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October 21, 2024

Planning & Zoning Commission  
Tiffany Antol, Zoning Code Manager  
City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, Arizona 86001

RE: PZ-24-00009 – Subdivision Process Amendment

Dear Tiffany and Members of the Planning & Zoning Commission:

On behalf of the various development partners we represent in the City, I am specifically writing to express our opposition to a portion of the proposed amendment to Title 11 of the City Code. While we support the City's goal to make plat approval more efficient, we continue to be adamantly opposed to the process being proposed for a replats (Section 11-20.40.070.B).

While the majority of the proposed amendment will simplify the subdivision process, Section 11-20.40.070.B will do the opposite. This proposed section requires public notice for land divisions, allows adjoining property owners to demand City Council review, and creates a very vague "good cause" standard for approval. Rather than streamlining the process, this provision makes plat approval a political decision, when it is supposed to be administrative.

A plat is a division of property. A plat must adhere to zoning, subdivision, and engineering requirements such as lot size, setbacks, road widths, etc. If the proposed plat meets such requirements, it must be approved. However, the amendment puts plat approval in the "hands" of the public. Under the amendment, someone with no ownership interest in the subject land would have say in whether it can be re-subdivided, and the "good cause" standard allows the City to deny a replat even when it meets all zoning, subdivision, and engineering requirements. A division of land does not belong in the court of public opinion. It either meets code requirements or it does not.

The proposed replat process is also contrary to the purpose of Senate Bill 1103. In 2023, Governor Hobbs signed SB 1103, allowing cities and towns to approve plats and other development plans without public hearing. The purpose of allowing administrative approvals is to streamline the development process, making it simpler, faster, and less expensive to develop land. By reducing the time and cost that goes into development, the bill aims to increase housing supply and reduce housing costs.

This is especially important in Flagstaff, since the City declared a housing crisis several years ago. Creating additional obstacles to plat approval will make it even more difficult for developers in the City to deliver affordable housing.

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In addition to the approval process outlined above, we have significant concerns with the drafted language for the petition requirements. Specifically, Section B.1.c requires signatures of all owners in a subdivision plat when the land is “owned in common for the benefit of all fee owners.” We have not seen such language in other jurisdictions are concerned with how it would be interpreted. Common ownership is an element of condominiums and other similar properties, such as cooperatives. In the case of a condominium, we agree that every person with an ownership interest in a common area must consent to a replat.

However, our concern is that this language will be incorrectly applied to single-family subdivisions. Although condominium owners have a legitimate ownership interest in common areas, the same is not true of lot owners and common tracts. Tracts in single-family subdivisions are independently owned by individual entities, such as a developer or HOA. The other fee owners in the subdivision *do not* have an ownership interest in that land. At most, the neighbors may have an easement over the land created through private CC&Rs. To require the consent of those without an ownership interest in the land would be unconstitutional, as we have previously communicated to Staff.

Additionally, there are communities in Flagstaff with 600+ homes benefitting from the same HOA. To obtain signatures from hundreds of homeowners would be nearly impossible. Thus, we are proposing a revision to clarify this section.

Attached to this letter are our proposed edits to Section 11-20.40.070.B. We appreciate your consideration of this matter and look forward to the opportunity to speak at the October 23, 2024 Planning & Zoning Commission hearing.

Sincerely,

GAMMAGE & BURNHAM

By   
Lindsay C. Schube

LCS/cap

## 11-20.40.070 Plat Amendments

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B. Replat. Any request to vacate, alter, or amend some or all of a recorded subdivision plat that does not include a certificate of correction, boundary adjustments, abandonment or vacation of public rights-of-way, or a reversion to acreage.

1. Petition for Replat. The City on its own initiative may consider the vacation, alternation, or amendment of a subdivision plat. Any fee owner of property lying within a recorded subdivision plat may petition the City to vacate, alter, or amend some or all of the subdivision plat. The petition shall include the following:

- a. The name and address of all owners of record of the land contained in the entire plat or on that portion of the plat described in the petition;
- b. The signature of each of the owners identified in the petition; and
- c. If the land described in the petition is owned in common ~~for the benefit of all~~ **other** by all fee owners within the subdivision boundaries, ~~such as in a condominium,~~ the signatures of each owner within the subdivision plat shall be provided unless individual representatives are elected through covenants, conditions and restrictions.

~~2. Notice. Notice of any subdivision replat shall be provided as specified in City Code Title 10, Zoning Code, Subsection 10-20.30.080 Notice of Public Hearing to all fee owners within the subdivision plat boundaries. The notice must include provisions for any fee owners to object in writing to the City within 15 days of the mailed notice.~~

~~3.~~ 2. Replat Review and Approval. The replat shall be reviewed and approved in accordance with the provision for final plat review and approval. ~~except as modified below:~~

- ~~a. If the City receives written objections within the required timeframes from any fee owner within the boundaries of the subdivision plat to be re-platted the matter shall be referred to the City Council for review and approval.~~

~~4. Grounds for Approving a Replat. The Director and City Engineer or City Council may approve a re-plat if they find that there is good cause for the replat, and no public street or municipal utility easement has been vacated or amended.~~