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MEMORANDUM

TO: HAINES BOROUGH PLANNING COMMISSION



FROM: BROOKS CHANDLER
BOROUGH ATTORNEY

DATE: NOVEMBER 14, 2013

RE: APPEAL FROM DENIAL OF PLAT APPLICATION
C-207-TL-0620

Jila Stuart asked I provide you with legal advice regarding the above-referenced appeal. Based on our review of the plat application and related documents and applicable provisions of the Borough code we have concluded as follows:

1. The Planning Commission does not have legal authority to grant exemptions from the requirement to extend utilities to subdivisions where utility service is "available" within 200 feet of an existing property line of the parcel being subdivided.

2. The only issue for consideration if the Commission decides to hear the appeal is whether utility service is “available” within 200 feet of the existing property.

3. It is possible that for technical reasons utility service is not “available” through connection to the existing main within 200 feet of the property being subdivided but that requires input from public works.

The basis for this conclusion is discussed in greater detail below.

FACTS

On May 29, 2013 the Borough received an application to subdivide a 6.9 acre parcel of property within USS 207 (“the Property”) into two lots. The southern end of the Property is adjacent to the intersection of Sunshine Street and North Sawmill. The northern end of the Property extends north of the end of Moose Lane. The Borough’s existing water system runs parallel to Sunshine to the Sunshine-N. Sawmill intersection. This is less than 200 feet from the Property. There is a Borough sewer line across N. Sawmill from the Property. The sewer line is also within 200 feet of the Property. There is also a Borough water line that extends part way down Moose Lane. This line is more than 200 feet from the Property.

The plat application did not show any utility easements and it was apparent the property owner did not intend to connect the northerly lot (identified as Lot 2 on the survey submitted with the plat application) to the water and sewer lines at the southerly end of the property. Borough staff met with the property owner on October 2 and informed her the Property did not qualify for an exemption from the utility connection requirement. The property owner indicated she planned to appeal to the Commission. On October 8, 2013 the Borough planner denied the short plat application. A timely appeal followed.

In her appeal the property owner indicates she is formally requesting an “exemption” from the utility connection requirement. This request is based on the size, shape and location of the property, the expense associated with extension of utilities and a belief that she would actually be required to tie in to the existing utility infrastructure at a point 1200 feet away from her property rather than at the Sunshine-N. Sawmill intersection for “technical reasons”.

LAW

Subdivision of property within the Borough is governed by Chapter 18.100 and other general provisions of Title 18. Persons dividing their property into two or more parcels must

obtain a “platting action permit”¹. If a permit is denied the property owner can appeal the denial to the Commission but the Commission is not required to decide every appeal. Instead, the Commission first decides whether to even consider the appeal. It is only after the Commission has decided to hear an appeal that an examination of the merits of the appeal occurs and a decision whether to grant or deny the appeal is made and documented with findings of fact².

General approval criteria applicable to all platting action permit applications are contained in Chapter 18.60. One of the general criteria states, “[i]f property on which a use is proposed is within 200 feet of an existing, adequate public water and/or sewer system, the developer shall be required to connect to the public systems”.³ An exemption⁴ from this requirement is allowed “[w]hen, in the opinion of borough staff, no public sanitary sewer and/or water service is available within 200 feet of the property”. In addition, “[w]hen public sanitary sewer and/or water service becomes available, the developer will be required to connect to the public utility within six months”. The definitional section of Title 18⁵ does not contain a definition of “available”.

Subdivisions of property within the Borough may proceed under either “short plat” or “long plat” requirements and procedure. This application proceeded under the “short plat” procedure and criteria because it involved a subdivision of a single lot into less than five lots. Short plats are subject to the requirements of HBC 100.070-095⁶ and are also subject to the general criteria of HBC 18.60.010-020⁷. The exemption from utility connection standards contained in HBC 18.60.010(I) is repeated in HBC 18.100.092(A)(2):

When, in the opinion of borough staff, no public sanitary sewer and/or water service is available within 200 feet of any exterior property line of a new subdivision in which all lots are one acre or

¹HBC 18.30.010

²HBC 18.30.050.

⁴Title 18 also allows for “variances” in certain circumstances. HBC 18.80.050. A “variance” is an “adjustment” or “relaxation” of standards not an exemption from the standard. There is no variance applicable to the utility connection requirement.

⁵HBC 18.20.020

⁶HBC 18.100.030(B).

⁷HBC 18.100.020.

larger in area, the developer may request an exemption from the requirements to connect to public utilities.

ANALYSIS

Whether the Commission decides to hear the appeal is entirely at the Commission's discretion. This is not a situation where the Commission is legally required to consider the appeal.

If the Commission does decide to hear the appeal it is clear from the code provisions referenced above that the only issue is whether there is some reason the existing utility line at the Sunshine-N. Sawmill intersection should be found to be not "available" to the southerly portion of the property proposed for subdivision. That the proposed lot line for Lot 2 is more than 200 feet away from existing utilities is irrelevant. The 200 foot measurement is taken from "any" exterior property line. Similarly, the cost of extending utilities is not an appropriate factor to consider⁸.

The dictionary definition of "available" is "suitable or ready for use".⁹ Accordingly, if the Commission is considering the appeal it needs to determine if there is some reason the existing utility line at the Sunshine-N. Sawmill intersection is not "suitable" for use in extending utility services to nearby property. In our opinion, "available" as used in the referenced provisions of Title 18 does not mean the "best" location at which to extend services for technical or practical purposes. It is only if there is some reason the existing utility line is not "suitable" for use as a connection point that the appeal from the denial of the exemption request should be granted.

⁸Even in variance applications cost of compliance is not a determining factor. HBC 18.80.050(C)(5).

⁹Webster's College Dictionary p.91 (Random House 2nd. Ed. 1997).