



VILLAGE OF MONTGOMERY

Plan Commission Meeting Agenda

May 5, 2016 7:00 P.M.

Village Hall Board Room

200 N. River Street, Montgomery, IL 60538

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Approval of the Minutes of April 7, 2016
- V. Public Comment Period
- VI. Items for Plan Commission Action
 - a. 2016-014 SU Public Hearing and Consideration of a Special Use for a Second Drive-Through and Outdoor Café Located in the Ogden Hill Commercial Development – Inland National Development Corporation.
- VII. Community Development Update/New Business – Community Room
 - a. Industrial and Commercial Priorities Marketing Presentation – Charlene Coulombe-Fiore, Executive Director of the Montgomery Economic Development Corporation.
 - b. Comprehensive Plan Implementation Summary Part 2 – Summary Review Results.
 - c. Comprehensive Plan Implementation Summary Part 3 – Residential Land Use and Other Identity Recommendations.
 - d. Sign Ordinance Update – *Reed v. City of Gilbert* Supreme Court Decision – Attorney Julien.
- VIII. Next Meeting: June 2, 2016
- IX. Adjournment



Plan Commission Meeting

April 7, 2016

I. CALL TO ORDER:

Chairman Hammond called the meeting to order at 7:00p.m.

II. PLEDGE OF ALLEGIANCE:

All present gave the pledge of allegiance.

III. ROLL CALL:

Tom Betsinger	Present	John Francis	Present
Tom Yakaitis	Present	Mildred McNeal-James	Present
Patrick Kelsey	Present	Butch Distajo	Present
Mike Hammond	Present		

Also present: Attorney Laura Julien; Village Engineer Tim Paulson; Trustee Denny Lee and members of the audience.

IV. APPROVAL OF MINUTES:

MOTION: Motion was made by Commissioner Francis to approve the minutes of the March 3, 2016 Plan Commission Meeting. Commissioner McNeal-James seconded the motion. Motion passed 7-0.

Ayes: Francis, McNeal-James, Distajo, Betsinger, Yakaitis, Kelsey and Hammond

Nays: None

V. PUBLIC COMMENT PERIOD:

There were no comments from the public.

VI. ITEMS FOR PLAN COMMISSION ACTION:

- a) **2016-009 SU Continuation of a Public Hearing and Consideration of a Special Use for a Drive-In Establishment Located at the Southeast Corner of Douglas Road and Barbara Lane – Ice House America.**

Senior Planner Chipman gave an overview on the requested special use by the Petitioner to install a drive-up self-service ice and water dispensing machine off of Douglas Road and Barbara Lane. The facility would utilize a portion of the parcel. Concerns were raised

regarding the close vicinity of the proposed drive way to the access point for the car wash. Installing a buffer is suggested between the two sites. If the Petitioner elects to relocate, the drive would need to be removed to cease access.

The Petitioner, Gary Kearby stated that a five (5) year lease was signed, nonetheless is viewing the site as a long term opportunity.

Chairman Hammond opened the public hearing.

There were no comments, and therefore, Chairman Hammond closed the public hearing.

Chairman Hammond read through the findings of fact:

A. *That the establishment, maintenance or operation of the special use will not be detrimental to endanger the public health, safety, comfort or general welfare;*

This use should not endanger the public health, safety, comfort or general welfare;

B. *That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, not substantially diminish or impair property values within the neighborhood;*

This use should not be injurious or diminish property values;

C. *That the establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;*

The proposed use does not prohibit use of surrounding property and is normal and orderly;

D. *That adequate utilities, access roads, drainage and/or necessary facilities have been, or are being, provided;*

Adequate utilities, roads and drainage have been planned for;

E. *That adequate measures have been, or will be, taken to provide ingress and egress so designed as to minimize traffic congestion in public streets;*

The property provides adequate ingress and egress; and

F. *That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the Village Board pursuant to the recommendations of the Plan Commission.*

All aspects of the proposed development that do not meet the Zoning Ordinance have been discussed in the above report and recommendations have been made accordingly.

Vice Chairman Kelsey asked Village Engineer Paulson how the grading and depressional storage will be handled.

Engineer Paulson responded he has not seen the grading plan and any drainage issues will be addressed.

Commissioner Kelsey, Francis and Yakaitis shared their concerns that an automated ice machine does not comply with the Comprehensive Plan as it does not attempt to redevelop Douglas Road.

Commissioner Betsinger indicated his struggle due to the absence of business's asking to redevelop the parcel and at this time the business may be a suitable replacement.

The Petitioner addressed the concerns and specified this is a new concept in Illinois and presently have three ice machines located in Plano, Yorkville and Seneca. Mr. Kearby feels this location is ideal as the machines are generally centered by car washes and discount stores. He trusts buying from the ice machine and water will bring traffic flow into Montgomery. The machine can be relocated but wants the investment in the community to generate revenue and income.

Commissioner Distajo asked how the water is monitored.

Mr. Kearby answered the water is filtrated and softened and tested by Ice House America and the State of Illinois.

Commissioner Distajo questioned why the building appearance is different than the photos that were presented last month.

Senior Planner Chipman replied the photos were a conceptual design.

Commissioner Francis enquired if there is a reason why the ice machine is located so close to the car wash.

Kearby would like to be close to water and the access road.

Questions were raised among the Commission concerning the amount of signs located on the building.

Chipman stated he is working with the Petitioner to allow six (6) signs on the face of the building.

MOTION: Motion was made by Commissioner Distajo to approve the Special Use for a Drive-In Establishment Located at the Southeast Corner of Douglas Road and Barbara Lane – Ice House America. Commissioner Betsinger seconded the motion.

Motion denied 4-3.

Ayes: Betsinger, Hammond and Francis

Nays: Distajo, Kelsey, Yakaitis and McNeal-James

VII. COMMUNITY DEVELOPMENT UPDATE/NEW BUSINESS:

Senior Planner Chipman will send notification on the grand opening for Swirls and Sweets.

Discussion took place with Village Attorney Julien regarding the status of the sign ordinance.

9-ers Grill is still under construction.

a) Comprehensive Plan Matrix – Part 2

Senior Planner Chipman brought forth Phase 2 of the Comprehensive Plan Implementation Summary which is two-thirds of the land use chapter. Chipman is asking the Plan Commission to review and submit their responses regarding the Commercial and Industrial Objectives by April 22nd, 2016. Chipman will compile a list for the May Plan Commission meeting for discussion.

Commissioner McNeal–James, Betsinger and Kelsey would like staff and the MEDC to prepare a presentation and discuss their vision on the land use along with how the Village of Montgomery is being marketed.

VIII. NEXT MEETING

May 5, 2016

IX. ADJOURNMENT

Having no further business to discuss, the meeting was adjourned at 7:43 p.m. by Chairman Hammond.

Respectfully submitted,

A handwritten signature in cursive script that reads "Toulia Coffey". The signature is written in black ink and is positioned to the right of the typed name.

Toulia Coffey
Administrative Assistant



PC 2016-014
PLAN COMMISSION ADVISORY REPORT

To: Chair Hammond and Members of the Plan Commission

From: Jerad Chipman, AICP
Senior Planner

Date: April 27, 2016

Subject: Additional Drive-Through and Outdoor Café for the Multi-Tenant Building Located in the Ogden Hill Commercial Subdivision - *Special Use*.

Petitioner: Inland National Development Corporation

Location/Address: Within the Ogden Hill Commercial Subdivision

Requests: Amendment to the Special Use for an Additional Drive-Through and Outdoor Café.

Current Zoning: B-2 General Retail Business District

Comprehensive Plan: Regional Commercial

Surrounding Land Uses:

Location	Adjacent Land Use	Adjacent Zoning
North	Commercial	B-2
East	Commercial	B-2 and Oswego
South	Commercial	B-2 and Oswego
West	Commercial	B-2

Background:

The Petitioner is requesting entitlements for a second drive-through and outdoor café. The Petitioner was granted approval of a single drive-through and outdoor café last year and has revised the plan to include a second drive-through and outdoor café. Attached is a revised site plan demonstrating the proposed drive-through addition.

Conformance with the Comprehensive Plan:

The proposed land use conforms to the Comprehensive Plan as it indicates that the location be utilized as Regional Commercial.

Zoning:

The property is zoned B-2 General Retail Business District. A drive-through is a special use in the B-2 District. An outdoor café is a special use in the B-2 District. A retail use is permitted in the B-2 District. The Petitioner is applying for a second drive-through and outdoor café entitlement, which are the appropriate special uses in order to fully comply with the Zoning Ordinance.

Bulk Standards:

Front Yard: The front yard complies with the required ten foot (10') building setback, and the thirty foot (30') landscape setback required when fronting U.S. Route 34.

Side Yard: All side yards comply with the side yard setbacks. The setbacks are ten (10) feet for the corner side yard located to the southwest and five feet (5') for the interior side yard located to the northeast.

Rear Yard: The proposed development complies with the rear yard setback. The setback is twenty (20) feet, however, accessory structures and parking spaces are allowed to encroach ten (10) feet into the setback.

Floor Area Ratio (FAR): The plans as proposed comply with the Village's standard, which is a maximum of 1.5 FAR.

Maximum Building Height: The building complies with the maximum building height of forty-five (45) feet.

Parking: Number of Spaces, Handicap Spaces, Drive Aisles & Dimensions:

The building as proposed is required to have one (1) parking space per 300 square foot of office space, one (1) parking space per 200 square foot of retail space and one (1) parking space per 100 square foot of food sales space.

The plan indicates that there are fifty-five (55) spaces on the site. The proposed parking meets the Village's standards, which requires fifty-five (55) parking spaces.

Three (3) accessible spaces are indicated on the plans complying with the Accessibility Code.

All two-way drive aisles are required to be twenty-four (24) feet wide. The proposed drive-aisles meet the Ordinance requirements. The one-way drive aisle on the northeast side of the building is indicated to be twenty (20) feet wide, exceeding the twelve (12) feet requirement.

The Zoning Ordinance requires six (6) stacking spaces per drive-through. Stacking for the newly proposed drive-through would extend into the drive aisle that traverses the front of the building. As there would still be room to maneuver and that sixth stacking space would be located in front of a landscape bed, staff believes that the design meets the intent of the Zoning Ordinance.

The proposed plan complies with the Zoning Ordinance requirement that the minimum size of a parking space is nine feet (9') wide and eighteen and one half feet (18.5') deep.

The site plan shows an adequate loading area per the zoning ordinance.

The Zoning Ordinance requires five (5) bicycle parking spaces. Bicycle parking spaces and a detail of the parking apparatus were indicated on a previous plan and complied with the Zoning Ordinance.

Landscaping:

A revised landscape plan has not yet been submitted, however, the landscaping was approved prior to this proposed change.

Engineering:

A revised engineering plan has not yet been submitted, however, the engineering was approved prior to this proposed change.

Architecture:

The proposed building is a masonry structure containing vertical and horizontal elements that break up the façade. The building also includes decorative awnings and architectural lighting. The Village has been promoting the use of masonry and other preferred building materials and is believes that this building will complement the other masonry structures fronting Ogden Avenue.

Lighting:

A photometric plan has been submitted and staff is working with the Petitioner to resolve one minor item prior to the plan being accepted.

Screening:

The plans indicate a garbage enclosure located north of the building. A detail of the enclosure has been provided on the plans and the detail complies with the Zoning Ordinance.

Mechanical units for the building have not been indicated on the plan. All mechanical units shall be screened in accordance with the Zoning Ordinance.

Signage:

A complete signage package is required before the issuance of sign permits.

Access:

Three (3) access points have been provided into the site with two (2) cross access points stubbed into the adjacent site for future connectivity. Staff recommends extending those stubs to the property line, rather than stopping short as currently indicated. The future cross access will also alleviate any concerns regarding the newly proposed one-way drive aisle located on the northeast side of the building.

Special Use:

The Petitioner is requesting a special use for a drive-through and outdoor café. The Commission should consider whether the use is in keeping with the vision of the area and whether its impacts can be properly mitigated. According to the Montgomery Zoning Ordinance, whose language hereafter is in italics, *“no special use shall be recommended by the Plan Commission unless the Commission shall find that the following standards have been satisfied:*

Staff has provided findings of fact following the standards for the Plan Commissioner’s consideration.

A. *That the establishment, maintenance or operation of the special use will not be detrimental to endanger the public health, safety, comfort or general welfare;*

This use should not endanger the public health, safety, comfort or general welfare;

B. *That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, not substantially diminish or impair property values within the neighborhood;*

This use should not be injurious or diminish property values;

C. *That the establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;*

The proposed use does not prohibit use of surrounding property and is normal and orderly;

D. *That adequate utilities, access roads, drainage and/or necessary facilities have been, or are being, provided;*

Adequate utilities, roads and drainage have been planned for;

E. *That adequate measures have been, or will be, taken to provide ingress and egress so designed as to minimize traffic congestion in public streets;*

The property provides adequate ingress and egress; and

F. *That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the Village Board pursuant to the recommendations of the Plan Commission.*

All aspects of the proposed development that have been submitted to this point that do not meet the Zoning Ordinance have been discussed in the above report and recommendations have been made accordingly.

The Plan Commission should discuss each of these criteria and make findings of fact as to whether the proposed use meets the criteria. If the Commission finds that the use should be permitted, they may impose additional conditions in order to mitigate any impacts of the proposed use.

Recommendation:

Staff is recommending approval of the special use for a second drive-through and outdoor café at the proposed multi-tenant building pending the review of the fully updated plan set.

GENERAL NOTES

1. DRAWINGS GENERALLY INDICATE SCOPE OF WORK. EACH CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS PRIOR TO START OF WORK TO ENSURE A COMPLETE AND PROPER INSTALLATION OF THEIR WORK.
2. ALL WORK SHALL COMPLY WITH ALL CITY, STATE, AND FEDERAL ORDINANCES HAVING JURISDICTION. NOTHING HEREIN SHALL BE INTERPRETED TO THE CONTRARY. ALL PERMITS AND INSPECTIONS REQUIRED SHALL BE SECURED BY THE CONTRACTOR INVOLVED.
3. SIDEWALK NOTES - CONTROL JOINTS @ 5'-0" O.C. WITH EXPANSION JOINTS TO BE PLACED EVERY 20'-0" O.C.
4. PROVIDE 4" CONDUIT FOR TELEPHONE TO TELEPHONE PANEL LOCATED IN UTILITY ROOM.
5. PROVIDE ALL NECESSARY SLEEVES AND CONDUITS FOR ALL UTILITIES TO RETAIL BUILDING.
6. SEE CIVIL DRAWINGS FOR ADDITIONAL SITE INFORMATION
7. SEE LANDSCAPE PLANS FOR ADDITIONAL INFORMATION

LIGHTING NOTES:

1. PROVIDE ELECTRICAL TO ALL LIGHT POLES AND MONUMENT SIGNS. ELECTRICAL TO BE RUN TO UTILITY ROOM.
2. SEE PHOTOMETRIC FOR POLE LIGHT SPECIFICATION



**OGDEN HILL EAST - RETAIL CENTER
NEW CONSTRUCTION**

LOT
MONTGOMERY, ILLINOIS
CLIENT:

REV	DATE	DESCRIPTION
04.06.16		REVISED SITE PLAN
10.20.15		REVISED FOR PERMIT
10.14.15		REVISED FOR PERMIT
09.28.15		REVISED FOR BID
09.21.15		ISSUED FOR BID
09.11.15		ISSUE FOR PERMIT
07.17.15		ISSUE FOR REVIEW

ISSUE DATE: 04.06.16

PROJECT NUMBER: 2646.00

DRAWN BY: JZ

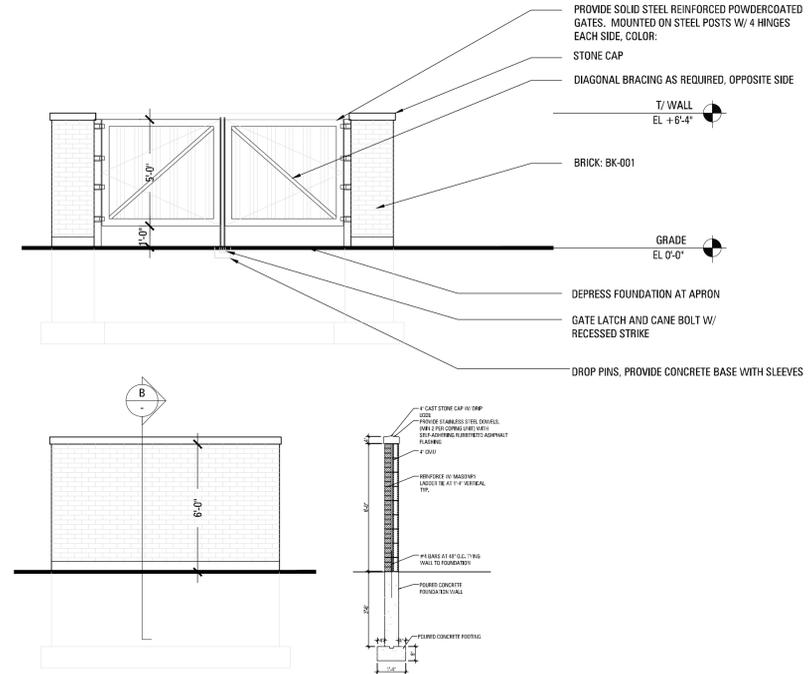
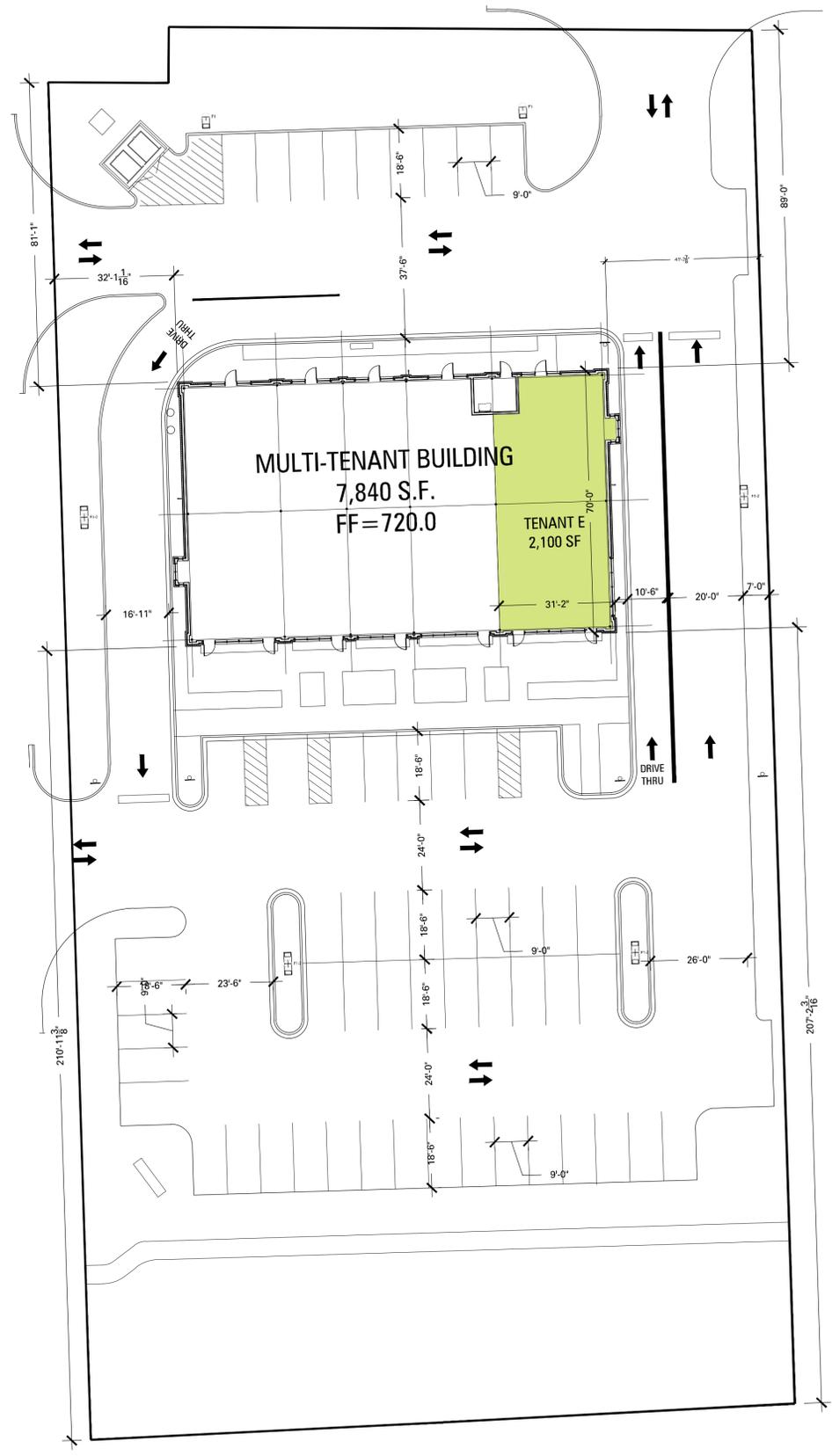
CHECKED BY: JH

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SHEET TITLE:

SITE PLAN

SHEET NUMBER:

ASP001



01 TRASH ENCLOSURE ELEVATION
SCALE: 1/4" = 1'-0"

02 SITE PLAN
SCALE: 1" = 20'-0"



PLAN COMMISSION MEMORANDUM

To: Chair Hammond and Members of the Plan Commission
From: Jerad Chipman, AICP
 Senior Planner
Date: April 27, 2016
Subject: Comprehensive Plan Implementation Summary – Residential Land Use Policy and Other Identity Recommendations

This Plan Commission Discussion Item is the next step in the Plan Commissions review and recommendation of the Comprehensive Plan Implementation Summary. Attached to this memo is a compilation of recommendations for the Residential Land Use Policy and Other Identity Sections.

Staff is requesting that the Plan Commission review the recommendations and supply their thoughts regarding the *Objective Completion Timeframe*, the *Prioritization* and in the comment sections indicate the top five most important objectives for both the Residential Land Use Policy and Other Identity Recommendations. Below is an example table and staff has indicated the possible answers that can be provided in each category. Staff intends to discuss this project with the Plan Commission at the May 5th meeting and would prefer the table to be completed and returned to staff by **May 20th**.

Once all of the Commissioners have filled out the table, staff will compile the information and provide it to the Plan Commission for discussion at the June meeting.

Residential Land Use Policy and Other Identity Recommendations	Objective Completion Timeframe	Status	Prioritization	Comments	Goal Objective Associated With	Comprehensive Plan Page Number
Recommendation...	Please Answer: Short Term (0-5 Years), Long Term (5+ Years) Or Ongoing	This section is optional to fill out as staff will supply comments later.	Please Answer: High Medium or Low	Please Answer: 1 2 3 4 5 - Ranking of the top five priorities for Commercial and Industrial Policies.	Residential Land Use Policy and Other Identity Recommendations	Page #

<i>Residential Land Use Policy Recommendations</i>	<i>Objective Completion Timeframe</i>	<i>Status</i>	<i>Prioritization</i>	<i>Comments</i>	<i>Goal Objective is Associated With</i>	<i>Comprehensive Plan Page Number</i>
Promote residential development in appropriate locations as identified in the Land Use Plan.					Residential Land Use Policy Recommendations	52
Encourage custom home building on areas within the Estate Residential land use areas.					Residential Land Use Policy Recommendations	52
Promote larger lots and higher value homes within Estate Residential areas.					Residential Land Use Policy Recommendations	52
Wherever possible, buffer and protect single-family neighborhoods from adjacent incompatible uses.					Residential Land Use Policy Recommendations	52
Work with developers to include more diverse multi-family options, including housing that is attractive to young professionals as well as senior housing.					Residential Land Use Policy Recommendations	52
Promote the development of high quality multi-family, town-home, and small-lot single-family housing along existing bus and transit lines to attract young professionals to the community.					Residential Land Use Policy Recommendations	52
New investment (including renovations, additions, and teardown redevelopment) should be context-sensitive.					Residential Land Use Policy Recommendations	52
Continue to identify and complete “gaps” in the sidewalk system to provide a more cohesive sidewalk network.					Residential Land Use Policy Recommendations	52
Provide opportunities for community input when establishing sidewalk locations in established areas without sidewalks.					Residential Land Use Policy Recommendations	52
Require residential developers to install walking and bicycle paths that connect subdivisions to nearby destinations, including shopping areas, parks, and schools.					Residential Land Use Policy Recommendations	52
Utilize vertical buffering, including berms, trees, and fencing to address existing land use incompatibilities that negatively affect residential areas.					Residential Land Use Policy Recommendations	52
Utilize horizontal buffering, including increased setbacks and landscaped yards to address future incompatibilities.					Residential Land Use Policy Recommendations	52
Continue to administer the parkland dedication ordinance and exact park dedications for residential subdivisions.					Residential Land Use Policy Recommendations	52
Consider cash-in-lieu of park-land dedication when required park donations are too small to accommodate the recreational needs of the community.					Residential Land Use Policy Recommendations	52
Require developers to provide an appropriate amount of “usable” open space, consisting of high-and-dry areas unencumbered by stormwater facilities.					Residential Land Use Policy Recommendations	52
Where possible, require developers to develop park sites in the first phase of residential subdivisions.					Residential Land Use Policy Recommendations	52
Actively enforce the Village’s codes and ordinances.					Residential Land Use Policy Recommendations	52

Industrial Land Use Policy Recommendations	Objective Completion Timeframe	Status	Prioritization	Comments	Goal Objective is Associated With	Comprehensive Plan Page Number
Continue to budget for the ongoing maintenance and improvement of streets and sidewalks.					Other Identity Recommendations: Transportation and Mobility	72
Bury, or relocate, overhead utility lines along arterial corridors.					Other Identity Recommendations: Transportation and Mobility	72
Improve the appearance of off-street parking areas to include landscaped islands and pedestrian crosswalks.					Other Identity Recommendations: Transportation and Mobility	72
Implement a streetscape plan along key corridors throughout the community and include street trees, pedestrian crossings, decorative light standards, light post banners, and pedestrian amenities such as benches and wayfinding signage.					Other Identity Recommendations: Transportation and Mobility	72
Work with the State to improve the right-of-way and appearance of State-controlled streets within the Village.					Other Identity Recommendations: Transportation and Mobility	72
Install gateway features at key entrances to the community.					Other Identity Recommendations: Transportation and Mobility	72
Continue to create an interconnected trail system and market the Village as a bicycle and pedestrian friendly community.					Other Identity Recommendations: Transportation and Mobility	72
Continue to require developers to provide active and passive recreation areas within walking distance of all new dwellings.					Other Identity Recommendations: Parks, Open Spaces, and Environmental Features	72
Market the Village's open space, environmental features, and parks to both new residents and visitors.					Other Identity Recommendations: Parks, Open Spaces, and Environmental Features	72
Support the usage of large parks and sports complexes, such as Stuart Sports Complex, to hold regional tournaments and sporting events.					Other Identity Recommendations: Parks, Open Spaces, and Environmental Features	72
Create an interconnected trail system that will support walking and biking throughout the community, and to the extent possible, connect with other regional trails to draw visitors and activity to Montgomery.					Other Identity Recommendations: Parks, Open Spaces, and Environmental Features	72
Leverage the waterfront of the Fox River for new development and/or parkland that can reinforce a desired image and identity.					Other Identity Recommendations: Parks, Open Spaces, and Environmental Features	72

Continue to budget for the ongoing maintenance and improvements of Village services and facilities.					Other Identity Recommendations: Community Facilities and Infrastructure	73
Ensure that external service providers are meeting the needs of Montgomery residents.					Other Identity Recommendations: Community Facilities and Infrastructure	73
Work with other governmental agencies, organizations, service providers, and religious institutions to support their plans for expansion and improvement.					Other Identity Recommendations: Community Facilities and Infrastructure	73
Serve as a coordinating body between the Village's various service providers to ensure efficiency and effectiveness.					Other Identity Recommendations: Community Facilities and Infrastructure	73
Ensure that future expansion plans are well-planned and designed to lessen any negative impacts on adjacent properties or neighborhoods such as parking.					Other Identity Recommendations: Community Facilities and Infrastructure	73
Work with other agencies to market the community facilities and services to ensure that residents are aware they exist within the community.					Other Identity Recommendations: Community Facilities and Infrastructure	73



To: Village of Montgomery, Planning Commission and Village Board of Trustees

From: Steven A. Andersson and Laura M. Julien

Date: April 11, 2016

Re: Sign Ordinance Update – *Reed v. City of Gilbert* Supreme Court Decision

The purpose of this memorandum is to update you with regard to the change in law impacting a public body's ability to regulate speech, and more specifically, the manner in which a municipality can implement and enforce a sign ordinance. We are providing this information because it marks a significant change from the way in which the law has been interpreted and applied. Because this represents such a departure from past jurisprudence, if challenged, nearly all municipal sign regulations drafted pre-*Reed* would be rendered unconstitutional. Because of this, we recommend that the Village revisit its sign ordinance to bring it into compliance with these newly articulated principals. This memorandum will provide a summary of the Supreme Court case, the applicable law, and suggestions for how the Village implement these principles to ensure adherence to these legal requirements.

Moreover, this case is also important to understand because its implications extend well beyond that of a sign ordinance. The Illinois Supreme Court has already decided at least one case, based upon *Reed*, in which it declared a city's panhandling ordinance unconstitutional. Other courts have invoked *Reed* when addressing issues such as election sign regulations, robocalling laws, and solicitor licensing. It is likely that in the future, these principles will continue to be extended into many other areas of governmental-regulated speech, such as renting out conference rooms.

I. Overview of the Case - *Reed v. Town of Gilbert*

The facts underlying this case are as follows:

The Town of Gilbert's sign code had a generally applicable provision prohibiting outdoor signs without a permit, but created twenty-three categorical exemptions to this provision. These exemptions were based upon the content of the sign (e.g. political, ideological, temporary directional). The Petitioners, Good News Community Church, sought to advertise their church services pursuant to the Town's exception for "temporary directional signs relating to a qualifying event," which were subject to the most stringent regulations of the twenty-three categories. After receiving multiple citations for its failure to strictly

adhere to these regulations, the church ultimately sued the city on the grounds that the ordinance unconstitutionally violated the free speech and free exercise clauses of the First Amendment. Upon review, the Supreme Court held that because the Town's sign regulations depended entirely upon the content of the sign, they constituted an impermissible regulation of speech (notwithstanding the fact that all signs within the same category of speech would be treated equally, i.e. were "viewpoint neutral"). This represented a marked change, whereas prior to the ruling most courts had held that cities could enforce certain content-based regulations, so long as the regulations were neutrally applied and not intended to censor or restrict speech within a particular category.

II. What is Permitted Post- *Reed*?

Content-based regulations, even if viewpoint neutral, are no longer likely to pass constitutional muster. Although such content based regulations may be permissible in some circumstances, they must pass *strict scrutiny*, which means that the regulation will only be upheld if the regulation is narrowly tailored to serve a compelling government interest, and leave open alternative forms of communication. In practice, **this is a very difficult standard to satisfy.**

A municipality can, however, continue to impose restrictions on signs, so long as they are independent of the sign's content, are applied uniformly, and can be supported by a rational basis. Practically speaking, this largely means that municipalities are limited to aesthetic and safety based regulations (height, size, lighting, material, etc.).

Between the court's opinion and concurrence, the following items were identified as areas in which a municipality could likely regulate without substantial constitutional implications:

- Regulations regarding size (height, maximum square footage)
- Regulations regarding location; may distinguish between freestanding and attached
- Lighting on signs
- Regulations addressing fixed message boards vs. electronic/scrolling message boards
- Regulations distinguishing between signs placed on private property vs. public property
- Regulations regarding on-premises and off-premises signs (potentially)
- Regulations regarding sign-density (i.e. limiting total number of signs allowed in a certain distance along a roadway or number of signs allowed on a parcel)
- Materials used on a sign
- Whether the sign may have moving elements

III. Steps for Redrafting the Village's Sign Ordinance and/or Other Ordinances Regulating Speech

While not intended to be comprehensive, the following list provides some guidance for reviewing the municipality's sign ordinance.

- Ensure that the ordinance has a clearly articulated, content neutral purpose statement
- Determine which regulations in the current ordinance are content based

- Do you have to read the message on the sign to determine how the sign is regulated? Does the regulation change based upon the person/group delivering the message or the nature of the event? If so, the regulation is content based and should be omitted or redrafted.
- Less is more. The fewer categories and exceptions, the less likely there are to be potential content-based distinctions.
- Focus on the regulation of non-content based aspects
- Be aware that certain classifications may have to be eliminated completely, others may need to be revised to eliminate reference to a content-based element
- Include a substitution/severability clause
- Standards should be objective (i.e. there should not be room for ample discretion)

If you would like for us to assist in reviewing and redrafting your Village's sign code, please let us know and we would be happy to do so. As always, if you have any additional questions do not hesitate to contact us to discuss further.