



Meeting Minutes - Draft Planning Commission

Thursday, July 16, 2020

8:30 AM

Remote Meeting

Ph: 720-617-3426 Conf ID: 311 296 53#

Appeal of 506 Hawthorne

- 6.C. [CPC AP 20-00096](#) An appeal of the Planning Commission's decision to uphold the administrative denial of a single-family site plan for 506 Hawthorne Place.

(Quasi-Judicial)

Related Files: CPC AP 20-00096

Presenter:

Lonna Thelen, Principal Planner, Planning and Community Development

Peter Wysocki, Director, Planning and Community Development

Staff presentation:

Lonna Thelen, City Planning, presented a PowerPoint regarding the appeal of an administrative decision for a single-family site plan submittal.

- Existing Property
 1. Zoned R1-6
 2. Currently a vacant property
- Application:
 1. Appeal of a site plan denial. A geologic hazard report was not submitted with site plan submittal.
- Geologic Hazard reports are required unless exempted per City Code 7.4.503.A.
 1. This site is not exempted per 7.4.503.A.
- If a report is required, then the applicant has two options:
 1. Submit a geologic hazard report
 2. Submit a geologic hazard waiver
 - To qualify for a waiver the site must meet the following:
 - Master plans, development plans, or subdivision plats for which geologic hazard reports have been previously prepared and reviewed and which are still considered to be relevant.
 - Development proposals west of Interstate

Highway 25 which exhibit none of the following characteristics:

- Slopes (existing or proposed) exceeding thirty three percent (33%) or which are otherwise unstable or potentially unstable.
- Underground mining or subsidence activity.
- A history of a landfill or uncontrolled or undocumented fill activity.

General concerns raised by City Engineering and Colorado Geologic Survey:

- The site is underlain by Pierre Shale and has high swell potential.
- The site is in the Landslide Susceptibility Layer
- Slopes appear greater than 3:1
 - The first 10 feet appear to be a 1:1 slope
 - The remaining portions of the site appear to have a 3:1 or 4:1 slope
- Site erosion must be managed due to the bedrock and soils derived from it.
- A full geologic hazard report and slope stability analysis is required to identify geologic hazards that may include expansive soils, failure planes, slope creep and unstable slopes.
- The geologic hazard report will provide analysis and construction recommendations for the lot so that the construction does not destabilize the slope and cause structural damage or failure to the public street and proposed house.

Landslide Susceptibility Zone

- This site is in the landslide susceptibility zone.
- A geologic hazard waiver or report is required for areas west of 1-25.
- A quote from a geotechnical firm confirmed that they would not support a waiver and backed the recommendations of City Engineering and CGS for a full geologic hazard report.

Cost of geohazard report as quoted to the appellant by leading geoengineering firm:

• Subsurface Soil investigation	\$1,465
• Geologic Hazard Study	\$2,960
• Slope Stability Analysis	\$2,530
• Consultation & Professional Eng/Geo Services	
	\$650 - \$1,250
	*Total: \$7,206

*Does not include additional consulting for the foundation design

Steep Site:

- A drilling rig would be required to gain samples for the geologic hazard report.
- The applicant does not want to construct a driveway to get to the site. This driveway is also shown as part of the site plan and would need to be constructed.

Development Cost:

- The applicant notes the following costs for development:
 - \$7,500 geologic hazard report
 - \$12,000 driveway
 - \$25,000 infrastructure
 - Total - \$44,500
- The infrastructure and driveway costs are part of development. The additional costs is \$7,500.
- The site clearly exhibits potential geologic hazard issues. In order to safely develop a geologic hazard report is needed to analyze the site.

Appellant Presentation:

Mr. Michael Lowery, owner and appellant, presented a PowerPoint with the problems with the Landslide Susceptibility Zone methodology.

Questions:

Commissioner McDonald asked Mr. Lowery if he has owned the land for an extensive period of time. Mr. Lowery replied that he has owned the property for almost 20 years. Commissioner McDonald asked if he had ever built on this property prior to this and if there was a reason for that.

Mr. Lowery said there were three reasons why the land was not built on:

1. After buying the lot city planning, sent Mr. Lowery to the fire department who said there was not a fire hydrant within 200 feet of the front door. After consulting with Utilities and the Stratton Meadows fire department, it was discovered that the fire hydrant at Square Park was only 1,300 gallons per minute. Seven years later a fire hydrant was installed within 50 feet of the proposed front door.
2. Four or five years ago gas and water service was finally obtained on Hawthorne so that it could be brought into the proposed home.
3. The reason for the variance that was filed was to get the house high enough so that the sewer would drain properly through the existing lot at 121 Alsace Way, which Mr. Lowery owns.

Commissioner McDonald asked if the intention was to sell the home to

someone else, and Mr. Lowery said they intended on keeping the house for the family, which adjoins the lot at 121 Alsace Way, which is also owned by Mr. Lowery.

Commissioner McDonald expressed her concern that if for some reason this requirement was overturned and there was no longer a requirement to have the geohazard report that down the road at some point, these homes are going to be sold to someone. Commissioner McDonald said that was one of her hesitations in releasing that requirement.

Mr. Lowery said he would be happy to include a document in the title that the geohazard survey was not completed for the site. Mr. Lowery said he would file with his own engineering so that anyone who buys the house, it will pop up with the title document, which should be sufficient to alert future buyers.

Commissioner McDonald said her second concern was that this would set a precedent for the City, which creates issues with the City Planning Department requirements as they stand currently. Mr. Lowery stated he understood that.

Mr. Lowery stated his thoughts were that anybody in the neighborhood that wanted to add or rebuild a garage and extend it by 30 square feet would have to pony up \$7,500 for a soil test. Mr. Lowery said the way he sees the law written is that anyone who wanted to add a spare bedroom would have to put up \$7,500 and in a lot of cases you could build it for twice that.

Mr. Lowery said he agreed with Commissioner McDonald that it could set a precedence and that is really one of the reasons that he was appealing the decision. Mr. Lowery said if he loses this appeal, he would appeal to the City Council, and if he lost at City Council, he would appeal it to district court.

Mr. Lowery stated when you add \$7,500 to a mortgage, and amortize it over 30 years, it turns into about \$35,000. It does reduce the risk of plaster cracking, but someone can replaster their house three times for \$7,500. Mr. Lowery said he understood the concerns but he was willing to accept whatever outcome today, but that he is just trying to get the house built.

Commissioner McDonald explained to Mr. Lowery that the commission's job was to make a decision based on the criteria that was already approved and not to debate what is approved. Commissioner McDonald said she understood what Mr. Lowery was saying and appreciated it, but that the commission could only go by the criteria.

Mr. Lowery said he fully understood that.

Commissioner Hente commented that he agreed with Commission McDonald and said that he believed what was really being asked was not so much the waiver, but to turn aside or even ignore the ordinance. Commissioner Hente said he did not believe that was in the purview of the Planning Commission. Commissioner Hente explained this was an item that City Council passed and they would have to make the decision on whether to ignore the ordinance or do something opposed to it, but it would not be appropriate for the Planning Commission to override the ordinance. Commissioner Hente said because of those reason he would not be supporting the appeal.

Commissioner Rickett said he concurred with his fellow commissioners and commented that the ordinance was actually developed with geotechnical engineers. So this was not something that was just put together, but was actually developed with geotechnical engineers. Commissioner Rickett explained he would not be supporting the appeal because the Planning Commission was there to review the law and uphold it.

Commissioner Almy said he agreed with the conversation so far, but what was really being asked is to change the code and not save money here for the individual. Commissioner Almy said Mr. Lowery had a well-documented case, but it wasn't a case that the Planning Commission could adjudicate. What needs to happen is to get a complete waiver from the code for this neighborhood based on the fact there is 100 years of history that shows the risk is relatively low, if it is. Commissioner Almy restated that was not the Planning Commission's place to do that.

Commissioner Rickett asked Mr. Lowery if he was going to eventually have to have a soils report to be able to understand what the foundation is. Mr. Lowery said he already had a soils report, that it was seven or eight pages long and it was done in 1996. There were two borings taken and nothing has been built on it since 1996. Mr. Lowery said if the financial circumstances of the permit could be brought to some reasonable level and he decided to go forward with the house, the lot would be excavated and another soil sample would be conducted at that point in the area that will actually be built upon. Mr. Lowery said he would consult with the professional engineer regarding both of the soil reports, and they would do the consulting work and put the stamp on the foundation.

Commissioner Rickett said he was just curious because Mr. Lowery had noted that he was going to have to bore again anyway and wondered why it was such a big deal at the moment.

Mr. Lowery said it was such a big deal because the current requirement is spending \$96,000 before a permit is even submitted and if any complaints or problems arise, he would be out \$100,000 or more and never end up with a

house.

Supporters:

None

Opponents:

Dan Santistevan, 504 Hawthorne Place right next door to Mr. Lowery's property

- Lived at his residence since 2000
- No Google maps or any picture shows the true geological challenge of the proposed site
- Mr. Santistevan said Mr. Lowery told him he was going through a variance of the setbacks because of the triangular shape of the property and that he would not be able to feasibly build the home without it
- Mr. Santistevan objects to that because he has the same issue and would not be able to put a garage or carport or anything because of that ordinance, which he said he commended
- Neighbors were relieved this was denied because Mr. Lowery wanted to build a structure with a tower and the only way he could do that is if he pushes that up against the Hawthorne Place abutment
- The reason the property has never been developed is because of the setback ordinance
- Mr. Lowery is trying to use the soil report from 1996 before he even owned the property and the property has changed a lot in the last 20 years with Mr. Lowery removing several old elm trees and a lot of shrub oak that stabilized the property
- One picture Mr. Lowery showed was a hundred year old ditch that goes through Mr. Santistevan's yard, and putting a house on that drainage will disrupt the whole hydrodynamic flow of the area
- Mr. Santistevan requested that a geological survey be done to see if the property should be developed

Rebuttal:

Mr. Lowery wanted to correct the fact Mr. Santistevan mentioned:

- The hundred year old ditch runs across the lot does not run into Mr. Santistevan's yard or anywhere near the yard
- The difference between Mr. Santistevan's house, Mr. Lowery's house and the proposed house is that Mr. Santistevan's house has the sewer draining into the common sewer that was built 70 years ago
- The reason this lot has not been built on previously was because the sewer had to have the variance to be higher up on the lot to be able to drain through Mr. Lowery's lot at 121 Alsace Way to go under a 70 foot spruce tree to hit the sewer on Alsace Way

- Nothing has changed on the lot since 1981 when Mr. Lowery bought his house
- The tower is only half a story above the two stories that are proposed
- Mr. Santistevan has opposed everything because he does not want a house built where he has a view of a vacant lot to look out on

Questions of Staff:

None

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Rickett said everyone did a great job on their presentations. Commissioner Rickett said it would be interesting what the geohazard study may bring up that also may not show, as Mr. Santistevan noted, that this would be even possible to build on due to whatever those things could be.

Chair Graham said he echoes some of the same comments of the other commissioners and stated this is something that City Council has to weigh in on.

Motion by Commissioner Rickett, seconded by Vice Chair Hente, to deny the appeal, thus upholding the administrative denial of the single-family site plan for 506 Hawthorne Place, based upon the findings that the appeal does not meet the appeal criteria set forth in City Code Section 7.5.906.A.4. The motion passed by a vote of 7:0:2:0

Aye: 7 - Vice Chair Hente, Commissioner McMurray, Chair Graham, Commissioner Almy, Commissioner Rickett, Commissioner Wilson and Commissioner McDonald

Absent: 2 - Commissioner Eubanks and Commissioner Raughton