



Date: October 27, 2016

To: City of Carnation City Council

From: City of Carnation Planning Board

Prepared by:

Tim Woolett, City Planner

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Re: **RECOMMENDATION OF THE PLANNING BOARD** in Consideration of Amendments to Chapter 15.09 and 15.10 CMC Relative to the Site Specific Rezone Process

I. INTRODUCTION

The matter presented to the Planning Board for consideration is a series of proposed amendments to Chapters 15.09 and 15.10 CMC. The following is a brief summary of the purpose and effect of the proposed code amendments, and explanation of the procedural requirements for the City's consideration and approval of site-specific rezones under state law.

SEPA: This procedural action is categorically exempt pursuant to WAC 197-11-800(19) (a) & (b).

II. ANALYSIS

A. Site-Specific Rezone.

Site-specific rezones that are not dependent upon and processed concurrently with a corresponding Comprehensive Plan land use map amendment are "project permits" that are properly processed in accordance with the City's Regulatory Reform procedures as codified at CMC Chapters 15.09 - 15.11 [*ref. CMC 15.100.010(B)*].

A "rezone" is an amendment that changes the official designation of property on the City's official zoning map. Rezones are classified under the City's code as either "area-wide" or "site-specific" depending primarily upon the size of the area and/or the number of parcels affected.

An area-wide rezone is defined as the zoning redesignation of a multi-parcel or otherwise large area:

"Area-wide rezone" means an amendment to the zoning map that addresses the zoning district classification of five or more tracts of land in separate ownership or any parcel of land (regardless of the number of lots or owners) is excess of fifty acres [*CMC 15.100.005*].

In contrast, a site-specific rezone is a redesignation of a particular site, and is much smaller in scope:

“Site specific rezone” means the amendment of the zoning map, and/or the comprehensive plan land use map, to change or amend the zoning designation of a specific parcel or site or small number of associated parcels or sites, not otherwise constituting an area wide rezone [CMC 15.100.005].

The City’s regulations generally track the state law definitions of these terms.

Site-specific rezones are further classified under state law depending upon whether the proposal is consistent with the municipality’s comprehensive plan or whether the rezone would require a comprehensive plan amendment in order to be approved [RCW 36.70B.020(4)]. Site-specific rezones that do not require an amendment of a city’s comprehensive plan are considered “project permits” under state law, and for legal purposes are treated similarly to other site-specific development proposals such as plats, conditional use permits, building permits, etc. The City’s procedural regulations reflect this distinction.¹

Many site-specific rezones are also quasi-judicial in that they involve the determination of the specific rights, obligations, etc. of particular landowners through an adjudicative hearing. For this reason, site-specific rezones of this type are subject to additional procedural safeguards including the Appearance of Fairness Doctrine, which are collectively intended to protect the due process rights of the parties involved [See *Chapter 42.36 RCW*].

B. Purpose of Proposed Code Amendments.

Under state law, the final decision to approve a site-specific rezone is a non-delegable function reserved to the municipality’s legislative body (the City Council), must occur by ordinance, and must involve a pre-decisional public hearing. The required hearing may be held before the City Council itself or it may be delegated to a subordinate hearing officer or body such as a hearing examiner or advisory board.

The Carnation Municipal Code contains potentially conflicting provisions regarding the body/officer designated to conduct the pre-decisional hearing for site-specific rezones. CMC 15.100.070 and CMC 2.78.110 both indicate that the hearing on site-specific rezones should be held before the City’s Hearing Examiner, while CMC 15.09.020, CMC

¹ CMC 15.100.010(B). Site-specific rezones that are not dependent upon and processed concurrently with a corresponding Comprehensive Plan land use map amendment are “project permits” that are properly processed in accordance with the City’s Regulatory Reform procedures as codified at CMC Chapters 15.09 - 15.11

15.09.050 and CMC 15.10.010(A)(3) collectively classify site-specific rezones as “Type V” project permits, implying that the City Council holds the hearing.

The proposed housekeeping amendments to Chapters 15.09 and 15.10 CMC are intended to resolve this internal conflict and clarify the procedural requirements for site-specific rezones.

C. Content of Proposed Amendments.

The proposed ordinance creates a new project permit type (“Type IVA”) for site-specific rezones that are not processed concurrently with a related comprehensive plan amendment and which are thus quasi-judicial rather than legislative. Under the amendments, Type IVA project permits would be subject to an open-record hearing before the Hearing Examiner, who forwards a written recommendation to the City Council. The Council would then conduct a closed-record review proceeding to consider the Examiner’s recommendation and would issue a final decision on the proposed rezone.

Site-specific rezones that are not consistent with the City’s Comprehensive Plan would continue to be reviewed and processed under the City’s standard procedure for other legislative proposals—i.e., Planning Board review followed by City Council adoption.

The proposed amendments reflect a fairly standard procedure for processing site-specific rezones. While the City may designate the City Council as the hearing body for site-specific rezones, this approach in practice can implicate concerns arising from the Council’s political role and its general unfamiliarity with the various legal considerations surrounding the quasi-judicial decisional process. Delegating the pre-decisional hearing and recommendation function in this context to a professional hearing examiner minimizes the City Council’s exposure and reduces the likelihood of a procedural mishap that could jeopardize the City’s ultimate decision on a site-specific rezone application.

D. Prohibition Against Multiple Public Hearings.

For legislative proposals (e.g., proposed amendments to the City’s development regulations or its Comprehensive Plan), there is a no limit to the number of public hearings the City may conduct before voting on the matter. The Planning Board and the City Council may accordingly choose to hold multiple hearings at each level of review for proposals of this type.

In contrast, the state Regulatory Reform Act (Chapter 36.70B RCW) imposes a strict limitation on local public hearings for “project permits”, including site-specific rezones that are authorized by a city’s comprehensive plan. For proposals of this type, the City is limited to holding a single open-record hearing and—if the City’s regulations provide for

it—a single closed-record appeal [RCW 36.70B.050(2)]. The purpose of this requirement is to expedite the local land use development process and prevent applicants from the arbitrary and wasteful permitting delays that would result from multiple hearings on the same development application. The City's local procedures for project permits codified at Chapters 15.09 - 15.11 CMC reflect this limitation.

III. FINDINGS

- A.** The proposed housekeeping amendments clarify the City's procedures for processing site-specific rezone applications in a manner that is compliant with state law and consistent with the City's current practice and intent as expressed in Chapter 15.100 CMC. The attached ordinance for your review creates a new project permit type ("Type IVA") for site-specific rezones that are not processed concurrently with a related comprehensive plan amendment and which are thus quasi-judicial rather than legislative. Per the attached draft, Type IVA project permits are subject to an open-record hearing before the Hearing Examiner, who then forwards a written recommendation to the City Council. The Council would conduct a closed-record review proceeding to consider the examiner's recommendation and would then issue a final decision on the proposed rezone.
- B.** In their public meetings of June 28, 2016 and August 23, 2016 the Planning Board evaluated the proposed changes described herein concluding with a recommendation to proceed to public hearing [CMC 15.100.030 B.]. The planning board shall review the request and shall hold at least one public hearing matter [CMC 15.100.030 C.].
- C.** On September 27, 2016 the Planning Board did hold a duly notice public hearing on the matter of proposed amendments as provided herein.
- D.** In accordance with CMC 15.100.030 D., following the public hearing upon a request or petition, the planning board shall make one of the following written recommendations to the council:
 - 1. Approval of the legislative proposal;
 - 2. Approval of the legislative proposal as modified or amended by the planning board;
 - 3. Denial of the legislative proposal;
 - 4. Remand the proposal with a request for additional information, studies or reports deemed necessary to fully analyze and consider the proposal and its associated impacts.

- E. In making their recommendation on a proposal for amendment or revision to the city's development regulations as provided above, the planning board shall consider the following criteria [CMC 15.100.030 E.2.]:
- a. Consistency with the Growth Management Act (Chapter 36.70A RCW);
 - b. Consistency with existing goals and policies of the comprehensive plan;
 - c. Whether the proposal adequately implements the goals and policies of the comprehensive plan;
 - d. The cumulative impact of the proposed amendment upon the health, safety, and welfare of the city;
 - e. The probable significant adverse environmental impacts of the proposal, if any.

IV. RECOMMENDATION

Based on its *FINDINGS* that the proposed the proposed amendments to Chapter 15.09 and 15.10 CMC relative to the Site Specific Rezone process:

- a. Are consistent with the Growth Management Act;
- b. Are consistent with the goals and policies of the comprehensive plan;
- c. Will not hinder or otherwise affect the implementation of the goals and policies of the comprehensive plan;
- d. Will have no impact upon the health, safety and welfare of the city; and
- e. Will have no probable significant adverse environmental impacts as a result of the proposal;

The Planning Board hereby forwards a recommendation of **approval** to the Carnation City Council by 4 – 0 affirmative vote.

Signed this 27th Day of October, 2016



Ernest Fix, Chairperson
City of Carnation Planning Board

Attached:

Exhibit A – Draft Amendments to Chapter 15.09 and 15.10 CMC Relative to the Site Specific Rezone Process

