

**NOTICE OF MEETING HELD IN PUBLIC SESSION
OF THE MORGAN COUNTY COUNCIL
WEDNESDAY, JULY 3, 2013
APPEAL AUTHORITY
MORGAN COUNTY COURTHOUSE
48 WEST YOUNG STREET
MORGAN, UTAH**

Meeting started at 3:20 p.m. and ended at 4:05 p.m.

Present

Meg Ryan, Appeal Authority
Charlie Ewert, Planning & Development Services Director
Jacob Briggs, Attorney for Appellant
Doug Durbano, Attorney & Appellant

Meg Ryan stated this appeal is for Fernwood LLC submitted June 6, 2013. She reviewed the rules for the administrative appeals noting that on June 27, 2013 she sent an email correspondence introducing herself and noted the state law that will be followed during this appeal as well as the Morgan County Code on appeals. She stated the application will be looked at and she will talk about the subject that will be discussed noting that when that she has finished the Appellant will be allowed to make a presentation. She reviewed Utah State Code 17-27a-703 as to her responsibilities. She noted that when the process is complete today that she will issue a decision in writing.

Ms. Ryan reviewed the application noting the following items for appeal:

1. Refusal of Morgan County to consider any building permit for the property without first amending the Development Agreement is evidenced by email from Morgan County, Charlie Ewert, and dated May 13, 2013.

She reviewed MCC 8-3-11D stating that on June 28, 2013 Morgan County responded noting that there was never any final action by the Land Use Authority to deny a building permit and that no said building permit was issued; there is no appeal on the table for this discussion.

2. Refusal of Morgan County to approve the Preliminary Plat submitted by Fernwood LLC pursuant to the Development Agreement. This will be the item of discussion for the appeals.

She stated the Preliminary Plat was submitted August 15, 2012 with Morgan County Council taking action on May 7, 2013 with the applicant being notified on May 9, 2013 of the denial.

She stated that she will only review the allegations on page 3 number 17 and page 5 number 31.

Doug Durbano questioned the rejection of the building permit appeal denial. He noted as he reviewed the State Code and County Code there is confusion as to what needs to be appealed. He stated the building permit for this property is the quintessential issue with the understanding that the County's position is that platting is a prerequisite to issuance of a Land Use Permit for a property. He stated that he feels that the two are intertwined and he feels that a written decision should have been forthcoming stating that no building permit would be issued until platting was completed. He stated that he does not understand why he cannot appeal the building permit and yet follow procedure for the Preliminary Plat appeal. He acknowledged that there was no formal building permit denied relative to a residence however they were aware that building permits were pending. He acknowledged that written decisions were received stating that the agricultural exception would apply to the property but nothing further could be done with the property. He also noted that there was a statement from the County that until platting was completed no building permits could be issued. He questioned whether that was a final decision that an appeal could be taken. He noted that he wanted it on the record that the issue was raised and the decision was that it was not proper to be before the Appeal Authority.

Meg reviewed the State Code 17-27a-703 and MCC 8-3-11C and D with what can be appealed. She stated the applicant must go through the proper administrative process before they can go to the appeals process.

Doug stated that he agrees with what Ms. Ryan has explained but questions whether the statute is being reviewed too narrowly.

Meg stated that this explanation is different from what was submitted and evidence would have to be provided showing how Mr. Durbanio feels that the County has erred and how the ordinance was not followed. She stated the burden is on the applicant to prove how the County has made an error. She noted that what was presented was a refusal of Morgan County to consider a building permit based on an email that was received stating what the process was under the County Code. She stated that she understands the argument but that is not what was presented. She invited Mr. Durbanio to present his evidence today.

Doug stated that what is being appealed is his interpretation of the ordinance and understands that it was not appropriately addressed and that he should re-file an appeal on that issue within a time frame of 30 days after the June 28th letter.

Meg told Mr. Durbanio that he does not state in his application that it was an ordinance interpretation by the County Zoning Administrator; he said it was the refusal of the County to consider any building permit without first amending the Development Agreement so that is a completely different issue than saying there was an interpretation that he was not allowed to have an action taken based on County Code. She stated that he may feel that she is too narrow but that is what she feels the process calls for.

Doug stated that he wants to file it correctly and understands if he has to come back another day.

Meg stated that on June 28, 2013 the County issued a letter stating, based on their Code citation, why they felt this was not ready for an appeal or rejected it which they had the right to do.

Doug stated they referenced a letter that appears to be a final statement or at least a final directive about an interpretation of an ordinance which is until platting there is no possibility for permitting.

Meg stated based on their statute, which he cites, that is what the appeal needs to be filed on. She stated they (Morgan County) have now issued the denial to you (Mr. Durbanio). She told Mr. Durbanio that he has the right to go through the correct Morgan County process and could perhaps submit an appeal and provide evidence within thirty days of the refusal letter dated June 28, 2013. She suggested that Doug use the language from the statute that he is appealing, if that is what he chooses to do, the interpretation of the Zoning Administrator that he interpreted County Code and the section and how he interpreted that incorrectly and what the evidence is. She told Doug the burden is on him to show how the mistake was made in citing the County Code.

Doug stated he came prepared to do that and asked if he should do both today.

Meg stated that he needed to file an appeal.

Doug asked if they should postpone the second portion of the appeal.

Meg stated that is his choice; she is ready to look at the preliminary plat. She stated she has done the research and has the background documentation. She noted they are two separate actions that will be decided. She stated that based on their code, which they have the right to adopt a code, states that a plat has to be approved before a permit is issued. She stated the burden is on him to show why it is incorrect, where they made a mistake.

Doug asked what if it is not in the code.

Meg stated that is what he needs to make a case, which should have been included in the appeal today if that is what he is stating. She stated that the appeal said it was an arbitrary and capricious action in the section that she cited previously and that is why she is here today, to here further evidence. She stated that is the only information that was submitted in regards to the preliminary plat (#29 & 31). She stated she needs to hear from the appellant what he feels in addition, with the burden being on the appellant, to make the case in what the County has made an error. She stated the choice for Mr. Durbano is to continue this or whether to file an appeal based on the decision given on June 28th or because the appeal was rejected then an application would have to be resubmitted given that the appellant feel there was an error in the interpretation of the ordinance. She stated an application will have to be submitted to Morgan County before she can hear the appeal. She stated that is the process and an application will have to be submitted to the County before it can be heard before an Appeal Authority; she noted she cannot hear something that has not been submitted.

Meg reminded the appellant that he has given a different interpretation which is more correctly aligned with the code for item #1 – a building permit – but the application needs to be formally filed with the County in order to proceed with that if you choose to do so.

Meg stated that there is an action being appealed in item #2 and she is ready to proceed if the applicant is ready.

Doug stated that he feels that it would be better to hold both appeals at the same time and the process would be better served. He requested to postpone the review of this appeal and allow him time to file a second appeal so that both appeals could be heard at the same time.

Meg stated that there is nothing in the County Code or State Statute that indicates this cannot be continued and keep the discussion alive. She stated that although she was prepared to hear and render a decision based on today's hearing on the submittal; she stated that she would like to put a timeframe on this that everyone could all work with to get this completed.

Meg stated that the item before this hearing today is to specifically hear the appeal of June 6, 2013 that was submitted to the County for the denial of the Preliminary Subdivision Plat. She noted that at the request of the appellant this hearing has been continued and a new date needs to be set so that it can be handled in a timely manner. She stated that if the appellant decides to file a subsequent appeal that it needs to be their decision on this other item of the interpretation of the code decision. She stated the statute is pretty clear about the Appeal Authority looks at the Code, why you believe the code was made in error, what exact citations in the code that you feel were misinterpreted.

Doug stated it sounds like the code references are the things that are missing that need to be included.

Meg acknowledged that she did not see a case made; she saw one or two statements that said arbitrary and capricious and unlawful but it did not give any indication where specifically and that is what she needs to tie a final a decision to as to how the County erred. She noted that she had a complete document from the County showing what they believed the code citations were that applied to this; it was a pretty detailed citations and the denial letter that was given to you on May 9, 2013.

Doug stated that he has not seen a detailed explanation from the County as to the basis for plat requirements prior to a building permit to be issued; this ordinance interpretation question that we have.

Charlie stated that has not been asked and he has not provided it.

Meg stated this was not the subject for this hearing. Meg stated she understands Mr. Durbano would like more time in order to think about what the procedures and processes are and if he is going to proceed with the application that is before her. She stated that she would like to hear back within the week whether the appellant is going to proceed.

Mr. Durbano stated that he is willing to set a date today while everyone is together; let's presume that we are capable of filing, and we are capable of filing a new appeal dealing with the issue that Meg does not feel is ripe today, and will get the paperwork filed with the Planning Office by Monday, July 8, 2013 or Tuesday, July 9, 2013.

This appeal hearing was postponed to July 17, 2013 at 11:00 a.m. in the County Council Chambers to re-hear the subdivision issue; if there are other decisions to come before Meg she will take them that day also.

Meg told Mr. Durbano and Mr. Briggs that the process outlined in the County Code needs to be followed before it can come before the Appeal Authority.

Charlie stated an email is not a final response; the majority of the time when applicants are appealing something it is an official Zoning Administrators interpretation formal notice.

Meg closed the hearing at 2:45 p.m. and postponed the application from Fernwood LLC dated June 6, 2013 until July 17, 2013 at 11:00 a.m. and directed the appellants to talk with the County Staff.

APPROVED Mr. B Date 8/16/13
Appeal Authority

ATTEST Charlie Date 8/19/13
CHARLES EWERT, PLANNING DIRECTOR