



# STAFF REPORT

## Planning Commission

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### CASE #AP-16-22

<b>PC Date:</b>	Tuesday, June 7, 2022	<b>City Staff:</b>	Jim Tolbert
<b>CC Date:</b>	Monday, June 20, 2022		
<b>Applicant:</b>	Clayton Properties Group II, Inc.	<b>Owner:</b>	Same As Applicant
<b>Address:</b>	4908 Tower Road Denver, CO 80249	<b>Address:</b>	Same As Applicant

### Case Summary

<b>Request:</b>	The applicant is appealing the final determination by the Community Development Director denying a lot line and terminology adjustment.  The applicant is asking for the approval of a Lot Line and Terminology Adjustment per section 21-3244 of the Land Development Code (LDC).
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### Background Information

Oakwood Homes submitted an application for a lot line adjustment and terminology change for property previously platted as part of Reunion Ridge Filing 1. The application was denied. The denial was communicated by letter sent on April 19, 2022 to the applicants informing them of the denial and explaining that the land use application submittal could not be processed as a terminology change; it was recommended that they submit for a final plat and include both the change from a tract to a lot and revision of lot lines.

Oakwood Homes has appealed the Director's decision regarding a Terminology Adjustment. This appeal is now before the Planning Commission for review and recommendation to the City Council, de novo.

### Applicant's Request

The applicant is requesting the approval of the Lot Line and Terminology as submitted and pursuant to LDC sec. 21-3244.

### Analysis

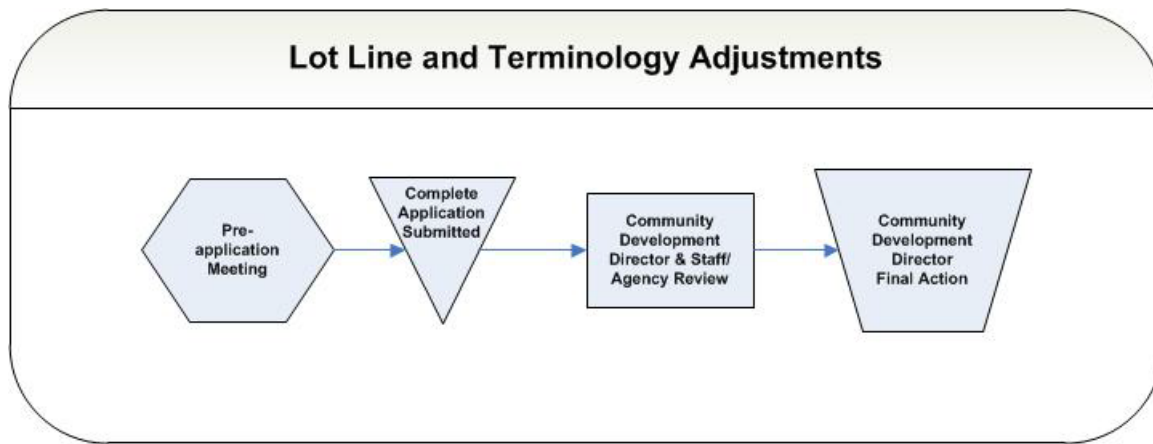
The applicant is proposing to change a tract to a lot which applicant contends, may occur, pursuant to section 21-3244 of the Land Development Code.

### **Lot Line and Terminology Adjustments:**

The City's Land Development Code outlines the following information for Lot Line and Terminology Adjustments (Section 21-3244), which in relevant part, states as follows:

- (1) **Description.** The lot lines or terminology of previously recorded documents may only be adjusted in accordance with this section.
- (2) **Review.** The director and the DRT, as deemed appropriate by the director, will review applications for lot line or terminology adjustments ("adjustments"). The director is authorized to approve, approve with conditions, or deny such applications based on the criteria below

*Figure III-20. Lot Line and Terminology Adjustments*



- (3) **Approval Criteria.** The director may approve a lot line adjustment if:
  - (a) The adjustment does not increase the number of lots or parcels or create new lots or parcels;
  - (b) The adjustment does not affect a recorded easement without the prior approval of the easement holder;
  - (c) Street locations will not be changed;
  - (d) The adjustment will not create any nonconformities, or increase the degree of nonconformity of any existing structure or use; and
  - (a)
  - (e) The adjustment complies with all other applicable city standards.
- (4) **Acceptance of Dedications.** When an adjustment involves a street, easement, or other public use dedication, the director's approval of the application shall constitute the city's acceptance of any such dedication.
- (5) **Recording.** The city will record each approved adjustment. The applicant may be required to pay all recording fees.

**Lapse.** If the approved plat is not executed by the applicant within 60 days of the date of approval, or within any longer period approved in advance in writing by the director due to unique circumstances, the plat shall automatically lapse and be null and void.

Relevant to the application of this section of the LDC are the following definitions, also contained in the LDC

## §21-11200 Definitions.

(248) *Lot* shall mean a unit of subdivided land occupied or designed to be occupied by a primary use or building or a group of such buildings and accessory buildings.

(256) *Lot Line Adjustment* shall mean a change in lot or parcel boundaries that does not create additional lots or parcels.

(337) *Plat* shall mean a map that defines the subdivision of land and commonly shows lots, blocks, streets, and other features relevant to the development of property.

(468) *Tract* shall mean a unit of subdivided land not occupied or designed to be occupied by a primary building, such as open space or drainage.

### Application of Approval Criteria to the Request:

Lot and Tract are the important terms. The main difference is that a tract is “not occupied or designed to be occupied by a primary building” while a lot is “designed to be occupied by a primary use or building... .” Thus, a lot is needed for development, while a tract can be utilized for open space, landscaping and drainage, and without structures that would require a Certificate of Occupancy. Tracts can also be used to set aside land for development at a later date which would require an additional land use application. When a tract becomes a lot, a land use entitlement is bestowed upon it because it is then immediately developable. As such, the approval process for review must consider this change in legal entitlement.

The applicant seeks to change Tract C in the Reunion Ridge Filing 1 from a tract to a lot for the purpose of development. This creates an additional lot that was not originally approved as part of Reunion Ridge Filing 1. There were originally zero (0) lots and one (1) tract. The applicant is requesting 1 lot and 0 tracts as a part of this application. By creating an additional lot, the application for a terminology adjustment does not conform with subsection (a) of the approval criteria found in §21-3244(3). As such, the application cannot be approved as a Terminology Adjustment. This change must instead occur through a Final Plat submittal, see LDC sec. 21-3241, and the associated final plat process.

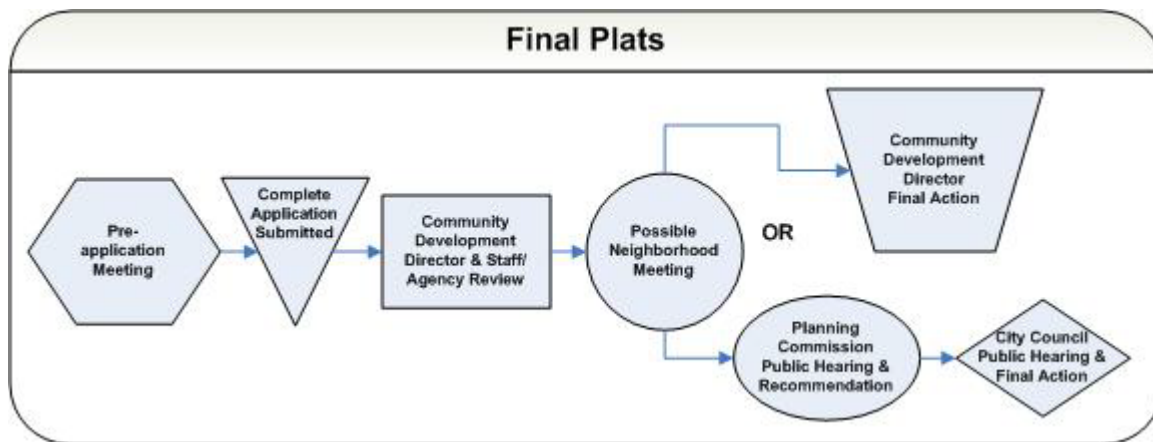
### Final Plat:

A final plat is the process in which lots are created and recorded. The final plat process is the only mechanism in which to legally create a new or additional lot within the Land Development Code. The following language is from Sec. 21-3241 of the LDC setting forth subparts (1) through (3) addressing the process and approval criteria for Final Plats.

- (1) Description. **A final plat provides a permanent and accurate record of the exact size and location of the lots**, blocks, streets, drainage areas, easements, and other parcels of land within a subdivision. When filed with the county clerk and recorder, a final plat, becomes the legal instrument whereby the location and boundaries of separate land parcels within the subdivision are identified.
- (2) Review.
  - (a) Except where public hearings are required pursuant to paragraph 4, the director and DRT review applications for final plats and the director is authorized to approve, approve with conditions, or deny such applications based upon the approval criteria outlined below (for purposes of this section, this process shall be referred to as an administrative approval). In the event the director denies the application, the applicant may request that the plat be reviewed through the public hearing process.

- (b) When public hearings are required by paragraph 4 or when the applicant requests a public hearing in response to the director's denial as outlined in paragraph (a), the review process shall be as follows:
- (i) The director and DRT will review the application and the director will provide a report to the planning commission.
  - (ii) The planning commission will hold a public hearing on the application and make a recommendation to the city council based on the approval criteria below.
  - (iii) The city council will consider the application and the planning commission's recommendation at a public hearing and after the hearing, shall approve, approve with conditions, or deny the proposed plat, based on the approval criteria below.

Figure III-17. Final Plats



- (3) Approval Criteria. A final plat may be approved if the decision maker finds that:
- (a) The subdivision is consistent with any approved rezoning, concept plan or PUD Zone Document;
  - (b) The subdivision is consistent with and implements the intent of the specific zoning district in which it is located;
  - (c) There is no evidence to suggest that the subdivision violates any state, federal, or local laws, regulations, or requirements;
  - (d) The general layout of lots, roads, driveways, utilities, drainage facilities, and other services within the proposed subdivision is designed in a way that minimizes the amount of land disturbance, maximizes the amount of open space in the development, preserves existing trees/vegetation and riparian areas, and otherwise accomplishes the purposes and intent of this land development code;
  - (e) The subdivision complies with all applicable city standards and does not unnecessarily create lots or patterns of lots that make compliance with such standards difficult or infeasible;
  - (f) The subdivision:
    - (i) Will not result in a substantial or undue adverse effect on adjacent properties, traffic conditions, parking, public improvements, either as they presently exist or as they may in the future exist as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program or ordinance adopted by the city; or

- (ii) Any adverse effect has been or will be mitigated to the maximum extent feasible;
- (g) Adequate and sufficient public safety, transportation, utility facilities and services, recreation facilities, parks, and schools are available to serve the subject property, while maintaining sufficient levels of service to existing development;
- (h) A development agreement between the city and the applicant has been executed and addresses the construction of all required public improvements; and
- (i) As applicable, the proposed phasing plan for development of the subdivision is rational in terms of available infrastructure capacity.

### **Application to Case**

As stated above, the Final Plat process is the process to create a lot. The approval criteria for a Final Plat allows the city to address the suitability for development. This is directly reflected in the approval criteria. The Final Plat approval criteria allows the fact finder to consider zoning, legality per other laws, maximization of open space, whether lot patterns are in compliance with city standards, adverse impacts, public services, phasing, and most importantly, whether a development agreement is necessary. Increasing the number of lots through a lot line and terminology adjustment deprives the City of the opportunity to review and assess these important criteria. Additionally, it deprives the City of the opportunity to seek lawful exactions to offset the adverse impacts of the development.

### **Application of Lot Line and Terminology Adjustment**

Application of the approval criteria for a lot line and terminology adjustment leads to the conclusion that the application, if reviewable under this section of the Code, does not meet criteria (3)(a) because the change creates a new lot. Therefore, the application for a Lot Line and Terminology Adjustment must be denied.