



.....
Date March 9, 2015

**RESOLUTION SETTING HEARING ON REQUEST FROM ABAY MENGISTU
(OWNER) FOR 3RD AMENDMENT TO THE EASTER LAKE ESTATES PUD
CONCEPTUAL PLAN FOR FENCING ALONG EASTER LAKE DRIVE**

WHEREAS, on December 5, 1994, by Roll Call No. 94-4602, the City Council adopted Ordinance No. 13,125, to rezone real property located in the vicinity of the 3100 block of Easter Lake Drive from “R1-90” Large Lot One Family Residential District to “PUD” Planned Unit Development District classification for the Easter Lake Estates PUD; and

WHEREAS, on March 24, 2003, by Roll Call No. 03-674, the City Council approved amendments to the Easter Lake Estates PUD Conceptual Plan for the double frontage lots on the north side of the 3000 block of East Kenyon Avenue, to allow for a unified 6-foot tall solid wood fence along the Easter Lake Drive frontage, subject to certain conditions set forth in said Roll Call; and

WHEREAS, thereafter Abay Mengistu, the owner of 3016 East Kenyon Avenue within the Easter Lake Estates PUD, constructed a 6-foot tall solid vinyl material fence in lieu of the permitted 6-foot tall solid wood material fence, while certain neighboring property owners also affected by the 2003 PUD Conceptual Plan amendment constructed the approved wooden fences, and other neighboring property owners did not construct any fence; and

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on February 19, 2015, its members voted 9-0 in support of a motion to recommend **APPROVAL** of a request from Abay Mengistu (owner), 3016 East Kenyon Avenue (“Property”), for a 3rd Amendment to the Easter Lake Estates PUD Conceptual Plan to allow retention of a 6-foot tall solid vinyl material fence on the Property in lieu of the permitted 6-foot tall solid wood material fence within 5-feet of the right-of-way line along Easter Lake Drive; and

WHEREAS, the Property is legally described as follows:

Lot 54, Easter Lake Estates Plat 4, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. That the attached communication from the Plan and Zoning Commission is hereby received and filed.
2. That the meeting of the City Council at which the proposed 3rd Amendment to the Easter Lake Estates PUD Conceptual Plan is to be considered shall be held in the Council Chambers, City Hall, Des Moines, Iowa, at 5:00 p.m. on March 23, 2015, at which time the City Council will hear both those who oppose and those who favor the proposal.



Roll Call Number

Agenda Item Number

29

Date March 9, 2015

-2-

- 3. That the City Clerk is hereby authorized and directed to cause notice of said proposal in the accompanying form to be given by publication once, not less than seven (7) days and not more than twenty (20) days before the date of hearing, all as specified in Section 362.3 and Section 414.4 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:



 Glenna K. Frank, Assistant City Attorney

(ZON2015-00011)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	

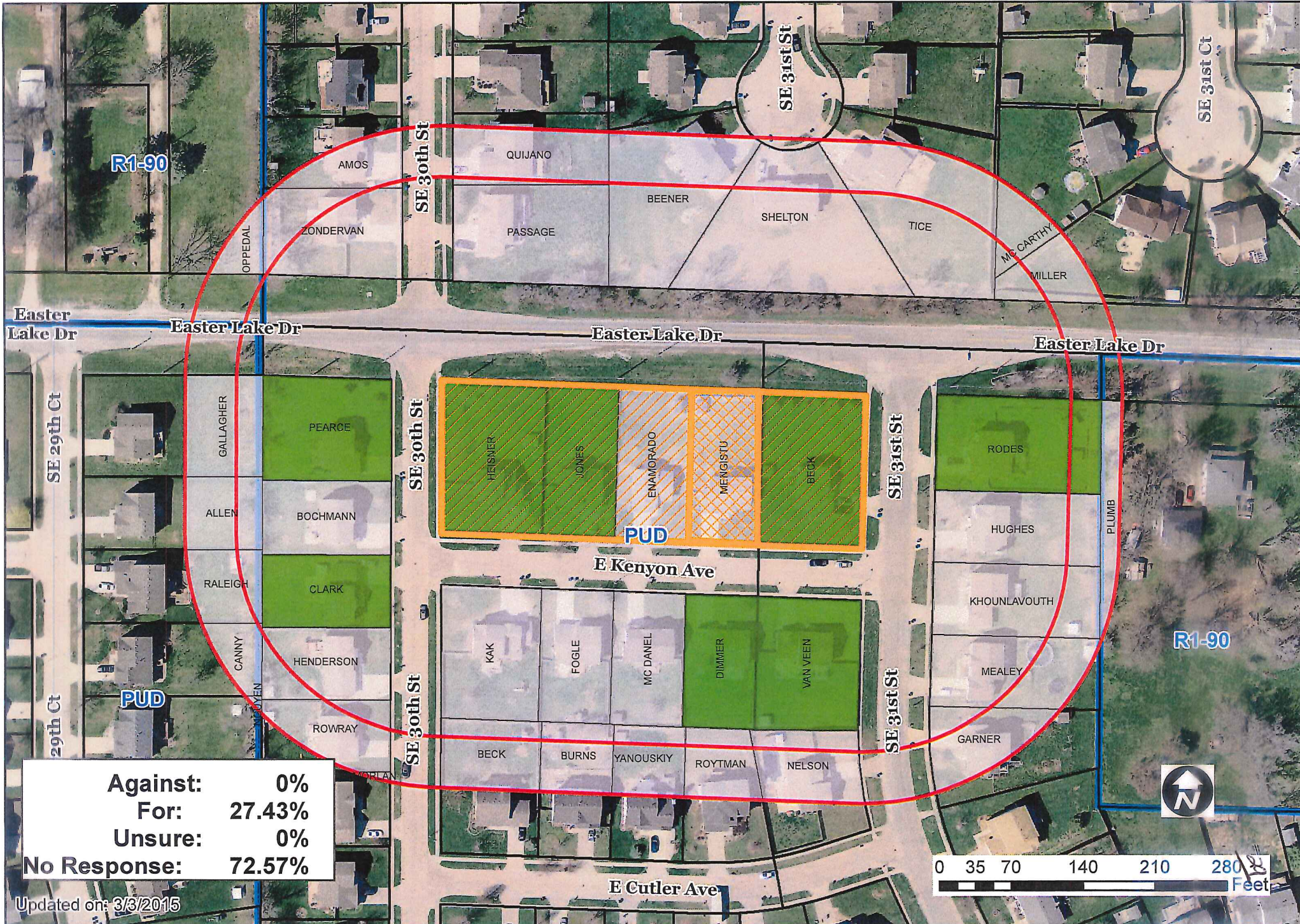
CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

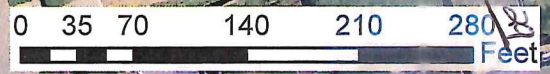
_____ Mayor

_____ City Clerk



Against:	0%
For:	27.43%
Unsure:	0%
No Response:	72.57%

Updated on: 3/3/2015





March 2, 2015

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held February 19, 2015, the following action was taken regarding a request from Abay Mengistu (owner) for a 3rd Amendment to the Easter Lake Estates PUD Conceptual Plan for property located at 3016 East Kenyon Avenue.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 9-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Dory Briles	X			
JoAnne Corigliano	X			
Jacqueline Easley				X
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes	X			
Greg Jones	X			
William Page	X			
Jonathan Rosenbloom				X
Mike Simonson	X			
CJ Stephens	X			
Vicki Stogdill	X			
Greg Wattier				X

APPROVAL of a 3rd Amendment to the Easter Lake Estates PUD Conceptual Plan to allow retention of a 6-foot tall solid vinyl material fence in lieu of the permitted 6-foot tall solid wood material fence within 5-feet of the right-of-way line along Easter Lake Drive.
(ZON2015-0011)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends denial of the requested amendment.

Written Responses

8 In Favor

0 In Opposition

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The owners of the subject property are seeking to allow retention of a fence that deviates from conditions of a previous amendment to the PUD Conceptual Plan for Lots 51 through 54 of Easter Lake Estates Plat 4 and Lot 32 of Easter Lake Estates Plat 3. This amendment would allow a white vinyl fence that is not compatible with the allowed 6-foot tall solid wood fence granted by the City Council to be allowed within the original 25-foot buffer yard identified on the Easter Lake Estates PUD Conceptual Plan.
2. **Size of Site:** 1.41 acres. Applicant's property is 10,492 square feet.
3. **Existing Zoning (site):** "PUD" Planned Unit Development.
4. **Existing Land Use (site):** Single-family residential.
5. **Adjacent Land Use and Zoning:**
 - North* – PUD, Single-family residential.
 - South* – PUD, Single-family residential.
 - East* – PUD, Single-family residential.
 - West* – PUD, Single-family residential.
6. **General Neighborhood/Area Land Uses:** Single-family residential dwellings.
7. **Applicable Recognized Neighborhood(s):** The subject property is within the Easter Lake Area Neighborhood. All recognized neighborhoods were notified of the meeting by mailing of the Preliminary Agenda on January 30, 2015. Additionally, separate notifications of the hearing for this specific item were mailed on January 30, 2015 (10 days prior to the scheduled hearing) and on February 9, 2015 (20 days prior to the scheduled hearing) to the Easter Lake Area Neighborhood and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the area affected by the requested Conceptual Plan amendment. A Final Agenda for the meeting was mailed to all the recognized neighborhood associations on February 13, 2015.

All agendas and notices are mailed to the contact person(s) designated to the City of Des Moines Neighborhood Development Division by the recognized neighborhood association. The Easter Lake Area Neighborhood Association mailings were sent to Jim Bollard, 4007 Southeast 26th Street, Des Moines, IA 50320.

- 8. Relevant Zoning History:** The Easter Lake Estates PUD Conceptual Plan and rezoning were approved by the City Council on December 5, 1994.

On March 10, 2003, the City Council approved an amendment to the Easter Lake Estates PUD Conceptual Plan for Lots 51 through 54 of Easter Lake Estates Plat 4 and Lot 32 of Easter Lake Estates Plat 3, which allowed for 6-foot tall opaque fencing within the required 25-foot setback along Easter Lake Drive, subject to the following limitations:

- a. No fence shall be permitted or constructed until each of the owners of the property described have signed and recorded a covenant prepared by the Legal Department wherein each owner assumes and obligation to install the fence and trees as provided below, by no later than November 1, 2004, and to thereafter maintain such fence and trees for the benefit of the City and the other affected properties.
- b. The fence shall be constructed in substantial compliance with the elevations now on file in the Community Development Department, with the posts, supporting rails and other supporting elements facing the interior of the subject properties.
- c. The fence shall be setback at least 5-feet from the south right-of-way line of Easter Lake Drive and outside any vision clearance triangle required by Section 114-14 of the Des Moines Municipal Code.
- d. No fencing shall be constructed until a building permit has been obtained for such work.
- e. At least two ornamental or evergreen trees shall be planted on each lot evenly spaced on an east/west line between at uniform spacing between the fence and the south right-of-way line of Easter Lake Drive.

- 9. 2020 Community Character Land Use Plan Designation:** General Development Zone – Low Density Residential.

II. ADDITIONAL APPLICABLE INFORMATION

The Easter Lake Estates PUD Conceptual Plan and Final Plats for Easter Lake Estates Plat 3 and Plat 4 identify a 25-foot buffer easement along the north lot line of the subject properties adjoining the Easter Lake Drive right-of-way.

Paragraph 4 of the Buffer Zone Agreement for the Easter Lake PUD states that “the buffer zone shall not be improved with the erection of any building, structure, parking area, deck or concrete slab. This restriction shall not prohibit the construction of a fence on the buffer zone. Any construction within the buffer zone shall be in conformity with the original site plan submitted and approved by the City of Des Moines.” The PUD does not specify the design or height limits for fencing within the buffer yard.

Section 134-694(6) of the Zoning Ordinance states that unless otherwise expressly provided in the PUD conceptual plan, fencing shall be allowed as per the standards for the R residential districts for all lots devoted to single-family or two-family use, with required yards for fence purposes to be determined by the setbacks shown by the typical lot layouts identified in the plan.

The typical lot layouts of the Easter Lake Estates PUD identify a 30-foot rear yard setback. Since the subject properties are double-frontage lots, the rear yards are treated as front

yards by the Zoning Ordinance. Therefore, a maximum 3-foot high solid fence would have typically been allowed within the 30-foot front yard setback (and the 25-foot buffer yard easement) by-right. The amendment approved to the Easter Lake Estates PUD Conceptual Plan on March 10, 2003 allowed the neighbors to jointly erect fences within five (5) feet of their north front property line so long as it was a unified design and provided evergreen landscaping to soften the visual impact along Easter Lake Drive.

Since that time, only three property owners have erected solid fences and only two (3000 East Kenyon Drive and 3006 East Kenyon Drive) have the solid wood design.

The applicant sought a permit from the Permit and Development Center to construct the existing white vinyl fence on September 3, 2010. While being attended to by the Zoning Inspector staffing the counter the applicant left without paying a permit fee and without issuance of a permit. He did take with him a placard that is required for posting on site but did not have the required permit document attached. Later, he understood that it was not the entire permit. On September 23, 2010, the Zoning Inspector issued a stop work order as the fence was under construction and enforcement was initiated.

Prior to requesting the building permit for the fence, the applicant had been working with another separate Zoning Inspector on August 10, 2010 to file an amendment to the PUD Conceptual Plan to go through the amendment process to allow the white vinyl fence. The applicant paid the appropriate fee for the amendment but did not provide the appropriate documentation to move forward with an amendment to the Plan and Zoning Commission. A refund of the fee was issued on September 21, 2010.

The applicant has indicated he was confused at the time between requirements for the permit and the requirements to amend the PUD Conceptual Plan. The inspector handling the enforcement action on the erection of the fence without a permit did not retire the case, attempting to get the applicant to refile a complete application for a PUD Conceptual Plan until his retirement. The enforcement case was recently picked up by a newly employed inspector prompting the current PUD Amendment to seek remedy and request to legitimize the 6-foot white vinyl fence that has been installed.

Staff believes that the initial amendment for the five properties approved by the Council met the intent and spirit of the Zoning Ordinance and the PUD Conceptual Plan by providing a unified design agreed to by all of the affected property owners at that time. The current applicant was not a party to the covenant agreement but it was recorded to run with the land. Allowing a different fence design and material defeats the intent of the previous amendment which only allowed the taller than typical fencing in the front yard setback along Easter Lake Drive based on the unified design.

SUMMARY OF DISCUSSION

Jacqueline Easley left the meeting @ 7:40 p.m.

Erik Lundy presented the staff report and recommendation.

Mike Simonson asked staff to explain again what happened with the permitting and the process.

Erik Lundy stated this is a Planned Unit Development (PUD) and in order to go into the front yard setback with fences in the past they had to ask for an amendment to get the fence. At that point as long as the approved unified design requirements that were in place were met, a permit could be taken out. Because this amendment to the PUD was so specific and narrow to the area, it was not general knowledge amongst all of the permit counter staff. He believes that when dealing with the applicant when requesting the permit, there were some unknowns by the counter staff at the time. The applicant ended up taking an inspection record placard thinking he had a permit but a placard is not a complete permit.

Vicki Stogdill asked what or who made the mistakes or misunderstanding.

Erik Lundy stated the mistake would have been writing out the placard before they had verified the requirements and were ready to issue the permit. But there was not an actual permit that was released. So a person could have misunderstood that the placard was the actual permit.

CJ Stephens asked if there a governing body over the PUD.

Erik Lundy stated in many instances there are Homeowner's Association that enforce covenants. He believes that if there was an association in this case for the Easter Lake Estates PUD it was a very limited in scope. This PUD was approved with phases and was platted in stages.

CJ Stephens stated she understands the need to make it consistent because it does add to the beauty and value of the neighborhood. The applicant's white vinyl fence clearly is better looking and will last longer than the wooden fencing in the approved design.

Mike Simonson asked is there landscaping on the applicant's five foot strip?

Erik Lundy stated yes there are some evergreen trees along the fencing.

Abay Mingistu 3016 E. Kenyon Avenue stated in 2009 he and his wife purchased this house and in 2010 they decided to fence the yard for safety of their little girl. He went to the permit office to get information on what he needed to do in order to put a fence up. He spoke to two people and was told that he could put up a vinyl fence as long as he setback 5 foot from the property line and if he is going to do that he can get the permit today. He went back about two week later and the permit was being written up. He questioned the setback again and was told that if he and the neighbors wanted the minimum 5-foot setback amended that there was a process in which they could write a letter to amend it to put the fence right on the property line. However, if that was not something he wanted to do he could take out a fence permit right now as long as it had a 5 foot setback. He received the permit and left. After a few days the person who made the permit came to his home and asked him for the permit he had. He was told that it was the wrong permit. The applicant said no. He then came to the office and talked to SuAnn Donovan and she told him that vinyl is wrong. He told her that he was told that vinyl was okay, in fact the placard says that vinyl is okay. By that time he had already purchased 48 panels and posts, 48 - 60lb bag of concrete and piled it up in his garage. The City staff did not care. He received a letter that he was in violation. He submitted all of the paperwork and he was told by SuAnn Donovan to tear down the fence or he could put wood picket on top of the vinyl or

go in front of the Plan and Zoning Commission and ask for amendment. His neighbors on both sides of him has signed a petition that they do not mind the vinyl fence.

Asgdish Fellake 3016 E. Kenyon Avenue stated when they went through the process to appeal or amend it they also had to pay a fee of \$100.00. However that was returned without explanation of why it was returned or what the next process was. After a few years had passed they then received a letter saying they were not in compliance. She explained the reason they chose vinyl fencing in the first place because it was a safety issue for them, something they did not have to maintain. They were not aware of what was done before they purchased the property.

Abay Mingistu pointed out had he known the fencing had to be wood he would have complied, it would have been a lot cheaper. But he was given the wrong information and even though he received a verbal apology the financial burden and the labor is on him.

CHAIRPERSON OPENED THE PUBLIC HEARING

There was no one to speak in favor or in opposition of the applicant's request.

CHAIRPERSON CLOSED THE PUBLIC HEARING

Mike Simonson stated he is going to move to allow the fence to remain. It is unfortunate that mistakes are made. He states there are so many variables and he does not fault anybody. He believes the applicant has gone through enough.

Will Page commented that looking at the photograph of the area in terms of the houses themselves vary in terms of their fencing. So he will support Commissioner Simonson's motion.

COMMISSION ACTION:

Mike Simonson made a motion to approve a 3rd Amendment to the Easter Lake Estates PUD Conceptual Plan to allow retention of a 6-foot tall solid vinyl material fence in lieu of the permitted 6-foot tall solid wood material fence within 5-feet of the right-of-way line along Easter Lake Drive.

Motion passed 9-0.

Respectfully submitted,



Erik Lundy, AICP
Senior Planner

EML:clw

Attachment

Abay Mengistu (owner) for property located at 3016 East Kenyon Avenue				File #	
				ZON2015-00011	
Description of Action	Approval for a 3rd Amendment to the Easter Lake Estates PUD Conceptual Plan to allow retention of a 6-foot tall solid vinyl material fence in lieu of the permitted 6-foot tall solid wood material fence within 5-feet of the right-of-way line along Easter Lake Drive.				
2020 Community Character Plan	Current: Medium-Density Residential. Proposed: N/A				
Horizon 2035 Transportation Plan	No planned improvements.				
Current Zoning District	"PUD" Planned Unit Development District.				
Proposed Zoning District	N/A.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Inside Area	8	0			
Outside Area					
Plan and Zoning Commission Action	Approval	9-0	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X



1 Inch = 96 feet

Item ZON2015-00011

Date 02/12/15 29
applicant

I (am) (am not) in favor of the request.

(Circle One)

Print Name Abay & Asgdish

Signature [Handwritten Signature]

Address 3016 e Keryon ave

Reason for opposing or approving this request may be listed below:

We are approving Vinyl because
its looks good, maintainance free
and inirromental fr-endly.

Item ZON2015-00011

Date 2/10/15

I (am) (am not) in favor of the request.

(Circle One)

Print Name Coralie Heiser

Signature Coralie Heiser

Address 3000 E Kenyon Ave, DSM

Reason for opposing or approving this request may be listed below:

We already signed paperwork over a year ago approving this. Let them keep their fence for the safety & protection of their family.

Item ZON2015-00011

Date 2-9-15

I (am) (am not) in favor of the request.

received after PR2

RECEIVED

COMMUNITY DEVELOPMENT

Print Name Jeffrey Dimmer

Signature Jeffrey Dimmer

FEB 27 2015

Address 3015 E. Kenyon Ave

DEPARTMENT

Des Moines IA 50320

Reason for opposing or approving this request may be listed below:

Item ZON2015-00011

Date

2/12/15

29

(am) (am not) in favor of the request.

(Circle One)

Print Name

Sharon + Andrew Clark

Signature

[Signature]

Address

5400 SE 30th St. Am 50322

Reason for opposing or approving this request may be listed below:

I don't see how a solid vinyl fence is any different than a solid wood fence. If consistency is the problem, how is a vinyl fence different than one person having a 6-ft wood fence & their neighbor 4-ft black chain link?

Item ZON2015-00011

Date

2-15-15

(am) (am not) in favor of the request.

(Circle One)

Print Name

Michael F Beck

Signature

[Signature]

Address

5300 SE 31st STREET

Reason for opposing or approving this request may be listed below:

I have no issues with the vinyl fence at 3016 E. Kenyon Ave. Its straight and clean, unlike a wooden fence that rots, warps, or fades. Like most wooden fences in the neighborhood that goes unrepaired.

Item ZON2015-00011

Date 2-11-15

I (am) (am not) in favor of the request.

(Circle One)

Print Name Kevin & Suzanne VanVeen

Signature [Handwritten Signature]

Address 309 E. Kenyon DSM

Reason for opposing or approving this request may be listed below:

I have no problem with the
Mengistie^{family} having the left solid
vinyl fence. It looks very nice
and does not affect line of
vision when driving on Easter Lake Dr

Item ZON2015-00011

Date 3/16/2015

I (am) (am not) in favor of the request.

(Circle One)

Print Name John Wade's / Sue Morgan

Signature [Handwritten Signature]

Address 5301 SE 31st St

Reason for opposing or approving this request may be listed below:

ABSOLUTELY APPROVE. The Mengistie's fence is
the best looking / most appealing in the
neighborhood. We hope they won't be penalized
for not getting pre-approval. They probably
weren't told about Easter Lake covenants. We weren't.

Item ZON2015-00011

Date 2/10/15 29

I (am) (am not) in favor of the request.

(Circle One)

Print Name

Darnehl Jones

Signature

[Signature]

Address

3006 E. Kenyon Ave Des Moines, IA

Reason for opposing or approving this request may be listed below:

I approve of my neighbor, Abay Mengistu,
to retain his 6 foot tall vinyl fence. It has
brought a certain level of beauty to neighborhood.

Item ZON2015-00011

Date 2-11-13

I (am) (am not) in favor of the request.

(Circle One)

Print Name

Kathleen Pearce

Signature

K. Pearce

Address

5300 SE 30th St

Reason for opposing or approving this request may be listed below:

This fence looks much better than the wood fences on
the street. I'd also like to give the homeowner the
benefit of the doubt and assume his intentions were pure
when he put up the fence. Lets show a little bit
of grace here!!

January 20, 2015

Abay Mengistu & Asgdish Fellake
3016 East Kenyon Ave
Des Moines, Ia 50320

Mayor, City of Des Moines
City Council
Planning & Zoning Commission

Subject Code Case Number: CODE2010-06941
Address of Property: 3016 E Kenyon Ave
Parcel Number: 120/01300-854-000

To Whom It May Concern:

I received a notice of violation of municipal code from Planning & Urban Development and I am concerned and confused with the letter. This has been an ongoing problem since September 2010 that I thought was taken care of 2 years ago. It is my intention in describing to you what has taken place in the order of occurrence to try to get to the bottom of this issue.

Prior to September 3, 2010, I visited the office twice and spoke to Mr. Poorman and another employee I don't recall his name but it seemed that he was in charge and provided instruction in regard to allowing the vinyl fence and proceeded given instruction to build the vinyl fence with 5' set back with Mr. Poorman. They explained that I could do the 6 foot vinyl fence with the 5 foot setback. I paid the required fee, but I left the office without obtaining the permit because there were some unanswered questions about the 5 foot setback.

September 3, 2010 – I was given the permit (No. BLD 2010-02031) dated 9/3/10, for construction of 6' Vinyl Fence placed 5' back from the property line at 3016 E Kenyon, with the name of Bob Knudson phone number 237-1412. I left the office under the impression that I have the proper permit to start the fence construction... I did find out later (after the fence was constructed that it was not the proper permit).

September 3, 2010 – I purchased all the necessary materials needed for construction in accordance with the building permit I had in my hand, which was for a 6' Vinyl Fence.

September 4, 2010 – I started building the fence which took approximately 2 weeks to complete.

Shortly after the completion of the fence I received a check from the Zoning Division of \$100.00, which was the permit refund without explaining the reason why they refund the permit fee. I then received a letter dated 10/13/2010 stating I was in violation by putting up a vinyl fence.

We've spoken to the Community Development Department about the discrepancy multiple times; informing them we were given a permit and told multiple times that vinyl fencing material was not an issue.

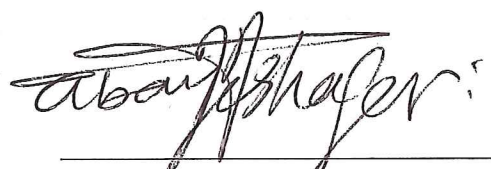
We received no word from the P.U.D. office, giving us the impression the issue had been taken care of. Then we received another letter from them in December 2012. Again we contacted their office to resolve the issue, submitted another letter along with all necessary documents as requested to have the problem resolved.

Again, we heard nothing from their office until we received a letter dated 12/11/2014, which was two years later. We are asking again for an administrative amendment to the P.U.D. requirements that would allow a vinyl fence. The purchasing of the vinyl fence was \$3,200.00 with 2 weeks to install it and now to take down the current fence and purchase the materials to put up a wooden fence would create a financial hardship on my family.

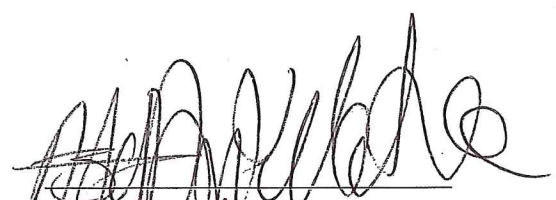
Attached you will find a petition signed by our neighbors in support of the variance we are requesting, a copy of the building permit in which we was supplied with on 9/3/2010, "Stop work" warning notice and copy of receipt for previous payment and refund dated 09/23/2010. We have also included with this letter and attachments with pictures of the fence and there is another \$110.00 enclosed to P.U.D conceptual plan amendment.

Thank you, for your consideration in this matter.

Sincerely,



01/20/15



01/20/15

Abay Mengistu & Asgdish Fellake
3016 East Kenyon Ave
Des Moines, Ia 50320