

We're pleased we were able to convince the council to consider this appeal. This was a major opportunity for us, the appellants, to try to convince the council that the commission did not perform due diligence in considering this case. Despite today's decision, the appeal and last week's hearing helped to shine the light on many flaws in the land use review process and how decisions are made. In preparing for the appeal hearing, we found other shortcomings, including the lack of a fully-developed appeal provision. This in turn puts the spotlight on the need for the council to revise the existing provision and enact one that clarifies who is to conduct the hearing as well as who should be defending the commission decision, and other critical points.

In this particular case, for example, the applicant—not the commission—was responding to our appeal and essentially defending the commission. To me, this is bizarre because the applicant didn't make the decision to approve the project, so was was the applicant defending the decision? Even the commission's attorney made this point at the end of the hearing.

In putting together our case to present to the council, we found still other weaknesses. For example, how does the commission call something a "finding" when it simply repeats something someone said without verifying the statement.

A case in point is how the commission "found" there was a contract presumably between the property owners and the developer, yet no such document is in the case file. Common sense would tell you that if you don't have a contract in hand you don't have a finding; you just have someone saying something without providing proof. This is a flaw across the board regarding land use decision making in this county.

And this whole process of reviewing the application and the commission's decision also shows how the various other parties have very limited opportunity to comment on projects that have a direct impact on them.

For example, while the developer's attorney and the council argued at the hearing this was only about a preliminary site plan, what they don't make clear to the public is that the hearing on the preliminary plan was the only opportunity for public input. In simple turns, the parties concerned about the impact of a development and the public had their one and only chance to comment.

Many people are under the mistaken impression the public would have a second chance to comment on the final site plan. No, they will not.

After the commission gets additional information from DNREC and others and the developer comes up with the final plan, all the others who live next door or across the county can do is watch. No person or other party concerned about this and other projects can do is sit silently by, short of going to court. This is regardless of any mistakes made, conditions not followed, or having learned about new and relevant events or additional relevant information that might surface.

Keith Steck