



MAYOR AND COUNCIL COMMUNICATION

DATE: 11/17/15
REGULAR
ITEM #: 10
MOTION

AGENDA ITEM: Reconsideration of the Hammes Plat Extension
SUBMITTED BY: Clark Schroeder
THROUGH: Clark Schroeder
REVIEWED BY: City Attorney Snyder, City Planners Gozola and Wensman and Finance Director Bendel

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item.....Staff
- Report/PresentationStaff
- Questions from Council to Staff..... Mayor Facilitates
- Public Input, if Appropriate..... Mayor Facilitates
- Call for Motion..... Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion Mayor Facilitates

PUBLIC POLICY STATEMENT

SUMMARY AND ACTION REQUESTED:

Councilmember Bloyer has requested a reconsideration of the extension of the Hammes Estate Plat.

FINANCIAL IMPACT: Delayed/Lost revenue related to 163 units; General fund impact of approximately \$100k per year, Utility fund access and connection fees of \$1.2M, Utility fund usage revenue of \$150k per year and parkland dedication fees of \$107k. Risk related to recovery of utility fund special assessments of \$580k.

BACKGROUND AND STAFF REPORT: On October 7, 2014, the City Council approved the Hammes Estates final plat. At that same meeting, a draft developer agreement was proposed and approved as well. However, the developer agreement was never executed due to various issues.

The issues which previously prevented the execution of the developer agreement and the plat from being recorded have since been mitigated. The broker and Mrs. Hammes were granted an extension to file the plat till October 7th 2016 on November 4th 2015 by city council.

In consultation with Mr. Snyder on the question of reconsideration of the approved motion he states.

“The council can reconsider any action at the next subsequent meeting. Or even after that.
The motion to reconsider must be brought by somebody who voted in the affirmative.

So, yes, it can be reconsidered. But, there is, however, the matter of what standards are to be applied in considering a reconsideration (must not be arbitrary, must not be capricious, must be fact-based) and the matter of whether intervening rights have accrued in the meantime (ie: whether the applicant has taken steps or materially changed its position after the first vote).

Bottom line, absent a showing of materially changed circumstances, reconsideration can be raised, but a vote to effectuate it is likely not recommended”.

In consultation with Ben Gozola on the initial question of whether to grant the extension he stated the following.

Statute 462.358

Subd. 3c. Effect of subdivision approval.

For one year following preliminary approval and for two years following final approval, unless the subdivider and the municipality agree otherwise, no amendment to a comprehensive plan or official control shall apply to or affect the use, development density, lot size, lot layout, or dedication or platting required or permitted by the approved application. Thereafter, pursuant to its regulations, the municipality may extend the period by agreement with the subdivider and subject to all applicable performance conditions and requirements, or it may require submission of a new application unless substantial physical activity and investment has occurred in reasonable reliance on the approved application and the subdivider will suffer substantial financial damage as a consequence of a requirement to submit a new application. In connection with a subdivision involving planned and staged development, a municipality may by resolution or agreement grant the rights referred to herein for such periods of time longer than two years which it determines to be reasonable and appropriate.

Nothing in this language says the applicant must have filed the approved plat or followed through with conditions, so even if the Council wishes to see something different happen on this land, it cannot compel such changes for approximately one more year. Put another way, if the Council elects to *not* approve the extension, the Hammes family can simply reapply for the subdivision through the preliminary and final plat process, and Council would have to approve the requests (it would be very difficult to arrive at findings for denial when the subdivision has already been approved under existing regulations).

No one wins if the extension is not approved: the Hammes family would need to spend time and money to redo the process (which would then restart their two-year protection clock), staff would need to prepare for and oversee this item taking up valuable meeting time, and the public would be invited to public hearings for an item that essentially has a predetermined outcome. Accordingly, it is strongly recommended that Council approve this item on the consent agenda and grant the requested one-year extension to file the approved final plat.

If the Hammes family does not act prior to the new deadline, then Council may be free to re-examine the comprehensive plan guidance and zoning for the site, and make changes to local controls as it sees fit. (End of Ben’s Comments)

The question as to whether to rescind the approved extension should be weighed with the same consideration as granting the extension in the first place. Such decision should not be capricious nor arbitrary. Since there have been no intervening area-wide zoning changes, or big land-use changes, since the city council approved the plat and subsequently approved the extension there would have to some sort of material reason to withdraw the extension at this point in time.

RECOMMENDATION:

Staff does not recommend rescinding the plat extension.