

Bulman Karen

From: Tracy Parris [tracyparris@starband.net]
Sent: Monday, May 23, 2005 9:39 PM
To: tracyparris@starband.net; deborah.hadcock@rcgov.org; doug.andrews@rcgov.org; ethan.schmidt@rcgov.org; gary.brown@rcgov.org; mike.lemay@rcgov.org; scott.nash@rcgov.org; mel.prairiechicken@rcgov.org; pete.anderson@rcgov.org; ida.fastwolf@rcgov.org; karen.olson@rcgov.org
Cc: karen.bulman@rcgov.org; bob.dominicak@rcgov.org
Subject: RE: May 26 Planning Commission Meeting - Dispute Concerning Items 58 and 59

Resend without the attached 50k JPEG.

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

From: Tracy Parris [mailto:tracyparris@starband.net]
Sent: Monday, May 23, 2005 9:34 PM
To: 'deborah.hadcock@rcgov.org'; 'doug.andrews@rcgov.org'; 'ethan.schmidt@rcgov.org'; 'gary.brown@rcgov.org'; 'mike.lemay@rcgov.org'; 'scott.nash@rcgov.org'; 'mel.prairiechicken@rcgov.org'; 'pete.anderson@rcgov.org'; 'ida.fastwolf@rcgov.org'; 'karen.olson@rcgov.org'
Cc: 'karen.bulman@rcgov.org'; 'bob.dominicak@rcgov.org'
Subject: May 26 Planning Commission Meeting - Dispute Concerning Items 58 and 59

Dear Planning Commission Members and Councilwoman Olson:

So as not to surprise you at the Thursday Planning Commission meeting, I am providing you with my written response to the Staff Report.

At the last meeting the Commission agreed to sponsor the corrective rezone and CPA for 0.05 acres of my property from flood hazard (FH) to park forest (PF). Thank you for that decision.

Staff Reports for items 58-59 (my rezone and CPA). Contrary to the rezone and CPA requested, Staff recommends approval of the rezone and CPA along the 500 year floodplain boundary instead of the 100 year floodplain boundary (a/k/a regulated floodplain or Flood Hazard area). Staff cites an alleged city council policy ("the Policy"), apparently adopted Sept. 27, 2000, that zones as FH private property upstream of the inlet to Canyon Lake that is within the 500 year floodplain (where private property zoned other than FH prior to the Policy was grandfathered). In stark contrast, private property downstream of the inlet to Canyon Lake and public property up or downstream of Canyon Lake is zoned FH only if it is within the 100 year floodplain.

The attached color JPEG file illustrates the issue. The blue line identifies a corrective rezone in 1987 from FH to PF accomplished by the original homeowners. The yellow line identifies the rezone presently sought. The yellow line follows the 100 year a/k/a base flood a/k/a flood hazard boundary. The area within the yellow line is a 40 degree angle hillside. The pink line identifies the amended rezone suggested by Staff. The pink line follows the 500 year floodplain boundary. You can see that the pink line interferes with the planned building, whose North face will follow the North face of the existing garage/apt. Incidentally, the Southern edges of the 1987 and present rezone (toward bottom of JPEG) also show just how far off the 1974 straight line FH zoning was from the 100 year boundary. It is located approximately 15 feet higher in elevation than the 100 year boundary and approximately 10 feet higher than even the 500 year boundary

I realize staff is merely following the Policy, assuming it to be correct, and that the issue has to be taken up with the Planning Commission and City Council.

To put it bluntly, I absolutely refuse to accept the amendment proposed by Staff. What follows explains why.

With respect to the Policy, the City violated city code by misapplying the flood hazard (FH) district to 500 year floodplain, which is actually park forest (PF). Municipal Code indicates that the FH district is for the 100 year floodway within the 100 year floodplain, but not floodfringe within the 100 year floodplain or areas inundated by much rarer floods such as 500 year floods. In fact, 100 year floodfringe property specifically falls within the park forest (PF) district. See 17.08.070. From 17.08.070 alone it is rather obvious that areas of 500 year flooding that are higher in elevation than both areas of 100 year floodway and 100 year floodfringe also fall within PF rather than FH. Nonetheless, I'll present you with more evidence that the Policy contravenes municipal code.

500 year floods, meteor strikes, earthquakes, and the like, do to their rare nature in Rapid City, are not a basis for restricting private property rights. The low potential of occurrence is the reason areas within 500 year flood zones are not regulated – the risk isn't worth the interference with private property rights. Thus, only 100 year floods are regulated by Rapid City Municipal Code. See, e.g., Titles 15 – Buildings and Construction, Chapter 15.32 – Flood Area construction Regulations, and Title 17 – [Use] Zoning, Chapter 17.04 – Definitions, Chapter 17.08 - PF Park Forest District, and Chapter 17.28 – FH Flood Hazard District. More specifically, see the following provisions:

Chapter 17.04 [Zoning Ordinance] Definitions

17.04.285 Floodway. "Floodway" means the channel of the watercourse and those portions of the adjacent floodplains which are reasonably required to carry and discharge the regulatory flood. This is or may be greater than the floodway zoning district.

17.04.590 Regulatory flood. "Regulatory flood" means a flood which is representative of large floods known to have occurred generally in the area and reasonably characteristic of what can be expected to occur in a particular stream. The regulatory flood generally has a frequency of approximately one hundred years determined from an analysis of floods on a particular stream and other streams in the same general region.

17.04.595 Regulatory flood protection elevation. "Regulatory flood protection elevation" means the elevation to which uses regulated by this title are required to be elevated or floodproofed.

Chapter 17.08 PF Park Forest District

17.08.070 Flood fringe building district. Any land that is within the flood fringe building district as provided for in Chapter 15.32 of this code must comply with the additional requirements of that district.

Chapter 17.28 FH Flood Hazard District

17.28.010 General description [of FH District]. This district is established for those uses having a low flood damage potential, and not obstructing floodflows [floodflows are carried by the floodway].

17.28.060 Warning and disclaimer of liability. The degree of flood protection required by the ordinance codified herein is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods [e.g. 500 year floods] may occur on rare occasions

Chapter 15.32 Flood Area Construction Regulations

FEMA FIRM (1996), Notes. Areas of special flood hazard (100-year flood) include Zones A, A1-30, AE, AH, AO, A99, V, V1-30 AND VE.

FEMA FIRM (1996), Legend. Special Flood Hazard Areas Inundated By 100-Year Flood [include] Zone A, AE, AH, AO, A99, V, VE . . . Other Flood Areas [include] Zone X [representing] Areas of 500-Year Flood.

15.32.020 Findings. Flood losses in areas of special flood hazard. [Note the same terminology in FEMA's FIRM, "Areas of special flood hazard (100-year flood)"]

15.32.030 Purpose of Provisions. [To manage] areas of special flood hazard. [Note the same terminology in FEMA's FIRM, "Areas of special flood hazard (100-year flood)"]

15.32.050 Description of properties within the floodplain development district.

A. A complete description of all properties within the floodplain development district is contained on the flood insurance rate maps dated as of November 18, 1981, or as amended . . . The city engineer shall treat all areas on the flood insurance rate map . . . within the A1 through A31, AO, A and A99 designated areas as flood fringe, except the areas that are designated as floodway . . .

15.32.060 Definitions.

"Base flood" means a flood having a one percent chance of being equaled or exceeded in any given year Also referred to as the one hundred year flood.

"Development" means any manmade change to improve or reimprove real estate including, but not limited to, buildings or other structures, mining, dredging, fillings, grading, paving, excavation, or drilling operations located within the area of special flood hazard

"Flood insurance rate map (FIRM)" means the official map on which the Federal Emergency Management Agency has

delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Regulatory flood (base flood)" means a flood which is representative of large floods known to have occurred generally in the area and reasonably characteristic of what can be expected to occur in a particular stream. The regulatory flood generally has a frequency of approximately one hundred years, determined from an analysis of floods on particular stream and other streams in the same general region

"Regulatory flood protection elevation" means one foot above the elevation established as the base flood elevation for the particular area.

15.32.100 Warning and disclaimer of liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions.

15.32.110 Floodplain development permit--Required when. A permit is required when building or enlarging a structure; placing a mobile home; or mining, dredging, filling, grading, paving, excavating, drilling; or any development within a flood hazard area.

15.32.130 Residential construction. New construction and substantial improvement of any residential structure shall: A Have the lowest floor (including basement) elevated to one foot above the base flood elevation.

15.32.160 Elevation of structures other than residences. Structures other than residences shall ordinarily be elevated on fill but may, in special circumstances, be otherwise elevated or protected as provided in this chapter to a point at least one foot above the regulatory flood protection elevation

15.32.180 Floodproofing safeguards. Floodproofing safeguards such as the following shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic forces and hydrodynamic forces, and other factors associated with the regulatory flood.

15.32.230 Administration. B. Application for Floodplain Development Permit. 1. a. A floodplain development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.32.050. Any person desiring a floodplain development permit shall make application . . . showing . . . development, and . . . the floodway, base flood elevations, and the flood protection elevation.

From 17.04, 17.08, 17.28, and 15.32, it can be seen that municipal code is not concerned with the 500 year floodplain. Rather, municipal code only concerns areas inundated by 100 year floods. The Policy is inconsistent with each Chapter of Municipal code.

Note that 17.04.285 says the flood hazard zoning district can be smaller than the 100 year floodway, but doesn't say the flood hazard zoning district can be larger than the actual 100 year floodway. Yet that is precisely what the Policy does, expanding the FH Flood Hazard district to cover selected areas of 500 year flooding. The FIRM identifies only areas of 100 year flooding as "flood hazard." It identifies areas of 500 year flooding as "other flood areas."

Per 15.32's 27 provisions, if you can build in the 100 year floodway that is elevated one foot above baseflood elevation, why then would you (by misapplying FH use zoning) prohibit building altogether on land that is not within the 100 year floodway or 100 year floodfringe? The Policy makes no sense; per 15.32, I can build on the land defined by the rezone because it is outside the 100 year floodplain (a/k/a flood hazard area), yet its use zoning is FH, preventing building.

Because the Policy is inconsistent with every code provision addressing what is and is not flood hazard property and how such property may be used, the Policy should be struck and Staff's suggestion to amend the rezone and CPA should therefore be ignored.

Another insurmountable problem with the Policy is that the City has violated state and federal equal protection guarantees by discriminating against private property owners upstream of Canyon Lake. Upstream private property owners in city limits, per the Policy, have less property rights than public property owners (upstream or downstream) and downstream private property owners. The Policy is not equally applied and should be struck for that reason alone. There is also at least the appearance of unlawful downzoning of creekfront property that the City has targeted for acquisition. The city owns many creekfront lots in the area that the city refuses to perform even routine maintenance on in response to complaints of nearby landowners.

While the Policy is the primary subject of dispute, there is also a major problem with the City's behavior in

the past 31 years with respect to FH zoning. More specifically, the City repeatedly violated state and city code when it adopted and amended its comprehensive plan and related zoning. State law (SDCL 11-6-15) and city code (RCMC 2.60.140) required the City to create its plan and therefore its zoning from "careful and comprehensive surveys and studies of the existing conditions." The City failed to do this in 1974 and has repeatedly failed to do so in the past 31 years with respect to FH zoning. Had the city completed a detailed survey and study in 1974 the FH line would not have been a straight line; it would have meandered with the land. Plus, the City had plenty of opportunity to correct its 1974 error. The city had the Corps of Engineers (COE) complete detailed surveys and hydrology studies in 1981, 1990, and 1996. These detailed surveys and studies culminated in FEMA FIRMs (Flood Insurance Rate Maps) dated 1981, 1990 and 1996. Each of those FIRMs identify flood hazard areas. Nonetheless, the City to date maintains the incorrect straight line plan and zoning adopted in 1974. Had the city followed state law and city code at any point over the past 31 years, my property would not need to be rezoned now, nor previously in 1987; the Policy would be irrelevant and none of use would be wasting our time with this rezone and CPA.

I see Staff alleged changed conditions to meet the Amendment test in 17.54.040(D)(1). However, the conditions of the property have been the same since 1974 when the first plan and zoning errors were made by the City. The property never was within FH and still isn't. The city erred in 1974 and has erred by inaction for more than 31 years now. This is a straightforward correction of a longstanding error. The correct test is 17.54.040(D)(2), "Errors or oversights . . ." I would also note that despite the boilerplate contention that the city would suffer adverse affects without Staff's proposed amendment, neither Staff nor anyone else can cite a single adverse affect of approving the corrective rezone and CPA without amendment.

The Policy contravenes state law, city code, and both state and federal Constitutions. It is not lawfully enforceable, and should be ignored/discarded. The rezone and CPA should be approved as submitted.

Thank you for your time considering this matter.

Sincerely,

Tracy Parris