

Memo

To: Randy Fife, City Attorney
From: Joel D. Plaskon, Community Development Director *JDP*
Date: January 24, 2006
CC: Nancy Chaney, Mayor
Gary J. Riedner, City Supervisor
Re: Curley Petition for Comprehensive Plan Amendment

Michael Curley filed a petition with my office on January 20, 2006 on behalf of himself, Mark Solomon, Mark Winstein, David Wilder and Nils Peterson to amend the Comprehensive Plan Land Use Designation of lands recently re-designated from Low Density Residential (LR) to Extensive Commercial (EC) in southeast Moscow. The lands can generally be described as being located between State Highway 8 and East Palouse River Drive on the east side of South Mountain View Road, extending almost to a southerly extension of Ridgeview Drive and also including land at the northwest corner of the intersection of South Mountain View Road and East Palouse River Drive. The petition is supplemented by a second, related petition signed by hundreds of other people. Although I am still in the process of reviewing said petition, it appears as though it is acceptable for hearing scheduling purposes. I am in the process of more fully reviewing the petition which will result in a review correction and comment list which I will give it to the petitioners with opportunity for them to make adjustments to the petition. Due to the fact that the petition explicitly requests scheduling for hearing at the earliest possible date, I will try to accommodate that request while balancing my work load and the scheduling of other business of the Planning and Zoning Commission. However, I would like your response to this memo prior to hearing scheduling.

Most of the land included in the above-mentioned petition, that being the land on the east side of South Mountain View Road, currently has an application for rezoning pending. Such application was submitted on November 10, 2005, but has not yet been scheduled for hearing. The rezone application is consistent with the current EC Comprehensive Plan Designation of the subject land, but may not be consistent with the designation requested in the above-mentioned petition by Mr. Curley, et al. The two applications in question, at least in part, could be said to be inconsistent to one another. The reason the rezone application has not yet been scheduled for hearing is that I await a response from the applicant to a correction and comment list which I sent them on December 14, 2005. Additionally, the rezone application does not request hearing scheduling at the earliest possible date.

I request your legal response to the following questions:

1. Given the circumstances described above, which of the two requests in question has the legal right to be heard first?

2. Must the application holding first right to consideration receive final decision prior to scheduling of the second application?
3. Must the application holding first right to consideration exhaust all available remedies/processes, including the court system, or let pass all related opportunities/time frames prior to scheduling of the second application?
4. If the applications may be processed in any overlapping manner, what are the implications of such, relative to how a decision on one application may impact the standing of the other application and any decision related thereto?
5. What is your suggestion, if any, about handling their request?

It is my observation that we have not experienced a situation in the past in which we have received applications by different parties requesting dissimilar or inconsistent land use requests for the same land at the same time. Such matter does not appear to be contemplated within the Moscow City Code, nor the Local Land Use Planning Act. It appears as though the logical thing to do would be to schedule and hear the applications in order of receipt.

Given the explicit request in the petition by Mr. Curley for a hearing to be scheduled at the earliest possible date, please respond to this memo as soon as possible.