



CITY COUNCIL WORK SESSION AGENDA

AUGUST 23, 2022 – 6:00 pm

1. CALL TO ORDER
2. 6:00 – ARTESSA COOPERATIVE PROPOSAL DISCUSSION
3. 6:25 – DRAFT BUDGET & PRELIMINARY LEVY DISCUSSION
4. 6:40 – THC MORATORIUM DISCUSSION
5. 6:45 – ASSESSING SERVICES CONTRACT DISCUSSION
6. 6:50 – MISCELLANEOUS
7. 6:55 – ADJOURNMENT

Note: Agenda times are approximate



Memorandum

To: Dan Tolsma, Tonka Bay City Administrator

From: Brandy Howe, City Planner, WSB

Date: July 25, 2022

Re: Artessa Cooperative – Shorewood v. Tonka Bay Planning Review Processes

Background

The City of Tonka Bay received a sketch plan for the Artessa Cooperative, a four-story, cooperative owned, multifamily building with 56 units. The project location is a 2.58-acre site containing two parcels: a 1.12-acre site in the City of Tonka Bay and a 1.46-acre site in the City of Shorewood. There are overlapping review and approval jurisdictions because of the site location. To move forward with the project, the developer and the cities of Tonka Bay and Shorewood should consider if this project should comply with one city's review process or both. The purpose of this memo is to outline in simple terms the planning review process for each city.

City of Tonka Bay Planning Review Process

The Tonka Bay side of the subject site is zoned C-2 General Commercial. The proposed multifamily project is not a permitted use in the C-2 district. The closest zoning district that would allow this project is the R-3 Medium Density residential district. The purpose of the R-3 district is to provide for a greater variety in housing type by allowing medium density residential development at an overall density ranging up to 7 units per acre. The density of the proposed structure is greater than 7 units per acre and would require a residential planned unit development (PUD) as a conditional use.

The PUD offers flexibility by allowing deviation from the strict provision of the ordinance. The PUD process is outlined in Section 1006 of the zoning ordinance. Note that the maximum building height to be considered within a PUD district shall be 30 feet. The proposed structure is four stories, which will be greater than 30 feet in height. A zoning amendment would be required.

The Comprehensive Plan designates the subject site as mixed use on the Planned Land Use map, which is inconsistent with the proposed residential use. Section 1006 of the zoning ordinance requires that a PUD be consistent with the Comprehensive Plan, thus a plan amendment would be also necessary.

Step 1: Comprehensive Plan amendments to increase maximum density and change future land use designation to multifamily. Step 1 requires review and approval by the City of Tonka Bay City Council as well as the Metropolitan Council.

Step 2: Zoning text amendment to potentially increase maximum R-3 density 1006.01 and increase the maximum PUD building height.

- Application for zoning text amendment.
- City Council public hearing; requires a majority vote of approval by City Council.

Step 3: Residential Planned Unit Development (PUD) – concurrent with Step 4.

2.a. General Concept Stage.

- Application for conditional use permit and rezoning.
- Developer city/staff meeting
- City Council public hearing; requires an affirmative 4/5 vote of approval by City Council.

2.b. General Plan of Development (Optional).

- Developer city/staff meeting

- City Attorney, Engineer, and Planner review
 - City Council, possible Park and Recreation Board review, other applicable agency review
 - City Council public hearing; requires an affirmative 4/5 vote of approval by City Council.
 - Attorney drafts PUD agreement that stipulates terms and conditions approved by the City Council and accepted by the applicant.
- 2.c.** Final Plan of Development.
- Staff review and approval required prior to building permit issuance.

Step 4: Rezone property from C-2 General Commercial to R-3 district with a residential PUD conditional use.

- Application for zoning map amendment.
- City Council public hearing; requires a majority vote of approval by City Council.

Step 5: Cooperative subdivision process per Section 1006.03(g), if applicable.

City of Shorewood Planning Review Process

The Shorewood side of the property is zoned R-2A (single/two-family). For greater detail on the city's zoning or subdivision regulations and their overall planning review process, please refer to Exhibit A attached.

Step 1: Comprehensive Plan amendment to adjust the boundary between the two cities and to allow greater density.

Step 2: Rezoning to a PUD to allow multifamily dwellings based on the R-3B zoning district.

Step 3: A PUD application with potential flexibility for lot area, height, import/export of material (if needed), etc. with a development agreement.

Step 4: Plat (if needed).

Attachment

Exhibit A: Shorewood Pre-Application Sketch Plan Review



CITY OF
SHOREWOOD

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MEMORANDUM

TO: Planning Commission, Mayor and City Council

FROM: Marie Darling, Planning Director

MEETING DATE: May 3, 2022

REQUEST: Pre-Application Sketch Plan Review

APPLICANT: Lifestyle Communities

LOCATION: 24250 Smithtown Road (Shorewood) and 24320 Smithtown Road (Tonka Bay)

LAND USE CLASSIFICATION: Medium Density Residential (Shorewood Parcel Only)

ZONING: R-2A (Single/Two-Family) (Shorewood Parcel Only)

FILE NUMBER: 22.03

REQUEST:

A pre-application sketch is a process to allow the Planning Commission and the City Council to comment informally (non-binding) on a development prior to the submission of an application for subdivision or comprehensive plan amendment. It allows the applicant the ability to make decisions regarding potential applications without incurring the costs of a full submission.



The applicant proposes to construct a cooperatively owned, multiple-family building on this 2.58-acre parcel. The proposal is complex and would involve policy decisions by both the City Councils for Shorewood and Tonka Bay. The City of Tonka Bay will have a separate introductory meeting and it is likely that joint meetings between the two councils would be necessary to formulate solutions to policy issues if the development progresses to applications.

There is no public notice required by the zoning or subdivision regulations for a sketch review. However, staff did include notice of the application under “Active Applications” on the website with the likely dates the proposal would be discussed at both Planning Commission and City Council.

Context:

The parcels that make up the subject site straddle the boundary between Shorewood and Tonka Bay.

The Shorewood parcel is developed with a single-family home and the Tonka Bay parcel is developed with a retail chocolate shop. A shopping center occupies the adjacent parcel to the west within Tonka Bay. In Shorewood, the property to the north is the Shorewood public works facility. The public safety building (housing SLMPD and EFD) lies to the east (within Shorewood). To the south across Smithtown Road is a variety of commercial uses within Shorewood.

The Shorewood property has numerous mature trees and about 18 feet of elevation change. The lowest point of grade is near the southeast corner of the site and the center is the highest point. There are no known wetlands or floodplain on the property and the site is not within a shoreland management overlay district.

PROPOSAL:

The proposal is for a multiple-family building that is laid out in a “Y” shape with the shortest wing of the building closest to Smithtown Road (three stories) and the northerly two legs would be taller (four stories). The total number of dwellings proposed is 56 units, with a variety of one- and two-bedroom dwellings. The applicant would provide interior underbuilding parking and surface parking.

Below is a quick summary of some of the “big-picture” issues with the proposal, discretionary and policy issues outlined in bold.

Use (Discretionary Issue): The Comprehensive Plan indicates that the City plans to provide sufficient housing types, sizes and values to meet the needs of varying segments of the population. It also recommends that the City encourage housing types that are designed to appeal to senior citizens to allow existing residents to downsize and remain in the City of Shorewood. The City Council can determine whether or not this type of project is the type they are looking for to fill that niche.

Density: The cooperative is currently proposed to have 56 dwellings, which is about 22 units per acre. The Shorewood property is guided for a maximum of eight units per acre, which would allow for a maximum of 20 units on the property. **Discretionary Issue:** The applicant would need to apply for a Comprehensive Plan Amendment to allow for the additional density.

Property line/City Boundary: As shown, the building would not only straddle a property line, but that property line is the boundary between Shorewood and Tonka Bay. Constructing a building over property lines increases the complexity of construction by eliminating connections and openings between building wings. Consequently, the properties should be consolidated or combined together by plat, and the two cities would need to decide in which city the development would be located.

Discretionary Issue: Moving city boundaries requires a comprehensive plan amendment. **Policy Issues for the City Councils:** A decision would need to be made regarding which city would gain the full parcel. Agreements would need to be put in place to determine costs and revenue sharing, utility services, permits and inspection jurisdictions, and etc.

Rezoning: The closest zoning district that matches this type of use is the R-3B district. That district would require a maximum of 3,500 square feet per dwelling, which would mean the applicant would need about 4.5 acres for this use. Additionally, the maximum height in the R-3B district is 40 feet, which the applicant is unlikely to meet with a four-story building and underground parking access.

Discretionary Issue: The applicant would likely need a Planned Unit Development in order to propose the density that they would like to provide.

Utilities: Tonka Bay and Shorewood both have water mains in the vicinity of the building. Shorewood’s main is on the south side of Smithtown and could be extended north to serve the development. Shorewood’s water pressure is higher, which may be necessary for a building of this size.

There is a Metropolitan Council sewer main on the south side of County Road 19. The applicant could install an 8-inch public sewer main from their property to the private drive and across the street to connect to the Met Council sewer main. **Policy Issues for the City Councils:** The City Councils would need to decide which city would serve the new development.

Traffic: The applicant has provided some traffic information that shows that the dwellings that they build and the residents they attract are low traffic generators, about 3.24 trips per dwelling (about 182 trips per day for a 56-unit building). The table to the right includes other residential uses for comparison. All numbers shown in the table are from the most recent Institute for Traffic Engineers (ITE) Trip Generation Manual.

Use	Daily Trips per Dwelling
Senior Multiple-Family (proposed)	3.24
Senior Single-Family Houses	4.31
Low-Rise Apartments	6.74
Townhouses	7.2
Single-Family Houses	9.43

Discretionary Issue: While the senior cooperative would likely produce fewer trips than other types of residential uses, staff recommend the applicant provide a traffic study with any comprehensive plan amendment application to verify the impact on the area’s intersections.

Access: At present, the developer is showing two access points, the westerly access is from the Tonka Bay shopping center’s private drive and the easterly accesses the Shorewood public works’ building driveway. The applicant would need to provide documentation that they have easement, covenants, or by other agreement have rights to the westerly access. The easterly access, being a private driveway, would require a shared access agreement and/or covenant for maintenance. **Policy Issue:** The Shorewood City Council would need to approve an agreement and/or covenants to share costs to maintain the driveway.

Parking: The applicant proposes 111 parking spaces for vehicles (garage and surface parking), where the zoning regulations would require 112. The applicant would likely be able to redesign their parking layout to add the one additional parking space that would be required. The applicant also shows that they would have areas for bicycle storage, which would be very appropriate for this location which is close to the Lake Minnetonka LRT Regional Trail.

Stormwater: Due to the size of the project, the applicant would be required to provide treatment of storm water run-off as well as volume and rate control. Full details on the storm water plan are required to be provided with any formal application and the applicant’s proposal must be consistent with City and Minnehaha Creek Watershed District regulations. Providing stormwater features could impact the site plan if the applicant uses ponds, infiltration basins, etc.

FUTURE STEPS:

Should the applicant come forward with an application, they would need the following approvals:

- A comprehensive plan amendment to adjust the boundary between the two cities and to allow greater density.

- A rezoning to PUD to allow a multiple-family dwelling based on the R-3B district.
- A PUD application with potential flexibility for lot area, height, import/export of material (if needed), etc. with a development agreement.
- A plat (if needed).

Some of the above applications may be submitted together.

ATTACHMENTS

Location Map

Applicant's Narrative

Location Map 24250 and 24320 Smithtown Road





City of Shorewood Council Meeting Item

#7C

MEETING TYPE
Regular Meeting

Title / Subject: Joint Review of Cooperative Housing Project
Applicant: Lifestyle Communities
Location: 24250 and 24320 Smithtown Road

Meeting Date: August 22, 2022
Prepared by: Marie Darling, Planning Director
Reviewed by: Interim City Administrator Shukle and City Attorney Jared Shepherd
Tonka Bay City Administrator Dan Tolsma

Attachments: May 9, 2022 Planning Memorandum
Applicants' Narrative

Background:

See May 9, 2022 Planning Memorandum for detailed background on this item.

Request for Direction:

The property owner seeks to move forward on this proposed development. Because the site straddles the city boundary with Tonka Bay, both cities would need to be involved. Staff is requesting direction from Council to determine how much involvement by each city they prefer.

Staff have flushed out three options with the City of Tonka Bay Staff for the Councils to review and provide direction, two would require a joint powers agreement:

Option 1 (Boundary Alteration): Move the city boundary and consolidate the two parcels in one of the two cities with a Joint Powers Agreement to determine how the two cities will share the costs and benefits of the project and which city would have zoning and permitting authority in perpetuity.

Advantages: No issues with a property line/city boundary running through the building. Zoning and permitting would be reviewed through only one city.

Disadvantages: Comprehensive Plan amendments for both cities for both land use and the alteration of the boundaries. Additional process through the state to alter the municipal boundary. If the city that reviews the proposal denies the application, what happens to the parcel? Do the cities adjust the line back to the original location?

Example: The Waters development on land that was originally in Shorewood and Excelsior.

Option 2 (Delegated Authority): Keep the city boundary as is, with a Joint Powers Agreement determining which city has zoning and permitting authority over the project and with a determination on how the two cities would share the costs and benefits of the project.

Mission Statement: *The City of Shorewood is committed to providing residents quality public services, a healthy environment, a variety of attractive amenities, a sustainable tax base, and sound financial management through effective, efficient, and visionary leadership.*

Advantages: Zoning and permitting would be reviewed through one city. Comprehensive Plan Amendments for both cities for the land use changes only.

Disadvantages: Foreseeable issues with dual jurisdiction would need to be resolved through joint powers agreement and title restrictions to prevent sale of either parcel without the other. The city that accepts delegation also accepts responsibility for the decision and by implication the potential liability.

Example: This has not been tried in Shorewood previously and staff would be working with examples in other communities (Golden Valley/St. Louis Park) to see how they accomplished this agreement with their JPA.

Option 3 (Separate Decision-making): Keep the city boundary as is, with each City retaining jurisdiction for zoning and permitting over its own parcel. Costs and benefits would not be shared and each city would serve utilities for their respective parcel. Although this is listed as an option in theory, staff would not recommend this option as it would not provide a functional procedure long-term.

Advantages: No upfront negotiations between the cities.

Disadvantages: Two separate review processes through the two cities with each having its own separate conditions could be overwhelming and create a process where the developer could not succeed. This would also result in Perpetual negotiations between the property owners and the two cities. The site would be a challenge for code enforcement in the future as the codes are different, and some issues would clearly apply to both properties.

Recommendation / Action Requested:

Staff recommend either option 1 or 2.

Providing direction requires a simple majority.

Next Steps and Timelines:

When the City Council provides direction, staff would notify Tonka Bay staff and the applicant of their decision.



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ITEM 4

To: Dan Tolsma, City Administrator

From: Jason M. Hill, City Attorney
Joseph L. Sathe, Assistant City Attorney

Date: July 14, 2022

Re: Regulation of THC Products

This memorandum provides information on ways the City can potentially regulate the newly legalized products that contain up to 5mg of tetrahydrocannabinol (“THC”) derived from certified hemp. This memo does not address local government enforcement of the requirements of the law legalizing these products, Minnesota Statutes, section 151.72 (the “Act”).

I. BACKGROUND

Beginning on July 1, 2022, it became legal to sell certain products containing delta-9 THC (“THC Products”) in Minnesota. The Act allows THC Products to be sold if certain requirements are met including that there are not more than 5mg of THC per dose and 50mg of THC per container; the purchaser is at least 21 years old; and the products are not marketed towards children.

The Minnesota Board of Pharmacy (“Board”) is the state agency with oversight of THC Products.

There is currently no state-level license required in order to sell THC Products and the Board does not test or approve products prior to their sale.¹

II. REGULATIONS

The Act neither explicitly allows nor explicitly prohibits local regulation of the sale of THC Products. Therefore, to determine whether a municipality has the ability to regulate the sale of THC Products, the municipality must have the authority to regulate the sale of THC products and must not be preempted by state law.

A municipality could rely upon its general police and general welfare power to regulate the sale of THC products. The two most applicable avenues through which the municipality can regulate the sale of THC Products is through its licensing or zoning authority.

¹ [Hemp Derived Products Frequently Asked Questions](#), page 5

A. The Act Does Not Expressly Preempt Local Regulation

The Act does not expressly require a city to allow the sale of THC Products, nor does it restrict a city's ability to regulate such facilities through additional zoning or licensing requirements. Nevertheless, a city cannot enact a local regulation if it conflicts with state law or if the state law fully occupies a particular field of legislation so that there is no room for local regulation.

Any regulations would need to be drafted to not create an irreconcilable conflict with state law, be merely additional and complementary or in aid and furtherance of the Act and meet specific requirements of either licensing or zoning regulations.

Two recent Minnesota Supreme Court cases indicate a deference for local ordinances that provide greater protections than state statutes.² Additional licensing and zoning requirements adopted for the purpose of protecting the general welfare and ensuring the sale of THC Products are being conducted in accordance with the Act, including that THC Products are not being sold to individuals under the age of 21, for example, would be considered greater protections than those included in the Act.

B. Licensing

A city may license a business or activity, either (1) when expressly allowed to do so by state statute; or (2) when implied by statute, such as when a license is necessary for a city to perform its general statutory powers (like preventing public nuisance or protecting the general welfare).

Since there is no express authority for a city to license a business selling THC Products the City must look to an implied authority. The authority granted under the "general welfare" clause allows a city to provide "for the suppression of vice and immorality, the prevention of crime, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by such ordinances not inconsistent with the Constitution and laws of the United States or of this state as it shall deem expedient."³

The Act contains very little regulatory structure, consumer protection, or general control of the sale of THC Products. The City very clearly has an interest in ensuring the THC Products are being sold in the manner provided for in the Act, and individual cities may each want to study the impact of the sale of THC Products in each community and determine what additional regulation is warranted to protect the general welfare of the City.

A licensing ordinance must be reasonable in its terms and conditions and cannot place unnecessary, unreasonable, or oppressive restrictions that conflict with the state or federal constitution. A licensing ordinance could include application requirements such as:

- terms;

² See *Minnesota Chamber of Commerce v. City of Minneapolis*, 944 N.W.2d 441 (Minn. 2020); and *Graco v City of Minneapolis*, 937 N.W.2d. 756 (Minn. 2020).

³ Minn. Stat. 412.221, subd. 32

- qualifications;
- bond and insurance requirements;
- hours of operation;
- reasons for denial, including no criminal conviction or license revocations related to controlled substances;
- revocation and suspension of license;
- transferability; license fees;
- limiting the number of licenses;
- Requiring licensees to ID purchasers;
- Requiring THC products to be sold from behind a counter; and
- Identify how the city will conduct compliance checks.

C. Zoning

Zoning controls generally relate to uses of property and not the sale of individual products, so using the City’s zoning authority alone may not be an effective way to regulate the sale of THC Products. However, cities have used a combination of zoning and licensing provisions to regulate the sale of THC Products.

i. Outright Prohibition

A city could probably prohibit the sale of THC Product sales if it defines such sale as a “use” in its zoning ordinance and has legitimate planning and zoning grounds for the ban. There is no “right” to sell THC Products and cities have broad discretion in establishing zoning requirements. An outright ban would likely need to be combined with other general business regulations (e.g., licensing) since the sale of THC Products is currently not a primary use of land but can be sold at any retail store.

ii. Expressly Authorize THC Product Sales

The City could expressly authorize THC Product sales at dedicated locations, establish the sale of THC Products as a dedicated permitted or conditional use, and consider imposing additional regulations on those operations that it does authorize.

Some examples of additional regulations might include:

- Restricting such uses to certain zoning districts;
- Capping the total number of THC-related land uses within the City or within certain zoning districts;
- Requiring that THC-related facilities not produce noxious odors;
- Requiring a minimum distance from certain land uses in addition to schools, such as child-care facilities; places of worship and other religious institutions; health care practitioners. and chemical dependency, alcohol and drug treatment facilities;
- Requiring a minimum distance between other THC-related uses;
- Requiring a minimum distance from liquor stores and bars; and

- Additional restrictions on signage and advertising.

Instead of including these traditional zoning provisions in the zoning code, the City could consider including similar provisions as part of a licensing regulatory scheme (e.g., only issue a license to an THC Product business that is located within particular zoning districts). This approach would be more appropriate if the City chooses not to require THC Product sales at dedicated business locations.

V. MORATORIUM/INTERIM ORDINANCE

A city may establish a moratorium on the sale of THC Products.

Cities have the authority to place moratoria on zoning matters for up to one year under Minnesota Statutes, section 462.355, subd. 4, and cities have also relied on the city's police power to enact moratoria on other issues regulated by the city so long as a moratorium is limited in duration and enacted in good faith and without discrimination.⁴

Before adopting a moratorium, a city will first decide that it does want to regulate the sale of THC Products in some manner. A moratorium would be for the purpose of studying licensing or zoning regulations related to the sale of THC Products and prohibiting such sales in the city until the study is completed.

IV. CONCLUSIONS

The state law legalizing the sale of THC Products includes minimal regulation and cities are left to establish individual regulations that can be tailored to the local needs of the community. Cities can rely on implied authority granted through its general welfare and police powers to regulate the sale of THC Products even though the Act does not contain express authority for such regulation.

The City could choose to use its licensing and/or zoning authority to restrict the sale of THC Products, and/or could issue a moratorium on the sale of THC Products to study the impacts of THC Product sales and develop appropriate restrictions.

A comprehensive approach to regulating THC Products could include both licensing and zoning aspects to ensure sales are in compliance with state law and any locally established regulations as well as regulating where within the City products can be sold.

It is also important to keep in mind that the Minnesota Legislature may act, either during a special or regular session, to regulate the sale of THC Products which could impact how the City is able to regulate THC products.

⁴ *Almquist v. Town of Marshan*, 245 N.W.2d 819 (Minn. 1976).

ITEM 5

SOUTHWEST ASSESSING
P. O. Box 47841
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Phone: 763-473-3978
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Assessor84@comcast.net

TO: Tonka Bay Mayor and City Council Members
Dan Tolsma-City Administrator

FROM: Rolf Erickson, Tonka Bay City Assessor

DATE: July 7, 2022

RE: 2023 Assessment Proposal: City of Tonka Bay

Current Monthly Assessng Fee	\$1,838
ProposedMonthly Assessing Fee	\$2,058
Current Yearly Assessing Fee	\$22,056
Proposed Yearly Assessing Fee (for year one of contract)	\$24,696
Current Prorated Expenses cap (maximum per year)	\$2,249
Proposed Prorated Expenses cap (maximum per year)	\$2,249

Term of Contract: 1 year, September 1, 2022-August 30, 2023.

Our cost of doing business has been increasing dramatically with the increase of fuel prices, insurance, supplies and office rental expenses. With the large increases in Market Values, we have seen a large increase in taxpayer calls for property reviews.

Please present this at the next possible council meeting. If it is approved, please prepare the contract as you have in the past.