

ORDINANCE NO. 2006-03-02

AN ORDINANCE OF THE CITY OF WESTON, TEXAS AMENDING THE SUBDIVISION ORDINANCE ESTABLISHING REQUIREMENTS RELATING TO ROUGH PROPORTIONALITY DETERMINATIONS FOR ALL PLAT AND DEVELOPMENT APPLICATIONS WHICH IMPOSE EXACTION REQUIREMENTS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROCEDURES; ESTABLISHING PROCEDURES FOR APPEAL THEREOF; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Weston, Texas is a Type A general-law municipality located in Collin County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City has adopted regulations for the development and subdivision of land within the City; and

WHEREAS, the City desires to assure both that development impacts are mitigated through contributions of rights-of-way, easements and construction of capital improvements, and that a subdivision contribute not more than its proportionate share of such costs; and

WHEREAS, the City Council has held a public hearing with respect to the amendment of the Subdivision Ordinance as required by law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTON, TEXAS:

SECTION 1.

That the Subdivision Ordinance of the City of Weston is hereby amended by adding new Sections 36 through 42, which shall read as follows:

Sec. 36 Proportionality Determination

(1) Prior to a decision by the City Council on a preliminary plat application, or if no preliminary plat application is required, on a final plat application, or any other application for which an exaction requirement is approved as a condition of approval, the City Engineer shall prepare a written statement affirming that each exaction requirement to be imposed as a condition of plat approval or permit approval is roughly proportionate to the demand created by the subdivision or development on the applicable public facilities system of the City, taking into consideration the nature and extent of the development proposed. In making this determination, the City Engineer may consider:

- (a) categorical findings of the North Central Texas Council of Governments in developing standard specifications for public infrastructure improvements;
- (b) the proposed and potential use of the land;
- (c) the timing and sequence of development in relation to availability of adequate levels of public facilities systems;
- (d) impact fee studies, traffic impact studies, drainage studies or other studies that measure the demand for services created by developments and the impact on the city's public facilities system;
- (e) the function of the public infrastructure improvements in serving the proposed subdivision or development;
- (f) the degree to which public infrastructure improvements necessary to serve the proposed subdivision are supplied by other developments;
- (g) the anticipated participation by the City in the costs of necessary public infrastructure improvements;
- (h) the degree to which acceptable private infrastructure improvements to be constructed and maintained by the applicant will offset the need for public infrastructure improvements;

- (i) any reimbursements for the costs of public infrastructure improvements for which the proposed subdivision is eligible; and/or
 - (j) any other information relating to the impacts created by the proposed subdivision or development on the city's public facilities systems.
- (2) Based upon the proportionality determination, the City Engineer shall affirm that the exaction requirements of the Subdivision Ordinance, or other ordinance requiring the permit, as applied to the proposed subdivision or development, do not impose costs on the applicant for public infrastructure improvements that exceed those roughly proportionate to the impact of the proposed subdivision or development.
- (3) The City Engineer may require that the applicant, at its expense, submit any information or studies that may assist in making the proportionality determination.

Sec. 37 Rough Proportionality Determination.

- (1) The City Council shall consider the City Engineer's report concerning the proportionality of the exaction requirements in making a decision on a plat application. The City Council may consider the City Engineer's report in granting a variance to the requirements of the Subdivision Ordinance.
- (2) The City official responsible for issuing a permit for which an exaction requirement is imposed as a condition of approval shall consider the City Engineer's report concerning the proportionality of the exaction requirements in making its decision as to whether to grant the permit.

Sec. 38 Rough Proportionality Appeal.

- (1) An applicant for a preliminary or final plat or for a permit which imposes an exaction requirement as a condition of approval may file an appeal to contest any exaction requirement, other than impact fees, imposed as a condition of approval or in which the failure to comply is grounds for denying the plat application pursuant to the Subdivision Ordinance.
- (2) The purpose of a proportionality appeal is to assure that an exaction requirement imposed on a proposed plat or development as a condition of approval does not result in a disproportionate cost burden on the applicant, taking into consideration the nature and extent of the demands created by the proposed subdivision or development on the City's public facilities systems.

Sec. 39 Appeals Procedure.

- (1) An applicant for a preliminary or final plat or an applicant seeking approval for any other permit or zoning for which an exaction requirement is imposed shall file a written appeal with the City Secretary within 10 days of the date the city official responsible for issuing the permit takes action applying the exaction requirement. This may include denial of the permit or plat. The applicant shall submit 15 copies of the appeal.
- (2) A separate appeal form shall be submitted for each exaction requirement for which relief is sought. The City Secretary shall forward the appeal to the City Council for consideration.
- (3) The applicant may request postponement of consideration of the applicant's plat application by the City Council pending preparation of the study required by subsection (6) , in which case the applicant shall also waive the statutory period for acting upon a plat for the time necessary for the City Council to decide the appeal.
- (4) No developer's agreement may be executed by the City until the time for appeal has expired or, if an appeal is filed, until the City Council has made a determination with respect to the appeal.
- (5) The appeal shall state the reasons that application of the exaction requirement is not roughly proportional to the nature and extent of the impact created by the proposed subdivision or development on the City's public facilities systems and does not reasonably benefit the proposed subdivision or development.
- (6) The appellant shall submit to the City Engineer 15 copies of a study in support of the appeal that includes, with respect to each specific exaction requirement appealed, the following information within 30 days of the date of appeal, unless a longer time is requested:

- (a) total capacity of the City's water, wastewater, roadway, drainage, or park system, as applicable, to be utilized by the proposed subdivision or development, employing standard measures of capacity and equivalency tables relating the type of development proposed to the quantity of system capacity to be consumed by the subdivision. If the proposed subdivision is to be developed in phases, such information also shall be provided for the entire development, including any phases already developed;
 - (b) total capacity to be supplied to the City's public facilities systems for water, wastewater, roadway, drainage or parks, as applicable, by the exaction requirement. This information shall include any capacity supplied by prior exaction requirements imposed on the development;
 - (c) comparison of the capacity of the applicable City public facilities systems to be consumed by the proposed subdivision or development with the capacity to be supplied to such systems by the proposed exaction requirement. In making this comparison, the impacts on the City's public facilities systems from the entire subdivision or development shall be considered;
 - (d) the amount of any City participation in the costs of oversizing the public infrastructure improvements to be constructed by the applicant in accordance with the City's requirements;
 - (e) comparison of the minimum size and capacity required by City standards for the applicable public facilities systems to be utilized by the proposed subdivision or development with the size and capacity to be supplied by the proposed exaction requirement; and
 - (f) any other information that shows the alleged disproportionality between the impacts created by the proposed development and the exaction requirement imposed by the City.
- (7) The City Engineer shall evaluate the appeal and supporting study and shall make a recommendation to the City Council based upon the City Engineer's analysis of the information contained in the study and utilizing the same factors considered by the Engineer in making the original proportionality determination.

Sec. 40 City Council Decision.

- (1) The City Council shall decide the appeal within 30 days of the date of final submission of any evidence by the applicant. Upon receipt of the final submission of evidence from the applicant, the City Secretary shall schedule a time and date for the City Council to consider the appeal and shall cause the applicant to be notified at the address specified in the appeal form of the time, date and location at which the City Council shall consider the appeal.
- (2) The applicant shall be allotted time, not to exceed 30 minutes, to present testimony at the City Council meeting. The Council shall base its decision on the criteria listed in Sections 36(1) and 39(6) and may:
- (a) deny the appeal and impose the exaction requirement in accordance with the City Engineer's recommendation on the plat or other development application; or
 - (b) grant the appeal, and waive in whole or in part an exaction requirement to the extent necessary to achieve proportionality; or
 - (c) grant the appeal, and direct that the City participate in the costs of acquiring land for or constructing the public infrastructure improvement.
- (3) In deciding an appeal, the City Council shall determine whether application of the exaction requirement is roughly proportional to the nature and extent of the impact created by the proposed subdivision on the City's public facilities systems for water, wastewater, roadway, drainage, or park facilities, as applicable, and reasonably benefits the subdivision. In making such determination, the Council shall consider:
- (a) the evidence submitted by the applicant;
 - (b) the City Engineer's report and recommendation, considering in particular the factors identified in Sections 36(1) and 39(6) ; and
 - (c) if the property is located within the City's extraterritorial jurisdiction, any recommendations from the county.

(4) The City Council may require the applicant or the City Engineer to submit additional information that it deems relevant in making its decision.

Sec. 41 Action Following Decision Of City Council.

(1) If the City Council finds in favor of the applicant and waives the exaction requirement as a condition of plat approval, or modifies the exaction requirement to the extent necessary to achieve rough proportionality, the applicant shall resubmit the plat application to the City official responsible for issuing the permit within 30 days of the date the City Council takes action, with any modifications necessary to conform the plat with the City Council's decision. The applicant shall not be deemed to have prevailed in the event that the City Council modifies the exaction requirement.

(2) If the City Council finds in favor of an applicant for any other permit and waives the exaction requirement as a condition of permit approval, or modifies the exaction requirement to the extent necessary to achieve rough proportionality, the applicant shall resubmit the permit application to the responsible official within 30 days of the date the City Council takes action, with any modifications necessary to conform the application with the City Council's decision. Failure to do so will result in the expiration of any relief granted by the City Council.

(3) If the City Council denies the appeal and the applicant has executed a waiver of the statutory period for acting upon a plat, the City shall place the plat application on the agenda of the City Council within 30 days of the City Council's decision.

(4) If the rough proportionality appeal was submitted appealing the imposition of an exaction requirement for a plat application, and City Council grants relief to an applicant but the applicant fails to conform the plat to the City Council's decision within the 30 day period provided, the relief granted by the City Council on the appeal shall expire.

(5) If the plat application is modified to increase the number of residential dwelling units or the intensity of non-residential uses, the City Secretary or City Engineer may require a new study to validate the relief granted by the City Council.

(6) If the plat application for which relief was granted is denied on other grounds, a new appeal shall be required on any subsequent application.

Sec. 42 Appeal Of City Council Decision.

An applicant may appeal the decision of the City Council to the county or district court of the county in which the development is located within 30 days of the date that the Council issues its final decision. In the event that the applicant prevails in such action, the applicant will be entitled to attorneys' fees and costs, including expert witness fees.

SECTION 2.

That the Subdivision Ordinance of the City of Weston is hereby amended by amending Section 10 to add new Subsections (13) through (15) , which shall read as follows:

(13) *Exaction requirement:* a requirement imposed as a condition for approval of a plat, preliminary plat, building permit, planned development district or other development permit application to:

- (a) dedicate an interest in land for a public infrastructure improvement;
- (b) construct a public infrastructure improvement; or
- (c) pay a fee in lieu of constructing a public infrastructure improvement.

(14) *Public infrastructure improvement:* a water, wastewater, roadway, drainage or park facility that is a part of one or more of the City's public facilities systems.

(15) *Public facilities system:* with respect to water, wastewater, roadway, drainage or parks, the facilities owned or operated by or on behalf of the City to provide services to the public, including existing and new developments and subdivisions.

SECTION 3.

This ordinance shall be cumulative of all provisions of Ordinances of the City of Weston, Texas, as

amended, and the Subdivision Ordinance for the City of Weston, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5. EFFECTIVE DATE

This ordinance shall be effective from and after its passage and adoption by the City Council.

PASSED AND APPROVED this the 14th day of March 2006.

Patti Harrington
Patti Harrington, Mayor

ATTEST:

Susan M Coffey
Susan M Coffey, City Secretary

