

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-62
Series of 2009

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A RESOLUTION SETTING FORTH THE FINDINGS OF FACT FOR THE DENIAL OF THE REZONING APPLICATION FOR 9777 FRED DRIVE FROM R-1-B TO PUD

WHEREAS, City Council of the City of Northglenn conducted a public hearing on April 23, 2009 to consider the rezoning of the property located at 9777 Fred Drive (the "Subject Property") from R-1-B to PUD;

WHEREAS, the Planning Commission of the City of Northglenn had previously on March 10, 2009, considered the rezoning application for the Subject Property, and recommended approval based on the evidence presented at its March 10, 2009 hearing;

WHEREAS, the City Council at the April 23, 2009 hearing on the rezoning of the Subject Property, heard and received evidence on the rezoning of the Subject Property, and specifically received evidence from interested parties in the neighborhood regarding the criteria set forth in Section 11-37-2(h) of the Northglenn Municipal Code regarding application for a zone change;

WHEREAS, the City Council must specifically find, pursuant to Section 11-37-2(h) of the Northglenn Municipal Code, the satisfaction of the following criteria, the burden of proof which must be met by the applicant by a preponderance of the evidence:

- "(1) That a need exists for the proposal;
- (2) That this particular parcel of ground is indeed the correct site for the proposed development;
- (3) That there has been an error in the original zoning; or
- (4) That there have been significant changes in the area to warrant a zone change;
- (5) That adequate circulation exists and traffic movement would not be impeded by development; and
- (6) That additional municipal service costs will not be incurred which the City is not prepared to meet.";

WHEREAS, the City Council specifically received into evidence a written protest against the proposed zoning change signed by the owners of "20 percent or more, either of the lots included in such proposed change or of those immediately adjacent to the side and in the rear thereof extending 100 feet therefrom or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots" within the meaning of Section 11-37-2(g) of the Northglenn Municipal Code, which requires that three-fourths of the entire voting membership of the City Council approve the zone change based on the criteria set forth above in order for it to be effective;

WHEREAS, three-fourths of the entire voting membership of the City Council requires that the zone change of the Subject Property in this case receive seven (7) affirmative votes in order to meet the threshold pursuant to Section 11-37-2(g), based on the receipt of the written protest;

WHEREAS, the City Council, after considering all of the evidence presented, determined by a vote of four (4) votes in favor and three (3) votes against, to approve the zone change, but such approval was insufficient because the zone change required seven (7) affirmative votes; and

WHEREAS, the City Council therefore directed that these findings of fact be drafted, memorializing the determination of the City Council regarding the application for a zone change of the Subject Property.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The recitals set forth above are hereby incorporated herein by this reference.

Section 2. The City Council received into evidence and finds sufficient a written objection signed by owners of at least twenty percent (20%) of those property owners "immediately adjacent to the side and in the rear thereof extending 100 feet therefrom or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots," and therefore the zone change requires seven (7) affirmative votes to be effective.

Section 3. The City Council hereby makes the following findings of fact regarding the evidence received of the zone change for the Subject Property:

- A. Competent evidence was received of both compatibility with the surrounding area, and incompatibility with the surrounding area, as more particularly described in the record of this matter;
- B. To the extent that the proposed development is not a use by right in a residential district and required the zone change, the City Council did not find sufficient evidence that the proposed development is not inconsistent with the City's Master Plan;

- C. Competent evidence was received indicating that there were numerous possible public health, safety, and welfare concerns associated with the proposed zone change, including congestion in the area based on (i) the location of the Subject Property relative to the intersection of Fred Drive and Huron Drive; (ii) parking concerns relative to the Subject Property; and (iii) hazards caused by the probability of increased emergency vehicle traffic to the Subject Property;
- D. Competent evidence was received that a need exists for the proposal, but competent evidence was also received that a need does not exist for the proposal at the specific location for which the zone change was sought;
- E. No evidence was specifically received that there have been significant changes in the area to warrant a zone change;
- F. There was competent evidence in the record both to suggest that adequate circulation exists and traffic movement will not be impeded by the proposed development, and similarly that adequate circulation does not exist and traffic movement may be impeded by the proposed development based on the nature of the intersection where the Subject Property is located; and
- G. No specific evidence was received regarding whether or not additional municipal service costs will be incurred based on the proposed development.

Section 4. Therefore, by these findings of fact, the City Council hereby determines that the zone change is not and cannot be effective as set forth above, based on the failure of the City Council to adopt Council Bill 1686, Series of 2009 with seven (7) affirmative votes, by an affirmative vote of 4-3.

Section 5. The City Council further finds and determines that even in the absence of the written objection received by the City Council which required approval by three-fourths of the entire membership of the City Council, Council Bill 1686, Series of 2009 would have nonetheless failed under Section 4.7 of the City of Northglenn Home Rule Charter, which requires for the adoption of an ordinance "the affirmative vote of the majority of the entire City Council for final passage."

Section 6. These findings of fact are effective upon approval thereof, to memorialize the determination of the City Council at its April 23, 2009 meeting following the public hearing described above.

DATED at Northglenn, Colorado, this ____ day of _____, 2009.

KATHLEEN M. NOVAK
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney