



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Carla R. Cushman, Assistant City Attorney
City web: www.rcgov.org

Phone: 605-394-4140
Fax: 605-394-6633
e-mail: carla.cushman@rcgov.org

MEMORANDUM

TO: Planning Commission

FROM: Carla Cushman, Assistant City Attorney *CC*

DATE: May 4, 2017

RE: Ordinance No. 6112 – *An Ordinance to Amend Provisions Concerning Zoning Applications by the City by Amending Section 17.54.040 of the Rapid City Municipal Code*

City-Initiated Rezones

While nearly all rezones occur at the request of the property owner, occasionally the City initiates a rezone of property. City-initiated rezones generally occur in one of two cases. In the more common situation, property that is annexed into the City is automatically zoned No Use District; the City then rezones the property to the appropriate zoning district for its existing or future use. The second and more unusual situation is when the City adopts a new zoning district or overlay zone with the intention that an area of the City will be rezoned to the new district/overlay. We anticipate this second situation arising as part of implementation of the Downtown Plan, which called for changes to the zoning regulations to accommodate and encourage future growth and development in the downtown area, particularly east of Fifth Street.¹

Existing Ordinance

Today, City ordinance RCMC 17.54.040.A imposes a two-step disclosure process prior to any action to rezone property, only when that rezone is initiated by the City. The ordinance, adopted in 2011, requires the City to mail two disclosure forms to each property owner that provide:

¹ Further examples of possible City-initiated actions include a rezone to rectify an error or oversight from a past rezoning process, or a rezone based upon changing conditions and needed to protect the health, safety, and welfare of the City's residents. Such rezones, while possible, are highly unusual.

- (1) “a written accounting of the estimates for any costs of subsequent zoning applications,” including application, sign, and mailing costs;
- (2) a notice about possible costs associated with requirements for professional drawings/plans/studies required for development applications;
- (3) applicable timeframes and publication requirements for development applications; and
- (4) a statement describing “the current use of the property, whether or not that use will be allowed under the proposed zoning district, any provisions for the existing use being a legal non-conforming or ‘grandfathered’ use and the circumstances that may result in the legal non-conforming status being lost.”

RCMC 17.54.040.A.2. The property owner(s) may return a signed disclosure statement, but regardless of any response, the City can proceed with submitting the rezone application once the disclosures have been mailed twice. Once the rezone application is submitted, all other relevant laws governing public notice apply, including publication and mailings made prior to Planning Commission, and notice by publication at least twice prior to City Council review. Because every rezone is an ordinance change, the rezone action needs two readings before it is final.

City staff are utilizing the existing process with the Big Sky rezone, where the disclosures are relatively straightforward since all of the properties were already developed and have the same use, and all properties will be rezoned to the same residential district. *See attachment.* However, staff are looking ahead to the changes anticipated by the Downtown Plan to adopt and implement a new zoning ordinance to encourage development and growth in the Downtown area. If Council adopts a new zoning district for a portion of downtown, it is possible that 120 or more properties may be rezoned to this new zoning district.

Proposed Ordinance

In anticipation of the downtown rezone, staff have drafted this proposed ordinance to amend RCMC 17.54.040 to require one notice to affected property owners with important information about the proposed rezone. The proposed ordinance reads:

1. Public notice shall be sent to all owners of property within the area to be rezoned and to all property within 250 feet from any part of the proposed rezone. Notice shall be sent by first class mail at least 14 days prior to the Planning Commission hearing on the rezone application. When adjacent property is owned by a subdivision or condominium association, notification may be sent to the management company or board of such association. The public notice shall provide the following information:
 - a. The area subject to the proposed rezoned;
 - b. The date, time, and location of the Planning Commission hearing;

- c. A summary of the purposes of the rezone and the changing conditions that support the rezone;
- d. Information regarding the existing zoning district and the proposed zoning district; and
- e. Any other information the Director deems relevant and necessary.

2. The Director may convene a neighborhood meeting to present and discuss a proposed rezone.

No change is made to the public hearing requirements or to other notice provisions within the rezone ordinance, nor does the ordinance limit additional outreach which would likely occur when the City initiates a rezone. This proposed amendment would provide sufficient notice to the property owners of the rezone and its possible implications for its property, while also recognizing that the City generally initiates rezones only in conjunction with another City activity which involves contact with the affected property owners, either on an individual basis or through public outreach.

Reasons Supporting the Ordinance Amendment

The Big Sky rezone and the anticipated City-initiated downtown rezone have highlighted two main concerns with the current ordinance. First, the lengthy process dictated by the multiple disclosures can cause difficulties for property owners. The ordinance requires that the two disclosures be provided to each property owner a minimum of 21 business days apart, with time allowed for return of the disclosure statement after the mailings.² This prolonged process makes it difficult for staff to notify the property owners of accurate hearing dates as part of the disclosure forms. The new ordinance amendment would require that the notice include the hearing before Planning Commission, and the simplification of the process would enable staff to provide the correct hearing date. Another side effect of the lengthy process is that properties zoned No Use District may have difficulty obtaining a building permit prior while the disclosure process is underway, since the No Use District generally prohibits the construction of permanent structures until the property is rezoned. *See RCMC 17.26.010.*

The second main problem with the ordinance is that its detailed disclosure requirements are an inefficient way to provide the affected property owners with the information they need. For any rezone to a new Downtown district, Staff would have to spend a substantial amount of time drafting the individualized disclosures for dozens of affected properties based on their current zoning designation and use and the unique qualities of their property. Staff's time would be better spent drafting a more informative notice with fewer unnecessary details that provides necessary information and prompts further one-on-one contact between concerned owners and the City about the implications and effects of the rezone. Furthermore, the disclosure can provide only a snapshot of the *current* fees, timelines, and requirements for professional costs, and these requirements/fees may likely change in the future. Finally, the ordinance as written

² As an example, June 5 is 21 business days from May 5.

today seems to be based on a situation where the property owner knows nothing about the proposed rezone and the disclosure is needed to point out every possible implication of the rezone. However, in the case of voluntary annexations such as Big Sky or in the case of the Downtown Plan, the affected property owners know a lot about any proposed rezone as part of his/her (often repeated) contact with the City throughout the process.

This proposed ordinance change is not intended to reduce the amount of information available to property owners affected by a City rezone. In reality, no rezone can occur without Planning Commission and City Council consent, and the City Council will not rezone a property without sufficient notice to and involvement of the property owner(s). Staff's intention is to simplify the notice procedure to remove unnecessary disclosure requirements that extend the already-lengthy process and that require an inordinate amount of staff time, and to adopt a procedure that will provide sufficient notice to property owners in a more effective and efficient way.

If there is any further way I can be of assistance, please call me at 394-4140 or email carla.cushman@rcgov.org.



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Community Planning and Development Services Department

300 Sixth Street

Sarah Hanzel, AICP, Long Range Planner II
Rapid City Community Planning & Development Services
city web: www.rcgov.org

Phone: 605-394-4120
Fax: 605-394-6636
e-mail: sarah.hanzel@rcgov.org

February 22, 2017

Re: Big Sky Subdivision Annexation

Dear Property Owner(s):

I am writing to update you on the annexation status of your property. On February 21, 2017 the Rapid City Council approved a Resolution of Annexation for the Big Sky Subdivision. The annexation becomes effective in approximately 30 days.

The City is now initiating the rezone process to assign a zoning district to your property. Your property is zoned Suburban Residential in Pennington County. The applicable City zoning district is Low Density Residential (LDR). A copy of the City land use regulations in the LDR district are attached for your information.

Current provisions in the Rapid City Municipal code require that a disclosure statement be sent to property owners whose land is to be submitted for rezoning by the City. The disclosure statement provides an overview of fees and procedures that could be required in the future if a proposed change in use or re-development of the property occurs. Please note there are no fees associated with this initial rezoning.

Our goal is to conduct the rezoning process as quickly as possible. Generally the City is unable to issue building permits prior to a zoning district being assigned. If you have questions regarding building permits during this period contact the Building Official, Brad Solon, at 605-394-4120.

Please sign, print, and date the disclosure statement and return it to the address listed on the letterhead. Contact me if you have any questions about the disclosure statement or the rezoning process in general.

Sincerely,

Sarah Hanzel

Enclosed: Timeline (see reverse), Disclosure Statement, LDR Zoning Regulations



EQUAL OPPORTUNITY EMPLOYER

Anticipated Rezoning Public Hearing Timeline:

Planning Commission: May 25, 2017

City Council (First Reading): June 5, 2017

City Council (Second Reading): June 19, 2017

Planning Commission meetings occur in the Council Chambers at 7:00 a.m.

City Council meetings occur in the Council Chambers at 6:30 p.m.

The Council Chambers are located on the second floor of the City School Administration Center located at 300 Sixth Street in Rapid City.

Rezoning Disclosure Statement

Owner of Record (Print): _____

Street Address: _____

Current Zoning: No-Use District (Suburban Residential while in Pennington County)

Proposed Zoning: Low Density Residential District

Future Land Use: Low Density Neighborhood

This Disclosure Statement is required by Rapid City Municipal Code 17.54.040 to be sent to all properties, recently annexed and temporarily zoned No Use District, when the City submits rezoning of property to the appropriate zoning designation, based on the Rapid City Comprehensive Plan. Specifically, the ordinance requires disclosure of any fees which could be assessed if the use on the property changes.

It appears that the use of this property is for single family residential use. This use is consistent with the purpose of the Low Density Residential District.

If, in the future, a property owner wishes to rezone this property, the property owner will be required to submit a rezoning application. The cost of that application is \$250.00. In addition, the owner will need to send First Class Mail letters to adjacent property owners within 250 feet prior to the hearing on the rezoning request. In order to assist with public notice, the City will prepare the list of adjacent property owners and the notice letter. The cost for this service is \$20. The same procedures and application costs are necessary to obtain a Conditional Use Permit, Planned Development, or Variance.

The application fee for a Comprehensive Plan Amendment is \$250. Letters sent certified mail to adjacent property owners within 250 feet, at a cost of \$6.53 each, must be mailed prior to the hearing on the request, at the property owner's expense. Similarly, the list of property owners and addresses will be provided by the City at a cost of \$20.

These applications may require a professional to complete drawings, plans or studies, and the property owner should seek information regarding the costs of such possible professional fees from those professionals.

A sign is required to be posted on the property for any Rezone, Conditional Use Permit, Planned Development, or Comprehensive Plan Amendment application. The cost of the sign deposit is \$40.00, to be reimbursed to the applicant upon final determination of the request and return of the sign.

Once a complete application is submitted for any Rezoning, Comprehensive Plan Amendment, Conditional Use Permit, or Planned Development, and all information has been provided, the Planning Commission will hear the application within 4 – 6 weeks of the complete application.

The Rezoning and Comprehensive Plan Amendment applications go before the City Council for a public hearing at the next Council meeting following the Planning Commission meeting. The Planning Commission's action on Planned Developments and Conditional Use Permits is final unless someone appeals the decision of the Planning Commission. In that case, the application will be appealed to the City Council at their second meeting after the Planning Commission meeting. Please note that the property owner may not prevail in such applications or hearings.

Once a complete application is submitted for a Variance, the Zoning Board of Adjustment will hear the application at a public hearing within a 4-6 week timeframe. All decisions by the Zoning Board of Adjustment are final and can only be appealed through the judicial system. Please note that the property owner may not prevail in the variance hearing.

Summary of Development Application Fees and Procedures

Development Application Type	Application Fee Amt.	Public Notice Requirements			Public Hearing Procedure		
		Notice sent 1st Class Mail	Notice Sent Certified Mail	Sign Posting	Heard by the Planning Commission within 4 - 6 weeks from completed application	Heard by next City Council following Planning Commission	Heard by Zoning Board of Adjustment within 4 - 6 weeks
Comprehensive Plan Amendment	\$250	N/A	\$20 plus \$5.54 per unit cost	\$40 deposit	X	X	N/A
Conditional Use Permit	\$250	N/A	N/A	\$40 deposit	X	N/A	N/A
Planned Development	\$250	\$20 + mailing costs	N/A	\$40 deposit	X	N/A	N/A
Rezone	\$250	\$20 + mailing costs	N/A	\$40 deposit	X	X	N/A
Variance	\$250	\$20 + mailing costs	N/A	N/A	N/A	N/A	X

I hereby acknowledge that I have read and understand the information provided.

Signed: _____

Date: _____