

**CITY OF TAMARAC  
INTEROFFICE MEMORANDUM  
CITY ATTORNEY'S OFFICE**

**TO: Mayor and City Commission**

**DATE: April 28, 2021**

**FROM: Hans Ottinot  
City Attorney**

**RE: TO # 2464 An Ordinance  
designating the City  
Commission as the final  
decision maker in land use  
matters**

---

**RECOMMENDATION:**

Adopt an ordinance designating the City Commission as the final decision-making authority in land use matters.

**ISSUE:**

Whether the City should amend the Land Development Code to designate the City Commission as the final decision maker in land use matters.

**BACKGROUND:**

I. Before July 2018

Before the City Commission adopted a comprehensive new Land Development Code, the Land Development Code consisted of eight chapters scattered throughout the City's Code of Ordinances (Chapter 5, Buildings and Building Regulations; Chapter 8, Flood Prevention and Protection; Chapter 10, Land Development Regulations; Chapter 11, Landscaping; Chapter 18, Signs and Advertising; Chapter 20, Streets and Sidewalks; Chapter 21, Subdivisions; and Chapter 24, Zoning). Under this pre-2018 Code, the City Commission was given final decision-making authority as it related to approval of major site plans (§ 10-2). However, it could only overrule a disapproval of a special exception decision or make changes to conditions by the planning board with a 4/5 vote (§ 24-552). Finally, as it related to zoning variances, the City Commission had no authority to review same. Only the planning board reviewed, approved or disapproved variances which could be appealed directly to circuit court (§ 24-64).

II. After 2018 Code Revisions

The current Land Development Code, adopted in July 2018, consolidated the eight code sections listed above. The adoption occurred after more than a year of meetings with the public, Planning Board and City Commission. The rationale for consolidating and updating the code was that it had not been revised comprehensively since 1975. The code made sweeping

changes, including allowing the Planning Board to become the final decision maker on many issues, including major site plans, special exceptions, and variances. In other words, this new ordinance expanded the role of the Planning Board. Specifically, as it relates to site plans and special exceptions, once the Planning Board makes a determination on an application, it is final unless the City Commission specifically “calls up” an application for review. “Calling up” requires that if the City Commission wishes to hear an application, it must specifically “adopt a motion to set a hearing to review the application” and it must consider relevant factors in making the decision to review the application. The request must initially come from a commissioner within 15 days of the decision of the Planning Board, and the motion to hear the application must be approved by a majority of the City Commission members. Only then can the City Commission hear an application and make a final determination.

### III. Proposed Ordinance

The City Commission has had opportunities to put these new changes into action and has found the procedure burdensome and not in the best interests of the City. Therefore, it requested an ordinance be prepared which makes the City Commission the final decision maker in land use matters. Below is an overview of the changes for your review and consideration.

- A. **Major Site Plans:** A major site plan is (1) a new development or the expansion of an existing development where 15 or more new dwelling units will be erected or added, (2) a new development or the expansion of an existing development where 15,000 or more square feet of new or added cleared land, (3) a development where there will be more than 10,000 square feet of new or added non-residential uses, or (4) a plan where there will be 30 or more new or added vehicle parking spaces.

The current code gives the Planning Board the final decision-making responsibility to determine whether an applicant meets the requirements for a major site plan approval. Again, the City Commission can only review such determinations if a commissioner “calls up” the application in a timely manner and the commission votes to hear the application.

The proposed ordinance changes this structure and makes the Planning Board a reviewing authority with the City Commission acting as the ultimate and final decision maker on **all** major site plan applications.

- B. **Special Exceptions:** The current code gives the Planning Board the final decision-making responsibility to determine whether an applicant meets the stringent requirements for a special exception, which allows an applicant to have a use in an otherwise incompatible location. As stated previously, the City Commission can only review such determinations if a commissioner “calls up” the application in a timely manner and the commission votes to hear the application.

The proposed ordinance changes this structure and makes the Planning Board a reviewing authority with the City Commission as the ultimate and final decision maker on special exception applications.

**Variances:** A variance allows certain deviations from standards of the City’s code when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner’s control, the literal application of the standards would result in undue and

unique hardship to the landowner and the deviation would not be contrary to the public interest. The current code gives the Planning Board the final decision-making responsibility to determine whether an applicant meets the very stringent requirements for a variance. If the applicant is dissatisfied with the determination, the applicant could appeal to the City Commission.

Under the proposed ordinance, the Planning Board would make a recommendation to the City Commission, and the City Commission would then make the final decision of whether the code requirements have been met. Appeals from the City Commission's decision would then be handled in circuit court.

- C. **Off-Street Parking Alternatives:** Currently, the Planning Board makes the final determination as to whether it will accept an in lieu of fee from a developer instead of requiring parking in non-residential areas. The proposed ordinance changes the structure and makes the City Commission the final decision maker on whether a payment will be accepted.
- D. **Signs:** As it relates to comprehensive sign plans, the Planning Board currently has the discretion to review variations from the general requirements that are above ten (10) percent. In the proposed ordinance, the Planning Board has a right to review the request but the City Commission is the final decision maker on determining an appropriate variation amount.

The proposed ordinance was preliminarily discussed at the April 14, 2021 Commission Meeting and staff was instructed to bring it back for consideration on first reading. Also, at that meeting, the City Commission considered additional information in a second memorandum discussing the City's Charter provision relating to planning and zoning (section 12.05). As discussed the City Attorney's Office will be following up on the issue to determine if further changes in the LDRs are required.

**FISCAL IMPACT:**

No direct budgetary Impact

ATTACHMENT(S)

Proposed Ordinance