

# LEE'S SUMMIT BOARD OF ZONING ADJUSTMENTS ACTION LETTER

**Thursday, January 25, 2018**

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Chairman Shawn Geraghty called the January 25, 2018 Board of Zoning Adjustments meeting to order at 6:00 p.m.

## **OPENING ROLL CALL:**

Mr. Shawn Geraghty, Chair	Present	Mr. Joseph Towns	Present
Mr. William Wilson, Vice Chair	Present	Mr. Joe Sauter (A)	Absent
Mr. Mike Atcheson	Present	Mr. Chris Campbell	Present

City staff present were Christina Stanton, Senior Planner; Nancy Yendes, Chief Counsel of Infrastructure and Planning; and Zach Cartwright, Chief of Litigation.

Also present were Jeremy Cover, legal counsel for the Board of Zoning Adjustments; and a number of property owners from the Prairie Lee Lake area.

## **APPROVAL OF AGENDA:**

**BOARD OF ZONING ADJUSTMENTS ACTION:** On motion of Mr. Wilson and seconded by Mr. Atcheson, the Board of Zoning Adjustments voted unanimously by voice vote to **APPROVE** the Agenda as published.

**MINUTES:** An Action Letter for the November 16, 2017, Board of Adjustment meeting.

**BOARD OF ZONING ADJUSTMENTS ACTION:** On motion of Mr. Towns and seconded by Mr. Atcheson, the Board of Zoning Adjustments voted unanimously by voice vote to **APPROVE** the Minutes as published.

## **PUBLIC HEARINGS:**

- 1. Continued Appl. #PL2018-001 – VARIANCE** to the rear yard setback – 232 NE Hidden Meadow Place; Donald & Marilyn Keller, applicants

Mr. Geraghty asked that anyone who was going to speak related to the hearing stand and be sworn in. The applicants were sworn in. Mr. Geraghty entered Exhibit A, List of Exhibits 1-16 into the record. Mr. Keller stated his name and address and then he stated they were there to request a variance to the rear of their property so they could put a cover over their existing patio. Mr. Keller presented three pictures of the rear of their property. These were added to the record as Exhibit #17. Mr. Geraghty stated that the variance was for 3' from the 20' rear setback. Staff answered correct.

Mr. Keller stated that the extent of the need of the variance varies across the rear of the property, but it is 3' at the greatest extent. Mr. Geraghty stated that he drove by and noticed a considerable amount of open area and asked if that was common property. Mr. Keller said yes, it is owned by the HOA. Mr. Keller also stated there was an easement along the northern property line, in between his lot and Lot 539. He further stated there is no easement in between them and 236 [NE Hidden Meadow Place] (Lot 541).

Mr. Geraghty asked the Board if there were any questions or discussion. Hearing nothing, he stated if there is no discussion would anyone like to make a motion. Mr. Towns stated he would like to make a motion that a variance for the 3' as requested be approved. Mr. Atcheson seconded the motion. It was approved unanimously.

**BOARD OF ZONING ADJUSTMENTS ACTION:** On motion of Mr. Towns and seconded by Mr. Atcheson, the Board of Zoning Adjustments unanimously voted by voice vote to **APPROVE** the variance as requested.

**OTHER ITEMS:** Discussion regarding the status of and compliance with the Decision in Application #PL2016-031. *The Board opened discussion on this matter at 6:05 p.m.*

Mr. Geraghty began by summarizing how this came back to the Board, and then he stated that the development permit was issued in error because it included land which the applicant (Mr. Hinkley) did not own, it was owned by the County. Mr. Geraghty asked for a run-down of the actions the City took to rectify the situation. Mr. Binger stated that the City met with Jackson County to talk about the work that had been done. Mr. Binger stated that the County did not have an issue with the work that had been done; he referenced that the permit had the phrase "clean out the cove" and the County did not object to that. Mr. Geraghty asked for the date of that conversation. Mr. Binger stated he wasn't sure of the exact date but it would have been June or July. Mr. Geraghty asked, "Of 2016?" Mr. Binger confirmed. Mr. Binger stated the City was unsure of how to proceed at that point because the County still had an issue with one of the two docks. The second dock was not located within the required distance from the property line. Mr. Binger stated they told the County they do not want to process the floodplain development permit because the County still has an issue with one of the two dock permits. Mr. Binger stated that they have approvable floodplain development permits from both Mr. Hinkley and the County, but not sure how that will affect the County and their efforts to enact enforcement on the dock permit, so he has been waiting for the County to respond on that matter.

Mr. Binger stated he received notice that the Board wanted an update on the status and they received a subsequent comment from the County stating again that they have no issue with the earthwork/excavation work done on their property. Mr. Atcheson inquired whether the County had any issue with the berm/peninsula area. Mr. Binger stated the County didn't have a problem with the berm, it was basically where Mr. Hinkley had stopped work. They didn't have an issue with not removing additional land. Mr. Binger again stated that the only issue the County has is with the second dock that is too far away from the property line. The County stated that they would submit a floodplain development permit for the remaining work on their property to help the City stay compliant with FEMA. The remaining issue is to get Mr. Hinkley to submit a floodplain development permit so that the City is compliant with FEMA. Mr. Atcheson asked whether the City had contacted Mr. Hinkley. Mr. Binger stated he had exchanged emails and sent a letter to Mr. Hinkley on November 27<sup>th</sup>. The City gave Mr. Hinkley 3 options: 1) resubmit a permit for his property only—trying to remove the phrase "clean out the cove" (Mr. Binger stated he was struggling with this because the floodplain criteria states you have to consider all the work that is done, and generally you are trying to protect adjacent property owners because you don't want people dumping fill on their property but in this case he is removing material so it is benefiting the County). So we gave him the option of resubmitting the permit without that phrase and then we would get a separate permit from the County, or include it in the work and have the County co-sign the permit. Mr. Binger stated that based on Mr.

Hinkley's relationship with the County it sounds like he is not going to talk to the County. Mr. Binger stated the City would probably be looking at having a permit for the work on Mr. Hinkley's property and one for the work on the County's property—having two permits cover the work that was done. Mr. Binger stated that the other option would be for Mr. Hinkley to remove the berm, remove the material from the site.

Mr. Binger stated that based upon Mr. Hinkley's responses he has no intention of removing the material, the berm, so the City has been trying to get him to submit the permit application. Mr. Geraghty stated that it appears that the City has done a lot of work on-behalf of Mr. Hinkley, he should have been communicating to Jackson County. Mr. Binger stated he looked at it as doing work on-behalf of the City because when we look at our National Flood Insurance Program, the last report was 133 properties with flood insurance in the City. Mr. Binger stated that if the City doesn't have a floodplain development permit in place the City is at risk of being removed or canceled from that program, which would mean that the 133 properties with flood insurance would have their policies canceled thru that program. Mr. Binger stated, "From the City's perspective we are trying to make sure we cover the flood insurance program."

Mr. Geraghty asked whether the City has the authority, because he has done work without a permit, to have Mr. Hinkley go back to the way it was before—to rectify that situation. Mr. Binger stated that is an option, and the other option is that he submits a permit after the fact—and that is based upon guidance the City received from FEMA. Mr. Geraghty stated Mr. Hinkley is not going to submit a permit for the work he did on County land, it is the work that the City is doing in communicating with the County that he isn't going to do it or hasn't done it. The only reason that permit is even going to happen is because of the work the City has done. Mr. Binger confirmed Mr. Geraghty was talking about the work on the County property. Mr. Geraghty confirmed. Mr. Binger stated that the City had considered whether we want to sue the County, take the County to court for this work. It was determined that that was not a viable solution so the City is trying to work with the County on this because they want to help us in this process.

Mr. Geraghty asked how the dock that is non-compliant come into play in this situation. Mr. Binger stated that "apparently it doesn't in the County's eyes". Mr. Geraghty, "They said they don't approve that dock?" Mr. Binger, "Correct." Mr. Geraghty, "But they're going to issue a building permit for the dock?" Mr. Binger, "No." Mr. Geraghty, "That's on his land? That's not on the County land?" Mr. Binger, "I'm not familiar with the dock permitting process, but I know the individual I talked with at the County said they are trying to work with him to get it permitted, or removed, or permitted after the fact." Mr. Geraghty stated that one of the things he was struggling with is that the Board has had property owners come in requesting a variance on work that was already completed and the Board denied the variance and the City did something about it to get it back into compliance. Mr. Binger stated that there was no variance here. "The work that was done there does not require a variance," said Mr. Binger. Mr. Geraghty said, "But it requires a building permit." Mr. Binger stated, "It requires a floodplain development permit." Mr. Geraghty stated, "Which there is none." Mr. Binger stated, "Which at this point and time there is not a floodplain development permit, correct." Mr. Geraghty stated, "So it's not a variance, but it is still something that the City has legal authority to enforce?" Mr. Binger said, "Correct."

Mr. Atcheson said Mr. Hinkley was given three options and has done nothing, so wouldn't it be appropriate that code enforcement enter the site, remove the berm, and remove the dock as

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they would any other nuisance that they handle such as a structure built, or the grass not mowed, or a pile of debris dumped on a vacant lot. Mr. Atcheson stated they do that every day of the week. Mr. Atcheson asked, "Why wouldn't the City go down that path? Is there an issue with that?" Mr. Binger stated, "That I don't know. Our initial conversations were the extent of doing something like that...The work in and of itself is work that would have been permitted, it's just the fact that we didn't have the permit up front." Mr. Binger went on to mention that the City has already taken Mr. Hinkley to court and he has already been fined. Mr. Binger stated that the last letter that was sent to Mr. Hinkley gave him a deadline to the end of this month. Mr. Binger also stated that the City gave him the option to remove the material. Mr. Atcheson asked, "You have a nuisance, so why wouldn't the City remove the nuisance after all proper notice as they do any other nuisance?" Mr. Binger stated that there really isn't a code that he knows of that the City can cite him for a nuisance. Mr. Binger again stated that the work in and of itself was not an issue. Mr. Atcheson gave the following example, "I build a house, and don't pull a permit. I get half-way through and I leave it. Just because the City would have given me a permit had I applied for one, yet I didn't and I leave the house half completed I'm pretty certain the City would step in and remove everything I built. I've done a lot of code enforcement work for other cities and that is pretty typical. You give them the 10 day notice; they either fix it or they hire a contractor to come in and they assess the property, it sells some day and the City gets their money back. I think that's how it works within this city too." Mr. Binger stated he wasn't that familiar with how it works on the building code side, but in his opinion it's not feasible for the City to go in and remove it (Mr. Binger stated that what he meant by feasible is cost effective). Mr. Binger stated that the City had a discussion on whether they wanted to spend public dollars on private property, and they decided they didn't want to spend public tax dollars on private property.

Mr. Atcheson stated he was having a hard time distinguishing this issue with any other issue where somebody was in violation with our City ordinances with anything. Mr. Towns stated he agreed with what Mr. Atcheson stated. Mr. Towns said he is in the construction business too, he owns a structural engineering firm and they build stuff everywhere. Mr. Towns stated the Board directed the permit to be pulled, then he asked for confirmation that it was pulled. Mr. Binger confirmed. Mr. Towns went on to state that Mr. Hinkley did this work, lost his permit, and he hasn't had to do anything. Mr. Towns stated, "What I'm hearing from your end of the table is that the City is pretty toothless! I can't believe that!" Mr. Towns stated he has been doing business for 35 years, and he can't believe that this one individual, Mr. Hinkley, does this—trashes that area up—and nothing happens. Mr. Towns asked for an explanation. Mr. Binger stated, "Again, I'm looking at it from the perspective of the citywide flood insurance program and making sure we are in compliance with that. Two, work is done on his property and on the County property, and the County has no objection to it and he has no objection to the work on his property. Placement of berm or landscaping is not necessarily something that is a structural life-safety or public-safety issue in this case. There's no adverse impact on the floodplain, so in my mind I don't see any reason to deny the permit in this situation because I see a property owner and the County that is okay and agreeable to the work and I see the other part that is on his property, which obviously he is agreeable to. So I look at it from the standpoint of, 'How do I deny that individual the right to do work on the property if it is compliant albeit they don't have a permit, but it is compliant there's not a public health and safety issue or life and safety issue with the work.'"

Mr. Geraghty stated Mr. Hinkley's requirement should have been to do all the work that the City has done for him by talking to the County. Mr. Geraghty stated that Mr. Hinkley did the work without a permit, he needs the permit in order for his work to be legal, and someone else did it for him. Mr. Geraghty didn't even have to go talk to the County. Mr. Towns stated Mr. Hinkley doesn't have to show up, answer phone calls, "He's the most powerful man in Lee's Summit from what I'm hearing. He's blown us off. I've never seen him. I'm amazed at this whole process." Mr. Atcheson stated, "George, I get your position. You're looking at the floodplain and trying to be compliant with FEMA, and all that. You probably, from your perspective care less about how it looks or the dock. You don't care, so I'm going to ask Christina a question: What does the UDO say about docks? It's a structure, it's in the City, do you require a permit?" Mrs. Stanton answered, "I don't think we have any requirements for docks because they are all on County property, they're in lakes." Mr. Atcheson stated, "Well it's in the City. It doesn't matter who the property owner is. It's within the City limits."

Mr. Atcheson stated he has to believe that the City has some control over any structure within the City. Mr. Geraghty stated that the City is requiring the County to do something with the City to allow it to be legal. Mr. Binger stated that was for the floodplain work. Mr. Geraghty stated that just because it is part of Jackson County, or owned by the County it still has to comply with the City. Mr. Binger stated that the conversation the City had with FEMA was who governs the floodplain, and since that is within the City limits then the City is responsible for the floodplain piece. Mr. Binger further stated that the other components on Prairie View Lake, the dock permits, are handled by the County but he was unsure if there were any other City building codes related to the dock permits. Mr. Towns stated that Mr. Hinkley asked the neighbors in that cove to contribute a certain amount of money to dredge the cove so they could all enjoy water front property, he did it without a permit, he got a permit after the fact, made a mess, and is getting away scot-free. Mr. Atcheson stated he gets why the Engineering Department/Public Works could care less about someone wanting to make the lake bigger by dredging out a cove, "Who's going to complain about that?" Mr. Atcheson stated that he doesn't think that is an issue anybody has here, "other than they probably would have like to seen it cleared out all the way to the back of the original cove, yet nobody wanted to help pay for it so I kind of understand his issue there, but then you go stick a dock right in the middle of all of this seems to be...How do you do that? I just don't understand how you do that without a permit and get away with it."

Mr. Campbell asked if code enforcement actions usually have recourse against the property owner, where they are able to get the money back that they spent on the process. Mr. Binger stated he wasn't sure about that process. Mr. Atcheson stated that they file a lien against the property; whenever it sells someday you get paid with interest. Mr. Atcheson stated that when the Board discussed this matter in November he asked for someone from code enforcement to come here to explain what they did and why they were choosing to do nothing. Mr. Atcheson stated, "It just seems simply, this is like a colossal waste of everybody's time talking about this." Mr. Campbell asked if Mr. Binger's issue was whether or not to approve the floodplain development permit if it is submitted. Mr. Binger stated that if the floodplain development permit were submitted, assuming it is approvable, he would approve it. Mr. Binger stated that Mr. Hinkley did submit work from the Corp of Engineers showing he had approval to do the dredging on the lake, he had some correspondence from Jackson County saying they were okay with him doing the dredging on the lake, there was a site visit from the Corps showing his dredging was compliant with what they said, he wasn't dropping material back into the lake, and the Corps had no jurisdiction, he had a letter from FEMA stating he had to go through the floodplain

development process. When work was first noticed the City issued a citation for erosion control violation and the work on the floodplain that did go through municipal court, he was fined for that. Legal options that are being considered, if he doesn't submit by the end of this month, include injunctions or lien on the property or back to municipal court. Mr. Campbell asked if Mr. Binger approves his permit what is left on the County part of the land. Mr. Binger explained that what work was done where and stated that the County has verbally told him they would submit a permit for the work done on their property. Mr. Campbell then asked if Mr. Hinkley submits a permit and the County submits a permit and they are both approved are all of the issues gone. Mr. Binger stated that he wouldn't say all the issues are gone because he knows the neighbors have a lot of issues, but from the City's standpoint it would take care of the issues of the floodplain development and national flood insurance program.

Mr. Atcheson stated that from a Public Works's position the City would be satisfied if those things happened. Mr. Binger answered, "Correct." Then Mr. Atcheson stated that there is still the issue of the non-permitted dock which both the neighbors and the County have an issue with because it is too far beyond the property line. Mr. Atcheson stated that Mr. Hinkley didn't dredge the whole cove, he just did right up to his land and then left a piece, which then gave him access. Mr. Binger stated one of his questions to the County was if the City issues a permit how does that affect their position, because if the City is saying it's okay and the County is still saying it is not okay it might harm their ability to bring the dock into compliance. Mr. Campbell asked for clarification and Mr. Binger stated that from his understanding the City doesn't have any issue with the docks but it was his understanding that the County handles the dock permits. Mr. Geraghty asked whether the dock is on county land. Mr. Binger answered yes. Mr. Geraghty then asked, "Wouldn't their permit have to include that dock?" Mr. Binger answered no. Mr. Geraghty, "There are no permits; we don't think anywhere it's required to put a dock anywhere?" Mr. Cartwright stated, "The County has a permitting approval procedural for putting the dock in, but we do not." Mr. Binger asked Mr. Geraghty if he was referring to the portion of the floodplain development permits that asks if all other permits necessary for the work are obtained. Mr. Binger stated that the initial scope of the work did not include the docks; it only mentioned cleaning out the cove and the earthwork. Mr. Binger stated that the dock was installed after the fact, so that could be a factor this time. The City may not be able to approve the floodplain development permit until Mr. Hinkley has all the permits from the County.

Mr. Binger stated that there is a portion of the floodplain development permit that asks whether all other permits have been acquired. He stated this is usually referring to land disturbance and Corps of Engineer permits, which Mr. Hinkley has. Mr. Geraghty said, "So given that, is that a possible...So let's say he does by January 31<sup>st</sup> submit the appropriate permit application but there's nothing that addresses that dock, is that one of your possible paths." Mr. Cartwright stated that would be something that the City would have to do legal research on. Mr. Geraghty restated, "You don't have all the applicable permits, so we can't grant it." Mr. Binger stated that was a question he still has in his mind because that [the dock] was not part of the original work he [Mr. Hinkley] submitted. Mr. Binger stated that now that the City is talking about after the fact he wasn't sure if that changes the conditions on the permit. Mr. Campbell asked that it is a separate permit. Mr. Binger confirmed, "A dock permit would be completely separate from the dredging and the earthwork."

Mr. Atcheson asked if staff had talked to code enforcement. Mrs. Stanton answered that a letter was included in the packet from Ryan Elam. Mr. Atcheson wanted to know what code enforcement had done and what do they intend to do, he stated they didn't necessarily have to come to the meeting but he wanted some sort of report. Mr. Atcheson stated that in the

November meeting he had requested staff to find out what code enforcement had done since the item was last ruled on to remove the nuisance, whether any action had been taken. Mr. Binger asked whether Mr. Atcheson's question was how do we go through abatement, removing the berm. Mr. Atcheson replied, "Yeah. As I sit here today, a guy who has dredged out  $\frac{3}{4}$  of the materials in that cove and then stopped at one point...how do you beat-up on him and remove the rest of it...I don't think you in your seat could care less. The lake has improved from where he started to where it sits today, I know everyone is not happy with that but somebody did that work, but the real issue is that he stuck a big dock right out in the middle and we know the County isn't going to permit that because it's too far away from his property line and...umm, so what do you do to remove it?" Mr. Campbell stated, "It sounds like you need to figure out whether the jurisdiction to remove it would be City or County. If they issue the permits, it seems like it would be their jurisdiction to remove it." Mrs. Stanton stated that there was a letter in the packet from the Development Services Director that said it was not something that was within the City's jurisdiction and it was something that needed to be handled through the County. Mr. Cover stated it was the June 29<sup>th</sup> letter from Ryan Elam.

Mr. Atcheson stated that it just didn't sound right to him, "This is land in the City of Lee's Summit. I know it is owned by the County, but....People make the assumption that because it's County owned property it's in the County and outside the City limits, that happens all the time. I still think, for the one and only reason that this Body had reserved that permit issue was because you didn't have the property owner on the permit. That was the one big item. So, if you follow that logic I find it hard to believe that the City would say 'It's just not our problem; it's on the County property.' I don't think that's right. If somebody made that claim I think they mis-spoke, but I sure would like somebody to look into that because I don't think that sounds right." Mr. Binger, "If I understood what you were saying earlier was obviously the County has the right to permit docks on the lake, but is there something other permit related to the structural components—like a deck permit or something—it seems relatively simple construction, but is there some other structural component or whatever that the City might govern." Mr. Atcheson stated, "I'll give you a good comparison. I've got a home at Lake of the Ozarks, okay. Ameren owns all of the land and mostly water within the 960 elevation okay. If I want to put a dock in I not only have to get approval from Ameren who owns the property, I have to get a permit from the City, and I have to get approval from the homes association. A lot of hurdles to go through before I can put the dock in, and I promise you if I put a dock in without all those approvals it would be unhooked and pulled away and impounded. So I'm just...this just seems so, you know...and I called it a nuisance earlier, but it just seems like this is something easy for the City to remedy...treat it like any other nuisance and just remove it!" Mr. Towns, "Mike said it better than I did. But that's my rub. This just doesn't smell right! And...um, I'm flabbergasted. He can put up a dock and nothing happens."

Mr. Geraghty, "It seems like, because that dock is on County property the County would actually, if there actually is indeed a requirement to have approval for the dock the County would have to apply for that and they're not going to do that because they don't want the dock there. So the only person who could do anything about that is the guy who built the dock and he's not going to do anything about it and the City's not to do anything to the County because the County didn't apply for that dock because the County's not going to do that, so nothing happens, so that dock stays there. That's what it sounds like." Mr. Cartwright, "So excuse me folks, but when did this become about the dock? I thought the whole thing was about the berm?" Mr. Geraghty, "It was about everything that the guy did." Mr. Cartwright, "Okay, well if the City doesn't have the authority to approve the dock, then the fact that the City hasn't approved it and doesn't like it doesn't give us the right to go in and unhook it or carry it off or do anything about the dock." Mr. Geraghty, "Which is why he hasn't...." [audio is indecipherable] Mr. Atcheson, "Can you sell it with certainty as to that fact?" Mr. Cartwright, "No, but I'll find out!" Mr. Atcheson, "That's what I'm asking for!" Mr. Cartwright, "Alright." Mr. Atcheson, "That's why I asked the code people to be here." Mr. Cartwright, "Alright. And, as far as filing an

injunction, if the law department is going to be asked to file an injunction it's going to have to come from the City Council. Respectfully, this Board doesn't have the authority to [ask] the law department to file an injunction." Mr. Geraghty, "We know..." Mr. Cartwright, "And third, as far as us taking trucks in there and hauling off a berm, I'd have to be darn sure that we wouldn't be liable for suit for trespass before I would agree that the City could do that. So I'll look this information up, I'll send you folks a letter let you know what I found out." Mr. Geraghty, "If you could because I think that's what he asked because the reason we asked to have this discussion goes completely back to the fact that a person did something that is not in compliance with some ordinance/regulation somewhere. It actually harmed other property owners, or at least they have a problem with what he did. [Mr. Hinkley] did some things that the County says is not in compliance with their law and he has done absolutely nothing, made no effort in any of this. Everybody else—the City, their doing stuff, we're doing stuff—he's done nothing and he's going to get exactly what he wants. And we felt that because it came in front of us the only thing we could do was have the opportunity to have this discussion."

Mr. Cartwright, "Sure. And don't get me wrong, I understand your frustration—that you've all expressed. I'm not saying that anything that you've said tonight is... [audio is indecipherable] philosophical, or what's the right perspective, but the City has limited powers and this maybe one of those things you really can't do much about. We know that the last time we went to court the judge said, 'Well, just go ahead and apply for the permit and they'll have to issue a permit.' So that kind of ended that and that's pretty much..." Mr. Geraghty, "In this situation or a different one?" Mr. Cartwright, "In this situation." Mr. Campbell, "For the permit related to dredging though, you don't know if you are able to issue a permit with the dock there without the permit for that?" Mr. Binger, "For the dredging?" Mr. Campbell, "Yeah." Mr. Binger, "The Corps already approved the dredging. The County already approved the dredging." Mr. Campbell, "The floodplain permit?" Mr. Binger asked if Mr. Campbell was referring to the County's property. Mr. Campbell answered that he was. Mr. Binger stated that there are two parcels that are being considered. Mr. Binger continued by stating that based upon the information and the project that was done both floodplain permits would be approvable.

Mr. Campbell, "But I thought you said you have an issue of...or approving the one on the County property because they had to state that all work has been permitted and then we have this unpermitted dock on it now." Mr. Binger stated that was his quandary because when he [Mr. Hinkley] was doing the work the dock was not part of the work. Mr. Campbell answered, "Right." Mr. Binger stated, "He talked about dredging, cleaning out the cove, and that was basically the work that he described. That's the part of it that was being reviewed." Mr. Binger stated he had his tunnel vision on, he was only looking at floodplain development permits and the two specific requirements (land disturbance permits and Corp of Engineers permits, which he had). Mr. Binger stated that his question was more of a legal process question. Mr. Binger, "Now that we're here, years after the fact, and there's a dock sitting there—how does that affect the permit? I honestly haven't...I still have to think through that a little bit." Mr. Atcheson, "I'm going to ask a hypothetical question: If the City doesn't have an issue dredging the County owned property that's under water or used to be under water that's filled in with silt, removing it (and I agree with you, I understand why the City wouldn't have an issue with that and would issue a permit on that)..How it sits right now, if any of these property owners decided 'You know, I think I want to remove all that' and they come to you, and they have the County sign the permit, you would issue the permit to remove this massive dirt." Mr. Binger, "Yes." Mr. Atcheson, "That's exactly why the County won't issue the permit for the dock here because it's not attached to this guy's land. That's all the reason why I believe the City is involved in these things because whether that's water or a vacant lot, everyone surrounding that has an interest in it and you can't just do something that hurts the adjoining property owners. Whether it be let the grass grow 6 feet high, dump a pile of trash, put a billboard up or any structure so I think (and I'm guessing and I'm hoping) that the UDO speaks to this type of structure and use of that land. I totally get why George is ready to issue a permit, and he should to dredge any of that

that doesn't hurt anybody, but I certainly understand everyone's frustration—they didn't get the whole thing dredged. But that dock seems to be a problem."

Mr. Cartwright, "In your mind, how does the placement of that dock hurt anybody?" Mr. Atcheson, "Well, I don't know. I don't live there, but.." [Mr. Atcheson marks on the dry erase board showing that the location of the dock interferes with an adjacent property owner's ability to install their own dock.] Mr. Atcheson, "When you look at permitting the dock you have to look at how that impacts the adjoining property owners." Mr. Atcheson discussed how docks are reviewed for permitting at Lake of the Ozarks, access and views of the lake. Mr. Cartwright stated that the adjoining property owners probably have a legal right to use the dock because it's on County property. Mr. Atcheson stated, "It's kind of a public dock." Mr. Cartwright, "That's right." Mr. Atcheson, "I agree. I agree." Mr. Binger asked for clarification about Mr. Atcheson's issue with the dock; he stated the crux of the discussion was that the dock was blocking access to the other properties. Mr. Atcheson confirmed. Mr. Atcheson went on to state that if anyone has a problem with the rest of the mud being left there they should go dredge it. Mr. Atcheson stated that he was sure Mr. Binger would give them a permit if the County would co-sign the permit. Mr. Binger, "That's right."

Mr. Geraghty asked Mr. Binger what actions he could do if Mr. Hinkley didn't meet the January 31<sup>st</sup> deadline. Mr. Geraghty, "It sounded like you were saying that you probably weren't going to do any of those things. That the City just wasn't going to do anything. Is that right?" Mr. Cartwright, "The City Council would have to direct the City Law Department to file for an injunction, whether it's an injunction to remove the berm or it's an injunction to remove the dock. The City Council is going to have to direct us to do it. As far as the prosecuting attorney's office goes, this Board could certainly write a letter to the prosecuting attorney asking them to pursue it, but it's a matter of prosecutorial discretion. Nobody can direct the prosecutor to charge this guy, again, for not having a permit. So if the prosecutor chooses not to do it there's no recourse. And, what I said was, from my standpoint, the self-help method of going in there with trucks and hauling off the dirt from Mr. Hinkley's property we would have to be convinced that we wouldn't be liable for trespass before I would even consider that method. And if George said that it is probably going to be something that would be rather expensive I'm not sure that the City would be inclined to do it even if they thought they could get reimbursed. I don't know."

Mr. Geraghty stated that at the very least the Board has had this discussion on record. Mr. Atcheson asked if the Board wanted to continue the discussion to allow the City to bring forth more information. Mr. Geraghty stated that this is just a discussion; there really is no action to be taken from the Board's perspective. Mr. Geraghty, "We have the ability to ask for the discussion. And that's what we did. I don't know if there's anything to continue unless we want to just keep talking." Mr. Atcheson asked to continue the discussion to get everyone's answers "because the people who have an issue with this have a narrow path of recourse, and I just think there might be an easy solution here if we heard back 'Hey, we're going to treat this nuisance like any other, we'll notice them up, then go in there, we have no problem trespassing.' You've got to trespass to remove a nuisance; it's no different than any other. If they [the City] come back with that then everyone's happy, problem solved." Mr. Geraghty, "It sounds like you're ready to make a motion." Mr. Atcheson, "I'll make a motion that we continue the discussion to a date certain of (when's our next meeting?)" Mrs. Stanton answered, "February 22<sup>nd</sup>." Mr. Atcheson, "to February 22, 2018." Mr. Towns seconded the motion. The motion carried unanimously.

**ROUNDTABLE:** None.

**ADJOURNMENT** – On motion of Mr. Atcheson and seconded by Mr. Towns, the Board of Zoning Adjustments voted unanimously by voice vote to adjourn the meeting at 6:58 p.m.  
BOARD OF ZONING ADJUSTMENTS, January 25, 2018