MEMORANDUM

To: **City of Dunwoody Planning Commission**

From: **Community Development Staff**

Date: **September 8, 2009**

Subject: **Discussion of Public Noticing Requirements**

Based upon continuing discussions begun in June among the City Council membership and the community development staff, it is agreed that at this time it would be prudent for the City of Dunwoody to examine and potentially amend its previously approved procedure for noticing requirements regarding zoning actions for both the Mayor & City Council meetings and for Zoning Board of Appeals meetings.

Staff has examined current policy for public notice and its relationship to both the Zoning Ordinance and the State of Georgia Zoning Procedures Act.

Zoning Procedures Law, O.C.G.A. §36-66-4, which reads in part: "A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing."

This state statute is the source of City of Dunwoody's Ch. 27, §5A-18(a) and §5D-16(c), which are portions of the binding codes related to the public hearing notification process for Zoning Map amendments (commonly referred to as 'rezonings'), Zoning Ordinance text amendments, Comprehensive Plan Land Use Map amendments, Special Land Use Permits, Variances, Special Exceptions, Appeals of Administrative Decisions and Annexations.

The later sub-parts of those Zoning Code sections (§5A-18(b) §5D-16(a & b) entail the posting of Public Hearing signs on site and staff mailings informing adjoining property owners of a proposed action. Signage content requirements are based on select portions of §36-66-4.

These two codes, §5A & §5D, are the guide currently used by staff for the noticing of zoning actions. In the interim between submission and the hearing, staff completes or observes opportunities for:

- a preliminary review
- the applicant to submit revised and/or amended plans if necessary (pursuant to §5A-6)
- newspaper advertisements
- property owner mailings
- on-site signage
- a substantive, multi-departmental review
- a staff memo to be written and delivered to the Board assigned to hear the application seven days in advance of the Hearing.

The schedule for these reviews and actions was developed by staff and approved by the City Council, pursuant to §5A-6(a). The most-recent discussions about the process and procedures center around the time at which the applications are made public, the frequency of the notices, and the size of the signs posted on site when required.

The items specifically addressed by the City Council that need to be addressed by this Public Hearing process are:

- Amend current code language to create a size requirement of on-site signage of 12sqft (§5A-18(b)(2)(b) and §5D-16B). *Staff is currently researching the price for these new signs, both materials and labor. Staff further recommends that the applicant pay for the installation of these signs and show evidence that the sign was successfully and properly erected on site.*
- Amend the requirement to increase the size of the text on signs to 4 inches (§5A-18(b)(2)(b) and §5D-16B).
- Amend the verbiage related to adjoining property owner mailings to increase the distance to 500 feet from 250 feet. (§5A-18(b)(1) and §5D-16A).
- Require the posting of the agenda and board packages to the website for all boards. *This is currently department policy, but not specifically codified in the zoning ordinance. Staff has been cautioned on more than one occasion by the City Attorney against codifying more stringent requirements than required by State Law with regard to noticing and the dissemination of information in a public manner.*
- Require that the posting to the city website of agenda with backup information be made at the time that signs are posted/letters mailed/Crier ads run (essentially no less than 15 days prior to the Public Hearing). *It is not anticipated that this would be a challenge to implement as a policy change, but staff cautions against implementing the procedure as a code requirement.*
- Signs for the ZBA and signs for the Mayor & City Council process should be different colors for viewer clarity. *Again, it is not anticipated that this would be a challenge to implement as a policy change, but staff cautions against implementing the procedure as a code requirement.*

Community Council

At their regular August 2009 meeting, the Community Council deliberated the above conversation points. The initial free-formed discussion began with an explanation by staff of the purpose of the amendment, and that the side effect of codifying many of the above items will be the lengthening of the process. It was generally agreed upon by the Community Council that more noticing of the Community Council meetings is a good thing, but the lengthening of the process was a negative consequence of that additional noticing.

Following the early discussion, a number of motions were made relating to the above bullet points:

1. A motion to amend §5A-18(b)(2)(b) and §5D-16B, increasing the size of Public Hearing signage to 12 square feet: **Motion opposed (7-0)**, as 12sqft was viewed as too big. The size of sign should only be large enough to accommodate #2, below.
2. A motion increasing the text size of Public Hearing signage: the Community Council believes 4 inches is too big. 2 ½ inches maximum is fine. However lettering should be printed, not hand written. **(Motion approved 7-0)**
3. A motion to increase the mailing notification distance from the subject property: Yes, an increase of an additional 250 feet for a total of 500 feet (**Motion approved 5-2** with Crean and Dwyer opposed).
4. A motion to address requiring staff to post the agenda with backup info to the city website at the time that signs are posted/letters mailed/Crier ads run, as well as codifying the color of Public Hearing signs in code itself: **Motion opposed on all counts**. The Community Council embraces the idea and supports making those changes as a matter of staff internal policy, but is opposed to the idea of putting that specific language in the Zoning Ordinance.

Further recommendations about the Community Council process were made at the same meeting:

1. Some on the Council feel that they need to be able to table applications for a month (Mr. Cosgrove and Mr. Dwyer opposed).
2. The Council doesn't feel they need to get packets when the notices are posted. They prefer the system that is in place today.
3. It was noted at the meeting that the size of the legal ads published in *The Crier* is acceptable. However, staff is to ensure that the ads don't get smaller. *It should be noted that staff has no editorial authority to mandate the size of Public Hearing advertisements in The Crier.*

Recommendation

Staff is able to implement these changes as a policy change whenever necessary. Were it the City Council's pleasure, the changes noted could instead be codified in the City Zoning Ordinance and a scheduled date of implementation could be established as a beginning date. Staff is not opposed to implementing the text amendments to bulk standards, such as sign square footage, text height and mailing distances. However, following the advice of the City Attorney, staff opposes codifying more stringent requirements than required by State Law with regard to noticing, and the dissemination of information in a public manner, such as staff reports and on-site signage.

Attachments

1. O.C.G.A. §36-66-4
2. Dunwoody schedule of application deadlines