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MEMORANDUM

TO: Planning Commission Members
FROM: David Schultz, Assistant City Attorney
DATE: March 10, 2015
RE: PRD/Quasi-Judicial Hearing

Pursuant to Section 18.23.020, a "planned residential development" (hereinafter PRD) means a development constructed on land of at least ten acres in size, designed and consistent with an approved master plan. A PRD is comprised of two components: single-family and multifamily units. The single-family component shall contain only single-family detached residences on lots equal to or greater than four thousand square feet. The multifamily component may contain either attached or detached single-family residences on lots smaller than four thousand square feet, or it may contain, but may not be limited to, duplexes, rowhouses, apartments, and designated manufactured homes, all developed in accordance with Section 18.23.030(A). A PRD is considered an overlay zone and will require that a zone change be processed and approved in conjunction with a PRD application. The conditions of approval relating to the PRD will be adopted as part of the rezone process. CMC 18.23.100 sets forth the standards for approval of a PRD. CMC 18.23.130 sets forth the procedure in which an application for a PRD shall be processed. A public hearing before the planning commission and review by the city council is required for preliminary master plan approval. Final master plan approval is subject to review and acceptance by the city council at a public meeting. Final approval shall be in accordance with the provisions of this chapter.

The purpose chapter 18.23 of the Camas Municipal Code relating to PRDs is "to promote the public health, safety and general welfare of the citizens of the City of Camas in accordance with state law and the city's comprehensive plan; to facilitate the innovative development of land; and to provide for greater flexibility in the development of residential lots in medium and high density districts. A further purpose of this chapter is to allow for the modification of certain regulations when it can be demonstrated that such modification would result in a development which would not increase the density and intensity of land use (except as provided for in Section 18.23.040); would preserve or create features or facilities of benefit to the community such as, but not limited to, open space or active recreational facilities; would be compatible with surrounding development; and would conform to the goals and policies of the City of Camas' comprehensive plan."

A public hearing for consideration of a PRD will be Quasi-Judicial Matter. As such, I have provided the following as a review of the laws associated with Open Public Meeting Act, Municipal Code of Ethics, and Appearance of Fairness Doctrine.

The purpose of the Open Public Meeting Act states: "[t]he Legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices and all other public agencies of this state and divisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberation be conducted today. The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." RCW 42.30.010.

The Municipal Code of Ethics, Chapter 42.23 RCW, provides municipal officers cannot be beneficially interested, directly or indirectly, in any contract which may be made by, through, or under the supervision of such officer. There is a list of exceptions to this general statement, many of which do not apply to cities.

The Appearance of Fairness Doctrine requires that public officials execute their duties with the appearance, as well as the reality, of fairness and impartiality; that they be free of entangling influences; and that their decisions be above reproach. The appearance of fairness doctrine applies only to quasi-judicial proceedings as opposed to legislative proceedings. Quasi-judicial actions are those of a limited scope which determine the legal rights, duties or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions include conditional use permits, subdivision approvals, planned unit developments, rezones of specific parcels, and other individualized proceedings. Legislative actions are those that have a generalized impact such as adopting an amendment to the text of the zoning code.

The test for an appearance of fairness violation is not whether the decision was in fact impacted by some outside influence, but rather whether it may appear that it could have been improperly influenced. Examples of improper influence include ex parte communications, hostile, rude or antagonistic comments which rise to the level of being biased or impartial, making statements showing that the decision maker has prejudged the merits of a land use action, conducting an independent investigation and then testifying regarding the facts, having a financial, equitable or social interest.

Ex parte contacts are those communications with either an opponent or proponent of a land use proposal that occur outside of the hearing process. They include face to face contacts, and contact by telephone, e-mail, and regular mail. Whenever an ex parte contact has occurred, the affected member should: (1) Disclose the contact at the public hearing, and (2) advise that members of the audience have the right to challenge the member and ask that the member disqualify himself or herself. A decision maker who is challenged must decide on his or her own whether to step down or not. A disqualified member should leave the hearing room.

The following two cases are offered as examples. In *Hayden v. Port Townsend*, 28 Wn. App. 192 (1981), a savings and loan held an option on land. An application was brought before the city to rezone the land to general commercial use. The chairman of the planning commission was a branch manager for the savings and loan association. At the initial hearing, the branch manager presided and spoke in favor of the rezone. The city council, upon advice of the city attorney, remanded based upon an appearance of fairness violation. At the second hearing, the branch manager disqualified himself as chairman, and did not vote in the proceedings. However, he stayed at the hearing and testified in favor of the proposal. At the appellate court level, the court held that an appearance of fairness violation had occurred, and invalidated the rezone approval. The court's ruling basically stands for the proposition that if there is an appearance of fairness problem, then the affected member may not only not vote, but may not participate in any way in the hearing or the decision-making process.

In *Mission Springs v. Spokane*, 134 Wn. 2d 947 (1998), in November of 1991, the City of Spokane approved a planned unit development application from Mission Springs. In October 1994, Mission Springs submitted an application for a grading permit for the planned unit development. By that time, neighboring property owners had organized and hired an attorney to resist the project. They appeared at the city council meeting to fight the project. The city attorney advised the council that the council had no administrative authority with respect to the issuance of grading permits and that the council acted through ordinances and setting policy. The city attorney further advised the council that any interference with the issuance of a building permit when property owner is entitled to that permit gives rise to a claim under state law and federal law. Notwithstanding the advice of the city attorney, the council directed the city manager not to issue the permit. The city and the individual council members were thereafter sued for violation of RCW 64.40, which creates a cause of action for damages from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, under 42 USC § 1983, which allows a claim for damages when a person acting under color of state law deprives another of a federal constitutional or state created property right without due process. The court ruled that the plaintiffs could proceed with their claims under both RCW 64.40 and under the federal civil rights act. In its ruling, the court noted that the arbitrary or irrational refusal or interference with processing a land use permit violates substantive due process. The council's actions was irrational in that it interjected itself into the administrative process notwithstanding a clear and unequivocal charter mandate to the contrary, and its irrationality was further dramatized by the overt rejection of advice from the city's own attorney.

The lessons to be learned are: (1) Do not base land use decisions upon community displeasure; (2) MYOB; (3) listen to legal advice; and (4) the cities indemnification obligation (CMC 2.76.050) extends only to acts or failures to act which are within the scope of authority and in the course of such officers' or employees' duties and responsibilities, and which are done in good faith and without malice.