CITY OF PULLMAN

Public Works and Planning Departments

325 S.E. Paradise Street, Pullman, WA 99163
(509) 338-3220 or (509) 338-3213 Fax (509) 338-3282
www.pullman-wa.gov

MEMORANDUM

TO: Pullman Planning Commission

FROM: Pete Dickinson, Planning Director PB

FOR: Meeting of October 22, 2008

SUBJECT: Pre-Application Meetings

DATE: October 16, 2008

In the fall of last year, the Pullman League of Women Voters submitted to the city a proposal for land use development pre-application meetings. At the Planning Commission session on August 27, the Commission decided to place this matter on a future meeting agenda at the request of the League. For an explanation of this proposal, please refer to documentation supplied recently by the League, entitled "Pullman Pre-Land Development Application Community Meeting Ordinance" (Attachment "A"). A League representative plans to attend the Commission meeting of October 22 to present the proposal and answer pertinent questions.

In response to a request from the Planning Commission, city attorney Laura McAloon has prepared a memorandum addressing the legal aspects of pre-application meetings. Ms. McAloon's memo is included herein as Attachment "B."

The city attorney's memo includes a brief discussion regarding voluntary pre-application meetings. Please note that city staff already advocates to developers that they conduct voluntary pre-application meetings for significant projects. Such meetings have been held for residential subdivisions near SW Wadleigh Drive, a residential subdivision near NW Larry Street, and the Whitman Senior Estates assisted living center on SW Center Street.

For the October 22 meeting, planning staff suggests the following course of action:

a) accept input on this matter from the League representative(s) and any other interested citizen;

b) conduct a discussion among Commission members;

c) if the Commission desires further consideration of this proposal, direct staff to arrange for a future Commission public forum on the topic by inviting representatives from the League, the real estate development community, neighborhood associations, the Chamber of Commerce, and other public interest groups.

Attachments

Pullman Pre-Land Development Application
Community Meeting Ordinance

The ordinance requires a developer to publicize and hold a community meeting about a proposed project as part of the application process and before applying to the city for a permit. The purpose is to notify the community and "foster communication between the developer and interested citizens regarding potential issues and opportunities for solutions related to the proposed project." The Cities of Bellingham and Spokane have similar ordinances and found the community meeting to be a useful instrument in gaining public consensus for a project. The ordinance could be called, "The Developer's Ordinance", because it gives the developer the opportunity to address community concerns early and avoid later conflict and lawsuits. The ordinance does not prevent the developer from going forward or compel changes in the plans, but does insure that the developer adequately notify the community first.

The key provisions include:

- An applicant for a significant project requiring a planning permit under Title 17 of the City Code shall conduct a community meeting regarding the proposed project before the submission of an application to the City of Pullman.
- At the meeting, the applicant shall present a description of the proposed project and be available to respond to questions about the proposed project from meeting participants. The applicant shall record the proceedings of the meeting and submit the recording and an accurate summary of meeting issues to the Planning Department for inclusion in the permit application file.
- If a traffic study will be required as a part of an application, the scope of the study shall be discussed at the community meeting.
- The applicant shall provide public notice of a community meeting by individual notice, public display, newspaper and sign (four feet by four feet or larger as needed.)

The League used the Janice Miller Memorial Fund to hire a land use attorney to assist in preparation of this ordinance. Janice was a strong proponent of careful and informed planning and this ordinance was created in her memory.

How the Pullman Community Meeting Ordinance Benefits Developers

1. It helps developers build support for their project.

2. It provides a method for people who support the project to speak and be heard.

3. It shares information and allows problems to surface and alternate solutions to be proposed.

4. It prevents rumors that incite reaction and, once entrenched, are hard to dispel.

5. It provides a stage for civil discourse for all affected parties and avoids later conflicts/lawsuits.

6. It is verifiable proof that all steps in the process were performed according to law.

7. It identifies persons with knowledge of the project who can be contacted for information.

City of Spokane Community Meeting for Land Use Applications Requirements
Planning Services Department

What is a Community Meeting?

A community meeting is an informal way for the applicant or their representative to inform the general public about their specific proposal. The meeting is a required component of any Type III applications, which are those that require a decision by the Hearing Examiner. The meeting needs to be conducted no more than one hundred twenty days prior to submitting an application, however, it does need to be completed before the City accepts the application.

When a traffic study is required as a part of an application, the scoping meeting for a traffic study may be combined with the community meeting. Any notice of a combined meeting must clearly advertise the purpose of the meeting being both the traffic scoping study and the required community meeting.

The public notice for a community meeting shall be provided as required in SMC 17G.060.110 and 17G.060.120. A separate handout about Public Notice requirements is available from the Planning Services Department.

At the time of application, the applicant shall provide a summary of the community meeting consisting of the following:

An audiotape of the meeting or proceedings
List of attendees or sign in sheet
A copy of the Notice of Community Meeting
Affidavits of posting/mailing the notice.

Anyone that attends a community meeting may submit their own summary of the meeting to the decision maker. A written summary from the applicant is helpful for City staff, but is not required.

If you have any questions on the community meeting procedure or public notice requirements you should consult with your staff contact directly or call the Planning Services Department at (509) 625-6300.

What is a Notification Map?

An application for Notification Map is included in your application packet or available online at www.spokaneplanning.org. Fill out the application and turn it in to the Planning Services Department. Staff will prepare your map and return it to you along with the Notice that is required to be mailed to individuals and the wording that needs to be placed on the Posted Notice sign.

The applicant can select the method of generating the list of names for notification. Some applicants choose to have a title company prepare the list for them and others prepare the list themselves using County Assessor records or other methods. The individuals identified on the notification list are the ones that receive public notices regarding the proposal.

For more information contact:
Planning Services Department
3rd Floor, City Hall, 808 W. Spokane Falls Blvd.
Spokane, Washington 99201
(509) 625-6300

CITY OF BELLINGHAM PRE-APPLICATION NEIGHBORHOOD MEETING INSTRUCTIONS

(Please note: This is part of the City of Bellingham's prepared handout for developers)

Some land use permits and all comprehensive plan amendments require a neighborhood meeting prior to submittal of the permit or plan amendment application to the City. This form explains how to arrange and conduct it. The neighborhood meeting is intended to benefit both the applicant and the public by initiating early discussion before permit application. It is the applicant's responsibility to hold the meeting.

Find a Location for the Meeting

Find a location that is as near as possible to the project site. The Bellingham School District, Bellingham Parks and Recreation Department and Public Library have meeting spaces available for community use. Meeting halls, community rooms, churches, offices and other private facilities may also be available in the local neighborhood.

Prepare a Mailing List

See the Mailing List Instructions attached. Include the applicable neighborhood associations, Mayor's Advisory Commission members, Planning and Community Development Department and the news media. These addresses are available from the Planning and Community Development Department. Planning staff can tell you which neighborhoods, associations and news media to include.

Schedule a Meeting Date

Neighborhood meetings should be scheduled on weekday and non-holiday evenings. If your project has been assigned to a staff planner, arrange a date that he/she can attend. Allow yourself time to prepare the mailing list and notice for mail out at least 10 days (14 days for a comprehensive plan amendment) before the meeting. Submit the Project Description for a Pre-Application Neighborhood Meeting form to the Planning and Community Development Department as soon as the date is known and not less than 10 days before the meeting so a staff planner can make arrangements to attend.

Mail and Post Notices

Notice format: Include the information in the attached sample meeting notice and a project vicinity map showing the location of the project site.

Mailing: Mail the notice to those on the mailing list at least 10 days before the meeting. Keep a record of the mailing date.

Posting the project site: Encase a copy of the meeting notice in a plastic bag (or laminate) for weather protection. Attach the notice to a yellow "Public Notice" sign (available for purchase at the Planning Department). Post the "Public Notice" sign on the project site in a location where it can be read from an abutting public street at least 7 days (14 days for Process Type VI applications such as comprehensive plan amendments) prior to the meeting. Keep a record of the posting date.

Suggestions For Conducting an Effective Meeting

The neighborhood meeting is intended to benefit both the applicant and the public by initiating early discussion, before permit application. The character and length of the permitting process may be largely determined by this first meeting. You, as the applicant or initiator, are responsible for both the quality of the information presented and the manner in which you conduct the meeting. You are advised to be patient, constructive in your comments, and take notes. The following additional guidelines are suggested to make the meeting both informative and productive for applicants and neighborhood residents.

1. Introduce yourself as the person conducting the meeting. Let the attendants know that you are holding this meeting at the direction of the City, but that no application has yet been made for City permits. The purpose of the meeting is to let the applicant inform residents about the proposal and to inventory their concerns before a permit application is submitted.
2. Use maps and graphics to show where the property is located and what is proposed. Also bring handout copies.
3. Bring your technical advisors, such as an engineer or architect, to provide information and listen to comments.
4. For all applications except a comprehensive plan amendment, distribute copies of the Neighborhood Pre-Application Meeting Land Use Permit Application handout included in this packet. Let the audience know they can also contact the Planning and Community Development Department to find out more about the permit/approval process or refer questions to a staff planner attending the meeting.

CONTACT: City Of Bellingham Planning Permit Center
210 Lottie Street, Bellingham WA 98225
Phone: 360-778-8300; fax: 360-778-8301; www.cob.org

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MEMORANDUM

TO: Pete Dickenson

FROM: Laura D. McAloon

DATE: October 10, 2008

RE: Pre-Application Meetings for Land Use Applications

A pre-application neighborhood meeting for land use applications can be a beneficial and a cost-saving method for developers, citizens, and the city. However, these meetings, if mandatory, could give rise to legal challenges by the developer based on the Regulatory Reform Act and the vested rights doctrine. This memo will first address whether pre-application meetings violate the single hearing rule in the Regulatory Reform Act and then discuss the pros and cons of these meetings, including any liability the city may subject itself to by allowing or requiring such meetings.

Pre-Application Meetings and the Single Hearing Rule

The Regulatory Reform Act generally allows cities to subject applicants for project permits to one "open record hearing." RCW 36.70B. However, the Act does not put any limits on the number of public meetings that can be held on a project. The problem arises when the subject of the public meeting takes it out from the definition of such a meeting and turns it into an "open record hearing." Fortunately, the Act has defined both of these terms.

"Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit." RCW 36.70B.020(3).

"Public meeting" means an informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the local government's decision. A public meeting may include, but is not limited to, a design review or architectural control board meeting, a special review district or community council meeting, or a scoping meeting on a draft environmental impact statement. A public meeting does not include an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation may be included in the local government's project permit application file. RCW 36.70B.020(5).

There are several scenarios where a pre-application public meeting can turn into an "open record hearing," thus violating the single hearing rule. The key distinction between a hearing and a meeting is that a hearing creates the city's record through testimony and submission of evidence and information, where a meeting is simply an informal, public gathering of people to obtain

comments from the public on a proposed project permit. There are several areas where this distinction can get complicated. The first example is where a "public meeting" is held by a review board, which is expressly allowed for in the Act. The review board will then make recommendations to the decision maker at the "open hearing" and will most likely include the information from the "public meeting" as a basis for their recommendation. Once the advisory board puts the information from the "public meeting" in the record, the "public meeting" has now been used to create the record and the meeting arguably meets the definition of an "open hearing."

A simpler example of a "public meeting" transforming into an "open hearing" can occur where a transcript of the "public meeting" is presented at the "open hearing." If this is done, the "public meeting" was then used to create the record and therefore meets the definition of an "open hearing" and violates the single hearing rule.

As of yet, no court has addressed this issue and shed light on how far a public meeting can go before it becomes an "open hearing". There are measure that can be taken to ensure a pre-application meeting is actually a meeting and not an "open hearing." However, this will likely depend on what the motivating factor is behind the pre-application meeting itself. Is the purpose of the meeting to facilitate communication and information flow between citizens and a developer, or is it to help the city or governing body decide whether the application or project should be approved? If it is the former, the pre-application meeting can be conducted in a way that will ensure it does not morph into an "open hearing." Mainly, make sure the meeting, or information originating out of the meeting, does not become a basis for the record, either by recording the meeting or through advisory boards making recommendations based on the pre-application meeting. If this is done, a pre-application meeting will not violate the single hearing rule under the Regulatory Reform Act.

Benefits Associated With a Pre-Application Meeting

The costs/benefits of a pre-application meeting will somewhat depend on whether that meeting is voluntary or mandatory. A mandatory meeting may be the only way to make the developer go to the meeting, but the costs of doing this are much greater. The benefits of a pre-application meeting will mainly revolve around saving on costs and time of all parties involved.

The pre-application meetings, both voluntary and involuntary, will most likely benefit all the parties involved. The citizens can express their feelings and concerns with a project very early on and at a time where simple citizen concerns can be easily addressed at little or no cost to the developer, assuming the plan is still in its early development stage. At this same time, the citizens can also voice concerns if they are adamantly opposed to the developer's project. The citizens will have a much better chance of stopping the project altogether if the developer has not invested very much money into the project and realizes that he or she is likely to face a long battle from the citizens. Additionally, these meetings allow the citizens to feel like they are a

part of the city and have a voice. This will be a benefit to both the citizens and the elected officials responsible to those citizens.

Likewise, the developer will also benefit from learning very early on the feelings of the citizens and can gain an estimate of how much opposition will be against the project. Again, this gives the developer a chance to consider the citizen's opinion and decide whether to move forward with the project while he or she has not already invested a great deal of resources into it. Finally, these meetings give the developer a chance to appease the citizens and make changes without a lot of expense in doing so.

Lastly, the city may also benefit from the meeting because it too will get an understanding of the project and learn the potential problems that might arise in the future. The city will also learn of the citizen's feelings about the project, although the information from these meetings should not be included in the record. The meeting may also allow the city to identify obvious problems in the project that the developer can correct while it is still easy to do so.

Although, the developer will likely benefit from a pre-application meeting, whether the developer will realize this and choose to participate in the meeting remains to be seen. Generally, developers are of a mindset that everyone is out to get them, most notably citizens living in the neighborhoods, environmental groups, and the cities themselves. With this in mind, developers may not agree to hold a voluntary pre-application meeting.

Costs and Potential Legal Challenges of a Mandatory Pre-Application Meeting

In a voluntary pre-application meeting, the benefits far outweigh the costs, if there are any costs at all. However, the problem with voluntary meetings is that the developer will likely not agree to these meetings. Therefore, a city may choose to make such meetings a requirement of the application process itself. Although this has the same benefits as a voluntary meeting, the costs and potential costs of mandatory pre-application meetings are much greater, including potential lawsuits against the city.

Having pre-application meetings may cost the city a nominal amount of money associated with holding the meeting itself. However, the biggest cost could come in the way of a lawsuit against the city by the developer. There are two main legal challenges that a developer could make if he or she is required to hold a pre-application meeting.

The most obvious claim is a violation of the single hearing rule under the Regulatory Reform Act. If the pre-application meeting is actually an "open hearing" the developer can bring a claim against the city based on the Regulatory Reform Act. This potential problem is discussed above, but there is definitely a grey area on this issue and the developer will have ample room to challenge the pre-application meeting requirement.

Another major problem with a mandatory pre-application meeting involves the vested rights doctrine. This is a clear rule that says once a person files a complete application, that persons has a vested right to build or develop under the current regulations and ordinances in place at the time the application is filed. This doctrine was established by the Washington Supreme Court in 1958 and has continuously been followed by subsequent courts. See, *Hull v. Hunt*, 53 Wn. 2d 125 (1958); *West Main v. City of Bellevue*, 106 Wn. 2d 47 (1986); *Friends of the Law v. King County*, 123 Wn. 2d 518 (1994).

The pre-application meeting may undermine the purpose for the doctrine in the first place, since it blurs the date of vesting and takes control of the vesting date away from the developer. A pre-application meeting gives the citizens and city time to change the regulations or ordinances before an application is filed, thus negating the purpose of the vesting rights doctrine.

A land use attorney has recently written an article discussing the pre-application meeting and its effect on the vested rights doctrine. Phil Olbrechts, *Cant Always Trust those RCW's: The Problems with Mandatory Pre-Application Conferences*, mrsc.org, July 2008. No case law has addressed this issue and in his article, Mr. Olbrechts acknowledges that attorneys differ on whether a court would hold a pre-application meeting invalid and provide a remedy along the same lines of a due process violation, or if the court would harmonize the Regulatory Reform Act, which allows pre-application meetings, with the vesting rights doctrine and simply move the vesting date to the time of the pre-application meeting. *Id.*

Mr. Olbrechts suggests there are at least two possible solutions to the problem pre-application meetings create. The first suggestion is to make pre-application meetings voluntary, and provide incentives for developers participating in the meetings. *Id.* Second, allow vesting to occur as of the date of the request for the pre-application meeting, but require that the complete application be filed within a certain amount of time following the meeting. *Id.*

Conclusion

These are the main legal challenges a developer may make against the city if it imposes mandatory pre-application meetings in order to obtain a permit. It is difficult to analyze the likelihood of success a developer may have on either of these claims, since there has been little case law on these issues and they are very fact specific. I think a pre-application meeting can be conducted without violating the single hearing rule, but the question of the date of vesting will have to be addressed. Furthermore, because the mandatory pre-application meetings give rise to potential legal claims without additional benefits, a voluntary pre-application meeting would be the more prudent way to proceed as long as developers are willing to participate in the meetings.

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