

JOHNSON: We have a motion and second. Roll call, please.

ROLL CALL VOTE

SWINDELL: AYE

TORRES: AYE

BARCA: I'd like to say for the record before I vote that this particular stretch that seems to be of real issue on 127th is substandard to the rest of 127th and it comes out on the intersection with 36th as a high impact intersection. I do think the County could look at doing a little bit and throw this neighborhood a bone about the idea of keeping the sight visualization available and to not have the problem of people parking on there and trying to maneuver around. That being said, I believe the applicant has met the criteria and I vote **YES**

JOHNSON: AYE

JOHNSON: Motion is passed 4/0 and we move on. Can we take -- do you need like five minutes? You good. Okay. We have a request to take a five-minute quick break. Okay. So we're going to take like a five-minute quick break and then come back here.

(Pause in proceedings.)

PUBLIC HEARING ITEMS, continued

B. CPZ2019-00029 Development Agreement Procedures - The proposal will consider amending the Clark County Code to add new Section 40.550.030 to create consistent process and criteria for review of proposed development agreements.

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JOHNSON: Okay. We're back. So we're moving forward with CPZ2019-00029, this is the Development Agreement Procedures; is that correct?

HERMEN: Correct.

JOHNSON: Okay. Staff.

HERMEN: So for the record my name is Matt Hermen, H-e-r-m-e-n, with Public Works. Today I'll be presenting CPZ2019-00029. This is a Title 40 code amendment, not a comprehensive plan amendment proposal.

So through my presentation I'll hit these nine different topics and take questions with you, from you.

So the purpose of development agreements is to, first of all, they were authorized by State legislature in 1995, they do innovative design and development, they are a contract between potential developer and the county, in all instances the property owner is the signator and goes into contract with the county.

Development agreements are often executed on large developments, complex developments and developments that don't -- that want to be different than what the code currently allows. Recently you guys have seen several of these development agreements come before you in recent history in regards to the urban holding at 179th Street.

The existing condition of developments as the County processes them is there is no formal process. There is nothing in County Code that requires an applicant to submit a development agreement to a particular body, and oftentimes because there is no formal procedures in County Code, this leads to inefficiency. Staff is the one that's negotiating policy when it's not upon our purview to do so, that's the County Council's responsibility, and also there's lack of public process when development agreements are brought forward.

From the private side, this creates a lot of uncertainty and financial risk to the developer that wants to execute a contract, a development agreement with the County. Through our research, we've looked at different jurisdictions and we've seen that the specific procedures in their county codes have benefits that result from them, it includes county council or city council involvement early in the stage, it encourages creative development.

Oftentimes when a development is unfamiliar with Clark County and they're from an outside perspective, they look to our County Code first. When there's no procedures in our County Code, they don't know how to proceed with their innovative development. Oftentimes development agreements can identify the impacts and the mitigation that are necessary early on and we can assess the proportionate fees at that time so that when the development moves forward, they know exactly what will be required from them financially.

So the first four bullets up here are practices that we've seen in other jurisdictions that are specific in the County Code. The last three bullets are clauses or things specifically put into the contract. The best practices with other jurisdictions include the actual application process, the assignment of who negotiates, the procedures are adopted and there are specific criteria that a development agreement application has to abide by before they move forward in the process.

So during the work session on the 1st of August the Planning Commission asked for a tentative schedule of how a proposed development agreement, how long it takes to get through the process. So the application process starts in our proposed guidelines with the application being

submitted.

At that time there's a 21 cursory review that's done by internal staff. This is a process for which County staff can identify the concerns that they have and raise those concerns to the County Council. After that 21 days expires, the County Manager then has 7 days to schedule a public meeting for the County Council to consider the development agreement. The County Council then holds a public hearing no fewer than 10 days after that 21 days expires.

During that public meeting, the County Council can authorize staff to continue the negotiations or can say we're done, we don't want to negotiate, at that point the proposed development agreement would end. After they -- if the County Council chooses for us to continue in negotiations, a resolution is signed.

Depending on the type of development agreement, there is project-based development agreements and non-project-based development agreements. Those non-project development agreements would go through the Type IV process and go forward to you for review, that goes through a 15-day notification period before it goes to you. Based on your recommendation, it would then go to the County Council.

Their adequate notification period would start and they would then approve or deny the negotiated development agreement through an ordinance. If a development agreement is a project base, it would go through the Type II or Type III track with the County Manager forwarding a recommendation to the County Council.

TORRES: So on the project-based negotiations, there's not a timeline?

HERMEN: No. And that's something that I want to make clear, the negotiation phase after the resolution is signed, there is no specific timeline that's detailed in our proposed amendments. There's no required time to get that negotiated development agreement completed.

The comments that we've received are from two different entities. Washington Department of Transportation, they want to be involved in development agreements when the development impacts their facilities. Also the Friends of the Columbia Gorge want it to be explicit that development agreements should not be considered in the scenic area of Clark County.

Our recommendation is that this proposed code abides by the RCWs and WAC, the State laws, the Home Rule Charter and the Comprehensive Growth Management Plan. We are recommending approval and wish that the Planning Commission forwards that approval recommendation to the County Councilors. If you have any questions, I'd be happy to take those now.

SWINDELL: Yeah, can you bring that little structure everything back up there. I haven't gotten

to see it yet, this is the first time I've seen it, so I didn't make it to that part of it, sorry. If anybody else has a question, go ahead, I'm looking at that, sorry.

BARCA: The days that are outlined, are they specific, are they calendar, are they working days?

HERMEN: They are calendar days.

BARCA: They are calendar days. Okay. So I guess I'm wondering about the impact of things that happen close to major holidays and how does that affect staff's capability if we are scheduling a distinct number of days and yet expecting staff to be able to get their negotiated holiday breaks?

HERMEN: So during the drafting of the code, this code was drafted with many eyes looking on it including multiple departments, Community Planning Department, Community Development Department and Public Works Department as well as our Prosecuting Attorney's Office.

During that time we talked about that 21-day review and if that is a substantial amount of time for us to complete our cursory review, all of the departments at that time agreed that 21 days is a sufficient amount of time to reply for the cursory review.

BARCA: Okay. I'm not challenging the number of days, I'm challenging the way we're describing the days.

SWINDELL: I would just, can I just throw in this thought, I think I'm with you on this in that thought of December 9th I'm going to bring you this, December 9th, you've got 21 days, how many people are taking vacation between Christmas and New Year's, are you going to be able to get that done?

I just, I don't -- I would hate to see us put something in here and then not be able to perform because, I don't know, maybe the developers are thinking, hey, I'll bring it in December 12th, you get 21-calendar days, people are on vacation, not a whole lot of people are going to look at it, I'm going to get a quick review, I'm just throwing it out there as a thought.

COOK: For the record Chris Cook, Senior Deputy Prosecuting Attorney. When we talked about the cursory review it's to be what in law school we called issue spotting. So you get a fact pattern on a law school exam, you know, you read a one and a half page preposterous story and then you have to think about every single legal issue that might be implicated by it and then you have to write a brilliant articulate essay and you have to do that in 20 minutes and what the professor really wants to see is that you have spotted every potential legal issue that there isn't one, oh, they should have done an environmental impact statement here or, you know, and you didn't even think of that, ooh, bad.

That's the level of review that I think we are talking about here. So that Public Works can look at it and determine whether for example an improvement is on the TIP, it doesn't take a long time to do that, you know. Will the TIP have to be amended to encompass this, oh, sorry, we don't have any funding for this project. With Community Development, well, they say they want a PUD, a Planned Unit Development, but they haven't presented anything at all about Public Unit Development, so it's kind of hard to evaluate that. That's the level of response that we're talking about with community planning.

They're asking to do something for which this property is not designated or they are asking to do something for which it's designated, so there's not an issue in terms of compliance with the comprehensive plan. So it's supposed to be a very, very broad brush review that will give the Councilors when they take a look at it just some ideas about whether staff and three departments are going to spend a year on it or whether it's going to be a relatively simple proposal that just one department might have to deal with whether it implicates major policies or not.

So that's its purpose. Its purpose is not, it's different from a law school exam in that if we don't find an issue, we still get to revisit it in the negotiation process, but the idea is to give as I say a broad brush view to the Council so that the Council can make an informed decision about what policies are implicated whether it's in the County's interest to go forward and then so that the County Manager can assign it appropriately and ensure that it's staffed appropriately.

SWINDELL: So just as a, as you're talking about that, it sounds like someone could bring in an application and then you could possibly be in the middle of the review and go, wait a minute, we don't have enough information here to even move forward and kick it back to the applicant and say, hey, you've got to do this and if that happens then that time frame starts over again, correct, until they get it right?

HERMEN: Or address that with County Council and say this is a big piece of the development agreement that's missing that will need to be negotiated, if you feel like this is as important of a piece that's missing and don't want to negotiate, that's your decision to make.

SWINDELL: Okay. That makes sense. Okay.

COOK: Yeah. Council can deny it at that point.

SWINDELL: Okay. And just as a, just a quick one let's say, and I know everybody's saying they can do it in 21 days, it's an arbitrary number, if it goes to 23 or 26, there's no fine, there's no, oh, we're going to give you ten percent off on your application fee because we went over it, right, there's no penalty or do you know what I mean? Does that make sense?

HERMEN: Yeah. And the intent of the 21 days is, well, typically people take two weeks

vacation at that time, at that Christmas time, 21 days is beyond that two-week vacation but it still maximizes the efficiency of the development agreement to move forward. What we don't want to do is we don't want that cursory review period to be a large amount of period to where a lot of resources are going into a development agreement that may not be moved forward.

SWINDELL: That makes sense to me, that makes sense.

BARCA: So, Chris, I need to ask, in your analogy, who was the professor, is the professor the County Manager or is the professor the Councilors because you kind of lost me on who's going to actually know that staff made a mistake and forgot something?

COOK: Oh, staff will.

BARCA: Staff will. So staff is --

COOK: When it comes to negotiating the agreement, if you look at the draft code, the manager assigns responsibility for that negotiation to a particular department which takes the lead and involves all the other affected departments, but once there is a piece of paper that has, you know, the actual development agreement itself and all the provisions of it and you have people who are supposed to take more than a half a day over a holiday break to look at it, I guarantee you things will, things will come up, and if you doubt me, I'll have a conversation with you about the number of changes that were made to development agreement drafts in the 24 hours before they were all posted after they had been under negotiation for many months, things will be seen.

BARCA: Yeah. But that isn't how we want to do business, that isn't how we want to proceed which is why we drafted this --

COOK: Right.

BARCA: -- flowchart here --

COOK: Right.

BARCA: -- so we could streamline and rectify some of the shortcomings.

COOK: Commissioner Barca, perfection is not to be found here. You know, staff will do their best at spotting everything that they can that makes a difference. Just in my experience in negotiating transactions and in looking at the way views change about developments, and sometimes the developments themselves change, there will be changes, but this is it's a process --

HERMEN: Process.

BARCA: Yeah.

COOK: -- and we don't have one now.

BARCA: Right. Which the reason we're bringing a process forward is to try and streamline and remove some of the errors of the past that have been noticeable I imagine. This is somewhat of a service level agreement that we are doing with the development community as well.

And so I think in that regard they want to get it right, we want to get it right because time is money and everybody wants to manage their resources, our staff time and the developers time to the best of their ability, what I see going forward in the draft amendment isn't. Well, let me rephrase that.

I'm having a little trouble putting the flowchart together and follow the draft amendment and see all the steps in it. I think when we talk to people who aren't familiar with this and we're going to show this, it would be nice to be able to show where in the draft amendment those particular boxes occur. It would be just simplifying it I think in that regard, that's certainly something that we in the private sector would expect to see that there's a tie between the guidance document which I believe is the ordinance and the flowchart.

So I don't have a problem with any of this. I'm happy that we're taking the time to document what we want to do and make it transparent, I think that's great. The questions we're asking though I think are questions that the public or the development community should be aware of.

You're saying 21 days in a calendar format is still fine because it's actually very adequate for the level of review that's going to take place. Okay. We'll accept that. I think if that's the agreement, then that's the agreement. What we don't want to do is tell people it's going to be 21 days and then find out of course that it's going to run much longer.

So our questions are only to the idea to ensure that the word of this development agreement as we're putting it in the flowchart can actually be managed without crushing the resources available, that's all.

JOHNSON: Questions? Okay. To the public. Mr. Stephen Crockford, do you wish to testify?

CROCKFORD: Do you have a preference on where I sit?

BARCA: By a microphone.

PUBLIC TESTIMONY

CROCKFORD: Okay. First of all, thank you for being here tonight, I know there's other things you could be doing and you're volunteering to be here and so I appreciate that. I just have two points of clarification. First of all on this -- excuse me.

BARCA: Start with your name and spelling, please.

CROCKFORD: Oh, I'm sorry. My name is Stephen Crockford, my last name is spelled C-r-o-c-k-f-o-r-d.

JOHNSON: Continue, Mr. Crockford.

CROCKFORD: Pardon?

JOHNSON: Go ahead.

CROCKFORD: Continue. Thank you. If I'm going too fast, just slow me down. Point of clarification on this front page it says at the bottom of the first paragraph, it says once made, referring to the DA, Development Agreement, "once made they are binding on the parties and their successors." So is that successor meaning my children, so if I develop my property in a certain way then my children are bound to that as well?

HERMEN: I'm sorry, I don't know what document you're looking at.

CROCKFORD: Oh, I'm sorry. This document that was at the back that gives the definition, it's Clark County Washington Community Planning document. I can give you a copy if you'd like.

HERMEN: No, that's fine. So you're referring to the staff report and the development agreements once they are agreed to by the property owner and the County they do run with the land and they are based on the land, if the ownership changes they still stay with the land.

CROCKFORD: They still stay with the land.

HERMEN: Correct.

CROCKFORD: Okay. So it is binding. Okay. And it's binding with the County as well?

HERMEN: Yes.

CROCKFORD: Okay. Great. Then the other thing, and please forgive me, I'm a simple man, two paragraphs down from that the final statement says, "The absence of codified procedures

introduces uncertainty into the establishment of DA's," can you explain to me what codified.

HERMEN: Yeah. So right now we don't have any procedures. We have the Clark County Code where our rules and regulations lie. So when we say code we also say codified a way of making it, making law. So because we don't have any procedures that are in County Code, we have uncertainty that goes with it when a development agreement is proposed.

CROCKFORD: Gotcha. Right. And that's the reason for my presence here tonight. Presently I have five acres that I've owned since 1992, lived on it since 1995. I've had two or three weddings in my backyard for friends, family, my daughter was married there and so my wife and I wanted to develop it into a place where people could come and have weddings or 50th wedding anniversaries or class reunions and what I was told by the County is that unless I'm a winery, I'm not allowed to have events on my property and so that's why I'm here tonight. I would like to see this agreement and established so that I don't have to become a winery to have events or have family picnics at my property.

COOK: Sir, this won't allow you to agree to do things that are not permitted by the comprehensive plan.

CROCKFORD: So how do we go about changing that comprehensive plan that only allows events to take place on a winery?

COOK: What is your plan designation?

ANDERSON: What's your zoning?

CROCKFORD: My zoning is R-5, rural.

COOK: Mr. Chair, do we want to go into this at this meeting?

CROCKFORD: I was here --

COOK: This is about development agreements.

JOHNSON: No. No, I understand that.

CROCKFORD: I was misled.

JOHNSON: No. No, I understand. I think the best thing to do in this and this we kind of walk people through this is to start with we're on development agreements which we're trying to get through, but your questions are valid, but I think what we do is get him to staff and staff will get you in the right direction.

And so all we're doing today on this issue is trying to find a way to do some work that is procedurally straight, not -- we're not doing anything specific, we're just creating this, I don't want to say for a better word a framework, but it's not, but I don't want to diminish your questions and so I think the best thing is really after we're done, just get your name and we'll point you in the right direction.

CROCKFORD: So the development agreement is simply an agreement --

JOHNSON: Right.

CROCKFORD: -- moving forward.

JOHNSON: So a lot of times you have someone that comes in and says, hey, look, you know, we want to do this and the County says, okay, you can do this but we want to negotiate what's happening here lots of things, sidewalks, streets, whatever, and in the end that is usually done in a, for a better term an informal, now we're looking at a process, just to go through these to how we create these developer agreements and we haven't had one, and so some things we're talking about and, Counsel, correct me if I'm going off the reservation here, but basically we're just trying to get this is a simple thing, it's not specific to what you're doing

CROCKFORD: Okay. Thank you.

JOHNSON: Any more questions for Mr. Crockford? Don't forget to give your name to them because really they are good people about figuring it out because --

CROCKFORD: So let's go to Dairy Queen.

JOHNSON: Okay. And there's nobody else in the audience that would like to speak to this issue? With that said, bring it back to us.

TORRES: I had one question, on Page 4 of your presentation, so is this the exhaustive list of development agreements over the last three years?

HERMEN: No. So you recently reviewed development agreements associated with the urban holding area at 179th for the Holt property, the Hinton property and the Wollam property.

TORRES: I was curious like over the last three years, how many have been negotiated or just as a work, I'm trying to get an idea of workload?

HERMEN: Yeah. So typically we see I would say three to five a year.

COOK: And the workload is really variable depending on what --

TORRES: They're asking for.

COOK: -- the nature of the DA is, you know, you get one that's basically we want to extend a development approval and move a street here and then you get stuff like 179th which involves, you know, tens of millions of dollars of financing.

TORRES: There's a broad spectrum of what they can entail.

COOK: And other questions. So the staff time is as I say variable. The departments that seem to spend the most time on it I'd say are Community Development is probably the department that deals most with them and Public Works and the PA's Office seems to be involved no matter which department has it and then if you have a comp plan change Planning is involved as well.

TORRES: Well, I imagine that variable scope also goes back to the level of ambiguity for each application, right, ambiguity of the process?

COOK: Well, the development agreements themselves are pretty darn specific, so one of the objectives here I think is for the developers who are applying to be specific early and to, you know, somebody said both sides are serious on this, so let's be serious early, let's get it to the right people and let's talk about what we can do.

TORRES: Okay. Thank you.

BARCA: Just a point of clarification, these development agreements that are shown here, these have links to them.

HERMEN: Yes. Yes, these do have hyperlinks to them. This and this presentation is on the Planning Commissions' website.

BARCA: Yeah. So here's what I was going to say about that, Matt, was I found it helpful looking at some of this, but at the public hearing before the Councilors it might be worthwhile to just kind of open a couple of these and show the varied nature of the development agreements because I think as we've just discussed, we have some that are pretty compact and seem relatively normal and then we have the ability to have some that are hundreds of millions of dollars and have so many moving parts, the nature of controlling both of those now would be fit within a process and I think that's, you know, that's kind of where we're trying to drive this to, so it's just a suggestion.

HERMEN: No, I appreciate it. On May 29th we held a work session with the County Council

which the County Council gave us the authorization to proceed with your review on this. This presentation was similar to the one that we gave County Council at that time and we did go through each one of those development agreements through those hyperlinks to show them what specifically they or the elected officials before them approved.

BARCA: All right. Great.

COOK: What's interesting in the wild wild west now is that although the County Council has to approve, and that's by State law, the County legislative authority has to approve a development agreement in the first place, the DA doesn't have to be amended with the approval of the County Council, and I know at least one of those has been amended once, maybe twice, they go to the hearings examiner rather than the County Council.

I think this ordinance would put the adoption and the amendment in the hands of, both in the hands of the County Council, we think that the body that has decided that this is good policy and why should be the body that then decides whether a proposed change fits that policy.

SWINDELL: I would agree with that.

JOHNSON: Any other questions? Any other discussion? I would be open to a motion.

BARCA: I'd like to make a **MOTION** to approve CPZ2019-00029 as documented in the staff report.

SWINDELL: I'll **second** it.

JOHNSON: Motion has been heard and seconded. Roll call, please.

ROLL CALL VOTE

SWINDELL: AYE

TORRES: AYE

BARCA: AYE

JOHNSON: AYE

JOHNSON: Motion passes 4/0.

OLD BUSINESS

None.