

## MEMORANDUM

TO: Mayor and Council,  
City of University Heights

FROM: Steve Ballard

Date: June 8, 2014

**Re: Legal Report on PUD Plan Application**

**I. Introduction**

- a. City received Multiple-Family Commercial PUD Development Plan Application from Jeff Maxwell May 8, 2014
  - i. Drawings were submitted by the project architect, Neumann Monson Architect
  - ii. A “Supplement” was submitted by Mr. Maxwell’s lawyer, Tom Gelman
- b. Various reports from City staff and service providers have been solicited and received
- c. Public hearing on the PUD Plan Application is scheduled for 7:00 p.m. June 10, 2014
- d. The property owners – St. Andrew Presbyterian Church and Jeff Maxwell – have given their consent to the PUD Plan Application
- e. PUD Procedure – requirements for project to move forward
  - i. City must approve PUD Plan Application
  - ii. City and developer must enter into Development Agreement
  - iii. Process may take as long as needed for discussion, negotiation, and completion of City’s consideration of Plan Application and Development Agreement
- f. This memorandum provides legal comment on the PUD Plan Application and recommendations for Council’s review process

**II. Specific Zoning Considerations**

- a. General
  - i. City Zoning Ordinance (No. 79) permits development of the property as a “Multiple-Family Commercial PUD”

- ii. The amendment creating the PUD at the St. Andrew property is Ordinance No. 180, found here: <http://www.university-heights.org/ord/ord180.pdf>
- iii. The entire Zoning Ordinance, as amended, is found here: <http://www.university-heights.org/ord/ord079amend.pdf>

b. Current PUD Plan Application

i. Height

- 1. The application shows the height of the rear building to be 76', which is the maximum permitted by the ordinance (No. 79(13)(B)(5))
- 2. The application shows certain appurtenances (an elevator over-run; a storage area; trellis structures) exceeding the 76'-height limitation
- 3. The ordinance measures height from the adjacent street to the "highest point of the roof or coping" (No. 79(7))
- 4. The ordinance excludes "[r]adio or TV towers, spires, steeples, and chimneys" from the height measurement (No. 79(7))
- 5. The rear building as shown in the PUD Plan Application does not clearly meet the height restriction of the ordinance
- 6. If Council desires to move toward approval of the PUD Plan Application as submitted, my advice is to amend the Zoning Ordinance to accommodate the height of the rear building as depicted

ii. Commercial Space

- 1. The ordinance permits a maximum of 20,000 square feet of commercial space
- 2. The application shows approximately 19,702 square feet of commercial space in the front building
- 3. It also shows an additional 2,163 square feet of "community space", also in the front building
- 4. "Community space" is not a phrase used in the ordinance
- 5. The front building as shown in the PUD Plan Application does not clearly meet the commercial space restriction of the ordinance
- 6. If Council desires to move toward approval of the PUD Plan Application as submitted, my advice is to amend the Zoning Ordinance to accommodate the "commercial space" and "public space" areas as depicted

- c. Zoning Ordinance Amendment
  - i. If Council desires to amend the Zoning Ordinance, then Council may call upon the Zoning Commission to consider and make recommendations concerning the amendment
  - ii. Alternatively, Council may take the amendment up on its own, without involving the Zoning Commission
  - iii. Council has the discretion take either approach, and Council has used both approaches in the past
  - iv. Whether or not Council involves the Zoning Commission, a public hearing on any proposed rezoning must be held, preceded by published notice

**III. Development Agreement**

- a. City and developer representatives have met three different times to discuss and review a Development Agreement
- b. The personnel involved in these meetings is as follows
  - i. City
    - 1. Council Member Lane
    - 2. Council Member Quezada
    - 3. MPO-JC Staff
      - a. Kent Ralston
      - b. Darian Nagle-Gamm
    - 4. Steve Ballard
  - ii. Developer
    - 1. Jeff Maxwell
    - 2. Kevin Monson
    - 3. Tom Gelman
- c. A “working draft” version of the Development Agreement that has emerged from these discussions is attached to the email transmitting this memorandum
- d. Council is free to make comment and recommendations and to request changes to this document

**IV. Recommended Review Procedure**

- a. Application has been received, circulated, and made available for review, inspection, and comment
- b. Public hearing will be held June 10, 2014
- c. Reports from City staff and service providers have been solicited and received (Mediacom and Iowa City Transit have not provided input – Steve Ballard will follow up)
- d. Council Action after Public Hearing

- i. Council requests additional information, changes, clarifications, etc.
  - 1. Council directs staff to provide further input on specific issues Council would like to consider or have addressed
  - 2. Council directs staff to obtain additional information from developer
  - 3. Staff and developer work on technical issues raised at public hearing at Council's direction
- ii. Further staff reports are provided, at Council's direction
- iii. Council schedules one or more work sessions and/or special meetings to continue review and consideration of PUD Plan Application
- iv. Process of discussions with developer, reports to Council from staff, etc., will continue until Council is ready to vote on PUD Plan Application
  - 1. Council – on its own or through staff – will direct desired changes to proposal
  - 2. Multiple iterations of application could be created based upon Council direction
- v. Council votes on PUD Plan Application and Development Agreement
  - 1. Council may vote to approve the application
  - 2. Council may vote to deny the application
  - 3. Council may vote to approve the application on condition (*i.e.*, indicate that approval is contingent upon performance of certain requirements or the occurrence of specified things)
- vi. Zoning Ordinance establishes no time limit for Council's consideration
- vii. Only one vote (not three readings) is required
- viii. Simple majority vote is required

**V. Financing**

- a. Assuming the developer asks the City to be involved in financing, consideration of that request will be integrated into the PUD Plan Application review process
- b. The City has contacted with National Development Council to assist and consult concerning any funding request from the developer
- c. The timeline for approving and implementing certain financing vehicles is subject to restrictions prescribed by Iowa law

**VI. Conclusion**

- a. Council should proceed with the public hearing June 10, 2014
  - i. Council will hear from citizens offering comment
  - ii. Council may ask questions of the developer

- iii. Council may direct staff to address particular issues, questions, and concerns
- b. Council should schedule additional meetings to consider the PUD Development Application further
- c. Council should direct action to amend the Zoning Ordinance, if Council wants to move toward approval of the PUD Plan Application as submitted
- d. Council should consider financing considerations once a funding request is made