



MEMORANDUM

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TO: Chair Chimenti
Planning Commissioners

FROM: Brent Lloyd, Assistant City Attorney *Brent Lloyd*

DATE: February 17, 2015

RE: **Planning Commission's Authority under City Code § 25-4-151**
(Street Connectivity and Alignment)

At your meeting on December 9, 2014, the Planning Commission requested a legal opinion regarding the extent of the Commission's authority under City Code § 25-4-151 (*Street Alignment and Connectivity*). This memo addresses that issue within the context of related provisions of the Land Development Code. I will be available to answer any questions you have at your February 24 meeting.

QUESTION PRESENTED

Based on comments from several commissioners, the primary question is paraphrased as follows:

Does Section 25-4-151 authorize the Land Use Commission to deny approval of a subdivision plat that includes required connections to existing streets if the Commission finds that departure from such connections is desirable?

BRIEF ANSWER

Viewed in isolation of other requirements, Section 25-4-151 can be interpreted to authorize the Commission to deny approval of a subdivision based on its disagreement with the inclusion of connections to an existing street network.

When read in context with other code sections and the relevant legislative history, however, the stronger interpretation is that departure from existing street connections requires approval by both the Commission and the Director of Planning & Development Review (“PDR”).

BACKGROUND

1. Summary of Relevant Code Sections

Several provisions of the Land Development Code affect the issue of street connectivity within and between subdivisions. Section 25-4-151, which speaks to the issue most directly, was amended in 2008 to read as follows:

§ 25-4-151 - STREET ALIGNMENT AND CONNECTIVITY.

Streets of a new subdivision shall be aligned with and connect to existing streets on adjoining property unless the Land Use Commission determines that the Comprehensive Plan, topography, requirements of traffic circulation, or other considerations make it desirable to depart from the alignment or connection.¹

This section applies where a new subdivision is located adjacent to development with an existing street network. Based on its legislative history, it appears that the amendment was intended to “encourage shorter blocks, more interconnected streets, and more pedestrian and bicycle access between subdivisions.”²

Connectivity is also addressed, albeit indirectly, by a patchwork of other code sections and provisions of the Transportation Criteria Manual. Unlike Section 25-4-151, which applies only where a subdivision is adjacent to an existing street network, these requirements also apply within a subdivision that does not adjoin existing streets.

- § 25-4-152 (*Dead End Streets*): Requires the director to approve dead-end streets and requires Commission approval if the dead-end is less than 2,000 feet in length.
- § 25-4-153 (*Block Length*): Establishes the maximum length of a block. Since a block is bounded by streets, this section affects the number and

¹ Ordinance No. 20080214-095.

² See “Request for Council Action,” at:

<http://www.austintexas.gov/edims/document.cfm?id=113707>. Prior to the 2008 amendments, some applicants argued that the requirement to “align” new streets with existing streets under City Code § 25-4-151 did not require street connections.

continuity of streets within a subdivision. The director may waive a block length requirement, and if the waiver is denied, the applicant may appeal the denial to the Commission.

- § 25-4-157 (*Subdivision Access Streets*): Requires that all subdivisions have access to at least two streets unless waived by the Director.
- Transportation Criteria Manual § 1.3.2(E). Requires dead-end streets that are stubbed out for future extension to terminate in an open-ended cul-de-sac, unless the dead-end is less than 150 feet long.

2. Staff Practice Regarding Connectivity

According to PDRD, until fairly recently city staff generally granted administrative waivers not to connect new subdivisions to existing streets if doing so was opposed by nearby residents. Since staff recommended these plats for Commission approval without requiring street connectivity, the issue of whether the Commission has the independent authority to reject connectivity under Section 25-4-151 has never arisen before.

In response to adoption of the *Imagine Austin* comprehensive plan in 2012, however, staff has required new subdivisions to provide connectivity on a more uniform basis and has approved fewer administrative waivers to allow the creation of dead-end streets. This change in policy reflects the increased emphasis on connecting with existing streets under *Imagine Austin*.³

LEGAL ANALYSIS

It has been suggested that Section 25-4-151, on its face, authorizes the Commission to deny approval of a subdivision that includes connections to existing streets if it finds that doing so is desirable based on the “Comprehensive Plan, topography, requirements of traffic circulation, or other considerations.” If this argument is accepted, the Commission would have authority to reject code-compliant subdivisions where the applicant has not sought or obtained waivers from the requirement to connect with existing streets.

At first blush, the language of Section 25-4-151 may appear to support this broad interpretation of the Commission’s authority. On closer review, however, the stronger interpretation is that any departure from connections to existing streets requires approval of both the Planning Commission and the PDRD Director. We reach this conclusion for several reasons.

³ See LUT P1 (“complete streets are connected streets”).

First, requirements of the Land Development Code apply *cumulatively*,⁴ such that each provision must be given effect and the most restrictive will always control. This means that waiving connectivity requires not only a determination by the Commission under Section 25-4-151 that doing so is “desirable,” but also a determination by the Director that “the most desirable plan requires laying out a dead-end street.” See City Code § 25-4-152(A). Unless both the Land Use Commission and the Director make these required determinations, the streets in a new subdivision must satisfy the requirement to connect with existing streets.

Second, one of the cardinal rules of construing an ordinance is that no provision should be interpreted in a manner that renders another part of the ordinance superfluous.⁵ To conclude that the Commission alone can approve a departure from connectivity would violate this rule of interpretation by making the Director’s approval under Section 25-4-152 unnecessary. In order to give both provisions effect, it must be presumed that approval by the Director and the Commission is required for a new subdivision to depart from existing street connections.

Third, an ordinance must be read as a whole,⁶ and from that standpoint a broad reading of the Commission’s authority under Section 25-4-151 is inconsistent with the overall structure of the Land Development Code. In those cases where the Commission is authorized to overrule or modify a determination by the Director, the Land Development Code generally provides a right of appeal from the Director’s determination.⁷ Section 25-4-152, however, provides no right of appeal from the Director’s determination to disallow dead-end streets.

Likewise, where an applicant has not requested a variance or waiver from a code requirement, we are aware of no provision that authorizes the Commission to unilaterally impose one. The standard divisions of authority established by the Land Development Code support a narrower interpretation of Section 25-4-151, in which the Commission’s discretion is limited to those cases where the Director has approved administrative waivers and presented a subdivision for approval without requiring connections to existing streets.

⁴ See City Code § 25-1-3 (*Conflicts*).

⁵ See *Hunter v. Fort Worth Capital Corp.*, 620 S.W.2d 547, 551 (Tex.1981); *Ex Parte Enriquez*, 227 S.W.3d 779 (Tex.App.–El Paso 2005). See also *SWZ, Inc. v. Bd. of Adjustment of City of Fort Worth*, 985 S.W.2d 268, 270 (Tex.App.–Fort Worth 1999, pet. denied) (“Municipal ordinances are interpreted by the same rules of construction that apply to statutes.”)

⁶ See *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex.2003) (legislative intent is determined “from the entire act and not just its isolated portions.”)

⁷ With respect to block length requirements, for example, City Code § 25-4-153(F) (*Block Length*) expressly authorizes appeal of administrative waivers to the Land Use Commission. In some cases, waiving connectivity would create a violation of the minimum block length requirement unless the applicant obtains a waiver under Section 25-4-153.

Fourth, since the Commission's determination under Section 25-4-151 is only required for departures from connectivity, it provides no basis for denying approval where a subdivision includes connections to existing streets.⁸ Unless a proposed connection is located in a manner that would violate applicable site development regulations, connecting to an existing street will always comply with the Land Development Code. As we have previously advised, commission approval is legally required if a subdivision satisfies applicable regulations.⁹

Finally, to the extent the Commission's authority under 25-4-151 is ambiguous, the legislative history suggests that the 2008 amendments were likely intended to require approval by both the Director and the Commission rather than by the Commission alone. As stated in the supporting documents that accompanied the ordinance, the amendments were intended to "encourage...more interconnected streets."

CONCLUSION

The provisions on street connectivity under Section 25-4-151 and related provisions of the Land Development Code are amenable to competing interpretations. For reasons explained above, however, we conclude that the stronger interpretation of Section 25-4-151 is that it does not allow the Land Use Commission to reject approval of a subdivision plat based on disagreement with the inclusion of connections to existing streets, but does allow the Commission to reject approval of a subdivision that fails to include such connections.

We recommend that the Commission follow this interpretation in applying Section 25-4-151 to future cases and will be available to address any questions or concerns at the Commission's meeting on February 24. We are also available to assist the Commission should you wish to consider initiating amendments to clarify or change the requirement that new subdivisions connect to existing streets.

cc Sue Edwards
Greg Guernsey
George Adams

⁸ By stating that "streets in a new subdivision *shall*...connect," City Code § 25-4-151 establishes a mandatory duty that can only be overcome if the Commission determines that departing from existing connections is desirable. See City Code § 1-1-6 (*Creation of Duties*) (stating that "[s]hall" imposes a duty.) Simply removing the duty to connect with existing streets, however, does not mean that providing such connections is a violation of code.

⁹ Texas Local Gov't Code § 212.010 and City Code § 25-4-57(B). See also *City of Round Rock v. Smith*, 687 S.W.2d 300, 302 (Tex. 1985); *Commissioners Court of Grayson County v. Albin*, 992 S.W.2d 597, 600 (Tex. App.—Texarkana 1999, pet. denied).