

AN ORDINANCE AMENDING ARTICLE 4-4(D)(1) OF THE LAND SUBDIVISION REGULATIONS TO INCREASE THE "LIFE" OF A PRELIMINARY SUBDIVISION PLAN APPROVED BY THE PLANNING COMMISSION FROM THREE (3) YEARS TO FIVE (5) YEARS. (PLANNING COMMISSION).

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment to Article 4-4(D)(1) of the Land Subdivision Regulations to increase the "life" of a Preliminary Subdivision Plan approved by the Planning Commission from Three (3) years to Five (5) years. Planning Commission did recommend APPROVAL of the text by a vote of 10-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Article 4-4(D)(1) of the Land Subdivision Regulations of the Lexington-Fayette Urban County Government is hereby amended as follows:

4-4 PRELIMINARY PLAN PROCEDURE - All preliminary subdivision plans shall be processed as follows:

(1) APPROVAL - Means the developer is authorized to proceed with the preparation of the required improvement plan. Preliminary plan approval by the Planning Commission automatically grants a developer five (5) years from the date of Commission action within which he shall submit final plans for all property shown on the preliminary plan for Planning Commission consideration. Before expiration, the Commission may extend the approval period in increments not to exceed one year at a time, provided the Commission finds that progress has been made in the physical construction of improvements. In conjunction with such approval extensions, the Commission shall have the right to require changes in the preliminary plan when it finds that time has necessitated such changes for the health, safety and welfare of the residents of the community or when applicable ordinances and regulations have been changed. Upon the expiration of any approval period specified under this section, the plan shall be deemed as disapproved by the Commission.

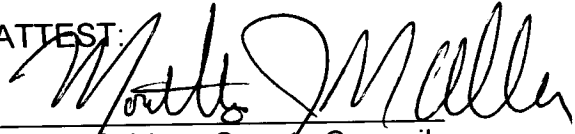
Section 2 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 16, 2016



MAYOR

ATTEST:



Clerk of Urban County Council

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Rec'd by Bm
Date: 5-2-16

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **SRA 2016-1: AMENDMENT TO ARTICLE 4-4(D)(1)** - petition for a text amendment to the Land Subdivision Regulations to increase the "life" of a Preliminary Subdivision Plan approved by the Planning Commission from 3 years to 5 years.

Having considered the above matter on **April 14, 2016**, at a Public Hearing, and having voted **10-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL**, for the following reasons:

1. The removal of the conflict in the Zoning Ordinance and the Land Subdivision Regulations regarding the allowable "life" of a combined Final Development Plan/Preliminary Subdivision Plan would be eliminated with this proposed amendment.
2. The long-standing practice of allowing Improvement Plans to be filed within three years of the certification of a Preliminary Subdivision Plan would be replaced with the certainty of a statement in the Regulations allowing up to "five (5) years from the date of Commission action" on the plan. In most instances, this will allow project engineers 12-23 months longer than the past practice to perform this task.

ATTEST: This 2nd day of May, 2016.


Secretary, James Duncan

Mike Owens
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by William Sallee, Division of Planning.

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (10) Berkley, Brewer, Cravens, Mundy, Owens, Penn, Plumlee, Richardson, Smith, Wilson

NAYS: (0)

ABSENT: (1) Drake

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **APPROVAL** of **SRA 2016-1** carried.

Enclosures: Minutes of PC meeting initiating this request
Staff Report
Applicable excerpts of minutes of Commission's public hearing

VI. **COMMISSION ITEMS** – The Chair will announce that any item a Commission member would like to present will be heard at this time.

- a. **SRA 2016-1: AMENDMENT TO ARTICLE 4-4(D)(1)** - petition for a text amendment to the Land Subdivision Regulations to increase the "life" of a Preliminary Subdivision Plan approved by the Commission from 3 years to 5 years.

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: (Text underlined indicates an addition to the existing Land Subdivision Regulations.)

(1) APPROVAL - Means the developer is authorized to proceed with the preparation of the required improvement plan. Preliminary plan approval by the Planning Commission automatically grants a developer ~~three (3)~~ five (5) years from the date of Commission action within which he shall submit final plans for all property shown on the preliminary plan for Planning Commission consideration. Before expiration, the Commission may extend the approval period in increments not to exceed one year at a time, provided the Commission finds that progress has been made in the physical construction of improvements. In conjunction with such approval extensions, the Commission shall have the right to require changes in the preliminary plan when it finds that time has necessitated such changes for the health, safety and welfare of the residents of the community or when applicable ordinances and regulations have been changed. Upon the expiration of any approval period specified under this section, the plan shall be deemed as disapproved by the Commission.

The Subdivision Committee made a recommendation of Approval.

The Staff Recommends: Approval, for the following reasons:

1. The removal of the conflict in the Zoning Ordinance and the Land Subdivision Regulations regarding the allowable "life" of a combined Final Development Plan/Preliminary Subdivision Plan would be eliminated with this proposed amendment.
2. The long-standing practice of allowing Improvement Plans to be filed within three years of the certification of a Preliminary Subdivision Plan would be replaced with the certainty of a statement in the Regulations allowing up to "five (5) years from the date of Commission action" on the plan. In most instances, this will allow project engineers 12-23 months longer than the past practice to perform this task.

Staff Presentation – Mr. Sallee directed the Commission's attention to the proposed text amendment to Article 4-4(d)(1) of the Land Subdivision Regulations regarding the approval of Preliminary Subdivision Plans. He said that, at the request of the staff, this text amendment was initiated by the Planning Commission to increase the allowable "life" of a Preliminary Subdivision Plan approval from 3 years to 5 years from the date of the Commission's approval of that plan. This text amendment was designed to dispel two current uncertainties and confusing items in the Land Subdivision Regulations.

Mr. Sallee indicated that the Commission has seen a number of combined Preliminary Subdivision and Final Development Plans. He explained that under the Zoning Ordinance, a Final Development Plan allows building permits to be obtained for up to 5 years; but the Preliminary Subdivision Plan will expire in 3 years, which is 2 years earlier than the rest of the plan. This proposed change will extend the life of all Preliminary Subdivision Plans to 5 years from the date of the Planning Commission's approval. This would then make both the Preliminary Subdivision Plan and the Final Development Plan match exactly with what is listed in the Zoning Ordinance for the life of a development plan.

Mr. Sallee said that the proposed change would also eliminate the uncertainty of when the 3-year clock would begin. He explained that, for years, the staff had interpreted the 3-year clock as beginning on the date the Preliminary Subdivision Plan was certified. That is the date the staff certified that the plan had met all of the conditions from the Planning Commission's approval. However, in reviewing this issue more closely with the Law Department, that practice was ambiguous. This proposed text amendment would take away that ambiguity, making it clear - it would be 5 years from the date of the Planning Commission's approval.

Mr. Sallee said that the Subdivision Committee and staff were recommending approval of the proposed change to Article 4-4(d)(1) of the Land Subdivision Regulations, for the following reasons:

1. The removal of the conflict in the Zoning Ordinance and the Land Subdivision Regulations regarding the allowable "life" of a combined Final Development Plan/Preliminary Subdivision Plan would be eliminated with this proposed amendment.
2. The long-standing practice of allowing Improvement Plans to be filed within three years of the certification of a Preliminary Subdivision Plan would be replaced with the certainty of a statement in the Regulations allowing up to "five (5) years from the date of Commission action" on the plan. In most instances, this will allow project engineers 12-23 months longer than the past practice to perform this task.

Citizen Comment – There were no citizens present to comment on this proposal.

Action - A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 10-0 (Drake absent) to approve SRA 2016-1: AMENDMENT TO ARTICLE 4-4(D)(1), as presented by the staff.

Mr. Berkley asked what type of burden the staff anticipates. Mr. Sallee said that if the Late Filing deadline remains on the 2016 Meeting & Filing Schedule, then there will not be any change to past procedure. If the Late Filing deadline is removed, then it would omit one whole filing cycle that the staff has to deal with every month. Thus, it would simplify the staff's work schedule. He then said that there would still be deadlines for continued discussion, reapproval, and approval extensions, just without Late Filing deadline, for plans which are generally reviewed by the Subdivision Committee first, before the Technical Committee meeting.

Mr. Duncan said that because the Lexington-Fayette Urban County Council has indicated through their action of eliminating the Late Filing fee, essentially they do not believe late files are an appropriate option. However, that is still up to the Planning Commission to make that final decision. He then said that for those who file late, plans are on an unequal footing because there is no longer a disincentive, such as triple filing fees. Mr. Duncan said that there are two issues – the policy that has been telegraphed by the Council's action by eliminating the triple filing fee, and then the technical issue of the implementing the Accela software. He then said that the implementation of the Accela software will not be tomorrow, and it may be this time next year; but nevertheless, it is coming. If the late filing is continued without the filing fee penalty, there would be no incentive to file plans on time.

Mr. Cravens asked if the Planning Commission can keep the triple fees. Mr. Duncan replied negatively and said that the Council has already set those fees.

Mr. Berkley said that often the plans that are submitted as "Late Filings" have a number of conditions that have not been worked through or reviewed by the Technical Committee, and he does not want to force that much work through that pipeline. The Chair agreed.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Smith, and carried 9-1 (Cravens opposed; Penn absent) to adopt the 2016 Meeting & Filing Schedule, discontinuing the Late Filing deadline.

The Chair asked if the staff can adjust the Meeting & Filing Schedule. Mr. Sallee said that, as a result of the Commission's action, the staff will remove the 3rd and 4th lines under #1. Major Subdivision & Development Plans.

Action - A motion was made by Ms. Plumlee, seconded by Mr. Wilson, and carried 9-1 (Cravens opposed; Penn absent) to adopt the revised 2016 Meeting & Filing Schedule, as it was presented by the staff, removing the 3rd and 4th lines under #1. Major Subdivision & Development Plans.

VII. STAFF ITEMS – The Chair will announce that any item a Staff member would like to present would be heard at this time.

A. SUBDIVISION REGULATIONS TEXT AMENDMENT INITIATION – The staff requested Commission initiation of a text amendment to Article 4-4(d)(1) of the Land Subdivision Regulations with regard to the Commission's action on Preliminary Subdivision Plans. The proposed changes to Article 4 were presented and discussed at the Commission's work session on October 29, 2015. If initiated, the required public hearing could be held as early as the Commission's December 10, 2015, meeting.

Staff Presentation - Mr. Sallee explained that this text amendment was the same exact item that was presented to the Commission at their last Work Session. He said that, more specially, it is to Article 4-4(d)(1) of the Land Subdivision Regulations. He then said that the text amendment will increase the "life" of a Preliminary Subdivision Plan from 3 years to 5 years. He explained that, as the Commission has recently seen, a combination plan that is both Preliminary Subdivision and a Final Development Plan could have different expiration dates for the different components of those plans; so it would be much easier for the community and the staff, as well as the Planning Commission, to make combination plans match for five years versus having each part of the plan expire in three years.

Mr. Sallee said that should the Planning Commission initiate this change, the staff will send out the required notification and proceed to a public hearing as early as December, or perhaps early in 2016.

Action - A motion was made by Mr. Brewer, seconded by Ms. Richardson, and carried 10-0 (Penn absent) to initiate a text amendment to Article 4-4(d)(1) of the Land Subdivision Regulations with regard to the Commission's action on Preliminary Subdivision Plans.

A. WORK SESSION – Mr. Duncan reminded the Commission members that the next Planning Commission meeting will be on November 19th.

VIII. AUDIENCE ITEMS – There were none.

IX. NEXT MEETING DATES

Zoning Items Public Hearing, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	November 19, 2015
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building).....	November 25, 2015
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building).....	December 3, 2015
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building).....	December 3, 2015

* - Denotes date by which Commission must either approve or disapprove request.

STAFF REPORT ON PETITION FOR LAND SUBDIVISION REGULATIONS TEXT AMENDMENT

SRA 2016-1: AMENDMENT TO ARTICLE 4-4(DV1): INCREASING THE LIFE OF A PRELIMINARY SUBDIVISION PLAN FROM THREE YEARS TO FIVE YEARS

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: (Text ~~dashed through~~ indicates a deletion, and text underlined indicates an addition to the existing Land Subdivision Regulations.)

4-4 PRELIMINARY PLAN PROCEDURE - All preliminary subdivision plans shall be processed as follows:

(1) **APPROVAL** - Means the developer is authorized to proceed with the preparation of the required improvement plan. Preliminary plan approval by the Planning Commission automatically grants a developer three (3) ~~five~~ (5) years from the date of Commission action within which he shall submit final plans for all property shown on the preliminary plan for Planning Commission consideration. Before expiration, the Commission may extend the approval period in increments not to exceed one year at a time, provided the Commission finds that progress has been made in the physical construction of improvements. In conjunction with such approval extensions, the Commission shall have the right to require changes in the preliminary plan when it finds that time has necessitated such changes for the health, safety and welfare of the residents of the community or when applicable ordinances and regulations have been changed. Upon the expiration of any approval period specified under this section, the plan shall be deemed as disapproved by the Commission.

STAFF REVIEW:

At the Division of Planning's request, the Planning Commission has initiated this amendment to the procedure established decades ago for Preliminary Subdivision Plans (PSPs). These plans, authorized by Article 4-4 of these regulations and defined in Article 4-2(a), are prescribed so that "the developer and project engineer may prepare and file the improvement plan with the Division of Engineering. No lot may be sold or transferred, or building permit obtained based upon an approved preliminary subdivision plan." These plans are a precursor to actual infrastructure construction on a given site, in advance of residential or commercial structures.

Over the past 2-3 years, the Commission has seen numerous requests to extend the Commission's past approvals for these types of plans, so that new improvement plans can be filed with the Division of Engineering staff. Some of these Preliminary Subdivision Plans have also been Final Development Plans, most often, when in the defined (1996) Expansion Area. Such plans have created some confusion with project engineers, since the Final Development Plan portions of those same plans have a "life" of five years, based on the limitations of Article 21-4(f)(2) of the Zoning Ordinance. The benefits of extending this time will be considerable. The possibly confusing conflict between 4-4(d) of the Land Subdivision Regulations and the Zoning Ordinance provision can be resolved, giving both types of plans the same allowable timeline (or "life," if you will).

Another uncertainty can also be eliminated with an update to this Subdivision Regulations paragraph. The staff has consulted with the Law Department recently to ascertain when the three-year clock actually begins. Under differing interpretations, one could surmise that it starts when the Commission votes to approve the PSP. However, for decades, the clock has actually started when the PSP is certified (i.e. signed) by the Commission's Secretary (usually the Director of the Division of Planning). As a practical matter, a developer's engineer has one year from the date of the Commission's approval to certify a Preliminary Subdivision Plan. Thus, in more recent (post-Recession) times, the 3-year authorization for some PSPs have been extended by up to 12 months when development activity has been slow for given projects.

Article 21-4(f)(2) of the Zoning Ordinance provides that, for development plans, the five-year "life" begins at the time the Commission votes to approve the plan. The staff would suggest that this is the perfect opportunity to have the uncertainty for PSPs eliminated with the proposed amendment. The new five-year timeline for a PSP will be clarified to be tied directly to the date of approval by the Commission. In this way, the differing sections of the Zoning Ordinance and the Land Subdivision Regulations can be revised to better eliminate any of the uncertainty that led to the need for this amendment.

The Staff Recommends Approval for the following reasons:

1. The removal of the conflict in the Zoning Ordinance and the Land Subdivision Regulations regarding the allowable "life" of a combined Final Development Plan/Preliminary Subdivision Plan would be eliminated with this proposed amendment.
2. The long-standing practice of allowing Improvement Plans to be filed within three years of the certification of a Preliminary Subdivision Plan would be replaced with the certainty of a statement in the Regulations allowing up to "five (5) years from the date of Commission action" on the plan. In most instances, this will allow project engineers 12-23 months longer than the past practice to perform this task.

WLS/TW/JME/BJR

4/4/2016

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