

Agenda Item: GB-B

Meeting Date: February 27, 2023

Subject: Public hearing and consideration of Ordinance 937, an ordinance amending Chapters 16 and 17 of the Dacono Municipal Code concerning the withdrawal of land use applications, inactive land use applications, and public notice requirements for land use hearings, on second reading.

Presenter: Jennifer Krieger, AICP, Community Development Director

Background: Ordinance 937 amends the Dacono Municipal Code to address the withdrawal of land use applications and inactive land use applications and standardizes public hearing notice requirements and procedures.

Adopting formal procedures for purging inactive land use applications and establishing a process for an applicant to withdraw a land use application help improve the City's procedural due process procedures.

The City of Dacono notice and public hearing requirements are located in Dacono Municipal Code Chapters 16 and 17. Various land use applications in the Dacono Municipal Code have different public hearing and notice requirements.

Ordinance No. 937 was revised for the second reading amendments to address the two typos identified by Councilmember Wittman. The first is in Section 15 on page 8, there were two "shall" in Sec. 16-483(c) after deletion of the intervening text. The second is in Section 23 on page 13, the word "plan" was replaced with "plat" in Sec. 17-51(b).

Recommended Action: Staff recommends approval of Ordinance 937 on the second reading.

Note: Amendments proposed for second reading are contained. Words to be deleted on second reading are shown in ~~bold double-strikeout~~; words to be added on second reading are shown in *bold italics*.

ORDINANCE NO. 937

**AN ORDINANCE AMENDING CHAPTERS 16 AND 17 OF THE
DACONO MUNICIPAL CODE CONCERNING WITHDRAWAL OF
LAND USE APPLICATIONS, INACTIVE LAND USE APPLICATIONS,
AND PUBLIC NOTICE REQUIREMENTS FOR LAND USE HEARINGS**

WHEREAS, the City regulates zoning and use of property within the City pursuant to Chapter 16 of the Dacono Municipal Code and regulates the subdivision of property pursuant to Chapter 18 of the Dacono Municipal Code; and

WHEREAS, the City Council finds that inactive land use applications can waste valuable staff time and allow applicants to avoid updates to City requirements and regulations that are adopted by the City Council over time; and

WHEREAS, it is in the best interest of the City, its residents, and other land use applicants that inactive land use applications be purged from the application review process after a reasonable period of inactivity, so that City resources may be dedicated to applications that are being actively pursued; and

WHEREAS, similarly, the City Council desires to establish a procedure for when a land use applicant wishes to withdraw an application; and

WHEREAS, the City Council recognizes the importance of notifying the public of of hearing to be held be decision-making bodies on land use applications; and

WHEREAS, the City Council finds that standardizing public notice requirements for the various application types in Chapters 16 and 17 of the Dacono Municipal Code will provide the public consistent notice of public hearings.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. Chapter 16 of the Dacono Municipal Code is hereby amended by the addition of a new Section 16-13 to read as follows:

Sec. 16-13 Withdrawal of pending application.

(a) Except as provided in Section 16-14 of this Code regarding inactive applications, only the applicant may withdraw an application filed pursuant to this Chapter. The applicant shall request the withdrawal in writing,

and after receipt of such written request, the City shall take no further action on the application. To re-initiate review after withdrawal, the applicant must resubmit the application, which in all respects shall be treated as a new application for all purposes.

(b) Withdrawal of an application the public hearing for which has been included on an agenda posted for a public meeting shall be discretionary with the decision-making body.

Section 2. Chapter 16 of the Dacono Municipal Code is hereby amended by the addition of a new Section 16-14 to read as follows:

Sec. 16-14 Inactive applications.

(a) An application filed pursuant to this Chapter shall be considered inactive if, at any point during the review process:

(1) The City has notified the applicant or its consultant that additional or corrected materials are required, and the applicant has not submitted such materials or responded to such request within ninety (90) days following such notification; or

(2) An applicant has not agreed to a date for a required meeting or public hearing before any decision-making body; or

(3) Has otherwise not taken other affirmative steps within a reasonable timeframe that are necessary to advance the application for a final determination.

(b) Upon a determination by the City that an application is inactive, the City shall provide the applicant written notice that if such inactivity is not cured within thirty (30) days no further processing of the application shall occur and the inactive application shall be considered automatically withdrawn. Any re-submittal of the application thereafter by the applicant will be treated as a new application for all purposes.

Section 3. Chapter 16, Article 2 of the Dacono Municipal Code (“Definitions”) is hereby amended by the addition of a new Section 16-24.5 to read as follows:

Sec. 16-24.5 Application.

Application means and includes all forms, fees, maps, plats, data, studies, reports, and other documents required to be submitted to obtain an approval pursuant to any provision of this Chapter.

Section 4. The title of Chapter 17, Article 1 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underline; words to be deleted ~~stricken~~):

CHAPTER 17 – SUBDIVISIONS

ARTICLE 1 – Applicability of Regulations; General Provisions

Section 5. Chapter 17 of the Dacono Municipal Code is hereby amended by the addition of a new Section 17-6 to read as follows:

Sec. 17-6 Withdrawal of pending application.

(a) Except as provided in Section 17-7 of this Code regarding inactive applications, only the applicant may withdraw an application filed pursuant to this Chapter. The applicant shall request the withdrawal in writing, and after receipt of such written request, the City shall take no further action on the application. To re-initiate review after withdrawal, the applicant must resubmit the application, which in all respects shall be treated as a new application for all purposes.

(b) Withdrawal of an application the public hearing for which has been included on an agenda posted for a public meeting shall be discretionary with the decision-making body.

Section 6. Chapter 17 of the Dacono Municipal Code is hereby amended by the addition of a new Section 17-7 to read as follows:

Sec. 17-7 Inactive applications.

(a) An application filed pursuant to this Chapter shall be considered inactive if, at any point during the review process:

(1) The City has notified the applicant or its consultant that additional or corrected materials are required, and the applicant has not submitted such materials or responded to such request within ninety (90) days following such notification; or

(2) An applicant has not agreed to a date for a required meeting or public hearing before any decision-making body; or

(3) Has otherwise not taken other affirmative steps within a reasonable timeframe that are necessary to advance the application for a final determination.

(b) Upon a determination by the City that an application is inactive, the City shall provide the applicant written notice that if such inactivity is not cured within thirty (30) days no further processing of the application shall occur and the inactive application shall be considered automatically withdrawn. Any re-submittal of the application thereafter by the applicant will be treated as a new application for all purposes.

Section 7. Section 17-20 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 17-~~20~~20.5 Block.

Block means a parcel of land bounded on all sides by a street or streets.

Section 8. Chapter 17, Article 2 of the Dacono Municipal Code (“Defintiions”) is hereby amended by the addition of a new Section 17-20 to read as follows:

Sec. 17-20 Application.

Application means and includes all forms, fees, maps, plats, data, studies, reports, and other documents required to be submitted to obtain an approval pursuant to any provision of this Chapter.

Section 9. Chapter 16 of the Dacono Municipal Code is hereby amended by the addition of a new Section 16-14.5 to read as follows:

Sec. 16-14.5 Notice of Public Hearings

(a) The City shall provide notice of the time, date, and subject matter of every public hearing required by this Chapter by publication in a newspaper of general circulation within the City at least fifteen (15) days prior to the public hearing. Such published notice shall be considered jurisdictional, and failure to publish notice of the public hearing shall cause the public hearing to be vacated.

(b) In addition to the published notice required by subsection (a) of this Section, additional notice of public hearings as set forth in this subsection (b) shall be provided for each public held pursuant to this Chapter. The notice provided pursuant to this subsection is not jurisdictional, and minor defects in the notice shall not impair the notice or invalidate any proceedings under the notice of a *bona fide* attempt has been made to comply with the notice requirements.

(1) The City shall post notice of the public hearing on the property that is the subject of the public hearing at least fifteen (15) days prior to the public hearing. The City shall determine the appropriate number, size, location, and content of the posted notice, and shall take

reasonable efforts to assure the posted signs remain on the site, in good condition to maintain legibility, during the posting period. ~~Posted notices shall be removed by the applicant from the subject property no later than 15 days after the public hearing has been held. Failure to do so shall constitute a violation of this Code.~~

(2) No later than fifteen (15) days prior to the public hearing, the applicant shall mail notice of the public hearing to all property owners located within three hundred (300) feet of the subject property. As a condition of approval of any application for which a public hearing is held pursuant to this Chapter, the applicant shall provide a written affidavit that notice required by this subsection (b)(2) was provided, on a form to be provided by the City.

Section 10. Chapter 17 of the Dacono Municipal Code is hereby amended by the addition of a new Section 7-8 to read as follows:

Sec. 17-8 Notice of Public Hearings

(a) The City shall provide notice of the time, date, and subject matter of every public hearing required by this Chapter by publication in a newspaper of general circulation within the City at least fifteen (15) days prior to the public hearing. Such published notice shall be considered jurisdictional, and failure to publish notice of the public hearing shall cause the public hearing to be vacated.

(b) In addition to the published notice required by subsection (a) of this Section, additional notice of public hearings as set forth in this subsection (b) shall be provided for each public held pursuant to this Chapter. The notice provided pursuant to this subsection is not jurisdictional, and minor defects in the notice shall not impair the notice or invalidate any proceedings under the notice of a *bona fide* attempt has been made to comply with the notice requirements.

(1) The City shall post notice of the public hearing on the property that is the subject of the public hearing at least fifteen (15) days prior to the public hearing. The City shall determine the appropriate number, size, location, and content of the posted notice, and shall take reasonable efforts to assure the posted signs remain on the site, in good condition to maintain legibility, during the posting period. ~~Posted notices shall be removed by the applicant from the subject property no later than 15 days after the public hearing has been held. Failure to do so shall constitute a violation of this Code.~~

(2) No later than fifteen (15) days prior to the public hearing, the applicant shall mail notice of the public hearing to all property owners located within three hundred (300) feet of the subject property. As a

condition of approval of any application for which a public hearing is held pursuant to this Chapter, the applicant shall provide a written affidavit that notice required by this subsection (b)(2) was provided, on a form to be provided by the City.

Section 11. Section 16-75 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-75 Public notice.

Public notice means ~~notice by one (1) publication in a newspaper of general circulation within the City and posted on the property at least fourteen (14) days prior to the hearing date, unless otherwise provided in this Chapter~~ notice of a public hearing provided in accordance with Section 16-14.5 of this Code.

Section 12. Section 16-375 of the Dacono Municipal Code, regarding special use permit public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-375 Hearings – notice – procedure -- records.

All public hearings shall be conducted in accordance with procedures designed to ensure all interested parties due process of law and shall, in all cases, provide for the following:

(1) The Planning Commission shall provide to the City Council a recommendation on the application. A public hearing before the Planning Commission shall be held prior to submitting its recommendation or report. The City Council shall then hold a public hearing on the application.

(2) Notices of time, place and subject matter of the hearing shall be provided ~~published once in a newspaper of general circulation in the City at least seven (7) days prior to the hearing date of the Planning Commission and at least seven (7) days prior to the hearing date of the City Council~~ in accordance with Section ~~16-75~~ 16-14.5 of this Chapter.

~~(3) The applicant shall, fifteen (15) or more days before the date of the Planning Commission hearing, mail by certified or registered mail, return receipt requested, notice of such hearing to all owners of legal or equitable interests in the land, and owners of adjoining property within three hundred (300) feet of the outside boundaries of the property as shown by the application, and shall file proof of such mailing, and/or~~

~~return receipts received, with the Planning Commission at the time of the hearing.~~

~~(4) — Notice of the special use permit application and of the holding of such hearing shall be posted on the property at least seven (7) days in advance of each hearing.~~

Section 13. Section 16-421 of the Dacono Municipal Code, regarding variance public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-421 Hearing required.

No variation or modification of the application of any provision of this Chapter shall be authorized except after public hearing thereon, notice of time and place and purpose of such hearing to be given ~~by posting of the property affected for not less than fourteen (14) consecutive days pursuant to Section 16-14.5 of this Code.~~

Section 14. Section 16-444 of the Dacono Municipal Code, regarding zoning and rezoning public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-444 Hearings – notice – procedure -- records.

All public hearings shall be conducted in accordance with procedures designed to ensure all interested parties due process of law and shall, in all cases, provide for the following:

(1) The Planning Commission shall provide to the City Council a recommendation on the application. A public hearing before the Planning Commission shall be held prior to submitting its recommendation or report. The City Council shall then hold a public hearing on the application.

(2) Notices of the time, place and subject matter of the hearing shall be provided ~~published once in a newspaper of general circulation in the City at least seven (7) days prior to the hearing date of the Planning Commission and at least seven (7) days prior to the hearing date of the City Council~~ in accordance with Section ~~16-75~~ 16-14.5 of this Chapter.

~~(3) — The applicant shall, fifteen (15) days or more before the date of the Planning Commission hearing, mail by certified mail, return receipt requested, notice of such hearing to all owners of legal or equitable interests in the land, and owners of adjoining property within three~~

~~hundred (300) feet of the outside boundaries of the property as shown by the application, and shall file proof of such mailing, and/or return receipts received, with the Planning Commission at the time of the hearing.~~

~~(4) Notice of the requested zoning application and of the holding of such hearing shall be posted on the property at least seven (7) days in advance of each hearing.~~

Section 15. Section 16-483 of the Dacono Municipal Code, regarding public hearings for solid waste disposal sites and facilities, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-483 Factors to be considered.

(a) In considering an application for a certificate of designation, the City Council shall take into account the factors set forth in Section 30-20-104, C.R.S., and such other factors as the City Council deems appropriate for the protection of the public health, safety and welfare.

(b) Designation of approved solid wastes disposal sites and facilities shall be discretionary with the City Council.

(c) Prior to the issuance of a certificate of designation, the City Council shall require that the report which shall be submitted by the applicant under Section 16-482 be reviewed and a recommendation as to approval or disapproval made by the department, and the City Council shall be satisfied that the proposed solid wastes disposal site and facility conforms to the comprehensive plan of the City. The application, report of the department if available, comprehensive plan and other pertinent information shall be presented to the City Council at a public hearing to be held after notice provided pursuant to Section 16-14.5 of this Code. Such notice shall ~~contain the time and place of the hearing and shall~~ state that the matter to be considered is the applicant's proposal for a solid wastes disposal site and facility. ~~The notice shall be published in a newspaper having general circulation in the City at least ten (10) but no more than thirty (30) days prior to the date of the hearing.~~

Section 16. Section 16-507 of the Dacono Municipal Code, regarding public hearings for major home occupations, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-507 Review and hearing – major home occupation.

(a) After receiving comments from affected departments and agencies pursuant to Section 16-505, a public hearing on the an application for a major home occupation, ~~together with the comments received,~~ shall be scheduled before

~~referred to the Planning Commission. Notice of the public hearing shall be provided pursuant to Seciton 16-14.5 of this Code~~

~~(b) The Planning Commission shall, at its next regular meeting following its receipt of the application, set the date and time for a public hearing thereon. The commission shall cause the applicant to be notified in writing of the location, date and time of the public hearing. The hearing shall not be held sooner than thirty (30) days after the date of the meeting at which the Planning Commission set the hearing date. Notice of the public bearing shall be published at least once not less than fourteen (14) days before the hearing date.~~

~~(c) Within seven (7) days after the date on which the notice of public hearing is mailed to the applicant, the applicant shall:~~

~~(1) Mail a copy of the notice to the owner of each property which is located within a radius of two hundred (200) feet from the perimeter of the applicant's property; and~~

~~(2) Post the property with two (2) signs stating that the property is the subject of a proposed home occupation license application. One (1) sign shall be posted at the front of the property, and the other sign shall be posted at the rear of the property, both in locations visible from the public right of way. The signs shall be in the form prescribed by the City Clerk. The property shall remain posted until the day after the public hearing.~~

~~(d b) At the public hearing, the Planning Commission shall consider the application and the applicant's testimony, the written comments and testimony of any affected department or agency and public testimony concerning the application. In addition, the Planning Commission shall review the application for compliance with the provisions of this Code, the compatibility of the application with the character of the surrounding neighborhood and adverse impacts, if any, that may result from approval of the application.~~

~~(e c) Following the public hearing, the Planning Commission shall forward the record of the hearing to the City Council, together with a recommendation to approve, approve with conditions or deny the application. Any conditions of approval recommended by the commission shall be specified by the Commission.~~

~~(f d) The At a public hearing held following notice provided pursuant to Section 16-14.5 of this Code, City Council shall consider the recommendation of the Planning Commission together with any other pertinent portions of the record in determining whether to approve, approve with any of the conditions recommended by the commission or any additional or different conditions~~

determined appropriate by the Council based on the record, or deny the application.

Section 17. Section 16-524 of the Dacono Municipal Code, regarding neighborhood meetings for oil and gas facility location and siting permit applications, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-524 Neighborhood meeting.

(a) Following the pre-application conference and prior to submittal of a location and siting permit application, the operator will hold a neighborhood meeting. A neighborhood meeting is required for any oil and gas locations that require a location and siting permit.

(b) The operator shall provide notice of, attend and conduct the neighborhood meeting. Notice of the neighborhood meeting shall be provided pursuant to Section 16-14.5 of this Code. The list of property owners notified shall be provided to the Community Development Director as part of the location and siting permit application.

~~(1) — Notice of the neighborhood meeting must be provided to the City and to all individuals entitled to notice pursuant to Section 16-527 of this Article 22.~~

~~(2) — Posted Notice. The real property on which the oil and gas location is proposed shall also be posted with a sign, giving notice to the general public of the proposed oil and gas operations. For parcels of land exceeding fifteen (15) acres in size, two (2) signs shall be posted adjacent to the nearest rights-of-way.~~

~~(3) — List of property owners. The list of property owners notified shall be provided to the Community Development Director as part of the location and siting permit application.~~

Section 18. Section 16-527 of the Dacono Municipal Code, regarding notice of oil and gas facility applications, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-527 Notice and hearings.

(a) ~~Notice of time, place and subject matter~~ of public hearings shall be provided pursuant to Section 16-14.5 of this Code ~~published by the City once in a newspaper of general circulation in the City at least seven (7) days prior to the Planning and Zoning Commission hearing and at least seven (7) days prior to the City Council hearing.~~

(b) The applicant shall also, at least fifteen (15) days before the date of the Planning and Zoning Commission hearing, mail ~~by certified or registered mail, return receipt requested,~~ notice of such hearing to the following ~~and shall file proof of such mailing (e.g., return receipts received) with the Planning and Zoning Commission secretary at the time of the hearing:~~

(1) To the surface owners of the parcels of land on which the oil and gas location is proposed to be located;

(2) To the surface owners of the parcels of land in the City within two thousand six hundred forty (2,640) feet of the parcel on which the oil and gas location is proposed to be located;

(3) To water source owners within two thousand six hundred forty (2,640) feet of the parcel on which the oil and gas location is proposed to be located;

(4) To all physical addresses within two thousand six hundred forty (2,640) feet of the parcel on which the oil and gas location is proposed to be located; and

(5) To any homeowners' associations within two thousand six hundred forty (2,640) feet of the parcel on which the oil and gas location is proposed to be located.

~~(c) — The real property proposed to be developed shall also be posted with a sign giving notice to the general public of the proposed development. For parcels of land exceeding fifteen (15) acres in size, two (2) signs shall be posted adjacent to the nearest right-of-way.~~

Section 19. Section 16-572(d) of the Dacono Municipal Code, regarding site plan public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-572 Site plan review and approval process.

(d) Public review process. Upon completion of the technical review process, the City Administrator, Community Development Director or designee shall be responsible for scheduling the site plan on a Planning Commission agenda. The Planning Commission shall conduct a public hearing to consider the site plan, after which hearing the Planning Commission shall make a recommendation to the City Council that it approve, approve with conditions or disapprove the site plan. After a recommendation by the Planning Commission, the site plan shall be placed on the next available City Council agenda where the City Council shall conduct a public hearing and shall approve, approve with

conditions or modifications or deny the application. In making a determination on the site plan, the Planning Commission and City Council shall consider whether the design requirements of Section 16-573 below have been met. Public notice requirements for the public hearings held on site plans shall meet the requirements of Section ~~16-74~~ 16-14.5 of this Chapter.

Section 20. Section 16-626 of the Dacono Municipal Code, regarding PUD zoning public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-626 Amendment to zoning map for PUD zone district.

(a) ~~Within fourteen (14) days of completion of~~ Following review of the ODP by City Council, the applicant shall make any revisions to the ODP plan map and text as appropriate and submit them to the City staff. ~~City Concurrent with or prior to the public hearing on the Final Development Plan,~~ staff shall prepare an ordinance amending the zoning map to establish the PUD zoning and set a date for the Planning Commission and City Council to hold public hearings.

(b) The Planning Commission shall consider the ordinance amending the zoning map to establish the PUD zoning and provide to the City Council a recommendation on the zoning application. The City Council shall hold a public hearing to approve or deny the zoning ordinance. Public notice of the hearings shall be ~~in accordance with Article 18~~ provided pursuant to Section 16-14.5 of this Chapter.

(c) The Preliminary and Final Development Plans must conform with the zoning established by the zoning ordinance.

Section 21. Section 16-627(c) of the Dacono Municipal Code, regarding PUD Preliminary Development Plan public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-626 Preliminary Development Plan (PDP) application and review procedures.

(c) After a complete PDP application has been received, the application shall be reviewed by the City staff and referral agencies. Upon a determination by the City staff that the application is in substantial compliance with the requirements for submittal of a PDP, public hearings shall be scheduled before the Planning Commission and City Council. Notice of the public hearings shall be provided pursuant to Section 16-14.5 of this Code. The Planning Commission shall review the PDP and send its recommendations to the City Council, which shall approve, approve with conditions or deny the PDP.

Section 22. Section 16-629(d) of the Dacono Municipal Code, regarding PUD Final Development Plan public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 16-629 Final Development Plan (PDP) application and review procedures.

(d) Review process. After all application materials have been received and reviewed by the City staff and referral agencies, the applicant shall make modifications to the plans and documents as appropriate and resubmit the application. Once deemed complete by City staff, the application shall be scheduled for public hearings before the Planning Commission and City Council. Notice of the public hearings shall be provided pursuant to Section 16-14.5 of this Code. The Planning Commission shall make recommendations to the City Council, which shall approve, approve with conditions or deny the Final Development Plan.

Section 23. Section 17-51 of the Dacono Municipal Code, regarding preliminary plat public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 17-51 Preliminary plat.

(a) Upon formal application, the subdivider shall submit to the Planning Commission ten (10) copies of a Community Development Director or their designee the proposed preliminary plat, together with supplementary material as specified in Section 17-71. ~~The preliminary plat shall be submitted together with a written application at least thirty (30) days prior to the Planning Commission meeting at which it is to be considered.~~

(b) Upon receipt of the preliminary plat, the ~~Planning Commission~~ Community Development Director or their designee shall transmit copies to public agencies having jurisdiction and utility companies, who shall examine the ~~plan~~ plat and report their recommendations thereon to the City Planning Commission.

(c) ~~The Planning Commission~~ City staff shall review the preliminary plat for compliance with the regulations set forth in this Chapter and negotiate with the subdivider on the type and extent of improvements to be installed and on modifications deemed advisable.

(d) Within forty-five (45) days following ~~submittal~~ the applicant responding to any comments of City staff, the Planning Commission shall hold a public hearing ~~for the review of on~~ the preliminary plat and supporting documents and shall ~~inform the subdivider of its approval or disapproval stating the~~

~~conditions of approval, if any, or if disapproved, stating the reasons therefor recommend the City Council approve, approve with conditions, or deny the application. The City Council shall thereafter hold a public hearing on the preliminary plat and approve, approve with conditions, or deny the application. Notice of public hearings before the Planning Commission and City Council shall be provided pursuant to Section 17-8 of this Code. Any conditions must be met before submittal of a final plat.~~

(e) Conditional approval of the preliminary plat shall be deemed a tentative expression of approval of the general layout as submitted or modified pending approval of the final plat. Any conditions must be met before submittal of a final plat application.

Section 24. Section 17-52 of the Dacono Municipal Code, regarding final plat public hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 17-52 Final plat.

(a) A final plat, containing the information specified in Section 17-72, shall be submitted together with a written application for approval. Said final plat shall be submitted within twelve (12) months after approval of the preliminary plat; otherwise, such preliminary plat approval shall become null and void unless an extension of time is applied for and granted by the Planning Commission.

(b) The final plat as submitted shall conform substantially with the preliminary plat as approved, and may constitute only that portion of the approved preliminary plat which the subdivider proposes to record and develop at the time. In the case of partial submission, the approval of the remaining portion of the preliminary plat shall automatically gain an extension of twelve (12) months before another phase of the plat must be submitted in final form.

(c) Following review at a public hearing, the Planning Commission shall recommend the City Council approve, approve with conditions, or deny the final plat application. The City Council shall thereafter hold a public hearing on the final plat and approve, approve with conditions, or deny the application. Notice of public hearings before the Planning Commission and City Council shall be provided pursuant to Section 17-8 of this Code. If the request for approval of the final plat is denied, the reasons therefor shall be stated in writing and a copy furnished to the subdivider.

(d) Within six (6) months of the effective date of the City Council resolution approving a final plat, final plat mylars and an executed subdivision agreement must be submitted to the City for recording and the Improvement Guarantee required by Chapter 17, Article 15 of this Code must be provided to the

City. If timely submission of all items is not made, a public hearing will be scheduled before the City Council, at which hearing the City Council will reconsider its approval of the final plat. Written notice of such hearing shall be provided to the applicant and published as required by the Dacono Municipal Code. No extension of the time period set forth in this subsection (d) may be granted except by resolution adopted by the City Council.

(e) In the event of the phased development of a subdivision, the subdivider shall identify on the final plat all improvements proposed to be constructed with each proposed phase of the subdivision. Such improvements for each phase shall provide a proportionate share of all public improvements for the subdivision and shall provide for the adequate access and service to each individual phase. The Improvement Guarantee provided pursuant to Chapter 17, Article 15 of this Code shall include all improvements for all phases of the subdivision included within the final plat.

Section 25. Section 17-170 of the Dacono Municipal Code, regarding subdivision variances and modifications, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 17-170 Procedure.

Application for variances or modifications of the regulations set forth in this Chapter shall be submitted to the Planning Commission and City Council as part of the subdivision application and shall be heard by the Planning Commission and City Council as part of the public hearing on the subdivision application. ~~Such application~~ The applicant shall include a statement setting forth the nature and extent of the requested variance or modification, together with evidence supporting need for such variance.

Section 26. Section 17-203 of the Dacono Municipal Code, regarding minor subdivision hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 17-203 Hearing procedures.

(a) The Planning Commission shall hold a public hearing to review the minor subdivision plat and shall report its findings and recommendations to the City Council for action. The City Council shall thereafter hold a public hearing on the minor subdivision plat and approve, approve with conditions, or deny the application. Notice of public hearings before the Planning Commission and City Council shall be provided pursuant to Section 17-8 of this Code.

~~(b) If the City Council elects to approve the minor subdivision plat, the plat shall be deemed in conformity with the standards set forth in these regulations.~~

~~(c) If the City Council elects to disapprove the minor subdivision plat, the plat shall be deemed not in conformity with the standards or the intent as set forth in these regulations.~~

~~(d) Whenever a minor subdivision plat has been denied by the City Council, the Planning Commission shall not reconsider the a minor subdivision plat application for the property may not be filed for a period of one (1) year from following the City Council denial action to disapprove.~~

Section 27. Section 17-222 of the Dacono Municipal Code, regarding notice of vested property rights hearings, is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 17-222 Creation – Notice and hearing.

(a) A vested property right pursuant to Article 68 of Title 24, C.R.S., as amended, is created only upon City Council approval or conditional approval of a site specific development plan which has been processed in accordance with the provisions of this Chapter. No administrative or other type of land use approval shall create such a vested property right.

(b) Any landowner seeking the creation of a vested property right through approval of the site specific development plan shall invoke the procedures of this Chapter by specific written request to the City. The request shall be made to the City Clerk at least thirty (30) days prior to the date the City Council is to consider approval of the site specific development plan. The failure of the landowner to make such a request renders the PUD final development plan not a site specific development plan, and no vested rights shall be deemed to be created by its approval or conditional approval.

(c) No site specific development plan shall be approved until after a City Council public hearing, preceded by notice of the hearing ~~published at least once in a newspaper designated by the City for the publication of notices provided pursuant to Section 17-8 of this Code.~~ The notice shall be published by the City at least seven (7) days prior to the City Council hearing date and may, at the City's option, be combined with any notice required for the public hearing on the particular site specific PUD final development plan under consideration or with any other required notice, or may be given separately. Interested persons shall have the opportunity to be heard at the hearing.

(d) The City Council's intention to create a vested property right shall be set forth in the resolution granting approval or conditional approval of the site specific development plan.

Section 28. Any person charged with a violation of this ordinance, upon conviction thereof, shall be subject to the General Penalty in Section 1-70 of the Dacono Municipal Code, which currently provides for incarceration for a period not to three hundred sixty-four (364) days, a fine not to exceed one thousand dollars (\$1,000.00), or both such fine and imprisonment. As provided in Section 1-70(b), each and every day during any portion of which any violation is committed, continued or permitted shall be a separate violation, and the violator shall be punished accordingly.

Section 29. If any article, section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 30. The repeal or modification of any provision of any prior ordinance by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 31. All other ordinances or portions thereof inconsistent or conflicting with this ordinance, or any portion hereof, are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED AND POSTED BY TITLE this 13th day of February, 2023.

PUBLIC HEARING AND SECOND READING WILL BE THE 27th day of February, 2023, AT 6:00 P.M. AT DACONO CITY HALL ANNEX, 512 CHERRY AVENUE, BUILDING C, DACONO, CO.

READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE this ____ day of _____, 20__.

CITY OF DACONO, COLORADO

Adam Morehead, Mayor

ATTEST:

Valerie Taylor, City Clerk

Summary of Ordinance No. 937, **“AN ORDINANCE AMENDING CHAPTERS 16 AND 17 OF THE DAONO MUNICIPAL CODE CONCERNING WITHDRAWAL OF LAND USE APPLICATIONS, INACTIVE LAND USE APPLICATIONS, AND PUBLIC NOTICE REQUIREMENTS FOR LAND USE HEARINGS”** Amends the Dacono Municipal Code to address withdrawal of land use applications by applicants, inactive land use applications, and to standardize public hearing notice requirements and procedures.



February 27, 2023

To: City of Dacono City Council

From: Jennifer Krieger, AICP, Community Development Director

Agenda Item: Public Hearing and consideration of Ordinance 937, an ordinance amending Chapters 16 and 17 of the Dacono Municipal Code concerning the withdrawal of land use applications, inactive land use applications, and public notice requirements, on the second reading.

Request

Ordinance 937 amends Chapters 16 and 17 of the Dacono Municipal Code concerning the withdrawal of land use applications, inactive land use applications, and public notice requirements.

Inactive land use applications can allow applicants to avoid updates to City requirements and regulations adopted by the City Council over time. The City needs to adopt a standard policy for inactive land use applications to be purged from the review process.

The City of Dacono notice and public hearing requirements are in Dacono Municipal Code Chapters 16 and 17. Various land use applications in the Dacono Municipal Code have different public hearing and notice requirements. The proposed amendments to Chapters 16 and 17 will standardize public notice requirements.

Proposed Amendments

If adopted by the City Council, this ordinance amends the Dacono Municipal Code to address the withdrawal of land use applications by applicants, inactive land use applications and standardizes public hearing notice requirements and procedures.

Section 16-13 Requires an applicant to request the withdrawal of an application in writing. A new application is required to reinstate application review after withdrawal.

Section 16-14 Defines inactive applications and the notice requirements for curing an inactive application or withdrawal by staff after notice.

Section 16-24.5 Adds a definition of "application."

Section 17-6 Applies to the Subdivision Code. Requires an applicant to request the withdrawal of an application in writing. A new application is required to reinstate application review after withdrawal.

Section 17-7 Applies to the Subdivision Code. Defines inactive applications and the notice requirements for curing

	an inactive application or withdrawal by staff after notice.
Section 16-14.5	Public hearing notice. The public notice will continue to be jurisdictional and published in the newspaper 15 days prior to the public hearing. In addition, notice shall be given by <ul style="list-style-type: none"> • Posting notice on the subject property fifteen days in advance of the public hearing. • Mail notice to all property owners within 300 feet of the subject property owner is required. The applicant shall provide an affidavit of notice. Posting and mailed notices are additional actions and are not considered jurisdictional.
Section 17-8	Notice of Public Hearings. Applies to the Subdivision Code. The public notice will continue to be jurisdictional and published in the newspaper 15 days prior to the public hearing. In addition, notice shall be given by <ul style="list-style-type: none"> • Posting notice on the subject property fifteen days in advance of the public hearing. • Mail notice to all property owners within 300 feet of the subject property owner is required. The applicant shall provide an affidavit of notice. Posting and mailed notices are additional actions and are not considered jurisdictional.
Section 16-75	Public Notice. Updates the definition of public notice.
Section 16-375	Updates public notice requirements for special use permit public hearings to match Section 16-14.5
Section 16-421	Updates public hearing notice for variance public hearings to match Section 16-14.5
Section 16-444	Updates public hearing notice for zoning/rezoning public hearings to match Section 16-14.5
Section 16-483	Updates public hearing notice for solid waste disposal sites and facilities public hearings to match Section 16-14.5
Section 16-507	Updates public notice for major home occupation public hearings to match Section 16-14.5
Section 16-524	Updates the notice for neighborhood meetings for oil and gas facility locations and siting permit applications to match Section 16-14.5
Section 16-527	Updates notice for oil and gas facility application public hearings to match Section 16-14.5

Section 16-572	Updates public notice for site plans public hearings to match Section 16-14.5
Section 16-626	Updates public hearing notice regarding PUD zoning public hearings to match Section 16-14.5
Section 16-627	Updates public hearing notice for PUD Preliminary Development Plan public hearings to match Section 16-14.5
Section 16-629	Updates public hearing notice for PUD Final Development Plan public hearings to match Section 16-14.5
Section 17-51	Updates public hearing notice for preliminary plat public hearings to match Section 17-8.
Section 17-52	Updates public hearing notice for final plat public hearings to match Section 17-8.
Section 17-170	Clarifies that applications for subdivision variances or modifications require public hearings with both the Planning Commission and the City Council.
Section 17-203	Updates public notice for minor subdivision public hearings to match Section 17-8.
Section 17-222	Updates the public notice of vested property rights hearings to match Section 17-8.

Planning and Zoning Commission Recommendation

The Planning and Zoning Commission held a properly noticed public hearing on December 13, 2022, and recommended approval of the proposed amendments to Chapters 16 and 17 concerning the withdrawal of land use applications, inactive land use applications, and public notice requirements.

Staff Recommendation

Staff recommends approval of Ordinance 937, an Ordinance amending Chapters 16 and 17 of the Dacono Municipal Code concerning the withdrawal of land use applications, inactive land use applications, and public notice requirements for land use hearings, on the second reading, finding:

1. Adopting a consistent and fair process for the withdrawal of applications and for staff to purge inactive applications further advances the intent of procedural due process.
2. Establishing a clear timeline for inactive applications to be purged ensures that applicants will follow the most recent updates to City requirements and regulations adopted by the City Council.
3. Adopting standardized public hearing notice requirements will create a consistent process for all land use applications.
4. Standardizing public notice requirements will provide the public with consistent notice of public hearings.