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FM: Jerry Balcom JB 5/19/93

RE: Minutes of the April 30, 1993 Regulatory Review Committee Meeting

Present: Lisa Lee, George McCallum, Harold Vandergriff, Jerry Balcom, Gordon Thomson, Kyle Evans, Riley Atkins, Henryk Hiller

1. Three questions concerning variances and the SEPA process:

A) Does the granting of a variance under K.C.C. Ch. 21.58 ever require a SEPA threshold determination?

B) If a project has already undergone SEPA review and then receives a variance, such as an SAO variance, must the project undergo another SEPA review?

C) If a project is exempt from SEPA review (such as a short plat), and a variance is sought, is a SEPA determination then required for the short plat?

There is a categorical exemption from SEPA review for variances based on special circumstances, not including economic hardship, unless the variance results in a change in land use or density (WAC 197-11-800(6)(b)). However, there are certain circumstances in which the categorical exemption does not apply and the variance is subject to SEPA review (see WAC 197-11-305(1)). Four general types of variances that may be subject to SEPA review were identified:

1) Density variances. These variances require SEPA review because they are not categorically exempt (see WAC 197-11-800(6)(b); WAC 197-11-310(1)). (Use variances are also not categorically exempt, but they are not permitted under the zoning code.) If the density variance is sought in connection with a land use action that itself will require SEPA review (such as a commercial building permit), the SEPA review for the permit can cover the variance as well.

2) Variances that are categorically exempt but are part of a series of physically or functionally related actions require SEPA review if one or more of the other actions require SEPA

review (see WAC 197-11-305(1)(b)(i)). For example, an SAO variance that is part of a multifamily development proposal. Rather than doing a separate SEPA review for the variance, the SEPA review for the nonexempt action can cover the variance as well. In the multifamily development example, the SEPA review for the multifamily project itself would take into account the nature of the variance.

3) Variances that are part of a series of physically or functionally related actions, all of which are categorically exempt but which when combined have a probable significant adverse environmental impact, require SEPA review (see WAC 197-11-305(1)(b)(ii)). For example, both a short plat and a variance may be categorically exempt, but the type of variance associated with a particular short plat may, when combined with the short plat development, result in probable significant adverse impacts. Here again, one SEPA review can cover both the variance and the short plat.

4) Riley Atkins noted that other variances which have a probable significant adverse environmental impact will also require SEPA review even if they technically fall within the categorical exemption in WAC 197-800-(6)(b).

The need for SEPA review in situations 3 & 4 above must be determined on a case-by-case basis. We will consider the drafting of a public rule (and any necessary code amendments) to set out criteria for determining when SEPA reviews are required in these circumstances.

If SEPA has already been done on a project, and the need for a variance (such as an SAO variance) then arises, a new SEPA review may be required if the project has been substantially changed or the new information indicates probable significant adverse environmental impacts (see WAC 197-11-340(3)(a)).

2. **Can a Public Agency and Utility Exception (K.C.C. 21.54.050) be sought only when a public agency or public utility is the project applicant? For example, if private property owners apply to construct a sewer main under an agreement with a public agency, and the facility will become part of the public utility system when completed (serving those property owners), can the property owners apply for a PAUE if the activity is otherwise prohibited under the SAO?**

The public agency or utility must be the one that applies for the Public Agency and Utility Exception under K.C.C. 21.54.050, which states that "the agency or utility may apply for an exception..." This is the case whether or not a contractor or other private party working under an agreement

with the agency or utility is the actual project applicant. If the public agency or utility does not apply for the PAUE, neither the contractor nor the private party can do so.

3. **Further consideration of Question 1C from the Minutes of the February 26, 1993 meeting, regarding whether a driveway can be located in a required yard. If a property owner seeks to build a garage behind the house, and the only way to reach the garage from the front street would be to drive in the required side yard past the house, does the zoning code permit the driveway to be located in that required side yard?**

No. K.C.C. 21.50.060(B)(5) clearly states no internal aisles or roadways are permitted in any required yards or landscaped areas unless authorized by the manager under K.C.C. 21.50.050 or unless a variance is obtained. That section goes on to provide a narrow exception to this rule: driveways may "cross" required yards or landscaped areas in order to get from the street to an off-street parking area. However, "crossing" a yard clearly means to go directly across the yard in order to gain access to the interior of the lot. Otherwise, it would contradict the clear prohibition on internal aisles or roadways in required yards or landscaped areas.

As indicated in the February 26, 1993 Minutes, we plan to draft a series of code amendments to bring more consistency and clarity to the code sections dealing with driveways and yard requirements.

4. **Legislative update.**

A) New Zoning Code. The final Council hearing on the proposed new zoning code is scheduled for May 3, 1993, with adoption expected later in May or early June. The current plan for conversion is to do it all at once, with transmittal to the Council expected about one year after adoption of the new code. Individual property owners may still apply for rezones in the interim to be considered under the new code. The East Sammamish Community Plan, scheduled for adoption by the end of May, will not use the new code.

B) Zoning Code Amendments. Three proposed code amendments will go before the GMH&E Committee on May 5: one to permit certain bulk gas storage tanks in residential zones with a CUP; one to permit retail sales of autos, boats and heavy equipment in the B-C zone; and one to permit the re-use of certain nonresidential structures for certain nonresidential uses with an Administrative CUP in the G-5 zone.

C) Ethics Code. A proposed amendment to the ethics code, which would exclude from post-employment restrictions career service employees in good standing who are laid off in a reduction in force, has been assigned to the Council's Law & Justice Committee.

5. **Name Change for Code Interpretation Group.**

In order to more accurately reflect its work, the Code Interpretation Group has been renamed the Regulatory Review Committee. An all-staff memorandum is being distributed to explain the change and to provide an overview of how the Committee operates.

JB:HH

cc: Ann Dold
Riley Atkins
Karen Scharer
Gordon Thomson
Henryk Hiller