

West Linn City Council Meeting Minutes
November 24, 2008

Council Present: Acting Mayor Michele S. Eberle, Councilor Scott A. Burgess, Councilor Jody Carson and Councilor Mike Jones

Council Absent: Norman B. King, Mayor

Staff Present: Chris Jordan, City Manager; Rhett Bernstein, Prosecuting Attorney; Gene Green, Public Works Director; Gordon Howard, Staff Attorney; Richard Seals, Finance Director; Terry Timius, Police Chief; Ken Worcester, Director Of Parks and Recreation; Jim Whynot, Water Utility Supervisor; City Attorney Bill Monahan; and Shirley Richardson, Minute Taker

8. Agenda Bill 08-11-09 CDC Amendment – Final Platting

Acting Mayor Eberle opened the meeting to Council consideration of a request to initiate an amendment to the West Linn Community Development Code that would allow extensions of approval for land divisions, allowing them more time to proceed to a final plat than is currently allowed by the City. She asked for a staff report.

Gordon Howard reported this matter is before the Council based upon a request that was received (letter from Michael Robinson representing Jeff Smith the property owner) to initiate a legislative amendment to the Community Development Code. Pursuant to Chapter 98 a private individual cannot initiate such a change to the City's code. Therefore Mr. Smith is making the request for the City to make this change.

The request is to allow more time between the tentative approval of the subdivision and the time required to get approval of a final plat of recording that subdivision. It must be approved by the City and then recorded by the County Surveyor.

Oregon law authorizes a two-stage process for approval of proposed land divisions. First the local jurisdiction reviews a tentative application for a land division and approves or denies it based upon the jurisdiction's adopted development codes. Second, if the land division is tentatively approved, the subdivider records a final plat, which legally creates the discrete lots for subsequent sale. A tentative approval will set forth a series of conditions that the subdivider must meet before recording the final plat.

The jurisdiction's development code sets a three-year deadline by which a tentatively approved land division must be recorded as a final plat or expire. An expired application must be resubmitted as a new tentative land division and begin the entire process over again. The City requires not only that the map be approved by the City within three years, but also that all public improvements required by the land division ordinance (roads, utilities) be in place and accepted by the City prior to the City approving the final plat.

A majority of other cities allow bonding or guaranteeing of those improvements instead of installation prior to the final plat. The staff memorandum included in the packet reviews the options raised by this request for initiation in dealing with this issue. The decision is not whether this idea should be approved, but whether it has enough merit to be initiated and studied by the Planning Commission and then reviewed and approved by Council.

The options reviewed were:

- Not to change the current code (leave three year requirement in place)
- Review whether the three-year period should be extended to a longer period
- Allow time extension applications which require discretionary review on an individualized basis with a specific request for an extension of time to get the tentative approved subdivision plat to the point where it can be recorded as a final plat
- Review allowing bonding for the improvements instead of the actual construction
- Bond and allow time extensions

This is a policy decision whether there are changes in circumstance where the City should allow more time to record a final once a tentative plat is approved. In the past the City has had no issues with applicant's promptly recording their final plats in the three-year period. However, there are changed economic circumstances and these two applicants have stated it is likely they will be in a position to put the major investment of public improvements into the subdivisions and get them recorded prior to the three-year limit.

Council will decide if this is enough change in the national situation to have the City look at necessity of the three-year requirement as to whether it should be longer. Staff recommends the Council initiate a code amendment regarding the final plat issues raised and any potential code amendments be limited to addressing the following matters:

Allowance of limited bonding of public improvements prior to final plat approval to address minor issues such as weather-related concerns. The bonding should only be allowed if a majority of the public improvements have been successfully installed, and only a few outstanding items remain.

Consideration of a blanket amount of additional time for approved projects beyond three years; considering the increased flexibility and fairness for applicants in balance with the desire of the City to not have approved projects built that don't reflect subsequent policy changes.

Councilor Jones asked if Planning staff ever raised this issue. Mr. Jordan said no. Staff met with Council a month ago and discussed what the priorities should be and where staff believed was the best places to spend their time. This item was not on that list at the time. The City would absorb the cost of this review because the property owner is petitioning the Council. Council will give staff direction. This will be a Council initiated legislative action.

Public Testimony

Michael Robinson stated he was here representing Jeff Smith a West Linn resident who has approval for division of his property. They are in complete support of the staff report to initiate a change to review two narrow amendments to the Code. The economy is not good right now and he has never seen the inability of his residential clients to borrow money to make public improvements. These are the largest home builders in the State of Oregon and Portland.

He is asking that Council needs to balance the need for having subdivisions timely against the needs to allow extensions where appropriate. Given the circumstances the economy is in and the investment of time and money that have been put into approvals, they feel taking a look at a longer period outweighs the other issues. They are asking that Council initiate the amendment that staff and the Planning Commission take a narrow look at it.

There is a time obligation in Section 98.030(B), which requires the Planning Commission to hold a hearing within 60 days of the Council initiation and then Council has to act within 60 days. Subsection (C) gives Council the ability to direct a different timeline.

Most jurisdictions have a much shorter time period; there is no other jurisdiction that requires the final plat to be recorded on the anniversary of the end of the approval period. In order for his client to start the development and get it done in that period, he would have to start now, get the construction drawings done, get the drawings approved and then go out and construct. This will not happen in this economic environment. For these reasons they are asking Council to consider initiating this.

Jeff Smith stated that he has been before the City several times for subdivisions. It is not just hard to get a development loan, it is impossible. The issue is not past experience or financial situation today, the issue is there is no funding to do development. Today there is no need for more homes or more lots in West Linn. There are a lot of developers who need to request extensions. He is asking that Council give this issue to Planning and let him work with the Planning Commission to come up with something that is reasonable and bring it back to Council at that time.

Alice Richmond, 3939 Parker Road stated that she is in favor of this initiative because of the economic situation. In these economic times three years do not give enough time for development. She would like to see a developer build houses at a slower pace and sell them as they are built without going into bankruptcies.

Kerry Oaks, 1125 Marylhurst Drive stated she is not prepared to testify tonight because the agenda item didn't seem clear. She doesn't feel that the description for this item clearly lets the public know what was to be discussed tonight. She feels that if people were more informed, there would be other private citizens here tonight to testify. The City will bear the cost for this initiative; the citizens will have to pay the taxes.

Councilor Burgess asked for clarification of the timeline. Mr. Howard stated the Code states the initiative will be heard by the Planning Commission in 60 days and the Council 60 days. The Council may by the same or separate motion adopt a longer time period for Planning Commission hearings of proposed legislative changes. Council can specify a longer period for the staff and Planning Commission to review it before returning it to Council.

Chris Jordan stated because of the new Council changes, staff changes, and the holidays coming, 60 days will be an incredibly fast turn-around to get this to the Planning Commission. Perhaps 150-180 days would be helpful to staff.

Acting Mayor Eberle asked what happens to the developers who are in the process of development if this initiative is not passed. Mr. Howard stated if the three years expire and they haven't recorded nor has a final plat approved and the improvements put in, they would have to start over with a new application process. The new application would have to conform to any new standards that may be in effect at the time of application.

Hearing no further questions from Council and no further response from staff, Acting Mayor Eberle closed the public hearing portion of the meeting.

Councilor Burgess moved to initiate a code amendment application to look at the issue of overall subdivision time limits and limited bonding of subdivision improvements, and refer it to the Planning Commission for analysis and a recommendation per Agenda Bill 08-11-09 with a change in the language for timeline to reflect 120/120 days. Acting Mayor Eberle seconded the motion.

Councilor Burgess feels there is no need to get into individual situations regarding reasons why developers need additional time. There is a reason to have a time limit in terms of approval. Staff has reviewed the request and feels there is merit in taking a look at this issue to see if there is a need in West Linn.

Councilor Jones stated he can go either way on this request. He feels this is no different from any other urgent or pressing need to change the CDC that rises to the top of the priority list, it should be reviewed.

Councilor Carson stated she could go either way. She understands the developers concerns on this issue. If this had not been raised as an issue by staff eventually it would have come from the citizens. She would like to see this brought forth with other code changes that are a part of the prioritizing process. She stated that when and if this issue comes before the Council, it is noticed in such a way that the citizens clearly know what the issue is.

Discussion followed on what time line would be appropriate for the Planning staff consideration and Council decision.

Councilor Carson moved to amend the motion to change the time limit for the application to return from the Planning Commission to Council up to one year. Councilor Jones seconded the motion.

Chris Jordan suggested that Council table the issue and let the new Council decide if this is a priority issue for them.

Councilors Burgess and Carson agreed it would be prudent to move this issue into the Planning staff domain and they can come back to the Council with a decision within a year whether there is merit to move forward on this issue.

Ayes: Carson, Burgess, Jones, Eberle

Nays: None

The motion carried 4-0.

Vote on the main motion to initiate a code amendment application to look at the issue of overall subdivision time limits , limited bonding of subdivision

improvements, and refer it to the Planning Commission for analysis and a recommendation per Agenda Bill 08-11-09 with a change in the language for the timeline to reflect up to a year.

Ayes: Carson, Burgess, Eberle

Nays: Jones

The motion carried 3-1.