

- **Letter dated November 9, 2012 from David Smith of VHB Engineering, Surveying and Landscape Architecture, P.C. regarding adult legislation.**



Planning
Transportation
Land Development
Environmental

November 9, 2012

Hon. Wayne Booth, Supervisor
Town Council Members
1496 Route 300
Newburgh, NY 12550

Re: Adult Use Legislation

Dear Supervisor Booth and Town Council Members:

The following is provided with respect to the continued consideration of proposed amendments to the Town's Zoning Code entitled Regulation of Adult-Oriented Businesses. A copy of the proposed local law, along with a series of studies prepared by other communities that review secondary effects of adult-oriented uses along with related memos from the Town Attorney's office, have been provided for review and consideration. Further, reports have been forwarded on behalf of Santa Monica Holdings, LLC an owner/operator of two existing adult-oriented establishments in the Town of Newburgh in response to earlier information prepared for the Town.

As recognized in the Town's Comprehensive Plan Update, the Town of Newburgh is a crossroads community that is afforded access to two inter-state highways, several major state highways, a major regional airport, bus terminal, nearby train stations and hotels and motels serving transient population. There have been concerns raised by the citizenry regarding specific land uses and their relation to access and location, travel centers being a recent example. The regulation of adult-oriented uses is another similar issue, among others, that was raised as part of the Town's Comprehensive Plan Update process. The Town has been pursuing various zoning map and text amendments along with other planning efforts since the adoption of the Comprehensive Plan Update in 2005. In the past, when the Town Board was considering zoning text amendments like buffer area setbacks, floor area ratio calculations, ridgeline development and senior housing, the Town board and technical staff were provided copies of other comparable ordinances used in various communities throughout New York State and the country. The objective was to identify where other communities, regardless of size and density, were faced with similar issues and how did they address them.

Reference was made in the Santa Monica Holdings response that the studies provided to the Town were not necessarily appropriate because, in part, the communities referenced therein were not comparable in density to the Town of Newburgh. We would offer that there is additional

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documentation, see attached, prepared by the Village of Scotia and an accompanying technical memo prepared by the New York Planning Federation (NYPF). As indicated therein, suburban and rural communities can rely on secondary studies conducted by other communities to help identify potential secondary impacts. The Santa Monica Holdings response has indicated that similar population densities is a key indicator of the appropriateness of the study and that the only two of the studies presented to the Town are from communities with like-size densities, and one of those, Oklahoma City, was discounted because the City is a large municipality with a dense urban core.

The NYPF technical memo points out that many studies done in larger cities are conducted on the neighborhood level, where the study area is actually no larger than many rural community centers or villages.¹ The Scotia study made the following findings: 1) the smaller the commercial district the larger the impact because the negative halo will affect a larger proportion of the municipality's business than it would a larger city; 2) Because of the small size of the commercial districts the probability of substantial impacts of sexually oriented businesses upon residential areas increases; and 3) small towns are more likely to have fewer days and hours of commercial activity than larger cities. This increases the likelihood that an adult business will have a larger impact on the area it is situated in during off-hours for other businesses.² Thus, when evaluating adult uses in larger communities, more discrete areas within those communities were studied and impacts evaluated. This is an important consideration given that the Town of Newburgh Comprehensive Plan Update recognized that there were at least 13 separate hamlet districts located throughout the community.

It is also noted that there are approximately 14 other comparably sized towns, by way of density, located throughout New York State, which have ordinances regulating adult oriented uses. Many of these communities relied upon the use of studies or reports prepared by other communities, including the Village of Scotia Study, as a basis for the creation and adoption of legislation regulating adult-oriented uses. The Town of Newburgh has used a rational approach to evaluate the approach other communities have taken with respect to regulating a particular land use. This is not unlike the process the Town underwent with other Comprehensive Plan Update initiatives as noted above.

While density is only one factor, land use compatibility is another. As with the Scotia Study, a methodology to identify sensitive land uses was included as a factor for consideration. In particular, it recognized that adult businesses should be separated from certain other land uses which are sensitive to the potential negative effects from adult uses.³ These include residential neighborhoods, houses/places of worship, schools, commercial districts, child care, recreations area/parks/playgrounds, civic and cultural facilities. The Town has gone through an extensive exercise to create a map that identifies sensitive land uses and existing adult-oriented businesses. A mapping process was undertaken to create an identifiable buffer area from residential districts.

¹ New York Planning Federation Tech. Memo, Adult entertainment Regulations – 2000 – page8

² Secondary Effects Study of Adult Entertainment Uses, prepared for the Village of Scotia Planning Board and the Village of Scotia Board of Trustees, September 1999.

³ Secondary Effects Study of Adult Entertainment Uses, prepared for the Village of Scotia Planning Board and the Village of Scotia Board of Trustees, September 1999, page 10



The Town then had the ability to identify remaining land area, in suitable zoning districts, where adult-oriented businesses could be located. An additional evaluation was provided which estimated locational criteria of 500 feet between uses. As noted in the Legislative Findings, there is significant land area, after applying all of the buffer and separation requirements, within the Town of Newburgh where adult-oriented uses may locate.

I appreciate the opportunity to assist the Town in this matter.

Kind regards,

A handwritten signature in black ink, appearing to read "D. B. Smith". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

David B. Smith

VHB, Engineering, Surveying and Landscape Architecture, PC

Cc: Mark Taylor, Esq.
Jeffrey Sculley, Esq.



COPY

**Secondary Effects Study of
Adult Entertainment Uses**

Prepared for:

THE VILLAGE OF SCOTIA PLANNING BOARD

And

THE VILLAGE OF SCOTIA BOARD OF TRUSTEES

Prepared by:

Lydia R. Marola, Village Attorney

And

Greg Blick, Village Planner

September 1999

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INTRODUCTION

In February 1999, the Village of Scotia Board of Trustees adopted a local law placing a moratorium on the establishment of adult entertainment businesses within the Village. The moratorium was adopted to temporarily prevent the establishment of adult businesses while the Village determined the need for adult entertainment regulations and if warranted, complete the work that would be necessary to adopt a local law regulating adult businesses.

A number of issues precipitated the Village of Scotia looking into the possibility of regulating adult entertainment establishments. Citizen concern was expressed to public officials, perhaps because of publicized problems the adjacent City of Schenectady was experiencing with established adult businesses. Additionally, in the summer of 1998, the New York State Court of Appeals issued an opinion in Stringfellows of New York, LTD. v. City of New York, holding that the zoning of adult businesses did not violate the free speech provisions of the New York State Constitution. This decision followed many previous decisions from federal courts upholding the regulation of adult businesses under the United States Constitution. Stringfellows renewed interest in adopting regulations for adult entertainment businesses, not only in Scotia, but also in municipalities across the State. Recently, numerous surrounding municipalities including the Town of Glenville, Town of Rotterdam, City of Amsterdam, City of Gloversville, Town of Milton, Town of Malta and the Town of Ballston have also been adopting local laws regulating adult businesses. Further, the Village of Scotia has been undergoing numerous projects to protect and further enhance the quality of life within the Village. There is concern that the establishment of an adult business and its adverse secondary effects in many areas of the Village would greatly impede these efforts.

The courts have long upheld zoning as a valid constitutional exercise of police power. More specifically, local laws regulating the zoning of adult entertainment businesses have been upheld by the courts. However, while local governments have the power to protect the public health, safety, and general welfare of their citizens through land-use control, they must also be mindful of protecting 1st Amendment rights. In respect to the zoning of adult entertainment businesses, the courts have made clear that local governments must show that the zoning is meant to reduce the adverse secondary impacts of adult businesses, not to suppress or ban freedom of expression. The purpose of this study is to review the potential adverse secondary effects of adult businesses in the Village of Scotia, and if found, recommend land use controls to regulate the establishment of such businesses in order to ameliorate the secondary effects. It is not the purpose of the Village of Scotia to regulate the content of material or nature of entertainment of adult businesses.

ADULT ENTERTAINMENT INDUSTRY

Adult entertainment has become a multi-billion dollar industry. Adult businesses are no longer found only in large cities or run down neighborhoods, but also in suburban and rural communities. Types of adult uses have expanded from traditional strip clubs and adult movie theaters to nude juice bars, lingerie modeling studios, body painting studios and businesses that perform services topless. Juice bars have been developed to avoid regulations of the Alcoholic Beverage Control (ABC) laws and regulations of the State Liquor Authority. If an establishment does not have a liquor license, partial clothing requirements under these laws do not apply, and dancers can perform nude. Further, ABC laws requiring certain distances from churches and schools, limiting the concentration of establishments, and giving the ability to deny establishments because of effects on the surrounding community do not apply.

REVIEW OF SECONDARY EFFECTS STUDIES

The Village of Scotia has no adult entertainment businesses; therefore, studies other municipalities have conducted on the secondary effects of adult businesses have been reviewed.

Austin, Texas

In 1986, the City of Austin conducted a study and prepared a report to provide the basis for development of an amendment to the Austin zoning ordinance regulating adult businesses.¹ Austin, which had 49 adult businesses at the time examined the crime rates and property values in study areas with adult oriented businesses and compared them with crime rates and property values in other areas of the city without adult businesses (control areas). To analyze the crime rates, both study areas and control areas were circular in shape with a 1,000 foot radius, contained similar land uses, and were in close proximity to one another. Within the study areas, sex related crimes were found to be from two to five times the citywide average. Additionally, sex related crime rates were found to be 66 percent higher in study areas with two adult businesses compared to study areas with only one adult business. All control areas had crime rates near the citywide average.

In regard to property values, questionnaires were mailed to 120 real estate appraisal and lending firms to determine the impact that an adult entertainment business has on surrounding property values in the opinion of the professionals. Eighty-eight percent of those responding indicated an opinion that an adult bookstore decreased residential property values within one block, and 59 percent indicated an opinion that residential property values would decrease within three blocks. The respondents indicated

¹ City of Austin, Office of Land Development Services, Report on Adult Oriented Businesses in Austin, May 19, 1986.

the reasons they thought property values would decline. They included concerns among families with children about the clientele attracted to adult businesses, and that properties in close proximity to adult businesses would not be as suitable as homes for families with children. Since families represent a large portion of the market, demand is lowered which in turn decreases property values. Additionally, the study indicated the existence of adult businesses leads mortgage underwriters to believe that the general neighborhood is in decline, and therefore they would be less willing to make 90 to 95 percent financing available for these properties. The study also reported that of 81 license plates observed at three of the adult businesses, only three lived within one mile of the adult business and 44% lived outside Austin.

El Paso, Texas

In 1986, the City of El Paso, Texas prepared a report on the secondary effects of the 33 adult entertainment businesses in the city.² The study was designed to examine what, if any, negative impacts were created by these uses to the social and the land-use characteristics of the area in which they were located. The study also did an analysis of crime incidence.

The study reviewed direct impacts possible from such uses such as traffic congestion, unusual hours of operation, litter, noise and criminal activity. The study examined geographical areas approximately ¼ mile in size, that had adult businesses (study areas) and others with none (control areas). The study and control areas were similar in size, number of residences and all other land use characteristics. The study concluded the following:

- The housing base within a study area decreases substantially with the concentration of adult uses,
- Properties located within a one block radius of an adult entertainment business realize a decrease in property value (affecting both residential and commercial properties),
- Properties located near adult entertainment businesses experience an increase in listings on the real estate market,
- The presence of adult entertainment businesses results in a relative deterioration of the residential condition of a neighborhood,
- A statistically significant increase in crime is found in areas where adult entertainment businesses are located,
- The average crime rate in the study areas was 72 percent higher than the rate for control areas,
- Sex related crimes occurred more frequently within neighborhoods having at least one adult entertainment business than those with no adult entertainment businesses,
- The neighborhood residents within the study area perceived far greater neighborhood problems than residents of the control areas, and

² City of El Paso, Department of Planning, Research and Development, Effects of Adult Entertainment Businesses on Residential Neighborhoods, September 26, 1986.

- Study area residents feared significantly more neighborhood deterioration and crime than residents of the control areas.

Newport News, Virginia

In 1996, the City of Newport News, Virginia prepared an adult use study in response to concerns of merchants and residents of the city.³ The city prepared the study to identify whether there was a need for an ordinance to regulate adult uses. The study reviewed research done in other cities on the impact of adult uses and also collected data on Newport News. The study concluded that in Newport News, police calls for service indicated adult uses experience crime problems that impact on nearby neighborhoods or businesses. Furthermore, restaurants with liquor licenses also containing adult entertainment were found to have more police calls for service than other restaurants with liquor licenses. Additionally, a survey conducted on realtors indicated adult uses depreciate nearby residential property values and may also lessen commercial property values. Based on these findings the city concluded that regulation of adult uses was warranted.

Garden Grove, California

In 1991, the City of Garden Grove California prepared a secondary effects study of adult oriented businesses.⁴ Statistics were measured from 1981 to 1990 and included crime data, surveys of real estate professionals and city residents. Existing adult businesses were selected for study areas, and control factors were used to ensure accurate results. It was found that crime increased significantly with the opening of an adult business or the expansion of an existing business or the addition of a nearby bar. The rise was greatest in serious offenses (homicide, rape, robbery, assault, burglary, theft and auto theft). Respondents to a real estate survey indicated that adult businesses within 200-500 feet of a residential or commercial property depreciates the property value. The greatest impact was on single-family homes. The chief factors cited for the depreciation was increased crime associated with adult businesses. A random sample of households in the vicinity of one of the existing adult business areas was conducted. Nearly 25 percent of the surveyed individuals lived within 1,000 feet of an adult business. More than 21 percent cited specific personal experiences of problems relating to these businesses, including crime, noise, litter, and general quality of life. Eighty percent said they would want to move if an adult business opened in their neighborhood, 60 percent saying they would move or probably would move. The report concluded that adult businesses have a real impact on everyday life through harmful secondary effects and recommended regulation of adult uses.

³ City of Newport News, Department of Planning and Development, Adult Use Study, March 1996.

⁴ City of Garden Grove, Richard McCleary, Ph. D. and James W. Meeker, J.D., Ph. D., Final Report the Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October, 1991

Islip, New York

In 1980, the Town of Islip, New York prepared a study on the effects of adult entertainment on surrounding uses, both residential and commercial.⁵ The concern was the preservation of neighborhoods and the placement of adult businesses that might have deleterious effects on surrounding uses. The report included reviewing studies and ordinances from other jurisdictions, and evaluated the impact of existing adult entertainment uses within Islip. The Islip study found the location of adult businesses in downtown areas may cause or accelerate decline or hinder revitalization efforts. In one area where two adult entertainment businesses were located next to each other, a "dead zone" was created where they discouraged shoppers from walking in pedestrian oriented commercial areas for fear of being associated with or having their children exposed to such areas. The case studies in Islip revealed that adult entertainment uses located close to residential areas caused parking impacts, nighttime activity, noise and dust, which are generally uncharacteristic for residential areas. Based on these findings, zoning regulations were adopted. They were subsequently challenged in court and upheld.

Indianapolis, Indiana

In 1984, the City of Indianapolis analyzed the effects of adult-oriented businesses on real estate values and on crime incidence.⁶ The study compared six study areas containing adult businesses with six control areas and with the city as a whole. The study areas and control areas both had high population, low income and older residents. A survey of real estate appraisers was also done to determine valuation effects of sexually oriented businesses on adjacent properties. In regard to property values, the study found the following opinions of appraisers: 1. Eighty percent felt that an adult bookstore located in the neighborhood would have a negative impact on residential property values within one block of the site. 2. Seventy-one percent believed that there would be a detrimental effect on commercial property values within a one-block radius. 3. The negative impact dissipates as the distance from the site increases, so that most appraisers believe that at a distance of three blocks, an adult bookstore would have a negligible effect on both residential and commercial properties. In addition, the study found that housing values in areas with adult entertainment businesses appreciated at only one-half the rate of housing values in control areas and one-third the rate of the city.

In regard to crime, the study found that areas with sexually oriented businesses had higher crime rates than similar areas with no sexually oriented businesses as follows: 1. Major crimes, such as criminal homicide, rape, robbery, assault, burglary, and larceny occurred at a rate that was 23 percent higher in those areas that had sexually oriented businesses. 2. The sex related crime rate, including rape, indecent exposure, and child molestation, was found to be 77 percent higher in areas with sexually oriented businesses.

⁵ Town of Islip, Department of Planning and Development, Study And Recommendations For Adult Entertainment Businesses In The Town Of Islip, September 23, 1980.

⁶ City of Indianapolis, Department of Metropolitan Development, Division of Planning, Adult Entertainment Businesses in Indianapolis: An Analysis, February 1984.

Based on these findings, Indianapolis limited adult oriented businesses to certain districts and also imposed distance requirements.

City of New Rochelle, New York

In January of 1996, the City of New Rochelle prepared a study to determine the potential secondary effects of adult oriented businesses and the extent of such impacts on the city.⁷ This analysis reviewed the effects of adult oriented businesses by comparing the incidence of crime in areas surrounding adult oriented businesses and by surveying the opinions of real estate professionals concerning the expected effects of adults oriented businesses, if any, on property values. Study areas (areas with adult oriented businesses) were selected based upon the location of existing adult oriented businesses in New Rochelle. Control areas (areas without adult oriented businesses), were selected according to their proximity and similarity, in terms of zoning, land use and population characteristics, to the study areas.

The analysis of the effects of adult oriented businesses on property values in general found that such businesses can cause residential and commercial property values to decrease. The effects of such businesses were greater when such businesses concentrate and the effects of sexually oriented businesses were less severe the greater the distance from the adult oriented use. The study done on the effects of crime were inconclusive.

POTENTIAL IMPACT OF ADULT BUSINESSES IN SCOTIA

The above cited studies as well as many others conducted across the country all establish a host of negative secondary effects that are attributable to the existence of adult businesses including, increased crime, decline in property values, noise, litter, late night hours, and general deterioration of quality of life. These studies, while conducted in larger municipalities are very relevant to the Village of Scotia. In most of the studies, when evaluating the secondary effects, the entire city as a whole was not studied, but study areas were established that had much smaller areas such as a 1,000 foot circumference and many of the secondary effects were found to occur within a few blocks of the adult business. The effects on the surrounding area were shown to be related to the adult business and were independent of the size of the municipality. An adult business located in Scotia would likely bring with it the same negative secondary effects and potentially in an intense manner.

Other reports have indicated, "[t]he presence of sex oriented businesses in small towns is likely to be magnified beyond that which would be expected in larger cities because of the more compact nature of downtowns and their relationship to surrounding

⁷ City of New Rochelle, Department of Development, Secondary Effects Analysis Of Adult Oriented Businesses In The City Of New Rochelle, January 1996

neighborhoods.”⁸ Among the findings especially applicable to the Village of Scotia are: 1) The smaller the commercial district the larger the impact because the negative halo will affect a larger proportion of the municipality’s business than it would in a larger city, 2) Because of the small size of commercial districts the probability of substantial impacts of sexually oriented businesses upon residential areas increases, and 3) Small towns are more likely to have fewer days and hours of commercial activity than larger cities. This increases the likelihood that an adult business will have a larger impact on the area it is situated in during off-hours for other businesses.

While Scotia has no adult business currently, the possibility exists. It is a crossroad of two major state roads. Route 5 which leads from Albany, to Schenectady into Scotia, to Amsterdam and beyond. Route 50 leads north to Saratoga Springs. Additionally, the recent opening of the bridge at Exit 26 of the Thruway provides easy access to the Village of Scotia from either direction. This could make the location desirable since it would be accessible from all directions. The belief that an adult business will not open in a small or suburban community has been proven a mistake. Adult businesses have opened in such locations locally, most notably in the Town of Stephentown, Rensselaer County and Canojoharie, Montgomery County (See attached articles). The proactive approach is to reasonably regulate adult businesses before being confronted with one. Regulating them after the fact can be much more difficult as can be seen in a review of pertinent case law and witnessed in the City of Schenectady.

EXISTING CONDITIONS IN THE VILLAGE OF SCOTIA

The Village of Scotia is an approximately two square mile village within the Town of Glenville and located in Schenectady County. The Town of Glenville borders the Village on the west, north and east. To the south, the Village is bordered by the Mohawk River where the Western Gateway Bridge connects the Village to the City of Schenectady. Scotia is a traditional village of around 7,500 residents. Medium to high-density housing, located on tree-lined pedestrian friendly streets, is mixed with schools, churches, businesses, parks and a central business district (CBD).

Like so many communities, the Village is concerned that an adult business will choose Scotia to set up shop. Given the Village’s proximity to the City of Schenectady and the restrictions being enacted in the surrounding communities of Rotterdam, Glenville and Schenectady, the possibility of an adult entertainment business locating in Scotia is real. This possibility not only threatens the character and quality of life, which the community has labored for decades to attain, but also the property values and local businesses that support the Village economy.

⁸ Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses. Peter R. Hecht, Ph.D., ERG/Environmental Research Group, 1996.

Current Zoning Regulations

The Village of Scotia has a general cumulative zoning scheme with use, bulk, height and setback requirements. This system supports the mixed-use nature of the Village but also increases the potential for conflict between adult uses and sensitive areas. The Village has no current restrictions on adult oriented businesses nor does it differentiate adult-oriented businesses from similar commercial uses.

There are currently nine zoning districts in the Village of Scotia as follows:
(See attached zoning map.)

- SR Single Residence
- MR Multiple Residence
- B-R Business-Residence
- NB Neighborhood Business
- RC Retail Commercial
- GB General Business
- IN Industrial
- WF Waterfront
- M/P Mohawk School Multiple Residence/Professional Office

Scotia contains a number of zoning districts where an adult use could now locate as a permitted use. Zoning districts currently open to adult uses are as follows:

- RC Retail Commercial
- GB General Business
- IN Industrial
- WF Waterfront
- NB Neighborhood Business (by special use permit)

Some of the undefined permitted uses within the Village Zoning Ordinance that a potential adult use applicant may argue are appropriate classifications for their use include, but are not limited to, retail stores and shops, restaurants, theaters, membership clubs, drinking establishments and personal service stores. Each zoning district above is potentially unrestricted for siting an adult use. Since most of these uses are not defined by the Village Zoning Ordinance, the chances of successfully locating an adult oriented business in an area within a commercial zoning district in the Village are great.

Sensitive Land Uses

Previous studies have shown that adult businesses should be segregated from certain other land uses, which are sensitive to the potential negative effects from adult uses. Adult uses should be dispersed and segregated in order to protect the existing

character of the community, the quality of life within existing neighborhoods, property values and the economic stability of existing businesses.

For this study a number of sensitive areas have been identified as possessing characteristics that are essential to the Village's character, quality of life, and economic success. These include its residential neighborhoods, central business district (CBD), houses/places of worship, schools, childcare facilities, recreation areas, parks and playgrounds and civic and cultural facilities.

Residential Neighborhoods

The Village contains extensive, medium to high-density residential neighborhoods. These areas take up the bulk of the developed portions of the Village. In addition, residential uses are mixed into, or adjacent to, each commercially zoned district with the exception of the Waterfront (WF) and Industrial (IN) districts.

Central Business District (CBD)

The Village CBD is the heart of the community. It is a traditional "Main Street" with residential, commercial and civic uses.

Houses/Places of Worship

A number of religious institutions and cemeteries exist within the Village including the following:

- First Reformed Church of Scotia, 224 N. Ballston Avenue
- St. Andrews Episcopal Church, 52 Sacandaga Road
- St. Joseph's Church, 236 First Street
- Scotia United Methodist Church, 201 N. Ten Broeck Street
- Our Redeemer Lutheran Church, 103 Reynolds Street
- First Baptist Church of Scotia, 132 Mohawk Avenue
- Park Cemetery, Sacandaga Road – 11.4 acre cemetery.
- Maple Shade Cemetery, Vley Road – 3.5 acre cemetery.
- Sanders Plot Cemetery, Ballston Avenue

Schools

The Scotia-Glenville School District maintains a number of elementary schools and a junior high school within the Village. There is also one private religious school. These include the following:

- Lincoln Elementary School, Albion Street
- Sacandaga Elementary School, Schermerhorn Street
- Scotia-Glenville Junior High School, Access Blvd.
- Schenectady Christian School, 36-38 Sacandaga Road

Child Care

The Village currently has one child care facility.

- YMCA of the Capital District-K Care, 204 S. Ten Broeck Street

Recreation Areas, Parks and Play Grounds

Scotia is home to a significant, and regionally important, park system. These include:

- Collins Park, Mohawk Avenue and Schonowee Avenue – 53.55 acre park adjacent to CBD with extensive public amenities including baseball fields, skating rink, tennis courts, basketball courts, swimming at Collins Lake, fishing, boating, playground, summer youth programs, swimming lessons, wildlife viewing and picnicking.
- Freedom Park, Schonowee Avenue – 1.8 acre park adjacent to CBD and Mohawk River. The park includes facilities for picnicking, a boat dock and a covered concert stage/outdoor auditorium, which holds weekly summer concerts.
- Quinlan Park, Washington Avenue - 3 acre park along Collins Lake which offers fishing, wildlife viewing, boating access and picnicking.
- Mohawk-Hudson Bike-Hike Trail, Schonowee Avenue and Washington Avenue – local segment of regional recreation trail follows local streets and then runs parallel to Mohawk River connecting to the Town of Glenville segment east of the New York Central and Hudson River Railroad.

Civic and Cultural Facilities

The Village maintains structures housing Village government offices and community meeting facilities. The Village also contains a library, two museums and a post office as follows:

- Village Hall, 4 N. Ten Broeck Street
- Village Fire Department, 148 Mohawk Avenue
- Village Police Department, 4 N. Ten Broeck Street
- Department of Public Works, Zoar Court
- Scotia Branch of the Schenectady Public Library, Mohawk Avenue and Collins Street
- United States Post Office, 224 Mohawk Avenue
- Flint House Historical Museum, 421 South Reynolds
- Scotia-Glenville Children's Museum, 303 Mohawk Avenue

Revitalization Efforts and Planning Initiatives

Over the last several years, the Village of Scotia has begun to aggressively work to revitalize its downtown and strengthen its ability to deal with development.

The major events and initiatives have been as follows:

- In 1993, site plan and subdivision review authority was granted to the planning board. Earlier in 1999 the site plan review ordinance was revised and strengthened.
- In May of 1996, the Village established its first Farmers' Market. The event is held weekly on Mohawk Avenue in the center of the business district.
- On December 15, 1996 the Village of Scotia, in cooperation with local businesses, organizations, schools, and residents, conducted its first annual "Holiday on the Avenue" celebration. The event was held on one entire block of Mohawk Avenue, which was closed to all vehicular traffic (this is also done for the "Crusin' on the Avenue" and the annual Memorial Day Parade).
- In May of 1997, Schenectady County's first Business Improvement District (BID) was established in the Village of Scotia. Thus far Scotia's BID, with an annual budget of approximately \$15,000, has helped sponsor events such as "Holiday on the Avenue" and provided funding for decorative benches, trash receptacles, large flower planters, and a tractor for snow removal and watering.
- In June of 1998, the first annual "Crusin on the Avenue" was held on Mohawk Avenue. This event, held on Fathers Day, included a car show, barbecue, vending tables, and numerous other activities.
- In June of 1998 the Village established its first planning department and hired a part-time planner.

- The Village, business and property owners, residents, and organizations have all been contributing to the physical revitalization of Scotia's downtown through funding, direct donations (such as street furniture) or donation of labor and materials. Business and property owners have been putting up decorative, pedestrian-oriented lighting (the style was chosen by the BID and will be used throughout the district), planting trees, and inlaying the sidewalks with red brick. Numerous clean-up days have been held and a private organization has been doing the weeding and regular maintenance of the grating and brickwork under the street trees. A large contribution by the Village was the demolition and reconstruction of the Freedom Park stage. The park, located adjacent to the BID, holds weekly summer concerts.
- In September of 1999 the Village of Scotia, in conjunction with the Scotia BID, retained the L.A Group P. C. to develop a Central Business District (CBD) Master Plan. The elements of the plan will include community "visioning" workshops, parcel level inventory and analysis, and development of streetscape designs. These elements are all geared toward providing a clear vision for the CBD's growth and economic success.

Additionally, the Village is considering amendments to the local law on signage and adopting architectural review standards.

LEGAL AND REGULATORY CONSIDERATIONS REGARDING ADULT USES

The United States Supreme Court has determined that municipalities can regulate adult entertainment uses provided such regulation does not unduly infringe upon the First Amendment rights. The courts have generally upheld zoning ordinances that have the stated purpose of minimizing the secondary adverse effects of adult businesses on the surrounding neighborhoods and businesses. However, adult entertainment businesses cannot be entirely prohibited through zoning and still withstand legal challenge. To withstand legal challenge, however, the municipality must show that the ordinance does not violate the test established by the Supreme Court in the City of Renton shown below.

Case Law

The following are among the most significant cases in regard to the regulation of adult business. Other court decisions, too numerous to review here, on all aspects of adult business regulations continue to be rendered.

Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976). City of Detroit had adopted an ordinance, after studying the secondary effects in the city, stating that an adult use could not be located within 1000 feet of another regulated adult use, or within 500 feet of a residential area. The court did not find a violation of equal protection by treating adult theaters differently than other theaters. The court found that municipalities may seek to

reduce the adverse secondary impacts of adult businesses by confining them to certain specified areas or by requiring they be dispersed throughout the city.

City of Renton v. Playtime Theaters, Inc., 475 U.S. 4189 L. Ed. 29, 106 S. Ct. 925 (1986). This case established that a municipality may rely on other community's secondary effects studies. The Supreme Court established a test to determine whether 1st Amendment rights are violated. The four prong test is whether:

1. The predominate purpose of zoning is to suppress the sexually explicit speech itself, or rather to eliminate the secondary effects of adult uses on surrounding communities;
2. The zoning regulation furthers a substantial government interest;
3. The zoning regulation is narrowly tailored to affect only those uses which produced unwanted secondary effects and;
4. The zoning regulation leaves open reasonable alternative avenues of expression.

Town of Islip v. Caviglia, 73 N. Y. 2d 544 (1989).

After conducting a secondary study, the Town adopted a local law defining adult businesses as those that exclude minors by reason of age and zoned them to industrial zones. The law was found to meet federal Constitutional standards and also upheld under the New York State Constitution. The court found the law was content neutral since it did not mention the nature of the material but defined adult businesses as those "which exclude minors from the premises by reason of age." The court also found that the Town's use of its zoning power was the most appropriate means to address its problem, was less restrictive than banning uses altogether and was more compatible with free speech values than licensing schemes.

Stringfellows of New York, Ltd. v. City of New York, 91 N.Y. 2d 382 (1998).

The Court of Appeals further clarified the power of local governments to use zoning to regulate adult uses. New York City's zoning law was found not to violate the freedom of expression provisions in the New York State Constitution. The Court also found that municipalities may define "adult businesses" by direct reference to specified sexual acts or exposure of specified anatomical areas without violating the Constitution so long as the zoning was enacted without intent to interfere with free speech and was directed at secondary effects of adult businesses.

Regulatory Methods

Zoning of adult uses has been the most commonly adopted method of regulation although some municipalities have also adopted licensing schemes. Zoning of adult uses has been adopted in a variety of forms.

Concentration Method - The concentration method, often referred to as the Boston model, concentrates adult uses within a specific zoning district. A special overlay district known

as the “Combat Zone” was created in the City of Boston or adult uses may be limited to a particular district of the municipality, such as industrial zones. This approach limits adult businesses to a small area of the municipality, however, there is potential for intensity of adult businesses.

Dispersion Method –The dispersion method, often referred to as the Detroit model, seeks to prevent the concentration of adult uses and “skid row” areas. Dispersion of adult businesses generally provides a minimum separation distance between adult businesses and may also provide distance requirements between adult businesses and sensitive uses such as residences, schools, childcare facilities, places of worship and parks.

Hybrid Method - A hybrid approach that is a variation of the concentration model is also commonly used. The Islip model is a locational ordinance, which concentrates adult uses within an area, zoned industrial and also further restricted adult uses from being located within certain distances of schools, churches, residences etc. This ordinance was upheld by the courts in Town of Islip v. Caviglia.

RECOMMENDATION FOR THE VILLAGE OF SCOTIA

It is recommended that the Village of Scotia adopt a local law zoning adult entertainment businesses for the purpose of reducing the negative secondary effects of adult uses. It is further recommended that adult entertainment businesses be permitted only in industrial zones and further restricted from being within a minimum of 500 feet from sensitive areas. The village may also wish to consider requiring a separation distance between adult uses and signage requirements.

Adult Use Siting Methodology

1. Identification of Sensitive Areas

The Village Zoning Map and 1999-2000 Village Tax Roll was utilized to list the sensitive areas in the Village. This list was then mapped to show possible locations where an adult use could be located without infringing upon sensitive areas.

2. Identification of Adequate Separation Distance

Given the high-density, mixed-use nature of the Village, use of a minimum separation distance of 500 ft. between an adult use and any sensitive areas is required in order to maintain the integrity of those areas.

3. Identification of Zoning District

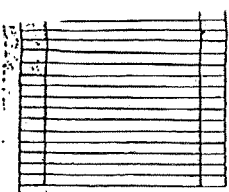
In order to locate adult uses in an area where their effect on sensitive areas will be minimized, and conform to the 500 ft. separation buffer zone, they should be excluded from zoning districts where sensitive areas are present. As stated earlier, Scotia has a cumulative zoning scheme, which in practice creates a mixed-use land use pattern. This pattern has saturated the following district with sensitive areas:

- SR Single Residence
- MR Multiple Residence
- B-R Business-Residence
- NB Neighborhood Business
- RC Retail Commercial
- GB General Business
- M/P Mohawk School Multiple Residence/Professional Office
- WF Waterfront

Since the above districts are saturated with sensitive areas, especially residential uses, these districts must exclude adult uses in order to avoid the documented secondary effects that result from uses being in close proximity to adult uses.

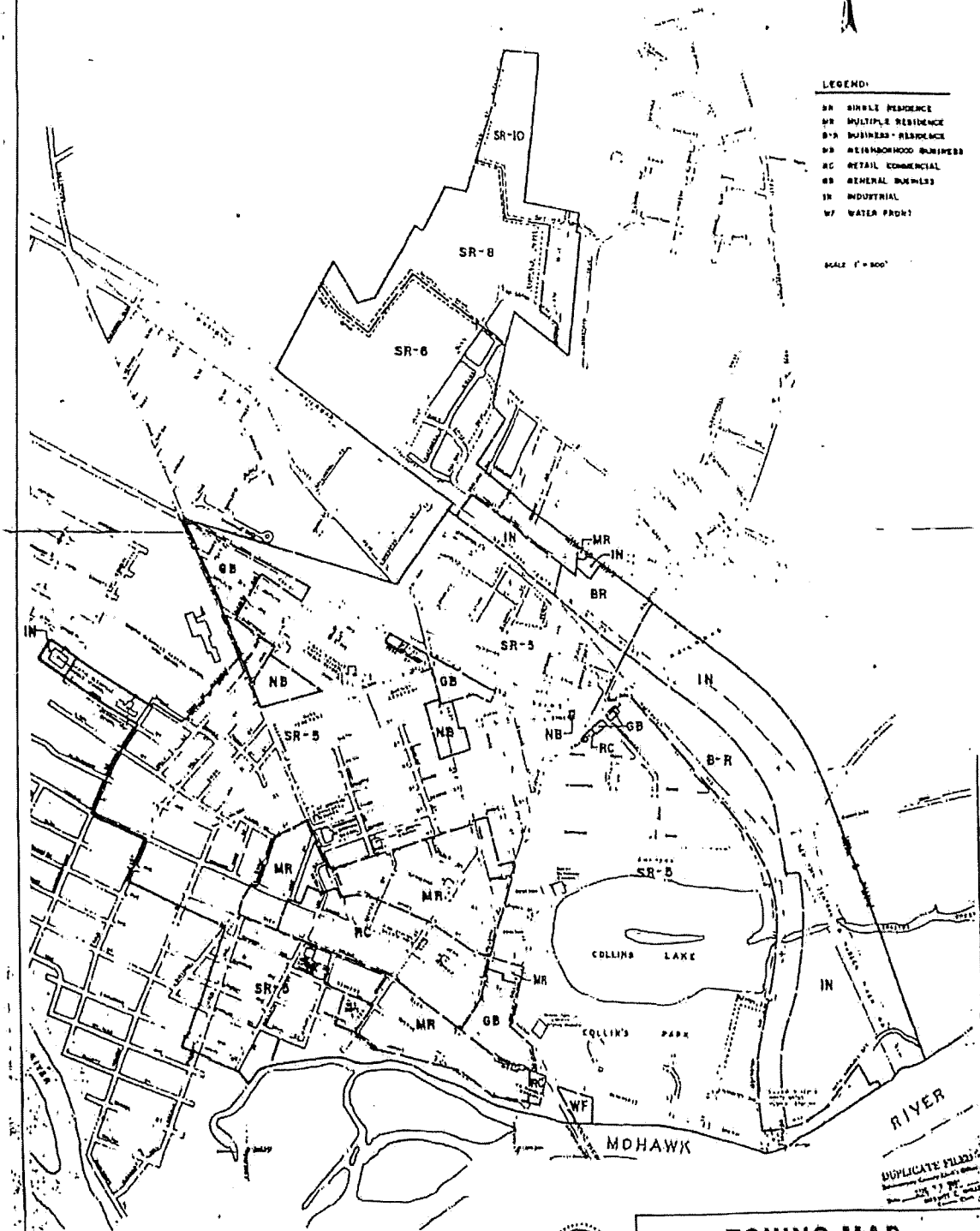
The remaining district in the Village, and the district most suited to adult uses, is the Village Industrial District (IN). Industrial districts tend to be separated from sensitive areas due to the nature of their activities.

As a matter of practicality, given the built-out nature of the Village, the only remaining land that is adequately separated from sensitive areas, capable of supporting development, and currently zoned for such activities, is in the Village Industrial Districts.



- LEGEND:**
- SR SINGLE RESIDENCE
 - MR MULTIPLE RESIDENCE
 - B-R BUSINESS - RESIDENCE
 - NB NEIGHBORHOOD BUSINESS
 - RC RETAIL COMMERCIAL
 - GB GENERAL BUSINESS
 - IN INDUSTRIAL
 - WF WATER FRONT

SCALE 1" = 800'



DUPLICATE FILED
 1957 JUN 13 PM 4:00
 VILLAGE OF SCOTIA

ZONING MAP OF THE VILLAGE OF SCOTIA

MAP PREPARED BY C.F. HALL ASSOCIATES, INC.
 FROM INFORMATION PROVIDED BY THE VILLAGE
 OF SCOTIA



APPROVED BY VILLAGE OF SCOTIA
William Joyce, Mayor

Stephentown

ident calling for meeting to crack down on school violence/Page A2

THE RECORD



Bevy of local talent on display at USBA

PAGE C1

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 MOVIES/TV.....A7
 POLICE BLOTTER.....B3
 REGION.....B1
 SPORTS.....C1
 STATE.....A3

Town, adult video store strike deal; store leaving

By Tom Murnane
 The Record Staff

STEPHENTOWN — The adult video store that "inspired" the town last year to restrict the location of adult entertainment businesses closed Sunday, ending a two-year battle of wills between the store's owner and town officials.

As part of an out-of-court settlement between the town and Jan DeGroot, owner of Tri-State Video at the intersection of routes 22 and 43, DeGroot closed his business Sunday and

will vacate the building by Tuesday, said the town's attorney, Craig Oriskany.

In exchange, the town is paying DeGroot \$80,000 for his building while the town's insurance carrier pays an additional \$15,000, for a total of \$95,000, officials said.

In February, 1998, a U.S. District Court judge had upheld the town's 1997 zoning law prohibiting adult entertainment establishments from within 1,000 feet of a church, school, cemetery, playground, park or

residential zone.

The town then cited DeGroot's store for violating the new zoning ordinance.

DeGroot, whose now-closed store was within 1,000 feet of a church, then sued the town to block the law from being enforced, arguing his first amendment right of free speech was being violated.

Despite the judge ruling in the town's favor this year, some sections of the lawsuit remained.

As a result, settling with DeGroot — who also reportedly

owns the Cinema ARTX-rated movie theater in Troy — was the cheapest way to go, said town Supervisor Michael Angley.

"We could have gone as long as another year and a half before coming to trial and the town would have spent much more money in attorneys' costs than the total terms of the settlement," Angley said.

DeGroot paid \$80,000 for the property in 1996, but the town expects to be able to resell it for

See TOWN, A8

More businesses using Internet to advertise and sell goods/Page D1

TOWN: Cuts deal with video store

Continued from A1

far more to a non-adult entertainment business, such as a pharmacy or other store.

For the town, Angley said the deal ends the controversy that began when DeGroot decided to open the adult video business in the small rural Rensselaer County community and helps avoid a potentially costlier legal battle.

"This is an excellent settlement for the town," said Crist of the law firm Dreyer-Beyajian, who drafted the zoning law and who handled the negotiations for the town.

"It ends the issue for the town and potentially saves it a great amount in legal costs," Crist said, adding that it was never the intent of the town to get rid of the store, but rather,

to simply control where such adult businesses could be located.

DeGroot and his attorney, Daniel S. Jones, of Syracuse could not be reached for comment Monday.

DeGroot had originally sued because he believed the law did not apply to his store because he claimed he had opened his establishment before the zoning law was approved. At the very least, he should be allowed to remain open for the required phase-out period specified in the law, he argued at the time.

But Stephenstown officials disputed DeGroot's claim that he was legally in business prior to the adoption of the local law.

They also said the town can

regulate the location of adult entertainment establishments based on legal precedent.

The town had attempted to shut down Tri-State's operation several times by citing violations of its site plan review regulations and its building and safety codes, as well as non-compliance with the local adult entertainment law.

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Blues brothers
Wearing as much ice cream as they're eating, brothers Justin (foreground) and Dylan Farman hide in a car pulled by their mother, Amy Farman, during Saturday's fall festival in Mechanicsville. Justin is 2 and his brother is 4.

the manager of the nearby Field of Dreams got an idea to turn the back room of the bakery into a multiple dance club on weekends.

But dozens of residents of the tiny village of Canajoharie didn't want to be exposed to such a business. Responding to their complaints, the Village Board subsequently passed a local law designed to prevent the dance club from opening there.

"I'm getting calls from other towns to see what we did," Miller said.

Cohoes apartment blaze was arson: investigators

Small-communities search for ways to ban nude dancing

By CRAIG FOX
Gazette Reporter

Last spring, someone put up a sign in a Canajoharie store from which announcing that a juke bar was about to open in that location.

It was a joke, but the prank has since caused a flurry of controversy in rural communities in Montgomery and Fulton counties.

When he saw the sign, Justin Miller thought anyone would want to open a place like that here. We have nice families and an older population."

Since then, the proposed juke bar has caused other nearby municipalities to look into ways of preventing other adult entertainment establishments from opening in their communities.

"I'm getting calls from other towns to see what we did," Miller said.

See ZONING, Page B1

to maintaining his residence in the Congress. Earlier this year, Senator Spector of the Congressional Budget Committee during a 20-year career in the House, and said he was leaving to go to Albany and recently moved his family to Maryland.

A Washington Post columnist said that Mallon said, "For the rest of my life, I hope to be a lobbyist in the Washington area, with various firms and organizations, including the health care industry."

Members of Congress are expected to receive a salary of \$112,000 a year, almost four times the median family income along with generous pension and health benefits. They have the power to set their own pay and many critics accuse them of being greedy.

"They make too much money and have too many perks to remember what it's like for the rest of us who have to eat corn," said Larry Ruckin, director of the Congressional Accountability Project in Washington.

That has not legislated a surprise, Ruckin said, because they tend to legislate for the benefit of wealthy elites who make as much as they do.

Private sector comparisons

But others argue that Spector and his colleagues deserve what they make, given the nature of their jobs and the unusual expenses that go along with spending so much time in Washington.

"The general perception is among members of Congress are paid a lot and they're not," said Michael Mallon, a political science professor at the State University at Albany.

"If you want to compare their workload and responsibilities to

the size of their bank accounts" is a valid point, he says.

The Washington Post, but as Congress' annual financial disclosure statements bear out, they year after year know of the gross profit has clearly come to a point, according to a Washington Post analysis by the Washington Post.

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See SOLUTIONS, Page B9

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Restrictive measures

But that has changed in recent months with the passage of laws that limit out-of-state income and other income tax breaks. Some of the laws were enacted in the wake of a scandal involving a tax shelter.

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Cohoes apartment blaze was arson: investigators

All You Ever Wanted to Know About... Adult Entertainment Regulations

Introduction

Adult entertainment uses can range from bookstores and/or video stores carrying a significant number of sexually-oriented material, to modeling studios, massage parlors and strip clubs. In almost every community, negative reactions usually greet these uses. This is even more likely if the municipality believes that it was caught off-guard by the use. Negative reactions can focus on moral objections to the nature of the use, or to real and perceived impacts such a use might have on a community.

While it is sometimes difficult to obtain statistical information about the adult entertainment industry, information regarding trends can be found in local newspaper ads and by noting news items concerning the industry. It is also important to note any other state laws which cover adult entertainment uses. As noted in the Village of Scotia study (*discussed elsewhere in this tech memo*), in New York State the Alcoholic Beverage Control (ABC) laws and regulations of the State Liquor Authority have partial clothing requirements in establishments holding liquor licenses. ABC laws also require certain distances from schools and churches. (Many adult establishments have circumvented such laws by not serving alcohol, thereby making local land use regulations the only laws which impact where such businesses are located.)¹

What exactly can a municipality do about adult entertainment uses? Can they be banned? Can they be limited to areas that are away from schools and residential neighborhoods?

This tech memo will help answer these questions and provide you and your community with information about the various planning tools available to municipalities dealing with adult entertainment uses. We will review municipal police power and the rights of municipalities to regulate land uses, and look at ways in which the First Amendment freedom of expression protection and landmark court cases have significantly impacted municipalities' rights to regulate adult uses. Finally, using models prepared by the Village of Scotia, we will discuss what municipalities should remember when drafting secondary impact studies and local regulations for adult uses.

Police Power: Municipal Rights to Regulate

There is no simple answer to the question of what a municipality can do when regulating adult uses. At least part of the answer can be found in a community's right to regulate land uses as part of its municipal police power.

Municipal police power is the power to enact regulations affecting private actions in order to protect the public health, safety and general welfare. Zoning and other land use regulations are exercises of municipal police power. Although this power has moved beyond its original intention and now allows municipalities to enact regulations protecting such things as historic properties and natural areas, police power cannot be used indiscriminately by a municipality in order to target a particular use or property owner.

A community can regulate land uses for a legitimate public purpose, such as addressing development issues, the ignoring of which has a demonstrable impact on the value of land and the burden of delivering municipal services. These issues are largely defined in municipal and regional documents such as comprehensive plans.

Usually, if a municipality determines that it would be in the best interest of its health, safety and general welfare not to have adult uses, then, through zoning or a local law, such uses could be prohibited. If it were that simple, that would be the end of the story. However, while municipal police power justifies a municipality's right to pass laws prohibiting certain uses in the community, adult entertainment uses may be protected under the First Amendment freedom of speech and expression provision, and therefore, must be allowed within any and all municipalities.

How First Amendment Protections Impact Municipal Police Power

Both the United States Constitution, in the First Amendment, and the New York State Constitution, in Article 1 Section 8, provide for the protection of every citizen's right to the freedom of speech and expression. Many forms of adult entertainment, including printed materials, films and live entertainment, are protected by the First Amendment. Municipalities are, therefore, not permitted to enact local regulations that totally suppress the freedom of expression associated with these activities. It should be noted that constitutional protections do not cover activities or material deemed to be obscene, and these materials and activities may be banned by municipalities. However, many of the most common adult entertainment activities, such as adult book and video stores and nude dancing establishments, while sexually explicit, are not considered obscene, and are protected by the First Amendment.

Keeping this in mind, it is the *content* of the adult entertainment activity that is protected under federal and state constitutions. The police power of a local government that justifies zoning and other types of local land use regulations cannot be aimed at suppressing or limiting the *content* of the use. "When municipal regulations impinge on an adult business's freedom of expression,

they lose the presumption of constitutionality that normally applies to zoning regulations, and the burden shifts to local government to justify its restrictions.” Although the constitutional protection of the freedom of expression means municipalities must allow for such uses within their boundaries, this does not mean that municipalities cannot regulate adult uses. What this means is that municipal regulations cannot focus on regulating adult uses because of what those uses contain, whether it be sexually explicit printed material, videos, or nude dancing. Municipalities are allowed to regulate adult uses in a manner that seeks to mitigate the potential secondary impacts (increase in crime, drug use, lowering of property values, etc.) often associated with adult entertainment uses.

Prior to adopting any type of adult entertainment regulations, a municipal government must demonstrate that it has conducted or relied upon planning studies illustrating the need to protect certain areas of the municipality from the negative secondary impacts associated with adult businesses. (*The content of secondary studies will be discussed later in this tech memo.*) The extent to which local governments can limit adult entertainment uses has largely been shaped through court cases challenging municipal regulations.

Courts and Their Impact on Municipal Regulation of Adult Entertainment Uses

Since local governments are limited in the extent to which they can regulate adult entertainment uses, municipal regulation has largely been a case of trial and error. Many regulations never make it to actual litigation, but those that do can have a significant impact on the adult use regulations in other communities. A number of state and federal cases have addressed municipal power over adult entertainment uses. Following is an overview of four important cases.

City of Renton v Playtime Theaters

The City of Renton, Virginia, after conducting public hearings and research on the impacts of adult uses, enacted zoning regulations prohibiting an adult motion picture theater from locating within 1,000 feet of any residential zone, single or multi-family dwelling, church or park, and within one mile of any school. At the time the regulation was enacted, no adult entertainment uses existed in Renton. Legal action was brought after the regulation was in place when Playtime Theater, Inc. acquired two theaters with the intention of showing adult films.³

In *City of Renton v Playtime Theaters*, 475 US 41, 89 L Ed 2d 29, 106 S Ct 925 (1986), the United States Supreme Court laid out a four-part test used to determine when zoning regulations for adult businesses do not violate the First Amendment. In determining the constitutional validity, courts must consider whether:

1. The predominant purpose of zoning is to suppress the sexually explicit speech itself, or rather, to eliminate the “secondary effects” of adult uses;
2. The zoning regulation furthers a substantial governmental interest;
3. The zoning regulation is “narrowly tailored” to affect only those uses which produced the

unwanted secondary effects; and

4. The zoning regulations leave open reasonable alternative locations for adult uses.⁴

The Court determined that the City of Renton regulations met this test and the regulations were upheld. An especially important point was made with regards to studies from municipalities outside of Renton that were relied upon when determining secondary impacts of adult entertainment uses. "The Court stated that the city did not have to produce its own studies...but must reasonably believe (on the record) that the studies were relevant to its concerns."⁵ This is significant since many municipalities, especially rural communities, have difficulty conducting studies of their own.

Town of Islip v Caviglia

In the case of the *Town of Islip v Caviglia*, 73 N.Y.2d 544 (1989), the Court rejected the challenge brought by the owner of an adult bookstore, stating the Islip regulations successfully met the test set forth in Renton. The Town of Islip, New York, enacted regulations that concentrated adult uses within an area zoned industrial. In addition, the Town also terminated and amortized adult uses located in the downtown area, which had been targeted for a major revitalization effort.

The court decided that Islip met the Renton test, finding the regulations to be content neutral and aimed at combating the secondary impacts of adult uses to allow for future development in the business district. This was supported through studies conducted by professional planners that supported the conclusion that adult uses have harmful secondary effects and that a "dead zone" was created in areas with existing adult uses that hindered development in those areas.⁶ In addition, the municipal government wanted to eliminate only those uses that were shown to produce unwanted secondary effects in order to allow for the redevelopment of those areas. Although Islip's regulations allowed adult uses only in an area zoned for industrial use, the court found that provided ample space for the development of such uses.⁷

Stringfellow's of New York, Ltd., v City of New York

Arguably the most important legal decision in recent memory involving adult uses is from the New York State Court of Appeals in 1998 in the case of *Stringfellow's of New York, Ltd., v City of New York*, when the court unanimously upheld the validity of the New York City zoning regulations governing the location of adult entertainment uses within the five boroughs.

In 1993, the New York City Division of City Planning conducted a study of the adult entertainment industry in that city. The study concluded that in areas where there was a concentration of adult uses, the presence of these businesses produced negative secondary impacts such as increased crime, decreased property values and reduced commercial activities.⁸

Following the study, the City amended its regulations, placing restrictions on both the location

and size of adult entertainment businesses. These zoning amendments were intended to mitigate the secondary impacts by breaking the concentration of adult uses in certain areas by dispersing them. The City's zoning amendments limited those districts where adult uses are allowed to certain commercial and manufacturing areas. Adult businesses located within districts where such uses are not allowed are required to conform to the new zoning or terminate the business at that location within one year of the amendment's effective date. In addition, businesses located within permitted districts are required to conform with certain distance and size requirements. Several adult businesses and their patrons brought actions challenging the validity of the City zoning amendments under Article 1, Section 8 of the New York State Constitution. This challenge was based on the claim that, because the amendment defines adult establishments as those allowing the exhibition of "specified anatomical areas" or "sexual activities," it is content-based and unlawfully suppresses expression.⁹

The New York State Court of Appeals developed a test for determining the validity of zoning regulations under Article I, Section 8 of the New York State Constitution. The test includes:

1. The zoning regulation must be justified by concerns unrelated to speech;
2. It must be "no broader than necessary" to achieve its purpose, and
3. It must provide alternative locations for adult use businesses.

The Court ruled that the New York City zoning amendment met the test and is valid under the New York State Constitution.¹⁰

City of Erie et al. V. Pap's A.M.

The most recent United States Supreme Court decision on adult entertainment uses was made in March, 2000 in the case of *City of Erie et al. V. Pap's A.M., tdba "Kandyland"*. The case was brought by Pap's, an establishment featuring all nude dancing, against the City of Erie, Pennsylvania which had enacted an ordinance making it an offense to knowingly or intentionally appear in public in a "state of nudity." To comply with the ordinance dancers, such as those performing at Kandyland, must wear, at a minimum, "pasties" and a "G-string." Pap's filed suit contending the ordinance violated its right to freedom of expression as protected by the First Amendment.

The Court evaluated the Erie ordinance under the framework set forth in *United States v. O'Brien*, 391 U.S. 367, for content-neutral restrictions on symbolic speech. In its decision, the Court stated that, "Although being "in a state of nudity" is not an inherently expressive condition, nude dancing of the type at issue here is expressive conduct that falls within the outer ambit of the First Amendment's protection. . . . What level of scrutiny applies is related to the suppression of expression." The Supreme Court upheld the Erie ordinance stating that it met all four factors set forth in *O'Brien*.

The factors in *O'Brien* are similar to those in the case of *Renton v. Playtime Theaters* and in *Stringfellow's*. In meeting the four factors the Court determined that first, "the ordinance is within Erie's constitutional power to enact because the city's efforts to protect public health and

safety are clearly within its police powers. Second, the ordinance furthers the important government interests of regulating conduct through a public nudity ban and of combating the harmful secondary effects associated with nude dancing. . . . The ordinance also satisfies *O'Brien's* third factor, that the government interest is unrelated to the suppression of free expression. . . . The fourth *O'Brien* factor--that the restriction is no greater than is essential to the furtherance of the government interest--is satisfied as well."¹¹

Clearly, to justify zoning regulations for adult businesses, municipalities must show that the regulations are not directed at the content of the use, but at the elimination of the negative secondary impacts resulting from that use. These are often demonstrated through secondary effects (or impacts) studies. Based on potential impacts identified in the study, a municipality can then recommend land use controls to regulate these types of uses. While secondary effects studies can take various forms, there are certain elements that should be included in any study. The *Secondary Effects Study of Adult Entertainment Uses* from the Village of Scotia (funded by the New York Planning Federation, and released in September, 1999), is used as a model for how communities prepare these studies and their format.¹²

Introduction: Motivation Behind Desire to Regulate

In its study, the Village of Scotia discusses the community's concerns over adult entertainment uses and why it is considering regulation of such entertainment. The Introduction discusses the Village's decision to enact a moratorium on adult entertainment uses (*See box*) while the study and local law were being prepared. Also discussed are some of the legal issues that allow municipalities to regulate adult entertainment uses and the purpose of the secondary study.

Moratoria

Before undertaking a secondary study, many municipalities choose to enact a moratorium. Often referred to as a "stop-gap" or "interim" regulation, moratoria are intended to preserve the status quo pending the adoption of zoning or other land use regulations. Municipal actions that might prompt the enactment of a moratorium include preparing a comprehensive plan, a proposal to establish a new use that is not adequately addressed in current zoning, or a municipal desire to ensure that community facilities may be made capable of servicing anticipated development.¹³

Regardless of the reason behind a moratorium, courts have consistently required that these regulations be adopted in strict adherence to the procedures set forth in the enabling statutes for the enactment or amendment to zoning regulations. "The rationale for this requirement is that a moratorium is a form of land use regulation, in that it temporarily prohibits one or more uses."¹⁴ In addition, municipalities should pay particular attention to the following when enacting a moratorium for any reason:

Purpose/Intent - there needs to be a clear public purpose to the action that is articulated in the moratorium.

The Extent of Coverage - be clear and fair on what actions are covered under the moratorium, as well as at what point during the review/approval process an applicant may gain exception. For

instance, are all applications requiring site plan approval subject to the moratorium? Does that mean final approval is needed prior to the effective date, or is submittal of a complete application by such a date okay? Must the project have completed the SEQR process? There are lots of options.

Period of Coverage - Courts have been consistently uncomfortable with long and broad moratoria. Six months or less is usually fine. Extensions of a year or more may be trouble, particularly if this effects significant proposals.

Show Action and Progress - Timing of any moratorium is critical. It should be designed as a safe period during which real work is progressing toward updating a plan and/or regulations in light of legitimate pressures or trends. If a moratorium is initiated too soon and shows no progress, it could become challengeable.

If the Moratorium Becomes Controversial - Don't poison community willingness to make changes by fighting over a moratorium. A moratorium should be relatively easy to initiate once there is agreement on the concept and terms. Remember, consistent with the SEQR amendments of 1996, moratoria are Type II actions under SEQR - greatly easing the process.

Review of Secondary Effects Studies

Since most suburban and rural communities currently faced with the issue of regulating adult entertainment uses have no direct experience with such businesses, they must rely on secondary studies conducted by other municipalities to help identify potential secondary impacts. (As discussed earlier, in the landmark case, *City of Renton v. Playtime Theaters*, the United States Supreme Court determined that municipalities do not have to produce their own studies, but must state how the studies chosen are relevant to their concerns regarding secondary impacts.) Often these studies have been conducted in large metropolitan areas, but, as shown in the Village of Scotia study, this doesn't necessarily mean that they are not applicable to more suburban or rural areas. Often studies done in large cities are conducted on the neighborhood level, where the study area is actually no larger than many rural community centers or villages. Also, the mix and proximity of commercial and residential uses is often comparable between city neighborhoods and less urban areas.

For their study, the Village of Scotia reviewed studies from Austin and El Paso, Texas; Newport News, Virginia; Garden Grove, California; Islip and the City of New Rochelle, New York; and Indianapolis, Indiana. Research methods used included a comparison of areas that contained adult uses with areas that did not (control areas), a survey of professionals and residents, and gathering statistical data. Secondary effects studied included crime rates, impacts on real estate, traffic, noise and general neighborhood appearance.

Based on the review of these studies, the Village of Scotia concluded that all supported the

existence of a number of negative secondary effects of adult entertainment uses, such as an increase in crime rates, decline in property values, and a general deterioration, both in reality and perception, of the neighborhoods in which these uses are located. Scotia also found that the studies were relevant to the Village since the studies did not focus on the city as a whole, but on much smaller areas. In addition, the impacts of adult uses on the study area were found to be independent of the size of the municipality.¹⁵

The Village of Scotia findings that were especially applicable to them included:

- 1) The smaller the commercial district, the larger the impact because the “negative halo” will affect a larger proportion of the municipality’s business than it would in a larger city;
- 2) Because of the small size of commercial districts the probability of substantial impacts of sexually oriented businesses upon residential areas increases, and;
- 3) Smaller places are more likely to have fewer days and hours of commercial activity than larger cities. This increases the likelihood that an adult business will have a larger impact on the area in which it is situated during off-hours for other businesses.¹⁶

Regulation Recommendation and Local Law

The next step after establishing the potential secondary impacts which adult entertainment uses may have on a community, is to identify how best to regulate these uses in order to minimize negative impacts on residents and businesses within the municipality. Before choosing a regulatory method, the Village of Scotia,

Reviewed current zoning: The Village identified which zoning districts would currently allow adult entertainment businesses to locate as a permitted use, siting some of the undefined permitted uses within the Village zoning that an adult entertainment establishment may argue are appropriate classifications for their use. These included, but were not limited to, retail stores and shops, restaurants, theaters, membership clubs, drinking establishments and personal services stores.

Identified land uses sensitive to potential negative impacts: The Village identified sensitive areas “as possessing characteristics that are essential to the Village’s character, quality of life, and economic success.”¹⁷ These areas include residential neighborhoods, the central business district, places of worship, schools, childcare facilities, recreation areas, parks and playgrounds, and civic and cultural facilities.

Reviewed legal considerations and regulatory options: An overview of legal considerations and regulatory options was presented to outline major court decisions that impact local regulation of adult entertainment uses. Regulatory methods of licensing,¹⁸ concentration (which concentrates adult uses within a specific zone), dispersion (which seeks to prevent the concentration of adult uses), and the hybrid method (which concentrates adult uses within a certain zone and additionally restricts adult uses from locating within a certain distance of identified sensitive areas) were presented as options available.¹⁹

Based on this analysis, the Village of Scotia decided to adopt a local law regulating adult entertainment uses for the purpose of mitigating the negative secondary impacts potentially caused by such uses. Adult entertainment uses are permitted only in industrial zones within the

Village and further restricted from being within a minimum of 500 feet from identified sensitive areas. A minimum separation of 500 feet between adult uses is included, as are signage restrictions.²⁰ (See attached)

The map below illustrates this process using a fictitious municipality.

Options for Municipalities without Zoning

Municipalities without zoning regulations still have options when it comes to regulating adult entertainment uses.

Site plan review can be used to help mitigate negative impacts on neighboring properties within a municipality. It is important to remember that site plan review is not zoning. Site plan review does not “permit” or “restrict” uses. The exercise of site plan review assumes land uses are allowed, subject to the elements of the site plan that may be reviewed as determined by the municipality. Using our example, a municipality may choose to require any adult entertainment establishment to be subject to site plan review.

Under site plan review the municipality may review elements of a site plan such as those defined by New York State statute including;

- Parking
- Means of Access
- Screening and landscaping
- Signs
- Architectural features
- Location/dimension of buildings
- Adjacent land uses and physical features meant to protect those uses
- Any additional elements the governing body may specify

Using this method, municipalities without zoning may control certain impacts on the community associated with the listed elements, but may not control the location of such a use within the community. It is important to remember that adult entertainment uses can be included in a municipal-wide site plan review local law that includes other land uses that the municipality wishes to make subject to site plan review.

Municipalities without zoning may also use their non-zoning police power to regulate the potentially negative aspects of secondary impacts. Based on secondary impacts identified by a municipality, local laws may be enacted which regulate the nuisance, such as noise. Again, it is important to remember that these types of local laws should be municipal-wide and cover all uses. Adult entertainment establishments should not be the only types of uses subject to such laws.

Conclusion

As was stated at the beginning, community reactions to adult entertainment uses are usually negative. Some could argue that by regulating adult entertainment uses, especially in municipalities where no such uses exist, attention is drawn to the topic and, by regulating these uses, that municipality is suddenly allowing them in the community. As is evidenced in this tech memo, this is not the case. Because of the First Amendment protections allowed many types of adult uses, municipal police power to prohibit these uses is limited. Thus, these uses, without municipal regulation, are essentially allowed in all municipalities, often in more locations prior to regulation than after.

As is clear from the information presented here, municipalities do have the power to limit and confine adult entertainment uses to the places in their communities that they identify. When faced with regulating adult entertainment uses, municipalities should remember the following:

Identify the issues -- what causes concern? Adult entertainment uses are often controversial and the issue or issues a municipality is most concerned with should be clearly identified and stated, ideally first addressed in a municipal comprehensive plan. As with any issue, communities should specifically identify what causes concern.

Identify possible solutions/tools as municipal options -- While municipal police power is limited in terms of prohibiting adult entertainment uses, municipalities do have control over where these uses can be located to mitigate possible negative secondary impacts.

Conduct a Secondary Study -- A secondary study is required before drafting any adult use regulations. While there is no required format for secondary studies, municipalities should include secondary impacts, current regulations/zoning, sensitive land uses and legal and regulatory options.

Draft and implement regulations -- Based on the secondary study and municipal options for regulation, draft and implement regulations that best suit the character of your municipality and best address municipal concerns.

Always involve the public -- Involving the public throughout the planning and regulatory process helps build a constituency regarding the issues of concern for the community. When dealing with a potentially controversial issue, involving the public can also help educate the community on all aspects of the issue.

Footnotes

1. Marola, Lydia R. and Blick, Greg. *Secondary Effects of Adult Entertainment Uses*, 1999. pg. 4
2. New York State Department of State Counsel's Office, Opinions of Counsel: Municipal Regulation of Adult uses After the *Stringfellows* Decision.
3. Weinig, Lynn E. "Regulating Adult Entertainment Uses," *Municipal Lawyer*, January/February, 1994. Volume 8, Number 1, pg. 1.
4. New York State Department of State Counsel's Office, *Loc. Cit*
5. Weinig, Lynn E. *Loc Cit*.
6. *Ibid*.
7. *Ibid*.
8. NYS Department of State Counsel's Office, *Loc. Cit*.
9. *Ibid*.
10. United States Supreme Court Decision
11. *Ibid*.
12. The Village of Scotia model was funded by the Rural New York Planning and Preservation Grant Program with support from the J.R. Kaplan Fund and The Andy Warhol Foundation for the Visual Arts. Other municipalities are encouraged to review it. Copies of the Secondary Effects Study are available from the New York Planning Federation.
13. Damsky, Sheldon W., Catalano, Joseph M., Coon, James A. *All You Ever Wanted to Know About Zoning...*3rd Edition, New York Planning Federation, Albany, NY 1999, pg. 15-1
14. *Ibid*. pg. 15-3
15. Marola, Lydia R. and Blick, Greg. *Loc. cit*. pp. 4-8
16. *Ibid*. pp. 8-9
17. *Ibid*. p. 10
18. *Ibid*. p. 10
19. *Ibid*. pp. 14-16
20. *Ibid*. pp. 16-17

- **Report dated May 6, 2008 from the Milford Police Department from Thomas J. O'Loughlin, Chief of Police.**



MILFORD POLICE DEPARTMENT

Thomas J. O'Loughlin
Chief of Police

*250 Main Street * Milford, MA 01757 * Tel. (508) 473-1113 * Fax (508) 473-5087**
milfordchief@aol.com

May 6, 2008

Planning Board
Town of Milford
52 Main Street
Milford, MA 01757

Dear Ladies and Gentlemen:

I would like to take this opportunity to present information to you in support of the Application of the Board of Selectmen to amend Section 2.3, Use Regulation Schedule, of the Zoning By-Law related to Adult Entertainment Enterprises.

In reviewing numerous studies and in my professional experience as a police official for thirty (30) years, twenty-two of which I have served as a Chief of Police in the Commonwealth of Massachusetts, it is my professional opinion that there exists a number of secondary or derivative effects that emanate from Adult Entertainment Enterprises.

In 1991, the City of Garden Grove, CA, examined ten (10) years of crime statistics and found that there was a significant increase in property crimes (burglary, theft, auto theft) and personal crimes (assault and robbery) within 1,000 feet of sexually oriented businesses, particularly if these businesses were located near an establishment that sells alcohol. "On Garden Grove Boulevard, the adult businesses accounted for 36% of all crime in the area. In one case, a bar opened less than 500 feet from an adult business, and serious crime within 1,000 feet of that business rose more than 300% the next year."

The study also found that sexually oriented businesses created conditions that draw outsiders to the area thus providing venues for opportunistic crimes; and further, that public and semi-private spaces, such as parking lots, alleys, and parks, are subjected to use for illicit purposes. These activities engender an increased level of fear of crime, particularly as the transient male population harasses and/or propositions women of all ages in the area assuming that they are associated with sexually oriented activities.

In a separate study conducted by Bothell, WA, the issues related to the transient nature of the customer base of sexually oriented businesses was highlighted when it was shown

that of the 321 vehicles parked within the lot at a sexually oriented business, only 8 or 2.5% were registered to residents of Bothell. This study also found that “a regional customer base, as opposed to a neighborhood customer base makes sexually oriented business owners less responsive to neighborhood problems, decreases the informal social control of behavior, and increases the potential for opportunistic crime.” The study also indicated that “the negative effects of an sexually oriented business in a small town will likely be more magnified than in a bigger city.”

Likewise, a 1988 study in Adams County, CO, “revealed that 76% of patrons were transient” and in “a rural area of Adams County with a single topless nightclub”, they “experienced a 39% increase in crime” over a one year period. Also, a 1986 study in Austin, TX, found that “of 81 license plates traced for owner address, only 3 lived within one mile of the sexually-oriented business”, while “44% were from outside Austin.”

A 1979 study in Phoenix, AZ, examined crime statistics for 1978 and compared areas that had sexually oriented businesses against those that did not. “On average, the number of sex offenses was 506% greater in neighborhoods where sexually oriented businesses were located” and “in one of the neighborhoods the number was 1,000% above the corresponding control area”. “Of the sex offenses, indecent exposure was the most common offense and the largest contributor to the increase of crimes in areas where sexually oriented businesses were located.” However, “even without considering the crime of indecent exposure, the number of other sex crimes, such as rape, lewd and lascivious behavior, and child molestation, was 132% greater than in the control areas without sexually oriented businesses”. Also, the study found that “on average the number of property crimes was 43% greater in neighborhoods where sexually oriented businesses were located, and the number of violent crimes was 4% higher”.

A 1990 study in Tucson, AZ, found that “at virtually every [adult] business, employees were arrested for prostitution or obscene sex shows. Dancers were usually prostitutes where, for a price, customers could observe them performing live sex acts. At several businesses, customers were allowed inside booths with dancers and encouraged to disrobe and masturbate. Many times, dancers would require customers to expose themselves [to ensure that they were not police officers] before they would perform. Underage dancers were found, the youngest being a 15 year old female.”

In 1977 a study by the City of Los Angeles, CA, revealed that “compared to city-wide statistics for 1969-75, areas with several such businesses experienced greater increases in pandering (340%), murder (42.3 %), aggravated assault (45.2%), robbery (52.6%), and purse snatching (17%). Street robberies, where the criminal has face to face contact with his victim, increased almost 70% more in the study areas. A second category of crime, including other assaults, forgery, fraud, counterfeiting, embezzlement, stolen property, prostitution, narcotics, liquor laws, and gambling increased 42% more in the study areas over the city as a whole.” While a 1978 study in Whittier, CA, found that “in the adult business area, criminal activity rose 102%” while “the entire city had only an 8.3% increase”. Additionally it was noted that “certain crimes skyrocketed (malicious mischief

up 700%; all assaults up 387%; prostitution up 300%” and “all types of theft (petty, grand, and auto) increased more than 120% each.”

The 1992 study in Oklahoma City, OK, found a direct correlation between entertainers, the buying of expensive drinks, and prostitution.

Along with prostitution there are the very real public health concerns related to these illicit sexual activities. In 1997, the City of Chattanooga, TN, cited statistics from Shelby County which indicated that “33% of all prostitutes jailed in 1990 tested positive for VD, and 13% of all prostitutes jailed tested positive for HIV, (all dying within 3-5 years at an estimated cost of \$500,000 per person, at tax payer expense). In one topless club 8 out of 9 female employees tested positive for VD.”

The 1986 study conducted by the City of El Paso, TX, found that “sex-related crimes occur more frequently in neighborhoods with even one sexually oriented business” and that these areas had a 72% higher crime rate.

A study in Newport News, VA, showed that these very real secondary effects require greater police attention through investigation, inspection, enforcement and calls for police services. In reviewing alcohol related businesses, the study found that “one particular downtown adult entertainment establishment had more than double the number (116.7) of police calls per 100 occupancy compared to a regular restaurant, non-adult use, located across the street (50 calls per 100 occupancy).

As part of its study in 1995, the City of Rome, GA, found that the secondary effects can be illustrated by reports from the LaGrange, GA police department that they responded to 106 calls at one adult club in a single year; reports from the Augusta, GA police department that during a two year period they responded to 971 calls from three adult entertainment businesses; and, reports from the Whitfield County Sheriff’s Office that they had reported instances of prostitution, drugs, thefts, and aggravated assaults involving discharging of firearms at adult entertainment establishments.

In a more recent study conducted for the City of Los Angeles, CA, in 2007, Dr. Richard McCleary, Ph.D., reported several findings or opinions:

“OPINION 1: The criminological theory of ambient crime risk, known as the “routine activity theory”, predicts that SOBs have large, significant crime-related secondary effects. The effect is a product of three factors. (1) SOBs draw patrons from wide catchment areas. (2) Because they are disproportionately male, open to vice overtures, reluctant to report victimizations to the police, etc., SOB patrons are “soft” targets. (3) The high density of “soft” targets at the site attracts predatory criminals, including vice purveyors who dabble in crime and criminals who pose as vice purveyors in order to lure or lull potential victims.

OPINION 2: In the last thirty years, empirical studies employing a wide range of quasi-experimental designs have found that SOBs have large, significant crime-related secondary effects.

OPINION 3: Given that strong criminological theory predicts the effect, and given the prediction is corroborated consistently by the empirical literature, it is a scientific fact that SOBs pose ambient crime risks.”

Dr. McCleary then went on to render three additional opinions that he indicated are “specific to Alameda Books”. Nevertheless, I believe these opinions may also be relevant to your assessment and consideration of the By-Law proposal before you.

“OPINION 4: Since the theoretical risk factors specified in my first opinion are common to all SOB subclasses, all are expected to pose ambient public safety hazards. The qualitative nature of the hazard may vary by subclass nevertheless. This will occur when the defining characteristics of a subclass creates opportunities for a particular type of crime; or when the characteristic interferes with routine policing strategies.

OPINION 5: In this suit, the two relevant subclasses are SOBs that sell video tapes and DVDs for off-site viewing (hereafter, “stand-alone bookstores” or “bookstores”) and SOBs that sell video tapes and DVDs for off-site viewing while, also providing private or semi-private booths for on-site viewing of video tapes and DVDs (hereafter, “combined bookstore-arcade” or “bookstore-arcade”). Although both subclasses have large, significant crime-related secondary effects, there are salient qualitative differences. Compared to stand-alone bookstores, e.g., combined bookstore-arcades pose higher risks of crime. Geo-coded crime incident data for the neighborhoods around 19 Los Angeles SOBs corroborate this theoretical expectation.

OPINION 6: Poisson regression analyses of crime incidents in the vicinity of 19 Los Angeles SOBs demonstrate a significant relationship between ambient crime victimization risk and distance from the site. Victimization risk at the site of a combined bookstore-arcade is more than double the risk at the site of a stand-alone bookstore. For both subclasses, victimization risk diminishes rapidly with distance until, at approximately 900 feet, the risks are roughly equal for the two subclasses. In general, victimization risk for bookstore-arcades is more densely concentrated in the immediate vicinity of the site.”

It remains clear, from each of the aforementioned studies and the study conducted by Dr. McCleary that there are “large, significant crime-related secondary effects” associated with adult entertainment enterprises, that adult entertainment enterprises “pose ambient crime risks” and that adult entertainment enterprises in which the customers remain on-site as contrasted to taking products with them off-site or to their homes for viewing, pose a higher risk for crime related secondary effects.

In reviewing these studies, I took the liberty of creating a spreadsheet for your consideration indicating the distances that were proposed and/or adopted by various communities requiring adult entertainment businesses to be situated away from other adult entertainment businesses; schools; residential zones and dwellings; bars or liquor establishments; parks; places of worship; child care facilities; libraries; recreation centers; and hotels or motels. I also developed a spreadsheet showing those communities that adopted regulations requiring that rooms within adult entertainment enterprises be open and viewable by establishment managers and the police; that require the licensure of adult entertainment employees by police; that require background investigations be conducted to determine if the person should be licensed to work as an employee at an adult entertainment enterprise and prohibits licensing of people who have been convicted of committing certain criminal offenses; that provide for a hearing if said license is denied or revoked; that regulate and prohibit the use of underage entertainers; that address issues of prostitution and other crimes; that restrict hours and days of operation; that control signs at the business location; that limit the property to one adult use; that prohibit the purchase of drinks for entertainers; that provide for and address public health and disease concerns; that exclude minors from admittance into adult entertainment enterprises; that require a license application fee; that provide for lighting requirements within the adult entertainment establishment; and that address concerns related to organized crime.

In closing, I would urge the Planning Board to adopt the proposed amendments to Section 2.3, Use Regulation Schedule of the Zoning By-Law related to Adult Entertainment Enterprises by replacing footnote #15 and adding a new Section 3.14 as proposed by the Board of Selectmen.

Respectfully submitted,

Thomas J. O'Loughlin
Chief of Police

- **Summary Report from Eric S. McCord and Richard Tewksbury from the University of Louisville.**

**Adult businesses & crime:
Seeking a better understanding**

Eric S. McCord

Richard Tewksbury



Introduction

- Scholarly research concerning crime & adult businesses is surprising light & contradictory
 - Few studies have examined crime at adult businesses or compared crime levels among the different types of businesses (strip clubs vs. adult book/novelty stores)
 - Contradictory findings concerning impact of adult businesses on neighborhood crime levels - McCleary & associates report significantly higher crime levels in 500 & 1000 foot buffers; Lind, Paul & associates find no such increases
- Why important? - US courts require ever-increasing levels of empirical evidence showing connection between crime & adult businesses to justify extra regulations

Theoretical base – Routine activities

- Numerous qualitative/observational studies identify common activities of adult businesses, their employees, & patrons that suggest an increased risk of crime
- Activities suggest existence of a *crime symbiosis* (Felson, 2006) where businesses, employees, & patrons receive illicit benefits (cash, sex, drugs) from the interdependence of their activities, both legal & illegal
 - Strippers report they are often under the influence of illegal drugs during performances that they purchase from fellow employees or patrons
 - Patrons pay to enter video booths and theaters not to watch the movie but to engage in sexual unions with other customers

Activities suggesting many suitable targets

- Patrons who:
 - Are disproportionately male, open to vice overtures, & carry cash
 - Desire to remain anonymous - reluctant to involve police
 - Often under the influence of alcohol or drugs
 - Distracted by the highly sexualized atmosphere

Douglas & Tewksbury; 2008; McCleary, 2008;
McCleary & Tewksbury, 2010; McCleary &
Weinstein, 2009

Activities suggesting many motivated offenders

- Marginality of adult businesses & tolerance for some illegal activities may specifically attract motivated offenders
 - Drug dealing/use by employees & patrons
 - Stripper involvement in prostitution on/off premises
 - Managers that encourage employees to skirt laws to earn higher tips for themselves & more income for the business
 - Patrons who visit businesses to engage in public sex in booths, theaters, & parking lots

DeMichele & Tewksbury, 2004;
Forsyth & Deshotels, 1997; Sherman, 2002

Activities suggesting lack of guardianship

- Marginality keeps responsible citizens away & promotes “containment policy” by officials
- Bouncers responsible for social control & enforcing rules, but avoid strict enforcement because its bad for business
- Secretive & suspicious patrons who rarely interact with one another. Grouped patrons only interact within group
- Patrons typically arrive & leave alone
- Dampening effect on surrounding business activity and commercial & residential property values that result in disorganizing effects on neighborhoods

Cooper & Kelly, 2008; National Law Center, 2005;
Douglas & Tewksbury, 2008; Tewksbury 1990; 1993

Research questions

- Are adult businesses criminogenic to their surroundings?
- What do crime patterns at these businesses tell us about them?

This study

- 30 adult businesses in Jefferson County, KY
 - 21 strip clubs
 - 9 adult novelty/book stores (5 have video booths/theatre)
- Crime data (1 yr Oct 2009-Sept 2010)
 - Violent – murder, robbery, & all assaults
 - Property – burglary & thefts
 - Disorder – Drug use/sales, prostitution, intoxication, weapon violations, littering, vandalism
- Multiple methods of analysis
 - Descriptive & inferential statistics
 - 500 & 1000 foot buffers
 - Comparisons among different types of adult businesses

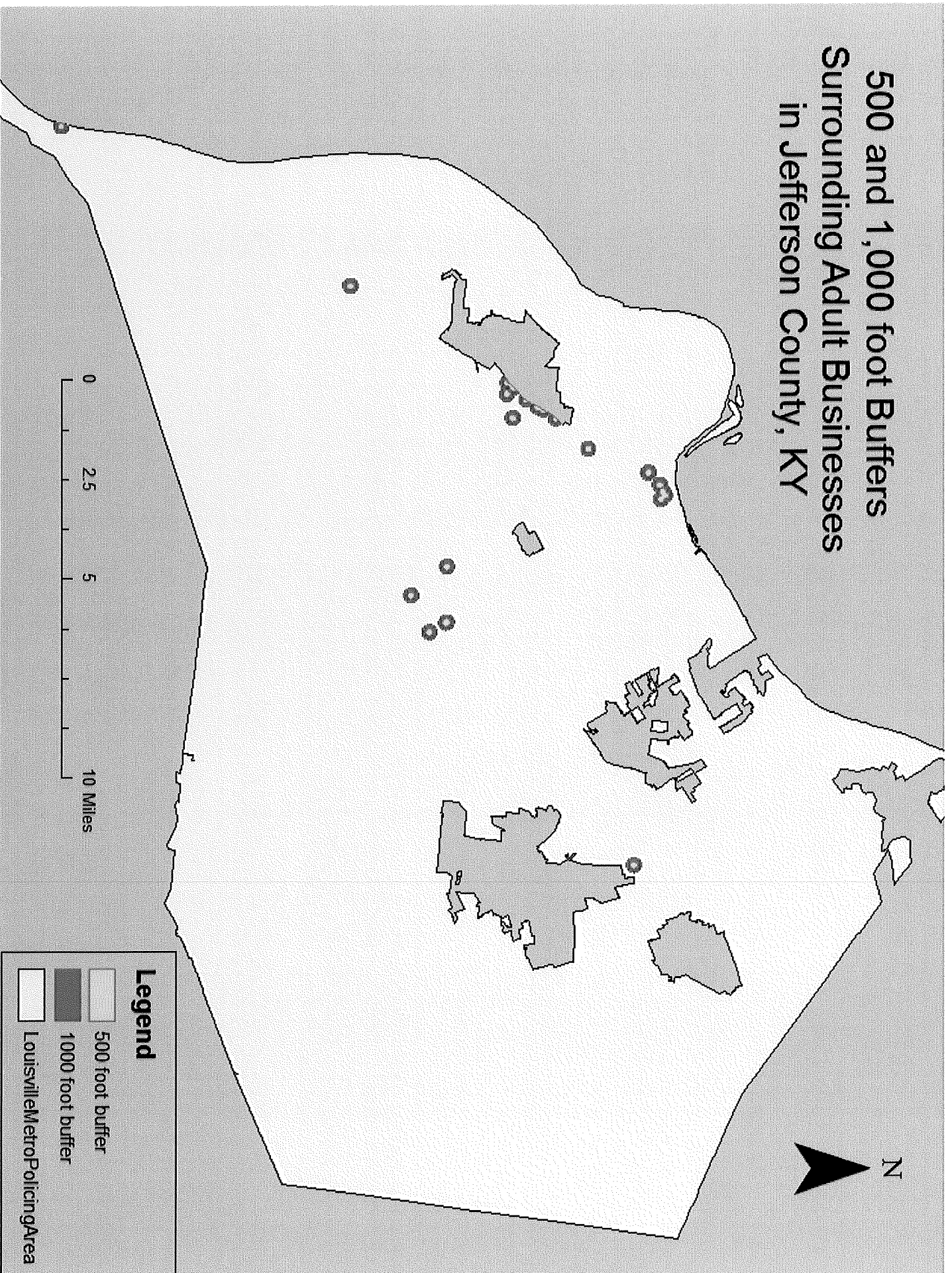
Stores (novelties, DVDs, video rooms)



Strip clubs



500 and 1,000 foot Buffers Surrounding Adult Businesses in Jefferson County, KY



LQ values (buffer density/larger area density)

	Violent crime	Property crime	Disorder Crime
LQ values (Jefferson County, LMPD)			
0-500 foot buffers	12.3	10.1	10.7
0-1,000 foot buffers	8.3	7.1	7.1

Percentage Individual Buffers Exceeding County Density

500 ft (n = 16): Violent – 94%, Property- 88%, Disorder – 88%

1000 ft (n = 14): Violent – 79%, Property- 71%, Disorder – 93%

Regression model – 500 foot buffers

N = 416	Violent crime	Property crime	Disorder Crime
Adult business indicator (0-1, 1 = AB)	+***	+***	+***
Median income	-	-	-
% Renters	+***	+**	+***
% Single parents	-	-	+*
% Black	-	-	-
Spatial lag	+**	+***	+***
Adj. R-square	.277	.312	.382

*p<.05, **p<.01, ***p<.001

Note: Beta values for adult business indicators are higher than all SES variables

Regression model – 1000 foot buffers

N = 414	Violent crime	Property crime	Disorder Crime
Adult business indicator (0-1, 1 = AB)	+***	+***	+*
Median income	-	-	-
% Renters	+***	+***	+***
% Single parents	-	+**	+*
% Black	-	-	-
Spatial lag	+**	+***	+***
Adj. R-square	.474	.489	.516

*p<.05, **p<.01, ***p<.001

Note: Beta values for adult business indicators no longer higher than all SES variables

Comparing crime occurring at strip clubs to stores

Crime Rates (incidents/places)	Strip Clubs (17)	Stores (7)	% Difference Strip club rate is...
Robbery – Business	0	.43 (3)	-----
Person	.29 (5)	.14 (1)	+ 107%
Assault – Aggravated	.24 (4)	.14 (1)	+ 71%
Minor	.47 (8)	.14 (1)	+ 236%
Burglary	0	.14 (1)	-----
Theft (no shoplifts)	.77 (13)	.43 (3)	+ 79%
Theft from Vehicle	.53 (9)	.57 (4)	- 7%
Auto Theft	.12 (2)	.14 (1)	- 16%
Vandalism (all to vehs)	.12 (2)	.14 (1)	- 14%
Drug cases	.65 (11)	.71 (5)	- 8%
Total crime rate	3.18	3.00	+ 6%
Violent rate	1.00	.86	+ 16%
Property rate	1.41	1.29	+ 9%
Disorder rate	.77	.86	- 10%

Comparing crime at stores with/without video booths

Crime Rates (Incidents/places)	Stores with video boots (5)	Stores without video booths (2)	% Difference With Booth rate is...
Robbery – Business	.60 (3)	0	-----
Person	.20 (1)	0	-----
Assault - Aggravated	.20 (1)	0	-----
Minor	.20 (1)	0	-----
Burglary	0	.50 (1)	-----
Theft	.60 (3)	0	-----
Theft from Vehicle	.80 (4)	0	-----
Auto Theft	.20 (1)	0	-----
Vandalism	.20 (1)	0	-----
Drug cases	1.00 (5)	0	-----
Total crime rate	4.00 (20)	.50 (1)	+ 700%
Violent rate	1.20 (6)	-----	-----
Property rate	1.60 (8)	.50 (1)	+ 220%
Disorder rate	1.20 (6)	-----	-----

Comparing crime at strip clubs to nearby bars*

Crime Rates (incidents/places)	Strip Clubs (17)	Nearby Bars (17)	% Difference Strip club rate is...
Robbery – Business	0	0	-----
Person	.29 (5)	.12 (2)	+ 142%
Assault - Aggravated	.24 (4)	.06 (1)	+ 300%
Minor	.47 (8)	.24 (4)	+ 96%
Burglary	0	.29 (5)	-----
Theft	.77 (13)	.41 (7)	+ 88%
Theft from Vehicle	.53 (9)	.35 (6)	+ 51%
Auto Theft	.12 (2)	0	-----
Vandalism (all to vehs)	.12 (2)	.12 (2)	0%
Drug cases	.65 (11)	.06 (1)	+ 983%
Total crime rate	3.18	1.70	+ 87%
Violent rate	1.00	.41	+ 144%
Property rate	1.41	1.06	+ 33%
Disorder rate	.77	.18	+ 328%

Summary & policy implications

- Criminogenic effects extend out at least 1,000 feet
 - Data supports 500 & 1000 foot zoning regulations aimed at reducing "secondary effects"
- Difference between store & strip club overall crime rates is minimal (6%) - mostly due to stores with video booths
 - Video booths have strong negative impacts justifying additional regulation
- Strip club crime rates considerably higher than bars for all categories
 - Strip club environments & opportunities differ from those of standard bars, justifying additional regulation
- Environmental criminology theories & methods can make important contributions to public policy debates

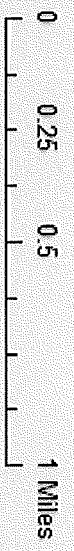
**Adult businesses and crime:
Seeking a better understanding**

Eric S. McCord

eric.mccord@louisville.edu

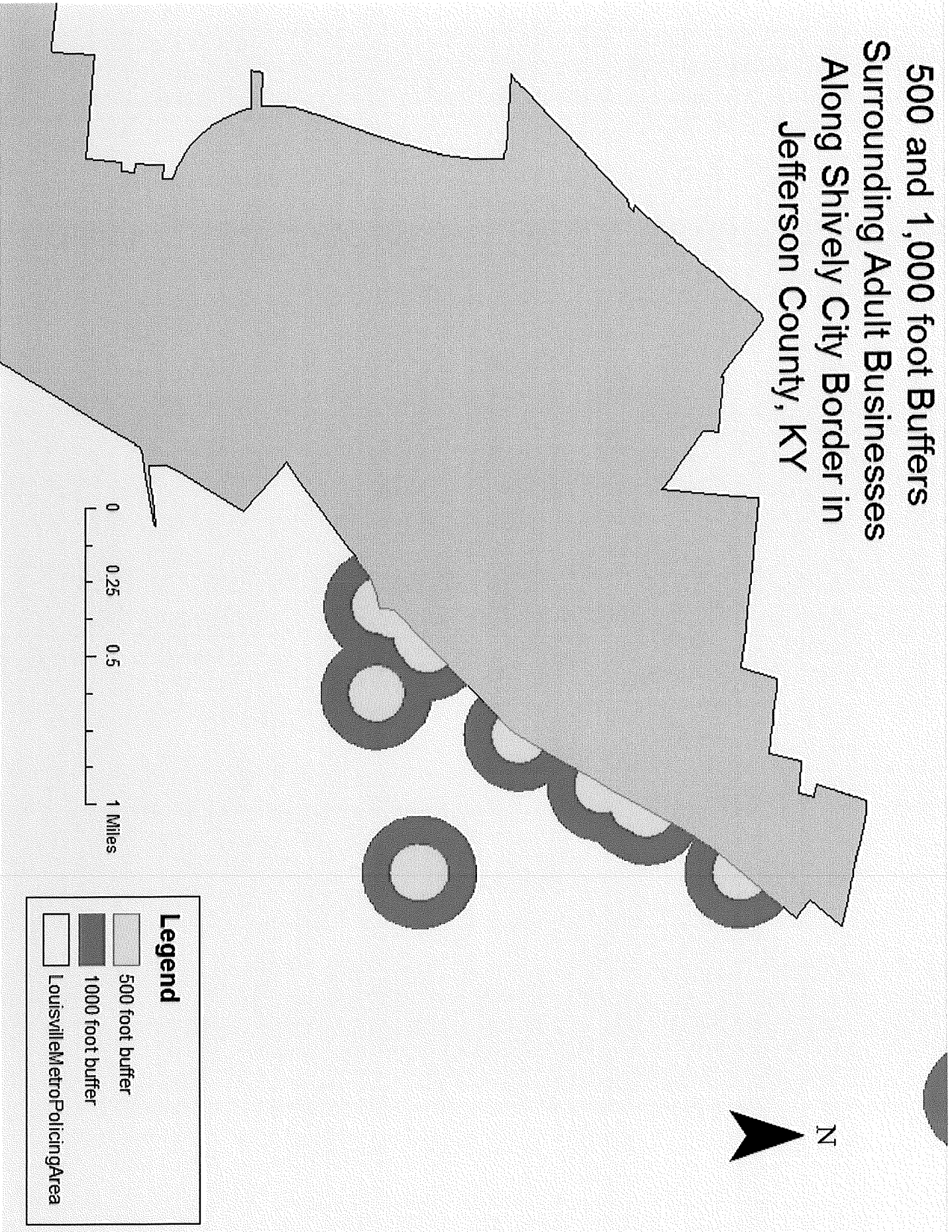


500 and 1,000 foot Buffers Surrounding Adult Businesses Along Shively City Border in Jefferson County, KY



Legend

- 500 foot buffer
- 1000 foot buffer
- Louisville Metro Policing Area



LQs of Concentric 250 foot buffers

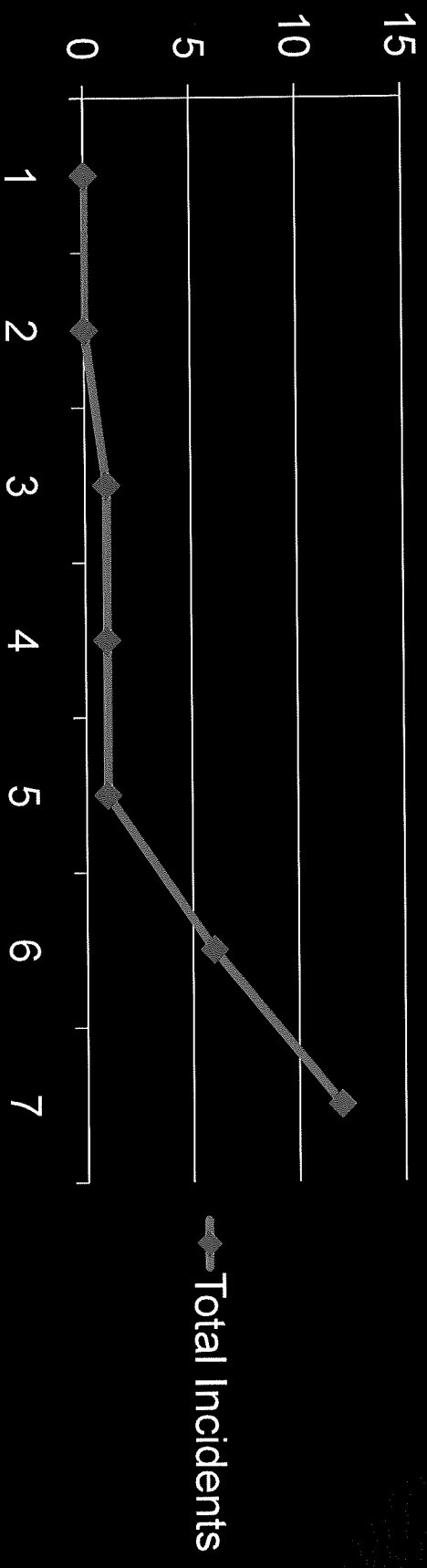
	Violent Crime	Property Crime	Disorder Crime
0 - 250 feet	23.7	18.3	24.4
250 - 500 feet	8.1	7.1	5.6
500 - 750 feet	5.2	5.6	4.8
750 - 1000 feet	7.8	6.2	6.2
1,000 – 1250 feet	5.8	4.4	4.9
1250 -1500 feet	7.5	5.8	4.8

LQs of Concentric 250 foot buffers

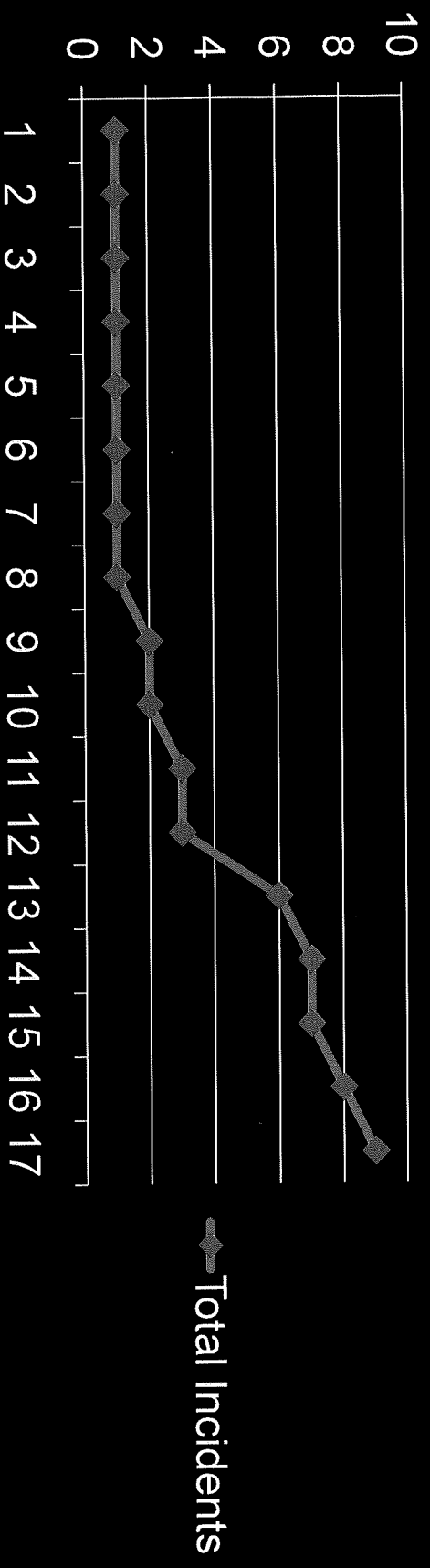
	Violent Crime	Property Crime	Disorder Crime
0 - 250 feet	23.7	18.3	24.4
250 - 500 feet	8.1	7.1	5.6
500 - 750 feet	5.2	5.6	4.8
750 - 1000 feet	7.8	6.2	6.2
1,000 - 1250 feet	5.8	4.4	4.9
1250 -1500 feet	7.5	5.8	4.8

80-20 rule

Total Crime Counts by Store



Total Crime Counts by Club



- **Letter dated November 13, 2012 from J.M. Mullis, Inc. Professional Project Location Specialists.**

J. M. MULLIS, INC.
Professional Project Location Specialists

Tuesday, November 13, 2012

VIA EMAIL

Wayne Booth, Supervisor
Town Board
Town of Newburgh
1496 Route 300
Newburgh, New York 12550
townsupervisor@hvc.rr.com

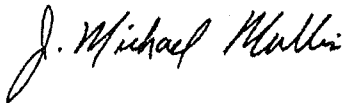
Re: Adult Entertainment Businesses

Dear Mr. Booth:

I am the founder and President of J.M. Mullis, Inc., which has provided development consultant services to companies considering expansion and/or relocation of business opportunities throughout the world for over thirty years. This includes assisting companies in the selection of sites for commercial development projects. In that regard, I am currently reviewing potential sites in Orange County, which includes a potential site in Newburgh, New York.

In my experience, companies are significantly less likely to develop sites in close proximity to adult-entertainment businesses; as such, the presence of such businesses negatively impacts the development potential of neighboring properties.

Sincerely,



J. Michael Mullis

cc (via email): Mark C. Taylor, Esq. (mtaylor@riderweiner.com)
Cindy Martinez (cmmartinez@hvc.rr.com)

- **Memorandum dated November 13, 2012 submitted by Chief Michael Clancy, Town of Newburgh Police Department.**



TOWN OF NEWBURGH POLICE DEPARTMENT

300 Gardnertown Road, Newburgh, New York 12550

Michael Clancy
Police Chief

(845) 564-1100

To: Wayne Booth, Town Supervisor

From: Chief Michael Clancy

Subject: Complaints re: Men's Entertainment establishments

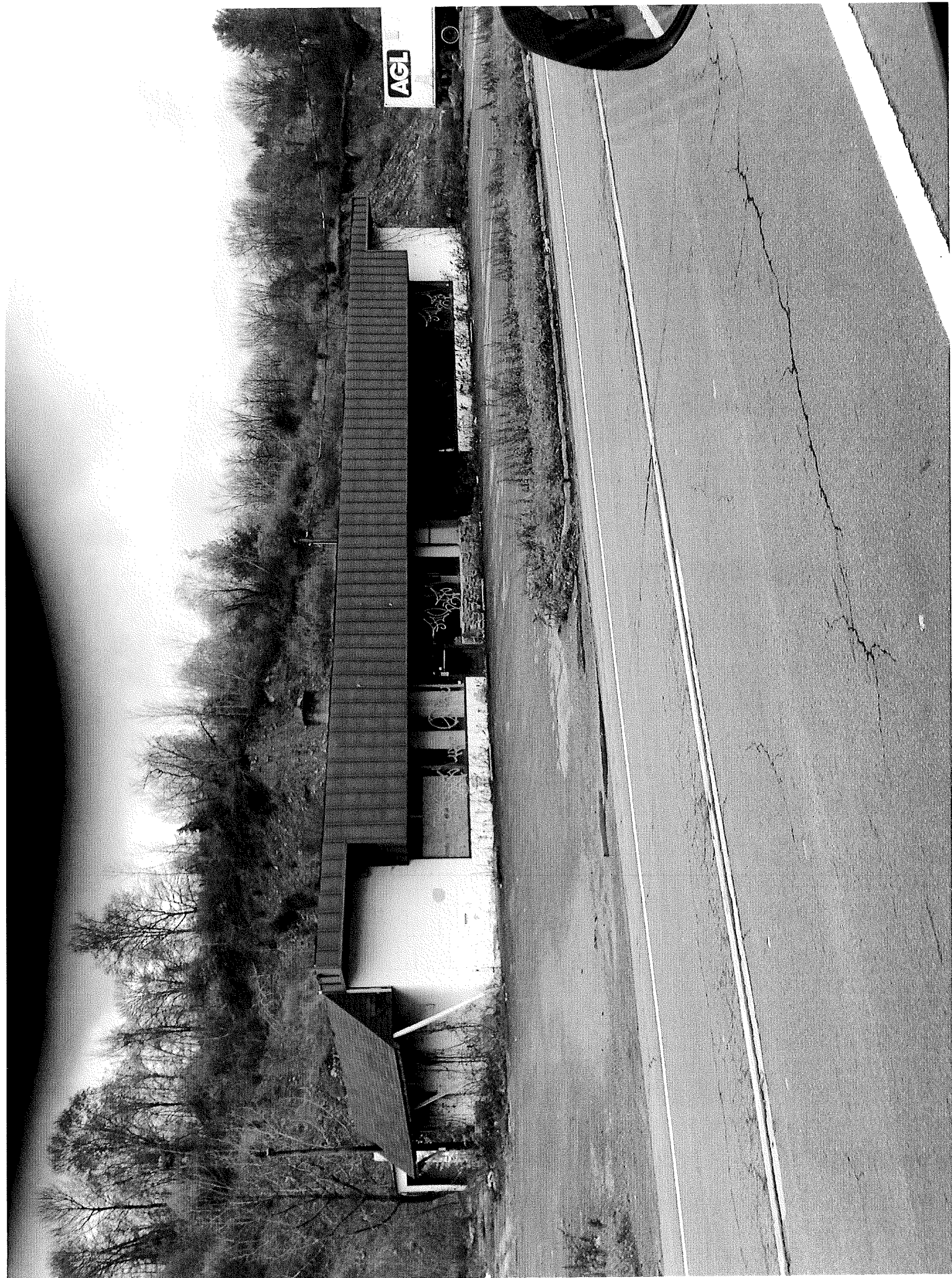
Date: November 13, 2012

Regarding previous discussions concerning police calls to the entertainment locations commonly referred to as "strip clubs", I can report that the number of routine police calls to Pleasure Island and the Blue Moon are not very remarkable. What becomes more problematic from a law enforcement perspective are the complaints of vice activities such as the use and sale of illegal narcotic substances and prostitution in those locations.

The normal and legal activities and general atmosphere at a strip club can be a problem when investigating vice-related complaints but the nature of complaints, sources of complaints and the information received about drug offenses and prostitution has lead experienced investigators to reasonably conclude that those activities take place in those locations.

- **Photographs of properties in the Town of Newburgh in the neighborhoods of existing Adult Entertainment establishments and real estate signs advertising properties for sale outside the area of the 1000 foot restrictions.**









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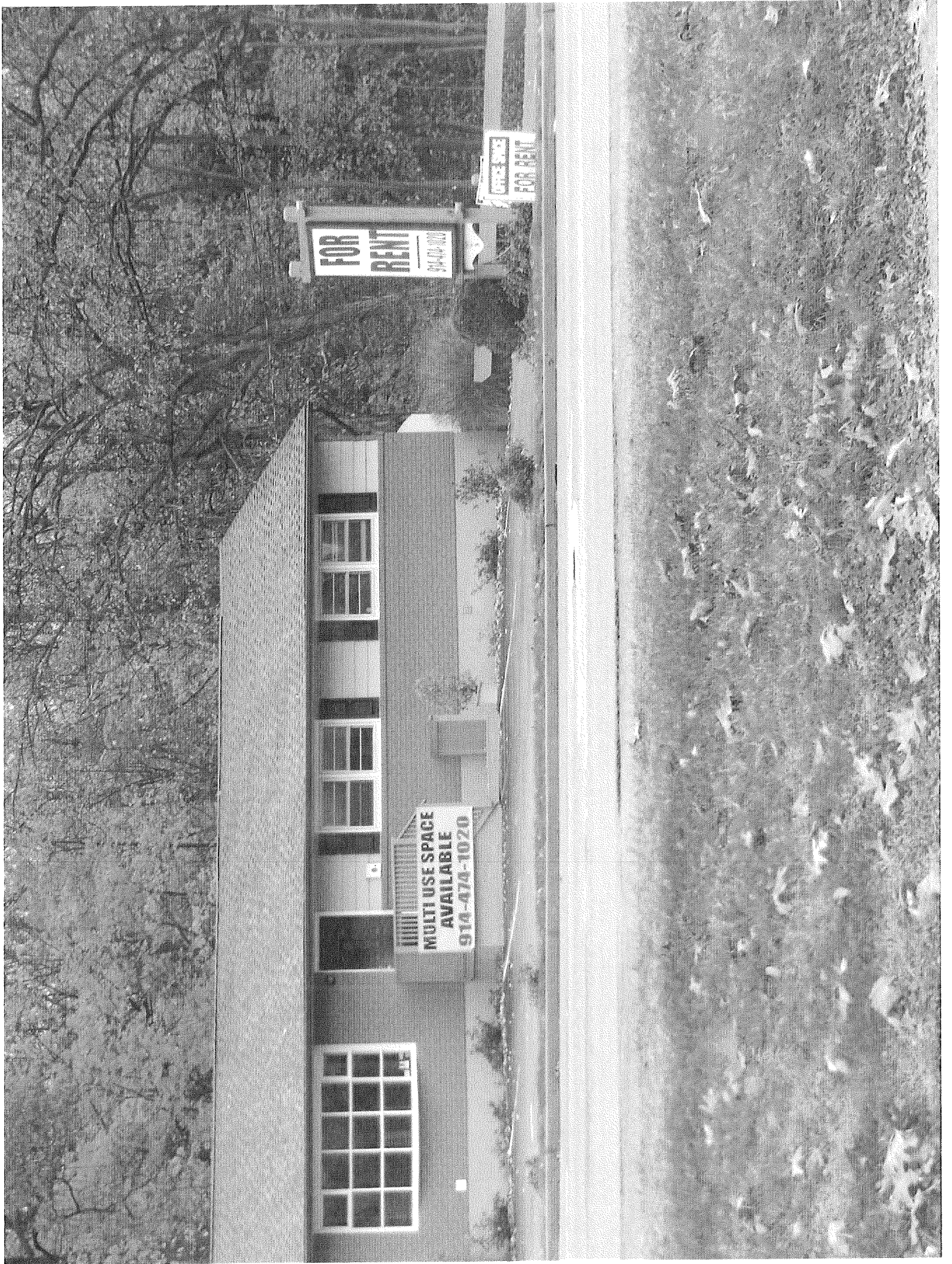
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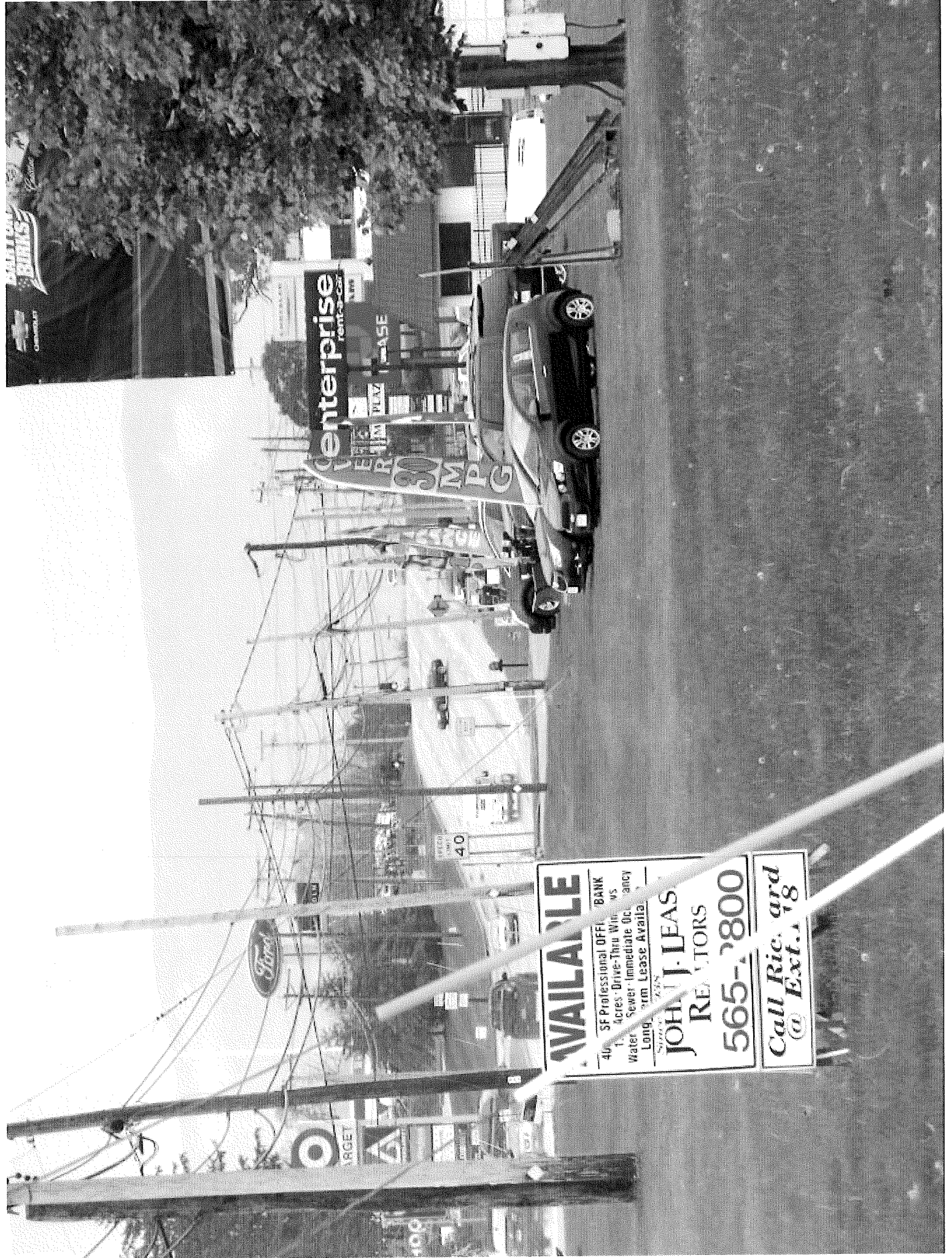
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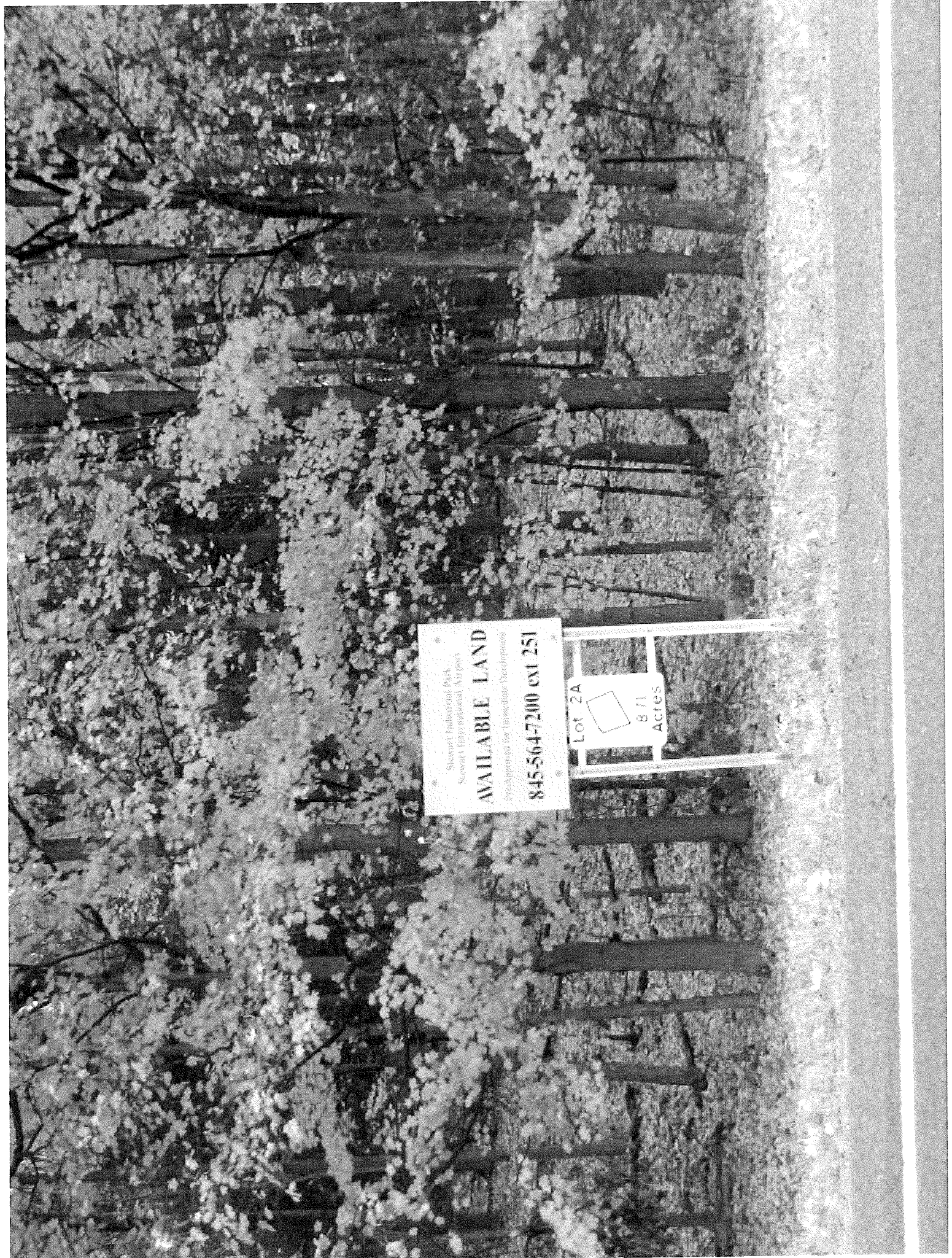






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