



**CITY OF WAYNESBORO, VIRGINIA
STAFF REPORT
SUBDIVISION ORDINANCE UPDATES
JUNE 27, 2022**

SUMMARY SHEET

<i>Applicant:</i>	Staff requests Planning Commission initiate this ordinance amendment
<i>Affected Properties</i>	This change affects all future subdivisions throughout the City.
<i>Action Requested:</i>	Amend Chapter 74, Subdivisions of the City Code
<i>Attachments:</i>	1. Proposed ordinance
<i>Summary Recommendations:</i>	City staff recommends Planning Commission recommend the following ordinance changes to the City Council.

1. Background

City Staff requests that Planning Commission recommend to the City Council a revision to the Subdivision Ordinance (City Code Chapter 74). These revisions include procedural changes for major subdivisions to bring City Code in line with Virginia State Code. The Subdivision Ordinance regulates and controls the division of land within the City of Waynesboro. The current Subdivision Ordinance was adopted on November 27, 2000, when the previous ordinance was repealed in its entirety and replaced. The last major revision to the Subdivision Ordinance was in 2017.

2. Current Process:

Subdivisions in Waynesboro are classified into “major” and “minor” subdivisions. A minor subdivision can be reviewed and approved administratively by staff. To qualify as a minor, the subdivision must:

- a. Front on an existing improved public street, require no extension of public utilities, and include no dedication of public right of way
- b. Require no waivers (all lots must comply with minimum area standards in the zoning ordinance)
- c. Result in no more than 6 lots (including the original “parent” tract).

The most significant criterion in this list is the first one. Major subdivisions generally involve construction of public infrastructure which must be inspected or bonded prior to the applicant receiving their subdivision. The City uses a three-stage process.

- a. Preliminary Plat: this is a plat showing the overall layout including lots and locations of public streets and other infrastructure. It must be approved by both Planning

Commission and City Council and involves public hearings. Developments often progress in phases once a preliminary plat is approved.

- b. **Public Improvement Plan:** these are detailed construction plans for all infrastructure that must be built. They are usually only submitted for a single phase. Once the Public Improvement Plan is approved, the applicant can begin construction.
- c. **Final Plat:** once the infrastructure has been completed and inspected – or if the applicant has submitted a bond to the City for completion of the infrastructure – the Final Plat can be approved. This is the legal document that is recorded with the Circuit Court and which allows the owner to sell the lots.

3. State Law

Recently, a change to state law barred localities from requiring applicants to go through the preliminary plat stage if their subdivision has 50 or fewer lots. For some localities, this was not a change. Applicants could submit the public improvement plan and final subdivision plat directly. For Waynesboro, however, this law requires significant changes. Most recently, the City approved a plat for the Waynesboro Marketplace development that included public infrastructure, but created fewer than 50 new lots. Because the owner of the property was not required to submit a preliminary plat, Planning Commission and Council did not see this subdivision.

4. Proposed Process

Major plats with fewer than 50 lots

Staff recommends that the major subdivision process be amended to require preliminary plats for subdivisions with 51 or more lots in accordance with state code. Subdivisions with 50 or fewer lots may submit a Preliminary Plat or they may proceed directly to submission of a Public Improvement Plan and review of the Final Plat. Because phasing is made possible through a phasing plan in the Preliminary Plat, subdivisions which do not include a Preliminary Plat must be built in their entirety before the Final Plat can be released.

This means that far fewer subdivisions will be subject to public hearings and public process. To compensate for this, the Planning Commission has proposed that all major subdivisions which do not require preliminary plats must submit a public improvement plan and final plat for a public hearing before the Planning Commission. Planning Commission can then approve this, contingent on a signature from the subdivision agent confirming that the infrastructure has been bonded or approved.

Eliminating Council Public Hearings

Planning Commission and staff also propose that the ordinance be changed so that major subdivision plats do not go to Council. Instead, preliminary plats will require only one public hearing and a final vote by Planning Commission.

There are three major reasons for this change. First, in light of the changes to state code, it will speed up approval of Preliminary Plats and decrease the disincentive to submit a Preliminary Plat. Without this change, applicants will likely do everything in their power to avoid a

Preliminary Plat, with its added 3-month process, including subdividing smaller sections at once to stay under the 50 lot maximum.

Second, sending Preliminary Plats to Council makes it nearly impossible to meet the state code's review deadlines for acting on subdivisions. This is an ongoing problem for the City and has been discussed in the past. Violating review deadlines opens up the possibility of an applicant suing to have their subdivision approved by a court.

Third, it is bad practice to make by-right approvals subject to a public hearing and a vote by elected officials. Applicants are entitled to approval of a by-right development if they meet all the standards of the City Code. By the time the application reaches Council, both staff and Planning Commission have certified that the application meets the ordinance and Council is obligated to approve the application. Denying an application for a by-right development after the City's staff and Planning Commission have certified that it meets City Code is also excellent grounds for a lawsuit to overturn a Council's decision. Most surrounding jurisdictions do not require council approval for a by-right subdivision regardless of size.

Holding a public hearing suggests to members of the public that the decision is discretionary and that their input can influence the outcome. This is deceptive to the public and risky for the City and elected officials who may be tempted to vote no on an application which meets the standards of the City's ordinance.

In the last five years, Council has held public hearings and approved 5 major subdivision preliminary plats, resulting in only one minor change to a preliminary plat.

5. Proposed Ordinance

Article II, Division 1 (General Procedures), Sec. 74-21 and Division 3 (Major Subdivision Procedures)

The proposed change to Division 1 (General Procedures) and Division 3 (Major Subdivision Procedures) removes the requirement for a submission of a Preliminary Plat for subdivisions of 50 lots or less. For subdivisions of 51 lots or fewer, the submission of a Preliminary Plat will become optional. However, if a subdivision includes public infrastructure, a Public Improvement Plan and a Final Plat will be required.

This change is in accordance with Virginia State Code Section §15.2-2260, which prohibits localities from requiring the submission of a preliminary plat for subdivisions of 50 lots or less.

Article II, Division 3 (Major Subdivision Procedures), Sec. 74-37, (f) and (g) and Sec. 74-38

The proposed change to Sections 74-37 and 74-38 of the Ordinance relates to the procedures for review and approval of a preliminary plat. This change will remove the requirement that the preliminary plat will be forwarded to City Council for final approval based on a recommendation by the Planning Commission. This change will mean that Planning Commission will consider, hold a public hearing, and approve a submitted preliminary.

This change is also in accordance with Virginia State Code Section §15.2-2260.

This change involves alterations to many sections of Chapter 74, but some of the key language, from Chapter 74 Division 3, is listed below:

For major subdivisions of 51 lots or more, there shall be three principal steps: approval of the preliminary plat, approval of the public infrastructure plans, and approval of the final plat. Subdividers with an approved preliminary plat may construct public improvements and dedicate final plats in phases, subject to approval of a phasing plan.

For major subdivisions of 50 lots or fewer, the subdivider shall have the option to submit a preliminary plat following the process outlined above. Subdivision applications without a preliminary plat must include both a final plat and a public improvement plan. The Planning Commission shall hold a public hearing in accordance with the provisions of Section 74-38, review the final plat and public improvement plan, and consider any recommendations with respect to the same by the subdivision agent or director of public works, or their designee. If the Planning Commission finds that the final plat and public improvement plan conform to all requirements of the subdivision ordinance, the Planning Commission will approve the same and authorize the subdivision agent to sign the final plat only upon a determination by the subdivision agent that all public improvements for the subdivision have been satisfactorily completed or a subdivision performance guarantee has been provided for any uncompleted improvements in accordance with section 74-23(b).

6. Recommendations

City Staff recommends these ordinance amendments be approved.

cc: Todd Wood, Assistant City Manager, Operations
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