

November 23, 2015

Honorable Larry Phillips, Chair
King County Council
516 Third Ave. Room 1200
Seattle, Washington 98104

RE: Proposed Ordinance 2015-0437

Honorable Larry Phillips and members of the Council,

My offices represents a number of citizens concerned with potential developments considered in Proposed Ordinance 2015-0437. I have serious concerns that this ordinance as proposed and as amended by draft striking ordinance version 1 will result in harm to the community, the environment and the County as a whole. Please accept this draft letter as comment on the draft striking amendment which has been circulated through council member Dombowski's office. I will be prepared to comment more fully once I have reviewed a final version and an accompanying staff report. I urge you to reject this proposed ordinance at this time for the forthcoming reasons.

When this Council came together three-and-a-half years ago to address concerns presented by Pacific Raceways, it foresaw a way of helping the racetrack find a sustainable business model and deal with a burdensome permitting process for multi-phased development proposals that would allow for *"safety improvements and uses that are accessory to a racetrack"* in a way that met concerns of the community. In its review of the potential development, the Council found that:

"there is likely significant adverse environmental impact necessitating the preparation of an environmental impact statement..." Ordinance 17287 at §1, M.

If the process outlined was too burdensome on the property owner, that owner has always had the option of pursuing development through a more traditional process.

While Ordinance 17287 took months of deliberation before reaching agreement on the final process, the property owner has not taken steps necessary to begin the demonstration process. Instead, you are now presented with and asked to pass a ordinance that would allow similar development to the one originally proposed without many of the environmental and community safeguards that came to be realized. The new proposed process would provide nearly all of the benefits of the demonstration project including 400,000 sqft of building and material processing necessary for those buildings yet absolve the racetrack of nearly all of the responsibility that would've been required. The contrast is stark between the two processes.

Demonstration Project

Allowed to: Create safety improvements and uses that are accessory to a racetrack

Required to:

- Submit a Master Plan Proposal, site plan, grading plan, drainage plan
- Perform an EIS
- Conduct multiple public meetings
- Create Development and operating agreements with requirements of
 - specified types of activities
 - noise levels for racing and non-racing uses
 - mitigation measures
 - monitoring and reporting compliance measures
- Enforcement mechanisms
- Annually review compliance

Receive expedited permit review.

Interim Use Permit

Allowed to: Build anything allowable by the code put to 400,000 sqft + required site improvements

Required to:

- Provide a site plan, grading plan, drainage plan, reclamation plan
- Development conditions related to grading activities and buildings (not operations or activities)
- No specific community level engagement
- Pass project level environmental review
- Receive: expedited permit and environmental review

There are no triggers included in this ordinance which would start the larger demonstration project if the property owner invokes the use of the interim use permit. The proposed process would effectively demolish the concerns presented and agreed upon under the previous ordinance and likely never provide a reason to develop an EIS or Master Plan proposal. Ordinance 2015-0437 effectively undermines the demonstration project that the Council worked so hard to pass in 2012.

Apart from arguments of equity, I also have legal concerns related to public participation requirements, projects of statewide significance, environmental and SEPA considerations and the lacking community protection measures as proposed in ordinance 2015-0437.

Public Participation Concerns: Proposed Ordinance 2015-0437 and its draft striking amendment have extracted the public from participating in this process on numerous levels.

One of the planning goals of Washington's Growth Management Act (GMA) is citizen participation and coordination. The state was explicit in its intent to require proper citizen participation in the planning process. See RCW 36.70A.020 (11). The GMA further states:

"... if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change

shall be provided before the local legislative body votes on the proposed change.” (RCW 36.70A.035)

Those interested in participating in this process have officially only been provided with a single version of this proposed ordinance despite a recent draft striking amendment circulated by Councilmember Dembowski’s office and almost no discussion on a committee level. If the council is to consider voting on the changes proposed in this draft striking amendment, without the opportunity for meaningful public review and comment, I believe that it is likely, would arouse serious concerns over violations of the GMA’s and the County’s participation requirements.

Furthermore, the timeframe for comment and consideration by the public on this legislation has been nearly non-existent through the lifespan of Proposed Ordinance 2015-0437. The interested community, including myself, was sent a draft striking amendment to this proposed ordinance on the evening of Thursday, November 19th, prior to the Council preparing to vote on Monday, November 23rd. A mere three days for consideration and comment - and still only a draft. The original draft of this legislation was published on Friday, October 23rd before consideration by the Transportation, Economy and Environment Committee on Tuesday, November 3rd - a seemingly generous ten days for consideration before it was rushed through committee without recommendation. Notably, this proposal was not mentioned or discussed in the annual community meeting concerning the activities of the raceway occurring on October 22nd. The short timeline and intentional omissions, appear calculated to avoid public discussion and participation.

Moreover, there is a community that has resides near Pacific Raceways and has been involved with the racetrack for more than 30 years in various ways. They are the people that deal with the noise, the traffic, and the environmental effects from this operation on a daily basis. They are the ones being pushed out of this process. The ordinance adopted in 2012 included the goal of *“Test[ing] a multiphased process that will provide public opportunity to provide input on the proposed future development and operating standards.”* (§1,K,2). It is telling that the ordinance no longer mentions public input any longer and is void of a discussion as to multiple phases.

Specifically, the draft striking amendment, as proposed, not only reduces the number of community meetings to the public that would normally be guaranteed under such development, but also potentially truncates the timeline within which the public can comment. For example, the proposal would not include a community meeting generally performed for materials processing sites in accordance with KCC 21A.22.035 despite the substantial clearing and grading that would occur. That meeting is generally important in gathering information to determine what information should be required before permitting. It is also devoid of mandatory meetings that were envisioned in the Master Planning process. The timeline as proposed also potentially reduces the time normally allowed during the environmental review process including placing maximum time limits on the Department of Permitting and Environmental Review’s environmental review which could curb the effectiveness of citizen comments.

Projects of Statewide Significance: RCW 43.157 is the statute which allows for Projects of Statewide Significance. There are numerous ways to meet the definition of a “Project of Statewide Significance” including that the project will *“provide a net environmental benefit,”* that it is *“in furtherance of the commercialization of innovations”* or it is *“a private industrial development with private capital investment in manufacturing or research and development.”* Despite the current designation, there should be doubt as to whether or not the interim use permit process would entitle Pacific Raceways to the privileges of the designation. The demonstration project includes language that would create an operating agreement for the facility which could ensure that the project meets such goals. However, the interim use permit on its own does not contain such agreements and there is no guarantee that the demonstration project would ever be triggered. On its own, the development of 400,000 sqft of buildings and site improvements likely would not meet the minimum requirements of a Project of Statewide Significance. Without further guarantees that the project will meet the other requirements, such as those that would be contained in the operating agreements or a master plan, it is possible that the County is embarking on a process that would not be supported by the state’s designation.

Without assurances from the property owner that the building performed under the interim use permit would meet those requirements, the County should be cautious with expediting legislation using this designation as a justification for passage.

Environmental Protections and SEPA: In 2012 the Council determined that:

“based on the potential uses that may be included in the master planning proposal, there is likely significant adverse environmental impact necessitating the preparation of an environmental impact statement in accordance with chapter 43.21C RCW and chapter 197-11 WAC.”

This statement was made lending high regard to both Big Soos and Soosette Creeks and the integral role they play within the ecosystem. Both of these creeks are salmon-bearing streams and run through the property. They are deserving of proper consideration even more today than when originally considered nearly four years ago. While a development may be piecemeal through various processes, environmental protections can’t and shouldn’t be. With developments that threaten to span decades there must be adequate time, understanding and consideration to properly understand the potential impacts of those actions.

Our State Environmental Policy Act (SEPA) determines that phased review is not appropriate when it would merely divide a project to avoid consideration of cumulative impacts or alternatives. SEPA specifically notes that:

“Phased review is not appropriate when... (ii) it would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts” (WAC 197-11-060(5)(d) (ii))

The Department of Ecology's SEPA Handbook provides an example when it states:

"For example, the review of a multi-phase planned unit development would consist of a general review of the entire proposal and detailed review of those phases ready for construction. Additional review would occur prior to each future phase when adequate information was available to evaluate the environmental impacts."

The interim use permit provides does not address the cumulative impacts of the larger vision for Pacific Raceways (namely the vision which would qualify for a Project of Statewide Significance) instead, it merely contains provisions for project level review. The Council has already been made aware of a larger plan for the racetrack (although not specifics) and the Staff Report includes discussion of a "second prong" of development which has been discussed with the owner which potentially includes mineral extractions. Allowing development in this piecemeal style would appear to be a SEPA violation. It would further appear to be a gross error on the part of the Council if it were aware of future development and specifically designed a process which would circumvent SEPA rules.

Lack of Community Protection Measures: The demonstration project, as currently adopted, would provide the local community numerous protections which would likely be lost by allowing an alternative interim use permit process. One important document considered by the demonstration project was the development and operating agreement. That agreement would include development standards and operating conditions for both the development and operation of the site. It would include provisions such as:

- a project phasing plan which included threshold requirements that would be met before approval of the development phase
- specified types of racing and non-racing activities
- Specified days and times for racing and non-racing activities
- Specified noise levels and measurement and mitigation provisions
- ongoing monitoring and reporting to measure compliance relating to air quality, groundwater quality, noise, traffic, stormwater flow control
- a process for monitoring condition violations.

Each of these protections were created to ensure clarity for the community, DPER and the racetrack. With use of the interim use permit, there would never be a reason to follow through with a master planning process proposal and thus, those issues which have caused the community and the county anguish over the years would not likely be resolved despite redevelopment. So while the racetrack may find development easier though the interim use permit, there are significantly fewer protections offered to the community.

The County and community has gone through significant expense over the years to determine the extent requirements of the conditional use permit. A process which brings clarity to the situation would be a welcome addition, unfortunately, the interim use permit process would provide no such clarity and would likely result in continued disagreement and legal battles.

Please accept these draft comments on proposed ordinance 2015-0437 and the draft striking amendment. For the reasons above, the Council should reject the changes proposed in Ordinance 2015-0437 and allow the demonstration project to proceed as envisioned in 2012.

Sincerely,

A handwritten signature in black ink, appearing to read 'ASTH' with a stylized flourish extending to the right.

Aaron Smith

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