CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To:

The Honorable Mayor and Council

From:

Vincent Knaggs, Planning Development Manager

Planning & Development Services Section

779-7631, Ext. 7356

Date:

November 4, 2009

Meeting Date:

November 17, 2009

Title:

RESOLUTION NO. 2009-49, A RESOLUTION APPROVING AN AGREEMENT

FOR WAIVER OF CLAIMS FOR DIMINUTION IN VALUE FOR LAND USE LAWS

APPLICABLE TO PROPERTY LOCATED AT 1600 EAST ROUTE 66.

Recommended Action:

Read Resolution No. 2009-49 by title only. Adopt Resolution No. 2008-49.

ACTION SUMMARY:

Adopting this resolution will approve the "Agreement for Waiver of Claims for Diminution in Value" between Thomas J. Olmstead, Bishop of the Roman Catholic Church of the Phoenix, a corporation sole, "owner" of the property and the City of Flagstaff and will authorize the Mayor to sign that Agreement.

DISCUSSION:

Background/History:

In November 2006, Arizona voters approved passage of Proposition 207, the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138, (the "Act") which allows a property owner to seek compensation if any land use law enacted after the date property is transferred to the owner reduces the fair market value of that property. The Act specifically recognizes that private property owners can enter into agreements with political subdivisions to waive any claim for diminution in value of property. The League of Arizona Cities and Towns has issued a set of implementation guidelines for the Act, which recommend that prior to adoption of any change in the City's land use laws at the request of a property owner, the City obtain from the requesting property owner a waiver of any right to compensation under the Act.

The owners of the property have requested that the City rezone the subject property. The requested action constitutes a change to the City's land use laws and is potentially subject to a claim for diminution in value under the Act. To protect the City from claims that adoption of the



rezoning will reduce the fair market value of the property or cause a diminution in the property's value, the City may enter into a waiver agreement with the owners of the property.

Key Considerations:

The change to the City's land use laws is at the request of the property owners.

The statute specifically authorizes waiver of claims for diminution in value.

The City may choose whether or not to approve the requested change to its land use laws, or to make agreement to the waiver a condition of approval.

Community Benefits and Considerations:

Approval of the waiver will limit the City's exposure to claims for diminution in value from adoption of the changes to its land use laws.

Community Involvement:

Arizona voters approved adoption of the Act in the November 2006 election.

Financial Implications:

Approval of the waiver lessens the risk of financial exposure to claims for diminution in value of the property.

Options and Alternatives:

Change the language of the waiver.

Approve the rezoning without a waiver.

Deny approval to the proposed rezoning request.

Attachments/Exhibits:

- Resolution 2009-49
- Agreement for Waiver of Claims for Diminution in Value, plus attached exhibits

Department Head (Acknowledgment that all reviews have been completed and required approvals initialed below.)

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
DATE OF CO	BIDS/PURCHASES GRANTS LEGAL UNCIL APPROVAL:	=		FINANCE/BUDGET CONTRACTS IGAS DEVELOPMENT SERVICES	

RESOLUTION NO. 2009-49

A RESOLUTION APPROVING AN AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY APPLICABLE TO PROPERTY LOCATED AT 1600 EAST ROUTE 66.

WHEREAS, in November of 2006, Arizona voters approved passage of Proposition 207, the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138, ("Act") which allows a property owner to seek compensation if any land use law enacted after the date property is transferred to the owner reduces the fair market value of that property; and

WHEREAS, the Owner of land located at 1600 East Route 66 in the City of Flagstaff has applied to the City of Flagstaff to rezone approximately 28 acres thereof from RR, Rural Residential Zoning District to HR, High Density Residential Zoning District; and

WHEREAS, the Act specifically recognizes that private property owners can enter into agreements with political subdivisions to waive any claim for diminution in value of property, and Arizona law, A.R.S. § 9-500.05, also authorizes the City and the owners to enter into a development agreement relating to the development of the Property; and

WHEREAS, the Owner and the City desire to enter into an Agreement for Waiver of Claims for Diminution in Value of Property ("Agreement") with respect to the property subject to the above rezoning request ("Subject Property"), as further described in the Agreement attached to the staff summary report in support of this Resolution; and

WHEREAS, the parties seek to avoid any potential argument that the rezoning of the Subject Property will impose any land use law that will reduce the fair market value of the Subject Property or constitute a diminution in value of the Subject Property entitling any of the owners of the Subject Property, now or in the future, to seek compensation;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Mayor and City Council of the City of Flagstaff hereby approve the Agreement for the Waiver of Claims for Diminution in Value of Property in the form attached to the staff summary report in support of this Resolution, or as modified on the record at the public meeting at which this Resolution is approved ("Agreement"), and authorize the Mayor to sign the Agreement on behalf of the City.

RESOLUTION NO. 2009-49

SECTION 2. That within ten days of execution of Clerk for the City of Flagstaff record this Agree Recorder.	
PASSED AND ADOPTED by the City Council Flagstaff this day of	
ATTEST:	MAYOR
ATTEST.	
CITY CLERK	
APPROVED AS TO FORM:	
CITY ATTORNEY	

When recorded, mail to: City Clerk City of Flagstaff 211 W. Aspen Avenue Flagstaff, Arizona 86001

existing rights

AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY
THIS AGREEMENT is entered into this day of, 2009, by and between Thomas J. Olmstead, Bishop of the Roman Catholic Church of the Diocese of Phoenix, a corporation sole ("Owner"), whose address is and the City of Flagstaff, an Arizona municipal corporation ("City").
RECITALS
A. The Owner owns certain real property located within the City. This real property is depicted and legally described and depicted in the attached Exhibits A and A-1, respectively, incorporated into this Agreement by this reference ("Property").
B. The Owner has requested that the City enact a rezoning ordinance, causing a certain land use change directly applicable to Owner's Property.
C. In November of 2006, Arizona voters approved passage of Proposition 207, the Private Property Rights Protection Act, codified in A.R.S §§ 12-1131 through 12-1138, (the "Act") which allows a property owner to seek compensation if any land use law enacted after the date property is transferred to the owner reduces the fair market value of that property.
D. The Act specifically recognizes that private property owners can enter into agreements with political subdivisions to waive any claim for diminution in value of property.
E. Arizona law, A.R.S. § 9-500.05, also authorizes the City and the Owner to enter into a development agreement relating to the development of the Property.
F. In response to the Owner's request, the City Council of the City of Flagstaff has held a public hearing and a first reading of Ordinance No. 2009-35 to rezone the Property subject to certain stipulations and conditions, a copy of which is attached hereto as Exhibit B and incorporated by this reference, which Ordinance

G. The parties seek to avoid any potential argument that the enactment of the Ordinance is a land use law that will reduce the fair market value of the Property or

embodies a new land use law applicable to the Property that modifies the Owner's

constitute a diminution in value of the Property entitling any of the owners of the Property, now or in the future, to seek compensation.

- H. The Owner and the City agree that adoption of this land use change pursuant to the terms of the Ordinance will result in aesthetic, planning, and economic benefits to the City and its residents, and the Owner has independently determined and believes that adoption of this land use change will be beneficial to the Owner and will increase the fair market value of the Property.
- I. Owner is aware that, as a condition of receiving approvals under the City's land use laws, the City may impose various requirements, conditions, and stipulations upon the Property that will govern development of the Property.
- J. Owner acknowledges that Owner is under no compulsion, economic or otherwise, to enter into this Agreement.

THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. <u>Terms of Ordinance.</u> Upon approval by the City Council of the City of Flagstaff, the Owner of the Property, as well as the Owner's agents, successors, and assignees, hereby agrees to be subject to all the terms, conditions, and stipulations of Ordinance No. 2009-35.
- 2. <u>Waiver and Release.</u> Owner hereby waives and fully releases any and all financial loss, injury, claims and causes of action that the Owner may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Act in connection with the application of the City's land use laws, including Ordinance No. 2009-35, to the Property. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under the Act as it exists or may be enacted in the future or that may be amended from time to time with regard to the subject Property.
- 3. <u>Indemnification.</u> Owner agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including attorney's fees and litigation costs, that may be asserted by or may result from any of the present or future owners of any interest in the Property seeking potential compensation, damages, attorney's fees or costs under the Act that they may have, as a result of the application of the City's land use laws upon the Property, now or in the future.
- 4. <u>Entire Agreement.</u> This Agreement, any exhibit attached hereto, and any addendum executed by the parties collectively shall constitute the entire understanding and agreement of the parties and shall supersede all prior agreements or understandings between the parties with respect to the subject matter thereof. This Agreement may not be modified or amended except by written agreement of the parties.

- 5. <u>Choice of Law; Venue.</u> This Agreement shall be governed by the laws of the State of Arizona. Owner and City agree that venue for an action commenced under this Agreement shall only be proper in a court of competent jurisdiction located in Coconino County, Arizona, and the parties hereby waive any objection to such venue.
- 6. <u>Attorneys' Fees.</u> If any legal action is brought by either party to enforce any provisions of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.
- 7. <u>Cancellation of Agreement.</u> This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.
- 8. <u>Recordation.</u> Within ten (10) days after the execution of this Agreement by the City, the City Clerk shall cause this Agreement to be recorded in the Official Records of Coconino County, Arizona.
- 9. <u>Successors and Assigns.</u> This Agreement shall run with the land and shall be binding upon all present and future owners of the subject Property.
- 10. Ownership; Signatures. Owner warrants and represents that Owner is the owner of fee title to the Property, and that no other person has an ownership interest in the Property. The person who signs this Agreement on behalf of Owner personally warrants and guarantees to the City that he has the legal power to bind Owner to this Agreement.

Dated this	day of	, 2009,
City of Flagstaff	, an Arizona mu	nicipal corporation
By:		_
Attest:		
City Clerk		
Approved as to	Form:	
City Attorney		

Thomas J. Olmsted, Bishop of the Roman Catholic corporation sole	Church of the Diocese of Phoenix, a
State of Arizona)) ss County of Coconino)	
SUBSCRIBED AND SWORN to before me	this day of, 2009, by
My commission expires:	Notary Public
State of Arizona)) ss County of Maricopa)	
SUBSCRIBED AND SWORN to before me	this day of, 2009, by
My commission expires:	Notary Public

Exhibit A and A-1 DESCRIPTION OF THE SUBJECT PROPERTY

EXHIBIT A LEGAL DESCRIPTION

A parcel of land situated in the Southwest quarter of Section 14, Township 21 North, Range 7 East of the Gila and Salt River Base and Meridian in the City of Flagstaff, Coconino County, Arizona, more particularly described as follows:

COMMENCING, for reference, at the Southwest corner of said Section 14;

THENCE North 01°35'29" West for a distance of 2720.59 feet to the Northwest corner of the Southwest quarter of Section 14;

THENCE North 88°05'18" East a distance of 846.29 feet to the TRUE POINT OF BEGINNING of this description:

THENCE continuing North 88°05'18" East a distance of 487.94 feet;

THENCE North 87°28'58" East a distance of 267.13 feet;

THENCE South 07°26'02" West a distance of 153.76 feet;

THENCE South 03°48'48" East a distance of 218.40feet;

THENCE South 24°44'19" West a distance of 67.91 feet;

THENCE South 19°52'06" East a distance of 109.87 feet;

THENCE South 30°01'54" East a distance of 237.86 feet;

THENCE South 56°06'06" East a distance of 226.42 feet;

THENCE South 64°02'30" East a distance of 285.67 feet;

THENCE South 56°27'00" East a distance of 252.45 feet;

THENCE South 35°55'02" East a distance of 281.07 feet;

THENCE South 00°55'12" West a distance of 98.57 feet;

THENCE South 31°13'44" West a distance of 258.44 feet;

THENCE South 70°31'25" West a distance of 211.15 feet;

THENCE North 64°44'50" West a distance of 264.72 feet;

THENCE North 46°03'09" West a distance of 668.62 feet;

THENCE North 38°33'25" West a distance of 597.38 feet;

THENCE North 21°55'17" West a distance of 175.23 feet;

THENCE WEST a distance of 203.97 feet:

THENCE NORTH a distance of 515.07 feet to the point of beginning.

SAID Parcel of land contains 28.042 acre, more or less as shown on the attached Exhibit A-1 which is made a part of this description by this reference.

Descriptive Title REZONING C.O.F. 04-08063

ACCEPTED CITY OF FLAGSTAFF ENGINEERING DIV.

UR3 9-18-09 INT

X10

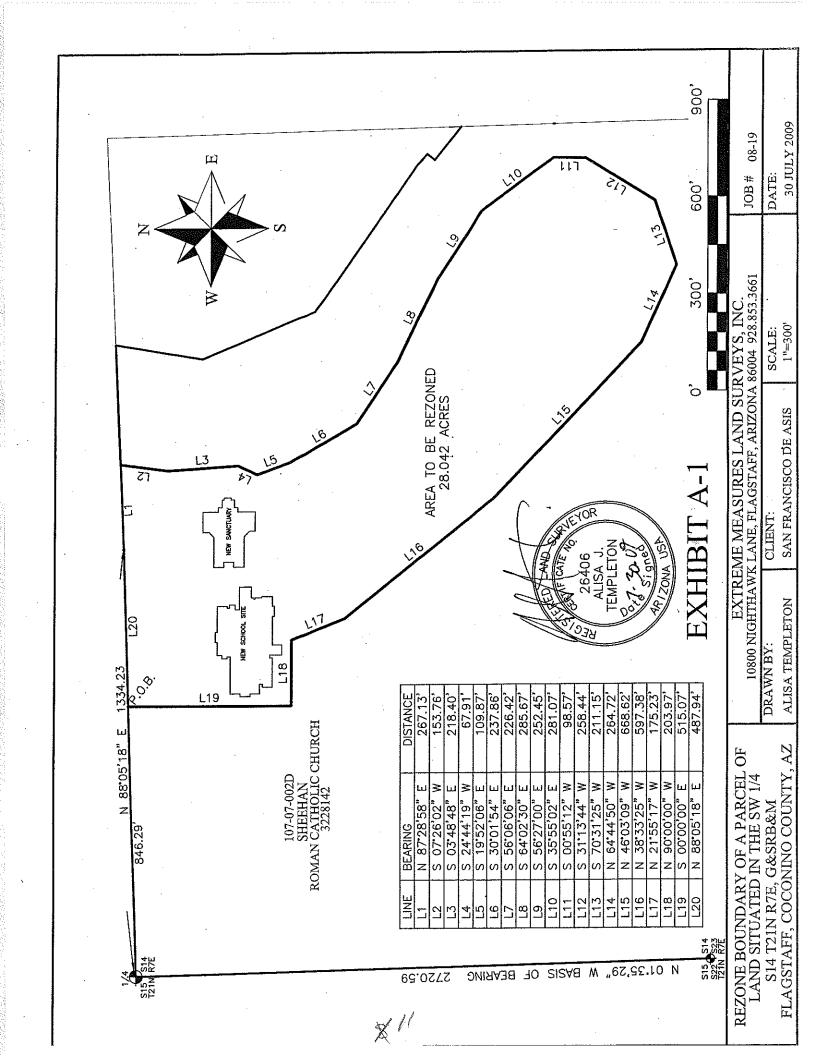


Exhibit B

ORDINANCE No. 2009-35

ORDINANCE NO. 2009-35

AN ORDINANCE REZONING APPROXIMATELY 28 ACRES OF AN EXISTING 107 ACRE PARCEL LOCATED AT 1600 EAST ROUTE 66 FROM RR, RURAL RESIDENTIAL ZONING DISTRICT TO HR, HIGH DENSITY RESIDENTIAL ZONING DISTRICT (CONDITIONAL).

WHEREAS, the applicant has applied for a rezoning of approximately 28 acres of land located at 1600 East Route 66, City of Flagstaff, Arizona (hereinafter referenced as "Subject Property"), a legal description and drawing of which are designated Exhibits A and A-1 respectively, attached to and made a part hereof, from RR, Rural Residential Zoning District to HR, High Density Residential Zoning District for purposes of establishing a 63,300 square foot, two story school facility and a 21,350 square foot single story church facility; and

WHEREAS, the Council of the City of Flagstaff ("Council") finds that the applicant has complied with Section I0-10-004-0007 of the Land Development Code by virtue of having paid the required fee and having supplied the required documentation; and

WHEREAS, the Planning and Zoning Commission has formally considered the present rezoning application following proper notice and hearing on August 26, 2009, and has recommended approval of the requested zoning application, subject to certain conditions, which are combined with additional conditions at the direction of the Council, as set forth below in Section 1; and

WHEREAS, the Council has read and considered the staff reports prepared by the Planning Department and has considered the narrative prepared by the applicant; and

WHEREAS, the staff has recommended approval of the rezoning application, subject to the conditions set forth below, and the Council has considered each of the conditions and has found them to be appropriate for the development of the Subject Property; and

WHEREAS, the Council finds that development of the Subject Property in accordance with the Site Plan for San Francisco de Asis dated July 21, 2009, and prepared by Eco-tecture, including all floor plans, elevations and other supporting drawings (collectively "Concept Plan") submitted with the rezoning application, would comply with the land use category established under the Flagstaff Area Regional Land Use and Transportation Plan ("Regional Plan"); and

WHEREAS, the Council finds that the proposed rezoning with conditions will not be detrimental to the uses of adjoining parcels or to other uses within the vicinity;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Subject Property be rezoned from RR, Rural Residential Zoning District to HR, High Density Residential Zoning District, subject to the following conditions:

- 1. Development of the Subject Property shall substantially comply with the Concept Plan. Any future development within the Subject Property shall be limited to church-related facilities and shall not exceed the Minor Amendment provisions set forth in Section 10-10-003-0005 of the Land Development Code. Any proposed amendment to the Concept Plan not qualifying as a Minor Amendment shall require an amendment to this Ordinance and the proposed development on the Subject Property shall conform to the intended uses and intensities of the Medium Density Residential land use category as established by the Regional Plan.
- 2. The owner of the Subject Property ("Owner") must apply for and receive site plan approval by the Development Review Board and approval of a conditional use permit by the Planning and Zoning Commission in order to proceed with the proposed development of the Subject Property under the Concept Plan.
- 3. The Owner shall dedicate to the City of Flagstaff a right-of-way through parcel number 107-07-002D to allow for the future construction of Ponderosa Parkway.
- 4. The Owner shall dedicate to the City of Flagstaff an easement no less than thirty feet in width through parcel number 107-07-002D to allow for the future construction of a segment of the Flagstaff Urban Trail System ("FUTS").
- 5. Development of the Subject Property shall conform substantially to the storm water management plan contained in the Storm Water Drainage Impact Analysis Report dated July 10, 2009, and revised July 31, 2009, by Larry Cepek, P.E., as approved by the City of Flagstaff, Storm Water Section.
- 6. All new utility lines that provide service to the proposed development on the Subject Property shall be located underground.
- 7. No outdoor sports lighting shall be allowed on any playing fields proposed to be located on the Subject Property.
- 8. Storm water from the retention/detention basins on the Subject Property shall be used for landscape irrigation.
- 9. In addition to the construction of a landscaped bufferyard along the north property boundary of the Subject Property as required under the Land Development Code, the Owner shall construct a four-foot high natural rock screen wall along the north access driveway/parking area to provide visual screening of vehicles from the existing FUTS trail and open space. The proposed wall improvement shall be included on the site plan submitted to the Development Review Board and the conditional use permit submitted to the Planning and Zoning Commission.
- 10. The approved Concept Plan provides a schematic illustration of the portion of extension of Ponderosa Parkway from Route 66 to be constructed by the City, which would support

the proposed development on the Subject Property. In the event that the City does not construct Ponderosa Parkway, the Owner shall construct, at the Owner's expense, public roadway, intersection and traffic signal improvements in accordance with the applicable construction documents on file with the City of Flagstaff, Engineering Section for that portion of the existing City owned right-of-way located at the southern end of the Owner's parcel number 107-07-002D. Furthermore, the intersection and traffic signal improvements must be reviewed and approved by the Arizona Department of Transportation.

104. If at the expiration of two (2) years from the effective date of this Ordinance a building permit has not been issued for the use for which it was conditionally approved, the City Council, after notification by certified mail to the Owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the Subject Property to revert to its former zoning classification. An extension of up to two years may be granted by the Planning and Zoning Commission and the City Council subject to the applicant filing an application with the Planning Director, at least sixty (60) days prior to the expiration of the zoning, a progress report and revised schedule of development on request for extension.

PASSED AND ADOPTE Flagstaff this				by the _, 2009.	t the	City	ot
	•		,				
			MAYOR				_
ATTEST:							
CITY CLERK		<u></u>					
APPROVED AS TO FOR	RM:						
CITY ATTORNEY							