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MEMORANDUM

TO: City Council, Michael Ciaravino, City Manager

FROM: Ian MacDougall, City Planner; Jason Morris City Engineer

DATE: July 14, 2014

RE: Draft Zoning Code Update

The City of Newburgh Draft Zoning Code Update has been prepared and is available for public comment. The following review pertains to the document on the city website dated January 20, 2014 on the cover page yet, dated February 21, 2014 on the footer throughout the remainder of the document.

This review is presented by focusing on three major topics: (A) the draft zoning map (graphic) and its relation to the future land use plan (B) the relation of the comprehensive plan (text) with the draft zoning ordinance and (C) the content of the draft zoning ordinance.

The city adopted the text portion of the comprehensive plan in December 2008 and the Future Land Use Plan in September 2011. Both these planning documents packaged together make up the comprehensive plan.

A: Draft Zoning Map Verses Future Land Use Map

According to § 28-a City Comprehensive Plan

(12) Effect of adoption of the city comprehensive plan. (a) All city land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.

The adopted future land use plan is a “policy statement” of how the community wants its development to unfold in the future. The plan was created with significant public input and the plan serves as the communication piece between the public and the city council. There is a council resolution adopting the future land use plan. Zoning is the planning tool which executes the vision of the comprehensive plan. The following examples indicate inconsistencies between the adopted Future Land Use plan and the Draft Zoning Code Update.

- (1) The area south of Broadway known as the Mill District was identified in the future land use plan (p. 28) as a Medium Density Mixed Use District. However, when reviewing the draft zoning ordinance it is Residential Low Density. The focus of these districts need to be similar.

- (2) The area east of Muchattoes is identified as Lake Street Area (p. 28) in the future land use plan and labelled Medium Density Mixed Use. However, when reviewing the zoning map provided with the Zoning Codes Update document the area is now changed to Residential Low Density. The focus of these districts need to be similar
- (3) The neighborhood known locally as The Heights is identified as “1-4 Residential” in the Future Land Use Plan. The draft Code Update identifies the area as Residential High Density which would set the stage for potential serious change in the neighborhood. Although the area may be considered high density because the houses are tightly packed within the neighborhood, the neighborhood is characterized by two and three story dwellings. At a recent meeting with the neighborhood residents concerns that their neighborhood character could change is a grave concern. The neighborhood residents expressed their long term goal of maintaining the existing character of the neighborhood. The terminology needs to be revisited for this area, and possibly other residential districts.
- (4) During the preparation of the future land use plan there was grave concern expressed regarding the outward growth of the colleges and hospital in the city Participants in the preparation of the future land use plan recognized education, hospital and government uses as “Institutional”. The intent was to create a growth boundary to minimize the number of tax exempt parcels generated by such land uses. The draft zoning ordinance suggests post-secondary uses allowed by Special Permit in all districts. This does not address concerns of unlimited growth by land uses that do not pay taxes. This concern was echoed in a submission by Barbara Smith a city resident who submitted written comments and lives near a college. This concern needs to be revisited and vetted among the community.
- (5) The city currently has properties benefiting from the New York State Environmental Restoration Program addressing contaminated sites. One of these sites is located at 86 Wisner Avenue. The adopted future land use plan identifies the east side of Wisner as “Commercial” whereas the draft Zoning Ordinance breaks down the area into Commercial and Residential with an Overlay district. I suggest the boundary of the Commercial District at least be extended to include 86 Wisner Avenue as a precautionary approach to make sure the district lines up with the intent of the Record of Decision.
- (6) There is a property at 33 Robinson Avenue that is currently designated Residential yet always has been a commercial use. The owner indicated during the recent public comment at a City Council meeting that he wants to expand to allow the performing arts as a permitted use. I feel to accommodate this proposal the Commercial District would need to be extended to include this property. However, this would require a Comprehensive Plan amendment.
- (7) There are multiple examples where the land uses of the comprehensive plan are not mirrored in the draft zoning. If this remains unchanged the document could be seriously scrutinized and could set the stage for some possible legal challenges. It is permissible to use different titles for zoning districts as opposed to the districts in the future land use plan but the intent and ideas must remain consistent in the proposed zoning districts. Optional ways to deal with differences in these two planning documents include adjusting the future land use plan simultaneously with the zoning ordinance or revise the proposed Zoning Code Update document.

- (8) When GIS reads data it reads the themes or layers from the bottom. Referring to the draft zoning ordinance, some streets are not visible on the map (e.g. Scobbie Drive or First Street extension). Possibly this is due to the layers being out of order or the street layer not being included. Umbra Studios is located on Scobbie Drive and could take exception to this mapping because they are one of the biggest tax payers in the city. The future land use plan clearly shows all streets and both of these plans need to follow similar cartographic standards.

B: Comprehensive Plan Verses Draft Zoning Ordinance

The preparation of the Comprehensive Plan addressed areas of concern as identified by the community. Each discussion for a specific topic closed with goal, targets and strategies that at times are suggested to be included in the zoning ordinance. The following inclusions need to be part of the zoning:

- (1) The plan calls for buffer planting requirements to protect critical areas (p 74). This should be part of site plan review for the Water Protection Overlay District.
- (2) Amend zoning ordinance to create an arts and cultural district to allow artist's studio space and shared work space as a permitted use (p 88). It is not evident how this is addressed in the draft zoning ordinance. This was a topic of great concern during the preparation of the comprehensive plan.
- (3) Revise the zoning to require bike racks for commercial development (p 98). This needs to be included as part of the site plan review process.
- (4) Strive to reduce impervious cover by allowing permeable surfaces as part of storm water management (p 105, 106). This needs to be called out as part of the site plan review process.

Draft Zoning ordinance

The zoning districts described in the draft ordinance are intended to advance the ideas of the adopted Comprehensive Plan. One of the most accepted practices to demonstrate a municipality has given a valiant effort to advance the vision expressed in the comprehensive plan is to provide a "purpose statement" at the beginning of each zoning section describing its purpose and what separates it from the other districts. Based on the comprehensive plan, the purpose statement explains why the district was created. There are fifteen zoning districts identified in the Draft Zoning Code Update ordinance, however "Purpose Statements" and descriptions are not provided for many of the districts. The document needs to be standardized and purpose statements and descriptions need to be provided for each and every zoning district.

Parking provision and needs continue to be major concerns in the community. The topic was raised and discussed at all recent public meetings. The idea of scaling back on parking requirements was clearly brought to the forefront in the comprehensive plan; however, if any of the districts are renamed, the parking requirements will need to be revisited.

In addition, the city of Newburgh continues to struggle financially and parking provides various opportunities to generate revenue. In situations where the applicant cannot meet parking requirements there are other options beyond a parking variance. We should consider introducing the

option of cash in lieu of parking. This would allow money to accumulate specifically for parking. The money could eventually be leveraged to develop badly needed parking structures.

The zoning update has suggested a newly created overlay district labeled the Waterfront Protection Overlay. The intent of this overlay is genuine because water quality is paramount everywhere. Addressing water quality in a zoning ordinance is appropriate because water pollution stems from land based activities. Applications of this overlay could conflict with the remediation of brownfields. If the overlay is more restrictive than the remedial action plan it could discourage or possibly jeopardize a project. For example, if the Hudson Valley Lighting project was subject to the suggested protected area it would require them to adjust the size of their building. Sometimes the size of the building is case specific. I suggest the overlay be revised to indicate where brownfields abut water bodies the requirement for protection be negotiated as part of the remedy or corrective action for the contaminated site. This would identify the area and type of protection.

The zoning update suggests the creation of a Conservation Development District which takes guidance from the comprehensive plan. One of the limitations of the district is a maximum impervious cover of 15 % of the total gross acreage. The Snake Hill/Crystal lake area measures approximately 74 acres and is owned by the City of Newburgh. I calculated the acreage for area of maximum 25% slope to be approximately 24 acres. Based on the impervious coverage limitation the amount of developable land is approximate 11 acres. This would restrict the attractiveness of developing the site. The amount of impervious coverage needs to be studied and a determination made of the allowable impervious area that protects the environment yet allows development in the area to gain serious attention as a viable development area.

The method for meeting the requirements for public notice for specific applications is unique to each municipality. Some municipalities delegate all the responsibility to the applicant whereas some municipalities accept all the responsibility. In Newburgh providing public notice is a cooperative effort between the planning board secretary and the applicant. I suggest we explore delegating that responsibility to one specific party to avoid any miscommunication.

In the Site Plan Application and Approval section, requirements for public hearing is mentioned on both page 66 and 71. The first time public hearing is mentioned the requirement is mandatory for all site plan applications; whereas, the second time, the requirement is at the discretion of the planning board. This needs to be clarified and presented without any ambiguity to the inexperienced applicant.

In both the Site Plan Application and Approval section and Special Permit section the idea of referrals is called out both in the Procedural and Action subsections. This creates ambiguity and confusion for the reader. There could easily be one section for referrals which would be less confusing. In addition, the referral section between the Site Plan Application and Approval section and the Special Permit sections differ. They need to be similar because the referral requirements are the same.

On page 33 F. – Second half of last sentence; “...and unless the actual access to such use or such structure will be over such frontage.” This language will prohibit common driveways which gain access over other lots’ street frontage and reduce curb cuts and impervious area. By eliminating this portion of the sentence, the requirement for 20ft of street frontage can be maintained while still allowing access via alternative routes other than over the required frontage.

On page 33 H. (5) – This sentence should be revised to add the following language at the end; “...when such fully extended.”

The word “*structures*” is spelled incorrectly on page 48 E. In the middle of the paragraph, how is the “*Top of Bank*” determined when referring to a watercourse? Does a surveyor need to locate this feature?

On page 51 C (1) – “*Sound levels shall be determined at the lot line of the lot from which the noise is emitted.*” This criteria does not apply to condos without lot lines or rented apartments.

On page 56 §300-A.(4) – The 30ft separation requirement seems excessive for the higher density areas within the City and will most likely lead to the requirement of an excessive amount of variances.

Refer to page 72 D. (1) (b) – This section requires a majority plus one, for overriding an Orange County Department of Planning Disapproval. The County’s comments may not necessarily recommend disapproval, but may have binding comments which should also require a majority plus one override. This section should be amended to add this statement.

On page 73 §300-C. – The last line of this section is unclear in its intention, and should be rewritten.

There are several new districts recommended as part of the Zoning Code Update. It is important to recognize that if these new districts were completely built-out to their maximum capacity, the City has an obligation to provide sufficient water and wastewater capacity. This capacity study is an important exercise in a zoning update, and therefore should be prepared as part of this zoning update. This analysis is also critical in negotiating any future inter-municipal water or wastewater intermunicipal agreements.

In addition to the forgoing concerns multiple grammar errors have been identified in the document. They are outlined in red on a copy of the proposed zoning update. Before moving to the next step all grammar and syntax errors need to be addressed. All comments, regardless of source, need to be reviewed and responses provided.