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RESOURCE STEWARDSHIP DEPARTMENT

Creating Solutions for Our Future

Brent A. Butler, AICP, Director

MEMORANDUM

TO: Planning Commission

FROM: Jeremy Davis, Senior Planner

DATE: June 21, 2017

SUBJECT: Presentation on Development Code Docket Item A-20 Permit Vesting and Single Family Residential Conditional Site Approval

Presentation

The Planning Commission will receive a presentation regarding the 2016-17 Official Development Code Docket Item, A-20 Permit Vesting and Single Family Residential Conditional Site Approval. This is an informational presentation to provide the Planning Commission background material to inform their decision. A draft of the proposed amendments and staff analysis will be presented at a subsequent meeting.

Vesting

In 2014, the Washington State Supreme Court ruled that only those applications specifically listed in state law, vest under state law. This ruling reversed several decades of court decisions on vesting. The rulings generally allowed various types of land use development permits to vest upon submittal of a complete application. The court indicated that the state legislature codified vesting for certain types of applications in state law and not others. Therefore, the legislature had spoken and the court decided not to deviate from the state legislature's decision. (*Potala Village, LLC v. City of Kirkland, Town of Woodway v. Snohomish County*)

Applications that vest under state law include:

- Building permits (RCW 19.27.095)
- Short subdivisions and subdivisions (RCW 58.17.033)
- Development Agreements (RCW 36.70B.180)

Local jurisdictions may pass their own vesting rules for other types of applications. These include other applications made under land use control ordinances, critical area regulations, and other development codes. Land use control ordinances are generally those that impose a restraining or directing control over land uses. They do not include permit fees, impact fees and other fees. They also do not include stormwater regulations adopted pursuant to a state issued

National Pollution Discharge Elimination Permit (Snohomish County v. Pollution Control Hearings Board, 2016).

Residential Conditional Site Approval

A Conditional Site Approval (CSA) process has been developed to review building sites for residential and agricultural structures for land use code compliance. CSA approval is required prior to approval of a single family building permit application. This review process has been in place since the mid 1990's. It has primarily been used when Land Use and Environmental Permitting staff review septic permits for compliance with zoning, critical area, and other regulations. Permittee's received a three year approval period in which to submit plans.

The four zoning ordinances do not include this process as an official application such as a Special Use Permit, Site Plan Review, Variance, or other land use development permit. This means the applicant's CSA approval from the county does not vest, and the regulations may change following approval.

The intent of the amendment is to add a process to the code to allow those developing a single family or two family homes to have their site reviewed and vested under the current land use codes, critical areas regulations and other development codes. This will provide the applicant with appropriate information to plan their home with assurances that the land use codes and interpretation of the codes at the time of approval will not change during the CSA permit approval period.