

COUNCIL ACTION FORM

SUBJECT: SUBDIVISION ORDINANCE TEXT AMENDMENTS RELATED TO PLATS OF SURVEY, BOUNDARY LINE ADJUSTMENTS, RETRACEMENT SURVEYS, AND SUBDIVISION REVIEW IN THE URBAN FRINGE

BACKGROUND:

On January 2, 2009, the City Council referred to staff amendments to the City's subdivision code pertaining to plats of survey, boundary line adjustments, retracement surveys, and subdivision review in the fringe. Staff explained to the Council the problems that we are currently experiencing that the amendments would address. One of the primary concerns expressed was the creation of parcels through plats of survey that were not processed or approved by the City. Staff explained the resultant burden on subsequent parcel owners due to laws that prohibit the issuance of permits on lots not otherwise created through adopted subdivision regulations. The draft amendments would provide a process and criteria for review and approval of plats of survey, and would also provide a means to legalize existing lots created by plats of survey.

Regarding boundary line adjustments, the amendments would more formally define these as an adjustment of a lot or parcel line that would result in the same or fewer numbers of lots. The amendments would then exempt most boundary line adjustments from the requirement to install public improvements along the property frontage. Finally the amendments would affirm the City's desire to review plats of survey in the urban fringe.

Staff presented the draft amendments to the Planning and Zoning Commission on January 2, 2009 and similarly explained the issues. Following the P&Z meeting, staff held meetings with both local developers and surveyors, and also with Story and Boone County staff. Based upon the comments received at these meetings, the staff fine-tuned the draft language and presented a revised draft for Public Hearing before the Planning and Zoning Commission. These amendments are now being brought forward for the City Council's consideration and public hearing.

In summary, the amendments would:

- a. Define more specific procedures for processing plats of survey before being submitted to the County for recording;
- b. Provide means to officially recognize parcels created through conveyance, but which were not previously reviewed or approved under City subdivision standards;
- c. Confirm the City's intent to review plats of survey within the Ames Urban Fringe;

- d. Define boundary line adjustments and review procedures, and exempt them from public improvement requirements (with limited exceptions); and
- e. Exempt from City review all retracement surveys that are clearly titled, "Plat of Retracement Survey".

Staff is attaching for the Council's consideration three separate ordinances that would adopt the above-described amendments. They are presented individually to reflect the different (but related) subjects of the amendments including (1) conveyance lots, (2) plats of survey, and (3) review of plats of survey in the urban fringe. A more detailed description of the amendments will be provided in a PowerPoint presentation at the June 23 Council meeting.

Findings of Fact and Conclusions:

Findings of facts and conclusions for each of the three proposed ordinances are provided in Attachment 1. These provide the legislative purpose of and legal basis for the proposed ordinances.

Recommendation of the Planning and Zoning Commission. At its meeting of June 3, 2009, the Planning & Zoning Commission conducted a public hearing on the proposed amendments. There were a number of people present in the audience, but there was no public input at the hearing. With a vote of 6-0, the Planning and Zoning Commission recommended approval of the proposed Subdivision Ordinance text amendments.

ALTERNATIVES:

1. The City Council can approve the subdivision ordinance text amendments as proposed in the attached three ordinances, based upon the findings and conclusions stated in Attachment 1.
2. The City Council can choose to modify the subdivision ordinance text amendments as shown in the attached three ordinances, and refer the ordinances back to staff for modification prior to consideration by Council.
3. The City Council can not approve the proposed subdivision ordinance text amendments.
4. The City Council can refer this issue to staff for further information.

MANAGER'S RECOMMENDED ACTION:

The proposed amendments would provide resolution to the problem of lots that were created without benefit of City review, and would also lessen the infrastructure burden on property owners who want to simply adjust their lot line without requiring additional public improvements, and would also simplify the process of doing a retracement

survey. Staff has put forth considerable effort to obtain input from individuals most affected by the changes, and believes that the draft amendments reflect, to the degree possible, input received to date.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative 1, thereby approving the three text amendments as proposed in the attached three ordinances.

ATTACHMENT 1
FINDINGS OF FACTS AND CONCLUSIONS

FOR

SUBDIVISION ORDINANCE TEXT AMENDMENTS RELATED TO PLATS OF SURVEY, BOUNDARY LINE ADJUSTMENTS, RETRACEMENT SURVEYS, AND SUBVISISION REVIEW IN THE URBAN FRINGE

Ordinance 1 – Subdivision Regulations Pertaining to Plat of Survey Requirements.

Findings:

1. Section 354.8 of the Code of Iowa requires the County Recorder to refuse to accept for recording a subdivision plat presented for recording without a resolution from each applicable governing body approving the subdivision plat or waiving the right to review.
2. Provisions of Section 354.8 of the Code of Iowa pertain to both subdivision plats and plats of survey as specified in said Section 354.8.
3. Ames Municipal Code Section 23.103(2) provides for conditional waiver by staff of the requirements of the Regulations for the platting of a Minor Subdivision, with one stated condition being that the description and area of the land shall be provided by means of a plat of survey.
4. Administrative approval of plats of survey are not approved by resolution, and may therefore not be accepted for recordation by the County Recorder under the provisions of Code of Iowa Section 354.8.

Conclusions

1. It is the purpose of this ordinance to define a review process for plats of survey, which includes approval by resolution. This will facilitate the lawful recording of plats of survey.

Ordinance 2 – Subdivision Regulations Pertaining to Procedures for Lots Created Through Conveyance.

Findings:

1. Iowa platting standards pertaining to the division and subdivision of land are codified in Chapter 354 of the Code of Iowa, and provide statewide, uniform procedures and standards for the platting of land, including the following provisions:
 - a. Section 354.9 authorizes cities to review subdivision plats or plats of survey for divisions or subdivisions within two miles outside the city’s boundaries; and Many lots have already been developed, and many have subsequently been sold to purchasers who may not have known that the new lots were illegal; and
 - b. Section 354.2 (6) defines a “division” as a means of dividing a tract or parcel of land into two parcels of land by conveyance or for tax purposes; and
 - c. Section 354.2(5) defines “conveyance” as an instrument filed with a recorder as evidence of the transfer of title to land, including any form of deed or contract; and
 - d. Section 354.8 requires plats of survey to be submitted to the governing body for review and approval prior to recording with the County Recorder, and said section further states that the County Recorder shall refuse to accept a subdivision plat or plat of survey presented for recording without a resolution from each applicable governing body approving the subdivision or plat of survey, or waiving the right to review.
2. Properties acquired through conveyances are often described on plats of survey.
3. Common practice has been to submit plats of survey directly to the County Recorder for recording prior to approval or waiver of the applicable governing body.
4. An unknown number of lots have been created in the City of Ames and its fringe by the recording of plats of survey that have not had the benefit of City review and approval under the above-cited statutes or the City’s adopted subdivision regulations.
5. The fact that these lots within recorded plats of survey have been assigned a tax parcel number has led many people, including property owners, to believe that the lots were created with prior City approval.
6. Ames Municipal Code Section 23.103 prohibits the City from issuing any zoning and/or building permit on any area of land that has not been platted in accordance with the City’s subdivision regulations as defined in Ames Municipal Code Chapter 23.

7. Beginning on January 1, 2008, the City initiated a new system for tracking and documenting subdivision applications in order to enable staff to more easily and readily determine if a parcel has been legally divided.

Conclusions:

1. For the following reasons it would be unreasonably burdensome to require property owners who are innocent bona fide purchasers of illegally created lots to apply for standard City subdivision approval in order to legalize the lot:
 - a. A standard subdivision or platting process would require the cooperation and signatures of all persons holding ownership in the original legally created lot in order to obtain their approval of the further dividing of the lot; and
 - b. Many lots have already been developed, and many have subsequently been sold to purchasers who may not have known that the new lots were illegal; and,
 - c. Owners of developed lots would have little incentive to participate in the platting process because they have already realized the economic benefit of their property without having to install the improvements typically required for dividing their property, making them unwilling partners in the standard platting process.
2. By the adoption of this Ordinance, the relevant permits may be issued and the public interest will not be adversely affected as long as: (1) The conveyance parcel was created prior to the effective date of this ordinance, or; (2) the conveyance parcel conforms in size and width with the City's then existing size and width requirements (as set forth in the Zoning Code); and (3) the City's Design & Improvement Standards are imposed on the conveyance parcel; and (4) the conveyance parcels are correctly described by a properly recorded plat of survey.
3. The effective date of this Ordinance should be established as the date for conformance to this ordinance, as both the public and City staff would have been able to easily and readily determine if a lot complied with all State and local subdivision laws prior to issuance of any building permits or the granting of any development applications.
4. In order to protect the public's interest, it is necessary to ensure that all newly created lots are reviewed for conformance with the City's development standards.
5. It is reasonable to require owners of land being divided or subdivided to install improvements along street frontages abutting their property as a means of mitigating the owner's rough proportional impacts to the street system providing access to the owner's land and thereby assessing the owner's proportional cost to improve said streets; and

Ordinance 3 – Subdivision Regulations Pertaining to Review of Plat of Survey in the Urban Fringe.

Findings:

1. The City of Ames subdivision standards are contained in Chapter 23 of the Ames Municipal Code; and
2. Ames Municipal Code Section 23.201(2)(b) states that the City's subdivision regulations govern any plat for subdivision of land within the City, or outside the City, but within two miles of the city boundaries, including any plat of survey, within Story County or Bone County, Iowa; and
3. Section 354.9 of the Code of Iowa establishes the City's authority to review subdivisions and plats of survey within two miles of a city's boundaries, which review shall be established by ordinance specifically referring to Code of Iowa Section 354.9; and

Conclusions:

1. The subdivision of land within two miles of the City's boundaries, including plats of survey, can adversely affect the City's ability to plan for future growth and to provide necessary infrastructure and services for such growth – both within the City limits and in future annexation areas.
2. It is necessary to review and regulate plats of survey within the Fringe in order to protect the City's interest in planning for future growth and providing necessary infrastructure and services.