



MEMORANDUM

Attorney-Client Privileged Communication

TO: Mike Smith, Community Development Director

FROM: Michael F. Connelly

DATE: October 24, 2013

RE: **Land Use Development Code Update Questions**

In response to your memorandum of October 9, 2013, I have the following comments:

1. Comments by Steve Lathrop.

ECC 15.210.020: My concerns with combining the annexation process with a project permit action are outlined in my previous memoranda. While I do not see any problem with processing the two together, I do think they should be in separate processes to ensure that both comply with the requisite state laws concerning timing, notice of public hearing requirements. The two can reference and/or be dependent upon the other. If a number of different permits are going to be consolidated the would insert language similar to the following:

“The review process may be separated or amended if necessary to comply with applicable laws as determined by the city attorney.”

You may also want to define “consolidation” and establish what project review procedures and appeals path will be followed if a number of separate matters are followed.

If there is not a Development Agreement you may want to indicate that vesting laws of the state of Washington will apply and not additional vested rights are provided due to the consolidation. If there is a development agreement you can address the issues of vesting within that agreement.

ECC 15.250.070: In the last paragraph concerning consolidation, I recommend that you provide the City as much flexibility as possible, making the consolidation permissive “may” instead of “shall.” This would be particularly important in that an annexation is permissive while approval of a project permit, if it complies with existing rules and regulations, is not. I would also add the word “with” in the third line of that paragraph after the word “consolidated.” I would also substitute another title for the term “annexation agreement.” If such an agreement is referred to with another title elsewhere in your code, I would use that title. The term “annexation agreement” is not found in the applicable statutes.”



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Under decision criteria (1)(a), I am usually hesitant to reference in the Comprehensive Plan land which is a guideline, not a regulatory tool, in the development regulations. If there is a portion of your development code that can be referenced, I think it would be cleaner. I would rewrite the last portion of the last sentence to read “regional retail commercial shall be a permissive use.”

You may also want to come up with some language explaining why regional retail commercial master site plan applications are singled out for preferential treatment.

With respect to the changes in your design standards, it is important to note that if you make them permissive, i.e. “may,” there is no way to enforce those standards without some specific enforcement language. If the Design Committee is given this discretion instead of the developer, be sure that you provide sufficient standards and guidance for the exercise of that discretion.

ECC 15.380.010: I think the change is appropriate. The key is to retain as much flexibility as you can under state law.

2. **Homeowners Associations.** There is always going to be some risk when you require a private party to maintain a facility. If you include the maintenance requirement and the formation of a homeowners association in any conditions of approval, you can then use the enforcement mechanisms you have for zoning violations to enforce any lapse. As you know this is not always successful. You could also have the developer enter into a contract with the City to construct and maintain the improvements and set forth the options for enforcement right into that contract. This would require a contractual relationship which may also have its own risks.

I would have any documents necessary to complete a project permit be approved by the City Attorney to ensure that the purpose and intent of the development regulations are met.

You may want to be more precise with the language in ECC 15.550.050. What is a parking cooperative? Are homeowners associations established pursuant to chapter 64.38 RCW the only types of associations you want to allow? I do think the definition of homeowners association contained in RCW 64.38.010 is appropriate to use.

3. **Direct and Legal Access.** I don't think the terms “direct access” or “legal access” are specific enough to accomplish your purpose. Historically, codes will require that lots be adjacent to rights-of-way or have the right of ingress and egress. You may want to require that a party not adjacent to a public right-of-way, with the right of ingress and egress to that right-of-way, establish that right as a matter of record in a manner that runs with the land and is irrevocable.