

From: Tracy Parris [tracyparris@starband.net]
Sent: Saturday, April 23, 2005 12:14 AM
To: vicki.fisher@rcgov.org
Cc: deborah.hadcock@rcgov.org
Subject: FW: Rezone Application

05CA073
05R2038

Vicki:

Below is a copy of the email I provided you in writing requesting Deb Hadcock of the Planning Commission to sponsor/institute the CPA in this case, if they think one is needed. I also add some thoughts in this email to you for you, the planning commissioners, and council members to analyze with respect to this rezone:

Formal Request - Per SDCL RCMC 2.60.160.A. (comprehensive plan amendment) and RCMC 17.54.040.A. (zoning (plan implementation) amendment) that allows them to do it, I request that the city/planning commission institute and foot the bill to correct city zoning and, if need be, its comprehensive plan with respect to the rezone sought in the application I filed in late March, 2005. Under the circumstances, it is city error and I've already paid for the survey to confirm the FH boundary is where FEMA says it is on the FIRM. I also paid have the area maps and rezone description prepared. More recently, I paid another \$310 for the rezone application, bring my total to well over \$2,000 so far.

With respect to the error, state statute and municipal code obligate the city/planning commission to engage in "careful and comprehensive surveys and studies" in order to come up with its comprehensive plan, and, therefore, implementation of its plan in the form of zoning ordinances and zoning maps. SDCL 11-6-15 and RCMC 2.60.140. The incorrect FH use zoning boundary on my property was set in 1974, a straight line not based on a careful and comprehensive survey or study. However, the city has had numerous hydrology studies performed since 1974. Each of the studies and surveys have shown that city zoning is in error, but yet the city has taken no steps to correct its erroneous zoning in the past 30 years.

My two cents: To correct all outstanding FH use zoning errors, City Council should pass an ordinance pegging its FH use zoning with the latest hydrology study, as represented on the FEMA FIRMs.

Also, thank you for looking up the ordinance concerning CPAs. I read it. I understand GM makes everyone pay two fees and file the same form twice in every single case of rezone, only checking a different box, when people want a zoning change that allegedly also requires a plan change. Even if that is correct in certain discretionary rezone cases, it isn't applicable in the case of an error in zoning. Here's why: Zoning maps are implementations of the plan and are not part of the plan. SDCL 11-6-1, definitions of "zoning ordinance" and "zoning map." If the plan was not implemented correctly (i.e. incorrect zoning) then I am not seeking a change in the plan. In the case of an error, I am only seeking a change in the implementation of the plan (i.e zoning). Correcting an error does not change the plan. This means we need to see what the plan says. Per SDCL 11-6-1, the Zoning code is the written implementation of the plan and the zoning map is the visual depiction of the implementation. Chapter 17 of the Municipal Code indicates what the plan says about the purpose of FH use zoning. In addition, somewhere there's a written plan behind the zoning code and zoning map that includes discussion about FH use zoning.

We really do need to break out the plan to see what it says about FH use zoning. Given what RCMC says I don't think the plan is the problem. Rather, the map is the problem.

As an aside, I get the feeling that the zoning map is treated as part of the plan rather than the visual depiction of the implementation of the plan, or that the zoning map matches a map that is part of the plan. Either way, the charging of double the fee to make one change on one map, or maps with matching information, is overcharging. I can see a second fee if the "goals, policies, and objectives" of the plan, the actual underlying plan, are changed in an amendment. However, the way 2.60.160 is written, double the rezone fee is charged even if the rezone is consistent with the "goals, policies, and objectives" of the plan, meaning the plan itself is not being changed by the rezone. Rather, only the implementation of the plan, i.e., the zoning map, is being changed - and a fee was already paid for that. I'd call that a city fee scam because pursuant to SDCL 11-6-1 zoning ordinances and zoning

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maps (i.e. the details that were developed from the broad "goals, policies, and objectives" of the plan) are not part of the plan; they are implementations of the plan. To take the details from the zoning map developed from the zoning code that was developed from the comprehensive plan and feed those details back into the plan, charging a fee to change that matching "plan" map in addition to the zoning map for every single zoning amendment is a fee sham. If the plan gives all the details, including a zoning map, then you don't need a separate zoning map saying the same thing. Either way, only one fee is due, either a CPA fee or a zoning amendment fee, but not both. I digress.

Let me know your thoughts, but in this case I don't think a CPA is either being requested or necessary.

Finally, with regard to the original issue that spawned my supplemental letter, if the policy announced by Marcia is part of the plan then that'll likely lead to a discrimination and violation of SDCL suit if the policy winds up being followed, because then the plan itself would be the problem rather than the implementation of the plan. In order to help figure this one out it would be nice to know what the official stature of that "policy" is. Is it an ordinance, part of the comprehensive plan, etc.

Please let me know if, early next week, you can let me see the plan and the stature of the anti-rezone policy to make the determinations. I'd like to have everything addressed by the Planning Commission on May 5th rather than delay anything out to June because the added month or two of delay after the Planning Commission is really too big of a delay for moving on to building or filing suit if need be after thinking about lengthy past, present, and future delays.

In dealing with this mess, please remember that I am only reacting to what the city has done. If this were done my way, it would be quick and painless following common sense.

Thanks,
Tracy
343-2128 office
341-1186 home

-----Original Message-----

From: Tracy Parris [mailto:tracyparris@starband.net]
Sent: Monday, March 28, 2005 1:23 PM
To: 'deborah.hadcock@rcgov.org'
Cc: 'karen.olson@rcgov.org'; 'sam.kooiker@rcgov.org'
Subject: Rezone Application - FYI with a request

Deb:

I wanted to let you know that I paid \$310 this morning (Monday, 3-28) for a rezone application to correct a city error in use zoning on 0.05 acres of my property (\$250 fee, \$40 deposit on the sign, and \$20 for mailing list generation). While at Growth Mgmt., I was told I needed to pay another \$310 for a "comprehensive plan amendment" (CPA).

I shouldn't have to pay for a city error in the first place, let alone double the fee. The application, information, considerations, process, and people involved are the same. It is only a matter of the city noting the rezone for two purposes instead of one, and trying to take an additional \$310 for it.

I refused to pay the fee and instead looked up the law. After taking a look at statutes and city code, I determined as expected that the city should not be charging homeowners, especially not those trying to get the city to correct a city error, for city management of the city plan. Generally, the city is charged by the state with plan management and city code allows the planning commission to institute zoning amendments (as in cases of erroneous zoning).

More specifically, SDCL indicates that management, including amendment, of the city's plan is the city's responsibility. SDCL 11-6-2 ("municipalities shall . . . make, adopt, amend . . . the comprehensive plan."). The only fee established in municipal code is for a zoning amendment (nothing about comprehensive plan

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amendment). 17.54.040 G. ("two hundred fifty dollars . . . for a zoning amendment"). Zoning is an implementation of the comprehensive plan. See SDCL 11-6-1 definitions of "zoning ordinance" and "zoning map." Further, 17.54.040 A. states that applications for zoning amendments "may be instituted by . . . the city planning and zoning commission." 17.54.040 G.

To the extent the city will need to amend its plan after rezoning, and to the extent you believe 17.54.040 G. applies to comprehensive plan amendments, and that it requires a fee to amend the city plan in addition to the fee to rezone, I request that the city planning and zoning commission institute the "comprehensive plan amendment" request in an "application for development review" pursuant to 17.54.040 A.

I think the city should pay for all of this and handle it without my involvement because it is city error, but yet I've done the legwork and paid the \$310 fee. I also think that 17.54.040 does not apply to comprehensive plan amendments. I also think that there is nothing in municipal code that says I need to pay another \$310. I also think SDCL requires the city to manage its plan at its own expense. I also think SDCL and municipal code agree on this topic, such that the demand for an application and fee to amend the city plan are without merit or requirement.

In short, I already paid \$310 and will pay no more for this rezone. Whatever else the city needs to do I ask that the commission institute it without further expense to me.

Please let me know your thoughts because I think the growth mgmt. dept. is way off base in demanding a second application and a second fee for rezones.

Sincerely,

Tracy Parris

References:

According to SDCL 11-6-2, the comprehensive plan is the city's obligation, with an implied obligation not to make errors. "Municipalities shall, as soon as possible, make, adopt, amend, extend, add to or carry out a general municipal plan of development, such plan to be referred to as the comprehensive plan." SDCL 11-6-2. "In the preparation of the comprehensive plan, the planning commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the municipality and its environs." 11-6-15. Surveys and studies in preparation of comprehensive plan--Purposes of plan.

SDCL 11-6-9, "The municipal governing body shall provide the funds, equipment and accommodations necessary for the planning and zoning commission's work."

SDCL 11-6-1 Definitions

"Comprehensive plan," any document which describes in words, and may illustrate by maps, plats, charts, and other descriptive matter, the goals, policies, and objectives of the municipality to interrelate all functional and natural systems and activities relating to the development of the territory under its jurisdiction;

"Zoning ordinance," any ordinance adopted by the municipality to implement the comprehensive plan by regulating the location and use of buildings and uses of land.

"Zoning map," any map adopted as an ordinance by the municipality that delineates the extent of each district or zone established in the zoning ordinance;

17.54.040 Amendments. G. Fees. There isn't a fee established for the city to correct its comprehensive plan. "A fee of two hundred fifty dollars shall be paid at the time of filing any application for a zoning amendment."
17.54.040 Amendments. G. Fees.

17.54.040 begins, "[t]he regulations, restrictions, boundaries and options set forth in this title may be amended, supplemented, revised or repealed from time to time as conditions warrant, subject to the following conditions:
A. Application. An application for a proposed amendment shall be filed with the city planning and zoning commission. Amendments may be instituted by the property owner or his designated representative, by an appropriate governmental agency, or by the city planning and zoning commission."

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