



Memorandum

To: Rules Committee

From: Councilmember Pete Constant

Subject: SEE BELOW

Date: April 28, 2008

Approved: 

SUBJECT: Waiver of Attorney-client Privilege on April 18, 2008 Memorandum titled, "Confidential Legal Advice Related to Imposition of Appropriate Conditions in Land Use Approvals"

RECOMMENDATION

I recommend that the City Council waive the attorney-client privilege on the above-referenced memo and make it available for public consumption.

BACKGROUND

Over the past year, I have repeatedly voiced concerns with the City Councilmembers' practice of adding conditions to zoning approvals that are of a broader nature and would better be addressed through a City-wide ordinance policy. The Council has chosen instead support disproportionate development standards, depending on the location of individual projects. Earlier this year, I asked the City Attorney to provide the Council with a legal opinion on the appropriateness of the City Council imposing conditions on land use applications that come before the Council for consideration and provide guidance as to the legal limits of Council conditions.

It has long been the tradition of the City Council to codify commitments that applicants make to the community to mitigate the impacts of development where there is a legitimate nexus to the development. Typically, these conditions are outlined in memos drafted by Councilmembers recommending action on zoning applications. Unfortunately, this practice has expanded beyond simple representation of community concerns and mitigation of impacts to furthering individual political agendas. Many projects have been subjected to conditional approvals that are neither supported by City Policy nor Federal or State law. It is one thing to condition approval on mitigations for impacts that have a clear nexus to development and quite another to approach an applicant with a wish list of items in order to ensure approval, simply because applicants "can afford it." Recent zoning actions have even included conditions on design elements, which according to City policy should be reserved for the permit stage of development - even though design elements are clearly documented in the city's established design guidelines.

The City Attorney's memo provided the Council with valuable guidance on the appropriateness and legal limits of this practice. In the spirit of openness this memo should be made available to the public so that community groups may better understand the City's land use process as well as the legal limits on Councilmembers' involvement in land use applications.