

AGENDA ITEM # 3

PLANNING COMMISSION COMMUNICATION FORM

FROM: Tom Leeson, AICP, Director of Planning & Community Development (Ext. 280)

DATE: December 10, 2009

ITEM: Revisions to Vesting Provisions, #TXT-09-07

NEXT STEP: Planning Commission's recommendation will be forwarded to the City Council for First Reading.

ORDINANCE
 RESOLUTION
 MOTION
 DIRECTION
 INFORMATION

PROJECT NAME: Revisions to Vesting Provisions, #TXT-09-07

PETITION: An amendment to the CDC to revise the term of approval for Final Development Plans, as well as the vesting period for single-phased projects that have installed required infrastructure and received Preliminary Acceptance from the City.

APPLICANT: City of Steamboat Springs, Department of Planning Services, c/o Tom Leeson, AICP, Director of Planning & Community Development, Centennial Hall, 124 10th Street, PO Box 775088, Steamboat Springs, CO 80477, 970-879-2060.

I. RECOMMENDED ACTION

Staff recommends the Planning Commission approve the attached draft ordinance amending the Community Development Code amending the term and effect of approval for Final Development Plans.

II. BACKGROUND INFORMATION

- 1. Term and Effect of Approval:** The CDC currently grants a three-year vesting period for Final Development Plans. A longer term of approval may be negotiated with City Council provided a Development Agreement is executed. The CDC language reads as follows:

“Approval of a Final Development Plan shall remain effective for a period of three (3) years, or for a time period agreed upon by the City Council through a Development Agreement pursuant to Sec. 26-203. Such Development Agreement shall be processed concurrently with Final Development Plan application. If an active building permit has been obtained for the Final Development Plan or part thereof, and the term of approval for the Final Development Plan expires, the development covered under the active building permit may continue; however, the Final Development Plan approval shall be considered expired and no new building permits may be issued based on the expired approval. Once the Final Development Plan or part thereof has been fully executed, the approval or part thereof shall remain in effect for perpetuity or until amended.”

Long vesting periods (greater than five years) can result in some negative consequences. The CDC is a dynamic regulatory document that is frequently modified to respond to evolving community priorities, changing building practices, shifting financing rules and other variables. As such, it is imperative the built environment also adjust to the constantly changing development environment. Longer vesting periods significantly increase the odds of buildings and projects being out of conformance with the CDC. This could result in outdated projects with respect to architecture or building materials, projects that don't align with community priorities, or projects that no longer adequately meet community needs.

Furthermore, longer vesting periods can result in land owners seeking approval of projects with the goal of increasing property values without the intent of actually constructing the project. This leads to a secondary real estate market that ultimately only increases real estate prices.

In order prevent any of the consequences detailed above, while allowing a slightly longer vesting period for greater flexibility, staff recommends administratively allowing a maximum of one 2-year extension of the vesting period if the project is still within substantial compliance of the development and dimensional standards contained within the CDC. If the project is found not to be within substantial compliance by the Director of Planning and Community Development, an extension could only be granted by City Council after a recommendation from Planning Commission through the established public review process. Extensions longer than two (2) years would also need to be approved by City Council after a recommendation from Planning Commission. Subsequent extensions would not be permitted.

2. Developments that have received Preliminary Acceptance of infrastructure improvements.

There are several developments that were approved in the last several years that contain multiple buildings but were only a single phase, and therefore, were required to install infrastructure (water, sewer, roadways, etc) to serve the development prior to issuance of a building permit. As a result of the slowdown in the economy, most of these projects may not be able to pull building permits on the remainder of the buildings prior to the expiration of the development permit.

Due to health and safety reasons such projects are required to install infrastructure (water, sewer, roadways, etc) to serve the development prior to issuance of a building permit. This requirement results in significant financial investment by the property owner prior to issuance of a building permit. Due to these up-front costs due to City requirements, it seems reasonable to grant an extension to the vesting provided the project receives Preliminary Acceptance of the infrastructure.

Any extension in vesting, however, needs to be contingent upon any outstanding agreements with regards to infrastructure improvements be fulfilled, as well as any incomplete grade & fill, or other improvements associated with outstanding permits, be completed.

By way of an example, the City of Steamboat Springs entered into an agreement as part of the Sundance North subdivision approval with respect to drainage issues. The City agreed to upgrade an undersized culvert under Hwy. 40 with financial participation from the developer. The City proceeded and completed the work, but has not yet received the financial participation of the developer. Furthermore, a grade and fill permit was approved for the project, but has not yet been completed. It seems reasonable to require execution of any agreements, as well as all outstanding work be completed prior to any extension of vesting.

For projects that were approved with multiple buildings in a single phase, Staff recommends the vesting be extended an additional three (3) years provided any outstanding agreements with regards to infrastructure improvements be fulfilled, as well as any incomplete grade & fill, or other improvements associated with outstanding permits, be completed.

III. DESCRIPTION

The Community Development Code shall be amended as follows (revisions are underlined):

Sec. 26-66 (e) Term and effect of approval.

- 1) Approval of a Final Development Plan shall be final as of the date of City Council approval.
- 2) Approval of a Final Development Plan shall remain effective for a period of three (3) years, or for a time period agreed upon by the City Council through a Development Agreement pursuant to Sec. 26-203, and may be extended as provided in Subsection (3) of this Section. Such Development Agreement shall be processed concurrently with Final Development Plan application. If an active building permit has been obtained for the Final Development Plan or part thereof, and the term of

approval for the Final Development Plan expires, the development covered under the active building permit may continue; however, the Final Development Plan approval shall be considered expired and no new building permits may be issued based on the expired approval. Once the Final Development Plan or part thereof has been fully executed, the approval or part thereof shall remain in effect for perpetuity or until amended.

3) The Director may approve a two (2) year extension if the Director finds the project substantially conforms to the provisions of the Community Development Code as defined in Sec. 26-402 at the date of the original approval expiration date. The Director may approve a three (3)-year extension if the project is in substantial conformance as defined in the preceding sentence and if the approval included multiple buildings in a single phase, the project has installed public infrastructure improvements and received Preliminary Acceptance of those improvements, and all outstanding agreements with regards to infrastructure improvements are fulfilled, as well as any incomplete grade and fill requirements, or other improvements associated with outstanding permits are fully complete. The applicant shall submit a request for administrative approval of an extension pursuant to this subsection to the Director no later than thirty (30) days prior to the approval expiration date.

III. ATTACHMENTS

Attachment 1 – Draft Ordinance

Attachment 2 – July 9, 2009 PC Minutes

CITY OF STEAMBOAT SPRINGS

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 26 OF THE STEAMBOAT SPRINGS REVISED MUNICIPAL CODE BY AMENDING THE TERM AND EFFECT OF APPROVAL OF FINAL DEVELOPMENT PLANS BY ALLOWING ADMINISTRATIVE EXTENSIONS IN LIMITED CIRCUMSTANCES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; REPEALING ALL CONFLICTING ORDINANCES; AND SETTING A HEARING DATE.

WHEREAS, approval of a Final Development Plan remains effective for a period of three (3) years, or for a time period agreed upon by the City Council through a Development Agreement pursuant to Sec. 26-203; and

WHEREAS, the City Council finds that a two-year extension of the term and effect of approval should be administratively granted provided the project is within substantial conformance of the Community Development Code at the date of the original expiration date; and

WHEREAS, the City Council finds that a three-year extension of the term and effect of approval should be administratively granted if the project was approved with multiple buildings in a single phase, and the project has installed public infrastructure improvements and received Preliminary Acceptance of those improvements, and provided any outstanding agreements with regards to infrastructure improvements be fulfilled, as well as any incomplete grade & fill, or other improvements associated with outstanding permits, be completed; and

WHEREAS, the Planning Commission held a public hearing on July 9, 2009 and _____, December 10, 2009, and provided a recommendation regarding the term and effect of approval of Final Development Plans; and

WHEREAS, City Council held a public hearing on August 4, 2009 regarding the term and effect of approval of Final Development Plans and provided feedback for this ordinance; and

WHEREAS, the City of Steamboat Springs City Council finds it in the community's best interest to allow administrative extensions of the term and effect of approval of Final Development Plans in limited circumstances.

NOW, THEREFORE, the City Council of the City of Steamboat Springs ordains as follows:

SECTION 1

Sec. 26-66 (e) Term and effect of approval.

- 1) Approval of a Final Development Plan shall be final as of the date of City Council approval.
- 2) Approval of a Final Development Plan shall remain effective for a period of three (3) years, or for a time period agreed upon by the City Council through a Development Agreement pursuant to Sec. 26-203, and may be extended as provided in Subsection (3) of this Section. Such Development Agreement shall be processed concurrently with Final Development Plan application. If an active building permit has been obtained for the Final Development Plan or part thereof, and the term of approval for the Final Development Plan expires, the development covered under the active building permit may continue; however, the Final Development Plan approval shall be considered expired and no new building permits may be issued based on the expired approval, **unless an extension is requested**. Once the Final Development Plan or part thereof has been fully executed, the approval or part thereof shall remain in effect for perpetuity or until amended.
- 3) **A two (2)-year extension shall be approved administratively only**The Director may approve a two (2) year extension if the Director finds the project is within substantial conformance**substantially conforms to the provisions of the Community Development Code as defined in Sec. 26-402 at the date of the original approval expiration date. The Director may approve a A three (3)-year extension shall be approved administratively only if the project is in substantial conformance as defined in the preceding sentence and if the approval included multiple buildings in a single phase, and the project has installed public infrastructure improvements and received Preliminary Acceptance of those improvements, and all outstanding agreements with regards to infrastructure improvements are fulfilled, as well as any incomplete grade and fill requirements, or other improvements associated with outstanding permits are fully complete. An administrative extension request**The applicant shall be submitted**submit a request for administrative approval of an extension pursuant to this subsection to the Director no later than thirty (30) days prior to the approval expiration date.**

SECTION 2

All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts, thereof, are in conflict herewith.

SECTION 3

If any section, subsection, clause, phrase or provision of this Ordinance is, or the application thereof to any person or circumstance, shall to any extent, be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and shall in no way be affected, impaired or invalidated.

SECTION 4

The City Council hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety.

SECTION 5

This Ordinance shall take effect immediately upon the expiration of five (5) days from and after its publication following final passage, as provided in Section 7.6 (h) of the Steamboat Springs Home Rule Charter.

INTRODUCED, READ, AND ORDERED PUBLISHED, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the ___th day of __, 2009.

Cari Hermacinski, President
Steamboat Springs City Council

ATTEST:

Julie Franklin, CMC
Deputy City Clerk

FINALLY READ, PASSED AND APPROVED this 21st ___ day of April __, 2009.

Cari Hermacinski, President
Steamboat Springs City Council

ATTEST:

Julie Franklin, CMC
Deputy City Clerk

**STEAMBOAT SPRINGS PLANNING COMMISSION MINUTES
JULY 9, 2009**

The special meeting of the Steamboat Springs Planning Commission was called to order at approximately 5:04 p.m. on Thursday, July 9, 2009, in the Citizens' Meeting Room, Centennial Hall, 124 10th Street, Steamboat Springs, Colorado.

Planning Commission members in attendance were Cedar Beauregard, Karen Dixon, Rich Levy, Brian Hanlen and alternate Jason Lacy. Absent: Chairperson Kathi Meyer, Tom Ernst, and Sarah Fox.

Staff members present were Director of Planning & Community Development Tom Leeson, Senior Planner Jonathan Spence, and Staff Assistant Tami Heskett.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

Revisions to Vesting Provisions Discussion

Discussion on this agenda item started at approximately 5:47 p.m.

STAFF PRESENTATION

Tom Leeson –

There are no decisions to be made tonight. Any feedback or recommendations that you make to City Council will come back with an ordinance at a later date. This has come up for 2 reasons and predominantly because we have received numerous requests for extensions to vesting. As a result City Council wanted to take a look at our vesting periods and have staff provide an analysis. There are 3 different elements to this. The first is outlined on pg 8-2 of the staff report, which is the determined fact of approval of the standard FDP. Currently it's 3 years. Extensions beyond that can only be granted by City Council through a development agreement. That's occurred on a number of occasions and will still be the case if somebody wants a vesting period longer than the 3 years or if this proposal is approved longer than the 3+2. We did an extensive research of various communities throughout Colorado in terms of their vesting periods. Just about all of them were 3 years, which is consistent with the state requirement. A fair number of them did allow extensions and they varied in terms of the mechanisms. After looking at this we felt that it probably made sense to allow an administrative approval of 2 if the project was in substantial conformance with the CDC after the initial 3 year period. The projects that we're seeing these days are larger and more complex than we've had in the past. We feel pretty secure in the CDC. We're making minor changes to it, but we're not going through extensive changes that we were during the first few years. We feel comfortable that if a project is in substantial compliance that it would make sense to do an administrative approval for the 2 years.

COMMISSIONER QUESTIONS

Initial Vesting Review

Commissioner Dixon –

How do variances fall into this? If a project is granted a significant variance and we change the CDC during that vesting period, how do you determine if that project is still in substantial conformance? Do you take into consideration the variance and what the variance percentage was?

Tom Leeson –

There's a definition for substantial compliance and conformance. It talks about site planning, architectural elements, vertical and horizontal dimensions, etc. It's not all at 5%, but that's a general rule that if anything is greater than that then it's out of substantial compliance with the original approval. If a project was or wasn't granted a variance and the code changed to where it put that project out of conformance then it would not get the administrative approval.

Commissioner Levy –

What about the opposite of that? What if it were a PUD and the variances disappeared due to an increase in height allowances and other factors, would that affect the required public benefit?

Tom Leeson –

If the code changed in favor of the project and it was within substantial conformance with the CDC then there wouldn't be an issue.

Commissioner Levy –

Would they probably want to cancel their vesting and reapply it if they wanted to remove the burden of public benefits?

Tom Leeson –

If they wanted to do that then they would have to go back through the process.

Commissioner Hanlen –

If vesting is set to expire and they're 6 months away from the expiration date and the applicant were to come back in and make a request to extend the vesting is that even an application or is it too bad you're vesting expires and you have to go through the whole process again?

Tom Leeson –

Currently you have to pull a building permit prior to your vesting expiring. If you don't pull that permit prior to that expiration date then you lose your vesting.

Commissioner Hanlen –

There's no such thing as a vesting extension application?

Tom Leeson –

There is not.

Commissioner Dixon –

Would we be creating one with this?

Tom Leeson –

Probably not. It would be a matter of somebody coming in and saying that they didn't pull their permit within the 3 years and their project hasn't changed and the code hasn't changed and they need an additional 2 years. The Planning Director would then write a letter granting that additional 2 years.

Commissioner Levy –

Do they have to walk in the door 5 min. before it expires and get something stamped and they're in the extension process? Does the decision have to be made before? In that time line of when it expires when do they have to say they want an extension?

Tom Leeson –

Prior to their initial 3 year vesting period.

Commissioner Hanlen –

The project that I keep thinking about is Edgemont. It has those 2 big buildings and then it also has those little duplexes behind it. By the time they get to pulling the building permit on those last couple of duplexes that it may be tough to make that time line. I'm wondering if it makes sense to create an application process for a vesting extension. Staff can just say no you have to go through the process. On a project like this where there's significant infrastructure and they're filling in the last pieces does that make sense to go back through the whole public process when it's just the last little parts?

Tom Leeson –

This is discussed later in this discussion. In that case they're required to put in all of that infrastructure and that would give them an additional 3 years to pull those permits without having to go through any kind of public hearing.

Commissioner Hanlen –

My question would still be the same. I don't know what their construction schedule looks like, but I wouldn't be shocked that by the time you build 1 building and start the next building and you go through all of those other buildings that you couldn't build it fast enough to get to the finish line.

Tom Leeson –

There are always going to be large projects. If it is a very large project then they should probably be initially asking for a longer vesting period up to 10 years, which is allowed through the development process. I think that is the more appropriate place to be dealing with that sort of thing rather than creating a vesting extension application. We used to have that under the old code and it created a lot of headaches, tracking issues, and it was very difficult to establish any criteria to approve an extension.

Commissioner Hanlen –

Do we have that many projects that were already approved and didn't get the chance to negotiate for longer vesting periods?

Tom Leeson –

I've given you a list of them in the staff report.

Commissioner Hanlen –

I didn't know if that was the complete list since Edgemont wasn't on that list.

Tom Leeson –

Edgemont's no longer an issue. There are a fair amount of projects that have multiple buildings and are getting caught now, because they're getting ready to expire within the next year and they're not going to be able to pull their permits.

Commissioner Dixon –

We don't do vesting by phase, we do it for the whole project regardless of whether or not it's phased?

Tom Leeson –

Correct.

Commissioner Dixon –

How would it work if you did it by phase? The clock wouldn't start ticking on their vesting until that phase began so I don't know how that would work? I don't know how that would be any different than granting a longer vesting period?

Tom Leeson –

You may have certain improvements that are part of a particular phase. They would not be able to go on to the next phase until all of those improvements were finished that way the City is assured of certain improvements.

Commissioner Levy –

If there was any change to the zoning or the standards of a particular zone that would be something that would also be looked at and not just the dimensional standards. If those things would change then those would also go under review by the Director? If we were to change the up zone or have a higher required commercial in the up zone then is that covered in this wording?

Tom Leeson –

As an example you're talking about required densities or mix of uses.

Commissioner Levy –

Or even a change from G-1 to G-2, which strongly encourages commercial. If that were to change then that could really change a lot about a project that may not have any commercial.

Tom Leeson –

That project isn't in substantial compliance with the CDC.

Commissioner Dixon –

We need to make sure that the wording compliance of the development standards just covers this.

Tom Leeson –

Next time we bring this before you we will give you the definition of substantial compliance.

Commissioner Levy –

Zoning falls under the development and dimensional standards?

Tom Leeson –

Correct.

Commissioner Lacy –

Did staff have any thoughts on any of these other criteria used by other cities and towns that you listed on pg 8-3 and whether we should include any of those or anything similar to those?

Tom Leeson –

There wasn't one that really jumped out. Some of it was too loopy goopy and some of it seemed too tight.

Commissioner Dixon –

It seemed like the Fort Collins example was the closest.

Tom Leeson –

Yes, I would agree.

Commissioner Levy –

I think that this is closest to some previous discussions that we've had at work session about vesting.

Public comment was taken.

Commissioner Dixon –

Did staff consider a difference in size or scope of a project and a different vesting approach or something similar to Crested Butte where it warrants it or staff thinks it warrants it? Is there a way to address that?

Tom Leeson –

We didn't in this change, because we feel that is covered with whatever is already in the code.

Commissioner Beauregard –

Why would size and mass of one building have anything to do with when you get that building permit?

Commissioner Dixon –

Not one building, but a project overall.

Commissioner Beauregard –

Size and mass I think of 1 building, but you're only getting 1 building permit.

Commissioner Dixon –

No, I wasn't talking about 1 building. I was talking about a larger project with multiple buildings where construction phasing might be carried out over 10 years.

Commissioner Levy –

If we're going to be looking at any kind of extended vesting periods then will we be looking at strengthening our demolition permit process so we can avoid vacant parcels for even an extended period of time? If we don't change the demolition permit process and have that be an effect on the Director's ability to give an automatic extension. It sounds like we're going in the direction of strengthening our demolition permit process even though it may be our downtown rule everywhere.

Tom Leeson –

The way the downtown demolition regulation is written is that you have to have an approved FDP. If you get your FDP approved then you could demo the next day and have a vacant lot for up to 5 years. I don't know if that covers your concern. In other parts of town you can get a demo permit without an approved FDP. I think that in certain circumstances that a vacant lot is worth more than a lot with a building that's going to be torn down. City Council wanted us to look at this at least in the base area so that it's consistent with downtown.

Commissioner Levy –

Personally I imagine that's what we're going to get is an existing demolition process, which for me is not strong enough for this case where we could possibly unless there's some wording that if we're going to grant extended vesting permits and it's been demolished to make way for that then it has to be brought into consideration of that. Ideally we should have a stronger demolition, but I don't think that's going to happen.

Commissioner Hanlen –

I heard through a rumor that the fire department has a condemned building. Is a condemned building any worse than a demoed building?

Commissioner Levy –

Under certain circumstances I can understand that. They were not getting ready to condemn Thunderhead Lodge.

Commissioner Hanlen –

That would be my only caution, because I agree with you that now all of a sudden we have this blank slate. I think that the language to have that be productive I think would be very complicated. It seems like everybody would be asking for that depending on what the rules would be. I think that it would be difficult to craft well.

Commissioner Beauregard –

There's not really another marker either. You've DP and then you've got building permits. Where's the middle ground where you would be saying condemn your building now?

Tom Leeson –

We'll take a look at that.

Transitional provisions

Tom Leeson –

He gave a brief background and discussion on transitional provisions. We're not recommending that any of the projects that were granted 10 year vested periods to receive any extensions.

Commissioner Beauregard –

Does this have to do with little residential variances too? I can think of a handful of river setback variances.

Tom Leeson –

No, they didn't fall under that. Are you referring to a variance that was approved and not acted on?

Commissioner Beauregard –

I know of some variances where they were approved and not even built. I know of some on the Plat.

Tom Leeson –

On the Plat they were granted a variance?

Commissioner Beauregard –

I don't know the exact wording. Mine is just a variance and it says this is where you can build to. It doesn't show what my building looks like.

Tom Leeson –

It's noted on your plat?

Commissioner Beauregard –

No, it's just a letter. There's no dates written on it at all. Mine is built, but there is not a reference to the actual building. The way they didn't back then was just distances from the river.

Tom Leeson –

I don't know how to answer that. We could take a look at it.

Commissioner Beauregard –

I'm just thinking that through the process of mine coming through I remember this public debate and a lot of them were brought up where they were given the variances. I was thinking that maybe a letter would be appropriate for these people.

Tom Leeson –

He explained how those variances were granted back then. We can take a look at that if you want.

Commissioner Beauregard –

I just figured that I'm probably not the only one.

Commissioner Hanlen –

Are these the only 5?

Tom Leeson –

These are the only 5 that we were able to find.

Commissioner Hanlen –

You mention in the report that several inquiries had been made. Which properties were those?

Tom Leeson –

In this list the one that is specifically requesting is the Steamboat Grand. They have a phase 2. It's 52 units. They have specifically requested for an extension since they know that their not going to build for the next 2 years.

Commissioner Hanlen –
Since we don't have an extension application then that's not an option?

Tom Leeson –
No.

Commissioner Levy –
They can't request to come before us to ask for an extension?

Tom Leeson –
We don't have any formal process and according to the code that it will expire, which is why we're having this conversation now.

Commissioner Dixon –
On pg 8-5 in the paragraph with the quotes are you suggesting that we change that language at all or we remove that language or clarify anything?

Tom Leeson –
No, that's the obscure language that Edgemont came through and got approval under. We're not proposing to change that in any way. We're proposing that these not be granted an extension in 2011, in which case this language wouldn't apply.

Commissioner Dixon –
This language could apply to other projects in the future, correct? We wouldn't remove the language. The language is problematic.

Tom Leeson –
It's only contained in the transitional provisions section, which only applies to those projects.

Commissioner Hanlen –
So it would go away.

Tom Leeson –
It would go away.

Commissioner Levy –
I assume that you guys had talked about whether it would be appropriate to create a process to request for an extension. Nothing automatic, but if someone wanted to request an extension they would have to come before both Planning Commission and City Council?

Tom Leeson –
That's essentially what they've done. They've written a letter requesting an extension. We told them that this was going before a public board and it's going to apply across the board

since we don't want to take this as a case by case basis. If that's what comes out of the decision then that's what needs to be talked about. Our recommendation is no more extensions.

Commissioner Dixon –
It's only going to be these 5 projects, correct?

Tom Leeson –
Yes.

Commissioner Levy –
If we weren't going to take any new action then under the current code there is no outline asking for an extension?

Tom Leeson –
Correct.

Commissioner Levy –
Even right now?

Tom Leeson –
Correct.

Commissioners agree with staff.

Developments that have received Preliminary Acceptance of infrastructure improvements.

Tom Leeson –
On pg 8-6 there is a list of developments that were approved with a single phase with multiple buildings. Due to the economy they have come to realize that they aren't going to be able to pull a building permit for the last few buildings. Based on the requirements of the city they wouldn't be able to pull permits after their extension. Looking at that more closely we felt that was too great of a burden. What we're recommending is that projects that are single phased, with multiple buildings and have installed their infrastructure and received preliminary acceptance that they be granted an additional 3 years administratively. There is some additional language in here provided that any outstanding agreements or improvements to infrastructure be fulfilled as well as any incomplete grade or fill that are associated with outstanding permits be fulfilled. There are cases where there were agreements made for offsite improvements or some grade and fill that needed to be done as part of the drainage. They just hadn't gotten around to it. We do not feel in that particular case that they should be granted an additional extension since those were improvements that were necessary and identified by the community that were needed sooner rather than later.

Commissioner Beauregard –
You're really only talking about 5 projects here as well?

Tom Leeson –

This would apply to these 5 projects. They haven't expired yet.

Commissioner Beauregard –
Only projects that have prior to this have been approved?

Tom Leeson –
This would apply to all projects in the future that met this criteria.

Commissioner Beauregard –
Where do you draw the line where 6 years would be given? How does the size of the project reach a certain threshold of so many buildings that you say that this is a 6 year?

Tom Leeson –
The way it's currently written there is no threshold.

Commissioner Hanlen –
It's any project that's been approved and is single phased with multiple buildings?

Tom Leeson –
Correct.

Commissioner Hanlen –
What if it's a single building with a massive infrastructure?

Tom Leeson –
They would have had to pull their permit so they wouldn't have lost their vesting.

Commissioner Levy –
Would there be a threshold of investment of infrastructure? That seems kind of broad. They could run a power line and say we had to run our own power line and that's our infrastructure.

Tom Leeson –
With multiple buildings it's a little bit more complex than that. A power line wouldn't cut it.

Commissioner Levy –
Unless a lot of that was already in place. Is there a threshold of infrastructure improvements or maybe that doesn't exist where only a minor amount of infrastructure is required for a multi-building project. I understand the intent that if they put in a lot of investment then we should give them a little bit more leeway. I'm wondering if that investment needs to be scrutinized?

Tom Leeson –
We didn't look at that. I can't think of an example where you would only need a minimal amount of improvements that didn't justify the extension.

Commissioner Hanlen –
Would this be retroactive on the projects that you mentioned?

Tom Leeson –
Yes.

Commissioner Hanlen –
River Front Industrial Park expired.

Tom Leeson –
Yes. That's the one that did expire. We would include in the ordinance that they be granted an extension as well.

Commissioner Hanlen –
When you talk about Sundance North Village in the 3rd paragraph down on pg 8-6 you talk about how the substantial infrastructure they didn't contribute?

Tom Leeson –
They're supposed to contribute financially to some drainage improvements the City has already completed, but they haven't yet.

Commissioner Dixon –
You can't grant the extension until they do contribute.

Tom Leeson –
Right.

Commissioner Beauregard –
Why are we separating 'a' and 'c'? Why don't we just combine the 2 into 1? In 'a' you could retroactively apply 'c' to the developments that got blind sided by the economy. I don't see why you would separate out multi-building developments from 'a'. I think that they should come in and at that time ask for a number and then we could individually approve or disapprove these projects.

Tom Leeson –
Are you saying that the 3+2 process should be the same? It is a little bit different since in 'a' you still have to be in substantial conformance with the code. In 'c' we're not asking you to be in substantial conformance. The code may have changed and you may be out of conformance. Since the project has already put in a substantial amount of infrastructure we're not requiring that.

Commissioner Beauregard –
Shouldn't they have had the foresight to have asked for an extension if they didn't think that they were going to be able to get these buildings built in that 5 year period? For the future projects, why are we going to have 'c'?

Tom Leeson –
That's a discussion. We feel that there are circumstances that are unforeseen in the future.

Commissioner Levy –

That was one of my questions as well. Why substantial compliance wasn't listed as a criteria for an extension on these preliminary projects? You answered that question.

Tom Leeson –

Part of the reason is that the City requires the infrastructure to be installed. There is automatically a delay for these projects before they can pull a permit. For that reason we felt that this time period was justified and also to not require that substantial of conformance.

Commissioner Dixon –

Would there be a situation where the infrastructure is put in and if they had to redesign a project based on substantial conformance then the infrastructure wouldn't be applicable? They could have wasted a whole bunch of money on infrastructure that doesn't apply to anything since they would have to redesign due to being out of substantial conformance.

Tom Leeson –

That could be possible. Most likely the code would have to change dramatically.

Commissioner Dixon –

For that reason I would support not having substantial conformance. Why a 3 year extension and where does that number come from?

Tom Leeson –

It's arbitrary. We felt that because of the bigger investment and the time to do that that doubling their vesting period was justified.

Commissioner Levy –

This is a pretty small number of projects that would fall under that scenario. Were there many other projects that were not completed that lost vesting due to the expiration of their permit that they were not able to complete it?

Tom Leeson –

Not recently.

Commissioner Levy –

This is a pretty small percentage of what we've seen over the last few years.

Tom Leeson –

There are some of those. The projects that felt that they weren't going to meet the 3-year minimum asked for a longer vesting period. These projects on the list that were small enough that they thought they could get it done in 3 years and then things changed.

Commissioner Beauregard –

Do you think any of these don't meet substantial conformance as described in 'a'?

Tom Leeson –

The only one that might not is Eco Corral. That might be one that might not meet the new mixed-use corridor and multi-family standards.

Commissioner Lacy –

I assume that when this language was drafted that we're going to make sure that there's no way that an applicant can come through and get an extension on one end on 'c'. It's going to be an either/or type of situation. They're either going to be able to get a 2 year or a 3 year extension and that's it.

Tom Leeson –

That's correct.

Public Comment was taken.

Tom Leeson –

The question is if they can come in and ask for an extension? Yes they can, but it would have to be under an ordinance. That's specifically what we did with the Porches. We gave an additional 6 months to the fall of 2009. They could be addressed individually if the ordinance doesn't work for all of them. These projects are in the process. This still makes sense to move forward in allowing for extensions. This might not be enough and we could address that through an ordinance process for each individual project.

Commissioner Hanlen –

I would say that normally it would be very difficult. We're already doing it for River Front and there's only 5 projects. It may be very warranted especially considering Sundance North may not be able to pony up in time to get their extension so now we're talking about 4 projects. It's just addressing the other 3 on the list. I'm assuming that they all have very different circumstances.

Tom Leeson –

That's right.

Commissioner Hanlen –

Eco Corral and Rocky Peak are both projects that were purchased from the original developer and now someone else is picking up the ball afterwards.

Tom Leeson –

Rocky Peak has pulled the majority of their permits. I know that Eco Corral has pulled some permits.

Brian Hanlen –

Your permit is only good for 6 months. 6 months is a trigger and if you haven't had an inspection within the 6 months then you lose your building permit.

Tom Leeson –

I respect that and that may be an approach for these 5 projects.

Commissioner Hanlen –

If somebody's pulling a permit just to stop the clock and then they get to go and play the game with Carl Dunham then it seems like we haven't solved anything. It seems like we

need to either address the issue and make a decision otherwise people are going to play games to get what they want. That's why I feel like it's probably warranted to address these on a case by case basis. Otherwise you're just playing a game.

Tom Leeson –

We've had circumstances where multiple building projects went and pulled all of their permits. They didn't start construction on some of those buildings for a year or more after that. The building department just let them move forward anyways.

Commissioner Levy –

Do we track when infrastructure is completed? It was mentioned that it took a year to get the infrastructure in for Porches II. Is that something that we can document?

Tom Leeson –

Yes.

Commissioner Levy –

I can see somehow reimbursing them. It seems like we're going away from this blanket ordinance anyways. I can see how we can possibly automatically reimburse them for that if that's possible. I was thinking of the opposite scenario for time in time of investing. If it takes a year to put it in then they couldn't have started building before then. The other problem that I was thinking of and we saw this with some of the downtown projects is that you get a rush of developments coming in right before the ordinance is going to change. I thought that a lot of downtown developments tried to get in before the inclusionary zoning got passed. There's that possibility and not only is getting their project in before in zoning or other codes, but then they do the infrastructure which is a cost but it might be a lot less if they had to comply with some new change. Now they possibly might get a 6 year beyond what they knew was going to be a change. Substantial conformance might not be the right wording, but if we look at any automatic extension then there needs to be some level of review that we're still on the same page. I don't know what the right term is or if there's another category, but a blanket extension I think opens the door for too many unforeseen consequences.

Tom Leeson –

I don't know that substantial conformance would not cover something like an affordable housing ordinance that came in after their approval. According to that definition they would not have to meet the affordable housing requirements and still be within substantial conformance.

Commissioner Hanlen –

Didn't we address that when we made revisions to the affordable housing ordinance where we talked about where it has to be paid right after the approval versus giving them the ability to pay right up to the time of the building permit? If they are paid at the time of the building permit then the fees are what they are.

Tom Leeson –

Yes and that's just an example of a new regulation that is applied after the approval of a building, but isn't necessarily covered under the definition of substantial conformance.

Commissioner Hanlen –
That doesn't typically pay at the time of the building permit anyways if it's an excise tax or TAC fee.

Tom Leeson –
I think that Commissioner Levy's point is well taken. That's why that substantial conformance definition is going to be important for you to look at the next round.

Commissioner Levy –
Is there a consensus with having them be a case by case basis?

Commissioner Beauregard –
Have them as a case by case and then delete 'c' for future development?

Commissioner Levy –
I would assume that Tom Leeson would like to see the future developments have the ability to be reviewed for an extension if they've put in a substantial infrastructure.

Commissioner Dixon –
On a case by case basis.

Commissioner Beauregard –
If it's on a case by case basis.

Tom Leeson –
When you say a case by case basis are you saying that substantial conformance applies to them?

Commissioner Levy –
No, it's negotiated. That's what I thought I heard us say. Look at the each one, look at the different circumstances, and look at the reasons why they're asking for an extension. If there are extenuating circumstances that would either allow it or prevent an extension.

Commissioner Hanlen –
Right now it's not looking at the reason why it got delayed. We're asking if it's still in substantial conformance regardless of the reason.

Tom Leeson –
I think it's problematic to do it on a case by case basis.

Commissioner Hanlen –
It's too vague.

Commissioner Levy –
What are Commissioner's thoughts on future projects?

Commissioner Hanlen –

Right now the whole world is on a down turn. That's not to say that 1 developer could have a bad year and couldn't start a project. I think the idea of the 3 year and 3 year administrative approval and they're granted the extension. If they're granted the extension just based off of substantial conformance.

Commissioner Beauregard –
They're not though in this regulation.

Commissioner Hanlen –
They're granted the extension. It keeps it out of the public process and turns it into this game where all of a sudden different Planning Commissioners and City Council requires different things. All of a sudden what seemed like a no brainer application turns into several \$100,000 worth of redesign and potentially craters the project. If somebody gets approved on something and staff feels that it's on the right track then they should be able to get the extension.

Commissioner Beauregard –
Why don't you write multi-building single phase developments as having a 6 year vesting period. With no criteria you might as well say 6 years.

Tom Leeson –
Because they may get an approval and not put in their infrastructure.

Commissioner Dixon –
At which point it expires in 3 years.

Tom Leeson –
If they haven't done anything then we don't want to give them 6 years.

Commissioner Hanlen –
The example that I can think of is Eco Corral, which is a fairly tight site. There's 7 buildings containing 28 units. If what Tom Leeson is saying is right where the garages don't meet our new rules then I don't know that they could redesign those buildings to meet our new rules on that site. All of a sudden you have this tiny postage stamp of an envelope to place that building and then all of a sudden we create requirements where it is physically impossible and they come to the end of the road and they can't redesign their site.

Commissioner Beauregard –
I understand the issues the developer could have for sure.

Tom Leeson –
Or they may have to rip up some of the infrastructure that they've installed and relocate it because of that.

Commissioner Hanlen –
As much as I want to say the substantial conformance would be important 6 years goes by fairly quickly. Just for what I was trying to explain was that there could be a whole bunch of

problems that could come up just by trying to change a building that already had an approval.

Commissioner Beauregard –

How could this development agreement that Bill Jameson was talking about come into play? It seems like you could deal with it at that point for new stuff.

Commissioner Hanlen –

It would be negotiated.

Commissioner Beauregard –

What does that look like?

Tom Leeson –

It looks like it does now.

Commissioner Beauregard –

You don't feel comfortable with the way it is in regards to new projects?

Tom Leeson –

That is certainly a possibility. We are just trying to create a scenario where it has occurred multiple times and we know that it's going to happen again to create an administrative process to go through.

Commissioner Beauregard –

They didn't ask for the extension or they felt that they could get it done within the 3 years?

Commissioner Dixon –

Some unforeseen circumstances could happen.

Commissioner Levy –

I'm not sure that I'm hearing a lot of consensus on it. As written that's the direction that we should go. If they put their infrastructure in that they can automatically get a 3 year extension. Who thinks that's the direction that we should be heading with this particular part of vesting?

Commissioner Hanlen –

It's more problematic than what we realize on future projects. Going in and trying to have them come back and meet substantial conformance. If you're repeating a building 10 times in a development then all of a sudden they have to come in and redesign that and you have this really tight constraint to work within. It seems like a no brainer and you just adjust the building a little bit. The domino effect could be rather large.

Commissioner Beauregard –

If that Eco Corral garage is 5% over then it automatically has to go through the whole process. If we eliminated 'c' and staff found that it's 5% over the threshold then it has to go through the process if we were to leave substantial conformance in there. The threshold is

very defined. When you leave it as is and the garages are 5% over then you don't get the extension and then you have to reapply through the whole process again?

Tom Leeson –

If you include the substantial conformance language then that's true.

Commissioner Beauregard –

You're trying to avoid it.

Commissioner Hanlen –

I don't know how making the garages conform meets any definition of the 5%. The design guidelines that are in the entry corridor plan doesn't come anywhere near the 5%. That's just here's how the garages are supposed to be placed. 2 of these projects wouldn't work. It's not like all of a sudden we moved the garage back 3' and it magically fits the bill now. It's a physical impossibility without a complete redesign of 2 of these projects. Now that the infrastructure is in I don't know that you have any wiggle room. If we're just talking about a case by case basis with these projects and then projects in the future being negotiated separately. If we don't feel comfortable granting a longer vesting then we don't give it.

Commissioner Beauregard –

Doesn't it say automatic 3 year?

Commissioner Levy –

That's what they said they were all in favor of going. That's what I was trying to clarify.

Commissioner Hanlen –

I'm saying longer than the 3+3. Regardless of this document developers can come in and negotiate a 10 year vesting on a project no matter what it is whether it's a small bank or Ski Time Square. I'm just saying that these are going to be the standards. People can come in and ask for something completely different than these.

Commissioner Levy –

I think that I'm somewhere in the middle. I'm not sure that I'm all for an automatic 3 year extension. I don't think that substantial conformance is right and I think that they need a little bit more credit since they made the investment, but I think that some criteria is what I would like to see for a 3 year extension.

Commissioner Beauregard –

I don't think that it's our responsibility that they didn't get the project done. I see the reasoning behind it, but I would like to see substantial conformance in there. I don't know that I want to leave that out.

Tom Leeson –

I'll take this forward to City Council on August 4 and get some feedback from them and return to you.

Commissioner Beauregard –

That was for future stuff. I can see the blind siding of the economy, but that was my thinking for future stuff. I think that the development agreement should cover their needs. I think that they should have the fore site to know that they're not going to get that done. For past stuff I think that it's fine.

Tom Leeson –

You could have said that 3 years ago about these projects.

Commissioner Hanlen –

Like what I was pointing out 3 of these projects were originally owned by different developers who were a little bit more optimistic than the current developers and those projects get sold. 2 ½ years of your clock has already run out before you break ground on your first building. It's definitely a different scenario.

Commissioner Levy –

Who's fault is that? That's even more of a tangent than the discussions that we've talked about. If someone buys a project where the clock is already ticking.

Commissioner Dixon –

I would assume to not see a bunch of infrastructure thrown into the land fill just because vesting expires.

Commissioner Beauregard –

I'm not thinking of it turning out that way. We have a new set of regulations. We decide that we want the 2nd floor on all of the stuff in the mixed use corridor. Wildhorse comes in and it hasn't been built yet and we all strongly in favor of a 2nd floor. We're not going to ask for all of the sidewalks to be ripped out. We're just going to ask for a 2nd floor. By keeping the substantial conformance in there it gives us a leveraging point to get. It may be something that we want. I'm not thinking of ripping the whole thing up. It just gives us some leveraging point to give us what we want.

Commissioner Hanlen –

What's the vesting period for Wildhorse Marketplace?

Tom Leeson –

They had a vesting longer than 3 years. I don't remember exactly what it is.

Commissioner Hanlen –

Just like what Commissioner Beauregard just brought up when those final 2 buildings go in.

Tom Leeson –

They may have had a 10 year approval too.

Commissioner Beauregard –

We get all of our leverage when we get something new that we like more than what they propose. The negotiations are mute. We can say that you don't need to rip up your sidewalks, but we would like to see some residential up above.

Commissioner Hanlen –
For any projects moving forward we're going to be asking for that.

Commissioner Beauregard –
Who knows what we're going to decide we want in 10 years. That just happens to be our hot button now.

Tom Leeson –
On this 3rd one you're recommending that this be a blanket change, but deal with these 5 projects through an ordinance through a case by case basis. My question for you is what criteria you're going to use to recommend approval of a longer vesting period for these? Whichever vesting period you choose you can expect that all of the other ones are going to request that same vesting period as well. We don't have to answer that question tonight.

Commissioner Hanlen –
Do you have any recommendations for criteria? It seems like it's so subjective. The Porches has 5 buildings left to go versus Rocky Peak has 14 buildings to go. If you go solely based off of size then one would be longer than the other. One is going to say our price point is higher and we need the longer absorption period. The other is going to say we have more units. What's a non-subjective way to approach that where we are being fair?

Commissioner Dixon –
We can't avoid subjectivity.

Tom Leeson –
That's why we're trying to get away from that. We'll think about it and I ask that you do the same.

Commissioner Hanlen –
If they haven't already has the applicant's made any requests about what they would like to see?

Tom Leeson –
No, the only one that we've talked is Porches II and they would like to see a 5-7 year. If they find that the 3 years isn't enough then they can come in and go through a public process.

Commissioner Dixon –
What's our criteria, that's the question.

Commissioner Levy –
I don't think that 3 years is as unpredictable as 3 years ago.

Commissioner Hanlen –
How much longer are we going to be in the recession for?

Tom Leeson –

You don't have to have that answer tonight.

Commissioner Beauregard –

With regard to 'c' is the issue the infrastructure that's in the ground? Or is the issue having them resubmit? We can maybe write in a contingency that we want them to meet substantial conformance and still using the infrastructure that's in dispute.

Commissioner Dixon –

In a case like Eco Corral or Sundance North with the garage issue that would be impossible.

Commissioner Beauregard –

If it's impossible then we would say you get 3 years. What I'm saying is that the issue or is the infrastructure the issue? Are you not wanting them to have to resubmit it or are you wanting to save the infrastructure that's already there? If we lose the substantial conformance clause then we lose our view point. Maybe tweak it in a better direction of what we want now. Can we just put it in there so that we use the infrastructure that's already there? We just want to tweak it a little bit in the bounds that it's already been paid for under the original development.

Commissioner Hanlen –

It sounds like we're back to the transitional provisions again.

Tom Leeson –

What you're saying is that by not requiring them to be in conformance, you want them to come into conformance as much as they can.

Commissioner Beauregard –

Without asking you to dig up everything that you've built on the first one.

Commissioner Hanlen –

I agree with it in theory. The problem again is drafting language for non-subjective criteria that you can evaluate. Going back to the transitional provisions for these projects with the really long vesting how do you weigh something like that? Watching Commissioner Levy struggle with the Edgemont project. It said that it had to be commensurate with the degree of change. Where do you start with something like that?

Commissioner Beauregard –

I'm just saying that we want you to save this infrastructure that we don't want to have to tell you to rip up.

Commissioner Hanlen –

I agree with you in theory. It's just tough to put into practice. I don't know how to do it. If there was a clean way to do it then I'd agree with you.

Tom Leeson –

We'll look at that.

Commissioner Beauregard –

It would be nice if the director could look at it and say you can come into conformance using the infrastructure that you built. I agree that it's not going to be easy to write down guidelines that are going to be easy to follow.

Commissioner Hanlen –

Do you have any ideas on this?

Tom Leeson –

I agree with you Commissioner Hanlen.

Commissioner Beauregard –

You just say no you don't get your extension. They resubmit and then ask if they can use the same infrastructure. That's how that would happen. In their resubmittal we say let's leave that infrastructure alone. I don't think that you can ever avoid resubmittal. Do we value the fact that they don't have to resubmit or do we value the infrastructure that they've already bought? If the reason we've put them into 'c' is because of the infrastructure then let's just say you get to leave that infrastructure, but you're going to have to resubmit. If it's because we don't want to have them resubmit then we would say you get a 3 year extension.

Commissioner Hanlen –

Both. If you spend over a million dollars on the infrastructure and the public process is very unpredictable. It would be one thing if you said I read the code, I drew my buildings, and I get my building permit. They go before us and stuff changes and they go before City Council and stuff changes.

Commissioner Beauregard –

If it's both then what's the difference between 'a' and 'c'? The infrastructure makes it a little bit stronger?

Commissioner Hanlen –

Right, you get another year because you put the infrastructure in. In theory that year that the infrastructure delayed you from being able to start your first building.

Commissioner Beauregard –

You don't have to come into substantial conformance.

Commissioner Dixon –

The other theory is that if you put the infrastructure in then you're basically committed to moving forward. You wouldn't have put it in otherwise. There should be some acknowledgment in the sincerity in doing that and some reward for doing that versus not putting anything in and just asking for an extension.

Tom Leeson –

That was a good discussion and it was helpful.

PUBLIC COMMENT

Initial Discussion

Bill Jameson –

I'm in support with what's being proposed. I'm troubled that you are trying to figure out how to loosen up the practice that we have today. This is just going to put a regulation of what's been done before to an extent. All of those projects that were granted a 3+2 all require substantial conformance with the then existent code. If they haven't gotten their act together then they shouldn't have gotten the permit in the first place. If they're not in substantial conformance for any reason that's in the criteria then they need to go back and submit a proposal that is in conformance with the existent code at that time. I think that the goal of the City should be to encourage prompt redevelopment or development to go forward. I would encourage you to recommend to City Council to give them their 3 years and in this proposal an additional 2 as long as it's in substantial compliance. It's not like you're not providing some relief.

Mark Matthews –

I think that Edgemont is a great example of the vesting period that was very long and the code actually changed. We're tracking this as much as we can. I'm encouraged by the initiatives that the Planning Department has taken into this. I know our vesting period has come under the public scrutiny. We submitted a 10 year vesting period on our DP on Ski Time Square. We're coming in recognizing that other projects has come in with a 10 year vesting period. We're recognizing that some of these projects, because of their scale require different standards. In our larger projects with recognizing that there needs to be some flexibility to move through these in terms with phasing and also size and massing.

3.)

Bill Jameson –

My understanding is why you wouldn't require substantial compliance under this section? The last one you saw was Rolling Stone, correct?

Tom Leeson –

Probably.

Bill Jameson –

It was a single phase multi-building project, but it had substantial compliance required in it for the extensions. I don't see why you're granting 'c' to future projects. Having been put on notice that they had better ask for a development agreement that gives them the opportunity for extensions or they're stuck with 3 years. If they've got multiple buildings out there then staff can tell them that they've got only 3 years to complete it or else they can get a development agreement. Why you would want to automatically give them 3 years as opposed to everybody else getting 2 years I don't understand. The development agreement is for these multi-building projects. I think that this is problematic that you would want to do this for projects in the future. I don't know any place else where you're not allowing substantial conformance. Why you don't want to have substantial conformance with current codes escapes me. To open up this kind of exception is problematic.

Roger Shugart –

Because of the number of projects and their uniqueness maybe we could consider looking at them individually. In reference to the Porches, it's 7 buildings on Mt. Werner versus the 35 buildings in the phase I area. The comments that were made earlier pertained to our development. The infrastructure took a year to go in. The sales on those are drastically slower than others. We understood that there would be checkpoints and now we're at a point where 3 years might not be enough. We want to build them. The lots aren't sitting there undeveloped and the infrastructure is already put in. I'm not concerned that our units will go stale over the next few years. I do think looking at these independently since there are only 5 of them.

Discussion on this agenda item concluded at approximately 7:15 p.m.