

Letter 1 of 3

From: Mariella Smith

Sent: Tuesday, October 31, 2017 9:44 AM

To: Lundgren, Johanna <LundgrenJ@hillsboroughcounty.org>

Cc: Gormly, Adam <Gormlya@HillsboroughCounty.ORG>; Hiznay, Tom <HiznayT@Hillsborough-County.ORG>; Kemp, Pat <KempP@hillsboroughcounty.org>; Murman, Sandra <MurmanS@hillsboroughcounty.org>; White, Stacy <WhiteS@hillsboroughcounty.org>

Subject: Chris's Plumbing continuance prohibited in LDC

Good morning Johanna Lundgren,

Chris's Plumbing's November 20 hearing date is inconsistent with the Land Development Code (LDC) requirement that:

“in no case shall the public hearing be continued to a hearing date that is more than six months after the originally scheduled hearing date. If a public hearing is not held on the application within the required time frame, the application shall be withdrawn from processing by the Zoning Administrator.”

(LDC Article X, Sec. 10.02.02., B. 2 AND *repeated verbatim* at Sec. 10.03.02, C. 2)

The “originally scheduled hearing date” was May 15, 2017. Hence, the November 20 hearing would be 5 days past “six months after the originally scheduled hearing date.”

Since Chris's Plumbing was out of order for the Oct. 16 hearing (because of their own fault in failing to properly notice the hearing), there is no other opportunity for them to be heard within six months of their original hearing date, so their proposal must be withdrawn.

They have continued this several times, putting the public through all their delays. Everyone knows the Thanksgiving week hearing date is impossible for some of the most deeply involved citizens who have been involved from the beginning. It is also impossible for some of our expert witnesses to attend, as they will be out of state with family for the Thanksgiving holiday.

It would be unfair for the county to manipulate the Land Development Code to favor of the applicant, not the citizens. The code should be applied literally in all cases to be fair. If the county wants to allow applicants more time than “six months after the originally scheduled hearing date,” then they should change the Land Development Code to say so. As it stands, the LDC literally and legally says Chris's Plumbing must withdraw.

Please let me know if you will hold Chris's Plumbing to this rule and tell them they must withdraw, or if you are going to somehow allow them to proceed on Nov. 20. And if the latter, please explain how November 20 can be legally construed to be within six months of May 15, as specified in the LDC language quoted above.

Thank you,
Mariella Smith

Letter 2 of 3

On Oct 31, 2017, at 4:15 PM, Lundgren, Johanna <LundgrenJ@hillsboroughcounty.org> wrote:

Ms. Smith,
Thank you for your email.

I have reviewed the relevant Land Development Code sections you have referenced. The applicable continuance provision for Special Use applications is Section 10.02.02 (B), which provides that:

“Continuance(s) of the public hearing shall be permitted in accordance with the procedures and requirements set forth in Section 10.03.02, Subsections C, D, E and F. However, in no case shall the public hearing be continued to a hearing date that is more than six months after the originally scheduled hearing date. If a public hearing is not held on the application within the required time frame, the application shall be withdrawn from processing by the Zoning Administrator. The hearing time frame shall not apply to any application that has been reopened or remanded for further hearing.”

The monthly Land Use Hearing Officer hearing is generally set for the third Monday of each calendar month. The Land Use Hearing Officer hearings fall on different dates each month. The six-month hearing deadline in Section 10.02.02 (B) requires a continued hearing to be held within the sixth calendar month following the month that the application was originally scheduled for hearing, irrespective of the relative dates for which the LUHO hearings are scheduled within those months. The fact that the November hearing falls on the 20th day of the month, whereas the originally scheduled May hearing fell on the 15th day of that month, has no bearing on the hearing deadline.

The continuance of the hearing date to November 20 is consistent with the six-month deadline of Section 10.02.02 (B).

Sincerely,

[Johanna Lundgren, Hillsborough County Attorney]

Letter 3 of 3

From: Mariella Smith

Subject: Re: Chris's Plumbing continuance prohibited in LDC

Date: November 1, 2017 at 3:03:53 PM EDT

To: "Lundgren, Johanna" <LundgrenJ@hillsboroughcounty.org>

Cc: "Gormly, Adam" <Gormlya@HillsboroughCounty.ORG>, "Hiznay, Tom" <HiznayT@HillsboroughCounty.ORG>, Pat Kemp <KempP@hillsboroughcounty.org>, "Murman, Sandra" <MurmanS@hillsboroughcounty.org>, "White, Stacy" <WhiteS@hillsboroughcounty.org>, "Moreda, Joe" <MoredaJ@HillsboroughCounty.ORG>

Ms. Lundgren,

Thank you for your prompt response.

It is important to follow the code exactly as it is written for several reasons:

- To save everyone the trouble & expense of legal challenges to zoning decisions.
- To enable the public and applicants to participate in the process easily, following what the code says; without — at every turn — having to get county staff opinions on current interpretations or non-codified policies that might contradict the letter of the law.
- In order for the Land Development Code to be independent of any particular county administration's wish to manipulate the code to suit the agendas of their day.

The policy you describe is sensible, however it is not what the LDC says. The rule (10.02.02 B) refers to two hearing DATES — not two hearing MONTHS. A DATE is a specific day — not a vague reference to any of the days within a month. (See "date" in any dictionary). The LDC says the public hearing DATE shall not be more than 6 months after the originally scheduled hearing DATE. It does not say what you said. It does not say the public hearing must be "before or within the 6th month after the month of the first scheduled hearing date." If the county wants the LDC to say that, they will have to change the code to say that.

As it stands, the SU 17-0510 hearing DATE of Nov. 20 is more than 6 months after the originally scheduled hearing DATE of May 15 — it is 6 months plus 5 days later — and thus is inconsistent with the six-month deadline of Section 10.02.02 (B). This is evident on a normal reading of the actual words in the rule, without any need for strained interpretation of how DATES might be read as MONTHS.

Please place this correspondence into Optix for the case of SU 17-0510, so that this issue will be on the record in that case.

Sincerely,
Mariella Smith