

# City considers options for Bachtold annexation comments

City Council members will not take testimony outside of the formal process as advised by the city attorney.

By DIAN VER VALEN  
of the Walla Walla Union-Bulletin

Those who came to Wednesday night's Walla Walla City Council meeting voiced frustration that city leaders wouldn't take oral comments at that meeting on the proposed Bachtold subdivision and annexation, but the city's attorney offered them a ray of hope.

The public has until 5 p.m. on Aug. 12 to submit written comments on the

development agreement application for about 105 acres south of Walla Walla on Cottonwood Road to: City of Walla Walla Development Services Department, 55 E. Moore St., Walla Walla, WA 99362. But several residents attended Wednesday's meeting to express their opinions in person and out loud.

On City Attorney Tim Donaldson's advice, however, the board did not allow the public to comment on the application at that meeting.

Residents might be able to speak to city leaders regarding the proposal to subdivide and annex the Bachtold property at a future Council meeting — before city staff make their recommendation to City Council, Donaldson said, which was something

many requested. Nothing definitive on that is known yet, however.

R.L. McFarland, a Middle Waitsburg Road resident, called the decision not to accept comments "bizarre."

"We've never encountered this," he said, referring to Mayor Barbara Clark's announcement just before the regular public comment period that no comments on the Bachtold annexation would be taken.

Developer Hayden Homes and property owners Jon and Mary Christine Bachtold filed a development agreement application with the city last week. That application and relevant documents are available online at [ubne.ws/32A5Cqq](http://ubne.ws/32A5Cqq).

"The city's consideration of a pre-annexation agreement for the Bachtold

annexation is a quasi-judicial matter, which means the City Council will in essence act in a judge-like capacity when it considers it," Donaldson wrote in an email to the U-B this morning. "Like a judge, the Council will have to consider the matter on the basis of the record presented to it rather than things Council member may have heard outside the formal process."

"The easiest way to explain it," he wrote, "is to compare the Council's role to that of a judge in a bench trial. The judge in a bench trial is required to decide a matter based on what he or she hears in the courtroom."

Council members are bound by state law in a doctrine known as the "appearance of

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fairness." Council members may be disqualified from participating in consideration of the matter if circumstances surrounding it would make it appear to a reasonable person who was informed of the facts that the member acted out of improper motives, Donaldson stated.

"While a matter is pending, Council members should refrain from receiving ex parte communications on the matter, and should instead confine its consideration to comments and materials submitted through the formal process for the matter," the attorney wrote.

According to Donaldson, he's already been contacted by an attorney opposed to the Bachtold annexation and an attorney who supports it who both expressed appearance of fairness concerns.

"As a result, I was compelled to specially advise the City Council that members should observe the appearance of fairness doctrine with respect to the Bachtold matter," Donaldson wrote.

In this case, a formal process for taking public comment has already been initiated. All comments timely submitted to the Development Service Department will be provided to Council members to consider in its deliberations on the matter. Interested parties are therefore encouraged to submit written comments in that manner, Donaldson wrote.

The City Council will ultimately hold a public hearing on this matter where citizens may present their

comments and concerns even if they didn't present written comments, however by state law the city may hold only one public hearing.

"This is another reason why the City Council cannot take and consider comments at multiple public meetings," Donaldson wrote.

The hearing on a pre-annexation development agreement with respect to the proposed Bachtold annexation has not yet been set, and it will not be scheduled until the Development Services Department completes its preliminary review of the

matter through the formal process that has been initiated. The city will provide advance public notice when that hearing will take place, according to the attorney.

Based on concerns expressed Wednesday by the public and queries from city staff and Council members, however, staff are also looking into options to structure Council's consideration of this matter to enable citizens an opportunity to speak at the public hearing on this matter, considered by Council, and possibly referring the matter back to the Development Services for further consideration before the Council ultimately makes a decision on the matter, Donaldson wrote.

"The city will need to comply with the state mandated 'one-hearing' requirement, and my office is looking into the options together with the Development Services Department," Donaldson wrote. "I unfortunately don't have

a definitive answer or solution at this time, but the details of the hearing process will be worked out and specified in the public notice that is given in advance of the public hearing."

In 2016, the city accepted a 10 percent annexation petition for the Bachtold property, meaning property owners representing 10 percent of the assessed value of land within the proposed annexation boundary signed a petition to annex into the city, according to city records online.

That year the city also hired Aspect Consulting to conduct an independent flood analysis for the location. This touches on one of the biggest concerns expressed by opponents of the project. The property is prone to flooding, they have said. Other concerns have included traffic congestion, the minimum density of four dwelling units per net acre, and "the long-term look and feel of our community in Walla Walla," as some have expressed it.

In 2017, city staff told annexation petitioners that their request couldn't go forward without a conceptual, full build-out master plan for development, a plan for transportation, and a plan for flood control. Last year, as required in the city's annexation process, property owners representing 60 percent of the assessed value of land within the proposed annexation boundary signed a petition confirming a majority of property owners commit to the annexation, the city's online records show.

Just before City Council's December 2018 meeting to decide on the annexation, the city attorney discovered a special provision in state law that allows a city to enter into a development agreement concurrent with an annexation proceeding. This provision had not been

used in Walla Walla before because cities typically do not assert their development regulations, such as zoning, until a property is annexed into its jurisdiction, city records state.

Given the size and complexity of the Bachtold annexation, city leaders felt it would be best to prepare a development agreement for the property to clearly identify expectations of development before annexation was finalized, according to information on the city's website.

Hayden Homes has indicated they'd like to begin developing the property next year, she said. The developer's website has more information on their plans, under Cottonwood Community at [ubne.ws/2JDPYTp](http://ubne.ws/2JDPYTp).

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