

JOHN GALVIN, PH.D.

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To: Jeffrey Thomas, Director of Community Development
City of Sammamish

From: John Galvin

Subject: Request for code interpretation
SMC 21B.95.020 (a)
From John Galvin, 432 228th Ave. SE Sammamish, Wa
Failure to implement requirement for UZDP 40% of A-1 zone for first
UZDP

Attachments and references: 8/21/2014 email from Evan Maxim
8/20/2014 email from John Galvin
9/7/2010 City Council meeting notes
9/7/2010 City Council Media Player video for
City Council Meeting of September 7,
2010
Analysis of SCM21B.95.020 (2)(a), (b), (c)

Date:: Monday, August 25, 2014

In accordance with City of Sammamish Ordinance 02009-248 and Municipal Code 21A.05.085 I am requesting a code interpretation for SMC 21B.95.020 (a).

In an email dated August 21, 2014, and in response to my inquiries concerning the failure to implement SMC21B.95.020 (2)(a) in the context of TRF pre-application UZDP project number PRA2014-00181, Senior Planner Evan Maxim sent me an email outlining his interpretation of SMC21B.95 (a) (b) and (c). My specific request concern section SMC21b.95 (a). However, in the context of Mr. Maxim's interpretation, section (b) and (c) are related.

Mr. Maxim claims that SMC21B.95 (2) (a) is not a basic requirement for a UZDP application but one of three choices available to an applicant by which a developer's application qualifies as an acceptable UZDP.

My claim is that such an interpretation is erroneous and arbitrary. I request that the Director provide citizens, staff and UZDP applicants with a clear interpretation of the code 21B.95.020 (2)(a).

In support of my claim I submit minutes of the City Council meeting held on September 7, 2010 during which the City Council discussed and voted on decision point #4 pertaining to the retention of the requirement for 40% of an A zone for developers submitting the first UZDP in any one of the 5 town center A-zones.

Also, in support of my claim, I direct the Director to the video record of the September 7, 2010 City Council meeting. Beginning at approximately hour 3, former Director Kameron Gurol introduces decision point #4 pertaining to the elimination or the retention of a 40% requirement for the first UZDP in a particular A Zone. The video record clearly shows that the City Council unanimously decided to retain this requirement and that the requirement was not intended to be one of three choices. In light of this video record, Mr. Maxim's interpretation is clearly at odds with the City Council's intent and the code.

My claim also directs the Director's attention to the very arbitrary and grammatically questionable claim by Mr. Maxim that the single word "or" that is found at the end of section (b) should be interpreted as establishing a choice among the three sections and should be understood as (a) or (b) or (c) with a choice of one eliminating the requirement of the two other. I request the Director to review Mr. Maxim's interpretation of the grammatical usage as outline in my analysis.

Further support for my claim rests what a researcher might call a lack of construct validity. If the code is as Mr. Maxim claims, a series of choices by which one is chosen and the other two eliminated, comparison between the three make no sense. Furthermore, in a recent code interpretation requested by Mr. Maxim, Notice of Code Interpretation SMC 21B.20.080 & 21B.95.020 (see attachment) Mr. Maxim is seeking to facilitate the TRF application by arbitrarily claiming that the SMC 21B.95.020(2)(c) of the development code permits TRF to include 20% of the entire A-1 zone's commercial allocation. This is 40,000 square feet of commercial development. If by choosing SMC 21B.95.020(2)(b) the applicant eliminates (a) and (c) as choices, how is it that (b) continues to be applicable but not (a). My point here is that Mr. Maxim's interpretation is arbitrary.

Based on my supporting evidence, SMC21b.95.(2)(a) should be understood as a basic requirement of the first application for a UZDP in a specific Zone. In the related application cited, this means that TRF requires assemblage of 40% of the A-1 zone in order to qualify as an acceptable UZDP.

A review of the pre-application process, particularly staff advice, feedback, and determinations to date show that staff have failed to adequately inform the applicant that to proceed the applicant requires approximately 11 acres of the A-1 Zone. The TRF pre-application shows that the applicant only has assembled 1.7 acres and therefore the TRF application does not qualify as a UZDP for the A-1 zone.

With reference to the above request, my supporting argument, and the submitted documents and references, I request the Director to provide the public, city staff, and potential applicants for UZDP with a clear code interpretation.



Department of Community Development

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September 15, 2014

John Galvin
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RE: Request for Interpretation – POL2014-00192

Dear John Galvin:

The City has received and reviewed your Request for Interpretation of Sammamish Municipal Code (SMC) 21B.95.020(a) dated August 25, 2014. The basis for this interpretation request is related to a perceived discrepancy between the City Council meeting minutes and the code versus the "...questionable claim by Mr. Maxim that the single word 'or' that is found at the end of section (b) should be interpreted as establishing a choice among the three sections...". The remainder of your Request for Interpretation focuses on a number of assertions regarding a previously issued interpretation.

The City has re-reviewed the documentation presented to the City Council on September 7, 2010, along with the video recording of that meeting. It has been confirmed that the adopted code is consistent with the City Council direction. Please note that such a concern (i.e. that the code does not reflect the City Council's direction) cannot normally be addressed through an interpretation request and is either corrected by the City Council or the City Clerk.

City ordinances are interpreted using statutory construction principles (*Tahoma Audubon Society v. Park Junction Partners*, 128 Wn. App. 671, 682, 116 P.3d 1046 (2005)). The rules of statutory construction generally indicate that each word should be given its plain meaning in context (*Ockerman v. King County Dept. of Development and Environmental Services*, 102 Wn. App. 212, 216, 6 P.3d 1214 (2000)). Except for words specifically defined in the code, all words and terms used shall be given their customary meaning (SMC 21A.05.060(4)). The term "or" in a list of criteria normally indicates that an applicant may meet one or more of the specified criteria, but is not required to meet all of the listed criteria. In contrast, the term "and" in a list of criteria normally indicates that an applicant must meet all of the specified criteria prior to approval. The regulations governing interpretations, in particular SMC 21A.05.090(3) authorize the Director to issue an interpretation "...in cases of any ambiguity, difference of meaning, unclear procedural requirements, or other unclear regulatory requirements of the SMC." A term is ambiguous if it is amendable to different, reasonable interpretations (*Tahoma Audubon Society* 128 Wn. App. at 682). It is the considered opinion of the Director that the regulations contained in SMC 21B.95.020(a) are sufficiently clear and unambiguous such that they do not require an interpretation.

Therefore, an interpretation is not authorized in this circumstance based upon the plain reading of the text.

Please be advised there is no administrative appeal of this action. The City will be refunding any unused review fees back to you.

Best regards,


Jeff Thomas
Community Development Director
City of Sammamish