

THE OFFICES OF
LEFF LAW FIRM, L.L.P.

222 SOUTH LINN STREET

Mailing Address: P.O. BOX 2447

IOWA CITY, IOWA

52244-2447

ARTHUR O. LEFF (1906-1989)

PHILIP A. LEFF (of Counsel)

R. BRUCE HAUPERT

CHARLES T. TRAW

RANDALL B. WILLMAN

STEVEN E. BALLARD

MARK C. DANIELSON

TIMOTHY S. GRADY

THOMAS E. MAXWELL

TELEPHONE:

(319) 338-7551

FACSIMILE:

(319) 338-6902

Writer's Email:

ballard@lefflaw.com

PATRICK J. FORD

May 19, 2009

Chair and Members,
UNIVERSITY HEIGHTS ZONING COMMISSION

**Re: St. Andrew Presbyterian Church -
Redevelopment Proposal**

Dear Chair and Commission Members:

I am writing with respect to certain matters that were discussed at the last University Heights Zoning Commission meeting, as well as a couple of additional items that have arisen since.

Proposed Ordinance Amendment. You should have received by email a proposed amendment to the University Heights Zoning Ordinance. In the event you did not receive this electronically, I am enclosing the proposed amendment herewith.

Zoning Process. I was asked to outline the process associated with the present application to rezone the St. Andrew Presbyterian Church property. The process is summarized as follows:

1. The City receives a rezoning proposal.
2. The Zoning Commission convenes one or more meetings to recommend for approval or against approval of the proposed amendment to the zoning ordinance. The Commission has an advisory role only; it may make a recommendation to the City Council, but its recommendation is not binding.

UNIVERSITY HEIGHTS ZONING COMMISSION

Re: St. Andrew Presbyterian Church

May 19, 2009

Page Two

3. If the Commission does not make a recommendation within 45 days of the date the application is filed (in this case, no later than May 30, 2009), then the Commission is deemed to have recommended approval of the requested rezoning. The proposed zoning amendment is then forwarded to the City Council. In the past, some proponents of other requests to rezone have waived the 45-day requirement to permit the Zoning Commission additional time to consider a proposal. No request for waiver has been made to the present applicants.
4. If the Zoning Commission recommends against approval, then the amendment may be adopted only by the affirmative vote of four members of the City Council. In other words, a recommendation by the Zoning Commission against approval triggers a super-majority Council vote by Iowa law.
5. Even if the Zoning Commission recommends for approval of a zoning change, the super-majority requirement is triggered if 20% or more of neighboring property owners protest the proposed change in writing to the City Clerk. At the prior Zoning Commission meeting, a petition was presented signed by more than enough property owners to trigger the super-majority requirement by the Council regardless of whether the Zoning Commission recommends for approval or against approval.
6. Once the Zoning Commission takes action, the proposed change to the zoning ordinance is submitted to the City Council for consideration. The Council must hold at least one public hearing and thereafter may adopt a change to the zoning

UNIVERSITY HEIGHTS ZONING COMMISSION

Re: St. Andrew Presbyterian Church

May 19, 2009

Page Three

ordinance only by super-majority vote at three separate Council meetings. The three readings requirement may be suspended and the amendment adopted after one or two readings but only by affirmative vote to suspend the requirement by four Council members.

7. If the Council does not approve the proposed change at any of its three readings, the proposal is defeated and the zoning ordinance will not be changed. The application for rezoning is considered rejected and no further action will be taken.
8. If a super-majority of the Council votes in favor of the proposed change at each of the three readings, then the proposed change will become a part of the zoning ordinance upon publication as required by law.
9. If the Council votes in favor of the proposed change, then the Council and the applicant will negotiate and enter into a Development Agreement that will specify many particulars related to this project (for example, building material composition, lighting, landscaping, and a great many other details). The terms of this agreement are enforceable by both the City and the developer.

Referendum. At the last Zoning Commission meeting, the question arose whether the present proposed change to the zoning ordinance could simply be submitted to the citizens of University Heights for a vote. The process of submitting a particular proposal to the general electorate is known as "referendum". Iowa law does not specifically provide that cities have the right to submit proposals to citizens by way of referenda, but the Iowa Supreme Court has ruled that if a city

UNIVERSITY HEIGHTS ZONING COMMISSION

Re: St. Andrew Presbyterian Church

May 19, 2009

Page Four

charter includes such a procedure, referenda are permitted in that city. Four cities in Iowa have adopted city charters, including the City of Iowa City. Two of those cities (again including Iowa City) have procedures for referendum. Both of those cities exclude from the referendum process any sort of zoning decision.

So, the answer to the question whether the present issue could be submitted to a general electorate vote is that first the City of University Heights would be required to adopt a city charter, establish a referendum procedure, and include zoning decisions among the proposals subject to referendum. This would take many months; the proposal to adopt the charter could not be voted upon until November 2009, and of course it would need to be drafted before then. A city charter is akin to a constitution and drafting such a document would take a great deal of time and citizen input by way of public hearings. Even if the voters of the City of University Heights adopted a charter, I do not believe inclusion of zoning matters among those items subject to referenda would be constitutional. Thus, in my opinion, it would take a very long time to adopt a charter and subject a proposal to a referendum, and I do not believe a zoning decision would be properly submitted by way of referendum in any event.

Conflict of Interest - UI Employee. I have been asked whether employees of The University of Iowa who may be members of the Zoning Commission or City Council have a conflict of interest that precludes them from considering the present proposal. I believe these inquiries contemplate that the University may be interested in acquiring the St. Andrew property depending upon the outcome of the present rezoning proposal. Thus, the thought goes, University employees might be making a decision that could benefit their employer. I previously outlined legal conflicts of interest for Zoning and Council members by letter dated April 14, 2009. That letter specifically concerned Commission and Council members who lived very near to St. Andrew or were church

UNIVERSITY HEIGHTS ZONING COMMISSION

Re: St. Andrew Presbyterian Church

May 19, 2009

Page Five

members, but the reasoning and rationale applies to University employees as well. There is no legal conflict of interest prohibiting a University employee from sitting as a member of the Zoning Commission or City Council. If members believe that they cannot set aside any private advantage that may result from the outcome of this proposal from their public duty to act in the City's best interest, then those members do have a conflict of interest and should recuse themselves from participation. As a matter of comity and full disclosure, University employees may wish to disclose the identity of their employer at a public meeting to make this process as transparent as possible, even though no legal conflict of interest exists.

Please call me if you have questions or wish to discuss the matters set forth in this letter. I look forward to seeing you Wednesday.

Very truly yours,

LEFF LAW FIRM, L.L.P.



Steven E. Ballard

Enclosure

cc: Mayor, Council Members, Clerk, and Engineer
CITY OF UNIVERSITY HEIGHTS, IOWA
Mr. Jeff Maxwell
Mr. Al Wells
Mr. Kevin Monson