WORK SESSION MINUTES
PLANNING COMMISSION
January 24, 2019
6:00 P.M. – 4th Floor Conference Room
City Hall, 1100 Frederick, St. Joseph, MO

MEMBERS PRESENT:

Name                  | Members’ Term Attendance | End of Current Term of Office
----------------------|--------------------------|-------------------------------
Jeff Penland          | (38-13)                  | 07/07/19                      |
Brandon Tritten       | (41-10)                  | 08/04/19                      |
Lauren Catron         | (11-07)                  | 07/17/22                      |
Ben Burtnett          | (08-02)                  | 02/12/23                      |
Phillip Vaughn        | (14-06)                  | 08/05/23                      |
Reba Hebert           | (34-06)                  | 01/29/22                      |
Donna Jean Boyer      | (11-00)                  | 07/22/23                      |

MEMBERS ABSENT:

Ted Hauser            | (34-11)                  | 12/14/19                      |
Bob Bucher            | (11-01)                  | 06/15/23                      |

STAFF PRESENT:

Bill McMurray, Mayor  
Bryan Carter, City Attorney
Nic Hutchison, City Planner
Rebecca Shipp, Executive Administrative Assistant

Call to Order.

Chairman Reba Hebert called the work session to order at 6:00pm.

Nic Hutchison introduced Chris Williams, Attorney, Williams & Camp P.C.

1. Discussion regarding Preliminary Plat process led by Williams

Williams passed around handouts entitled Subdivision Regulations (plattting process) and Subdivision Variances. Attached

Williams spoke regarding the history of the preliminary process-how it evolved into the process we use today.

The role of the Planning Commission was discussed.

Williams spoke about the manner in which evidence should be presented to support decision made by the commission in approval or denial of a request.
Williams discussed the 16 criteria stated in the City Code of Ordinances Section 26-45(g) Guidelines for Commission Recommendation

Williams emphasized if a submission meets the requirements stated in the code, it must be approved. If it does not, it can be a) denied; or b) approved with the condition(s) that all the requirements must be met.

Hebert asked for clarification regarding the process. More specifically, if a pre-application meeting was not held.

Williams responded the applicant has the obligation to read the codes. Conversely the codes should be understandable.

2. Discussion regarding Finding of Fact process led by Williams

Williams discussed the reason a variance may be requested, if applicant believes any mandatory provision of the requirement causes an undue hardship or is unreasonable.

Williams emphasized in order for a variance to be granted all 3 criteria must apply.

Boyer stated the voting on the Finding of Fact and the Final can get confusing.

Williams agrees voting individually can get procedurally tedious. Williams suggested a motion could be made to adopt the Finding of Fact as presented in the staff report. If it is something more complicated the Findings of Fact can be adopted at the next meeting.

Williams stated the Finding of Fact are required by code and are helpful should the item go through the courts.

Williams discussed competent and substantial evidence.

Hebert stated she would like to use a consistent format for the Finding of Fact and have that same format included with the ordinance as it goes to city council.

The meeting adjourned at 6:55 pm.

Minutes respectfully submitted,

Rebecca Shipp, Executive Administrative Assistant
Subdivision Regulations (platting of property)

- Subdivision regulations developed as a way to make it easier to convey property by eliminating metes and bounds legal descriptions

- Ensure that adequate public infrastructure would be installed

- Subdivision regulations do not regulate the uses of land (that's the job of zoning)

- Planning Commission makes recommendation to City Council

- City Council approves plat by ordinance. § 445.030 RSMo

- The decision to approve or deny a preliminary plat is an "administrative" decision, meaning that the role of the Planning Commission is to determine whether the plat meets the requirements set forth in the subdivision ordinance.

- The authority of City authorities is limited in considering approval of plats. Once determined that a preliminary plat meets the requirements in the statutes and any applicable ordinances, the Planning Commission and City Council have no discretion to refuse to approve the proposed plat. State ex rel. Schaefer v. Cleveland, 847 S.W.2d 867, 873 (Mo.App.1992). However, the Commission and Council have considerable discretion in determining whether the subdivision plat meets the standards established by ordinance. Id.

- Relate evidence presented to approval criteria in subdivision ordinance

  - helpful to have relevant approval criteria from subdivision ordinance in front of members of Planning Commission while they are considering an application

  - if decision is challenged, court will look closely at whether the relevant approval criteria was considered in the making of the decision

  - if plat approval action, approval criteria must be clearly articulated in the subdivision ordinance

  - comments on the record from members of the Planning Commission regarding how evidence that is being presented shows that the approval criteria is being met or not met is helpful
CITY CODE CHAPTER 26 SUBDIVISION REGULATIONS (excerpts)

Sec. 26-2. Purposes of regulations.

(a) The purposes of these provisions are to regulate the subdivision and improvement of land for urban use, to provide adequate light, air, open space, drainage, transportation, public utilities and other needs; to assure the maintenance of health, safety and an attractive and efficient community; and to encourage the economical use of human and natural resources.

(b) The subdivision of land is the first step in the process of urban development. The arrangement of land parcels in the community for residential, commercial and industrial uses and for streets, alleys, schools, parks and other public purposes provides the basic framework for the uses of land and for the arrangement of the community.

(c) These regulations are designed, intended and should be administered in a manner to:

1. Implement the city's adopted comprehensive plan of urban development.

2. Provide for neighborhood conservation and prevent the development of slums and blight.

3. Harmoniously relate the development of the various tracts of land in the city to the existing community development and facilitate and coordinate the future development of adjoining tracts.

4. Provide the best possible design for the tract being subdivided and developed.

5. Reconcile the diverse interests of the subdivider, adjacent property owners and the city.

6. Coordinate the provision of streets within subdivisions with existing and planned streets and with other features of the comprehensive plan and official map.

7. Ensure that all necessary public utilities and facilities are provided and are or will be available, accessible and adequate, pursuant to adopted city standards and requirements, at the time of subdivision or development.

8. Establish adequate and accurate records of land subdivision.
Sec. 26-45. Preliminary plat – major subdivisions.

(g) Guidelines for commission recommendation. The commission shall consider the following criteria in making a recommendation on the preliminary plat:

(1) The plat substantially conforms with an approved sketch plat reviewed in the preapplication conference.

(2) The plat conforms to these regulations and the applicable provisions of the zoning ordinance and other land use regulations.

(3) The plat represents an overall development pattern that is consistent with the goals and policies of the comprehensive plan, the major street plan, the official map, the capital improvements program and any other applicable planning documents adopted by the city.

(4) The development shall be laid out in such a way as to result in:

a. Good natural surface drainage to a storm sewer or a natural water course.

b. A minimum amount of grading on both cut or fill and preservation of good trees and other desirable natural growth.

c. A good grade relationship with the abutting street(s), preferably somewhat above.

d. Adequate width for the type and size of dwellings contemplated, including adequate side yards for light, air circulation, access and privacy.

e. An adequate depth for outdoor living space.

f. Generally regular shapes, avoiding acute angles and breaks in property lines.

g. Favorable building location not requiring excessive grading, footings or foundation walls, to the extent practicable.

h. Mitigation of adverse affects of excessive shadow, noise, odor, traffic, drainage and utilities on neighboring properties.

(5) The plat contains a parcel, lot and land subdivision layout that is consistent with good land planning and site engineering design principles.
(6) The location, spacing and design of proposed streets, curb cuts and intersections are consistent with good traffic engineering design principles.

(7) The plat is served, or will be served at the time of development, with all necessary public utilities, including, but not limited to, water, sewer, gas, electric and telephone service.

(8) The plat is served, or will be served at the time of development, with all necessary public facilities at appropriate levels of service standards as may be established in the comprehensive plan, major street plan and other documents. Such facilities include, but are not limited to, streets, fire protection, police protection, emergency medical services, schools, parks, recreation and open space and libraries.

(9) The plat shall comply with the stormwater regulations of the city and all applicable storm drainage and floodplain regulations to ensure the public health and safety of future residents of the subdivision and upstream and downstream properties and residents. The commission shall expressly find that the amount of off-site storm water runoff after development will be no greater than the amount of off-site storm water runoff before development.

(10) Each lot in the plat of a residential development has adequate and safe access to/from a local street. If lot access is to/from a collector or arterial street, the commission shall expressly find that such access is safe and that no other lot access or subdivision configuration is feasible.

(11) The plat will be laid out and developed in a manner that is sensitive to environmental features and/or characteristics of the tract or parcel including, but not limited to, topography, slope, soils, geology, hydrology, floodplains, wetlands, vegetation and trees. If a proposed plat will require extensive grading, soil removal, fill, cuts and/or removal of mature trees, the commission shall expressly find that such actions represent the minimum necessary for safe and efficient use of the tract or parcel and that no other lot layout would be more effective at preserving environmental features and/or characteristics. Where extensive grading, soil removal, fill, cuts and/or removal of mature trees is proposed by the applicant, the commission shall urge the applicant to consider cluster or planned development to obtain the same number of lots but without environmental damage.

(12) The plat is located in an area of the city that is appropriate for current development activity and which will not contribute to sprawl and leapfrog development patterns nor to the need for inefficient extensions and expansions of public facilities, utilities and services.
(13) If located in an area proposed for annexation to the city, the area has been annexed prior to, or will be annexed simultaneously with, plat approval.

(14) The applicant agrees to dedicate land, right-of-way and easements, as may be determined to be needed to effectuate the purposes of these regulations and the standards and requirements incorporated herein.

(15) All relevant and applicable submission requirements have been satisfied in a timely manner.

(16) Improvements may include any necessary upgrades to the adjacent existing roads and facilities to current standards and shall include dedication of adequate right-of-way to meet the needs of the city's transportation plan.
Subdivision Variances

Sec. 26-130. Variances from subdivision requirements.

(a) Authorized. If any mandatory provision of these regulations is shown by the applicant to be unreasonable and to cause undue hardship as applied to the land in a proposed subdivision the council, upon recommendation of the commission, may grant a variance to such applicant from such mandatory provision so that substantial justice may be done and the public interest secured; provided, that such variance will not have the effect of nullifying the intent and purpose of these regulations nor adversely affect the public health, safety or welfare and provided that the variance shall be the minimum necessary to accomplish its purposes. In the event that the commission shall render a tie vote on any recommendation, said vote shall represent a recommendation for denial of the request for relief. In the event of a recommendation of denial of the variance request by the commission, a two-thirds majority vote of the city council will be required to grant a variance.

(b) Conditions. In granting variances, the council may impose such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied.

(c) Findings of fact for variance approvals. No variance shall be granted unless it is found that all of the following apply:

   (1) There are special and unusual circumstances affecting said property such that the strict application of the provisions of this article would deprive the owner of the reasonable use of his land, and is not the mere grant of a privilege not granted to others, and

   (2) The variance is necessary for the preservation and enjoyment of a substantial property right of the owner, and

   (3) The granting of the variance would not be detrimental to the public safety, convenience or welfare or be injurious to other property in the vicinity.

"Practical difficulty and unnecessary hardship" from BZA cases

- Inability to use property for purpose it is zoned without variance
- If an alternative is available to address the issue without a variance, no practical difficulty
- Unique feature of land makes compliance with the ordinance requirements impossible or unreasonable
• Variance request from requirement for 2 entrances to a subdivision; no evidence of unusual size, shape or topography of site; variance request due to developer's financial considerations

• Determination of whether practical difficulty exists is a factual matter; court will only reverse if abuse of discretion (i.e., arbitrary and unreasonable)

• Unnecessary hardship can be shown if landowner deprived of all beneficial or permitted use of property or would incur unwarranted hardship in achieving a permitted use

• Unnecessary hardship cannot be established based on a mere inconvenience to landowner

• Unnecessary hardship not limited to physical impossibility of complying with ordinance requirements but can also include economic hardship

Findings of Fact

• Required by Sec. 26-130 for subdivision variances

• Helpful in clarifying for the court the basis for the decision, showing that the decision was based on competent and substantial evidence, and to show that the decision was not against the overwhelming weight of the evidence as a whole

• The findings of fact should refer back to evidence submitted as being in support of the Planning Commission's action; conclusory statements without reference to the evidence are not desirable

Competent and Substantial Evidence on the Record

• Court will review evidence to determine whether the decision is based on competent and substantial evidence

• Evidence presented to and considered by the court is limited to evidence in the record presented at the time of the decision; new evidence cannot be introduced at trial

• Court must be able to clearly tell from the record the rationale for the decision and that the decision was based on information properly presented

• Competent evidence is relevant and admissible evidence that can establish the fact at issue (e.g., evidence establishing whether the requested variance will be detrimental to the public safety).
• Substantial evidence is competent evidence which, if believed and accepted as fact, enables a reasonable person to find the issue (e.g., requested variance will not harm public safety) to be in harmony with the proof.

• Professional land planner's testimony alone can constitute competent and substantial evidence to support the Planning Commission's decision

• Even if opponents to variance request provide competent and substantial evidence to the contrary, does not mean that Planning Commission's decision is invalid

• Planning Commission evaluates the credibility of each witness and decides the weight to be given to their testimony and evidence presented

• Court will not overturn Planning Commission's decision in this situation unless the decision was contrary to the overwhelming weight of the evidence; decision is presumed valid and cannot be overcome by anything short of clear and convincing evidence