

120 Day Rule

Article 4.3.1.2. of the CLURO reads, in pertinent part:

No amendment shall become effective until: . . . 4. **City Council Action.** A final ye or nay vote on the proposed amendment shall have been taken by the City Council within one hundred twenty (120) days, dated from the introduction of an ordinance in correct form by the City Council, the submittal to the City Council of the recommendation of the Planning Commission or Zoning Commission or from the final filing of the petition of the property owner or owners in correct form, whichever event is first to occur.

Multiple analyses of the “120 Day Rule” have concluded that the Port Marigny application is not subject to the 120 Day Rule. Two interpretations are below.

A key point to be made on the 120 Day Rule is that no consequence or penalty is included in the CLURO of what happens if the City Council does not vote on the proposed amendment within 120 days, which renders the provision effectively null.

I. “Initiative” Approach

Article 4.3 of the CLURO is entitled “Legislative and Administrative Procedures.” Section 4.3.1, under the general title of Legislative and Administrative Procedures, is entitled, “Procedure and fees for Zoning Amendments and Amendments to the Land Use Regulations.” Under that general heading of “Amendments” to the Zoning and Land Use Regulations are several different procedures that can be used to accomplish an amendment to the Zoning and Land Use Regulations. Two of the methods are amendments that are filed by *Initiative* as provided for in Section 4.3.1.1 and amendments that are the pursued under the provisions of Section 4.3.3 which is entitled, “Procedures and Fees for Conditional Use Permits and Planned District Zoning.”

The “*Initiative*” method is covered in Section 4.3.1.1 and is entitled, “Methods of Initiation of Amendment.” Section 4.3.1.2 (4) of the *Initiative* method provides that an ordinance to amend the Zoning Ordinance and the Official Map under this method must be voted ye or nay by the City Council within 120 days from the earliest of the occurrence of one of three certain events. The events are (1) the introduction of an ordinance in correct form by the City Council, (2) the submittal to the City Council of the recommendation of the Planning Commission or Zoning Commission, or (3) the final filing of the petition of the property owner or owners in correct form.

The public petition provision gives the public the opportunity to *initiate* a zoning amendment, by petition, to attempt to amend the CLURO. The definition of the word “Initiative” is, “an electoral process by which a percentage of voters can propose legislation and compel a vote by the legislature.”

Ordinance number 15-17 was introduced by the Council on July 9, 2015. If Section

4.3.1.1 applies, then a yea or nay vote should have been taken by the City Council by November 6, 2015, 120 days from July 9.

The question is whether Article 4.3.1 (Initiative) of the CLURO is controlling in the application of Port Marigny or does the provision regarding Conditional Uses Permits and Planned Districts control. Port Marigny made an application under the Traditional Neighborhood Development provision of the CLURO found in Article 8.5. The property subject to this application is already zoned a Planned District and the Applicant has requested that the classification be amended to Planned Combined District. To give proper consideration of the Port Marigny application, the application process should be followed all the way through the CLURO.

The Traditional Neighborhood Development (TND) is provided for in Article 8.5 of the CLURO. Section 8.5.1.2 of that Article states that a TND shall be developed within the City's Planned District zoning classification. Section 8.5.1.3 states that the TND approval process shall be consistent with the approval process for rezoning to and establishing of uses within the planned development district established in Section 7.5.15 except that the application for a conditional use in a TND shall include the information listed in the TND conditional use application (e.g., architectural standards and other information to demonstrate compliance with the TND Article in the CLURO).

The property to be developed into a TND was zoned as a Planned District with the adoption of the CLURO so it qualifies for TND treatment. The property is an undeveloped site under Section 7.5.15.9. That section states that undeveloped lots zoned Planned District by the adoption of the CLURO shall be subject to site plan review in accordance with the Procedures for Conditional Use Permits and Planned District Zoning provided for in Section 4.3.3 entitled, "Procedures and Fees for Conditional Uses Permits and Planned Districts."

Section 4.3.3.1 (Conditional Use) says the Conditional Use procedure is intended to encourage broad public review and evaluation of the site development characteristics and operating characteristics and to ensure adequate mitigation of potentially unfavorable impacts. Section 4.3.3.5 (Conditional Use) calls for Public Hearing(s) notice required of the Planning Commission for this broad review refers the reader to the provision for public notice of the hearing required for zoning amendments under Section 4.3.1.1 which is referred to as the "zoning amendment" (by *Initiative*) of the CLURO. This reference to the "zoning amendment" does not include all of the provisions of this procedure (120 day limit on Council). As described above, the "zoning amendment" procedure in Article 4.3.1.1 is for *Initiatives* to amending zoning, not for consideration of a TND. The TND goes through the Conditional Use and Planned District Zoning Procedure with all of its requirements, including action by the City Council.

Section 4.3.3.7 (Conditional Use) states that the Planning Commission must act (recommend to the City Council) not more than twenty (20) days following the closing of the public hearing(s) on the Conditional Use Permit and Planned Combined Use District application. The Planning Commission must recommend for approval or denial of the Conditional Use Permit and the Planned Combined Use District Zoning to the City Council.

The Planning Commission must act within a time limit after its final public hearing. There is no time limit on how long the public hearings may take, presumably because, as described above, the Conditional Use process calls for broad public review. The Planning Commission makes a recommendation to the City Council.

Then the City Council holds a public hearing(s) (Sec. 4.3.3.11) and the City Council must give notice of the meeting in the “manner as the notice required for zoning amendments” (*Initiative*). Back to the Initiative section but only for the notice provision, not for the 120 day limit on the City Council or any other provision under that section. The public will have had the benefit from all of the Planning Commission public hearings and will have the same opportunity to be heard before the City Council.

As described above, the procedure used for a Conditional Use Permit and the Planned District Zoning is intended to offer broad public involvement. It is triggered by the time limits for the Planning Commission to act after it has completed its public hearings, but not regarding time limits for the City Council to act. The CLURO simply refers to the Initiative provisions to copy its notice provisions; nothing else.

The Conditional Use Permits and Planned District Zoning process is the proper procedure for determining the approval or disapproval of the application for a TND by the Applicants. The 120 day provision in the Initiative section of the CLURO does not apply to the Conditional Use and Planned District Zoning procedure and, therefore, does not apply to the Port Marigny application.

II. “Stricter Provision Applies” Approach

The 120 Day Rule is located in article 4.3.1 of the CLURO, which is entitled “Procedure and Fees for Zoning Amendments and Amendments to the Land Use Regulations.” Article 4.3.3, “Procedures and Fees for Conditional Use Permits and Planned District Zoning,” governs the Port Marigny application. The Port Marigny site is zoned “PD” (Planned District) and the Port Marigny application is a conditional use permit application, in accordance with the Planned District and Traditional Neighborhood Development articles.

Article 4.3.3 does not contain the 120 Day Rule, nor any other time restriction on the Council's original assessment of a Conditional Use Permit or Planned District application. Although no time restriction is placed on the Council to vote yay or nay on the application in article 4.3.3, time restrictions are set forth in the section for other entities and periods of time, namely:

-Article 4.3.3.7 requires that "[t]he Planning Commission shall act on the application not more than twenty (20) days following the closing of the public hearing on a Planned District zoning or Conditional Use Permit application."

-Article 4.3.3.10 requires that "[t]he recommendations of the Planning Commission shall be forwarded to the City Council within 10 days after the date on which action is announced."

-Article 4.3.3.12 directs the lapse of a conditional use permit and/or lapse of uses approved in conjunction with a Planned District and contains numerous time periods.

-Article 4.3.3.14 does limit the City Council to a specific time period in a specific circumstance: a conditional use permit may be suspended upon notification of the City Clerk to the owner of the use or property and if that happens, then "[t]he City Council shall hold a public hearing within forty (40) days of such notification."

Article 1 of the CLURO contains a "specific over general" provision which means that the more specific provision governs over the more general provision. Article 1.3.3 states in relevant part that:

These Land Use Regulations shall be held to be the minimum requirements for the promotion of the public health, safety, welfare and aesthetics of the community. The provisions of these regulations are intended to supplement and to be read, construed and applied in [sic] with all existing laws, ordinances and regulations of this City so that whenever possible full and due effect is given to all such enactments. The provisions of these regulations shall not be deemed to have repealed or suspended any such existing law, ordinance or regulation of this City unless such result shall have been expressly stated or be clearly intended by the context and language of the provision in question. In the event of a conflict in any particular circumstances between the provisions or requirements of these regulations and the provisions or requirement of any other law, ordinance or regulation of this City the more restrictive provision or requirement shall apply unless a contrary application thereof is expressly directed or clearly intended by the context and

language of the laws, ordinances and regulations in question.¹

Here, article 4.3.3 is more specific than 4.3.1 in its application to Planned Districts and Conditional Use Permit procedure. The Port Marigny application procedure is directed by article 4.3.3, the more specific provision.

Given the lack of the 120 Day Rule in article 4.3.3 - - the section that specifically applies to Planned District and Traditional Neighborhood Development procedure - - the 120 Day Rule does not apply to the Port Marigny decision. Additionally, as noted above, there is no consequence for violating the 120 day rule, should it apply.

III. Conclusion

Although the language of the 120 Day Rule - - and the CLURO sections in which the Rule both exists and does not exist - - is not as clear as desired, multiple interpretations of the Rule and its applicability to the Port Marigny application have concluded that the 120 Day Rule does not apply to the Port Marigny application. Further, the 120 Day Rule does not have an attached consequence or penalty if the City Council does not vote on a proposed amendment within 120 days, which effectively neuters the 120 Day Rule provision.

¹ Emphasis added.