



STAFF REPORT TO THE PLANNING COMMISSION

Prepared November 3, 2020

FILE NUMBERS: L20-0106

REQUEST: Amend Title 17 and Title 18

PUBLIC HEARING: A Notice of Public Hearing was published in the Seattle Times on October 29, 2020.

SEPA: This project is exempt from the State Environmental Policy Act under WAC 197-11-800 (19), Procedural actions.

STAFF: Jaimie Reavis, Senior Planner

ATTACHMENTS: A. TMC 17.14.030, C: Criteria for Final Plat Approval and TMC 17.14.040 Phasing

ISSUE/SUMMARY OF PROPOSED ACTION

Staff is proposing changes to Title 17 and Title 18 that are intended to address approval process issues for subdivisions identified by City staff, Segale Properties, and other applicants. Included are revising the approval process for modifying a subdivision which has received preliminary approval (including Boundary Line Adjustments, Lot Consolidations, Short Subdivisions, and Subdivisions), changing the decision maker for final approval of subdivision applications which involve 10 or more lots, and modifying the length of time for phases in a subdivision to be submitted for final subdivision approval.

BACKGROUND

Title 17 Subdivisions and Plats of the Tukwila Municipal Code (TMC) contains the regulations and criteria for approval of subdividing land in the City of Tukwila. Title 18 of the TMC (Zoning) has additional regulations for subdividing land, specifying the decision maker, appeal body, appeal type (open record or closed record), and the procedures required for each type of application.

The different processes for the subdivision of land include short plats, boundary line adjustments, lot consolidations, binding site improvement plans, and subdivisions. Except for the first issue, the focus of this memo is on subdivisions of 10 or more lots (called plats).

Subdivision Process – Current

Table 1 summarizes who the decision maker is at various stages of review for a subdivision plat, subdivision phasing, and modification of a preliminary plat. Also included are the public notification and public hearing processes, time limits for expiration of the Preliminary Approval, and information on proposed changes.

The current process all applications for subdivision go through include the following workflow:

Staff review--> Preliminary Approval-->Installation of Infrastructure (utilities, access)-->Final Approval

1. Staff review: Initial review by Fire, Public Works, Planning, and Building – results in correction letter or recommendation for Preliminary Approval.
2. Preliminary Approval: for the decision on a subdivision involving 10 or more lots - the recommendations are referred to the Hearing Examiner or Planning Commission (when there is an associated Design Review application). After mailed and posted public notice is provided to tenants and property owners within 500 feet, a public hearing is held on the application prior to a decision on approval by either the Hearing Examiner or Planning Commission.
3. Installation of infrastructure and changes to survey document: Conditions of Preliminary Approval include required changes to the survey and easement documents (for all types of subdivision applications), and construction of infrastructure improvements in the case of a Short Plat, some Binding Site Improvement Plans, and Subdivision Plats.
4. Final Approval:
 - a. The applicant makes changes to the survey and other applicable documents in response to the conditions of Preliminary Approval and resubmits materials for City review. If conditions of approval are met, then Final Approval is recommended and approval granted by the DCD Director’s signature on the survey.
 - b. Subdivision plats are forwarded to the City Council for a quasi-judicial public hearing and decision.

DISCUSSION

Four main areas of revisions to Titles 17 and 18 of the TMC have been identified to improve subdivision procedures. The options to consider are included in Table 1 below:

1. Add a process for an applicant to request modifications to Preliminary Approval of any type of subdivision (i.e., Boundary Line Adjustment, Lot Consolidation, Binding Site Improvement Plan, Short Plat, Subdivision). There is currently no guidance in the code and addition of a process would add clarity for applicants and staff.
2. Revise the process for Final Approval of a subdivision with 10 or more lots (called a Final Plat) to allow Director approval. Currently, the final plat is approved by the City Council as a quasi-judicial decision. State law was changed in 2017 to allow the City Council to delegate the review and decision of a Final Plat to “an established planning commission or agency, or to such other administrative personnel in accordance with state law or local charter.” Other jurisdictions have adopted ordinances which allow Final Plat approval by the Planning Director, Hearing Examiner, or Planning Commission.

3. Revise the phasing approval process to accommodate phasing during and after the Preliminary Plat Approval stage.
4. Revise the extension approval process and language in TMC 17.14.050 to allow the DCD Director to approve extensions, and allow for the expiration of a preliminary approval for a phased subdivision to be extended for longer than the existing one-year time period. Housekeeping cleanup of the existing language is also proposed.

Table 1. Summary of Recommended Changes (highlighted in blue)

Subdivision Application Name	Existing Processes			Recommended Final Approval Decision Type*	Expiration – Preliminary Approval
	Preliminary Approval Decision (Type*)	Required Public Notification/ Public Hearing	Final Approval (Type*)		
Subdivisions (10+ Lots)	<ul style="list-style-type: none"> Hearing Examiner (Type 3) OR <ul style="list-style-type: none"> Planning Commission if design review is required (Type 4) 	<ul style="list-style-type: none"> Public Hearing held for both preliminary approval and final approval stage. Hearing at final approval stage not required by state law. 	City Council (Type 5)	Director (Type 2) OR Hearing Examiner (Type 3) or Planning Commission (Type 4)	<u>Existing:</u> 5 years (plus 1 additional year upon written request) <u>Proposed:</u> No change
Phasing of a subdivision	<ul style="list-style-type: none"> Hearing Examiner (Type 3) OR <ul style="list-style-type: none"> Planning Commission if design review is required (Type 4) 	Existing notice is done as part of notice of City Council meeting. Proposed notice would be per required notice for Type 2 decisions (TMC 18.104).	City Council (Type 5)	<ul style="list-style-type: none"> Hearing Examiner (Type 3)/Planning Commission (Type 4) at time of Preliminary Approval. If proposed or modified after Preliminary Approval, reviewed through an application for a modification of the Preliminary Plat (see below). (Type 2) 	<u>Existing:</u> All phases must be recorded within the 5-year time limit associated with Preliminary Plat <u>Proposed:</u> First phase must be recorded within 5 years; subsequent phases can receive an extension of up to 3 years.
Modification of Preliminary Approval/ Preliminary Plat (Minor)	Director (Type 2)	Per required notice for Type 2 decisions (TMC 18.104)	N/A	N/A	Proposed: Retains original preliminary approval expiration.
Modification of Preliminary Approval/ Preliminary Plat (Major)	Requires submittal of a new application for the subdivision				

***Type 1**= Director (public notice not required for Type 1 decisions, appeal is closed-record appeal to Hearing Examiner), **Type 2**= Director (appeal is open record appeal to the Hearing Examiner or Board of Architectural Review); **Type 3**= Hearing Examiner; **Type 4**=Planning Commission/BAR; **Type 5** = City Council

1. Addition of a Process to allow a Modification of Preliminary Approval/Preliminary Plat

The Department of Community Development has received requests by subdivision applicants to modify an application in between the Preliminary Approval and Final Approval stages. This process is not currently addressed in the code, requiring an applicant to withdraw an existing application and submit a new one to obtain Preliminary Approval for their revised plan. Other cities have adopted a process under which changes can be made to an existing Preliminary Approval before the application for Final Approval is submitted.

Many other cities have adopted an application process which involves the Director deciding as to whether the request for a modification to a Preliminary Approval constitutes a “minor” or “major” modification. If the modification is deemed to be Minor by the Director, then the modification can be approved administratively by the Director, and additional conditions that must be addressed prior to Final Approval can be added. If the modification is deemed to be “Major”, then a new application for Preliminary Approval must be submitted and the previous application is required to be withdrawn. A minor modification does not change the vesting or expiration date associated with a Preliminary Approval decision.

Staff Recommendation: Staff’s recommendation is to create a new application process for a minor and major modification, according to the following processes:

- **Minor modifications** proposed by an applicant after Preliminary Approval may be approved by the DCD Director as an administrative Type 2 decision. The DCD Director may include conditions as part of an approval of a minor modification to ensure conformance with the criteria below.
 - Minor modifications are those which:
 - (1) do not increase the number of lots in the subdivision beyond the number previously approved;
 - (2) do not decrease the aggregate area of open space, or the design or location of stormwater systems or roadways in the subdivision by ten percent (10%) or more;
 - (3) may realign internal roadways and lot lines, but do not relocate any roadway access point to an exterior street from the plat;
 - (4) do not alter the exterior boundaries of the subdivision;
 - (5) which are consistent with applicable development standards and will not cause the subdivision to violate any applicable City policy or regulation;
 - (6) are consistent with the conditions of the preliminary approval.
- **Major modifications** are those which, as determined by the DCD Director, are not minor modifications as defined in this code, and either add property or lots or substantially change the basic design, density, open space, or other substantive requirement or provision. If the applicant proposes to make one or more major changes, the revised plan(s) must be processed as a new application.

2. Final Plat Approval Process

Currently, the decision on a final plat is made by the City Council following a public hearing. The Council decision on the final plat is quasi-judicial, meaning the City Council is required to make the decision on a project that will impact a specific project site and applicant or property owner. As the legislative body of the City, the Council most often reviews issues and makes decisions that apply City-wide.

The following are reasons to consider changing the Decision Maker on a Final Plat Approval:

- State law only requires a public hearing during the review of the Preliminary Plat application. Tukwila currently complies with this requirement per TMC 18.104.010. A change in the decision maker or approval process will not change this.
- The City of Tukwila also currently requires a public hearing at the Final Plat Approval stage of a subdivision, as required for Type 5 decisions (as well as Type 3 and Type 4 decisions). However, as noted above, state law only

requires a public hearing on a subdivision during review of the Preliminary Plat application when there is the most opportunity to consider public comments.

- State law requires Final Plat to be processed within 30 days of filing unless an extension is requested. It is difficult to meet the deadline when a public hearing by the City Council is required for Final Plat approval. A code change to allow administrative review by the Director of a Final Plat as a Type 2 or Type 1 decision would remove the requirement to hold a public hearing for final plat approval, allowing for a faster and more efficient processing of Final Plat applications.
- A Final Plat is approved if it meets established criteria of approval for the preliminary plat. The Final Plat approval process is non-discretionary, subject to the criteria in TMC 17.14.030, C (see Attachment A).
- The Washington Cities Insurance Authority strongly encourages councils to remove themselves as much as possible from having to make quasi-judicial decisions.
- The City Council is the legislative body of the City of Tukwila. Most of the items reviewed by the City Council are legislative in nature, involving setting City-wide policies. The decision on a final plat is quasi-judicial, meaning the Council is required to make the decision on a project that will impact a specific project site and applicant or property owner. This is different from a legislative process, as Councilmembers are not allowed to discuss the matter with community members beforehand (ex parte communication).

Proposed options:

- Administrative approval by the DCD Director.
- Approval issued by the Hearing Examiner or Planning Commission.

Staff Recommendation: Option a. Administrative approval by the DCD Director.

3. Phasing of Final Approval

Phasing of a plat is currently approved by the City Council during the Final Plat approval, according to the criteria of TMC 17.14.040 (see Attachment A).

Staff Recommendation: At the time of Preliminary Approval, review and approval of project phasing is done by the Hearing Examiner (Type 3)/Planning Commission (Type 4). If phasing is proposed after Preliminary Approval, or if a modification to the phasing is proposed, then an application for a modification to the Preliminary Approval shall be submitted for review by the DCD Director.

4. Subdivision Preliminary Plat Expiration

Currently, a subdivision preliminary plat and all associated phases must be recorded within five years of the date of preliminary plat approval. Per TMC 17.14.050, B, “the hearing body of the preliminary approval may approve one extension not to exceed one year.” Phased subdivisions are often done on larger plats to allow the developer to sequentially receive final approval and begin selling or building on lots in one area of a plat while still completing infrastructure installation in other specified phases.

The length of time a preliminary plat approval is in effect is significant because a preliminary plat vests the developer with the right to both divide the property and to develop it in the manner disclosed in the application in accordance with the land use and zoning laws in effect on the date of submittal. As land use and zoning laws are adopted, it is the City’s intent to have new development consistent with current laws. It is also important for developers to have assurance regarding the land use and zoning laws applicable to their proposals when they are planning new developments.

The options below allow for the DCD Director to issue extensions on subdivision preliminary plats which have received phasing approval.

Proposed options:

Staff is recommending the following criteria be used in review of any request for extension of a subdivision preliminary plat approval that has received phasing approval.

1. A written request for extension is filed at least 30 days before the expiration of the preliminary plat; and
2. Unforeseen circumstances or conditions which are not the result of voluntary actions of the applicant necessitate the extension of the preliminary plat; and
3. Conditions in the immediate vicinity of the subject property have not changed substantially since the preliminary plat was first approved; and
4. An extension of the preliminary plat will not cause substantial detriment to existing uses in the immediate vicinity of the subject property or to the community as a whole; and
5. The applicant has demonstrated reasonable diligence in attempting to meet the time limit imposed; and
6. The preliminary plat substantially complies with applicable City Code provisions in effect on the date that the application for extension was made.

The two options for extending the time allowed for a Subdivision Preliminary Plat Approval that has received phasing approval including the following:

- a. The DCD Director may extend a preliminary plat for a project that has received phasing approval, but not including the initial phase, for up to three additional years beyond the period provided in TMC 17.14.050, A. In no case shall the total time period between the date of Preliminary Approval and the date of recording of the final phase of a phased development exceed 8 years.
- b. Final plat approval of any phase of the subdivision preliminary plat will constitute an automatic one-year extension for the filing of the final plat for the next phases of the subdivision.

Staff Recommendation: Option A, along with adoption of the above criteria for use in review of requests for an extension.

Additionally, staff is recommending the following language cleanup to TMC 17.14.050, A, since there are not currently any Preliminary Plats in Tukwila which have not received Final Plat Approval:

17.14.050 Expiration

A. The preliminary plat approval for subdivision shall expire unless a complete application for final plat meeting all requirements of this chapter is submitted ~~to the Tukwila City Council for approval within seven years from the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015; provided that final plat meeting all requirements of this chapter shall be submitted to the Tukwila City Council for approval within ten years from the date of the preliminary plat approval if the project is not subject to requirements adopted under Chapter 90.58 RCW and the date of the preliminary plat approval is on or before December 31, 2007.~~

RECOMMENDED ACTION

Staff recommends that the Planning Commission hold a public hearing on the proposed changes on November 12, 2020, review each proposed change, and forward recommendations to the Council for a public hearing on December 14, 2020.

7. King County Assessor's maps which shows the location of each property within 500 feet of the subdivision; two sets of mailing labels for all property owners and tenants (residents or businesses) within 500 feet of the subdivision.

8. Maintenance agreements, easements and other documents ready for recording.

9. Signatures on the following certificates on the face of the plat (when appropriate) from the surveyor that prepared the plat, the King County Treasurer, Seattle-King County Health Department, City of Tukwila Finance Director, Owner's affidavit and certificate of dedication as identified in TMC 17.04.060(l).

B. FINAL PLAT REVIEW PROCEDURES: Applications for final plat approval shall be processed as Type 5 decision subject to the provisions of TMC 18.108.050.

1. *Referral to Other Departments and Agencies* - The Department of Community Development shall distribute the final plat to all departments and agencies receiving the preliminary plat, and to any other departments, special purpose districts and other governmental agencies deemed necessary.

2. *Departmental Approval* - The Public Works Department and other interested departments and agencies shall review the final plat and submit to the Department of Community Development written comments with respect to the final plat decision criteria. If the final plat is in order, the Public Works Director shall sign the appropriate certificates on the mylar original.

3. *Filing Final Plat* -

a. Before the final plat is submitted to the City Council, it shall be signed by the City Treasurer (Finance Director), Director of Public Works, and the Director of the Department of Community Development. Upon approval by the City Council, it shall be signed by the Mayor and attested by the City Clerk.

b. The applicant shall file the final plat with the Department of Records and Elections. The plat will be considered complete when a copy of the recorded documents is returned to the Department of Community Development.

C. CRITERIA FOR FINAL PLAT APPROVAL: In approving the final plat, the City Council shall find:

1. That the proposed final plat bears the required certificates and statements of approval.

2. That a title insurance report furnished by the subdivider confirms the title of the land, and the proposed subdivision is vested in the name of the owner(s) whose signature(s) appears on the plat certificate.

3. That the facilities and improvements required to be provided by the subdivider have been completed or, alternatively, that the subdivider has submitted with the proposed final plat a performance bond or other security in conformance with TMC 17.24.030.

4. That the plat is certified as accurate by the land surveyor responsible for the plat.

5. That the plat is in conformance with the approved preliminary plat.

6. That the plat meets the requirements of Chapter 58.17 RCW and other applicable state and local laws which were in effect at the time of preliminary plat approval.

(Ord. 1833 §1(part), 1998)

17.14.040 Phasing

The subdivider may develop and record the subdivision in phases. Any phasing proposal shall be submitted for City Council review at the time at which a final plat for the first phase is submitted. Approval of the phasing plan shall be based upon making the following findings:

1. The phasing plan includes all land contained within the approved preliminary plat, including areas where off-site improvements are being made.

2. The sequence and timing of development is identified on a map.

3. Each phase shall consist of a contiguous group of lots that meets all pertinent development standards on its own. The phase cannot rely on future phases for meeting any City codes.

4. Each phase provides adequate circulation and utilities. Public Works has determined that all street and other public improvements, including but not limited to drainage and erosion control improvements, are assured. Deferment of improvements may be allowed pursuant to TMC Chapter 17.24.

5. All phases shall be recorded within the five-year life of the preliminary plat, unless an extension is granted.

(Ord. 1833 §1(part), 1998)

17.14.050 Expiration

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B. The hearing body of the preliminary approval may approve one extension not to exceed one year.

(Ord. 2499 §1, 2016; Ord. 2124 §2, 2006; Ord. 1833 §1 (part), 1998)