

Zoning & Platting Commissioners – Notice of item to amend previous Zoning and Platting Commission Action

By way of this notice, a note from Commissioners Evans, Lavani & Tatkow regarding the Special Called Meeting

As you know there was a six-three vote at the April 3, 2018 Zoning and Platting Commission to postpone action on Item C4 Preliminary Plan C8-2016-0197 – The Grove at Shoal Creek Preliminary Plan until May 15, 2018.

Although the item, based on Commissioner Kilobassa's request related to what was thought to be (but was not) a new CEF and park calculation issue, was originally on the agenda for a ZAP Postponement till April 17, 2018, Commissioner Evans requested the item be pulled for discussion on the merits of the postponement.

In the ensuing discussion the Neighborhood Opposition had three speakers, each of which did not speak (in the opinion of Commissioner Evans) as to the reasons for postponement but spoke more directly to the perceived deficiencies in the Preliminary Plat.

On questioning of the applicant and staff, the Commissioners were advised these issues had been addressed and according to staff the Preliminary Plat met all the required conditions for approval. Randy Scott of PARD testified the calculations regarding parks were all within the requirements.

Commissioner Evans made a motion to close discussion and a concurrent motion to approve the Preliminary Plat as Recommended by Staff.

Commissioner Denkler then made a substitute motion to postpone the public hearing until May 1, but that date not being available, the motion was amended to May 15, 2018 and passed. At the conclusion of the April 3rd meeting, Commissioner Evans informed the commission that he would be bringing the question back for consideration at a future meeting.

Staff has also reviewed the points that were made by Commissioner Denkler as a basis for her motion and staff has confirmed the Preliminary Plan meets all applicable regulations.

So why this Special Called Meeting with an Agenda Item to discuss and possibly amend the previous action to change the date of postponement from May 15, 2018 to a different date. It's our (the three commissioners calling this meeting) recommendation that the postponement date be amended to April 25, 2018. This meeting would be a regular ZAP meeting in lieu of the May 1, 2018 meeting which is the date of a CodeNEXT Public Hearing.

Our reasons are as follows:

1. Staff has determined the project meets all applicable regulations and thus under state law, the Commission must approve a subdivision plat that does so. (See attached Memorandum RE: Standard for Review & Approval of Subdivision Plats) Staff does not need until May 15, 2018 to communicate the answers to Commissioner Denkler to commissioners and the public. Staff is ready to proceed and has answers to those questions.
2. To needlessly delay this approval leads to the negative consequences as described in points 3 – 7 below.
3. The applicant has been pursuing approval of this Preliminary Plan for over sixteen months which is probably 10-12 months longer than would be expected; the expense associated with this delay is significant. Expenses are always reflected in the cost of the delivered product.
4. Each month of delay impacts the subsequent steps of the permit/development process. A project of this magnitude necessitates an enormous expenditure in site preparation and infrastructure before any product can be delivered and marketed.
5. Each month of delay pushes the project further into the economic cycle (yes, even Austin is subject to economic cycles) and the risk of not being able to bring everything in the project plan to the market (including the Affordable Housing component) due to declining market conditions.
6. Each month of delay incurs considerable carrying cost for the funds at risk for this development. Continued delay can cause the sources of funds to reconsider and sometimes (see 5 above) even shutdown or withdraw from a project.
7. Each month of delay impacts the cost of project delivery thus increasing the market rate prices for the product being delivered and the overall affordability of the project components, including the Affordable Housing.



MEMORANDUM

TO: Planning Commission
Jeff Jack, Ex Officio
Howard Lazarus, Ex Officio

FROM: Brent Lloyd, Assistant City Attorney *Brent Lloyd*

DATE: October 27, 2014

RE: **Standard for Review & Approval of Subdivision Plats**

This memo provides brief answers to several questions recently posed by Commissioner James Nortey, which are paraphrased below, regarding the Planning Commission's authority in reviewing and approving subdivision plats.

A. What actions are available to the Planning Commission when considering a subdivision plat besides approving or rejecting the plat? Does the Commission have the discretion to postpone or table a subdivision plan?

If approval of a final plat or preliminary plan requires Commission-approved variances, there may be instances where reasonable conditions may be imposed on the variance if necessary to address impacts of the subdivision. However, the Commission does not have the legal authority to impose conditions on plat approval. As explained below, approval of a plat is legally required if it meets all applicable regulations.

Regarding the timing of approval, the Commission must disapprove a plat within 30-days, or it is automatically approved by operation of state law. The Commission satisfies this requirement during the review through its regular "statutory disapproval" process. Once the plat is ready for final review, however, approval of the plat is a "ministerial" (i.e., non-discretionary) duty if the plat meets all applicable regulations.

B. What is the legal standard for plat approval? Is the standard different when variances are required?

Under state law, the Commission must approve a subdivision plat “that satisfies all applicable regulations.” Approval of a subdivision plat is required if:

- (1) it conforms to the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;
- (2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;
- (3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and
- (4) it conforms to [the City’s subdivision regulations].

See Texas Local Gov’t Code § 212.010.

In order to deny a plat that staff has recommended for approval, the Commission should be able to articulate on the record why the Commission believes that it fails to satisfy one or more applicable regulations. General concerns about the impact of approving a subdivision are insufficient to warrant disapproval where all subdivision regulations are satisfied. The Commission’s lack of discretion in subdivision review contrasts with its role in considering a conditional use permit or a zoning case, where it is appropriate for the Commission to consider a variety of factors in deciding whether to approve or recommend approval.

The Commission does have greater discretion when a subdivision is dependent on Commission-approved variances, but that discretion is limited to whether or not to approve the variance. Administrative variances approved by staff are not reviewable by the Commission and do not confer any greater discretion on the Commission.

C. What options does the Commission have when a subdivision plat is inaccurate or was not properly noticed and what authority does the Commission have to consider additional information?

In determining whether a subdivision plat satisfies applicable regulations, the Commission may consider all evidence in the record presented at the public hearing. If that evidence leads the Commission to believe the plat is materially defective in some way, the Commission should be able to articulate what requirement is not satisfied before rejecting a staff recommendation for approval. Likewise, if the Commission believes that notice was improper, it should be able to explain how the notice fails to satisfy the City's notification requirements as codified in Title 25.

D. What is the policy rationale for requiring the Commission to review subdivision plats?

We cannot answer this question; suffice to say that, except for certain minor amendments and replats, state law requires municipalities to delegate authority for approving subdivision plats to either the planning commission or city council. Some jurisdictions around the country have authorized the use of hearing examiners or other administrative officers for non-discretionary plat approvals, but Chapter 212 of the Local Government authorizes administrative approvals only in limited circumstances.

cc Mitzi Cotton
Greg Guernsey
George Adams
Andy Linseisen
David Wahlgren