



PLANNING SERVICES
808 W. SPOKANE FALLS BLVD.
SPOKANE, WASHINGTON 99201-3329
(509) 625-6060
FAX (509) 625-6013
www.spokaneplanning.org

MEMORANDUM

TO: Mayor Mary Verner
Council President Shogan and Members of the City Council
Marlene Feist, Communications Director

FROM: Jo Anne Wright, Acting Planning Director *JA*

DATE: December 21, 2010

RE: Notice of Expiration of Application, Proposed Barnes Road Preliminary PUD,
File number Z2006-38-PP/PUD

Please see the attached letter notifying the applicant for this project that the application has expired because of failure to meet procedural requirements of the Spokane Municipal Code.

This application was originally submitted in 2006. Based on the Applicant's failure to provide notice of application within 14 days as required by state and local law, and based on the Applicant's failure to complete the next application step within one hundred eighty days as required by SMC 17G.060.220, the Application has expired by limitation and has become null and void. In addition, the Application has been pending more than 360 days since having been deemed counter complete (application was counter complete on June 6, 2006 – over four years ago). It was the Applicant's obligation and it was within the Applicant's control to have timely complied with state and local law regarding providing notice of application. The Application has expired and is null and void.

The applicant may appeal this determination to the Hearing Examiner.

This application requested approval of a preliminary long plat and planned unit development on approximately 14 acres for 19 building lots for single family homes, 3 lots for duplexes, and 1 lot for multi-family apartments with approximately 70 units. After this application was submitted, the City's zoning regulations were amended so that multi-family structures are no longer allowed on the subject property. By filing its Application prior to the zoning regulation amendment, however, the Applicant would be entitled to vest under the prior rules, which allowed multi-family structures, as long as the Application was ultimately deemed technically complete.

As you may have heard, there is significant neighborhood opposition to this project.

If you have questions, please contact Ken Pelton, Current Planning Manager at 625-6063.

Attachment



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December 17, 2010

Barnes Road L.L.C.
608 E. Holland Avenue
Spokane, WA 99218

DCI Engineers, Inc.
c/o Wade Gelhausen
601 W. Riverside Avenue, Suite 600
Spokane, WA 99201

Re: File number Z2006-38-PP/PUD Notice of Expiration of Application

On or about June 6, 2006, Barnes Road, LLC (the "Applicant") submitted a counter complete application to create a preliminary long plat and planned unit development on approximately 14 acres for 19 building lots for single family homes, 3 lots for duplexes, and 1 lot for multi-family apartments with approximately 70 units (the "Application"). Thereafter, the City's zoning regulations were amended so that multi-family structures are no longer allowed on the subject property. By filing its Application prior to the zoning regulation amendment, however, the Applicant would be entitled to vest under the prior rules, which allowed multi-family structures, as long as the Application was ultimately deemed technically complete.

Thereafter, the Application languished for considerable periods of time. The Applicant requested extensions of time to provide the information necessary to achieve technically complete status. The Planning Services Department on more than one occasion sent out letters indicating the Application had expired for inactivity and failure to timely complete next steps. See SMC 17G.060.220(A). In response, the Applicant argued that the delays were beyond its control. Each time, the Planning Services Department granted the Applicant the benefit of the doubt and allowed the Application to continue. The Department's decisions were consistent with its usual approach of excluding time during which delays are beyond an applicant's control for purposes of determining whether applications have expired due to inactivity and lapse of time.

Earlier this year, following a notice to the Applicant that the Application had expired, Planning Services staff met with the Applicant and its representatives and agreed one more time to grant the Applicant the benefit of the doubt regarding reasons for delay in making forward progress with the Application. Following that meeting, and following the receipt of additional information from the Applicant, on June 15, 2010, Planning Services sent the Applicant notification that the Application was certified technically complete and advising the Applicant to take the next step in the application process – i.e., distribute notice of application as required by state and local law. SMC 17G.060.100; RCW 36.70B.110. According to SMC 17G.060.100 and RCW 36.70B.110, *notice of application must be circulated within 14 days after the City's determination that an application is technically complete.*

For a plat and PUD application, SMC 17G.110 and .120 require both individual notice and posted notice. Posted notice must be by installation of a sign (meeting specified criteria) on the site of the proposal and at "official public notice posting locations" including (1) the main City public library and the branch library within or nearest to the area of the proposal and (2) the space in City Hall officially designated for posting notices. SMC 17G.060.120(B)&(C).

In late November, more than five months after having been notified that the Application was technically complete, the Applicant *partially* complied with the notice of application requirements set forth in SMC 17G.060.100 and RCW 36.70B.110. The Applicant substantially complied with individual notice requirements (i.e., mailing notice to owners and taxpayers within a notification boundary 400 feet from the site of the proposal) and also posted a notice sign on the site of the proposal. The original mailed notice of application provided a public comment period ending on December 7, 2010. A second mailed notice of application which included a map of the notification boundary was sent at a later date and provided a public comment period ending on December 17, 2010. The original posted notice signs provided a public comment period ending on December 7, 2010. The posted notice signs did not identify the extended public comment period when the public comment period was extended to December 17, 2010. Although the Applicant posted notice at the Indian Trail Public Library, the Applicant failed to post the required notice at City Hall and the main City public library as required by SMC 17G.120.

In addition to failing to properly post notice of application as outlined above, the Applicant also failed to provide the required declaration of evidence of compliance for any of the notice that has been provided to date. SMC 17G.060.110 ("It is the responsibility of the applicant to provide public notice and file a statutory declaration as evidence of compliance").

SMC 17G.060.220(A) provides as follows:

Any application . . . which has been determined to be complete, and for which the application fails to complete the next application step for a period of one hundred eighty days after issuance of the determination of completeness, or for a period of one hundred eighty days after the City of Spokane has requested additional information or studies, will expire by limitation and become null and void. The department may grant a one hundred eighty day extension on a one-time basis per application. In no event shall an application be pending for more than three hundred sixty days from the date the application is deemed counter complete.

As indicated above, the Applicant was notified that its Application was technically complete on June 15, 2010. State and local law required the Applicant to provide notice of application within 14 days, which Applicant did not do. In addition, the Applicant failed to complete the next application step within one hundred eighty days as required by SMC 17G.060.220(A). Applicant made attempts to provide notice of application beginning in late November but still has not complied with SMC 17G.060.120 with respect to posting notice at City Hall and the main City public library.

Based on the Applicant's failure to provide notice of application within 14 days as required by state and local law, and based on the Applicant's failure to complete the next application step within one hundred eighty days as required by SMC 17G.060.220, the Application has expired by limitation and has become null and void. In addition, the Application has been

pending more than 360 days since having been deemed counter complete (application was counter complete on June 6, 2006 – over four years ago). It was the Applicant's obligation and it was within the Applicant's control to have timely complied with state and local law regarding providing notice of application. The Application has expired and is null and void. SMC 17G.060.220(A).

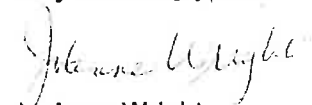
If you disagree with this determination you have the right to appeal to the Hearing Examiner within fourteen (14) days of the date of this decision. The appeal must include the following according to Spokane Municipal Code 17G.060.210 Appeals:

G. An appeal or request for reconsideration of the director or hearing examiner shall take the form of a written statement of the alleged reason(s) the decision was in error, or specifying the grounds for appeal or reconsideration. The following information, accompanied by an appeal fee as specified in chapter 8.02 SMC, shall be submitted. All fees including transcript deposit fees must be paid by the appellant no later than the last day to file the appeal. The appellant shall pay the cost of a written transcript within five days of the receipt of the hearing examiner's statement for the cost. An appeal application is not considered complete until all required fees are paid. Failure to timely pay all fees results in dismissal of the appeal with prejudice. The appeal or request for reconsideration application shall contain:

1. file number of the decision;
2. an indication of facts that establish the appellant's right to appeal or request reconsideration;
3. an identification of exceptions and objections to the decision being appealed or reconsidered, or an identification of errors in fact or conclusion;
4. the requested relief from the decision being appealed or reconsidered;
5. any other information reasonably necessary to make a decision on the appeal or reconsideration;
6. failure to set forth specific errors or grounds for appeal shall result in summary dismissal of the appeal or reconsideration request.

Please feel free to contact Dave Compton at (509) 625-6089 or Ken Pelton at (509) 625-6063 if you have further questions related to this matter.

Very sincerely yours,



Jo Anne Wright
Acting Planning Director

Cc: Ted Danek, City Administrator
Mike Taylor, Engineering Services Director
Eldon Brown, Engineering Services
Cindy Kinzer, Engineering Services
James Richman, Assistant City Attorney