



AGENDA
COMMITTEE OF THE WHOLE

**City Hall – Council Chambers
3600 Kirchoff Road
Rolling Meadows, IL 60008**

March 21, 2023 – 7:30 p.m.

- 1) Temporary Certificates of Occupancy and Site Plan Improvements**
- 2) Lead Service Line Inventory**

Committee of the Whole Agenda – March 21, 2023

1) Temporary Certificates of Occupancy and Site Plan Improvements

Attachments:

- Sample Unconditional Agreement and Consent

Background & Summary:

One of the strategic goals of the City Council is to establish a high-performance community development function. This has many facets including: excellent customer service; fast and cost-effective reviews; thoughtful future planning; and reasonable enforcement. Staff is proactively working to change the City's practices to this end. For example, the implementation of Tyler Energov and the reduction in cash bonds and deposits are two examples achieved in the first quarter of 2023.

One community development issue that has been prioritized by members of the City Council is that developments frequently struggle to satisfy one common condition of the City's zoning approvals – namely, that the developer must complete all exterior site improvements before occupancy of their building and the start of operations. These challenges reflect the tension between (i) the City's interest in creating a sense of place, community, and first-class commercial areas; and (ii) the increasingly difficult environment for development, especially of the types that are of the most strategic interest to the City.

Staff understands that the Council's desire is to add flexibility and support development phasing to navigate these challenges. The City can improve its processes to ensure that the City Council retains control in an orderly and effective development process, and can do so without overburdening the City's limited resources with costly post-development follow-up and tracking. Much of the Council's vision will necessarily need to be implemented through project-specific changes. However, the following four recommendations are general policy decisions that may be directed by the City Council. These items have been used at times by the City in recent years and can be implemented more uniformly in the future.

Staff Recommendations

A. Modify Future Zoning Relief Conditions to Allow More Flexibility

Today, many of the City's zoning ordinances are written to require the specific performance of certain conditions before occupancy may be granted; provide that the violation of certain conditions renders a grant of zoning relief "null and void;" and specify particular measures or techniques without a clear process to approve minor changes. Taken together, these measures can make it difficult to adjust to changing timelines and phasing without special intervention.

The City can authorize its future grants of zoning relief in such a manner that they can be administered more flexibly. For example, these techniques are common in other communities:

1. Conditions can be tied to different timeframes or milestones aside from the start of occupancy or operations. (See also B below.)
2. Staff, the City Council, or both can be granted the ability to approve minor changes using an expedited or administrative process. (This is common for planned developments.)
3. The City Council may reserve the ability to revoke zoning relief, or *not* revoke zoning relief, at its discretion where a violation of these conditions occurs rather than making this outcome automatic.

B. Expand Opportunities to Issue Temporary Certificates of Occupancy for Phased Projects

Today, the Municipal Code provides relatively limited authority for Staff to issue temporary certificates of occupancy. “*All aspects of the site and structure*” must be complete “*except for exterior landscaping and asphalt installation,*” which must have been delayed due to weather. Temporary certificates can only be issued between November 1 – June 1 and must expire on July 1. This framework is roughly equivalent to the strictest that Staff located in its research; it is stricter than both the International Codes and many other communities. For example, the 2018 International Residential Code is much more permissive:

R110.4 - Temporary occupancy. The *building official* is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the *permit*, provided that such portion or portions shall be occupied safely. The *building official* shall set a time period during which the temporary certificate of occupancy is valid.

The City may modify its codes to allow Staff to issue temporary certificates of occupancy for a broader set of reasons and for a longer period of time. If desired, Staff will draft an Ordinance for consideration at a future City Council meeting that draws from best practices.

C. Ensure Property Owners Remain Involved in Zoning Relief

At present, the City simply requires that a zoning applicant show that they have the property owner’s written consent to make an application. At times, this has led to situations where applicants have indicated their agreement with conditions of approval that the property owner does not support or is not fully made aware of. The City can modify its application forms to ensure that the City has the means to contact the property owner throughout the process, and can take extra steps to keep the property owner involved and aware throughout the entitlement process. (See also D below.)

D. Require Unconditional Agreements and Consent as a Condition of Zoning Relief

After the City Council adopts an Ordinance granting zoning relief, it may require, as a condition of relief, that the applicant and owner execute an Unconditional Agreement and Consent similar to the attached. This agreement acts as written confirmation that both the applicant and the property owner are aware of and accept the final approval conditions contained within the Ordinance.

Importantly, agreements like these are a commonly used means of managing the financial risk of land use litigation throughout Chicagoland communities. Litigation concerning the City’s land use decisions can be among the most time-consuming, expensive, and consequential legal entanglements that the City may face. These costs are commonly not insured (or insurable), and even when covered by an insurer, the City may have legislative interests (e.g. upholding its land use decisions) that outweigh financial interests (e.g. reaching the lowest cost settlement). These agreements greatly reduce the applicant’s ability to sue the City successfully, and ensures that the Applicant fairly bears the *risk* of a third-party legal challenge as well as the *benefits* of the City’s zoning actions.

Recommended Action

Staff requests City Council feedback on this topic and the above recommendations. Staff supports the implementation of all four items set forth above.

Two different grants of zoning relief are pending introduction at the next City Council meeting. If desired, the City Council should direct staff to incorporate recommendations A and/or D in the draft Ordinances that will be considered for first reading at the next meeting.

Attachment 1

Sample Unconditional Agreement and Consent

WHEREAS, [Insert Recitals from Ordinance, including legal description of the Subject Property.]

WHEREAS, Ordinance No. _____, adopted by the Corporate Authorities of the City of Rolling Meadows on _____, (“**Ordinance**”) grants the [Zoning Relief] to [Operator or Owner] for the [Use/Development] at the Subject Property, subject to certain modifications, conditions, restrictions, and provisions; and,

WHEREAS, Subsection ____ of the Ordinance provides, among other things, that the Ordinance will be of no force or effect unless and until the Owner [and Operator] file with the City Manager, within 60 days following the passage of the Ordinance, its unconditional agreement and consent to accept and abide by each of the terms, conditions and limitations set forth in said Ordinance.

NOW, THEREFORE, the Owner [and Operator] do hereby agree and covenant as follows:

1. The Owner [and Operator each] hereby unconditionally agree[s] to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of the Ordinance.
2. The Owner [and Operator each] acknowledge[s] that public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, have [has] considered the possibility of the revocation provided for in the Ordinance, and agree[s] not to challenge any such revocation on the grounds of any procedural infirmity or a denial of any procedural right.
3. The Owner [and Operator each] acknowledge[s] and agree[s] that the City is not and will not be, in any way, liable for any damages or injuries that may be sustained as a result of the City’s issuance of any permits for the [Use/Development] and the Subject Property, including, without limitation, the [types of zoning relief] approved in the Ordinance, and that the City’s issuance of any such permits or approvals does not, and will not, in any way, be deemed to insure [either] the Owner [and Operator] against damage or injury of any kind and at any time.
4. The Owner [and Operator each] agree[s] to and do[es] hereby hold harmless and indemnify the City, the City’s corporate authorities, and all City elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of such parties in connection with the operation and use of the [Use/Development] or the Subject Property, or the City’s adoption of the Ordinance.
5. By signing, the Owner [and Operator], or the individual(s) signing on behalf of the Owner [and Operator], represents, warrants, and guarantees that they have the legal authority to bind the Owner [and Operator] pursuant to the terms of this Unconditional Agreement and Consent.

Dated: _____, _____.

[Insert signature blocks for Owner and, if applicable, Operator.]

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2) Lead Service Line Inventory

Background:

Water service lines are underground water pipes that connect homes or buildings to a source of drinking water such as a water main or private well. Water service lines are generally jointly owned by water supplies and property owners. Under Public Act 099-0922, which took effect in 2017, community water supplies in Illinois have been required to submit annual service line material inventories to the IEPA. In 2019, community water supplies in Illinois reported 677,359 known lead service lines currently connected to Illinois water systems.

To address the known and unknown burden of lead service lines in the state, the Lead Service Line Replacement and Notification Act, Public Act 102-0613, was passed and made effective on January 1, 2022. This Act requires community water supplies to continue inventorying activities while developing and implementing plans to identify and remove lead service lines. In addition, it requires community water supplies to give owners and occupants notifications about lead service lines serving their homes or buildings and construction activities that may release lead into drinking water.

By April 15, 2022, municipalities were required by the Act to create an initial material inventory containing the total number of service lines located within the municipality and the material of each line. This inventory is required to be updated and initially submitted to the Illinois Environmental Protection Agency (IEPA) by April 15, 2023, and a final inventory is required to be completed and submitted to IEPA by April 15, 2024. Following creation of the water service line material inventory, a lead service line replacement plan is required to be drafted by any municipality with known or suspected lead service lines. This plan will identify the course of action each water supplier will take to replace all the lead service lines within its service area. The initial phase of the replacement plan is required to be submitted by early 2024 with the final version due 2027. The percentage of lines that must be replaced per year, and the length of time a municipality will have to replace all lead service lines, is dependent on the number of lead service lines within the community.

Rolling Meadows Status:

Currently, staff believes through historical information, combined with documentation that no lead service lines exist in the City. However, the IEPA is requiring the City to verify every service line that was installed prior to 1988 (two years after the ban on lead for water service lines) and smaller than 2" in size. This requires the City to inventory a substantial number of water supply lines.

The City's utility division is on track to meet the first deadline this April in which we will have an inventory of all our service lines and the expected material. Our next step will be to begin verifying through various means, the material of each service line. These activities can include a resident survey, physically checking the material near the meter, as-built records, construction

images, pictures or replacement records, and other forms of verification. Knowing this requirement was coming, utility staff have been documenting the material of all service lines when performing their regular duties (i.e. water meter repairs, replacements).

Funding:

The City of Rolling Meadows will be responsible for funding the entire cost of the lead service line inventory and water service line replacements. The Lead Service Line Inventory (LSLI) Grant Program offers grants to local government units ranging from \$20,000 - \$50,000 to fund the creation of a complete lead service line inventory however the City of Rolling Meadows Median Household Income (MHI) is currently \$81,601 per the US Census Bureau and the threshold for grant assistance is only for communities that are fall at or below the State of Illinois MHI which is currently \$72,563 which means no grant funding is available for the inventory collection phase of this project. The City will continue to explore grant funding as we continue collecting water service line information.

City Staff is still examining the level of consultant involvement combined with utility staffing to complete the needed inventory. Staff is currently seeking proposals from engineering firms we have existing relationships with that have been assisting other communities in this process.

In the event that the City does find through our verification process that lead services do exist, there are grant opportunities to explore to assist with the replacement cost.

Direction:

At this juncture, no direction from Council is requested, this is for the Council's information and knowledge.