

City Of Woodland
City Council Meeting Agenda Summary Sheet

Agenda Item: Motion to initiate a Comprehensive Plan Text Amendment that would allow auto-oriented uses, and specifically drive-through facilities, in the Central Business District (C-1).

Agenda Item #: (F) Action

For Agenda of: 04/15/2013

Department: Planning

Date Submitted: 04/09/2013

Cost of Item: N/A

Amount Budgeted:

Unexpended Balance:

BARS #:

Description:

Department Supervisor Approval: Carolyn Johnson / s /

Committee Recommendation: _____

Agenda Item Supporting Narrative (list attachments, supporting documents):

1. Staff Report
2. Legal Memo

Summary Statement/Department Recommendation:

Please see staff report.

**STAFF REPORT – Amending the Allowed, Conditionally
Allowed, and Prohibited Land Uses in the C-1 District (Central Business District)**

TO: City Council

FROM: Carolyn Johnson, Community Development Planner

RE: Proposed Ordinance 1263 Amending C-1 Uses

DATE: Prepared April 9, 2013 for April 15, 2013 Council Meeting

Introduction

On April 1, 2013, Council tabled the second reading of Ordinance 1263 until April 15th so that staff could report back on the correct process and schedule for approving Mr. Perry’s amendment to add drive-through facilities to the list of permitted uses (except drive-through fast food restaurants which would remain conditional uses).

As discussed on April 1st, including drive-through facilities to the list of outright permitted uses would be inconsistent with the Woodland Comprehensive Plan. If the Council wishing to move forward with allowing drive-throughs in the C-1, the correct procedure for moving forward is to:

1. Table approval of draft ordinance 1263 until the fall of 2013, after Council has completed first and second readings of 2013 Comprehensive Plan Amendments.
2. Initiate a Comprehensive Plan text amendment that would allow auto-oriented uses such as drive-throughs in the central business district.

Relationship between the Comprehensive Plan and Development Regulations

The Growth Management Act requires local development regulations to be consistent with a community’s adopted Comprehensive Plan, RCW 36.70A.130(1)(d) and RCW 35.63.125. Municipal Research Services Center (MRSC) clearly describes the primacy of the Comprehensive Plan and its relationship to development regulations: “The Growth Management Act establishes the primacy of the comprehensive plan. The comprehensive plan is the starting point for any planning process and the centerpiece of local planning. Development regulations (zoning, subdivision, and other controls) must be consistent with comprehensive plans. (MRSC, June 2006 <http://www.mrsc.org/subjects/planning/compplan.aspx>).”

Timeline

By statute, all Comprehensive Plan amendments can occur no more than once per year and must be considered together. For this reason, the City generates an annual schedule for considering Comprehensive Plan amendments. The schedule for reviewing 2013 amendments has just begun and it is still possible to consider a text amendment without holding up private parties that are in the process of applying for amendments.

The process and schedule for considering comprehensive plan amendments is as follows:

DATE	STEP
December 19	City asks for formal request letters from those who have expressed interest in comprehensive plan amendments.
December 19 and 26, 2012	Public participation program with procedures and schedules published (<i>The Reflector</i>).
January 10, 2013 (Deadline)	Deadline for formal request letters.
March 8, 2013 (Deadline Extended)	Extended deadline for formal request letters.
March 21, 2013	Planning Commission determines if a proposal should receive further consideration as part of the comprehensive plan amendment process (WAC 365-196-640(6)(d)).
April 19, 2013 (Deadline)	Applications submitted. Any applications not received by the deadline will be considered in 2014.
May 29, 2013	NOA and Likely SEPA determination published in <i>The Reflector</i> and 60-day DOC notice issued as Per RCW 36.70A.106
June 12, 2013 at 5 PM	SEPA public comment period ends.
July 3, 2013	SEPA threshold determination issued and Notice of Public Hearing published in the <i>Reflector</i> .
July 18, 2013	Public Hearing before Planning Commission
August 5, 2013	1st readings of the ordinance by City Council
August 19, 2013	Final reading of the ordinance by City Council

Existing Comprehensive Plan Language

Language in the Comprehensive Plan conflicts with the idea of listing drive-throughs as an outright permitted use. The following text in the Comprehensive Plan would have to be amended in order to eliminate the inconsistency:

Downtown Commercial: This is high intensity land use including the central business district and other dense arrangements of professional offices and retail stores. This designation discourages land consumptive uses (i.e., warehouses) and uses that generates high traffic (i.e., drive-through businesses or gas stations). This designation encourages high floor area ratios (1.5 to 1.0) and also residential use on upper floors (2005 Comprehensive Plan Update, Page 1-20).

The downtown commercial district is that area west of the Interstate 5 freeway and at or near the historic downtown area. It is oriented towards smaller retail stores; service, financial, insurance, real estate, and professional outlets and offices; municipal and private shared parking garages and lots; pedestrian mall and plazas; performing arts and other entertainment and cultural facilities and activities; transportation terminals; mixed use projects; upper story apartment housing; and pedestrian walkways linking key facilities. Discouraged uses are those that are land consumptive such as warehouses, automobile sales lots, and individual business parking lots that diminish the area's compactness and convenience as an integrated shopping goods and services area. Also discouraged are uses that are strictly automobile-access oriented, such as drive-in

restaurants and gas stations, as opposed to pedestrian oriented (2005 Comprehensive Plan Update, Page 1-41).

The Planning Commission's Treatment of Drive-Through Facilities

The Planning Commission supported an ordinance that would make all new drive-through facilities conditional uses that are decided by a hearing examiner based on criteria. Conditional use permits allow the City to consider special uses which may be essential or desirable to a particular community, but which are not allowed as a matter of right within a zoning district. The intent of conditional use permits is to provide flexibility within a zoning ordinance. Another purpose is to enable a municipality to control certain uses which could have detrimental effects on the community. The process involves public notification and a public hearing. Conditional uses are to be reviewed annually by staff for compliance with the terms of the approved conditional use permit.

The Planning Commission chose to make drive-through facilities a conditional use based on discussions about the range of businesses (i.e., bank, pharmacy, coffee stand, restaurant, etc.) that may desire a drive-through and the idea that while some may take away from the pedestrian environment, others may not have negative impacts because of their scale/size, design, or location. The Commission was aware that the Comprehensive Plan specifically discourages auto-oriented uses such as drive-throughs and that development regulations must be consistent with the Comprehensive Plan. However, approving drive-through facilities through a conditional use permitting process would require a developer to show that the facility is "compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design" (WMC 17.72.050.C) and that the proposal is in "keeping with the goals and policies of the Woodland Comprehensive Plan" (WMC 17.72.050.D), a plan which promotes a C-1 district with a pedestrian-oriented environment. Staff supports the Planning Commission's treatment of drive-through facilities.

CMJ

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TO: City of Woodland
ATTN: Mayor Grover Laseke
City Council
FROM: William J. Eling *WJE*
RE: Consistency of Comp Plan and Zoning
DATE: April 10, 2013

Issue

Must the City amend its Comprehensive Plan which states it is a goal to discourage automobile drive-through in the C-1 zone, prior to considering an amendment to the zoning code which would allow drive-through outright?

Answer

Given the statutory requirements of the Growth Management Act and the explicit language in the Woodland Comprehensive Plan, the Comprehensive Plan must be amended before the City Council can adopt the proposed amendment to the zoning code.

Analysis

First, I examine the legal requirements of the Growth Management Act. Second, I review the language in the comprehensive plan. Finally, posit the most likely judicial interpretation should the Council decide to go ahead with the zoning code change without first amending the comprehensive plan. Ms. Johnson's memo outlines the steps necessary to modify the City of Woodland's Comprehensive Plan and it is not a subject of this memo.

Growth Management Act

"The Growth Management Act is Washington's fundamental land use planning law. Before its enactment, local land use planning was optional." *Town of Woodway v. Snohomish County*, Washington Court of Appeals, Division 1, No. 68048-0-1, (January 7, 2013). A "comprehensive land use plan" is defined as "a

generalized coordinated land use policy statement of the government body of a county or city that is adopted pursuant to this chapter." RCW 36.70A.030(4). The Washington Courts have described the comprehensive plan as a "blueprint" or "guide" for all future developments. *Barrie v. Kitsap County*, 93 Wn.2d 843, 849 (1980). In contrast, a "development regulation" is defined as "the controls placed on development or land use activities by a county or city, including, but not limited to zoning ordinances..." RCW 36.70A.030(7). The Washington Supreme Court noted the difference between a comprehensive plan and a zoning regulation in *Pinecrest Homeowner's Association v. Cloninger*, 115 Wn.App. 611, 621 (2003).

"We begin with the well-accepted notion that planning and zoning are not the same thing. A comprehensive land use plan is "a generalized coordinated land use policy statement of the governing body..." RCW 36.70A.030(4).

Development regulations, on the other hand, are "the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances..." RCW 36.70A.030(7). "The plan embodies policy determinations and guiding principles; the zoning ordinances provide the detailed means of giving effect to those principles." 1 ROBERT M. ANDERSON, AMERICAN LAW OF ZONING 3D § 1.03, at 9-10 (1986).

Thus, zoning and comprehensive plans perform fundamentally different functions. 1 ANDERSON, *supra*, § 1.13, at 21 n. 47 (quoting *San Diego Gas & Elec. Co. v. City of San Diego*, 81 Cal.App.3d 844, 146 Cal.Rptr. 103 (1978)). " 'Zoning is very precise and legally restricts the present land use, while the general plan is merely a planning document which is to serve as a guide to future land use.' " 1 ANDERSON, *supra*, § 1.13, at 21 n. 47 (quoting *San Diego Gas & Elec.*, 146 Cal.Rptr. at 111).

These differences have been accepted in Washington: *Planning*, as such, then in effect forms a blueprint for the various regulatory measures it suggests. Municipal "zoning" on the other hand, is, in effect, a part of and an end result or product of effective municipal "planning," for it is through the medium of enacted and enforceable zoning regulations that the aims and objectives of the land-use-classification facet of over-all municipal "planning" may be carried to fruition.

Shelton v. City of Bellevue, 73 Wash.2d 28, 35, 435 P.2d 949 (1968) (emphasis added)."

State law clearly requires a zoning regulation to be consistent with the comprehensive plan. The GMA states that "[a]ny amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan." RCW 36.70A.130(1)(d). See also RCW 36.70A.040(2).

Amendments and revisions of the comprehensive plan must be completed in accordance with the procedures set forth in RCW 36.70A. These procedures include the notice and hearing requirements set forth in RCW 36.70A.035 and RCW 36.70A.140.

In short, State law requires the comprehensive plan and development regulations to be consistent and requires them to be adopted in a specific process.

Inconsistency between the Comprehensive Plan and the Proposed Development Regulations

The Comprehensive Plan discourages auto-oriented uses.

"Downtown Commercial: This is high intensity land use including the central business district and other dense arrangements of professional offices and retail stores. This designation discourages land consumptive uses (i.e., warehouses) and uses that generates high traffic (i.e., drive-through businesses or gas stations). This designation encourages high floor area ratios (1.5 to 1.0) and also residential use on upper floors (2005 Comprehensive Plan Update, Page 1-20). (emphasis added.)

The downtown commercial district is that area west of the Interstate 5 freeway and at or near the historic downtown area. It is oriented towards smaller retail stores; service, financial, insurance, real estate, and professional outlets and offices; municipal and private shared parking garages and lots; pedestrian mall and plazas; performing arts and other entertainment and cultural facilities and activities; transportation terminals; mixed use projects; upper story apartment housing; and pedestrian walkways linking key facilities. Discouraged uses are those that are land consumptive such as warehouses, automobile sales lots, and individual business parking lots that diminish the area's compactness and convenience as an integrated shopping goods and services area. Also discouraged are uses that are strictly automobile-access oriented, such as drive-in restaurants and gas stations, as opposed to pedestrian oriented (2005 Comprehensive Plan Update, Page 1-41). (emphasis added.)

Given that language, how would a Court determine the meaning of that language? The Courts would employ the rules of statutory interpretation.

"Courts interpret local ordinances the same as statutes. *Sleasman v. City of Lacey*, 159 Wash.2d 639, 643, 151 P.3d 990 (2007). We apply an unambiguous ordinance according to its plain meaning; we construe only ambiguous ordinances. *Sleasman*, 159 Wash.2d at 643, 151 P.3d 990. Our goal in construing zoning ordinances is to determine legislative purpose and intent. 8 E. McQuillin, *The Law of Municipal Corporations*, §

25.71 at 224 (3d ed.2000); *HJS Dev., Inc. v. Pierce County*, 148 Wash.2d 451, 472, 61 P.3d 1141 (2003).

The court should be guided by the reasonable expectation and purpose, as expressed in the ordinance or fairly to be inferred therefrom, of the ordinary person who sits in the municipal legislative body and enacts law for the welfare of the general public. 8 *Law of Municipal Corporations*, § 25.71 at 224.”

Milestone Homes, Inc. v. City of Bonney Lake, 145 Wn.App. 118, 126-127 (2008).

The Comprehensive Plan is unambiguous regarding auto-oriented uses in C-1: such uses are discouraged. A zoning regulation which allows auto-oriented uses outright logically does not discourage such uses. Therefore, a Court could conclude that a zoning provision allowing the use outright is inconsistent with the comprehensive plan and invalid. While an argument can be made that, as a general matter, the Comprehensive Plan allows for auto-dependent uses in the C-1 zone, the specific language would control. Generally there is a legal presumption that a legislative body intends a specific statute to prevail over a more general statute. *Muije v. Department of Social and Health Services*, 97 Wn.2d 451, 453 (1982). This would be the applicable principle in this case.

Legal Effect of Inconsistency

“If a comprehensive plan is declared invalid or if a development regulation is found to be inconsistent with the plan, the validity of any permits issued by the local government under the authority of those development regulations will be called into question.” *Skagit Surveyors and Engineers, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 561 (1998) (emphasis added). “... (S)mall town must be held to the same standards as larger cities with respect to zoning decisions.” *Carlson v. Town of Beaux Arts Village*, 41 Wn.App. 402, 408 (1985). By not following the statutory process the City risks litigation in Superior Court under the Land Use Petition Act and in the Growth Management Hearings Board under the GMA. The City may become liable for damages to third party land owners. The better alternative is to follow the statutory process and modify the comprehensive plan before adopting the zoning regulation.