
From: Manny Terminella <mterminella@pacmac.com>
Sent: Monday, October 26, 2020 4:16 PM
To: Paxton, Kara <kapaxton@fayetteville-ar.gov>
Subject: CENG-2020-000007

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern:

I recently received a notice of Grading Permit Violation.

I am writing this email to appeal this violation.

I have owned some of this land since 1983 and have maintained thousands of feet of driveway during this time.

I have owned the parcel cited in the violation since 2012.

This parcel also has thousands of feet of driveway to maintain.

I do not think I need a grading permit because all of the work I have done falls within the exceptions.

169.03 (C) number 6 which reads:

Grading Permits are Not required for the following,

(Other minor fill, clearing or grading for maintenance purposes such as landscaping, yard grading, maintenance, farming, gardens, and similar activities.)

All activity done on my land recently touches on all activities listed under #6.

I have approximately 30 acres (1,250,000 sq ft) of land.

The activity done recently encompassed about 3000 sq ft.

This is about 0.24% of total land.

This land is also not visible to any other land owners,

and is hundreds of feet from any property lines.

Thank You for your consideration on this matter.

Manny Terminella

Thank You

Manny Terminella
Pacmac Inc.
(479)521-0525

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MEETING OF NOVEMBER 17, 2020

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Garner Stoll, Development Services Director
Chris Brown, City Engineer

FROM: Jonathan Ely, Development and Construction Manager

DATE: October 28, 2020

SUBJECT: Appeal of Grading Violation CENG-2020-000007

RECOMMENDATION:

Staff Recommends Denial of Appeal from Manny Terminella related to Notice of Violation CENG-2020-00007, on Parcel 765-13292-001.

BACKGROUND:

On the morning of October 15, 2020, the City Attorney's Office, Sloan Scroggin and Sarah Bunch received an email from a concerned citizen related to construction activities on the undeveloped 20-ish acres between Savanna, Brookbury, Covington, Candlewood and Township. The report mentioned noise from heavy equipment – machinery, backing/beeping noises and dirt trucks hauling on Brookbury. The email went on to request that the city look into the matter.

Kit Williams City Attorney forwarded the message to Chris Brown City Engineer the same morning. As a standard operating procedure, when complaints regarding construction activities are received, city staff researches the area to first determine if there are any active building or grading permits. In this case there were not, so the next step is to start a Code Case, and schedule a Code Officer to perform an inspection and document site conditions. This inspection was performed on the afternoon of October 15th, by Code Compliance. The Code Officer reported back to the engineering department of fill being placed on the site, dump trucks delivering dirt to the site, a dozer leveling out the fill, and some tree's/brush which were placed in piles. Pictures from the inspection were sent to the engineering department the following day, (October 16th) and are included in this memo for reference. That same day, I received a phone call from the property owner, Mr. Manny Terminella. He was given my contact information from the Code Officer and was inquiring about the site visit and if there were any issues. I informed him the filling and land alteration occurring required a Grading Permit, which had not been issued. Later that same day the Notice of Violation was issued to Manny Terminella in an email, requesting he stop work until the necessary permit was obtained.

Following this Notice of Violation, Mr. Terminella contacted both Chris Brown (City Engineer) and Jonathan Ely (Development and Construction Manager) on Monday October 19th inquiring about the violation, and explaining that he had read the code and felt like the work being performed qualified for an exemption listed under 169.03(C)(6) as the fill being placed was minor relative to the size of his property, and he was just trying to maintain his property. We discussed meeting him on his property to review the scope of work in closer detail, and further evaluate if any exemptions could be allowed.

Tuesday, October 20th, Chris and Jonathan received an email from Mr. Terminella informing he could not meet as discussed, and again stated he felt the work being performed was exempt from grading permit activities. Chris Brown replied to the email the following day Wednesday, October 21st, informing Mr. Terminella that a final determination had been made regarding the case, and that it indeed required a grading permit based on the available information. Chris also summarized Mr. Terminella's rights to an appeal of the determination and provided the necessary information, and noting he had 10 days to file the appeal.

Monday, October 26th, City Clerk Treasurer Kara Paxton received an email from Mr. Terminella requesting an appeal of the staff determination for a grading permit and Notice of Violation.

Please see attached emails and Notice of Violation for full details of the correspondence summarized.

DISCUSSION:

Unified Development Code Chapter 169.03 describes requirements related to Physical Alteration of Land. This chapter states that any grading, clearing, filling, excavation or land alteration shall require:

1. Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
2. A grading permit pursuant to this chapter; and
3. An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.

Upon review of the location of the disturbed area, it was determined that an exception to requirement #1 was appropriate as this was a previously developed site, and the work was near an existing house as well as several other miscellaneous buildings. Although the pictures did show some downed trees, it did not appear that any other tree removal would take place, nor was the property impacted by floodplain.

Upon review of requirement #2 Grading permit, staff researched the possible exemptions listed in 169.03(C),

Exceptions to Permit Requirements. Grading permits are not required for the following:

1. *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
2. *Cemetery Graves.* Cemetery graves.
3. *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
4. *Single-Family/Duplex.* Construction of up to two (2) single-family residences on a single lot, or duplex unless located within the Hillside/Hilltop Overlay District per §169.03(B) above.
5. *Building Additions.* Building additions of less than 2,000 square feet located within the Hillside/Hilltop Overlay District per §169.03(B) above.
6. Other minor fill, clearing or grading for maintenance purposes such as landscaping, yard grading, maintenance, farming, gardens, and similar activities.

Items 1-5 do not apply to this situation, and a determination must be made on item #6. The words, “minor fill, clearing or grading” are interpreted to mean those activities that are done without the use of heavy construction equipment, as the examples provided in code are landscaping, yard grading, maintenance, farming gardens and similar activities. However, in this instance heavy construction equipment was being used to spread and compact multiple dump truck loads of fill material. Thus, a staff determination was made that this work did not meet the intent of exemption #6 as “minor fill”, and a grading permit is required.

BUDGET/STAFF IMPACT:

None

Attachments:

Vicinity Map

Site Map

Pictures from Site Inspection by Code Compliance October 15, 2020

Grading Violation CENG-2020-000007

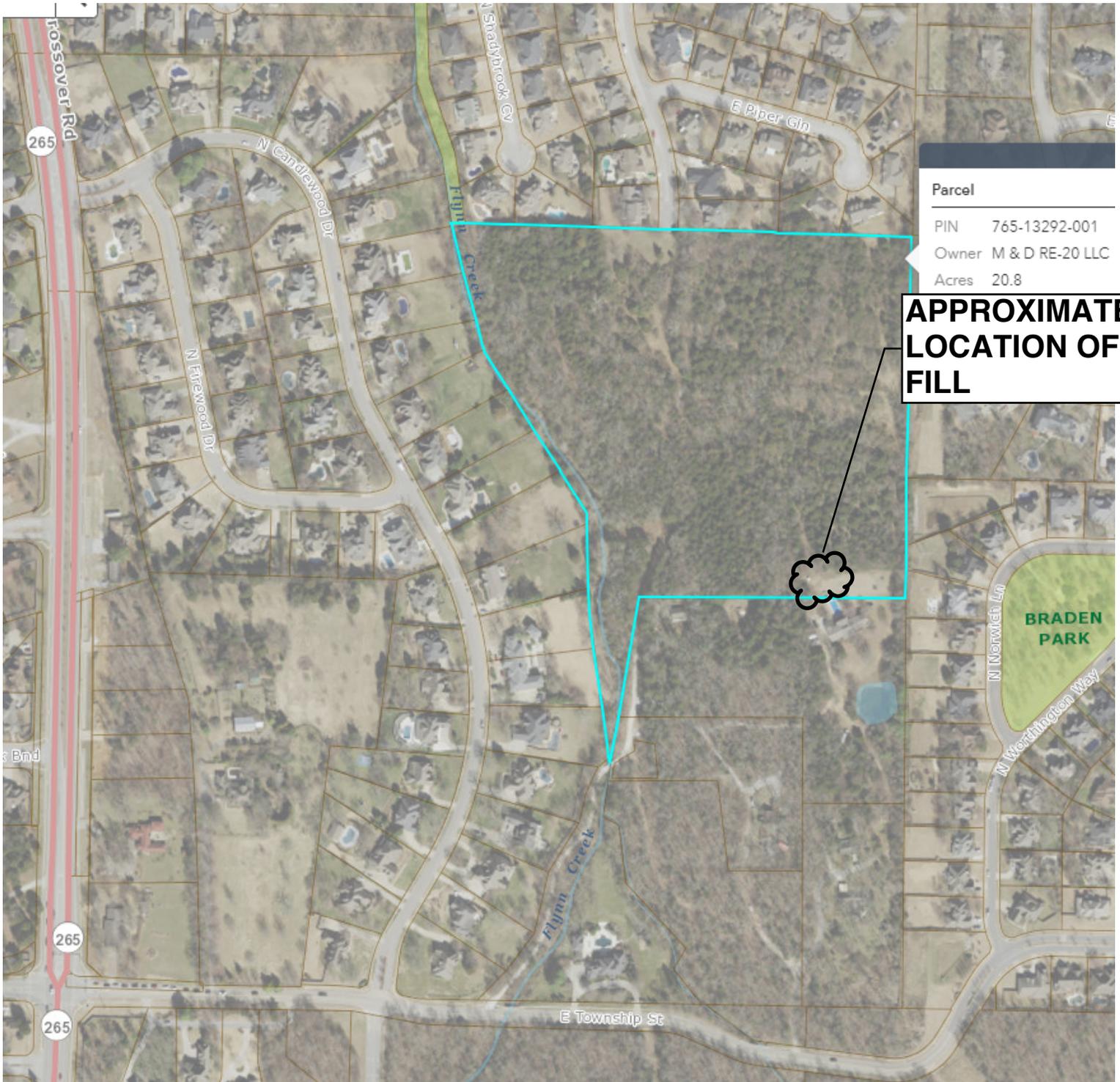
Email Correspondence between City Staff and Manny Terminella

Email requesting appeal from Manny Terminella

VICINITY MAP



SITE MAP









10.15.2020 13:59



10.15.2020 14:13







CITY OF FAYETTEVILLE

125 West Mountain Street
Fayetteville, AR 72701

Case Number: **CENG-2020-000007**

**Violation
Notice**

Case Type: **Engineering**

Date Case Established: **10/14/2020**

Owner: Manny Terminella

Mailing Address

3180 E Township St
Fayetteville, AR 72703

Notice of Violation for the following location:

Address

Parcel

765-13292-001

Dear Property Owner:

It appears that your property contains a violation of the Fayetteville Unified Development Ordinance. It is our goal to notify and assist property owners to correct violations of city ordinances before taking actual enforcement actions. If you need clarification of this notice or advice on how to correct the problem, please contact us.

Violation That Needs Correction: 169.03 - Grading Permit Violation - Grading Permit Required Violation

169.03 - Permits Required/Exceptions

(A) Permit Required. Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require: (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform; (2) A grading permit pursuant to this chapter; and (3) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.

Possible Penalties:

"10.99 - General Penalty

(A) Maximum penalties permitted. (2) If a thing prohibited or rendered unlawful is, in its nature, continuous in respect to time, the fine or penalty for allowing the continuance thereof, in violation of the bylaw or ordinance, shall not exceed \$250.00 for each day that it may be unlawfully continued."

How This Violation Can Be Voluntarily Corrected: Obtain necessary Permits

Sincerely,

Jonathan Ely
Development and Construction Manager
479.444.3424
jely@fayetteville-ar.gov



10.15.2020 13:56



10.15.2020 13:55



10.15.2020 13:59

169.03 - Permits Required/Exceptions

- (A) *Permit Required.* Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:
- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
 - (2) A grading permit pursuant to this chapter; and
 - (3) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.
- (B) *Residential Grading Permit Required.* When located within the Hillside/Hilltop Overlay District boundaries:
- (1) Construction of up to two (2) single-family residences or a duplex on a single lot shall require a grading permit;
 - (2) Residential building additions of 2,000 square feet or more on a single lot shall require a grading permit;
 - (3) Residential building additions of less than 2,000 square feet where associated land alteration activities are not beyond the scope of what is necessary to construct said addition and no trees are impacted do not require a grading permit;
 - (4) Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary.
- (C) *Exceptions to Permit Requirements.* Grading permits are not required for the following:
- (1) *Excavation Below Finish Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.
 - (2) *Cemetery Graves.* Cemetery graves.
 - (3) *Refuse Disposal.* Refuse disposal sites controlled by other regulations.
 - (4) *Single-Family/Duplex.* Construction of up to two (2) single-family residences on a single lot, or duplex unless located within the Hillside/Hilltop Overlay District per §169.03(B) above.
 - (5) *Building Additions.* Building additions of less than 2,000 square feet located within the Hillside/Hilltop Overlay District per §169.03(B) above.
 - (6) Other minor fill, clearing or grading for maintenance purposes such as landscaping, yard grading, maintenance, farming, gardens, and similar activities.
- (D) *Grading Permit Application and Approval.* No grading permit shall be issued until the grading plan, endorsed by a landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.
- (E) *Permit Posted.* A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.

(Code 1991, §161.03; Ord. No. 3551, 6-5-91; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98; Ord. No. 4313, 5-15-01; Ord. No. 4855, 4-18-06; Ord. No. 5336, 8-3-10; Ord. No. 5702, Repealed & Replaced Chp. 169, 8-5-14; Ord. No. 5945, §18, 1-17-17; Ord. No. 6061, §4, 4-17-18)

CHAPTER 153: - ENFORCEMENT

153.01 - Complaints

All complaints of violations of the UDC may be submitted in writing to the appropriate administrator and shall state the location and the nature of the alleged violation. Upon receipt, the alleged violation shall be investigated and appropriate action taken.

(Code No. 1965, App. A., Art. 14; Ord. No. 1747, 6-29-70; Code 1991, §160.198; Ord. No. 4100, §2 (Ex. A.), 6-16-98)

153.02 - Right Of Entry And Inspection

- (A) *Tree Preservation and Protection.* The Landscape Administrator shall have the right to inspect the sites within the city involving tree preservation plans, tree preservation in rights-of-way and public grounds, significant trees that constitute a hazard or a threat, and trees involving variance requests, or as otherwise required under the Code of Fayetteville.
- (B) *Physical Alteration of Land.* In applying for a grading permit, the applicant shall be deemed to have consented to an inspection to determine whether construction is proceeding according to the grading plan.
- (C) *Manufactured homes.* The Health Officer shall have the power to enter at reasonable times upon any manufactured home park for the purpose of inspecting and investigating conditions relating to the enforcement of Chapter 175, or of regulations promulgated thereunder.

(Code 1965, §13B-6; Ord. No. 1859, 3-20-72; Code 1991, §§156.071(B), 161.14, 162.08; Ord. No. 3551, 6-4-91; Ord. No. 3699, §8, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 4100, §2 (Ex. A.), 6-16-98)

153.03 - Liability

- (A) *Owner of Record.* The owner of record of any real property or appurtenance thereto, who participates in, assists, directs, creates, or maintains any situation in violation of the UDC may be held liable for the penalties or remedies ascribed herein.
- (B) *Others.* Tenants, occupants, architects, builders, contractors, agents or other persons, who participate in, assist, direct, create, or maintain any situation in violation of the UDC may be held liable for the penalties or remedies ascribed herein.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.04 - Notice Of Violation

- (A) *Content.* When an owner or other person participates in, assists, directs, creates, or maintains any situation in violation of the UDC, a notice of violation shall immediately be issued to the person liable and shall contain the following:
 - (1) The name of person liable (owner of record or others).
 - (2) The street address, when available, or a description of the building, structure, or land where the violation is occurring.
 - (3) A statement specifying the nature of the violation.
 - (4) A description of the remedial actions necessary to bring the development activity into compliance with the UDC, and a time schedule for the completion of such remedial actions.
 - (5) A statement of the penalty, or penalties that shall or may be assessed against the person(s) to whom the notice is directed.
 - (6) A statement that an appeal may be filed.
- (B) *Service.* The violation notice shall be served either personally or by certified mail, postage prepaid, return receipt requested.

(Code 1965, §17B-7(a); Ord. No. 1893, 12-19-72; Ord. No. 2934, 8-2-83; Ord. No. 2948, 9-20-83; Ord. No. 3298, 10-6-87; Code 1991, §§158.34, 163.12; Ord. No. 3895, §1, 6-20-95; Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.05 - Emergencies

If a violation exists that poses a danger to the public health, safety, or welfare, or which requires immediate action to prevent irreparable damage, the city may invoke any of the penalties, remedies, revocation of permits or stop work orders as authorized by the UDC without service of a written notice.

(Code 1991, §163.12 (A); Ord. No. 3895, §1, 6-20-95; Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.06 - Remedial Work

(A) *Remedial Work.*

(1) *General.* When a violation notice has been served, remedial work shall begin, as directed, within forty-eight (48) hours.

(2) *Signs.* When a violation notice has been issued, the sign shall be removed within 30 days.

(B) *Lien.* If remedial work is not undertaken and completed as described in the violation notice, within the prescribed time period, the city is hereby authorized to enter upon the property and take necessary actions to correct or remove the conditions described in the notice. The costs of correcting said condition shall be charged to the owner, and the city shall have a lien against such property for such costs.

(C) *Permit Revocation.* If remedial work is not undertaken as directed by the violation notice, any or all development related permits may be revoked.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.07 - Stop Work Order

(A) *Remedial Work.*

(1) A stop work order may be issued if remedial work is not being undertaken.

(2) When the city has performed remedial work, a stop work order shall be issued and shall remain in effect until payment has been received for the work performed.

(B) *Failure to Obtain Permit or Plan.* A stop work order may be issued for all work being performed without required permits or plans.

(C) *Noncompliance/Tree Preservation Plan.* The Landscape Administrator may issue a stop work order directing the parties involved to cease and desist all work which does not comply with the tree preservation plan.

(Code 1991, §§161.20(A), (B), 163.12(A)(2); Ord. No. 3551, 6-4-91; Ord. No. 3895, §1, 6-20-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98)

153.08 - Miscellaneous Remedies

(A) *Garage Sale Signs.* Any signs not removed the following day or located in the public right-of-way may be removed by the city staff and for any such removal; a collection fee of up to \$25.00 per sign shall be imposed.

(B) *Occupancy Without Certificate of Occupancy.* The Building Official shall have the right, after notice is given, to disconnect the water service to a building, if occupied before a certificate of occupancy is issued or if all law, ordinances, and code violations are not remedied and inspected as approved.

(C) *Noncompliance with Tree Preservation and Protection Standards, Specifications and Guidelines.* Noncompliance with the standards, specifications and guidelines outlined herein, as well as those set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual, shall result in the following actions being taken:

(1) *First Violation.* Warning issued and repeat educational workshop.

(2) *Second Violation.* Suspension of certificate for thirty (30) days.

(3) *Third Violation.* Revocation of certificate.

Should a violation result in the revocation of an individual's certificate, such individual shall have the right to reapply for a commercial tree pruner/service certificate after thirty (30) days. Attendance at the educational workshop is required prior to reissue of such certificate.

(D) *Subdivision Regulations.* In order to carry out the purposes of these regulations and to assure an orderly program of development after the effective date of these regulations:

(1) *Plat Not Accepted for Filing.* No plat of any tract of land within the planning area jurisdiction of the Planning Commission shall be accepted by the County Recorder for filing unless the plat has been approved by the Planning Commission.

(2) *No Metes and Bounds Conveyance.* No conveyance by metes and bounds of tracts coming under the definition of subdivision without compliance with the applicable provisions of §166, or amendments thereto, shall be permitted. This provision is aimed at preventing any attempt to circumvent these regulations by conveying by metes and bounds without taking the necessary steps for filing an approved plat.

- (3) *No Dedication of Streets.* No dedication of streets shall be accepted by the city unless the use of the adjoining affected land is shown purpose of opening the street is to make the affected land available for sale as a subdivision, the street may not be accepted until accepted by the required plat.
- (4) *No Building Permit.* No building permit shall be issued for construction of any building, no person, firm, or corporation shall sell or offer for any lot, no water, sewer, gas, or electric service shall be extended to serve any structure on any lot, nor shall any land be accepted for dedication by the County Recorder unless:
- The lot, building, or structure was established before July 6, 1970.
 - The lot is part of a subdivision approved by the Planning Commission.
 - A variance has been granted under the provisions of Chapter 156.
- (E) *Sexually Oriented Business.* A person who operates or causes to be operated a sexually oriented business in violation of §163.12 will be subject to a suit for injunction as well as prosecution for criminal violations.
- (F) *Manufactured Homes and Manufactured Home Parks.*
- Inspection/Notice.* Whenever, upon inspection of any manufactured home park, the enforcement officer finds that conditions or practices exist which are in violation of any provision of Chapter 175, the enforcement officer shall give notice in accordance with Chapter 157. At the end of the specified period, the enforcement officer shall reinspect such manufactured home park, and if such conditions or practices have not been corrected, he shall suspend the applicable permit or permits and give notice to the person to whom the permit is issued. Upon receipt of notice of suspension, regardless of whether a building permit or an operator's permit may be involved, the operator of such manufactured home park shall cease operation of such park.
 - Emergency Order.*
 - When the Health Officer finds that an emergency exists which requires immediate action to protect the public health, he/she may, without notice of hearing, request the enforcement officer to issue an order reciting the existence of such an emergency and requiring that such action be taken as he/she may deem necessary to meet the emergency including the suspension of the permit. Notwithstanding any other provisions of Chapter 175, such order shall be effective immediately.
 - Any person to whom such an order is directed shall comply therewith immediately.
- (G) *Signs.*
- Removal of Nonconforming, Dilapidated or Dangerous Signs.*
 - If the Zoning and Development Administrator shall find that any sign or the sign supporting structure is unsafe or insecure, is a menace to the public, is abandoned or maintained in a dilapidated condition, or has been constructed or is being maintained in violation of the provisions of Chapter 174 or other provisions of the Unified Development Code, the Administrator shall give written notice of the violation or problem to the sign permittee or owner of the property on which the sign is located. The notice shall require removal of the sign and/or structure within seven (7) days. If the permittee or owner fails to remove or alter the sign or sign supporting structure so as to comply with the standards set forth in Chapter 174 within seven (7) days of the receipt of said notice, the city may remove or alter such sign or sign supporting structure to comply with the Unified Development Code. All expense incidental to such removal or alteration shall be charged to the owner of the property upon which the sign is or was located and shall constitute a lien upon the property.
 - Summary Removal of Signs and sign Supporting Structures Which Constitute an Immediate and Substantial Peril.*
 - The Zoning and Development Administrator may cause any sign or sign supporting structure which is an immediate and substantial peril to persons or property to be removed summarily without notice. Such signs or other sign supporting structures are hereby declared to be a public nuisance. When any sign or sign supporting structure is removed summarily without notice, the owner or lessee thereof shall have the right to be heard at the post-seizure administrative hearing before the Planning Commission to determine whether there was probable cause to remove the sign summarily.
 - The Planning Commission may affirm the Zoning and Development Administrator's decision and place a lien upon the property for the city's expense in removing the sign and/or structure or it may order the city to replace the sign and/or structure at the city's expense if it determines that there was no substantial and immediate peril justifying summary removal of the sign or sign structure.
 - Removal of Sign After Business Cessation for Sixty (60) days.*
 - If a property owner fails to remove the sign and/or nonconforming sign supporting structure of the business that has ceased operation for a period of time in excess of sixty (60) days, the Zoning and Development Administrator shall issue a written

notice to the sign permittee and to the property owner, which notice shall state that such sign and/or nonconforming sign supporting structure must be removed within seven (7) days. If the sign permittee owner or property owner fails to comply with such written notice to remove, the Zoning and Development Administrator is hereby authorized to cause removal of such sign and/or nonconforming sign supporting structure, and any expense incidental to such removal shall be charged to the owner of the property upon which the sign and/or nonconforming sign supporting structure is located and shall constitute a lien upon the property.

- (H) *Sidewalks.* If the owner of any property shall fail, or refuse to comply with the provisions of §171.12, the city may contract with some suitable person for the construction, reconstruction, or repair of such sidewalk, on the best terms that can be made, after giving reasonable notice to such owner or the agent in charge of said property of an intention to do so, and the city may pay said person for said construction, reconstruction, or repairing the same. The amount so paid by the city, together with 6% penalty added thereto, shall constitute a charge against the owner of said property and shall be a lien of said property from the date of the commencement of said work.
- (I) *Zoning.* Noncompliance with the provisions of Chapters 160 through 161 shall result in the following actions being taken:
- (1) *Notification.* A notice of violation shall be made in accordance to §153.04 Notice of Violation.
 - (2) *Prosecutor's Office.* Should noncompliance continue after initial notification, the Zoning and Development Administrator shall forward the violation to the Prosecutor's Office for further action.

(Code 1965, §§13A-42, 17B-4(c), 17B-7(a), App. C., Art. V. §D; Ord. No. 1509, 8-8-66; Ord. No. 1847, 1-17-72; Ord. No. 1893, 12-19-72; Ord. No. 2790, 1-18-82; Ord. No. 2934, 8-2-83; Ord. No. 2948, 9-20-83; Ord. No. 3298, 10-6-87; Code 1991, §§156.019, 158.135, 159.67, 118.04; Ord. No. 4024, §5, 3-18-97; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4972, 1-16-07; Ord. No. 5296, 12-15-09).

153.09 - Appeals

See Chapter 155, Appeals.

153.10 - Penalty

- (A) *General Penalty.*
- (B) *Other Lawful Action.* Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation of the UDC.

(Code No. 1965, §§1-5, 17B-13, 18-47; Ord. No. 1725, 1-8-70; Ord. No. 1893, 12-19-72; Ord. No. 2128, 7-15-75; Ord. No. 2647, 7-15-80; Ord. No. 2655, 8-5-80; Ord. No. 2725, 5-19-81; Code 1991, §§98.99(A), (B), 158.99, 161.18, 162.99, 163.12; Ord. No. 3551, 6-4-91; Ord. No. 3699, §12, 4-20-93; Ord. No. 3895, §1, 6-20-95; Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.11—153.99 - Reserved

CHAPTER 155: - APPEALS

155.01 - Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04))

155.02 - Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

- (A) *Form.* All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error.
- (B) *Time.*
- (1) *Appeals.* Appeals shall be submitted within ten (10) working days from the date of the final action taken.
 - (2) *Hearings.* The entity hearing the appeal shall fix a reasonable time for hearing an appeal.
- (C) *Place.* Appeals shall be filed with the following:
- (1) *City Clerk.* Appeals made to the City Council shall be filed with the City Clerk.
 - (2) *Zoning and Development Administrator.* Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.
 - (3) *Building Safety Division Director.* Appeals made to the Board of Adjustment, [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

155.03 - Stay

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

155.04 - Alderman Appeal On Behalf Of Resident

An alderman may bring an appeal on behalf of any resident of the city a decision by the Planning Commission to approve or deny the requests as set forth below.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09)

155.05 - Appeals From Planning Commission Decisions

(A) *Appeals to City Council.*

- (1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests, in accordance with the procedures set forth in §155.02.
 - (a) Annexation
 - (b) Rezoning
 - (c) Planned Zoning District

- (d) Subdivision (preliminary plat, final plat, concurrent plat, lot split)
- (e) Large scale development
- (f) Vacation of utility easement, access easement, public right-of-way
- (g) Commercial Design Standards
- (h) Tree Preservation Plan
- (i) Variances and waivers of the UDC

(2) *Conditions of Approval.* An owner of record may appeal the conditions of approval determined by the Planning Commission for any of the requests listed in (A)(1).

(3) *Conditional Use Request.* Three (3) aldermen, two (2) of whom must reside in the effected ward, may in unison appeal a decision by the Planning Commission approving or denying a conditional use request.

(B) All other decisions by the Planning Commission must be appealed to Circuit Court.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4334, 9-4-01; Ord. No. 4340, 10-2-01)

155.06 - Appeals From Staff Interpretations/Actions

(A) *Appeals to City Council.* The following staff interpretations/actions may be appealed to the City Council by an owner of record of the property in question or an alderman on behalf of a resident of the city:

(1) *Zoning and Development Administrator.*

- (a) *Design Overlay District requirements.* The decision of the Zoning and Development Administrator not to exempt property from the Design Overlay District requirements as allowed in §161.28(G).
- (b) *Development Matters.* An interpretation or decision of the Zoning and Development Administrator regarding development matters, including subdivisions, large scale developments, parking and loading, and outdoor lighting may appeal.

(2) *City Engineer.*

- (a) *Stormwater, Drainage, and Erosion Control Requirements.* The decision of the City Engineer to issue a violation notice related to these requirements.
- (b) *Development Matters.* An interpretation or decision of the City Engineer regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems may appeal.
- (c) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the City Council shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
- (d) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.

(3) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.

(4) *Impact Fee Administrator.* Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159 Fees.

(B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or an alderman on behalf of a resident of the city to the Board of Adjustment:

(1) *Zoning and Development Administrator—Zoning.* An interpretation or decision of the Zoning and Development Administrator regarding zoning matters may appeal.

(2) *Building Safety Division Director—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Division Director, made in the administration of Airport Zone, Chapter 165, may appeal.

(C) *Appeals to the Planning Commission.*

(1) Required Dedications and Improvements.

- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, development permit, or otherwise within 10 days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications and improvements meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."

(2) Administrative Approvals.

- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Zoning and Development Administrator regarding development matters that are approved administratively, as required by Chapter 166.02(C) may appeal the decision to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
 - (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
- (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.

(D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.

(Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162..03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No.3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93, Ord. No. 3806, §1, 6-28-94; Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. No. 4652, 12-07-04; Ord. No. 5206, 12-16-08; Ord. No. 5296, 12-15-09; Ord. 5390, 3-1-11)

155.07 - Appeals To The Housing Board—Mobile Homes And Mobile Home Parks

- (A) *Permit Denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.
- (B) *Permit Suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.
- (C) *Petition Deadline.* When no petition for hearing shall have been filed within ten (10) days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten (10) days.

(Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Ex. A), 6-16-98)

(Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04).

155.08 - Appeals From The Construction Board Of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. No. 5019, 5-15-07)

155.09—155.99 - Reserved

EMAIL OCTOBER 15, 2020

Ely, Jonathan

From: Brown, Chris
Sent: Thursday, October 15, 2020 9:07 AM
To: Pugh, Alan; Ely, Jonathan
Subject: FW: Help with Terminella property behind my house

Not sure how you are processing these complaints these days, but please have someone look in to this and let me know what you find out.

Chris

-----Original Message-----

From: Williams, Kit <kwilliams@fayetteville-ar.gov>
Sent: Thursday, October 15, 2020 9:01 AM
To: 'Eva Madison' <eva.dave@cox.net>; Bunch, Sarah <ward3_pos2@fayetteville-ar.gov>; Scroggin, Sloan <ward3_pos1@fayetteville-ar.gov>
Cc: Brown, Chris <cbrown@fayetteville-ar.gov>; Pugh, Alan <apugh@fayetteville-ar.gov>; Pennington, Blake <bpennington@fayetteville-ar.gov>
Subject: RE: Help with Terminella property behind my house

All,

I am forwarding Eva's information to our Engineering Department that handles grading and drainage issues. I should note that I do not believe this area is zoned for extraction, but I will leave it up to Engineering to bring in Planning if a zoning issue is involved.

Kit

-----Original Message-----

From: Eva Madison <eva.dave@cox.net>
Sent: Thursday, October 15, 2020 8:34 AM
To: Bunch, Sarah <ward3_pos2@fayetteville-ar.gov>; Scroggin, Sloan <ward3_pos1@fayetteville-ar.gov>; City_Attorney <city_attorney@fayetteville-ar.gov>; Williams, Kit <kwilliams@fayetteville-ar.gov>
Cc: Eva Madison <eva.dave@cox.net>
Subject: Help with Terminella property behind my house

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sarah, Sloan, and Kit,

I live in Candlewood, and the Terminella family owns the land behind my house, which is the undeveloped 20-ish acres between Savanna, Brookbury, Covington, Candlewood, and Township. I can hear heavy equipment back there - machinery, backing/beeping noises, etc. I heard it this morning just in the past hour. The only street access to the land is the dead-end in Brookbury. A friend in Brookbury says there have been big dirt trucks back and forth in their neighborhood in recent days. You all may also know that the County has been dealing with Tom Terminella's dirt pit out Wedington on Harmon Road. The conditional use permit was denied, but he has continued to haul dirt. It definitely makes me wonder if the two issues are related.

I would appreciate it if the City would look into this. Normally, I wouldn't include Kit on what seems to be a compliance or planning issue, but knowing the parties involved, I thought that was advisable here.

Thanks for your help.

Eva

479-283-9229
2600 Candlewood, 72703

EMAIL OCTOBER 16, 2020

Ely, Jonathan

From: Ely, Jonathan
Sent: Friday, October 16, 2020 2:56 PM
To: manny@pacmac.com
Cc: Brown, Chris; Carver, David; Thomas, Brian; Rowden, David; Sherrets, Kristin
Subject: Notice of Violation - Parcel 765-13292-001
Attachments: NOV - CENG-2020-000007.pdf

Hi Mr. Terminella,

Following up on our phone conversation this morning, attached is the letter of violation documenting the code violation on this parcel. Please note work on this property should stop and no further fill should be placed or grading activities performed until an a Grading Permit is obtained. Due to requirements of 169.03, it will be necessary to also submit a development plan through the planning office showing your intent for development, or request a variance of that requirement from the planning commission. In talking with Jonathan Curth from the planning office, depending on your intent here, it may make the most sense to submit a variance request. Unless you have larger development plans, which didn't seem to be the case from what you described to me. Once that development approval or variance is granted, you could then apply for a permit through our Citizen Self-Service portal. I've provided information on how to do that in the links below.

<https://www.fayetteville-ar.gov/149/Development-Services> - This is the main development service page on the website, it provides information related to different divisions, as well as requirements and processes for permitting and approvals.

<https://www.fayetteville-ar.gov/3942/About-EnerGov> - This is a summary page about our new permitting software EnerGov you can use to apply for and manage permits.

[169.07 - Grading Plan Specifications](#) - This is a link to the grading plan requirements that will need to accompany your submittal.

Please let me know if you have any questions about how to resolve the violation and obtain proper permits. I've copied a couple other folks on this email here from the city, to keep everyone in the loop.

Regards,

Jonathan Ely, P.E.

Development and Construction Manager

Engineering Division

City of Fayetteville, Arkansas

T 479.444.3424

www.fayetteville-ar.gov



EMAIL OCTOBER 20, 2020

Ely, Jonathan

From: Manny Terminella <mterminella@pacmac.com>
Sent: Tuesday, October 20, 2020 8:04 PM
To: Ely, Jonathan; Brown, Chris
Subject: FW: 11 am meeting
Attachments: IMG_5359.PNG; IMG_5362.jpg; IMG_5358.PNG; IMG_5357.PNG

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chris, Jonathon

This email is to let you know that I cannot meet with you tomorrow as previously scheduled.

After setting up that meeting with you, I later talked to the assistant city attorney and learned that there is no City of Fayetteville policy that prevents city governing officials or representatives from taking a citizen's private correspondence, information or pictures and distributing them to whomever they like or posting them on social media.

After speaking to several different people at the city, and explaining a very troubling situation that happened to me and my family over the weekend, I was surprised to find not one person there who indicated they had any concerns about this kind of activity.

Let me explain what happened:

1. On Thursday of last week a stranger not in a city vehicle drove 1,000 feet onto my private property and into my backyard. Without identifying himself or speaking to me he took an unknown number of pictures. When I approached him and asked who he was he said he was here to take pictures for the city engineering dept to see if I needed a permit. I asked him more than once what his title and position were and he repeatedly indicated that he was the code compliance picture-taker. He was just the guy who takes the pictures.

When I later got my notice of violation, I learned that he was actually the inspector. Therefore, he had misrepresented himself when he was on my property, thus not allowing me to ask him any questions or have a meaningful discussion.

2. On Friday at 3:00 I got the email from Jonathon Ely notifying me of a permit violation. Within an hour of receiving this email I was contacted by friends and family alerting me to the fact that everything contained in that email - the violation notice and pictures - were on Eva Madison's Facebook page. Soon after that, I was further alerted to the appearance of these pictures on numerous other people's social media. One of the posts had these same 3 pictures, but the name of the property owner had been changed to Tom Terminella and the violation had been changed to "illegally clear-cutting and burning." I later learned that the person responsible for supplying these incorrect details and pictures to people on Facebook was my ward representative, Sloan Scroggin.

See attachments for further details.

For these reasons, I can only assume that anything I say or anything you see on my property could be misrepresented and subsequently show up on social media. I hate to have to say that but those are my honest feelings.

See attachments for further clarification.

I want a copy of every picture that was taken on my property. I have no idea how many pictures were taken or of what.

Let this be the official notice that no one from the city of Fayetteville is welcome on my private property without prior written permission.

Moving on to the violation itself:

My position is that I do not need a grading permit. All work done on my property clearly falls within [Exceptions to Permit Requirements](#) Number 6 located in 169.03 Section (C) of the unified development code.

Considering the conversations I've had with both of you on the phone, you should be clear on the scope and nature of the work that's been done. I'm landscaping, maintaining my drive and access roads, leveling my yard, and improving my access through Brookbury.

I'm hopeful that your concerns have been answered and that you'll find that in fact I do not need a grading permit.

I am not accusing either of you of dishonesty, but Sloan Scroggin is clearly dishonest and should not be on the City Council.

Thank You

Manny Terminella
Pacmac Inc.
(479)521-0525

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For more information please visit <http://www.symanteccloud.com>

EMAIL OCTOBER 21, 2020

Ely, Jonathan

From: Brown, Chris
Sent: Wednesday, October 21, 2020 2:36 PM
To: Manny Terminella
Cc: Stoll, Garner; Ely, Jonathan; Evans, Melissa
Subject: Grading Violation Follow up and Determination
Attachments: 155 and 169.pdf

Mr. Terminella,

We received your email, and Jonathan also forwarded your voicemail to me.. The reason Jonathan and I were planning to meet you on site was to see the work you are doing in person, to make a better determination regarding permitting requirements or potential exemptions from those requirements.

All of the pictures taken during the site visit by the City's Code Compliance Administrator may be found at: <https://www.dropbox.com/sh/lrw676ge5h5bcye/AACAWQc4mZ2AI75bonJltGBSa?dl=0> .

We are still willing to meet you on site if you want to reconsider, but at this time we can only make a determination regarding permitting requirements based on the photos that we have. That determination is that a **grading permit is required**, due to the scope of work and land disturbance that we see in the pictures.

In order to apply for a grading permit, you will need to submit a grading plan and permit application per the requirements of City Code Chapter 169. Please note that we are not requiring prior development approval (required by Ch. 169.03), since you are grading on an existing developed site and do not appear to be impacting trees or floodplains and are not significantly altering the natural landform. If the grading plan you submit does indicate that trees are impacted and/or the scope of work is more significant than what we have seen so far or than what you have described, you may be required to get planning commission approval of a development plan prior to receiving the grading permit.

You do have the right to appeal this determination to the City Council per City Code Chapter 155. If you wish to appeal, you will need to do so through the City Clerk's office. As noted in Ch. 155.02, you have 10 days from the date of the final action taken to file an appeal. This email shall serve as your notice of that final action.

I have attached the relevant sections of the City Code of Ordinances for your reference. If you want to read in further detail, our Unified Development Code may be found at: https://library.municode.com/ar/fayetteville/codes/code_of_ordinances?nodeId=CD_ORD_TITXVUNDECO

Please contact me with any questions.

Chris Brown, P.E.
City Engineer
Engineering Division
City of Fayetteville, Arkansas
(479) 575-8207
www.fayetteville-ar.gov



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Susan Norton**, Chief of Staff
Garner Stoll, Development Services Director
Yolanda Fields, Community Resources Director
David Carver, Code Compliance Administrator

FROM: **Kit Williams**, City Attorney

DATE: **October 29, 2020**

RE: **Investigating Citizen Complaint of Unpermitted Grading or Construction**

After receiving a citizen report or complaint about heavy machinery working in a residential area, Code Compliance Officer David Carver drove to the area. He then drove up a fairly long driveway and saw a bulldozer and tractor operating. David parked his vehicle on the driveway and walked over toward the machinery in operation.

Mr. Manny Terminella was operating one of the pieces of machinery and spoke with David Carver who showed Mr. Terminella his City of Fayetteville ID. Although Mr. Terminella may have initially denied any activity requiring a grading permit or any other city permit was occurring, Mr. Terminella also asked David Carver to move his vehicle from the driveway onto his yard to allow a dump truck to deliver a load of red dirt.

David moved his truck and informed Mr. Terminella that he was merely taking photos of what was happening and would not make the determination himself about the permit question. David said he was just gathering information which will be considered by Engineering or other City Departments which would then decide whether the *Unified Development Code* requires a permit for Mr. Terminella's activities.

After the City Engineer reviewed the photos and listened to the information from Code Compliance Officer David Carver, Engineering issued a stop work order and/or violation notice to Mr. Terminella due to his failure to obtain the necessary permit and comply with the *Unified Development Code*.

Mr. Terminella has appealed this violation notice to the City Council for its review and either its approval or disapproval of the stop work or violation order. Mr. Terminella further asserted that David Carver acted beyond his legal authorization by driving up a portion of Mr. Terminella's driveway and took a few photographs from that general area. My analysis is that David Carver is legally authorized to drive up the ungated, open driveway to investigate the citizen complaint.

The Courts have had numerous decisions about the limitations of a government's power to enter a person's private property without a valid search or administrative warrant. Houses are very strongly protected by our Constitution because of an owner's clear and reasonable expectation of privacy in one's home. Driveways that are not closed off to the public by gate are perceived by the Courts to have almost no reasonable expectation of privacy to prevent a government employee such as David Carver from driving along the driveway to investigate a complaint.

"Driveways and walkways used to approach a residence are portions of the curtilage as traditionally defined, but under *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed. 2d 576 (1967), the expectation of privacy in such areas is not generally considered reasonable.... Neither a driveway nor a yard are *per se* private, and, for Fourth Amendment purposes, areas outside the confines of one's home are ordinarily considered public." *Walley v. State*, 353 Ark. 586, 112 S.W. 3d 349, 360 (2003)

The Arkansas Attorney General issued Opinion No. 2006-115 concerning whether government officials need a search warrant to go up driveways when investigating a potential crime or violation. The Attorney General cited Arkansas Supreme Court cases in determining that a homeowner generally has no reasonable expectation of privacy for his driveway that would prevent a government official from driving or walking on the driveway toward the house.

“Protection against unreasonable searches extends only to areas where someone has demonstrated a subjective expectation of privacy and that expectation of privacy is one that society will reasonably accept. Two particular areas on private property do not necessarily possess a reasonable expectation of privacy despite private ownership – driveways or walkways and ‘open fields.’

There is generally no reasonable expectation of privacy in the driveway or walkway of a private home.” At page three of Attorney General Opinion No. 2006-115 (citations omitted).

If Mr. Terminella had tried to protect his privacy expectation in his driveway with a closed gate which prevented public access, any subjective expectation of privacy of Mr. Terminella might be determined to be reasonable. However, Mr. Terminella’s driveway was not gated nor otherwise closed to the public.

“Driveways and walkways used to approach a residence are portions of the curtilage as traditionally defined; however, the expectation of privacy in such areas is not generally considered reasonable.... Nothing barred the public from walking up the driveway. As such, we hold that McDonald did not exhibit a reasonable expectation of privacy in his driveway.” *McDonald v. State* 354 Ark. 216 119 S.W. 3d 41 (2003)

CONCLUSION

I believe that David Carver was within his rights as a City employee to drive up Mr. Terminella’s driveway to investigate a neighbor’s complaint about what appeared to be construction or grading activities on Mr. Terminella’s property. He is also entitled to take photos from that area in pursuant to his job duties.