

LEE'S SUMMIT BOARD OF ZONING ADJUSTMENTS ACTION LETTER

Thursday, November 16, 2017

Chairman Shawn Geraghty called the November 16, 2017 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)	Present
Mr. Mike Atcheson	Present	Ms. Brenda Morin	Absent

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. Atcheson and seconded by Mr. Wilson, the Board of Zoning Adjustments voted unanimously by voice vote to **APPROVE** the Agenda as published.

MINUTES: An Action Letter for the September 28, 2017 and the October 26, 2017, Board of Adjustment meeting.

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

Mr. Geraghty stated that anyone wishing to speak at the meeting would need to be sworn in, so all those who were present were sworn in. Mr. Geraghty started to open the first item on the agenda. It was discovered that Mr. Fields, the applicant was not present; staff checked the building doors to make see if he was on his way in. Staff was unable to locate the applicant. Mr. Geraghty inquired what should be done when the applicant is not present, "Does it get automatically get pushed to next month, or does he have to reapply?". Staff answered that we could push the item down on the agenda and proceed to the next item, if the applicant didn't show up by the time the next item was finished his application could be continued to the next month.

Mr. Geraghty moved on to the next item on the agenda, the Discussion on Motion to Show Cause filed by Mr. Robert Handley regarding the floodplain permit at Prairie Lee Lake. Mr. Geraghty stated that he wanted to read the decision of the Board, when this matter was last heard on June 23, 2016, before having any discussion. The decision (page 5 of the Findings of Fact and Conclusions of Law) was read.

Mr. Handley spoke on behalf of the group of property owners present. He stated that all the responses they have received from Mr. Hinkley have been very vague. He stated that when

they tried to talk to the City the City would refer them to the County, and when they tried to talk to the County the County would refer them back to the City. Mr. Handley stated that the Board gave direction, but nothing has happened which is why they have asked that the matter be brought back to the Board so that inquiry can be made of the City Engineer regarding what has happened. Mr. Handley asked the Board, pursuant to their authority, to direct the City Engineer to do something. Tammi stated that nothing has been done about the structure that was built, and she recalled someone making the statement that if nothing was done it was as if it had been approved and meant anyone with a backhoe could go and build a 10-foot berm.

Mr. Wilson inquired about the permit. Tammi stated that the permit was granted after the fact and that was the permit that the Board had revoked. Mr. Handley stated that the Board revoked the permit but the structure remains without the permit. Mr. Wilson asked why the property owners had not sought legal regress within the Court system. Mr. Handley stated the Courts require them to exhaust all their administrative remedies first and they are not allowed to go to Court until they have finished all of this process. Mr. Wilson inquired that the fact the Board did in fact make the decision they did a year ago could not be used as part of the legal process. Mr. Handley stated that it was one of the moving parts, but they can't go to Court until the matter is concluded with the Board. He further stated that the reason they were here is that the City has processes but none of the process were followed for him. Mr. Handley asked whether the City was going to enforce the laws that were on the books "or turn it over to citizens and say it's tough luck, we're not going to enforce our laws, you have to hire attorneys and do it yourself". He stated that they had to pay close to \$10,000.00 just to have the hearing last time.

Mr. Handley stated the Board rendered a decision and it's been ignored by the City staff as far as he can tell, and he can't afford to spend any more money to go to Court. He stated that the Board was their last hope as far as he's concerned. Mr. Geraghty stated that one of the main questions for the Board to answer is whether or not it is a matter for the Board to hear. Mr. Handley stated that the Board used to always have this authority, but the language that used to give this Board that authority was removed at some point in time. Mr. Geraghty stated he had been to "pretty much every BZA meeting since '94, and there was nothing like this before that year". Mr. Handley stated it may go back further.

Zach Cartwright, Chief of Litigation, stated it was the City's position that under the Statute of this State that this Board has continuing jurisdiction for 30 days after it entered its Order in June, after that 30 days expired and no appeal was filed on the Order the Board lost its jurisdiction to reconsider this matter or to take any further action on this matter. Mr. Cartwright stated that the motion filed by Mr. Handley is completely out of line and should not be considered. Mr. Cartwright further stated that he was sure Mr. Cover had reviewed the case law, and that if the Board chose to act outside of their technical jurisdiction on this matter it might open it up for anybody else, in the future, who is dismayed by a decision made by this Board to come in a year, two years later and reopen it and complain. We can't have that. Mr. Wilson declared, "The dreaded precedent." Mr. Cartwright stated that's the City's position, and the property owners do have relief in the Court system even though they do not apparently want to avail themselves of it.

Mr. Geraghty stated that he believed the property owners were very happy with the Board's decision; the issue is what has happened since that time. Tammi stated that she did not believe that they were aware of the 30 day window and they were happy with the decision so they wouldn't have been appealing it. Mr. Cover stated that the 30 day period was set by State Statute, it's not a Lee's Summit rule, they were well represented before they should have been aware of it; however, they were okay with the decision and did not want to appeal the decision therefore there was no reason for an appeal. Mr. Cover stated he was sure Mr. Bredemeier was aware of the 30 days to appeal. Technically any part of the Board's decision could have been appealed. Mr. Geraghty talked through the fact that the property owners were happy with

the decision so there would have been no reason for an appeal. The 30 day period was to appeal if they did not like the decision that was made, but they did. Mr. Sauter also stated that since the ruling was in their favor they didn't want to appeal the decision and now that is blocking their ability to move forward. Mr. Geraghty stated that what is in front of them right now is whether or not the decision the Board made was an appropriate decision at the time. Tammi stated she was under the impression that when she left the permit had been revoked and that the City was going to look into or investigate what could be done to remove this structure that he [Mr. Hinkley] illegally built. She was under the impression that the City was going to go forward, but when they [the property owners] started doing inquiries they weren't getting responses to their emails they started hitting brick walls.

Mr. Geraghty stated they were all sympathetic but the Board would have to determine if it was something appropriate for the Board to be talking about. Mr. Wilson moved to go into executive session for the purpose of privileged communication from the Board's attorney. Mr. Atcheson seconded the motion. Staff performed a roll call, all members stated aye. The Board, and their attorney Mr. Cover, retired to a separate room for executive session at 6:22 p.m. A motion was made to exit closed session was made by Mr. Wilson, seconded by Mr. Atcheson. The roll call was taken with all members voting aye.

The Board and Mr. Cover returned to the Strother Conference Room at 7:35 p.m. Mr. Geraghty stated that in closed session the Board discussed and voted to grant the appellants motion for a hearing at next month's meeting. Mr. Atcheson asked staff to find out what Code Enforcement has done since this item was last ruled on to remove the nuisance, if they have taken any action. Ms. Yendes inquired of Mr. Cover to make sure he recorded the vote, stating that it is made public. Mr. Cover stated he did. The following vote was recorded in closed session on the motion to grant the application a hearing at next month's meeting: 4 aye (Mr. Towns, Mr. Sauter, Mr. Geraghty, and Mr. Atcheson) and 1 nay (Mr. Wilson).

PUBLIC HEARINGS:

- 1. Continued Appl. #PL2017-215 – VARIANCE** to the swimming pool setback – 4548 SW Raintree Shore Drive; Wesley Fields, applicant

Mr. Geraghty asked the applicant to be sworn in at 7:37 p.m. The applicant was sworn in. Mr. Fields stated his name and address and that he was before the Board to request a 8-foot variance to the rear setback of his property which abuts common property and beyond that Raintree Lake. Mr. Geraghty confirmed that common ground was located behind the property. Mr. Geraghty also verified that the pool, itself, would actually be 2-feet from the rear property line. Mr. Wilson stated that this case appeared to be almost identical to the case they heard on September 28th. Mr. Geraghty agreed. Mr. Wilson said he wondered if the Board needed to have a deep discussion. Mr. Atcheson asked what he was thinking. Mr. Geraghty asked what the rest of the Board thought. Ms. Yendes asked to make sure the exhibits were entered into record. Mr. Geraghty entered Exhibit A, List of Exhibits 1-18, dated November 16, 2017, into record. Mr. Wilson asked if he could repeat his motion. Mr. Geraghty said yes. Mr. Wilson moved that the requested variance be granted. Mr. Atcheson seconded the motion. It was approved unanimously.

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

OTHER ITEMS: Discussion of Motion to Show Cause filed by Mr. Roberty Handley regarding floodplain permit at Prairie Lee Lake. *This item was discussed first because the applicant for the first item on the agenda was not present at the start of the meeting; he entered at 6:11 p.m.*

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 7:41 p.m.