

SUMMARY OF REVIEW AND CONCLUSIONS
REGARDING THE CITY OF ST. CLOUD'S
REGULATION OF ADULT USE BUSINESSES

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I. Introduction

This firm has been retained to conduct an independent review of various ordinances adopted by the City of St. Cloud for the purpose of regulating adult uses and sexually oriented businesses in that community. We have been asked to evaluate both the content and effect of these ordinances, but also the process that the City followed in developing these regulations.

To complete this assignment we contacted the Planning Advisory Service of the American Planning Association and requested copies of all of the studies and ordinances that the APA had on file related to the regulation of adult uses. We also reviewed our own files and contacted numerous planning departments and planners throughout the State of Minnesota to identify all of the available examples of local ordinances established to regulate adult uses and the studies of adverse secondary effects that supported the regulation of adult uses.

We also received a copy of the report published by the Working Task Force established by the Minnesota State Attorney General's office in 1989. This report includes a summary of the issues surrounding the regulation of adult uses, and provides guidance to communities that seek to establish zoning ordinances and other regulations to avoid the adverse secondary effects associated with adult uses.

In addition to assembling and reviewing numerous studies and ordinances, we also attempted to identify and gather copies of all of the court cases related to local adult use ordinances. Our purpose in completing this initial research was to identify the necessary components of a local program to regulate adult uses. We wanted to understand the limits of a local governments authority to regulate these uses. Our objective was to establish a model process that communities should follow in developing and enforcing regulations to control adult oriented businesses.

The next step in our research was to gather and review the minutes of meetings, staff correspondence, planning reports, and other public records related to meetings at which the City of St. Cloud considered adult use ordinances. When we had completed our research regarding the regulation of adult uses generally, and understood the required procedures and the legal limitations to the regulation of these uses, we compared the St. Cloud ordinance and process against this model.

Although there are many important elements that are discussed regarding the St. Cloud regulations and the process that the City followed in developing them, certainly one of the most important questions was to determine if the St. Cloud ordinances provide reasonable opportunities for adult uses to locate within that community. Therefore, the next segment of this study included a map of the available sites for the establishment of an adult use business, under the St. Cloud ordinances. In the completion of this research we collaborated with a local real estate broker. He was responsible for determining the availability of the various properties

identified in this research. A summary of that research is attached to this report.

Our conclusion following this analysis is that there are numerous sites available for the establishment of an adult use business, consistent with the St. Cloud Adult Use Ordinances. Also, there have been other sites available on the market during the amortization period for the A, B, & C facility that have since been purchased or leased for other uses. Furthermore, from our work on the St. Cloud Comprehensive Plan we understand that the City of St. Cloud is but a part of a much larger metropolitan area, consisting of four other cities and five townships. There are extensive opportunities within the same market area for the location of adult oriented businesses.

The final section of this report consists of an analysis and refutation of the assumptions and conclusions contained in a planning review commissioned by the owners of adult use establishments in St. Cloud. This report, titled, City of St. Cloud Minnesota Adult Use Regulations was written by R. Bruce McLaughlin, AICP and has been submitted as testimony on behalf of the Adult Bookstore & Cinema (A, B, and C) and seeks to invalidate the St. Cloud ordinances.

II. Description of a Model Process for the Establishment of Adult Use Ordinances

Background

The First Amendment Right to free speech prohibits cities from enacting an ordinance that would ban all forms of adult uses or regulate the content of adult material. Cities do, however, have the right to use zoning regulations limit or restrict the adverse secondary effects associated with adult use businesses.

A city may control regulate the effects of a sexually oriented business, without regulating the content of speech protected by the First Amendment, by drafting an ordinance that is aimed at controlling the adverse secondary effects of adult use businesses. Such regulation must be content neutral in its time, place and manner and must further a local government interest in protecting the health, safety and welfare of its citizens.

The Court ruled, in *United States v. O'Brien*, 391 U.S.367, 377, 88 S.Ct. 1673. 1679 (1968), that for an ordinance to be content neutral in time, place and manner a city must act within the constitutional power of the government. It must further a substantial government interest which is unrelated to the suppression of free expression and the incidental restriction on the First Amendment must not be greater than is essential to further that government interest. The U.S. Court of Appeals, 11th Circuit applied a four part analysis to determine whether an ordinance is content neutral in time, place and manner. The following considerations have since guided numerous court decisions.

- a.) Whether the type of adult use is protected by the first Amendment.
- b.) Whether the ordinance advances a substantial government interest
- c.) Whether the interest to be protected is unrelated to the suppression of free expression.
- d.) Whether the incidental restriction on free expression is narrowly tailored to advance that interest and allows for reasonable avenues of communication.

Zoning

Zoning is an important and effective tool used by local governmental units to implement land use planning. It is also one of the few controls local communities have over the establishment and location of adult entertainment facilities and the potential adverse secondary effects that may be associated with them. A zoning ordinance, when content-neutral, may regulate the time place and manner in which adult material is presented without expressly violating the First Amendment.

Adverse Secondary Effects

The authority of local governments to enact zoning regulations is one of the primary means by which a city may preserve and protect the public welfare. A city may place locational restrictions or limitations on sexually oriented businesses to keep the adverse secondary effects of these uses from degrading the quality of life in the community.

These effects, resulting from a proximate relationship to an adult use establishment, have been documented in studies conducted by cities across the county. The courts have reasoned that a local government does not have to experience negative effects in order to adopt a proactive ordinance. Local officials may rely on studies, reports, or findings generated by other cities if they reasonably believe the findings are relevant to their own situations. This "reasonable belief", the courts have held, must be documented by the city. *City of Renton v. Playtime Theaters Inc.*, 427 U.S. 50, 96 S.Ct.926 (1986)

In the case of *Holmberg v. City of Ramsey*. 12F.3d 140 (8th Cir. 1993), the court upheld the city council's conclusion that if adult uses were not regulated, the secondary effects would occur. This conclusion was based on the recommendation of the city planning commission, whose reliance upon studies conducted by other cities met the court's standard of "reasonable belief". (see page II - 8 for a representative list of studies on adult uses and adverse secondary effects)

Definitions

Defining what constitutes an adult use establishment has been historically troublesome when an ordinance is challenged in the courts. The courts have ruled that a definition must enable planners, city officials and the public to distinguish between similar but not identical uses. Therefore, the ordinance must first define the characteristics of a particular adult use, which may be similar to other uses, and then must qualify the definition so as to distinguish it from uses which are not identical.

Many cities have adopted the wording or a variation of the wording from the Detroit ordinance, upheld in *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976), which qualifies its definitions with the phrase "which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to 'specified sexual activities' or 'specified anatomical areas'". This type of qualifying statement, subsequent to *Young*, has been ruled confusing or vague and resulted in the ordinance being overturned by the courts.

In reaction to these decisions, some communities have attempted to quantify their definitions. The use of numbers or percentages to determine what is to be considered an adult use, the courts have ruled, must be justified. The ordinance would have to show how a number or percentage could be determined and the city would have to show that the same number or percentage could be reached by two people when applied to the same use.

Recently cities have begun to rely on their own state obscenity statutes which typically prohibit the distribution of pornography to minors. An ordinance, based on the statute, can qualify a certain use as an adult use when it must exclude any minor by reason of age. Thus when an establishment is found to be off limits to minors it concurrently becomes, by definition, subject to regulation by zoning.

Spacing and Distancing Requirements

There are two forms of locational restrictions and limitations that an adult use ordinance may impose to combat the adverse secondary effects. The first regulating method creates an adult entertainment district, concentrating all adult uses into one area. This district, established by means of a special overlay zone, serves two purposes: (1) to concentrate similar adult uses into one small area and (2) to prevent the spread of these uses and their associated adverse secondary effects to other parts of the city.

The second and most common is the dispersal method, originally drafted by the city of Detroit. This regulating method places linear restrictions between adult entertainment establishments and more sensitive uses such as residential districts, churches, schools, parks, daycare centers and nursing care facilities. The dispersal method also subjects certain defined uses from concentrating in one area, in order to insure that such uses and their effects will not contribute to the blighting or downgrading of the surrounding neighborhood.

Linear restrictions require a city to institute spacing standards. These standards typically dictate a specified distance to be maintained between certain uses and residentially-zoned land or between the same or similar uses. These spacing standards, when used as a means to control the adverse secondary effects of adult use businesses, should be based on the each community's own planning analysis. (see page II - 10 for an representative list of spacing standards from across the country) The following list, (*Spaced Out Zoning*, Gerald Luedtke, Planning and Zoning News, 1989),

presents a means, whereby, a city may justify its adoption of spacing standards:

- a. The prevention of blight and urban deterioration, (particularly with respect to residential neighborhoods and commercial shopping centers).
- b. Preventing deleterious effects on future community economic development potential.
- c. Preventing negative effects on environmental and personal health.
- d. Prevention of social disorganization and crime.
- e. Prevention of negative impacts on the community tax base.
- f. Prevention of negative effects on accepted standards of community aesthetics.

Although the dispersal method seeks to avoid a concentration of adult uses in one area, a city may specify, through zoning, certain districts where adult use establishments may operate. These districts, together with spacing standards or alone, must be in line with the cities objective of curbing the adverse secondary effects. They may not be used to deny an adult use business a reasonable opportunity to open or operate.

Amortization

At the time an ordinance, which regulates the secondary effects of an adult use is adopted, an existing adult use establishment may become nonconforming. When allowed by state statute, amortization can require the cessation of a nonconforming use, within a specified period of time, so long as the adult business is not denied access to new locations that meet the requirements of the new ordinance. The courts have ruled that for an amortization provision to be valid it must allow a reasonable, (determined by balancing the public gain against the private loss), amount of time for the owner to recoup his or her investment and it must not deny the public reasonable access to such entertainment.

Reasonable Avenues of Communication

Although the adverse secondary effects of an adult use business may be regulated through zoning, a city may not effectively deny an adult business the opportunity to open and operate. The courts have ruled zoning ordinances invalid when, through the albeit legitimate establishment of districts permitting adult businesses and spacing standards, there arises an actual or practical unavailability of alternative sites due to insuperable physical, legal, or economic barriers to the operation or development of an adult business.

The Ninth Circuit Court stated that the economics of site location is a valid inquiry, so long as the economic analysis focuses on whether a site is part of the relevant real estate market. The criteria

used by the court to determine commercial viability is: 1) When it is reasonable to believe that a particular site will become available for a commercial enterprise, 2) sites in industrial or manufacturing zones are reasonably accessible to the general public, have a proper infrastructure of sidewalks roads and lighting and are suitable for some type of commercial enterprise, and 3) commercially zoned locations are part of the real estate market. The Eighth Circuit went on to say that an adult business left to fend for itself in the real estate market on an equal footing with others does not violate the first amendment.

Recommendations

1. Communities should substantiate the need, rationale and factual basis for regulating the secondary adverse effects of adult use businesses.
2. City officials must document their intent to further a government interest in controlling the adverse secondary effects of adult use businesses.
3. Communities should document reports from the community regarding the deleterious effects of a proximate relationship to an adult business.
4. Planning officials may substantiate local problems by relying on studies, reports or findings completed by other communities.
5. City officials should document their reliance on studies conducted by other communities to substantiate or extrapolate the need to regulate the adverse adverse effects associated with adult use businesses.
6. City officials should analyze and document the reasonableness and necessity of each regulatory aspect of a proposed ordinance.
7. City officials must determine that the ordinance provides reasonable opportunities for adult businesses to open and operate within the community.

ADULT USE STUDIES

1. **Minneapolis City Planning Department Report**
Zoning Code Text Amendment Analysis
August 29, 1990
2. **City of Falcon Heights**
Report Related to Adult Uses
February 28, 1994
3. **New Hanover County Planning Department**
Regulation of Adult Entertainment Establishments in New Hanover County
July, 1989
4. **Manatee County, Florida County Planning and Development Department**
Adult Entertainment Business Study
June, 1987
5. **State of Minnesota**
Report of the Attorney General's Working Group on the Regulation of Sexually-Oriented
Businesses
June 6, 1989
6. **City of Brooklyn Park**
Staff Reports/Study on Adult Use Entertainment
February 24, 1992
7. **Department of Justice Canada**
The Impact of Pornography: A Decade of Literature
1984
8. **City of Lakeville**
Zoning Ordinance Revision Adult Uses - Part One
July 6, 1993
9. **City of Lakeville**
Zoning Ordinance Revision Adult Uses - Part Two
January 13, 1994

10. Rochester/Olmsted Consolidated Planning Department and Office of the Rochester City Attorney
Adult Entertainment Perspectives
1988
11. Division of Planning, Department of Planning and Economic Development, City of St. Paul
Adult Entertainment - A 40-Acre Study
1987
12. Division of Planning, Department of Planning and Economic Development, City of St. Paul
Adult Entertainment - Supplement to the 1987 Zoning Study
13. City of Phoenix
Relation of Criminal Activity and Adult Businesses
May, 1979
14. Indianapolis, IN
Adult Entertainment Businesses in Indianapolis
1984
15. Adams County, CO
Adams County Nude Entertainment Study, prepared by the Sherriff's Department
1987

SPACING STANDARDS

City	Residential	Adult Use	On or More of the Following: Daycare, Church, Park, School, Playground, etc.	Other
Islip, NY	500'	½ Mile	500'	
San Bernadino, CA	1,000'	2,000'	1,000'	
Wyoming, MI	500'	1,000'	500'	
Peoria, IL	700'	500'	500'	
Duluth, MN	250'		400'	
Minneapolis, MN	1,000'	1 per block face	500'	
Fargo, ND	1,200'		1,200'	Main Avenue 300' R.O.W.
St. Paul, MN	100'	300'		
Palm Beach City, FL	500'	2,000'	500 TO 1,500'	
Ramsey, MN	750'	1,000'	1,000'	
St. Louis Park, MN	500'	1,000'	1,000'	
Rochester, MN	750'	750'	750'	
Manatte City, FL	500'	1,000'	2,000 TO 2,500'	
Monticello, MN	700'	400'	700'	
Marion City, IN	500'		500'	
Whittier, CA	500'	1,000'	1,000'	
Champlin, MN	500'	500'	500'	

III. Summary of the St. Cloud Process to Establish an Adult Use Ordinance

Background

The City of St. Cloud began a process in 1978 to amend its zoning code to include an ordinance that would regulate adult bookstores and adult motion picture theaters, thereby limiting or restricting the associated adverse secondary effects. This action was initiated in response to community complaints of illicit behavior and unsanitary conditions at an adult bookstore located on T.H. 10.

A draft ordinance was prepared by city staff, subsequent to an investigation conducted by the health department. It provided definitions applicable to adult uses, created an adult use and service establishment district, and specified spacing standards. It was presented by the City Council at a public hearing. Public testimony opposed the ordinance and it was defeated. The adult bookstore continued its operation at the same location.

In 1982 the City Council held a public hearing on an ordinance pertaining to the unlawful display to minors of indecent publications, pictures, or articles. Public opinion favored the ordinance and it was passed unanimously. A motion was made that suggested a copy of the ordinance be displayed where books or magazines are sold. The motion passed unanimously.

Process

A letter to the editor was published by the *St. Cloud State University Chronicle* in 1991 describing the illicit behavior occurring at the adult bookstore located on T.H. 10, (the same bookstore that was investigated in 1978). During the same period the city was receiving numerous complaints from citizens and business owners. The City decided to prepare an ordinance, similar to the adult use ordinance adopted by the City of Minneapolis, to control the adverse secondary effects associated with the adult bookstore and other adult uses. In response, the City Council proposed an amendment to the ordinance relating to nuisances. This amendment would add a section entitled "High Risk Sexual Conduct" which would regulate adult bookstores and theaters where high risk sexual conduct was alleged to have occurred.

In August, 1991, the city attorney drafted an amendment to the nuisance ordinance, at the request of the city council, that would regulate adult uses. City staff together with the City Attorney reviewed studies conducted by other cities that document the adverse secondary effects associated with adult uses. These studies and/or memoranda that discussed the pertinent facts and findings were also reviewed by City Council prior to adopting the ordinance. According to information provided to us by the City of St. Cloud, the following studies were among those reviewed.

- *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*
St. Paul Minnesota
1989
- *Adult Entertainment, 1987, A 40 Acre Study*
Prepared by the division of planning
Department of Planning and Economic Development
St Paul, Minnesota
- *Study of the Effects of the Concentration of Adult Entertainment Establishments in Los Angeles*
Department of City Planning
Los Angeles, California
1977
- *Adams County Nude Entertainment Study*
Prepared by the Adams County Sheriff's Department
Adams County Colorado
1987

The draft ordinance provided definitions applicable to adult uses, taken verbatim from the American Planning Association's *Survey of Definitions*; it designated Light Industrial, Heavy Industrial and Highway Commercial as zoning districts that would allow an adult bookstore or adult theater as a permitted use; it provided 6.15% of the City as area appropriately zoned for adult uses; and specified spacing standards consistent with standards previously set for other uses regulated in the St. Cloud ordinance. Correspondence between the Planning Commission and the City Attorney document the City's desire to draft an ordinance that is consistent with the recent court decisions regarding the regulation of adult uses.

The city council considered the ordinance at a public hearing in August 1991. Public testimony was favorable and the ordinance was passed unanimously. The ordinance was subsequently amended to exclude Highway Commercial as a zoning district that would permit an adult use. The exclusion, it was determined, would still allow adequate opportunity for an adult use business to open and operate in the city. A two year amortization clause, similar to the Minneapolis ordinance, was added to deal with adult use businesses which under the new ordinance would become a nonconforming use.

The final step in the process was to add clarifying amendments to the ordinance. Section 4, is titled "The Purpose and Intent of Adult use Zoning Regulations". This section addresses the City's concern for the health safety and welfare of the community and outlines the actions taken

by the City to curb the adverse secondary effects associated with adult use businesses.

Conclusion

A review of the St. Cloud process to draft an adult use ordinance illustrates the City's intent to regulate the adverse secondary effects associated with an adult use business rather than to regulate the content of adult material protected by the 1st Amendment. The model process was based on the court's ruling in *United States v. O'Brien* which states that an ordinance must be content neutral in time, place and manner. The following is a comparison of the St. Cloud process with the model process presented in the previous section of this report.

Substantial Government Interest

The model process begins by documenting a substantial government interest to protect the health, safety and welfare of its citizens as it relates to the adverse secondary effects associated with adult use businesses. This can be accomplished in one of two ways. The City may rely on studies conducted by others, or may rely on its own evidence of adverse secondary effects.

The City of St. Cloud began documenting, in 1978, an increase in reported crimes and/or nuisances directly related to the bookstore on T.H. 10. Police reports and public testimony describe high risk sexual behavior and unsanitary conditions at this location. The City continued to document reports of crimes, nuisances and concerns regarding the adult bookstore as evidence of the adverse secondary effects associated with adult uses. Studies of adverse secondary effects, conducted by other cities, were also reviewed by the City Attorney, Planning Department and City Council.

Correspondence between the St. Cloud City Attorney, the Planning Commission, the Planning Department and the City Council document the City's belief that the adoption of an adult use ordinance would help the City control the increase in nuisances and crime in the area surrounding the adult bookstore. This ordinance, they felt, should be based on the facts and findings presented in the studies of adult uses and their associated adverse secondary effects, the ordinances from other cities which have been upheld by the courts, and police reports and public testimony regarding the illicit behavior associated with the adult bookstore.

Definitions

The model process defines adult uses in terms of the characteristics which may make it similar to other uses and qualifies the definition so as to distinguish it from uses which are not identical. The St. Cloud Ordinance defines the characteristics of adult uses which may be similar to other uses in a manner identical to the model process.

The two differ in the way each qualifies the definition. The City of St. Cloud relied on the statement:

"...that are characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas."

Although this qualifying statement has been upheld by the courts, the recent trend is to consider this wording "vague". The courts have reasoned that this type of qualifying statement leaves too much room for personal judgement. The model process adopted a qualifying statement based on the State Obscenity Statute. The use of an objective age based qualifying statement avoids the potential for confusion found in the subjective phrase "...characterized by an emphasis on..."

Spacing and Distancing Requirements

The model process describes two forms of locational restrictions that an adult ordinance may impose to combat the adverse secondary effects associated with an adult use business. The City of St. Cloud chose the dispersal method with specified zoning districts. This method requires the creation of spacing standards and the delineation of specified areas of the city in which an adult use business can open and operate.

The standards set by the St. Cloud ordinance, 1320' between adult uses and 350' between adult uses and sensitive areas, are in line with the standards set by other communities. The standard set for the distance between two adult uses is similar to the distance required between other regulated uses of an identical nature. The standard set for the distance between an adult use and land uses that are considered "sensitive" is 350'. This standard is identical to the standard the city imposes on amusement centers. It also corresponds to the distance that requires notification prior to any change in the land use.

The model process suggests a planning analysis be completed documenting actual negative effects or illustrating a reasonable belief that the negative effects would occur in a proximate relationship to an adult use. Although the City of St. Cloud did not justify their spacing standards on a documented belief that negative effects would occur within the standards chosen, they did base their decision on the ordinances adopted by other communities and the State Attorney General's study.

It is important to remember that the City started to prepare its adult use ordinance immediately after completing its review of high risk sexual activities. Through that process both high risk sexual activities and other adverse secondary effect directly related to the Adult Bookstore & Cinema were thoroughly documented.

Amortization

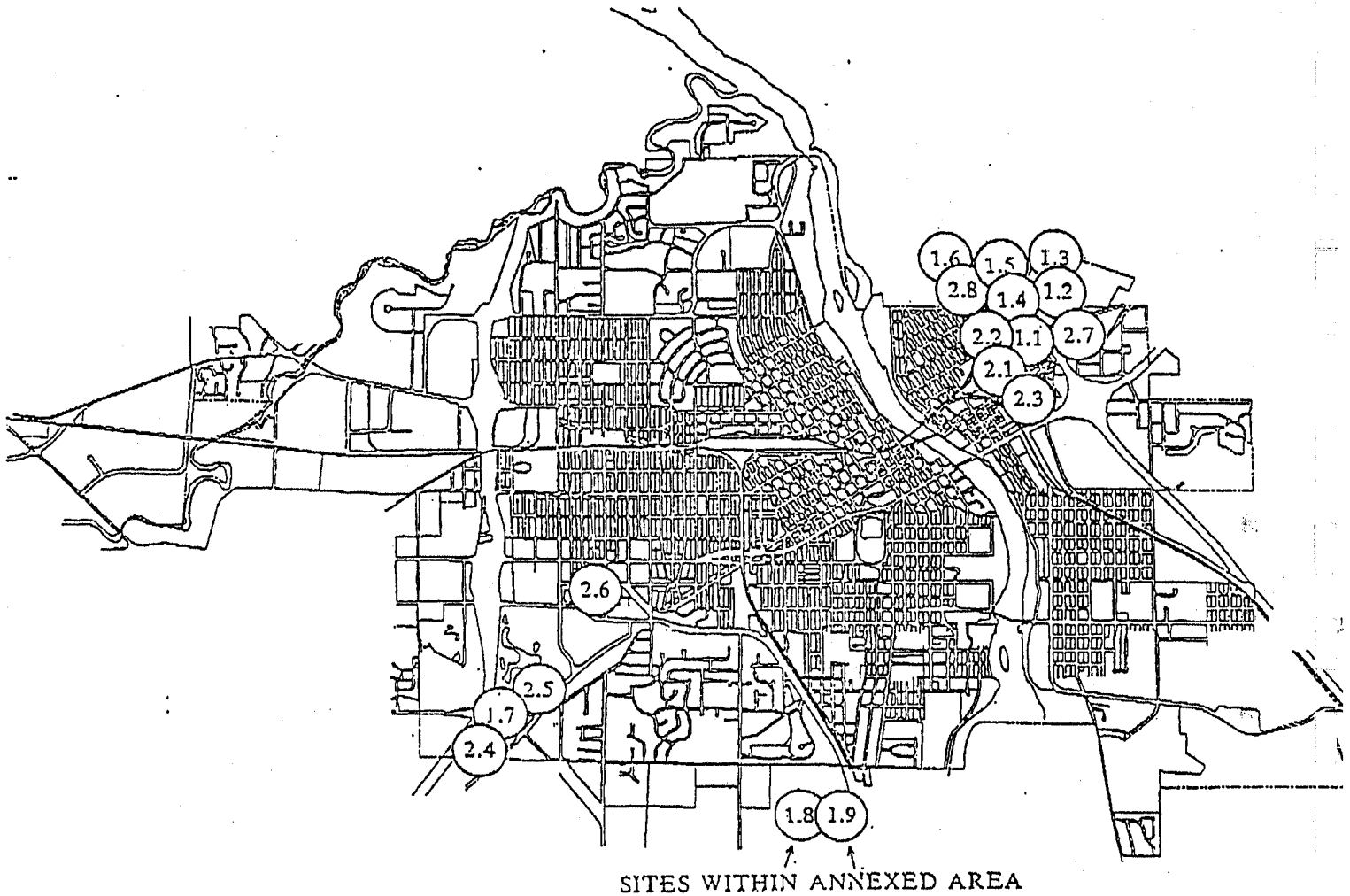
The model process reflects the courts' decisions that amortization is valid when the owner is given a reasonable opportunity to first recoup his or her investment and secondly to relocate within the city. The City of St. Cloud added an amortization amendment that allows two years for a nonconforming use to cease operation. Based on ordinances, which have been upheld by the courts, the 2 year time frame combined with reasonable access to other areas of the city in which adult uses are permitted, appears to be a valid approach to regulate adult uses.

Reasonable Avenues of Communication

The model process does not specify a percentage of the city's total land area that must be open to the establishment of adult uses, instead it focuses on the city's obligation to provide for reasonable avenues of communication. The courts have reasoned that land with physical characteristics which hinder development or legal characteristics that exclude adult business may not be considered "available" for constitutional purposes. Recent court decisions have looked at potential sites for adult uses in terms of the relevant real estate market, as a test to determine if the city is providing a reasonable avenue of communication or effectively trying to ban adult uses.

The City of St. Cloud approached this issue of providing alternative sites by first looking at the amount of aggregate land that would permit adult uses. This amount was estimated to be 3.35 % of the city. The actual amount of land which, would not be hindered by physical and/or legal restrictions, and is part of the relevant real estate market is less than the original 3.35%. However, examination of the market for adult uses in St. Cloud combined with the number of businesses that would be required to relocate reveals the city meeting its obligation to provide reasonable avenues of communication. A complete analysis of available sites for the establishment of adult use businesses follows this section.

LOCATIONS OF AVAILABLE SITES FOR ADULT USE ESTABLISHMENTS



- 1.1 415 Franklin Avenue N.E.
- 1.2 580 North Highway 10
- 1.3 700 North Highway 10
- 1.4 625 Apollo Avenue N.E.
- 1.5 745 8th Street N.E.
- 1.6 777 Lincoln Avenue N.E.
- 1.7 3720 18th Street South
- 1.8 1203 33rd Street South
- 1.9 1059 33rd Street South

- 2.1 229 Lincoln Avenue N.E.
- 2.2 235 Lincoln Avenue N.E.
- 2.3 607 1st Street S.E.
- 2.4 West St. Germain
- 2.5 West St. Germain
- 2.6 2925 1st Street South
- 2.7 250 North Highway 10
- 2.8 Apollo Avenue N.E.

Summary Review of McLaughlin Report

In addition to the research described above, we have also been provided with a copy of a report prepared by R. Bruce McLaughlin, AICP, which presents his review, analysis, and opinions regarding the St. Cloud Adult Use Regulations. The following is a summary of our review of Mr. McLaughlin's report.

Mr. McLaughlin states that his report sets out to accomplish four objectives:

1. to determine if the City of St. Cloud Adult Use Zoning Regulations are, on their face, a valid exercise of the City's police power, or if they are facially arbitrary and capricious and unrelated to the legitimate exercise of the police power;
2. to determine if the City of St. Cloud Adult Use Zoning Regulations, as applied to one particular site (Adult Bookstore & Cinema, 631 U.S. Highway 10 South), are a valid exercise of the City's police power, or if, as applied to the subject site, they are arbitrary and capricious and unrelated to the valid exercise of the police power;
3. to review, consider and determine the amount of land legally permissible in the City of St. Cloud for Adult Uses in accordance with applicable St. Cloud Zoning requirements and with all other applicable Land Development Regulations; and to present this data as a determination of the number of sites potentially available; as well as a gross acreage and as a percentage of the entire City;
4. to determine if, based on the previous three analysis, the City of St. Cloud Adult Use regulations appear to comply with the Constitutional requirements for such regulations.

To accomplish these objectives he presents a review of portions of relevant State Statute, sections of the St. Cloud Comprehensive Plan, its Zoning Ordinance and other reports and documents. Mr. McLaughlin concludes in his report that not only did St. Cloud fail to identify any adverse secondary uses associated with the subject adult use establishment, but further that through his own independent analysis, he has concluded that not a single one of the many studies that have been prepared to document the adverse secondary effects of adult uses are "statistically or scientifically valid".

It follows logically therefore, that he goes on to conclude that any ordinance that is justified based upon findings and conclusions about adverse secondary effects is also invalid. In preparing his report, Mr. McLaughlin chose to include extensive, photocopied sections from State statute, the 1993 St. Cloud Comprehensive Plan, and City ordinances. In my opinion, extensive portions of the copied documents are of virtually no relevance to the central issues in this case.

Both I and members of my staff have completed a line by line review of the McLaughlin report and I would be happy to comment on specific examples of the numerous mistakes in interpretation and unsupported conclusions that we noted in our review. However, in the interest of brevity, I believe that when one wades through all of the padding, Mr. McLaughlin's report advances four principal conclusions. I strongly disagree with all four of these conclusions.

Again, as previously noted, his first principle conclusion is that there are no adverse secondary effects associated with adult use businesses. In support of this conclusion he states that his own independent analysis has determined that not one of the studies prepared throughout the country, documenting the adverse secondary effects of adult uses, are scientifically or statistically valid.

The studies prepared to document adverse secondary effects of adult uses vary significantly, both with respect to the nature of the uses involved and to the methodologies applied. While I would agree that several of the studies that I reviewed could be improved upon from an esoteric professional perspective, I believe that the fact that there are adverse secondary effects associated with adult uses has been irrefutably established. More significantly, courts throughout the United States, including the United States Supreme Court have concluded that many of these studies have adequately documented the adverse secondary effects associated with adult uses. Numerous cases that I have reviewed have concluded that the regulation of adult uses supports a substantial public interest. All of these ordinances are supported by studies completed either by that community, or other communities.

I personally have had extensive involvement with the neighborhoods surrounding the 40 acre study completed by the City of St. Paul. I served as the project manager for the University Avenue Corridor Study and worked very closely with six neighborhood groups and business organizations along the corridor. Among these groups were the three neighborhood groups and businesses most involved with and affected by the concentration of adult uses that used to be located at the intersection of Dale Street and University Avenue.

I observed the conditions in this neighborhood first hand and heard extensive testimony from property owners, teachers, clergy, and business owners about the adverse effects of these adult uses. It is easy for Mr. McLaughlin to sit down in Indian Rocks Florida and conclude that nobody would discard sexually explicit materials in a surrounding neighborhood, because this material is expensive. In fact, I heard of numerous situations in which small children walking home from school found very explicit materials. I also heard from people who owned property adjacent to these uses who told of finding similar material discarded on their property. I also heard testimony about street prostitution, cruising "johns", and discarded prophylactics, as well as neighborhood residents encountering people in the alley and on their property engaged in various sexual acts.

A related conclusion that Mr. McLaughlin makes is that since there are no adverse secondary effects in existence surrounding the Adult Bookstore and Cinema, the St. Cloud ordinance is specifically unjustified. He also advances his own standard for the establishment of an adult use ordinance. That standard is that the community has to identify actual adverse secondary effects before they can regulate adult uses. From my reading of the case law this is clearly not what the courts are saying. Rather, I believe it is generally accepted that communities can rely on the documentatin of adverse secondary effects in other communities in advancing their ordinances.

More importantly, from my review of the public record, including affidavits, minutes, police records and many other documents provided to me by the City of St. Cloud, I believe that the adverse secondary effects surrounding this specific establishment were extensively documented. Furthermore, despite McLaughlin's statements to the contrary, the City Council reviewed this and other relevant studies before it adopted the adult use ordinances.

The third conclusion that Mr. McLaughlin advances is that adult oriented businesses are fundamentally commercial in nature and they, therefore, belong in commercial zoning districts. Inherent in this conclusion is the predicate conclusion that there are no adverse secondary effects, or any other characteristics associated with these uses that distinguish them from other commercial uses. In fact, studies have clearly established why adult uses need to be regulated more stringently than general commercial uses.

Mr. McLaughlin's fourth conclusion is the most serious. Here he states that there are an unreasonably limited number of sites available for adult use businesses, after applying the St. Cloud ordinance. I do not know if he failed to measure correctly, or misinterpreted the ordinance, or exactly what the problem is here. The bottom line is that we know there are numerous sites that meet the ordinance that are available on the market. There are others that were available during the amortization period for Adult Bookstore & Cinema that have since been sold. Please refer to the section of this report that identifies all of the sites available for the establishment of adult uses in St. Cloud, under the current ordinance. It is also relevant to point out that the City of St. Cloud is only a part of a much larger metropolitan area and that area includes many more available sites within the same market area.

In summary, Mr. McLaughlin advances basically four principal conclusions in his report. I disagree with all four of his conclusions, including most importantly his conclusion that the ordinance results in too few available sites for adult use businesses. There are definately adverse secondary effects associated with adult use businesses. Adverse secondary effects associated with the Adult Bookstore & Cinema are significant, and they have been well documented. The St. Cloud City Council had this information and more available to it when they adopted their adult use ordinance.