

MINUTES
Ferndale City Council Meeting
Held Tuesday, January 17, 2006
City Hall Annex – Council Chambers
7 p.m.

ROLL CALL:

Councilmember Steve Oliver
Councilmember Mike Reilly
Councilmember Gary Jensen

Councilmember Mel Hansen
Councilmember Marianne Elgart
Councilmember Keith Olson

ABSENT:

Councilmember Ken Downey (excused)

STAFF:

City Administrator Greg Young
Public Works Director Bob Cecile
Planning Director Tom Black
City Attorney Dick Langabeer

City Clerk Linda Knutson
City Treasurer Mark Peterson
Police Chief Michael Knapp

Mayor Jerry Landcastle Presiding

COUNCIL WORKSHOP: (COMMERCIAL) PLANNED UNIT DEVELOPMENT ORDINANCE MORATORIUM

The Council met from 5 p.m. to 6:50 p.m. to consider public input on the moratorium imposed on commercial planned unit development applications. The moratorium was passed at the Council meeting of January 3, 2006 and is set to expire at midnight this date.

Those speaking for the extension of the moratorium to allow for further study and or revision of the PUD ordinance were: Kira Derhgawen, Barbara Brenner, John Flarry, Lynnea Flarry, Michele Seaburg, Carl Weimer, Steve (?), David Bricklin, Brent Goodrich, Roy Jordana, Debi Covert-Bowlds, Aileen Satushek, and Barbara Shoemacher.

Those speaking against extending the moratorium and allowing commercial planned unit development applications to be submitted were: Travis Glass, Brad Oxford, Neal Cox, Rhonda Oxford, Gary Russell, Ted Wood, Mike Kohl, and James Kaufman.

CALL TO ORDER

Mayor Landcastle called the meeting of the Ferndale City Council to order at 7:00 p.m.

CONSENT AGENDA

The following consent agenda was moved for approval by Councilmember Oliver and seconded by Councilmember Hansen:

1. Approval of Minutes of 01/17/06 Council Meeting
2. Approval of Payroll of 01/17/06; Total Payroll:\$530.08; Cash out K. Denman
3. Approval of Payroll of 01/18/06; Automatic Deposit Amount: \$108,088.51; Checks #22853 #22865 Amount: \$39,507.51; Total Payroll:\$147,596.02
4. Approval of Payroll of 01/25/06; Automatic Deposit Amount: \$149.20; Checks #22866 - #22867 Amount: \$916.48; Total Payroll:\$1,065.68
5. Approval of Payroll of 02/01/06; Automatic Deposit Amount: \$2,336.64 Checks #22868 - #22892 Amount: \$10,742.53; Total Payroll:\$13,079.17 – Police Uniform Allowance, and 5th week vacation buy-out
6. Approval of Payroll of 02/03/06; Automatic Deposit Amount: \$111,066.01; Checks #22893 -#22907 Amount: \$40,654.36; Total Payroll:\$151,720.37

Motion passed unanimously.

PUBLIC COMMENT

Sheila Weber, Ferndale, thanked the Council for their support and written comments to the FCC regarding a local station's license review. She said that recent publicity attention by Seattle media had generated a good deal of interest from other entities that are experiencing interference from other high-frequency radio stations.

Judy Davis, Ferndale, also thanked the Council for their support on behalf of their "anti-high radio frequency" group. She felt that the assistance of the City and County Councils went a long way to empower the group's concerns heard by the FCC.

Dave Edmondson, Whatcom County, added his thanks to the Council, saying that they had not yet heard back from the FCC, but would keep interested parties posted. He further stated that it was not the intent of the group to shut down the radio station, but to have the power lowered to a level that would greatly lessen or eliminate the interference that he and others had been experiencing for over a decade.

Barbara Brenner, Whatcom County, said that an audio-tape of a meeting that the Charter Review Board had held locally was nearly inaudible due to the interference from the station in question.

ANNUAL HEARINGS EXAMINER REPORT TO THE CITY COUNCIL

Rick Sepler, who provides Hearings Examiner services to the City, was present to update the Council on the process over the past five months. Mr. Sepler reported on emerging trends and process protocols that are working well, and will have some suggestions on areas that could be improved once the process has been in place for a few more months. He will also have suggestions on any code provisions that he feels are in need of updating.

PUBLIC HEARING: COMP PLAN UPDATE SCHEDULE

Planning Director Black stated that the update to the City's Comprehensive Plan had been under way for several months. At this point a calendar/schedule via a Council resolution is proposed as part of that update process. The resolution sets out workshops and public hearings on the various elements of the Comp Plan, and has been recommended for approval by the Planning Commission. Senior Planner Robb Millspaw stated that staff has made great strides thus far in the update process.

Mayor Landcastle reviewed the protocol governing public hearings.

Public Hearing Opened
No one spoke
Public Hearing Closed

It was moved by Councilmember Hansen and seconded by Councilmember Reilly to approve Resolution #06-02-06 establishing a revised work program and schedule for the review and revision of the City's Comprehensive Plan and development regulations pursuant to the requirements of the Growth Management Act. Motion passed unanimously.

PUBLIC HEARING: MORATORIUM ON COMMERCIAL PLANNED UNIT DEVELOPMENTS

Planning Director Black updated the Council that a public hearing was to be held this evening to determine whether or not it was necessary to continue to emergency moratorium on commercial planned unit development applications, passed at the Council meeting of January 3rd. He further reviewed that the Council had now held two special committee meetings plus a two hour workshop in order to address

issues outlined by Seattle attorney David Bricklin, as well as receive public input. Director Black noted that Council packets included an overview letter authored by him and City Attorney Langabeer, as well as a lengthy memo from the City Attorney addressing Bricklin's comments point-by-point.

Mayor Landcastle reminded the assembled that the rules of protocol governing public hearings were still in effect. He asked that speakers limit their comments to three minutes.

Public Hearing Opened

(Proponents: In favor of extending moratorium

Opponents: NOT in favor of extending moratorium)

Lynnea Flarry, Whatcom County, was concerned about traffic regulations related to the PUD Ordinance. She added that any major project allowed under the PUD would heavily impact already congested areas.

Kira Derhgawen, Ferndale, asked for a comprehensive review of the PUD Ordinance and an extension of the moratorium for that purpose. She felt that David Bricklin was an expert in the area of land use and urged the Council to give credence to his comments.

Barbara Brenner, Whatcom County, said that while she appreciated the information distributed by City staff, she was disappointed that the traffic ordinance wasn't included. She said she was hopeful that Council would extend the moratorium for at least two more weeks in order to have time to revise PUD and related ordinances.

Aileen Satushek, Whatcom County, asked the Council to upgrade the PUD Ordinance in regard to traffic studies and mitigation. Her main concern was safety for both pedestrians and drivers in her area, which she considers already dangerous, and asked that Council extend the moratorium.

John Flarry, Whatcom County, said that he had three main concerns with the commercial PUD, the first being what, if anything, was allowed for mixed use. His second concern was that Council would have little or no control over PUD project issues, and his third concern centered on concurrency standards for traffic studies and mitigations.

Neal Cox, Ferndale, stated that he had actually developed under the Planned Unit Development Ordinance and felt that it worked very well for both the City and himself. He urged the Council to lift the moratorium and allow the process to work.

Susan Cole, Ferndale, asked the Council to lift the moratorium because she knew how much work had gone into the development of the Planned Unit Development Ordinance, as well as all of the tools that are in place to mitigate issues and concerns. She felt that the City Attorney had done an excellent job of addressing each of Mr. Bricklin's criticisms of the Ordinance.

Rhonda Oxford, Ferndale, asked the Council to lift the moratorium. She stated that over a year or research and work had gone in the PUD Ordinance and none of those speaking against it had attended any of the meetings or workshops.

Mike Kohl, Bellingham, suggested that Council give due consideration to all of the testimony on this issue. He said that the Ordinance itself addressed every issue raised during this review, and that all tools are in place to allow the process to work very well for Ferndale.

Gary Russell, Ferndale, urged the lifting of the moratorium because the City has in place a process that work, a professional and responsible staff, and a Council who listens to all sides, then makes the hard decisions. He said that it's time for Ferndale to move forward.

David Bricklin, Seattle, said that he was hired by someone to review and critique the City's PUD ordinance. He felt that many provisions could be improved and revised, and was particularly concerned with how traffic mitigation impacts are currently addressed. He felt the Council should consider hiring a third party attorney to represent them, as he considered Mr. Langabeer "the Mayor's attorney". Councilmember Oliver asked how traffic impacts were addressed through SEPA and EIS. Mr. Bricklin said there were limited remedies to traffic in those two processes. Councilmember Jensen asked for clarity of mixed usage in the commercial PUD. Mr. Bricklin responded that the ordinance is "vague" in addressing mixed use.

Debi Covert-Bowlds, Ferndale, said she supported an extension of the moratorium, as her neighborhood is impacted by traffic that is already becoming troublesome and dangerous.

Brent Goodrich, Ferndale, said that the moratorium should not be leveled against any specific project, but "if it's broke, fix it". He said that the Council can't please everyone, but encouraged them to look ahead to traffic problems and impacts as a priority.

Carl Weimer, Whatcom County, agreed that traffic impacts must be addressed as a high priority, and urged the Council to extend the moratorium.

Terese VanAsshe, Ferndale, felt that six year traffic concurrency was extremely generous, and should be lessened considerably. She also stated that buffer requirements were "miniscule" and therefore inadequate.

Barbara Shoemaker, Ferndale, felt the size of the PUD project should dictate buffer size, and that traffic issues were going to be major concern of the public. She favored ordinances that Pt. Townsend has in place to address these concerns.

John Friberg, Ferndale, said that he would like to have the minimum acreage requirements of the residential PUD reviewed.

Brent Hoezle, Ferndale, said that he lives near a proposed commercial PUD, and has no problems with any of the ordinance provisions, and feels the City is "wasting time" with this moratorium. He trusts that Council will look at traffic issues as they come forward.

Ted Wood, Bellingham, noted that the two Whatcom County Councilmembers who had testified earlier needed to look at the County's traffic problems rather than Ferndale's. He stated it was time to lift the moratorium and let Ferndale move forward.

Janice Schuch, Whatcom County, requested that the moratorium be extended in order to have more time to look at traffic, lighting, and buffer issues, all of which were her highest priorities.

Public Hearing Closed

Council Discussion

Councilmember Reilly asked for clarity regarding the often referred to "six year traffic concurrency" during the public hearing. Attorney Langabeer stated that this simply that they any funds received for traffic mitigation had to be spent within a six-year time frame, and not that the development had six years to conform.

In response to Mr. Bricklin's assertion that he was "the Mayor's attorney", Mr. Langabeer stated that he was the City's Attorney, Council's Attorney, Staff's Attorney, and had been representing the City for more than thirty years. He further stated that he had never, and would never, give any advice or do anything that would "put the City in harm's way".

Planning Director Black responded to Mr. Bricklin's comments that the PUD did not allow for mixed uses, saying that it in fact allowed for a great many mixed uses, because the PUD in itself was created in order to encourage innovative and flexible development.

Councilmember Hansen commented that the biggest concern of the public was traffic. Director Black explained that the PUD Ordinance is a tool that allows for consideration of bigger issues, and that traffic is addressed elsewhere in the process.

There was general discussion between staff and Council regarding what safeguards are built into the process, and how much ultimate control the Council retains during the review process. Attorney Langabeer and Director Black contended that the PUD Ordinance and related regulations give Council the tools necessary to deal with any PUD application received by the City. Council is able to add to findings of fact, conclusions of law, and conditions of approval on any recommendation from the Hearings Examiner, as long as they are supportable and hold up to the law.

Mayor Landcastle announced that if the Council took no action to the contrary, the moratorium would expire at midnight.

Ten minute break 9:05 to 9:15 p.m.

The meeting was called back to order at 9:15 p.m.

Motion

It was moved by Councilmember Olson and seconded by Councilmember Jensen to extend the moratorium on commercial planned unit development applications for an additional sixty days.

Council Discussion

Councilmember Olson felt that there was still too much confusion on this issue that needed to be clarified.

Councilmember Elgart stated that she would not support an extension, as she was confident of the process in place. She added that it would be necessary to remain vigilant and proceed with caution, in order to assure that any PUD projects are done right.

Councilmember Oliver also would not support an extension, saying that he supported the substantial regulatory process that was in place. He added his assurances that the Council would proceed with caution, and consider all concerns expressed.

Councilmember Hansen stated that current regulations were in place, and he felt there was no confusion on the part of the City Attorney or the professional staff regarding those regulations, only that many things had been brought forward that clouded the issues. He felt that the moratorium had been a method of stopping a particular project, and not to address the PUD ordinance. He added that additional conditions of approval could and would be imposed to safeguard the City.

Councilmember Jensen stated that any and all planned unit developments, both residential and commercial, would be filled with hard decisions that they had been elected to make. He promised to study all of the issues and "fight for the citizens".

Councilmember Reilly stated that he trusted the professional staff and City Attorney and their advice and guidance during the moratorium.

Vote

Motion failed five-to-one, with Councilmember Olson voting yes.

ARIEL COURT FINAL PLAT

Director Black reviewed that the Preliminary Plat for Ariel Court, consisting of 15 single-family residential lots, was approved by the City Council on November 15, 2004. Construction of the physical infrastructure for the project has been underway for several months and is now substantially complete.

The Hearings Examiner held a public meeting on January 19, 2006 to consider the Final Plat Application. After considering the materials provided, the report submitted by staff, and the recommendations of the Plat Administrator and the Public Works Director, the Hearings Examiner recommends approval of the Final Plat Application, based on the Findings of Fact and Conclusions of Law contained in the Hearings Examiner Decision, and subject to the Conditions of Final Plat Approval contained in the Staff Report dated January 19, 2006. Director Black noted that this Final Plat is subject to the provisions of the moratorium adopted by Ordinance #1379, prohibiting the connection to the sewer line in that area until the Southwest Sewer Bypass Project is completed.

It was moved by Councilmember Oliver and seconded by Councilmember Reilly to approve the Final Plat of Ariel Court, based on the Findings of Fact and Conclusions of Law contained in the Hearings Examiner Decision, and subject to the Conditions of Final Plat Approval contained in the Staff Report dated January 19, 2006. Motion passed unanimously.

REVISIONS TO FINANCIAL MANAGEMENT POLICIES – INVESTMENT ELEMENT

City Treasurer Mark Peterson gave an overview of how the City has been investing funds over the past several months. He is suggesting some revisions in the percentages of funds that are allowed to be invested in different areas, allowing for maximum flexibility during favorable rate periods.

It was moved by Councilmember Hansen and seconded by Councilmember Jensen to approve the recommended revisions to the investment element of the Financial Management Policies. Motion passed unanimously.

CIVIL SERVICE RULES AND REGULATIONS

City Administrator Greg Young updated the Council that he had received no comments or suggestions on the Draft Civil Service Rules distributed several weeks ago. Those Rules were now coming forward and were recommended for approval.

It was moved by Councilmember Reilly and seconded by Councilmember Elgart to approve the City of Ferndale Civil Service Rules and Regulations. Motion passed unanimously.

MAYOR REPORTS

Mayor Landcastle proclaimed Tuesday, February 14, as Cherry Blossom Day in the City of Ferndale, and announced that a cherry tree will be planted at the City Hall site on that day to commemorate and honor the City's long standing friendship with Japan.

It was moved by Councilmember Elgart and seconded by Councilmember Reilly to endorse the Cherry Blossom Day Proclamation as presented. Motion passed unanimously.

A Council work session is scheduled for Tuesday, February 21, from 5 – 7 p.m. to discuss the siting of the Boys and girls Club in Pioneer Park.

Mayor Landcastle asked for Council support to appropriate \$7,450 for all-staff training. Council asked that the facilitator do a brief presentation to the Council regarding the training content and purpose. Mayor Landcastle will arrange for the trainer to be at the next regular meeting.

COUNCIL REPORTS

Councilmember Jensen stated that he had recently received some compelling information regarding the future regulation of detention/retention ponds. He felt this information should come to the attention of the voters during stormwater education process.

ADJOURNMENT

There being no further scheduled City business, the meeting was adjourned at 9:55 p.m.

ATTEST:

Jerry Landcastle, Mayor

Linda Knutson, City Clerk

ATTACHMENT A:

**MINUTES
Planning and Judicial Committee Meeting
Held Wednesday, February 1, 2006
City Hall Annex – Council Chambers
9:30 a.m.**

**PRESENT (Committee of the Whole): Councilmembers Oliver, Hansen, Reilly, Elgart,
Jensen, and Olson**

**ADMINISTRATION: Mayor Landcastle, City Administrator Young, Planning Director Black, City
Clerk Knutson, City Treasurer Peterson**

LEGAL COUNSEL: Richard Langabeer

Mayor Landcastle called the meeting of the Committee as a whole to order at 9:35 a.m.

RESOLUTION #06-02-06 – PROPOSED CALENDAR FOR COMP PLAN REVIEW

Planning Director Black presented the Committee with a Resolution setting out the proposed work program and schedule for the review and revision of the Comprehensive Plan and Development Regulations pursuant to the requirements of the Growth Management Act.

It was moved by Councilmember Elgart and seconded by Councilmember Hansen to forward Resolution #06-02-06 to the Full Council for consideration at their next regular meeting.

FINAL PLAT – ARIEL COURT

Director Black reviewed that the Preliminary Plat for Ariel Court, consisting of 15 single-family residential lots, was approved by the City Council on November 15, 2004. Construction of the physical infrastructure for the project has been underway for several months and is now substantially complete.

The applicant desires city approval of the Final Plat, which is necessary before the Plat can be recorded, lots sold, or building permits issued. A Final Plat Application was submitted, reviewed by the Plat Administrator and Public Works Director, and forwarded to the Hearings Examiner for a recommendation per Section 17.24.010 of the Ferndale Municipal Code.

The Hearings Examiner held a public meeting on January 19, 2006 to consider the Final Plat Application. After considering the materials provided, the report submitted by staff, and the recommendations of the Plat Administrator and the Public Works Director, the Hearings Examiner recommends approval of the Final Plat Application, based on the *Findings of Fact* and *Conclusions of Law* contained in the Hearings Examiner Decision, and subject to the *Conditions of Final Plat Approval* contained in the Staff Report dated January 19, 2006.

Director Black noted that this Final Plat is subject to the provisions of the moratorium adopted by Ordinance #1379, prohibiting the connection to the sewer line in that area until the Southwest Sewer Bypass Project is completed.

It was moved by Councilmember Hansen and seconded by Councilmember Elgart to forward this item to the full Council at their next regular meeting. Motion passed unanimously.

DISCUSSION ON PLANNED UNIT DEVELOPMENT COMMENTS SUBMITTED BY D. BRICKLIN

City Administrator Greg Young distributed to the assembled a booklet containing several ordinances, code provisions and documents related to the PUD moratorium. He explained that all of the documents worked together as would be apparent later in the meeting. When the moratorium was imposed in early January, there were no stated "emergencies" in the Council's discussion. This has caused staff some concern, as the moratorium could have been challenged on several different levels. Administrator Young concluded by saying that the City's rules and regulations have been well-thought out and carefully reviewed over several years and provide all the tools necessary to handle the impacts large commercial developments. He added that this discussion would relate only to the PUD and related ordinance, as appropriate, and would not be project specific, unless Mr. Bricklin's comments specifically referred a proposed project.

Planning Director Tom Black read a memorandum into the record, attached hereto as Attachment A. The memo details the approach used in addressing a "summary of comments by David Bricklin" that was brought forward at the January 3rd meeting. The summary laid out several perceived flaws and inadequacies in the City's Planned Unit Development ordinance. Director Black and City Attorney Richard Langabeer were asked by Council to review and comment on the Bricklin summary point-by-point during the moratorium period.

City Attorney Richard Langabeer reviewed his "Response to Summary of Comments from David Bricklin", a memo submitted to Council and attached to these minutes as Attachment B. In it, Langabeer addresses each area of Bricklin's concerns in the order listed. He then reviewed the eleven items outlined in the Bricklin summary. Each was thoroughly evaluated and addressed from a legal perspective.

Mr. Langabeer concluded by stating that in his opinion, there was absolutely "no basis or substance to the comments in the document. I find no deficiencies in the City's PUD regulations or in any other land use controls or regulations that would preclude a complete and comprehensive review of the Pioneer Plaza proposal or any other development within the City."

Attachment "A":

February 1, 2006

Honorable Mayor and City Council Members,

Attached to this cover letter is a memorandum prepared by the City Attorney and the Planning and Building Director at the direction of the City Council. It responds to an unsigned memorandum, purportedly summarizing comments by David Bricklin, which questions the adequacy of the city's development regulations as they pertain to the review of commercial PUD applications; specifically, the Pioneer Plaza commercial PUD.

In response to this memorandum, the Council imposed an emergency moratorium on the processing of all commercial PUD applications. Since the Pioneer Plaza application has not yet been declared complete, the Council's action has effectively halted the development review process.

We understand that the Council asked for an "item-by-item" response to the comments in the memorandum, and we have done so in the attached memorandum. However, we believe it is necessary to provide these introductory comments in order to provide some context for considering these criticisms of the city's plans and regulations.

Perhaps the place to start is with the author's underlying assumption that the city's Comprehensive Plan and associated development regulations are somehow naïve, in that they "*were not drafted with this kind of development in mind*". Nothing could be farther from the truth, and frankly, it is difficult to understand how anyone could make such a statement after reading the Comprehensive Plan and reviewing the development regulations that the city has revised or put in place since the adoption of the Comprehensive Plan in 1996.

The fact is, the Comprehensive Plan promotes and anticipates substantial growth in retail commercial development adjacent to I-5, and designates over 400 acres of land surrounding the I-5/Main Street interchange for commercial use. The Plan also recognizes the regionally-oriented nature of Ferndale's location, and assumes that regionally-oriented commercial development will occur adjacent to I-5. If there is any doubt about these assumptions, or about the land use decisions that the Council has made with regard to this commercial area, it should be noted that they were challenged by appeal to the Growth Management Hearings Board, and the city's position was upheld.

The Comprehensive Plan also specifically promotes design flexibility and innovative approaches to commercial development and recommends creating ordinances to accomplish this. The City Council has followed through on the implementation of these objectives by amending the PUD ordinance on two separate occasions since 1996. The latest update was accomplished less than three years ago, after a public review process that lasted over a year.

Of course, while promoting and planning for commercial growth, the Comprehensive Plan also contains numerous goals aimed at protecting the environment. Once again, the Council has implemented these goals by updating both the Shoreline Master Program and the Critical Areas Ordinance, which was updated only 15 months ago and accepted by DOE. The city has also adopted the most up-to-date DOE stormwater standards, and has recently enacted city-wide landscape standards and design standards for large retail projects.

Given all of this, it is just nonsense to say that the city's plans and regulations never anticipated, and are therefore inadequate, to deal with large commercial proposals like Pioneer Plaza. The author of the memorandum would have us believe that the Council has been sitting idle for the last decade. He would simply ignore the thousands of hours of work, by citizens, city staff, and elected officials that went into the careful development, consideration, and adoption of the city's plans, codes, and ordinances.

Beyond asserting that the city's plans and regulations were not written with large commercial development in mind, the author contends that these same ordinances are simply not strong enough. He feels that many of our regulations are subject to challenge, but it must be understood that *all* regulations are *always* subject to challenge. The author's primary complaint appears to be that our regulations are "vague". We do not agree. Many of the code provisions characterized as vague are in fact written broadly *on purpose* in order to achieve stated goals of the Comprehensive Plan. Unfortunately, the author often provides incomplete quotations or misstates provisions of the code, and then asserts that they are vague. It is difficult to know how to respond to this kind of bewildering comment, other than to say that the author of the memorandum appears to be the one clouding the issues.

Another of the author's assertions is that once a PUD application is complete "*the city is prohibited from imposing any requirements on the development other than those in the current code.*" This statement is simply wrong, and completely ignores the role of the SEPA process in project review. In reality, the city has the ability to identify and include conditions of approval for a project based not only on city code provisions, but the mitigation measures identified through the SEPA process as well. Between the city's Comprehensive Plan, its development ordinances, and the SEPA process, any significant commercial PUD proposal will face intense, lengthy, and very public scrutiny before a final decision is rendered by the City Council.

The PUD ordinance in particular has been roundly criticized by the author. According to him, its flaws are so grave as to constitute an emergency situation of a magnitude sufficient to warrant the imposition of a moratorium. Again, we disagree. To the contrary, the PUD ordinance provides the city with a singular and extremely useful mechanism

by which unconventional mixed-use commercial development may be considered by the community. In fact, it is the *only* means by which such proposals may be considered by the city.

The author thinks that the PUD language provides too much flexibility, and objects to the fact that it includes no “quid-pro-quo”. What he apparently does not understand is that the PUD ordinance was written to implement Comprehensive Plan policies which specifically encourage and promote just the sort of flexibility he finds objectionable. There is no quid-pro-quo because the city’s Comprehensive Plan considers mixed-use development and innovative approaches to commercial development, *per se*, as beneficial to the city.

The PUD ordinance has been purposefully written to achieve these ends by being flexible and broadly written. It must not be forgotten that the commercial PUD ordinance exists, in large part, to implement the Commercial Land Use Goal of the Comprehensive Plan, which supports substantially increasing the amount and variety of retail commercial development adjacent to I-5, not limiting it. The fact that the author, and those he represents, do not agree with that objective does not make the city’s ordinance vague or weak. Actually, the commercial PUD ordinance puts the Council in a strong position, providing it with considerable opportunities to affect the nature of a large commercial development--- far more so than would be the case if those hundreds of acres of commercial properties were developed piecemeal in accordance with minimum zoning requirements. The reality is, uses such as restaurants, offices, bulk retail outlets (Costco, Home Depot, etc.), light industry, a variety of manufacturing uses, lumberyards, container yards, and mini-warehouses could all be developed right now, by right--- meaning *without* any requirement for public review or approval by the City Council.

For the city, that piecemeal development scenario is also a “worst-case” scenario. While a single large development may be required to be coordinated, phased, and developed as an integrated whole, piecemeal development will occur randomly, ultimately generating the same level of impacts, but with far less control on the city’s part to effectively mitigate those impacts. Worse, the piecemeal scenario includes no meaningful public review process.

Far from being a dirty word, the PUD provides an opportunity for developers to propose “out-of-the-box” approaches to land development, while at the same time affording the Council considerable discretion to affect the design of such projects, including imposing conditions to mitigate their impacts on the community. Together with other city plans, regulations, and standards, the PUD ordinance provides more than adequate protection for the city when considering commercial PUD applications.

We will be happy to answer questions you may have regarding this statement, or the contents of the attached memorandum.

Respectfully,

Richard Langabeer, City Attorney

Tom Black, AICP, Planning and Building Director

ATTACHMENT B:

MINUTES