

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-11
DATE: November 15, 2007
SUBJECT: Cairncross and Hempelmann
Negotiate an Agreement for Land Use Attorney Services
CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to authorize the Mayor to negotiate a professional services contract with Cairncross and Hempelmann for land use attorney services to 1) assist the City with responding to the Compliance Deadlines on December 31, 2007 and January 28, 2008; and 2) assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.

STAFF RECOMMENDATION:

1. Discuss the pros and cons of retaining special legal council to assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.
2. Discuss the pros and cons of conducting an request for proposal (RFP) process to retain special legal council to assist the city.
3. Authorize the Mayor to negotiate a professional services contract with Cairncross and Hempelmann for land use attorney services to 1) assist the City with responding to the Compliance Deadlines on December 31, 2007 and January 28, 2008; and 2) assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.

SUMMARY:

There are several policy questions the Council should consider prior to making a decision.

First, should the City retain the services of a land use attorney who specializes in the Growth Management Act to:

1. Assist the City with responding to the Compliance Deadlines on December 31, 2007 and January 28, 2008; and

2. Assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.

Second, should the City retain the services of Mr. Andrew (Andy) Lane of Cairncross and Hempelmann to provide special legal council for land use matters or should the City use a competitive process (e.g. RFP) before making a decision.

A decision to hire special legal council comes with fiscal impacts. The City's municipal attorney, Tom Graafstra charges \$165/hour for litigation. The proposed fee for Mr. Lane is \$275/hour. There is a \$110/hour "premium" for special legal council. Mr. Lane's \$275/hour is a reduction from his normal rate of \$325/hour.

BACKGROUND:

Fallgatter V and Fallgatter VIII Compliance Deadlines

The Central Puget Sound Growth Management Hearing's Board has issued several Final Decision and Orders with compliance deadlines (deadlines for submitting required documents consistent with the Growth Management Act) ranging from December 31, 2007 for the TIP (Fallgatter V and Fallgatter VIII) to January 31, 2008 for the Capital Facilities Plan (Fallgatter IX).

The City must prepare and submit materials to the Growth Management Hearings Board for the compliance deadlines and have representation in front of the Growth Management Hearings Board.

This work must begin immediately.

Either the City must rely on the City Attorney, Tom Graafstra to prepare the compliance materials and represent the City at compliance hearings or the City must contract with another attorney for representation.

If the City Council decides to hire another attorney, there is a very short window of time to retain new legal council. The City must provide sufficient time for the new attorney to review the previous petitions for review, court cases and write the necessary documents to submit to the Board by the deadline.

Since November 15, 2007 is the last regular meeting of the City Council for November, a decision not to retain Mr. Lane will, by default, require Mr. Graafstra to represent the City unless the Council directs the Mayor to negotiate a contract with another attorney or firm.

Fallgatter IX

The most recent Final Decision and Order in Fallgatter IX also requires the City to do some extensive technical work to develop inventories of city facilities, identify the gaps between existing facilities and facilities needed to serve the City's future population.

This work needs to be coordinated with the City's land use element, facilities elements (transportation, parks, city facilities, storm water, etc.), adopted levels of service, and the Capital Facilities Plan.

The City has taken a piecemeal approach to developing a compliant comprehensive plan. In other words, the City has addressed each Final Decision and Order from the Board as a standalone issue. Although this approach has limited the budget expenditure, it has not always produced successful results. The City appears to be in a "do-loop" with petitions and appeals that wrap around one-another.

The staff proposal is to address these issues holistically to ensure that the City's comprehensive plan comes together in one seamless piece.

In order to achieve this result, staff is proposing to contract with a number of comprehensive plan specialists including:

- Planning consultant who can develop a compliance strategy, perform technical analysis, and oversee the work of other subject matter experts.
- Land use attorney who specializes in the Growth Management Act, and representation in front of the Growth Management Hearings Board
- Long-range planners from Snohomish County to peer review the work done by the planning consultant and ensure consistency with the Snohomish County Comprehensive Plan
- Capital Facilities Plan expert who can bring together the City's various planning documents and capital plans into a cohesive whole, and develop a viable and sustainable financing strategy.

While this is perhaps the most comprehensive approach to ensure success, it is also the most expensive approach requiring coordination between several planning professionals and legal experts.

City staff recommend retaining the services of Mr. Lane as the land use attorney to provide special legal counsel to the City during the upcoming compliance effort.

DISCUSSION:

City staff recommend contracting with a land use attorney to provide legal guidance to the City throughout the compliance effort. In the past, the City and its consultants have completed the technical work to address the GMHB Final Decisions and Orders. Tom Graafstra, the City attorney has done his best to represent the City in front of the Board using the materials provided to him by staff and consultants.

The proposed approach is to retain the services of a land use specialist who is familiar with the Central Puget Sound Growth Management Hearings Board and who will guide the efforts of the planning consultants at each step of the way to ensure the technical

work meets the depth and breadth requirements of both the GMA and the decisions of Board that will be used to review Sultan's work.

Washington cities or towns are not required to seek competitive bids for services such as special legal counsel. The City can however choose to use a competitive process such as a request for proposal process or the City can choose to request proposals from a few select service providers.

Cairncross and Hempelmann

City staff contacted attorneys who specialize in land use and the Growth Management Act. While a number of firms are capable of assisting the City, Mr. Andrew (Andy) Lane with the firm Cairncross and Hempelmann appears to have the background and experience that fits the City's current needs.

Mr. Lane has previously worked for the Central Puget Sound Growth Management Hearings Board. He was also a Prosecuting Attorney for Snohomish County and provided legal counsel to the County's planning staff to craft a compliant comprehensive plan for Snohomish County in response to several petitions for review filed by Jody McVittie with the Central Puget Sound Growth Management Hearings Board against Snohomish County.

City staff recommend the City Council authorize the mayor to negotiate a contract for services with the firm Cairncross and Hempelmann.

As an alternative, the City Council could direct staff to conduct a request for proposal (RFP) process to review proposals from various land use attorneys to represent the City. The City would miss the deadline for the compliance hearings in December and January, but the City would be able to select special legal counsel to assist with the City's comprehensive plan compliance effort in 2008.

FISCAL IMPACT:

Staff have requested a break down of deliverables, timelines, and costs from each of the consultants. A draft scope of work from Cairncross is provided to the City Council as a point of discussion and to give the Council and idea of the scope of work and costs. If the City Council decides to authorize the Mayor to negotiate a contract for services, a detailed breakdown of tasks, timelines, costs and deliverables will be included in the contract.

The work on the compliance deadlines for December 31, 2007 and January 28, 2007 should begin immediately. Mr. Lane anticipates this work will take approximately 32 to 51 hours at a cost of \$9,000 to \$14,000. Deliverables would include

- Compliance documents
- Proposal to integrate compliance deadlines
- Representation at hearings

If the City were to direct Tom Graafstra to represent the City, Mr. Graafstra would not have to take time to familiarize himself with the project since he has been representing the City throughout each of the petitions for review filed with the Board. In addition, Mr. Graafstra's hourly rate is \$110 less than Mr. Lane's rate.

For comparison, if you assume half the preparation time 16 hours x \$165/hour, the cost to the City is \$2,640. Representation at hearings would be estimated at \$660 (4 hours x \$165). This is approximately one-third the cost.

It is difficult to determine whether the City will have sufficient money in the 2007 budget to support the compliance effort. The City is not likely to receive billings from Mr. Lane until after January 1, 2008. However, the expenses were incurred in 2007, so they will be debited to the 2007 budget. The City's last budget amendment for 2007 will be December 13.

The City's 2008 budget includes \$200,000 in funding toward this effort. The budget is divided between the General and Enterprise Funds.

ALTERNATIVES:

1. Authorize the Mayor to negotiate a professional services contract with Cairncross and Hempelmann for land use attorney services to 1) assist the City with responding to the Compliance Deadlines on December 31, 2007 and January 28, 2008; and 2) assist the City with adopting a compliant comprehensive plan under the State Growth Management Act.

This alternative implies that the City Council is comfortable with the staff recommendation to retain the services of Mr. Lane and Cairncross for this work, and the Council is prepared to authorize the necessary funding.

2. Do not Authorize the Mayor to negotiate a professional services contract with Cairncross and Hempelmann for land use attorney services.

This alternative implies that the City Council is not comfortable with the staff recommendation to retain the services of Mr. Lane, and/or the Council is not prepared to authorize the necessary funding.

3. Hybrid Approach

There is the opportunity to separate the work on the compliance deadlines in December and January from the larger effort in 2008 to assist the City in adopting a compliant comprehensive plan.

In other words, the Council could choose to retain Mr. Lane to assist the City in responding to the Compliance deadlines on December 31, 2007 and January 28, 2008, and in the meantime either do an RFP process or seek other quotes from qualified land use attorneys for comparison at a later date.

RECOMMENDED ACTION:

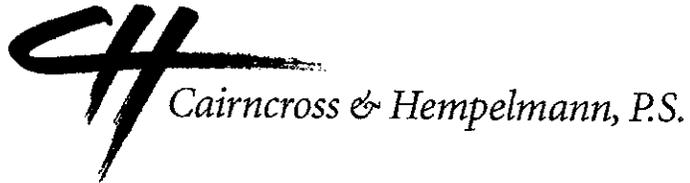
I MOVE TO AUTHORIZE THE MAYOR TO NEGOTIATE A PROFESSIONAL SERVICES CONTRACT WITH CAIRNCROSS AND HEMPELMANN FOR LAND USE ATTORNEY SERVICES TO 1) ASSIST THE CITY WITH RESPONDING TO THE COMPLIANCE DEADLINES ON DECEMBER 31, 2007 AND JANUARY 28, 2007; AND 2) ASSIST THE CITY WITH ADOPTING A COMPLIANT COMPREHENSIVE PLAN UNDER THE STATE GROWTH MANAGEMENT ACT.

ATTACHMENTS:

A – Draft Scope of Services

COUNCIL ACTION:

DATE:



November 2, 2007

VIA EMAIL

Deborah Knight, City Administrator
City of Sultan
319 Main St. #200
PO Box 1199
Sultan, WA 98294

Re: Proposal to Assist with GMA Compliance

Dear Deborah:

I am excited about the possibility of helping the City of Sultan resolve its Growth Management Hearings Board appeals and achieve GMA compliance. This letter provides an overview of the services Cairncross & Hempelmann can provide you, and a rough estimate of the probable cost for the first phase of work, as we discussed on October 24, 2007.

**GMA and Case Law Analysis of Capital Facilities
and Transportation Requirements**

The first step is to review and analyze relevant GMA provisions and determine the state of the law as interpreted by the Growth Boards and the courts. As you have experienced, the level of detail the Growth Board requires has increased over time. This analysis will also include discussions with CTED staff, as their support in our compliance efforts would be helpful. Once this analysis is complete, it will serve as guidance in analyzing the City's capital facilities and transportation elements, as well as levels of service and funding plans.

I would expect to have this analysis completed by mid-December of 2007. However, this schedule may change as necessary to guide any compliance action to be taken before the end of this year.

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Assist with Development and Revision of Capital Facilities and Transportation Elements

Once this analysis is complete, we can begin analyzing the existing capital facilities and transportation elements of the Comprehensive Plan. This will tell us the adequacy of existing inventories and adopted levels of service. This analysis sets the stage for initial considerations of the needs analyses, along with the possibility of revising levels of service. We would provide recommendations to the City and its planning consultants on how best to proceed with this next phase of work.

The timing of this stage of work would closely follow the initial analysis of the GMA and Growth Board decisions. I would expect to complete this work by the end of 2007 or early 2008.

Defending the City's Actions in Phase One

In this first phase of work, we would evaluate the merits of asking the Growth Board to coordinate the several compliance orders – if that has not already been done. This would establish the same compliance schedule on all compliance issues, avoiding the need to return to the Growth Board to argue different portions of these interrelated issues. When we met on October 24, I got the impression the TIP and Transportation Element may be ready to take back to the Growth Board on schedule (the current deadline for taking action is December 31, 2007). We would want to review the substance of this proposal to confirm it satisfies the GMA and the Growth Board. If it will be ready by December 31 and if it satisfies the GMA and Growth Board requirements, then it may be preferable to stay with the original schedule (at least for the TIP). In that event, we would represent the City in this proceeding.

Potential Cost of Legal Services

Providing an estimate of the potential cost of legal services presents challenges. Many variables prevent a 100% reliable estimate of the amount of work that will be required in any GMA compliance action. That said, we are keenly aware of the City's limited resources and believe this phased approach, dividing the entire GMA compliance process as several discrete projects, is a sensible way for the City to approach this project.

The analysis of the GMA and case law requirements for capital facilities and transportation planning will be one of the most critical tasks. I would expect this analysis and our assistance with developing and revising the Capital Facilities and Transportation Elements to require \$9,000 - \$14,000 of legal work. I would expect this phase of work before the Growth Board (i.e., requesting coordination of outstanding compliance cases and possibly presenting the TIP) to require \$10,000 - \$18,000 of legal work. As this effort progresses, I will be able to provide an estimate for the additional work necessary before the Growth Board.

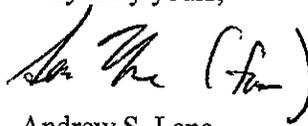
Deborah Knight
November 2, 2007
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Conclusion

I hope this proposal provides you with some idea of the cost of legal services for this phase of the City's GMA compliance efforts. We at Cairncross & Hempelmann are excited about the possibility of working with you on this project.

Please let me know if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "A. Lane" with a stylized flourish at the end.

Andrew S. Lane

ASL:sw