



Roll Call Number

Agenda Item Number

16-1000

61B

Date June 13, 2016

RESOLUTION HOLDING PUBLIC HEARING ON APPEAL BY NICHOLAS S. BUSSANMASS, LLC OF THE DENIAL OF A PRELIMINARY PLAT "WINTERFELL" ON PROPERTY LOCATED AT 3816 JOHN LYNDE ROAD

WHEREAS, on April 25, 2016, by Roll Call No. 16-0669, the City Council received a communication from the Plan and Zoning Commission advising that at a public hearing on April 7, 2016, the Commission voted 11-1 for DENIAL of a request from Nicholas S. Bussanmass, LLC (owner) represented by Nicholas Bussanmass (officer), for review and approval of a Preliminary Plat "Winterfell" on property located at 3816 John Lynde Road; and

WHEREAS, Nicholas S. Bussanmass has timely appealed to the City Council pursuant to Ordinance No. 15,481, seeking to have the determination of the Plan and Zoning Commission overturned; and

WHEREAS, on May 9, 2016, by Roll Call No. 16-0766, it was duly resolved by the City Council that said appeal be set down for hearing on June 13, 2016 at 5:00 p.m. during the City Council meeting at the Municipal Services Center; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said appeal; and

WHEREAS, in accordance with said notice, those interested in said appeal, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that upon due consideration of the facts and any statements of interested persons and arguments of counsel, any and all arguments and objections to the Plan and Zoning Commission denial of a Preliminary Plat "Winterfell" on property located at 3816 John Lynde Road, as appealed by Nicholas S. Bussanmass, LLC (owner), to allow subdivision for residential purposes, are hereby received, and the public hearing on the appeal and proposed preliminary subdivision plat is closed.

MOVED BY Hensley to DENY the proposed Preliminary Plat "Winterfell" as requested by Nicholas S. Bussanmass, LLC, and to make the following findings of fact and objections regarding the proposed preliminary subdivision plat:

- a. In accordance with Iowa Code Section 354.8, the City Council is charged with considering the possible burden on public improvements and balancing interests between the appellant, future purchasers, and the public interest in reviewing proposed subdivision plats, and the Council finds that the Preliminary Plat "Winterfell" would create a burden on the City's stormwater management system and the surrounding neighborhood that outweighs the interest of the developer and future purchasers of the subject property.
b. The Preliminary Plat "Winterfell" does not meet the requirements of Des Moines Municipal Code Section 106-3(b), which states that "land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire and flood and shall not be subdivided until adequate utilities, drainage, streets and similar improvements exist or are satisfactorily provided."

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- c. The Preliminary Plat "Winterfell" is not consistent with the following purposes stated in the City's subdivision ordinance (Municipal Code Chapter 106): (i) to "protect and provide for the public health, safety, and general welfare of the city"; (ii) to "secure safety from ... flooding"; (iii) to "ensure the adequacy of drainage facilities; safeguard the water table; and encourage the wise use and management of natural resources throughout the city in order to preserve the integrity, stability, and beauty of the community and the value of land"; and (iv) to "provide for due consideration to be given to the preservation of canopied areas and mature trees and to provide for the mitigation of canopied areas and mature trees which are removed for development."
- d. Following public hearing, the City Plan and Zoning Commission voted 11-1 to recommend denial of the Preliminary Plat "Winterfell" on the basis of stormwater management concerns in the general neighborhood and specifically upon the subject property at 3816 John Lynde Road and adjoining properties, and neighborhood opposition to the project.
- e. The proposed subdivision and development of the subject property should not be allowed due to existing stormwater concerns in the area, including the volume of water that currently accumulates and flows through the ravine upon the subject property. The subject property currently acts as a natural watershed, and development thereon may negatively impact this existing stormwater management.
- f. The proposed subdivision and development of the subject property further should not be allowed due to the planned removal of large mature trees on the property, which provide natural stormwater management. Replacement trees are not anticipated to be able to fully compensate for removal of the existing trees, and further erosion of the ravine may occur in the event of mature tree removal on the subject property.

FORM APPROVED:

Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

(13-2016-1.37)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MOORE	✓			
WESTERGAARD	✓			
TOTAL	7			
MOTION CARRIED			APPROVED	

T. M. Franklin Council

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.

Diane Rauh

City Clerk