

**EXTRACT OF MINUTES OF MEETING  
OF THE  
CITY COUNCIL OF THE CITY OF ROSEVILLE  
IN ITS CAPACITY AS THE BOARD OF ADJUSTMENTS AND APPEALS**

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Pursuant to due call and notice thereof, a meeting of the City Council of the City of Roseville, County of Ramsey, State of Minnesota, acting in its capacity as the Board of Adjustments and Appeals, was duly held on the 8<sup>th</sup> of January, 2016, at 6:00 p.m.

The following members were present: Jason Etten, Lisa Laliberte, Tammy McGehee, Robert Willmus, and Mayor Dan Roe, and the following were absent: None.

Member McGehee introduced the following Resolution and moved its adoption:

**RESOLUTION No. 11297**

**RESOLUTION GOVERNING AN APPEAL BY VOGEL MECHANICAL, INC.  
REGARDING AN ADMINISTRATIVE DECISION**

WHEREAS, on June 23, 2014, the City of Roseville (“City”) approved an interim use for Vogel Sheetmetal (now Vogel Mechanical, Inc.) (“Vogel”) which included the requirement for the installation of a fence; and

WHEREAS, on August 24, 2015, the City Council met and clarified the intent of the City’s fencing requirement related to the interim use approval; and

WHEREAS, on November 13, 2015, Vogel requested authority from City staff to set the fence between five and ten feet south of the location required in the interim use approval; and

WHEREAS, on November 19, 2015, City staff denied the request; and

WHEREAS, on November 27, 2015, Vogel appealed the administrative decision in accordance with Section 1009.08 of the Roseville Zoning Code; and

WHEREAS, on January 25, 2016, a public meeting was held of the City Council, acting as the Board of Adjustments and Appeals (“Board of Adjustments and Appeals”) to hear the appeal and issue a decision; and

WHEREAS, the Board of Adjustments and Appeals made the following findings and conclusions regarding said appeal.

NOW THEREFORE BE IT RESOLVED that, based upon all submitted written reports, correspondence, visual aids, and any other portion of the written record contained within

the official meeting agenda packet, together with any and all oral testimony and evidence offered and recorded at the public hearing on January 25, 2016, the Roseville Board of Adjustments and Appeals declares the following:

#### FINDINGS OF FACT

1. The City Council approved the fence requirement on June 23, 2014 and Vogel confirmed in writing on June 26, 2014, that the fence would be installed as required.
2. The information provided by the employee of Midwest Fence on November 17, 2015, indicated that it was possible to install a fence as required.
3. The information provided by the employee of CenturyLink on November 18, 2015, indicated that it was possible to install a fence as required.
4. The information provided to the City by Midwest Fence and CenturyLink was consistent with the administrative decision to deny Vogel's request to move the fence significantly to the south.
5. The new information presented at the Board of Adjustments and Appeals hearing on January 25, 2016, that was not available to the City staff at the time of the original decision, was inconclusive.
6. The draft CenturyLink QC ("CenturyLink") Encroachment Agreement offered by Vogel at the January 25, 2016 hearing explicitly confirmed that the fence could be constructed within the easement area. The Encroachment Agreement stated that CenturyLink would consent to Vogel constructing the fence within the "Easement Tract," as long as the fence was not constructed on or in close proximity to CenturyLink's cable. This did not contradict the staff conclusion on November 19, 2015, that the fence could be constructed within the easement area. Rather, it confirmed the conclusion and the administrative decision based thereon.
7. City staff provided flexibility concerning the fence location. The fence was not required to be located exactly on the property border, and the fence could "meander" based on obstructions such as utility wires, cables, and encroachments, including tree roots, so objections related to the same were not persuasive.
8. The information presented by Vogel on January 25, 2016, related to the opinions of fence contractors did not invalidate the conclusion of City staff that the fence could be built near the northern property boundary, obstructions from neighboring properties notwithstanding. The information confirmed that a fence could be built near the property line, but that location added complexity and cost, which is not in dispute.
9. The Board indicated that the fence does not have to be taller than 6.5 feet, based on the original and confirmed interim use language requiring a "6' to 8' opaque fence." A fence of this height will not fall under the building code's requirement to have an engineered fence able to withstand minimum wind loads as specified in MSBC section 1609 and/or 1303.2200, so information concerning the increased construction cost of an 8' high fence height was not persuasive.

CONCLUSION OF LAW

The appeal of Vogel Mechanical, Inc. is therefore **DENIED** in its entirety.

The motion for the adoption of the foregoing resolution was duly seconded by Member Etten, and upon vote being taken thereon, the following voted in favor thereof: Member Etten, Member Laliberte, Member McGehee, Member Willmus, and Mayor Dan Roe, and the following voted against the same: None.

WHEREUPON said resolution was declared duly passed and adopted.

