

Jane Rasely

From: Hayes Gori <hayes@hayesthelawyer.com>
Sent: Tuesday, February 6, 2018 1:59 PM
To: Joe Levan
Cc: Kelly Tayara; Peter Corelis; PCD; Kimberly McCormick Osmond; Mack Pearl; Don Doman; Jon Quitslund; William Chester; Lisa Macchio; Michael Killion; Sarah Blossom
Subject: Wallace Cottages project - Planning Commission review
Importance: High

Hello Joe,

I write regarding J. Mack Pearl's e-mail below, which is concerning in several regards. First, since Mr. Pearl sent his e-mail – in which he discusses the Wallace Cottages project – to all of the Planning Commission (PC) members, the e-mail was a private meeting in violation of the Open Public Meetings Act (OPMA). At the end of the January 25 meeting, the PC members were reminded of the requirements of the OPMA. As you know, violations of the OPMA can result in personal liability for the violators, an award of attorney fees, and nullification of any subsequent decision by the PC regarding Wallace Cottages.

Second, Mr. Pearl's e-mail betrays the PC's mistaken belief (according to Mr. Pearl) that it cannot submit its recommendation until Mr. Crampton's claim has been resolved. This is incorrect for three reasons. First, the PC does not have a quasi-judicial role in this context, and consequently resolution of legal issues is not within its purview. The PC's role here is set forth in BIMC 2.14.B.3: *Review and make recommendations on all housing design demonstration project applications pursuant to BIMC 2.16.020.Q, including those housing design demonstration project applications involving land subdivision, based on a comprehensive review of the project at a public meeting.* In carrying out their duties, per BIMC.C.1, "[e]ach commissioner shall endeavor to understand and agree to uphold the city's adopted comprehensive plan." Second, Mr. Crampton's claim is meritless. This is not only my opinion, but it is also the opinion of City Staff, which I assume consulted with you on the matter. Third, my clients have made a workaround proposal (which meets all of the legal requirements) that renders Mr. Crampton's claim irrelevant for purposes of evaluating my clients' project. For each of these reasons, Mr. Crampton's claim is not a valid basis for delaying my clients' project.

The procedure to be followed by the PC is set forth in BIMC.G: *The planning commission will consider the land use applications at a public meeting and shall recommend approval, approval with conditions, or denial of an application. . . . In making a recommendation, the planning commission shall consider the applicable decision criteria of this code, the comprehensive plan, all other applicable law, any necessary documents and approvals, and any testimony presented verbally or in writing at the public meeting. If the applicable criteria are not met, the planning commission shall recommend the proposal be subject to conditions or denied. A planning commission recommendation is not a final decision and is not subject to appeal. The planning commission's written recommendation and other documents upon which its decision is based shall be immediately transmitted to the director and/or the hearing examiner, as applicable. (emphasis added).*

The PC's role is limited to considering the land use application based on the information provided, applicable law, and public testimony. That's it. No further inquiry or review or process is authorized. Once the PC has completed its prescribed review, the next step is to submit a recommendation of approval, approval with conditions, or denial. That's it. No other action is authorized. As far as timing, the PC's recommendation shall be transmitted immediately to the decision-maker. No delay is authorized.

Third, the fact that the PC prefers (according to Mr. Pearl) that the access for my clients' project come from Madison is not a valid basis for delay. My client made every effort to have the access come from Madison (discussed in more detail

in my clients' memo below my signature block), but for various reasons it did not work out. If it is to happen now, it will take City action, which is beyond my client's control. In any event, my clients' project has a City Staff-approved access plan. If the PC wants to recommend an alternative access plan to the Hearing Examiner, it is free to do so, but, again, this is not a valid basis for delay.

Fourth, Mr. Pearl's e-mail indicates that the PC has misgivings about the design and HDDP scoring of my clients' project. First of all, City Staff scored the project and believes it meets the requirements of the HDDP ordinance. The Design Review Board concurs. What is the basis of the PC's belief (according to Mr. Pearl) that the scoring of the project is incorrect? Even though my clients have already run the gauntlet of HDDP approval, below my signature block is a memo (in all caps) from my clients explaining ways in which their project is innovative. (Note: The innovations set forth below are in addition to those that were considered by City Staff for purposes of HDDP scoring.) Second, if the PC has misgivings about the design and/or scoring, the proper course of action is not delay but rather a recommendation to the Hearing Examiner.

Fifth, Mr. Pearl states that his goal is to work together with applicants and the neighborhood to make the resultant project work for all concerned; that it would be great if my clients' project turns out to be an asset to the neighborhood; and that he hopes to work together to get a positive recommendation to the Hearing Examiner. All of these statements betray a misunderstanding of the PC's role. The PC's role is not to broker a deal between the applicant and the neighborhood. Tensions between developers and neighborhoods are inherent. The PC's role is not to resolve these tensions but rather to review projects to ensure compliance with the Comprehensive Plan and other applicable law. Likewise, the PC's role is not to ensure that projects are an "asset" to the neighborhood. This reeks of subjective evaluation. Again, the PC's role is to ensure that projects comply with applicable law, which in this case means the HDDP ordinance, which, if satisfied, means, objectively, that the project is an asset. Finally, it is not the PC's role to work with the applicant to formulate a positive recommendation. I submit, as does City Staff, that a positive recommendation is warranted in my clients' case, but if the PC respectfully disagrees then it should submit an other-than-positive recommendation. None of Mr. Pearl's goals/hopes is a valid basis for delay.

As you know, my clients' project is well past the 90-day approval deadline. My clients have been gracious and understanding with the delays to date. However, my clients are not willing to endure further delay, especially when there is no valid basis for it.

On behalf of my clients, I request your assistance in facilitating the expeditious completion of the PC's review of my clients' proposal in accordance with applicable law. The PC's next meeting is this Thursday, February 8. I plan to attend, and I request that you attend as well. I see no reason why the PC cannot complete its review of my clients' proposal at this meeting. Please let me know if you do not think this is possible and, if so, why not.

Sincerely,
Hayes Gori

1. BUILDING DESIGN: FOLLOWING A RECOMMENDATION FROM THE COBI DESIGN REVIEW BOARD TO REDESIGN OUR HOMES ON THE LOTS WE MOVED THE 2 PARKING SPACES AWAY FROM THE FRONT OF THE HOUSE TO ALLEVIATE THE "CAR CENTRIC" FEEL OF THE PROJECT. WE RE-DESIGNED ALL OF OUR HOME MODELS TO BE NARROW ENOUGH TO ALLOW ROOM FOR PARKING ON THE SIDE AND BETWEEN THE HOMES, RECESSED FROM THE FRONT PLAIN OF THE HOME TO ELIMINATE CAR PARKING FROM VIEW. OUR HOMES ARE OF HIGH QUALITY DESIGN AS PER THE SCHEMATIC RECOMMENDED COTTAGE/HOUSE DESIGN IN COBI'S DESIGN GUIDELINES. OUR HOMES ARE QUALITY CONSTRUCTION THAT INCLUDES A 10 YEAR HOME OWNERS WARRANTY. BY INNOVATIVELY DESIGNING OUR HOMES AND LOTS TO ACCOMMODATE 2 CARS PER HOME, VERSUS A LOWER NUMBER OF PARKING SPACES PER HOME, WE ARE ALSO MEETING AN HDDP REQUIREMENT TO REDUCE THE IMPACT OF HOMEOWNERS WHO WILL HAVE 2 CARS, REGARDLESS OF WHETHER OR NOT THEIR HOME HAS 2 SPACES, TO ELIMINATE THEIR NEED TO PARK IN THE SURROUNDING NEIGHBORHOODS. THE GROW AVENUE COMMUNITY HOMEOWNERS' BIGGEST COMPLAINT IS THE REMOTE AND INADEQUATE PARKING FOR THEIR HOMES.

2. INNOVATIVE SITE DEVELOPMENT: OUR CIVIL ENGINEER, KELSEY LAUGHLIN, OWNER OF SEABOLD ENGINEERING, DEVELOPED AN INNOVATIVE STORM WATER SOLUTION THAT WILL CAPTURE THE CURRENT STORM WATER RUNOFF FROM THE NAKATA, TAURNIC AND PROPOSED WALLACE COTTAGES PROJECT BY COLLECTING THIS STORM RUNOFF AND CONVEYING THE STORM FLOW BY PIPE TO THE MADISON AVE STORM SYSTEM. COBI PUBLIC WORKS HAS AGREED THAT WITH OUR UPGRADING A SECTION OF THE EXISTING 12" STORM PIPE IN MADISON TO 24" AT OUR EXPENSE WE WILL HAVE ACHIEVED THE BEST SOLUTION TO HANDLING ALL OF OUR AND THE OFFSITE NEIGHBORHOOD STORM FLOWS AS WELL. PROJECTS, SUCH AS THE MADISON COURTYARDS, WILL BE RELIEVED OF ACCEPTING THE CURRENT STORM FLOW THAT HAS CONTINUOUSLY FLOODED THEIR CRAWL SPACES AND CAUSED OTHER RELATED STORM FLOW ISSUES. FOR THE RECORD, AS PER RCW, OUR PROJECT IS ONLY REQUIRED TO PROVIDE ENOUGH DETENTION OF STORM WATERS TO MATCH PRE-EXISTING CONDITIONS. BECAUSE OUR GEO-TECH REPORT NOTES THAT OUR SITE'S SOILS WILL NOT ALLOW APPRECIABLE PERCOLATION OF STORM WATERS, VIRTUALLY ALL OF THE CURRENT STORM WATERS NOW FLOW ACROSS ALL PROPERTIES IN ITS FLOW PATTERN TO MADISON AVE WHERE IT IS CAPTURED BY THE MADISON AVENUE'S CATCH BASINS AND INTO THE MADISON STORM SYSTEM.

3. TRAFFIC IMPACTS - INNOVATIVE POSSIBLE SOLUTIONS: THOUGH WE WERE NOT LEGALLY REQUIRED TO MITIGATE, OR OBTAIN ACCESS OTHER THAN VIA WALLACE WAY THROUGH THE INTERSECTION OF NAKATA AND TAURNIC TO GROW AVENUE FOR OUR PROJECTS ACCESS, WE DID ATTEMPT THESE FOLLOWING ALTERNATIVE INNOVATIVE SOLUTIONS TO REDUCE TRAFFIC IMPACTS: WE ATTEMPTED TO DO A JOINT VENTURE TO GAIN A 30' RW FROM EITHER THE REHAB CENTER OR THE OHRT GROUP THAT OWNS THE VET CLINIC. THOUGH WE WERE UNABLE TO COMPLETE AN AGREEMENT WITH EITHER OF THESE PARTIES, WE DID PROVIDE A STRATEGY THAT ONLY COBI COULD PURSUE TO CONVINCE THE OHRT GROUP THAT COOPERATING WITH US TO CREATE WALLACE WAY FROM MADISON AVE. WAS IN THEIR BEST INTERESTS. BECAUSE COBI DETERMINED THAT DUANE LANE WAS A COBI RW AND NOT OWNED BY THE OHRT GROUP THEY COULD OFFER THE OHRT GROUP A "FREE VACATION" OF THE DUANE LANE RW ALLOWING THE OHRT GROUP TO GAIN OWNERSHIP AND USE OF THE RW VALUED IN EXCESS OF \$300,000 IN EXCHANGE FOR THE OHRT GROUP TO CONSTRUCT WALLACE WAY FROM MADISON VERSUS DUANE LANE FOR ACCESS TO THEIR AND OUR PROJECTS. NEVERTHELESS, WALLACE COTTAGES STILL HAS THE OPTION OF USING THE EXISTING WALLACE RW AS ACCESS TO GROW AVENUE REGARDLESS OF THE SUCCESS OF OBTAINING WALLACE WAY ACCESS TO MADISON.

BY CREATING A 4 WAY STOP INTERSECTION WITH WALLACE WAY, NAKATA AND TAURNIC ALONG WITH A "NO RIGHT TURN" ONTO NAKATA FOR CARS EXITING WALLACE COTTAGES VIA WALLACE WAY, ANY NAKATA TRAFFIC IMPACTS WILL LARGELY BE ELIMINATED. ADDITIONALLY, THE COMPREHENSIVE PLAN GOALS FOR AFFORDABLE AND VARIABLE HOUSING ALLOW HDDP PROJECTS TO BE LOCATED ANYWHERE IN THE COBI SEWER DISTRICT, THUS ACKNOWLEDGING THAT TRAFFIC IMPACTS FROM THESE PROJECTS MUST BE ACCOMMODATED OR THE GOALS OF THE COMPREHENSIVE PLAN CANNOT BE ACHIEVED.

4. COMMON OPEN SPACE: OUR INNOVATIVE LOT DESIGN AND LAYOUT ALLOWED US TO CREATE OVER 20,000SF OF ACTIVE AND PASSIVE OPEN SPACE COMPARED TO THE REQUIRED 7600SF (400SF PER UNIT X 19 HOME=7600SFT).

WE LOCATED THE PLAYGROUND, "ACTIVE OPEN SPACE", AT THE NORTH END OF THE PROJECT SO THAT NOT ONLY THE WALLACE COTTAGES PROJECT COULD ENJOY THE PLAYGROUND, BUT ALSO THE NAKATA AND TAURNIC NEIGHBORHOODS. ADDITIONALLY, ALL THE PEDESTRIANS, SUCH AS FAMILIES WITH CHILDREN, USING THE PATHWAY WE ARE DEDICATING TO COBI TO MADISON, CAN ALSO ENJOY THE PLAYGROUND.

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From: Mack Pearl [<mailto:mack.pearl@cobicommittee.email>]

Sent: Wednesday, January 31, 2018 2:39 PM

To: Hayes Gori <hayes@hayesthelawyer.com>; Kelly Tayara <ktayara@bainbridgewa.gov>; Peter Corelis <pcorelis@bainbridgewa.gov>; PCD <pcd@bainbridgewa.gov>; Joe Levan <jlevan@bainbridgewa.gov>; Kimberly McCormick Osmond <Kimberly.McCormick.Osmond@cobicommittee.email>; Don Doman <Don.Doman@cobicommittee.email>; Jon Quitslund <jon.quitslund@cobicommittee.email>; William Chester <william.chester@cobicommittee.email>; Lisa Macchio <lisa.macchio@cobicommittee.email>; Michael Killion <michael.killion@cobicommittee.email>; Sarah Blossom <sblossom@bainbridgewa.gov>

Subject: Re: Wallace Cottages project

Hayes Gori,

I am the chair of the Planning Commission and an Architect not a Lawyer. We as planning Commission members are not equipped to determine legal access issues. I don't know if you or Mr. Crampton has the winning legal claim. We (I am mostly speaking for myself, but there seemed to be consensus on the committee) think that all legal access issues must be resolved before we can determine if an application follows the Comprehensive Plan. We would like the access for your project to come from Madison per your suggestion #3 in the capitalized section of your letter. This may take time to resolve. The second issue is that HDDP projects are supposed to be Demonstrations of innovative design. None of us on the PC felt that the project was innovative or even an example of good design. The pea patch and playground on the North edge of the project with limited solar access and requiring the cutting of a forest seem very problematic. It may turn out that this project meets the minimum requirements of the HDDP ordinance, but we are not yet convinced of this fact. We believe that the scoring of the project is incorrect. My goal is to work together with applicants and the neighborhood and to make the resultant project work for all concerned. It would be great if your project turns out to be an asset to the neighborhood and meets the goals of the Comprehensive Plan. I hope we can work together on completing our review and getting a positive recommendation to the Hearing Examiner.

Thank You

J. Mack Pearl - Chair PC

From: Hayes Gori <hayes@hayesthelawyer.com>

Sent: Wednesday, January 31, 2018 7:18:51 AM

To: Kelly Tayara; Peter Corelis; PCD; Joe Levan; Kimberly McCormick Osmond; Mack Pearl; Don Doman; Jon Quitslund; William Chester; Lisa Macchio; Michael Killion; Sarah Blossom

Subject: Wallace Cottages project

City Staff, Planning Commission and City Attorney,

I represent Central Highlands, Inc. and Wallace Cottages, LLC. At the last Planning Commission meeting, my clients' Wallace Cottages project was on the agenda. As you know, a neighboring property owner, Stephen Crampton, has asserted an adverse possession claim against my clients' property. As I have previously explained (in a 1/25/18 e-mail to Kelly Tayara, attached), it is not possible for

Mr. Crampton (or anyone else) to adversely possess my clients' property because it is held for a public purpose – that is, COBI has an above- and below-ground right of way easement for sanitary sewer in the property. The applicable statute is RCW 7.28.090. I also attach a Washington case, *Kiely v. Graves*, that interprets and applies this statute, as well as an article by a Seattle law firm discussing the import of *Kiely v. Graves*. Because the sewer easement is a right of way, COBI is legally obligated to protect this important public infrastructure, and accordingly should remove Mr. Crampton's encroachments.

I must point out that COBI has been slow in processing my clients' project – we are way beyond the 90-day decision deadline – and further delay is not acceptable, especially if the cause of delay is a meritless claim by a neighbor. Mr. Crampton's claim – which he reiterated at the recent Planning Commission meeting by making baseless claims of ownership and use rights, and which has resulted in a special exception in my clients' title insurance policy – is a slander against my clients' title, and any resultant delay will only add to my clients' damages. The Planning Commission has all the information it needs to make its advisory decision that will be considered by the Hearing Examiner, and I implore it to do so as soon as possible. If the Planning Commission does not wish to make a recommendation, then it should submit a "no decision" memo to the Hearing Examiner. The point is that there should be no further delay in the processing of my clients' project en route to the Hearing Examiner.

Finally, below my signature block is a memo from my clients with input on other aspects of the project. As the body charged with upholding the Comprehensive Plan, I submit that the Planning Commission should be championing my clients' project because as pointed out below, the project furthers many of the goals of the Comprehensive Plan.

Sincerely,
Hayes Gori

COBI COMPREHENSIVE PLAN, WHICH INCORPORATES THE HDDP GOALS WAS THE SUBJECT OF EXTENSIVE PUBLIC HEARINGS AND INPUT FROM THE PLANNING COMMISSION.

THE HDDP PLAN HAS BEEN EXTENDED ALMOST YEARLY FOR THE PAST SEVERAL YEARS AND WILL HAVE TO BE EXTENDED AGAIN FOR 2018. THEREFORE, THE PLANNING COMMISSION HAS HAD TO HAVE HAD INPUT AND LIKELY APPROVAL OF HDDP PLAN. THEREFORE, NEITHER THE NEIGHBORS OR THE PC MEMBERS HAVE ANY LEGAL, MORAL OR VALID TRAFFIC DANGER COMPLAINTS WHEN HDDP PROJECTS ARE DEVELOPED IN THE GEOGRAPHICALLY APPROVED AREAS OF BAINBRIDGE (COBI SEWER DISTRICT BOUNDARIES). ALL OF THOSE ISSUES, INCLUDING INCREASED TRAFFIC DUE TO THE INCREASED DENSITY ALLOWED BY HDDP PROJECTS, ARE ALLOWED IN ORDER TO MEET THE GOALS OF THE COMPREHENSIVE PLAN. HOWEVER, MITIGATION EFFORTS SHOULD BE ALLOWED AND ENCOURAGED TO LESSEN THE TRAFFIC AND OTHER IMPACTS RESULTING FROM HIGHER RESIDENTIAL DENSITIES AS I HAVE NOTED BELOW.

NOTE: GROWTH MANAGEMENT GOALS ALONG WITH COMMENTS FROM THE PC MEMBERS THEMSELVES SHOW THEY SUPPORT HIGHER DENSITIES IN THE URBAN CORE BECAUSE: 1. INCREASED RESIDENTIAL DENSITY IN THE CORP ALLOWS WORKING FAMILIES TO WALK TO THE FERRY, WALK TO SHOPPING, WALK TO SCHOOLS, WALK TO CITY HALL AND SO ON, THUS DECREASING THE USE OF CARS REGARDLESS OF HOW MANY PARKING SPACES ARE AVAILABLE PER HOME. WALLACE COTTAGE IS A "POSTER CHILD" PROJECT IN MEETING THESE GOALS. ADDITIONALLY, HDDP PROJECTS HAVE ATTRACTED FAMILIES WITH CHILDREN WHO ARE DESPERATELY NEEDED TO OFFSET THE DECLINING SCHOOL POPULATION AND INCREASING GENTRIFICATION OF BAINBRIDGE.

NAKATA/TAURNIC NEIGHBORHOOD MITIGATION POSSIBILITIES TO REDUCE INCREASED DANGER FROM INCREASED TRAFFIC

1. INSTALL A 4 WAY STOP INTERSECTION AT WALLACE AND NAKATA THAT CURRENTLY HAS ONLY 1 STOP FOR TAURNIC AT WALLACE ALONG WITH INSTALLING A NO RIGHT TURN AS OUR WALLACE INTERSECTS NAKATA, THUS FORCING WALLACE COTTAGES TRAFFIC TO GO ONLY TO GROW AVE. THE NEIGHBORS WHO TESTIFIED SPOKE ONLY OF PROTECTING NAKATA FROM INCREASED TRAFFIC. TAURNIC IS A CULDESAC THUS THERE IS NO REASON FOR OUR TRAFFIC TO ENTER TAURNIC EXCEPT TO VISIT A NEIGHBOR.
2. OR CLOSE NAKATA AVE. WITH AN EMERGENCY ONLY ACCESS "SEATTLE STYLE BERMED EMERGENCY ACCESS PASSTHRU WITHOUT BARRIERS" LEAVING THE ACCESS TO NAKATA ONLY AT THE NORTH END.
3. THE PC MEMBERS AND NEIGHBORS CAN USE OUR SUGGESTED PLAN OF WITHHOLDING A FREE "VACATION" OF DUANE LANE TO THE OHRT GROUP UNLESS THE OHRT GROUP USES OUR 15' FLAG ALONG WITH A DEDICATION OF THEIR PROPERTY TO CREATE AN "EASTERN EXTENSION OF WALLACE RIGHT OF WAY FROM THE WALLACE COTTAGES BOUNDARY TO MADISON AVE. WITH A FREE VACATION OF DUANE AVENUE THE OHRT GROUP GAINS OWNERSHIP OF DUANE LANE EASEMENT AND THE PARALLEL PSE UTILITY EASEMENT AND GAINS A \$400,000 LAND VALUE. THEN THE ACCESS TO WALLACE COTTAGES CAN BE FROM MADISON AVENUE VERSUS THROUGH THE NAKATA/TAURNIC NEIGHBORHOOD.

NOTE: SEATTLE TICKETS DRIVERS WHO USE THESE EMERGENCY PASSTHROUGHS ARE SUBJECT TO TRAFFIC TICKETS.

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