



**Environmental
Planning
Commission**

*Agenda Number: 7
Project Number: 1004831
Case #'s: 08EPC 40075
August 21, 2008*

Staff Report

Agent	City of Albuquerque Planning Department
Applicant	City of Albuquerque City Council
Request	Text Amendments to §14-14-5-3 ROA 1994 (the Subdivision Ordinance), regarding extension of Subdivision Improvement Agreements
Location	City-wide
Zoning	NA

Staff Recommendation

*That a recommendation of **CONDITIONAL APPROVAL** of a Text Amendment to Zoning Code §14-14-5-3, 08EPC 40075, be forwarded to the City Council based on the Findings beginning on Page 4*

Staff Planner

*Jack Cloud, AICP
Chair, Development Review Board*

Summary of Analysis

This proposal consists of a text amendment to §14-14-5-3 ROA 1994, the ‘Subdivision Ordinance,’ regarding the process for the time it takes to construct required infrastructure once a development has been approved (currently, developers have two years to complete construction, unless an extension is granted by the Development Review Board for good cause).

The proposed text amendment would require some commenting City agencies to provide written concurrence prior to approval of a proposed extension, and would also require City Council approval for any extension longer than six months.

Staff finds the requirement for City Council approval to be unwarranted, given that the Council would have an opportunity for review of said extensions via due process through existing ordinances and regulations.

City-wide

City Departments and other interested agencies reviewed this application from 7/7/2008 to 7/18/2008. Agency comments begin on Page 6.

I. INTRODUCTION

Proposal

This proposal is for a text amendment to §14-14-5-3 ROA 1994, the portion of the Subdivision Ordinance that pertains to the required construction of infrastructure by a developer when a project is approved with financial guarantees. These guarantees are in the form of a contract between the City and the developer, known as a Subdivision Improvement Agreement or SIA.

An SIA generally allows up to two years for the construction of infrastructure. If required improvements are not completed and accepted within the two year term of the SIA, the City is contractually authorized to call on the financial guarantee and complete the construction with those funds. Alternatively, the developer may request an extension of the contract/ SIA, which may be approved by the Development Review Board (DRB) subject to a public hearing.

The intent behind the amendment is to increase communication and coordination among City departments prior to the granting of an extension by 1) requiring the City's Department of Municipal Development to indicate in writing that the Department has reviewed and agrees to such an extension, and 2) require the applicant to demonstrate that the City's Air Quality Division has reviewed the request prior to the public hearing.

Additionally, the proposed amendment would require that any extension request for a period longer than six months would require approval by City Council. Currently, the DRB holds public hearings for requests of extensions, with a maximum extension of two years.

Environmental Planning Commission (EPC) Role

The EPC's task is to make a recommendation to the City Council regarding the proposed changes to the Zoning Code. The City Council is the City's Zoning Authority and the EPC is a recommending body.

Background and Context

The City's Subdivision Ordinance requires that a developer be responsible for the infrastructure associated with the approval of a project. This is to prevent someone from buying a lot in the City without adequate infrastructure. For smaller projects a developer may choose to construct any required streets and utilities prior to receiving final plat approval, so that everything would be in place when lots are sold. For larger projects, however, a developer may choose to financially guarantee the required infrastructure so that lots could be sold and built upon concurrent with the construction of the streets and utilities. As previously noted, the ordinance generally allows a developer two years to complete the required infrastructure (with up to four years for completion of required sidewalks, so that they may be installed after large equipment has finished coming and going on each individual lot).

For the last several years, the City has processed approximately 40 requests per year for SIA extensions (although there have already been 41 requests through August of this year, and 5 scheduled for public hearing on September 3, 2008). There are varied reasons submitted for extension requests, many of which are related to the rate of development/ economic activity. Extension requests are often for one

year or less, including cases where infrastructure is physically completed but all inspections and paperwork are not. Longer term extensions are requested where large segments of a project remain undeveloped, or where a developer will wait and coordinate segments of major infrastructure with adjacent development, which would avoid piecemeal construction of these facilities.

II. ISSUES

Commenting on Extensions

The proposed text amendment would require by ordinance that the City's Department of Municipal Development indicate in writing that the Department has reviewed and agrees to an extension of an SIA. Currently, requests for SIA extensions are heard by the DRB at an advertised public hearing. Public hearing requests are distributed to other City departments for review and comment. Generally, comments from the Department of Municipal Development are informational (e.g. classifications of streets per the Long Range Roadway System) or non-oppositional, i.e. no adverse comments. While the latter form of statement is taken by the DRB to mean that the department agrees to an extension request, this proposed text amendment would simply instruct the department to indicate its concurrence with an extension request by commenting with a positive statement.

Similarly, the proposed text amendment would require demonstration that the Air Quality Division of the Environmental Health Department has reviewed any SIA extension request. In this case, the text amendment does not instruct the division to provide a positive comment, so that there can simply be an acknowledgment that the request was reviewed prior to the public hearing.

Approval by City Council

The final portion of the proposed text amendment would require City Council approval of any request for an SIA extension that would be longer than 6 months. Nearly all extension requests heard in the last several years would qualify for this new requirement.

The DRB holds a public hearing prior to approving an SIA extension, and of course any decision by the DRB is subject to appeal. This is the same process for the original approval of a project, and similar to the process for most zone changes and site plans. With 40 or more SIA extension requests each year, this proposed text amendment would result in an extraordinary amount of paperwork without a clear benefit to the process.

If extensions are not granted for an SIA, the resulting process for calling on a financial guarantee and having the City complete construction of infrastructure would be a complex undertaking. The contractor that had the construction contract would leave the job; to finish this project the City would be required to put it out for bid, thus taking many months for the new contractor to restart this job. The construction site would sit idle for this time period. Further complications would result from the engineer of record not being able to provide a set of as-built plans, and the new engineer would not be able to certify the first engineer's work. Thus no as-builts would be obtained, which is important for future work and City records. Finally, prices obtained by the City are usually higher than those obtained by a developer (due to the developer being able to negotiate with contractor, and City can not). The City has gone through this process, but for the most part it has been beneficial to the City to work with developers towards completion of their projects.

III. ANALYSIS OF APPLICABLE ORDINANCES, PLANS AND POLICIES

The applicable ordinance (Article 14 – Subdivision Regulations of Chapter 14 –Zoning, Planning and Building) is the subject of this proposed text amendment.

VI. CONCLUSION

The proposed text amendments regarding comments from City departments would mandate by ordinance that SIA extensions not be approved without certain positive acknowledgements. This should not present any undo burden for these departments, as they would simply need to reformat their comments for DRB public hearings.

The proposed amendment to require City Council approval for extensions of longer than six months, however, would put approximately 40 such applications each year into a category of process more complex than the original subdivision request, as well as most site development plans and zone map amendments.

FINDINGS- 08EPC 40075, August 21, 2008-Text Amendments

1. §14-14-5-3 ROA 1994, the 'Subdivision Ordinance' of the Zoning Code, outlines procedures for financially guaranteeing infrastructure with the approval of a subdivision through a Subdivision Improvement Agreement (SIA), and allows for extensions of SIA's if required infrastructure is not constricted within two years.
2. The purpose of the proposed text amendment is to increase communication and coordination among City departments prior to the granting of an SIA extension by a) requiring the City's Department of Municipal Development to indicate in writing that the Department has reviewed and agrees to such an extension; b) require the applicant to demonstrate that the City's Air Quality Division has reviewed the extension request prior to approval; and c) require approval by City Council for extension requests longer than six months.
3. Requiring positive acknowledgement by certain City departments prior to approval of an SIA extension would not present an undue burden on these departments.
4. The Development Review Board holds public hearings for SIA extensions consistent with public hearings for original subdivisions, site development plans, and zone map amendments; this includes a legal advertisement in the local newspaper, posting of signs, and mailed notice, along with distribution to other City departments for review and comment.
5. The City of Albuquerque processed 43 applications for SIA extensions in 2005, 39 applications in both 2006 and 2007, and 46 applications to-date in 2008ent.
6. Requiring City Council approval for SIA extensions of longer than six months would put approximately 40 such applications each year into a category of process more complex than the original subdivision request, as well as most site development plans and zone map amendments.

RECOMMENDATION

That a recommendation of CONDITIONAL APPROVAL of Text Amendments to Zoning Code §14-14-5-3 be forwarded to the City Council based on the preceding Findings and subject to the following Conditions of Approval.

CONDITIONS OF APPROVAL- 08EPC 40075, August 21, 2008-Zoning Code Text Amendments

1. That proposed Item 14-14-5-3.C.4.: A request for a period longer than six months must be approved by the City Council. be deleted from the proposed text amendment.
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***Jack Cloud, AICP
Chair, Development Review Board***

cc: City of Albuquerque, City Council, Attn: Bruce Thompson, P.O. Box 1293, Albuquerque, NM 87102
City of Albuquerque, Planning Department, P.O. Box 1293, Albuquerque, NM 87102

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Code Services

No Comments

Office of Neighborhood Coordination

City-wide

6/8/08 – An article will be published in the “Neighborhood News” newsletter and on ONC’s website - siw

Advanced Planning

CITY ENGINEER

Transportation Development (City Engineer/Planning Department):

- Reviewed, no comments.

Hydrology Development (City Engineer/Planning Department):

- The Hydrology Section has no objection to the zone change request.

Transportation Planning (Department of Municipal Development):

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT

and NMDOT:

Conditions of approval for the proposed Zone Map/Subdivision Regs Amendment shall include:

- a. None.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

WATER UTILITY AUTHORITY

Utility Services

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

PARKS AND RECREATION

Planning and Design

Reviewed, no objection. Request does not affect our facilities.

Open Space Division

Open Space has no adverse comments

City Forester

POLICE DEPARTMENT/Planning

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

No adverse comments.

FIRE DEPARTMENT/Planning

TRANSIT DEPARTMENT

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

The City of Albuquerque proposes a **City-Wide** amendment to the Subdivision Ordinance, Section 14-14-5-3 ROA 1994, to require certain notice and approval prior to the granting of an extension of a Subdivision Improvements Agreement. This will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

No comment based on the information provided to date.