

September 15, 2020

To: Hon. Mayor O'Connell and City Council
From: Planning Commission Chairperson Sayasane
Re: Planning Commission Comments on Draft Grading Ordinance Revisions

Dear Hon. Mayor and Council:

The changes in procedure outlined in the draft Grading Ordinance represent such a significant departure from present procedure that the Planning Commission feels compelled to bring specific items to your attention.

The City Engineer's Role

At present, grading projects exceeding a certain threshold require Planning Commission review.

This would be eliminated.

The draft ordinance proposes **all** grading permits, *no matter how large the project*, would be reviewed **only** by the City Engineer.

Accepting the draft ordinance, you will be removing the important oversight role of the Planning Commission that the 2013 guidelines explained: *The Planning Commission reserves the right to consider alternative grading plans for any Grading permit subject to its review and may reject projects proposing unnecessary amounts of excavation contrary to the policies and programs in the City's General Plan.*

You will also be eliminating public hearings that were required on large grading projects.

Those hearings put the public on notice about large grading projects, allowed for public input, and provided an opportunity for other professional testimony to be heard. We believe those hearings should be retained.

The Planning Commission's Role

While grading permits would be the purview of the City Engineer, grading permits **would** come before the Commission but **only** on projects requiring Planning Commission review where there is a Design Permit, Use Permit, Variance etc.

This doesn't make sense, especially when . . .

A memo from the City Manager: . . . *the Commission will have the opportunity to review grading as part of the overall project. No unique findings for grading are required, rather the Commission may consider grading in making the findings for the requested permit.*

And the City Attorney wrote: *Staff is recommending that this provision of the Grading Ordinance be deleted because it conflicts with State law concerning who is authorized to review these types of applications.*

This is confusing and needs to be reconciled.

Engineering reviews should be performed by our City Engineer. The Planning Commission does *not* conflict with State law because we do not practice engineering.

We *do* perform analysis using all the information made available to us to determine compatibility with the General Plan and suitability of a project. This includes *the evaluation of the City Engineer*, staff reports, and public testimony.

Engineering studies required by the City Engineer should be completed and reviewed, with an opinion rendered, **before** a public hearing is scheduled for the Planning Commission. The public could then review reports and comment or bring forth their own credentialed experts to testify at the public hearing.

The 2013 draft ordinance also had this provision: *The Planning Commission may provide comments and recommendations to the City Engineer concerning mitigation or avoidance of any potential adverse impacts of the proposed grading considered by the commission pursuant to this section.*

This provision should be retained. During public hearings, valuable facts previously unavailable to the City Engineer may be brought to light.

The City Attorney has written: . . . *the section of the Grading Ordinance that provides for the Commission's review of such applications should be deleted. In addition, the proposed review criteria fail to meet the objective standards now required for review of residential development projects . . .*

If new requisite standards are required, then simply draw up new guidelines for the Planning Commission.

Finally, regarding trees, the City Attorney stated: . . . *the Commission has no authority over trees in the public right of way . . .*

Naturally, trees on public land fall under the General Plan considerations the Planning Commission utilizes to review the entire project. This is consistent with the City Attorney's recommendation that the Planning Commission adopt a holistic and logical review process.

Appeals

The draft ordinance makes a procedural change with appeals of the City Engineer’s action on a grading permit going to the City Manager. We suggest appeals *continue* to go before the Commission (see BMC Section 15.01.130) and be further appealable to the City Council to ensure appeals are heard at a public hearing.

Conclusion

The Institute of Local Government treatise “Land Use and Local Planning: Guide to Local Planning” asserts that the Planning Commission, “Through public hearings and other means, provides a key venue for residents and other community stakeholders to learn about planning issues and project proposals and provide their views.” And further, “Public participation in local decision-making is fundamental to democracy. The public often evaluates the service of local officials based not only on the wisdom of their decisions, but also on their commitment to involving the public in decision making.”

Thank you for considering our comments.

Respectfully submitted,

Pamala Sayasane

Pamala Sayasane
Chairperson
Brisbane Planning Commission