

Summer 2004

Municipal Research News

Municipal Research and Services Center of Washington



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Design Review

How's it working in Washington?

Design review by local governments has become increasingly common throughout the country since the 1980s. Design review is the local government practice of examining public and private projects for their design, aesthetic or urban design quality, and compatibility with nearby development. Design review focuses on the appearance of new construction, site planning, and such concerns as landscaping, signage, and other aesthetic issues. Most large cities in Washington State have a design review program, generally focusing on new commercial and multifamily development. Quite a few smaller communities have established design review programs as well.

Design review is common for downtown development, development in historic districts, and for projects within certain transportation corridors. In many communities, design review is administered by an appointed design review board of volunteers that includes architects, landscape architects, developers, urban designers, and other design professionals. Some communities have administrative design review, which is handled by city planning or urban design staff.

There are many reasons why communities enact design review programs. In some older established communities, the interest is in ensuring the compatibility of new development with existing character. Design review can help to enhance desirable pedestrian characteristics and the aesthetic quality of the streetscape. Another reason for design review is to avoid monotony in new construction. Design review is sometimes used to create an identity or a

particular physical character in an area of new development.

Legal Issues Until 1993, there were no Washington appellate cases ruling on the validity of design review ordinances. That year, the Washington State Court of Appeals decided in *Anderson v. Issaquah*, 70 Wn. App. 64, 82 (1993), that Issaquah's design review regulations were invalid due to vagueness. It found the guidelines deficient because they did not give meaningful guidance to the applicant or the design review board. The court affirmed the legitimacy of design review by stating that "aesthetic standards are an appropriate component of land use governance." The issue of how far a city may go in regulating design is far from settled, and it is important for communities to develop meaningful, clear design standards. In light of the Issaquah case, MRSC strongly advises cities, towns, and counties to review their proposed design review program and criteria with their attorney's office.

Design review should follow a step-by-step process to ensure that it is fairly and consistently conducted. A community should develop its design guidelines before beginning to review individual development projects. Typically a community publishes design review informational materials available to the public. Design review guidelines include both graphics and text to illustrate the characteristics of the desired development design. Sometimes these guidelines are developed with the assistance of an urban design consultant. A city's planning commission is often involved in the development

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FYI

Ruling on Disclosure of Government Attorney-Client Communications

In *Hangartner v. City of Seattle*, the state supreme court issued an important ruling affecting three public disclosure issues: the attorney-client privilege; what constitutes a “controversy”; and the requirement that public disclosure requests identify documents with some specificity. All counsel dealing with public disclosure issues are encouraged to review the decision.

Supreme Court Invalidates Kennewick’s Monthly Ambulance Charge

The state supreme court issued a decision on May 6 in *Arborwood Idaho, LLC v. City of Kennewick* that invalidated as an unauthorized tax the city of Kennewick’s monthly ambulance charge, imposed under RCW 35.21.768, on each household, business, and industry within the city.

CONTACTING MRSC

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and fine tuning of local design review standards and guidelines.

Although the Washington State Growth Management Act does not mandate a design element as a required part of a comprehensive plan, quite a few communities have adopted urban design elements of their plans. These elements can be useful as a first step in developing local design guidelines. Comprehensive plans that contain design elements include Bothell's urban design element, Edmonds' community culture and urban design element, Kirkland's community character element, and Bellingham, Gig Harbor, Puyallup, and Woodinville's community design elements.

Projects Subject to Design Review

Design review has evolved from the practice of reviewing building design in des-

ignated historic districts to reviewing a wide range of new development projects. Design review has been used for many years in historic districts and in reviewing changes to designated historic structures. Landmarks and historic district boards typically review changes to historic structures for compatibility with important designated features of a building and buildings within a historic district. Many historic preservation guidelines for design review are based on "The Secretary of the Interior's Standards for the Treatment of Historic Properties." Most preservation boards have adapted these standards by developing their own guidelines for changes to historic properties.

The types of development that are subject to design review vary from community to community. Most design review programs address commercial and multifamily development of a certain size. Many communities, including Seattle, Kirkland, Bellingham, Vancouver, Burien, University Place, and Walla Walla, have developed design guidelines that address the charac-

ter of downtown development. These guidelines address the image of downtown and may include preserving existing "Main Street" character or the development of a desired new identity for the town center.

Some cities have developed special design guidelines to address big-box retail development, such as Wal-Mart, Costco, Home Depot, and other warehouse-type commercial development. The city of Sequim has established design standards and guide-



Sumner Fred Meyer Development by Sienna Architecture. Photo provided by city of Sumner

lines for large retail developments. Fort Collins, Colorado was one of the early leaders in addressing the design impacts of big-box retail development. Sumner is one of relatively few communities that has developed design review standards for new industrial development. Sumner decided to review industrial projects because the city annexed 1,000 acres of new, industrially zoned land.

In recent years, with the advent of megahouses and "McMansions," some communities have adopted design review for single-family development. This seems to be a more common trend in California and Arizona than in the Northwest. Rather than reviewing all new, single-family development in a community, these single-family guidelines are typically tailored to specific situations, including unique lot conditions such as steep slopes, transitional areas adjacent to other, more intensive uses, and other special circumstances. Washington's Growth Management Act encourages higher densities in cities, and more people are living in close prox-

imity, which has resulted in a growing concern about design aspects of new development. In Washington, Sumner has developed single-family residential design guidelines that encourage neo-traditional single-family development, which is consistent with the community character element of its comprehensive plan. Gig Harbor has prepared standards for single-family housing design that de-emphasize garages located in the front of houses and encourage the location of garages behind houses.

Sumner won a Vision 2020 award from the Puget Sound Regional Council for its neo-traditional Daffodil neighborhood, which includes live-work spaces in a light industrial area. These artist loft-type units have been extremely popular.

Another trend in design review is in the development of specific standards for a particular neighborhood. This can work especially well in an area that has an established design character, or an area that needs special attention, such as a neighborhood commercial district. Subarea or neighborhood plans can help to establish broader design policies and principles for an area's streetscape or the relationship to a major urban park. In Seattle, a subarea plan for Ballard's municipal center has helped to define design and streetscape standards for private projects in the vicinity.

The typical content of design guidelines varies depending on the type of development being reviewed and the specific needs in a particular community. Generally, some standards address site planning and layout, including such issues as streetscape compatibility, relationship to adjacent sites, parking location and access, and location of open space. Other standards address the specific architectural elements of building design, such as architectural concept, building form, massing and bulk, building articulation and modulation, consistency, human scale, and exterior building materials. Other standards involve pedestrian features, safety, crime prevention through environmental design (CPTED), and landscaping. Design guidelines also address scale issues and transitions for projects abutting less intensive development, such

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as single-family zoning adjacent to a mixed-use commercial and multifamily zone.

I have served as a design review board member in Seattle for four years. One of the most successful features of Seattle's design review program is an allowance for design departures. The design review process allows developers and city staff working with the design review board to negotiate departures from the strict application of the land use code to produce a better building. This provides an incentive for some developers to participate in design review when their project would not meet the size threshold that triggers required design review. Design departures have resulted in the inclusion of special amenities to provide more light into open space, include public art, and add landscaping, such as green roofs, and other features that take advantage of the particular characteristics of a site or location. Design departures can lead to creativity, innovation, and positive tradeoffs in siting and designing buildings for a particular site.

Another aspect of Seattle's design review program that receives accolades is the inclusion of an "early design guidance" meeting. This meeting is a forum where the neighbors, design review board members, and the project proponent offer suggestions about how the project can best fit with the neighborhood context and to identify key factors and issues to be addressed in the project's design. Kirkland has a similar two-stage design process that involves early design guidance.

In Seattle, more than 800 projects have gone through the design review process since the program's inception in 1993. Some of the most successful designs that have resulted from the Seattle program have been low-income housing projects. One possible explanation is that the low-income housing developers are long-term property owners, and they want to construct buildings that are durable, made of high quality materials, and are relatively inexpensive to maintain. One example of positive collaboration between the owner, developer, architect, design review board, and the community is the University of Washington's Radford Court housing in northeast Seattle near Magnusson Park

designed by Mithun. This attractive, innovative design represents more than double the density of the past student housing on the site.

Administrative Design Review vs. Design Review Boards Communities such as Bellevue and Federal Way have an administrative design review process that is handled by planning staff instead of an appointed design review board. Bellevue has been doing administrative design review for about 20 years. In a recent focus group to discuss design review, participants indicated a preference for continuing Bellevue's administrative program rather than appointing a volunteer design review board. Administrative design review is generally less costly than a volunteer program and is simpler to administer. Because the same core group of staff works on design review, there may be more consistency in administrative design review decisions than in those by a volunteer board whose members change on a regular basis. In Federal Way, minor changes to commercial, multifamily, and institutional buildings are subject to design review, whereas in Seattle, which has design review boards, there is a higher threshold for the type and size



Radford Court, University of Washington graduate student housing, by Mithun. Photo by Carol Tobin

of new construction that will trigger design review. In Bellevue, one of the benefits of the administrative design review process is that staffs from different departments, including transportation, fire, utilities, and land use, work together as a team. This team approach to design review minimizes conflicts between departments and results

in a consistent application of design principles.

Some of the advantages of an appointed citizen review board include increased credibility and visibility for design review in the community, more ability to provide flexibility, such as through a design departure process, and increased richness of input and viewpoint. In some smaller communities, the planning commission may serve as the local design review board administering the design guidelines.

Gig Harbor's design review process is an intriguing blend of the administrative and volunteer board approach. Gig Harbor's design review guidelines were adopted by the city in 1996 following the *Anderson v. Issaquah* decision, and the city developed very specific language to address the court's concerns about the vagueness of the Issaquah guidelines. Gig Harbor has a streamlined approach for projects that follow the specific language, setbacks, and design details of the city's design manual. Projects that meet the written guidelines are reviewed administratively by city staff. If a developer wishes to deviate from the city's guidelines, he or she can appeal to

the city's design review board, which has the authority to allow other approaches that meet the intent of the guidelines. One successful large project in Gig Harbor is a development called "Gig Harbor North," a recently annexed area that now includes an Albertson's store and a Target. These establishments have an architectural presence on the streetfront that is quite different from a typical suburban store with parking in front. At Gig

Harbor North, most parking is located behind the structures.

Kirkland started its design review program about 10 years ago with an administrative review process, and the city now has a design review board that looks at development in downtown, and in certain commercial neighborhoods. Unlike Seattle's

process, in which the director of the Department of Planning and Development has the final decision on design review, the final design decision in Kirkland is made by the board. Kirkland has an administrative design review process for minor changes and for projects outside these commercial districts.

Concluding Comments It is extremely important that design guidelines be specific and follow certain clearly articulated principles. Design review cannot involve any arbitrary decision making, and it must be consistently applied.

One of the development community's major concerns about design review is the issue of timeliness. The time involved in the review process can have a huge effect on a project's schedule and the profitability of a development project. When design review can increase certainty and be accomplished within a reasonable time period, it is much easier to sell the idea to developers and builders. With design review, sometimes a developer and architect will need to spend more time in the early phase of a project to meet design require-

ments, but they may save time in the long run because a project that is subject to design review is more likely to be acceptable to the larger community and may cause fewer legal appeals.

Some design review boards can spend exorbitant amounts of time analyzing the minutia of a project, such as signage, building materials, and colors. Design review boards need to carefully evaluate projects based on local design guidelines, but not agonize over minor details of a project.

Design guidelines should mesh with a community's land use code to allow flexibility to accommodate good design while maintaining consistent standards and to provide incentives for infill and creative site design.

As many communities are implementing design review programs, there is interest in a forum for discussing the experience and providing training to new board members. This is especially important in small- and medium-sized communities where there are fewer design professionals available to serve on a design review board. If

you are interested in working with other communities on design review issues, contact Jeremy McMahan at Kirkland (jmcmahan@ci.kirkland.wa.us or 425-828-1141).

Design review is a delicate balancing act, looking at community aesthetic issues in light of the public interest, while encouraging good design. Design review is more of an art than a science, but it must be based on sound, clearly articulated design principles and on a process that is fair and open.

Thanks are due to the following individuals for sharing their design review comments: Patti Wilma - Bellevue, Patrick Doherty - Federal Way, Steve Osguthorpe - Gig Harbor, Angela Ruggieri and Jeremy McMahan - Kirkland, Vince Lyons - Seattle, John Doan - Sumner, and Mark Hinshaw - LMN Architects. ▀

By Carol Tobin
Public Policy Consultant
Municipal Research and Services Center

WEB TALK

News and information about www.mrsc.org

What's new?

Updated list of city and town officials - On the MRSC Web site, we maintain a "profile" of each city and town (the state also links to these pages from the home page of Access Washington). Each profile contains a list of your city or town officials as well as links to selected documents, when available, such as your municipal code, budget, comprehensive plans, and business license forms. We have now added a convenient way for you to update your list of officials when changes occur prior to the publication of the next biennial directory. From the MRSC home page, go to "Research Tools," "City Profiles" and click on "City Officials." You will see a link to the update form.

Software Forums - Do you have questions about the information technology systems used by other cities, towns, and counties? We've set up a series of surveys and forums that assessors, auditors, clerks,

finance directors, planners, public works directors, treasurers, and other groups of city, town, and county officials can use to share information with their peers. To begin using the forums, go to "Services," "Software Discussion Forums" on the MRSC home page.

Bi-Weekly Update Notice - About 1200 of you subscribe to the biweekly update notice that MRSC distributes, via e-mail, to inform you of issues and news affecting local governments. We have recently begun using a service that will allow us to enhance the formatting of these messages and tailor the distribution. If you would like to subscribe, go the MRSC home page and click on the "Get MRSC Updates by E-mail" link at the top of our Focus section.

What's coming?

Over the past several months, MRSC has been working with the city of Bothell to

develop an online citizen help-desk application that residents and businesses can use to communicate with a variety of city departments.

To see how the citizen interface and the administrator interface work, go to: <http://www.mrsc.org/Subjects/InfoServ/webmastr/040122/presentations/helpdesk.aspx>

MRSC can host the application for cities, towns, and counties that do not have programming staff or the ability to host it on their own servers. For large jurisdictions, we are offering the code at no cost, so that you can modify it for your own purposes (available for either .NET or ColdFusion) If you are interested in discussing hosting options, please contact Fred Ward at (206) 625-1300 or fward@mrsc.org. To obtain the code, contact Don Edlin at dedlin@mrsc.org or (206) 625-1300. ▀

Ask MRSC

Summaries of recent inquiries answered by MRSC consultants

Domestic Violence Policies – What information does MRSC have about new legislation dealing with police procedures when law enforcement officers are charged with domestic violence?

SSB 6161 (Chapter 18, Laws of 2004, amending and adding new sections to Chapter 10.99 RCW) requires the Washington Association of Sheriffs and Police Chiefs (WASPC) by December 1, 2004 to adopt a model policy on domestic violence committed or allegedly committed by sworn police officers. Then, by June 1, 2005, every law enforcement agency in the state must adopt a local policy that conforms to the model policy and must provide copies of that policy to WASPC. Local agencies must also notify WASPC regarding compliance with associated training requirements.

Finance Charges – Must a city or county pay finance charges?

Yes, if it does not pay a bill within 30 days. RCW 39.76.011(1) says, in part:

every state agency, county, city, town, school district, board, commission, or any other public body shall pay interest at a rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the public body fails to make timely payment.

Land Use Planning – Are non-GMA cities and counties required to submit their comprehensive plan and development regulation amendments to CTED 60 days in advance of adoption, under RCW 36.70A.106(1)?

Non-GMA cities and counties are not generally required to submit comprehensive plan and development regulation amendments to the Department of Community, Trade, and Economic Development (CTED) 60 days in advance of adoption. RCW 36.70A.106(1) provides:

“Each county and city proposing adoption of a comprehensive plan or development regulations *under this chapter* shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption.” (*Emphasis added.*)

So, only those regulations that the non-GMA city or county is required to deal with under the GMA must be submitted to CTED. Basically, that means the critical areas guidelines and regulations and any amendments to those, however minor.

Military Leave – Are there any state laws that provide tax exemptions or restrictions on penalties and interest for delinquent taxes for persons on active duty military leave?

The 2004 legislature, in SSB 6302 (Chapter 161, Laws of 2004), amended RCW 84.56.020(6) as follows (the language in parentheses was deleted and the language underlined was added):

no interest or penalties may be assessed for the period April 30, ~~(1996) 2003~~, through ~~(December 31, 1996) April 30, 2005~~, on delinquent taxes imposed ~~(in 1995)~~ for collection in ~~(1996) 2003 or 2004~~ which are imposed on the personal residences owned by military personnel who participated in the situation known as “Joint Endeavor Operation Enduring Freedom.”

This legislation has an emergency clause and was effective when it was signed by the governor on March 26, 2004.

Open Meetings – Does a code city council violate the Open Public Meetings Act if it meets in executive session to discuss whether to confirm a mayoral appointment?

No. Such an executive session would not violate the Open Public Meetings Act. RCW 42.30.110(1)(g) provides that the council may meet in executive session “to

evaluate the qualifications of an applicant for public employment.” That provision would apply to an executive session to decide whether to confirm a mayoral appointment. The person “appointed” is still an applicant for public employment, because the appointment is not complete until the council confirms it. This is assuming, of course, that the council has required confirmation of an appointment to that particular office.

Privacy Rights of Prisoners – May county jail officials inspect prisoners’ incoming and outgoing mail?

Yes. Two Washington State cases, *State v. Hawkins*, 70 Wn. 2d 697 (1967), cert. denied, 390 U.S. 912 (1968), and *Robinson v. Peterson*, 87 Wn. 2d 665 (1976), have upheld the right of jail officials to examine the letters and packages, incoming and outgoing, of all inmates. Nothing has occurred since the *Hawkins* and *Robinson* decisions to change the rule.

Public Disclosure – Must a city provide copies of all city utility bills if requested for commercial purposes.

Yes. The public disclosure law prohibits the disclosure of “lists of individuals” if requested for a commercial purpose. RCW 42.17.260(9). In our opinion, a request for a list of all utility bills is not equivalent to a request for a list of individuals. However, the city should delete residential addresses and telephone numbers, though not those for businesses, from the bills. See RCW 42.17.310(1)(v).

Speed Limits – When does a speed limit change in relationship to speed limit signs?

According to the “Manual on Uniform Traffic Control Devices” (MUTCD), Millennium Edition (December 2000), the “new” speed limit begins and the old limit ends at the speed limit sign (not when one can first see the sign). If a city or county has adopted the MUTCD, the answer set out above would certainly apply. Even if it has not been adopted, the answer supplied by the manual would, arguably, still apply.

LIBRARY LISTINGS

New resource materials now available

New Acquisitions

This list contains new publications, ordinances, and other materials recently received by the MRSC library. We also prepare a more comprehensive list of new acquisitions each month which is posted on our Web site at www.mrsc.org/library/newacq.htm. If you would like to borrow one or more of these publications, please contact Amanda Kemp in our library at (206) 625-1300 or akemp@mrsc.org.

▼Construction

Building Official's Management Manual, International Code Council, 1999

Green Building, by Kathryn Whiteman, 2003

▼Environment

Critical areas workshop: July 10, 2002, Seattle, WA (workshop materials), Law Seminars International, 2002

Wetlands in Washington: October 30 and 31, 2003, Seattle, WA (conference materials), Law Seminars International, 2003

▼Finance

Organization and Design of an Effective Budget Function, by R. Gregory Michel, 2002

Tax Exemptions: A Study of Tax Exemptions, Exclusions, Deductions, Deferrals, Differential Rates and Credits for Major Washington State and Local Taxes, Washington State Department of Revenue, Research and Information Division, 2004

▼Governance

Measuring Up: Governing's Guide to Performance Measurement for Geniuses and Other Public Managers, by Jonathan Walters, 1998

▼Planning and Land Use

Better Models for Commercial Development: Ideas for Improving the Design and Siting of Chain Stores and Franchises, by Edward T., 2004

Capital Budgeting and Finance: A Guide for Local Governments, by A. John Vogt, 2004

Place Matters: Metropolitcs for the Twenty-First Century, by Peter Dreier, John Mollenkopf & Todd Swanstrom, 2001

The Planner's Use of Information, edited by Hemalata C. Dandekar, 2003

Smart Growth Zoning Codes: A Resource Guide, by Steve Tracy, 2003

▼Public Safety

Police and Fire Physical Fitness, by Glenn R. Jones, 2003

▼Transportation/Traffic/Streets

City and County Design Standards for the Construction of Urban and Rural Arterials and Collectors, Washington State Department of Transportation, 2003

Comprehensive Street Tree Plan, prepared for the city of Tumwater by Galen M. Wright, 2002

School Administrator's Guide to School Walk Routes and Student Pedestrian Safety, Washington State Department of Transportation, 2003

Options and Innovations Toolkit: Context Sensitive Solutions for Rural Town Centers and Corridors, prepared by MAKERS Architecture and Urban Design, the Transpo Group; prepared for Puget Sound Regional Council, 2004

▼Utilities

Developing Rates for Small Systems, American Water Works Association, 2004

Resource Sharing

The *Information Partnership Program* seeks and collects current materials from Washington local governments. The materials received provide answers and support to the challenges faced by cities and counties every day. You may order the materials below by contacting the MRSC library at (206) 625-1300 or 1-800-933-6772 or e-mail us at mrsc@mrsc.org. Due to space limitations, the list below may not be complete. A comprehensive list of IP materials received may be requested from the library or viewed on our Web site at www.mrsc.org/library/rshare.htm.

▼Contracts With Recipients of City or County Hotel-Motel Tax Funds

Bellingham Financial assistance agreement for use of hotel/motel tax revenue funds—Jazz project 2004 concert season, 2004; Gig Harbor Agreement for tourism promotion activities between Gig Harbor and the Tacoma-Pierce County Convention and Visitor Bureau, 2004; Olympia Memorandum of Understanding regarding allocation of 2000 lodging tax revenues for (1) comprehensive brochure of Olympia Arts organizations, and (2) comprehensive website about Olympia's history; Memorandum of Understanding regarding allocation of 2002 lodging tax revenues for brochures promoting parks and arts in Olympia; Port Angeles Contract for tourist information and tourist promotion services, 2004; Westport Tourist promotion contract between the city of Westport and the Westport/Grayland Chamber of Commerce, 2004 (F 5.1211).

▼Electronic Copies of Civil Service Rules

Camas Civil service commission rules and regulations [fire and police], 1999 (PE 5.2410); Des Moines Civil service commission rules and regulations [police], 2001 (PE 5.2310); Gig Harbor Civil service commission rules and regulations [fire and police], 2004 (PE 5.2410); Grand Coulee Civil service commission rules and regulations [police], n.d. (PE 5.2310); Port Angeles Civil service commission rules and regulations [fire and police], 2004 (PE 5.2410); Port Townsend Civil service rules [fire and police], 2004 (PE 5.2410); Poulsbo Civil service commission rules and procedures of the civil service commission [fire and police], 2003 (PE 5.2410); Vancouver Civil service rules and regulations [fire and police], 2002 (PE 5.2410); Walla Walla Civil service commission rules and regulations [fire and police], 2003 (PE 5.2410).

Public Employee of the Year

Rich Yukubousky, MRSC Executive Director

Each year the Municipal League of King County recognizes outstanding contributions in the areas of volunteerism and good government with Civic Awards. We are pleased to announce that Rich has been acknowledged with an award for exceptional public service.

Congratulations Rich!



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