



## CITY OF WASHINGTON, ILLINOIS

### Committee of the Whole Agenda Communication

**Meeting Date:** May 9, 2022

**Prepared By:** Jon Oliphant, AICP, Planning & Development Director  
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**Agenda Item:** Chapters 53 and 152 Possible Amendment Follow-Up Discussion

**Explanation:** Following direction from the City Council at the March Committee of the Whole meeting, there was continued interest in a possible amendment that would grant the Council the sole discretion to accept any proposed changes to a previously approved preliminary plat within an existing subdivision for residential development. Staff and the City Attorney have reviewed the City Code, state statute, and case law to provide a framework for a possible code amendment.

Amending the City Code to bind property owners to the layout of previously approved preliminary plats creates many practical issues and could be interpreted as an unconstitutional “taking” of a private property by the courts. The City may provide record notice to minimize the “takings” argument through the recording of any prior preliminary plats. However, this action will likely only apply to future owners of the property as many current owners are unlikely to have any knowledge of previously approved preliminary plats. Additionally, the City does not have all prior preliminary plats on file and only recording some of them further exposes the City to potential claims of selective enforcement. The City Attorney did not identify any Illinois municipalities that limit plat design changes once a preliminary plat has been approved or require the recording of a preliminary plat after completing a brief review of municipal codes governing other Illinois home-rule municipalities. Due to these concerns, City staff and the City Attorney recommend only considering implementing a preliminary plat recording regulation for future plats.

Staff has some concern about there being complete discretion given to any subsequent approval of revised preliminary plats that meet all zoning and subdivision code regulations without quantifiable criteria guiding those decisions. Denial of plats that meet these regulations could be subject to a legal challenge. Instead, staff recommends setting a maximum allowance for future plat modifications. For example, a proposed revised preliminary plat would be allowed up to 15% of its lots to be modified, provided all zoning and subdivision code regulations continued to be met. This would clearly articulate the level of flexibility to the developer(s) as part of the build-out and ideally, eliminate any decisions that could be ascertained as being subjective. It would also acknowledge that there may be new developers and that land use patterns often change over time to reflect customer demand and market conditions.

Another future policy decision could be to require approval of an annexation or development agreement prior to commencing development for those areas that are located outside of the City’s corporate limits. Such an agreement can identify all planned improvements and any flexibility (if applicable) with the future build-out. The Illinois Municipal Code limits the duration of an annexation agreement for a period not to exceed 20 years from the date of execution. The City Attorney has not been directed to research whether the City, as a home-rule municipality, has the ability to draft an agreement that exceeds 20 years.

Staff recommends implementing a reimbursable final grading fee of \$2,000 for each new construction building permit to ensure adherence to the subdivision grading plan. Any drainage issues are most commonly a result of the builder not adhering to the grading plan and are typically not a result of problems from the developer. Upon completion of the house and before occupancy, staff would inspect the final grading to ensure that it was done in accordance with the grading plan. The City would have

the right to make any grade modifications if it is not done satisfactorily by the builder. The recommended fee amount was determined by estimating the general cost to make improvements, if necessary, and the financial impact on future development in Washington. The fee would mirror the temporary certificate of occupancy fee, whereas the builder would have 30 days to make any corrections or else it would forfeit the payment and the City could complete the work. Any cost that the City has to bear that is not covered by the grading fee, is the sole responsibility of the property owner.

**Fiscal Impact:** TBD depending on whether any code amendments impact the cost of development or its maintenance.

**Action Requested:** Staff requests further feedback on the consideration of amendments to either of these parts of the City Code. Any proposed amendments to the subdivision and/or zoning codes require a public hearing and recommendation from the Planning and Zoning Commission (PZC) and because the subdivision code references Chapter 53, any amendments to that part of the City Code may also require a PZC public hearing before an ordinance could be brought to the Council for consideration.