



Date of Council Meeting: May 13, 2013

**TOWN OF LEESBURG
TOWN COUNCIL WORK SESSION MEETING**

Subject: Investigation of Initiation of Zoning Ordinance amendments to permit the temporary storage of automobiles at off-premises locations.

Staff Contact: Tracey Shiflett, Assistant Zoning Administrator

Recommendation: Staff recommends that the Council consider the information contained in this memo and provide direction to staff at the work session on May 13, 2013 regarding whether or not to proceed with developing an ordinance to allow by-right or by special exception temporary storage of automobiles at off-premises locations.

Issue: Should the Zoning Ordinance be amended to include a provision to allow by-right or by special exception temporary storage of automobiles at off-premises locations?

Fiscal Analysis: A detailed fiscal analysis has not been conducted at this time. However, the Planning Commission and Economic Development Commission raised concerns regarding the possible costs to the Town; through failures resulting from stormwater management compliance, and delayed development of underutilized properties to a higher and better use if this use were permitted.

Background: At the Council meeting on February 12, 2013 staff was directed to “investigate initiating a zoning ordinance text amendment allowing the temporary storage of automobiles at off-premises locations”. The issue arose as a result of 1) an established used auto sales business in Leesburg that expanded inventory beyond the capability of the current site, and 2) a dealership that redeveloped their site but could not contain the normal inventory level on-site during the period of redevelopment.

The Planning Commission (PC) and Economic Development Commission (EDC) received a briefing on April 3, 2013 from staff regarding the issue and consideration of a solution a Zoning Ordinance Amendment to permit the temporary storage of automobiles at off premises locations. The Staff Report prepared for that briefing is attached. Both the PC and the EDC expressed support for helping businesses whenever possible, however in this case, a zoning solution was not deemed the right course of action. Staff suggests that the better course of action is to continue to offer assistance such businesses to help find other commercial property that is properly zoned, or could be rezoned for vehicle sales. Staff notes that early attempts to facilitate find a property zoned appropriately for this step with the subject businesses but it was not successful. This may be due to a sense that a zoning solution may be viable. It was noted at the conclusion of the work session that traditional economic development approaches to deal with

the business expansion are most appropriate if management of inventory continues to be a problem.

Joint Work Session and Recommendation: After discussing the possible zoning ordinance text amendment (TLOA), the PC and EDC determined that allowing automobiles to be stored off premises temporarily would not improve the health, safety and welfare to the citizens and businesses of Leesburg. Moreover, the environmental concerns; legal constraints, and negative economic impacts far outweighed any benefit of this use.

The Commissioners did not believe that it would be possible to craft a TLOA for such a narrow set of regulations to accommodate this use without illegally excluding like uses (see legal issues below). On the other hand, a TLOA that covered a broader set of users was felt to be very difficult to administer and could potentially turn Leesburg into a repository for vehicles from auto dealers throughout the Northern Virginia region. Given these concerns and challenges, the PC and EDC decided not to recommend that Town Council amend the Zoning Ordinance to permit temporary storage of automobiles at off premises locations.

A summary of the comments and concerns expressed by Planning Commissioners and Economic Development Commissioners is below. The comments can be grouped into the following broad categories: *Zoning Related, Relationship to the Comprehensive Plan, Environment Concerns, Economic Development, and Legal Issues.*

Zoning Related

- Temporary use of property for car storage would be difficult to enforce.
- The proposed change does not fit in with established temporary uses in the Zoning Ordinance. The Commissioners had a difficult time defining what “temporary” means as it relates to vehicle storage. Currently permitted temporary uses are authorized to operate for very short periods of time, generally a few weeks or less and are normally associated with holidays or business special events.
- How would the regulations differentiate between new and used cars? State law requires that like uses be treated the same (see legal issues below).
- What size and types of vehicles would be allowed to be stored? What qualifies as a “vehicle” in the Zoning Ordinance is broad and covers a wide variety types and sizes of motor vehicles, including cars, trucks trailers and motor homes.
- The Special Exception Process adequately met the needs of the three auto sales businesses that have recently expanded and protected the character of the Town.
- It was pointed out that property in the JMLA with PD-GI zoning could be used to store vehicles with approval by the County Zoning Administrator, so alternatives are available.
- Not all business needs should lead to a TLOA. There should be a significant public benefit and little to no negative impacts associated with a proposed use to justify changing the Zoning Ordinance.

Relationship to the Comprehensive Plan

- Zoning changes should reflect the goals and objectives of Chapter 6 (Land Use) of the Town Plan. The members did not believe this use reflects the goals and objectives of the

Town Plan Land Use Element due to the fact it could potentially expand vehicle related uses in areas where such use is not intended.

- The Town Plan specifically prohibits auto-related businesses in the Historic Downtown.
- More car lots will not advance the goal of being more pedestrian-friendly and promote business development.

Environment Concerns

- There appears to be only a small economic benefit to the Town, while the cost of the environmental impacts could be large. The Town is spending a great deal of money to comply with the State mandated Total Maximum Daily Load (TMDL) standards. Permitting a use that qualifies under the TMDL standards as a “Hot Spot” without adequate stormwater quantity and quality controls is at odds with the effort to comply with state water quality and quantity regulations.
- This sets a difficult and undesirable precedent for land use and it would be a step back with respect to environmental protection. There were concerns that unimproved lots used to store vehicles would lead to more runoff and pollution into streams due to leakage of automotive fluids into Town drainage systems.

Economic Development

- Occupied property is generally viewed as being unavailable for purchase by potential buyers. This could delay the redevelopment of property for its highest and best use by tying up property with off-site car storage, thus delaying achievement of more long-term economic development goals.
- A company’s business plan should consider the capacity of their business site for on-site storage. There are several local organizations that can help to develop business plans.
- This use could be very detrimental to businesses that rely on one another to generate foot traffic because it does not generate customers.
- There are existing businesses (e.g. self-storage facilities) that would be negatively impacted by this use. The existing businesses, with much higher overhead, would lose business to properties where this use would be allowed by right with little to no overhead costs. An owner with a vacant lot could undercut existing self-storage businesses because little or no property improvement would be required of the temporary by right use to establish a storage lot.

Legal Issues

- State law requires that like uses in a zoning district be treated the equally. A TLOA that was so narrowly written that is excluded certain classes of the same use (i.e. vehicle sales, vehicle storage) without strong justification could lead to the regulations being challenged on equal protection grounds.
- Permitting temporary uses by right, while requiring a Special Exception to operate the same use permanently could support claims of arbitrary and capriciousness leading to legal challenges against the Town.

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- Allowing a use temporarily by right in a district when otherwise requiring a special exception could lead to questions of the need for a special exception for such uses in the first place.

Attachment: Planning Commission Staff Report Dated April 4, 2013



Commission Meeting: April 4, 2013

TOWN OF LEESBURG
PLANNING COMMISSION MEETING

Subject: Investigation of Initiation of Zoning Ordinance amendments to permit the temporary storage of automobiles at off-premises locations.

Staff Contact: Tracey Shiflett, Assistant Zoning Administrator

Issue: Should the Zoning Ordinance be amended to include a provision to allow by-right or by special exception temporary storage of automobiles at off-premises locations?

Fiscal Analysis: A detailed fiscal analysis has not been conducted at this time. Discussion of possible fiscal impacts is contained below.

Recommendation: No recommendation at this time. This memo is for informational purposes to assist the Planning Commission, Economic Development Commission and staff to identify issues and facilitate discussion regarding the temporary storage of automobiles with the goal of providing Town Council a recommendation on whether to proceed with a zoning text amendment and if so, how to approach the text amendment.

Background: At the Council meeting on February 12, 2013 staff was directed to “investigate initiating a zoning ordinance text amendment allowing the temporary storage of automobiles at off-premises locations” (Town Council Resolution 2013-033, Attachment 1). The issue arose as a result of an established used auto sales business in Leesburg that have expanded inventory beyond the capability of their current site, and for dealerships that are redeveloping their site and cannot contain their normal inventory on-site during the period of redevelopment and must find somewhere to store vehicles. The Commission must determine if it is advisable to amend the Zoning Ordinance to allow such a temporary use. In reaching its conclusion the Commission should consider the following information.

I. Existing Regulations

The Zoning Ordinance currently requires that before any use can begin operation in Leesburg, the site must be developed in accordance with all applicable Town regulations. Specifically, Section 3.7.6 Standards for Issuance states as follows:

No zoning permit shall be issued where the structure to be constructed or the use contemplated would be in violation of the provisions of the Zoning Ordinance or other applicable Town law, ordinance or regulation. In addition, *no permit shall be issued if the proposed use violates the terms of approval of a rezoning, special exception, subdivision, proffer, variance or other approval.* (emphasis added)

Outdoor Vehicle storage is currently a special exception use in the B-2, B-3 and I-1 Districts. The use is not defined in the Zoning Ordinance nor does it have specific use standards but it is generally considered to have adverse aesthetic, noise and operational impacts on some adjacent properties. Typical issues that have been raised as part of a special exception review are paving, landscaping, lighting, hours of operation and appropriateness of location.

II. Temporary Use Regulations

Certain temporary uses are exempted from Sec. 7.3.6 Standards of Issuance under Section 9.5 Temporary Uses. Section 18.1.187 Temporary Use defines such a use as “A use established for a fixed period of time with the intent that such use will terminate automatically upon the expiration of the fixed time period, unless permission to conduct the use is renewed pursuant to this Zoning Ordinance.” Temporary uses are therefore not permanent, year-round uses but are limited to a specific season or time of the year, such as Christmas tree sales. A review of the types of permitted uses demonstrates that most are seasonal or of short duration:

Temporary Use	District Type		
	Residential	Commercial	Industrial
Wayside stand	P	P	NP
Christmas tree sale	P	P	NP
Fair	R-1 only	P	P
Carnival	NP	P	P
Circus	NP	P	P
Festival	NP	P	P
Dog Show	NP	P	P
Horse Show	NP	P	P
Tent Revival & Similar Meetings	NP	P	P
Meeting, Rally	NP	NP	P
The Zoning Administrator may authorize other similar temporary uses to those permitted in each district			

P=Permitted NP=Not Permitted

These uses are further subjected to performance standards that are listed in Sec. 9.5.4.C as follows:

1. Duration. A temporary use permit for such activities shall be issued for not more than **ten consecutive days**, in any six (6) month period. (emphasis added)
2. Location. **No such activity shall be located closer than 300 feet to a residential use**. (emphasis added)
3. Off-street Parking and Access. Adequate provisions must be made for off-street parking, safe ingress and egress must be provided and approved by the Zoning Administrator.
4. Hours of Operation. Such activities are permitted only between the hours of 7:00 a.m. and 12:00 midnight. The Zoning Administrator may require that no activity, including set-up or knock-down of a carnival or circus, shall be permitted between 12:00 midnight and 7:00 a.m.
5. Illumination. Night operations shall be permitted only if there is a lighting plan approved by the Zoning Administrator which provides for safe lighting without excessive glare into residential areas or onto public streets.

6. Signs. One temporary on-site sign, advertising the activity and two on-site directional signs for ingress and egress may be permitted in accordance with this Zoning Ordinance.

These limited duration uses are further subject to the following criteria in Zoning Ordinance Sec. 9.5.3:

9.5.3 General Standards for Permitting Temporary Uses

No temporary use shall be permitted unless it is determined that the following requirements are met. It shall be the applicant's responsibility to demonstrate compliance with these standards. The Zoning Administrator may impose reasonable conditions on the proposed use to ensure compliance with these standards or other applicable provisions of law.

- A. *Adjacent uses shall be suitably protected from any adverse effects of the use, including noise and glare.* (emphasis added)
- B. *The use shall not create hazardous conditions for vehicular or pedestrian traffic,* or result in traffic in excess of the capacity of streets serving the use. (emphasis added)
- C. Adequate refuse management, security, emergency services, and similar necessary facilities and services shall be available for the temporary use, and all necessary sanitary facilities shall be approved by the appropriate health agency.
- D. *The site is suitable for the proposed use, considering flood hazard, drainage, soils and other conditions which may constitute a danger to life, health or property.* (emphasis added)
- E. *The use shall not have a substantial adverse impact on the natural environment, including trees, ground cover and vegetation.* (emphasis added)

Considering the guidance provided by the above ordinance provisions, commercial uses such as an outdoor vehicle storage subject to special exception conditions and limited to certain business districts currently do not qualify as a temporary use and are not permitted to be open for business to the public without complying with all applicable standards.

III. Practice in Other Jurisdictions

A survey of local jurisdictions including Herndon, Manassasa and Loudoun County, has revealed that none allow the temporary storage of automobiles off-premises by right or by Special Exception. Uses that are permitted on a temporary basis are similar to those Leesburg allows.

III. Purpose of Regulations - General

The purpose of Town regulations (ZO, DCSM, SLDR and TC) is to make certain that any commercial use that begins operation in Leesburg, will adequately protect the public health, safety and welfare and meet other applicable Federal or State laws such as the Americans with Disabilities Act (ADA). That means that paving, screening, utilities, storm drainage, ingress and egress features, buildings and other permanent improvements are installed and inspected to meet Town and building code requirements before an occupancy permit will be issued. They also make certain that any mitigation measures required are in place to protect adjacent properties. Taken together, these regulations maximize the safety of the public doing business in Leesburg and ensure that improvements will be built in a timely manner and in accordance with a logical procedure used throughout the region.

IV. Proposed Regulations

Regulations are proposed to permit what is currently a special exception use limited to the B-2, B-3 and I-1 Districts to be located for a limited period on a by-right basis in these and perhaps other commercial

districts such as the B-1 Community (Downtown) Commercial and B-4 Mixed-Use Business Districts. In addition, the question of whether such a temporary use should be located on a site that does not meet current standards for automobile storage applicable to permanent uses, and whether that can provide adequate mitigation of the use on adjacent properties, should be considered. Such an ordinance would basically supersede other Town regulations. Rather than draw up specific ordinance amendments staff is seeking guidance from the Commission on whether, after the wide-ranging consequences of such an ordinance have been presented, any such amendment should be considered, and if so, what its general nature should be – any performance standards, and whether it should be by-right or by special exception. Possible impacts of an amendment are discussed below.

V.-Considerations

The following discussion generally assumes a Zoning Ordinance amendment that would permit temporary outdoor storage of vehicles. Exactly for how long, where and under what conditions the temporary use would be permitted is not specified. Logical places to consider include the B-1, B-2, B-3 , B-4 and I-I Districts because they all permit commercial activity, though the B-1 also permits residential use. Temporary uses in Leesburg are typically by-right in the districts where they are allowed, and as noted above have performance standards that must be fulfilled. The Commission has several options, including the following to include temporary vehicle storage as a by-right use in some districts; or to include temporary vehicle storage as a special exception use in some districts; or to determine if the use is not appropriate on a temporary basis in any district. Points to consider when determining the efficacy of such an amendment are set forth below, and may lead the Commission to make specific recommendations.

1. Business Advantages. From a private business standpoint, a regulation permitting temporary use for outdoor vehicle storage gives certain advantages, including the following:

- **Business Flexibility.** A car dealer or person who stores automobiles would have the ability to:
 - Move excess automobiles to and from a permanent site when desired. This would be especially useful for automobile sales, towing businesses, automotive repair shops etc.
 - Store inventory in advance of sales needs, such as changing model years.
 - Continue the business without interruption caused by expansion on premises to store automobiles.
- **Cost Benefits**
 - Ability to operate a business without meeting current design standards, such as pavement standards or stormwater management standards.
 - Relief from the financial burden of meeting the latest development regulations when expanding an existing business.
 - Use of underutilized or vacant property that would otherwise not produce business revenue for the Town. That is, revenue is afforded to a property owner of an underutilized property.

2. Benefits to Town. From the point of view of the Town, there are some immediate advantages to such land use flexibility:

- Additional tax revenue is earned if an existing business can remain in operation during a period of site redevelopment.

Use of underutilized or vacant property that would otherwise not produce business revenue for the Town.

- New auto dealers or auto storage uses will be attracted to the Town due to a less restrictive policy than other local jurisdictions.

3. Concerns. When viewed generally, there are a number of significant consequences to consider, including the following:

- **Requirements Waived.** Many otherwise applicable requirements of the Zoning Ordinance, Subdivision and Land Development Regulations (SLDR), Design and Construction Standards Manual (DCSM) and the Town Code may have to be waived or modified. One example is Zoning Ordinance Sec. 11.6.1.D. Pavement Requirements which states in pertinent part “*all off street parking and loading areas including aisles and entrances, shall be paved with durable and dust-free hard surface.*” Another is stormwater quality management.
- **What is Temporary?** Under current regulations, temporary uses only exist for short periods of time and/or a specific number of times per year. Since this use is not permitted within the region, other professions do not have the experience on which to assist staff in evaluating what an appropriate time limit for automobile storage would be. In any case, to be consistent with other regulations regarding temporary uses, the time frame would have to be very brief lasting no more than 20 days or 10 consecutive days in six months. Note that the Council approved an ordinance amendment known as a “temporary commuter parking lot” that allowed that use for two years, but the use required special exception approval by Council and was subject to specific use standards regarding mitigation of impacts on adjacent properties. The use is not listed in the temporary uses of Sec. 9.5 but as a permanent use requiring a Special Exception in the B-2 and B-3 District use tables. It is therefore not equivalent to the by-right or special exception temporary use under consideration at this time.
- **Fairness/Decreased Incentive to Invest.** One intent of regulations is to provide a level playing field for similar uses. A by-right temporary outdoor vehicle storage could have the following impacts:
 - **Potential Disinvestment Issue for Existing Business.** If a car dealer can use land to expand his business without going through a special exception, there is little incentive for him to invest in upgrades to his business at the current location or a new, larger location. Automobile sales businesses may use this storage option as a way to avoid having to expand their business with permanent improvements to accommodate their inventory. This use could allow a property owner to generate income with virtually no capital outlay which may delay the redevelopment of the property. Also, owners of vacant land shall have a delayed incentive to develop (or redevelop) to a higher and better use.
 - **Competitive Disadvantage.** Others have already incurred significant cost because they had to go through the Special Exception process to have approval for this same use on a permanent basis. If automobile storage is permitted by right on a temporary basis, existing business may be hurt, such as land owners that have proper zoning or self storage businesses. The latter had to go through a special exception process and meet latest development standards to store vehicles and other property. With virtually no

development costs or overhead, property owners with vacant land could undercut those businesses that have had to make an investment in their business.

- **Potential for Unintended Economic Impacts.** The Town Plan seeks redevelopment of property in accordance with the dictates of the plan in a timely manner. It also discourages expansion of existing auto-related use in the Downtown in an effort to encourage a synergistic mix of retail, office and residential uses. A by-right temporary outdoor vehicle storage could have the following impact:
 - **Decreased Activity.** Property used only for storage does not attract retail customers, so locating this use in commercial districts could negatively impact nearby business. This is especially hurtful to commercial districts, such as downtown, because their viability requires a high proportion of businesses to generate foot traffic. Permitting automobile storage in the downtown; an area that is supposed to be walkable and pedestrian friendly, sends the wrong message to visitors and potential investors.
- **Environmental Impact.** Recently adopted State regulations mandate better quality controls. Automobile storage is considered a “stormwater hotspot” which is defined “*as commercial, industrial, institutional, municipal, or transport related operations that produce higher levels of stormwater pollutants, and/or present a higher potential risk for spills, leaks or illicit discharges.*” Hotspots require the highest level of stormwater management infrastructure because of the potential for polluted runoff due to oil, gas and other fluids leaking from vehicles. Permitting property to temporarily store automobiles without requiring stormwater management improvements could have a negative environmental and fiscal impact on the Town. The State’s new stormwater quality regulations; which become effective in July of 2014, mandates reductions in the both the quality and quantity of stormwater runoff. If no stormwater improvements are made by property owners as part of temporary vehicle storage, then it will be the Town’s responsibility to address and pay for the impact of the runoff. There could also be penalties for not meeting the requirements of the Town’s MS4 Permit regarding water quality.
- **Use Not Limited to Town Businesses or Residents.** Given the limitations on commercial and residential vehicle storage in surrounding communities, there is the real possibility that automobiles from other jurisdictions could be stored in Leesburg.
- **Additional Staff Time Required.** Additional staff time will be required to inspect a temporary use to ensure compliance with the conditions of the temporary use permit. The storage site could also lead to complaints, such as neighbors complaining about the lack of screening and buffering normally expected with the permanent use. Note that the amount of staff time needed could be substantial depending on the number of use permits issued.
- **Additional Requests for Expanded Temporary Uses.** If property owners in one zoning district are allowed to temporarily store automobiles, residential users, developers and other businesses may request that this use be expanded throughout the Town. Also, owners and businesses may ask for additional temporary uses that do not need to meet otherwise applicable standards.
- **Legal Issues**

Perhaps the most important considerations regarding the temporary storage of automobiles are the potential legal impacts.

- **Could Weaken Other Town Regulations.** According to the Town Attorney, Council does have the legal authority to enact an Ordinance permitting the issuance of a temporary permit because Council can enact any reasonable regulation on land uses. However, there is a real danger that doing so could weaken the use criteria in the Zoning Ordinance to such an extent that a legal challenge against the criteria would be successful. In the case of a special exception use, the law requires that when the Town places conditions, that these conditions be reasonable. The reasonableness requirement extends to ordinance requirements such as subdivision requirements and conditions, or non-ordinance requirements, such as those added to special exception use permits. If the Town waives conditions for a temporary period, there is an implication that those conditions are not really necessary or reasonable for a permanent use. Using screening and buffers as an example, how can it be reasonable for the Town to require thousands of dollars of buffer landscaping or a masonry wall to screen a use and then allow that same use to function for six months without it?
- **Need for Special Exception Could be Questioned.** Currently, the Zoning Ordinance requires a special exception to store automobiles on a site. However, if temporary automobile storage is permitted without meeting the conditions and approval criteria of the special exception in the B-2, B-3 and I-1 Districts, including those conditions related to landscaping, stormwater management and other lot improvements which mitigate the impact of the use on adjacent property, this could undermine the intent of requiring a special exception in the first place. Some developers could argue that, in the case of special exceptions, for example, conditions imposed were not actually necessary to mitigate impacts of the use because the town is allowing the use to operate without the landscaping, paving, road improvements, etc., shown on the special exception plat and contained in the conditions for an approved permanent outdoor vehicle storage.
- **Like Uses Must be Treated Equally.** Section § 15.2-2282. of the Code of Virginia requires that “all zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district.” If the Town requires by-right applicants or other special exception uses to meet town development standards and approval conditions but exempts some users from those same standards or conditions by permitting temporary automobile storage, there could be claims that the rules fail to provide equal protection to one business without a reasonable justification. Therefore, treating applicants differently may not survive a legal challenge.

SUMMARY: The Town permits a number of temporary uses such as Christmas tree sales, festivals and carnivals that have short or seasonal durations. Additionally, currently permitted temporary uses are ones that need no permanent improvements. Permanent uses on the other hand, such as outdoor vehicle storage facilities, require site improvements in order to operate and mitigate the impact of a concentration of vehicles on the property. All outdoor vehicle storage is considered a stormwater “Hot Spot”.

Amending the Zoning Ordinance to allow temporary storage of automobiles off-premises could give an advantage to some property owners and users by permitting them to expand their business with little cost or overhead. Moreover, the property investment costs may be shifted to Town taxpayers. Additionally, the low costs of development and operation, could give them an economic advantage over those who have had to make significant improvements to their property or business.

Besides practical, economic and environmental considerations, such an amendment could undermine the justification for many of the regulations contained in various Town ordinances, as well as the reasonableness of special exception conditions, resulting in legal challenges. The adoption of an expanded definition of what is a temporary use could set a precedent to allow applicants the ability to post-pone compliance with regulations.

SUMMARY TABLE

Temporary uses are currently permitted:
<ul style="list-style-type: none"> • Are short in duration. • Have no permanent improvements. • Are required to protect adjacent properties from their impact.
Business advantage
<ul style="list-style-type: none"> • Temporary automobile storage could operate without making costly property improvements that permanent businesses must have • Have much lower overhead costs than do permanent businesses.
Environmental implications
<ul style="list-style-type: none"> • Outdoor automobile storage is a stormwater “Hot Spot” requiring increased water treatment.
Development costs shifted to the Town Taxpayers
<ul style="list-style-type: none"> • If stormwater is allowed to runoff from unimproved sites, the Town is liable for the cost to treat the polluted water, repair eroded stream banks and remove sediment.
Puts the Town’s regulations at risk:
<ul style="list-style-type: none"> • Undermines the justification for requiring Special Exceptions conditions. • Could call into question site development regulations, such as buffering, landscaping, paving etc. • Could set a precedent for allowing applicants to postpone compliance with regulations. • Could create an actual or perceived unequal treatment of the same use, opening the Town to legal challenges.