



STINSON
MORRISON
HECKER LLP

Neil R. Shortlidge
(913) 344-6715
nshortlidge@stinsonmoheck.com
www.stinsonmoheck.com

9 Corporate Woods, Suite 450
9200 Indian Creek Parkway
Overland Park, KS 66210-2008

Tel (913) 451-8600
Fax (888) 234-3881

October 26, 2005

Mr. David L. Corliss
Assistant City Manager
and Director of Legal Services
City of Lawrence
6 East Sixth Street
P.O. Box 708
Lawrence, Kansas 66044

RECEIVED

OCT 28 2005

**CITY MANAGERS OFFICE
LAWRENCE, KS**

Re: October 24, 2005 Letter from Jane Eldredge

Dear Mr. Corliss:

You have asked that we respond to the letter from Jane Eldredge dated October 24, 2005 regarding the zoning and subdivision amendments that were requested by the Kansas Department of Transportation. Joe Lauber of our office drafted the proposed amendments in coordination with your office, the Planning Department and KDOT, so we are familiar with them and the objectives to be accomplished through the amendments.

Ms. Eldredge requests that the City initiate variance applications for the four final development plans for Westgate Place No. 3, Lots 1, 2, 3 and 4. Ms. Eldredge does not identify a code provision that will be violated, thereby necessitating the need for variances. In our judgment, variances will not be necessary if the proposed amendments are adopted.

Ms. Eldredge argues that the proposed changes to Article 12, Chapter 21, are in direct conflict with the state enabling legislation "because they attempt to usurp the BZA's sole authority" to grant exceptions to the setback requirements. We submit that Ms. Eldredge misreads the applicable statute. It should first be noted that K.S.A. 12-765 – which is an example of what is known in planning circles as an "official map" statute – is permissive in nature. Cities and counties are not required to establish setbacks by an official map. For those that wish to do so, however, there are two aspects to the official map statute. First, the governing body legislatively establishes the setback requirements and the circumstances in which they will apply. Second, the Board of Zoning Appeals is given the authority to administratively grant modifications in "specific cases" of hardship.

The proposed amendments are an example of the governing body legislatively determining that reduction in the setbacks resulting from governmental takings will

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not result in a violation of the setback requirements. These amendments are of general application and do not apply to "specific cases." In sum, the proposed amendments do not conflict with K.S.A. 12-765.

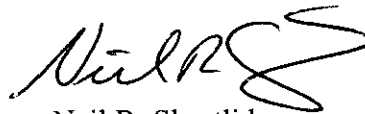
It is also important to note that K.S.A. 12-765 contains a limitation on the application of setbacks created pursuant to this statute which appears to be germane to its application against existing property and uses. The last sentence of the statute provides: "[t]he powers of this section shall not be exercised so as to deprive the owner of any existing property or of its use or maintenance for the purpose to which such property is then lawfully devoted." This provision would prohibit the enforcement of a K.S.A. 12-765 setback line against an existing property owner if such action would be interpreted as a deprivation.

Finally, Ms. Eldredge requests that the City repeal Article 21, Chapter 12. The determination to establish the setback requirements along 6th Street is a policy determination. If the rationale for establishing the setback is no longer valid, then perhaps repeal of the Article is appropriate, but there certainly is no legal necessity to do so.

Please let me know if any of our comments require clarification.

Sincerely,

STINSON MORRISON HECKER LLP

A handwritten signature in black ink, appearing to read "Neil R. Shortlidge", with a stylized flourish at the end.

Neil R. Shortlidge

NRS:mdp