

February 22, 2005

RE: Complaint Regarding Current Uses at 405 South Main Street

I am in receipt of a written complaint regarding the educational-related use of the above-referenced property which has been filed by Dustin Bauer, Charles Nolan and Joseph Hansen, for whom you provide legal representation. As I understand it, the complaint is that New St. Andrews College is an “educational institution” as defined by the City of Moscow Zoning Code and, therefore, is prohibited because educational institution is not explicitly listed as a permissible use in the Central Business (CB) Zoning District in which it is located.

There are various ways to interpret the zoning Code; for example, looking at the intent, reading the law as an integrated whole, focusing on the literal meaning and/or the ordinary meaning or a strict, narrow reading. After reviewing the information that New St. Andrews has provided to the City regarding the use which, it appears, is primarily educational, I reviewed the Moscow Zoning Code and Moscow Comprehensive Plan which places emphasis on the Central Business District, and which is adopted by reference in the Zoning Code as the policy guide for such a Code. My review has resulted in my determination that New St. Andrews College is an allowable use in the CB Zoning District as a “. . . similar public or private institution” (MCC 4-3-5(B)(7)) as supported in the Zoning Code and in the Comprehensive Plan, I render this determination pursuant to MCC 4-11-5 and using my “reasonable discretion” as to whether the use is encompassed by a listed use.

It appears that educational uses have been allowed to exist in commercial zoning districts by various means, over time. There have been various changes in the Zoning Code since its establishment in 1931. For example, “educational institutions” were allowed as a permissible use in what is now the Central Business (CB) Zoning District from 1931 until 1990. “Schools” were allowed in what is now the Central Business (CB) Zoning District from 1931 until 1990. I have found no explanation for their current absence from the list of permissible uses.

“Commercial Schools” were allowed in the Central business (CB) Zoning District from 1931 to 1957 but were not listed as a permissible use between 1957 and 1990. “Commercial Schools” were listed as a permissible use from 1990 until 1998 when their existence was allowed only pursuant to a Conditional Use Permit. “Commercial Schools” were then allowed as a use by right following a change in 1999. According to the history of the ordinances I have available to me, there does not appear to have been a consistent Zoning Code approach to educational uses within the City. From a planner’s perspective, it is difficult for me to understand the purpose of appearances and disappearances of these uses in the same Zoning District over time.

I acknowledge that the current use of New St. Andrews College is not explicitly listed as a permissive use in the CB Zoning District. However, such use has been explicitly permitted as a use by right in the past, and I interpret the Zoning Code to otherwise allow

educational uses in certain commercial zoning districts. Additionally, I read the law as an integrated whole and considered the intent of the Zoning Code and the Comprehensive Plan. Therefore, it is my determination that such use be allowed to continue while the City more thoroughly reviews the Zoning Code regarding these types of uses and considers amending the Code to clarify or explicitly allow such uses in such Zoning Districts, either by right or by Conditional Use Permit.

The City Attorney has advised me that he does not believe the City's zoning or other relevant land use regulations run afoul of the Religious Land Use and the Institutionalized Persons Act (RLUIPA) in this case, even though New St. Andrews College is affiliated with a religious entity and tradition.

As you are likely aware, you may appeal this determination pursuant to MCC Â4-8-2(A).

Thank you for your interest in this matter.

Respectfully,

/s/Joel D. Plaskon  
JOEL D. PLASKON, AICP  
Community Development Director/Zoning Administrator