

City of Piedmont
COUNCIL AGENDA REPORT

Date: January 3, 2005

From: George S. Peyton, Jr., City Attorney

Subject: **Ordinance Amending Chapter 17 Regarding Appeals, Review and Remand**

RECOMMENDATION

Approve the first reading of the attached ordinance dealing with planning appeals, remand, and review.

BACKGROUND

Going back some months, the Council raised questions about how our current Planning Appeals and related Ordinance sections work, and requesting possible changes of its procedures. I previously provided you information relating to certain legal considerations and Standards of Review, specifically that the current ordinance requires a de novo standard of review. Working with the City Administrator and the City Planner, I have prepared an Ordinance that would carry out some of the concepts that had been discussed over the past several months. One of the key concerns had to do with the above mentioned fact that the current wording of Section 17.25 of the Piedmont City Code involving Planning Appeals has a de novo standard of review rather than any more restricted types of review. I was instructed to prepare new wording that would provide more restricted review standards on normal Planning Commission Appeals, and also would provide the ability to review a decision by the Planning Commission at the initiative of a City Administrator or City Council Member, which review would be based on a de novo standard of review, and finally to provide new wording that would allow matters to be remanded from the City Council to the Planning Commission. The attached Ordinance attempts to accomplish all of these three goals.

NEW ORDINANCE PROVISIONS

The following is a brief summary of the changes proposed:

1. Section 17.25.5 has been modified by a new second sentence which indicates that the normal review standard will not be a de novo review, and instead will be governed by the provisions of Section 17.25.6 which is an entirely new section.

2. Section 17.25.6 is divided into 3 separate parts. The first part requires that the City Council on hearing appeals from Planning Commission actions would provide due deference to the decisions of the Planning Commission. The second part establishes six specific grounds for overruling Planning Commission decisions. After conferring with the City Administrator, it was decided that instead of trying to adopt legal language for judicial review, which often seems inappropriate in dealing with appeals from Planning Commission decisions, it was better to deal with specific items that make sense in the context of the actions being taken by the Planning Commission. These grounds are proposed based on discussions with the City Administrator and the City Planner. Finally, there is a short provision in Subsection c. involving appeals of Staff Design Review decisions and Administrative Design Review decisions, to which the same basic grounds would apply. It is possible that the Council may want different grounds to apply to appeals of such Design Review decisions. You will note in Subsection b.1 on Page 2 of the proposed new Ordinance, I have inserted in brackets alternative wording of “substantial evidence” that the Council may want to consider putting in place of “...the weight of the evidence....”.
3. On Page 3 of the proposed ordinance you will see wording for a new Section 17.25.7 on Remand. This sets forth the procedures to use in remanding a matter back to the Planning Commission that has been appealed to the City Council and sets forth a series of options to allow the Council some flexibility in how it wishes to remand the matter. For instance, the Council can indicate it wants only one aspect of the Planning Commission decision to be considered on Remand, or it can open up the entire application for consideration de novo. It also allows the Council to have the Planning Decision decision automatically come back to the Council for a final decision or to instead allow the Planning Commission decision to stand unless it is appealed further back to the Council. There is a provision that indicates that under normal circumstances no additional fees would be charged to the Appellant based on the Remand, although the Council can decide to the contrary by taking affirmative action requiring either partial or total fees to be charged again.
4. Section 17.26 on Review is very similar to the current wording that exists, although a new sentence has been added at the end requiring a de novo hearing, and old language that involved a required recusal of a Council Member who might request review of a Planning Commission decision has been removed. The latter language has been removed because it is no longer required by law as it was at the time it was originally adopted.

Council should conduct a first reading of the proposed Ordinance and instruct the staff on any modifications that the Council may desire.

ORDINANCE NO. 652 N.S.

AN ORDINANCE OF THE CITY OF PIEDMONT AMENDING
CHAPTER 17 OF THE PIEDMONT CITY CODE RELATING TO APPEALS, REMAND,
AND REVIEW

The City Council of the City of Piedmont hereby ordains as follows:

SECTION 1

The intent of the City Council in enacting this Ordinance is to clarify the standards of review governing appeals on matters called on review, as well as adding a section to allow matters to be remanded in whole or in part to the Planning Commission.

SECTION 2

Section 17.25.5 is hereby amended to read as follows:

"17.25.5 Action. Upon conclusion of the hearing, the appeal body shall act upon the appeal. The standard of review governing the appeal shall not be a de novo review, but instead shall be governed by the provisions of Section 17.25.6 hereafter. Subject to the foregoing, the appeal body may sustain, modify, add to, or overrule any recommendations or rulings of the decision maker and make such other findings which are consistent with the provisions of this chapter, including the right to require or modify the requirements for story poles, surveys, time periods for completion or extension thereof, and any other conditions relating to the project for which approval is sought, whether or not the decision maker has made any such requirements; provided that in the event there is not a majority of three members of the appeal body who vote for any of the foregoing actions, then the matter automatically shall be continued to the next meeting, but if no such majority vote can be obtained at the next meeting, the appeal shall be deemed denied and the action of the decision maker affirmed. The appeal body shall report its decision to the appellant, the original applicant for variance or design review, and the decision maker. (Ord. No. 488 N.S., 10/87)"

SECTION 3

Section 17.25.6 shall hereby be added to the Piedmont City Code to read as follows:

"17.25.6 Appeals – Standard of Review. The standard of review which applies to the hearing of an appeal from a Planning Commission decision by the City Council or of a Staff Design Review decision by the Planning Commission shall not be de novo, and shall be governed by the following:

- (a) Deference. Due deference shall be given to the actions of the Planning Commission in light of the substantial number of planning applications heard by them and the major accumulated group experience that those actions represent.

(b) Grounds for Overruling Decision. The following will serve as grounds for overruling all or part of a Planning Commission decision:

- (1) If findings made by the Planning Commission as a basis for its action are not supported by the weight of the evidence [alternative wording: “substantial evidence”].
- (2) If there is clear error in the application of the provisions of Chapter 17 that is important to sustaining the action by the Planning Commission.
- (3) If there is significant error in the application of the Design Review Guidelines as approved by the City Council from time to time.
- (4) If it is determined that there is a significant violation of the notice provisions of Section 17.28 of the Piedmont City Code relating to the hearing(s) leading to the Planning Commission action.
- (5) If significant errors are discovered after the Planning Commission hearing on which its action was taken in the application, plans, drawings or other materials provided to the Planning Commission as a basis of its decision.
- (6) If there is a clear error in the application of approved City policies (such as the story pole and site visit policies) that is important to sustaining the action taken by the Planning Commission.

(c) Appeals from Staff Design and Administrative Design Review Decisions. The same grounds as set forth in Section 17.25.6.(b). shall apply for overruling part or all of a Staff Design Review decision or Administrative Design Review decision appealed to the Planning Commission.

SECTION 4

Section 17.25.7 shall hereby be added to the Piedmont City Code to read as follows:

“17.25.7 Remand. Notwithstanding the provisions of Section 17.25.5, the City Council acting as the appeal body shall have the option to remand the matter to the Planning Commission for further consideration, which remand shall include either specific issues to be considered alone or to open the entire application for the Planning Commission to decide de novo. Unless the City Council determines otherwise, the remand hearing before the Planning Commission shall take place at the next Planning Commission Meeting, which is at least twenty (20) days after the remand action of the City Council. Unless the City Council affirmatively acts to the contrary, no additional fees shall be charged to the applicant or appellant relating to the remand. The decision of the Planning Commission on the remand shall be deemed final unless appealed pursuant to Section 17.25, or unless the City Council retains appeal jurisdiction over the entire

matter at the time of the remand and requests only an advisory opinion on specific issues from the Planning Commission.”

SECTION 5

Section 17.26 of the Piedmont City Code is hereby amended to read as follows:

“SEC. 17.26 REVIEW

Within ten (10) days of the date of any action by the Director of Public Works, a member of the City Council, a member of the Planning Commission or City Administrator may initiate proceedings for review by the Planning Commission of the action in the manner set forth in Section 17.25 for appeals. Within ten days after the date of an action by the Planning Commission, a member of the City Council or the City Administrator may initiate proceedings for review by the City Council of the Planning Commission action in the manner set forth in Section 17.25 for appeals. The standard of review governing proceedings under Section 17.26 shall be a de novo hearing. (Ord. No. 488 N.S., 10/87; Ord. 615 N.S. 3/20/00; 620 N.S. 3/19/01)”

SECTION 6

This ordinance shall be posted at City Hall after its second reading by the City Council for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

Passed and adopted this ____ day of _____, 2005.

AYES:

NOES:

ABSENT OR ABSTAINING: