

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JANUARY 31, 2007 PLANNING COMMISSION MEETING

PROJECT#: Misc.#06016 -Text amendment to County Land Subdivision Regulations

- PROPOSAL:**
1. Set a one-year period within which applications that have been deferred at the applicants' request are presented to the Planning Commission or County Board for final action or they automatically expire.
 2. Set a 12 week time period from the initial hearing date for the Planning Commission to act on applications unless the applicant consents to the deferral.
 3. Delete the filing deadline before a preliminary plat may be scheduled on the Planning Commission agenda.
 4. Delete the provision that a preliminary plat shall be effective for only 10 years and authorize the Planning Director to determine if a new preliminary plat may be required after 5 years rather than the County Board.
 5. Reword procedures regarding filing the Planning Commission's findings within 7 days with the County Clerk.
 6. Change public hearing notice dates when signs are posted and notices appear in the newspaper to be consistent with the City's notification dates.

CONCLUSION: The proposals require timely action by both the Planning Commission and the applicant on an application, and the changed filing deadline will allow for an expedited staff review. The deletion of the provision that preliminary plats expire in 10 years will eliminate the need to submit a new preliminary plat unless the regulations have changed and allows that decision to be made administratively by the Planning Director. Having the same notice dates for both the County and City is appropriate since the Planning Department is a joint City/County Department.

RECOMMENDATION:

Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: Sections 3.06, 3.07, 3.08, and 3.09, and a new section 3.21 of the County Land Subdivision Regulations

ASSOCIATED APPLICATIONS: Change of Zone # 06062, County Change of Zone #06070, Misc.#06012 Subdivision Ordinance, and Misc. 06014 Planning Commission Bylaws.

ANALYSIS:

1. Currently, at the request of applicants there are dozens of applications which were placed on the staff's "pending" list and not scheduled for Planning Commission or governing body hearings. These applications have remained on the list for years, despite the Planning Staff's efforts to encourage the applicant to move forward or withdraw. Currently, the only way to dispose of these cases is to set unilateral hearing dates, prepare staff reports, and advertise the hearings. The proposed amendments would allow the Planning Department to save time and money by replacing this cumbersome process with a time period within which, if the applicant does not direct that his/her case be scheduled for hearing, the case is automatically closed. The proposed amendment will require staff to notify the applicant of the pending expiration date, in writing, at least 30 days before that date. If approved, this amendment would provide a year from the adoption date for action on applications that are already on the Planning Department pending list.
2. The Planning Commission on several occasions has postponed their final action on applications. They have been advised that their responsibility is to hold a public hearing and then act on the application. The issue of delaying action occurred on two different cases in the past two years, both involving "downzoning:" a request by a neighborhood association to rezone vacant land adjacent to the neighborhood, and a request by another neighborhood association to rezone the property within their association's boundaries.

In the first case, the property was held on pending by the Planning Commission for nearly a year as the Commission approved repeated requests from the neighborhood association for deferral (after the Planning Commission did act, the City Council voted to place the item on its indefinite pending list, where it sits today). In the second case, the Planning Commission delayed the association's request to consider imposing new procedural requirements for that request as well as future requests of the same nature. Before these applications were filed, it was not unusual for the Planning Commission to place

applications on pending for indefinite periods, to await the completion of some planning study or another.

The deliberations on the second downzoning case led the City Attorney's office to give its opinion to the Planning Commission that due process required them to act in a timely manner and pass applications on to the governing body in a reasonable time, unless the applicant consented to further delay.

3. Presently in the event the Planning Commission fails to act there are no provisions for the applicant to force a final action.
4. Deleting the filing deadline from the Subdivision Regulations will allow staff an earlier opportunity to flag issues that may require further explanation, or cause us to arrange meetings with applicants, and this should avoid delays later in the process.
5. Deleting the 10 year effective date on preliminary plats will allow a preliminary plat to remain effective for 5 years and thereafter unless the subdivision regulations have been changed. Since the Planning Director has the authority to approve final plats it is appropriate that the decision to require a new preliminary plat based on the changes to the regulations should be made administratively by the Planning Director.
6. Adjust the notice in the newspaper from 10 days to 8 days before the public hearing. This adjustment will be the same as the City's notifications.
7. The Zucker report encourages the streamlining of applications.

Prepared by:

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DATE: January 19, 2007

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THE PROPOSED TEXT IS ATTACHED

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LANCASTER COUNTY LAND SUBDIVISION REGULATIONS

CHAPTER 3
PROCEDURE

Sec. 3.06. HEARING BY COMMISSION. Hearing on a preliminary plat shall be before the Commission ~~at its first regular meeting following filing~~, provided:

(a) that notice of the consideration of such plat and the time and place of hearing shall be given to all interested persons as hereinafter provided, and

(b) a report from the Planning Director, Health Department and the County Engineer has been received by the Commission.

Sec. 3.07. NOTICE OF HEARING. (a) No hearing shall be held by the Commission until notice thereof shall have been given by the Planning Director on behalf of the Commission, by publication of notice of said hearing one time at least ~~ten (10)~~ eight (8) days prior to such hearing in a daily newspaper having a general circulation in the City of Lincoln and Lancaster County in a local newspaper of any county which has territory within three (3) miles of the property affected by such action of the County Board. Notice of the time and place of such hearing shall also be given in writing to the Chairman of the municipal, county or joint planning commission, which has jurisdiction over land within three (3) miles of the property affected by such action. In the absence of a Planning Commission, such notice shall be given to the clerks of units of local government having jurisdiction over land within three (3) miles of the property affected by such action. (Resolution No. 5344, June 25, 1996)

(b) A notice shall be posted in a conspicuous place on or near the property being subdivided, stating that the Commission will hold a hearing on the proposal to subdivide the property. Such notice shall be posted at least eight (8) days in advance of the hearing. It shall be unlawful for any person to remove, mutilate, destroy, or change the posted notice prior to the hearing time.

(c) A general notice describing the property location and stating the date and location of the Commission hearing will be mailed at least ten (10) days before the Planning Commission's public hearing to the owners of record within one mile of the boundaries of the proposed subdivision. Receipt of such notice is not mandatory or required as a condition precedent to any such public hearing. (Nov. 13, 1990, Resolution No. 4690)

Sec. 3.08. APPROVAL OF PRELIMINARY PLAT. If, upon hearing, the Commission shall find such proposed plat to satisfy the requirements of this resolution, it shall approve said plat. If, upon hearing, the Commission shall find that such proposed plat does not satisfy the requirements of this resolution, it shall specify in writing in the minutes of the hearing such objections as are found to such plat and may recommend the disapproval of such proposed plat, or recommend approval conditioned upon specific changes in the proposed plat, and complying with this resolution. ~~One copy of the proposed plat, together with a copy of the findings of the Commission, upon hearing, shall be filed by the Commission with the County Clerk, and~~ The Commission's findings shall be filed with the County Clerk within seven (7) days of the Commission's findings. ~~Any interested person may appeal to the County Board any action of the Commission by filing notice of appeal~~

with the County Clerk within (7) days following the filing of such findings. ~~The Commission's findings shall be filed with the County Clerk within seven (7) days of the Commission's findings.~~ One copy of the proposed plat land findings shall be retained by the Commission and one copy and findings given to the person offering the proposed plat. In the event the Planning Commission fails to make a required report and recommendation within twelve (12) weeks following the date of their first public hearing on the matter, the applicant may request the matter be forwarded to the County Board for consideration. The approval of the preliminary plat shall not constitute authority for the subdivider to sell the individual lots.

Sec. 3.09. PRELIMINARY PLAT APPROVAL LIMITED. ~~The approval of the preliminary plat shall only be effective for a period of ten (10) years from the date of the approval, and shall be of no force or effect thereafter.~~ If any final plat on all or a portion of the approved preliminary plat is submitted five (5) years or more after the effective date of the preliminary plat, the ~~Board~~ Planning Director may require that a new preliminary plat be submitted, pursuant to all the provisions of the subdivision resolution. A new preliminary plat may be required if the Subdivision Resolution, the Design Standards, or the required improvements have been amended by the Board; and as a result, the preliminary plat as originally approved does not comply with the amended rules and regulations.

Sec. 3.21 EXPIRATION OF APPLICATION.

All existing applications which have been placed on pending by an applicant shall automatically expire and become null and void one (1) year after the approval date of this text amendment (County Miscellaneous No. 06016). All applications which have been placed on pending by an applicant after the approval date of this text amendment (County Miscellaneous No. 06016) shall automatically expire and become null and void one (1) year thereafter. At least thirty (30) days before the date of expiration, the Planning Director shall cause notice of expiration to be sent to the applicant by regular United States mail, postage prepaid. Said notice shall advise the applicant that the matter shall automatically terminate unless prior to the expiration date, the Planning Director receives a request from the applicant to remove the application from pending and reschedule the matter on the Planning Commission or County Board agenda as appropriate.