

★ Roll Call Number

Agenda Item Number ✓

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Date May 23, 2016

RESOLUTION HOLDING PUBLIC HEARING ON PROPOSED AMENDMENTS TO SUBDIVISION ORDINANCE (CHAPTER 106) RELATING TO SUBDIVISION PLAT APPROVAL AND APPEALS

WHEREAS, Des Moines Municipal Code Section 106-7 provides that amendments to the Subdivision Ordinance (Chapter 106) shall not become effective until after public hearing before the Plan and Zoning Commission and the City Council; and

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on May 19, 2016, its members voted 10-0 in support of a motion to recommend APPROVAL to amend Sections 106-72 and 106-73 of the Subdivision Ordinance, in the form attached hereto, relating to subdivision plat approval and appeals thereof; and

WHEREAS, on May 9, 2016, by Roll Call No. 16-0765, it was duly resolved by the City Council that the proposed amendments to the Subdivision Ordinance be set down for hearing on May 23, 2016 at 5:00 P.M., in the Council Chamber at City Hall; and

WHEREAS, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed amendments to the Subdivision Ordinance; and

WHEREAS, in accordance with said notice, those interested in said proposed amendments, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

- 1. Upon due consideration of the facts and any statements of interested persons and arguments of counsel, any and all objections to the proposed amendments to Sections 106-72 and 106-73 of the Subdivision Ordinance, Chapter 106 of the Des Moines Municipal Code, are hereby overruled, and the hearing is closed.
2. The proposed amendments to Sections 106-72 and 106-73 of the Subdivision Ordinance relating to subdivision plat approval and appeals are hereby approved, subject to final passage of an ordinance amending said Sections as set forth herein.

FORM APPROVED:

MOVED by _____ to adopt.

Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GATTO, GRAY, HENSLEY, MAHAFFEY, MOORE, and TOTAL.

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

Mayor

City Clerk



May 20, 2016

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their meeting held May 19, 2016 the following action was taken regarding the proposed amendment to Chapter 106 of the City Code, known as the Subdivision Ordinance. This amendment would revise Section 106-72 to include provisions for appealing decisions of the Plan and Zoning Commission to City Council with regard to conditionally approved or denied Preliminary Plats; and it would revise Section 106-73 to include provisions for appealing decisions of the Plan and Zoning Commission to City Council with regard to conditionally approved or denied Final Plats heard by the Commission on appeal of conditional approval or denial by the Permit and Development Center Coordinator

COMMISSION RECOMMENDATION:

After public hearing, the members voted 10-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus				X
Dory Briles				X
JoAnne Corigliano	X			
David Courard-Hauri				X
Jacqueline Easley	X			
Tim Fitzgerald	X			
Jann Freed				X
John "Jack" Hilmes	X			
Greg Jones	X			
Sasha Kamper	X			
William Page	X			
Mike Simonson	X			
CJ Stephens	X			
Steve Wallace	X			
Greg Wattier	X			

APPROVAL of the proposed text changes.

(10-2016-5.01)

STAFF RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the proposed text changes.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

Proposed changes to Section 106-72 and Section 106-73 of the City Code are attached.

Changes to Section 106-72 would allow an applicant to appeal to City Council a decision by the Plan and Zoning Commission to deny or conditionally approve a preliminary plat, provided the appeal is filed within 30-days of determination by the Commission.

Section 106-73 already allows an applicant to appeal a decision by the Permit and Development Center coordinator to reject or conditionally approve a final plat to the Plan and Zoning Commission. Changes to this section would allow the applicant to subsequently appeal a decision by the Plan and Zoning Commission to reject or conditionally approve the final plat to the City Council, provided the appeal is filed within 30-day of determination by the Commission.

II. ADDITIONAL APPLICABLE INFORMATION

The Des Moines City Council has scheduled a public hearing on May 23, 2016 regarding the proposed text changes.

SUMMARY OF DISCUSSION

Glenn Frank presented the staff report and recommendation.

Will Page asked how this change would affect a neighborhood's ability to raise objections to projects that were not in their interest.

Glenna Frank stated the change will allow neighborhoods the option to appear at City Council hearing. The new code change would have the City Council setting hearing by resolution at the first City Council meeting, publishing notice of that hearing and then holding a public hearing. Any neighborhood representatives or applicants can come and speak at the Council public hearing, just as they did in front of the Plan and Zoning Commission.

Greg Wattier asked if currently the only options the homeowners, developers and applicants have are to go straight to District Court and not to City Council.

Glenna Frank stated she did not want to speak in depth about this because the City is in litigation. However, yes currently the homeowners, developers and applicant's only option to appeal is to take it to District Court.

John "Jack" Hilmes stated the proposed change adds rights and makes the appeal process less onerous.

Mike Simonson asked would the Plan and Zoning Commission's action for this proposed change trigger a super majority vote at Council.

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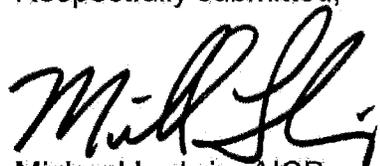
Glenna Frank stated no. This proposed change was formatted based on site plan appeals. A super majority vote only applies to rezoning and comprehensive plan amendments. It does not currently apply to site plan appeals.

COMMISSION ACTION:

Greg Wattier moved staff recommendation for approval of the proposed text changes.

Motion passed 10-0.

Respectfully submitted,



Michael Ludwig, AICP
Planning Administrator

MGL:clw

cc: File

Sec. 106-72. Preliminary plat approval by commission.

- (a) After completion of the preapplication conference required in section 106-71 of this division and if the applicant wishes to proceed to subdivide the property that was the subject of such preapplication conference, he or she shall cause to be prepared a preliminary plat of such subdivision and shall submit 13 copies of such preliminary plat and such other information as is required in this section to the city permit and development center for preliminary study and recommendation.
- (b) The preliminary plat shall be drawn to a scale of not less than one inch to 100 feet, shall be certified by a registered professional engineer and a registered land surveyor and shall show the following:
 - (1) Title and complete legal description of the tract of land to be subdivided, showing north point, scale, date, certification by the surveyor staking the lots, and the names, addresses and telephone numbers of the owner, subdivider and surveyor/engineer.
 - (2) Existing and proposed contour intervals of not more than two feet; provided, however, that a minimum of two contours shall be shown on any plat. If the applicant does not propose to grade any portion of the subject property, he or she shall so indicate on the plat.
 - (3) The location of property lines, existing and proposed public easements, and all such surface features as buildings, railroads, utilities, watercourses, canopied areas and similar items affecting the development; also, the general location and size of all existing and proposed subsurface features such as storm and sanitary sewers, water mains, culverts, gas mains, underground electric lines or cables, and drainpipes. The preliminary plat must be accompanied by a tree removal and mitigation plan containing the information required by section 42-554 of the tree removal and mitigation ordinance.
 - (4) A vicinity sketch or key map at a scale of not more than 500 feet to the inch shall be shown on or shall accompany the proposed plat. Such map shall show existing streets and alleys and neighboring subdivisions or undeveloped property.
 - (5) All existing adjacent subdivisions, streets and tract lines of acreage parcels together with the names of record owners of unsubdivided parcels of land immediately adjoining the proposed subdivision and between it and the nearest existing streets.
 - (6) The sites proposed for streets, alleys, parks, open areas, school property, other areas of public use and outlot areas set aside for future development, all assigned a progressive letter with the proposed use clearly designated.
 - (7) The zoning district classification of the tract of land to be subdivided.
 - (8) Proposed street paving widths, the radii of curvature of streets, maximum grades for streets, and changes in grades of streets in accordance with division 1 of article III of this chapter, the design standards and the standard specifications.
 - (9) A soils report for the tract of land to be subdivided prepared by a registered professional engineer experienced in soils investigation showing general soil conditions and including recommendations as to the adaptability of such soils for the proposed development. This requirement may be waived at the discretion of the city engineer.
 - (10) All established floodway or flood fringe encroachment limits.
 - (11) A drainage report prepared in accordance with the design standards by a registered professional engineer.

- (12) The numbered address of each proposed lot assigned pursuant to article XII of chapter 102 of this Code.
- (c) Upon submission of such preliminary plat, the permit and development center coordinator shall retain three copies and forward copies to city departments, county agencies and utilities, as appropriate. The permit and development center coordinator shall instruct the city departments, county agencies and utilities to complete their review of the preliminary plat and forward their comments concerning the plat to the city permit and development center within 14 days after the date of submission of such plat to the city permit and development center.
- (d) Upon receipt of comments from the appropriate city departments, county agencies and utilities, the permit and development center coordinator shall prepare a report on the preliminary plat which shall incorporate the comments and concerns of the city departments, county agencies and utilities. To ensure compatibility with the city's planning goals and policies, such report shall be reviewed with the planning director, after which the permit and development center coordinator, in consultation with the planning director, shall prepare a recommendation on the preliminary plat and forward such recommendation to the applicant. The planning director shall forward the plat and recommendation to the plan and zoning commission for consideration.
- (e) ~~Before approving a preliminary plat, the commission shall hold a public hearing. The commission shall determine if such preliminary plat conforms to the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter and shall approve, conditionally approve or reject such plat within 45 days after the date of submission to the city permit and development center. Unless the applicant agrees in writing to an extension of time, the preliminary plat shall be deemed approved if the commission does not act within such 45-day period. The commission's action for approval or conditional approval shall be null and void unless the final plat is submitted to the city permit and development center within 270 days after the date of such action; provided, however, that the permit and development center coordinator may grant, upon written request of the applicant, up to a 90-day extension for submittal of the final plat to the city permit and development center.~~
- (f) ~~Before approving a preliminary plat, the commission may in its discretion hold a public hearing, notice of which shall be given as provided by law.~~
- ~~(g)~~ The permit and development center coordinator shall promptly notify the applicant of the commission's recommendations regarding the plat. Decisions of the commission rejecting or conditionally approving a preliminary plat may be appealed to the city council by the applicant. Appeal shall be made, without cost, by written notification received by the city clerk within 30 days after the date of the determination of the commission. The city council shall decide all appeals by public hearing within 30 days after the written notification has been received by the city clerk, or as soon as practical thereafter in the event that the public hearing is continued by resolution of the city council. A majority vote of the city council shall be necessary to overturn or modify the action of the plan and zoning commission.
- (g) The commission's action for approval or conditional approval, or the city council's action for approval or conditional approval on appeal if applicable, shall be null and void unless the final plat is submitted to the city permit and development center within 270 days after the date of such action as applicable; provided, however, that the permit and development center coordinator may grant, upon written request of the applicant, up to a 90-day extension for submittal of the final plat to the city permit and development center.

- (h) Subject to approval of the permit and development center coordinator, one model building may be constructed prior to final approval of the plat, provided:
 - (1) The model building shall be constructed on a designated parcel on the proposed plat;
 - (2) The designated parcel shall derive its access from an existing open street;
 - (3) The designated parcel shall meet all minimum bulk regulations of the zoning district in which it is located;
 - (4) The designated parcel is not located in an area where a future street or other improvement is proposed;
 - (5) The designated parcel shall be shown as a lot in the proposed plat; and
 - (6) If the designated parcel is sold prior to completion of the plat, the subdivider shall:
 - a. Ensure the installation of required improvements for the parcel; and
 - b. Obtain all documents from the subsequent proprietors, mortgage holders and lienholders required as attachments to plats under I.C. § 354.1 et seq.
- (i) If the applicant desires to commence construction of any required improvement after approval of the preliminary plat, but prior to approval of the final plat by the city council, he or she shall comply with the contractor's bond requirements set forth in division 2 of article III of this chapter.
- (j) Grading of the site shall comply with the following:
 - (1) If the applicant proposes to grade, strip, excavate, fill, undertake or cause any earth change on the site or stockpile any granular construction materials in excess of 5,000 cubic yards on the site, he or she shall submit to the city permit and development center an application for a grading permit, containing all of the information set forth in section 42-87 of this Code. The application for the grading permit shall be processed in the manner set forth in section 42-88 of this Code.
 - (2) An application for grading permit may be submitted at the time the preliminary plat is submitted to the city permit and development center, or at any time thereafter, but in no event shall the applicant proceed to grade, strip, excavate, fill, undertake or cause any earth change on the site or stockpile any granular construction material in excess of 5,000 cubic yards on the site until after approval of the preliminary plat and issuance of the grading permit by the city engineer.
 - (3) The bond requirements set forth in division 2 of article III of this chapter shall apply to the installation and construction of permanent soil erosion control measures on areas of the site to be dedicated to the city.

(C42, §§ 3A-2, 3A-3; O.4972; C54, C62, §§ 55-2, 55-3; O.7716; C62, § 55-4; C75, §§ 24-3, 24-10; O.9305, C75, § 24-22; O.9455; C79, § 24-22, O.9726, 10,561; C85, § 24-22; O.11,191, 11,611; C91, § 24-22; O.13,289; C00, § 106-72; O.14,890)

Sec. 106-73. Final plat approval.

- (a) Within 270 days after approval of the preliminary plat by the plan and zoning commission, or by the city council on appeal if applicable, plus any extensions granted by the permit and development center coordinator pursuant to subsection 106-72(e) of this division, the applicant shall submit to the city permit and development center for its review and recommendation five copies of a final plat of the subdivision made from an accurate survey

certified by a registered land surveyor and drawn to a scale of 100 feet to the inch or larger, which plat shall contain the following information:

- (1) The boundaries of the plat, the right-of-way lines and width of all proposed streets and alleys, and lines for any parks, open areas, school property, other areas of public use and outlot areas set aside for future development accurately established by sufficient information, including dimensions and angles or bearings. The boundaries of the plat shall be accurately described and shall give reference to two section corners within the United States public land survey system in which the plat lies or, if the plat is a subdivision of any portion of an official plat, two established monuments within the official plat. All streets, alleys, parks, open areas, school property, other areas of public use and outlot areas set aside for future development shall be assigned a progressive letter and shall have the proposed use clearly designated.
- (2) The right-of-way lines, width and names of adjoining streets and alleys.
- (3) All lot lines, with applicable addresses and all easements, accurately established by sufficient information, including dimensions and angles or bearings.
- (4) All surveying dimensions and requirements as set forth in division 1 of article III of this chapter.
- (5) A complete legal description and list of proprietors of the property to be subdivided, showing the location and extent, points of compass, scale of plat, and certification and name of the surveyor responsible for staking the lots. All adjoining properties shall be identified, and where such adjoining properties are a part of an official plat, the name of that plat shall be shown.
- (6) An outline of all property to be reserved by deed covenant for the common use of subsequent property owners in the subdivision.
- (7) A proposed consent to plat statement and proposed dedication statement for all property within the plat to be designated for streets, alleys, parks, open areas, school property, or other public use.
- (8) All other information required under I.C. § 354.6.
- (b) Upon submission of such proposed final plat with all required documents and information, the permit and development center coordinator shall retain three copies and forward copies to city departments, county agencies and utilities as appropriate. The permit and development center coordinator shall instruct the city departments, county agencies and utilities to complete their review of the proposed final plat and forward their comments concerning the plat to the permit and development center within 21 days after the date of submission of such final plat to the permit and development center.
- (c) The permit and development center coordinator shall determine if the proposed final plat conforms to the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter and shall approve, conditionally approve or reject such plat. The permit and development center coordinator shall notify the applicant of the action regarding the proposed final plat within 30 days after the date of submission thereof to the permit and development center. Unless the applicant agrees in writing to an extension of time, the proposed final plat shall be deemed approved if the permit and development center coordinator does not act within such 30-day period.
- (d) The applicant may make a written appeal, in whole or in part, of the action of the permit and development center coordinator to the plan and zoning commission. Such written

appeal must be submitted to the permit and development center within 30 days after the date of final action by the permit and development center coordinator.

(e) If an appeal occurs, the commission, in conformity with the standards and requirements outlined in I.C. § 354.1 et seq., and this chapter, shall hear and decide such appeal within 30 days of the date the appeal is submitted to the permit and development center. If the commission does not act within such 30-day period, the portion of the permit and development center coordinator's action appealed from shall be deemed reversed.

(f) The permit and development center coordinator shall promptly notify the applicant of the commission's decision on the appeal. Decisions of the commission rejecting or conditionally approving a final plat may be appealed by the applicant to the city council. Appeal shall be made, without cost, by written notification received by the city clerk within 30 days after the date of the determination of the commission. The city council shall decide all appeals by public hearing within 30 days after the written notification has been received by the city clerk, or as soon as practical thereafter in the event that the public hearing is continued by resolution of the city council. A majority vote of the city council shall be necessary to overturn or modify the action of the plan and zoning commission.

(g) The action for approval or conditional approval shall be null and void unless a complete application for final plat approval is submitted to the city council within one year after the date on which action on such plat was taken by the permit and development center coordinator, or by the plan and zoning commission or city council on appeal as applicable; provided, however, that the permit and development center coordinator may grant, upon written request of the applicant, a 90-day extension for submittal of the final plat to the city council.

(C42, §§ 3A-2, 3A-3; O.4972; C54, C62, §§ 55-2, 55-3; O.7716; C62, § 55-4; O.8542; C75, §§ 24-7, 24-11; O.9305; C85, § 24-23; O.11,611; C91, § 24-23; O.11,816, 13,289)