

AGENDA ITEM SUMMARY

April 21, 2015

City Council

THIS ITEM HAS BEEN WITHDRAWN FROM CONSIDERATION

STAFF

Laurie Kadrich, Community Development & Neighborhood Services Dir

SUBJECT

First Reading of Ordinance No. 051, 2015, Amending the Land Use Code with Regard to City Development Projects.

EXECUTIVE SUMMARY

The purpose of this item is to consider amending the Land Use Code to require any development review project in which the City is an applicant to be reviewed by the Planning and Zoning Board (P & Z) and eliminates formal appeals to the City Council, while allowing a Council override of a P & Z decision.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Currently City development projects are subject to the same development review process as any private sector development project. As such, the project is required to meet all Land Use Code (LUC) requirements and be subject to a Type 1 or Type 2 hearing as outlined in the LUC. Any resulting decision may be appealed to the City Council. Therefore the Council has been prevented from participating in discussions regarding the projects in order to avoid procedural issues in the event an appeal of the decision is sought. In many cases the City Council has authorized a City project to advance through the development review process through a strategic planning and budgeting process. Since the Council has input at the beginning of the project it has been confusing to the public when the Council is not allowed to participate during the development review process except in deciding appeals that are brought to Council.

In order to develop a process that would then allow Council, staff and members of the public to engage in conversations related to City development projects, staff recommends the following changes to the LUC. The changes recommended are similar to those allowed under Colorado Revised Statutes (CRS) Section 31-23-209 which describes what currently occurs for Site Plan Advisory Review (SPAR) processes. SPAR reviews are currently conducted by the Planning and Zoning Board (P & Z) for most public projects such as those of the Poudre School District or some Colorado State University projects. The SPAR process is limited to a review of location, character and extent. If a review is disapproved by the P & Z, the governing board of the public entity which is funding the project, by a vote of not less than two-thirds of its entire membership may overrule the decision and approve the project.

Since City projects are currently subject to the same process as other development projects staff recommends the following:

1. Require full development review and not limit the review to location, character and extent (SPAR) for any City project.
2. Require all City projects to be reviewed as a Type 2 (Planning and Zoning Board) hearing rather than a

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Type 1 (Hearing Officer) hearing. Holding Type 2 hearings may increase the transparency of the hearings by having them televised and by having an appointed board review the project. CRS requires all SPAR reviews under its jurisdiction to be reviewed by the P & Z.

3. A majority vote by the Council would overturn or modify any P & Z decision (whether approval or disapproval) made regarding a city project.

Staff provided Council with a memorandum on January 2, 2015, outlining these recommendations, as well as using the Planning and Zoning Board Hearing for public outreach. (**Attachment 1**) Staff was asked to move forward with the recommendations contained in the memorandum.

BOARD / COMMISSION RECOMMENDATION

At its February 12, 2015 meeting, the Planning and Zoning Board held a public hearing and voted 5-0 (Boardmembers Heinz and Hobbs absent) to recommend the LUC amendments. (**Attachment 2**)

ATTACHMENTS

1. Staff memo re: City Projects, January 2, 2015 (PDF)
2. Planning and Zoning Board minutes, February 12, 2015 (PDF)
3. Powerpoint presentation (PDF)

**Planning, Development & Transportation Services**

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MEMORANDUM

DATE: January 2, 2015

TO: Mayor and City Councilmembers

THRU: Darin Atteberry, City Manager
Jeff Mihelich, Deputy City Manager
Karen Cumbo, Planning, Development & Transportation Director

FROM: Laurie Kadrich, Community Development and Neighborhood Services Director

RE: Review of City Projects

SUMMARY

Currently City development projects are subject to the same development review process as any private sector development project. As such, the project is required to meet all Land Use Code (LUC) requirements and be subject to a Type 1 or Type 2 hearing as outlined in the LUC. Any resulting decision may be appealed to the City Council. Therefore, the Council has been prevented from participating in ex parte discussions in order to avoid procedural issues in the event an appeal of the decision is sought. In most cases, the City Council has authorized a city project to advance through the development review process through a strategic planning and budgeting process. Since the Council has input at the beginning of the project, it has been confusing to the public when the Council is not allowed to participate during the development review process, except in deciding appeals that are brought to Council.

OPTION TO CONSIDER

Council may want to consider changing the appeal process for City projects to one similar to what occurs in a Site Plan Advisory Review (SPAR) process. SPAR reviews are currently conducted by the Planning and Zoning Board (P & Z) for most public projects, such as those of the Poudre School District or some CSU projects. The SPAR process is limited to a review of location, character and extent. If a review is disapproved by the P & Z, the governing board of

the public entity that is funding the project, by a vote of not less than two-thirds of its entire membership, may overrule the decision and approve the project (Section 31-23-209 Colorado Revised Statutes (CRS)). Staff would recommend that, if Council desires staff to prepare Code amendments to change the process for City projects, Council could consider using a modified version of the SPAR process consisting of the following:

1. Require a majority vote to overturn any P & Z decision (whether approval or disapproval) made regarding a city project.
2. Require full development review and not limit the review to location, character and extent (SPAR) for any City project.
3. Require all City projects to be reviewed as a Type 2 (P & Z Board) hearing rather than a Type 1 (Hearing Officer) hearing. Holding Type 2 hearings may increase the transparency of the hearings by having them televised and by having an appointed board review the project. CRS requires all SPAR reviews under its jurisdiction to be reviewed by the P & Z.

PUBLIC ENGAGEMENT

Staff suggests holding a public hearing at a Planning and Zoning Board (P & Z) meeting and seeking a recommendation from the P & Z prior to Council consideration of this potential change.

Planning and Zoning Board Hearing Minutes
February 12, 2015
6:00 p.m.

Council Liaison:	Mayor Weitkunat	Staff Liaison:	Laurie Kadrich
Chair:	Jennifer Carpenter	Phone:	(H) 231-1407

Project: Review of City Projects and Land Use Code Amendment

Project Description: This is a request to subject all City projects to a Type II review, with that review coming before the Planning and Zoning Board. Therefore, the appeal process would be amended in a manner that would be a legislative review by the City Council, rather than a judicial review.

Recommendation: Recommendation to City Council

Hearing Testimony, Written Comments and Other Evidence

Staff and Applicant Presentations

Director Kadrich explained the purpose of this item, which is to request that the Board recommend to City Council a Land Use Code (LUC) amendment. She stated that, if a City project is going through the development review process, it is subject to the code requirement that assigns it to a Type I or II hearing. That project would also be subject to the current appeal process. City Council would be cautious in the type of communications that they had with any parties belonging to or having interest in the project (defined as *ex parte* communications). Therefore, if an appeal is sought, the City Council would be able to hear the project information without bias from those other parties.

If all City projects were brought before the P&Z Board, their decision could ultimately be overturned by the City Council by a majority vote. The reason for this is that, sometimes a City project will begin through a budget or appropriation process, and the City Council may be involved until the project goes to a development review. They may only hear of the project again if it is later appealed. This has created a lot of confusion for citizens who may be engaged in the project process. This proposal is similar to the Site Plan Advisory Review (SPAR) process, which is subject to decision overturning by the specific governing body.

Staff/Applicant Response to Citizen Concerns

Member Schneider asked who could appeal the decision of this Board. Deputy City Attorney Eckman responded that no one could appeal a decision based on the way this proposal is drafted; as a substitution, the City Council may, by a majority vote, exercise its legislative power and overturn or modify any final decision regarding the project. He continued by saying that this amendment would allow citizens to communicate directly with the City Council their opinions on P&Z Board decisions. Vice Chair

Kirkpatrick asked whether this amendment would result in making the P&Z Board's decisions more political in the future. Deputy City Attorney Eckman responded by saying there would no longer would be a necessity for Council to determine whether the LUC was properly interpreted; Council could overturn a P&Z Board decision under their legislative powers. Member Hart stated that he thought the purpose of this amendment was to provide a more transparent process for the people. Director Kadrach responded that citizens had been confused when a City project went to a Type I hearing instead of coming to the P&Z Board. Options other than an appeal process were also considered. With respect to how the SPAR process works, she believes it is reasonable to request that P&Z Board would hear all City project reviews.

Board Questions and Staff Response

Public Input

Eric Sutherland stated that he believes that many of the problems in the past have been the result of citizen misinterpretations, which he also believes have been manufactured by City government. He stated that the role of the City Council as defined by the City Charter has also been misinterpreted, which places the City Council's authority over the P&Z Board.

Board Deliberation

Member Hart feels this amendment will give citizens better access to the City Council and will also give the Council more flexibility in dealing with those concerns. Member Hansen feels it will protect the rights of the developers and property owners, let more citizens be fully engaged, but still uphold the LUC requirements. Director Member Schneider asked how the process would work if a P&Z decision was overturned (if the case would return to the P&Z Board at a later date). Kadrach clarified that staff would still recommend compliance with the LUC. Deputy City Attorney Eckman added that the P&Z Board would make their decision based on the LUC; City Council would make their decisions based on their legislative prerogative, and the project would not return to the P&Z Board. City Council would be able to overturn or modify a decision, but not remand. Member Schneider asked how the P&Z Board would be held accountable for the standards in place. Deputy City Attorney Eckman stated that this is a hybrid situation where the City must first comply with the LUC to get a favorable vote from the P&Z Board, but City Council would not be required to uphold the LUC. Member Hansen stated that this amendment could be beneficial to both citizens and the City, depending on the issue. Chair Carpenter expressed her discomfort with this proposal; while she likes some parts of the proposal, she still wants the Board to be more transparent. Deputy City Attorney Eckman stated that he is noticing some dissidence – he can foresee some friction arising in the future. He also stated that he thought Estes Park was another municipality that had exempted themselves from their LUC. Member Hart clarified that the City Council has a broader charter and, while they may be intentionally ignoring LUC, they can vote to “better serve community needs”.

Vice Chair Kirkpatrick asked whether this process would only be applicable when the City is an applicant, rather than when the City is involved in other ways (i.e. through TIF). There was a question as to what does the term “City-Sponsored” projects refer specifically. Deputy City Attorney Eckman could not recall the specific reasons why “sponsored” is listed. Director Kadrach stated that it would be helpful to clarify exactly which types of projects this amendment would apply to. Vice Chair Kirkpatrick stated that she could more easily support this amendment if City is applicant; other situations will require more deliberation. Member Hansen stated he believes this change will open up City projects to the community and improve transparency overall.

Director Kadrach requested the Board to make some sort of decision at this hearing. There was more discussion as to how a motion should be worded and whether “City-Sponsored” and “City-Funded” should be excluded from the motion. Director Kadrach stated that she did not know of any projects that would be compromised with this amendment at this time. Deputy City Attorney Eckman added that, if the City Council has to make some decision about sponsorship or other matters, they would prefer that it is not quasi-judicial in order to avoid the *ex parte* issues or possibility of appeals. Vice Chair Kirkpatrick stated her difficulty in supporting a potentially political process that meets the LUC but may be contentious. Member Schneider asked if the applicant could legally refuse to comply with the LUC because, for example, they know they will be financially supported by Tax Increment Financing (TIF) dollars. Director Kadrach clarified that there is nothing proposed that would suggest that the City would not comply with the LUC. The intent of this amendment to the ordinance is that any City project that is required to go through the development review process would have to comply with the LUC and be reviewed by the P&Z Board. If the City Council decides to hear it as a legislative matter, then they could exercise their legislative powers at that time. Member Hart asked to forward their concerns to the City Council so they could decide on the actual wording of the amendment. Deputy City Attorney Eckman added that TIF or other quasi-judicial issues could be carved out. Member Hart asked to define what “City-sponsored” projects include.

Member Hart made a motion to recommend to City Council to amend section 2.212 of the LUC for City-development projects in which the City is the applicant and that all such projects be subject to a Type II hearing before the Planning and Zoning Board. Vice Chair Kirkpatrick added that, if the City definitions are to be more expansion, we would also recommend that there be a larger public engagement process undertaken. Vice Chair Kirkpatrick seconded the motion. Vote: 5:0.

Other Business

None noted.

The meeting was adjourned at 8:04 pm.

Laurie Kadrach, CDNS Director

Jennifer Carpenter, Chair

First Reading Amending Land Use Code City Projects

Laurie Kadrich

Director, Community Development, Neighborhood
Services

April 21, 2015 Council Hearing

Background

- Land Use Code (LUC) adopted in 1997
- Designated various processes under which City Projects were to be reviewed
- Processes are subject to Appeal:
 - Appeals to City Council
 - Procedural concern with Ex parte communications

Code Amendment Summary:

- Projects in which the City is an applicant
- Planning and Zoning Board (P & Z) review
- Full Development Review Process
- Majority vote by Council to overturn P & Z decision
 - Approval or
 - Disapproval

Board Review:

- P & Z Board
- February 12, 2015
- One citizen spoke
- P & Z unanimously supported the amendment

Staff Recommendation

- Staff recommends adoption of Ordinance No. 051, 2015, Amending the Land Use Code with Regard to City Development Projects

ORDINANCE NO. 051, 2015
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE LAND USE CODE WITH REGARD TO
CITY DEVELOPMENT PROJECTS

WHEREAS, currently the Land Use Code provides that City development projects must go through the same process and analysis as any other project subject to the Land Use Code; and

WHEREAS, the City Council has determined that although such City projects should be reviewed under the full terms and conditions of the Land Use Code, all such reviews should be conducted by the Planning and Zoning Board, and there should be no right of quasi-judicial appeal to the City Council of any final decision regarding such City projects; and

WHEREAS, the City Council has further determined that in substitution of right of quasi-judicial appeal, the City Council in its legislative function should, by majority vote, have the power to overturn or modify any final decision regarding such City project; and

WHEREAS, the City Council has determined that it is in the best interests of the City that the Land Use Code be amended accordingly.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 2.2.12 of the Land Use Code is hereby amended to read as follows:

2.2.12 Step 12: Appeals

Appeals of any final decision of a decision maker under this Code shall be only in accordance with Chapter 2, Article II, Division 3 of the City Code, unless otherwise provided in Divisions 2.3 through 2.11 of this Code. Despite the foregoing, if the City is the applicant for a development project, there shall be no appeal of any final decision regarding such development project to the City Council. In substitution of an appeal of a development project for which the City is the applicant, the City Council may, by majority vote, as an exercise of its legislative power and in its sole discretion, overturn or modify any final decision regarding such project.

Section 2. That Article 2 of the Land Use Code is hereby amended by the addition of a new Division 2.17 which reads in its entirety as follows:

Division 2.17 City Projects

Development projects for which the City is the applicant shall comply with this Land Use Code but shall be subject to review by the Planning and Zoning Board in all instances,

despite the fact that certain uses would otherwise have been subject to administrative review.

Introduced, considered favorably on first reading, and ordered published this 21st day of April, A.D. 2015, and to be presented for final passage on the 5th day of May, A.D. 2015.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 5th day of May, A.D. 2015.

Mayor

ATTEST:

City Clerk