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Legal Opinion 2016-017

TO: City Council, Mayor Engen, Mike Haynes, Leslie Schwab, Laval Means, Marty Rehbein, Dale Bickell, Ginny Merriam, Ellen Buchanan, Chris Behan

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE June 22, 2016

RE: Reasonable meaning of term "Error" in City of Missoula Zoning Title 20 Section 20.85.100 Missoula Municipal Zoning Code Appeals of Administrative Decisions

FACTS:

Two city council adopted historic preservation ordinances set forth in title 20 of the City of Missoula City Council adopted zoning title, cross reference to other provisions of title 20 zoning for the purpose of the City Council processing appeals made to the City Council of either the historic preservation officer or the historic preservation commission itself. Section 20.85.100 Missoula Municipal Code (MMC) entitled "APPEALS OF ADMINISTRATIVE DECISIONS" is the section utilized for processing appeals made to the City Council of the historic preservation officer or historic preservation commission decisions. Basically when utilizing section 20.85.100 MMC for city council processing of an appeal made to the city council, city council is to be substituted for references to the zoning board of adjustment when implementing the appeal to city council process. Section 20.85.100 MMC provides for a focus on whether there was error in the decision that is being appealed to the city council.

ISSUE(S):

What is a reasonable meaning for the term "error" when it is utilized within section 20.85.100 MMC?

CONCLUSION(S):

Since the City Council has not defined the term "error" within the City of Missoula title 20 ZONING, title, city council members may utilize common sense plain meanings of the word "error" that are generally associated with identifying the meaning of "error".

LEGAL DISCUSSION:

Section 20.85.100 Missoula Municipal Code (MMC) is entitled “APPEALS OF ADMINISTRATIVE DECISIONS”. Section 20.85.100 MMC focuses on whether there was “error” made by the decision maker whose decision is being appealed. Error is focused on in at least three (3) of the subsections of section 20.85.100 MMC as follows:

20.85.100 APPEALS OF ADMINISTRATIVE DECISIONS

A. APPLICABILITY; AUTHORIZED APPEALS

The Board of Adjustment (City Council) is authorized to hear and decide appeals where it is alleged there has been an ERROR in any order, requirement, decision or determination made by the zoning officer or any other administrative official (e. g. city engineer) in the administration, interpretation or enforcement of this zoning ordinance.” (*emphasis added*)

G. HEARING AND FINAL DECISION

....

4. In acting on the appeal the Board of Adjustment (City Council) must grant to the official’s decision a presumption of correctness, placing the burden of persuasion of ERROR on the appellant”. (*emphasis added*)

H. REVIEW CRITERIA

An appeal may be sustained only if the Board of Adjustment (City Council) finds that the zoning officer or other administrative official ERRED.” (*emphasis added*)

The City Council has not defined the terms “error” or “erred” in title 20 ZONING. Therefore it is legally acceptable for the City Council to utilize reasonable common sense plain meaning of the term “error” in attempting to make its decision as to whether or not the historic preservation commission erred in its decision making process, findings or conclusion when reviewing the pending application for a demolition permit for the Merc building.

Black’s Law Dictionary, Eighth Edition, at page 582, sets forth the following definitions for “err”, erroneous”, or “error” for public consideration:

“ERR To make an error, to be incorrect or mistaken”

“ERRONEOUS Incorrect; inconsistent with the law or the facts”

“ERROR An assertion or belief that does not conform to objective reality; a belief that what is false is true or that what is true is false; MISTAKE”

Black’s Law Dictionary, Eighth Edition at pages 1022-1023 defines the terms “mistake”, “mistake of fact” and “mistake of law” as follows:

“MISTAKE, An error, misconception, or misunderstanding; an erroneous belief”

“MISTAKE OF FACT, A mistake about a fact that is material to a transaction; any mistake other than a mistake of law-Also termed error in fact, error of fact”

“MISTAKE OF LAW, A mistake about the legal effect of a known fact or situation-Also termed error in law, error of law”

LEGAL THESAURUS, REGULAR EDITION, William c. Burton at page 204 identifies synonyms for the terms “err”, “erroneous” and “error” as including:

“ERR, be erroneous, be in the wrong, be misguided, be misled, be mistaken,, blunder, cause error, commit an error, delude oneself, fall into error, go amiss, go astray, go wrong, labor under a misapprehension, make a mistake, misapprehend, miscalculate, misconstrue, misinterpret, misjudge, misreckon, mistake, misunderstand, receive a false impression”

“ERRONEOUS, aberrant, amiss, blundering, containing error, devoid of truth, erring, false, faulty, groundless, illogical, inaccurate, incorrect, inexact, mistaken, spurious, unfounded, ungrounded, unreal, unsound, unsustainable, untrue, wrong”

“ERROR, deviation, distorted conception, distortion, erroneous statement, error, false conception, false impression, fault, flaw, inaccuracy, incorrect belief, inexactness, injustice, misbelief, miscalculation, miscarriage of justice, miscomputation, misconception, misconjecture, miscount, misjudgment, misreckoning, misstatement, mistake, mistaken belief, mistaken judgment, mistranslation, misunderstanding, misuse of words, oversight, poor judgment, slip, wrong course, wrong impression, wrongness”

Set forth above are legal definitions and legal synonyms associated with the terms “error” and “erred” that may assist the Missoula City Council determine in its appeal review of the historic preservation commission decision to conclude or determine if there was any “error” by the historic preservation commission when denying the demolition permit for the Merc building.

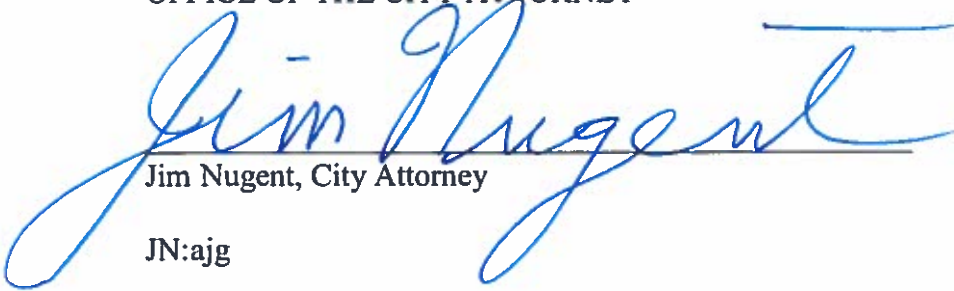
Further, the City Council, when reviewing the entire record present in the appeal and determining whether there was “error”, may review the entire public record for any error potentially committed by the Historic Preservation Commission. The City Council is not limited to solely the actual findings and conclusions identified and adopted by the Historic Preservation Commission. The Historic Preservation Commission error(s) may also exist in what they ignored, failed and/or declined to include in their findings and conclusions.

The written appeal that is pending before the city council at page 2 asserts/alleges in part that: “As a result of these errors, the HPC failed to conduct a process in accordance with fundamental legal requirements and ignored numerous material facts in order to reach a conclusion that is not supported by the record.”

CONCLUSION(S):

Since the City Council has not defined the term “error” within the City of Missoula title 20 ZONING, title, city council members may utilize common sense plain meanings of the word “error” that are generally associated with identifying the meaning of “error”.

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