

*For: Monday, **January 26, 2015**, City Council Meeting*

Advance Packet Information

Dated: January 16, 2015

Included in this packet is documentation to support the following Agenda item:

PUBLIC HEARINGS

1. Legislative public hearing in the matter of File LDC-1-15, revising the street improvement deferral process in Brookings Municipal Code Chapters 17.170, 17.128 and 17.136 of Title 17, Land Development Code. [Planning, pg. 2]
 - a. Draft text revisions. [pg. 4]

*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, or at City Hall. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

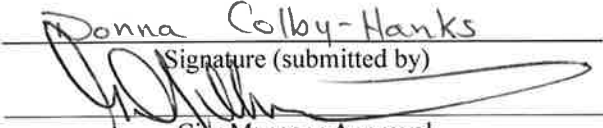
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CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: January 26, 2015

Originating Dept: PWDS-Planning


Signature (submitted by)

City Manager Approval

Subject: A hearing on File LDC-1-15 for consideration of revisions to Chapter 17.170 Street Standards, Chapter 17.128 Interpretations and Exceptions, and Chapter 17.136 Conditional Uses, Brookings Municipal Code (BMC) to implement a new process for deferral of street improvements.

Recommended Motion: A motion to approve revisions proposed by LDC-1-15 to implement a new process for deferral of street improvements.

Financial Impact: None.

Background/Discussion: Construction of street improvements on existing unimproved streets, such as curb, gutter, sidewalk, paving, and storm drainage facilities are required for new development proposals. Under special circumstances these improvements are deferred with an agreement to allow for a more complete street to be constructed. New streets within the development must be fully constructed.

Currently Deferred Improvement Agreements (DIA) are allowed by recording a document that runs with the land. The process of administering the DIAs has proven to be an administrative challenge. Some of the effected home owners are unaware of the existence and financial implication of the DIA. The current property owner is rarely the developer who signed the DIA.

After several workshops with City Council, Staff was directed to investigate other options for allowing future DIAs. The new process developed and presented in **Attachment A** of this report is similar to the policies of the City of Grants Pass and the City of Medford.

With these revisions, developers with projects that meet the listed criteria will have the option to install the street improvements or make a deposit of a percentage of the estimate of the cost of the improvements. The draft revisions were presented to the Planning Commission at their January 6, 2015 meeting with a 125% deposit. The Planning Commission unanimously recommended approval of a deposit of 150% to cover future increases in the cost of materials. Grants Pass requires a deposit of 115% and Medford 125%.

The Planning Commission also added language to require a document be recorded to alert potential property buyers that a deposit had been made but the property owner may have an additional obligation if the deposit is insufficient for the installation of the required improvements.

After much deliberation on effects of the requirements for single lots and 2 parcel partitions, the Planning Commission requested that Staff have City Council consider retaining the current DIA process for these smaller developments.

Policy Considerations: Current policy allows developers in certain cases, to transfer the obligation for street improvements to a future property owner. This would change the policy to require a deposit from the developer and lessen the potential obligation for future property owners.

Attachment(s): A. Draft text of Chapter 17.170, Chapter 17.128, and Chapter 17.136

Original text to be deleted is ~~stricken~~.

Proposed new text is **bold**.

Text deleted by Planning Commission is ~~**bold-stricken**~~

Text added by Planning Commission is **bold underlined**

Brookings Municipal Code

Chapter 17.170 Street Standards

17.170.060 Street standards.

A. All parcels of land subject to the issuance of a development permit shall be provided access to a public or private street as follows:

1. Street improvements are required along the street frontage of all newly created lots and of new development on an existing vacant lot. Improvements shall be to the standards as shown in Table 17.170.060 or as in an approved neighborhood circulation plan, planned unit development or master plan. Deferment of street improvements may be allowed when authorized by the ~~site plan committee~~ **Public Works Director or designee** as described in BMC 17.170.070. Some development is exempt from street improvements as described in BMC 17.04.070.

17.170.070 Off-site street improvements, deferred.

~~Street improvements may include pavement, curbs, gutters, pavement markings, sidewalks, and storm drainage. These improvements may be deferred by the site plan committee. The site plan committee will consider street improvement requirements on a case-by-case basis utilizing the following information:~~

- ~~• The condition and standard of the existing, abutting street;~~
- ~~• The likelihood and timing of new improvements given existing development on parcels in the vicinity;~~
- ~~• Topographic constraints;~~
- ~~• Safety concerns;~~
- ~~• Other details specific to the subject property or vicinity.~~

~~A. When an entire street, or a segment of a street, is on the city's capital improvement project list to be improved within the next five years, the property owner will be required to provide an engineer's estimate of cost for street improvements to the frontage of the subject property. This~~

estimate must be reviewed and approved by the city. These costs must be paid and these funds will be put into an account to be used when the project is initiated.

B. ~~Deferred Street Improvements.~~ When street improvements are deferred, the developer shall enter into a deferred improvement agreement for each lot fronting the street segment and record said agreement with the Curry County recorder's office. Said agreement shall run with the land and require that the property owner agree to the performance of the work deferred by conformance with one of the following options:

1. ~~Work Performed by Property Owner.~~ The owner of the property subject to a deferred improvement agreement shall be responsible for performance of the work identified in said agreement and for obtaining contractors therefor. The owner shall cause satisfactory plans and specifications for the improvements to be prepared and to submit said plans and specifications to the city public works department for approval prior to commencement of the work to be done. Such work shall be done in accordance with city standards in effect at the time the improvement plans are submitted for approval. The owner agrees to make payments required by the city including, but not limited to, engineering deposits, permit fees and inspection fees. The owner shall obtain a permit to work in the right-of-way and notify the city public works department at least 48 hours prior to the start of work.

Prior to approval of improvement plans by the city, the owner may be required to execute and deliver to the city a security bond in an amount and form acceptable to the city, to be released by the city upon the city's final acceptance of the work performed.

2. ~~Recordation of a deferred improvement agreement shall be equivalent to consent to the establishment of a local improvement district. If the property owner does not complete the improvement pursuant to BMC 17.80.080(F), the city may do the work as a local improvement project following the procedures established by ordinance for such projects and assess the cost against the property specially benefited. Permission to enter onto the property of the owner is granted to the city or its contractor as may be necessary to construct such improvements.~~

3. ~~Activation of Deferred Improvement Agreements.~~ When the city determines the improvements must be constructed, the city shall notify affected property owners in writing. All or any portion of said improvement may be required at a specified time. Each affected owner shall participate on a pro rata basis of the cost of installation of the improvements. The city may require a local improvement district to be formed for a street or segment of a street involving all properties' owners to participate when this street or segment has at least 50 percent of the properties subject to a deferred improvement agreement. As city funds are available, the city may participate in the expense of the project.

~~C. The site plan committee's decision regarding required street improvements may be appealed to the planning commission. [Ord. 07 O 595.]~~

(A) Criteria for Deferral. Subject to the criteria and standards set forth in this section, the improvement of existing streets, alleys, or unimproved rights-of-way may be deferred by the Public Works Director or designee to such time as a complete street segment can be improved to City standards. The Public Works Director's decision regarding required street improvements may be appealed to the planning commission. For purposes of this section, a street segment shall be considered as the length of a street between street intersections on the same side of the street as the project site. Street improvements may only be deferred when the project site complies with the following criteria:

(1) More than 50% of the block between street (not including alley) intersections on which the project site fronts is unimproved (street improvements required within subdivisions and Planned Communities shall not be deferred); or,

(2) There are site conditions confirmed by the City Engineer that justify the deferral.

(B) Financial Deposit. When street improvements are deferred, the developer shall deposit with the City of Brookings a financial deposit acceptable to the City in the amount of ~~125~~ **150** percent of the City Engineer's estimate of the costs for the deferred street improvements, in lieu of the developer constructing the street improvements. This financial deposit shall be deposited with the City prior to the recordation of the Final Plat for land divisions, or prior to submittal of building permit applications or final approval for other approved projects. Said financial deposit shall be held until one of the following conditions has been met:

(1) The required street improvements have been constructed by the developer or property owner, at which time, the deposit may be returned to the property owner in whole or in part; or,

(2) The required street improvements have been constructed as part of a Local Improvement District, in which case, the deposit shall be applied to the proportional share of the property owner's obligation; or,

(3) The project site's Local Improvement District assessment is less than the amount of the deposit required as a condition of the deferral, in which case, the difference between the two amounts shall be refunded to the developer.

The developer shall record a Deferred Improvement Agreement, on a form provided by the City, for future installation of the deferred public improvements, to be used by the City if the cash deposit is insufficient to construct the public improvements at the time future construction is undertaken.

(C) Construction Performed by Developer or Property Owner. If the developer or property owner elects to construct the required street improvements prior to the formation of a Local Improvement District, she/he shall be responsible for performance of the work identified in the conditions set forth in the applicable Final Order from the approving authority or in applicable sections of this code and for obtaining contractors therefore.

(1) The developer or property owner shall cause satisfactory plans and specifications for the improvements to be prepared, and shall submit said plans and specifications to the City Public Works Department for approval prior to commencement of the work. Such work shall be done in accordance with the City's Engineering Requirements and Standard Specifications in effect at the time the improvement plans are submitted for approval.

The City Engineer shall review the construction documents, and notify the applicant in writing of any additional requirements for installation of street improvements. If the applicant disagrees with the requirements for installation of street improvements as provided in this section, she/he shall, within 30 days of the date the notice from the City Engineer was mailed, request a review of the requirements by the City Council. The decision of the City Council shall be binding upon both the City and the applicant.

(2) The developer or owner shall make payments required by the City, including, but not limited to, engineering deposits, permit fees and inspection fees. Prior to approval of street improvement plans by the City, the applicant may be required to execute and deliver to the City, a performance bond in an amount and form acceptable to the City, to be released by the City in whole or in part upon the City's final acceptance of the work performed. The developer or owner shall notify the City Public Works Department at least 48 hours prior to the start of construction. The developer or owner shall provide a warranty bond pursuant to BMC 17.80.090 upon completion, inspection, and acceptance of the work by the City.

(D) Construction as Local Improvement District. The financial deposit shall be applied to the property owner's proportional share of the resulting final assessment for the subject property for a future Local Improvement District for street improvements along the property frontage or other locations for which the deposit was made. Should the subject property's resulting assessment be less than the deposit amount required as a condition of the deferral, the difference between the two amounts shall be refunded to the party which paid the deposit. At the time the City decides to make the deferred street improvements, permission to enter onto the property of the owner is granted to the City or its contractor as may be necessary to construct such improvements.

(E) Construction Performed by City. The financial deposit shall be applied as a proportional share toward a project which completes the deferred improvements, in whole or in part, if the project is constructed with City funds or resources. If the subject property's proportional share of the improvement project is less than the amount of the deposit, the difference shall be refunded to the party which paid the deposit.

(F) Tracking of Payments. Deposit accounts for the financial deposit shall be maintained by the City in a separate fund for Deferred Improvements. The City shall track the original deposit by identifying the developer, the property owner, the map and tax lot number of the parent parcel being developed and for which the payment is being received, and the date and amount of the payment.

(G) Existing Deferred Improvement Agreements. Deferred Improvement Agreements that were recorded prior to the date of adoption of this ordinance shall continue to be in effect, and said agreements shall continue to run with the land.

(1) If the owner of the property subject to a Deferred Improvement Agreement elects to construct the deferred improvements, she/he shall be responsible for performance of the work identified in said agreement and for obtaining contractors therefore. The property owner shall cause satisfactory plans and specifications for the improvements to be prepared, and shall submit said plans and specifications to the City Public Works Department for approval prior to commencement of the work. Such work shall be done in accordance with the City's Engineering Requirements and Standard Specifications in effect at the time the improvement plans are submitted for approval. The City Engineer shall review the construction documents, and notify the applicant in writing of any additional requirements for installation of street improvements. If the property owner disagrees with the requirements set forth for installation of improvements as provided in this section, she/he shall, within 30 days of the date the notice from the City Engineer was mailed, request a review of the requirements by the City Council. The decision of the City Council shall be binding upon both the City and the property owner.

(2) The property owner shall make payments required by the City including, but not limited to, engineering deposits, permit fees and inspection fees. Prior to approval of improvement plans by the City, the property owner may be required to execute and deliver to the City, a performance bond in an amount and form acceptable to the City, to be released by the City in whole or in part upon the City's final acceptance of the work performed. The property owner shall notify the City Public Works Department at least 48 hours prior to the start of work. The property owner shall provide a warranty bond pursuant to BMC 17.80.090 upon completion, inspection, and acceptance of the work by the City.

(3) Recordation of a Deferred Improvement Agreement shall be equivalent to consent to the establishment of a local improvement district. If the property owner does not complete the improvements under provisions (G)(1) above, the City may do the work as a local improvement project following the procedures established by ordinance for such projects and assess the costs against the property specially benefited. Permission to enter onto the property of the owner is granted to the City or its contractor as may be necessary to construct such improvements.

When the City Engineer determines that the reason(s) for the street improvement deferment no longer exist(s), she/he shall notify affected property owners in writing. The notice shall be mailed to the current owner or owners of the land as shown on the latest

adopted county assessment roll. All or any portion of said improvements may be required at a specified time. Each affected owner shall participate on a proportional share basis of the cost of installation of the improvements.

Chapter 17.128 Interpretations and Exceptions

17.128.050 Access.

Except as permitted by other provisions of this code, no lot shall contain any building used in whole or in part for residential purposes unless said lot abuts a street, dedicated and improved as a public right-of-way, other than an alley, or an accepted private street, for a distance of at least 20 feet. Residential development is permitted on dedicated but unimproved streets; provided, that the applicant has **satisfied BMC 17.170.070.** ~~signed and recorded a deferred improvement agreement.~~ On all lots created after the date of this amendment, the frontage street is the street providing access to the lot or parcel. The lot or parcel must be addressed to that street. The site plan committee may require that driveway construction be completed and approved by the city prior to the recordation of a subdivision or partition plat. Secondary access may be allowed but cannot replace the primary access from the frontage street. [Ord. 08-O-617 § 2; Ord. 91-O-446.F § 2; Ord. 89-O-446 § 1. Formerly 17.128.060]

Chapter 17.136 Conditional Uses

17.136.050 Action by the planning commission.

D. Conditions of Approval. In permitting a conditional use, the planning commission may impose, in addition to regulations and standards expressly specified in this code, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the city as a whole. These conditions may include, but not be limited to, the following:

18. Requiring an applicant ~~to record a deferred improvement agreement (DIA)~~ to provide for sharing the cost of future development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to city standards **pursuant to BMC 17.170.070.** If the proposed use is no more intense a use than what exists presently, it is not lawful for the city to require improvements to the above-listed infrastructure;