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In the Matter of Cedar Park Properties LLC Subdivision Development

FINDINGS OF FACT

1. Cedar Park Properties LLC (CPPL) submitted three variance applications on March 4, 2021 which contained supplemental information in support of the applications.

2. On April 20, 2021, the Palmer City Manager (CM) convened a hearing on the CPPL variance requests. Testimony at the hearing was presented by the following witnesses:

Connie Yoshimura, Owner & Developer
Natalie Travers-Smyre, Owners Representative
Gary LaRusso, Keystone Engineering for CPPL
Curt Holler, Holler Engineering for CPPL
Chad Cameron, Fire Chief for the City of Palmer
Chris Nall, City of Palmer Public Works Director

3. Written and documentary evidence was also presented and accepted into the record by the CM.

4. CPPL had a full and fair opportunity to present evidence, testimony and argument at the appeal hearing and appeared at the hearing without objection. Upon review and analysis of the whole record including testimony presented in the appeal the CM adopts the following Findings of Fact and Conclusions of Law:

5. CPPL is the owner of a proposed new subdivision of approximately 89 acres and consisting of 83 homesites, identified by Property tax numbers 528748, 528749, 528750, and 16089, in the City of Palmer (City).

6. CPPL is a property development company managed by its principal Connie Yoshimura and with a physical address of 561 E 36th Ave, Suite 200, Anchorage, AK 99503. Ms. Yoshimura provided testimony at the April 20, 2021 hearing.

7. CPPL identified Gary LaRusso of Keystone Engineering and Curt Holler of Holler Engineering as the engineers of record on the application. Both provided testimony at the April 20, 2021 hearing.

8. CPPL's subdivision permit, dated March 4, 2021, calls for individual wells and on-site sewage system.

9. Concurrent with the filing of its subdivision permit, CPPL submitted five variances to the City for consideration. Two of those variances are currently before the City Council and the remaining three are the subject of this determination.

10. CPPL seeks to vary the City subdivision standards (identified in the request as "2015 IFC-96' Diameter Cul De Sac") and seeks to construct cul-de-sacs according the 96 foot standards from the Matanuska-Susitna Borough according to the new SMS Construction Manual adopted January 1, 2021.¹

11. CPPL, pursuant to its variance request, seeks to reduce the cul-de-sac diameters in the subdivision from 96 feet, as set forth in the IFW Standards adopted by the City, to 85 feet.

12. CPPL also seeks a variance to Palmer Municipal Code (PMC) 13.16.20, 13.16.025, and 13.16.030, and seeks "to create large lots with on-site water and sewer."²

13. CPPL, pursuant to this variance request, seeks to authorize on-site water and sewer for each of the 83 lots of the subdivision.

14. CPPL seeks an additional variance to "PMC 13.16.025 and any other City Code requirements for sprinklers or hydrants" and states that in light of the concurrent variance request for onsite water and sewer, "[h]ydrants are installed when utilizing City water."

15. CPPL, pursuant to this variance request, seeks to remove the requirement to install fire hydrants in the subdivision because of the inclusion of a secondary access road as well as the variance request for on-site water and sewer.

16. In support of the cul-de-sac request, CPPL stated that the 2015 International Fire Code (IFC) that was adopted under PMC 15.44.010, states that cul-de-sac bulbs are 96 feet. However, the IFC was updated in 2018 in which it states that cul-de-sac bulbs are 96 feet when there is a fire hydrant. The rationale behind the 2018 modification is to clarify that the additional size is required when

¹ The referenced construction manual was adopted by the Matanuska-Susitna Borough.

² The CM interprets this variance request as a waiver request under PMC 13.08.030, which authorizes the CM to approve water and septic plans without requiring a variance.

a fire truck is utilizing a fire hydrant, and will still allow room for additional emergency vehicles.

17. CPPL also notes that Matanuska Susitna Borough adopted an 85 foot cul-de-sac bulb as its construction standard.

18. CPPL also notes the policy and practical benefits of a smaller cul-de-sac, including less maintenance for the City including snow removal, increased green space in neighborhoods, and reducing water run-off. The smaller cul-de-sac aligns with the goals stated in the City Comprehensive Plan.

19. Regarding the onsite well and septic variance request, CPPL contends that well and septic use is standard throughout Alaska and that soil testing was conducted on twenty three individual lots, with a minimum depth of twelve feet, which ensured the viability of septic. Additionally, three water wells were drilled spaced throughout the subdivision, with results ranging from 10 to 30 gallons per minute which is more than adequate for a typical household.

20. The CPPL subdivision has much larger lots than adjoining subdivisions, which substantially increases the cost of connecting water and sewer. The onsite water and septic aligns with the goals stated in the City Comprehensive Plan.

21. Regarding the fire hydrant variance request, CPPL contends that there would not be any City water utility service to connect the fire hydrants to if the water and sewer variance request is approved.

22. IFC D107.1 contains the standards for the two separate fire apparatus access roads. CPPL contends that its design utilization of two access roads is such that fire hydrants are not required.

23. CPPL further submits that it will provide clear signage of each house in the subdivision and that residents will be required to adhere to "fire-wise" principles to mitigate fire risk. The rural character implicit in the proposed design also aligns with the goals stated in the City of Palmer Comprehensive Plan.

24. CPPL contends that the cost and maintenance of fire hydrants is much higher on large lot properties, thereby requiring CPPL to utilize a smaller lot design.

25. CPPL has provided all of the evidence it has in support of its variance requests.

26. City Public Works Director Chris Nall submitted comments in an undated Memorandum for Record. In the memorandum, Director Nall concurs with the request to install cul-de-sacs with an 85 foot diameter with the caveat that "if

this request conflicts with the newer, more updated requirement adopted by the City, IFC 2015, as noted by the requestor, it is likely in the City's best interest to impose the more restrictive in nature requirement for safety reasons."

27. Director Nall concurs with the variance request for onsite water and sewer conditioned upon CPPL providing confirmation that Alaska Department of Environmental Conservation (ADEC) has approved individual well and on-site sewage systems for each lot in the subdivision and enters into a septic maintenance agreement with the City for each lot. Director Nall further notes that this decision would impact future subdivision development within the City and would impact City utilities by imposing additional maintenance and resulting in lost revenue.

28. Director Nall had no comments regarding the fire hydrant variance request.

29. In a letter dated April 23, 2021, the Fire Chief for Palmer Fire and Rescue (City Fire Chief) provided his comments regarding the proposed cul-de-sac variance and the fire hydrants variance. Specifically, the City Fire Chief objects to granting the variance because he argues the 85 foot cul-de-sac does not meet the 2015 IFC as adopted by the City in PMC 15.44.010.

30. The City Fire Chief also notes that 13 AAC 50.025 adopted the 2012 IFC, which is congruent with the 2015 edition requiring cul-de-sacs exceeding 150 feet in length to have a minimum radius of 96 feet.

31. The City Fire Chief provided comments regarding the proposed fire hydrant variance and notes that 2015 IFC Section 507.2 states that "an approved water supply capable of supplying the required water flow for the fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction."

32. 2015 IFC, Section 507.2 states that "an approved water supply capable of supplying the required water flow for the fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction."

33. 2015 IFC, Section 507.2 states, "a water supply shall consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required water flow."

34. 2015 IFC, Section 507.5 states, "Fire hydrant systems shall comply with Sections 507.5.1 through 507.5.6."

35. 2015 IFC, Section 507.5.1 states, "Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than

400 feet from a hydrant on a fire apparatus access road...on-site fire hydrants and mains shall be provided where required by the fire code official." The section contains two exceptions that are not applicable.

36. The City Fire Chief contends that the second access road does not negate the requirement for fire hydrants. The second access road provides for a backup road in case one access road becomes unusable, and the specific exception calls for automatic sprinkler systems.

37. 2015 IFC, Section [A] 104.8 states that "[w]here there are practical difficulties involved in carrying out the provisions of this code, the fire code official shall have the authority to grant modifications for individual cases, provided the fire code official shall first find that special individual reason makes the strict letter of this code impractical and the modification does not lessen health, life and fire safety requirements."

38. The City Fire Chief objects to this variance request after consultation with multiple fire experts in the State of Alaska, stating that the request does not meet the 2015 IFC as adopted by the City in PMC 15.44.010.

39. CPPL disagrees with the requirement based upon their subdivision design, in which a loop road design provides a secondary access in addition to the primary fire response access. Additionally, CPPL has stated that they will become a 'Fire Wise' community that will help mitigate fire risk in the subdivision. Finally, CPPL asserts that the creation of 83 homes compared to the 235 homes currently permitted inherently reduces home owner fire risk.

40. CPPL also asserts that the subdivision plan aligns with the City Comprehensive plan and is rural in character. However, CPPL also asserts that cost is a significant factor in seeking the variance request.

41. The City development standards, division 1000, para. 1104.5 states, "All cul-de-sacs shall have a minimum diameter of 85 feet of pavement (front curb to front curb)." In contrast, language in the 2015 IFC, specifically Appendix D103.4, sets forth a 96 foot requirement for purposes of safety of apparatus, personnel and personal property.

42. The City adopted the 2015 IFC via PMC 15.44.010, which states that "The bound volumes containing the code known as the IFC, 2015 Edition, of the International Code Council, including Appendices B, C, D and E, together with the local amendments as set forth in Chapter [15.48](#) PMC, shall constitute the laws of the city relating to conditions hazardous to life and property from fire or explosion."

43. The City in its discretion has used the 85 foot development standard as of April 2021. This past practice has been applied in the City's discretion when

the facts of an application support a reduced cul-de-sac diameter as they do in this case.

44. CPPL has indicated that the cost to serve one-acre homesites with water and sewer is prohibitive but has not provided specific evidence supporting this claim. The cost of subdivision development is irrelevant to the variance or waiver analysis.

45. PMC 15.70.010 states that "Whenever the building official disapproves an application or refuses to grant a permit applied for, or when it is claimed that any provision of the code has been misconstrued or wrongly interpreted, the person disagreeing with the building official, referred to as applicant, may appeal from the decision of the building official to the city manager within 30 days from the date of the decision."

46. PMC 13.08.030 states in relevant part:

A. No person shall erect any dwelling or commercial or industrial building without providing sewerage facilities and connection to the city sanitary sewer; provided, that such connection need not be made if the premises are located further than 150 feet from the city sanitary sewer as measured in a straight line from the sanitary sewer to the nearest exterior lot line; and provided further, that it shall be unlawful to erect any such structure where city sewer service is not available within 150 feet unless the proposed sanitary facilities shall have been approved by the city manager or his duly authorized agent as providing adequate disposal of wastes. Such officer, in making his decision, shall consider the terrain and drainage of the area as well as technical compliance with the specifications for septic tanks, and no building plans shall be approved unless the sanitary facilities have first been approved.

D. Subsections (A) and (B) of this section notwithstanding, a residential dwelling no larger than a two-family dwelling, located on a parcel having an area of at least 20,000 square feet shall not be required to be connected to the city sanitary sewer system or water distribution system; provided, that the city manager has granted a written waiver from the applicable requirements of subsections (A) and/or (B) of this section. Regarding water, the city manager shall not grant such a waiver unless the owner has proved to the city manager that the on-site water system complies with Alaska Department of Environmental Conservation regulations. Regarding sewer, the

city manager shall not grant such a waiver unless the owner (1) has proved to the city manager that the construction and operation of the on-site wastewater system has been approved by the Department of Environmental Conservation; and (2) the owner has entered into an agreement with the city under which the owner agrees to regular maintenance of the on-site wastewater system. The agreement with the city must run with the land and must be duly recorded. All costs of maintenance, inspection, recording, etc., will be at the owner's expense.

CONCLUSIONS OF LAW

1. CPPL has the burden of proof to demonstrate that granting of the variance requests is proper.

2. PMC 15.44.010 states that "The bound volumes containing the code known as the IFC, 2015 Edition, of the International Code Council, including Appendices B, C, D and E, together with the local amendments as set forth in Chapter 15.48 PMC, shall constitute the laws of the city relating to conditions hazardous to life and property from fire or explosion."

3. PMC 15.44.020 states that the chief of the fire department shall have the power to modify any of the provisions of the IFC upon application when there are practical difficulties in carrying out the strict letter of the code. No application to the chief of the fire department has been made by CPPL for variances. However, the City Fire Chief has reviewed, commented, and objected to two of the three variances.

4. The CM interprets the City Fire Chief objections to the cul-de-sac and fire hydrant variance requests as confirmation that the City Fire Chief has decided not to modify any provisions of PMC 15.44.020.

5. The City Fire Chief's objection to the cul-de-sac and hydrant variance requests is essentially a building official disapproving of an application under PMC 15.70.010, resulting in the present appeal to the CM.

6. The CM has reviewed the whole record regarding the cul-de-sac variance request and finds that CPPL has met its burden of proof. The CM concludes that the City in its discretion has applied the 85 foot cul-de-sac diameter when the facts of the subdivision application support a reduced diameter as they do in this case.

7. The other two variance requests must be read in conjunction with the Code Section 13 of the Palmer Code. Under PMC 13.16.020, the subdivider shall be responsible for the installation of improvements in accordance with the conditions

and specifications outlined in PMC 13.16.025 (water supply system) and 13.16.030 (sanitary sewer system).

8. Under PMC 13.16.025, fire hydrants shall be provided to standards established by the American Waterworks Association.

9. Subject to PMC 13.08.030, when each lot within a proposed subdivision has an area of 20,000 square feet or more, connection to the city water system is not required, provided the developer proves to the CM that the ADEC has approved on-site water supply systems for each lot.

10. Under PMC 13.16.030, subject to PMC 13.08.030, when each lot within a proposed subdivision has an area of 20,000 square feet or more, connection to the city sewer system is not required, provided the developer proves to the CM that the ADEC has approved on-site wastewater supply systems for each lot.

11. PMC 13.08.030 states that any structure erected more than 150 feet from city sewer service (as is the case here), must be approved by the CM as providing adequate disposal of waste, considering the terrain and drainage as well as technical compliance with the specifications for septic tanks, and no building plans shall be approved unless the sanitary facilities have first been approved.

12. The CM has the authority under PMC 13.08.030 to grant a waiver and approve water and septic plans without requiring a variance. In light of PMC 13.08.030 and based on a review of the whole record including concurrence from the Public Works Department, the CM conditionally approves the water and septic plans subject to the following conditions:

- a. CPPL provides sufficient evidence that the on-site water system complies with ADEC regulations;
- b. CPPL provides sufficient evidence that the on-site wastewater system complies with ADEC regulations;
- c. CPPL obtains and provides the City official written ADEC approval and certification, authorizing the construction and operation of the on-site wastewater system;
- d. CPPL enters into an agreement with the City under which CPPL agrees to regular maintenance of the on-site water and wastewater systems and to defend and indemnify the City for any costs or damages related to the on-site wastewater system, and the failure to comply may result in the City asserting any and all legal and equitable remedies available to it;

- e. The Agreement with the City will be recorded and will run with the land as to each of the lots in the subdivision; and
- f. CPPL will bear all costs relating to the drafting of the Agreement, maintenance, inspection, recording, or disputes, with respect to the on-site wastewater system.

13. The City's comprehensive plan encourages growth, and a variety type of housing. This waiver approval does not diminish current City resident's water pressure and supply. The proposal also does not negatively impact the City's water service financials. By granting this waiver it will however, impact the level of service required for oversight, review and approval by the City. It will also set a new requirement, expense, and responsibility for the homeowner. This waiver is granted based on the subdivision lot size average of one acre. This variance should be viewed as an examination of a new type of housing within the City and should not be viewed as future approval for City water and sewer exemptions.

14. The CM finds that no express variance is required under PMC 13.16.025 as the code does not expressly set forth standards for fire hydrants. In addition, the CM's decision on sewer and water above renders the fire hydrant request moot, as fire hydrants cannot be utilized without City water in place in the subdivision. The CM, based on a review of the record including concurrence from the Public Works Department and also based on the concurrent approval of on-site well and sewer, conditionally approves the request to not include fire hydrants in the subdivision plan subject to the following conditions:

- a. CPPL provides sufficient evidence that the homes are to be developed following "Fire Wise" standards and principles such as non-combustible building materials, proper vegetation planning and maintenance, removing brush and tall dry grasses;
- b. CPPL provides sufficient evidence that CPPL will require home safety apparatus such as alarms, easy egress, and in-home system maintenance;
- c. CPPL provides sufficient evidence that it will require easily identifiable home numbers;
- d. CPPL enters into an agreement with the City under which CPPL agrees to maintain the standards in (a) through (c), and the failure to comply may result in the City asserting any and all legal and equitable remedies available to it (Agreement);
- e. The Agreement with the City will be recorded and will run with the land as to each of the lots in the subdivision; and

- f. CPPL will bear all costs relating to the drafting of the Agreement subject to approval of the City, maintenance, inspection, recording, or disputes with respect to fire requirements set forth herein.

15. The CM has reviewed all of the evidence and testimony in the record, including the materials submitted by CPPL and the information provided from the City, in support of his final decision.

This written decision of the CM issued this 24th day of May, 2021.



John Moosey

Cc: City Council
Connie Yoshimura, Owner & Developer
Natalie Travers-Smyre

Attachments:

Subdivision Permit Dated 03.04.2021
Variance Application Form: 96' Diameter Cul-De-Sac
Variance Application Form On-site Water and Sewer
Variance Application Form Fire Hydrants
Proposed 2021 Subdivision Map Overview
Public Works Memorandum For Record
Palmer Fire and Rescue Response March 23, 2021
Fact Sheet and Brochure: National Firewise Communities

NOTICE OF FINAL DECISION AND RIGHT TO APPEAL

Regarding the water and wastewater variance request as well as the fire hydrant variance request, and based on the CM's interpretation of the variance requests as waiver requests, the applicant has a right to appeal this final decision to city council pursuant to PMC 13.08.040. Such appeal to the city council must be filed within 15 days of applicant's receipt of the final decision. Applicant's failure to meet this 15 day deadline constitutes a waiver of all appeal rights and the CM's decision becomes final. The city council is authorized to hear to the appeal on the

waiver determinations and is also authorized to make variance determinations under 13.16.040.

The CM's decision regarding the cul-de-sac variance triggers an appeal right under PMC 15.70.010, in which an applicant who is dissatisfied with the CM's decision may appeal it to the superior court in Palmer. Such appeal must be filed within 30 calendar days of applicant's receipt of the final decision. Applicant's failure to meet this 30-calendar-day deadline constitutes a waiver of all appeal rights and the CM's decision becomes final.