

PLANNING BOARD MEETING MINUTES

July 21, 2009

PLANNING BOARD MEMBERS PRESENT:

Frank Linth - Chairman
Steve Harris
Keith Arndt
Robin Shaw-Official Resignation
Jerry Knox

CITY STAFF:

Bob Martin, DCD
Carole Feldmann, Secretary

CALL TO ORDER: Linth calls the meeting to order at 7:03 PM

Pledge of Allegiance:

Roll Call: See Above

Changes to the Agenda:

Martin: Minutes of June 30, 2009 Joint meeting deferred to Planning Board Meeting on August 4, 2009.

Public Comments:

Mr. Jerry Gibson: Shares his concerns with potential conflict of interest in Planning Board Members making recommendation on some of the changes with the Comprehensive Plan, Permit Processes etc.. The Industrial Master Plan, building site procedures, I don't understand all of this completely and it gives the appearance of fairness issue, like something isn't right here. I don't think its right when someone on the planning board might benefit from a regulation that is being laxed. In D-2 Commerce before rooftops concept; it seems contrary to what has always been said with regard to building homes will bring commerce. Contractors pay 60% citizens pay 40% and I don't think that's fair. I think the Planning Board has a responsibility to the people who live in town now. The issue on the agenda with regard to the Terra-EX development (directs question to Steve Harris) and asks if he has anything to do with that? With regard to the senior living referenced the area has critical area issues and some other things a similar project was denied in the past. Trying to do it again appears off; a decision was made in the past and it was denied and now it's being attempted again. The comp plan calls for purchasing peoples land to run a road through or fix a creek and the property owners aren't aware of it. I think it is the responsibility of the City to notify these home owners when their properties could be subject to these easements. I am suggesting this idea of notifying the land owners be revisited. Questions the Reese Park re-zone as he understands it's a flood prone zone and doesn't understand why it would be rezoned for residential and changes with major development outside of the city instead of inside the city. These issues appear contrary to what he believes has been the previous goals of the city.

Planning Board Member Comments:

Martin: Informs Mr. Gibson he is available to speak with him and explain in more detail his questions and concerns with the issues he has raised. He feels he may benefit from the conversation as he appears to misunderstood the intent of the proposed changes.

Linth: Gives the background of planning board members and doesn't believe there are any hidden agendas or information from any of them. Believes they are well qualified and best suited to perform their roles on the planning board.

Gibson: It's the appearance of a conflict of interest, in relaxing some of the regulations it gives an appearance of personal gain.

Linth: We do research work and give recommendations to City Council we are not the decision makers.

Arndt: I know of no body like this that does not have people who are involved directly. Law guides the conflict of interest, the idea it may benefit or it gives the appearance of benefiting a planning board member it is in essence benefitting everyone else also.

Knox: I understand Mr. Gibson's point-of-view, my perspective on this is the amount of work needing to be done with regard to policy and policy matters, there has not been to my knowledge mention of a single applicant or developer in our discussion. We vote independently of each other after digesting the information, there are no private agenda's from members of the planning board as individual or not discussed and that has been my experience thus far. Recommends the board stay focused on agenda topics and not be diverted with issues that can be handled elsewhere.

Harris: Explains Terra-Ex is his company and doesn't hide it and plans to promote it, this is my hometown and my view is if I spend millions of dollars in this city my intent is to be a part of the board and learn as much as possible. I sat in the audience for two years listening; I have spent my own money to lobby for the City in Washington DC because I believe in this city. If an issue deals with my project in Sultan I will recue myself. My obligation is to this City I am president of the Skykomish Valley Indian Education Program which involves the City of Sultan. I invite you to attend all these meetings with planning board and council so you can understand fully what it is we do.

Martin: References Item D-3 as an example and explains how Harris will recue himself and that is how the appearance of fairness issue is dealt with. That is how it is dealt with it is dealt with by the law not by a person's feelings.

Approval of Minutes: (Audio File 4)

Arndt: Moves to accept the minutes of the June 2, 2009 meeting, 2nd by Harris; all ayes.

Linth: Advises Robin Shaw has resigned from the Planning Board and suggests Mr. Gibson apply for the vacant seat created by Robin Shaw.

HEARING and ACTION ITEMS

A-1 Planning Board Appointment to Permit Process Task Force (Audio File 9)

Martin: Has not confirmed the group will be created, but in the event it does the council would like to have a planning board member assigned to the task force. Gives planning board members an overview of the groups function and time commitments of whoever becomes involved. Requests planning board members choose amongst themselves of who would become a part of the task force.

Linth: Board recommends Jerry Knox be appointed to the task force.

A-2 Planning Board Work Plan Update

Martin: Proposed additions to the Planning Board Work Plan. The Planning Board established a work program in November 2008. The Work Plan has been periodically reviewed and updated since that time, including discussions at joint meetings with the City Council. The next significant work item on the current Work Plan is development of a replacement for Sultan Municipal Code (SMC) Chapter 16.10, Planned Unit Development District. The Long Term, High Priority group of topics are generally related to the coming 2011 Update of the Comprehensive Plan. The Council and Planning Board will be addressing these topics together as base-line policy decisions are made for revision of the Plan.

Recommends addition of the 2009 Docket items to the Work Plan. This recommendation is really an expansion of Mid Term, High Priority item #3; "Finalize Comprehensive Plan Docked recommendations." By adding the specific docket items to the Work Plan, the Board is only acknowledging the necessary follow-up to the docket process started in work item #3. Defers to Linth for the next item.

Linth: Would like to revise SMC Chapter 2.17 "Department of Community Development" to the Work Plan. This is proposed for the purpose of clarifying the accountability of members relative to the Mayor's appointment and attendance/absence policies: This was written during a time when the planning commission worked as a quasi judicial function and the practice no longer occurs as the planning board as gone through many changes. The issue is with absences from meetings specifically repeated absences.

Board Members discuss their role or lack thereof in this issue.

Martin: SMC 2.17.110 nothing in that section assigns that responsibility to the planning board; it is assigned to the Mayor. Over the course of meetings we record who is in attendance. It is not the function of the board to excuse or not excuse an absence.

Linth: Again is this something the planning board should handle? If so do we want to handle it at this time?

Knox: No.

Arndt: No.

Linth: Okay decision made.

Martin: A Board Member proposes adding review of the pending Sultan Water-Sewer Allocation Policy. The Policy has many implications for implementation of the Comprehensive Plan and Development Regulations. The proposal is that the Board asks the Council for time to understand these implications and make recommendations to the Council before the Council acts on the proposed policy, defers to Keith Arndt to further explain.

Arndt: In the spirit of full disclosure my father owned a piece of property that was transferred to a trust and I am currently the trustee of the property. Several years ago he attempted to apply for a planned unit development on the property and was denied because sewer was not available. Currently there is no application by my family regarding the property there is a tenant single house and a single barn and water is obtained from surface water. A year and half ago I suggested they take a look at the issue the

city lacks a water sewer allocation policy. This is the first I have seen of it since a year and a half ago with that in mind does anyone have an issue with me discussing this?

Gibson: Yes I do, you and your family may apply for this and gain from your input and decision on this topic. There is indirect gain from this issue, when you make a recommendation or support a topic.

Arndt: I understand the procedure is for the board to conduct a vote and decide whether there is an appearance of fairness issue with me discussing this or if I need to leave the room.

Martin: The Appearance of Fairness is the legal issue. The 3 levels of involvement are: the board responds to the challenge of appearance of fairness and have the board member excused from the room with no further discussion. The second is to have the board member introduce the topic before the board and then leave before the discussion begins. The third is the board member declares publicly on the record if they are able to conduct discussion and action on topic in a fair and unbiased frame of mind and reach a conclusion that is not swayed by their involvement in the activity. The Board then votes, if this is accepted and understood and subject to that declaration the board member gets to stay through all aspects of the discussion.

Arndt: Declares on the challenge raised: I feel the challenge is unwarranted because the discussion is on policy that affects the entire community and everyone in it. I have no applications pending, it's zoned for housing, it's got one house on it. It's an important issue to me, beyond that I have nothing to gain that any other community member would have to gain. And with that reason I disagree with the challenge. I therefore request to introduce the topic and introduce my concerns and make my argument why the planning board should take it up as a topic on the work plan.

Knox: Can anyone else on the planning board speak as competently as Keith Arndt would be able to do on this topic?

Linth: No one has the background Keith Arndt does on this topic.

Harris: This discussion is regarding a topic that will take place city wide it is not directed to a single property or anyone individual it well affects the whole community.

Knox: I take him at his word I have no doubts there. My question is this the proper forum to discuss the Sultan water-sewer allocation policy?

Linth: Before we get to that; we need to handle this challenge.

Knox: I don't have a problem with Mr. Arndt remaining.

Harris: This is only a work agenda, so no.

Linth: I have no problem either; Mr. Arndt is only one of many property owners who would be affected. Specifically what he will present to us will not sway any of us in his direction as we are all very independently minded individuals.

Martin: What I want to clarify is; your vote is whether Mr. Arndt can make a clear and unbiased recommendation not whether you can be swayed by his side of the story.

All Board Members stated they believe Mr. Arndt's recommendation will be clear and unbiased.

Martin: For the record the challenge as been registered and according to the procedures set forth in the "Appearance of Fairness Doctrine" Mr. Arndt has been allowed to remain on the seat and participate in the discussion. It was further clarified that future challenges can be made on this topic with regard to Mr. Arndt participating in discussions for recommendations but he has been cleared for tonight's discussion.

Linth: Raises the prior question by Mr. Knox is this the proper forum to discuss this topic?

Arndt: I think a decision to that question should wait until board members hear my introduction then make that call. The City has operated without a water-sewer allocation policy other than the vague language in the Comp Plan for several years. I see this as a link between policy issues we deal with in the comp plan as it ties to development regulations that we deal with as a planning board. Because of that position I think that we has a planning board are capable of examining it and making a proper recommendation to staff and city council with how to deal with it and that is why I have brought it up here. After further analysis of the document I believe there is serious exposure to litigation issues as a matter of policy both in state RCW and Case Law as well as conflict with our current development regulations. Those are all things we can reasonably examine. Why is this being promoted the way it is by staff? I hope to answers those questions and why they are taking the direction they are and why they are against this board from examining this as a policy issue. It relates to both the comp plan and development regulations. The policy portion of what they call the water sewer connection policy is actually language derived directly from the comp plan and in the same nature of vagueness on how to implement that. The foundation on what that procedure lies is from the comp plan. The reason we should address this topic is because it directly affects the comp plan and development regulations and its policy Because of the Fallgatter challenge the City rescinded the water-sewer allocation policy and it was never replaced except where it is referenced in the current comp plan.

Martin: The previous policy of water and sewer available to any developer on a first come first serve basis, which is contrary to the current policy of retail before rooftops, concentric circle, prohibition of development in the urban growth area. The current policy being discussed is to conform to those standards. The board will be dealing with those 3 policies, in the new comp plan. The water-sewer allocation policy will be addressed in the next comp plan.

Linth: What is being implemented now is going to work best with those 3 policies?

Martin: At this point it is a legal issue more than a policy issue.

Arndt: Again why is this being set up so the planning board is not a part of it?

Martin: Given all the other things planning board is being asked to do staff does not believe this is a priority at this point.

Arndt: To use the PI Zone as an excuse to detour the water-sewer allocation away from the planning board is not reasonable. I think there is something else going on here and hopefully you can enlighten me.

Martin: This is related to the issue of charging for holding those certificates, even though that issue is off the table. The city attorney is dealing with this. The case law is intricate in the extreme. If the board

starts in to the issue then the city attorney needs to be here. She is already doing that with the city council. It isn't an overt response to a developer's presence or lack thereof in any way.

Arndt: timing is suspect when a draft was required 1 year and a half ago.

Linth: Is this issue not primary enough to warrant the city attorney and planning board.

Martin: You have heard the discussion you now need to vote because I need to take your recommendations to the City Council on 07/23/09. Your vote or request would be that discussion of the proposed policy takes place at planning board prior to it being taken up by city council any further.

Arndt: What about staff and city attorney put together a draft to be being brought to the planning board.

Martin: When the plat renewals came in the obvious need to address this issue is how I became aware of it. But that has nothing to do with how it is constructed. The only thing that dictates the construction is the comp plan, Falgatter IV and existing case law. A vote is now required.

Arndt: Moves to request of city council it be included in the planning board work plan and no further action is taken on it at the council level until planning board has a chance to make a recommendation. 2nd by Harris. All ayes. (Audio File 21)

STAFF PRESENTATIONS AND DISCUSSION BY BOARD

D-1 Update on the Public/Institutional Zone

Martin: Fire District position the site is already purchased on Hwy 2 and Cascade View and constitutes a defacto prior vesting the city should honor for a fire station without a conditional use procedure, they have engaged legal counsel. Legal Council advised them the city has the authority to adjust zoning laws through the legislative process and such contention of prior vesting is a position they can choose to take. It was understood that position may not survive a court challenge, the city has no interest in being involved with a lawsuit between the city and fire district. The direction course of action was to work with the fire department and legal counsel and find a solution to this issue so the city can finalize adoption of the P/I Zone. The case in Washington Supreme Court Law called Noble Manner is liberal vesting law. The fire department files a land use action request which would vest them in a fire station on that property only under the current zoning regulations with no conditional use process. Under that law we are required to approve it. There would be no further disagreement on the topic with the Fire Departments objection to the public and institutional zone and it goes forward without further challenge to the City Council. We hope to have the Fire Department Land Use Application soon and can hopefully approve application is expected mid September. (Audio File 24)

D-2 Comprehensive Plan Docket 2009

Martin: Reviews the anticipated Comp Plan updates, which include 5 items and 1 proposed by Terra-Ex Land Developers. (1) Amend Comprehensive Plan Text to provide for Public/Institutional Zone as overlay in the Zoning Section of the Unified Development Code, Sultan Municipal Code (SMC) Title 16. This item will be brought to the Planning Board late in August or in September of 2009. (2) Amend the Comprehensive Plan Future Land Use Map to designate the north portion of Reese Park and the Water Treatment Plant site as Low-Moderate Density Residential, and provide Comprehensive Plan direction for zoning the properties as P/I on the official Zoning Map. (3) Assessment and possible Amendment of Comprehensive Plan Policies on Population and Economic Development, Section 2.2, Goals and Policies, General, 26/130 #12, #13, and #14. (4) Industrial Park Master Plan (Reference Document to Comprehensive Plan) at page 3.7, Development Review Process, Binding Site Plan.

(5) The Road Functional Classification used in the Comprehensive Plan does not correlate with the State and Federal classification systems. (6) Terra-Ex Land Group proposes a joint Comprehensive Plan Text and Map Amendment which calls for corresponding Amendments of SMC Title 16 (Unified Development Code) and the Official Zoning Map. (discussed in D-3 below)

D-3 2009 Comprehensive Plan Docket Item #6 Terra-Ex Land Group Comprehensive Plan and Unified Development Code Amendment Hwy 2 and Sultan Basin Road

Martin: Informs board members this is a 2 part request. (1) Amend the Comprehensive Plan and Unified Development Code to change Plan Designation and Zoning at the intersection of Hwy 2 and Sultan Basin Road from Economic Development and Moderate Density residential to Highway Oriented Development. Amend the text of the Highway Oriented Development Zone to permit High Density Senior-Dedicated Housing. (2) Terra-Ex has submitted a Boundary Line Adjustment Application to reconfigure several existing lots that comprise their ownership and is designing a development proposal that will accommodate several commercial businesses in a commercial park setting with joint parking and access. The proposed Amendment also requests a change to the text of the HOD Zone to allow High Density Senior-Only Housing as a permitted use. Staff agrees with the proposal that the best plan designation and zone for the property is HOD. There is little benefit to the community or the property owner from expecting that this site will or should be used for industrial development. The signalization of the intersection, the position and elevation looking out to the river and mountains to the south, and the position relative to downtown all indicate a desirable site for a new category of quality commercial development in the community. The proponent will need to expand the information provided to support the proposal before it is able to be fully considered by the Board. However Staff sees no essential difficulty with the proposal or compiling the defense necessary to support it. The second part of the proposal is to amend the text of the HOD Zone to provide for High Density Senior-Only Housing. The Comprehensive Plan is based on a series of complicated interacting population, land capacity allocation, and utility capacity equations. To open an entire Zone to High Density Residential Development that was not previously considered in these equations as a source of population for the community has implications throughout the plan. To provide a valid application for this change, the proponent will need to address the full range of implications for the Plan. This would start with the number of acres in the HOD Zone, the population accommodated based on a percentage of the Zone being used for High Density Residential Development and moving on to whatever adjustments this population calls for in other areas/zones in the community to remain within the various limits established by the Plan. Without too much additional work, the applicant can provide the information necessary to support the map changes proposed. This should be approached from the perspective of expanding the general support for the project as a concept and providing facts, findings, and conclusions that the Board could use to support the requested change. With regard to the text change, there is significant additional work necessary. The applicant may choose to do that on a different schedule than the map change, or may consider alternatives of their choosing. As presented, there is insufficient information or support for the text change.

D-4 2009 Comprehensive Plan Docket Item #4 Amendment of industrial Park Master Plan Binding Site Plan Procedure

Martin: Reviews the need to amend Industrial Park Master Plan to remove policy requiring that all projects within Industrial Park Master Plan designation are approved through the Binding Site Plan process. The Binding Site Plan Procedure is one of those Development Standards that is called for in policies of the Industrial Park Subarea Plan. The Binding Site Plan Procedure is authorized by RCW

58.17.035 and 58.17.040. As stated in the statute, the purpose of this procedure is to provide developers with an alternative means of creating lots for commercial, industrial, and condominium developments. The IPMP, the BINDING SITE PLAN Section calls for all development within the IPMP to be subject to the BSP procedure as provided in SMC Chapter 21.06. This is a classic misuse of the BSP procedure as discussed above. Taken literally as written, a small scale single-use development on an existing lot with no land divisions would be required to go through the BPS Procedures that are intended both in the State Statutes and in the SMC to be applied to significant projects with multiple uses and land divisions. This is an unwarranted and unnecessary restriction and cost to both developers and the community. The BSP process provided in RCW 58.17 was not intended to be an impediment to effective and streamlined processing of permits and it is not properly imposed as a site design tool where there are no proposals for land division. The process was provided as an alternative to developers and municipalities to get around the problem of "isolated" lots in commercial and industrial developments. Staff recommends that the Planning Board undertake Amendment of the IPMP provisions discussed above to eliminate the requirement for BSP Procedures on all developments within the IPMP jurisdiction. The Board should discuss the alternatives provided below and provide Staff direction for construction of language to be brought back to the Board for consideration according to the Level IV Procedures of the Public Participation Procedures for Amendments to the Comprehensive Plan.

PUBLIC COMMENTS ON AGENDA ITEMS ONLY

None

Board Member Comments:

Arndt: Thanks the board for allowing him to be a part of the water-sewer allocation policy.

Harris: Thanks Bob Martin for all the work he puts into these meetings.

Arndt: Moves to adjourn, 2nd by Knox, all ayes.

Meeting adjourned at: 9:45 PM