

CITY OF ELLENSBURG
Date of Meeting
Time of Meeting
Place of Meeting

Minutes of Council Meeting, Special Session
April 25, 2011
7:00 p.m.
Council Chambers, 501 North Anderson Street

Councilmembers Present: Arango, Bottcher, Lillquist, D. Miller, F. Miller and Mayor Tabb.

Councilmember Absent: Elliott

Others present were City Manager Barkley; Community Development Director Smith; Planning Supervisor Bailey; Deputy Clerk Keno; and five members of the audience.

LAND DEVELOPMENT CODE UPDATE

An initial draft of the land development code update document is anticipated to be ready for release in June for public review and comment. In order to better help staff and the consultant format that draft update and the proposed permit processing section, Council is being asked to provide direction on how certain permitting processes and land use concepts should be handled in the code update document.

SEPA

In 2008 Council recommended a number of small changes to more closely align the City's SEPA Code (Chapter 1.42) with the SEPA Rules adopted by Ecology in WAC 197-11. Those changes will be included in the draft Code update document. Staff would like to revisit a few larger changes made at that time to determine if those changes are still in the form that Council would like to see.

Since 2008 the City has adopted a Critical Areas Ordinance that is based on Best Available Science and a traffic impact fee.

In answer to Council inquiry, the City does not have any regulations for archaeology.

Comment Periods

The SEPA rules originally allowed a "pre-threshold determination" comment period to allow for public and agency comments prior to issuance of the threshold determination and required a "post-threshold determination" comment period after the issuance of the threshold determination. In the early 2000's the State adopted a number of land development code amendments designed to speed up and streamline the development review process.

The City's SEPA Code has long utilized the "pre-threshold determination" comment period and continues to use it today. Prior to Council's review of SEPA in 2008, that pre-decision comment period was 35 days. In 2008 Council approved a reduction in that pre-decision comment period down to 14 days. A large number of jurisdictions surveyed by staff do not provide the pre-threshold determination comment period.

Staff's recommendation is to follow the SEPA rules adopted by the Municipal Code and not provide the additional 14-day comment period. With regard to the optional DNS process which the City has adopted and never used, staff's recommendation is to use the SEPA rules as adopted by code and use the optional DNS process as intended.

Motion to grant Councilmember Elliott an excused absence unless he shows up. Lillquist Affirmed

Direct staff to prepare language to adopt SEPA rules, including the optional DNS process, but amending the SEPA process by adding a 14-day pre-threshold comment period and changing the DNS comment period language from "may" to "must." F. Miller

In answer to staff request for clarification, this motion does not apply to the "optional DNS."

Vote on motion.

Approved (Lillquist-no)

SEPA Exemptions

Council reviewed and discussed the SEPA exemptions as reviewed and recommended by Council in 2008 and chose to leave the Council recommended changes as follows:

1. Projects involving residential dwelling units – 9 units
2. Agricultural structures – 10,000 square feet
3. Office, school, commercial, recreational, service or storage buildings - 12,000 square feet; 20 parking spaces
4. Parking lots – 20 spaces
5. Landfills and excavations – 200 cubic yards

Quasi-judicial public hearing process and open and closed record public hearings

In response to new State requirements in the early 2000's the City adopted ECC Chapter 1.68 which established administrative processes for land use permits. On the whole those City processes meet the State requirements, although they will need to be updated and clarified during the code update process. However, some of the requirements in ECC 1.68 are either no longer needed or are not clearly addressed in the established application review processes for certain Boards/Commissions.

- There are referenced appeals made to a Hearing Examiner even though the City no longer uses a Hearing Examiner
- The Landmarks & Design Commission (LDC) serves two primary permit processing roles. If Council desires to have the LDC as a quasi-judicial body then the Commission needs to be set up that way.
- There is appeal language that is confusing and inconsistent.

Consideration should be given whether or not the LDC should be making final decisions or should instead be making recommendations that will then go to the final decision maker. The Code update will include recommendations on much clearer design review requirements which should not require interpretation and it will provide specific deviation criteria to be followed in considering a request to deviate from those design review requirements. Most jurisdictions surveyed have a recommendatory Design Review Commission that reviews the design and then makes recommendation to the decision maker. The LDC could serve in that recommendatory capacity or a separate body could be established and the LDC could focus on its historic preservation function. Or the design review could be a simple administrative decision that could be appealed.

Staff recommendation is for the LDC to serve in a recommendatory capacity or for the establishment of a separate body so that the LDC could focus on its historic preservation function. Alternatively, design review could be a simple administrative decision that could be appealed.

Hearing examiner

Most jurisdictions use a Hearing Examiner rather than rely on appointed citizen bodies, or even elected bodies, to make final decisions on matters that are governed by both legal and process requirements, as well as heavily interpreted through court decisions. The City once used a Hearing Examiner to handle certain design review appeals but found that there were not sufficient appeals to warrant the process. Kittitas County has utilized a Hearing Examiner for several years now with staff, applicants and the public being generally favorable to the results. The County includes the cost of the Hearing Examiner in its fee schedule which has larger fees for most quasi-judicial permit applications than the City's current fee schedule. Because use of the Hearing Examiner does not significantly reduce staff time involved in the permit process, an increase in the City's fee schedule would likely be warranted to meet the additional cost of a Hearing Examiner.

Councilmember Elliott arrived at 8:36 p.m.

Council consensus supports a hearing examiner process. The issue is how to frame the process and pay for it. Staff will review the list of quasi-judicial permits and present them for Council consideration.

Nonconforming uses

The traditional approach to non-conforming uses is to make them go away whenever possible. Some can be enlarged and some cannot. Some can be rebuilt within the footprint if destroyed by natural causes and some cannot. Ellensburg's Code is particularly confusing in dealing with non-conforming uses. In the code update project staff would like to explore options for developing a tiered approach to non-conforming uses that would allow some low-impact types to continue on and even be voluntarily replaced by new structures.

Council consensus supports exploring a different approach to non-conforming uses.

Shoreline Management Act

The Department of Ecology is now requiring that all jurisdictions with "waters of the State" must have a Shoreline Management Plan (SMP) that follows recently amended State Guidelines. For the City, the only "water of the State" is the Yakima River in Irene Rinehart Park. To date the City has opted to not develop a SMP and instead has utilized the County SMP to address proposed activities in the park. Ellensburg must now have a SMP by the end of 2013.

Because the City has so little jurisdictional shoreline (Irene Rinehart Park) and very little jurisdictional shoreline in the UGA it would be overly burdensome to City finances and staff time to engage in the development of a SMP. Staff has been in contact with Ecology and Kittitas County in an effort to explore the option for the City being included in the County's SMP update process, perhaps as an appendix to their SMP. Staff is working with the County to formalize an agreement for consideration by the elected bodies. The City will need to budget some money for 2012 to offset the costs associated with the City's piggybacking on the County project.

ADJOURN Motion to adjourn at 9:05 p.m.

F. Miller
Affirmed

Mayor

ATTEST:

City Clerk