Sections 3 and 4 and the following conditions:

- A. The following conditions are imposed by referenced permit authorities to ensure compliance with the Planned Unit Development and Protected Area Development Exception decision criteria and other relevant City codes to mitigate adverse environmental impacts which are otherwise not addressed through applicable code provision. These conditions must be complied with prior to Clearing and Grading Permit and/or Building Permit approvals.
 1. **Landscaping.** Shrub sizes in the southwest and west landscape buffer and adjacent area shall be increased to 42 inches in height at planting. Shrub species with rapid growth characteristics and large mass at maturation, such as Photinia Fraseri, shall be included in the variety of shrubs in this area. Additional evergreen trees, 12 to 14 feet in height at planting, shall be planted along the southwest and west landscape buffer and adjacent area to provide additional visual screening of the McTavish buildings from the residents on the bluff. Indigenous plant materials should be used where possible. Number and location of the additional shrubs and trees shall be determined as part of the review of the Building Permit. (LUC 20.20.520, 20.30D.150.E)
 2. **Lights.** Light fixtures shall be maintained at specific angles and internal shields may be required on fixtures to

avoid light spillover on adjacent properties. This information shall be shown on the plans and catalogue cuts provided. (LUC 20.30D.155.H, 20.20.522)

3. **Wetland Report.** A wetland report documenting the delineation and flagging done by the ERC Group for wetland "C" (located in the northeastern portion of the site) and documenting the information provided in the May 13, 1996 letter from Milbrandt Architects shall be provided as part of the Clearing and Grading Permit application. (LUC 20.30E.150.B, 20.30P.140.F)
4. **Grading and Temporary Erosion Control Plans.** The grading and temporary erosion control plans shall comply with the requirements outlined in the Clearing and Grading Development Standards and the Best Management Practices (BMPs) for erosion control delineated in Chapter 1 of the Department of Ecology's Storm Water Management Manual for the Puget Sound Basin. (BCC 23.76.040.B)
5. **Seasonal Construction Limits.** Seasonal construction limits from May 1 to October 31 shall be applied to all Clearing and Grading Permits issued for this site. Construction outside this window may be allowed, subject to PCD approval only if the weather conditions allow construction without adverse impacts to the sensitive areas. (BCC 23.76.093)
6. **Construction Sequence Plan.** A detailed Construction Sequence Plan shall be prepared by the contractor and reviewed by the geotechnical engineer of record. The Construction Sequence Plan shall be approved by the City, included on the Clearing and Grading Permit plans, and discussed at the preconstruction conference prior to commencing construction on any structure or performance of any related site work. The geotechnical engineer of record shall be in attendance at the preconstruction conference. (BCC 23.76.110, 120)
7. **Geotechnical Engineer Requirement.** The project geotechnical engineer shall review and evaluate construction plans to certify in writing to the City that the plans incorporate site earthwork and drainage recommendations contained within the project geotechnical reports. The review shall identify critical

stages in clearing, grading, and construction and identify when evaluation by the geotechnical engineer will be required. A written report shall be submitted prior to Clearing and Grading Permit approval and shall be included with the approved Clearing and Grading Permit plans. (Comp. Plan Policies EN-19, 22, 23; BCC 23.76.080)

8. **Geotechnical Engineer Requirement.** The project geotechnical engineer shall be on-site to observe and/or inspect soil cuts and fills, including rockeries, retaining walls, building foundations, utility installations, and roadway construction. The geotechnical engineer shall submit a final inspection report at the conclusion of all earthwork-related construction that documents the degree of conformance to the recommendations in the geotechnical reports. The final inspection report shall address all excavation, fill, rockeries, retaining structures, building foundations, utility corridors, riparian corridors, and any groundwater encountered during construction. The report shall confirm that facilities have been constructed in conformance with the plans and specifications and that all slopes and related facilities meet a Factor of Safety of 1.5. The report shall also identify needs and make recommendations for long-term maintenance of slopes, wetlands, and riparian corridors. No occupancy permits or other approvals will be authorized by PCD in the absence of this final inspection report. (Comp. Plan Policies EN-19, 22, 23; BCC 23.76.080)

9. **Geotechnical Engineer Requirement.** If geotechnical monitoring during grading for roads and utilities indicates the presence of high levels of groundwater, the geotechnical engineer/civil engineer shall submit a report that addresses the impact of groundwater on the development's infrastructure and include recommendations, if necessary, for specific design changes sufficient to prevent settlement and to ensure long-term stability. The report shall also include recommendations for groundwater interception as needed to ensure that such flows, especially during seasonally saturated periods, do not adversely impact structures and slope stability or contribute to excessive and uncontrolled erosion during construction. Plans shall conform with

recommendations generated from this report. (Comp. Plan Policies EN-19, 21, 23, 26, 27, 29; BCC 23.76.080)

10. **Riparian Corridor Monitoring.** The riparian corridor (McTavish No. 1) shall be monitored periodically during construction for signs of erosion. A bi-weekly examination during construction of the stream bed is required. Stream monitoring points shall be approved by the clearing and grading inspector in the field. Results of the examinations and recommendations to mitigate identified impacts shall be included in the geotechnical field report and shall be submitted to the clearing and grading inspector on a schedule determined by the inspector. The developer will be responsible for performing any recommendations made by the geotechnical engineer or determined necessary by the City prior to project completion. (Comp. Plan Policies EN-11 and 16)
11. **SE 13th Street Public Street Improvements.** The applicant shall incorporate on the Clearing and Grading and Building Permit plans and shall construct the public portion of SE 13th Street to public street construction standards. Public street construction standards include: 26-foot wide roadway pavement; vertical curb and gutter; street lights; five-foot concrete sidewalks; and a bomanite (colored, stamped concrete) driveway approach with street signs which indicate the end of the public street. All pedestrian facilities must meet ADA standards. (BCC 14.60.110, 181)
12. **SE 13th Street Private Roadway Improvements.** The applicant shall incorporate on the Clearing and Grading and Building Permit plans and construct all private roadways to public street construction standards. These standards include two inches of Class B asphalt over four inches of ATB asphalt over a well drained and compacted base; 24-foot wide roadway surface with off-street parking facilities; curb and gutter on both sides of the roadway; storm drainage facilities; and an easement and maintenance agreement binding all unit owners. All pedestrian facilities must meet ADA standards. (BCC 14.60.130, 181)
13. **Intersection Sight Distance.** The City shall establish the appropriate entering sight distance for persons turning left

from SE 13th Street after determining the speeds that are reasonably to be anticipated from vehicles proceeding north on 123rd Avenue SE. The applicant shall improve the sight distance, as necessary, to meet the requirement established by the City. Any trimming or pruning of trees must be done in an environmentally-sensitive and aesthetically acceptable manner in accordance with professional arboricultural specifications and standards. If the required distance cannot be achieved, additional measures to mitigate traffic impacts may be imposed by the Transportation Department. (BCC 14.60.060A, 240.E)

14. **Construction Parking.** The applicant shall provide sufficient off-street parking to accommodate all construction vehicles, including workers' personal vehicles. All loading and unloading shall be accommodated on-site. This information shall be shown as part of the Clearing and Grading Permit plans. (BCC 11.70)
15. **Transportation Impact Fee.** A Transportation Impact Fee is required for the proposed development. The applicant will be required to pay the fee in effect at the time of Building Permit issuance. (BCC 22.16)
16. **Right-of-Way Use Permit.** The applicant shall secure a Right-of-Way use permit for work in the right-of-way from the City of Bellevue Transportation Department prior to Engineering Plan approval, issuance of a Clearing and Grading Permit, Building Permit, Foundation Permit, or Demolition Permit. The permit shall include:
 - a. Designated truck hauling routes;
 - b. Truck loading and unloading activities;
 - c. Location of construction fences;
 - d. Maintenance requirements for pedestrian access;
 - e. Provisions for mechanical street sweeping during excavation and construction;
 - f. Construction signing and pedestrian detour routing;
 - g. Hours of construction and hauling; and
 - h. All other construction activities as they affect the public street system. (BCC 11.70)
17. **Utility Code Requirements.** The Utilities Department approval of the Preliminary Planned Unit Development and

Protected Area Development Exception applications is based on the preliminary utility design only. Because review of the proposal has been on a conceptual level, there are no implied approvals of the engineering components of the proposal. Final civil engineering of the utility design may require changes to the site layout or size of buildings to accommodate the utilities. Utilities Department review and inspection for off- and on-site engineering is done through the Developer Extension Agreement process. Review falls under current Utilities Code and Engineering Standards. (BCC 24.02, 04, and 06)

18. **Construction Techniques in Utility Corridor.** Clearing, excavation, and placement of the sewer and storm water pipelines shall be done using hand equipment only. No motorized construction equipment shall be used, unless it can be contained within the corridor as shown on the plan. Equipment must access from the top of the slope adjacent to Building 1. Construction equipment is not permitted within the undisturbed area. This condition shall be included as a note on the construction plans. (LUC 20.30P.140.C, 20.30P.140.E)
19. **Revegetation Plan for Utility Corridor.** A Revegetation Plan shall be submitted as part of the Clearing and Grading Permit and Building Permit plans. The Revegetation Plans shall indicate the indigenous plant materials (listing species, quantities and sizes) to be placed in the utility corridor to replace vegetation which was disturbed for placement of the sewer and storm water pipes. A wetland biologist shall prepare the Restoration Plan for portions of the utility corridor located within the riparian corridor and the wetland and a Maintenance Care Plan to ensure newly planted vegetation will survive. (LUC 20.30P.140.F, 20.25H.110.C)
20. **Construction Fencing.** To mitigate adverse impacts to the undisturbed areas, six-foot high chain-link fencing with driven posts, or PCD-approved alternative, shall be installed at the clearing limits prior to initiation of clearing and grading activities. No excavation or clearing shall be performed within the driplines of any trees to be retained within the construction area, except as specifically approved on the plans. All work within driplines of trees

to be retained shall be done by hand to avoid damage to roots and shall be done under the supervision of a certified arborist approved by the City. (LUC 20.30D.150.B, LUC 20.20.520; BCC 23.76.060)

21. **Public Non-motorized Trail Easement.** Dedication of a 15-foot wide public non-motorized trail easement is required overlaying the trail and sidewalk access to the trail. In lieu of dedicating a trail easement, the applicant may elect to dedicate the undeveloped open space as a tract to the City of Bellevue Parks and Community Services Department. If dedicated, the Parks Department would manage the open space, as other greenbelts are managed for forest health and habitat resource, and maintain the trail. If the open space is not dedicated, the developer and subsequent homeowner's association will be responsible for the maintenance. The City will have the right, but not the responsibility, to maintain the trail. The easement or land dedication is required prior to issuance of Clearing and Grading and Building Permits. Easements shall be shown on the final PUD plans. The applicant is responsible for the recording of the easements. (Comp. Plan Policies TR-54, 56, 57, 62, 66; PA-1, 6, 9, 13)

22. **Public Non-motorized Trail Easement.** All trail easements shall be surveyed and staked in the filed with permanent monuments (capped rebar) prior to issuance of the Clearing and Grading and Building Permits. (Comp. Plan Policies TR-54, 56, 57, 62, 66; PA-1, 6, 9, 13)
 - B. The following conditions are imposed by the referenced permit authorities to ensure compliance with provisions of cited Code or to mitigate environmental impacts which are otherwise not addressed through applicable code provision. These conditions must be complied with prior to Temporary Certificates of Occupancy.
 1. **Wetland Report.** A wetland report analyzing construction impacts to wetland "B" shall be submitted prior to Final Certificate of Occupancy. The wetland report shall include mitigating measures, if determined to be necessary to ensure the long-term viability of the wetland. This report shall be a further analysis of the preliminary report

submitted by David Evans and Associates, Inc. on May 20, 1997, which concluded that impacts to the wetland were unlikely. If mitigating measures are required, they shall be implemented prior to Final Certificate of Occupancy. (LUC 20.30D.150.B, 20.30P.140.F)

2. **Landscape Maintenance Assurance Device.**
The applicant shall provide a performance assurance device equal to 20% of the cost of site landscaping (based on the landscape architect's or landscape contractor's estimated cost to provide and install all plant material shown on the approved Landscape Plan). The Department Director shall determine the type of assurance device that will be used. Approximately one year after landscape installation, the landscaping shall be reinspected by the City. The owner shall replace all unhealthy or dead plant materials per the approved Landscape Plan. Upon completion of the replanting, the assurance device, minus 20% of the value of the replaced plant materials, shall be returned to the applicant. If the applicant fails to replace plant material as required by the City, funds from the assurance device will be used to complete the restoration. (LUC 20.20.520.K)

3. **Native Growth Protection Area (NGPA).** A native Growth Protection Area (NGPA) shall be designated for the 90% of the site which is to remain undisturbed. Prior to the Temporary Certificate of Occupancy, the boundaries of the undisturbed areas shall be surveyed and clearly shown and labeled on a Site Plan; and the legal description of the NGPA shall also be included on the Site Plan. The Site Plan shall include a statement that the provisions of LUC 20.25H, as now or hereafter amended, controls use and development of the subject property. This plan shall be submitted to the City for approval prior to recording with

King County Records and Elections and with the City Clerk's office. A copy of the plan shall be submitted to the Department of Planning and Community Development for file documentation. In addition, the NGPA boundaries shall be marked in the field with survey monuments and permanent information signs which have been approved by the DPCD. (LUC 20.25H.120)

4. **Slopes Maintenance Bond.** A two-year maintenance bond for the slopes immediately east of the development shall be established prior to issuance of any Certificates of Occupancy. The slope area shall be inspected by a geotechnical engineer for signs of instability throughout the one-year period on a schedule determined by the geotechnical engineer. The results of the slope inspection and monitoring shall be submitted to the City and shall assess the condition of the slopes, structures, and surrounding areas and make recommendations as needed. The amount for the bond shall cover 150% of the cost of the inspections and monitoring reports. The developer will be responsible for performing any recommendations made by the geotechnical engineer or determined necessary by the City. The bond will be released following the submittal of the final report and the performance of any recommendations contained therein. (Comp. Plan Policies EN-22, 23)

5. **Riparian Corridor Maintenance Bond.** A two-year maintenance bond for the riparian corridor (McTavish No. 1) shall be established prior to issuance of any Certificates of Occupancy. The riparian corridor shall be inspected for signs of erosion and stability throughout the one-year period on a schedule to be determined by the riparian corridor biologist. The results of the corridor inspection and monitoring shall be submitted to the City

and shall document the condition of the corridor and make recommendations as needed. The amount of the bond shall cover 150% of the cost of the inspections and monitoring reports. The developer will be responsible for implementing any recommendations to the corridor recommended by the biologist or as determined necessary by the City. The bond will be released following the submittal of the final report and the performance of any recommendations contained therein. (Comp. Plan Policies EN-10, 11, 16)

6. **Recording of Geotechnical Report Information.** Geotechnical report information of record shall be recorded in the declaration creating the condominium so that all future condominium owners will be aware of the work performed to date, the general nature of the subsurface conditions, and the stability of the slopes. A complete list of the geotechnical reports on file, including, but not limited to authors, titles, and dates, as well as final construction reports, shall be recorded in the declaration creating the condominium. The reports will remain on file with the City. (Comp. Plan Policy EN-22)

7. **Public Non-motorized Trail.** The applicant shall construct trails and install appropriate signs through the public trail easements to City of Bellevue standards current at the time of development. Trail location and construction methods and materials shall accommodate the sensitive nature of the site. All trail construction shall be coordinated with the Parks Department. (Comp. Plan Policies TR-54, 56, 57, 62, 66; PA-1, 6, 13)

0137-ORD
01/29/98

8. **Public Non-motorized Trail.** Stairs constructed to Parks Department standards shall be required where grades exceed 10% to 15% along the trail. (Comp. Plans Policies TR-54, 56, 57, 62, 66; PA-1, 6, 13)

Section 7. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

PASSED by the City Council this 2nd day of February, 1998, and signed in authentication of its passage this 2nd day of February, 1998.

(SEAL)



Mike Creighton, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Richard Gidley, Deputy City Attorney

Attest:



Myrna L. Basich, City Clerk

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