

**WEST HAVEN CITY LAND USE APPEAL AUTHORITY
FILE NO.**

**IN THE MATTER OF THE APPEAL FROM THE DENIAL OF FINAL PLAT
APPROVAL FOR PHASE 2 OF THE FAIRHAVEN SUBDIVISION.**

This matter came on for hearing before the West Haven Land Use Appeal Authority on March 24, 2022, on the appeal of a decision denying the approval of the final plat of phase 2 of the Fairhaven Subdivision. The undersigned David L Church was sitting as the hearing officer (pro tem).

The appellant (hereinafter referred to as Developer) was present and represented by attorney Analise Wilson. Also present were Skylar Tolbert and Greg Timothy from the Developer. The City was present and was represented by attorney Amy Hugie who was accompanied by Shari Phippen the City's Community Development Director

The Developer and the City, on being asked to make any objections they may have to either the procedure followed by the City in setting up this appeal, or the appointment of the undersigned to hear the matter, both affirmatively indicated that they had no objections.

ADMINISTRATIVE RECORD

The following documents and things were presented as the record of proceedings on the disputed subdivision prior to the time of the appeal.

- Planning Commission Meeting Minutes (and recording) of December 9, 2020, meeting.
- City Council meeting minutes (and recording) of December 16, 2020, meeting.

- Application for final approval with Copy of proposed plat for Fairhaven Phase 2.
- City Council meeting minutes (and recording) of February 16, 2022.
- Email from Shari Phippen to Greg Timothy dated February 22, 2022, stating the basis for the denial.
- Application for Hearing filed by Greg Timothy
- Improvement plans for the subdivision (2 sheets)
- Position statement of appellant filed by Analise Wilson dated March 17, 2022.

No objection to the record was made by either party and the record of proceedings was accepted by both parties.

EVIDENCE PRESENTED AT THE HEARING

The following facts were presented at the hearing by the appellant and were either agreed to by the City or were not controverted by the City.

1. A preliminary plat for phase 2 of the Fairhaven subdivision was approved by the City Council on December 16, 2020.
2. Preliminary plat approval is a requirement of the City development code.
3. The approved preliminary plat did not comply with the City's development code in at least one respect—some of the proposed lots that bordered property with an agricultural zone designation did not meet the minimum size requirement for such lots (the buffer requirement).
4. The agricultural property that the lots border is the site of a future school.
5. The fact that there were undersized lots was known to both the Developer and the City at the time of preliminary plat approval.

6. The Developer, in reliance on the approval of the preliminary plat proceeded to engage engineers to design and draft the final plat and to install improvements consisting of at least storm drain lines, sewer lines, and laterals.
7. The Developer applied to the City for final plat approval.
8. The proposed final plat complied in all respects to the approved preliminary plat.
9. On February 16, 2022, the City Council failed to approve the final plat for the subdivision for the stated reason that some of the proposed lots did not meet the minimum area requirements of the City code for a buffer between the residential and agricultural zones.

ARGUMENTS PRESENTED AT HEARING

Developer's arguments. The Developer presented three arguments in its written submission and at the hearing. Those arguments were that the denial of the proposed final plat was in error because the purpose of the buffer zone was to keep smaller lots from bordering agricultural uses not a school site; that the legal doctrine of zoning estoppel precludes the City from enforcing the buffering requirement; and that the Developer had an enforceable contract with the City arising out of the approval of the preliminary plat which contract requires the City approve a final plat for this subdivision if the final plat is consistent with the approved preliminary plat.

The Developer relied on the purpose clause of the ordinance which enacted the buffering requirement to support the contention that there was no need to buffer small residential lots from a school site and that therefore the buffering provisions of the code should be ignored in this instance.

In support of the argument that it had an enforceable contract with the City the Developer argued that the concessions it made regarding some other lots during the preliminary approval process were sufficient consideration to support a contractual right to have the final plat approved.

On the matter of zoning estoppel the Developer, relying on the language in *Fox v. Park City*, 2008 UT ¶ 32, 200 P.3d 182, pointed out that the law in Utah prevents the City from enforcing a zoning regulation if a property owner relied reasonably and in good faith on a governmental act or omission to incur such expenses that it would be highly inequitable to deprive the owner of its rights to complete a proposed development. The Developer identified the approval of the non-compliant preliminary plat as the act or omission of the City that it relied on. It stated that it had relied on this approval to its potential detriment by expending money on building storm water and sewer lines and preparing the final plat for approval.

City's arguments. In response to the arguments of the Developer the City contested whether there were sufficient formalities for the approval of the preliminary plat to become a contract with the City. The City also argued that you cannot define the purpose of a code section just simply by reading the purpose statement in an ordinance.

In response to the arguments on zoning estoppel the City acknowledged that a preliminary plat had been approved by the City. The City acknowledged that preliminary plats are required by City code. The City acknowledged that an approved preliminary plat vests the landowner in the right to proceed to final plat approval. The City did not dispute that the Developer had relied on the preliminary plat by installing certain public improvements and in expending money to prepare a final plat. The City did not appear to

present any arguments as to whether the Developer's reliance on the City's approval of a non-compliant preliminary plat was reasonable or that it would be highly inequitable to now require the developer to now amend its proposed plat. Nor did the City present any evidence to controvert the assertion that if the final plat was not approved the Developer would incur a financial loss.

DISCUSSION

This case presents an interesting issue as to whether a current City Council is bound by a previous City Council's mistake. It is undisputed that the proposed final subdivision plat does not comply with existing City ordinances. It is also undisputed that the City approved the preliminary plat for this development despite this non-compliance and that the proposed final plat complies with the preliminary plat approval. It is clear from the record that both the City and the Developer at the time of preliminary plat approval knew that the lots in the plat did not comply with the City code.

I find the Developer's arguments on the purpose of the buffering requirement in the City code to be non-persuasive. I do not see anything in the original purpose language of the ordinance enacting this buffering code provision or the code itself that would clearly allow me as the appeal authority to ignore the plain language of the code.

I also do not find the argument concerning the contractual obligations of the City to be persuasive. I do not think there are sufficient formalities in the manner in which the preliminary plat was approved to support the position that the City had entered into a binding contract with the Developer.. Even if I were to find a contract had been created by the approval process, I believe it is beyond my authority as the land use appeal hearing officer to determine whether a breach of contract exists and what the remedy for that breach would be.

The issue of zoning estoppel is a more nuanced matter. It is clear and undisputed that the City approved the preliminary plat. It is also undisputed that the Developer in reliance on this approval expended money installing improvements and hiring engineers to design the final plat. I believe the issue is whether this reliance on what everybody knew was a non-compliant preliminary plat was reasonable and in good faith.

Developer presented evidence that they relied in good faith on the preliminary plat approval. This evidence was not refuted by the City. The evidence presented by the Developer to support the reasonableness of this this reliance included that phase 1 of the same subdivision had been approved as final and that it was allowed by the City to install the improvements for phase 2 while doing phase 1 work. The Developer also stated that the installed improvements would be of limited or no value to it if phase 2 was not allowed.

The City in response to these facts, did not present any evidence that the Developer's reliance was unreasonable or in bad faith. Nor did it present any evidence or argument that the expenses incurred by the Developer were insufficient to support a finding that it would be inequitable to enforce the buffering requirement on this proposed subdivision phase.

The City attorney, at the hearing, in response to a question for this hearing officer, stated that an approved preliminary plat vested the landowner in the right to proceed to final plat approval. It is my belief that the City's requirement of a preliminary plat must be given some meaning. The time for a City to correct any compliance issues in a subdivision is at the time of preliminary plat approval. Final approval of a plat that complies with the approved preliminary plat should be perfunctory.

CONCLUSION

Based on the arguments made at the hearing; the agreed upon or undisputed facts; and the equities in the matter, I believe that the City made an error in denying the final plat approval. As the appointed appeal authority for this matter, it is my ruling that denial of the final plat should be overturned. The basis for my decision is that I believe the City is equitably estopped from applying the buffering requirements for the lots that border the agricultural use in this subdivision. The City is required to approve the final plat for this subdivision if it is in compliance with the approved preliminary plat.

Dated this 24th_ day of March 2022.

WEST HAVEN CITY LAND USE APPEAL
AUTHORITY (pro tem)

A handwritten signature in black ink, appearing to read "David L. Church", written over a faint circular stamp.

David L. Church

