

ORDINANCE NO. 2005-08-066

AN ORDINANCE RELATING TO THE ADMINISTRATION OF DEVELOPMENT REGULATIONS, CORRECTING AND AMENDING PROCEDURAL RULES IN THE FOLLOWING CHAPTERS OF THE BELLINGHAM MUNICIPAL CODE IN ORDER TO MAINTAIN CONSISTENCY AND PROVIDE CLARIFICATION: 2.56 HEARING EXAMINER, 16.80 LAKE WHATCOM RESERVOIR REGULATORY CHAPTER, 16.100 SCHOOL IMPACT FEE, 18.24 BINDING SITE PLAN, 18.32 CLUSTER SUBDIVISIONS, 18.48 VARIANCES AND AMENDMENTS, 20.04 INTRODUCTORY CLAUSES, 20.10 LAND USE AND DEVELOPMENT CODE GENERAL PROVISIONS AND 21.10 PROCEDURES AND ADMINISTRATION.

WHEREAS, the City of Bellingham adopted Ordinances 2004-09-065 and 2004-12-088 pertaining to land use permit processes; and

WHEREAS, the City of Bellingham adopted Ordinance 2004-09-064 repealing Bellingham Municipal Code Chapter 16.04 and adopting a new Chapter 16.20 pertaining to environmental procedures; and

WHEREAS, it is necessary to amend certain additional sections of the Bellingham Municipal Code to avoid conflict and maintain consistency with said adopted ordinances or to provide clarity; and

WHEREAS, the proposed amendments are consistent with the provisions of said adopted ordinances; and

WHEREAS, as required by RCW 36.70A, notice of the City's intent to adopt the proposed amendments was sent to the Department of Community, Trade and Economic Development and other reviewing agencies on March 15, 2005; and

WHEREAS, after mailed and published notice as required by Bellingham Municipal Code 21.10, the Planning Commission held a public hearing on the proposed ordinance on May 5, 2005; and

WHEREAS, the Planning Commission considered the staff report and comments received and recommends approval; and

WHEREAS, after mailed and published notice as required by Bellingham Municipal Code 21.10, the City Council held a public hearing on the proposed ordinance on July 18, 2005; and

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

WHEREAS, the City Council has considered the recommendation of the Planning Commission, the staff report and the public comment and hereby adopts the Findings and Recommendations of the Planning Commission;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Bellingham Municipal Code Section 2.56.050 regarding the Hearing Examiner is hereby amended as follows:

2.56.050 - Powers and Jurisdiction

The Hearing Examiner shall have the power to receive and examine available information, conduct public hearings and prepare a record thereof and enter decisions as provided by ordinance.

- A.** The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner notwithstanding any other provision of the Bellingham Municipal Code shall be final unless such decision is appealed to the City Council as provided in this chapter:
1. Applications for preliminary plat approval for subdivisions exceeding nine lots under BMC Chapter 18.16;
 2. Applications regarding 5-9 lot cluster subdivisions and 2-4 lot cluster subdivisions with density bonus under BMC 18.32.050;
 3. Variances from the terms of Title 18 of the Bellingham Municipal Code relating to preliminary plats, 2-4 lot cluster subdivisions with density bonus, and 5-9 lot cluster subdivisions.
- B.** The decision of the Hearing Examiner on the following matters which shall be within the jurisdiction of the Hearing Examiner, notwithstanding any other provision in the Bellingham Municipal Code, shall be final, subject only to judicial challenge:
1. Appeals provided for in BMC 4.74.155 (admission tax) and Title 6 of the Bellingham Municipal Code (business taxes, licenses and regulations), except only as specifically provided by the Code with respect to cable, utility, and telecommunication franchises under BMC Chapters 6.17 and 6.70;
 2. Appeals of determinations of the Parks and Recreation Director provided for in Title 8 or Chapter 13.40 of the Bellingham Municipal Code;
 3. Appeals and applications provided for in Title 10 of the Bellingham Municipal Code (criminal code);

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4. Appeals as provided by BMC 11.38.09 and hearings related to towing and impoundment, pursuant to Chapter 11.18 of the Bellingham Municipal Code, subject to appeal as provided by sections 11.18.040 and 11.18.050;
5. Appeals of determinations and variances by the Public Works Director or other decision making body or board provided for in Title 13 of the Bellingham Municipal Code, including BMC Chapter 13.60 (traffic impact fees);
6. Applications for variances and other determinations by the Hearing Examiner as provided for in Title 13 of the Bellingham Municipal Code;
7. Appeals of the interpretation and/or decisions of the Public Works Department BMC regarding local improvement districts pursuant to BMC 14.02.150;
8. Appeals from the decisions of the Utility Hearings Board relating to water and sewer services as provided by section 15.04.120 of the Bellingham Municipal Code;
9. Unless otherwise provided by law, appeals as provided in Title 16 of the Bellingham Municipal Code, including but not limited to appeal decisions assigned to the Hearing Examiner in BMC 16.20 Environmental Procedures.
10. Shoreline conditional use applications, provided that the procedures for decision and appeal shall be as contained in BMC 21.10;
11. The following matters as provided by Title 18 of the Bellingham Municipal Code:
 - a. Appeals from determinations of the Planning Director regarding lot line adjustments under Chapter 18.10, and short subdivisions under Chapter 18.12 including 2-4 lot cluster subdivisions;
 - b. Appeals from decisions regarding General Binding Site Plans under BMC 18.24.040.
 - c. Applications for 2-4 lot cluster subdivisions with hearing under BMC 18.32.060(B);
 - d. Applications for minimum lot size exception under BMC 18.36.020(A) (4)(c);
 - e. Variances relating to lot line adjustments and short subdivisions including 1-4 lot cluster subdivisions;

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12. Applications for conditional use permits pursuant to Chapter 20.16, and Landmark adaptive use permits and Landmark special valuation pursuant to sections 17.80.110 and 17.80.130, respectively, of the Bellingham Municipal Code;
 13. Applications for variance pursuant to Chapter 20.18 of the Bellingham Municipal Code;
 14. Appeals from decisions relating to permits, administrative determinations, and interpretations of the Planning Director provided for in Title 20 and section 17.82.030 of the Bellingham Municipal Code;
 15. Applications for co-housing developments pursuant to Bellingham Municipal Code 20.10.048;
- C. On the following matters, which shall be within the jurisdiction of the Hearing Examiner notwithstanding any other provision in the Bellingham Municipal Code, the Hearing Examiner shall enter findings of fact, conclusions of law, and recommendations to the City Council:
1. Formation of a local improvement district;
 2. Approval of local improvement district assessments, including contests of the preliminary assessment reimbursement area and preliminary assessment for local improvement districts pursuant to BMC 14.02.060;
 3. Petitions for street and alley vacations;
- D. Notwithstanding provisions of other Chapters of the Bellingham Municipal Code the following matters shall be determined by the City Council. Council may in its discretion refer any of the following matters to the Hearing Examiner for a recommended decision:
1. Applications for utility and telecom franchises as provided by BMC Chapters 6.17 and 6.70;
 2. Expansion of existing water and sewer service zones outside the city limits as provided by BMC 15.36.060;
 3. Appeals from determination of the City Attorney on applications for remission and mitigation of civil penalties relating to storm water management pursuant to BMC 15.42.070(4.2)(D).

E. through G. – No change.

Section 2. Bellingham Municipal Code Section 16.80.060 regarding the Lake Whatcom Reservoir Regulatory Chapter is hereby amended as follows:

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210 Lottie Street
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16.80.060 - Permitted Uses

A. RESIDENTIAL SINGLE PERMITTED USES.

Uses Permitted Outright. No building or land shall be used within an area designated residential single, except as follows:

(1) through (9) -- no change.

(10) *(Repealed)*

(11) No residential single lot or parcel may be partially or entirely cleared of vegetation or used as a soil/earth/rock material fill site without having first obtained a valid building permit. Written exemptions shall apply for minor clearing to facilitate land survey, the removal of hazardous trees or noxious weeds or other public nuisance as determined by the City.

B. RESIDENTIAL SINGLE CONDITIONAL USES that are listed as follows may be allowed if approval can be obtained based upon standards and requirements for conditional uses as specified in BMC 20.16.

(1) through (8) -- no change.

(9) Community Public Facilities, with the exception of publicly owned parks, trails and playgrounds; subject to the provisions of Section 20.16.020.P.(4) of the Bellingham Municipal Code.

C. RESIDENTIAL MULTI PERMITTED USES.

Uses Permitted Outright. No building or land shall be used within areas designed RM or RM-Planned except as enumerated below:

(1) through (8) -- no change.

(9) *(Repealed)*

D. RESIDENTIAL MULTI CONDITIONAL USES. The following uses may be allowed if approval can be obtained, based upon standards and requirements for conditional uses as specified in BMC 20.16:

(1) through (9) -- no change.

(10) Community Public Facilities, with the exception of publicly owned parks, trails and playgrounds; subject to the provisions of Section 20.16.020.P.(4).

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E. COMMERCIAL USES. Commercial uses shall be as permitted and specified in the zoning classification in BMC Title 20.

Section 3. Bellingham Municipal Code Section 16.80.140 regarding the Lake Whatcom Reservoir Regulatory Chapter is hereby amended as follows:

16.80.140 - Appeals

Appeals of administrative decisions made under this chapter shall be considered in accordance with the procedures for appeals of the underlying permit or decision as provided in BMC 21.10 and BMC 2.56.

Section 4. Bellingham Municipal Code Subsection 16.100.080.B regarding school impact fees is hereby amended as follows:

B. Appeals of decisions - procedure.

1. The Director's final impact fee determination may be appealed to the Hearings Examiner under the provisions of Chapter BMC 2.56. The appeal provisions of Chapter BMC 16.20 shall govern appeals of mitigation requirements imposed pursuant to this chapter.
2. At the hearing, the appellant shall have the burden of proof, which shall be met by a preponderance of the evidence. The impact fee may be modified upon a determination that it is proper to do so based on the application of the criteria contained in BMC 16.100.080.A. Appeals shall be limited to application of the impact fee provisions to the specific development activity and the provisions of this title shall be presumed valid.

Section 5. Bellingham Municipal Code Section 18.24.020 regarding binding site plans is hereby amended as follows:

18.24.020 - Binding Site Plan Review Procedures

The review and approval of a binding site plan is a two step process: General and Specific. No sale of land divided through a binding site plan process shall be allowed prior to final approval of a specific binding site plan providing for such sale.

General and specific binding site plan applications shall follow the procedures in BMC 21.10.

Section 6. Bellingham Municipal Code Subsection 18.24.060.D regarding binding site plans is hereby deleted.

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Section 7. Bellingham Municipal Code Section 18.32.060 is hereby amended as follows:

18.32.060 - Administrative Approval of 1-4 Lot Cluster Short Subdivisions

- A.** Cluster short subdivision proposals with four or fewer lots shall be considered and approved administratively. Said proposals shall be consistent with cluster subdivision criteria outlined in Chapter 18.32.040 and follow the approval procedure of Chapter 18.12. and as provided below.
- B.** A public hearing shall be scheduled if it is determined there are significant planning issues or significant neighborhood opposition in which case the proposal shall follow the procedures in BMC 21.10 for a Type III-A process. The Director may make the decision to require a Type III-A process at any time prior to making a decision on the application.
- C.** Appeals of an administrative decision regarding a cluster short subdivision shall follow the procedures in BMC 21.10.
- D.** Any bonus requested in a four or fewer lot cluster subdivision shall follow the procedures in BMC 21.10.

Section 8. Bellingham Municipal Code Section 20.04.050.B regarding the zoning map and classification system is hereby amended as follows:

- B.** Changes in the boundaries, general use type (also called the "zone" in Appendix 20-A), use qualifier or density of each "Area" shall be considered through the rezone procedure in BMC 21.10. Changes in permitted uses and/or density rules that modify the general use type, use qualifier or density shall be considered a rezone, regardless of the topic category in which they appear in the Appendix 20-A tables. All other amendments to Appendix 20-A shall be considered through the development regulation amendment procedure in BMC 21.10.

Section 9. Bellingham Municipal Code 20.10.020 is hereby repealed.

20.10.020 - (Repealed- See BMC 20.19.050)

Section 10. Bellingham Municipal Code Subsection 21.10.040.C is hereby amended as follows:

- C. Type II.** A Type II review process is an administrative review and decision by the Director. Public notice is required. Appeals of Type II decisions are decided by the Hearing Examiner. The following are Type II decisions:

1 through 10 -- no change.

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11. Preliminary Short plats consisting of 5-9 Lots that are not using cluster subdivision provisions; and cluster short plats of 1-4 lots without a density bonus (unless the Director requires Process III-A) but EXCLUDING any short plats rounding up the number of lots from a fraction of less than .75 when dividing the combined area of two or more lots of record by the required minimum lot size;
12. Wetland permit requiring a SEPA threshold decision; and
13. Type I decisions that require a SEPA threshold decision and all other decisions specifying a Type II process.

Section 11. Bellingham Municipal Code Subsection 21.10.040.D is hereby amended as follows:

D. Type IIIA. A Type IIIA review process is a quasi-judicial review and decision made by the Hearing Examiner that has no administrative appeal, with the exception that a Shoreline conditional use decision may be appealed to the State Shoreline Hearings Board. The following are Type IIIA decisions:

1 through 6 – no change.

7. Variance as provided in BMC Section 18.48.010 for a short plat, lot line adjustment, binding site plan or preliminary plat that is not being reviewed under Process Type IIIB;
8. Variance from Land Use Development Code and/or Lake Whatcom Reservoir Regulatory Chapter 16.80;
9. Wetland variance;
10. Cluster short plats of 1-4 lots without a density bonus if the Director requires Process III-A; and
11. All other decisions specifying a Type IIIA process.

Section 12. Bellingham Municipal Code Subsection 21.10.140.A is hereby amended as follows:

A. Type V-A Process.

1 through 10 – no change.

11. Notice of Decision. The procedures in Section 21.10.230 apply to a Type V-A process.

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12. Appeal of Type V-A Decision. A Type V-A decision may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in State law and within the 21-day time period as set forth in RCW 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled.

Section 13. Bellingham Municipal Code Subsection 21.10.250.J is hereby renumbered to 21.10.250.I.

PASSED by the Council this 1st day of August, 2005.

Grant Dege
Council President

APPROVED by me this 4th day of Aug., 2005.

Mark Asen
Mayor

Attest: Patricia Jensen
Finance Director

Approved as to form:
W. C. Thomas
Office of the City Attorney

Published: August 5, 2005

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