**Practice Land Use Exam Question***

David Bird owns a 50-acre tract of land in Plano, Texas. This land is located in an R-1 Residential District where use is restricted to single-family residences on lots of not less than one acre in size, and all dwellings must be at least 42 feet back from the street (the “setback line”). The Plano Zoning Ordinance provides, however, that a setback line may be changed, allowing dwellings to be sited closer to the street, by a vote of 50% of all property owners within 200 yards of any property for which zoning relief is sought. Bird wants to build townhouses on his land and, to this end, sought to amend the Ordinance in two respects. His proposed amendment would have (1) created a new Townhouse District to be located on his property and (2) moved the setback line for his property to only 20 feet back from the street.

Bird intends to construct 250 townhouse units and the unit selling prices would range from $150,000 to $250,000. Bird plans to retain ownership of 25 of those townhouses and lease them for a relatively small amount to low and moderate income families. Such families are abundant in nearby Dallas, and Bird has already located and reached agreement with 25 such families.

Unfortunately for Bird, the Plano City Council rejected the proposed amendment as unnecessary. The Council stated that it believed that the construction of townhouses was already permissible in another section of the city, the R-5 District, and that such construction was not a desirable use in the R-1 District. The City Attorney advised the Council that a townhouse use is permitted in the R-5 District because § 551 of the Ordinance provides that any “multi-family dwelling which constitutes a single operating or proprietary unit” is a permitted use in the R-5 Multi-Family District. Section 200(5) of the Ordinance defines a “multi-family dwelling” as:

A building not a single-family dwelling nor a two-family dwelling, designated for and occupied exclusively for dwelling purposes by three or more families living independently of one another, not a rowhouse, but customarily called an apartment house.

When denying Bird’s proposed amendment, the Council also relied upon § 800 of the Ordinance which provides that “any other lawful and legitimate use not otherwise specifically provided for in this Ordinance may be granted by the issuance of a Special Permit.” No permits for multi-family dwellings were granted during the previous 10 years.

Recently Bird learned of an amendment presently pending before the Town Council which would ban residential construction in Plano for a period of 5 years while awaiting the results of a study investigating the city’s present resources and their susceptibility to depletion by

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*This practice land use exam question comes from a collection of Professor Bernard V. Keenan’s sample questions. Professor Burke has made some minor adjustments to the question.*
further residential development. Presently the city has suffered little adverse impact upon resources from any form of development, but the neighboring community of Garland has suffered the expense of several new public schools to accommodate the need generated by recent development.

_Analyze the potential legal avenues available to Bird and the 25 families in order to achieve their goals relative to this 50-acre tract. This question provides an opportunity to map the legal strategy from the initial stage. Approach and discuss all relevant issues in an organized manner, presenting the arguments of all interested parties._