

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: January 26, 2015
	Agenda Item No. 46 Roll Call No. <u>15-0134</u> Communication No. <u>15-039</u> Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Public hearing on proposed amendments to the zoning ordinance regarding remedial measures relating to Planned Unit Development (PUD) and Planned Business Park (PBP) development plans.

SYNOPSIS:

On January 12, 2015 the City Council voted 7-0 to continue the public hearing on proposed amendments to the zoning ordinance regarding remedial measures relating to PUD and PBP development plans until January 26, 2015. The Council requested the City Manager and City Attorney provide information regarding prior PUD and PBP plan approvals that could need to be reviewed by the Plan and Zoning Commission and City Council based upon existing code and reasoning for proposed changes.

The amendments to the PUD and PBP regulations, are proposed so that City code matches the City’s historical and current practices for administration of the zoning code. Staff believes changing mandatory words “shall” to permissive words “may” are minor in nature. The proposed text still preserves the City’s right and discretion to void a PUD or PBP in the future if necessary.

Staff recommends that the proposed amendments to the zoning ordinance be approved on January 26, 2015. Staff also requests that the City Council provide directive regarding review of up to 11 PUD/PBP districts that appear to have no approved final development plan or that have not commenced construction on any phase within the timeline specified on the approved development plan.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

Planned Unit Development District Code History

The PUD regulations were first adopted by Ordinance 10,726 on November 4, 1985. The original code required the developer to submit a development plan within one (1) year from the date a concept plan was approved. The original ordinance included the mandatory “shall” language for review of PUD’s that did not have a final development plan submitted or for failure to complete work with the schedule on the approved development plan. Ordinance 12,067 was approved on November 22, 1993 and amended the code to require the developer to submit a final development plan within two (2) years from the date the conceptual plan was approved.

Since 1985, the City has approved 112 PUD zoning districts within the City. Preliminary research indicates that there are approximately 10 approved PUD Concept Districts for which no Final Development Plan was submitted within two (2) years after the PUD Conceptual Plan was approved. All remaining PUD's are either completed entirely pursuant to approved plans or have a Final Development Plan approved and constructed for at least one (1) phase.

In the 30 years that PUD regulations have existed, staff is unaware of any PUD district that was voided by the City for a failure to submit a development plan within two (2) years after the date the Concept Plan was approved or a failure to commence construction within the timeline of listed on a final development plan.

Planned Business Park District Code History

The PBP regulations were first adopted by Ordinance 11,325 on June 5, 1989. The original code required the developer to submit a development plan within three (3) years from the date a concept plan was approved. The original ordinance included the mandatory "shall" language for review of PBP's that did not have a final development plan submitted or for failure to complete work with the schedule on the approved development plan.

Since 1989, the City has approved five (5) PBP zoning districts within the City. Preliminary research indicates that there is one (1) PBP district for which no concept plan or final development plan exists (located generally between Old Army Post Road, New Army Post Road, SW 42nd Street and SW 48th Street adjacent to the Des Moines International Airport runway). All remaining PBP's are either completed entirely pursuant to approved plans or have a Final Development Plan approved and constructed for at least one (1) phase.

In the 26 years that PBP regulations have existed, staff is unaware of any PBP Conceptual Plan that was voided by the City for a failure to submit a development plan within three (3) years or failure to commence construction within the timeline of listed on a final development plan.

PUD and PBP District Administrative Practice

PUD's and PBP's have historically been held to a higher "quality" standard than by-right development in other zoning districts. As such, PUD's and PBP's have regularly been encouraged by the Community Development Department, Plan and Zoning Commission, and City Council as a preferred method of development. The primary benefit of PUD's and PBP's is that specific uses, specific layouts and specific design/architecture are ultimately approved by the City Council for a particular development after public hearings by the Plan and Zoning Commission and City Council. By comparison, many other zoning districts allow a range of uses with minimal design/architecture review to occur after administrative review by staff without public notice or hearing, and there are no time limits for which any development must commence.

PUD's and PBP's require a developer to incur significant upfront planning, architecture and engineering design costs prior to having "zoning approval". Once a PUD or PBP is approved, any significant change to use, layout or architecture is also subject to public hearings by the P&Z and City Council and additional planning, architecture and engineering costs. Therefore, based on the time, process, costs and scrutiny that PUD's and PBP's are ultimately subjected to, current and past City

staff have been hesitant to automatically refer stalled projects to the P&Z and Council for review. Staff believes that it could ultimately reduce a future developer's willingness to submit a project under the PUD or PBP standards.

Staff has ultimately deferred to the belief that any PUD or PBP plan that was ultimately approved by a City Council, was a quality development proposal and should remain valid until amended by the City Council. The City has utilized existing, but yet to be constructed PUD and PBP district plans to negotiate equal or better development plans on numerous occasions when revisions are proposed. All existing PUD and PBP zoning districts are reflected on the City's zoning map. Copies of all PUD /PBP Concept Plans and Development Plans are kept on file in the Community Development Department and are available during normal work hours to the public.

Potentially Non-Compliant PUD and PBP Districts

Attached is a map showing the locations of all approved PUD and PBP Districts in the City of Des Moines. Those districts which have no development plan approved or that have not commenced construction on any phase per the approved development plan are highlighted on the map in orange and are listed below:

- Northridge Mall PUD (1987) - E. 14th Street/I-80, regional mall use;
- Pearl Lake PUD (2001) - 3009 E. Payton Avenue, mixed density residential uses;
- Copper Crossing PUD (2004) – 5450 NE 23rd Avenue, mixed density residential uses, Amendment to approved plan currently being processed;
- Harvest Hills PUD (2006) – 3930 SE 72 Avenue, mixed density residential and commercial uses;
- Southern Ridge PUD (2006) – 300 County Line Road, mixed density residential and commercial uses;
- Silver Leaf PUD (2007) – 5100 NE 38th Avenue, mixed density residential uses;
- Beaverdale Hy-Vee (2007) – 4442 Douglas Avenue, grocery store / commercial use;
- Vision Fuels PUD (2007) – Agrimergent Technology Park, ethanol plant use;
- Brook Run North PUD (2008) - 5100 NE 38th Avenue, mixed density residential uses;
- Kum & Go #120 PUD – (2012) – 6304 SW 9th, gas station / convenience store use; and
- PBP zoning – Airport property generally between Old Army Post Road, New Army Post Road, SW 42nd Street and SW 48th Street.

Regardless of whether or not the City Code has mandatory (“shall”) language or permissive (“may”) language, the City Council retains the right to reconsider approved but undeveloped PUD and PBP districts.

The time and workload commitment by staff, Plan and Zoning Commission, City Council and development community to review these potentially non-compliant PUD and PBP districts will be significant. Therefore, staff respectfully requests that a majority of the Council provide direction as to whether any of the approved but undeveloped PUD and PBP districts should be formally reviewed by the Plan and Zoning Commission and to specify a timeline for such review.

PREVIOUS COUNCIL ACTION(S):

Date: January 12, 2015

Roll Call Number: [15-0068](#)

Action: [On](#) proposed amendments to the zoning ordinance regarding remedial measures relating to PUD and PBP development plans. Moved by Hensley to continue the hearing to January 26, 2015 at 5:00 PM and request that the City Manager and City Attorney provide information regarding prior PUD and PBP plan approvals that could need to be reviewed by the Plan and Zoning Commission and City Council based upon existing code and reasoning for proposed changes. Motion Carried 7-0.

Date: December 22, 2014

Roll Call Number: [14-1933](#)

Action: [On](#) proposed amendments to the zoning ordinance regarding remedial measures relating to PUD and PBP development plans, (1-12-15). Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Plan and Zoning Commission

Date: December 4, 2014

Resolution Number: 10-2014-5.05

Action: The Commission voted 11-0 in support of a motion to recommend APPROVAL of proposed amendments to Section 134-708 and Section 134-741(15) of the Zoning Ordinance of the Des Moines Municipal Code to clarify remedial measures in response to failure to submit a PUD or PBP Development Plan or to commence construction in accordance with a time schedule set forth in a PUD or PBP Development Plan, as proposed by City staff.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Review of potentially non-compliant PUD's and PBP's if directed by a majority of the City Council.

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