



January 10, 2010

The Honorable Geoff Simpson
Chair, House Local Government and Housing Committee
426 John L. O'Brien Building
Olympia, WA 98504-0600

RE: HB 2408 relating notifying property owners of proposals to modify zoning requirements

Dear Representative Simpson:

The Washington Chapter of the American Planning Association opposes HB 2408 and respectfully requests that the House Local Government and Housing Committee reject this legislation. This bill would require a mailed notice to affected property owners of each public meeting at which any zoning regulation modification is discussed. As practitioners who are responsible in this state's communities for carrying out the various kinds of public notice now given of land use matters, we have a unique understanding of this bill's true impacts on our communities. We believe that, as drafted, HB 2408 would not only impose unwarranted and burdensome costs on local governments, it would be unlikely to achieve more effective notice.

The following describes our specific concerns about the bill:

1. **Is There a Problem?** What is the problem that this bill is trying to fix? Reasonable and adequate public notice is already required under the Growth Management Act, Planning Enabling statutes, State Environmental Policy Act and local ordinances. If there is a specific problem, we would be happy to work with the bill sponsors to craft a workable solution.
2. **One Size Does Not Fit All:** This bill is a "one size fits all" approach to notification that would apply to all 281 cities and towns and 39 counties in the state as well as every type of change to zoning requirements. Zoning amendments can be complex and broad in their effect, such as changing a height limit in residential zones applying to most of a community. They can be minor,



housekeeping changes such as correcting an obvious inconsistency in landscaping requirements. They can also improve and streamline a jurisdiction-wide permit review process designed to encourage economic development. In all of these examples, mailed notice would be required to most if not all of the property owners in the city, town or county.

Another common reason for a change is to comply with a non-discretionary state mandate. Some recent examples include State mandates for: adopting levels of service for State-owned transportation facilities, allowing accessory dwelling units or not prohibiting mobile homes. Imagine the uproar and fiscal impact of even a simple state agency definition or regulatory change that then requires every jurisdiction in the state to amend its codes and mail to every property in its boundaries!

- 3. Effectiveness and Sustainability of Mailed Notice:** The bill does not consider the availability of alternative and possibly more effective and sustainable means of notice that many jurisdictions are currently using. These include web sites, e-mail/listserv, notice boards, newspaper notices, government TV channels, notification to neighborhood group leaders, etc. Mailed notices are a waste of paper and these days are not a particularly effective way of getting the message out.

Mailed notice to property owners is a one-way, slow communication that excludes renters, leased businesses and mobile home owners. Cities like Kent have adopted free, sustainable and instant ways of communicating with their residents. Use of social networking sites like Facebook and Twitter, "e-alerts", e-mail lists, is increasing and is much more effective.

It has been suggested that monthly utility bills be used for the mailed notice. Unfortunately, this doesn't work for everyone. Some cities, towns and counties do not have utilities and therefore, do not mail utility bills. For those that mail such bills, they are automated. Printing a notice on the bill is usually limited to a few sentences—not enough to fully describe the proposal and



its impacts on properties. Finally, utility bills aren't always mailed to property owners; sometimes they're mailed to tenants.

4. **Risk and Liability:** We are concerned about potential litigation over the adequacy of the required notice – “*concise description and explanation of modifications*” affecting real property--provides lots of room for interpretation. The bill also requires notice to “owners of real property”. The only way to get 100% accurate ownership information is to perform a title search for each property we would mail to. Due to the prohibitive cost of this technique, most cities and counties approximate ownership information by using County assessor’s information for mailing to property owners. However, this approach is also flawed. Data is often out of date by two to six months or may not include the owner’s actual mailing address (such as a P.O. Box). A brief survey indicates that return rates for mailed notices are between 10% to 30% on any given mailing due to these kinds of data quality issues. This is why we use other means of notification as described above.

5. **Notification of Any Public Meeting:** Requiring a notice that identifies “any public meeting at which the proposal is scheduled to be addressed” would be difficult to achieve. What is “a proposal”? Many jurisdictions spend hours working with Planning Commissions and elected officials over a period of months discussing concepts for zoning regulation changes. Would a mailed notice be required for these informal but public meetings?

The public process needs to remain flexible and responsive to community needs. The initial public meeting schedule announced on the required notice will often change in response to community comments and public official requests. Rather than allowing the community to drive the process, the issuance of a costly public notice with specific dates and times of meetings would likely drive the process.

Many of us are always tweaking, updating and improving our zoning requirements to clarify language, improve process, address new community concerns and close gaps. Many of these



improvements have community and property owner benefits. These improvements might not be made if an onerous mailed notice requirement were in place.

6. Cost of Mailed Notices: The actual cost of the required mailed notice will differ between jurisdictions depending on many variables. Since many jurisdictions amend their zoning regulations more than once per year, these costs could be easily doubled or tripled. The Fiscal Note on this bill also recognizes the unpredictability of the fiscal impact of the bill on cities, towns and counties.

- Issaquah estimates a city-wide mailing to 12,000 addresses would initially cost \$6,000 in materials and postage, plus staff time.
- Burien estimates an initial cost of \$8,000 in materials, postage and charges from an outside mailing firm for an 18,000 piece mailing.
- Redmond estimates an initial cost of \$6,000 for a single postcard mailing.
- Seattle is currently working on two separate amendments affecting all single-family zoned properties. Each would provide more flexibility for development of homes and remodels—including a proposal to allow “green roofs”. Each mailing would initially cost the City \$84,000.
- Mukilteo estimates an initial cost of \$8,600 per mailing.
- Mountlake Terrace estimates an initial cost of \$3,000 plus staff time for a mailing. In 2009, they processed 7 amendments, which would have totaled \$21,000 just for the initial mailings.

Additional costs would incur from having to mail multiple times on a single amendment proposal—for example, if additional public meetings are added to the process. On a recent proposal, Mukilteo would have spent \$25,800 on the mailings required by HB 2408 due to the scheduling of additional public meetings during the public process.

7. Possible Need for Property by Property Analyses: The bill's direction to “contain a clear and concise description of the



proposal and an explanation of modifications affecting the real property owned by the notification recipient" may be extremely difficult to do (and adding even greater costs) for any code amendment that does more than one simple thing. This language implies that, at least for some amendments, local governments could have to analyze the potential impacts to each individual property--in other words, if the code amendment deals with several subjects, a property-by-property analysis may be required, to be able to explain how the real property would be affected. That may not be the bill proponent's intent--but that could be an unintended and undesirable result.

8. **Consistency:** Changes to building codes, subdivision codes, infrastructure standards, local budgets, and even State budgets and statutory changes can affect the use and value of private property. Yet none of these actions would require the same public notice standard required in HB 2408.

We also have had an opportunity to read the proposed amendment to HB 2408 limiting the notice requirements to "zoning classifications, rezone an area, or otherwise make changes to the allowable land uses." While this would apparently limit the scope of the notice requirements, we again question why the bill is needed.

As planners, we are committed to providing all citizens with the opportunity to have a meaningful impact on the development of plans, programs and regulations. House Bill 2408 is not the right way to achieve this objective. We urge the Committee to reject this bill and work with the sponsor to clearly define the problem. We will be happy to work with you in crafting a bill that addresses a specific problem without imposing undue impacts on our local communities.

Thank you for the opportunity to comment. If I can answer any questions about this position statement, please do not hesitate to contact me.



American Planning Association
Washington Chapter

Making Great Communities Happen

Respectfully,

A handwritten signature in blue ink, appearing to read 'Scott Greenberg'.

Scott Greenberg, AICP
Washington Chapter of the American Planning Association
President

Cc: Members of the House Local Government and Housing Committee