



Commissioners

Nancy E. Barnes
Jim Malinowski
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*Chief Executive Officer/
General Manager*

Wayne W. Nelson

November 13, 2017

Clark County Planning Commission
1300 Franklin Street
Vancouver, WA 98660

**Re: *Public Facilities Zoning Classification
Supplemental Information Request***

Dear Planning Commission,

During the October 19, 2017, Planning Commission Meeting, Deputy Prosecuting Attorney, Christine Cook, requested information regarding any legal restrictions associated with creating a split zone through a boundary line adjustment. Since that information was not immediately available, we offered to provide a supplemental legal opinion on that topic.

In order to get that opinion, we contacted Chuck Maduell with the Seattle law firm of Davis Wright Tremaine. Mr. Maduell is a partner with the firm and specializes in land use/zoning law. He has also advised the utility on the impact of the Public Facilities zoning classification.

Attached is Mr. Maduell's opinion regarding the issues that can develop from creating a split-zone parcel (containing a Public Facilities classification) via a boundary line adjustment. In his memo, Mr. Maduell specifically responds to Ms. Cook's question and indicates that while the Clark County Code does not explicitly restrict the creation of a split-zoned parcel through this method; such action does appear to have significant legal and practical consequences.

As pointed out by Mr. Maduell, forming a lot with more than one zoning designation may prevent the development of that parcel. The resulting property would be subject to differing land use/zoning regulations, which likely cannot be harmonized. And since the Public Facilities designation is incompatible with any other zoning classification, it is unlikely that adjoining property owners would enter into a boundary line adjustment with the utility for any property that has that designation.


Another question was raised by one of the commissioners regarding the number of transactions that have been impaired by the application of the Public Facilities

designation. At this time, we still have only identified two property sales that have been delayed by this action. However, since the beginning of 2014, the utility has granted seven easements, entered into two land swaps, participated in three boundary line adjustments, and sold two parcels with an additional two sales pending. Some of these transactions were located in the unincorporated areas and others within municipal boundaries. However, these transactions may not be reliable indicators of future activity or need, given the increased growth Clark County is currently experiencing.

As we come to the end of this hearing process, we want to express our gratitude to the Commission and Planning staff for taking the time to consider our concerns and your willingness to expedite possible solutions. We look forward to the opportunity to work with your staff in the future to find possible solutions to these issues in a way that meets the needs of the County, but at the same time does not impair utility operations.

Please let us know if you have any other questions.

Sincerely,



John Eldridge
Legal Counsel

Encl: Chuck Maduell Memo (11/10/17)

MEMORANDUM

To: John Eldridge
From: Chuck Maduell
Date: November 13, 2017
Subject: Effect of Public Facility Zoning on Boundary Line Adjustments

As per your request, we have analyzed the potential effect of the Public Facilities (“PF”) zoning designation on boundary line adjustments (“BLAs”) that Clark Public Utilities may wish to enter into with neighboring property owners to resolve boundary disputes and other issues. Based on our review of the Clark County Code, and as more fully set forth below, we think the PF zoning designation could potentially interfere with the ability of Clark Public Utilities to enter into BLAs for these purposes because of the split-zoned parcels it would create.

The PF zoning designation was established as part of the 2016 Comprehensive Plan Update. It is intended to be applied to land uses that have already constructed facilities or are for public use, such as public schools, government buildings, water towers, sewer treatment plants and other publicly owned uses. For properties zoned PF, the underlying zoning designation was eliminated, leaving an implementing base zone of PF for properties in the PF zoning district. Allowable uses in the PF zoning district are strictly limited to certain specified public uses and facilities as set forth in the Clark County Unified Development Code (“UDC”). *See* CCC §40.230.090.

Those Clark Public Utilities properties in the county with existing utility facilities on them were designated and zoned PF as part of the 2016 Plan Update. Consequently, land uses on these properties are now limited to public facilities and uses.

We understand that it is sometimes necessary for Clark Public Utilities, as part of its management of its properties, to enter into BLAs with neighboring property owners in order to resolve encroachment disputes and other property issues. Because of the limited nature of the uses allowed on its PF-zoned land, there is a concern that the PF zone designation may prevent or interfere with the ability of Clark Public Facilities to enter into BLAs with neighboring properties for these purposes. This concern is justified.

A BLA is “a process for the purpose of adjusting boundary lines which does not create any additional lot, tract, parcel, site or division nor create any lot, tract, parcel, site or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site.” CCC 40.40.010; *see* RCW 58.17.040(6). Because exempt from state and local subdivision laws, the process for obtaining a BLA is typically fairly easy and

uncomplicated. For a BLA involving a PF-zoned lot, it is neither—mainly because of the lots with split zoning that it would create.

While a BLA may adjust boundary lines between lots, it does not adjust zoning district boundaries. Consequently, a BLA between a Clark Public Utilities property with PF zoning and a neighboring property with different zoning would result in creation of a lot or lots with more than one zoning designation—the so called “split-zoned” lot. The result of such split zoning is to establish two different sets of land use and zoning regulations on a single lot: the PF-zoned part of the lot would be subject to the zoning regulations that apply to the PF zoning district and the other part would be subject to the zoning regulations that apply to the other district. While, so far as we can tell, creation of lots with split zoning through BLAs is not prohibited or even addressed by the UDC, it could affect use and development of such lots, especially given the inconsistent and incompatible zoning designations on a lot with both PF zoning and just about any other zoning, such as residential zoning.

For example, BLAs cannot create lots that are undersized or substandard. In fact, BLAs are sometimes used to bring undersized and substandard lots into compliance with minimum zoning requirements for width and area for a building site, a necessary prerequisite for obtaining a BLA under the UDC and state subdivision law. This may not be possible if it would result in two inconsistent and incompatible zones on a single lot—in this case, PF and some other zoning district such as a residential zone—with potentially different and conflicting width and area requirements on the same lot.

In any event, even if a BLA is possible, a lot created with two such very different zones and zoning regulations is likely to affect and potentially limit use and development of the lot with split zoning. This is especially the case with a BLA between a Clark Public Facilities property with PF zoning and a neighboring property with different zoning. Zoning districts have separate and discrete regulations regarding use, bulk, area, density, dimensions, lot coverage, setbacks, and height, to name a few. Thus, any development of a lot with split zoning will need to take into consideration the different use and zoning regulations of each of the zones on the split-zoned lot. When the two zoning districts are substantially similar, with compatible land uses and zoning regulations, such as with different residential and commercial districts, a BLA that creates lots with split zoning may not have much of an effect on use and development of the lots with split zoning. However, this is not likely to be the case when the BLA is between a Clark Public Facilities lot with PF zoning and a neighboring lot with just about any other zoning designation. Because of the limitations on land uses in the PF zoning district—only limited public-owned facilities and uses are allowed—the PF zoning designation likely conflicts with and is incompatible with just about any zoning district. Thus, creating a split-zoned lot through a BLA between a Clark Public Facilities lot with PF zoning and a neighboring lot with just about any other zoning designation would likely limit and interfere with use and development of the lot, especially if the neighboring lot is split-zoned. In fact, so limiting are the land uses allowed by the PF zoning district that there is a risk that the portion of the neighboring lot with PF zoning may be undevelopable so long as it is zoned PF.

That said, it is difficult to address in the abstract the impact of creating a lot with split zoning through a BLA since it is not expressly addressed by the UDC and could depend on a

number of property-specific factors, including the pre-BLA zoning, the intended use and development of the lots to be created through the BLA, and whether the BLA is a major or minor change to the pre-existing lots, among other things. Depending on these and other factors, at the very least it is likely that the PF zoning will complicate any BLA with a neighboring property to resolve boundary disputes and other issues because of the PF zoning, and may make it less desirable for neighboring property owners to enter into BLAs with Clark Public Facilities if a portion of their property will have PF zoning. At most, it could interfere with and even prevent neighboring property owners from entering into BLAs with Clark Public Utilities for these purposes.