



PLANNING & DEVELOPMENT SERVICES

DALE PERNULA, AICP, DIRECTOR

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Memorandum

To: Board of Commissioners & Planning Commission

From: Dale Pernula, AICP

Date: February 1, 2013

Re: Responses to Comments on Planning & Land Use Legislation Ordinance

The following are summary responses to comments received so far related to the proposed Planning and Land Use Legislation Ordinance. In general, the Department and the Board are working hard to fix problems that have been identified over the years within the Planning Commission and with the process for adopting development regulations and comprehensive plan amendments.

We acknowledge that we should have provided more time than the 10 days required by statute to allow for public review and understanding of the proposal. The Board acknowledged this at its public hearing on January 22, and extended the comment period to February 4. The Board also directed the Department to present this proposal to the Planning Commission at its February 5 meeting for discussion. I expect the Board will take the time necessary to ensure the public's questions are answered and the proposal is better understood before taking any action.

The proposal is not an attempt by the Department to constrain the Planning Commission; in fact, the ordinance contains many new requirements on the Department. It is intended to clarify language, roles, and processes so that the legislative process works more smoothly with earlier and more continuous public involvement. I urge the public to carefully review the actual text of the proposal. A clean copy (without strikethroughs) of the proposed ordinance is now available on the county website, which may be easier reading.

Comment: The Planning Commission is required to review and approve any changes to Skagit County Code Title 14. The proposal should go through the Planning Commission for a recommendation before approval by the Board of County Commissioners.

The Planning Commission reviews and issues recommendations on proposals to amend “plan, plan amendment, or development regulation.” SCC 14.08.080. That includes most of what’s in Title 14 (because that’s where development regulations are), but not all of it. (It also includes many items, like the Comprehensive Plan, that are not contained within Title 14.) The Board has asked for the Planning Commission’s comments on the proposal because it affects the Planning Commission, but the Planning Commission does not need to approve legislative matters other than plans and development regulations.

Comment: The proposal strengthens the power and control of the Planning Department.

Disagree. No commenters actually pointed to any specific provisions of the ordinance that would do that. In fact, the ordinance specifically constrains the Department in the following ways:

- The Department cannot propose new development regulations or plan or policies without Board approval (proposed SCC 14.08.060(1)).
- Any person may propose new development regulations, and the Board must consider them (proposed SCC 14.08.060(1)).
- At the very beginning of a project, the Department must publish a webpage describing the issue and the Department’s proposed approach to the project, and provide public notice (proposed SCC 14.08.070(2)).
- At the beginning of a project, before text is drafted, the Department must consult with the Planning Commission and provide an opportunity for discussion of approaches and alternatives (proposed SCC 14.08.070(3)).
- The Department’s requirements for a staff report are significantly expanded, and the date a staff report is required is specified (proposed SCC 14.08.070(5)).
- The Department’s requirements for providing notice to the public are significantly expanded, more detailed, and updated to include electronic notices (proposed SCC 14.08.210)).
- The proposal explicitly grants the Planning Commission authority to extend a public hearing or request another public hearing (proposed SCC 14.08.080(1)(b)). The proposal also specifically authorizes the PC to continue their deliberations to another meeting (proposed SCC 14.08.080(2)(c)).
- The Department must consult with the Planning Commission chair before creating the Planning Commission’s meeting agenda (proposed SCC 14.02.120(2)(b)).

Comment: The proposal places the Planning Commission in an inferior position to PDS.

Disagree. Both the Planning Commission’s existing bylaws and the State Planning Enabling Act, RCW 36.70.040, states that the Planning Commission’s mission is to “assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto. To this end, the planning commission shall conduct such hearings as are required by this chapter and shall make findings and conclusions therefrom which shall be transmitted to the department which shall transmit the same on to the

board with such comments and recommendations it deems necessary.” The proposed ordinance quotes this same provision, and doesn’t change that role.

Comment: Skagit County should retain use of the State Planning Enabling Act. It is not clear that the County can rely on the state constitution for planning legislation.

The state constitution (Article XI, Section 11) clearly gives counties authority to adopt “police, sanitary, and other regulations.” “Police powers” is a legal term of art that includes zoning regulations. Other jurisdictions already rely on this constitutional provision, instead of state legislation like the Planning Enabling Act, to authorize their zoning ordinances. Municipal attorney Phil Olbrechts agrees and has advised that counties (including non-charter counties) can rely on the state constitution instead of the other land use statutes for zoning.

State law contains at least two statutes that counties *may* use to setup a Planning Commission — RCW 36.70, “the Planning Enabling Act,” and RCW 35.63. Skagit County currently uses the Planning Enabling Act. Which authority a county uses has nothing to do with whether or not a county is a charter county—both Clark County and Thurston County (neither of which are charter counties) operate under RCW 35.63 instead of the Planning Enabling Act.

Using authority other than the Planning Enabling Act would give the County greater flexibility in setting up its Planning Commission—such as creating three-year staggered terms and changing the appointment process. If the County opts to continue under the Planning Enabling Act, it must follow each aspect of it, including having four-year terms for Planning Commissioners. Both Kitsap County and Lewis County (neither of which are charter counties) have recently re-established their Planning Commissions, as this proposal would do, to re-establish staggered terms and make other changes.

Comment: The County should consult with outside attorneys.

We did consult with outside counsel—specifically Phil Olbrechts, who works as hearing examiner for many different jurisdictions, writes the Planning Advisor column for MRSC, and made a presentation on the topic of Planning Commission and legislative process at a planning conference last year. We showed him the draft text, and he commented positively on the proposed ordinance.

Comment: The proposed ordinance would eliminate the Planning Commission’s ability to set its own bylaws.

Disagree. The proposal, at SCC 14.02.130, expressly allows the Planning Commission to adopt special rules of order to govern its meetings. Current code, at SCC 14.02.080(6), allows the Planning Commission to adopt “procedural rules,” but requires those rules to be approved by the Board of Commissioners. The proposal therefore gives the Planning Commission *more* authority to make rules to govern its meetings.

Comment: The proposed ordinance would eliminate the ability for the public to provide comments on the record.

Disagree. There is no basis for that claim, and no commenter provided a citation to any part of the proposed ordinance that would make such a change. The Growth Management Act requires “early and continuous” public participation, and the proposed ordinance would make several changes to expand public notice and expand Planning Commission involvement in the drafting of development regulations.

Comment: Planning Commissioners serve at the pleasure of the Board, so the Board of Commissioners can simply adjust their terms to accomplish term staggering.

Disagree. Current code (SCC 14.02.080(2)), the Planning Enabling Act (RCW 36.70.110), and the proposed ordinance (SCC 14.02.110(4)) all require that a Planning Commissioner have committed “inefficiency, neglect of duty, or malfeasance in office” in order to be removed.

Comment: Planning Commissioners don’t need continuing education, just common sense.

Disagree. Land use law is complex and Planning Commissioners need training to be at least familiar with the concepts and the various overlapping statutes, how to comply with the Open Public Meetings Act, how and when it’s necessary to avoid ex parte communications, and how to run their meetings efficiently. Some Planning Commissioners have attended the free, annual “Short Course” trainings provided by the State Department of Commerce and spoken favorably about the usefulness of the presented material.

Comment: The proposed ordinance would change the way subdivisions are regulated.

Disagree. The proposed ordinance deals only with land use legislative proposals. It does not affect the way permits or land divisions are processed.

Comment: The proposed ordinance would eliminate the requirement for a staff report and map for a comprehensive plan amendment.

Disagree. In the proposed ordinance, see SCC 14.08.070(5), which fully describes the requirement for, and content of, a staff report for proposals, and SCC 14.08.070(4), which requires the Department to include any relevant maps in a proposal.

Comment: The proposed ordinance changes the way the Planning Commission makes recommendations.

Disagree. We are not aware of any provisions in the proposal that have this effect, and commenters did not specify any.

Question: Proposed section 14.08.090(5) is deleted and replaced with the word “Reserved.” Does this mean the Board “reserves” the right to ignore the Planning Department and do what it wants?

Legal drafters use the word “reserved” when a code paragraph is deleted so that the numbering of later paragraphs doesn’t change. That can be important if readers are used to seeing a paragraph of text appear at a specific paragraph number. Deleting SCC 14.08.090(5) makes the code simpler, shorter, and more readable, but doesn’t change the way the Board handles land use legislation. The options the Board has in paragraph 14.08.090(2)(b) of the current code, are all the same as the options the Board has in paragraph (5)(c). It is therefore not necessary to state all those options twice. The basic principle is that if the Board wants to adopt a regulation that is significantly different than what was released for public comment, the Board must provide additional opportunity for public comment before moving forward. The proposal wouldn’t change that.

Comment: The proposal doesn’t include a requirement for timely transmission of PDS materials to the Planning Commission.

The proposed ordinance would, in fact, require that proposals and staff reports be completed and made available on the PDS website at the same time as the public comment period is opened, which would be at least 14 days before the public hearing. See proposed SCC 14.08.220(1)(a) and (2)(a) and SCC 14.08.070(5) and (6). I have recognized that this has been a problem, and I have directed my staff accordingly. We could also

draft a provision that require the Department to provide other documents (such as drafts that are not yet scheduled for any action by the Planning Commission) to be provided seven days ahead of PC meetings.

Comment: No Planning Commission input was solicited during development of the proposal.

Disagree. The Board of Commissioners sent a letter to the Planning Commissioners with a list of 17 questions soliciting their input into possible reforms of the Commission and the legislative land use process in January 2012. The Planning Commission discussed that letter at two subsequent meetings, and could have taken more time to discuss it if it had wanted. It received a briefing on the content of the proposed ordinance at its March 2012 meeting. It received another briefing on the proposed ordinance at its January 2013 meeting, received a preview copy of the proposal on January 8, and comments that Planning Commissioners provided were incorporated into the proposal that was released for public review on January 11.

Comment: The proposal dilutes citizen input into the planning process.

Disagree. We are not aware of any provisions in the proposal that have this effect, and commenters did not specify any.

Comment: The County should not be a member of ICLEI—Local Governments for Sustainability.

Skagit County is not currently a member of ICLEI, and ICLEI has nothing to do with the proposed ordinance. Skagit County was a member of ICLEI from 2009 to 2011. We did not renew our membership for 2012 or 2013. We were members in order to use their greenhouse gas inventory software. Northwest Clean Air Agency grants paid for our membership fee each year.

Comment: The proposed docketing exceptions for shorelines amendments is a concern.

The proposed SCC 14.08.050 references the docketing exception provision allowed by GMA, which includes the shoreline provision contained in paragraph (2) that the proposal deletes. The section is now shorter and simpler.

Comment: There was no notice in the newspaper about the ordinance.

The Commissioners' office did purchase a legal notice in the Skagit Valley Herald, as is procedure for notice of public hearings, which was published January 10.

Comment: The proposal reduces public notice and the Planning Department should notify landowners by mail of proposed regulations.

The only expressly required notification of new planning projects under current code is publishing a legal notice in the newspaper. See current SCC 14.08.080(3) and .070(9). The proposal would expand required notice provisions to include notice via e-mail list and publishing to the county website. See proposed SCC 14.08.210. The Planning Department currently mails property owners within 300 feet of a site-specific proposal, such as a site-specific zoning change. It also sends mailed notifications for big projects, such as comprehensive plan updates and the shoreline plan update. Each such mass mailing, even if only a postcard to 25,000 landowners, costs in excess of \$7,000.