

## **Bellevue Board of Adjustment Meeting**

Wednesday, August 19, 2020 7:00 PM

Bellevue City Hall

1500 Wall Street

Bellevue, NE 68005

### 1. CALL TO ORDER:

a. Roll Call

b. The Open Meetings Act location

c. Approve Minutes of October 21, 2019 Regular Meeting

d. Accept into the record all staff reports, attachments, memos, and handouts regarding each application.

### 2. PUBLIC HEARINGS:

a. Request for an appeal of staff's requirement to sign a non-conversion agreement in order to obtain an electrical permit for a garage located in the floodway on Tax Lot 12, located in the Southwest ¼ of Section 8, T13E, 14N, of the 6th P.M., Sarpy County, Nebraska. Applicant: Jacob Benak. Location: 13701 Elbow Bend Road. Case #: BOA-2008-02. **Request to lay over until the September 23, 2020 BOA meeting by Colin Bernard on behalf of the applicant.**

b. Request for an appeal of staff's interpretation of the Bellevue Zoning Development Agreement for Lots 1 through 3, Block 55, Bellevue, located in the Southeast ¼ of Section 36, T14N, R13E of the 6th P.M., Sarpy County, Nebraska. Applicant: Main Street Properties, LLC. Location: 2221 Main Street. Case #: BOA-2008-01.

### 3. CURRENT BUSINESS

4. ADJOURNMENT 7:58 p.m.

Bellevue Board of Adjustment, October 21, 2019, Page 1

The Bellevue Board of Adjustment held a regular meeting on Monday, October 21, 2019 at 7:00 p.m. in the Bellevue City Council Chambers. Upon roll call, present were Board Members Petersen, Anderson, Hawkins, and Cain. Also present was Tammi Palm, Land Use Planner.

Notice of this meeting was given in advance thereof by publication in the Bellevue Leader and posting in two public places, and was also given to the Chairperson and members prior to the meeting. These minutes were written and available for public inspection within ten days of the meeting.

Acting Chair Anderson announced a copy of the Open Meetings Act was posted in the entry to the City Council Chambers.

Motion was made by Hawkins, seconded by Petersen, to approve the minutes of the April 17, 2019 regular meeting as provided. Upon roll call, all present voted yes. Motion carried unanimously.

MOTION was made by Hawkins, seconded by Cain, to accept into record all staff reports, attachments, memos, and handouts regarding each application. Upon roll call, all present voted yes. Motion carried unanimously.

PUBLIC HEARING was held on a request for a variance of Section 5.10.05, City of Bellevue Zoning Ordinance, regarding the minimum 35 foot front yard setback for Lot 237, Willow Springs. The applicant is requesting the minimum 35 foot front yard setback be reduced to 25 feet for the purpose of a third car garage addition. Applicant: Charles Crinklaw. Location: 10609 South 18th Circle. Case #: BOA-1909-02.

Acting Chair Anderson explained the public hearing procedures.

Charles Crinklaw, 10609 South 18<sup>th</sup> Circle, Bellevue, NE 68123 was present to speak. Crinklaw said his house was purchased in 1999 with the intent to retire there. At the time of purchase (cul-de-sac location, large lot) the realtor gave the impression adding a third garage would not be an issue. He said, a few years ago they realized the setbacks would cause an issue and at that time they began looking into requesting a variance to get the 25 foot front yard setback which is why they are before the Board of Adjustment. He said a lot of the houses in the neighborhood have the same RS-72 zoning and have a 25 foot or less front yard setback. He will not infringe on the right of way in the front cul-de-sac area. He has a concrete pad on the side of the existing garage that encompasses the area where he wants to place the garage. Crinklaw said the concrete pad extends up to the deck of the existing pool. Crinklaw stated he is trying to improve his property. He said they built their house in 1999 with the intent to make Bellevue their home. As recently as two weeks ago, they have continued improvements to the property. Crinklaw said he has a classic car and he wishes to remove it from the elements and house it in a garage. Anderson asked Crinklaw if he would address the four statutory variance findings. Crinklaw said his civil engineer would address this.

Joe Foley, Civil Engineer, 8790 F Street, Suite 108, Omaha, NE 68127 was present to speak on this request. Foley stated he would address the four items in Section 19-910 of the Nebraska State Statutes which are needed for the Board of Adjustment to grant a variance. He addressed item "A" regarding undue hardship caused by the zoning regulations. Foley pointed out very few lots are like the applicant's front lot line which has a sharp curve. He said they are not asking to place the proposed garage any closer to the street than the existing garage. Foley stated the curve of the applicant's front yard makes it almost impossible to have an addition. He said the house sits skewed on a peculiar or odd lot. Foley addressed item "B" regarding a hardship not generally shared by other properties in the same zoning district and vicinity. He stated the applicant's lot is one of two lots in the area with the same curvature in the front. He said in the case of both lots there may be enough room on the side yard to add a garage, but it has the same curve on the front which makes it unique. Foley stated the other lot is located in Willow Springs at the south end of 18<sup>th</sup> Street. Foley addressed item "C", the authorization of such variance will not be of substantial detriment to the neighbors. He said neighboring homeowners support the addition and copies of their letters of support were provided. The house is visually hidden and does not protrude into the street. He stated approximately 50% of the homes in Willow Springs have less than a 35 foot setback; from 25 foot to as little as 12 to 15 foot front yard setbacks. Lastly, Foley addressed item "D" which

references demonstrable and exceptional hardships distinguished from variations for purposes of convenience, profit or caprice. Foley said the applicant intended to add the garage once his finances allowed. He said the applicant has continually improved the property over the years and the garage addition will be the last big step. Foley stated the garage will be an investment in the property, the neighborhood, and the City. Foley said the 35 foot setback makes it difficult to fit the garage addition on the property.

Nolan Ausan, Warrior Home Solutions, 8704 South 169<sup>th</sup> Street, Omaha, NE 68136 was present to speak in favor of the request. Ausan stated he is trying to help the homeowner build something that will look like the existing house and will appear to have always been there.

There was no one else present to speak in favor of or in opposition to this request. Subsequently, Anderson closed the public hearing.

Peterson asked Palm when the initial build began and when building ended in the Willow Springs neighborhood. Palm said she was unsure of the exact dates but stated there are several different developments within the area; The Town, an older area, and Willow Springs which is newer. Palm stated the age of the homes may range from 1980-1990. Crinklaw stated most homes on South 17<sup>th</sup> Street and South 18<sup>th</sup> Street were still in the process of being built when their home was purchased. He said they looked at several lots in the neighborhood to find a corner lot large enough to place a garage addition. He stated the majority of the lots on 17<sup>th</sup> Street and Yorktown were built from 1999-2002. Cain asked the applicant if the letters he presented in favor of his request were from neighboring residents within the cul-de-sac. Crinklaw confirmed the letters were written by neighbors in the cul-de-sac and he said they were all supportive and in favor of his request. He stated neighbors were provided a rendering of his proposed garage addition and they believe it will be a great addition to the neighborhood.

Peterson asked Palm if the zoning regarding setbacks changed over time. Palm stated the subdivision has RS-72 and RS-84 zoning areas. She referred to an older area on the GIS map zoned RS-72-PS with a Planned Subdivision Overlay where some of the lots have a 25 foot front yard setback. She stated the lots were built with a shorter front yard setback to provide additional buffer from the freeway. The lots have more of a back yard verses a front yard. The Town, an older section of the area consists of lots that are set closer to the property line even though they have a 35 foot front yard setback. Palm stated the area might have been preliminary platted under Sarpy County and final platted under the City of Bellevue. Palm said she checked City Council minutes and they note the final plat was approved but she was unable to find record of the preliminary plat. She suggested the preliminary plat might have been done under the County with a different set of regulations. Peterson asked Palm when the homes in this area were built. She checked the dates from the County Assessors data on some of the properties and replied mid-1980's.

Crinklaw stated the opposing street, being South 17<sup>th</sup>, was built during the same time as his property and all were zoned RS-72. He stated the blocks surrounding his house all have property that set further forward with the exception of the first part of South 17<sup>th</sup> which has a 35 foot front yard setback. Palm stated there are two different zonings in this area, RS-72 and RS-72-PS.

Peterson asked Crinklaw if he could build a garage on his property if it were moved back to meet the 35 foot setback. Crinklaw stated he would lose 8 ½ feet if he moved it back and the garage would not be large enough to store a vehicle. Peterson asked if the pool was a reason for his inability to move the garage back further to get the additional 8 ½ feet needed. Crinklaw stated he plans to go up to the edge of the pool but he also has a fireplace and must remain a certain distance away from it. Hawkins asked the applicant if the fireplace was really the issue and Crinklaw said yes. Hawkins asked if he was aware of the restrictions at the time he installed the pool. Hawkins asked Crinklaw to point out the exact area of the existing pool and fireplace looking at the drawings provided by the applicant. The applicant confirmed the area of the fireplace and stated he had to stay at least four feet from the exhaust of the fireplace. Peterson asked if it is gas or wood burning, Crinklaw stated gas. Peterson asked Crinklaw if he could make a flue and come up out of the new garage. Crinklaw said he would have to remove the pool to build the garage back far enough to get past the end of the fireplace. He noted the pool as a contributing factor to his lack of space but expressed concern with putting a heat source in the middle of the garage.

Anderson stated approval of a variance constitutes a statutory hardship which must be present. He said the statutory hardship in this case would have to be a topographical issue. Anderson stated the statute uses the words "exceptional, peculiar, unusual, narrowness, and steepness". He said aside from having a different shaped lot, these do not apply to the applicant. Anderson stated Crinklaw has a difficult situation, a corner lot with a cul-de-sac, however it is not so unusual that they have not run across it before. He stated the applicant has a bit of a different slope but it is not something exceptional or so unusual that it could not be found in a normal neighborhood. Anderson stated, in his opinion, the lot does not qualify to be so unusual that it would warrant granting a variance. He said if everyone in the cul-de-sac moved in with a 25 foot setback to add on to their house, the entire neighborhood would have a different look. Anderson said the 35 foot front yard setback and side yard separation is needed for firefighting capacity, airflow, and appearance; to avoid a tunnel vision. Anderson said that last question asks if the applicant is requesting this for a reason of extreme hardship or is it for convenience. Anderson stated it is for convenience. Crinklaw stated his request is being made to improve his property and increase the property value, not just for profit. Anderson stated the reason is convenience, profit, or caprice. Anderson told the applicant his project is not being judged as good, bad, or indifferent; they look at the neighborhood and the topographic issues surrounding it. Crinklaw stated RS-72 has multiple setbacks within the four block radius and he is not asking for anything more than what the Willow Springs neighbor nine houses from his property has. Peterson said the area was platted that way. Crinklaw said Celebrity homes built at the same time as his, now in a Planned Subdivision and have a 25 foot front yard setback. Peterson stated the homes the applicant referenced were platted with the 25 foot front yard setback. Crinklaw said Palm could not find out when the houses in the Planned Subdivision were built. Palm clarified she was referring to homes in The Town Subdivision; Anderson stated the building timeframe is a moot point because the Board of Adjustment does not have the power to change something without a statutory reason.

Anderson explained the Board makes the motion in the affirmative for the purposes of being clear and consistent.

MOTION made by Peterson, seconded by Cain, to APPROVE a request for a variance of Section 5.10.05, City of Bellevue Zoning Ordinance, regarding the minimum 35 foot front yard setback for Lot 237, Willow Springs. Variance to allow the minimum 35 foot front yard setback be reduced to 25 feet for the purpose of a third car garage addition. Applicant: Charles Crinklaw. Location: 10609 South 18th Circle. Case #: BOA-1909-02.

Anderson clarified the motion.

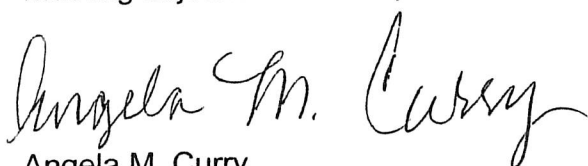
Upon roll call, Peterson, Anderson and Hawkins voted no. Cain voted yes. Motion failed.

Anderson explained the applicant had 15 days in which to appeal the Board's decision to District Court.

Motion made by Peterson, seconded by Cain, to elect Anderson as Chair and Conte as Vice Chair. Upon roll call, all present voted yes. Motion carried unanimously.

Motion made by Peterson, seconded by Hawkins, to approve the 2020 Uniform Review Schedule as presented. Upon roll call, all present voted yes. Motion carried unanimously.

Meeting adjourned at 7:44 p.m.



Angela M. Curry  
Planning Assistant

**CITY OF BELLEVUE  
BOARD OF ADJUSTMENT REPORT**

**CASE NUMBER:** BOA-2008-02

**FOR HEARING OF:**

**REPORT #1:** August 19, 2020

**I. GENERAL INFORMATION**

**A. APPLICANT:**

Jacob Benak  
306 Frontier Drive  
Papillion, NE 68046

**B. PROPERTY OWNER:**

Jacob Benak  
306 Frontier Drive  
Papillion, NE 68046

**C. LOCATION:**

13701 Elbow Bend Road

**D. LEGAL DESCRIPTION:**

Tax Lot 12, located in the Southwest ¼ of Section 8, T13N, R14E, of the 6<sup>th</sup> P.M.,  
Sarpy County, Nebraska

**E. REQUESTED ACTION:**

An appeal of staff's requirement to sign a non-conversion agreement in order to  
obtain an electrical permit for a garage located in the floodway.

**F. EXISTING ZONING AND LAND USE:**

AG (Agricultural), Vacant/Garage

**G. PURPOSE OF REQUEST:**

The applicant is appealing staff's requirement to sign a non-conversion agreement in order to obtain an electrical permit for a garage located in the floodway.

**H. SIZE OF SITE:**

The site is approximately 2.25 acres.

**II. BACKGROUND INFORMATION**

**A. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

- 1. North:** Vacant/Agricultural, AG
- 2. East:** Missouri River
- 3. South:** Vacant/AG
- 4. West:** Vacant, AG

**B. GENERAL COMMENTS:**

1. The applicant has a garage structure located on his property at 13701 Elbow Bend Road. The property previously contained a single family residence, which was demolished after the 2011 Missouri River flooding. After the 2011 flooding, the property owner was advised he could no longer use the property for residential purposes. The existing garage has remained through the 2011 and 2019 floods.

This property is located in the floodway.

2. Section 5.30.07, Zoning Ordinance, specifically prohibits new structures for human habitation in the floodway overlay district.

3. On July 19, 2019, the applicant applied for an electrical temporary pole through the Permits Department. This pole was inspected and passed inspection on July 25, 2019. The purpose of the electrical temporary pole is for electrical to be plugged into at the pole.

4. On October 25, 2019, Mike Christensen, Chief Building Official (CBO), and Tammi Palm, Planning Manager went to the applicant's property as part of routine post-flood inspections. During the inspection the CBO explained the seal of the electrical meter was cut for the purposes of gaining access to the inside of the meter socket. This had been done in order to tie in the circuit to the garage. The applicant had installed an electrical panel in the garage and wired this structure. The applicant's garage's electrical was not permitted and has never been inspected.

5. After the October 25, 2019 inspection, staff requested the requirement of a signed non-conversion agreement prior to the issuance of another electrical temporary pole permit. The purpose of the non-conversion agreement is to prohibit the applicant/owner from converting the garage into a habitable residence, which is prohibited by Section 5.30.07 of the Zoning Ordinance.

6. The non-conversion agreement is not presently a requirement of the zoning regulations. The State Floodplain Administrator at the Department of Natural Resources recommended the utilization of the non-conversion agreement in this type of situation in which the floodway property contained a garage structure but not a residence.

7. On July 27, 2020, the applicant applied for an electrical temporary pole permit through the Permits Department and was denied based upon the applicant's refusal to sign the requested non-conversion agreement.


8. The applicant is appealing staff's requirement to sign a non-conversion agreement in order to obtain an electrical permit for a garage located in the floodway.

**III. ATTACHMENTS TO REPORT**

1. Vicinity map
2. Zoning map
3. Exhibit "A", and Exhibits 1 and 2 received from the applicant, dated August 5, 2020
4. Pictures from staff's October 25, 2019 inspection

**VII. COPIES OF REPORT TO:**

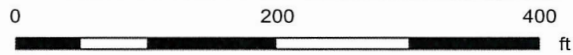
1. Jacob Benak
2. Public Upon Request

  
Prepared by:

  
Planning Manager                      Date of Report



Sarpy County | Esri, Inc. | City of Naperville, Illinois | Esri, Inc. | Sarpy County, Nebraska | Sarpy County, NE



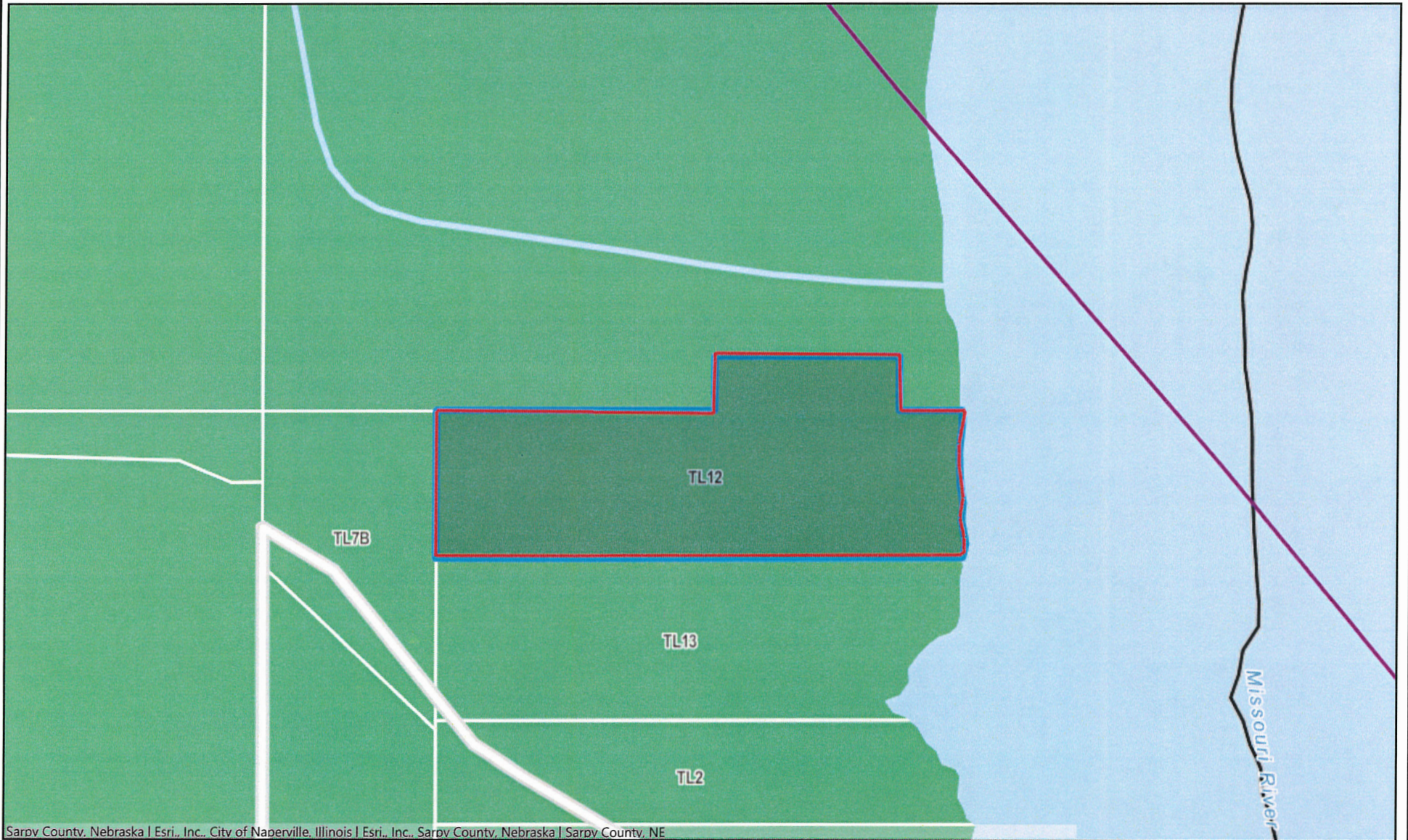
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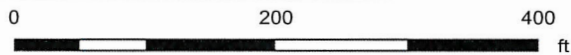


Notes



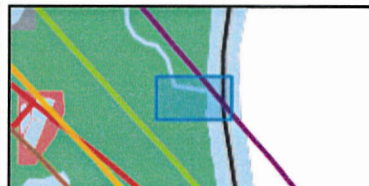


Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska | Sarpy County, NE



Map Scale 1: 2257

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Notes



Exhibit "A"

On Monday, July 27, 2020, Owner submitted an application for an electrical permit for a temporary power pole to the Permits and Inspections Office ("Permits Office"). A true and correct copy of the application, along with the associated fee, is attached hereto as Exhibit "1". A temporary power pole currently exists on the property and a permit had previously been issued to the prior property owner. The Permits Office refused to accept and/or approve the application insisting that it would only accept the application when it was accompanied by a signed Non-Conversion Agreement. A true and correct copy of the Non-Conversion Agreement that the Permits Office is insisting Owner sign is attached hereto as Exhibit "2".

The Permits Office, through the City Attorney, contends the Non-Conversion Agreement is needed because a garage located on the property is considered a new structure for purposes of Section 5.30.07(2) of the Zoning Ordinance. Even if this Section is applicable to the garage, which Owner disputes, the Non-Conversion Agreement goes much further than just prohibiting human habitation. Instead, it includes restrictions found in Section 5.30.05 of the Zoning Ordinance, which section is wholly inapplicable to Owner's application for an electrical permit. Further, the Non-Conversion Agreement, which provides that the City of Bellevue "has a right to inspect inside the premises at any time" is not found in the Zoning Ordinance and would violate Owner's right to privacy and from unreasonable intrusion. Finally, even if Owner would sign the Non-Conversion Agreement, there is nothing therein requiring that the Permits Office issue the requested permit.

The decision of the Permits Office, in consultation with the City Attorney, to demand Owner execute and deliver the Non-Conversion Agreement, which is contrary to the Zoning Ordinance as outlined above, prior to accepting or approving Owner's application for electrical permit is arbitrary, capricious and without basis.

RECEIVED  
AUG 05 2020  
PLANNING DEPT.



CITY OF BELLEVUE, NEBRASKA  
ELECTRICAL PERMIT APPLICATION

402-293-3014 office / 402-293-3055 fax

DIANE J BENAK  
MICHAEL J BENAK  
306 FRONTIER DR  
PAPILLION, NE 68046-3715

7/27/20  
Pay to the Order of City of Bellevue-Permits \$47.00  
County Clerk 4027102

ACCESSbank  
bankingYOUR way  
6712 West Dodge Road  
Omaha, NE 68154  
402-763-8000  
www.accessbank.com

For electric-permit

Alvin Benak

Code No:

Permit No:

1. Job Address: 13701 Elbow Bend Road

2. Legal Description Lot Block Subdivision Name:

Attachments:  Yes  No

3. Owner Name:

Phone: 402-253-5907

Jacob Benak

4. Owner Mailing Address:

City: Papillion NE State: NE Zip: 68046

306 Frontier Drive

5. Company/Contractor Name:

Phone: License #

6. Company/Contractor Address:

City: State: Zip:

7. Class of Work:  New  Addition  Alteration  Repair

8. Describe Work:

Work: Temp pole

Email Address: mdjj97@msn.com

Application/Plans Accepted by:

NOTICE

Separate permits are required for building, electrical, plumbing, heating, ventilation, or air conditioning.

This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of law and ordinances governing this type of work will be complied with whether specified herein or not. The granting of permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

ALL permits require inspections.

Signature of Contractor or Authorized Agent

Date

Signature of Owner (if Owner/Builder)

Date

7-27-2020

QUANTITIES MUST BE FILLED IN

	Total Number	Price Each	Fee
Receptacle/Switch		\$	
Light Fixture		\$	
Ranges, Clothes Dryer, Water Heater		\$	
Garbage Disposal		\$	
Sta. Cook Top		\$	
Dish Washer		\$	
Clothes Washer		\$	
Space Heater		\$	
Sta. Appliance 1HP Max		\$	
Motors: HP			\$
temp pole			\$ 23.50
Misc.			\$
Signs			\$
No Trans			\$
No Lambs			\$
Temp Power Service			\$
Service			\$
0-200 amp			\$
201-1000 amp			\$
Over 1000 amp			\$
Permit Issuing Fee			\$ 23.50
Total Fee			\$ 47.00

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AUG 05 2020  
PLANNING DEPT.

EXHIBIT  
1

**CITY OF BELLEVUE  
NON-CONVERSION AGREEMENT  
FOR CERTAIN STRUCTURES IN THE FLOODPLAIN**

Application has been made to improve and repair an Accessory Structure located at 13701 Elbow Bend Road, Tax Lot 12, Section 8-13-14, in the City of Bellevue, Sarpy County, Nebraska, owned by Jacob Benak, Property Owner, which does not conform to the elevation requirements of the Bellevue City Code. The flood protection elevation at the site is 970.0 ft. feet (NGVD).

In consideration for the granting of the permit for the above structure which does not conform to the requirements of the Bellevue City Code, the Property Owner the undersigned owner of said property hereby agrees to the following:

1. That the enclosed foundation area, if permitted, shall be used solely for parking of vehicles, limited storage, or access to the Accessory Structure and will never be used for human habitation without first becoming fully compliant with the Floodplain Management Regulations in effect at the time of conversion.
2. That all interior walls, ceilings, and floors below the flood protection elevation shall be unfinished or constructed of flood-resistant materials. "Flood-resistant materials" are addressed in the FEMA Technical Bulletin 2 and FEMA guidelines should be used for these items.
3. That mechanical, electrical, or plumbing devices that service the building shall not be installed below the flood protection elevation. The flood protection elevation at this site is 970.0 ft. (NGVD).
4. That the openings in the walls of the enclosed area below the lowest floor shall not be blocked, obstructed, or otherwise altered to reduce the size of the openings or restrict the automatic entry and exit of floodwater.
5. The Accessory Structure is adequately anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
6. That the Accessory Structure may increase the risk to life and property, and may be subject to increased premium rates for flood insurance from the National Flood Insurance Program.
7. That any variation in construction beyond what is permitted shall constitute a violation and be abatable as such.
8. That this Non-Conversion Agreement becomes part of Permit#12-001934 & 2018-2004, and grants the City of Bellevue the ability to inspect and enforce the provisions of this Agreement at any time. That the owner understands that the City of Bellevue, Nebraska,

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AUG 05 2020

PLANNING DEPT.

EXHIBIT

2

has a right to inspect inside the premises at any time to verify compliance with this agreement.

9. That any variation in construction beyond what is permitted shall constitute a violation of this agreement and Bellevue City Code.
10. That this Agreement may be recorded with the deed to the above property so that subsequent owners are made aware of these restrictions.
11. Signing this agreement is the first step for consideration of a permit on this property but in no way guarantees a permit will be issued. Permits may be obtained by going through the proper application process and review. This agreement will be considered in conjunction with any permit application(s) submitted for this property.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
City of Bellevue Planning Manager

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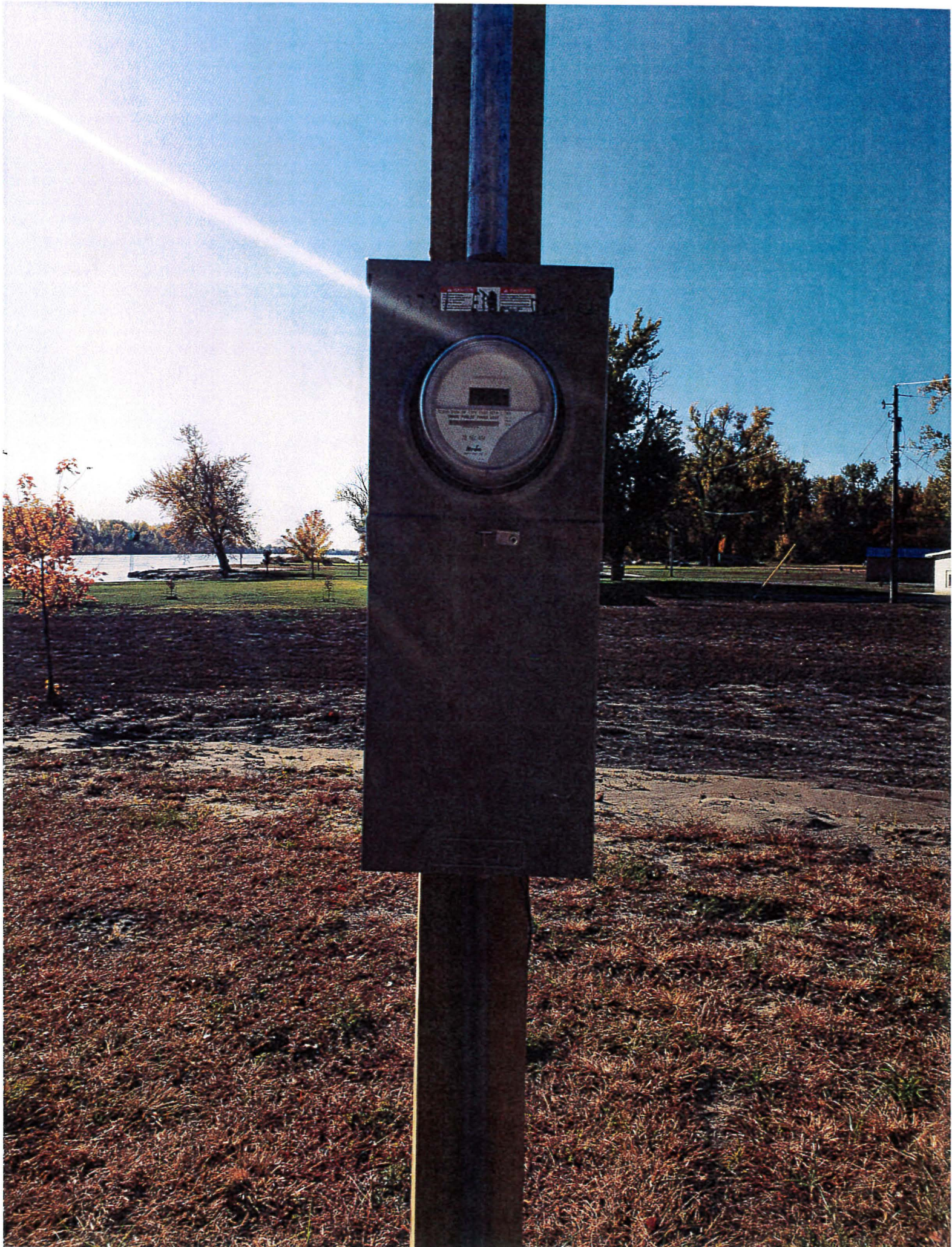
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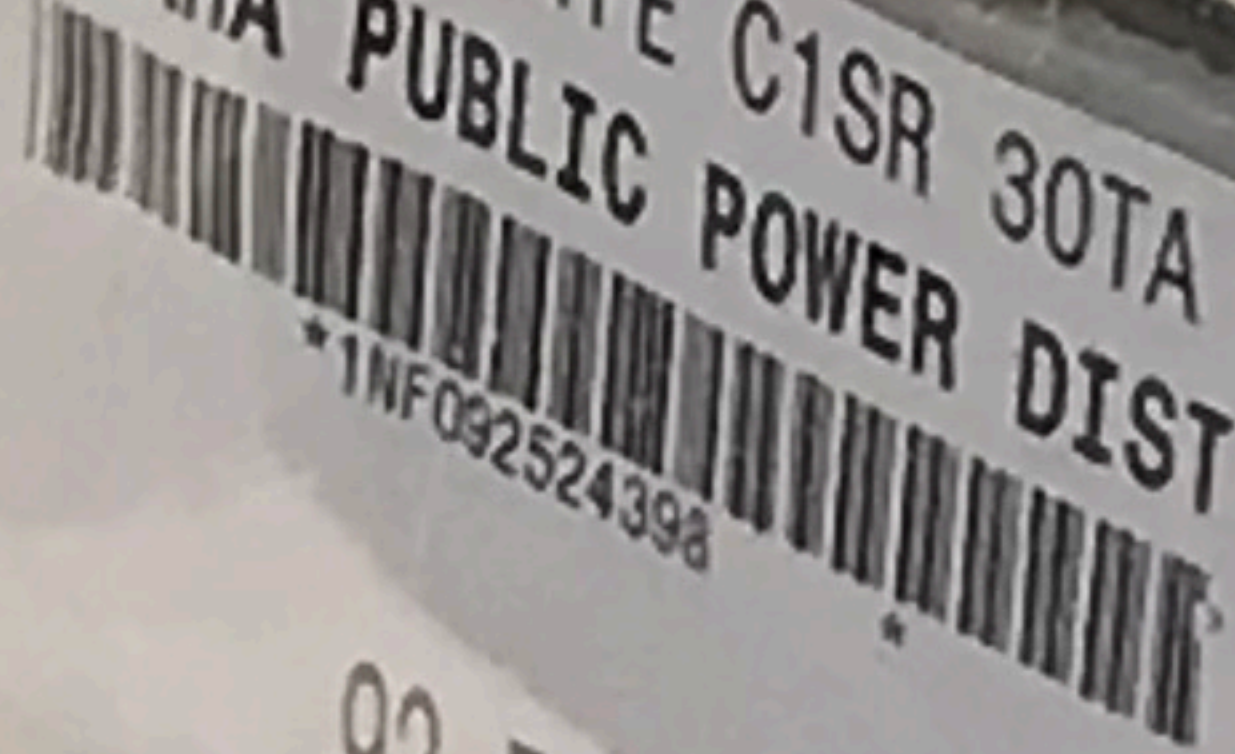




NOISE



CL200 240V 3W TYPE C1SR 30TA 1.0Kh  
OMAHA PUBLIC POWER DIST



92 524 398

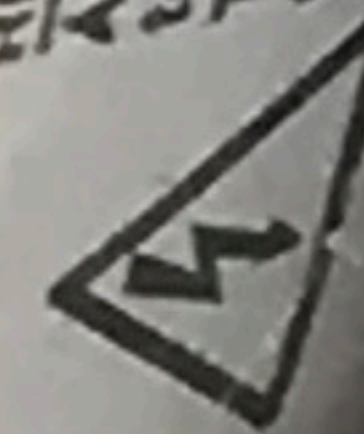
**Ittron**  
WATTHOUR METER  
USA

CA 0.5  
FM2S  
60HZ

THIS DEVICE COMPLIES WITH PART 15 OF THE FCC RULES. OPERATION IS SUBJECT TO THE FOLLOWING TWO CONDITIONS:  
1. THIS DEVICE MAY NOT CAUSE HARMFUL INTERFERENCE AND  
2. IT MUST ACCEPT ANY INTERFERENCE RECEIVED, INCLUDING INTERFERENCE THAT MAY CAUSE IMPROPER OPERATION.  
THIS CLASS B DIGITAL APPARATUS COMPLIES WITH CANADIAN ICES-003 CLASS B BUT CONFORMS TO CLASS A EQUIPMENT NUMBERS OF LA FORME NBS-003 DU CANADA.

**PELIGRO**

Desconectar antes de abrir.  
Contiene Voltajes Peligrosos.  
Riesgo de Electrocuación.  
A desconectar avant  
toute intervention.  
Tension dangereuse/  
Courant dangereux à l'intérieur.  
Risque d'électrocution.



**DANGER**

Disconnect power before opening.  
Contains High Voltage.  
Risk of electrocution.

**HAZARDOUS VOLTAGE WILL CAUSE SEVERE INJURY OR DEATH**  
This device contains high voltage parts. Do not open the cover unless you are qualified to do so. Failure to follow these instructions may result in severe injury or death.  
TENSION PELIGROSA. LA TENSION PELIGROSA PUEDE CAUSAR LES LÈSIONS GRAVES OU LA MORT.  
Este dispositivo contiene partes de alta tensión. No abra la tapa a menos que sea calificado para hacerlo. El no seguir estas instrucciones puede resultar en lesiones graves o la muerte.







**CITY OF BELLEVUE  
BOARD OF ADJUSTMENT REPORT**

**CASE NUMBER:** BOA-2008-01

**FOR HEARING OF:  
REPORT #1:** August 19, 2020

**I. GENERAL INFORMATION**

**A. APPLICANT:**

Main Street Properties, LLC  
c/o Jason Bruno, Sherrets Bruno & Vogt, LLC  
260 Regency Parkway Drive, Suite 200  
Omaha, NE 68114

**B. PROPERTY OWNER:**

Main Street Properties, LLC  
2221 Main Street  
Bellevue, NE 68005

**C. LOCATION:**

2221 Main Street

**D. LEGAL DESCRIPTION:**

Lots 1 through 3, Block 55, City of Bellevue

**E. REQUESTED ACTION:**

An appeal of staff's interpretation of the Bellevue Zoning Development Agreement for Lots 1 through 3, Block 55, City of Bellevue.

**F. EXISTING ZONING AND LAND USE:**

BGM-OTO (Metropolitan General Business District, Olde Towne Overlay),  
Commercial

**G. PURPOSE OF REQUEST:**

The applicant is appealing staff’s interpretation of the Bellevue Zoning Development Agreement dated September 10, 2012, and wishes to maintain his current BGM-OTO zoning.

**H. SIZE OF SITE:**

The site is approximately .52 acres.

**II. BACKGROUND INFORMATION**

**A. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

- 1. North:** Single Family Residential, RD-60-OTO
- 2. East:** Single Family Residential, RG-50-OTO
- 3. South:** Single Family Residential, RG-50-OTO
- 4. West:** Single Family Residential, BGM-OTO

**B. GENERAL COMMENTS:**

1. On September 10, 2012, Pat Shannon (on behalf of Main St. Properties, LLC), entered into a contractual zoning agreement for the property located at 2221 Main Street, and legally described as Lots 1 through 3, Block 55, City of Bellevue. The property was zoned as RG-50-OTO, and the zoning agreement allowed the property to be zoned BGM-OTO as long as specific conditions were met, for the purpose of allowing the continued use of the parcel for business offices, as well as a U-Haul operation for the rental of moving vans, trucks, trailer, and related equipment and the sale of boxes and packing materials.

2. The agreement allowed the BGM-OTO zoning under specific terms and conditions:

Pursuant to the Agreement, Section 6, it states:

Violations and Remedies. In the event that the Owner should violate any of the provisions of this Agreement, then, after providing the Owner with written notice of such violation, and upon the Owner’s failure to cure such violation within ten (10) days after receipt of such notice, or after three (3) violations have occurred regardless if the violations are cured, the City shall have the following rights:

- a. To schedule a hearing to rezone the Parcel to its prior RG-50-OTO zoning and, at such hearing, rezone the Parcel back to RG-50-OTO zoning;

- b. To deny the approval of any additional permits or certificates with respect to the Parcel;
- c. To bring a legal action to prohibit and/or enjoin an unlawful use and/or development from continuing upon the Parcel; and
- d. To utilize any and all other remedies provided to the City by law.

Pursuant to the Agreement, Section 4, it states:

Restrictions on the Project. No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel north of the north face of the building currently situated on the Parcel.

3. Mr. Shannon of Main St. Properties, LLC, was notified by Code Enforcement on April 14, 2020 there were trucks/trailers parked on the north side of his building and that this was a zoning violation based on the zoning agreement. Mr. Shannon failed to cure the violation and the ten (10) day period to cure the violation lapsed. Mr. Shannon was also notified on October 18, 2012 and September 11, 2014 for a violation of this zoning agreement. With the violations of April 14, 2020, October 18, 2012, September 11, 2014, and another violation and notice dated May 21, 2020, this exceeds the three notices as outlined in the zoning agreement. Subsequently, the city is enforcing and taking the necessary steps to revoke the zoning agreement.

4. Paragraph 9 of the zoning agreement states: Covenant Not to Sue or Defend. Owner hereby represents, warrants and covenants that they shall not sue the City, nor shall they defend any proceeding brought by the City, based upon (a) unlawful taking, (b) inverse condemnation, (c) standing, (d) invalidity or vagueness of this Agreement, or (e) similar claims or defenses, should the City seek to enforce any of its rights granted under this Agreement.

5. Mr. Jason Bruno, on behalf of Main Street Properties, is appealing staff's interpretation of the zoning development agreement and its enforcement of such.

### **III. ATTACHMENTS TO REPORT**

1. Vicinity map
2. Zoning Map
3. Recorded copy of the Bellevue Zoning Development Agreement
4. Copies of the zoning violation paperwork from Code Enforcement on the following dates: October 23, 2012, September 11, 2014, April 16, 2020, and June 19, 2020.
5. Code Enforcement pictures documenting violations
6. Legal documents provided by the applicant

**VII. COPIES OF REPORT TO:**

1. Main Street Properties, LLC, c/o Jason Bruno
2. Public Upon Request

Prepared by: \_\_\_\_\_

*Sammi R Palm* 02/12/2020  
\_\_\_\_\_  
Planning Manager                      Date of Report



Sarpy County | Esri, Inc., City of Naperville, Illinois | Esri, Inc., Sarpy County, Nebraska | Sarpy County, NE

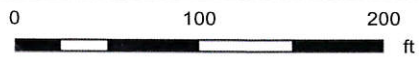
0 40 80 ft  
Map Scale 1: 478  
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.



Notes  
▲



Sarpy County, Sarpy County, Nebraska | Esri, Inc., Sarpy County, Nebraska | Esri, Inc., City of Naperville, Illinois | Sarpy County, NE



Map Scale 1: 1592

This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.



Notes



FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

2012-29687

09/27/2012 9:30:35 AM

*Floyd J. Dowling*

REGISTER OF DEEDS

COUNTER JD C.E. JD  
VERIFY JD D.E. P  
PROOF D  
FEES \$ 31.50  
CHECK# 10608  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_



*AR* Record & Return to:  
Adams & Sullivan, P.C., L.L.O.  
1246 Golden Gate Drive, Suite 1  
Papillion, NE 68046

### BELLEVUE ZONING DEVELOPMENT AGREEMENT

THIS ZONING DEVELOPMENT AGREEMENT (the "Agreement"), made this 10<sup>th</sup> day of September, 2012 (the "Effective Date"), by and between Main St. Properties, LLC (the "Owner") and the City of Bellevue, a Nebraska Municipal Corporation (the "City"). For the purposes of this Agreement, Owner and City may be referred to individually as a "Party" and collectively as the "Parties".

#### RECITALS

A. WHEREAS, the Owner is the owner of the real property legally described as Lots 1-3, Block 55, City of Bellevue, Sarpy County, Nebraska (the "Parcel"), which Parcel is within the corporate limits of the City and within the City's zoning and platting jurisdiction; and

B. WHEREAS, the Owner has requested rezoning of the Parcel by the City from RG-50-OTO to BGM-OTO to allow continued use of the Parcel for business offices and to allow use of the Parcel as a U-Haul operation for the rental of moving vans, trucks, trailers and related equipment and the sale of boxes and packing materials (the "Project"); and

C. WHEREAS, the City is willing to conditionally rezone the Parcel from RG-50-OTO to BGM-OTO so long as the Parcel is not used for any other uses, as defined by the City of Bellevue Zoning Ordinance, allowable under BGM zoning, except as provided herein; and

D. WHEREAS, City has determined that it is in the best interest of the health, safety and welfare of the City and its residents to exercise its legislative prerogative in favor of Owner as contemplated by paragraph B of the recitals conditioned upon Owner establishing for its own benefit and for the mutual benefit of all future owners and occupants of the Parcel, certain

privileges, covenants, terms, conditions, restriction, and rights in, under, over and upon the Parcel together with certain mutually beneficial covenants, privileges, restrictions and obligations with respect to the use, operation and maintenance of the Parcel in addition to those matters currently of record, and notwithstanding any other right, privilege, interest of entitlement whatsoever inuring to Owner or their successors, grantees or transferees as an owner, user or occupant of the Parcel, whether under the laws of the State of Nebraska, the City or otherwise, the same hereby being waived by Owner to the maximum extent permitted by law; and

E. WHEREAS, it is intended that all owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any right, title or interest in the Parcel shall at all times enjoy the benefits of, and shall hold their interests subject to all rights, easements, privileges, covenants, terms, conditions and restrictions set forth in this Agreement, all of which shall run with the land and be binding upon the Parcel and anyone having or acquiring any rights, title or interest in or to any part thereof. All rights, easements, privileges, covenants, terms, conditions and restrictions created hereunder are declared to be in furtherance of a plan to promote and protect the cooperative use, operation and maintenance of the Parcel, the comprehensive development of the City and otherwise for the public health, safety, welfare and best interests of the City and its residents.

NOW THEREFORE, the Parties agree as follows:

1. Authority. The City has the authority to enter into this Agreement pursuant to Neb. Rev. Stat. §19-901 et. seq., as amended, and pursuant to Nebraska law.

2. Zoning. The City shall conditionally rezone the Parcel from RG-50-OTO to BGM-OTO.

3. Initial Use and Development. The Parcel shall be used only for (a) business offices and (b) the Project except as any different use is expressly authorized hereafter by action of the Bellevue City Council

4. Restrictions on the Project. No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel north of the north face of the building currently situated on the Parcel.

5. Zoning Restrictions. The Parcel shall retain conditional BGM-OTO zoning for the term of this Agreement if and only if the following conditions are satisfied:

(a) The Parcel shall be used for the Project and for business offices and for no other use or purpose.

(b) The City shall file this Agreement and any amendments thereto, including all exhibits, in the Sarpy County office specified for recording zoning ordinances. The City shall record this Agreement and any amendments thereto, including all exhibits, in the Office of the

Register of Deeds of Sarpy County, Nebraska, against the Parcel so as to notify all persons, including future owners of the Parcel, as to the use and development restrictions placed upon the Parcel; and

(c) The Developer shall otherwise comply with the requirements for BGM-OTO.

(d) At such time as none of the lots presently zoned for residential uses in Blocks 55, 56 and 106, City of Bellevue, are zoned for residential uses, the limitations and restrictions set forth in this agreement shall be of no further force and effect, with the Parcel thereafter being usable for any purpose permitted under BGM zoning.

6. Violations and Remedies. In the event that the Owner should violate any of the provisions of this Agreement, then, after providing the Owner with written notice of such violation, and upon the Owner's failure to cure such violation within ten (10) days after receipt of such notice, or, after three (3) violations have occurred regardless if the violations are cured, the City shall have the following rights:

(a) To schedule a hearing to rezone the Parcel to its prior RG-50-OTO zoning and, at such hearing, rezone the Parcel back to RG-50-OTO zoning;

(b) To deny the approval of any additional permits or certificates with respect to the Parcel;

(c) To bring a legal action to prohibit and/or enjoin an unlawful use and/or development from continuing upon the Parcel; and

(d) To utilize any and all other remedies provided to the City by law.

7. Acknowledgement of Remedies of City. Owner acknowledges that failure to comply with the terms of this Agreement shall cause damage to the City which may not be fully redressed by monetary damages and that the remedies provided to the City in this Agreement constitute reasonable liquidated damages clauses under Nebraska law.

8. Jurisdiction and Venue. Should the City bring any legal action pursuant to this Agreement, Owner, including their officers, directors and employees, shall consent to personal jurisdiction in the State of Nebraska and shall consent to venue in Sarpy County, Nebraska.

9. Covenant Not to Sue or Defend. Owner hereby represents, warrants and covenants that they shall not sue the City, nor shall they defend any proceeding brought by City, based upon (a) unlawful taking, (b) inverse condemnation, (c) standing, (d) invalidity or vagueness of this Agreement, or (e) similar claims or defenses, should the City seek to enforce any of its rights granted under this Agreement.

C

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit and burden of the Parties hereto, and their respective successors and assigns. No right granted herein may be severed from the entirety of this Agreement except as expressly permitted by this Agreement, or by the written consent of the then interested Parties.

11. Nondiscrimination. With respect to development of the Project, neither the Developer nor the Owner shall discriminate against any persons on account of race, national origin, sex, age, political or religious affiliations, or disability in violation of federal or state laws or local ordinances.

12. Choice of Laws. The laws of the State of Nebraska shall govern as to the interpretation, validity and effect of this Agreement.

13. Complete Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter of this Agreement.

14. Good Faith. Every representation, covenant, warranty or other obligation within this Agreement shall carry with it an obligation of good faith in its performance or enforcement.

15. Warranty. Owner represents, covenants and warrants that the making and execution of this Agreement, and all other documents and instruments required or related hereunder, have been fully authorized by the necessary corporate and company action of Owner and are valid, binding and enforceable obligations of the Owner in accordance with their respective terms.

16. Modification. This Agreement may not be amended, modified or altered unless by written agreement signed by the City and Owner.

17. Approval. This Agreement is conditional, subject to the approval of the City Council of City.

18. Running with the Land. This Agreement, including any obligations, representations, warranties and covenants shall run with the Parcel and shall be binding upon any subsequent owners of the Parcel.

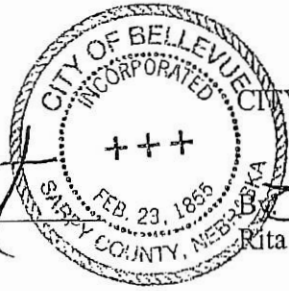
19. Cost of Filing. Owners shall pay the cost of filing this document with the Sarpy County Register of Deeds.

WHEREFORE, the Parties have signed this Agreement as of the Effective Date.

*(Signature pages to follow.)*

D

ATTEST:



CITY OF BELLEVUE

*Ray Dammas*  
 \_\_\_\_\_  
 City Clerk

*Rita Sanders*  
 \_\_\_\_\_  
 Rita Sanders, Mayor

APPROVED AS TO FORM:

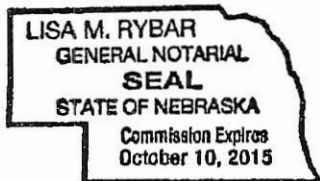
*David Hillin*  
 \_\_\_\_\_  
 Attorney for City of Bellevue

STATE OF NEBRASKA    )  
   ) ss.  
 COUNTY OF SARPY     )

On this 10<sup>th</sup> day of September, 2012, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Rita Sanders, Mayor of the City of Bellevue, a Nebraska Municipal Corporation, to me personally known to be the identical person whose name is affixed to the foregoing instrument who acknowledged the same to be her voluntary act and deed on behalf of said corporation.

Witness my hand and notarial seal on the day and year last above written.

*Lisa M Rybar*  
 \_\_\_\_\_  
 Notary Public



2012-29687 E

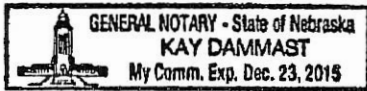
MAIN ST. PROPERTIES, LLC

By: [Signature]  
Manager

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF SARPY    )

On this 11<sup>th</sup> day of September 2012, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Pat Shannon, Manager of Main St. Properties, LLC, to me personally known to be the identical person whose name is affixed to the foregoing instrument who acknowledged the same to be his voluntary act and deed as the Manager of Main St. Properties, LLC and the voluntary act and deed of the LLC.

Witness my hand and notarial seal on the day and year last above written.



[Signature]  
Notary Public

APPROVED AS TO FORM:

[Signature]  
Attorney for Owner  
LARRY FOWMAN



#3779

BELLEVUE CODE ENFORCEMENT  
OFFICIAL NOTICE - ZONING VIOLATION

Z-15856

TIME 9:20 AM

DATE October 23 2012

NAME: Guyon W. Search, Director ADDRESS: \_\_\_\_\_

LOCATION OF VIOLATION: 2221 Main Street

OWNER: Uhaul Company of Arizona ADDRESS: PO Box 21503 Phoenix Arizona

YOU ARE HEREBY NOTIFIED THAT YOU ARE IN VIOLATION OF THE  
BELLEVUE ZONING ORDINANCE AS INDICATED BELOW:

Motor vehicles, boats, recreational vehicles (r.v.'s) and trailers must be parked on asphalt, concrete or other approved hard surface (e.g. brick pavers). Zoning Ordinance 770, Sec. 7205, as amended.

Other: Sec 8.03.07 Ref Off Street Parking

Other: \_\_\_\_\_

YOU ARE HEREBY ORDERED TO REMEDY THE VIOLATION (BY ABATEMENT AND/OR REMOVAL) ON OR BEFORE

November 23, 2012

TO REMEDY THE VIOLATION(S), YOU SHALL have the Uhaul truck license Plate Ariz. AD 37349

exp. Dec/2012 that exceeds 8 feet wide or 21 feet long removed from the city streets.

PLEASE READ THE REVERSE SIDE OF THIS OFFICIAL NOTICE. THIS NOTICE APPLIES TO THESE  
AND ANY FUTURE VIOLATIONS. FUTURE VIOLATIONS THAT ARE REPEAT VIOLATIONS  
WILL NOT BE GIVEN A NOTICE AND WILL BE SUBJECT TO IMMEDIATE ABATEMENT OR REMOVAL BY THE CITY.

**APPEAL TO THE BOARD OF ADJUSTMENT:** You have **thirty (30) calendar days** after the day you receive this Official Notice to appeal this Order to the Board of Adjustment. If you fail to timely appeal this Order or fail to appear at a hearing scheduled pursuant to a timely request, then it shall be conclusively presumed that you are in violation of the Bellevue Zoning Ordinance sections referenced above. If you have any questions concerning how to request a hearing, please read the reverse side of this Official Notice or else contact **BELLEVUE PLANNING DEPARTMENT** at **293-3026**, or **Code Enforcement** at **293-3050** regarding this notice

Received by: Guyon W. Search Issued by: E. [Signature]

BEFORE CALLING FOR INFORMATION, READ THE FOLLOWING:

SECTIONS 7201 to 7210 of the Bellevue Zoning Ordinance No. 770 are laws that, among other things, prohibit vehicles from being parked on private property unless such vehicle is parked on an approved hard surface.

- **"APPROVED HARD SURFACE"** means that the vehicle is parked on asphalt, concrete, or another approved hard surface (e.g., brick pavers).



# 11554

BELLEVUE CODE ENFORCEMENT  
OFFICIAL NOTICE - ZONING VIOLATION

Z- 15915

TIME 2:45 pm

DATE September 12, 2014

NAME: Jason Darnell ADDRESS:

LOCATION OF VIOLATION: 2221 Main Street

OWNER: ADDRESS:

YOU ARE HEREBY NOTIFIED THAT YOU ARE IN VIOLATION OF THE  
BELLEVUE ZONING ORDINANCE AS INDICATED BELOW:

Motor vehicles, boats, recreational vehicles (r.v.'s) and trailers must be parked on asphalt, concrete or other approved hard surface (e.g. brick pavers). Zoning Ordinance 770, Sec. 7205, as amended.

Other: Per Zoning Agreement With The City Of Bellevue

Other:

YOU ARE HEREBY ORDERED TO REMEDY THE VIOLATION (BY ABATEMENT AND/OR REMOVAL) ON OR BEFORE

October 11, 2014

TO REMEDY THE VIOLATION(S), YOU SHALL Have All Unpaid Vans, Trucks And/or Trailers Parked Or Stored South Of The North Face Of The Building

PLEASE READ THE REVERSE SIDE OF THIS OFFICIAL NOTICE. THIS NOTICE APPLIES TO THESE AND ANY FUTURE VIOLATIONS. FUTURE VIOLATIONS THAT ARE REPEAT VIOLATIONS WILL NOT BE GIVEN A NOTICE AND WILL BE SUBJECT TO IMMEDIATE ABATEMENT OR REMOVAL BY THE CITY.

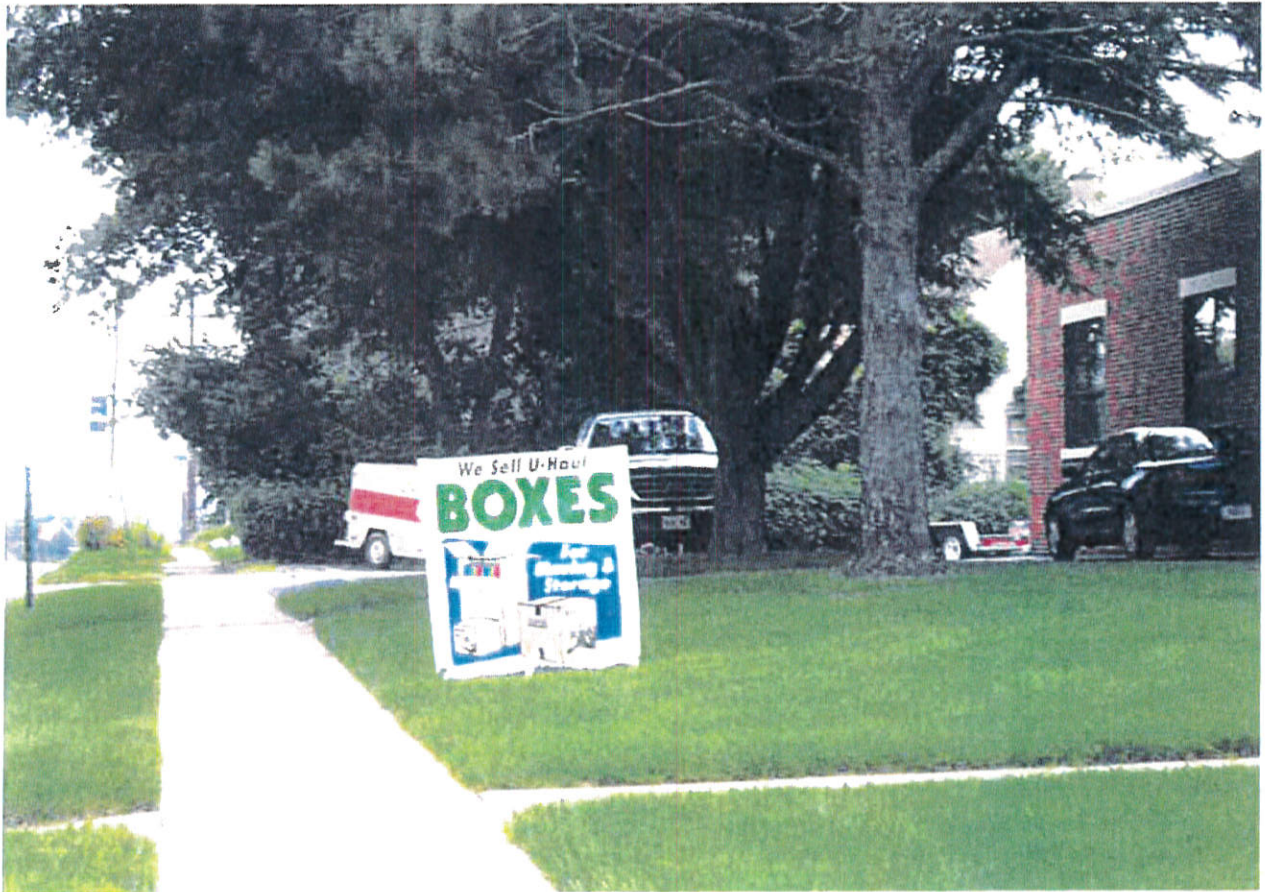
**APPEAL TO THE BOARD OF ADJUSTMENT:** You have thirty (30) calendar days after the day you receive this Official Notice to appeal this Order to the Board of Adjustment. If you fail to timely appeal this Order or fail to appear at a hearing scheduled pursuant to a timely request, then it shall be conclusively presumed that you are in violation of the Bellevue Zoning Ordinance sections referenced above. If you have any questions concerning how to request a hearing, please read the reverse side of this Official Notice or else contact **BELLEVUE PLANNING DEPARTMENT at 293-3026, or Code Enforcement at 293-3050 regarding this notice**

Received by: Issued by:

BEFORE CALLING FOR INFORMATION, READ THE FOLLOWING:

SECTIONS 7201 to 7210 of the Bellevue Zoning Ordinance No. 770 are laws that, among other things, prohibit vehicles from being parked on private property unless such vehicle is parked on an approved hard surface.

- "APPROVED HARD SURFACE" means that the vehicle is parked on asphalt, concrete, or another approved hard surface (e.g., brick pavers).





#45

BELLEVUE CODE ENFORCEMENT  
OFFICIAL NOTICE - ZONING VIOLATION

Z-10191

TIME 2:05 pm

DATE April 16, 2020

NAME: Postal First Door ADDRESS: ---

LOCATION OF VIOLATION: 2221 Main St

OWNER: --- ADDRESS: ---

YOU ARE HEREBY NOTIFIED THAT YOU ARE IN VIOLATION OF THE  
BELLEVUE ZONING ORDINANCE AS INDICATED BELOW:

- Zoning Ordinance Sec: Ref Contract Zoning Agreement
- Zoning Ordinance Sec: with City of Bellevue
- Zoning Ordinance Sec: \_\_\_\_\_

YOU ARE HEREBY ORDERED TO REMEDY THE VIOLATION (BY ABATEMENT AND/OR REMOVAL) **ON OR BEFORE:** May 16, 2020

TO REMEDY THE VIOLATION(S), YOU SHALL Move all Wheel Vans, Trucks, and/or trailers parked on street south of the white line of the Building

**THIS NOTICE APPLIES TO THESE AND ANY FUTURE VIOLATIONS. FUTURE VIOLATIONS THAT ARE REPEAT VIOLATIONS WILL NOT BE GIVEN A NOTICE AND WILL BE SUBJECT TO IMMEDIATE ABATEMENT OR REMOVAL BY THE CITY.**

**APPEAL TO THE BOARD OF ADJUSTMENT:** You have **thirty (30) calendar days** after the day you receive this Official Notice to appeal this Order to the Board of Adjustment. If you fail to timely appeal this Order or fail to appear at a hearing scheduled pursuant to a timely request, then it shall be conclusively presumed that you are in violation of the Bellevue Zoning Ordinance sections referenced above. If you have any questions concerning how to request a hearing, please contact **BELLEVUE PLANNING DEPARTMENT** at **402-293-3026**.

Received by: [Signature] Issued by: [Signature]

**FOR FURTHER INFORMATION OR QUESTIONS ABOUT THIS OFFICIAL NOTICE, PLEASE CONTACT:  
BELLEVUE CODE ENFORCEMENT AT 402-293-3050**

**FOR FURTHER INFORMATION OR QUESTIONS ABOUT THE APPEAL PROCESS, PLEASE CONTACT:  
BELLEVUE PLANNING DEPARTMENT AT 402-293-3026**





05.22.2020 07:50



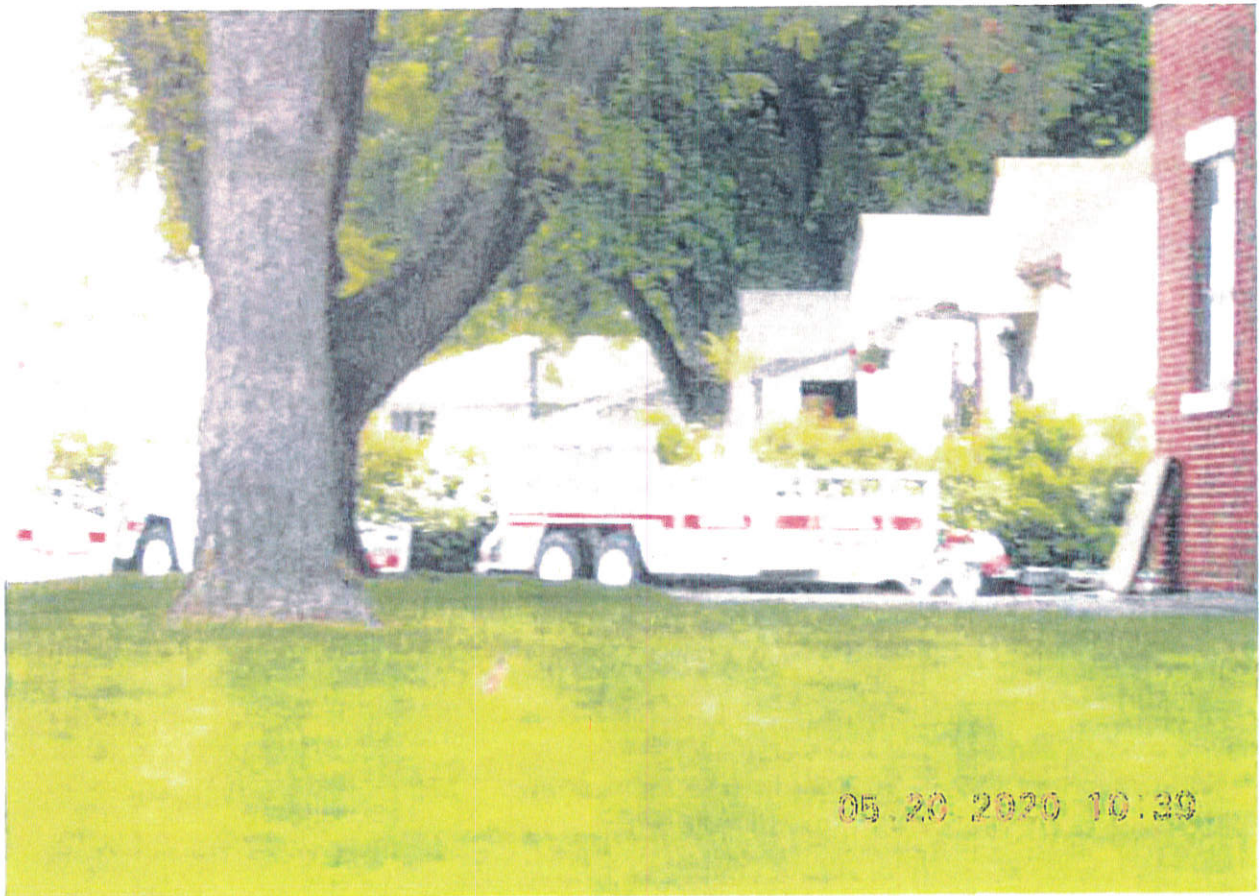
05.22.2020 07:16



04.15.2020 08:33



04.16.2020 13:19





# 858

BELLEVUE CODE ENFORCEMENT  
OFFICIAL NOTICE - ZONING VIOLATION

Z- 00310

TIME 2:15 pm

DATE June 19, 2020

NAME: Posted Front Door ADDRESS: -

LOCATION OF VIOLATION: 2221 Main St

OWNER: - ADDRESS: -

YOU ARE HEREBY NOTIFIED THAT YOU ARE IN VIOLATION OF THE  
BELLEVUE ZONING ORDINANCE AS INDICATED BELOW:

- Zoning Ordinance Sec: Ref Contract Zoning Agreement
- Zoning Ordinance Sec: with City of Bellevue
- Zoning Ordinance Sec:

YOU ARE HEREBY ORDERED TO REMEDY THE VIOLATION (BY ABATEMENT AND/OR REMOVAL) ON OR

BEFORE: July 19 2020

TO REMEDY THE VIOLATION(S), YOU SHALL Have all Uhaul vans, trucks  
and/or trailers Parked or Stored South of the  
North Face of the Building

THIS NOTICE APPLIES TO THESE AND ANY FUTURE VIOLATIONS. FUTURE VIOLATIONS THAT ARE REPEAT VIOLATIONS  
WILL NOT BE GIVEN A NOTICE AND WILL BE SUBJECT TO IMMEDIATE ABATEMENT OR REMOVAL BY THE CITY.

**APPEAL TO THE BOARD OF ADJUSTMENT:** You have **thirty (30) calendar days** after the day you receive this Official Notice to appeal this Order to the Board of Adjustment. If you fail to timely appeal this Order or fail to appear at a hearing scheduled pursuant to a timely request, then it shall be conclusively presumed that you are in violation of the Bellevue Zoning Ordinance sections referenced above. If you have any questions concerning how to request a hearing, please contact **BELLEVUE PLANNING DEPARTMENT at 402-293-3026.**

Received by: Posted Front Door Issued by: D. Kullerum

FOR FURTHER INFORMATION OR QUESTIONS ABOUT THIS OFFICIAL NOTICE, PLEASE CONTACT:  
BELLEVUE CODE ENFORCEMENT AT 402-293-3050

FOR FURTHER INFORMATION OR QUESTIONS ABOUT THE APPEAL PROCESS, PLEASE CONTACT:  
BELLEVUE PLANNING DEPARTMENT AT 402-293-3026

B





# MINUTE RECORD

No. 729 - REDFIELD & COMPANY, INC., OMAHA

Bellevue City Council Meeting, September 10, 2012, Page 2

**Motion** was made by Blood, seconded by Knutson, Council recommend to the Nebraska Liquor Control Commission that the application of Lisa Meierhoff for manager of the Class D liquor license for Aldi, Inc. No. 40, 2112 Cornhusker Road, be approved. Roll call vote on the motion was as follows: Houghtaling, Saniuk, Sanborn, Knutson, Preister and Blood voted yes; voting no: none. Motion carried.

**CVS Pharmacy No. 3085, application for a Class C liquor license**

The application of CVS Pharmacy No. 3085, 1701 Galvin Road, for a Class C liquor license to sell beer, wine and distilled spirits, both On and Off Sale, and the application of Dale W. ZurKammer as Corporate Manager, were presented for Council consideration. Mr. Buck Heim, 1650 Farnam Street, Omaha, was present on behalf of the applicant, CVS Pharmacy. This application is for a replacement of the current Class D liquor license. The Class C license will be restricted to allow for consumption by customers for promotional events at the store.

Mayor Sanders asked for public comment. No one in the audience came forth to speak in support of or in opposition to the application. Mayor Sanders declared the public hearing closed.

**Motion** was made by Blood, seconded by Houghtaling, Council recommend to the Nebraska Liquor Control Commission that the application of CVS Pharmacy No. 3085, 1701 Galvin Road, for a Class C liquor license to sell beer, wine and distilled spirits, both On and Off Sale, and the application of Dale W. ZurKammer as Corporate Manager, be approved. Roll call vote on the motion was as follows: Houghtaling, Saniuk, Sanborn, Knutson, Preister and Blood voted yes; voting no: none. Motion carried.

**Paul R. Klabunde, dba "Century Lounge," application for a Special Designated Liquor License**

The application of Paul R. Klabunde, dba "Century Lounge," 2109 Franklin Street, for a Special Designated Liquor License to sell beer, wine and distilled spirits, at a beer garden on September 29, 2012, from 6:00 a.m. until 2:00 a.m., was presented for Council consideration. Ms. Rheanna Webber was present to answer any questions.

Mayor Sanders asked for public comment. No one in the audience came forth to speak in support of or in opposition to the application. Mayor Sanders declared the public hearing closed.

**Motion** was made by Houghtaling, seconded by Blood, to recommend to the Nebraska Liquor Control Commission that the application of Paul R. Klabunde, dba "Century Lounge," 2109 Franklin Street, for a Special Designated Liquor License on September 29, 2012, from 6:00 a.m. until 2:00 p.m., be approved. Roll call vote on the motion was as follows: Houghtaling, Saniuk, Sanborn, Knutson, Preister and Blood voted yes; voting no: none. Motion carried.

**ORDINANCES:**

**Ordinance No. 3681 - Amending Section 2-29 of the Bellevue City Code Pertaining to Deadlines for Submission of Agenda Materials (Third Reading)**

Ordinance No. 3681, an ordinance to amend Section 2-29 of the Bellevue Municipal Code pertaining to the preparation of the agenda for Regular and Pre-Council meetings; to repeal Section 2-29 as heretofore existing; and to provide for an effective date, was read by title only for the third and final reading.

**Motion** was made by Blood, seconded by Houghtaling, that Ordinance No. 3681 be adopted. Mayor Sanders asked "Shall Ordinance No. 3681 be passed and adopted?" and upon roll call the following voted yes: Houghtaling, Saniuk, Sanborn, Knutson, Preister and Blood; voting no: none. Mayor Sanders proclaimed Ordinance No. 3681 passed and adopted.

**Ordinance No. 3682 - Rezoning Lots 1-3, Block 55, Bellevue (2221 Main Street), from RG-50-OTO to BGM-OTO (Third Reading)**

Ordinance No. 3682, an ordinance to amend the official zoning map of the City of Bellevue, Nebraska, as provided for by Article 3 of Ordinance No. 3619, by changing the zone classification of land located at 2221 Main Street, more particularly described in Section 1 of the ordinance, from RG-50-OTO to BGM-OTO, and to provide for an effective date, was read by title only for the third and final reading.

City Attorney Pat Sullivan explained that if the Council wishes to approve the rezoning with the restrictions as outlined in the Zoning Development Agreement, a motion would be made for adoption of the ordinance, and then another motion would be made to amend the ordinance with the new ordinance provided by Mr. Sullivan and the attached Bellevue Zoning Development Agreement.

**Motion** was made by Knutson, seconded by Preister, to adopt Ordinance No. 3682.

**Motion** was made by Knutson, seconded by Blood, to amend Ordinance No. 3682, with the revised ordinance.

Mrs. Saniuk stated she is going to defer to the recommendation of the Planning Commission, which was denial. As a general rule, she is not in favor of contract zoning. When exceptions to the zoning ordinance are made, perhaps the zoning ordinance needs to be changed rather than rezoning properties. She questioned who keeps track of the contract and conditions granted. Mr. Sullivan answered that the Agreement is filed in the Register of Deeds office and the Planning Department maintains the enforcement.

**Roll call on the motion to amend the ordinance** was as follows: Houghtaling, Sanborn, Knutson, Preister and Blood voted yes; voting no: Saniuk. Motion carried.

# MINUTE RECORD

No. 729—REDFIELD & COMPANY, INC., OMAHA

Bellevue City Council Meeting, September 10, 2012, Page 3

Mayor Sanders asked "Shall Ordinance No. 3682 be passed and adopted, as amended?" and upon roll call the following voted yes: Houghtaling, Sanborn, Knutson, Preister and Blood; voting no: Saniuk. Mayor Sanders proclaimed Ordinance No. 3682 passed and adopted.

**Ordinance No. 3683 – Amending Ordinance No. 3619, Zoning Ordinance, by Adding Section 5.35, Relating to the Highway 34 Corridor Overlay District (Third Reading)**

Ordinance No. 3683, an ordinance to amend Ordinance No. 3619, Bellevue Zoning Ordinance, by adding Section 5.35, relating to the Highway 34 Corridor Overlay District; and to provide for an effective date, was read by title only for the third and final reading.

**Motion** was made by Saniuk, seconded by Sanborn, to adopt Ordinance No. 3683.

**Motion** was made by Preister, seconded by Saniuk, to amend Ordinance No. 3683, to the red-lined ordinance that adds four words to the Lighting Section of the ordinance. Roll call vote on the motion was as follows: Houghtaling, Saniuk, Sanborn, Knutson, Preister and Blood voted yes; voting no: none. Motion carried.

Mayor Sanders asked "Shall Ordinance No. 3683 be passed and adopted, as amended?" and upon roll call the following voted yes: Houghtaling, Saniuk, Sanborn, Knutson, Preister and Blood; voting no: none. Mayor Sanders proclaimed Ordinance No. 3683 passed and adopted.

**Ordinance No. 3684 – Annual Appropriations Ordinance (Third Reading)**

Ordinance No. 3684, an ordinance to adopt the budget statement to be termed the Annual Appropriations Bill; to appropriate sums for necessary expenses and liabilities; and to provide for an effective date, was read by title only for the third and final reading.

**Unused restricted funds:**

Mayor Sanders opened the meeting to a public hearing to give opportunity for individuals to speak in favor of or in opposition to the implementation of the allowable 1% increase in unused restricted funds authority. No one came forward to speak in support of or in opposition to the ordinance. Mayor Sanders closed the public hearing.

**Motion** was made Knutson, seconded by Saniuk, to approve the implementation of the allowable 1% increase in unused restricted funds authority. Roll call vote on the motion was as follows: Houghtaling, Saniuk, Sanborn, Knutson, Preister and Blood voted yes; voting no: none. Motion carried.

**Public Hearing on Ordinance No. 3684**

Mayor Sanders opened the meeting to a public hearing to give opportunity for individuals to speak in favor of or in opposition to Ordinance No. 3684.

Mr. Chuck Fredrick, 1511 Madison Street, stated that there was no transparency in last year's budget. He looked at the budget and did not see any money for an Assistant City Administrator. He questioned if there are any hidden items in the proposed budget for the next fiscal year. Finance Director Rich Severson stated that there are no hidden items in the budget, in fact, there are funds budgeted for the Assistant City Administrator.

Mr. Fredrick stated that every city he knows prepares a balance sheet at least once a month, but no one here seems to care that one is not produced. Mr. Fredrick stated that the money to purchase the old Wilson Concrete site (Coreslab) came from the Community Betterment Fund and when it is sold, it is supposed to go back into that fund. He stated that we have the highest mill levy in the County. He questioned if the Council is banking on the increase in sales tax that the voters will vote on in November, to make up for no increase in mill levy now. He asked what will happen if the vote on the additional sales tax does not pass.

Mrs. Blood stated that LB 840 and LB 357 have implemented statutes that guide the use of the extra half-cent city sales tax. It cannot be used just to balance our budget. LB 840 is specifically for economic development and will not raise the sales tax. LB 357 provides for the extra half-cent sales tax, a portion of which must be used for an Interlocal Agreement. Other cities in the metro-area have economic development tools that we do not have. This will give us an economic development tool.

Mr. Fredrick stated we desperately need to cut costs. Someone needs to look into the amount of money we pay to MUD for billing our trash and sewer charges. The rescue billings need to be returned to the professionals. The Council should not have forgiven a half million dollar debt owed to the city by the Eastern Sarpy County Fire District.

City Administrator Dan Berlowitz clarified that \$375,000 of the revenue produced by an extra half-cent sales tax, if approved by the voters, will be used for the City's share of an Interlocal Agreement with the County to extend sanitary sewer to the Highway 34 corridor district.

Mayor Sanders asked for additional comments from the public. No one came forward to speak in support of or in opposition to the ordinance. Mayor Sanders closed the public hearing.

Mr. Sanborn stated that he will vote against the adoption of Ordinance No. 3684 because it includes half a million dollars of double taxation money to the County.

**Motion** was made by Knutson, seconded by Saniuk, for adoption of Ordinance No. 3684.

# MINUTE RECORD

No. 729 - REDFIELD & COMPANY, INC., OMAHA

Bellevue City Council Meeting, August 27, 2012, Page 2

**Ordinance No. 3680 – Amending Section 4-12 of the Bellevue City Code to Permit the Sale of Alcoholic Liquor on Sundays from 6:00 a.m. to 1:00 a.m. (Third Reading)**

Ordinance No. 3680, an ordinance to amend Section 4-12 of the Bellevue Municipal Code pertaining to hours of sale of alcoholic beverages in the City of Bellevue; to repeal such Section as heretofore existing; and to provide for the effective date of this ordinance, was read by title only for the third and final reading.

**Motion** was made by Houghtaling, seconded by Saniuk, that Ordinance No. 3680 be adopted.

Mrs. Saniuk commented that because we are already allowing the sale of beer and wine on Sundays from 6:00 a.m. until 1:00 a.m., she sees the dilemma of store owners due to some alcohol being allowed for sale at those times, but other alcohol not being allowed for sale during the same time period; therefore this ordinance makes sense and she will support it.

Mayor Sanders asked "Shall Ordinance No. 3680 be passed and adopted?" and upon roll call the following voted yes: Houghtaling, Saniuk, Sanborn, Preister and Blood; voting no: none; absent: Knutson. Mayor Sanders proclaimed Ordinance No. 3680 passed and adopted.

**Ordinance No. 3681 – Amending Section 2-29 of the Bellevue City Code Pertaining to Deadlines for Submission of Agenda Materials (Second Reading)**

Ordinance No. 3681, an ordinance to amend Section 2-29 of the Bellevue Municipal Code pertaining to the preparation of the agenda for Regular and Pre-Council meetings; to repeal Section 2-29 as heretofore existing; and to provide for an effective date, was read by title only for the second time and presented for public hearing.

Mayor Sanders asked for public comment. No one in the audience came forth to speak in support of or in opposition to the ordinance. Mayor Sanders declared the public hearing closed. The third reading of the ordinance will be heard at the next Council meeting on September 10<sup>th</sup>.

**Ordinance No. 3682 – Rezoning Lots 1-3, Block 55, Bellevue (2221 Main Street), from RG-50-OTO to BGM-OTO (Second Reading)**

Ordinance No. 3682, an ordinance to amend the official zoning map of the City of Bellevue, Nebraska, as provided for by Article 3 of Ordinance No. 3619, by changing the zone classification of land located at 2221 Main Street, more particularly described in Section 1 of the ordinance, from RG-50-OTO to BGM-OTO, and to provide for an effective date, was read by title only for the second time and presented for public hearing.

Mayor Sanders opened the meeting to a public hearing to give opportunity for individuals to speak in favor of or in opposition to the rezoning request.

Mr. Larry Forman, 7171 Mercy Road, Omaha, appeared before the Council representing the applicant, Main Street Properties LLC. The building on these lots was built in 1942 and was originally used as a medical clinic during World War II. It then became a school and, more recently, was the administrative offices for the Bellevue Public School District. It was purchased by Main Street Properties in 2005. It has never been used as a residence. It is located at the southeast corner of the intersection of Main Street and Mission Avenue, the main thoroughfare through the Olde Towne area. There is heavy truck traffic on Mission Avenue nearly twenty-four hours a day. Most of these trucks turn south on Hancock to circumvent most of the community and to go around the back of Offutt Air Force Base. The requested zoning is not out-of-line with existing zoning because the property directly across Main Street to the west is already zoned BGM and the property on the northwest corner of the intersection is zoned BGH. Recently the Council designated a significant portion of this area as blighted and substandard. The purpose of such a re-designation is to make a property more susceptible to development for commercial and business-type purposes, to increase property values and to increase tax flow for the community. This property is within two blocks of the eastern boundary of the blighted and substandard area. The proposed use is to resume use of this property as a U-Haul facility. It was used as such for approximately two years until fairly recently when it was closed. A U-Haul facility would not be an offensive use of the property because it would be operated with limited hours of 9:00 to 5:00 Monday through Friday and 10:00 to 2:00 on Saturdays. There would be no evening hours or Sunday hours. During the time it was previously operated as a U-Haul facility, the average number of stops per day was five. This is well under what is normal for a commercial use. There is no appreciable noise generated by the proposed use because the trucks and vans are gasoline operated; there are no diesel vehicles in the U-Haul fleet that would be utilized at this location. The eastern-most lot is currently a parking lot and was previously a playground, which provides a 46 foot wide buffer where no building exists. Copies of petitions signed by many of the neighbors in support of the business as a U-Haul facility have been submitted to the City. At two extensive Planning Commission public hearings, no one has appeared to voice opposition.

Mr. Forman stated that a U-Haul facility would be a good business for the City. It is close to Offutt Air Force Base which can make extensive use of the business. It is a clean, safe environment for the rental of vehicles. During the time this property was previously operated as a U-Haul business, it generated about \$1,000 per month in sales tax. The Planning Commission had three major concerns: 1) what if it starts out as a U-Haul but the current owner sells to someone who wants to use it for a more liberal or offensive use of the property. To avoid this, he has submitted a covenant which would be filed with the Register of Deeds, enforceable by the City and any of the property owners in three of the surrounding blocks. The covenant provides that so long as there is any residential zoning in these three blocks, nothing else could be done with this property without the consent of the City Council. The Planning Commission wanted some sort of large-scale rezoning. He suggested that these three lots could be a catalyst to other rezoning requests in the area. Approval of this request would send a message to the owners of other properties in the area that a non-residential use that is not offensive will be considered. A third item the Planning Commission was concerned that the first thing people would see when entering the city from the east, would be U-Haul trailers. He proposed that the property

# MINUTE RECORD

No. 729 - REDFIELD & COMPANY, INC., OMAHA

Bellevue City Council Meeting, August 27, 2012, Page 3

north of the building line, all of which is paved, would be designated as a "no U-Haul zone" where no U-Haul vehicles would be allowed to park. The 8-foot tall hedge on the east side of the subject property acts as a visual buffer between the property and the residence to the east.

Mr. Forman suggested that the current zoning is really not suitable. This property has never been used as residential. No harm would come to the neighbors to allow this rezoning and allow the U-Haul business. The impact to the community is that the proposed use serves a legitimate need in the community. U-Haul is a respectable, national name which will generate sales tax. This could become a real catalyst in the blighted and substantial area.

Ms. Bonnie Younk stated that she lives directly across the street from this business. She has lived here over twenty years and has never had any noise from this property. The owner keeps the property looking nice. She asked for the Council's consideration of his rezoning request.

Mr. Sean Schooley, U. S. Bail and Recovery Service, 2221 Main Street, stated that he has been a tenant in this property since last year. The building is very secure and they have never seen any type of crime. The businesses located in the building are diversified and it is a good business center. He would not want to move out of Bellevue. They do a lot of work with law enforcement, including the Sarpy County Attorney's office and the U.S. Marshal's office. His business is not advertised and does not produce a lot of traffic. When the U-Haul trucks were there they were very unobtrusive. There was no additional noise. He has spoken with neighbors in the area and they support the rezoning. He urged the Council to support the rezoning request.

Mayor Sanders asked for additional public comment. No one in the audience came forth to speak in support of or in opposition to the rezoning ordinance. Mayor Sanders declared the public hearing closed.

Mayor Sanders stated the third reading of the ordinance will be heard at the next Council meeting on September 10<sup>th</sup>.

**Ordinance No. 3683 - Amending Ordinance No. 3619, Zoning Ordinance, by Adding Section 5.35, Relating to the Highway 34 Corridor Overlay District (Second Reading)**

Ordinance No. 3683, an ordinance to amend Ordinance No. 3619, Bellevue Zoning Ordinance, by adding Section 5.35, relating to the Highway 34 Corridor Overlay District; and to provide for an effective date, was read by title only for the second time and presented for public hearing.

Mayor Sanders asked for public comment. No one in the audience came forth to speak in support of or in opposition to the ordinance. Mayor Sanders declared the public hearing closed.

Mayor Sanders stated the third reading of the ordinance will be heard at the next Council meeting on September 10<sup>th</sup>.

**Ordinance No. 3684 - Annual Appropriations Ordinance (Second Reading)**

Ordinance No. 3684, an ordinance to adopt the budget statement to be termed the Annual Appropriations Bill; to appropriate sums for necessary expenses and liabilities; and to provide for an effective date, was read by title only for the second time and presented for public hearing.

Mayor Sanders asked for public comment. No one in the audience came forth to speak in support of or in opposition to the ordinance. Mayor Sanders declared the public hearing closed.

Mayor Sanders stated the third reading of the ordinance and a second public hearing will be at the next Council meeting on September 10<sup>th</sup>.

**Ordinance No. 3685 - Amending the Budget for Fiscal Year 2011-2012 (Second Reading)**

Ordinance No. 3685, an ordinance to amend the budget statement to be termed the Annual Appropriation Bill, which was adopted on September 12, 2011, by Ordinance No. 3633; to appropriate sums for necessary expenses and liabilities; and to provide for an effective date, was read by title only for the second time and presented for public hearing.

Mayor Sanders opened the meeting to a public hearing to give opportunity for individuals to speak in favor of or in opposition to the ordinance.

Mr. Chuck Fredrick, 1511 Madison Street, expressed concern that one "chart" shows expenditures for last year at \$45.5 million in revenue/expenditures and then it says we're going to be the same at \$45.4 million and now this is being changed to \$60 million for last year and to \$70 million for next year. He feels we are "playing with the numbers and you're really going to be going up \$25 million in expenditures next year. He previously asked for the inspection papers on the new buildings that are being purchased. At that time they were still private. He will ask for these again before the next meeting. He is concerned that we are going to spend \$9 million to renovate the building. The cost is no longer \$3.9 million, but really \$12.9 million for these buildings.

Finance Director Rich Severson stated that the \$45 million Mr. Fredrick referenced is the projected expenditures for the General Fund. The \$60 million represents the total expenditures of the city in all funds. The amendments are necessary because of the purchase of the Wall Street properties and some police retirement pay-outs which were not anticipated. The original \$55 million budget for last year to this year's \$70 million proposed budget includes a \$9 million renovation, pay-off of a \$2.5 million anticipation note and \$1.5 million in other police retirement pay-outs. Mr. Severson stated that if anyone would like additional details on

# MINUTE RECORD

Bellevue City Council Meeting, August 13, 2012, Page 4

**Ordinance No. 3680 -- Amending Section 4-12 of the Bellevue City Code to Permit the Sale of Alcoholic Liquor on Sundays from 6:00 a.m. to 1:00 a.m. (Second Reading)**

Ordinance No. 3680, an ordinance to amend Section 4-12 of the Bellevue Municipal Code pertaining to hours of sale of alcoholic beverages in the City of Bellevue; to repeal such Section as heretofore existing; and to provide for the effective date of this ordinance, was read by title only for the second time and presented for public hearing.

Mayor Sanders opened the meeting to a public hearing to give opportunity for individuals to speak in favor of or in opposition to the ordinance. No one came forward to speak in support of or in opposition to the ordinance. Mayor Sanders closed the public hearing.

Mrs. Saniuk asked the City Attorney for background information on this ordinance since no background information had been presented. Mr. Sullivan stated that the legislature amended the statute to allow the sale of liquor before noon on Sunday, subject to approval of each city. This law was effective July 19<sup>th</sup>; prior to that time only beer and wine could be sold before noon on Sunday.

Mrs. Saniuk questioned if other cities have also adopted this, since we try to be consistent in the metro area. Mr. Sullivan stated that he did not know if any other cities had amended their ordinances. Mr. Berlowitz stated that LB 861 was enacted by the Nebraska Legislature this year to allow this. He knows of about a dozen cities that have also enacted this. Mrs. Blood stated that background information should have been supplied.

Mr. Sullivan stated that Mr. Houghtaling had requested the ordinance be placed on the agenda and his office had rushed to prepare the ordinance for presentation. Mr. Houghtaling explained that he had spoken to Mr. Berlowitz after he received several phone calls from business owners requesting that our ordinance be changed.

Mayor Sanders announced that the third and final reading of the ordinance will be on August 27<sup>th</sup>.

**Ordinance No. 3681 -- Amending Section 2-29 of the City Code pertaining to the Preparation of the Agenda for Regular and Pre-Council meetings (First Reading)**

Ordinance No. 3681, an ordinance to amend Section 2-29 of the Bellevue Municipal Code pertaining to the preparation of the agenda for Regular and Pre-Council meetings; to repeal Section 2-29 as heretofore existing; and to provide for an effective date, was read by title only for the first time and scheduled for public hearing at the Council meeting on August 27, 2012.

**Ordinance No. 3682 -- Rezoning land at 2221 Main Street from RG-50-OTO to BGM-OTO**

Ordinance No. 3682, an ordinance to amend the official zoning map of the City of Bellevue, Nebraska, as provided for by Article 3 of Ordinance No. 3619 by changing the zone classification of land located at 2221 Main Street, more particularly described in Section 1 of the ordinance and to provide for an effective date, was read by title only for the first time and scheduled for public hearing at the Council meeting on August 27, 2012.

**Ordinance No. 3683 -- Amending the Zoning Ordinance by adding Section 5.35 relating to the Highway 34 Corridor Overlay District**

Ordinance No. 3683, an ordinance to amend Ordinance No. 3619, Bellevue Zoning Ordinance, by adding Section 5.35, relating to the Highway 34 Corridor Overlay District; and to provide for an effective date, was read by title only for the first time and scheduled for public hearing at the Council meeting on August 27, 2012.

**Ordinance No. 3684 -- Annual Appropriations Ordinance**

Ordinance No. 3684, an ordinance to adopt the budget statement to be termed the Annual Appropriations Bill; to appropriate sums for necessary expenses and liabilities; and to provide for an effective date, was read by title only for the first time and scheduled for public hearing at the Council meeting on August 27, 2012.

**Ordinance No. 3685 -- Amending the 2011-2012 Fiscal Year Budget**

Ordinance No. 3685, an ordinance to amend the budget statement to be termed the Annual Appropriation Bill, which was adopted on September 12, 2011, by Ordinance No. 3633; to appropriate sums for necessary expenses and liabilities; and to provide for an effective date, was read by title only for the first time and scheduled for public hearing at the Council meeting on August 27, 2012.

**PUBLIC HEARINGS ON MATTERS OTHER THAN ORDINANCES:**

**Public Hearing regarding the proposed Substantial Amendment to the 2012-2013 Action Plan which includes consideration of reallocated funds in the amount of \$100,000 from the FY 2012-2013 CDBG funding cycle.**

Mayor Sanders opened the meeting to a public hearing to give opportunity for individuals to speak in favor of or in opposition to the proposed substantial amendment to the 2012-2013 CDBG Action Plan. No one came forward to speak on the proposed amendment. Mayor Sanders closed the public hearing.

**APPEAL TO BOARD OF ADJUSTMENT**

<b>MAIN ST PROPERTIES LLC,</b>	)	
	)	<b>ZONING VIOLATION</b>
<b>Appellant,</b>	)	<b>Case Z-No. 00310</b>
	)	
<b>vs.</b>	)	
	)	<b>NOTICE OF APPEAL</b>
<b>CITY OF BELLEVUE, BELLEVUE</b>	)	
<b>CODE ENFORCEMENT, JOEY</b>	)	
<b>BOCKMAN, DARRYL KUHLMAN,</b>	)	
	)	
<b>Appellees.</b>	)	

The Appellant Main St. Properties, LLC (“MSP”) appeals from the June 19, 2020, Bellevue Code Enforcement Official Notice (No. 00310) for the location of 2221 Main St. (“the Property”). MSP is the owner of the Property. A copy of the Zoning Violation is attached hereto as Exhibit A.

There is no basis for the Notice of Violation. The Zoning Violation constitutes a material breach of the Bellevue Zoning Development Agreement entered into between MSP and the City of Bellevue (“the City”) on September 10, 2012 (“the Development Agreement”). The Development Agreement is attached as Exhibit B. The plain terms of the Development Agreement state, in pertinent part:

No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel *north of the north face* of the building currently situated on the Parcel. (Exhibit B, Pg. 2, ¶ 4) (emphasis added).

Prior to the Development Agreement, MSP was utilizing the parking spots north of the north face of the building to park U-Haul vans, trucks, and trailers. MSP surrendered the ability to continue to park U-Haul vans, trucks, and trailers in those spots as consideration and in exchange for the obligations of the City in the Development Agreement.

MSP has not violated any zoning laws, ordinances, or regulations. MSP has fully complied with the terms of the Development Agreement and has not parked or stored any U-Haul vans, trucks, or trailers north of the north face of the building since the execution of the Development Agreement.

In order to harass and harm MSP and its principal, Patrick Shannon (“Shannon”), and violate their constitutional and property rights, the City suddenly and arbitrarily claimed, after the passage of nearly eight years, that MSP could not park U-Haul vans, trucks, or trailers in three additional spots circled on the photograph attached as Exhibit C.

The City’s contentions are baseless. The Development Agreement does not prohibit MSP from parking vehicles “on the north side of building.” The City is attempting to expand upon the clear and unambiguous language of the Development Agreement, which only prohibits parking to the north of the *north face* of the building. The attempt to re-write and misconstrue the Development Agreement is improper and deprives MSP of the benefit of its bargain. “A contract written in clear and unambiguous language is not subject to interpretation or construction and must be enforced according to its terms.” *Ray Anderson, Inc. v. Buck’s, Inc.*, 300 Neb. 434, 441, 915 N.W.2d 36, 42 (2018).

MSP entered into the Development Agreement and gave up valuable consideration, including the right to park in parking spots north of the north face of the building, so it could continue to operate a U-Haul business unimpeded and park and store U-Haul vans, trucks, and trailers on the Property, including in the three additional spots depicted in Exhibit C. The City’s attempt to unilaterally change the negotiated and agreed upon terms of the Development Agreement is further contradicted by the Parties’ actions since that agreement was executed. MSP has conspicuously parked U-Haul vans, trucks, and/or trailers in those three additional

parking spots since September of 2012 with the City's knowledge and without any problems, complaints, or purported violations. "The best, if not controlling, evidence of the intent of the parties to an agreement is the parties' interpretation of the agreement as evidenced by their actions in performance of the agreement." *Marvin E. Jewell & Co. v. Thomas*, 231 Neb. 1, 6, 434 N.W.2d 532, 535 (1989).

The Zoning Violation is further unwarranted because there were no U-Haul vans, trucks, or trailers located in the three additional spots depicted on Exhibit C or north of the north face of the building at the time it was issued because MSP's counsel was investigating the City's contentions. On June 19, 2020, MSP's attorney alerted the City's attorney to the fact that there were no U-Haul vans, trucks, or trailers located in the three additional spots depicted on Exhibit C or north of the north face of the building at the time the Zoning Violation was issued, asked for clarification of the alleged violation, and requested photographic evidence of any violation. A copy of the June 19, 2020 email is attached as Exhibit D. The City never responded to the June 19, 2020 email or provided evidence of any violation existing at the time of the citation because there was no violation. Instead, on July 2, 2020, the City retaliated against MSP by threatening to rezone its Property.

The Zoning Violation should also be dismissed because it does not articulate the reasons for its issuance with any specificity or list any zoning ordinance sections that MSP purportedly violated. The Zoning Violation requires the purported zoning violation to be remedied on or before June 19, 2020, *the same day it was issued*.

MSP filed a lawsuit seeking redress for the City's violations of its constitutional and property rights in the United States District Court for the District of Nebraska, including by

issuing the Zoning Violation. A copy of the Complaint filed in the federal lawsuit is attached as Exhibit E.

MSP filed a notice of contract claim with the City regarding the City's breach of the Development Agreement, including by issuing the Zoning Violation. A copy of the notice of contract claim is attached as Exhibit F. MSP intends to file suit with a Court of competent jurisdiction if the City denies or fails to timely consider its contract claim.

Dated this 13<sup>th</sup> day of July, 2020.

MAIN ST PROPERTIES LLC, Appellant

By: /s/ Jason M. Bruno  
Jason M. Bruno, NE #23062  
James L. Schneider, NE #25825  
SHERRETS BRUNO & VOGT LLC  
260 Regency Parkway Drive, St. 200  
Omaha, NE 68114  
(402)390-1112 Telephone  
(402)390-1163 Facsimile  
[law@sherrets.com](mailto:law@sherrets.com)  
ATTORNEYS FOR APPELLANT

I hereby certify that on July 13, 2020, a true and accurate copy of the foregoing was served via Electronic Mail to:

Susan Kluthe  
Bellevue City Clerk  
1500 Wall Street  
Bellevue, Nebraska 68005  
[susan.kluthe@bellevue.net](mailto:susan.kluthe@bellevue.net)

Bree Robbins  
Bellevue City Attorney  
1500 Wall Street  
Bellevue, Nebraska 68005  
[bree.robbs@bellevue.net](mailto:bree.robbs@bellevue.net)

Joey Bockman  
Code Enforcement Supervisor

1500 Wall Street  
Bellevue, Nebraska 68005  
[Joey.Bockman@bellevue.net](mailto:Joey.Bockman@bellevue.net)

I hereby certify that on July 13, 2020, a true and accurate copy of the foregoing was served via hand delivery to:

City of Bellevue  
Planning Department  
1510 Wall Street  
Bellevue, NE 68005

Susan Kluthe  
Bellevue City Clerk  
1500 Wall Street  
Bellevue, Nebraska 68005  
[susan.kluthe@bellevue.net](mailto:susan.kluthe@bellevue.net)

Bree Robbins  
Bellevue City Attorney  
1500 Wall Street  
Bellevue, Nebraska 68005  
[bree.robbins@bellevue.net](mailto:bree.robbins@bellevue.net)

Board of Adjustment  
Brad Anderson (Chair)  
Maria Nagel (Vice-Chair)  
Jim Hawkins  
Stephanie Cain (Planning Commission Member)  
Nick Petersen (BOA Alternate Member)  
1510 Wall Street  
Bellevue, NE 68005

Joey Bockman  
Code Enforcement Supervisor  
1500 Wall Street  
Bellevue, Nebraska 68005  
[Joey.Bockman@bellevue.net](mailto:Joey.Bockman@bellevue.net)

Darryl Kuhlman  
1500 Wall Street  
Bellevue, Nebraska 68005



# EXHIBIT A

BELLEVUE CODE ENFORCEMENT  
OFFICIAL NOTICE - ZONING VIOLATION

Z- No 00310

TIME 2:15 pm

DATE June 19, 2020

NAME: Posted Front Door ADDRESS: -

LOCATION OF VIOLATION: 2221 Main St

OWNER: - ADDRESS: -

YOU ARE HEREBY NOTIFIED THAT YOU ARE IN VIOLATION OF THE  
BELLEVUE ZONING ORDINANCE AS INDICATED BELOW:

- Zoning Ordinance Sec: Ref Contract Zoning Agreement
- Zoning Ordinance Sec: with City of Bellevue
- Zoning Ordinance Sec: \_\_\_\_\_

YOU ARE HEREBY ORDERED TO REMEDY THE VIOLATION (BY ABATEMENT AND/OR REMOVAL) ON OR

BEFORE: July 19 2020

TO REMEDY THE VIOLATION(S), YOU SHALL Have all Uhaul vans, trucks  
and/or trailers Parked or Stored South of the  
North face of the Building

THIS NOTICE APPLIES TO THESE AND ANY FUTURE VIOLATIONS. FUTURE VIOLATIONS THAT ARE REPEAT VIOLATIONS  
WILL NOT BE GIVEN A NOTICE AND WILL BE SUBJECT TO IMMEDIATE ABATEMENT OR REMOVAL BY THE CITY.

**APPEAL TO THE BOARD OF ADJUSTMENT:** You have **thirty (30) calendar days** after the day you receive this Official Notice to appeal this Order to the Board of Adjustment. If you fail to timely appeal this Order or fail to appear at a hearing scheduled pursuant to a timely request, then it shall be conclusively presumed that you are in violation of the Bellevue Zoning Ordinance sections referenced above. If you have any questions concerning how to request a hearing, please contact **BELLEVUE PLANNING DEPARTMENT** at 402-293-3026.

Received by: Posted Front Door Issued by: D. Kuhlman

FOR FURTHER INFORMATION OR QUESTIONS ABOUT THIS OFFICIAL NOTICE, PLEASE CONTACT:  
BELLEVUE CODE ENFORCEMENT AT 402-293-3050

FOR FURTHER INFORMATION OR QUESTIONS ABOUT THE APPEAL PROCESS, PLEASE CONTACT:  
BELLEVUE PLANNING DEPARTMENT AT 402-293-3026

# EXHIBIT B

COPY

Record & Return to:  
Adams & Sullivan, P.C., L.L.O.  
1246 Golden Gate Drive, Suite 1  
Papillion, NE 68046

#### BELLEVUE ZONING DEVELOPMENT AGREEMENT

THIS ZONING DEVELOPMENT AGREEMENT (the "Agreement"), made this 10<sup>th</sup> day of September, 2012 (the "Effective Date"), by and between Main St. Properties, LLC (the "Owner") and the City of Bellevue, a Nebraska Municipal Corporation (the "City"). For the purposes of this Agreement, Owner and City may be referred to individually as a "Party" and collectively as the "Parties".

#### RECITALS

A. WHEREAS, the Owner is the owner of the real property legally described as Lots 1-3, Block 55, City of Bellevue, Sarpy County, Nebraska (the "Parcel"), which Parcel is within the corporate limits of the City and within the City's zoning and platting jurisdiction; and

B. WHEREAS, the Owner has requested rezoning of the Parcel by the City from RG-50-OTO to BGM-OTO to allow continued use of the Parcel for business offices and to allow use of the Parcel as a U-Haul operation for the rental of moving vans, trucks, trailers and related equipment and the sale of boxes and packing materials (the "Project"); and

C. WHEREAS, the City is willing to conditionally rezone the Parcel from RG-50-OTO to BGM-OTO so long as the Parcel is not used for any other uses, as defined by the City of Bellevue Zoning Ordinance, allowable under BGM zoning, except as provided herein; and

D. WHEREAS, City has determined that it is in the best interest of the health, safety and welfare of the City and its residents to exercise its legislative prerogative in favor of Owner as contemplated by paragraph B of the recitals conditioned upon Owner establishing for its own benefit and for the mutual benefit of all future owners and occupants of the Parcel, certain

privileges, covenants, terms, conditions, restriction, and rights in, under, over and upon the Parcel together with certain mutually beneficial covenants, privileges, restrictions and obligations with respect to the use, operation and maintenance of the Parcel in addition to those matters currently of record, and notwithstanding any other right, privilege, interest of entitlement whatsoever inuring to Owner or their successors, grantees or transferees as an owner, user or occupant of the Parcel, whether under the laws of the State of Nebraska, the City or otherwise, the same hereby being waived by Owner to the maximum extent permitted by law; and

E. WHEREAS, it is intended that all owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any right, title or interest in the Parcel shall at all times enjoy the benefits of, and shall hold their interests subject to all rights, easements, privileges, covenants, terms, conditions and restrictions set forth in this Agreement, all of which shall run with the land and be binding upon the Parcel and anyone having or acquiring any rights, title or interest in or to any part thereof. All rights, easements, privileges, covenants, terms, conditions and restrictions created hereunder are declared to be in furtherance of a plan to promote and protect the cooperative use, operation and maintenance of the Parcel, the comprehensive development of the City and otherwise for the public health, safety, welfare and best interests of the City and its residents.

NOW THEREFORE, the Parties agree as follows:

1. Authority. The City has the authority to enter into this Agreement pursuant to Neb. Rev. Stat. §19-901 et. seq., as amended, and pursuant to Nebraska law.

2. Zoning. The City shall conditionally rezone the Parcel from RG-50-OTO to BGM-OTO.

3. Initial Use and Development. The Parcel shall be used only for (a) business offices and (b) the Project except as any different use is expressly authorized hereafter by action of the Bellevue City Council

4. Restrictions on the Project. No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel north of the north face of the building currently situated on the Parcel.

5. Zoning Restrictions. The Parcel shall retain conditional BGM-OTO zoning for the term of this Agreement if and only if the following conditions are satisfied:

(a) The Parcel shall be used for the Project and for business offices and for no other use or purpose.

(b) The City shall file this Agreement and any amendments thereto, including all exhibits, in the Sarpy County office specified for recording zoning ordinances. The City shall record this Agreement and any amendments thereto, including all exhibits, in the Office of the

Register of Deeds of Sarpy County, Nebraska, against the Parcel so as to notify all persons, including future owners of the Parcel, as to the use and development restrictions placed upon the Parcel; and

(c) The Developer shall otherwise comply with the requirements for BGM-OTO.

(d) At such time as none of the lots presently zoned for residential uses in Blocks 55, 56 and 106, City of Bellevue, are zoned for residential uses, the limitations and restrictions set forth in this agreement shall be of no further force and effect, with the Parcel thereafter being usable for any purpose permitted under BGM zoning.

6. Violations and Remedies. In the event that the Owner should violate any of the provisions of this Agreement, then, after providing the Owner with written notice of such violation, and upon the Owner's failure to cure such violation within ten (10) days after receipt of such notice, or, after three (3) violations have occurred regardless if the violations are cured, the City shall have the following rights:

(a) To schedule a hearing to rezone the Parcel to its prior RG-50-OTO zoning and, at such hearing, rezone the Parcel back to RG-50-OTO zoning;

(b) To deny the approval of any additional permits or certificates with respect to the Parcel;

(c) To bring a legal action to prohibit and/or enjoin an unlawful use and/or development from continuing upon the Parcel; and

(d) To utilize any and all other remedies provided to the City by law.

7. Acknowledgement of Remedies of City. Owner acknowledges that failure to comply with the terms of this Agreement shall cause damage to the City which may not be fully redressed by monetary damages and that the remedies provided to the City in this Agreement constitute reasonable liquidated damages clauses under Nebraska law.

8. Jurisdiction and Venue. Should the City bring any legal action pursuant to this Agreement, Owner, including their officers, directors and employees, shall consent to personal jurisdiction in the State of Nebraska and shall consent to venue in Sarpy County, Nebraska.

9. Covenant Not to Sue or Defend. Owner hereby represents, warrants and covenants that they shall not sue the City, nor shall they defend any proceeding brought by City, based upon (a) unlawful taking, (b) inverse condemnation, (c) standing, (d) invalidity or vagueness of this Agreement, or (e) similar claims or defenses, should the City seek to enforce any of its rights granted under this Agreement.

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit and burden of the Parties hereto, and their respective successors and assigns. No right granted herein may be severed from the entirety of this Agreement except as expressly permitted by this Agreement, or by the written consent of the then interested Parties.

11. Nondiscrimination. With respect to development of the Project, neither the Developer nor the Owner shall discriminate against any persons on account of race, national origin, sex, age, political or religious affiliations, or disability in violation of federal or state laws or local ordinances.

12. Choice of Laws. The laws of the State of Nebraska shall govern as to the interpretation, validity and effect of this Agreement.

13. Complete Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter of this Agreement.

14. Good Faith. Every representation, covenant, warranty or other obligation within this Agreement shall carry with it an obligation of good faith in its performance or enforcement.

15. Warranty. Owner represents, covenants and warrants that the making and execution of this Agreement, and all other documents and instruments required or related hereunder, have been fully authorized by the necessary corporate and company action of Owner and are valid, binding and enforceable obligations of the Owner in accordance with their respective terms.

16. Modification. This Agreement may not be amended, modified or altered unless by written agreement signed by the City and Owner.

17. Approval. This Agreement is conditional, subject to the approval of the City Council of City.

18. Running with the Land. This Agreement, including any obligations, representations, warranties and covenants shall run with the Parcel and shall be binding upon any subsequent owners of the Parcel.

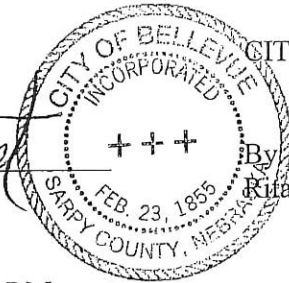
19. Cost of Filing. Owners shall pay the cost of filing this document with the Sarpy County Register of Deeds.

WHEREFORE, the Parties have signed this Agreement as of the Effective Date.

*(Signature pages to follow.)*

ATTEST:

*[Signature]*  
City Clerk



CITY OF BELLEVUE

By *[Signature]*  
Rita Sanders, Mayor

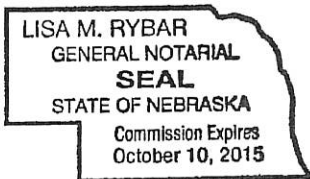
APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for City of Bellevue

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

On this 10<sup>th</sup> day of September, 2012, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Rita Sanders, Mayor of the City of Bellevue, a Nebraska Municipal Corporation, to me personally known to be the identical person whose name is affixed to the foregoing instrument who acknowledged the same to be her voluntary act and deed on behalf of said corporation.

Witness my hand and notarial seal on the day and year last above written.



*[Signature]*  
Notary Public

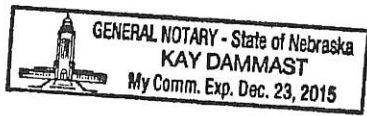
MAIN ST. PROPERTIES, LLC

By: *Pat Shannon*  
Manager

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

On this 11<sup>th</sup> day of September 2012, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Pat Shannon, Manager of Main St. Properties, LLC, to me personally known to be the identical person whose name is affixed to the foregoing instrument who acknowledged the same to be his voluntary act and deed as the Manager of Main St. Properties, LLC and the voluntary act and deed of the LLC.

Witness my hand and notarial seal on the day and year last above written.



*Kay Dammast*  
Notary Public

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for Owner

# EXHIBIT C



# EXHIBIT D

## Jason Bruno

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**From:** Jason Bruno  
**Sent:** Friday, June 19, 2020 3:52 PM  
**To:** Bree Robbins  
**Cc:** Law Office  
**Subject:** Re: 6.19.20 Ltr to Bruno re 2221 Main Street

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good afternoon,

Would you mind telling me what the violation Mr. Shannon received today was for? That aerial was not current and there was nothing in the three spots referenced at the time the citation was issued. Do you have any photographic evidence of the purported violation? Thank you.

Jason M. Bruno  
Attorney at Law  
Licensed in Nebraska, Arizona, Minnesota & Texas

On Jun 19, 2020, at 1:45 PM, Bree Robbins <bree.robbins@bellevue.net> wrote:

Mr. Bruno:  
Please see attached.

Bree Robbins  
Bellevue City Attorney

1500 Wall Street  
Bellevue, NE 68005  
(402) 682-6157 - Tahnee (City Paralegal)  
(402) 682-6156 - Bree  
(402) 293-3058 - Fax

Confidentiality Notice: 18 U.S.C. 2510 et seq. provides federal criminal and civil penalties for the unauthorized reading of this e-mail if you are not the intended recipient

<6.19.20 Ltr to Bruno re Uhaul.pdf>

# EXHIBIT E

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MAIN ST PROPERTIES LLC,	)	<b>Case No. 8:20-cv-278</b>
	)	
Plaintiff,	)	<b>COMPLAINT</b>
	)	
vs.	)	<b>TRIAL IN OMAHA,</b>
	)	<b>NEBRASKA</b>
THE CITY OF BELLEVUE, NEBRASKA	)	
BREE ROBBINS, DARRYL KUHLMAN,	)	
and JANE AND JOHN DOES,	)	
	)	<b>JURY DEMANDED</b>
Defendants.	)	

Plaintiff submits the following Complaint against the Defendants:

**JURISDICTION AND VENUE**

1. Plaintiff invokes this Court's jurisdiction under 28 U.S.C. § 1343(a)(1), 28 U.S.C. § 1343(a)(3), and 28 U.S.C. § 1331. This action is authorized and instituted pursuant to 18 U.S.C. § 1964, 42 U.S.C. § 1983, 42 U.S.C. § 1985, and the Fifth and Fourteenth Amendments to the United States Constitution.
2. This Court has personal jurisdiction and venue is proper under 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(b)(2) because the Defendants reside in this district and the events giving rise to Plaintiff's claims occurred in this district.

## **PARTIES**

3. Plaintiff Main St Properties LLC (“MSP”) is a Wyoming limited liability company registered to do business in and doing business in Bellevue, Nebraska.
4. Defendant the City of Bellevue (the “City”) is a political subdivision of the State of Nebraska.
5. Upon information and belief, Defendant Bree Robbins (“Robbins”) is a resident of Bellevue, Nebraska. Robbins is the City Attorney for the City of Bellevue.
6. Upon information and belief, Defendant Darryl Kuhlman (“Kuhlman”) is a resident of Bellevue, Nebraska. Kuhlman is a Code Enforcement representative for the City of Bellevue.
7. Defendants Jane and John Does are individuals that have yet to be discovered or identified who acted in concert with, in conjunction with, and conspired with some or all of the Defendants to circumvent and violate MSP’s constitutional, contractual, and other rights. It is anticipated that some of the Jane and John Does will be agents and representatives of the City.

## FACTS AND BACKGROUND

8. MSP is the owner of the real property located at 2221 Main Street, Bellevue, Nebraska 68005 (“the Property”). The Property was part of the Mission Reserve created in the first official plat of Bellevue in the Nebraska Territory in approximately 1854.
9. Patrick Shannon (“Shannon”) is an affiliate of MSP.
10. Since prior to 2012, MSP has operated a U-Haul operation out of the Property for the rental of moving vans, trucks, trailers, and related equipment and the sale of boxes and packing materials.
11. On September 10, 2012, MSP and the City entered into the Bellevue Zoning Development Agreement (the “Development Agreement”). A true and correct copy of the Development Agreement is attached as Exhibit A. [Doc. 1-1.]
12. Pursuant to the Development Agreement, the City agreed to, among other things, conditionally rezone MSP’s Property from RG-50-OTO<sup>1</sup> to BGM-OTO to allow it to continue operating its U-Haul business and continue to use the Property for business offices without interference.

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<sup>1</sup> RG-50-OTO is a combined General Residential and Olde Town Overlay District discussed at §§ 5.12 and 5.31 of the Zoning Ordinance. BGM-OTO is a combined Metropolitan General Business District and Olde Town Overlay District discussed at §§ 5.12 and 5.31 of the Zoning Ordinance.

13. Prior to the Development Agreement, MSP was utilizing the parking spots north of the north face of the building to park U-Haul vans, trucks, and trailers.
14. As consideration and in exchange for the obligations of the City in the Development Agreement, MSP surrendered the ability to park U-Haul vans, trucks, and trailers north of the north face of the building located on the Property. The Development Agreement plainly states, in pertinent part:

Restrictions on the Project. No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel *north of the north face* of the building currently situated on the Parcel.

(Doc. 1-1, Pg. 2, ¶ 4) (emphasis added).

15. In reliance upon the Development Agreement, MSP made extensive improvements to the Property in excess of \$115,436.65. MSP currently has five other tenants leasing portions of the Property aside from itself.
16. In 2020, the Defendants, and likely others who are presently unknown, commenced a conspiracy to harm and harass MSP and Shannon and circumvent and violate MSP's constitutional, contractual, and other rights.
17. As part of that conspiracy, after the passage of nearly eight years since the Development Agreement, the City suddenly and arbitrarily contended that MSP could not park U-Haul related vehicles in three additional parking spots circled on the photograph attached as Exhibit B. [Doc. 1-2.]

18. MSP entered into the Development Agreement and gave up valuable consideration, including the right to park in parking spots north of the north face of the building, so it could continue to operate a U-Haul business and park and store U-Haul vans, trucks, and/or trailers on the Property without interference, including in the three spots depicted in Exhibit B. [Doc. 1-2.] The three additional spots that the City is effectively attempting to condemn are the largest and most profitable spots and are crucial to the U-Haul business.
19. MSP would not have entered into the Development Agreement or provided any consideration to the City if it could not utilize the three additional parking spots to park and store U-Haul vans, trucks, and/or trailers or the City requested parking limitations extending beyond the north of the north face of the building.
20. The plain terms of the Development Agreement do not prohibit MSP from parking anywhere on the north side of the building.
21. Since the Development Agreement was executed, MSP has *never* parked or stored any U-Haul vans, trucks, or trailers *north of the north face of the building*.
22. MSP has conspicuously parked U-Haul vans, trucks, or trailers in those three additional parking spots since September of 2012 with the City's knowledge

and without any problems, complaints, or purported violations. In May of 2020, Councilman Bob Stinson, stated to Shannon, while on the Property, that he drives by the Property all of the time and knows that those three additional spots have been used for the parking of U-Haul trailers.

23. On June 18, 2020, MSP's counsel sent a letter informing the City that it was improperly seeking to expand the terms of the Development Agreement, violating MSP's rights, causing harm to MSP, and requesting that the City cease and desist from further attempting to breach the Development Agreement or harm or intimidate MSP or Shannon. A true and correct copy of the June 18, 2020 letter is attached as Exhibit C. [Doc. 1-3.]
24. On June 19, 2020, at the direction of the City and Robbins, Kuhlman trespassed upon MSP's Property and posted a Zoning Violation. A true and correct copy of the Zoning Violation is attached as Exhibit D. [Doc. 1-4.]
25. The Zoning Violation is facially arbitrary, punitive, retaliatory, and void for vagueness.
26. The Zoning Violation does not articulate the reasons for its issuance with any specificity or list any zoning ordinance sections that MSP purportedly violated.
27. The Zoning Violation requires the purported zoning violation to be remedied on or before June 19, 2020, *the same day it was issued*.

28. MSP has not violated any zoning laws, ordinances, or regulations.
29. There were also no U-Haul vans, trucks, or trailers located in the three additional spots depicted on Exhibit B at the time the Zoning Violation was issued because MSP's attorney was reviewing the matter. [Doc. 1-2.]
30. On June 19, 2020, MSP's attorney alerted Robbins to the fact that there were no U-Haul vans, trucks, or trailers located in the three spots depicted on Exhibit B or north of the north face of the building at the time the Zoning Violation was issued, asked for clarification of the alleged violation, and requested photographic evidence of any violation. A true and correct copy of the June 19, 2020 email to Robbins is attached as Exhibit E. [Doc. 1-5.]
31. The City never responded to the June 19, 2020 email or provided evidence of any violation existing at the time of the Zoning Violation because there was no violation.
32. The Defendants' retaliatory actions escalated further. On July 2, 2020, Robbins notified MSP's attorney that a hearing was scheduled before the Bellevue Planning Commission where the Property would be reverted to its previous zoning of RG-50-OTO. A true and correct copy of the July 2, 2020 correspondence from Robbins is attached as Exhibit F. [Doc. 1-6.]

33. In the July 2, 2020 correspondence, Robbins notified MSP that it could not participate in or be heard at the hearing to rezone its Property. Robbins stated:

Please let this letter serve as notice that a hearing is scheduled before the Bellevue Planning Commission on July 23, 2020 at 7:00 p.m. to rezone the parcel located at 2221 Main Street in Bellevue, Sarpy County, Nebraska to its prior RG-50-OTO zoning. The rezoning from BGM-OTO to RG-50-OTO and the scheduled hearing is being conducted pursuant to the Bellevue Zoning Development Agreement signed on or about September 10, 2012 and recorded with the Sarpy County Register of Deeds at Instrument Number 2012-29687.

Since Main St. Properties LLC waived its rights to defend any action(s) of the City to enforce any of its rights granted under the Agreement, including but not limited to this rezoning hearing, you will not be allowed to address the Bellevue Planning Commission on this matter.

34. In the July 2, 2020 correspondence, Robbins further contended that MSP had no right to appeal the Zoning Violation to the Board of Adjustment:

Finally, your paralegal, Alysia Waller, called our planning department on June 30, 2020 inquiring into how to appeal a zoning violation received on or about June 19, 2020 (Z-00310). Typically, appeals are made the Bellevue Board of Adjustment and only allowed for specific enumerated reasons, none of which would be applicable in the present situation. Additionally, as stated above, your client has waived its right to defend any action(s) of the City to enforce its rights under this agreement.

35. Robbins made this contention even though the Zoning Violation states, in pertinent part:

**APPEAL TO THE BOARD OF ADJUSTMENT:** You have **thirty (30) calendar days** after the day you receive this Official Notice to appeal this Order to the Board of Adjustment. If you fail to timely appeal this Order or fail to appear at a hearing scheduled pursuant to a timely request, then it shall be conclusively presumed that you are in violation of the Bellevue Zoning Ordinance sections referenced above.

**FIRST CAUSE OF ACTION:  
VIOLATION OF DUE PROCESS UNDER 42 U.S.C. § 1983**

36. The foregoing paragraphs are incorporated by reference.<sup>2</sup>
37. Defendants have violated the rights of MSP guaranteed under Federal and State law, including 42 U.S.C. § 1983, the Fifth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, and Article 1, § 3 of the Nebraska Constitution.
38. Defendants are depriving MSP of procedural and substantive due process.
39. MSP is being denied its right to appeal from the Zoning Violation before the Board of Adjustment and subsequently to the Sarpy County District Court, if

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<sup>2</sup> Paragraph 9 of the Development Agreement states, “Owner hereby represents, warrants and covenants that they shall not sue the City, nor shall they defend any proceeding brought by the City based upon (a) unlawful taking, (b) inverse condemnation, (c) standing, (d) invalidity or vagueness of this Agreement, or (e) similar claims or defenses, should the City seek to enforce any of its rights granted under this Agreement. This provision is unenforceable, unconstitutional, invalid, illegal, violative of the City and Nebraska’s public policies, and inapplicable. The City is not enforcing any rights under the Development Agreement, the City is not acting in good faith, a party cannot rely upon terms of an agreement that it has breached, and there was a failure of consideration and satisfaction of conditions precedent.

necessary, under both the City's Zoning Ordinance (§§ 10.02 & 10.04) and Nebraska law.

40. MSP is being deprived of its rights under the Development Agreement as it has never defaulted, never been declared in default by any court of competent jurisdiction, and has not been afforded appropriate notice of default or opportunity to cure as required by Paragraph 6 of the Development Agreement.
41. MSP is being deprived of its right to resist, present evidence, be heard, and participate in proceedings to rezone its Property.
42. The City's Zoning Ordinance and procedures require a specific process, application, and a public hearing for any property to be considered for rezoning or rezoned. The City's published Developer's Guide related to Rezoning Requests is attached as Exhibit G. [Doc. 1-7.]
43. The rezoning of a property in the City must also be done in accordance with the City's comprehensive plan, to promote the health, safety, and general welfare of the community and:

- To implement the goals, policies, and proposals of the Comprehensive Plan for the zoning jurisdiction;
- To lessen congestion in streets;
- To secure safety from fire and other dangers;
- To provide adequate light and air;
- To encourage the most productive use of urban land resources through promotion of compatible land use patterns;

To promote the distribution of population, land classifications and land development to support provisions for adequate transportation, water flows, water supply, drainage, sanitation, recreation, and other public requirements;

To regulate and restrict the location and use of buildings and uses of land within each district for residential, commercial, industrial and other purposes;

To regulate and restrict height, number of stories and size of buildings;

To regulate and restrict the percentage of the lot that may be occupied by buildings and other structures; to regulate the size of yards and open spaces;

To guard against loss of life and damage to property due to flooding through protection of natural drainage features; to preserve features of historical significance;

To promote the conservation of natural resources;

To protect property values; to protect property against blight and depreciation; and

To secure economy in governmental expenditures.

(Zoning Ordinance § 1.02).

44. The rezoning of a property must be consistent with the surrounding areas and properties. The City's Land Use Plan designates the Property, and the surrounding ones for up to approximately two blocks, to be within an Activity Center. RG-50-OTO zoning for the Property is not consistent with an Activity Center and contrary to the City's expressed desire for commercial type uses.
45. No party submitted an appropriate application or development plan to rezone MSP's Property.
46. As Robbins made clear, the City has no intention of holding a public

hearing, following the process required by its own Zoning Ordinance and procedures, or considering any of the relevant factors required for a rezoning. Instead, the City intends to arbitrarily rezone the Property to RG-50-OTO on July 23, 2020 to punish and retaliate against MSP and Shannon.

47. MSP cannot exhaust any state remedies because the Defendants are refusing to afford it any due process and hindering and obstructing its opportunity to be heard or defend itself.
48. As a result of Defendants' actions, MSP has suffered damages and will continue to suffer damages as the Defendants' retaliatory and unlawful conduct continues to escalate.

**SECOND CAUSE OF ACTION:  
VIOLATION OF EQUAL PROTECTION UNDER THE LAW**

49. The foregoing paragraphs are incorporated by reference.
50. The Fourteenth Amendment to the Constitution of the United States and Article I, § 3 of the Nebraska Constitution guarantee equal protection under the laws.
51. MSP is being discriminated against and treated differently than similarly situated person, entities, and property owners.
52. MSP constitutes a "class of one."
53. Upon information and belief, MSP is likely the only person, entity, or property owner, out of hundreds or thousands, denied the opportunity and

right to appeal a Notice of Violation to the Board of Adjustment.

54. The City's standard Notice of Violation form demonstrates that anyone issued a Notice of Violation is entitled an appeal to the Board of Adjustment.
55. Upon information and belief, MSP is likely the only person, entity, or property owner, out of hundreds or thousands, issued a Notice of Violation that did not specify the Zoning Ordinance Sections allegedly violated.
56. The City's standard Notice of Violation form has a specific section that states, "YOU ARE HEREBY NOTIFIED THAT YOU ARE IN VIOLATION OF THE BELLEVUE ZONING ORDINANCE AS INDICATED BELOW:"
57. The City's standard Notice of Violation form has a specific section containing blank lines and boxes to be checked where the City is required to identify the specific Zoning Ordinance Sections allegedly violated.
58. Upon information and belief, MSP is likely the only property owner, out of hundreds or thousands, to have its real property threatened to be rezoned or rezoned without an application, an alternative development plan, a public hearing, or an opportunity to resist, present evidence, be heard, or participate in the proceedings, and/or where the property was to be automatically rezoned without regard to the City's own Zoning Ordinance and procedures

or consideration of any of the relevant factors required for a rezoning.

59. There is no rational basis for the difference in treatment of MSP to those similarly situated. MSP is being specifically targeted to harm, harass, intimidate, and retaliate against MSP and Shannon.

**THIRD CAUSE OF ACTION:  
RETALIATION UNDER 42 U.S.C. § 1985**

60. The foregoing paragraphs are incorporated by reference.
61. 42 U.S.C. § 1985(2) is captioned “Obstructing justice; intimidating party, witness, or juror” and states:

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws[.]

62. Defendants violated 42 U.S.C. § 1985(2) by conspiring to hinder, obstruct, and deter, including by intimidation and threat, MSP from seeking to enforce its rights under the Development Agreement, appealing the Zoning Violation

to the Board of Adjustment and the Sarpy County District Court, from attending or testifying before the Board of Adjustment, Planning Commission, and Sarpy County District Court, and from contesting Defendants' arbitrary attempt to rezone the Property.

63. Defendants violated 42 U.S.C. § 1985(2) by conspiring to influence (and actually make) the decisions of the Board of Adjustment and the Bellevue Planning Commission.
64. Defendants violated 42 U.S.C. § 1985(2) by conspiring to injure and retaliating against MSP for retaining counsel, speaking out against and challenging the City's actions, for lawfully enforcing, or attempting to enforce its property, constitutional, and property rights, including those arising under the Development Agreement and Zoning Ordinance.

**FOURTH CAUSE OF ACTION:  
EQUITABLE ESTOPPEL**

65. The foregoing paragraphs are incorporated by reference.
66. The City should be estopped from claiming that MSP cannot park U-Haul vans, trucks, or trailers in the three additional parking spots depicted on Exhibit B and that doing so constitutes a breach of the Development Agreement. [Doc. 1-2.]
67. The City engaged in affirmative representations and conduct establishing that MSP could park U-Haul vans, trucks, and trailers in the three parking

spots depicted on Exhibit B, including negotiating, memorializing, and executing the Development Agreement and accepting and benefiting from consideration received from MSP. [Doc. 1-2.]

68. MSP reasonably relied upon the City's representations by entering into the Development Agreement, giving up the right to park U-Haul vans, trucks, and trailers in parking spots north of the north face of the building, making improvements to the Property in excess of \$115,436.65, and entering into lease and other agreements with tenants.

69. MSP has conspicuously parked U-Haul related vehicles in those three additional parking spots since September of 2012 with the City's knowledge and without any problems, complaints, or purported violations.

70. MSP had no way of knowing that the City would try to unilaterally and arbitrarily attempt to expand the terms of the Development Agreement nearly eight years after it was executed.

#### **DEMAND FOR JURY TRIAL**

71. MSP hereby demands a trial by jury on all claims so triable.

72. Pursuant to Local Rule 40.1(b), MSP requests the trial be held in Omaha, Nebraska.

WHEREFORE, Plaintiff requests relief as follows:

A. An order temporarily and permanently restraining and enjoining

- Defendants from attempting to rezone or rezoning the Property;
- B. An order temporarily and permanently restraining and enjoining Defendants from preventing Plaintiff from appealing the Zoning Violation to the Board of Adjustment and Sarpy County District Court;
- C. An order temporarily and permanently restraining and enjoining Defendants from taking any further action against Plaintiff or the Property during the pendency of this action;
- D. A declaration that Plaintiff did not violate the Development Agreement and that the Development Agreement permits MSP to park U-Haul vans, trucks, and trailers in the three additional parking spots depicted on Exhibit B [Doc. 1-2.];
- E. A declaration that the Zoning Violation is unlawful, void, and unenforceable against Plaintiff;
- F. All general, special, compensatory, statutory, and punitive damages in amounts to be proven at trial;
- G. Attorneys' fees as may be allowed by law; and
- H. Such other and further relief as is just and necessary.

MAIN ST PROPERTIES LLC, Plaintiff

By: /s/ Jason M. Bruno  
Jason M. Bruno, NE #23062

James L. Schneider, NE #25825  
Thomas G. Schumacher, NE #26856  
SHERRETS BRUNO & VOGT LLC  
260 Regency Parkway Drive, St. 200  
Omaha, NE 68114  
(402)390-1112 Telephone  
(402)390-1163 Facsimile  
[law@sherrets.com](mailto:law@sherrets.com)  
ATTORNEYS FOR PLAINTIFF

# EXHIBIT A

COPY

Record & Return to:  
Adams & Sullivan, P.C., L.L.O.  
1246 Golden Gate Drive, Suite 1  
Papillion, NE 68046

#### BELLEVUE ZONING DEVELOPMENT AGREEMENT

THIS ZONING DEVELOPMENT AGREEMENT (the "Agreement"), made this 10<sup>th</sup> day of September, 2012 (the "Effective Date"), by and between Main St. Properties, LLC (the "Owner") and the City of Bellevue, a Nebraska Municipal Corporation (the "City"). For the purposes of this Agreement, Owner and City may be referred to individually as a "Party" and collectively as the "Parties".

#### RECITALS

A. WHEREAS, the Owner is the owner of the real property legally described as Lots 1-3, Block 55, City of Bellevue, Sarpy County, Nebraska (the "Parcel"), which Parcel is within the corporate limits of the City and within the City's zoning and platting jurisdiction; and

B. WHEREAS, the Owner has requested rezoning of the Parcel by the City from RG-50-OTO to BGM-OTO to allow continued use of the Parcel for business offices and to allow use of the Parcel as a U-Haul operation for the rental of moving vans, trucks, trailers and related equipment and the sale of boxes and packing materials (the "Project"); and

C. WHEREAS, the City is willing to conditionally rezone the Parcel from RG-50-OTO to BGM-OTO so long as the Parcel is not used for any other uses, as defined by the City of Bellevue Zoning Ordinance, allowable under BGM zoning, except as provided herein; and

D. WHEREAS, City has determined that it is in the best interest of the health, safety and welfare of the City and its residents to exercise its legislative prerogative in favor of Owner as contemplated by paragraph B of the recitals conditioned upon Owner establishing for its own benefit and for the mutual benefit of all future owners and occupants of the Parcel, certain

privileges, covenants, terms, conditions, restriction, and rights in, under, over and upon the Parcel together with certain mutually beneficial covenants, privileges, restrictions and obligations with respect to the use, operation and maintenance of the Parcel in addition to those matters currently of record, and notwithstanding any other right, privilege, interest of entitlement whatsoever inuring to Owner or their successors, grantees or transferees as an owner, user or occupant of the Parcel, whether under the laws of the State of Nebraska, the City or otherwise, the same hereby being waived by Owner to the maximum extent permitted by law; and

E. WHEREAS, it is intended that all owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any right, title or interest in the Parcel shall at all times enjoy the benefits of, and shall hold their interests subject to all rights, easements, privileges, covenants, terms, conditions and restrictions set forth in this Agreement, all of which shall run with the land and be binding upon the Parcel and anyone having or acquiring any rights, title or interest in or to any part thereof. All rights, easements, privileges, covenants, terms, conditions and restrictions created hereunder are declared to be in furtherance of a plan to promote and protect the cooperative use, operation and maintenance of the Parcel, the comprehensive development of the City and otherwise for the public health, safety, welfare and best interests of the City and its residents.

NOW THEREFORE, the Parties agree as follows:

1. Authority. The City has the authority to enter into this Agreement pursuant to Neb. Rev. Stat. §19-901 et. seq., as amended, and pursuant to Nebraska law.
2. Zoning. The City shall conditionally rezone the Parcel from RG-50-OTO to BGM-OTO.
3. Initial Use and Development. The Parcel shall be used only for (a) business offices and (b) the Project except as any different use is expressly authorized hereafter by action of the Bellevue City Council
4. Restrictions on the Project. No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel north of the north face of the building currently situated on the Parcel.
5. Zoning Restrictions. The Parcel shall retain conditional BGM-OTO zoning for the term of this Agreement if and only if the following conditions are satisfied:
  - (a) The Parcel shall be used for the Project and for business offices and for no other use or purpose.
  - (b) The City shall file this Agreement and any amendments thereto, including all exhibits, in the Sarpy County office specified for recording zoning ordinances. The City shall record this Agreement and any amendments thereto, including all exhibits, in the Office of the

Register of Deeds of Sarpy County, Nebraska, against the Parcel so as to notify all persons, including future owners of the Parcel, as to the use and development restrictions placed upon the Parcel; and

(c) The Developer shall otherwise comply with the requirements for BGM-OTO.

(d) At such time as none of the lots presently zoned for residential uses in Blocks 55, 56 and 106, City of Bellevue, are zoned for residential uses, the limitations and restrictions set forth in this agreement shall be of no further force and effect, with the Parcel thereafter being usable for any purpose permitted under BGM zoning.

6. Violations and Remedies. In the event that the Owner should violate any of the provisions of this Agreement, then, after providing the Owner with written notice of such violation, and upon the Owner's failure to cure such violation within ten (10) days after receipt of such notice, or, after three (3) violations have occurred regardless if the violations are cured, the City shall have the following rights:

(a) To schedule a hearing to rezone the Parcel to its prior RG-50-OTO zoning and, at such hearing, rezone the Parcel back to RG-50-OTO zoning;

(b) To deny the approval of any additional permits or certificates with respect to the Parcel;

(c) To bring a legal action to prohibit and/or enjoin an unlawful use and/or development from continuing upon the Parcel; and

(d) To utilize any and all other remedies provided to the City by law.

7. Acknowledgement of Remedies of City. Owner acknowledges that failure to comply with the terms of this Agreement shall cause damage to the City which may not be fully redressed by monetary damages and that the remedies provided to the City in this Agreement constitute reasonable liquidated damages clauses under Nebraska law.

8. Jurisdiction and Venue. Should the City bring any legal action pursuant to this Agreement, Owner, including their officers, directors and employees, shall consent to personal jurisdiction in the State of Nebraska and shall consent to venue in Sarpy County, Nebraska.

9. Covenant Not to Sue or Defend. Owner hereby represents, warrants and covenants that they shall not sue the City, nor shall they defend any proceeding brought by City, based upon (a) unlawful taking, (b) inverse condemnation, (c) standing, (d) invalidity or vagueness of this Agreement, or (e) similar claims or defenses, should the City seek to enforce any of its rights granted under this Agreement.

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit and burden of the Parties hereto, and their respective successors and assigns. No right granted herein may be severed from the entirety of this Agreement except as expressly permitted by this Agreement, or by the written consent of the then interested Parties.

11. Nondiscrimination. With respect to development of the Project, neither the Developer nor the Owner shall discriminate against any persons on account of race, national origin, sex, age, political or religious affiliations, or disability in violation of federal or state laws or local ordinances.

12. Choice of Laws. The laws of the State of Nebraska shall govern as to the interpretation, validity and effect of this Agreement.

13. Complete Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter of this Agreement.

14. Good Faith. Every representation, covenant, warranty or other obligation within this Agreement shall carry with it an obligation of good faith in its performance or enforcement.

15. Warranty. Owner represents, covenants and warrants that the making and execution of this Agreement, and all other documents and instruments required or related hereunder, have been fully authorized by the necessary corporate and company action of Owner and are valid, binding and enforceable obligations of the Owner in accordance with their respective terms.

16. Modification. This Agreement may not be amended, modified or altered unless by written agreement signed by the City and Owner.

17. Approval. This Agreement is conditional, subject to the approval of the City Council of City.

18. Running with the Land. This Agreement, including any obligations, representations, warranties and covenants shall run with the Parcel and shall be binding upon any subsequent owners of the Parcel.

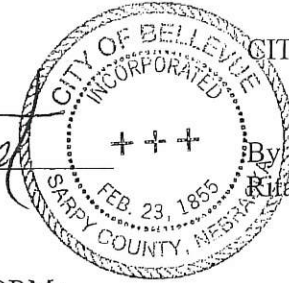
19. Cost of Filing. Owners shall pay the cost of filing this document with the Sarpy County Register of Deeds.

WHEREFORE, the Parties have signed this Agreement as of the Effective Date.

*(Signature pages to follow.)*

ATTEST:

*[Signature]*  
City Clerk



CITY OF BELLEVUE

By *[Signature]*  
Rita Sanders, Mayor

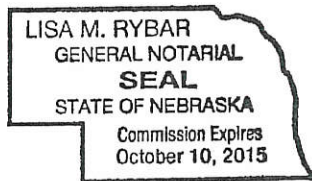
APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for City of Bellevue

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY    )

On this 10<sup>th</sup> day of September, 2012, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Rita Sanders, Mayor of the City of Bellevue, a Nebraska Municipal Corporation, to me personally known to be the identical person whose name is affixed to the foregoing instrument who acknowledged the same to be her voluntary act and deed on behalf of said corporation.

Witness my hand and notarial seal on the day and year last above written.



*[Signature]*  
Notary Public



# EXHIBIT B



# EXHIBIT C

SHERRETS BRUNO & VOGT LLC

James D. Sherrets  
licensed in Arizona, Colorado &  
Nebraska

260 Regency Parkway Drive, Ste. 200  
Omaha, NE 68114

James L. Schneider  
licensed in Nebraska

Robert S. Sherrets  
licensed in Kansas, Nebraska,  
Missouri & Iowa

8700 E Vista Bonita Drive, Ste. 236  
Scottsdale, AZ 85255

Thomas G. Schumacher  
licensed in Nebraska

Jason M. Bruno  
licensed in Arizona, Minnesota,  
Nebraska & Texas

Phone: (402) 390-1112

Max J. Kelch  
licensed in Nebraska

Fax: (402) 390-1163

[www.sherretslaw.com](http://www.sherretslaw.com)

Diana J. Vogt  
licensed in Nebraska

E-mail: [law@sherrets.com](mailto:law@sherrets.com)

June 18, 2020

Bree Robbins  
City of Bellevue  
Office of the City Attorney  
1500 Wall Street  
Bellevue, NE 68005

Via Email: [Bree.robbins@bellevue.net](mailto:Bree.robbins@bellevue.net)

**RE: 2221 Main Street  
Pat Shannon Bellevue Zoning Development Agreement**

Dear Ms. Robbins:

Please be advised that I represent Pat Shannon and Main Street Properties, LLC ("MSP"). Please direct any further communications regarding this matter to me. I am in receipt of your May 21, 2020 letter claiming that Mr. Shannon violated the Bellevue Zoning Development Agreement entered into between MSP and the City of Bellevue on September 10, 2012 ("Development Agreement") by parking U-Haul trucks/trailers on the north side of the building.

Your accusations are unfounded and contradict the plain terms of the Development Agreement, which states, in pertinent part:

No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel *north of the north face* of the building currently situated on the Parcel. (emphasis added).

The contractual limitation does not prohibit MSP from parking vehicles "on the north side of building" as represented in your letter. The City is attempting to expand upon the clear and unambiguous language of the Development Agreement, which only prohibits parking to the north of the *north face* of the building. The attempt to re-write and misconstrue the agreement is improper and deprives MSP of the benefit of its bargain. "A contract written in clear and unambiguous language is not subject to interpretation or construction and must be enforced according to its terms." *Ray Anderson, Inc. v. Buck's, Inc.*, 300 Neb. 434, 441, 915 N.W.2d 36, 42 (2018).

June 18, 2020

Page 2 of 2

MSP has fully complied with the terms of the Development Agreement and no U-Haul vans, trucks, or trailers have been parked north of the north face of the building. The trailers you reference were lawfully and appropriately parked in accordance with the Development Agreement. I attach a photograph, with the trailers circled, that undisputedly shows that they were not parked north of the north face of the building.


The City's attempt to unilaterally change the negotiated terms of the Development Agreement is further contradicted by the Parties' actions since that agreement was executed. MSP has consistently and conspicuously parked U-Haul trucks and trailers in those same three parking spots since September of 2012 with the City's knowledge and without any problems, complaints, or purported violations. "The best, if not controlling, evidence of the intent of the parties to an agreement is the parties' interpretation of the agreement as evidenced by their actions in performance of the agreement." *Marvin E. Jewell & Co. v. Thomas*, 231 Neb. 1, 6, 434 N.W.2d 532, 535 (1989).

The City's actions are interfering with MSP's property interests and business and significant money losses continue to accrue by the day. Please confirm to me in writing by close of business on June 23, 2020, time being of the essence, that MSP can continue to park in those three spots as it has been doing for nearly a decade and that MSP and Mr. Shannon will no longer be cited, harassed, or threatened by the City.

If this confirmation is not received or MSP or Mr. Shannon are subjected to further harassment or threats, my clients fully intend to seek redress against the City, including for violations of their civil rights, condemnation of their property rights and interests, and breach of the Development Agreement. If my clients are forced to file suit, they intend to seek compensatory damages, punitive damages, attorney fees, and any other damages or remedies authorized by law.

If you have any questions or wish to discuss this matter, please do not hesitate to contact me. Thank you.

Sincerely,



Jason M. Bruno  
For the Firm

JMB:arm  
cc: Pat Shannon (via email)  
enclosure

# EXHIBIT D

BELLEVUE CODE ENFORCEMENT  
OFFICIAL NOTICE - ZONING VIOLATION

Z- NO 00310

TIME 2:15 pm

DATE June 19, 2020

NAME: Posted Front Door ADDRESS: —

LOCATION OF VIOLATION: 2221 Main St

OWNER: — ADDRESS: —

YOU ARE HEREBY NOTIFIED THAT YOU ARE IN VIOLATION OF THE  
BELLEVUE ZONING ORDINANCE AS INDICATED BELOW:

- Zoning Ordinance Sec: Ref Contract Zoning Agreement
- Zoning Ordinance Sec: with City of Bellevue
- Zoning Ordinance Sec: —

YOU ARE HEREBY ORDERED TO REMEDY THE VIOLATION (BY ABATEMENT AND/OR REMOVAL) **ON OR**

**BEFORE:** July 19 2020

TO REMEDY THE VIOLATION(S), YOU SHALL Have all Uhaul vans, trucks  
and/or trailers Parked or Stored South of the  
North face of the Building

THIS NOTICE APPLIES TO THESE AND ANY FUTURE VIOLATIONS. FUTURE VIOLATIONS THAT ARE REPEAT VIOLATIONS  
WILL NOT BE GIVEN A NOTICE AND WILL BE SUBJECT TO IMMEDIATE ABATEMENT OR REMOVAL BY THE CITY.

**APPEAL TO THE BOARD OF ADJUSTMENT:** You have **thirty (30)** calendar days after the day you receive this Official Notice to appeal this Order to the Board of Adjustment. If you fail to timely appeal this Order or fail to appear at a hearing scheduled pursuant to a timely request, then it shall be conclusively presumed that you are in violation of the Bellevue Zoning Ordinance sections referenced above. If you have any questions concerning how to request a hearing, please contact **BELLEVUE PLANNING DEPARTMENT** at 402-293-3026.

Received by: Posted Front Door Issued by: D. Kuhlman

FOR FURTHER INFORMATION OR QUESTIONS ABOUT THIS OFFICIAL NOTICE, PLEASE CONTACT:  
BELLEVUE CODE ENFORCEMENT AT 402-293-3050  
FOR FURTHER INFORMATION OR QUESTIONS ABOUT THE APPEAL PROCESS, PLEASE CONTACT:  
BELLEVUE PLANNING DEPARTMENT AT 402-293-3026

# EXHIBIT E

**Jason Bruno**

---

**From:** Jason Bruno  
**Sent:** Friday, June 19, 2020 3:52 PM  
**To:** Bree Robbins  
**Cc:** Law Office  
**Subject:** Re: 6.19.20 Ltr to Bruno re 2221 Main Street

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good afternoon,

Would you mind telling me what the violation Mr. Shannon received today was for? That aerial was not current and there was nothing in the three spots referenced at the time the citation was issued. Do you have any photographic evidence of the purported violation? Thank you.

Jason M. Bruno  
Attorney at Law  
Licensed in Nebraska, Arizona, Minnesota & Texas

On Jun 19, 2020, at 1:45 PM, Bree Robbins <bree.robbins@bellevue.net> wrote:

Mr. Bruno:  
Please see attached.

Bree Robbins  
Bellevue City Attorney

1500 Wall Street  
Bellevue, NE 68005  
(402) 682-6157 - Tahnee (City Paralegal)  
(402) 682-6156 - Bree  
(402) 293-3058 - Fax

Confidentiality Notice: 18 U.S.C. 2510 et seq. provides federal criminal and civil penalties for the unauthorized reading of this e-mail if you are not the intended recipient

<6.19.20 Ltr to Bruno re Uhaul.pdf>

# EXHIBIT F



## CITY OF BELLEVUE

OFFICE OF THE CITY ATTORNEY

1500 Wall Street ☐ Bellevue, NE 68005 ☐ (402) 682-6156  
Bree.robbins@bellevue.net

---

July 2, 2020

Jason Bruno

[jbruno@sherrets.com](mailto:jbruno@sherrets.com)

[law@sherrets.com](mailto:law@sherrets.com)

RE: 2221 Main Street (*Lots 1- 3 Block 55 Bellevue*)  
REZONING NOTICE

Dear Mr. Bruno:

Please let this letter serve as notice that a hearing is scheduled before the Bellevue Planning Commission on July 23, 2020 at 7:00 p.m. to rezone the parcel located at 2221 Main Street in Bellevue, Sarpy County, Nebraska to its prior RG-50-OTO zoning. The rezoning from BGM-OTO to RG-50-OTO and the scheduled hearing is being conducted pursuant to the Bellevue Zoning Development Agreement signed on or about September 10, 2012 and recorded with the Sarpy County Register of Deeds at Instrument Number 2012-29687.

Since Main St. Properties LLC waived its rights to defend any action(s) of the City to enforce any of its rights granted under the Agreement, including but not limited to this rezoning hearing, you will not be allowed to address the Bellevue Planning Commission on this matter.

Finally, your paralegal, Alysia Waller, called our planning department on June 30, 2020 inquiring into how to appeal a zoning violation received on or about June 19, 2020 (Z-00310). Typically, appeals are made the Bellevue Board of Adjustment and only allowed for specific enumerated reasons, none of which would be applicable in the present situation. Additionally, as stated above, your client has waived its right to defend any action(s) of the City to enforce its rights under this agreement. Additionally, I would remind you that the City of Bellevue is represented by an attorney in this matter, as you are well aware, and all communications from your office need to go directly through me.

Sincerely,

*/s/ Bree Robbins*

Bree Robbins  
City Attorney

# EXHIBIT G

## Rezoning Request

Zoning of property in Bellevue must be changed by ordinance. The Bellevue Planning Commission recommends action to the Bellevue City Council. The Council then acts on the ordinance.

Process	Applicant	Processing Agency
Pre-Application Conference (Recommended)	Contacts Planning Department and provides general outline of development and reason for zoning change request.	Planning Department discusses the project with the applicant and provides advice on a variety of development related issues.
Application & Planning Department Review	Files complete application, supplemental information and required fee. Information required generally includes legal description of property, general development plans and proposed zoning. Specific submittal requirements are detailed on the application form.	The Planning Department reviews the application, inspects the site, prepares its recommendation and notifies surrounding property owners of the request. The application and recommendation are forwarded to the Planning Commission.
Planning Commission Review & Public Hearing	Attends public hearing to formally present request, answer questions and provides additional information, if necessary.	The Planning Commission holds a public hearing and formulates its recommendation. The Planning Department prepares an ordinance for the zoning change and forwards it to the City Council.
City Council Review & Public Hearing	Attends public hearing to the City Council to formally present proposal, answer questions and provide additional information, if necessary.	The City Council conducts three readings of the proposed zoning change, the second of which is a public hearing. The Council votes at the last reading. If approved, the ordinance is transmitted to the Mayor for signature. The change becomes final 15 days after Council action.

# EXHIBIT F

IN THE OFFICE OF THE BELLEVUE CITY CLERK

MAIN ST PROPERTIES LLC,	)	<b>NOTICE OF</b>
	)	<b>CONTRACT CLAIM</b>
Claimant,	)	
	)	
vs.	)	<b>AMOUNT OF CLAIM</b>
	)	<b>\$469,738</b>
CITY OF BELLEVUE, NEBRASKA,	)	
	)	
Respondent.	)	

Main St Properties LLC (“MSP”) presents its claim against the City of Bellevue, Nebraska (“the City”) pursuant to Neb. Rev. Stat. § 16-726 and other applicable law. The name and address of the Claimant are Main St Properties LLC, 2221 Main Street, Bellevue, Nebraska 68005. MSP is represented by attorney, Jason Bruno, and the law firm of Sherrets Bruno & Vogt LLC, at 260 Regency Parkway Drive, Suite 200, Omaha, Nebraska 68114. The amount of the claim is \$469,738, comprised of the following:

- \$14,000 for interference with three additional parking stalls;
- \$250,000 reduction in fair market value of Property;
- \$42,302 in annual U-Haul rental commission profits and \$3,000 profit in box and moving supply;
- \$115,436 in building improvements and expenditures; and
- \$48,000 in annual lost rent from tenants.

On September 10, 2012, MSP and the City entered into the Bellevue Zoning Development Agreement (“the Development Agreement”), wherein the City agreed to rezone MSP’s real property located at 2221 Main Street (“the Property”) from RG-50-OTO to BGM-OTO. The Development Agreement is attached as Exhibit A. The plain terms of the Development Agreement state, in pertinent part:

No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel *north of the north face* of the building currently situated on the Parcel. (Exhibit A, Pg. 2, ¶ 4) (emphasis added).

Prior to the Development Agreement, MSP was utilizing the parking spots north of the north face of the building to park U-Haul vans, trucks, and trailers. MSP gave up the ability to continue to park U-Haul vans, trucks, and trailers in those spots as consideration and in exchange for the obligations of the City in the Development Agreement.

MSP has not violated any zoning laws, ordinances, or regulations. MSP has fully complied with the terms of the Development Agreement and has not parked or stored any U-Haul vans, trucks, or trailers north of the north face of the building since the Development Agreement was executed.

After the passage of nearly eight years since it entered into the Development Agreement, the City suddenly and arbitrarily contended that MSP could not park U-Haul vans, trucks, or trailers in three additional spots circled on the photograph attached as Exhibit B. The City claimed that those three additional spots violate the restriction in the Development Agreement because they are generally on the north side of the building. On June 19, 2020, the City issued Enforcement Official Notice (No. 00310) on the Property. A copy of the Zoning Violation is attached as Exhibit C.

The City's contentions are baseless and constitute material breaches of the Development Agreement. The Development Agreement does not prohibit MSP from parking vehicles on the north side of building or pertain to the three additional parking spots depicted on Exhibit B. The City is attempting to expand the clear and unambiguous language of the Development Agreement, which only prohibits parking to the north of the *north face* of the building. The attempt to re-write and misconstrue the agreement is improper, a breach of contract, and deprives

MSP of the benefit of its bargain. “A contract written in clear and unambiguous language is not subject to interpretation or construction and must be enforced according to its terms.” *Ray Anderson, Inc. v. Buck's, Inc.*, 300 Neb. 434, 441, 915 N.W.2d 36, 42 (2018).

MSP entered into the Development Agreement and gave up valuable consideration, including the right to park in parking spots north of the north face of the building, so it could operate a U-Haul business and park and store U-Haul vans, trucks, or trailers on the Property, including in the three spots depicted in Exhibit B. The City’s attempt to unilaterally change the negotiated and agreed upon terms of the Development Agreement is further contradicted by the Parties’ actions since that agreement was executed. MSP has conspicuously parked U-Haul trucks and trailers in those same three parking spots since September of 2012 with the City’s knowledge and without any problems, complaints, or purported violations. “The best, if not controlling, evidence of the intent of the parties to an agreement is the parties’ interpretation of the agreement as evidenced by their actions in performance of the agreement.” *Marvin E. Jewell & Co. v. Thomas*, 231 Neb. 1, 6, 434 N.W.2d 532, 535 (1989).

The Zoning Violation further constitutes a breach of the Development Agreement because there were no U-Haul, vans, trucks, or trailers located in the three additional spots depicted on Exhibit B or north of the north face of the building at the time it was issued because MSP’s counsel was investigating the City’s contentions. On June 19, 2020, MSP’s attorney alerted the City’s attorney to the fact that there were no U-Haul, vans, trucks, or trailers located in the three additional spots depicted on Exhibit B or north of the north face of the building at the time the Zoning Violation was issued, asked for clarification of the alleged violation, and requested photographic evidence of any violation. A copy of the June 19, 2020 email is attached as Exhibit D. The City never responded to the June 19, 2020 email or provided evidence of any

violation existing at the time of the citation. The Zoning Violation does not articulate the reasons for its issuance with any specificity or list any zoning ordinance sections that MSP purportedly violated. The Zoning Violation required the purported zoning violation to be remedied on or before June 19, 2020, *the same day it was issued*.

On July 2, 2020, the City notified MSP's attorney that a hearing was scheduled before the Bellevue Planning Commission where the Property would be reverted to its previous zoning of RG-50-OTO. A true and correct copy of the July 2, 2020 correspondence is attached as Exhibit E. In the July 2, 2020 correspondence, the City notified MSP that it could not participate in or be heard at the hearing to rezone its Property. The City stated:

Please let this letter serve as notice that a hearing is scheduled before the Bellevue Planning Commission on July 23, 2020 at 7:00 p.m. to rezone the parcel located at 2221 Main Street in Bellevue, Sarpy County, Nebraska to its prior RG-50-OTO zoning. The rezoning from BGM-OTO to RG-50-OTO and the scheduled hearing is being conducted pursuant to the Bellevue Zoning Development Agreement signed on or about September 10, 2012 and recorded with the Sarpy County Register of Deeds at Instrument Number 2012-29687.

Since Main St. Properties LLC waived its rights to defend any action(s) of the City to enforce any of its rights granted under the Agreement, including but not limited to this rezoning hearing, you will not be allowed to address the Bellevue Planning Commission on this matter.

The City has breached the Development Agreement by: 1) threatening and issuing a Zoning Violation to MSP; 2) attempting to alter and rewrite the Development Agreement years after its execution; 3) interfering with and failing to allow continued use of the Property as a U-Haul operation; 4) failure to allow the RG-50-OTO zoning; 5) threatening to rezone the Property and rezoning the Property; 6) fabricating violations of the Development Agreement; 7) restricting parking and storage on the Property beyond the north of the north face of the building on the Property; 8) impeding MSP's business, expectancies, property rights, and interests; 9) failing to afford MSP appropriate notice of default or opportunity to cure as required by

Paragraph 6 of the Development Agreement; and 10) failing to act in good faith as required by Paragraph 14 of the Development Agreement.

Dated this 12<sup>th</sup> day of July, 2020.

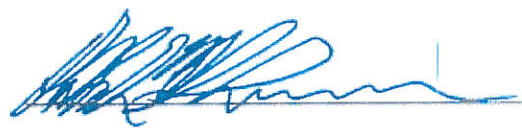
MAIN ST PROPERTIES LLC, CLAIMANT

By: 

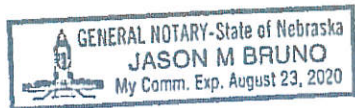
Jason M. Bruno, NE #23062  
James L. Schneider, NE #25825  
SHERRETS BRUNO & VOGT LLC  
260 Regency Parkway Drive, St. 200  
Omaha, NE 68114  
(402) 390-1112 Telephone  
(402) 390-1163 Facsimile  
[law@sherrets.com](mailto:law@sherrets.com)  
ATTORNEYS FOR CLAIMANT

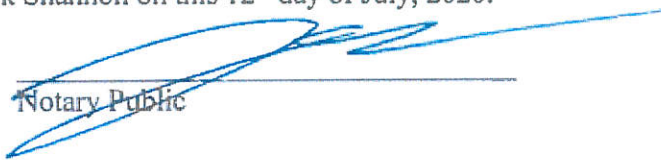
STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF SARPY     )

I, Patrick Shannon, being first duly sworn upon oath, state that I am an authorized representative of the Claimant Main St Properties LLC, I have read the foregoing Notice of Claim, have personal knowledge of the contents herein, and confirm that the facts set forth herein are true and correct to the best of my knowledge and belief.



Subscribed and sworn to before me by Patrick Shannon on this 12<sup>th</sup> day of July, 2020.



  
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2020, a true and accurate copy of the foregoing was served via Electronic Mail to:

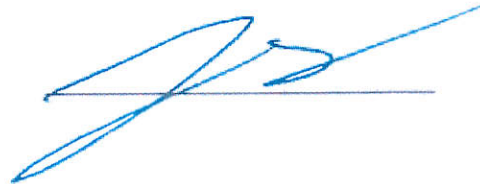
Susan Kluthe  
Bellevue City Clerk  
1500 Wall Street  
Bellevue, Nebraska 68005  
[susan.kluthe@bellevue.net](mailto:susan.kluthe@bellevue.net)

Bree Robbins  
Bellevue City Attorney  
1500 Wall Street  
Bellevue, Nebraska 68005  
[bree.robbins@bellevue.net](mailto:bree.robbins@bellevue.net)

I hereby certify that on July 13, 2020, a true and accurate copy of the foregoing was served via hand delivery to:

Susan Kluthe  
Bellevue City Clerk  
1500 Wall Street  
Bellevue, Nebraska 68005  
[susan.kluthe@bellevue.net](mailto:susan.kluthe@bellevue.net)

Bree Robbins  
Bellevue City Attorney  
1500 Wall Street  
Bellevue, Nebraska 68005  
[bree.robbins@bellevue.net](mailto:bree.robbins@bellevue.net)

A handwritten signature in blue ink, appearing to be 'Bree Robbins', is written over a horizontal line.

# EXHIBIT A

COPY

Record & Return to:  
Adams & Sullivan, P.C., L.L.O.  
1246 Golden Gate Drive, Suite 1  
Papillion, NE 68046

#### BELLEVUE ZONING DEVELOPMENT AGREEMENT

THIS ZONING DEVELOPMENT AGREEMENT (the "Agreement"), made this 10<sup>th</sup> day of September, 2012 (the "Effective Date"), by and between Main St. Properties, LLC (the "Owner") and the City of Bellevue, a Nebraska Municipal Corporation (the "City"). For the purposes of this Agreement, Owner and City may be referred to individually as a "Party" and collectively as the "Parties".

#### RECITALS

A. WHEREAS, the Owner is the owner of the real property legally described as Lots 1-3, Block 55, City of Bellevue, Sarpy County, Nebraska (the "Parcel"), which Parcel is within the corporate limits of the City and within the City's zoning and platting jurisdiction; and

B. WHEREAS, the Owner has requested rezoning of the Parcel by the City from RG-50-OTO to BGM-OTO to allow continued use of the Parcel for business offices and to allow use of the Parcel as a U-Haul operation for the rental of moving vans, trucks, trailers and related equipment and the sale of boxes and packing materials (the "Project"); and

C. WHEREAS, the City is willing to conditionally rezone the Parcel from RG-50-OTO to BGM-OTO so long as the Parcel is not used for any other uses, as defined by the City of Bellevue Zoning Ordinance, allowable under BGM zoning, except as provided herein; and

D. WHEREAS, City has determined that it is in the best interest of the health, safety and welfare of the City and its residents to exercise its legislative prerogative in favor of Owner as contemplated by paragraph B of the recitals conditioned upon Owner establishing for its own benefit and for the mutual benefit of all future owners and occupants of the Parcel, certain

privileges, covenants, terms, conditions, restriction, and rights in, under, over and upon the Parcel together with certain mutually beneficial covenants, privileges, restrictions and obligations with respect to the use, operation and maintenance of the Parcel in addition to those matters currently of record, and notwithstanding any other right, privilege, interest of entitlement whatsoever inuring to Owner or their successors, grantees or transferees as an owner, user or occupant of the Parcel, whether under the laws of the State of Nebraska, the City or otherwise, the same hereby being waived by Owner to the maximum extent permitted by law; and

E. WHEREAS, it is intended that all owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any right, title or interest in the Parcel shall at all times enjoy the benefits of, and shall hold their interests subject to all rights, easements, privileges, covenants, terms, conditions and restrictions set forth in this Agreement, all of which shall run with the land and be binding upon the Parcel and anyone having or acquiring any rights, title or interest in or to any part thereof. All rights, easements, privileges, covenants, terms, conditions and restrictions created hereunder are declared to be in furtherance of a plan to promote and protect the cooperative use, operation and maintenance of the Parcel, the comprehensive development of the City and otherwise for the public health, safety, welfare and best interests of the City and its residents.

NOW THEREFORE, the Parties agree as follows:

1. Authority. The City has the authority to enter into this Agreement pursuant to Neb. Rev. Stat. §19-901 et. seq., as amended, and pursuant to Nebraska law.
2. Zoning. The City shall conditionally rezone the Parcel from RG-50-OTO to BGM-OTO.
3. Initial Use and Development. The Parcel shall be used only for (a) business offices and (b) the Project except as any different use is expressly authorized hereafter by action of the Bellevue City Council
4. Restrictions on the Project. No parking or storage of U-Haul vans, trucks or trailers shall be permitted on the portion of the Parcel north of the north face of the building currently situated on the Parcel.
5. Zoning Restrictions. The Parcel shall retain conditional BGM-OTO zoning for the term of this Agreement if and only if the following conditions are satisfied:
  - (a) The Parcel shall be used for the Project and for business offices and for no other use or purpose.
  - (b) The City shall file this Agreement and any amendments thereto, including all exhibits, in the Sarpy County office specified for recording zoning ordinances. The City shall record this Agreement and any amendments thereto, including all exhibits, in the Office of the

Register of Deeds of Sarpy County, Nebraska, against the Parcel so as to notify all persons, including future owners of the Parcel, as to the use and development restrictions placed upon the Parcel; and

(c) The Developer shall otherwise comply with the requirements for BGM-OTO.

(d) At such time as none of the lots presently zoned for residential uses in Blocks 55, 56 and 106, City of Bellevue, are zoned for residential uses, the limitations and restrictions set forth in this agreement shall be of no further force and effect, with the Parcel thereafter being usable for any purpose permitted under BGM zoning.

6. Violations and Remedies. In the event that the Owner should violate any of the provisions of this Agreement, then, after providing the Owner with written notice of such violation, and upon the Owner's failure to cure such violation within ten (10) days after receipt of such notice, or, after three (3) violations have occurred regardless if the violations are cured, the City shall have the following rights:

(a) To schedule a hearing to rezone the Parcel to its prior RG-50-OTO zoning and, at such hearing, rezone the Parcel back to RG-50-OTO zoning;

(b) To deny the approval of any additional permits or certificates with respect to the Parcel;

(c) To bring a legal action to prohibit and/or enjoin an unlawful use and/or development from continuing upon the Parcel; and

(d) To utilize any and all other remedies provided to the City by law.

7. Acknowledgement of Remedies of City. Owner acknowledges that failure to comply with the terms of this Agreement shall cause damage to the City which may not be fully redressed by monetary damages and that the remedies provided to the City in this Agreement constitute reasonable liquidated damages clauses under Nebraska law.

8. Jurisdiction and Venue. Should the City bring any legal action pursuant to this Agreement, Owner, including their officers, directors and employees, shall consent to personal jurisdiction in the State of Nebraska and shall consent to venue in Sarpy County, Nebraska.

9. Covenant Not to Sue or Defend. Owner hereby represents, warrants and covenants that they shall not sue the City, nor shall they defend any proceeding brought by City, based upon (a) unlawful taking, (b) inverse condemnation, (c) standing, (d) invalidity or vagueness of this Agreement, or (e) similar claims or defenses, should the City seek to enforce any of its rights granted under this Agreement.

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit and burden of the Parties hereto, and their respective successors and assigns. No right granted herein may be severed from the entirety of this Agreement except as expressly permitted by this Agreement, or by the written consent of the then interested Parties.

11. Nondiscrimination. With respect to development of the Project, neither the Developer nor the Owner shall discriminate against any persons on account of race, national origin, sex, age, political or religious affiliations, or disability in violation of federal or state laws or local ordinances.

12. Choice of Laws. The laws of the State of Nebraska shall govern as to the interpretation, validity and effect of this Agreement.

13. Complete Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter of this Agreement.

14. Good Faith. Every representation, covenant, warranty or other obligation within this Agreement shall carry with it an obligation of good faith in its performance or enforcement.

15. Warranty. Owner represents, covenants and warrants that the making and execution of this Agreement, and all other documents and instruments required or related hereunder, have been fully authorized by the necessary corporate and company action of Owner and are valid, binding and enforceable obligations of the Owner in accordance with their respective terms.

16. Modification. This Agreement may not be amended, modified or altered unless by written agreement signed by the City and Owner.

17. Approval. This Agreement is conditional, subject to the approval of the City Council of City.

18. Running with the Land. This Agreement, including any obligations, representations, warranties and covenants shall run with the Parcel and shall be binding upon any subsequent owners of the Parcel.

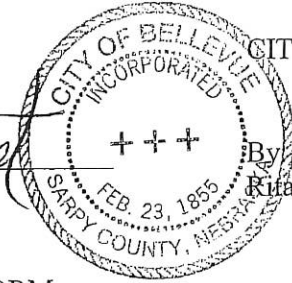
19. Cost of Filing. Owners shall pay the cost of filing this document with the Sarpy County Register of Deeds.

WHEREFORE, the Parties have signed this Agreement as of the Effective Date.

*(Signature pages to follow.)*

ATTEST:

*Ray Dammasch*  
City Clerk



CITY OF BELLEVUE

By *Rita Sanders*  
Rita Sanders, Mayor

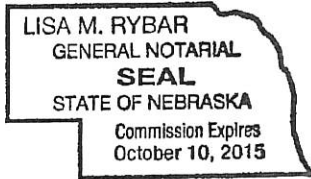
APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for City of Bellevue

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

On this 10<sup>th</sup> day of September, 2012, before me, the undersigned, a Notary Public duly commissioned and qualified for said county, personally came Rita Sanders, Mayor of the City of Bellevue, a Nebraska Municipal Corporation, to me personally known to be the identical person whose name is affixed to the foregoing instrument who acknowledged the same to be her voluntary act and deed on behalf of said corporation.

Witness my hand and notarial seal on the day and year last above written.



*Lisa M Rybar*  
\_\_\_\_\_  
Notary Public



# EXHIBIT B



# EXHIBIT C

BELLEVUE CODE ENFORCEMENT  
OFFICIAL NOTICE - ZONING VIOLATION

Z- No 00310

TIME 2:15 pm

DATE June 19, 2020

NAME: Posted Front Door ADDRESS: —

LOCATION OF VIOLATION: 2221 Main St

OWNER: — ADDRESS: —

YOU ARE HEREBY NOTIFIED THAT YOU ARE IN VIOLATION OF THE  
BELLEVUE ZONING ORDINANCE AS INDICATED BELOW:

Zoning Ordinance Sec: Ref Contract Zoning Agreement

Zoning Ordinance Sec: with City of Bellevue

Zoning Ordinance Sec: —

YOU ARE HEREBY ORDERED TO REMEDY THE VIOLATION (BY ABATEMENT AND/OR REMOVAL) **ON OR**

**BEFORE:** July 19 2020

TO REMEDY THE VIOLATION(S), YOU SHALL Have all Uhaul vans, trucks  
and/or trailers Parked or Stored South of the  
North face of the Building

THIS NOTICE APPLIES TO THESE AND ANY FUTURE VIOLATIONS. FUTURE VIOLATIONS THAT ARE REPEAT VIOLATIONS  
WILL NOT BE GIVEN A NOTICE AND WILL BE SUBJECT TO IMMEDIATE ABATEMENT OR REMOVAL BY THE CITY.

**APPEAL TO THE BOARD OF ADJUSTMENT:** You have **thirty (30) calendar days** after the day you receive this Official Notice to appeal this Order to the Board of Adjustment. If you fail to timely appeal this Order or fail to appear at a hearing scheduled pursuant to a timely request, then it shall be conclusively presumed that you are in violation of the Bellevue Zoning Ordinance sections referenced above. If you have any questions concerning how to request a hearing, please contact **BELLEVUE PLANNING DEPARTMENT** at **402-293-3026**.

Received by: Posted Front Door Issued by: D. Kuhlman

FOR FURTHER INFORMATION OR QUESTIONS ABOUT THIS OFFICIAL NOTICE, PLEASE CONTACT:  
BELLEVUE CODE ENFORCEMENT AT 402-293-3050

FOR FURTHER INFORMATION OR QUESTIONS ABOUT THE APPEAL PROCESS, PLEASE CONTACT:  
BELLEVUE PLANNING DEPARTMENT AT 402-293-3026

# EXHIBIT D

## Jason Bruno

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**From:** Jason Bruno  
**Sent:** Friday, June 19, 2020 3:52 PM  
**To:** Bree Robbins  
**Cc:** Law Office  
**Subject:** Re: 6.19.20 Ltr to Bruno re 2221 Main Street

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good afternoon,

Would you mind telling me what the violation Mr. Shannon received today was for? That aerial was not current and there was nothing in the three spots referenced at the time the citation was issued. Do you have any photographic evidence of the purported violation? Thank you.

Jason M. Bruno  
Attorney at Law  
Licensed in Nebraska, Arizona, Minnesota & Texas

On Jun 19, 2020, at 1:45 PM, Bree Robbins <bree.robbsins@bellevue.net> wrote:

Mr. Bruno:  
Please see attached.

Bree Robbins  
Bellevue City Attorney

1500 Wall Street  
Bellevue, NE 68005  
(402) 682-6157 - Tahnee (City Paralegal)  
(402) 682-6156 - Bree  
(402) 293-3058 - Fax

Confidentiality Notice: 18 U.S.C. 2510 et seq. provides federal criminal and civil penalties for the unauthorized reading of this e-mail if you are not the intended recipient

<6.19.20 Ltr to Bruno re Uhaul.pdf>

# EXHIBIT E



## CITY OF BELLEVUE

OFFICE OF THE CITY ATTORNEY  
1500 Wall Street □ Bellevue, NE 68005 □ (402) 682-6156  
Bree.robbs@bellevue.net

---

July 2, 2020

Jason Bruno  
[jbruno@sherrets.com](mailto:jbruno@sherrets.com)  
[law@sherrets.com](mailto:law@sherrets.com)

RE: 2221 Main Street (*Lots 1- 3 Block 55 Bellevue*)  
REZONING NOTICE

Dear Mr. Bruno:

Please let this letter serve as notice that a hearing is scheduled before the Bellevue Planning Commission on July 23, 2020 at 7:00 p.m. to rezone the parcel located at 2221 Main Street in Bellevue, Sarpy County, Nebraska to its prior RG-50-OTO zoning. The rezoning from BGM-OTO to RG-50-OTO and the scheduled hearing is being conducted pursuant to the Bellevue Zoning Development Agreement signed on or about September 10, 2012 and recorded with the Sarpy County Register of Deeds at Instrument Number 2012-29687.

Since Main St. Properties LLC waived its rights to defend any action(s) of the City to enforce any of its rights granted under the Agreement, including but not limited to this rezoning hearing, you will not be allowed to address the Bellevue Planning Commission on this matter.

Finally, your paralegal, Alysia Waller, called our planning department on June 30, 2020 inquiring into how to appeal a zoning violation received on or about June 19, 2020 (Z-00310). Typically, appeals are made the Bellevue Board of Adjustment and only allowed for specific enumerated reasons, none of which would be applicable in the present situation. Additionally, as stated above, your client has waived its right to defend any action(s) of the City to enforce its rights under this agreement. Additionally, I would remind you that the City of Bellevue is represented by an attorney in this matter, as you are well aware, and all communications from your office need to go directly through me.

Sincerely,

*/s/ Bree Robbins*

Bree Robbins  
City Attorney