

TO: Mayor and City Council
FROM: Joel Strassman, Planning and Zoning Officer
DATE: March 30, 2022
SUBJECT: Ordinance 22-21: Extending Winding Creek Subdivision Entitlement Expirations
Pulte Home Company, LLC, applicant

Summary: Ordinances approved in October of 2021 for the annexation agreement and development of Winding Creek Subdivision require the applicant, Pulte, to obtain fee simple title to the property within 180 days of Council approval of the annexation agreement. Pulte has informed staff that they will not be able to close by April 16, 2022 – the end of the 180-day period. Attached Ordinance 22-21 would extend the effective dates for Ordinances 21-55 (annexation agreement), 21-56 (annexing property), and 21-57 (R1-M & POS Planned Development Overlay) by sixty (60) days to cover time needed for Pulte to close on the property.

Background: After the previous iterations of Winding Creek’s approvals lapsed and that applicant withdrew its applications, Batavia staff sought, and Pulte agreed to its approvals including sunset clauses. The sunset clauses in the agreement and Ordinances simplify making approvals null and void if the property transaction does not take place. Pulte is confident in its ability to close on the property and complete Winding Creek per the annexation agreement and entitlement approvals.

Pulte needs City Ordinance approval for a relatively short period of extension for annexation and entitlement approvals to remain effective for parties with whom Pulte is working with to acquire the property. Staff believes Pulte is acting in good faith for the success of Winding Creek by requesting this extension. The City Council has the ability to extend the effective dates for the Ordinance by passage of Ordinance 22-21 at its meeting on April 4.

Alternatives: The Council can approve or deny Ordinance 22-21 as presented or consider amendments to the Ordinance before acting.

Impacts: Approval will allow Pulte to close on the property as envisioned with approval of Ordinances 21-55, 21-56, and 21-57. Denial result in Pulte’s inability to close on the property per the deadlines set in those Ordinances. This will result in either Winding Creek not moving forward or Pulte needing to amend the annexation agreement seeking an appropriate time extension and redoing other entitlement ordinances that would greatly impact staff and Council time.

Timeline for Actions: City Council action on Ordinance 22-21 is final.

Recommendation: Staff recommends approval of Ordinance 22-21 as presented.

Attachment: Ordinance 22-21

c Mayor
Applicant
Department Heads
Media

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 22-21**

**AN ORDINANCE EXTENDING EFFECTIVE DATES FOR
AN ANNEXATION AGREEMENT APPROVED UNDER ORDINANCE 21-55 AND FOR
ORDINANCES 21-56 AND 21-57 FOR WINDING CREEK SUBDIVISION
2500 AND 37W330 MCKEE STREET**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
THIS 4TH DAY OF APRIL, 2022**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Batavia,
Kane & DuPage Counties, Illinois,
This 5th day of April, 2022

Prepared by:

City of Batavia
100 N. Island Ave.
Batavia, IL 60510

**CITY OF BATAVIA, ILLINOIS
ORDINANCE 22-21**

**AN ORDINANCE EXTENDING EFFECTIVE DATES FOR
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ORDINANCES 21-55, 21-56 AND 21-57 FOR WINDING CREEK SUBDIVISION
2500 AND 37W330 MCKEE STREET**

WHEREAS, on October 18, 2021, the City of Batavia, Kane and DuPage Counties, Illinois, passed Ordinance 21-54 titled “An Ordinance Amending the Land Use Map of the Comprehensive Plan of the City of Batavia – Pulte Home Company LLC” with respect to the property legally described in said Ordinance and generally located at 2500 and 37W330 McKee Street (the “Comprehensive Plan Amendment Ordinance”); and

WHEREAS, on October 18, 2021, the City of Batavia, Kane and DuPage Counties, Illinois, passed Ordinance 21-55 titled “An Ordinance Authorizing the Execution of an Annexation Agreement by and Among the City of Batavia and TLCD, LLC, Lester M. Landmeier, not personally, but as Trustee of (i) the Wesley Landmeier Revocable Trust dated December 3, 2012 (the “Wesley Landmeier Trust”), (ii) the Valerie Landmeier Multi-Generation Trust dated December 12, 1991 (the “Valerie Landmeier Trust”), and (iii) the Lester Landmeier Multi-Generation Trust dated December 12, 1991, and Pulte Home Company, L.L.C. for the Property located 2500 and 37W330 McKee Street (the “Annexation Agreement Ordinance”); and

WHEREAS, on October 18, 2021, the City of Batavia, Kane and DuPage Counties, Illinois, passed Ordinance 21-56 titled “An Ordinance Annexing and Zoning Properties and Territory to the City of Batavia, Kane and DuPage Counties, Illinois 2500 and 37W330 McKee Street (“Annexation and Zoning Ordinance”); and

WHEREAS, on October 18, 2021, the City of Batavia, Kane and DuPage Counties, Illinois, passed Ordinance 21-57 titled “Amending the Official Zoning Map for a R1-M Single Family Medium-Density District and POS Parks and Open Space District and Planned Development Overlay – Pulte Home Company, LLC 37W330 and 2500 McKee Street” (“Zoning and Planned Development Ordinance”); and

WHEREAS, the Comprehensive Plan Amendment Ordinance, the Annexation Agreement Ordinance, the Annexation and Zoning Ordinance, and the Zoning and Planned Development Ordinance were all approved to facilitate the future development of the Property by Pulte Home Company LLC (“Pulte”) as a 163-unit residential community (“Winding Creek”) and shall be collectively referred to as the “Winding Creek Ordinances”; and

WHEREAS, the Annexation and Zoning Ordinance contains an expiration clause stating Pulte must obtain fee simple title to the Property within 180 days from the date of the Annexation and

Zoning Ordinance or the Annexation and Zoning Ordinance shall be deemed null and void (the “Ordinance Expiration Clause”); and

WHEREAS, the timeline set forth in the Ordinance Expiration Clause applies to the remaining Winding Creek Ordinances for the reason that expiration of the Annexation and Zoning Ordinance ultimately revokes the necessary municipal approvals needed to facilitate the development of Winding Creek; and

WHEREAS, the Annexation Agreement Ordinance approves an annexation agreement between the City of Batavia, Pulte, and the owners of record of the Property (the “Annexation Agreement”) and said Annexation Agreement contains an expiration clause stating Pulte must obtain fee simple title to the Property within 180 days from the date of the Annexation Agreement Ordinance or the Annexation Agreement shall be deemed null and void; and

WHEREAS, Pulte is currently seeking approval from the City of Batavia for a Final Plat of Subdivision for Winding Creek, said approval that which is required prior to Pulte obtaining fee simple title to the Property; and

WHEREAS, Pulte is diligently working in good faith to secure the requisite land-use entitlements to facilitate the development of Winding Creek and successfully obtain fee-simple title to the Property; and

WHEREAS, it is in the best interest of the City of Batavia that the Winding Creek Ordinances and the Ordinance Expiration Clause be extended for an additional sixty (60) days from the date of this Ordinance to provide Pulte sufficient time to obtain fee simple title to the Property in accordance with the terms of the Winding Creek Ordinances.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois as follows:

SECTION 1: That the foregoing recitals are incorporated herein and made part hereof.

SECTION 2: That the Expiration Clauses in Ordinances 21-56, 21-57, and the Annexation Agreement approved under Ordinance 21-55 are hereby extended for an additional sixty (60) days from the date of this Ordinance.

SECTION 3: That the terms of Ordinances 21-56, 21-57, and the Annexation Agreement approved under Ordinance 21-55 remain in full force and effect. To the extent there is any inconsistency between this Ordinance and the Ordinances 21-56, 21-57, and the Annexation Agreement approved under Ordinance 21-55, the terms of this Ordinance shall prevail.

SECTION 4: If Pulte fails to obtain fee simple absolute title to said property within sixty (60) days of the date of this Ordinance is approved, this Ordinance shall be deemed null and void having no further force and effect.

CITY OF BATAVIA, ILLINOIS ORDINANCE 22-21

PRESENTED to the City Council of the City of Batavia, Illinois, this 4th day of April, 2022.

PASSED by the City Council of the City of Batavia, Illinois, this 4th day of April, 2022.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 4th day of April, 2022.

Jeffery D. Schielke, Mayor

Ward	Alderman	Aye	Nay	Abstain	Absent
1	Baerren				
1	Solfa				
2	Leman				
2	Wolff				
3	Ajazi				
3	Chanzit				
4	Malay				
4	Connelly				
5	Uher				
5	Beck				
6	Cerone				
6	Russotto				
7	Vogelsinger				
7	Miller				
Mayor	Schielke				
		AYES	NAYS	ABSTAIN	ABSENT
	TOTALS				

total holding office: Mayor and 14 Aldermen

ATTEST:

Kate Garrett, City Clerk