

AGENDA

CITY OF FORT COLLINS

PLANNING AND ZONING BOARD SPECIAL HEARING

Interested persons are invited to attend and be heard at the time and place specified. Please contact the Current Planning Department for further information on any of the agenda items at 221-6750.

DATE:	Friday, December 14, 2012
TIME:	12:00 P.M.
PLACE:	Chambers, 300 Laporte Avenue, Fort Collins, CO

A. Roll Call

B. Agenda Review

C. Citizen Participation (for non-agenda and pending application topics)

D. Consent Agenda: The Consent agenda consists of items with no known opposition or concern and is considered for approval as a group allowing the Planning and Zoning Board to spend its time and energy on the controversial items. Any member of the Board, staff, or audience may request an item be “pulled” off the Consent Agenda.

None

E. Discussion Agenda: Specific time for public input has been set aside for discussion on the following items:

The Planning and Zoning Board provides a recommendation to City Council on the following items:

1. Land Use Code Amendment to Amend Division 2

This is a request for a recommendation to City Council on This is a request for a Recommendation to City Council to amend Division 2 of the Land Use Code to allow for the processing of applications for development of property that is not yet under the full ownership and control of the applicant or developer.

Applicant: City of Fort Collins

Staff: Laurie Kadrach

F. Other Business

G. Adjourn to Worksession

PROJECT: Land Use Code Amendment

APPLICANT: City of Fort Collins

PROJECT DESCRIPTION:

This is a request for a Recommendation to City Council to amend Division 2 of the Land Use Code to allow for the processing of applications for development of property that is not yet under the full ownership and control of the applicant or developer.

RECOMMENDATION: Approval.

EXECUTIVE SUMMARY:

The Land Use Code (LUC) requires that all submittal requirements be met before a development application can be submitted and processed by City staff. One of these requirements is that the property being proposed for development must be under the ownership or control of the applicant. The proposed amendments would give the Director of Planning, Development, and Transportation Service Unit (the "Director") the discretion to allow applications to proceed through the development review process under certain circumstances, even if the property is not yet controlled by the applicant. The applicant would be required to show that at the time of application, the applicant has ownership of, or the legal right to use and control, the majority of the property included in the development application. The Director would have the ability to determine if moving ahead with the review of the application would be detrimental to the public interest. The applicant would be required to agree not to record any documents related to the processing of the application until the applicant had control of the entire property and would be required to indemnify the City against any third party claims related to processing the application. A related amendment would remove the six-month delay for resubmittal of a project that was denied, but only for those projects that were allowed to move through the review process with an incomplete application.

BACKGROUND:

Section 2.2.3 (C) (1) of the LUC prevents the Director from submitting applications to the Board and/or Hearing Officer until the documentation is presented to prove that the applicant “has the requisite power, authority, clear title, good standing, qualifications and ability to submit and carry out the development and/or activities requested on the development application”.

Section 2.2.4 states that an application must have a “determination of sufficiency” made by the Director in order to be ready for review and that this determination cannot be made on the perceived merits of the development proposal.

The intent of these provisions appears to be to avoid using City resources on proposals that may never come to fruition. In most cases, this approach makes sense; however, there are times when these provisions may result in delays that may work to the detriment of the applicant/developer, as well as the City.

Section 2.2.11 (D) (9) addresses projects that have been denied, requiring a six-month period before a new application may be submitted. The proposed amendment to this section would mean that if a project with an incomplete application was allowed to proceed through the review process and was denied, the six-month delay in resubmitting the application would not be required.

Staff is recommending that these LUC amendments be made to allow for greater flexibility in the development review process and afford the Director more discretion in determining whether the review of a particular development proposal can and should move ahead in advance of all submittal requirements being met. A development application moving through the review process will not entitle the applicant to commence development unless and until all other relevant Code provisions have been met, and all required approvals are obtained

City Council considered the proposed Code amendments at the December 4, 2012 Council meeting and voted to adopt the Ordinance on First Reading.

STAFF RECOMMENDATION:

Staff recommends that the Planning and Zoning Board recommend adoption of the proposed Land Use Code Amendments.

ORDINANCE NO. 149, 2012
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING DIVISION 2 OF THE LAND USE CODE
TO ALLOW FOR THE PROCESSING OF APPLICATIONS FOR THE
DEVELOPMENT OF PROPERTY NOT YET UNDER THE FULL OWNERSHIP
AND CONTROL OF THE APPLICANT OR DEVELOPER

WHEREAS, Division 2.2 of the City's Land Use Code (LUC) establishes certain development review procedures for the processing of applications for land development that are submitted to the City; and

WHEREAS, among those procedures are the submittal requirements contained in Sections 2.2.3 and 2.2.4; and

WHEREAS, LUC Section 2.2.3(C)(1) states that a master list of development application submittal requirements is to be established by the City Manager and that such master list is to include, at a minimum, documentation showing that the applicant "has the requisite power, authority, clear title, good standing, qualifications and ability to submit and carry out the development and/or activities requested in the development application"; and

WHEREAS, under LUC Section 2.2.4, an application cannot be processed or presented to a decision maker until the Director of the Planning, Development and Transportation Service Unit (the "Director") determines that it is complete and ready for review; and

WHEREAS, these provisions are intended to alleviate the need for the City to expend City resources on development proposals that may never come to fruition; and

WHEREAS, in certain instances, the foregoing requirements can cause unnecessary, costly delays; and

WHEREAS, City staff is recommending that LUC Section 2.2.4 be amended to allow for more flexibility in the development review process and afford the Director more discretion in determining whether the review of a particular development proposal can and should move ahead in advance of the foregoing submittal requirements being met; and

WHEREAS, the City Council believes that the amendments recommended by staff are in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Section 2.2.4 of the Land Use Code is hereby amended so as to read in its entirety as follows:

2.2.4 Step 4: **Review of Applications.**

(A) Determination of Sufficiency. After receipt of the development application, the Director shall determine whether the application is complete and ready for review. The determination of sufficiency shall not be based upon the perceived merits of the development proposal.

(B) Processing of Incomplete Applications. Except as provided below, if a submittal is found to be insufficient, all review of the submittal will be held in abeyance until the Director receives the necessary material to determine that the submittal is sufficient. The development application shall not be reviewed on its merits by the decision maker until it is determined sufficient by the Director. Notwithstanding the foregoing, if an application has been determined to be incomplete because the information provided to the Director shows that a portion of the property to be developed under the application is not yet under the ownership and control of the applicant or developer, the Director may nonetheless authorize the review of such application, and the presentation of the same to the decision maker, as long as:

- (1) the applicant, at the time of application, has ownership of, or the legal right to use and control, the majority of the property to be developed under the application;
- (2) the Director determines that it would not be detrimental to the public interest to accept the application for review and consideration by the decision maker; and
- (3) the applicant and developer enter into an agreement satisfactory in form and substance to the City Manager, upon consultation with the City Attorney, which provides that:
 - (a) until such time as the applicant has acquired full ownership and control of all property to be developed under the application, neither the applicant nor the developer will record, or cause to be recorded, in the Office of the Larimer County Clerk and Recorder any document related to the City's review and approval of the application; and
 - (b) the applicant will indemnify and hold harmless the City and its officers, agents and assigns, from any and all claims that may be asserted against them by any third party, claiming injury or loss of any kind whatsoever that are in any way related to, or arise from, the City's processing of the application.

The denial of an incomplete application that has been allowed to proceed to the decision maker under the provisions of this Section shall not cause a post denial re-submittal delay under the provisions of Section 2.2.11(D)(9).

Introduced, considered favorably on first reading, and ordered published this 4th day of December, A.D. 2012, and to be presented for final passage on the 18th day of December, A.D. 2012.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of December, A.D. 2012.

Mayor

ATTEST:

City Clerk