

Bricklin ♦ Newman ♦ Dold, LLP

DAVID BRICKLIN
CLAUDIA M. NEWMAN
JENNIFER A. DOLD
RYAN P. VANCIL
DEVON N. SHANNON

ATTORNEYS AT LAW
1001 FOURTH AVENUE, SUITE 3303
SEATTLE, WA 98154
TEL. (206) 265-8600
FAX (206) 264-9300
<http://www.bnd.law.com>

March 9, 2006

Mayor Ben Tolson
Interim City Administrator Leeland Walton
City Attorney Thom Graafstra
City of Sultan
P.O. Box 1199
319 Main Street
Sultan, WA 98294-1199

Dear City of Sultan Representatives:

This letter is submitted on behalf of Loretta Storm and Raymond J. Kistenmacher. The purpose of this letter is to request the Council to reconsider its recent adoption of Ordinance 904-06, which designated the Council as the City's Planning Commission. This Ordinance has created a procedural and legal quagmire for the Council.

On February 8, 2006, the City Council adopted Ordinance 904-06. Ordinance 904-06 abolished the existing Planning Commission and appointed itself as the members of the new Planning Commission:

The City Council hereby designates itself on an interim basis as the planning agency for the City of Sultan to perform all duties, directly or indirectly, by contract or agreement, required of a planning agency as imposed by law. Where provisions in the City's Municipal Code reference a "planning agency" or a "planning commission," from and after the effective date of this section such references shall refer to the City Council.

The Council adopted Ordinance 904-06 without public notice or public hearing. It fails to comply with City of Sultan and State procedural and substantive requirements for adopting an ordinance. Moreover, it establishes a City planning process that will result in substantial procedural confusion and delay and may expose the City to future litigation.

A. Ordinance 904-06 Does Not Comply With City or State Requirements

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Significant errors were committed in the adoption of Ordinance 904-06 with regard to State and local law. Any decision by the Council as the Planning Commission will be tainted by these errors.

1. The City has violated RCW 35A.12.030 which states a "councilman shall hold within the city government no other public office or employment." Ordinance 904-06 appoints the City Council to the additional public office of members of the Planning Commission. Under RCW 35A.12.030, City Council members may not simultaneously hold the offices of City Council member and Planning Commissioner.

2. The City has failed to meet the requirements of RCW 35.21.530:

After the first reading of the title of the adopting ordinance and of the title of the code to be adopted thereby, the legislative body of the city or town shall schedule a public hearing thereon. Notice of the hearing shall be published once not more than 15 nor less than 10 days prior to the hearing in the official newspaper of the city, indicating that its ordinances have been compiled, or codified and that a copy of such compilation or codification is on file in the city or town clerk's office for inspection. The notice shall state the time and place of the hearing.

Notice of a hearing for Ordinance 904-06 was not published in the City's official paper and no public hearing was held before the Council adopted the ordinance.

3. The City's failure to hold a public hearing concerning Ordinance 904-06 is also a violation of the Sultan Municipal Code ("SMC") 16.128.010 and .030, which require a public hearing for any amendment of Chapter 16 of the SMC. Ordinance 904-06 repealed SMC 16.120.010 and 16.120.020, and altered the implementation of other sections of the SMC concerning the role of the Planning Commission.

4. The City has violated the requirements of RCW 35A.12.090 which states: "The Mayor shall have the power of appointment and removal of all appointed officers and employees subject to any applicable law, rule, or regulation relating to civil service." The Council's decision to appoint itself to the Planning Commission is illegal because it strips the Mayor of his appointment powers concerning appointed officers such as the Planning Commission.

5. Ordinance 904-06 also is internally inconsistent:

a. Ordinance 904-06 indicates that "where provisions in the city's Municipal Code reference a 'planning agency' . . . from and after the effective date of this section such references shall refer to the City Council." However, the term "planning agency" does not appear in the SMC and this term in the Ordinance is meaningless.

b. Ordinance 904-06 abolished the Planning Commission and the sections of the SMC which guided most of its conduct. However, the Ordinance also appoints the City Council to act in an interim role as the Planning Commission -- the body it has just abolished. Thus, the Council has appointed itself to a role which appear to no longer exist and has no guiding principles.

c. No definition or time limit was established in the Ordinance with regard to the term "interim." Therefore, the Council is not acting in an interim role at all because it is acting under an open ended ordinance.

B. Abolishing the Planning Commission Creates a Procedural Nightmare for the City Planning Process and for the City Council

Until the adoption of Ordinance 904-06, the City of Sultan had a Planning Commission appointed by the Mayor and confirmed by the Council. The function of the City of Sultan Planning Commission had been to act as a "research and fact finding agency for the City" concerning planning activities; to "study, promulgate, develop, and update" City plans including the Comprehensive Plan; to process and hear requests for certain development proposals and variances for the established zoning requirements; and to participate in Planning Commission activities on a regional level. See SMC 16.128.020. Performed in a legal and correct manner, these are enormously time consuming activities that require a significant dedication of time and resources by dedicated and diverse members.

Sultan is a small town (population 4,300) on the verge of explosive new growth. Growth projections offered by the Mayor during a recent public meeting indicated an expectation of approximately 4,000 more people within the next two to four years. In addition to this jump in growth (and the increase in development applications that will precede it), the City of Sultan's growth plans in the near future include finalization of its Shoreline Master Program, the review and approval of its Critical Areas Ordinance and Comprehensive Plan amendments, as well as the inevitable and concomitant revisions to Sultan's development regulations. Thus, the work faced by the Planning Commission (now Council/Commission) will be substantial in the immediate future.

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1. Public participation is compromised by Ordinance 904-06

The loss of the Planning Commission as a separate entity within the City of Sultan is a loss of an essential layer of the public participation process, oversight, and education for the City planning process.

The purpose of Planning Commission is to provide residents the opportunity to actively participate in the planning of the City and its welfare; to learn all facets of the regulations governing City functions; interact with a wide variety of other citizens participating in shaping the City's future; and to assume an active role in regulation changes involving zoning and subdivision activity.

Public participation is one of the central planning goals under the State Growth Management Act ("GMA"):

Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.020.

Furthermore, the GMA requires:

Each county and city . . . shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

RCW 36.70A.140.

The City of Sultan's action to abolish the existing Planning Commission and appoint itself in its place runs the risk of violating these GMA public participation requirements and of exposing itself to appeals to the Growth Management Hearings Board.

2. Diverse community representation is lost by the abolishment of the Planning Commission

By abolishing the Planning Commission, residents living within Sultan's UGA will lose the potential for direct representation because the SMC specifically provided that a Planning Commission member may be selected from that area. This will no longer be the case with the City Council acting in that role.¹ The Ordinance 904-06 code revisions do not create a similar policy of seeking a representative cross-section of the community. Storm and Kistenmacher are expressly interested in this issue because even though they currently reside outside of Sultan's UGA, City Planner Rick Cisar's original high growth alternative for the City's 2004 Comprehensive Plan included Storm and Kistenmacher home. Therefore, it can be expected that at some point in the near future of Sultan's explosive growth that these individuals will be within the UGA of Sultan and affected by the current and near future planning efforts engaged in by the City.

3. Abolishing the Planning Commission is an extreme measure that hurts the City

Removal of the Planning Commission at this time also results in an irreparable loss of institutional memory of existing members of the Planning Commission. Even though the Planning Commission was recently reduced to only a few members, these members remained interested and educated public officers prepared to give their assistance to the City Council by attending to the significant workload of the City.

Abolishing the Planning Commission is a drastic and unnecessary measure. Pre-Ordinance 904-06 SMC 2.17.050 provided a means for the Mayor to remove Planning Commissioners found to be inefficient, negligent, or malfeasant in the conduct of their office. If the City was displeased with the functions of the Planning Commission, the City should have considered this removal process before the extreme measure of abolishing the Planning Commission and thereby gutting the City's planning process. Furthermore, it is clear that one reason for the Planning Commission's difficulty in performing its function was due to the lack of a sufficient number of members. The Mayor's failure to appoint new members to the Planning Commission -- even when four applications had been received -- effectively blocked new members from the Commission. Instead of disbanding the Planning Commission, the Mayor should have made a genuine effort to appoint new members. Instead of remedying how the Planning Commission was working, the Council's actions have thrown out the proverbial baby with the bath water by

¹ The SMC also provided for a member of the business community to be appointed a Planning Commissioner.

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discarding the existing dedicated members of the Commission and abolishing a useful planning body for the City.

4. The Planning Commission workload will overburden the Council

The City Council clearly does not have the time and resources to substitute itself for the crucial public participation role of the Planning Commission. The City Council members only have so much time to dedicate to City activities, and acting in the dual roles of Planning Commissioner and City Council member appears to be a full time job with all of the work Sultan has in its future. It seems unlikely that all of the City Council members will be willing or able to put the rest of their lives on hold to take on this daunting task. Thus, the loss of the Planning Commission will compromise Sultan's public participation process during the large volume of time for City projects including revisions to the SMC and Comprehensive Plan and processing of development project permits.

Ms. Storm and Mr. Kistenmacher ask the City Council to reconsider the approach it has taken with regard to the Planning Commission and rescind Ordinance 904-06. The Council is essentially setting itself and the City of Sultan on a path toward a failed planning process which will likely be accompanied by litigation, disruption of City services to the development community and citizenry, and disruption of the City's financial infrastructure.

Thank you for your attention to this matter.

Very truly yours,

BRICKLIN NEWMAN DOLD, LLP

Ryan P. Vancil

RPV:pse

cc: Client
Interim City Finance Director Gordon Hey
Members of the Sultan City Council: Kristina Blair, Derek Boyd, Bruce Champeaux, Jim Flower, John Seehuus, Steve Slawson and Ron Wiediger
Former Planning Commissioner Josie Fallgatter
Former Planning Commissioner Jeff Kirkman

Storm:City Council-030706