



DATE: **March 14, 2023**

TO: File

FROM: Londell Pease, Senior Planner
 Nick Johnson, Senior Planner

RE: **Expiration of a PDP. FDP and Plat for Cases #PL2020-133 and #PL2021-50**

On October 5, 2020, the City Council approved a Comprehensive Plan Amendment to reguide 8525 and 8545 Penn Avenue from Low-Density Residential to Medium Density Residential and Rezoning from R-1 to R-3(PD). On October 19, 2020, the City Council approved Preliminary and Final Development Plans for 15 townhomes located at 8525 and 8545 Penn Avenue South and an associated Type III Preliminary and Final Plat to subdivide two lots into 15 townhome lots and one common lot (Case #PL2020-133). On March 10, 2021, the applicant applied to change a condition of approval attached to the Final Development Plan approved on October 19, 2020. (Case #PL2021-50).

On June 10, 2021, the City Council denied a Change in Condition for Case #PL2020-133 related to the access requirements for Penn Lake CityHomes townhome development. The applicant subsequently appealed the denial to the Second Judicial District Court. The case was heard on April 5, 2022, before Honorable John Guthmann, and a decision was issued on July 5, 2022. After the District Court decision, the City Council adopted a resolution approving the requested Change in Condition on August 8, 2022.

Therefore, after reviewing the record, it was determined that in accordance with Sections 21.501.03(f) and 22.06(e), the Final Development Plan and Final Plat expiration date for approvals associated with Cases #PL2020-133 and #PL2021-50 is August 8, 2024.



Request for Council Action

Originator

Planning

Item

3.7 Penn Lake CityHomes - Change in Condition Resolution

Agenda Section

CONSENT BUSINESS

Date

August 8, 2022

Requested Action:

Motion by _____, seconded by _____, as required by Court Order in Case #PL2021-50, to adopt a resolution approving a Change in Condition of Approval #7 in Case #PL2020-133 to allow an emergency-only secondary access to Penn Avenue South for a 15-unit townhome development, subject to the conditions listed in the resolution.

Item created by: Nick Johnson, Planning

Item presented by: Melissa Manderschied, City Attorney

Description:

MCDC Penn LLC, owner of 8525 and 8545 Penn Avenue South, submitted a Change in Condition application for Case #PL2020-133 related to the access requirements for a 15-unit townhouse development (Case #PL2021-50). The Change of Condition application was denied by the City Council on May 10, 2021. The owner and applicant filed a lawsuit (File No. 27-CV-21-10098) challenging the denial of the application. The District Court ordered the City to adopt a resolution approving the Change in Condition of Approval as presented at the May 3, 2021 City Council meeting. The attached resolution was prepared to comply with the Court Order.

As a point of clarification, Final Development Plan approval is valid for a two-year period. Per Section 21.501.03(f) of the City Code, Final Development Plan approval shall expire if no building permit is issued within two years of the date of approval. Due to the applicant being unable to obtain a building permit for the approved development during the time period of the dispute, the two-year Final Development Plan approval period was tolled. As a result, the Final Development Plans approved in Case #PL202000133 shall be granted a new two-year period of validity starting on August 8, 2022. Should the City Council adopt the resolution approving the Change in Condition application in Case #PL202100050, the applicant or their successor or representative must obtain a building permit for the proposed development by August 8, 2024.

Attachments:

Resolution of Approval

Court Order - MCDC Penn LLC vs. City of Bloomington