CITY OF ELLENSBURG
Minutes of Council Meeting, Special Session
June 6, 2007

Date of Meeting
7:00 p.m.

Time of Meeting
Council Chambers, 501 North Anderson Street

Place of Meeting

Councilmembers Present: Barry, Bassett, Lillquist, Perrie and Mayor O'Brien

Excused Absence: Councilmembers Carlson; Niner

Others present were City Manager Barkley; City Attorney Pidduck; Community Development Director Witkowski; Carol Morris, Association of Washington Cities Land Use Attorney; Deputy Clerk Keno; and approximately seven members of the audience.

LAND USE ISSUES - DISCUSSION OF PROPOSED DEVELOPMENT REGULATIONS REGARDING RETAIL DEVELOPMENT

The purpose of the special meeting is a discussion with the Association of Washington Cities' (AWC) Land Use attorney, to receive her advice on the City's proposed development regulations and site plan ordinance. Carol Morris, AWC's land use counsel, represents the Association's member cities and advises them on land use matters. Mayor O'Brien announced no time will be allowed for public input during the meeting.

Larry Nickel objected to the absence of public input. City Attorney Pidduck advised Council it could proceed with the meeting as indicated.

Carol Morris, AWC's land use attorney, spoke about the vested rights doctrine. Washington already has one of the most liberal vested rights doctrines in the United States. She explained what other states have and discussed the rationale for local governments. She reviewed a list of reasons why the vested rights provisions as amended by the developer in the proposed ordinance is something the City should not consider. Ms. Morris recommends the City not adopt vested rights provisions in its Code with respect to site plans.

Ms. Morris has never had a developer come to a City she represents and request this type of provision be included in the city's code. If the developer wants vested rights to attach to the site plan he can submit a building permit application with the site plan application. If Ellensburg were to adopt a vested rights provision for site plan applications, Ms. Morris believes the City will have great difficulty trying to figure out what the applicant is vested to. The City would be making decisions on adverse environmental impacts before knowing what the project entails. Should the City be sued by a developer on a land use matter Ms. Morris will defend the City through the Association of Washington Cities. The applications associated with the development run with the property. The proposed vesting rights provision will cause a significant amount of confusion and potential litigation for the City.
Council asked questions of Ms. Morris. The differences between subdivision plans versus site plans were discussed. Preliminary plat criteria submitted for approval is much more comprehensive than a site plan and includes adequate provisions for water, sewer & parks, etc. A site plan shows the location of buildings, access on site-maybe parking. However, it does not designate water, sewer or adequate other public facilities for the site. The subdivision plan and site plan are totally different; the materials needed to complete and process a project for approval are lacking with a site plan. Under the proposed language, the City would be asked to evaluate environmental impacts based on incomplete information.

Writing the ordinance for the highest possible impact was discussed. The difference between a binding site plan and a site plan was discussed. Binding site plan applications vest. The City currently does not have a binding site plan provision in its code. The binding site plan process involves land that will be sold. Should the City decide to allow the site plan language it should not allow the vesting language. The building permit application will have the information necessary to do the analysis. The City cannot force a binding site plan on a developer. Vested rights provisions only benefit developers-not cities or counties.

A development agreement will provide more information from the developer to advise the City what the development will look like. A development agreement is a substantial piece of work; Ms. Morris does not recommend a development agreement for this type of site plan. Council needs to recognize it is already giving the developer the best vested rights doctrine outside of three other states. The developer’s solution to vested rights is to submit a building permit with their site plan application. The developers/individuals asking today may not be the developers/individuals the City will deal with in the future. Interpretation could be difficult. The City can rely on case law and court decisions in Washington.

Council questioned staff about preliminary plats.

Ms. Morris suggested Council consider the master plan application process. She has never seen a City agree to the vesting language being proposed by this developer. Cities who have done so do not understand the Vested Rights Doctrine. Preliminary plats, building permits, and conditional use permits vest; site plans do not vest unless you allow them to vest. The City should not change the law as it exists in the State of Washington.

Council directed staff to work with the developer’s attorney to try and reach a solution acceptable to both parties. Staff advised Council of the need to begin the SEPA process tomorrow, June 7, on the proposed ordinance in order to hold the public hearing on June 25. Staff questioned whether Council wished to delay the public hearing due to the vesting issue. Council discussed its intent with staff. Ms. Morris advised against eliminating the site plan process in place of the master plan process. In answer to Council inquiry, a SEPA can be done on a master plan ordinance following the site plan ordinance. Any master site plan ordinance proposed should be open as to use. Council consensus was to move forward with the June 25 public hearing.
ADJOURN Adjourn at 8:43 p.m. Barry

Affirmed

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Mayor

ATTEST: ____________________________

City Clerk