

PLANNING COMMISSION REPORT **Regular Agenda -- Public Hearing Item**

PC Staff Report
10/26/11

ITEM NO. 7: TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE & DOUGLAS COUNTY CODE; SUBDIVISION REGULATIONS (SMS)

TA-3-3-10: Consider Text Amendments to the joint city/county subdivision regulations in the City of Lawrence Land Development Code, Chapter 20, Article 8 and the Douglas County Code, Chapter 11, Article 1 to revise process requirements for division of property through Certificates of Survey, Minor Subdivisions and Major Subdivisions. Modifications include reformatting this article/chapter to eliminate duplicative text and to delete terminology not used. *Initiated by City Commission on 2/16/10. Re-initiated by Planning Commission on 5/23/11.*

RECOMMENDATION: Staff recommends that the Planning Commission consider the proposed revisions and forward a recommendation for approval of the proposed amendments TA-3-3-10 to Chapter 20, Article 8 of the Land Development Code to the City Commission and Chapter 11, Article 1 of the County Code to the County Commission for consideration and action.

Reason for Request: Revisions initiated in response to Chamber of Commerce request for changes regarding processing steps between Preliminary and Final Plats. Review of Article expanded to address consistency and readability issues following several years of use with the regulations since adoption in December 2006.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- 07/01/09 Chamber of Commerce letter – initial request
- 06/17/11 Productive joint meeting – staff & members of development community
- Attachment – 07/25/11 Staff Memo – Overview of proposed revisions

OVERVIEW OF PROPOSED AMENDMENT

The primary purpose of the initial amendment request was to provide criteria and thresholds in the regulations which would allow minor changes between preliminary plat approval and final plat submission. Process issues relating to dedication of easements at preliminary plat stage or by separate instrument with minor subdivision approvals were also identified for improvement. After several years working with the regulations as adopted in 2006, staff was of the opinion that the sequence/process outlined for subdivision of property needed improvement as well.

The majority of remaining revisions were related to formatting of the document in terms of where information was located, the repetitive nature of several sections, and inconsistencies throughout the Article. The specific changes are identified below.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

Horizon 2020 recognizes the importance of having up-to-date development regulations in order to implement the goals and policies identified in the plan. The plan notes the need for regulations to be frequently reviewed to respond to changing conditions, unforeseen needs and/or new policies. Clear, streamlined development regulations improve the environment for both property owners and potential investors in the community.

CRITERIA FOR REVIEW AND DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

1) Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and

The Chamber letter identifies the omission of any standards with which to judge whether a Final Plat is *consistent with, conforms to, or substantially complies with* an approved Preliminary Plat. The proposed amendment adds criteria to Section 809/1109 which provides various triggers or thresholds that can be used to determine whether a submitted Final Plat is in substantial compliance with the approved Preliminary Plat and may be processed without further review by the Planning Commission.

As noted below, a number of the proposed revisions address either errors or inconsistencies that have been identified by Staff or the public since the adoption of these regulations. As described, the majority of these changes are proposed for readability and usability of the document.

Changes in the Certificate of Survey sections are the result of changing conditions. After working with the regulations for five years, Staff has found that the Large Parcel Property Divisions in the UGAs are not utilized and would encourage more curb cuts to township roads. Therefore, changes are proposed to expand the ability to utilize the Cluster Development process for land divisions within the UGAs. Changes to standards for this type of rural development have also included suggestions from members of the development community who have worked with the regulations in the last several years.

2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).

Horizon 2020 supports the continual review of development regulations. The plan notes the need for regulations to be frequently reviewed to respond to changing conditions, unforeseen needs and/or new policies. Clear, streamlined development regulations improve the environment for both property owners and potential investors in the community.

The proposed amendments are intended to enhance the general welfare of the community and are consistent with the stated purpose of the Development Code.

Staff Review

As noted above, Staff has been working over the last year to address issues initially raised by the Chamber of Commerce and to address numerous items identified internally as Staff has utilized the regulations since adoption in 2006. Staff provided updates to the Planning Commission in August 2010, February 2011, May 2011 and July 2011 which included a brief list highlighting both Substantive and Housekeeping Changes. Throughout the Article, a number of the revisions are to provide the existing text in a list format, rather than long paragraphs for ease in reading. Existing regulatory statements included in term definitions have been relocated to appropriate sections. Terms not used in the body of the Article have been deleted and defined terms have been highlighted in Blue as provided in the remainder of the Development Code. The revisions also include the amendments adopted in December 2010 that were included in the Environmentally Sensitive Lands text amendment (TA-06-12-08) which have not yet been incorporated into the printed code. Below is a section by section summary of the revisions as shown in the *October 26, 2011 Draft Subdivision Regulations*.

Section 20-801/Section 11-101 General

Revisions were made in (d) *Exemptions* to include the common terms *'Boundary Line Adjustment'*, *'Correction Survey'* and *'Homestead Exemption Survey'* which are terms used in recent years to describe common surveys filed in association with Unincorporated Area land transfers.

Revisions were made in (e) *Vested Rights* to indicate the status of Nonconforming Lots or Parcels consistent with a draft Code Interpretation that Staff has been utilizing to determine when development parcels are subject to the Subdivision Regulations and must be platted or replatted as part of a proposed development process. Changes in this section also include another reference to the *'Homestead Exemption Survey'* and clarify that a *Land Combination* does not increase the number of building permits a property is eligible to receive. This requirement was previously stated only in the Definitions section of the Article.

Section 20-802/Section 11-102 General Review and Approval Procedures

Revisions include updates to reflect current practice (receiving submissions in electronic format) and changes made in later sections of the Article. The principle change is the addition of a section for Notice Procedures which were omitted in the adopted version. This section is modeled after the Notice Procedures in Article 13 of the Land Development Code.

Section 20-803/Section 11-103 Property Divisions in Service Area 1, Lawrence UGA

No substantive changes.

Section 20-804 and Section 20-805/Section 11-104 and Section 11-105 Cluster Developments and Large Parcel Property Divisions in the UGAs

During the review process, County Zoning and Legal Staff suggested the need to make changes to the Land Division options for properties in within an Urban Growth Area. In the five years following adoption of these regulations, there have only been two divisions completed through these processes in the UGA. Staff has found that the Cluster Development process was narrowly written and the Large Parcel Property Division process forced more curb cuts to township roads. The proposed revisions eliminate the Large Parcel process and expand the Cluster Development to any properties more than 20 acres in size within a UGA.

The proposed changes to the Cluster Development process include suggestions from the development community regarding the layout/location of the cross access easement in relation to the Immediate and Future Development Areas. The revisions also include Legal Staff suggestions regarding the applicability of the Temporary Set Aside Agreements to the Immediate Development Areas, as well as the Future Development Areas.

Section 805/105 has been reserved for future use (and to eliminate the need to renumber the remaining sections).

Section 20-806/Section 11-106 Property Divisions in the Rural Area

The County Sanitary Code requires parcels proposed for development and served with publicly treated water to contain a minimum of three acres to accommodate an on-site sewer management system. The regulations state that property divisions in accordance with the subdivision regulations must contain three acres outside of the floodplain. Sections 804/104 and 805/105 contain specific language which requires the minimum parcel size for RDPs to exclude property within the floodplain. This specific restriction is not identified for property divisions in the Rural Area. The amendments propose to specifically include this requirement so that the regulations are consistent throughout the county.

Section 20-807/Section 11-107 Certificate of Survey, Administrative Review Procedures

All application requirements that were stated in Sections 804/1104, 805/1105 and 806/1106 were relocated to this section so that they were only stated once. Revisions also include restating the requirement for Health Department approval of Certificate of Surveys prior to approval since this requirement had only been stated in Section 811/1111 which did not clearly apply to the Certificate of Survey process.

A section was also added to provide a 24 month approval for Certificate of Surveys and to include a process for requesting extensions similar to that provided in the Land Development Code.

Section 20-808/Section 11-108 Minor Subdivisions/Replats

The Minor Subdivision process has been expanded to allow Replats of property divisions in more situations than currently are permitted. The process will allow lot line adjustments or mergers that do not increase the total number of lots even if the property has previously been part of a Minor Subdivision. This change provides an administrative review of the proposed divisions/mergers, but streamlines the review process to reduce the amount of time involved.

The proposed revisions also provide an opportunity to dedicate or vacate easements or rights-of-way with a Minor Subdivision/Replat by placing the application on a governing body agenda for action. Since the governing bodies meet weekly, this action can be efficiently accommodated in the administrative review period. The proposed process also includes a mailed notice provision prior to placement on the governing body's agenda for action. Having easements dedicated and shown graphically on replats is considered more useful to end users than having easements dedicated and recorded separately.

The amendments also include a section indicating a 24 month approval period and a process for requesting extensions similar to that provided in the Land Development Code.

Section 20-809/Section 11-109 Major Subdivisions

Proposed revisions specifically identify that the term 'Major Subdivision' is the overall process that involves two steps: Preliminary Plats and Final Plats. The content required for both preliminary and final plats has been moved from Section 812/1112 so that both process and content information is located in the same place in the Article. This is considered a usability improvement for both preparers and reviewers of subdivision plats.

The requirement to show surveyed topographic data on a Preliminary Plat has been revised to limit the survey requirement to areas where land disturbance has taken place. This revision is in response to development community concerns that the existing requirement was costly and too restrictive.

The revisions include a reference to Mailed Notice requirements for applications which had been inadvertently omitted from the adopted regulations.

The current regulations require dedication of all easements with the approval of the Preliminary Plat. Following design of public improvements, easements often need to be revised which has required additional processing and review of a revised Preliminary Plat. The proposed amendments defer dedication of interior easements until the Final Plat stage and only require that perimeter easements for the entire subdivision be dedicated with the first Final Plat phase. The process changes for dedication of rights-of-way and easements mean that the Planning Commission will continue to approve Preliminary Plats and Final Plats will be administratively approved, but dedications will be considered by the Governing Body during the Final Plat review process. Final Plats will be placed on

the Governing Body's agenda for acceptance of easements and/or rights-of-way prior to recording the Final Plats. By this time in the process, public improvement plans have been reviewed and easements are more precisely determined.

In Section *(l) Final Plat Contents*, a statement regarding the completion of required Public Improvements has been moved from Section 811/1111 to emphasize that improvements must be designed to the degree that reasonable cost estimates for guarantee can be provided when the Final Plat is submitted for review and prior to recording the plat. Having public improvement plans at this design level provides a level of assurance that easements and rights-of-way are correctly located and sized to serve the development and that financial assurances are provided prior to lots being sold after plat recordation. In Staff's opinion, this is a critical issue with the review of Final Plats and prior to their recordation and it is important to emphasize this requirement in the regulations.

This section also includes the majority of the requested changes from the Chamber of Commerce, specifically in sub-section *(m) Final Plat – Review and Action by the Planning Director*. Standards have been provided to evaluate a Final Plat's substantial compliance with the approved Preliminary Plat. Including these standards that allow for some degree of change between Preliminary and Final Plat stages, allows for minor revisions that do not require additional process time and a second review through the Planning Commission.

The section also increases the approval time period for Preliminary and Final Plats from 18 months to 24 months to align the approval period with the other development applications in the Development Code. This consistency is considered a usability improvement so that all applications have the same approval periods and processes for extensions.

Section 20-810/Section 11-110 Subdivision Design Standards

This section has been modified to separate City and County requirements for ease in reviewing which standards apply. Design standards that currently are located in the Subdivision Improvements section (811/1101) have been moved to this section. Design standards that specify information to be shown on a plat have been moved to the 'contents' section of the respective plat section. Design standards that are currently listed within definitions have been moved to this section.

Section (e)(2)(iv) regarding the requirement for two access points to subdivisions over a certain size has been revised. The existing text conflicts with the International Fire Code. The proposed language simply references the adopted IFC requirements so as not to create an internal conflict between the codes.

After consultation with both the City and County Engineers, staff has proposed eliminating specific cross section construction requirements for streets and roads that currently are specified in Section (e)(5) and have instead provided references to standards used by the City and County Engineering departments.

Currently the regulations in Section *(i) Parks, Open Space, Schools and Other Public Facilities* includes a statement *'encouraging or requiring' the donation of 5% of the land area of a residential subdivision plus a fee of \$600 per lot for each single-family dwelling lot*. As written, this section has been determined to be unenforceable and vaguely worded. During the review of subdivision plats, staff works with the developer to identify potential open space areas that may be environmentally sensitive lands. The code amendments adopted in December 2010 provide the basis for retaining some of these natural features as part of the subdivision design. At this time, this method is preferable to a specific percentage dedication. The concept of park impact fees has not yet been accepted by the governing

body and, as worded, the existing code language would only apply to one segment of residential lots which does not seem equitable. Therefore, staff has recommended that this text be eliminated from these regulations at this time.

Section 20-811/Section 11-111 Public Improvement Standards

Throughout this section, Public Improvement Standards that apply differently to city or county subdivisions have been listed separately. As in the previous section, where Public Improvement Standards were located in the Design Standards section, they have been relocated to this section.

In this section, the term 'waivers' has been deleted so that 'variances' from Design Standards or Public Improvement Standards are the consistent mechanism used. The Planning Commission is specified as the approval body for all of these variances (except the wastewater standards in Section 813/1113 specifically required by the governing body).

The existing regulations inadvertently omitted standards for city wastewater and water utility improvements that had been stated in the previous subdivision regulations. Sections (d) and (e) have been updated to include this previous text and to provide a reference to the City's Administrative Policies regarding review of proposed improvements to the infrastructure system.

A common review comment from private utility providers has been to inform the applicant that the developer is responsible for the cost of relocation of any existing utilities. This comment has been added to section (f) to provide up-front notice to designers and owners regarding this development cost.

Section 20-812/Section 11-112 Contents of Plats

The contents of this section have been moved to Section 809/109 so that both process and content of preliminary and final plats are provided in one section of the Article. This was a revision identified by Staff to improve the ease in which users can access the information either in preparing or reviewing plats.

The section has been reserved for future use (and to eliminate the need to renumber the remaining sections).

Section 20-813/Section 11-113 Administration and Enforcement

The revisions in this section reference the changes made in previous sections regarding process revisions. A reference is also provided in the city building permit section to the Nonconforming Lots provisions of the Development Code to clarify when property is eligible for development.

Section 20-814/Section 11-114 Building Setbacks, Enforcement, Exceptions

No substantive changes.

Section 20-815/Section 11-115 Interpretations, Rules of Construction and Definitions

The introductory portion of this section has been updated to include text similar to Article 17 of the Land Development Code regarding permissive and mandatory terms. A reference has also been provided to the Floodplain Management articles in the Development Code and the County Zoning Regulations so that all floodplain terms deleted from this Article are still defined elsewhere in the respective codes. Eliminating duplication is helpful so that when updates are made in the future multiple articles do not need to be revised and future inconsistencies can be avoided.

Terms not used in the Article have been deleted unless those definitions were considered helpful to the general discussion of the subdivision process. Where regulatory language was found in definitions, it has been moved to the appropriate section of the regulations. In several places, alternate definitions have been provided for consideration if the given definition is not consistent with the definition found in either the County Zoning Regulations or the Development Code. Several definitions have been identified for future amendments to those documents for consistency.

Conclusion

Attached is the draft language in the code sections. Deleted text is shown as ~~strikethrough~~ and new or relocated text is shown in green font. **Bold green** or **blue** text typically indicates new text rather than relocated text. Due to the multiple drafts of this Article, some previously suggested text may be shown as ~~green strikethrough font~~. The text proposed for Section 809/1109 is shown in **red text**. Throughout the document, staff has changed defined terms to **Blue Font** even if found in a new text section.

[Editor's Note – Staff is still struggling with formatting and indentation throughout the document. Please bear with us. Staff has tried to identify defined terms and change them to blue font where they are appropriate to the context. An occasional term may have been overlooked.]

Staff Recommendation

Staff recommends that the Planning Commission consider the proposed revisions and forward a recommendation for approval of the proposed amendments TA-3-3-10 to Chapter 20, Article 8 of the Land Development Code to the City Commission and Chapter 11, Article 1 of the County Code to the County Commission for consideration and action.