

AFFIDAVIT OF POSTING

ORDINANCE CB-0-43-85

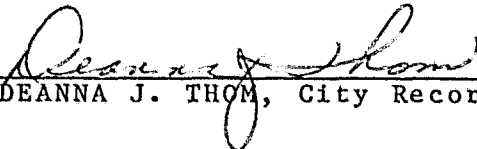
STATE OF OREGON)
)
COUNTIES OF CLACKAMAS)
AND WASHINGTON)
)
CITY OF WILSONVILLE)

I, the undersigned, City Recorder of the City of Wilsonville, State of Oregon, being first duly sworn on oath depose and say:

On the 11th day of December, 1985, I caused to be posted copies of the attached Ordinance CB-0-43-85, an Ordinance amending Section 4.139(6) and 4.188 of the Wilsonville Code to allow for submittal of modified development plans following a denial and further amending Section 4.008 WC to establish withdrawal procedures, in the following four public and conspicuous places of the city, to wit:

- WILSONVILLE CITY HALL
- WILSONVILLE POST OFFICE
- KOPPER KITCHEN
- LOWRIE'S FOOD MARKET

The ordinance remained posted for more than five (5) consecutive days prior to the time for said public hearing on the 16th day of December, 1985.


DEANNA J. THOM, City Recorder

Subscribed and sworn to before me
this 14th day of December, 1985.


NOTARY PUBLIC, STATE OF OREGON

My commission expires: August 23, 1989

ORDINANCE NO. 282

AN ORDINANCE AMENDING SECTIONS 4.139(6) AND 4.188 OF THE WILSONVILLE CODE TO ALLOW FOR SUBMITTAL OF MODIFIED DEVELOPMENT PLANS FOLLOWING A DENIAL, AND FURTHER AMENDING SECTION 4.008 WC TO ESTABLISH WITHDRAWAL PROCEDURES.

WHEREAS, Chapter 4, Sections 4.139(6) and 4.188 of the Wilsonville Code restrict an applicant from submitting any development plans for one (1) year following a denial; and

WHEREAS, there are currently no provisions in the Code regulating the withdrawal of applications; and

WHEREAS, based on findings and conclusions set forth in Exhibit A, attached hereto, the City Council finds it appropriate to allow for new applications following a denial under certain circumstances, and further, finds it necessary to establish procedures and standards for withdrawal of an application; and

WHEREAS, the City Council duly considered the matter at a regularly scheduled meeting on November 18, 1985, at the hour of 7:30 p.m. at the Wilsonville City Hall.

NOW, THEREFORE, the City Council of the City of Wilsonville ordains as follows:

Section 1.

Section 4.139(6) of the Wilsonville Code shall be amended to read as follows: (new language underlined)

Section 4.139(6) Limitations on Resubmission:

(1) Whenever an application for a Planned Development Permit has been denied, no application for substantially the same real property or any portion thereof, shall be filed EXCEPT as authorized by either the Planning Commission or City Council after finding good cause. Good cause shall be shown by one or more of the following:

- (a) New evidence will be presented which was unavailable or unknown to the applicant at previous hearings and which could not have been discovered by reasonable diligence of the applicant; and/or
- (b) There has been a change of circumstances since the previous hearings which materially affect the applicant's real property and, as a result, the reasons for the denial,

as stated by the Planning Commission
or City Council, no longer exist;
and/or

- (c) A mistake was made at the previous
hearings which was a significant
factor in the denial of the previous
application; and/or
- (d) The resubmitted application sub-
stantially corrects any stated
grounds for denial or the earlier
application; and/or
- (e) Resubmitted application substantially
revises the proposal.

Section 2.

Section 4.188 of the Wilsonville Code shall be amended to read as follows:

Section 4.188 Zone Changes Amendments and Development Permits.

- (1) Whenever an application for a zone change or development permit is denied, no application for substantially the same real property or any portion thereof, shall be filed Except as authorized by either the Planning Com-

mission or City Council after finding good cause. Good cause shall be shown by one or more of the following:

- (a) New evidence will be presented which was unavailable or unknown to the applicant at previous hearings and which could not have been discovered by reasonable diligence or the applicant; and/or
- (b) There has been a change of circumstances since the previous hearings which materially affect the applicant's real property, and as a result, the reasons for the denial, as stated by the Planning Commission or City Council, no longer exist; and/or
- (c) A mistake was made at the previous hearings which was a significant factor in the denial of the previous application; and/or
- (d) The resubmitted application substantially corrects any stated

grounds for denial of the earlier application; and/or

- (e) Resubmitted application substantially revises the proposal.

Section 3.

Section 4.008 shall be amended by adding subsection (4) to read as follows:

4.008(4) Withdrawal of Application.

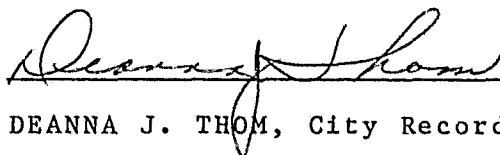
- (a) An application for a zone change or development permit may be withdrawn, at the request of the applicant, any time up to the point that the first public hearing on the matter is closed. Once the hearing has been closed, however, a final decision shall be made and no withdrawal request will be accepted.
- (b) If an application is withdrawn within one week of the date it was submitted, the application fee, less a 15% administrative cost shall be refunded. Any withdrawal after one

week of the date it was submitted
shall be without any refund or
application fees.

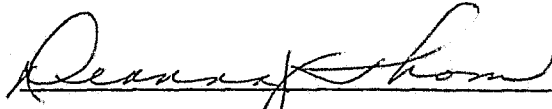
Section 4.

It is hereby determined by the Wilsonville City Council that expediting land use actions is in the interests of public health, safety and general welfare, and therefore, an emergency exists. Therefore, this Ordinance shall take effect immediately upon final reading and passage by the Wilsonville City Council.

Submitted to the Council and read the first time at a special meeting thereof on the 3rd day of December, 1985, and scheduled for second reading at a regular meeting of the Council on the 16th day of December, 1985, commencing at the hour of 7:30 o'clock p.m., at the Wilsonville City Hall.



DEANNA J. THOM, City Recorder

ENACTED by the Council on the 16th day of December, 1985,
by the following votes: YEAS: 3 NAYS: 2.



DEANNA J. THOM, City Recorder

DATED and signed by the Mayor this _____ day of December,
1985.



A. G. MEYER, Mayor



PLANNING DEPARTMENT

SUMMARY STAFF REPORT

Prepared by Ben Altman

TO: City Council

DATE: November 14, 1985

SUBJECT: Ordinance to amend Chapter 4 of Code to allow resubmittal within one (1) year of a denial.

MEETING DATE: December 2, 1985

ACTION REQUIRED: Adoption.

- PREVIOUS ACTION TAKEN:**
1. In the final action to deny the Fox Chase II appeal, the Council sought to waive the one-year restriction on resubmission.
 2. A legal opinion (see Exhibit B) following Fox Chase II Appeal concludes that the one-year limitation on resubmittal of a denied plan cannot be waived, without an amendment to the Code language.

CONCLUSIONARY FINDINGS:

1. The Planning Director and City Attorney met with the applicant, his attorney, and representatives from First Interstate Bank. Subsequently, there was an agreement reached to temporarily stay the LUBA Appeal to allow time to consider a modified Development Plan to address the City's concerns.
2. Section 4.139(6) of the Wilsonville Code currently states as follows:
"(6) Limitation on Resubmission: Whenever an application for a Planned Development Permit has been denied, no application for the same area or any portion thereof shall be filed by the same applicant within one (1) year after the date of denial."

Further, Section 4.188(1) WC currently states as follows:

"4.188 Zone Changes and Amendments - Time Limit.

- (1) No application shall be received nor acted upon within one (1) year of final action by the Planning Commission or City Council which covered substantially the same real property and which requests substantially the same rezoning, conditional use, variance, temporary use, or expansion of a non-conforming use unless either the Planning Commission or City Council permits such reapplications after finding one (1) of [sic] more of the following apply:

- (a) That new evidence will be presented which was unavailable or unknown to the applicant at previous hearings and which could not have been discovered by reasonable diligence of the applicant.

- (b) That there has been a substantial and permanent change of [sic] circumstances since the previous hearings which materially affect the applicant's real property.
 - (c) That a mistake was made at the previous hearings which was a significant factor in the denial of the previous application."
3. The present Code language (4.139(6)) actually restricts an applicant from any planned development permit action within one year of a denial. The language does not just restrict an applicant from resubmitting the same plans for review. Under the present Code, Fox Chase II, for example, is now restricted from processing any plans within one year, regardless of what is being requested.

On the other hand, relative to zone changes (4.188), limits resubmission for substantially the same requests unless authorized by specific findings.

It would appear that the language in 4.139(6) is much more severe than necessary. The City's primary concern on resubmittals would most appropriately be focused on repetitive reviews of substantially the same development plans as previously denied. To this extent, the zone change language in 4.188 seems more appropriate.

There is, however, a distinct difference in our Code process between the zone change action and a final development plan. The zoning action is typically general relative to permitted uses, and in accordance with the Comprehensive Plan.

Development plans, however, can differ substantially within the same zone and even on the same site, over time. Ash Meadows and Fox Chase are our two most recent examples.

In the case of Fox Chase, the proposed plat failed to meet our Planned expectation, however, in denying the plat, the City's intent was obviously not to limit any development. Rather, it was to prohibit resubmittal of essentially the same plat design that was denied. Clearly, the City's intent is to encourage and allow a new plat design, without specific time limits on resubmission. The City would like to see the property developed to increase our residential base.

4. In a previous application (Randall Plan Amendment), the City experienced legal problems relative to denying an applicant the right to withdraw an application. The matter was appealed to the Land Use Board of Appeals (LUBA). LUBA ruled in favor of the applicant on the grounds that the City Code did not regulate withdrawals. They did conclude, however, the City had the right to establish such controls.

The City's objective is to allow applications for appropriate modified plans to be submitted without a one-year time restriction on the original applicant following a denial. This action requires an amendment to Section

4.139(6) of the Code. The City Attorney further recommends that Section 4.188 be amended to give the City more discretion on zone changes and non-planned development projects, by adding a requirement to show good cause.

It is further recognized that the current Code language does not cover applications that are not either zone changes or planned developments.

The Planning Commission considered the reapplication issue, and the matter of withdrawals at the regularly scheduled meeting, held November 12, 1985. Based on their discussion, it was concluded that withdrawals should be restricted after the public hearing is closed. The review is substantially complete at that point.

With this consideration, it is further necessary to allow for a refund of application fees. Currently, such fees are totally forfeited upon withdrawal. The Commission previously considered fee issues and forwarded their recommendations to the City Council. The Council subsequently tabled the Fee Ordinance for a committee review of all City fees. The proposed Fee Ordinance, however, contained language on fee refunds.

LAW OFFICES OF
MICHAEL E. KOHLHOFF & ASSOCIATES

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BETH ELLEN MARKS
JOHN T. GIBBON

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LINDA S. PATTERSON
OF COUNSEL
HUGH R. McDONALD
OF COUNSEL

MEMO TO : BEN ALTMAN
FROM : BETH E. MARKS
DATE : September 18, 1985
RE : Fox Chase II - Waiver of Limit on Resubmission of Application

After reviewing Code Sections 4.139 and 4.188, it is our opinion that the City Council may not waive the provisions regarding the one-year limit on resubmission of applications. I would suggest, that if the City Council wishes to provide for situations where it would like to allow resubmission in certain cases, that it amend both Sections 4.139 (6) and 4.188 (1). I would recommend adding the words "except upon good cause shown" to both sections, thereby allowing the applicant to reappear before the Planning Commission and show good cause why it should be able to resubmit the petition prior to the end of the one-year limitation. Once this section is amended, Fox Chase, or any other applicant, could request a "waiver" of the provision.

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