



WILDWOOD®

December 18, 2018

The Honorable City Council
City of Wildwood, Missouri
16860 Main Street
Wildwood, Missouri 63040

Re: **Past Amendments to the NU Non-Urban Residence District of the Zoning Ordinance, and the City's Noise Code Relative to the Property Located at 2036 Wild Horse Creek Road (Ward One)**

Council Members:

In 2017, the Planning and Zoning Commission and City Council, not the Planning and Parks Committee, were presented with several discussion items relating to the use of properties within the City for certain activities that generate noise on an extended basis of time, not just in short durational episodes. Specifically, one (1) such use that was discussed was the operation of an aquaculture activity on properties five (5) acres or greater in size, which could be located in the NU Non-Urban Residence District zoned areas of Wildwood. As the members may recall from the City Council's discussion on this matter, the City Attorney and the Department of Planning explained that properties zoned NU Non-Urban Residence District and five (5) acres or greater in size can be considered farms within this zoning designation, if the "cultivation and sale of any plant crops or domestic animals" is undertaken upon them. Aquaculture is a widely accepted farm type activity and allowed on properties of adequate minimum lot area and appropriate zoning district designation. The City has one (1) such property that is located at 2036 Wild Horse Creek Road.

This discussion of the Planning and Zoning Commission and City Council in 2017 was prompted by five (5) years of comments, questions, and concerns by surrounding neighbors about this aquaculture operation and the noise that it generates twenty-four (24) hours per day, seven (7) days per week. In this instance, the pens, where the fish are kept, must be aerated to oxygenate the water in them, which requires the motors of the aerators to never be off, otherwise the fish will die. Therefore, to operate this type of aquaculture facility, via its current design, the component of noise is incumbent to it. This noise, however, has created issues for the abutting and nearby property owners.

Over the almost six (6) years of operation, the Department of Planning and the operator have discussed the noise component and attempted to find a workable solution for all parties, but none have been implemented. During these periods of discussions, different parties offered options to address the noise associated with the use of aerators on the lake. Despite these options, concerns were voiced by the owner of the aquaculture operation about the impact of muffling the machinery and damaging it due to the build-up of heat, while others in its vicinity still noted the noise as a nuisance, which eventually led to a **Warning Notice** being issued by the City regarding the noise of the aerators, then withdrawn, and two (2) sound studies being completed by the Department on abutting properties to determine if an enforceable violation to Wildwood's Noise Code existed there. The results of the sound studies indicated the aquaculture operation was not in violation, thereby allowing it to continue to operate in its current state. Despite the sound studies not indicating violations existed to the noise levels, concerns were also noted about the frequency of the sound, which is another component of any complaint in this regard.

With little progress being made on addressing the nearby residential lot owners' concerns and issues, the aforementioned 2017 process concerning ordinance amendments to address considerations, such as these items, was initiated. Specifically, this process considered changes to the Noise Code, the Definitions Section of the Zoning Ordinance, the NU Non-Urban Residence District Regulations, and a new section for aquaculture activities to specifically address both this type of operation for the future and any constant emitters of sound. The proposed changes that were recommended by the Planning and Zoning Commission, when its report was presented to the City Council, made aquaculture operations a conditional type of use in the NU Non-Urban Residence District, while also noting that any existing operation would be legal, but non-conforming. Thereafter, if these recommended legislative changes were adopted, retention of the grandfathering allowance for any existing aquaculture use would be premised on the four (4) conditions noted below:

SECTION 415.600 SUPPLEMENTARY REGULATIONS FOR AGRICULTURAL AND AQUACULTURAL OPERATIONS

- B. On any lot, which is used for aquaculture on the effective date of this Section, the following are prohibited without obtaining a conditional use permit from the City:
1. Any other use of any kind on the lot, including accessory uses;
 2. Expansion of the area used for aquaculture;
 3. Installation, construction, reconstruction, or replacement of any structures used for aquaculture; or
 4. An increase in the number of aquatic organisms held, grown or harvested on the lot.

By this legislation, which was approved by City Council, the operator of the current aquaculture facility could not utilize the lot for any permitted use, without causing the non-conforming activity to lose its 'grandfathering' protections. Accordingly, due to this change, any current aquaculture operation, if seeking to add a permitted use to the property, where the farm activity is located, would have to also obtain a Conditional Use Permit (CUP) for it, before being authorized for a dwelling, etc. Although all of the changes, which are reflected in the attached ordinance, did not address the current operation, the owner of the aquaculture operation questioned them and the impact on his property.

It is important to note that, prior to the passage of these aforementioned changes, the operator of the current aquaculture facility requested certain components of them be addressed, particularly relating to his perceived inability to use the property for an allowable dwelling. ***The Department did identify this topic, at a City Council meeting in 2017, where this proposed legislation was first discussed, and stated that, by allowing a dwelling, without affecting the non-conformity status of the aquaculture activity, would be reasonable and appropriate, since the City's Zoning Ordinance allows permitted uses to exist on the same lots with approved conditional types.*** Therefore, in limited instances, both permitted and conditional uses are allowed on the same property. The Department's opinion was that, with having a dwelling on the lot, it would allow the occupant to better monitor the aquaculture operation, experience the noise component, as the neighbors do at this time, and provide the mass of the building to assist in sound mitigation. However, the City Council did not concur and retained these provisions in the proposed regulations, as recommended by the Planning and Zoning Commission.

The operator of the aquaculture activity has continued to comment on this matter to this Committee and met with the City Attorney and the Director of Planning on several occasions. In those meetings, the