MEMORANDUM

DATE: May 7, 2013
TO: Record
FROM: Jeff Rowe, Deputy Director, DCD
Cc: Scott Diener, Manager, Policy and Planning, DCD
RE: Director’s Administrative Interpretation
Postponement of Issuing Decisions, KCC 21.04.200(G)

The Director, or his designee, is authorized to initiate and issue Administrative Interpretations under KCC 21.04.040(C)(1) "whenever necessary." The Director finds that the application of Kitsap County Code (KCC) 21.04.200(G), regarding the postponement of decisions, has been the subject of confusion and this Interpretation is necessary to clarify its application.

Background

In June 2012, the Board of County Commissioners adopted amendments to Title 21 KCC (Ord 490-2012) to, in part, outline timeframes for actions on permit applications. KCC 21.04.200 provides multiple opportunities for applicants to request extensions throughout the review process (e.g., KCC 21.04.200(B) before a determination of completeness, and KCC 21.04.200(F) when a correction is required). In KCC 21.04.200.G another opportunity is provided, but it is ambiguous as to whether a request under this section can only be requested just prior to the issuance of a decision or at some point earlier in the process. There is also confusion as to whether this section can be invoked if an applicant had already received an extension under the other sections of KCC 21.04.200.

KCC 21.04.200(G) states in full:

The department may postpone issuing a decision for a specific project permit application, or an applicant may request in writing such postponement, due to special circumstances. An initial postponement may occur for a period up to one year. An additional second postponement period of up to one year may occur; provided, that the director may require the project application become vested to the codes in effect the date the second postponement would be granted. No additional postponements shall be granted. All applicable timelines and deadlines will be stayed during the postponement period. In the case of a postponement requested by an applicant, the department will take no further action until the application is re-activated by the applicant. Applications that have not been re-activated at the end of the agreed-upon postponement period

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shall be considered withdrawn, and in this instance, prorated fees (up to seventy-five percent of the permit fee) may be refunded to the applicant, based upon the unused hours allotted to the project permit application processing time. Withdrawn applications must be resubmitted as new applications with full fees. Financial hardship shall not be considered for postponement of decision issuance.

Administrative Interpretation

Based on the plain language of the section, as well as accepted rules of statutory construction, the Director finds that KCC 21.04.200(G) was intended to achieve the following requirements. Accordingly, the application of KCC 21.04.200(G) to any permit shall comply with the following:

1. DCD may postpone issuing a decision, but is not required to.

2. Postponement shall mean taking no further action by DCD, during which time the deadline for issuing a decision is stayed.

3. The review of an application may be postponed:
   a. For Type II permits, at the point just prior to the issuance of a decision by DCD; or
   b. For Type III permits, just after the staff report is finalized and the matter is ready for hearing; or
   c. For any permit, at any point during the application review process if special circumstances, determined on a case-by-case basis, warrant it. Financial hardship, however, cannot be considered a special circumstance.

   [Signature]

Jeffrey E. Rowe, Deputy Director, DCD

In accordance with KCC 21.04.040(C)(4), this decision shall be retained by DCD and made available to the public. This Interpretation is not subject to appeal.