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02/10/2012 03:20:18 PM

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RESOLUTION NO. 12-48

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

**A RESOLUTION IMPLEMENTING PHASING AND PRO-RATION OF FINAL
SUBDIVISION PLATS BASED ON MARKET CONDITIONS TO PREVIOUSLY
APPROVED BUT NOT RECORDED FINAL SUBDIVISION PLATS.**

WHEREAS, Colorado Revised Statutes, Article 28 of Title 30, authorizes the State of Colorado and its political subdivisions to enact zoning and subdivision regulations in the unincorporated areas of the County through planning and building codes, and other regulatory documents or references as necessary; and

WHEREAS, pursuant to Section 30-11-107(1)(e), C.R.S., the Board of County Commissioners ("Board") has the authority to represent the County and manage the business and concerns of the County in all cases where no other provisions are made by law; and

WHEREAS, by Resolution 01-164 the Board adopted a new application fee schedule for the El Paso County Development Services Division ("Development Services" or the "Development Services Division") based upon cost of service, which schedule has been updated within the annual Division budgets in subsequent years; and

WHEREAS, in response to current economic conditions, the Board adopted Resolution No. 09-165, in which Resolution the Board approved temporary fee reductions for new subdivision applications submitted through Development Services in order to provide regulatory relief toward the stimulation of the local housing and building industry; and

WHEREAS, contemporaneously with the adoption of Resolution 09-165, the Board directed staff to consider and, if feasible, prepare a resolution that would allow the Board to approve a similar phasing plan for subdivisions that have already received land use approval but that have not otherwise been recorded; and

WHEREAS, in response to, the Board's direction, staff prepared such a resolution; Resolution No. 10-409 was approved and adopted, in which Resolution the Board approved a phasing plan for subdivisions that have already received land use approval but that have not otherwise been recorded; and

WHEREAS, as in continual response to current economic conditions, and in order to provide additional regulatory relief toward the stimulation of the local housing and building industry, but without providing an additional fee reduction or increasing the cost to taxpayers, the County Administrator's Office, Development Services and the County Attorney's Office are recommending to the Board of County Commissioners a system for the payment of the final plat drainage, transportation, bridge, park, school and processing

fees for residential subdivisions at this time to be pro-rated and phased in over time based upon market demand for lots for subdivisions that have already received land use approval but that have not otherwise been recorded, and for which market demand at this time does not include a speculative component, but is trending toward lots that have contractors, lenders and buyers ready and able to purchase completed product; and

WHEREAS, this program recognizes that the local housing and building industry may be experiencing an increase in demand for new construction in new subdivisions, although at demand rates that cannot justify the high costs and risk levels associated with traditional subdivision platting and phasing; and

WHEREAS, recognizing the concept that some economic activity tends to beget even more economic activity, the Board recognizes the importance of adjusting its regulatory systems in order to adapt to and facilitate emerging market conditions, although not at a cost to the taxpayers; and

WHEREAS, the benefits of the phasing program to the County and the taxpayers are the collection of pro-rated reconsideration of a final plat and construction drawing review processing fees, which pro-rated fees include a premium to the County, the payment of transportation, park, school and drainage and bridge fees at a time when, without this program, there would otherwise be little or no collection of these fees (park, school, drainage and bridge fees are not subject to the premium; the fact of platting a subdivision with a lower amount of lots than a traditional subdivision phasing will automatically reduce the amount of these fees based on existing regulations), and the movement of land on the tax rolls at a substantially higher market valuation rate, and which land is often times moved from the agricultural land valuation and assessment rate to the substantially higher vacant land or residential tax classifications; and

WHEREAS, it is the desire of the Board to set forth an efficient and understandable process for the review, re-review where necessary, phasing and recording of Eligible Plats.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of El Paso County, State of Colorado, that:

1. All final plats of residential subdivisions that have received Board approval but have not otherwise been recorded, "Eligible Plats", shall be eligible to phase the recording of portions of said plat in conformance with the provisions of this Resolution. In order to be eligible for the phasing program set forth in this Resolution, the final plat shall not have lapsed for recording under the existing provisions of the Land Development Code. To the extent any final plat shall have lapsed for recording, the applicant may apply to make the final plat eligible for recording and for the phasing program by any applicable Code provision or resolution of the Board of County Commissioners.

2. The phasing program shall be limited to a maximum number of phases based upon the number of lots in the originally approved final plat: for a final plat of 1 to 100 lots, a maximum of five (5) phases, for a final plat of 101 to 249 lots, a maximum of ten (10) phases, and for a final plat of 250 or greater lots, a maximum of fifteen (15) phases. There shall be no minimum or maximum number of lots for a phase.
3. The payment or pro-ration of applicable park, school, drainage and bridge fees shall be made at the time of the recording of each phase in the proportion of the number of lots being recorded in the phase to the total number of lots in the originally approved final plat (ie., the proration for purposes of establishing the amounts to be paid at recording shall have in the numerator the number of lots being recorded in the phase and shall have in the denominator the total number of lots in the originally approved final plat). The allocation of transportation, park, school, drainage and bridge fees to subsequent phases shall be based upon the fees established by the Board at the time that phase is recorded.
4. If the developer of an Eligible Plat proposes phases, the developer shall submit an exhibit, hereinafter referred to as the "Master Plat Exhibit", together with the first phase for recording. All land other than that in the first phase shall be shown on the Master Plat Exhibit as a tract, on which tract no residences or other buildings may be constructed. The Master Plat Exhibit and the subdivision improvements agreement for the Master Plat Exhibit shall clearly note the total number of lots originally approved by the Board and the designation of the later phases as a tract shall in no way be interpreted to mean that said lots have been vacated, deemed to have merged or otherwise been decreased in number. The Master Plat Exhibit and all subsequent phases shall be recorded in the Office of the Clerk and Recorder of El Paso County in the same manner as the recording of final plats. Each phase shall be accompanied by such documents reasonably required by Development Services to review the phases being proposed. The documents shall include:
 - a. Construction drawings and drainage reports for the particular phase being proposed;
 - b. An updated traffic memorandum from a traffic engineer stating that there has been no significant change in circumstances from the original traffic study applicable to the phase being proposed, or, if there has been a significant change, a revised Traffic Impact Study per Appendix B of the Engineering Criteria Manual for that phase.
 - c. Where public and/or central water services had been proposed for the initial final plat, an updated commitment from the applicable public or private commercial water provider to serve the proposed phase

shall accompany the submittal. The applicable public or private commercial water provider shall have submitted the annual updated Water Resources Report as required in Section 8.4.7(B)(f) of the Land Development Code prior to providing the updated commitment. Notice of the proposed phase, including a reference to the initial final plat, shall be referred to the State Engineer and any applicable designated groundwater management district for comment. Unless the County Hydrologist, after reviewing comments and recommendations from the applicable public or private commercial water provider, the State Engineer or the applicable designated groundwater management district, makes a recommendation that the water supply for the proposed phase is insufficient in terms of quantity and quality, the developer of the proposed phase shall not be required to provide a new Water Resource Report pursuant to Section 8.4.7(B) of the Land Development Code.

d. Where private wells had been proposed for the initial final plat, an updated proof of ownership of the existing or proposed water rights shall accompany the submittal. Notice of the proposed phase, including a reference to the initial final plat, shall be referred to the State Engineer and any applicable designated groundwater district for comment. Unless the County Hydrologist, after reviewing comments recommendations from the State Engineer or the applicable designated groundwater management district, makes a recommendation that the water supply for the proposed phase is insufficient in terms of quantity and quality, the developer of the proposed phase shall not be required to provide a new Water Resources Report pursuant to Section 8.4.7(B) of the Land Development Code.

e. Where a central wastewater system had been proposed for the initial final plat, an updated commitment from the applicable public wastewater provider shall accompany the submittal. Notice of the proposed phase, including a reference to the initial final plat and Wastewater Disposal Report, shall be referred to the EPCDHE for comment. Neither the Master Plat Exhibit nor any subsequent phases, whether utilizing a central or individual wastewater systems, shall be recorded unless the EPCDHE has made a favorable recommendation regarding the proposed method of sewage disposal. A new Wastewater Disposal Report, pursuant to Section 8.4.8(E)(1)(a), shall not be required where a wastewater report was previously approved unless there are modifications to the report.

f. Where on-site wastewater systems had been previously approved with the initial final plat, a favorable recommendation shall be made by the EPCDHE regarding the proposed method of sewage disposal. A new Wastewater Disposal Report, pursuant to Section 8.4.8(E)(1)(a), shall not be required where a wastewater report was previously approved unless there are modifications to the report.

5. The Master Plat Exhibit shall require review and approval by the Board of County Commissioners. Development Services shall approve the recording of subsequent phases administratively unless it determines that material and substantial changes to the original plat have been made since the original plat was initially approved by the Board. Each phase shall include a subdivision improvements agreement, including an estimate of guaranteed funds for the final plat of said phase, to be approved by Development Services and the Office of the County Attorney and executed by the authorized member of the Board. Development Services may require the imposition of conditions and notations as for any major residential subdivision, including any special conditions and notations as may arise by reason of allowing the Master Final Plat to be recorded up to the maximum number of phases as provided herein. In the event that Development Services finds material and substantial changes to the original plat or the Developer disagrees with the imposition of the conditions and notations imposed by Development Services, the proposed final plat of said phase shall be referred to the Board for final determination.
6. If the developer of an Eligible Plat, prior to the time of the recording of the Master Plat Exhibit and first phase, submits a subdivision improvements agreement, phased construction drawings and estimates of guaranteed funds for each phase and same are approved by Development Services, then revised construction drawings, traffic and drainage reports shall not be required to be submitted at the time of the recording of each phase.
7. Development Services may at any time it is considering a Master Plat Exhibit or the final plat for any remaining phase require as a condition of recording the preparation of a supplemental estimate of guaranteed funds and the posting of surety for an appropriate portion of the originally approved estimate of guaranteed funds, as it relates to the phase being recorded. Original dollar amounts shall be updated, if necessary, at the request of Development Services.
8. A re-review processing fee of \$6,800 for the first phase shall be paid up front to approximate the cost of Development Services' additional staff time associated with phasing the Eligible Plat. An additional processing fee of \$2,200 shall be due for each subsequent phase either upon the submittal of a phase for consideration by Development Services or upon recording a final plat for a phase where the phase was previously approved by the Board or Development Services.
9. At any time it is considering a Master Plat Exhibit or the final plat for any

remaining phase, Development Services may require as a condition of recording the preparation of a supplemental estimate of guaranteed funds and the posting of surety for any private or public amenities associated with the plan for the development, including, but not limited to, such amenities as trails, ponds, lakes, a swimming pool, a club house, etc.

10. All applications for phases shall be submitted and the requisite fees paid within five (5) years of the recording of the first phase for an originally approved final plat of one to 100 lots, seven (7) years of the recording of the first phase for any originally approved final plat of 101 to 249 lots, and ten (10) years of the recording of the first phase for any originally approved final plat of 250 lots or more. The failure to submit an application for phasing any of the land located within the boundaries of the Master Plat Exhibit within the applicable time period shall result in the loss of the lots on that land as originally approved by the Board and any future subdivision of that land shall comply with the County's subdivision regulations in effect at that time. Annual extensions of Eligible Plats, as required in the Land Development Code, shall continue to be required until such time as the first phase of the Master Plat Exhibit is recorded. Thereafter, no extensions of the Master Plat Exhibit shall be required.

11. In the event that phases are completed consistent with the governing SLA, surety related to that phase shall be released in accordance with the applicable provisions of the Land Development Code.

AND BE IT FURTHER RESOLVED that because this is a pilot program that is geared toward unusual economic times, the Board recognizes that Development Services, under the supervision of the County Administrator and in consultation with the County Attorney's Office, shall have the authority to develop written guidelines for the administration of the authority granted herein, subject to the basic principles as set forth herein; and

AND BE IT FURTHER RESOLVED that the ability to enter into this phasing program shall automatically end without the need for further action by this Board on December 31, 2013. To be entered into the program means to have a Master Plat Exhibit and first phase approved by the Board and recorded by said date.

AND BE IT FURTHER RESOLVED that the provisions of this Resolution shall not be applicable to final plats approved by the Board after the effective date of this Resolution, it being the intent of the Board that phasing of future final plats, if to be allowed at all, shall be subject to procedures and guidelines to be established by the Board at a future date; and

AND BE IT FURTHER RESOLVED, that to the extent that the provisions of this Resolution conflict with any prior Board Resolutions regarding similar fee programs, the provisions of this Resolution shall control; and

AND BE IT FURTHER RESOLVED, that Amy Lathen, Chair of the Board of County Commissioners of El Paso County, Colorado, or Sallie Clark, the Vice Chair, is hereby authorized to execute this Resolution.

DONE THIS 9th day of February, 2012, at Colorado Springs, Colorado.

ATTEST:
**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

 By: 
Cindy Clerk and Recorder Amy Lathen, Chair