Council Meeting Date: June 14, 2004 **Agenda Item: 9(a)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adopt Ordinance No. 352 Amending the Shoreline Development Code
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Tim Stewart, Director Kim Lehmberg, Planner II

PROBLEM/ISSUE STATEMENT:

On June 7, 2004, the Council began discussing the proposed development code amendments. Staff presented proposed amendments #1 – 13, and also explained the recommendation that proposed amendments #5, (Zoning Variance criteria), #7, (Tent City notification requirements), and #10, (High Security Fencing) should be referred back to the Planning Commission for further review.

Council had questions and discussion about the following items:

- Amendments #1, 6 and 12 – proposed changes to right-of-way definition and classification; were further explained by the City Attorney.
- Amendment #2 – site development permits.
- Amendment #3 – notification for commercial additions; staff presented state law regarding SEPA exemptions.
- Amendment #8 – home occupation criteria; specifically at issue were the allowed number of employees.
- Amendment #13 – change "easements" to "rights-of-way" for North City alleys.

Due to the length of the meeting, Council decided to hold over the discussion until the meeting of the 14th. The Technical Amendments (#s T1 – T14) have yet to be presented or discussed.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 352 without Amendment #5 (Zoning Variance Criteria). Further, staff recommends that Amendment #5, Amendment #7 (Tent City Notice) and Amendment #10 (High Security Fencing) be referred back to the Planning Commission for further review.

Approved By: City Manager City Attorney N/A

Attachment A: June 7 Staff Report
Attachment B: Memorandum from Planning Commission Chair Harris
Attachment C: April 26 Staff Report, with Attachments
Attachment D: Letter dated May 26, 2004 from Smith & Lowney, P.L.L.C
Attachment E: Letter dated May 25, 2004 from Public Interest Associates

Council Meeting Date: June 7, 2004 **Agenda Item: 6(c)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adopt Ordinance No. 352 Amending the Shoreline Development Code
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Tim Stewart, Director Kim Lehmberg, Planner II

PROBLEM/ISSUE STATEMENT:

On April 26, 2004, the Council adopted a motion "to close the public hearing but accept public comment on this item for the next 30 days before taking action." Two comment letters from the public were received during the comment period. One additional comment was received, a Memorandum dated May 10, 2004 from Planning Commission Chair Harris asking that Amendment #7 (Tent City notification requirement) be referred back to the Planning Commission for further study. In addition, staff has further reviewed the new comments regarding Amendment #5 (Zoning Variance Criteria) that were received during the Council Public Hearing.

Both letters contained comments regarding proposed Amendment #5 (Zoning Variance Criteria). The letter from Brian Derdowski of Public Interest Associates also had comments on a number of other amendment proposals, which are discussed below.

The issue of public notice regarding Tent City (Amendment #7) has received widespread attention as a result of the action of King County. Planning Commission and staff think that it would be prudent to reconsider the recommendation of Amendment #7 and would suggest Council refer this matter back to the Commission for further review.

At the City Council Public Hearing, the proposed amendment to the Zoning Variance Criteria (Amendment #5) received comments from three individuals who did not testify at the Planning Commission Public Hearing. In addition, both Mr. Derdowski and the Thornton Creek Legal Defense Fund have raised new issues not presented to the Planning Commission. Staff believes that it would be appropriate to refer this matter back to the Planning Commission for review of the new information presented during the Council Public Hearing and comment period.

The following discussion responds to issues raised in the letter from Public Interest Associates (Attachment D). The discussion focuses only on the issues not related to Amendment #5 (Zoning Variance Criteria). Issues raised in the letter are in *Italics*, staff response follows in normal type:

The Council should consider and vote on this ordinance concurrent with, or after it considers its 2004 Comprehensive Plan Amendments.

The procedure for revising the Development Code is authorized under the Shoreline Municipal Code Section 20.30.070 (not GMA). Development Code amendment requests are accepted throughout the year, but are typically processed only once per year as a convenience to the public, the Planning Commission and the Council. All proposed amendments are consistent with the Comprehensive Plan.

Amendment #1 Public right-of-way, eliminate parking as use

Parking is an accepted and common usage of public right-of-way. Should parking be eliminated as a permitted use of the public right-of-way, there would be no parking allowed on any portion of the public right-of-way, including street parking in front of businesses or homes.

Amendment #2 Site Development Permits, concern about issuance of "partial permits"

As stated in the previous staff report, any development project that is subject to environmental review is reviewed as a whole prior to permits being issued. No permit would be issued that would violate the Code's surface water or other requirements. If this amendment were denied, the effect would be that the current policy of issuing clearing and grading permits for site development would continue.

Amendment #3 Commercial Footprint Increase should require public notice

According to Shoreline Municipal Code Section 20.30.100, the Council has the authority to initiate Code Amendments. Should the Council provide a proposed amendment, it will be duly processed.

Amendment #5 – Variances

See Staff recommendation to refer this amendment back to the Planning Commission for further review.

Amendment #6 Rights-of-Way, parking

Parking is an accepted and common usage of public right-of-way. Should parking be eliminated as a permitted use of the public right-of-way, there would be no parking allowed on any portion of the public right-of-way, including street parking in front of businesses or homes.

Amendment #12 Rights-of-Way, easements and pathways

Code requirements for sidewalks and walkways are found in Section 20.70.030, and in the Development standards under 20.50. The guidelines proposed to be removed are more appropriately placed in the engineering development guide.

Amendment #T2 Planned Action Determination

The Planned Action Determination is a new type of action authorized by the North City Subarea Plan, and codified under Shoreline Municipal Code Section 20.90.025. This amendment clarifies the procedural section of the code to reflect this change.

Amendment #tT5 SEPA Appeals

For a SEPA action, the Threshold Determination is the action that may be appealed under this section, not the Notice of Decision. This amendment corrects an error in the code.

Amendment # T6 Type L Actions eliminates public notice requirements

Under Code Section 20.30.070, Type L actions do not require notice requirements as described in 20.30.060. This amendment corrects an error in the code.

Amendment #T7 Community Residential Facilities

The table in Section 20.40.120 specifically outlines that a Community Residential Facility I requires a Conditional Use Permit in the R-4 through R-12 zoning districts, and are allowed in the high density and commercial zones. It also clearly outlines that a Community Residential Facility II is not permitted in the R-4 through R-12 zones and is permitted in the high density and commercial zones. The criteria say the same thing, and add no additional criteria. This amendment eliminates a redundancy in the code that many customers have complained about, and does not reduce any zoning standards.

Amendment #T13 Undergrounding

The correction makes this requirement consistent with City policy for applying development standards only to redevelopment where substantial expense relative to existing investment justifies full code compliance. See for example the rule in SMC 20.70.030 (C) applying engineering standards generally to alterations which exceed 50 percent of the existing structure, and Title 15.05.010 adopting KCC Title 16 requiring full building code compliance for alterations in excess of 50% of the value of existing structures. If the above section were read as requiring undergrounding of all overhead facilities with any construction which involved relocation of service, for minor construction, the conversion costs of the overhead facilities could far exceed the cost of the construction. There is nothing in the history of adoption to indicate the Council intended to depart from this policy. This amendment corrects an error in the code.

Special Comments as to Alternative Amendments

Staff does not recommend exempting further amendment proposals from public notice, as public notice can build a sense of trust and community between the applicant, agencies, and the public. As we have seen regarding the definition of "Reasonable Use" referral of amendments back to the Planning Commission would help build trust within the process.

Finally, staff also requests that the issue of the high security fence (Amendment number 10) also be referred back to the Planning Commission for further study.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 352 without Amendment #5 (Zoning Variance Criteria). Further, staff recommends that Amendment #5, Amendment #7 (Tent City Notice) and Amendment #10 (High Security Fencing) be referred back to the Planning Commission for further review.

Approved By: City Manager _____ City Attorney _____

Attachment A: Memorandum from Planning Commission Chair Harris
Attachment B: April 26 Staff Report, with Attachments
Attachment C: Letter dated May 26, 2004 from Smith & Lowney, P.L.L.C
Attachment D: Letter dated May 25, 2004 from Public Interest Associates

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Attachment A

CITY OF SHORELINE

Memorandum

DATE: May 10, 2004

TO: Mayor and Council

FROM: David Harris, Planning Commission Chair

RE: Request to Remand and Reconsider Notification for Tent City Applications

At the May 6, 2004 Planning Commission meeting, Commissioner MacCully proposed a motion to request the City Council to remand Development Code Amendment # 7 regarding providing notice to the public for tent city applications back to the Planning Commission for reconsideration within the next 6 months. Commissioner Sands seconded the motion, and the motion passed with six voting in favor and one abstaining from the vote (Commissioner Phisuthikal).

Amendment #7 to section 20.40.120 of the Development Code would add Tent City to the use tables and create noticing requirements and additional decision criteria. This proposal seeks to attach public notice requirements and a 90-day turnaround period to any application for a Temporary Use Permit for the homeless camp Tent City. It also proposes to have Police Department review and provide a recommendation on the application.

Previously the Commission recommended denial of this amendment. However, in light of the recent calls for public notice following King County's attempt to site a tent city in the Bothell area, the Commission is interested in taking a second look at requiring notice for tent city projects in Shoreline. This memo serves as a request to the Council to consider remanding Development Code Amendment # 7 to the Commission for further deliberation. Thank you in advance for taking the time to consider the Commission's request.

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ATTACHMENT B

Council Meeting Date: April 26, 2004 **Agenda Item: 8(a)**

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing on Proposed Amendments to the Development Code
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Tim Stewart, Director Kim Lehmberg, Planner II

PROBLEM/ISSUE STATEMENT:

The issue before Council is the consideration of several amendments to the Development Code.

In 2003 the City received three applications to amend the Development Code. Two applications for an amendment were submitted by the public and one was submitted by the City Council in response to a public request. City Staff submitted an additional 25 items, 14 of which are considered to be technical in nature, that is, they clarify the meaning or clear up a typographical error without changing the code's intent.

The Planning Commission held a Public Hearing and has made a recommendation on each amendment for the Council's consideration. Development Code amendments are processed as legislative decisions. Legislative decisions are non-project decisions made by the City Council under its authority to establish policies and regulations.

ALTERNATIVES ANALYZED: The following options are within Council's discretion and have been analyzed by staff:

1. The Council could not adopt the amendments to the Development Code.
2. The Council could adopt the amendments as recommended by the Planning Commission and Staff by adopting Ordinance No. 352 (Attachment A)
3. The Council could amend the proposed Planning Commission recommendations

FINANCIAL IMPACTS:

4. There are no direct financial impacts to the City of the amendments proposed by Planning Commission and Staff.

RECOMMENDATION

The Planning Commission and Staff recommend that Council hold a Public Hearing on adoption of Ordinance No. 352, (Attachment A), hear public testimony and seek additional information, but defer the decision to adopt Ordinance #352 until the Council meeting of May 10. Staff also recommends that Council table Amendment #10 for further study, although the Planning Commission had recommended denial.

Approved By: City Manager City Attorney

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INTRODUCTION

An amendment to the Development Code is a Legislative process that may be used to bring the City's land use and development regulations into conformity with the Comprehensive Plan, or to respond to changing conditions or needs of the City. The Development Code section 20.30.100 states that any person may request that a Development Code amendment be initiated by the Director, Planning Commission, or City Council.

BACKGROUND

PROCESS

An amendment to the Development Code may be used to bring the City's land use and development regulations into conformity with the Comprehensive Plan, or to respond to changing conditions or needs of the City. The Development Code Section 20.30.100 states that "Any person may request that the City Council, Planning Commission, or Director initiate amendments to the Development Code." Development Code amendments are accepted from the public at any time and there is no charge for their submittal. Departmental policy has been to collect proposed amendments throughout the year and process them collectively once per year.

All the proposed amendments were considered for inclusion on the official docket. The Director docketed these amendments. At the January 29, 2004 meeting, the Planning Commission was asked to review the amendments and docket any additional amendments for consideration. The Planning Commission did not docket any additional amendments and confirmed the official docket. The Commission discussed and requested research on several of the amendment requests. After the discussion there were comments from the public.

On March 4, 2004, the Planning Commission held a public hearing to hear testimony and make recommendations to the City Council on each of the docketed amendment items. No public testimony was given. A summary of the docketed amendments, with the final Planning Commission and staff recommendation, is attached in matrix form (Attachment B). The minutes of both of the Planning Commission meetings are also attached (Attachments C and D).

PUBLIC COMMENT

The City advertised the availability of the official docket of proposed amendments for review and comment. The written comment period began on January 29, 2004 and ended on February 13, 2004. A Copy of the written comment letter received during the comment period can be found in Attachment E. No letters were received after the close of the comment period or for the public hearing.

SCHEDULE
The following table is a chronology of the proposed Development Code amendment process for the current amendments.

DATE	DESCRIPTION
Ongoing	• Development Code amendments accepted by the Planning and Development Services Department for consideration for docketing.
January 29, 2004	• Planning Commission Workshop introduction to proposed amendments.
January 29, 2004 Notice of Public Hearing and Public Comment Period Advertised	• Proposed Amendments advertised in Seattle Times and Shoreline Enterprise (1/30 for the Enterprise, published on Fridays). • Written comments deadline—February 13, 2004
February 17, 2004 SEPA Threshold Determination	• SEPA Determination of Non Significance Issued
March 4, 2004	• Planning Commission Public Hearing on proposed amendments for docketing. • Planning Commission deliberation and record recommendation to City Council on approval or denial of docketed amendments (unless further meetings are required).
April 26, 2004	• City Council Meeting • City Council Decision

ALTERNATIVES ANALYSIS

NOT ADOPT PROPOSED AMENDMENTS
If Council does not adopt the proposed amendments the Development Code would remain unchanged.

ADOPTION OF AMENDMENTS AS RECOMMENDED BY PLANNING COMMISSION AND STAFF
The Planning Commission amended six of the Staff's original recommendations (amendment #s 3, 4, 6, 8, 9, and 10). The Staff concurs with all of the Planning Commission's changes and recommendations, except for the recommendation to deny Amendment #10. Staff recommends the Council table this amendment for further study. Staff and Planning Commission are in agreement with recommending approval of the amendments as set forth in Ordinance 352 (Attachment A).

AMENDMENTS AND ISSUES

Attachment F includes the original amendment application forms submitted by the applicants and contains a copy of the originally proposed amending language shown in

legislative format. Legislative format uses ~~strikethoughs~~ for proposed text deletions and underlines for proposed text additions. Note that there is no proposed amendment language for Log #3. The Planning Commission suggested changes to several of the proposed amendments. The following is a summary of the proposed amendments, with staff analysis and discussion of Planning Commission input, where applicable.

Amendment #1: 20.20.044, Change definition of right-of-way to clarify that public right-of-way should be used to describe the tract dedicated to public right-of-way uses regardless of the extent of actual improvement, and to eliminate the common "general" definition that does not reflect the public usage definition. Planning Commission and Staff recommend approval.

Amendment #2: 20.20.040 & 046, Clarify that the use of Site Development Permits is not limited to subdivisions. The Summary of "Type A" Actions table currently lists the section on subdivisions as a section reference for "Type A" Site Development Permit. Due to common usage in the trades of the term "Site Development Permit" for actions such as clearing and grading, as well as other activities such as parking lot paving and striping, it should be made clear that this type of permit can be used for projects such as cottage housing and other large-scale phased developments. Also, the City's permit tracking computer system uses this terminology. Site Development Permits are useful for projects when they are to be developed in phases (such as Top Foods), or if the site work is not attached to an individual building permit but rather to the whole site (as in cottage housing projects). It should be noted that for any development subject to SEPA and public notice, the development as a whole is reviewed accordingly prior to any permit, including a site development permit, being issued. Planning Commission and Staff recommend approval.

Amendment #3: In response to citizen concern over the 3952 square foot addition at the Safeway store on Aurora, Council suggested considering requiring public notice for all commercial projects that are increasing building footprint. Currently, the Code requires SEPA, and therefore a neighborhood meeting and public notice, for any addition of 4000 square feet or more. Additions less than this threshold require a building permit and no public notice.

Staff has had difficulty developing specific amendment language that would implement the proposed change. Staff's original recommendation was to defer this proposal for further study. The Commission noted that the existing required setback from commercial development to low density residential zones is sufficient to protect people who purchase residential property that is located next to a commercial zone. The Commission also discussed that if notification were required, it would imply that the public would have some ability to stop the application from being approved. The Planning Commission recommends denial. Staff concurs with the Planning Commission recommendation.

Things to think about:

- **Resources:** Additional administrative staff would need to be brought into the review process for publishing and mailing public notice.
- **Permit Turn-around Time:** Creating and publishing the public notice adds approximately two weeks to the permit process. Without additional staff resources to

perform these duties, the turnaround time could be much longer as projects would have to wait for staff availability to prepare, publish and mail the notices. In addition, a "Type B" application that requires public notice also requires the applicant to have a pre-application meeting with City staff, and a neighborhood meeting with surrounding property owners prior to application. These requirements add another 3 – 4 weeks to the process for the applicant before the application is submitted.

- **Public Expectation:** Approval of a building permit not subject to SEPA is a ministerial decision, meaning that if the application meets Code requirements, it must be approved. Providing public notice of such a permit may give the public the expectation that public input is part of the approval process; for a "Type A" permit it would not be.
- **Precedent:** Requiring a notice period for a "Type A" ministerial action would set a precedent that may be counter to the public welfare. If these types of actions become subject to public review, an overall slowdown of essential governmental functions would be expected.
- **Council Goal #6:** Implementing an active economic improvement plan is a City Council goal. This proposal would slow down the permitting process, thus slowing down economic improvement.

Amendment #4: 20.30.280, Clarify and restructure the section of the Code that governs non-conformances. The definition of legal nonconformance needs to be changed to reflect the law; and the sections restructured to make more sense.

The first change, replacing *"this code"* with *"a land use regulation,"* is because the phrase "this code" is too narrow and would exclude moratoria or King County ordinances. A nonconforming use could have become nonconforming as a result of a change in the King County ordinance, prior to Shoreline incorporation. The reason for the second text change is because the way it is currently written may be read to require that the building not be used for any purpose before the nonconforming use can be extinguished.

Changes to the chapter headings and subsections are technical in nature and serve to better organize the regulation. Planning Commission recommends approval with minor text edits from the original proposal. Staff concurs with the Planning Commission action.

Amendment #5: 20.30.310, This proposal is intended to clarify zoning variance criteria and make the Code consistent with case law.

The proposed changes and reasoning are outlined as follows:

- Some of the criteria for approval are actually more of a definition of what a variance is; they are not true approval criteria because an application that did not meet them would not be accepted. For example, a variance to the Development Code is not a variance to the Building Code. Also, any request for a variance from the critical areas standards would not be accepted as an application for a variance. Therefore, these "criteria" (#s 8 and 10) are proposed to be cut from the criteria section and added to the intent section as a description of a variance.

- The addition of "B" clarifies that the decision-making authority has the authority to attach conditions to the variance as necessary to meet the criteria and serve the public interest.
- Clarify the scope of what unique circumstances can contribute to the necessity of a variance.
- Add "or practical difficulties" to second criteria because the word "hardship" is very subjective and difficult to prove (i.e. many think of "hardship" as being hungry or homeless, conditions which would probably not apply to a variance request). "Practical difficulties" relates to the inability to construct something per Code due to an unusual circumstance or physical characteristic of the lot.
- Change criterion #7a: "The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity, adding *"based on existing development in the vicinity or zone, including nonconforming development."* This proposal is based on case law.
- Change criterion (#7b) "The granting of the variance will not be materially detrimental to the public welfare or injurious to *the zone in which the subject property is located* by removing *the zone in which the subject property is located* because taken literally a "zone" cannot be injured. Here the proposal is to add a criterion: *"The variance does not conflict with the purpose of the zone in which the proposal is located,"* which meets the intent of the original language.
- Eliminate the criterion (#11) that the variance is the "minimum necessary" to grant relief. This is very subjective (similar to the word "hardship") and difficult to prove or support either way.

Planning Commission and Staff recommend approval.

Amendment #6: 20.40.060, Eliminate restriction on use of public right-of-way. Public rights-of-way do not necessarily need to be limited to street purposes, they may be used for pedestrian pathways, bikeways, trails, etc. Planning Commission recommends approval with minor text edits from the original proposal. Staff concurs with the Planning Commission action.

Amendment #7: 20.40.120, Add Tent City to use tables; create noticing requirements and additional criteria. This proposal seeks to attach public notice requirements and a 90-day turnaround period to any application for a Temporary Use Permit for the homeless camp Tent City. It also proposes to have Police Department review and provide a recommendation on the application.

Under the current Code, temporary sheltering of the homeless is not listed as a permitted use in the R6 zoning district, and is not included within the Shoreline Municipal Code definition of church use. Anyone proposing to host Tent City must apply for a Temporary Use Permit (TUP). A Temporary Use Permit is a mechanism by which the City may permit a use not otherwise allowed on an interim basis. The proposal would have to meet the criteria for Temporary Use. It is a ministerial decision; no public notice is required.

To date only the cities of Seattle, Tukwila, Shoreline and Burien have hosted Tent City. The Cities of Seattle and Burien require a Temporary Use Permit. Seattle is under court order to allow Tent City. Tukwila did not require a permit. None of these other

jurisdictions went through a public notice procedure, however, in each location where Tent City sets up, the organizers make an effort to notify immediate neighbors and invite them to an informational meeting at the host church.

For more information about Tent City, see Attachment G, which includes the staff report for the Temporary Use Permit, a Tent City Fact Sheet developed by the City, the results of a survey the City sent to neighbors of Tent City after its stay, and a report from the Police Department documenting activity surrounding Tent City during its stay.

Things to think about:

- **Resources:** Additional administrative staff would need to be brought into the review process for publishing and mailing public notice.
- **Permit Turn-around Time:** A 90-day turn around permit period may not be responsive to the needs of the homeless in Tent City, which is essentially emergency housing.
- **Public Expectation:** A TUP not subject to SEPA is a ministerial decision, meaning that if the application meets Code requirements, it must be approved. Providing public notice of such a permit may give the public the expectation that public input is part of the approval process.
- **Precedent:** Requiring a notice period for a Type A ministerial action could set a precedent that may be counter to the public welfare. If these types of actions become subject to public scrutiny, an overall slowdown of essential governmental functions would be expected.

The Planning Commission and Staff do not recommend this proposal for approval. The Planning Commission discussion included statements that *"...the City of Shoreline took a very noble and pioneering step to accommodate the "Tent City" community..."*, and that there wasn't compelling information provided by the citizen who proposed the amendment in terms of issues that were involved with the experience. They indicated that the presentation from staff, which also included reports on police calls, etc, was positive. The Commission went on to clarify that denying the proposed amendment would not prohibit "Tent City" in the future. It would continue the process that was used where the Planning Director has the authority to grant the temporary use permit.

Amendment #8: 20.40.400, Changes some of the criteria for operating a business out of one's home, removes some arbitrary criteria and allows additional square footage to be used for the home occupation. This amendment also strengthens the restriction on emissions. Many of these changes are recommended by American Planning Association publication (*Planning Advisory Service Report #499).*

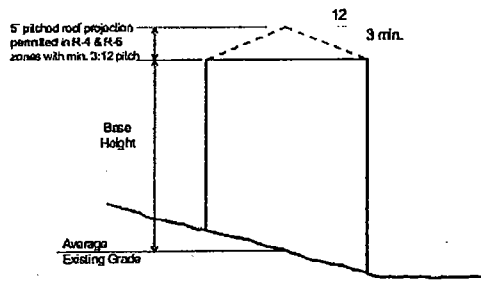
The proposed changes and reasons are briefly summarized as follows:

- Adding intent for clarity of purpose.
- Increase allowed floor area (this provision is somewhat arbitrary but probably should not be eliminated entirely). Increasing the allowed floor area allows a little more flexibility for use of the house. The allowance of 25 percent is fairly standard according to the Planning Advisory Service report.
- Delete reference to "attached" garages. As long as storage is inside it should not matter whether the garage is attached or detached.

- Revise restriction on number of employees to refer only to on-site employees. If employees work off-site, there is no sense in limiting their numbers. Note that limiting the number of on-site employees might preclude such businesses as catering companies, etc. that use a greater number of employees for short lengths of time. It may be worthwhile to discuss provisions for allowing additional employees with certain restrictions. Research into other jurisdiction's codes indicates that most jurisdictions have the same or even greater restrictions on number of employees. Some allow one employee besides the residents, some allow no employees other than residents. See Attachment H for a sampling of language from other codes.
- Eliminate the restriction of storage of building materials for use on other properties. As long as all of the storage for off-site work is indoors, there is no need to prohibit it.
- Clarify that electronic sales are allowed.
- If no adverse effects to the neighbors are felt by a change in fire rating, a change to the rating shouldn't be prohibited, as long as it's approved by the Building Division & Fire Marshall.
- Broadening the limits on emissions serves to further protect the neighbors.
- Day Cares, Community Residential Facilities B & B's and Boarding houses are subject to different criteria than the home occupation criteria.

Planning Commission recommends approval with some changes from the original proposal. Staff concurs with the Planning Commission action.

Amendment #9: 20.50.050, Allows a pitched roof to extend 5 feet over the 35-foot base height limit in high-density residential zones. The single-family zones permit such an extension over the 30-foot base height limit. The Code currently has no such provision for multi-family development. The 35-foot limit tends to encourage flat-roof structures as builders want to maximize allowed area for housing units. Flat-roofed structures are not suitable for northwest weather conditions, and tend to result in monotony of appearance. Following is an example of this type of ordinance, which the City has for R-4 and R-6 zones.



The Planning Commission recommendation is to approve this proposal, with the change the pitch be at least 4:12. Staff concurs with the Planning Commission action.

Amendment #10: 20.40.110 & 210, Allows high security-style fencing for police and essential facilities. This amendment was proposed by the Shoreline Police Department. Barbed wire fencing is specifically prohibited for residential development and security fencing is allowed under certain conditions for commercial development. See the attached code interpretation for more information (Attachment I-1) The purpose of this

amendment would be to clarify that the City or utilities can secure essential facilities, such as sewer pump stations, water towers, etc.

Staff conducted code research on other jurisdictions in the area, see Attachment I-2. Many jurisdictions allow such fencing, subject to restrictions. Many also prohibit this type of fencing in residential zones. Several jurisdiction's codes have no mention of barbed wire fences at all.

Staff's original recommendation was for approval, however, The Planning Commission recommends denial. The Commission had discussed this proposal at the January 29, 2004 meeting. The majority of the Commission felt there are other ways to provide security treatment besides using wire fences. Staff recommends that this item be studied further in concert with the City's work on its hazard assessment mitigation plan.

Amendment #11: 20.50.410, Updates signage requirements for disabled persons parking, per State Code. Planning Commission and Staff recommend approval. Staff made several changes from the original proposal to comply with updated State requirements.

Amendment #12: Changes to clarify right-of-way regulations and make terminology consistent with Ordinance #339, which moved most of the right-of-way regulations out of the Development Code to another section of the Shoreline Municipal Code. Planning Commission and Staff recommend approval.

Amendment #13: 20.90.025, Requires public rights-of-way for alleys in the North City Business District (instead of easements). The purpose of this is to use uniform terminology for right-of-way that will include all the common law uses such as utilities, pedestrian and vehicular traffic, includes exclusive public possession and control, and a process for vacating. All rights-of-way including alleys that are dedicated by plat or as development standards are easements, but using the right-of-way term is a short hand means of describing what we have more completely.

The word "easement" should be limited to something less than full right-of-way use, such as a slope easement next to a right-of-way which will describe the public use, reserved rights of the owner and procedures for termination within the deed. Planning Commission and Staff recommend approval.

TECHNICAL AMENDMENTS: (Planning Commission and Staff recommend approval of all technical amendments)

Amendment #T1: 20.20.014, Changes "fault" hazard areas to "seismic" hazard areas to include all of the seismic hazards (e.g. liquefaction) in addition to the fault hazards.

Amendment #T2: 20.30.040, Includes Planned Action Determination as a Type A Permit for determining whether a project in the North City Business District meets the criteria for Planned Action review.

Amendment #T3: 20.30.336, Corrects a typographical error from recent Code amendment – geologic hazard area buffers are to be given lower priority than a geologic hazard area.

Amendment #T4: 20.30.460, Clarifies from what point a subdivision is vested.

Amendment #T5: 20.30.680, Clarifies filing procedures for notice of SEPA threshold determination, which may be different from a notice of decision.

Amendment #T6: 20.30.630, Acknowledges that public notice for legislative Type L actions is different than for administrative Type B or quasi-judicial Type C actions.

Amendment #T7: 20.40.120, Eliminates redundant indexed criteria for community residential facilities. The indexed criteria states the same information that is in the Code's Permitted Use Table – it does not list any additional criteria for approval.

Amendment #T8: 20.40.600, Clarifies that the extension allowed to a wireless facility is limited to one such extension.

Amendment #T9: 20.50.040, Clarifies from what point a front yard setback is taken. For some commercial projects, the lot line may be perceived to be different from the property line.

Amendment #T10: Figure 20.50.560 is very confusing. It shows a small pole sign instead of a monument sign, which is what it is supposed to depict. Since the remainder of the picture is also confusing (see Amendment #11, below), the proposal is to eliminate the figure.

Amendment #T11: 20.50.560, Clarifies setback for monument signs in relationship to the right-of-way or sidewalk, as the sidewalk is not always necessarily part of the right-of-way. The figure is also confusing.

Amendment #T12: 20.50.540, Clarifies that a property can have a combination of the different types of signs on the chart, and are not limited to one.

Amendment #T13: 20.70.470, Corrects a couple of typographical errors in the undergrounding ordinance (Ordinance 340).

Amendment #T14: 20.80.240, Cleans up inconsistent terminology; instead of using "Class" and "Type" interchangeably.

ALTERNATIVE AMENDMENT
The Council under its authority in 20.30.100 to initiate Development Code amendments could direct staff to consider an alternative amendment. Noticing requirements in the Development Code would require the City to re-advertise any alternative amendment and would require an additional Public Hearing and Planning Commission recommendation.

RECOMMENDATION

The Planning Commission and Staff recommend that Council hold a Public Hearing on adoption of Ordinance No. 352, (Attachment A), hear public testimony and seek additional information, but defer the decision to adopt Ordinance #352 until the Council meeting of May 10. Staff also recommends that Council table Amendment #10 for further study, although the Planning Commission had recommended denial.

ATTACHMENTS

Attachment A	Ordinance #352
Attachment B	Summary Log of Proposed Amendments to the Development Code
Attachment C	Minutes from Jan. 29, 2004 Planning Commission Meeting
Attachment D	Minutes from March 4, 2004 Planning Commission Public Hearing
Attachment E	Public Comment Letter Received During Comment Period
Attachment F	Original Amendment Application forms and Legislative Language
Attachment G	Tent City Information, including: G-1: Staff Report for Temporary Use Permit G-2: Tent City Fact Sheet G-3: Tent City Neighborhood Survey Results G-4: Police Report on Tent City
Attachment H	Jurisdictional Code Research on Home Occupations
Attachment I	Security Fencing Information, including: I-1 Code Interpretation #5270031902 I-2 Jurisdictional Code Research on Barbed Wire Fence Restrictions

ORDINANCE NO. 352

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING THE DEVELOPMENT CODE CHAPTERS 20.20, 20.30, 20.40, 20.50, 20.70, 20.80 AND 20.90, INCLUDING CHANGES TO ZONING VARIANCE CRITERIA; CHANGES TO HOME BUSINESS REGULATIONS; ALLOWING PITCHED ROOF IN HIGH DENSITY RESIDENTIAL ZONES TO EXTEND 5 FEET ABOVE THE BASE HEIGHT LIMIT OF 35 FEET; CLARIFY RIGHT-OF-WAY REGULATIONS; CLARIFY COMPONENTS OF THE SIGN STANDARDS; AND MAKE TECHNICAL AMENDMENTS.

WHEREAS, the City adopted Shoreline Municipal Code Title 20, the Development Code, on June 12, 2000; and

WHEREAS, the Shoreline Municipal Code Chapter 20.30.100 states "Any person may request that the City Council, Planning Commission, or Director initiate amendments to the text of the Development Code"; and

WHEREAS, the City received two (2) complete applications from the public to amend the Development Code; and

WHEREAS, the City Council proposed one (1) amendment to the Development Code in response to a public request; and

WHEREAS, City staff drafted twenty-four (24) additional amendments to the Development Code; and

WHEREAS, the Planning Commission developed a recommendation on all of the proposed amendments; and

WHEREAS, a public participation process was conducted to develop and review amendments to the Development Code including:

- A public comment period on the proposed amendments was advertised from January 29, 2004 to February 13, 2004; and
- The Planning Commission held a Public Hearing and formulated its recommendation to Council on the proposed amendments on March 4, 2004.

and

WHEREAS, a SEPA Determination of Nonsignificance was issued on February 18, 2004 in reference to the proposed amendments to the Development Code; and

WHEREAS, the proposed amendments were submitted to the State Department of Community Development for comment pursuant WAC 365-195-820; and

WHEREAS, the Council finds that the amendments adopted by this ordinance are consistent with and implement the Shoreline Comprehensive Plan and comply with the adoption requirements of the Growth Management Act, Chapter 36.70A. RCW; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Shoreline Municipal Code Sections 20.20, 20.30, 20.40, 20.50, 20.70, 20.80 and 20.90 are amended as set forth in Exhibit A, which is attached hereto and incorporated herein.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date and Publication. A summary of this ordinance consisting of the title shall be published in the official newspaper and the ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON APRIL 26, 2004.

_____
Ronald B. Hansen
Mayor

ATTEST:

_____
Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

_____
Ian Sievers
City Attorney

Date of Publication:
Effective Date:

Chapter 20.20.044

Right-of-Way	~~A. A strip of land acquired by reservation, dedication, forced dedication, prescription, easement or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses;~~ ~~B. Generally, the right of one to pass over the property of another.~~ Property granted or reserved for, or dedicated to, public use for street purposes and utlities, together with property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways, and parking whether improved or unimproved, including the air rights , sub-surface rights and easements thereto.
Right-of-Way, Railroad	Property granted or reserved for, or dedicated to, railroad use including all facilities accessory to and used directly for railroad operation.

Chapter 20.20.046

- S - Definitions

Site Development Permit	A permit, issued by the City, to develop or partially develop a site exclusive of any required building or land use permit. A Site Development Permit may include one or more of the following activities: paving, grading, clearing, on-site utility installation, stormwater facilities, walkways, striping, wheelstops or curbing for parking and circulation, landscaping, or restoration.

Chapter 20.30.040

Table 20.30.040 – Summary of Type A Actions and Target Time Limits for Decision, and Appeal Authority

Action Type	Target Time Limits for Decision	Section
Type A:		
1. Accessory Dwelling Unit	30 days	20.40.120, 20.40.210
2. Lot Line Adjustment including Lot Merger	30 days	20.30.400
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	20.30.450
5. Home Occupation, Bed and Breakfast, Boarding House	120 days	20.40.120, 20.40.250, 20.40.260, 20.40.400
6. Interpretation of Development Code	15 days	20.10.050, 20.10.060, 20.30.020
7. Right-of-Way Use	30 days	12.15.010-12.15.180
8. Shoreline Exemption Permit	15 days	Shoreline Master Program
9. Sign Permit	30 days	20.50.530 – 20.50.610
10. Site Development Permit	360 days	20.20.046, 20.30.430
11. Variances from Engineering Standards	30 days	20.30.290
12. Temporary Use Permit	15 days	20.40.100, 20.40.540
13. Clearing and Grading Permit	60 days	20.50.290 – 20.50.370

Chapter 20.30.280

20.30.280 ~~Determining status~~ Nonconformance.

A. Any use, structure, lot or other site improvement (e.g., landscaping or signage), which was legally established prior to the effective date of ~~this Code~~ a land use regulation that rendered it nonconforming, shall be considered nonconforming if:

1. The use is now prohibited or cannot meet use limitations applicable to the zone in which it is located; or
2. The use or structure does not comply with the development standards or other requirements of this Code.
3. ~~B~~. A change in the required permit review process shall not create a nonconformance.

B. ~~1~~. Abatement of Illegal Use, Structure or Development. Any use, structure, lot or other site improvement not established in compliance with use, lot size, building, and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal.

C. ~~2~~. Continuation and Maintenance of Nonconformance. A nonconformance may be continued or physically maintained as provided by this Code.

1. ~~C.~~ Any nonconformance that is brought into conformance for any period of time shall forfeit status as a nonconformance.
2. ~~3.~~ Discontinuation of Nonconforming Use. A nonconforming use~~, when abandoned or discontinued,~~ shall not be resumed, when abandonment or discontinuance extends ~~land or building used for the nonconforming use ceased to be used~~ for 12 consecutive months.
3. ~~5.~~ Repair or Reconstruction of Nonconforming Structure. Any structure nonconforming as to height or setback standards may be repaired or reconstructed; provided, that:
    a. The extent of the previously existing nonconformance is not increased; and
    b. The building permit application for repair or reconstruction is submitted within 12 months of the occurrence of damage or destruction.
4. ~~6.~~ Modifications to Nonconforming Structures. Modifications to a nonconforming structure may be permitted; provided, the modification does not increase the area, height or degree of an existing nonconformity.

D. 4. Expansion of Nonconforming Use. A nonconforming use may be expanded subject to approval of a conditional use permit or a special use permit, whichever permit is required under the Code, or if ~~no~~ neither permit is required, then through a conditional use permit; provided, a nonconformance with the Code standards shall not be created or increased.

E. ~~7~~. Nonconforming Lots. Any permitted use may be established on an undersized lot, which cannot satisfy the lot size or width requirements of this Code; provided, that:

~~a.~~ 1. All other applicable standards of the Code are met; or a variance has been granted;
~~b.~~ 2. The lot was legally created and satisfied the lot size and width requirements applicable at the time of creation;
~~c.~~ 3. The lot cannot be combined with contiguous undeveloped lots to create a lot of required size;
~~d.~~ 4. No unsafe condition is created by permitting development on the nonconforming lot; and
~~e.~~ 5. The lot was not created as a "special tract" to protect critical area, provide open space, or as a public or private access tract. (Ord. 238 Ch. III § 6, 2000).

Chapter 20.30.310

20.30.310 Zoning variance (Type B action).

A. Purpose. A zoning variance is a mechanism by which the City may grant relief from the zoning provisions and standards of the Code, where practical difficulty renders compliance with the Code an unnecessary hardship. A variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located, nor does it relieve an applicant from:

a. Any of the procedural or administrative provisions of this title, or
b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
c. Use or building restrictions, or
d. Any provisions of the critical areas development standards.

B. The decision-making authority may attach conditions in approving the variance as necessary to carry out the spirit and purpose of this title and in the public interest.

~~B~~C. Decision Criteria. A variance shall be granted by the City, only if the applicant demonstrates all of the following:
1. The variance is necessary because of the unique size, shape, topography, surroundings, trees or location of the subject property;
2. The strict enforcement of the provisions of this title creates an unnecessary hardship or practical difficulties to the property owner;
~~3. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;~~
43. The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property; unless the action 1) was approved as part of a final land use decision by the City or other agency with jurisdiction; or 2) otherwise resulted in a nonconforming use, lot or structure as defined in this title;

~~5~~4. The variance is compatible with the Comprehensive Plan;
~~6~~5. The variance does not create a health or safety hazard;
~~7~~6. The granting of the variance will not be materially detrimental to the public welfare or injurious to~~:~~
~~a.~~ ~~T~~the property or improvements in the vicinity, ~~or~~ based on existing development in the vicinity or zone, including nonconforming development.
~~b. The zone in which the subject property is located;~~
~~8. The variance does not relieve an applicant from:~~
~~a. Any of the procedural or administrative provisions of this title, or~~
~~b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or~~
~~c. Use or building restrictions, or~~
~~d. Any provisions of the critical areas development standards;~~
97. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;
~~10. The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; or~~
~~11. The variance is the minimum necessary to grant relief to the applicant. (Ord. 324 § 1, 2003; Ord. 238 Ch. III § 7(c), 2000).~~
8. The variance does not conflict with the purpose of the zone in which the proposal is located.

Chapter 20.40.060

20.40.060 Zoning map and zone boundaries.*

D. Classification of Rights-of-Way.

1. Except when such areas are specifically designated on the zoning map as being classified in one of the zones provided in this title, land contained in rights-of-way for streets or alleys, or railroads, shall be considered unclassified.

~~2. Within street or alley rights-of-way, uses shall be limited to street purposes as defined by law.~~

23. Within railroad rights-of-way, allowed uses shall be limited to tracks, signals or other operating devices, movement of rolling stock, utility lines and equipment, and facilities accessory to and used directly for the delivery and distribution of services to abutting property.

34. Where such right-of-way is vacated, the vacated area shall have the zone classification of the adjoining property with which it is ~~first~~ merged. (Ord. 238 Ch. IV § 1(F), 2000).

Chapter 20.40.250

20.40.250 Bed and breakfasts.
Bed and breakfasts are permitted only as an accessory to the permanent residence of the operator, provided:

A. Serving meals to paying guests shall be limited to breakfast; and
B. The number of persons accommodated per night shall not exceed five, except that a structure which satisfies the standards of the Uniform Building Code as adopted by the City of Shoreline for R occupancies may accommodate up to 10 persons per night.
C. One parking space per guest room, plus two per facility.
D. Signs for bed and breakfast uses in the R zones are limited to one identification sign use, not exceeding four square feet and not exceeding 42 inches in height.
E. Bed and breakfasts require a ~~home occupation~~ Bed & Breakfast permit. (Ord. 238 Ch. IV § 3(B), 2000).

Chapter 20.40.260

20.40.260 Boarding Houses

A. Rooming and boarding houses and similar facilities, such as fraternity houses, sorority houses, off-campus dormitories, and residential clubs, shall provide temporary or longer-term accommodations which, for the period of occupancy, may serve as a principal residence.
B. These establishments may provide complementary services, such as housekeeping, meals, and laundry services.
C. In an R-4 or R-6 zone a maximum of two rooms may be rented to a maximum of two persons other than those occupying a single-family dwelling.
D. Must be in compliance with health and building code requirements.
E. The owner of the rooms to be rented shall provide off-street parking for such rooms at the rate of one parking stall for each room.
F. Boarding houses require a ~~home occupation~~ Boarding House permit. (Ord. 238 Ch. IV § 3(B), 2000).

Chapter 20.40.400

-H-

20.40.400 Home Occupation

Intent/Purpose: The City of Shoreline recognizes the desire and/or need of some citizens to use their residence for business activities. The City also recognizes the need to protect the surrounding areas from adverse impacts generated by these business activities.

Residents of a dwelling unit may conduct one or more home occupations as an ~~a~~Accessory Use(s)~~activities~~, provided:

A. The total area devoted to all home occupation(s) shall not exceed ~~20~~ 25 percent of the floor area of the dwelling unit. Areas with ~~attached~~ garages and storage buildings shall not be considered in these calculations, but may be used ~~to~~ for storage of goods associated with the home occupation.

B. In residential zones, all the activities of the home occupation(s) (including storage of goods associated with the home occupation) shall be conducted indoors, except for those related to growing or storing of plants used by the home occupation(s).~~;~~

C. No more than one nonresident working on-site shall be employed by the home occupation(s);

D. The following activities shall be prohibited in residential zones:

1. Automobile, truck and heavy equipment repair;
2. Auto body work or painting; and
3. Parking and storage of heavy equipment.~~; and~~

~~4. Storage of building materials for use on other properties~~

E. In addition to required parking for the dwelling unit, on-site parking shall be provided as follows:

1. One stall for a nonresident employed by the home occupation(s); and

2. One stall for patrons when services are rendered on-site.~~,~~

F. Sales shall be limited to:

1. Mail order sales; and

2. Telephone or electronic sales with off-site delivery.~~,~~

G. Services to patrons shall be arranged by appointment or provided off-site.~~,~~

H. The home occupation(s) may use or store a vehicle for pickup of materials used by the home occupation(s) or the distribution of products from the site, provided:

1. No more than one such vehicle shall be allowed;

~~1.~~ 2. Such vehicle shall not park within any required setback areas of the lot or on adjacent streets; and

~~2.~~ 3. Such vehicle shall not exceed a weight capacity of one ton.~~,~~

I. The home occupation(s) shall not use electrical or mechanical equipment that results in:

1. A change to the fire rating of the structure(s) used for the home occupation(s), unless appropriate changes are made under a valid building permit, or;

2. Visual or audible interference in radio or television receivers, or electronic equipment located off-premises; or

3. Fluctuations in line voltage off-premises.~~;~~ or

4. Emissions ~~of~~ such as dust, odor, bright lighting or noises greater than what is typically found in a neighborhood setting.

J. Home occupations that are entirely internal to the home; have no employees in addition to the resident(s); have no deliveries associated with the occupation; have no on-site clients; create no noise or odors; do not have a sign, and meet all other requirements as outlined in SMC 20.40.400 may not require a home occupation permit. (Ord. 299 1, 2002; Ord. 238 Ch. IV 3(B), 2000).

Note: Daycares, Community Residential Facilities such as Group Homes, Bed and Breakfasts and Boarding Houses are regulated elsewhere in the Code.

Chapter 20.50.020 & 20.50.050

Table 20.50.020(1) – Densities and Dimensions in Residential Zones

Note: Exceptions to the numerical standards in this table are noted in parenthesis and described below.							
Residential Zones							
STANDARDS	R-4	R-6	R-8	R-12	R-18	R-24	R-48
Base Density: Dwelling Units/Acre	4 du/ac	6 du/ac (1)(7)	8 du/ac	12 du/ac	18 du/ac	24 du/ac	48 du/ac
Min. Density	4 du/ac	4 du/ac	4 du/ac	6 du/ac	8 du/ac	10 du/ac	12 du/ac
Min. Lot Width (2)	50 ft	50 ft	50 ft	30 ft	30 ft	30 ft	30 ft

Min. Lot Area (2)	7,200 sq ft	7,200 sq ft	5,000 sq ft	2,500 sq ft	2,500 sq ft	2,500 sq ft	2,500 sq ft
Min. Front Yard Setback (2) (3)	20 ft	20 ft	10 ft	10 ft	10 ft	10 ft	10 ft
Min. Rear Yard Setback (2) (4) (5)	15 ft	15 ft	5 ft	5 ft	5 ft	5 ft	5 ft
Min. Side Yard Setback (2) (4) (5)	5 ft min. and 15 ft total sum of two	5 ft min. and 15 ft total sum of two	5 ft	5 ft	5 ft	5 ft	5 ft
Base Height	30 ft (35 ft with pitched roof)	30 ft (35 ft with pitched roof)	35 ft	35 ft	35 ft (40 ft. w/ pitched roof)	35 ft (40 ft. w/ pitched roof)	35 ft (40 ft. w/ pitched roof) (8) (9)
Max. Building Coverage (6)	35%	35%	45%	55%	60%	70%	70%
Max. Impervious Surface (6)	45%	50%	65%	75%	85%	85%	90%

20.50.050 Building height – Standards.

The base height for all structures shall be measured from the average existing grade to the highest point of the roof. The average existing grade shall be determined by first delineating the smallest rectangle which can enclose the building and then averaging the elevations taken at the midpoint of each side of the rectangle; provided, that the measured elevations do not include berms.

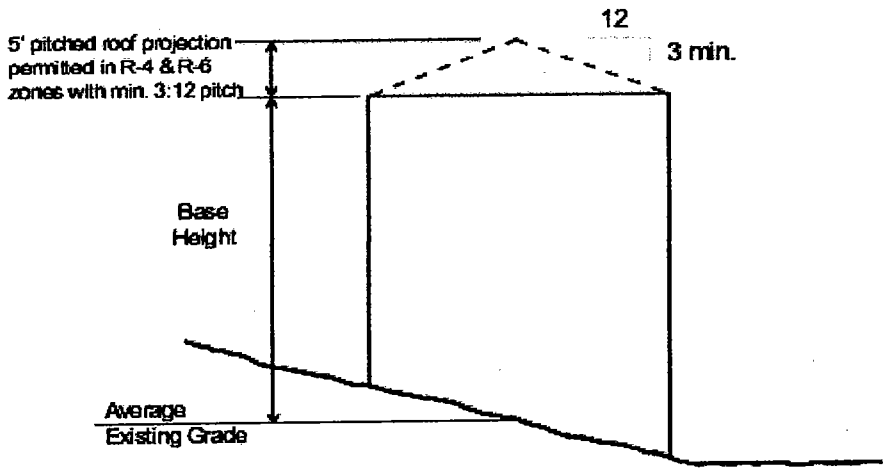


Figure 20.50.050(A): Building height measurement.

Exception 20.50.050(1): The ridge of a pitched roof on the principal house in R-4 and R-6 zones may extend up to 35 feet; provided, that all parts of the roof above 30 feet must be pitched at a rate of not less than three to 12.

Exception 20.50.050(2): The ridge of a pitched roof on the building in the R-18 through R-48 zones may extend up to 40 feet; provided, that all parts of the roof above 35 feet must be pitched at a rate of not less than four (4) to twelve (12). [For further exceptions to height limits in the R-48 zone, see 20.50.020, Exceptions (8) and (9).]

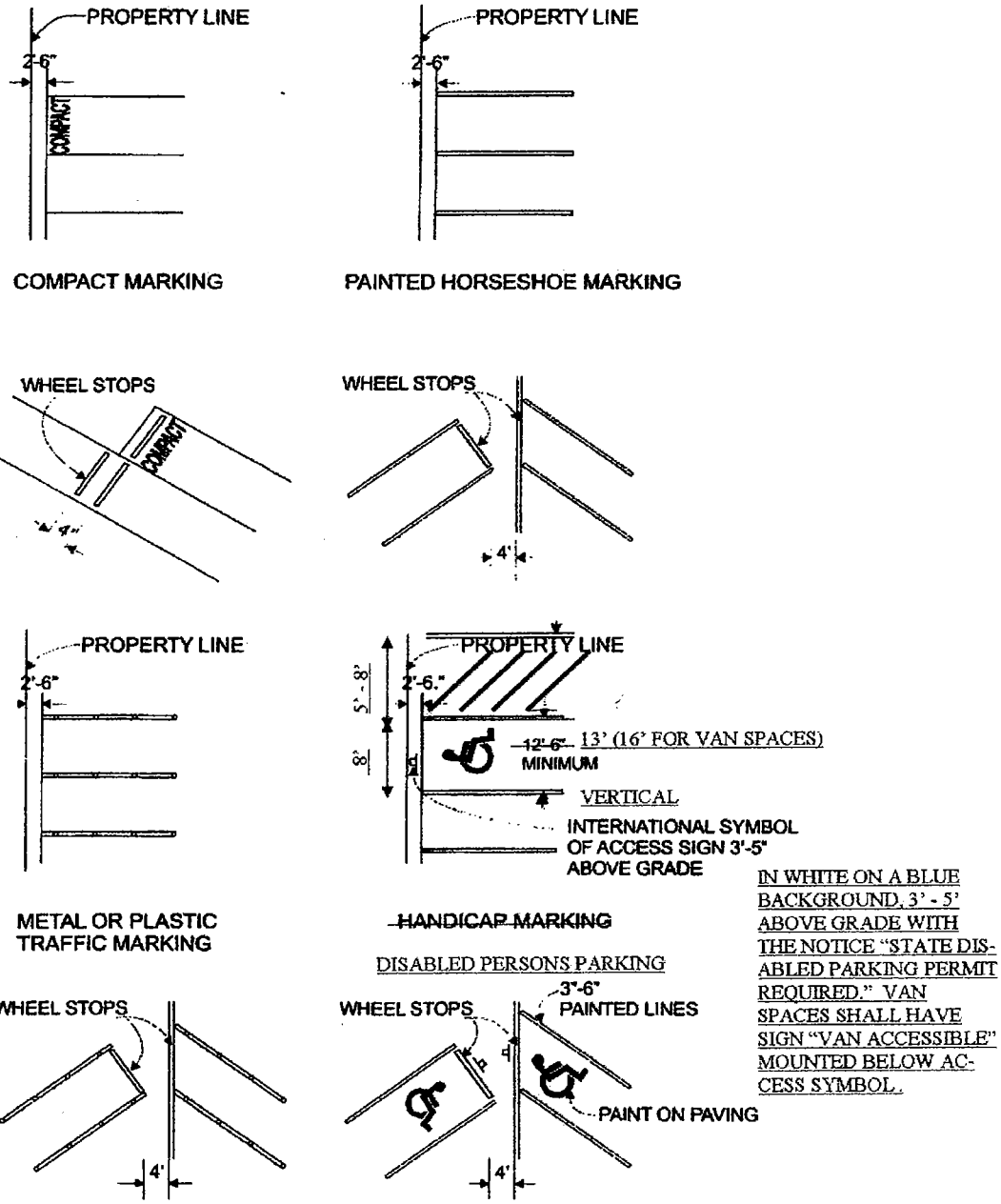


Figure 20.50.410(E): Pavement marking and wheel stop standards.

Note that parking spaces must meet setbacks from property lines where required by the zone.

20.70.040 Purpose.

The purpose of this subchapter is to provide guidance regarding the dedication of facilities to the City. Dedication shall occur at the time of recording for subdivisions, and prior to permit issuance for construction projects. Dedications may be required in the following situations:

A. To accommodate motorized and nonmotorized transportation, landscaping, utility, street lighting, traffic control devices, and buffer requirements;
B. The City will accept maintenance responsibility of the facility to be dedicated;
C. The development project abuts an existing substandard public street and the additional right-of-way is necessary to incorporate future frontage improvements for public safety;
D. Right-of-way is needed for the extension of existing public street improvements necessary for public safety;
E. ~~Right-of-way is to be extended to water bodies and/or the center of watercourses as land is developed to provide public access. (Ord. 238 Ch. VII § 2(A), 2000).~~

20.70.050 Dedication of right-of-way.

A. ~~When a planned street right-of-way, or as is necessary to complete a public City street system, lies within a proposed development, it shall be required to be dedicated to the City as a condition of approval.~~ The City may require the dedication of right-of-way in order to incorporate improvements that are reasonably necessary to mitigate the direct impacts of development.

3. The Director has determined that ~~the facility is in the dedicated public road right-of-way or that~~ maintenance of the facility will contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:

20.70.130 Street Trees

A. No person shall plant, remove, prune, or otherwise change a tree on a ~~street,~~ right-of-way ~~, parking, or planting strip or other public place~~ without an approved right-of-way permit, or if appropriate, site development permit. The general maintenance of street trees by City employees, their contractors, or assigns in accordance with an approved maintenance schedule is exempt from this requirement.
B. When it is necessary to remove a street tree in connection with right-of-way improvements, the tree(s) shall be replanted or replaced. Replacements shall meet the standards specified in the S.M.C. 20.50.480 and the Engineering Development Guide. The cost of the removal and replacement of street trees shall be the responsibility of the permittee.
C. All new development applications are required to plant street trees consistent with the requirements of the landscaping subchapter (S.M.C. 20.50, Subchapter 7). Developments with street frontage identified as green streets in the Comprehensive Plan shall be subject to additional/different provisions as specified in the Engineering Development Guide. (Ord. 238 Ch. VII § 3(B-2), 2000).

20.70.230 Location

A. Sidewalks fronting public streets ~~right-of-way~~ shall be located within public right-of-way. ~~The preferred location for other sidewalks, walkways and trails is within existing public rights-of-way. If it is not feasible to locate these facilities within the right-of-way, then easements recorded with the County across private property that guarantee public access may be utilized.~~
Other sidewalks or trails should use existing undeveloped right-of- way, or, if located outside the City's planned street system, may be located across private property on pedestrian right-of-way restricted to that purpose. The width may vary according to site-specific design issues such as topography, buffering, and landscaping.

~~B. Easements and tracts may be used to accommodate trails. Easements and tracts shall be wide enough to include the trail width and a minimum clear distance of two feet on each side of the trail. The width may vary according to site-specific design issues such as topography, buffering, and landscaping.~~

~~C. The location of nonmotorized facilities shall consider the following factors:~~

~~1. Compliance with the Comprehensive Plan and the Parks, Recreation and Open Space Plan;~~

~~2. Need to improve access to public facilities;~~

~~3. Need to connect a development with trails;~~

~~4. Need for access between developments;~~

~~5. Compliance with the standards of the Shoreline Development Code and the Engineering Development Guide;~~

~~6. Need for sidewalks on one or both sides of a street. (Ord. 238 Ch. VII § 4(C), 2000).~~

Chapter 20.90.025

Provide public alley ~~easements~~ rights-of-way through designated areas identified in figure 20.90.080

Chapter 20.20.014

20.20.014
Critical Areas
An area with one or more of the following environmental characteristics:
A. Steep slopes;
B. Flood plain;
C. Soils classified as having high water tables;
D. Soils classified as highly erodible, subject to erosion, or highly acidic;
E. ~~Fault areas~~ Seismic hazard areas;
F. Stream corridors;
G. Estuaries;
H. Aquifer recharge areas;
I. Wetlands and wetland transition areas; and
J. Habitats of endangered species.

Chapter 20.30.040

Table 20.30.040 - Summary of Type A Actions and Target Time Limits for Decision, and Appeal Authority

Action Type	Target Time Limits for Decision	Section
Type A:		
1. Accessory Dwelling Unit	30 days	20.40.120, 20.40.210
2. Lot Line Adjustment including Lot Merger	30 days	20.30.400
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	20.30.450
5. Home Occupation, Bed and Breakfast, Boarding House	120 days	20.40.120, 20.40.250, 20.40.260, 20.40.400
6. Interpretation of Development Code	15 days	20.10.050, 20.10.060, 20.30.020
7. Right-of-Way Use	30 days	12.15.010-12.15.180
8. Shoreline Exemption Permit	15 days	Shoreline Master Program

9. Sign Permit	30 days	20.50.530 – 20.50.610
10. Site Development Permit	60 days	20.20.046, 20.30.430
11. Variances from Engineering Standards	30 days	20.30.290
12. Temporary Use Permit	15 days	20.40.100, 20.40.540
13. Clearing and Grading Permit	60 days	20.50.290 – 20.50.370
14. Planned Action Determination	28 days	20.90.025

Chapter 20.30.336

Critical areas reasonable use permit (Type C action).

20.30.336

D. Priority. When multiple critical areas and critical area buffers may be affected by the application, the decision making authority should consider exceptions to critical areas standards that occur in the following order of priority with number 5 having the highest protection:

1. Geologic hazard areas ~~and~~ buffers;
2. Wetland buffers;
3. Stream buffers;
4. Fish and wildlife habitat conservation area buffers; and
5. Geological hazard, wetland, stream, and wildlife critical areas protection standards in the order listed above in items 1 through 4. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(L), 2000. Formerly 20.80.120.).

Chapter 20.30.460

20.30.460 Effect of Rezones

The owner of any lot in a final plat filed for record shall be entitled to use the lot for the purposes allowed under the zoning in effect at the time of filing of a complete application for five years from the date of filing the final plat for record, even if the property zoning designation and/or the Code has been changed.

Chapter 20.30.630

20.30.630 Comments and public notice – Additional considerations.

A. For purposes of WAC 197-11-510, public notice shall be required as provided in Chapter 20.30, Subchapter 3, Permit Review Procedures~~.~~, except for Type L actions.

Chapter 20.30.680

20.30.680 Appeals

B. Appeals of threshold determinations are procedural SEPA appeals which are conducted by the Hearing Examiner pursuant to the provisions of Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearings and Appeals, subject to the following:

1. Only one appeal of each threshold determination shall be allowed on a proposal.
2. As provided in RCW 43.21C.075(3)(d), the decision of the responsible official shall be entitled to substantial weight.
3. An appeal of a DS must be filed within 14 calendar days following issuance of the DS.
4. An appeal of a DNS for actions classified as Type A, B, or C actions in Chapter 20.30 SMC, Subchapter 2, Types of Actions, must be filed within 14 calendar days following notice of the ~~decision~~ threshold

determination as provided in SMC 20.30.150, Public Notice of Decision; provided, that the appeal period for a DNS for Type A, B, or C actions shall be extended for an additional seven calendar days if WAC 197-11-340(2)(a) applies. For actions not classified as Type A, B, or C actions in Chapter 20.30 SMC, Subchapter 2, Types of Actions, no administrative appeal of a DNS is permitted.

Chapter 20.40.120

20.40.120 Residential type uses.

NAICS #	SPECIFIC LAND USE	R4-R6	R8-R12	R18-R48	NB & O	CB & NCBD	RB & I
GROUP RESIDENCES							
	Boarding House	C-i	C-i	P-i	P-i	P-i	P-i
	Community Residential Facility-I (Less than 11 residents and staff)	C-i	C-i	P-i	P-i	P-i	P-i
	Community Residential Facility-II			P-i	P-i	P-i	P-i
721310	Dormitory		C-i	P-i	P-i	P-i	P-i
P = Permitted Use S = Special Use C = Conditional Use -i = Indexed Supplemental Criteria							

- C -

~~20.40.280 Community residential facilities I and II.~~

~~A. Type I community residential facilities are allowed as a conditional use in the R-4-6 and R-8-12 residential districts.~~

~~B. Type I and II facilities are permitted in the R-18-48, neighborhood business, community business, regional business and office districts. (Ord. 299 § 1, 2002; Ord. 238 Ch. IV § 3(B), 2000).~~

Chapter 20.40.600

20.40.600

F. Structure-Mounted Wireless Telecommunication Facilities Standards.

2. The maximum height of structure-mounted facilities shall not exceed the base height limits specified for each zoning designation in this title regardless of exceptions for the particular mounting structure; provided the facility may extend up to 15 feet above the top of the structure on which the facility is installed, including those built at or above the maximum height allowed in a specific zone, so long as the diameter of any portion of a facility in excess of the allowed zoning height does not exceed the shortest diameter of the structure at the point of attachment. The height and diameter of the existing structure prior to replacement or enhancement for the purposes of supporting wireless facilities shall be utilized to determine compliance with this subsection. Only one extension is permitted per structure.

Chapter 20.50.040

20.50.040 Setbacks – Designation and measurement.

A. The front yard setback is a required distance between the "front ~~lot line~~" property line to a building line (line parallel to the front line), measured across the full width of the lot.

Chapter 20.50.540

Table 20.50.540B – Standards for Signs. A property may use a combination of the four types of signs listed below.

	All Residential (R) Zones	NB and O	CB, RB, and I
FREESTANDING SIGNS:			
Maximum Area Per Sign Face	4 sq. ft. monument sign (home-occupation) 25 sq. ft. (nonresidential use, residential subdivision or multifamily development) 32 sq. ft. (schools)	Only Monument Signs are Permitted: 25 sq. ft.	Monument Signs: 50 sq. ft. Shopping Center/Mall Signs: Malls must have more than 1 business, max. 100 sq. ft.
Maximum Height	42 inches	6 feet	20 feet Shopping Center/Mall: 20 feet Monument: 8 feet
Maximum Number Permitted	1 per street frontage	1 per street frontage and 150 ft. apart.	1 per street frontage per property and 150 ft. apart.
		Two per street frontage if the frontage is greater than 250 ft. and each sign is minimally 150 ft. apart from other signs.	
Illumination	External only: Maximum 6 feet from the sign display	Permitted	
BUILDING-MOUNTED SIGNS:			
Maximum Sign Area	Same as for Freestanding Signs	25 sq. ft. (each tenant) Building Directory 10 sq. ft. 25 sq. ft. for building name sign. See Figure 20.50.580.	
Canopy or Awning	Sign shall be maximum 25% of the canopy vertical surface Note: Counts toward total allowable signage.		
Maximum Height (ft.)	Not to extend above the building parapet, eave line of the roof, or the windowsill of the second floor, whichever is less.		
Number Permitted	1 per street frontage	1 per business located on street frontage Note: One building-mounted sign per facade facing street frontage or parking lot	
Illumination	External illumination only	Permitted	Permitted
PROJECTING SIGNS FROM A BUILDING:			
Maximum Sign Area	6 sq. ft. Nonresidential uses, schools, residential subdivision or multifamily development	12 sq. ft.	
Minimum Clearance from Grade	9 feet		
Maximum Height (ft.)	Not to extend above the building parapet, eave line of the roof, or the windowsill of the second floor, whichever is less.		
Number Permitted	1 per street frontage		1 per business located on street frontage
DRIVEWAY ENTRANCE/EXIT:			
Maximum Sign Area	4 sq. ft. Nonresidential uses, schools, residential subdivision or multifamily development	4 sq. ft.	
Maximum Height	42 inches		
Number Permitted	1 per driveway		

Chapter 20.50.560

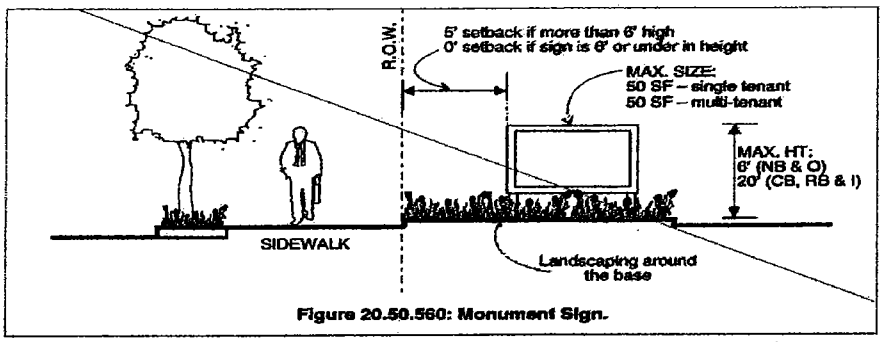


Figure 20.50.560: Monument Sign.

Chapter 20.50.560

20.50.560 Site-specific sign standards – Monument signs.

A. Location.

- Minimum Distance From Existing or Planned Public Sidewalk or Public Right-of-Way, whichever is closest to the sign: zero feet if under six feet in height, five feet if over six feet in height;.
- ~~Minimum Distance From Public Right-of-Way: five feet.~~
- Distance from Interior Property Line: 20 feet. If this setback not feasible, the Director may modify the requirement, subject to the approval of a signage plan.

Chapter 20.70.470

20.70.470 Undergrounding of electric and communication facilities – When required.

A. Undergrounding of electrical and telecommunication facilities defined in S.M.C. 13.20.030 shall be required with new development as follows~~ing~~ unless the facility is exempt under S.M.C. 13.20.030:

1. All new nonresidential construction, including remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the site at the time of application and/~~or~~ involves the relocation of service.
2. All new residential construction and new accessory structures, the creation of new residential lots, and residential remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the site at the time of application and/~~or~~ involves the relocation of service. Residential projects may be exempted from some or all of the undergrounding provisions at the request of the applicant if the project involves the construction, remodel, or addition to only one new house or accessory structure and a street crossing would be necessary.

Chapter 20.80.240

20.80.240 Alteration

B. Class IV Landslide Hazard Areas. Development shall be prohibited in Class IV (very high) landslide hazards areas except as granted by a critical areas special use permit or a critical areas reasonable use permit.

C. ~~Type~~ Class II, III, IV Landslide Hazards. Alterations proposed to ~~Type~~ Class II, III, and IV Landslide Hazards shall be evaluated by a qualified professional through the preparation of the geotechnical report. However, for proposals that include no development, construction, or impervious surfaces, the City, in its sole discretion, may waive the requirement for a geotechnical report. The recommendations contained within the geotechnical report shall be incorporated into the alteration of the landslide hazard area.

DOCKET MATRIX: SUMMARY OF PROPOSED AMENDMENTS TO THE DEVELOPMENT CODE - 2003

Log #	Name	Page (s)	Chapter	Section(s)	Request	Original Staff Recommendation	Final Planning Commission and Staff Recommendation
1	City Attorney	28	20	044	Change definition of right-of-way.	Approve	Approve
2	Staff	30, 41	20, 30	146 & 140	Clarify intent of site development permit to be used for developments in addition to subdivisions. Increase time for approval.	Approve	Approve
3	City Council	41-42	30	040, 050	Consider adding public notice for all commercial projects with changes to building footprint.	Defer for further study	Deny
4	City Attorney	53	30	280	Changes to titles and numbering of nonconforming section. Also add clarifying language.	Approve	Approve with minor text changes
5	City Attorney/Staff	56	30	310	Changes to zoning variance criteria.	Approve	Approve
6	City Attorney	94	40	060(D)2	Clarify classification of right-of-way.	Approve	Approve with minor text changes
7	Virginia Botham	98	40	120	Add Tent City as indexed criteria; add notification (per Type B permits) and other procedures.	Deny	Deny
8	Staff	109	40	400	Changes to Home Occupation regulations. Add purpose section and change/clarify some criteria.	Approve	Approve with minor text changes

Log #	Name	Page (s)	Chapter	Section(s)	Request	Original Staff Recommendation	Final Planning Commission and Staff Recommendation
8A & 8B	Staff	104	40	250	Distinguish between Bed & Breakfast & Boarding House Permits and Home Occupation Permits (different criteria).	Approve	Approve
9	Kevin Wang	127	50	020	Allow pitched roof in high-density zones to extend up to 40 feet, provided that all parts of the roof above 35 feet are pitched at least 3/12.	Approve	Approve with change that minimum pitch be 4/12
10	Police Dept.	142, 157-8, 168	50	110(C), 210(D) 270(C&D)	Allow high security (barbed wire) fencing for police or other high security facilities.	Approve	Planning Commission Recommends Denial Staff Recommends Tabling for Further Study
11	Staff	196	50	410	Add detail to specifications for disabled parking signs. Update dimensions and requirements per RCW.	Approve	Approve
12	City Attorney	starting on pg. 235	70	040(E), 050, 060(B)3, 130(A), 230	Changes to clarify right-of-way regulations and reflect ordinance #339 (attached for reference).	Approve	Approve
13	City Attorney	310	90	025(F)4	Change easements to rights-of-way for public alleys in North City.	Approve	Approve

Log #	Name	Page (s)	Chapter	Section(s)	Request	Original Staff Recommendation	Final Planning Commission and Staff Recommendation

TECHNICAL AMENDMENTS

T1	City Attorney	11	20	014	Clarify that critical areas include seismic hazard areas.	Approve Technical	Approve
T2	Staff	41	30	040	Add Planned Action Approval to table of Type A Actions.	Approve Technical	Approve
T3	Staff	60	30	336(D)1	Delete the "s" from "areas" and the "and." This was meant to only include the buffer areas.	Approve Technical	Approve
T4	City Attorney	65	30	460	Clarify that "time of filing" refers to time of filing a complete application for subdivision.	Approve Technical	Approve
T5	Staff	77	30	680	Clarify that appeal must be filed within 14 days of notice of threshold determination (not necessarily notice of decision).	Approve Technical	Approve
T6	Staff	78	30	630	Clarify that notice procedures for site specific projects under SEPA are not the same for Type L projects.	Approve Technical	Approve
T7	Staff	98	40	120	Eliminate redundant criteria for CRF's	Approve Technical	Approve
T8	Staff	121	40	600.F(2)	Clarify that wireless extensions are restricted to one.	Approve Technical	Approve
T9	Staff	131	50	040.A	Clarify front setback.	Approve Technical	Approve

Log #	Name	Page (s)	Chapter	Section(s)	Request	Original Staff Recommendation	Final Planning Commission and Staff Recommendation
T10	Staff	212	50	560	Eliminate figure of "monument sign" that shows a pole sign. and confuses the setback issue.	Approve Technical	Approve
T11	Staff	212	50	560.A	Clarify setbacks for signs.	Approve Technical	Approve
T12	Staff	212	50	210	Clarify that properties can have a combination of all signage and are not restricted to either/or.	Approve Technical	Approve
T13	Staff	260	70	470(A)(2)	Delete clerical errors in undergrounding ordinance (as amended by Ordinance #340).	Approve Technical	Approve
T14	Staff	270	80	240(C)	Change the word "Type" to "Class" for consistency.	Approve Technical	Approve

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF SPECIAL MEETING

January 29, 2004 | Shoreline Conference Center
7:00 P.M. | Board Room

PRESENT
Chair Doennebrink
Vice Chair Harris
Commissioner Gabbert
Commissioner Piro
Commissioner MacCully
Commissioner Doering

STAFF PRESENT
Tim Stewart, Director, Planning & Development Services
Rachael Markle, Planning Manager, Planning & Development Services
Kim Lehmberg, Planner
Lanie Curry, Planning Commission Clerk

ABSENT
Commissioner Sands
Commissioner McClelland
Commissioner Kuboi

1. CALL TO ORDER

The regular meeting was called to order at 7:00 p.m. by Chair Doennebrink

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Doennebrink, Vice Chair Harris, Commissioners Gabbert, Piro, MacCully and Doering. Commissioners Sands, McClelland and Kuboi were excused.

3. APPROVAL OF AGENDA

COMMISSIONER PIRO MOVED TO APPROVE THE AGENDA AS PROPOSED. COMMISSIONER DOERING SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

4. APPROVAL OF MINUTES

COMMISSIONER PIRO MOVED TO ACCEPT THE MINUTES OF DECEMBER 4, 2003 AS AMENDED. VICE CHAIR MACCULLY SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

5. GENERAL PUBLIC COMMENT

Janet Way noted that some of the Commissioners terms will expire in March. She thanked them for their service on the Commission. It is a lot of work to ponder all of the documents that are forwarded to them for each meeting.

Patty Crawford said she wants to make sure the environmental information that she and her husband submitted regarding their property was included in the Stream Inventory since they hired the same consultant as the City did to do their inventory. She said she just attended a meeting of the Thornton Creek Management Committee. Seattle Public Utilities was present at that meeting to discuss their plan of removing barriers downstream. She suggested that this plan might be of interest to the City.

Ms. Crawford referred to the reasonable use definition that was recently approved by the City Council. She said she spent a significant amount of time researching where this term came from. She recalled that at public hearings the Commission and the City Council considered definition changes for four different terms: development, building footprint, qualified professional and utility. However, when the City Council ruled on the definition changes, the term "reasonable use" was substituted for "building footprint." There was no change or addition proposed for the term "building footprint" as discussed at the public hearing. Because of the controversy surrounding "reasonable use," she said it is important that the definition be clear. Wherever this term is used in the body of the code, the definition will dictate its interpretation.

Ms. Crawford said the new definition for reasonable use states, "reasonable use shall be liberally construed to protect the constitutional property rights of the applicant." She said that at no time during the public process was a definition of this type discussed. She said she feels the new definition flies in the face of protecting any environmental, historical or neighborhood features. She urged the Commission to review the progression of how the reasonable use definition replaced the building footprint definition in the new ordinance.

Mr. Stewart said Ms. Crawford made these same comments at the last City Council Meeting. Staff is preparing a response, which will be provided to the City Council. They will make sure the Planning Commission members receive a copy of the response, as well. He explained that the definition for "reasonable use" was one of ten changes that were made to the Planning Commission's recommendation. Those were clearly outlined in the staff report that was prepared for the City Council dated June 23rd (Attachment G). The amendments were made after negotiations with the Thornton Creek Legal Defense Fund. He referred to the letter the City received from the Thornton Creek Legal Defense Fund thanking the staff for their cooperation in working through some of the technical issues that resulted in the ten amendments.
He emphasized that the staff did not "slip" the reasonable use amendment in. It was clearly articulated in the staff report and in the attachment to the staff report. In fact, the City Council discussed whether the ten amendments should be referred back to the Planning Commission for further review. They chose not to do that and unanimously adopted the recommendations.

Mr. Stewart said that, as per the Commission's request, staff has retained the consultant for an additional scope of work related to the stream inventory. A contract was signed, and they anticipate that the work will be completed later in the spring. The first effort will be to collect additional data on all of the artificial open watercourses that have not been collected in the appendix.

Secondly, it will remove the word "artificial" from all the language within all the reports. The result will be an appendix that does not distinguish between open watercourses. All open watercourses will have exactly the same amount of data. When the consultant's work is completed, it will be presented back to the Commission for further review.

Chair Doennebrink inquired if the data collected by the Crawfords would be included as part of the additional data. Mr. Stewart said he is not sure. As discussed at the last meeting, the Crawfords refused to allow the City scientists to access their property, so the City did not have anyone who could objectively evaluate that stream section. If Ms. Crawford would like to submit additional information to staff, he said he would be happy to forward it along to the consultant.

6. STAFF REPORTS

a. Introduction of 2003 Development Code Amendment Docket

Mr. Stewart introduced Kim Lehmberg, a City Planner who tracks issues related to the Development Code. He advised that she would be the project manager for the 2003 Development Code docket, and is available to answer any technical questions the Commission might have.

Mr. Stewart provided a brief overview of the Development Code Amendment process. He advised that the adoption or amendment of the Development Code is a legislative process. He explained that anyone can propose an amendment to the Development Code. However, in order for the proposed amendment to be included on the docket, it must be initiated by the City Council, the Planning Commission or the Planning Director. He advised that he, as the Planning Director, has initiated all of the amendments proposed by the citizens and staff in 2003. He noted that he is not recommending some of the amendments in the preliminary matrix. However, because they are related to issues of significant importance, he feels they merit an open public debate.

Mr. Stewart said that once the docket has been established, the amendments would be advertised for a formal public hearing, which is tentatively scheduled for March 4, 2004. During the public hearing, the Commission would receive comments on any of the amendments. Once the hearing has been closed, the Commission will be charged with formulating a recommendation to the City Council on any, none or all of the amendments. Historically, the City Council has held a second public hearing before making the ultimate decision on each amendment.

Commissioner Piro inquired regarding the schedule for the current docket of amendments. Mr. Stewart said the docket that is being proposed follows the calendar year. He said it is important to note that, unlike the Comprehensive Plan, Development Code amendments can be initiated and approved any time during the year if a critical issue arises. For example, he said there are a few technical issues related to the enforcement section of the Code that might be brought before the Commission later in the year.

Commissioner Piro referred to the amendment that was initiated by the City Council. He inquired if this was done by the City Council as a whole or by an individual City Council Member. Mr. Stewart said the amendment to add a public notice requirement for commercial projects was initiated in response to a citizen comment on the Safeway building permit. The general consensus of the City Council was that this issue should be considered.

Commissioner Doering asked what process the City follows when a code violation occurs. Mr. Stewart reviewed the City's current code enforcement program. He said the City attempts to get voluntary compliance for code enforcement. When they receive a code enforcement complaint, the Customer Response Team (CRT) will investigate and make a determination as to whether or not there is a code violation. CRT will then attempt to educate the violator and seek voluntary compliance. Oftentimes, that is followed with a "please comply letter." Whether or not CRT takes the next enforcement step depends upon the cooperation of the violator. If the violator does not comply, CRT will send a much stronger letter, including the issuance of a legal document called the "notice and order" or in some cases the issuance of a civil citation, depending on the nature of the case. The "notice and order" is appealable to the Hearing Examiner. The final step would be for the City to take remedial action or put a lien on the property until the violation is corrected.

The Commission did not provide any comments regarding **Proposed Amendment 1.**

Commissioner Gabbert inquired why the staff is recommending denial of **Proposed Amendment 2.** Mr. Stewart said a site development permit is an intermediate type of permit that is often issued as a clearing/grading permit. It is preliminary to actual construction activities. For example, when a developer has gone through the platting process and obtained approval for a subdivision, the approval is typically based on a number of conditions that must be met before construction could begin. The site development permit would be issued once all of the conditions have been met. In the case of other types of development, a developer could obtain a clearing and grading permit to proceed with the clearing and grading, but oftentimes the site development permit would seek other things like water, sewer, etc. Staff felt the proposed amendment would clarify the intent of this section.

Ms. Lehmberg said the way the Development Code is written, a site development permit can only be used for subdivisions, which is limiting because there are other types of development where the site development permit would be the most appropriate type of permit.

Chair Doennebrink said **Proposed Amendment 3** was proposed as a result of public notice issues raised when the Safeway was remodeled. He noted that staff is recommending denial. Mr. Stewart explained that there are three types of permits. Type A Permits are issued without any public notice and are based upon specific criteria. No discretion is involved and no public comments are accepted. Type B Permits require public notice, and there are specific criteria that must be met. There is a higher level of discretion, and decisions are appealable to the Hearing Examiner. Type C Permits are quasi-judicial and require a public hearing process.

Mr. Stewart explained that **Proposed Amendment 3** would create a public notice requirement for a Type A Permit. Another option to address the concern raised by the public would be to move commercial building permits of a certain size to a Type B Permit. However, he questioned whether it is appropriate to add more regulatory requirements to the commercial building permit process when one of the major objectives of the City is to expand their economic base. Staff does not believe the proposed amendment is appropriate. Ms. Lehmberg added that commercial permits of a certain size would be subject to public notice because they would require a SEPA review, which triggers the Type B Permit process.

Commissioner MacCully inquired if staff prepared draft code language for **Proposed Amendment 3.** Ms. Lehmberg said she did not create specific code language changes for this amendment because she wanted more feedback as to which direction the Commission wanted to go.

Ms. Lehmberg advised that **Proposed Amendment 4** was proposed by the City Attorney, Ian Seivers. The intent of the amendment is to clarify language. She referred to Section 20.30.280 and said staff feels it is inappropriate to limit the non-conformance to the current code, since it does not take into account other codes that were previously in place or any moratoriums the City Council might enact.

Ms. Lehmberg said the second major change included as part of **Proposed Amendment 4** is found in Section 20.30.280.B.2. The current language could be construed to mean that the building should not be used for any purpose before the non-conforming use can be extinguished. The proposed language would clarify the intent of this section. In addition, Ms. Lehmberg said the City Attorney has recommended title changes to Section 20.30.280.

Commissioner Piro said it appears that staff is still undecided as to whether the changes in **Proposed Amendment 4** could be considered technical or more substantive. Mr. Stewart recalled that there has been some criticism from the public related to technical amendments versus substantive amendments. Given that attitude, he said he would rather error on the side of including it as part of the more substantive amendments. The Commission agreed that would be the appropriate course of action.

Mr. Stewart said the City Attorney has suggested **Proposed Amendment 5**, which involves changes to the variance criteria. The proposed amendment would bring the variance criteria and standards more in compliance with case law in the State of Washington. He recalled that the City has experienced two cases (Aegis and Gaston Projects) where the variance criteria were applied to a critical area. The City has changed the critical areas standards so that variances are no longer allowed. The changes in **Proposed Amendment 5** would not apply to critical areas. They would only apply to waivers of other standards such as setbacks, etc.

Mr. Stewart said that if Section 20.30.310.B is changed as per **Proposed Amendment 5** and the judge's ruling is applied. There is no way that a variance could be granted legally.
Therefore, the variance option should be removed completely. He advised that the City Attorney would be present at the public hearing on the proposed amendments to provide further clarification and feedback.

Commissioner Doering referred to **Proposed Amendment 6,** and inquired if the proposed changes would help ease the process for obtaining right-of-way permits. Mr. Stewart answered that the right-of-way ordinance was changed significantly last year, and this resolved some of the problems associated with right-of-way permits for special events. Ms. Lehmberg added that this permit is now called a "Special Events Right-of-Way Permit," and there are provisions that allow the City to waive the fee.

Mr. Stewart said Ginger Botham, a Shoreline citizen, submitted **Proposed Amendment 7.** He said that while he does not recommend approval of the proposed amendment, he felt it should be brought before the Commission for consideration. The proposed amendment has to do with the "Tent City" regulations. He explained that, at this time, "Tent City" is regulated as a temporary use permit, which does not require any notice. The proposed amendment would regulate "Tent City" as a Type B Permit, which would require neighborhood notice. He pointed out that even if notice were required, the same conditions would still apply. The issuance of a temporary use permit would not depend upon any comments that are issued by the neighbors.

Ms. Lemberg added that **Proposed Amendment 7** is similar to **Proposed Amendment 3**, since both propose a notice requirement for a type of permit that does not require notice now. She cautioned the Commission against setting precedence by requiring notice for some Type A Permits. If notice is required for these types of permits, the public's expectation would be that their comments could change the outcome of the project. But if a Type A project meets the criteria, the permit must be approved, and denial of the permit must not be based on public comments.

Commissioner Gabbert inquired as to Ms. Botham's intent for **Proposed Amendment 7**. Mr. Stewart said he believes her intent was to make it more difficult to obtain a permit for "Tent City." He said the City did have a previous experience with "Tent City" at the Methodist Church on 175th. Ms. Lehmberg researched the impacts of this use afterwards. He recommended that as part of the public hearing, staff would provide a thorough analysis and report for the Commission's consideration based on the City's previous experience with "Tent City."

Commissioner MacCully agreed that it would be helpful for staff to provide more information about the previous "Tent City." The group that is behind the "Tent City" process is relatively militant in wanting this use to continue, obviously with cooperation. The City is responsible for preparing the citizens as much as possible. On the other hand, he said he is in favor of anything that can be done to reduce street homelessness.

Ms. Lehmberg said that she recently read a publication by the American Planning Association that addressed home occupations. A lot of their suggestions were incorporated into the changes found in **Proposed Amendment 8.** She said staff feels it is helpful to identify the intent and purpose of any code.
Staff also believes the suggestion for increasing the allowed floor area to be used for home occupation is appropriate. She said she anticipates that home occupations will be a growing trend in the City, and the Code needs to be a little more flexible. At the same time, it is still important to protect the neighborhoods.

Chair Doennebrink inquired if **Proposed Amendment 8** would change the regulations related to delivery trucks coming to home occupation sites. Ms. Lehmberg said no changes of this nature have been proposed, but the Commission could consider some provisions for limiting deliveries. The current code does not limit on-site patronage, either.

Commissioner MacCully referred to the third line of Section 20.40.400.A and suggested that the word "to" be deleted. In Section 20.40.400.D.3, the word "and" should be deleted.

Commissioner MacCully pointed out that the fastest growing arena of business in the United States is home-based. He inquired if **Proposed Amendment 8** would limit the number of employees allowed to work out of a home occupation location. Next, Commissioner MacCully referred to Section 20.40.400.D.4, which staff is proposing to deleted from the code. He said there is a home-based scrap metal collection business located in his neighborhood. Most of the collection is stored on public right-of-way. He questioned if the code would allow this. Also, he questioned if large trucks would be allowed to park outside of home occupations.

Mr. Stewart said home occupations, along with non-conforming uses, are some of the most difficult uses to regulate.

Commissioner Piro said as the Commission continues to work on the home occupations section of the Code, it would be helpful to get additional information from neighboring jurisdictions regarding their limitation for non-resident employees at home occupations.

Commissioner Doering inquired if the home occupation provisions would apply to non-profit businesses that are home based. Mr. Stewart answered that the provisions would apply to all home-based occupations. However, it would probably be a different matter if the non-profit business had no revenue coming in, but was a volunteer type of business only. Commissioner Doering felt that this type of use should be defined.

Commissioner MacCully referred to Section 20.40.400.F, which limits sales in a home occupation to mail order sales or telephone sales with off-site delivery. Ms. Lehmberg said this provision would prohibit customers coming to a home occupation to buy goods. This activity needs to be arranged off site, or mailed. If goods were sold on site, the business would be considered a commercial use.

Ms. Lehmberg referred to **Proposed Amendments 8a and 8b**. She said that while the code requires a home occupation permit for bed and breakfast and boarding house uses, different criteria is applied. The proposed change clarifies that there is different criteria than for a typical home occupation.

Mr. Stewart advised that because **Proposed Amendment 9** is related to building height, it is likely to be contentious, even though staff believes the rationale behind it is fairly equitable.
Ms. Lehmberg said this amendment was proposed by Kevin Wang, and he expressed that it is not logical for the high-density and low-density zones to have the same height limit. He felt the current code encourages flat roofs, which are not suitable for northwest weather conditions.

Commissioner Gabbert said he would support **Proposed Amendment 9**. He said he would like to see as many amendments to the code as possible that would encourage pitched roofs in lieu of flat roofs. The only change he would make is that the pitched roof must be 4-12 or greater. He expressed his opinion that a pitched roof up to 40 feet in height would not seem as high as a 35-foot high flat roof. The eave would be down lower to start with. If this section is worded properly, the change could end up being a positive thing.

Commissioner MacCully inquired if a 40-foot height limit would allow for a three-story structure. Mr. Stewart said that three stories could easily be accommodated. In some situations, parking could be provided on the bottom with three stories above. He noted that **Proposed Amendment 9** would only apply to the high-density multi-family zones. Commissioner Gabbert suggested that this same height provision should apply to mixed-use zones, as well.

Mr. Stewart said that **Proposed Amendment 10** was submitted by the Shoreline Police Department in response to September 11th and the recent bombing of a police car. The amendment would allow high-security (barbed wire) fencing for police and other high security facilities. He noted that this provision would only apply to essential public and utility facilities.

Commissioner Doering said she would like the staff to provide more anecdotal information from other jurisdictions that have allowed high-security fencing. She said she is totally against this provision because she felt it could get way out of control. She is strongly against planning based on fear. She suggested that there are other alternatives besides wire fencing.

Commissioner Piro said he believes that a modest use of high-security fencing would be easier to accept, but he is also worried about it getting out of hand. Vice Chair Harris agreed that security could be provided by means other than fencing.

Mr. Stewart said it is clear that more work is necessary for **Proposed Amendment 10.** Perhaps they could invite the Police Chief to come before the Commission to further explain her position.

Vice Chair Harris referred to Section 20.50.110.E and asked the staff to explain its purpose. Ms. Lehmberg said the purpose is to eliminate the possibility of having a huge fence located on top of a huge wall. Vice Chair Harris inquired if the provision is intended to benefit the property owner on the high side of the wall or the property owner on the low side. He suggested that the person on the high side of the wall would not be able to construct a fence for privacy. Commissioner Doering recalled that the Commission previously discussed the height of fences allowed on top of retaining walls. Commissioner Gabbert suggested that perhaps the provisions should be different depending on the location of the retaining wall and fence. Commissioner MacCully suggested that the allowed height should also depend upon the purpose of the fence.

He pointed out that this provision only applies to fences on the external property line. Ms. Lehmberg said that internal fences could be built at any height as long as they meet the setback requirements. Commissioner MacCully inquired if Section 20.50.110.E would apply to a fence that might be put around a subdivision. Ms. Lehmberg said this would apply to fences placed around single-family homes as well as fences built around entire subdivisions. She said the provisions in this section would not, however, apply to living fences.

The Commission did not provide any comments related to **Proposed Amendments 11 and 12.**

Chair Doennebrink asked the staff to explain the intent of **Proposed Amendment 13.** Ms. Lehmberg said the City Attorney has indicated that this amendment is being proposed so that uniform terminology can be used throughout the code for the term "rights-of-way." This section would only apply to the North City Subarea. Mr. Stewart further explained that the proposed amendment is intended to open up alley access in North City, particularly on the west side so that parking can be gained underneath to support multi-family uses on the upper floors. He said it is critical that the alley system be established in North City so that buildings can obtain the necessary access.

Commissioner MacCully referred to the chart in **Proposed Amendment T2** and noted that it is inconsistent with **Ordinance 339** and **Proposed Amendment 2.** He said that if the site development permit is changed to 60 days, then this same number has to carry through on the chart. He also noted that there is inconsistency in the section reference for right-of-way use and site development permit. In addition, he pointed out that if they decide to add a planned action determination as a technical amendment, this would also need to be brought back into **Proposed Amendment 2.**

Commissioner Doering referred to **Proposed Amendment T1**, which would clarify that critical areas include seismic hazard areas. She asked who would be responsible to determine what is a seismic hazard area. Ms. Lehmberg said the seismic hazard areas are mapped on the King County Critical Areas Fault Map. Mr. Stewart added that a hazard mitigation plan is now under development, and this will include the new and much more accurate soils mapping that has been done by the University of Washington. This mapping identifies areas in the community that have unstable soils and a very high risk for seismic hazard.

They have done additional work beyond that and located the number of structures that are masonry and built prior to the earthquake code. The Comprehensive Plan update will address this class of property and identify what, if anything, the City wants to do to proactively encourage retrofitting, etc.

Commissioner Gabbert said that if the areas with unstable soil are mapped, this could have a significant impact on property values. Mr. Stewart said the City will eventually include this information as part of their critical areas folio, and this would effect what happens when a property owner comes in for a permit.

The Commission did not provide comments regarding **Proposed Amendments T3 through T14.**

Chair Doennebrink reminded the Commissioners that they are encouraged to submit any additional code amendments they feel are appropriate. Mr. Stewart said staff is going to start to advertise the public hearing for the code amendments, which is scheduled for March 4, 2004.

Janet Way, Thornton Creek Legal Defense Fund, responded to Mr. Stewart's comments regarding the "reasonable use" issue. She said the Legal Defense Fund did negotiate with the City on other elements of the critical areas code changes, but the reasonable use segment was not really one that they chose to negotiate in detail on. She said she does not actually recall the "reasonable use" language being discussed in the negotiations, so she would not concur that the Legal Defense Fund agreed with the wording.

Ms. Way also expressed her concerns about some of the proposed code amendments. She said she would like to have more information from staff regarding **Proposed Amendment 2,** which is related to the site development permit. She would also like more information regarding **Proposed Amendment 3**, which would consider adding public notice for all commercial projects. As an involved citizen, she expressed her opinion that the Commission should not do anything that would cut down on opportunities for citizens to comment. Regarding **Proposed Amendment 4**, Ms. Way said she would like to understand the non-conforming section better as it relates to lots that are too small for building uses.

Ms. Way said she is most concerned about **Proposed Amendment 5**, which relates to zoning variance criteria. She referred to the Gaston Project, and said that just because there were other houses in the neighborhood that were built close to the creek, it should not be okay for new development to do the same. This is a Class II Stream that needs protection, and perhaps a special category should be created for critical areas. There is now an Endangered Species Act in place to protect streams and critical habitat, and no variance should be allowed.

Ms. Way referred to **Proposed Amendment 10** and said she is glad that Commissioner Doering brought up her concern about having barbed wire in the City. She said there must be a way to improve upon the way developments are separated by fences and vegetation, etc. She suggested that there should be provisions that encourage pedestrian access between properties.

Ms. Way referred to **Proposed Amendment T12** and said the City should allow people with legitimate reasons to have signs. Right now, the maximum number of signs permitted is one per street frontage. She referred to a Coffee House that is located along Aurora Avenue on the same property as a car repair shop. The owner is not allowed to have a sign on the street because the other business in the same building already has a sign. She said she finds this to be unreasonable.

Commissioner Piro referred to Ms. Way's comments related to fencing and property linkages. He encouraged Ms. Way and the Commission to review the work that has been done by the University of Washington Department of Urban Design Planning. They have studied these types of communities in the four-county region, and have identified 99 locations similar to what Ms. Way referred to. This issue has been a significant planning concern.

Commissioner Gabbert thanked Ms. Way for her comments regarding fencing and linking properties. He said the Cities of Des Moines and SeaTac have put pedestrian linkage provisions into their ordinances to help tie properties together. He suggested that the Commission should review these ordinances. Mr. Stewart noted that Top Foods constructed the first portion of the Interurban Trail next to their property.
The grade change that exists to the south was a significant issue during the development process because of the conflict between activities in the neighborhood to the South and Top Food's absolute desire to have site visibility at grade with 175th Street. He said he appreciates Ms. Way's comments regarding connectivity and agreed that the City should work to address the issue.

Commissioner Doering said she lives near Fred Meyer, and they recently closed the access near their outdoor garden area. Their argument in support of closing this access was that they lost so much merchandise from theft. She questioned what the public process could do with private businesses that are trying to cut down on their theft.

Commissioner MacCully said that as the Commission addresses the issue of connectivity, they also need to be sensitive to the issues of the communities that they are trying to connect. There might be some communities that don't want to be connected to the outside. The reason communities put fences around is that they want to have a separate enclave. They want to control access, etc.

Chair Doennebrink referred to Ms. Way's comments regarding **Proposed Amendment 5.** Mr. Stewart said the important thing to recognize is that one can no longer apply for a variance for relief from the critical area buffer requirements. This has been removed from the code as part of the procedural amendments. The permit that the Gaston and Aegis Projects applied for is no longer available to anybody in the City of Shoreline. The only relief that is available is through the reasonable use permit. The variance provision that is referenced in **Proposed Amendment 5** could not be applied to any critical areas or critical areas buffers.

Chris Egan, 15104 – 11th NE, referred to the reasonable use permit provision. He said that, as written, one could conceive that a property in a critical area could be cut off or sold separately from another set of properties. The buyer would then be considered faultless and apply for a reasonable use permit. He felt it could open up critical areas for potential abuse where they are purposely subdivided and sold off to property owners who can then apply for reasonable use permits. He said the City should insert some language to state that if a property is subdivided in such a manner that a section is wholly in a non-conforming position in a reasonable use area, that section should be forever barred from being developed under a reasonable use permit.

Mr. Stewart explained that SMC 20.30.410 lists the criteria for preliminary plat approval. This section states, "Where environmental resources exist, such as trees, streams, lagoons, wildlife habitat, the proposal shall be designed to fully implement the goals, policies, procedures and standards of the critical areas chapter."

Mr. Stewart said staff would not likely recommend approval of a lot which is fully engulfed in a critical area because that would not be consistent with the policies in the plan. Commissioner MacCully inquired if this same interpretation would be applicable to a short plat process. Mr. Stewart answered affirmatively.

Ms. Lehmberg noted that under the critical areas ordinance, there is a notice to title provision that requires subdivisions, development agreements and binding site plans, which include critical areas or their buffers to establish a separate critical areas tract as a permanent protective measure. This actually subdivides the critical area off, but it makes it permanently protected.

b. Briefing On Process for Appointing Planning Commissioners for Expiring Terms

Chair Doennebrink reminded the Commission that Planning Commissioners are appointed by the City Council for a term of four years. The terms of five of the Commissioners are up on March 31, 2004. He noted that only two consecutive terms are allowed for each Commissioner, and Commissioner Gabbert is just completing his second term.

Ms. Markle said that applications for the Commission positions are due February 17th. The City has not received any applications to date, but she anticipates they will receive numerous applications by the deadline. The City Council will appoint a subcommittee on February 9th to review the Planning Commission applications. They may choose to interview the applicants before making a recommendation to the City Council for appointment on March 22nd. The new Commissioners will be appointed before the Commission's regular meeting of April 1st, at which time the Commission will elect new officers.

Commissioner MacCully inquired why the election of Commission officers is scheduled for the same meeting in which the new Commissioners will be seated. Ms. Markle said this timeline is identified in the Commission by-laws, as well as the Planning Commission rules that were established by the City Council.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Commissioner Doering announced that February 2nd would be the last free day to ride the Sounder Train. She said she has been taking this train every day.

Commissioner Doering complimented the Customer Response Team (CRT). She said her husband called them because two lights on their street were out. CRT contacted Seattle City Light and the lights were replaced right away.

Commissioner Gabbert suggested that if the City is doing work on a residential street, the Public Works Department should notify the people living on the street that they are going to close the street off and that no access would be allowed. They also need to make alternate arrangements for the garbage to be picked up.

Commissioner MacCully said he has been struck lately about the challenges that exist around public facilities with no sidewalks. There is an absence of adequate street lighting, and it is difficult to see people who are not in designated walking areas. He specifically noted the area around the Shoreline Center.

Attachment D

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF REGULAR MEETING

March 4, 2004 — Shoreline Conference Center
7:00 P.M. — Board Room

PRESENT
Chair Doennebrink
Vice Chair Harris
Commissioner Gabbert (arrived at 7:15)
Commissioner Kuboi
Commissioner MacCully
Commissioner McClelland
Commissioner Sands
Commissioner Piro (arrived at 7:05)

STAFF PRESENT
Rachel Markle, Planning Manager
Ian Sievers, City Attorney
Kim Lehmberg, Planner
Lanie Curry, Planning Commission Clerk

ABSENT
Commissioner Doering

1. CALL TO ORDER

The regular meeting was called to order at 7:00 p.m. by Chair Doennebrink.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Doennebrink, Vice Chair Harris, Commissioners McClelland, Kuboi, MacCully, and Sands. Commissioner Piro arrived at 7:05 p.m. and Commissioner Gabbert arrived at 7:15 p.m. Commissioner Doering was excused.

3. APPROVAL OF AGENDA

COMMISSIONER SANDS MOVED TO APPROVE THE AGENDA AS PROPOSED. COMMISSIONER KUBOI SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

Commissioner Piro arrived at the meeting at 7:05 p.m.

4. APPROVAL OF MINUTES

There were no minutes available for approval.

5. GENERAL PUBLIC COMMENT

There was no one in the audience.

6. STAFF REPORTS

a. Type L Public Hearing on Proposed Amendments to the Development Code

Commissioner Doennebrink reviewed the rules and procedures for the public hearing and noted that no one was present in the audience.

Ms. Lehmberg reviewed that at the Commission meeting of January 29th, staff introduced the proposed amendments to the Development Code. Because not all of the Commissioners were present at that meeting, she briefly reviewed each of the amendments. She advised that the purpose of the hearing is for the Commission to accept comments from the public and then formulate recommendations for each of the amendments to the City Council. She reviewed that the amendments include: verifying the right-of-way definition and regulations, clarifying definition and application of site development permits, considering a requirement of public notice for all commercial development additions, clarifying and reformatting the section on non-conformance, considering changes to the zoning variance criteria, adding regulations specific to the "Tent City Homeless Camp," considering changes to the home occupation regulations, allowing pitched roofs in high-density residential zones to go five feet above the base height limit, specifying when high security fencing is allowed, updating disabled parking standards per the Washington State Code, and changing easements to required alleys in North City to rights-of-way. She said there are also several proposed technical amendments to clean up typographical errors or clarify the code, but these amendments would not change the code.

Ms. Lehmberg reminded the Commission that at a previous meeting they asked staff to conduct additional research on some of the items, including jurisdictional research on home occupations and security fences. This information was provided as attachments to the staff report. A graph was also provided in the staff report to show how the increase in height limit would be allowed and regulated. She noted that because staff has been unable to come up with code language for **Proposed Amendment 3** to consider adding public notice for all commercial additions, they changed their recommendation for denial. Staff now recommends this item be referred for further study.

Ms. Lehmberg advised that the proposed code amendments were tentatively scheduled on the City Council agenda for April 12th, but they would likely be postponed to April 26th. She noted one typographical error she found on the staff report. She said that on the bottom of Page 8, reference to Attachments VI-A and VI-B should be changed to VII-A and VII-B.

She also noted that only one letter was received during the public comment period that ended on February 13th, and no additional letters were received after that point, either.

THERE WAS NO ONE IN THE AUDIENCE PRESENT TO ADDRESS THE COMMISSION DURING THE PUBLIC HEARING. THE PUBLIC HEARING WAS CLOSED.

Commissioner Gabbert arrived at the meeting at 7:15 p.m.

COMMISSIONER PIRO MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED TECHNICAL AMENDMENTS T1 THROUGH T14** AS PRESENTED. COMMISSIONER SANDS SECONDED THE MOTION.

Commissioner McClelland referred to **Proposed Amendment T9,** which clarifies from what point a front yard setback would be measured. She noted that the staff report indicates that for some commercial projects, the lot line may be perceived to be different from the property line. She asked who would be perceiving? Ms. Lehmberg said this would normally be the applicant. She said the amendment was proposed by a staff member who works a lot with commercial development. Sometimes it is confusing to applicants, and they don't quite know what the City is referring to when using the term "front setback." The proposed amendment clarifies for both the staff and the applicant that the front yard setback would be taken from the property line.

Commissioner McClelland suggested that **Proposed Amendment T9** should read, "The front yard setback is a required distance between the property line to a building (line parallel to the property line) measured across the full width of the lot." She also suggested that a small illustration be provided to clarify Section 20.50.040 further. Ms. Lehmberg noted that as proposed, the amendment would not delete the word "front" from this section. Commissioner McClelland said it would still be appropriate to add the word "property" between the words "front" and "line." Again, she said an illustration would be helpful in this section. Ms. Lehmberg clarified that the proposed amendment would merely change the word "lot line" to "property line." The Commission agreed that no changes to **Proposed Amendment T9** would be necessary. However, they agreed that an illustration would be appropriate.

Commissioner MacCully referred to **Proposed Amendment T2**, which is a table found in Section 20.30.040. He noted that Item 10, which is a site development permit, should read from 30 days to 60 days so that it is consistent with the basic table. He suggested that a reference should also be added to Section 20.20.046. He also noted that changes should be made to update all references to the right-of-way use section (Sections 12.15.010 through 12.15.080). Ms. Lehmberg clarified that a recent code amendment moved a lot of the right-of-way use regulations out of Title 20 and into a different chapter altogether. References will have to be updated to reflect that change.

Commissioner McClelland referred to **Proposed Amendment T4,** which would clarify at what point a subdivision would be vested. She questioned if it is standard procedure to vest something for five years. Mr. Sievers answered that this would be consistent with the State statute. Commissioner Gabbert inquired if the vestment could be renewed. Mr. Sievers answered that there is some process for extension, but it is complicated.

He explained that the vestment is filed on the date the application is completed. However, the divesting statute actually runs from the filing of the final plat. The total vesting period would probably extend a lot more than five years.

THE COMMISSION APPROVED THE MOTION UNANIMOUSLY.

Mr. Sievers referred to **Proposed Amendment 1** and explained that there are a number of right-of-way definitions proposed throughout the Development Code. The proposed amendment would identify that the right-of-way permit ordinance would be transferred into a different chapter. He explained that this definition caused some ambiguity, particularly with zoning and uses allowed in the Seattle City Light right-of-way. He said the principal point of the proposed definition would be pull out "pipe lines," "electrical lines" and "railroad lines" as rights-of-way. He advised that a separate definition was provided for railroad rights-of-way, but they would like to consider the others as easements for the purposes of land use regulations.

Commissioner MacCully inquired if consideration was given to including bus ways or bus pullouts within the right-of-way definition. Mr. Sievers answered that the right-of-way definition related to street uses was intended to include anything on the street, such as on-street parking, pull outs, etc. This would include transit.

Commissioner McClelland noted that the spelling for the word "utilities" should be corrected.

COMMISSIONER PIRO MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 1** AS PRESENTED. VICE CHAIR HARRIS SECONDED THE MOTION.

Commissioner Sands inquired how often the term right-of-way is actually used in the code. Mr. Sievers said it is used all throughout the code. It is important to get a consistent definition that makes sense for all applications.

THE MOTION CARRIED UNANIMOUSLY.

Ms. Lehmberg explained that **Proposed Amendment 2** would clarify the terminology to make it clear that site development permits are not limited to subdivisions. She explained that the term is used for other projects, as well, such as Top Foods and cottage housing projects, where the actual site work was not tied to one single building permit. The site work was done first with a site development permit, and the applicant came in later with a building permit application.

Commissioner McClelland inquired if there would be a conflict with using the term "site development" as opposed to "site improvement." She said the word "development" suggests the development of something, when what they are really talking about is grading, clearing, planting, etc. Mr. Sievers said the term "site development" is commonly used in the industry to refer to clearing and preparing a site.

Commissioner MacCully noted that when the Commission recommended approval of all of the proposed technical amendments, **Proposed Amendment T2** was included. This added "Planned Action Approval" to the table of Type A Actions.

COMMISSIONER PIRO MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 2** AS PRESENTED. COMMISSIONER GABBERT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

Chair Doennebrink reminded the Commission that staff recommended that **Proposed Amendment 3** be deferred for further study.

COMMISSIONER MACCULLY MOVED THAT THE COMMISSION RECOMMEND THAT **PROPOSED AMENDMENT 3** BE DEFERRED FOR FURTHER STUDY. COMMISSIONER PIRO SECONDED THE MOTION.

Commissioner Gabbert said he would recommend the Commission deny **Proposed Amendment 3,** which would add public notice for all commercial projects with changes to the building footprint. He noted that if an applicant were proposing to change the building footprint, a SEPA review would be required. Ms. Lehmberg said that a SEPA review would only be required for projects that add 4,000 square feet or more. The proposed amendment would require notification for any changes to the building footprint regardless of the amount.

Vice Chair Harris said he would also recommend the Commission deny **Proposed Amendment 3**. He expressed his concern that if an applicant were required to send out a public notice for a use that is a permitted use, the public could have the expectation that they would be allowed to have input in the process. However, the public would not have the opportunity to participate in the review of a Type A Action. If a notice is going to be required, we need to change the classification of the action so the public has an opportunity for input.

COMMISSIONER PIRO AGREED WITH VICE CHAIR HARRIS, AND HE WITHDREW HIS SECOND TO THE MOTION.

Commissioner McClelland inquired if a different type of process that could be used to let the public know what is happening when an application has been submitted that would increase a building footprint. She suggested, for instance, that there be triggers such as proximity to a residential neighborhood or a change in circumstances that would impact the neighborhood. In these situations, the applicant could be required to notify the public of these changes. The Commission should anticipate that any change that comes forward for commercial property that abuts residential property could result in citizen concerns. She said she would be willing to discuss some other method for helping the public learn about changes that would impact them.

Commissioner Gabbert said that, normally, when a commercial site backs up against residential, the applicant would be required to provide some sort of buffer. Ms. Lehmberg said this requirement already exists in the City's code. Commissioner Gabbert noted that there are situations of this type in the City and perhaps further study on this issue should be done.

Commissioner Sands said the expectation should be that no improvements would be allowed to encroach into the buffer areas. When people purchase residential property that is located next to a commercial zone, the only expectation they should have is that whatever buffer was there when they purchased their home should continue to exist. He suggested that it is inappropriate to require notification as per **Proposed Amendment 3.** He agreed with Vice Chair Harris that if notification were required, it would imply that the public would have some ability to stop the application from being approved. If the City were to require this type of notification, it should be clear that it is being done out of courtesy and that the citizens do not really have the ability to stop the application. This could make the situation even worse.

Commissioner Gabbert asked what the buffer requirement is between single-family residential and commercial properties. Ms. Lehmberg answered that the buffer between low-density single-family residential and commercial developments is 20 feet. Commissioner Gabbert said he would support denial of **Proposed Amendment 3**.

COMMISSIONER GABBERT MOVED THAT THE COMMISSION DENY **PROPOSED AMENDMENT 3**. VICE CHAIR HARRIS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

The Commission requested clarification as to why **Proposed Amendment 4** was not being considered as a technical amendment. Commissioner Piro referred to the minutes from the January 29th meeting (Page 53 of the Staff Report), in which Mr. Stewart offered an explanation as to why **Proposed Amendment 4** is not being handled as a technical amendment.

COMMISSIONER MACCULLY MOVED THAT THE COMMISSION APPROVE **PROPOSED AMENDMENT 4** AS PRESENTED. COMMISSIONER GABBERT SECONDED THE MOTION.

Commissioner McClelland expressed her concern about the way **Proposed Amendment 4** was written because it appears that non-conformance could be used by applicants to get around other code requirements.

Commissioner MacCully clarified that in situations where structures are damaged significantly, if an applicant were to apply for a permit within 12-months, they could put the same structure back on the property regardless of setbacks, intrusion into wetlands, etc. Mr. Sievers said that is correct. He noted that even the critical areas ordinance has its own exemptions for existing structures that are replaced to allow them to be reconstructed in their exact location.

Commissioner McClelland referred to Section 20.30.080.D.4, which is confusing to her. This section would allow a nonconforming use to be created or expanded. Mr. Sievers referred to the gambling use, which is a situation the Commission considered at their last meeting. He explained that this section states that even though a nonconforming use is allowed to expand, the structure would still be required to conform with the required standards.

Commissioner McClelland inquired when a property owner would be able to expand a nonconforming use without a permit. Ms. Lehmberg explained that if no conditional use permit or special use permit were required by the code, the applicant would have to go through the conditional use permit process as opposed to the special use permit process. Commissioner McClelland suggested that this language be changed to read, ". . . approval of a conditional use permit or a special use permit, whichever is required under the code, or if neither is required, through a conditional use permit." The Commission agreed that Commissioner McClelland's proposed language would be appropriate.

Commissioner Gabbert said he recently did a project in Seattle that placed an institutional type structure in a multi-family zone, where the maximum length for a building was 150 feet. Because the site was triangular without much depth, they were limited in what they could do. The Seattle code allowed an administrative conditional use to increase the length of the building. The Planning Director was able to place provisions on the permit that allowed them to increase the nonconformance as long as they were able to mitigate the impact through building modulation and landscaping. He concluded that there are times when this is appropriate, and times when it is not. So requiring a conditional use or special use permit would be good.

Commissioner MacCully referred to Section 20.30.280.E.c and asked that Mr. Sievers provide further clarification. Mr. Sievers said that often a nonconforming lot is undersized. This lot would be considered nonconforming and be entitled to all development rights and permits unless the lot could be combined with contiguous undeveloped lots to create a lot of required size. If there were common ownership of a contiguous lot, the property owner would not receive an individual building permit for a lot that could not meet the size requirements because they could combine and get closer to or meet the required lot size.

THE MOTION TO APPROVE **PROPOSED AMENDMENT 4** WAS APPROVED UNANIMOUSLY, INCLUDING THE SPELLING, NUMBERING AND WORDING CHANGES AS DISCUSSED.

Ms. Lehmberg said **Proposed Amendment 5** was presented by both the staff and the City Attorney. She explained that some of the criteria for approval are actually more of a definition of what a variance is. They are not really true approval criteria. Therefore, the amendment would cut Criteria 8 and Criteria 9 from the criteria section and add them to the intent section as a description of a variance. Ms. Lehmberg said the proposed amendment would also clarify that the decision-making authority has the ability to attach conditions to the variance as necessary to meet the criteria and serve the public interest. The proposed amendment clarifies what sorts of conditions might cause a need for a variance.

Ms. Lehmberg further explained that **Proposed Amendment 5** would add "or practical difficulties" to the second criteria because the word "hardship" is very subjective and difficult to prove. She explained that "practical difficulties" is a more specific term that relates to the inability to construct something per code due to an unusual circumstance or physical characteristic of the lot. Mr. Sievers said he supports this change, and he is recommending that C.11 be deleted for the same reason. He reminded the Commission of their previous discussion that the purpose of the critical areas reasonable use permit is to preserve the constitutionality of property rights. He recalled that the Commission discussed whether this same concept should apply to zoning variances and not just to critical areas.

Mr. Sievers recalled that the judge in the Aegis case indicated that the following three variance criteria are redundant: is the variance necessary, is it an unnecessary hardship, and is it the minimum necessary. They all say the same thing. They want the absolute minimum, after all of the design criteria has been considered, to allow a reasonable use of the property. He said this section ends up being as strict as the reasonable use criteria, which is really not necessary. If the variance is not harmful to the development in the surrounding area, it should be allowed to go forward.

Mr. Sievers said the issue of minimum necessary criteria came up on Monday when he was in the Court of Appeals arguing the Gaston Case. The Crawford's attorney stated that there was not enough evidence in the record to show that the applicant had examined an infinite number of design alternatives to get the absolute smallest house that would encroach on the critical area buffers. Mr. Sievers said this is a very time-consuming process, and it is easy to appeal. There will always be someone to second guess an applicant's final design and whether it is the absolute minimum necessary. He concluded that softening three of the criteria and removing one would result in fewer legal challenges. It would also allow more flexibility for the staff and anyone on appeal to determine what would be reasonable given the surroundings.

Mr. Sievers said he also proposed changes to Section 20.30.310.C.3, which is the deliberate actions criteria. This criteria is exactly the same as the self-created hardship criteria found in the critical areas/reasonable use ordinance. The finality doctrine creates a property right that must be protected from being taken away as a final decision by a jurisdiction. In addition, nonconforming uses have protected rights and privileges under the nonconforming use section.

Commissioner McClelland asked that the words "on the part" be added after the word "actions" in Section 20.30.310.C.3. She asked for clarification as to whether the two items listed in this section are intended to be exceptions. Mr. Sievers answered that they are. He reminded the Commission of their recommendation to not include language related to self-created hardship in the critical areas reasonable use permit criteria. Almost everything is subject to some kind of permit approval. If a project were done without permit approval, the property owner would not have any rights, anyway. However, as a compromise with the Thornton Creek Legal Defense Fund, the City Council put this criteria back in, with the exception to just cover the law as to when the City has to recognize and protect property rights in order to preserve the constitutionality of the ordinance.

Mr. Sievers said that he has also proposed that Item 3 in Section 20.30.310.C be removed as a result of an issue that arose during the Aegis case. He said some of this language was moved down to Item 6. He explained that when the Aegis permit application was reviewed, they did a study of the surrounding area to show development patterns in the neighborhood, especially in the critical areas. However, the Superior Court Judge indicated that developments that are nonconforming uses could not be counted, only properties that were developed under the same code as the applicant would be able to obtain a variance. The City argued before the Hearing Examiner that this was unreasonable, and he agreed. However, he indicated that the issue was outside of his jurisdiction because he has to follow the direction provided by the Superior Court. He recommended that the City Attorney ask the judge to reconsider. The variance was dropped so the City did not get a chance to appeal.

COMMISSIONER GABBERT MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 5** AS PRESENTED. COMMISSIONER PIRO SECONDED THE MOTION. THE MOTION WAS APPROVED UNANIMOUSLY.

COMMISSIONER MACCULLY MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 6** AS PRESENTED. COMMISSIONER GABBERT SECONDED THE MOTION.

Commissioner McClelland referred to Section 20.40.060.D.4. She requested clarification of the term "first merged." What would happen if the right-of-way had a different use on each side of it? Mr. Sievers said it would be the first property that it is merged with. After it leaves the status of right-of-way, it becomes private property. The Commission agreed to eliminate the word "first."

THE MOTION TO APPROVE **PROPOSED AMENDMENT 6** CARRIED UNANIMOUSLY, INCLUDING THE WORD CHANGE AS RECOMMENDED BY COMMISSIONER MCCLELLAND.

COMMISSIONER PIRO MOVED THAT THE COMMISSION RECOMMEND DENIAL OF **PROPOSED AMENDMENT 7**. COMMISSIONER MACCULLY SECONDED THE MOTION.

Commissioner Piro said he believes the City of Shoreline took a very noble and pioneering step to accommodate the "Tent City" community. He said he does not feel any of the information that was provided by the citizen who proposed the amendment was particularly compelling in terms of issues that were involved with the experience. The presentation from staff, which also included reports on police calls, etc, was positive.

Commissioner Gabbert clarified that by denying the proposed amendment, they would be accepting the staff's recommendation.

Commissioner MacCully clarified that denying the proposed amendment would not prohibit "Tent City" in the future. It would continue the process that was used where the Planning Director has the authority to grant the temporary use permit.

Commissioner Kuboi said his sense is that the citizen who proposed the amendment was concerned about public notification. Ms. Lehmberg said that last year, the organizers of "Tent City" chose to notify people living within a two-block radius, but this was not required by the City.

THE MOTION TO DENY **PROPOSED AMENDMENT 7** WAS APPROVED UNANIMOUSLY.

Ms. Lehmberg recalled that at the last meeting, the Commission asked staff to research and provide more information related to **Proposed Amendment 8.** She said almost all of the jurisdictions she contacted indicated that their regulations were almost identical to those of the City of Shoreline. They all grew out of the King County regulations, and no one has done much to change them significantly. Limiting the number of employees to either residents or one other employee is common throughout all of the jurisdictions she contacted.

COMMISSIONER GABBERT MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 8** AS PRESENTED. COMMISSIONER PIRO SECONDED THE MOTION.

Commissioner McClelland said she does not like the implication that home occupations are allowed in the City in order to reduce trip generation and provide another economic development tool. She did not feel it was necessary to provide a "feel good" reason for allowing home occupations. The Commission agreed that the first sentence of the first paragraph in Section 20.40.400 should end after the word "activities."

Commissioner McClelland requested clarification of the second paragraph in Section 20.40.400. Because there is a definition for the term "accessory uses," the Commission agreed that the term "accessory activities" should be changed to "Accessory Use(s)."

Commissioner Gabbert clarified that if he had a house with an accessory use (mother-in-law apartment) he could operate a business from the main house, and his mother-in-law could operate a business in the accessory structure, as well. Ms. Lehmberg agreed.

Commissioner Kuboi inquired if the term "heavy equipment" is defined in the code. Ms Lehmberg said there is no definition for heavy equipment. Commissioner Kuboi inquired if a person would be allowed to have a business that included a tractor-trailer or a large moving truck, etc. Ms. Lehmberg noted that Item H.2 would limit the size of the vehicle to not exceed a weight capacity of one ton.

Commissioner Sands inquired if a doctor would be able to have an office in his home and employ both a secretary and a nurse. Ms. Lehmberg pointed out that only one non-resident employee would be allowed. Commissioners Sand questioned the logic of making a distinction as to whether the employees are residents of the home or not. He said some of the requirements in this section appear arbitrary and could be difficult to enforce. Commissioner Piro agreed. He recalled that this was also a concern of the Commission in January when they asked the staff to research the issue further. He said he was amazed to find that having one additional employee seems to be the maximum allowed by most jurisdictions in the region.

Commissioner MacCully pointed out that Section 20.40.400.H only speaks to parking a heavy vehicle used in a home-based occupation. It does not speak to parking a heavy vehicle that is used in an occupation that is not based at home. He inquired if they have any way of regulating the parking of heavy vehicles that are not associated with home-based occupations. Ms. Lehmberg said that if the City has regulations for this, they would be found elsewhere in the code. They have limitations for recreational vehicles and for the number of vehicles allowed to park. Mr. Sievers said there are some cases in which people are storing large equipment at their house. This use would be considered storage of commercial or heavy equipment that is not used for community. The City could require that this equipment be stored in a zone that would allow for this.

Commissioner MacCully said he runs a small business out of his home. As a caterer, he has more than one employee who comes in and helps him work. If his neighbor decides to complain, he would be in violation of the code. Ms. Lehmberg said this business would not be legal according to the code. Commissioner McClelland explained that the objective of the home occupation regulations is to avoid the disruption of the quality of residential neighborhoods. If parking were limited, none of the neighbors would be detrimentally impacted in any way. Having two or three people come in and help prepare a meal for his business would really not have any more impact on the neighborhood than someone who invites a few friends over for lunch.

Commissioner Gabbert inquired if it would be possible to allow the Planning Director discretion to allow a greater number of employees. Commissioner Sands expressed his concern that the Commission is considering approval of regulations that would be violated by citizens who are simply trying to make a living. On the other hand, he said he does not feel comfortable turning the neighborhoods into business communities. He said it is important to recognize that the fastest growing population is home-based businesses. He said he anticipates the Commission will need to spend more time on this in the future.

Vice Chair Harris agreed that the home occupation ordinance is being violated all the time. However, it is important to have an ordinance that enables the City to enforce the regulations if necessary to prevent abuse. As long as people are low key and do not abuse the opportunity, hopefully, the code will allow them to function in a reasonable manner.

Commissioner MacCully suggested that Item F.2 be changed to read, "Telephone or electronic sales with off-site delivery;"

THE MOTION TO APPROVE **PROPOSED AMENDMENT 8** CARRIED UNANIMOUSLY, INCLUDING THE ADJUSTMENTS MADE DURING THE COMMISSION'S DISCUSSION.

COMMISSIONER MACCULLY MOVED THAT THE COMMISSION APPROVE **PROPOSED AMENDMENTS 8A AND 8B** AS PRESENTED. COMMISSIONER GABBERT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

Ms. Lehmberg explained that **Proposed Amendment 9** was presented by Kevin Wang, a member of the public who is an architect. The proposed amendment would allow a pitched roof in high-density zones to extend up to 40 feet, provided that all parts of the roof above 35 feet are pitched at least 3/12.

Commissioner Gabbert said he would recommend approval of **Proposed Amendment 9**, but they need to change the pitch from 3/12 to 4/12. He explained that composition shingles and shakes cannot be used on a roof that has a pitch of less than 4/12. The Commission agreed that this change would be appropriate. Commissioner Sands noted that by increasing the pitch of the roof, the walls would have to come down a little bit. The actual height of the building without the roof would be lower. Commissioner Gabbert said this would still allow for dormers to create more space.

COMMISSIONER GABBERT MOVED THAT THE COMMISSION APPROVE **PROPOSED AMENDMENT 9** AS MODIFIED. COMMISSIONER MCCLELLAND SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

COMMISSIONER PIRO MOVED THAT THE COMMISSION DENY **PROPOSED AMENDMENT 10** AS MODIFIED. COMMISSIONER GABBERT SECONDED THE MOTION.

Commissioner Piro recalled that the Commission previously discussed this proposal. It is unfortunate when there is vandalism such as occurred at the police facility. However, he felt there are other ways to provide security treatment besides using wire fences. The staff research that was done to see how other jurisdictions handle this issue indicates that that the City of Shoreline would be unique if they were to accept the proposed amendment.

THE MOTION TO DENY **PROPOSED AMENDMENT 10** WAS APPROVED 7-1, WITH COMMISSIONER MACCULLY VOTING AGAINST THE MOTION.

COMMISSIONER GABBERT MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 11** AS PRESENTED. COMMISSIONER KUBOI SECONDED THE MOTION. THE MOTION WAS APPROVED UNANIMOUSLY.

Mr. Sievers explained that **Proposed Amendment 13** would change easements to rights-of-way for public alleys in North City. The purpose is to use uniform terminology for right-of-way that will include all of the common law uses such as utilities, pedestrian and vehicular traffic. It should also include exclusive public possession and control, and a process for vacating. He said **Proposed Amendment 12** would clarify right-of-way regulations and make the terminology consistent with Ordinance 339, which moved most of the right-of-way regulations out of the Development Code to the Shoreline Municipal Code.

Commissioner Gabbert said his understanding is that at North City, the property owners are under negotiations with the City in granting easements for sidewalks. Mr. Sievers said the City is trying to get everyone to expand the right-of-way, so these are rights-of-way dedications. There may have been some easements earlier, but this terminology was changed. Commissioner Gabbert inquired who would be responsible to maintain the sidewalks. Mr. Sievers said maintenance would be the City's responsibility. There is a statute that would allow the City a procedure for requiring the private property owner to do some improvements.

Commissioner McClelland referred to Section 20.70.130, which states that no person shall plant, remove, prune or otherwise change a tree on a right-of-way without an approved permit. She said there is an open ditch running along her street that is considered right-of-way. If her husband did not clean and prune this area, nobody else would. Mr. Sievers said this section only speaks to street trees, not mowing the grass and cleaning up the right-of-way. Commissioner McClelland inquired if the City is responsible for cleaning the ditches and removing the blackberries, etc. Mr. Sievers said the ditches would be cleaned, if necessary, by the City because they are part of the stormwater system. He said public responsibility and privilege of use of undeveloped portions of the rights-of-way is beyond the scope of **Proposed Amendment 12.** However, the City intends to address this issue in the future.

Commissioner Sands said he has a problem with prohibiting a property owner from pruning a tree that is located within the right-of-way. He said the City would not prune these tree unless they have to because they are a safety hazard. Mr. Sievers said a right-of-way use permit would be required, and these permits are granted for hazardous trees. If a tree encroaches into the air space of another property, the property owner would be allowed to trim the tree. Commissioner Sands said he is concerned that a property owner would not be allowed to take care of a dangerous situation without first obtaining a permit from the City. He said there should also be a requirement that the utility companies trim the minimum necessary when pruning trees that are located in the public rights-of-way.

COMMISSIONER MACCULLY MOVED THAT THE COMMISSION APPROVE **PROPOSED AMENDMENT 12** AS PRESENTED. COMMISSIONER GABBERT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

COMMISSIONER SANDS MOVED THAT THE COMMISSION APPROVE **PROPOSED AMENDMENT 13** AS PRESENTED. COMMISSIONER GABBERT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Commissioner McClelland reported that she would be absent both meetings in April.

8. UNFINISHED BUSINESS

There was no unfinished business scheduled on the agenda.

9. NEW BUSINESS

There was no new business scheduled on the agenda.

Attachment E

Virginia Botham
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206-542-7793
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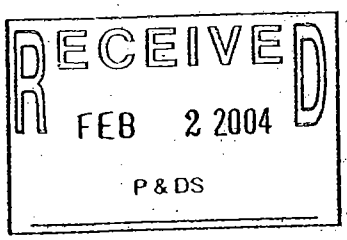
January 29, 2004



Shoreline Planning Commission
City of Shoreline
17544 Midvale Avenue North
Shoreline, WA 98133

Re: Shoreline Planning Commission - Agenda Packet dated 1/29/04 - Proposed SMC Code Changes -- PUBLIC COMMENT FOR 3-4-04 PUBLIC HEARING

These are my written comments, for the record, on proposed Shoreline Municipal Code changes presented to the Planning Commission 1/29/04.

Please note, this is the first time SMC proposed code changes have not included the original applications. Please have the original applications included as part of the public record.

Tent City

Pages 04 and 14, Tent City, were triggered by last spring's tent city located just north of the Shoreline Library. Several problems were identified at the Council of Neighborhoods meeting during a presentation by Tim Stewart and follow-up by a Shoreline police officer who was leaving to accept another job elsewhere. It was suggested then that part of the solution to the identified problems might be via SMC code amendments. Staff sent me suggested code language. The language given me by staff was more complex and restrictive than I had envisioned so I did not include the staff language in my proposal.

The first issue raised by Tim Stewart was that we had no code specifically developed to provide policy and procedures for a tent city. Thus we had no prior notice notification requirements for either public or police. Nor did

we identify how large an area should be notified if our city chose to notify the public in advance of tent city arriving. Thus far notifications have been optional. The second issue was a body count maximum for tent city. I looked at the Tukwila code and it specified a maximum number of residents in each tent city.

The second issue was raised by the Shoreline community police officer present at that meeting. He was unhappy that the police department had received no prior notice (notice before the permit was issued by the Planning Department). He would have liked to have had the opportunity to phone jurisdictions with experience with tent city and asked what they did to make it work, and to help identify problem areas in advance. He would have liked to help participate in laying out the ground rules (policy and procedure). He would have liked an opportunity to do his job.

As a parent of a high school age runner, I wanted public notice so that I could advise my daughter (who often runs alone) in advance, of the location and duration of tent city. During this period, I was also taking daily walks alone and I also modified my route to stay on busier public streets.

At the time of the Council of Neighborhoods presentation, both Tim Stewart and the police officer indicated that some sort of more formal policy/procedure structure needed to be created by Shoreline in preparation of future tent cities. If my suggestions are not appropriate, I am asking the City to write up their own instead of leaving this gaping hole in our SMC code.

Variance

Pages 04 and 12, Changes to zoning variance criteria, was provided by the City Attorney and staff. No explanation is provided why this proposal intends to make the changes that it makes. The line that has removed that I would like to keep follows: "***The variance is the minimum necessary to grant relief to the applicant.***" In most jurisdictions, variances are granted infrequently and with great caution and reluctance. Most jurisdictions aim to write code that is clear and restrictive but that allows rare exceptions under extreme circumstances. The scope of those exceptions is restricted deliberately to as small an exception as will solve the problem requiring an

exception. **If it is too easy to get a variance, and if the variance can be very generous in giving permission to ignore the rules (code), then the focus of the variance becomes a question of how much leniency will be allowed in avoiding the code.** Requiring a variance to be restricted to the 'minimum necessary to grant relief' restricts the argument to 'how small' the exception will be instead of 'how large an exception can be horse-traded for'. If all you do is create more loopholes and exceptions to the code (i. e., reasonable use - critical areas) then you are weakening the code and creating a less predictable code which will encourage lawsuits.

I would like the City Attorney to explain what is wrong with the variance code we now have and ask him to explain in detail what problems this new version solves that the current code does not. The code we have is very similar, but more flexible and lenient, than variance codes in nearby cities. I suggest you go to the Municipal Research and Services Center site and type in 'variance' and see the code for other cities.
http://www.mrsc.org/codes.aspx?r=1

Critical Areas Reasonable Use Permit

Pages 28 and 29 make minor technical changes to our current Critical Areas Reasonable User Permit code. At the City Council meeting 1/26/04 Patty Crawford presented the flawed history of how the new current definition of Critical Areas Reasonable Use Permit was adopted by the Shoreline City Council. She brought to the City's attention copies of the Planning Commission agenda packets with rough drafts before approval by the Planning Commission, at approval by the Planning Commission and a MODIFIED definition given to the City Council for adoption that was presented as having come from the Planning Commission .... but it was not a definition that the Planning Commission saw and approved for forwarding to the City Council. That definition that the Planning Commission did not see or approve is now the basis of a Hearing Examiner appeal of development of a landslide hazard (79% slope) lot. It explicitly ranks highest the property owner's right to develop any lot. I could not locate the exact language of that version of the code. This quasi judicial proceeding does not appear before the Planning Commission. The definition being used by the developer is not the definition presented in this packet. Nor is it the definition

appearing on the Municipal Research and Services Center site. There is a problem with changing the code over and over and over again, continually creating more loopholes and exceptions, and more versions of the code. If you've got code that 'isn't broken' then don't fix it with a re-write, please.

Sincerely,

Virginia Botham

cc: Kim Lehmberg

20.20.044

Attachment F

Right-of-Way	~~A. A strip of land acquired by reservation, dedication, forced dedication, prescription, easement or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses;~~ ~~B. Generally, the right of one to pass over the property of another.~~ Property granted or reserved for, or dedicated to, public use for street purposes and utlities, together with property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways, and parking whether improved or unimproved, including the air rights , sub-surface rights and easements thereto.
Right-of-Way, Railroad	Property granted or reserved for, or dedicated to, railroad use including all facilities accessory to and used directly for railroad operation.

20.20.046 - S - Definitions

Site Development Permit	A permit, issued by the City, to develop or partially develop a site exclusive of any required building or land use permit. A Site Development Permit may include one or more of the following activities: paving, grading, clearing, on-site utility installation, stormwater facilities, walkways, striping, wheelstops or curbing for parking and circulation, landscaping, or restoration.

Table 20.30.040 – Summary of Type A Actions and Target Time Limits for Decision, and Appeal Authority

Action Type	Target Time Limits for Decision	Section
Type A:		
1. Accessory Dwelling Unit	30 days	20.40.120, 20.40.210
2. Lot Line Adjustment including Lot Merger	30 days	20.30.400
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	20.30.450
5. Home Occupation, Bed and Breakfast, Boarding House	120 days	20.40.120, 20.40.250, 20.40.260, 20.40.400
6. Interpretation of Development Code	15 days	20.10.050, 20.10.060, 20.30.020
7. Right-of-Way Use	30 days	20.70.240 – 20.70.330
8. Shoreline Exemption Permit	15 days	Shoreline Master Program
9. Sign Permit	30 days	20.50.530 – 20.50.610
10. Site Development Permit	360 days	20.20.046, 20.30.430
11. Variances from Engineering Standards	30 days	20.30.290
12. Temporary Use Permit	15 days	20.40.100, 20.40.540
13. Clearing and Grading Permit	60 days	20.50.290 – 20.50.370

20.30.280 ~~Determining status~~ Nonconformance.

A. Any use, structure, lot or other site improvement (e.g., landscaping or signage), which was legally established prior to the effective date of ~~this Code~~ a land use regulation that rendered it nonconforming, shall be considered nonconforming if:

1. The use is now prohibited or cannot meet use limitations applicable to the zone in which it is located; or
2. The use or structure does not comply with the development standards or other requirements of this Code.

3B. A change in the required permit review process shall not create a nonconformance.

B~~1~~. Abatement of Illegal Use, Structure or Development. Any use, structure, lot or other site improvement not established in compliance with use, lot size, building, and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal.

C~~2~~. Continuation and Maintenance of Nonconformance. A nonconformance may be continued or physically maintained as provided by this Code.

1. ~~C.~~ Any nonconformance that is brought into conformance for any period of time shall forfeit status as a nonconformance.
2. ~~3.~~ Discontinuation of Nonconforming Use. A nonconforming use~~, when abandoned or discontinued,~~ shall not be resumed, when abandondment or discontinuance extends ~~land or building used for the nonconforming use ceased to be used~~ for 12 consecutive months.
3. ~~5.~~ Repair or Reconstruction of Nonconforming Structure. Any structure nonconforming as to height or setback standards may be repaired or reconstructed; provided, that:
   a. The extent of the previously existing nonconformance is not increased; and
   b. The building permit application for repair or reconstruction is submitted within 12 months of the occurrence of damage or destruction.
4. ~~6.~~ Modifications to Nonconforming Structures. Modifications to a nonconforming structure may be permitted; provided, the modification does not increase the area, height or degree of an existing nonconformity.

D4. Expansion of Nonconforming Use. A nonconforming use may be expanded subject to approval of a conditional use permit or a special use permit, whichever permit is required under the Code, or if no permit is required, then through a conditional use permit; provided, a nonconformance with the Code standards shall not be created or increased.

E~~7~~. Nonconforming Lots. Any permitted use may be established on an undersized lot, which cannot satisfy the lot size or width requirements of this Code; provided, that:

a. All other applicable standards of the Code are met; or variance has been granted;
b. The lot was legally created and satisfied the lot size and width requirements applicable at the time of creation;
c. The lot cannot be combined with contiguous undeveloped lots to create a lot of required size;
d. No unsafe condition is created by permitting development on the nonconforming lot; and
e. The lot was not created as a "special tract" to protect critical area, provide open space, or as a public or private access tract. (Ord. 238 Ch. III § 6, 2000).

20.30.310 Zoning variance (Type B action).

A. Purpose. A zoning variance is a mechanism by which the City may grant relief from the zoning provisions and standards of the Code, where practical difficulty renders compliance with the Code an unnecessary hardship. A variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located, nor does it relieve an applicant from:

a. Any of the procedural or administrative provisions of this title, or
b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
c. Use or building restrictions, or
d. Any provisions of the critical areas development standards

B. The decision-making authority may attach conditions in approving the variance as necessary to carry out the spirit and purpose of this title and in the public interest.

~~B~~C. Decision Criteria. A variance shall be granted by the City, only if the applicant demonstrates all of the following:

1. The variance is necessary because of the unique size, shape, topography, surroundings, trees or location of the subject property;

2. The strict enforcement of the provisions of this title creates an unnecessary hardship or practical difficulties to the property owner;

~~3. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;~~

43. The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property; unless the action 1) was approved as part of a final land use decision by the City or other agency with jurisdiction; or 2) otherwise resulted in a nonconforming use, lot or structure as defined in this title.

~~5~~4. The variance is compatible with the Comprehensive Plan;

~~6~~5. The variance does not create a health or safety hazard;

~~7~~6. The granting of the variance will not be materially detrimental to the public welfare or injurious to:

~~a.~~ The property or improvements in the vicinity, ~~or~~ based on existing development in the vicinity or zone, including nonconforming development.

~~b. The zone in which the subject property is located~~;

~~8. The variance does not relieve an applicant from:~~

~~a. Any of the procedural or administrative provisions of this title, or~~

~~b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or~~

~~c. Use or building restrictions, or~~

~~d. Any provisions of the critical areas development standards~~;

97. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;

~~10. The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; or~~

~~11. The variance is the minimum necessary to grant relief to the applicant. (Ord. 324 § 1, 2003; Ord. 238 Ch. III § 7(c), 2000).~~

8. The variance does not conflict with the purpose of the zone in which the proposal is located.

20.40.060 D 2

20.40.060 Zoning map and zone boundaries.*

D. Classification of Rights-of-Way.

1. Except when such areas are specifically designated on the zoning map as being classified in one of the zones provided in this title, land contained in rights-of-way for streets or alleys, or railroads, shall be considered unclassified.

~~2. Within street or alley rights-of-way, uses shall be limited to street purposes as defined by law.~~

2~~3~~. Within railroad rights-of-way, allowed uses shall be limited to tracks, signals or other operating devices, movement of rolling stock, utility lines and equipment, and facilities accessory to and used directly for the delivery and distribution of services to abutting property.

3~~4~~. Where such right-of-way is vacated, the vacated area shall have the zone classification of the adjoining property with which it is first merged. (Ord. 238 Ch. IV § 1(F), 2000).

20.40.120 Residential type uses

NAICS #	SPECIFIC LAND USE	R4-R6	R8-R12	R18-R48	NB & O	CB	RB & I
TEMPORARY LODGING							
	Tent City	P-i	P-i	P-i	P-i	P-i	P-i

-T-

20.40.535 Tent City

A. Allowed only by temporary use permit.
B. Temporary use permit for tent city uses shall follow the notice requirements for type B permits in SMC 20.30.
C. The target time limit for a decision for a tent city temporary use permit is 90 days.
D. The City Police Department shall review and provide a recommendation on any temporary use permit for tent city uses.
E. The permit decision notice shall follow the requirements of SMC 20.30.150.

-H-

20.40.400 Home Occupation
Intent/Purpose:

The City of Shoreline recognizes the desire and/or need of some citizens to use their residence for business activities in order to reduce trip generation and to provide another economic development tool. The City also recognizes the need to protect the surrounding areas from adverse impacts generated by these business activities.

Residents of a dwelling unit may conduct one or more home occupations as accessory activities, provided:

A. The total area devoted to all home occupation(s) shall not exceed ~~20~~ 25 percent of the floor area of the dwelling unit. Areas with ~~attached~~ garages and storage buildings shall not be considered in these calculations, but may be used ~~to~~ for storage of goods associated with the home occupation.

B. In residential zones, all the activities of the home occupation(s) (including storage of goods associated with the home occupation) shall be conducted indoors, except for those related to growing or storing of plants used by the home occupation(s);

C. No more than one nonresident working on-site shall be employed by the home occupation(s);

D. The following activities shall be prohibited in residential zones:

1. Automobile, truck and heavy equipment repair;

2. Auto body work or painting;

3. Parking and storage of heavy equipment.~~; and~~

4. ~~4. Storage of building materials for use on other properties~~

E. In addition to required parking for the dwelling unit, on-site parking shall be provided as follows:

1. One stall for a nonresident employed by the home occupation(s); and

2. One stall for patrons when services are rendered on-site;

F. Sales shall be limited to:

1. Mail order sales; and

2. Telephone sales with off-site delivery;

G. Services to patrons shall be arranged by appointment or provided off-site;

H. The home occupation(s) may use or store a vehicle for pickup of materials used by the home occupation(s) or the distribution of products from the site, provided:

No more than one such vehicle shall be allowed;

1. Such vehicle shall not park within any required setback areas of the lot or on adjacent streets; and

2. Such vehicle shall not exceed a weight capacity of one ton;

I. The home occupation(s) shall not use electrical or mechanical equipment that results in:

1. A change to the fire rating of the structure(s) used for the home occupation(s), unless appropriate changes are made under a valid building permit;

2. Visual or audible interference in radio or television receivers, or electronic equipment located off-premises; or

3. Fluctuations in line voltage off-premises.

4. Emissions ~~of~~ such as dust, odor, bright lighting or noises greater than what is typically found in a neighborhood setting.

J. Home occupations that are entirely internal to the home; have no employees in addition to the resident(s); have no deliveries associated with the occupation; have no on-site clients; create no noise or odors; do not have a sign, and meet all other requirements as outlined in SMC 20.40.400 may not require a home occupation permit. (Ord. 299 1, 2002; Ord. 238 Ch. IV 3(B), 2000).

Note: Daycares, Community Residential Facilities such as Group Homes, Bed and Breakfasts and Boarding Houses are regulated elsewhere in the Code.

20.40.250 Bed and breakfasts.

Bed and breakfasts are permitted only as an accessory to the permanent residence of the operator, provided:

A. Serving meals to paying guests shall be limited to breakfast; and
B. The number of persons accommodated per night shall not exceed five, except that a structure which satisfies the standards of the Uniform Building Code as adopted by the City of Shoreline for R occupancies may accommodate up to 10 persons per night.
C. One parking space per guest room, plus two per facility.
D. Signs for bed and breakfast uses in the R zones are limited to one identification sign use, not exceeding four square feet and not exceeding 42 inches in height.
E. Bed and breakfasts require a ~~home occupation~~ Bed & Breakfast permit. (Ord. 238 Ch. IV § 3(B), 2000).

20.40.260 Boarding houses.

A. Rooming and boarding houses and similar facilities, such as fraternity houses, sorority houses, off-campus dormitories, and residential clubs, shall provide temporary or longer-term accommodations which, for the period of occupancy, may serve as a principal residence.
B. These establishments may provide complementary services, such as housekeeping, meals, and laundry services.
C. In an R-4 or R-6 zone a maximum of two rooms may be rented to a maximum of two persons other than those occupying a single-family dwelling.
D. Must be in compliance with health and building code requirements.
E. The owner of the rooms to be rented shall provide off-street parking for such rooms at the rate of one parking stall for each room.
F. Boarding houses require a ~~home occupation~~ Boarding House permit. (Ord. 238 Ch. IV § 3(B), 2000).

20.50.050 Building height – Standards.

The base height for all structures shall be measured from the average existing grade to the highest point of the roof. The average existing grade shall be determined by first delineating the smallest rectangle which can enclose the building and then averaging the elevations taken at the midpoint of each side of the rectangle; provided, that the measured elevations do not include berms.

Figure 20.50.050(A): Building height measurement.

Exception 20.50.050(1): The ridge of a pitched roof on the principal house in R-4 and R-6 zones may extend up to 35 feet; provided, that all parts of the roof above 30 feet must be pitched at a rate of not less than three to 12.

Exception 20.50.050(2): The ridge of a pitched roof on a multi-family structure in R-18, R-24 and R-48 zones may extend up to 40 feet; provided, that all parts of the roof above 35 feet must be pitched at a rate of not less than three to 12.

20.50.110 Fences and walls – Standards.

A. Fences and walls shall be maximum three feet, six inches high between the minimum front yard setback line and the front property line for the street frontage that contains the main entrance to the building. Chain link fences are not permitted in the minimum front yard setback for the street frontage that contains the main entrance to the building.

B. Fences located along private roads serving lots, which are not fronting on a street, shall avoid creating a "tunnel" effect by varying the alignment or setback of the fence, softening the appearance of fence lines with planting, or similar techniques. In no instance shall a fence or wall be opaque for more than 50 feet of every 75 feet of length, or portion thereof.

Figure 20.50.110(B): Fences along private roads.

C. The maximum height of fences located along a property line shall be six feet, subject to the site clearance provisions of SMC 20.70.170, 20.70.180, and 20.70.190(C). (Note: The recommended maximum height of fences and walls located between the front yard building setback line and the front property line is three feet, six inches high.

D. All electric, razor wire, and barbed wire fences are prohibited.

D.1. Exception to 20.50.210 D: Police, essential public facilities or essential utility facilities, as determined by the Director.

E. The height of a fence located on a retaining wall shall be measured from the bottom of that wall to the top of the fence. The portion of a fence, that is higher than six feet above the bottom of the retaining wall, shall be an openwork type of fence, such as lattice. The overall height of the fence located on the wall shall be maximum six feet (cumulative opaque and openwork portions of the fence).

20.50.210 Fences and walls – Standards.

A. Fences and walls shall be maximum three feet, six inches high between the minimum front yard setback line and the front property line for the street frontage that contains the main entrance to the building. Chain link fences are not permitted in the minimum front yard setback for the street frontage that contains the main entrance to the building.

B. Fences located along private roads serving lots, which are not fronting on a street, shall avoid creating a "tunnel" effect by varying the alignment or setback of the fence, softening the appearance of fence lines with planting, or similar techniques. In no instance shall a fence or wall be opaque for more than 50 feet of every 75 feet of length, or portion thereof.

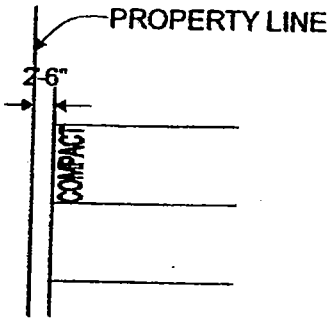
Figure 20.50.210(B): Fences along private roads.

C. The maximum height of fences located along a side and/or rear yard property line shall be six feet.

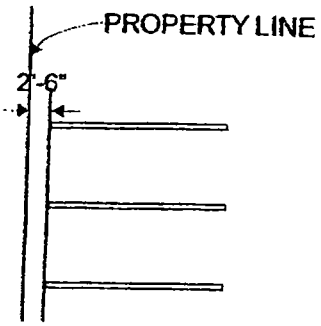
D. All electric, razor wire, and barbed wire fences are prohibited.

D.1. Exception to 20.50.110 D: Police, essential public facilities or essential utility facilities, as determined by the Director.

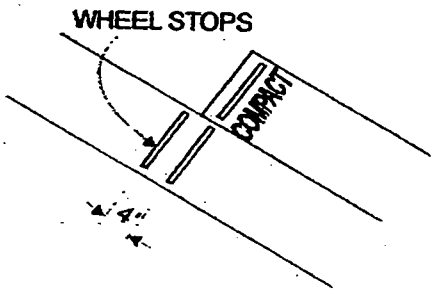
E. The height of a fence located on a retaining wall shall be measured from the bottom of that wall to the top of the fence. The portion of a fence, that is higher than six feet above the bottom of the retaining wall, shall be an openwork type of fence, such as lattice. The overall height of the fence located on the wall shall be maximum six feet (cumulative opaque and openwork portions of the fence). (Ord. 299 § 1, 2002; Ord. 238 Ch. V § 3(C-4), 2000).

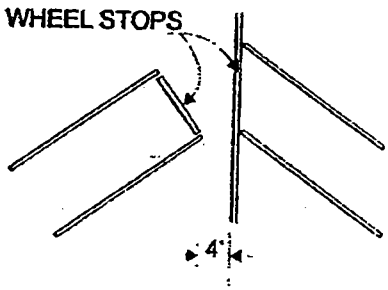


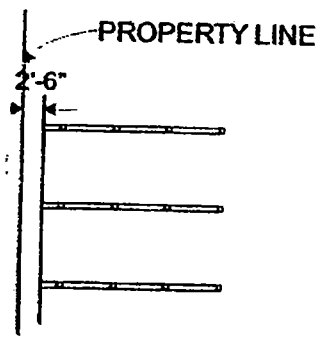
COMPACT MARKING



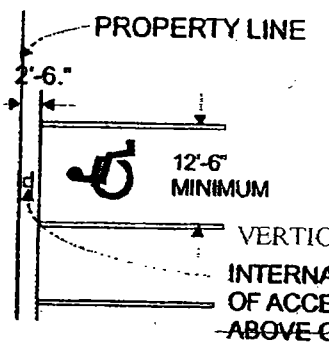
PAINTED HORSESHOE MARKING







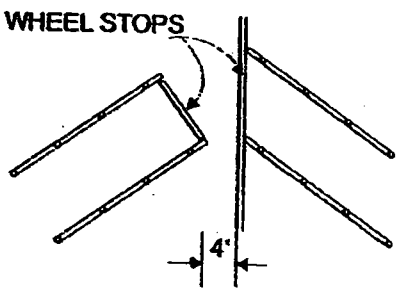
METAL OR PLASTIC TRAFFIC MARKING



~~HANDICAP MARKING~~

DISABLED PERSONS PARKING

IN WHITE ON A BLUE BACKGROUND, 3' - 7' ABOVE GRADE WITH THE NOTICE "STATE DISABLED PARKING PERMIT REQUIRED." (SEE R.C.W 70.92.120)



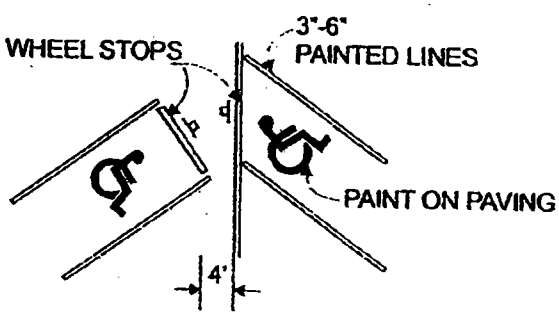


Figure 20.50.410(E): Pavement marking and wheel stop standards.

20.70

20.70.040 Purpose.

The purpose of this subchapter is to provide guidance regarding the dedication of facilities to the City. Dedication shall occur at the time of recording for subdivisions, and prior to permit issuance for construction projects. Dedications may be required in the following situations:

A. To accommodate motorized and nonmotorized transportation, landscaping, utility, street lighting, traffic control devices, and buffer requirements;
B. The City will accept maintenance responsibility of the facility to be dedicated;
C. The development project abuts an existing substandard public street and the additional right-of-way is necessary to incorporate future frontage improvements for public safety;
D. Right-of-way is needed for the extension of existing public street improvements necessary for public safety;
E. ~~Right-of-way is to be extended to water bodies and/or the center of watercourses as land is developed to provide public access. (Ord. 238 Ch. VII § 2(A), 2000).~~

20.70.050(A)

20.70.050 Dedication of right-of-way.

A. ~~When a planned street right-of-way, or as is necessary to complete a public City street system, lies within a proposed development, it shall be required to be dedicated to the City as a condition of approval.~~ The City may require the dedication of right-of-way in order to incorporate improvements that are reasonably necessary to mitigate the direct impacts of development.

20.70.060 B 3

3. The Director has determined that ~~the facility is in the dedicated public road right-of-way or that~~ maintenance of the facility will contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:

20.70.130

A. No person shall plant, remove, prune, or otherwise change a tree on a ~~street,~~ right-of-way, ~~parking, or planting strip or other public place~~ without an approved right-of-way permit, or if appropriate, site development permit. The general maintenance of street trees by City employees, their contractors, or assigns in accordance with an approved maintenance schedule is exempt from this requirement.
B. When it is necessary to remove a street tree in connection with right-of-way improvements, the tree(s) shall be replanted or replaced. Replacements shall meet the standards specified in the S.M.C. 20.50.480 and the and the Engineering Development Guide. The cost of the removal and replacement of street trees shall be the responsibility of the permittee.

C. All new development applications are required to plant street trees consistent with the requirements of the landscaping subchapter (S.M.C. 20.50, Subchapter 7). Developments with street frontage identified as green streets in the Comprehensive Plan shall be subject to additional/different provisions as specified in the Engineering Development Guide. (Ord. 238 Ch. VII § 3(B-2), 2000).

20.70.230 Location

A. Sidewalks fronting public streets ~~right-of-way~~ shall be located within public right-of-way. ~~The preferred location for other sidewalks, walkways and trails is within existing public rights-of-way. If it is not feasible to locate these facilities within the right-of-way, then easements recorded with the County across private property that guarantee public access may be utilized.~~ Other sidewalks or trails should use existing undeveloped right-of- way, or, if located outside the City's planned street system, may be located across private property on pedestrian right-of-way restricted to that purpose. The width may vary according to site-specific design issues such as topography, buffering, and landscaping

~~B. Easements and tracts may be used to accommodate trails. Easements and tracts shall be wide enough to include the trail width and a minimum clear distance of two feet on each side of the trail. The width may vary according to site-specific design issues such as topography, buffering, and landscaping.~~

~~C. The location of nonmotorized facilities shall consider the following factors:~~

~~1. Compliance with the Comprehensive Plan and the Parks, Recreation and Open Space Plan;~~

~~2. Need to improve access to public facilities;~~

~~3. Need to connect a development with trails;~~

~~4. Need for access between developments;~~

~~5. Compliance with the standards of the Shoreline Development Code and the Engineering Development Guide;~~

~~6. Need for sidewalks on one or both sides of a street. (Ord. 238 Ch. VII § 4(C), 2000).~~

20.90.025 F 4

Provide public alley ~~easements~~ rights-of-way through designated areas identified in figure 20.90.080

Note: the "0" before the "80" should be added as a technical amendment for clarification regardless of the outcome of the other proposed amendment.

20.20.014

Critical Areas
An area with one or more of the following environmental characteristics:
A. Steep slopes;
B. Flood plain;
C. Soils classified as having high water tables;
D. Soils classified as highly erodible, subject to erosion, or highly acidic;
E. ~~Fault areas~~ Seismic hazard areas;
F. Stream corridors;
G. Estuaries;
H. Aquifer recharge areas;
I. Wetlands and wetland transition areas; and
J. Habitats of endangered species.

20.30.040

Table 20.30.040 - Summary of Type A Actions and Target Time Limits for Decision, and Appeal Authority

Action Type	Target Time Limits for Decision	Section
Type A:		
1. Accessory Dwelling Unit	30 days	20.40.120, 20.40.210
2. Lot Line Adjustment including Lot Merger	30 days	20.30.400
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	20.30.450
5. Home Occupation, Bed and Breakfast, Boarding House	120 days	20.40.120, 20.40.250, 20.40.260, 20.40.400
6. Interpretation of Development Code	15 days	20.10.050, 20.10.060, 20.30.020
7. Right-of-Way Use	30 days	12.15.010-12.15.180
8. Shoreline Exemption Permit	15 days	Shoreline Master Program
9. Sign Permit	30 days	20.50.530 – 20.50.610
10. Site Development Permit	60 days	20.20.046, 20.30.430
11. Variances from Engineering Standards	30 days	20.30.290
12. Temporary Use Permit	15 days	20.40.100, 20.40.540
13. Clearing and Grading Permit	60 days	20.50.290 – 20.50.370
14. Planned Action Determination	28 days	20.90.025

20.30.336 Critical areas reasonable use permit (Type C action).

A. Purpose. The purpose of the critical areas reasonable use permit is to allow development and use of private property when the strict application of the critical area standards would otherwise deny all reasonable use of a property.

B. Decision Criteria. A reasonable use permit shall be granted by the City only if the applicant demonstrates that:

1. The application of the development standards would deny all reasonable use of the property; and
2. There is no other reasonable use of the property with less impact on the critical area; and
3. Any alterations to the critical area would be the minimum necessary to allow for reasonable use of the property; and
4. The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity, is consistent with the general purposes of this title and the public interest, and all reasonable mitigation measures have been implemented or assured; and
5. The inability to derive reasonable economic use is not the result of the applicant's action unless the action 1) was approved as part of a final land use decision by the City or other agency with jurisdiction; or 2) otherwise resulted in a nonconforming use, lot or structure as defined in this title.

C. Development Standards. To allow for reasonable use of property and to minimize impacts on critical areas the decision making authority may reduce setbacks by up to 50 percent, parking requirements by up to 50 percent, and may eliminate landscaping requirements. Such reductions shall be the minimum amount necessary to allow for reasonable use of the property, considering the character and scale of neighboring development.

D. Priority. When multiple critical areas and critical area buffers may be affected by the application, the decision making authority should consider exceptions to critical areas standards that occur in the following order of priority with number 5 having the highest protection:

1. Geologic hazard areas ~~and~~ buffers;
2. Wetland buffers;
3. Stream buffers;
4. Fish and wildlife habitat conservation area buffers; and
5. Geological hazard, wetland, stream, and wildlife critical areas protection standards in the order listed above in items 1 through 4. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(L), 2000. Formerly 20.80.120.).

20.30.460 Effect of Rezones

The owner of any lot in a final plat filed for record shall be entitled to use the lot for the purposes allowed under the zoning in effect at the time of filing of a complete application for five years from the date of filing the final plat for record, even if the property zoning designation and/or the Code has been changed.

20.30.680 Appeals

B. Appeals of threshold determinations are procedural SEPA appeals which are conducted by the Hearing Examiner pursuant to the provisions of Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearings and Appeals, subject to the following:

1. Only one appeal of each threshold determination shall be allowed on a proposal.
2. As provided in RCW 43.21C.075(3)(d), the decision of the responsible official shall be entitled to substantial weight.
3. An appeal of a DS must be filed within 14 calendar days following issuance of the DS.
4. An appeal of a DNS for actions classified as Type A, B, or C actions in Chapter 20.30 SMC, Subchapter 2, Types of Actions, must be filed within 14 calendar days following notice of the ~~decision~~ threshold determination as provided in SMC 20.30.150, Public Notice of Decision; provided, that the appeal period for a DNS for Type A, B, or C actions shall be extended for an additional seven calendar days if WAC 197-11-340(2)(a) applies. For actions not classified as Type A, B, or C actions in Chapter 20.30 SMC, Subchapter 2, Types of Actions, no administrative appeal of a DNS is permitted.

20.30.630 Comments and public notice – Additional considerations.

A. For purposes of WAC 197-11-510, public notice shall be required as provided in Chapter 20.30, Subchapter 3, Permit Review Procedures~~.~~, except for Type L actions.

20.40.120 Residential type uses.

NAICS #	SPECIFIC LAND USE	R4-R6	R8-R12	R18-R48	NB & O	CB & NCBD	RB & I
GROUP RESIDENCES							
	Boarding House	C-i	C-i	P-i	P-i	P-i	P-i
	Community Residential Facility-I (Less than 11 residents and staff)	C-i	C-i	P-i	P-i	P-i	P-i
	Community Residential Facility-II			P-i	P-i	P-i	P-i
721310	Dormitory		C-i	P-i	P-i	P-i	P-i
P = Permitted Use S = Special Use C = Conditional Use -i = Indexed Supplemental Criteria							

- C -

~~20.40.280 Community residential facilities I and II.~~

~~A. Type I community residential facilities are allowed as a conditional use in the R-4-6 and R-8-12 residential districts.~~

~~B. Type I and II facilities are permitted in the R-18-48, neighborhood business, community business, regional business and office districts. (Ord. 299 § 1, 2002; Ord. 238 Ch. IV § 3(B), 2000).~~

20.40.600

F. Structure-Mounted Wireless Telecommunication Facilities Standards.

2. The maximum height of structure-mounted facilities shall not exceed the base height limits specified for each zoning designation in this title regardless of exceptions for the particular mounting structure; provided the facility may extend up to 15 feet above the top of the structure on which the facility is installed, including those built at or above the maximum height allowed in a specific zone, so long as the diameter of any portion of a facility in excess of the allowed zoning height does not exceed the shortest diameter of the structure at the point of attachment. The height and diameter of the existing structure prior to replacement or enhancement for the purposes of supporting wireless facilities shall be utilized to determine compliance with this subsection. Only one extension is permitted per structure.

20.50.040 Setbacks – Designation and measurement.

A. The front yard setback is a required distance between the ~~"front lot line"~~ property line to a building line (line parallel to the front line), measured across the full width of the lot.

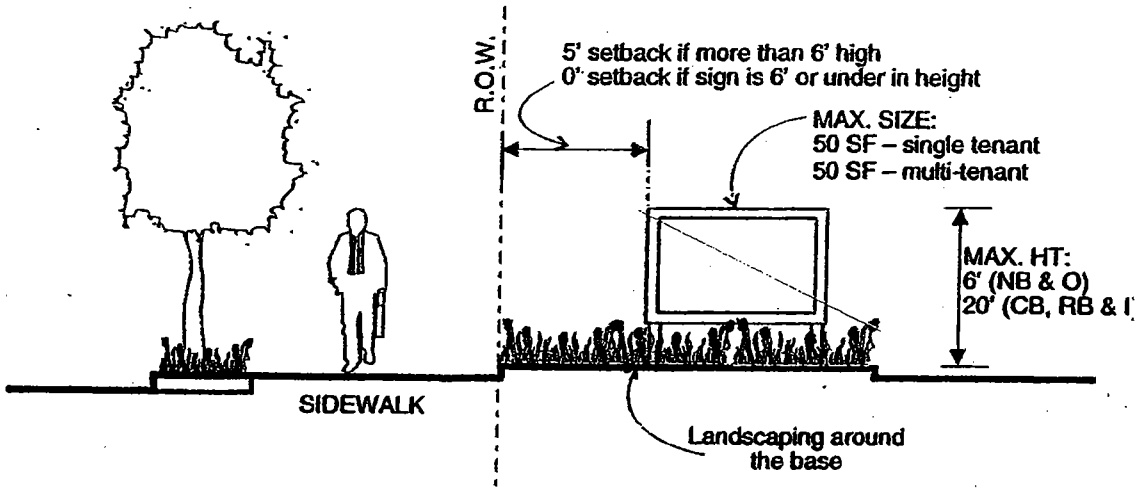


Figure 20.50.560: Monument Sign.

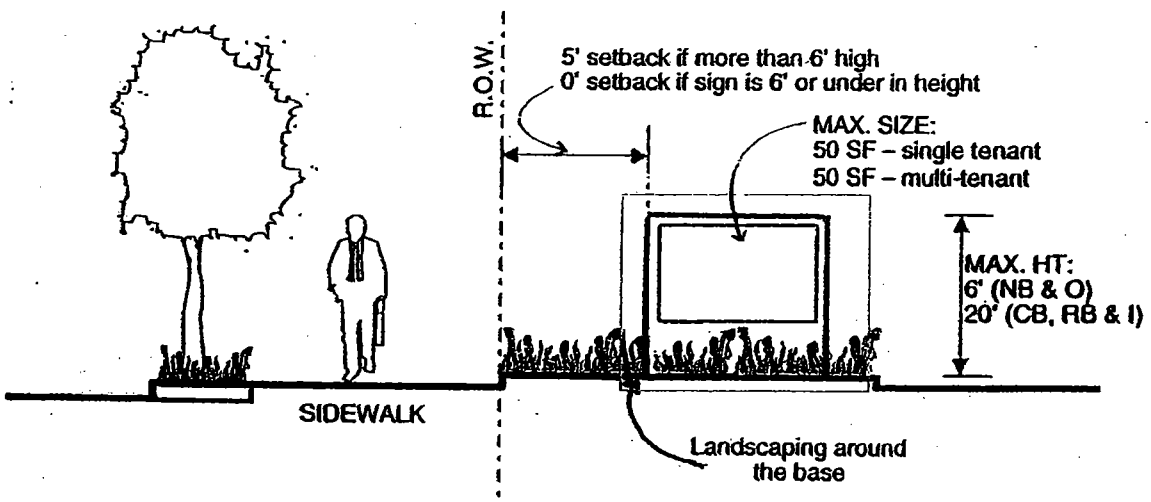


Figure 20.50.560: Monument Sign.

20.50.560 Site-specific sign standards – Monument signs.

A. Location.

- Minimum Distance From Existing or Planned Public Sidewalk or Public Right-of-Way, whichever is closest to the sign: zero feet if under six feet in height, five feet if over six feet in height;.
- ~~Minimum Distance From Public Right-of-Way: five feet.~~
- Distance from Interior Property Line: 20 feet. If this setback not feasible, the Director may modify the requirement, subject to the approval of a signage plan.

(710 ALT)

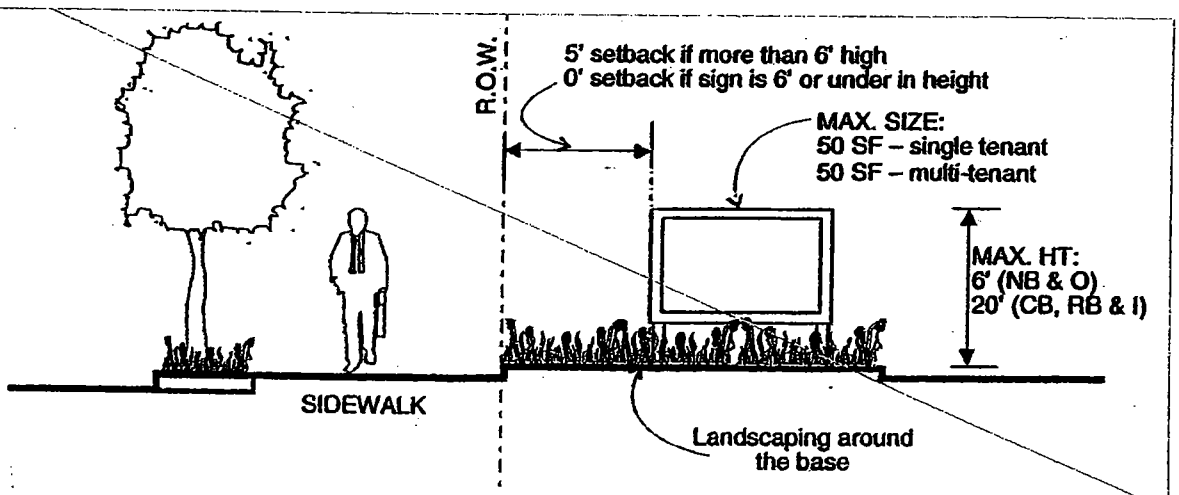


Figure 20.50.560: Monument Sign.

Table 20.50.540B – Standards for Signs. A property may use a combination of the four types of signs listed below.

	All Residential (R) Zones	NB and O	CB, RB, and I
FREESTANDING SIGNS:			
Maximum Area Per Sign Face	4 sq. ft. monument sign (home-occupation) 25 sq. ft. (nonresidential use, residential subdivision or multifamily development) 32 sq. ft. (schools)	Only Monument Signs are Permitted: 25 sq. ft.	Monument Signs: 50 sq. ft. Shopping Center/Mall Signs: Malls must have more than 1 business, max. 100 sq. ft.
Maximum Height	42 inches	6 feet	20 feet Shopping Center/Mall: 20 feet Monument: 8 feet
Maximum Number Permitted	1 per street frontage	1 per street frontage and 150 ft. apart.	1 per street frontage per property and 150 ft. apart.
		Two per street frontage if the frontage is greater than 250 ft. and each sign is minimally 150 ft. apart from other signs.	
Illumination	External only: Maximum 6 feet from the sign display	Permitted	
BUILDING-MOUNTED SIGNS:			
Maximum Sign Area	Same as for Freestanding Signs	25 sq. ft. (each tenant) Building Directory 10 sq. ft. 25 sq. ft. for building name sign. See Figure 20.50.580.	
Canopy or Awning	Sign shall be maximum 25% of the canopy vertical surface Note: Counts toward total allowable signage.		
Maximum Height (ft.)	Not to extend above the building parapet, eave line of the roof, or the windowsill of the second floor, whichever is less.		
Number Permitted	1 per street frontage	1 per business located on street frontage Note: One building-mounted sign per facade facing street frontage or parking lot	
Illumination	External illumination only	Permitted	Permitted
PROJECTING SIGNS FROM A BUILDING:			
Maximum Sign Area	6 sq. ft. Nonresidential uses, schools, residential subdivision or multifamily development	12 sq. ft.	
Minimum Clearance from Grade	9 feet		
Maximum Height (ft.)	Not to extend above the building parapet, eave line of the roof, or the windowsill of the second floor, whichever is less.		
Number Permitted	1 per street frontage		1 per business located on street frontage
DRIVEWAY ENTRANCE/EXIT:			
Maximum Sign Area	4 sq. ft. Nonresidential uses, schools, residential subdivision or multifamily development	4 sq. ft.	
Maximum Height	42 inches		
Number Permitted	1 per driveway		

20.70.470 Undergrounding of electric and communication facilities – When required.

A. Undergrounding of electrical and telecommunication facilities defined in S.M.C. 13.20.030 shall be required with new development as follow~~sing~~ unless the facility is exempt under S.M.C. 13.20.030:

1. All new nonresidential construction, including remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the site at the time of application and/~~or~~ involves the relocation of service.
2. All new residential construction and new accessory structures, the creation of new residential lots, and residential remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the site at the time of application and/~~or~~ involves the relocation of service. Residential projects may be exempted from some or all of the undergrounding provisions at the request of the applicant if the project involves the construction, remodel, or addition to only one new house or accessory structure and a street crossing would be necessary.

B. Conversion of facilities shall not be required with:

1. The upgrade or change of location of electrical panel, service, or meter for existing structures not associated with a development application; and
2. New or replacement phone lines, cable lines or any communication lines for existing structures not associated with a development application.

20.80.240

B. Class IV Landslide Hazard Areas. Development shall be prohibited in Class IV (very high) landslide hazards areas except as granted by a critical areas special use permit or a critical areas reasonable use permit.

C. ~~Type~~ Class II, III, IV Landslide Hazards. Alterations proposed to ~~Type~~ Class II, III, and IV Landslide Hazards shall be evaluated by a qualified professional through the preparation of the geotechnical report. However, for proposals that include no development, construction, or impervious surfaces, the City, in its sole discretion, may waive the requirement for a geotechnical report. The recommendations contained within the geotechnical report shall be incorporated into the alteration of the landslide hazard area.

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SHORELINE

City of Shoreline
Planning & Development Services Dept.

17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-1811 ♦ Fax (206) 546-8761

ADMINISTRATIVE ORDER #301138 - A

DECISION ON APPLICATION FOR TEMPORARY USE PERMIT

PROJECT DESCRIPTION

The proposal is for the Shoreline Free Methodist Church, 510 NE 175th Street, Shoreline, to host a Tent City temporary homeless camp on the church property. The proposed area of the camp is approximately 6775 square feet, to be located on grass adjacent to the parking lot. Up to 100 people are proposed to be housed in up to 47 tents, the tents ranging in size from 40 – 800 square feet.

In November of 2002, the Church applied for a Temporary Use Permit for Tent City for a five-week duration. The City of Shoreline issued a decision that the proposal could not meet all of the criteria for permit because of it's appearance (see discussion below under Temporary Use Permit Criteria and Appearance), and approved a permit to house the residents inside the church building on a temporary basis. The Church chose not to pursue that option; instead they have applied again for Tent City, including in the current proposal the installation of temporary screening fence to reduce the visual impact of the encampment. The current proposal is to host the Tent City from April 20, 2003 to July 20, 2003.

FINDINGS

- **Site and Surrounding Land Use**
  Existing Use: The site contains a church building, large parking lot and landscaped and grass area. There is no residential use of the site.
  Lot size: 2.76 acres.
  Zoning: R-6, Residential, 6 units per acre maximum density.
  Comprehensive Plan Designation: Low Density Residential.
  Surrounding Zoning and Land Use: **South**: R-6, low density residential. **West**: R-6 and R-12, lot to medium density residential. **North**: R-8 zoned properties across N. 175th St. , library, church and low to medium density residential. **East**: R-6 and R-8, low to medium density residential.

- **Applicable Regulations**

A. Shoreline Comprehensive Plan

Housing Goal H III: *"Maintain and enhance single family and multi-family residential neighborhoods, so that they provide attractive living environments, with housing that is compatible in quality, design and scale within neighborhoods and that provides effective transitions between different uses and scales".*

Housing Policy #H28: *"Encourage, assist and support social and health service organizations that offer housing programs for people with special needs."*

Housing Policy #H29: *"Support the development of emergency, transitional, and permanent supportive housing with appropriate services for persons with special needs throughout the City and region."*

Housing Policy #H34: *"Cooperate with private and not-for-profit developers and social and health service agencies to address regional housing needs."*

B. Shoreline Development Code

Temporary sheltering of the homeless is not listed as a permitted use in the R6 zoning district, and is not included within the Shoreline Municipal Code definition of church use. Residences for staff is included as an accessory use to church use but it must be located in approved buildings and does not include housing for the general public.

A Temporary Use Permit is a mechanism by which the City may permit a use not otherwise allowed on an interim basis. The proposal would have to meet the criteria for Temporary Use listed below. It is a "Type A" permit as described in Development Code Section 20.30.040; it is a ministerial decision made by the Director; no public notice is required. The Director's decision must be based upon findings that the application conforms (or does not conform) to all applicable regulations and standards.

Section 20.20.014 C, Church, Synagogue or Temple

A place where religious services are conducted, and including accessory uses in the primary or accessory buildings such as religious education, reading rooms, assembly rooms, and residences for nuns and clergy. This definition does not include facilities for training of religious orders.

Section 20.40.540 Temporary Use Permit (TUP) Criteria

a. The Director may approve or modify and approve an application for a temporary use permit if:

1. The temporary use will not be materially detrimental to public health, safety, or welfare, nor injurious to property and improvements in the immediate vicinity of the subject temporary use; and

2. The temporary use is not incompatible in intensity and appearance with existing land uses in the immediate vicinity of the temporary use; and
3. Adequate parking is provided for the temporary use, and if applicable the temporary use does not create a parking shortage for the existing uses on the site; and
4. Hours of operation of the temporary use are specified; and
5. The temporary use will not create noise, light, or glare which would adversely impact surrounding uses and properties.

b. A temporary use permit is valid for up to 60 calendar days from the effective date of the permit, except that the Director may establish a shorter time frame or extend a temporary use permit for up to one year.

Section 20.50.020 Density and Dimensions: The R6 zoning would allow 17 units on the property if it were to be developed to it's maximum capacity. Allowing for a maximum of 8 persons per household (see definition of *Family*, Code Section 20.20.020), this parcel of land could support a density of up to 136 people.

C. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

42 U.S.C. 2000cc §2(a)(1):
No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless that government demonstrates that imposition of the burden on the person, assembly, or institution-

(A) is furtherance of a compelling governmental interest; and
(B) is the least restrictive means of furthering that compelling government interest.

- **Tent City Rules and Regulations**

The operators of Tent City have a list of rules and regulations for it's participants, which include 24-hour security, no drugs or alcohol or intoxicated persons allowed, quiet time between 8:00 a.m. and 8:00 p.m., laundry done once per week, and personal hygiene standards. Sani-cans and wash stations are provided and serviced three times per week. Food is brought in.

- **Appearance**

City staff visited the current Tent City located at the Highline United Methodist Church in Burien on December 3rd and December 4th, 2002. The visits confirmed that, although clean and orderly, the appearance of the encampment is visually incompatible with a low or medium density residential neighborhood. The many tents are made up of various materials and colors, and there is also a row of about 5 Sani-cans. In the words of former Tent City

host Reverend Rich Lang, (of Trinity United Methodist Church in Ballard): *"It looks like a refugee camp. It is not a pleasant thing to look at."* [1]

- **Other Jurisdictions**

City of Seattle: The City of Seattle was found by a judge to have denied a Temporary Use Permit for Tent City in error, because the criteria used for the denial were not criteria specifically related to the granting of the Temporary Use Permit. The judge further ruled that: *"There is no evidence to support the conclusion that Tent City is materially detrimental to the public welfare..."* and *"...Tent City is not injurious to property in the vicinity."* Seattle churches have hosted Tent City at various locations approximately 12 times. Police records do not indicate any increase in crime or police calls in the areas where Tent City has been located.

City of Tukwila: The City of Tukwila has allowed Tent City to be hosted by churches three times. It did not require a permit. John McFarland, City Administrator reports that in that time, there were approximately 3 – 4 police call to Tent City, for "hooliganism" (no serious crime or injury to person or property). He also reported that in general, crime went down in the areas where Tent City was located, and that Tent City left the areas cleaner than they were before. City staff makes routine inspections once per week.

City of Burien: The City of Burien issued a Temporary Use Permit for Tent City on November 1, 2002, with conditions mostly related to fire issues. The Building Official (Lee Bailey) reported that Tent City has complied with all of the conditions associated with the permit, and that there has been no reported trouble associated with Tent City. There were no police calls and no apparent increase in "panhandling." City officials make a routine inspection once per day.

- **Length of Stay**

Staff reviewed the length of time Tent City has stayed at their various host sites over the past two years. The length of stay has generally been between four weeks to three months, most stays are between six weeks and two months. The maximum length of stay set by the City of Seattle is three months.

CONCLUSIONS AND DECISION

- **TUP Criteria:** Since the applicant does not have a nonconforming public shelter use, a permitted accessory use to provide shelter housing must meet the criteria of the Temporary Use Permit. The Director has analyzed the proposal and supporting information in relation to the Temporary Use Permit Criteria and has made the following conclusions:

[1] March 24, 2002 King 5 "UpFront" News Broadcast

1. *The temporary use will not be materially detrimental to public health, safety, or welfare, nor injurious to property and improvements in the immediate vicinity of the subject temporary use;*

   Based on evidence provided by the applicant, proposed security to be provided, judge's rulings in past cases, and research into other jurisdiction's experiences with the proposed use, the Director finds that the proposal meets this criterion provided the use is subject to initial inspection and follow-up inspections by the City of Shoreline, Health and Fire District's for compliance with conditions of the temporary use permit.

2. *The temporary use is not incompatible in intensity and appearance with existing land uses in the immediate vicinity of the temporary use;*

   Intensity: The shelter proposes to house up to 100 people. If this site were built out to full residential density allowed by the code, it could theoretically support up to 136 people (see discussion under Densities and Dimensions, above). The Director finds that the proposal meets this criterion.

   Appearance: Tent City is proposed to consist of up to 47 tents ranging in size from 40 square feet to 800 square feet The tents are of various colors and materials. There is no land use in the vicinity comparable in appearance to Tent City. It would be visible from the back yards of several single-family homes, and to a lesser extent from NE. 175th St. and 5th Ave NE and the houses on these streets. The applicant has proposed to install fencing consisting of six-foot high panels and windscreen, placed on concrete blocks. The proposed fencing would begin at the bottom of the back driveway to decrease visibility from 5th Ave NE, and run up the entire 165 feet of driveway adjacent to the grass area where Tent City would be located. The fencing would also run 150 feet South to North along the grass adjacent to the parking lot, decreasing the visibility from NE 175th St. and the backyard neighbors. An additional eighty-five feet of the fencing will be installed between the upper and lower grass areas to further limit the visibility for the backyard neighbors. With the proposed fencing to mitigate the visual impact of Tent City, the proposal meets this criterion.

3. *Adequate parking is provided for the temporary use, and if applicable the temporary use does not create a parking shortage for the existing uses on the site;*

   The proposed use will not generate a significant demand for parking; further, no required parking for the church will be compromised by the proposal. The proposal meets this criterion.

4. *Hours of operation of the temporary use are specified;*

   Quiet hours are specified in the Tent City rules. The proposal meets this criterion.

5. *The temporary use will not create noise, light, or glare which would adversely impact surrounding uses and properties.*

   The proposed use has specified hours for quiet. There is only one electric light in the security checkpoint tent. The occupants use battery operated lights and radios in their individual tents. The existing parking lot is already well lit with two parking lot lights. The proposal meets this criterion.

- **Length of Permit:** Typical length of stay for Tent City is approximately six weeks to two months. The City of Shoreline Development Code calls out a 60 day duration for a Temporary Use Permit, unless modified at the discretion of the Director. The Director finds that this 60 day time limit is reasonable for this application. Since Tent City typically moves on Sundays due to less traffic, a two-day extension may be granted so that the last day will be on a Sunday.

DECISION: The use of the church site for temporary housing will conform to all of the criteria provided that the use is in compliance with the following conditions:

1. Temporary emergency sheltering of the homeless for up to 100 people is allowed, in compliance with the site plan and project description submitted with the application materials, and the installation of screening for mitigation of visual appearance to the street and neighboring properties. The screening shall be installed as described in the application, including the driveway fencing, the parking lot fencing, and the 85-feet of fencing between the upper and lower grass areas. The color of the windscreen shall not be black.
2. The rules and regulations for Tent City will be followed.
3. A fire permit is required for all tents over 200 square feet.
4. All tents must be made of fire resistant materials and labeled as such.
5. The shelter shall permit inspections by City, Health and Fire Department inspectors at reasonable times without prior notice for compliance with the conditions of this permit.
6. Only a single point of entrance is allowed. Security personnel shall monitor this entrance point at all times. A working telephone shall be available to security personnel at all times.
7. This permit is valid from April 20, 2003 until June 22, 2003.

_____ _____

Director's Signature Date

CITY OF SHORELINE

Tent City Fact Sheet

What: Temporary homeless camp for up to 100 people in up to 47 tents. Tents range in size from 40 to 800 square feet.

When: Saturday, April 19, 2003, through Sunday, June 22, 2003.

Host: Shoreline Free Methodist Church, 510 NE 175th St., (206) 365-9303

Operators: SHARE/WHEEL, PO Box 2548, Seattle, WA 98111, Scott Morrow or Michele Marchand at (206) 448-7889

Location: On approximately 6,775-square-feet of grass on the Church grounds adjacent to the parking lot.

In November 2002, the Shoreline Free Methodist Church applied for a Temporary Use Permit for Tent City for a five-week duration. The City of Shoreline denied the permit because of its appearance and approved a permit to house the residents inside the church building on a temporary basis. The Church chose not to pursue that option.

In February 2003, the Church again applied for a Temporary Use Permit for Tent City, and included in the application the installation of a temporary screening fence to reduce the visual impact of the encampment. The February 2003 application met the Temporary Use Permit Criteria and the City of Shoreline issued the permit for the period of April 20 through June 22, 2003. Since April 20 is Easter Sunday, the City is allowing Tent City to set up one day early on April 19, 2003.

Shoreline Free Methodist Church (SFMC) hosted a meeting about Tent City on April 10, 2003. Members of the SFMC contacted adjacent property owners in person to discuss Tent City and invite them to the meeting and approximately 400 flyers were distributed door-to-door in a three-block radius surrounding the church. Approximately 40 people attended the meeting.

Tent City is operated by SHARE/WHEEL. SHARE is an organization of homeless men and women working on improving their conditions and trying to wipe out homelessness. WHEEL is the sister organization to SHARE that works on homeless problems affecting women. SHARE/WHEEL has operated Tent City in a number of locations around the

Seattle area and also recently in Tukwila and Burien. After its stay in Shoreline, Tent City expects to accept the invitation of Temple Beth Am in Seattle to relocate there.

Tent City has a list of rules and regulations for its participants, which include 24-hour security, no drugs, alcohol or intoxicated persons allowed, quiet time between 8:00 p.m. and 8:00 a.m., laundry done once per week, and personal hygiene standards. Only a single point of entry is allowed and security personnel will monitor this entrance at all times. Sani-cans and wash stations are provided and serviced three times per week. Food is brought in. As with any permit, violations of the permit conditions could be grounds for the City of Shoreline to revoke the permit.

Contact Information

Shoreline Free Methodist Church: (206) 365-9303

SHARE/WHEEL: Scott Morrow or Michele Marchand at (206) 448-7889

City of Shoreline
Permit Questions: Tim Stewart (206) 546-3227
Community Concerns: Julie Modrzejewski (206) 546-8978
Media Calls: Joyce Nichols (206) 546-0779

SHORELINE

City of Shoreline
17544 Midvale Avenue North
Shoreline, WA 98133-4921
(206) 546-1811 ♦ Fax (206) 546-8761

TENT CITY SURVEY RESULTS

1. Were you notified by the church or the organization that runs Tent City that Tent City was going to be in your neighborhood?

   yes 18 (38%) no 29 (62%)

2. Did you receive notification that the church was hosting a meeting regarding Tent City?

   yes 12 (26%) no 26 (55%) don't know or didn't answer: 9 (19%)

   Did you attend the meeting? (If #2 was yes) yes: 3 no: 9

   Comments:
   1. Better notice about tent city would have been appreciated
   2. Wouldn't have objected anyway
   3. Out of town, otherwise would have attended
   4. Would have been nice to know
   5. Would have appreciated one
   6. Don't remember
   7. Don't know
   8. Don't remember
   9. The church had already decided to host the tent city – what would be the point?
   10. The notification was on their billboard I was told, but I didn't personally see it. How would I know to look there?
   11. We don't recall receiving such notification.

3. Did you have any positive experiences involving Tent City while it was in your neighborhood?

   yes: 10 (21%) no: 26 (55%) neutral or no answer: 11 (24%)

   Comments
   1. Did not see much of people – only at bus stops…quiet
   2. Tent city had little impact on neighborhood. Residents were respectful, property was clean.
   3. Cleaning up the street around tent city.
   4. Nice to see the folks in the neighborhood.
   5. My neighborhood was cleaned of all aluminum cans.
   6. No, but not negative either.
   7. Yes, whenever I walked by residents said hello and were friendly.

8. There was much more pedestrian traffic on 175th to and from North City. They were friendly people.
9. I noticed that they would pick up litter on 5th Ave.
10. No complaints.
11. No. I tried to offer assistance through the church, but there was no one there both times I attempted.
12. Some concerns
13. Yes. They picked up garbage on 5th Ave NE – it was wonderful!
14. Our dog wandered over to them – they called us that she was (with) them.
15. Wish we had known about it as we could have offered some sort of assistance.
16. No positive but no negative – I barely noticed.
17. Yes – took them cookies, they were very appreciative.
18. I only noticed the tent city right before it was dismantled.

4. Can you tell us about any specific incident when Tent City was detrimental to the public health, safety or welfare?

yes: 8 (17%) no: 31 (66%) neutral or no answer: 8 (17%)

Comments:

1. Didn't know they were there!
2. No complaints.
3. No, unless you consider roaming late @ night leaving their vehicles left parked in front of your house the whole time they were there. My daughter was approached on 3 different occasions and being asked for money or food. the 3rd time I was able to follow the guy straight to tent city. When I went to talk to my husband about it, he said to just leave the situation alone & not (be) angry anyone. He has come home to several notes on our door for work with tent city as the location and who to ask for. We also kept getting asked if we wanted to give our extra set of tires & rims away. We store them in the side corner of our driveway. People also used my front lawn to drink and visit w/ others. When asked to leave they said that they couldn't drink where they were staying. I asked where and their said they belong to the tent city behind the church on the other corner. My husband was able to persuade them to find an different spot. Felt very unsafe and unsecured every time I left for work or when my daughter was home by herself (she is 15).
4. Numerous occasions of pan handling at Q.F.C. from residents of Tent City.
5. Noticed a couple of times the greenbelt was used for urinational purposes (saw men standing & urinating).
6. They were walking along our streets, up & down – made us uncomfortable.
7. Several people wandered the neighborhood, one person had a bright colored shirt that said "safety patrol" on and was throwing things (garbage & whatnot) and yelling. It was very disconcerting to our family. Another incident involved a man approaching my 9 yr. old daughter and said "I know where you live." Scary.
8. Saw tent city at church 125/130 NE – Lake City area. Looked bad.
9. Yes a young couple appeared to be drunk or on drugs at corner 175th & 5th NE.
10. Some garbage blew into our yard. *Parental peace of mind* Some were "hitting" on my daughters when they walked to the library. Some persons, obviously having business at the city, parked across the street, tossed trash in a recycle bin, one "hung out by the car" the other went up and then came back a short time later.

11. I had no idea they were there.
12. My car was broken into while they were here, but there is no way to know if tent city residents were responsible.

5. Can you tell us about any specific incident when Tent City was injurious to your property?

yes: 4 (9%) no: 34 (72%) neutral or no answer: 9 (19%)

Comments:
1. Was having a wedding reception but was unable to accommodate all my guest parking because I had a motor home & 2 cars left in front of my house.
2. They were in groups waiting at close-by bus stop next to our property all day long.
3. They were unusually noisy, leaving litter around on the street, walking late at night.

6. Did the neighborhood parking situation worsen while Tent City was there?

yes: 1 (2%) no: 41 (87%) neutral or no answer: 5 (11%)

7. Did you think that the visual appearance of Tent City was compatible with the neighborhood?"

yes: 23 (49%) no: 16 (34%) neutral or no answer: 8 (17%)

Comments
1. No. Tarps and chain link not compatible.
2. Can be improved.
3. No, but that didn't matter
4. Yes, I did see it.
5. Was fine, well hidden
6. Everything looked neat & clean at the location.
7. It was not noticeable.
8. No, but it was somewhat screened.
9. It does not fit in with the area but what area would it – at least it was hidden from the street somewhat.
10. They made it work while they were there.
11. Well hidden for this property behind greenbelt area.
12. Yes, because it was on a discrete property.
13. Not as all. It looked awful & made the neighborhood look like a slum. The visual appearance of both tent city & it's tenants all over the streets wandering, yelling, and approaching children they don't know…The whole neighborhood to a sub-standard level. One that I do not want to live in.
14. Didn't see.
15. Seemed OK.
16. They did a pretty good job of screening it off.
17. Yes – you didn't really notice because of the location.
18. We didn't realize that they're there at the Methodist Church.
19. No – but it was only visible on 5th Ave. going North – was partially hidden behind the church.

20. Didn't even see it.
21. I could not see it from my house.
22. It was so well hidden – I didn't know it was there.

8. Did Tent City produce noise, light or glare which adversely impacted surrounding properties?

yes: 4 (8%) no: 37 (79%) neutral or no answer: 6 (13%)

Comments
1. Saw more fences being built on 5th NE – So. of 175th.
2. No, just bothersome when they walked the streets at night.
3. Yes – firecrackers, some yelling.

9. Do you think Tent City is an appropriate use of the land on a temporary basis?

yes: 30 (64%) no: 9 (19%) neutral or no answer: 8 (17%)

Comments
1. Was ok but need to get a permanent area for the people.
2. Yes, there are not enough shelter beds in King County to accommodate the need for housing.
3. Yes – the area was pretty & private.
4. Didn't like Tent City being in a residential neighborhood.
5. Yes as long as its done on a rotational basis and not in any one spot once every 5 years.
6. Who's to say. I had no problems w/them. Everyone needs a place to stay. They had visual security & picked up after themselves.
7. There welcomed back in my book.
8. No! Not next to homes! undesirable
9. Possibly, as long as the inhabitants are law abiding.
10. No – do on Fircrest property as needed. Do at park 165th & 10 NE or 185 & Meridian by courthouse. Big open spaces.
11. Stays should be limited to a month, and no neighborhood should have to play host more than once every 5 years or so. Would not want it to become a frequent fixture as the camp looked straight down into our back yard.
12. It's OK.
13. Maybe
14. We think that's great the church allow them to use that land on a temporary basis.
15. Yes if there are no homes with children close by (as Bethel Lutheran is).

10. Any additional comments?

1. Everyone was quite & there was no use of drugs which was a real blessing. I live around the back of the church.
2. We need be notified, and we weren't.
3. It was well managed for the time one or 2 months.

4. How will we hear the results of this survey? *(note – this writer did not include name or address).*
5. Didn't like the Tent City people waiting in large groups at the Bus stops.
6. Next time do this on-line and save the $.37 per envelope.
7. It worked because the residents of tent city understood and respected the community and their responsibilities. Also thanks to you for respecting the residents and asking for feedback. Keep it up, very important.
8. I think the members of the church should take a tent family in instead of having a tent city. That way they are doing something for the individual person or family and not making the neighbors that live very close to tent city has a bad thing to look at or be concerned about anything happening to their neighbors.
9. I thought it was done well.
10. Why are they not able to use the parks that are being closed down because of lack of maint? Or even empty warehouse that have been emptied for years and are no longer being used?
11. Don't bring them back please!! Make use, next time, of state owned property such as Fircrest or Sandpoint away from private residences & churches.
12. The looks of some of the people made us nervous.
13. Very little impact. All was fine.
14. Neighborhood residents should be notified in advance that the tent city would be there for a certain amount of time...and see what feedback on the front end is. Don't wait until after the fact, once neighbors have had bad experiences. If our input matters, ask on the front end...We are the neighborhood that this effects.. Shouldn't we gather & talk about our community?
15. Is Hamlin Park safe: I've have been under impression not safe without male companion.
16. I don't think having a tent city in our neighborhood makes for feeling secure – or proud of our property.
17. We didn't realize all this had taken place those 2 months.
18. I would like to be better informed of their pending arrival in the future. And they should not litter the street with food wrappers and cans.
19. Hope to see more churches participating in good deeds like this!
20. If the people act accordingly, I'm all for it.
21. All in all less disruptive than I was expecting. Thank you for following up. Our house is directly across from the driveway up to the main? check in tent? (lit most if not all of the night) which was not bothersome.
22. I was not notified that Tent City was coming (I don't think I was), but they were not a problem and were always very nice when they walked past my house.
23. I am not opposed to this at all. I do think it would be nice to be informed. I had heard rumors of an impending tent city, but I thought it would be at a closer church. I really would be interested next time in knowing.

Memorandum

DATE: April 22, 2004

TO: Chief Pentony

FROM: Capt. Clement Rusk **VIA:** Direct

RE: Tent City Recap

CC: Capt. Rusk's file, Tent City File

Tent City has been in the City of Shoreline from April 19th, 2003 to June 22nd, 2003. I met with Scott Morrow, from Share Wheel, the organizer of Tent City and Jeff Horton, the Pastor of the Shoreline Free Methodist Church at a neighborhood meeting prior to Tent City moving into Shoreline. After this meeting I directed officers to stop by and chat with the organizers periodically while Tent City was in operation and ensured that both Share Wheel and the Church had the ability to communicate directly with me. I also made periodic visits to Tent City to meet with the organizers and also periodically spoke with Jeff Horton.

During this time the Church had no issues with Tent City, feeling that they had lived up to their part of their agreement. During my contacts with Tent City I noticed that the 24 hour security tent was always staffed and someone was present to answer questions or deal with problems. The staff at Tent City is all volunteer and was elected on a weekly basis by the residents. During most of my visits I noted that Tent City seemed to be full, with little if any room for additional tents to be erected. The permitted occupancy was to be 100 residents. During their stay, the staff did maintain a log of the residents, listing people they had expelled and the reason why. They also went to the nearby library to check the King County Sex Offender website to attempt to eliminate known sex offenders from staying at the camp. The weakness of that system was that occupants were not required to have identification. The Porta Potty area and the dining area seemed to be clean and orderly. Tent City was unsightly due mostly to the proliferation of older blue tarps covering many of the individual tents. After Tent City left I went to the Church and saw that the grounds were very clean, and they were waiting

for the temporary fences and Porta Potties to be picked up by the vendors. There was no garbage on the grounds.

I checked with Shoreline Fire. They had six calls for medical services at Tent City. There were no fire calls.

I found 10 police calls that were directly attributable to Tent City, with an additional four calls that were probably related. The calls for service included serving a material witness warrant in an SPD Assault case where one occupant of Tent City was arrested. There was also a possible strong arm robbery for cigarettes in the area that was believed to be committed by residents of Tent City. Most of the calls for service involved residents of Tent City that were asked by the staff of Tent City to leave for either disorderly behavior or theft.

There were also several reports from neighbors in nearby areas who suspected residents of Tent City of using or selling drugs in the surrounding neighborhoods. No drugs were found and no drug arrests were made during this period. On the Narcotics Activity Reports it was impossible to prove that the suspects were from Tent City as the suspects were not located.

CRT received three calls regarding Tent City. Two of the calls were general concerns about having Tent City in their neighborhood. The other call involved a 13 year old youth being approached by someone wanting cigarettes. This was very near Tent City and it is very possible that the suspects were from Tent City. The caller was referred to the Police, however our records indicate that she did not call.

The major unintended consequence of Tent City was that residents of Tent spilled into the neighborhoods after being evicted from Tent City or not allowed into Tent City. Of note was a registered sex offender from California who was denied access to the camp because of his sex offender status. He was later contacted by patrol after he set up camp in Echo Lake Park. While evicted residents or potential residents that are not allowed into Tent City are given bus tickets after being evicted, there is no guarantee that they will actually leave the area as directed, and no provision is made for them if the busses are not running at that time of day.

Attachment 1

JURISDICTIONAL RESEARCH: # OF EMPLOYEES ALLOWED IN HOME OCCUPATIONS

Auburn	Only members of the immediate family residing on the premises may be employed;
Bellevue	No more than one person who is not a resident of the dwelling is participating in the business at the dwelling;
Bellingham	No more than 1 assistant or employee, in addition to the resident(s), may engage in the occupation on the premises. One off-street parking space shall be provided for the use of the employee.
Bothell	The business shall be conducted by a member of the family residing within the dwelling unit plus no more than one additional person now residing in the dwelling unit.
Bremerton	No person may be employed in the home occupation unless a resident of the dwelling unit.
Edmonds	Is carried on exclusively by a family member residing in the dwelling unit; and
Everett	There shall be no person other than a resident of the dwelling employed on the premises
Lynnwood	Employment. No one other than members of the family who are residing on the licensee's premises may perform labor or personal services on the premises, whether such persons are employees or independent contractors. Persons in building trades and similar fields using their homes or multiple-family housing as offices for business activities carried on off the residential premises may have other employees or independent contractors; provided, that such employees or independent contractors do not perform labor or personal services on the residential premises, park on or near the dwelling site, or visit the residence during the course of business.
Woodinville	No nonresident shall be employed by the home occupation(s);

SECURITY FENCES for Public buildings/facilities
Section 20.50.270 (C) (D)
March 19, 2002
Ref. #5270031902

A security fence for a public building such as a Police Station, Washington State Health Lab, NERF facility or a public facility such as a Water Tower or Water District facility would be regulated under section 20.50.220-280 of the Development Code. This subchapter, Mixed-Use, Commercial and Other Nonresidential Development Design Standards, references security fences specifically in 20.50.270 (C) and (D).

C. Fences designed for privacy, security, and/or screening shall be made of material that is compatible with the building design. For example repeat of the building material on fence columns and/or stringers.

D. Fences for screening and security adjacent to sidewalk may be used only in combination with trellis, landscaping, or other design alternatives to separate such fence from pedestrian environment.

A barbed wire fence or other type security fencing would be allowed on these specific types of facilities as a compatible design element of the structure. Public buildings and facilities are considered a security risk and appropriate protection of these properties is allowed as long as it compatible with the building's design and if adjacent to a sidewalk is separated from the pedestrian environment with trellis, landscaping, or other design elements.

(Note that security fences made of barbed wire, razor wire, or electrified fences are prohibited for single family detached dwellings (20.50.110) and for multifamily and single family attached dwellings (20.50.210). The Director has proposed an exception to these sections for Police or high security facilities. This amendment will be considered in 2003 during the Development Code Amendment Annual Review.)

Jurisdictional Code Research on the Regulation of Barbed Wire Fences

Bellevue	"No barbed wire may be used in fencing along a property boundary except at the top of a solid or chain link fence six feet or more in height." Code also has provisions related to electric fences.
Bothell	"Barbed wire fencing is permitted in association with animal husbandry or pasturing or security purposes."
Edmonds	Has provisions banning "hazardous fences", barbed wire fences are not specifically mentioned.
Covington	"Except as specifically required for the necessary security related to a non-residential use, no barbed or razor-wire fence shall be located in any R-4 through R-8 zone." Code also has provisions related to electric fences.
Des Moines	"Electric fences shall not be permitted in any residential zone;" "Any fence exceeding a height of six feet, and any retaining wall exceeding a height of 48 inches shall require a building permit; the provisions and conditions of this section shall not apply to fences required by state law to surround and enclose public utility installations, or to chain link fences enclosing school grounds and public playgrounds."
Everett	"No person shall erect or maintain any fence, within the city limits of Everett, that is composed of, or has any part of, constructed of barbed wire unless such fence is located within an area zoned A-1 Agricultural Use Zone as set forth in the zoning code of the city of Everett, or unless such barbed wire is placed above a woven wire or solid wooden fence, said fence to be of a minimum height of six feet, for the purposes of providing an impenetrable barrier for use around industrial properties, athletic fields, airports, electric substations, storage yards, etc., or unless such fence encloses a minimum land of twenty-two thousand square feet solely devoted to the pasturing and/or sheltering of animals permitted by ordinance." The code has a similar ordinance for electric fences.
Federal Way	"Barbed wire is permitted only atop a fence or a wall at least six feet in height or between two agricultural uses." "Razor wire fences are prohibited in the city." The code regulates electric fences as well.
Issaquah	Electric Fences: Electric fences are not permitted in any district except where additional fencing or other barriers prevent access to the electric fence by small children. E. Barbed Wire Fences: Barbed wire fences may be used only in the following situations: 1. At the top of a six (6) foot high solid or chain link fence in commercial or industrial zoned districts; or 2. To protect and contain permitted agricultural animals, such as horses or llamas; or 3. At the top of a solid or chain link fence around a major or minor electrical utility facility.
Kenmore	"Except as specifically required for the necessary security related to a nonresidential use, no barbed or razor-wire fence shall be located in any R-4 through R-48 zone."
Lynnwood	"No fences incorporating barbed wire are permitted except that barbed wire may be used on top of a six-foot high solid or chain link fence surrounding a public utility, an industrial plant site or a whole property, or barbed wire may be used when the fence is not a property line fence." Code also regulates electric fences.
Redmond	"Barbed wire fences are permitted in Agriculture, RA-5, and R-1 zones, but not along property lines adjacent to other residential and commercial zones." Code also regulates electric fences
University Place	No prohibition.

ATTACHMENT C

SMITH & LOWNEY, P.L.L.C.
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SEATTLE, WASHINGTON 98112
(206) 860-2883, FAX (206) 860-4187

May 26, 2004

Via Facsimile and First Class Mail
Members of the City Council
Ms. Kim Lehmberg, Planning & Development Services
City of Shoreline
17544 Midvale Avenue North
Shoreline, Washington 98133-4921
Fax: (206) 546-8761
Fax: (206) 546-2200

RE: *Ordinance 352--proposed revisions to the Development Code.*

Dear Members of the City Council and Ms. Lehmberg:

Thornton Creek Legal Defense Fund has retained this firm to review Ordinance 352, proposed revisions to the City of Shoreline Development Code. These comments include and incorporate by reference any comments submitted by Twin Ponds Fish Friends, Brian Derdowski, and Michele McFadden. Please consider these comments and our suggested changes to the Ordinance, and include this comment letter in the permanent file for this matter.

First, Thornton Creek Legal Defense Fund is very concerned that the proposed variance criteria in §20.30.310(B)(6) is overly broad and might result in abuse of the variance provision. Specifically, the language "based on existing development in the vicinity or zone, including nonconforming development" does not specify exactly what about "existing development" the City is supposed to consider when it reviews a variance application.

TCLDF certainly agrees it is appropriate to consider whether granting a variance will damage the public interest or injure nearby properties. However, because variances are normally only granted *based on the characteristics of the subject property, see Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 884 P.2d 910 (1994), the City's consideration of a variance application must not include consideration of *the mere existence* of nearby nonconforming uses, or whether the City has in the past granted other variances in the neighborhood. The existence of a nearby nonconforming use or variance does not justify granting another variance —using them to do so could create a "domino effect" that renders meaningless in certain areas of the City the code's building and setback provisions.

To prevent abuse of the variance provision, the City should add language to §20.30.310 that makes it clear the City will consider "existing development" *only* to determine whether granting a particular variance will injure the public interest or nearby properties. The following language should be added to proposed §20.30.310(B)(6): "Each application for a variance shall only be considered in its own right, and the City shall not consider any earlier decisions to grant a variance or allow the continuance of a nonconforming use when deciding on a pending application for variance." Adding this

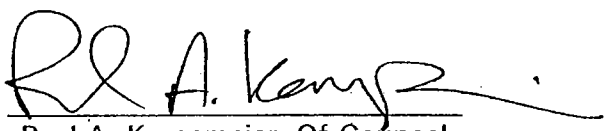
language will further clarify the variance provision, while appropriately limiting its use to appropriate circumstances.

Second, TCLDF strongly objects to the proposal to delete from §20.30.310 the requirement that the City grant a proposed variance only when it is "the minimum necessary to grant relief to the applicant." §20.30.310(B)(11). This provision appropriately limits variances to the relief necessary to avoid hardships caused by strict application of the zoning code. Without this criterion, project proponents will likely seek, and the City may be required to grant, variances that do much more than simply relieve practical difficulties imposed by the code. If the City has a concern about whether the present code language is too subjective, the City should clarify the language rather than delete it. Indeed, retaining the criterion will ensure that the City can maintain and enforce its development regulations while allowing certain limited variances where necessary. By deleting this criterion from the code, the City will encourage developers to seek a variance rather than comply with City regulations. TCLDF strongly urges the City to keep the criteria now in §20.30.310(B)(11) so that project proponents do not use the variance provision to avoid code restrictions or obtain greater relief than necessary.

Thank you for considering these comments and our suggested changes. We certainly hope the City will incorporate TCLDF's suggested changes so that future problems over these revisions may be avoided. Please keep us informed on the progress of this proposal and, if you have any questions, feel free to contact me at (206) 860-4102. I am available to discuss these issues at your convenience.

Sincerely,

SMITH & LOWNEY, P.L.L.C.

By: 

Paul A. Kampmeier, Of Counsel
Attorneys for Thornton Creek Legal Defense Fund

ATTACHMENT D

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May 25, 2004

Via Email, Facsimile, and First Class Mail

Mayor Ron Hansen
Vice-Mayor Scott Jepsen
Councilmember John Chang
Councilmember Maggie Fimia
Councilmember Paul Grace
Councilmember Rich Gustafson
Councilmember Bob Ransom
Ms Kim Lehmberg, Planning and Development Services

City of Shoreline
17544 Midvale Avenue North
Shoreline, Washington 98133-4921
Fax: (206) 546-8761

RE: Ordinance 352—proposed revisions to the Development Code

On behalf of Twin Ponds Fish Friends, we wish to offer the following comments regarding the above referenced ordinance. These comments include and incorporate by reference any comments submitted by Mr. Paul Kampmeier on behalf of the Thornton Creek Legal Defense Fund. Please consider these comments and our suggested changes to the Ordinance, and include this comment letter in the permanent file for this matter:

The Council should consider and vote on this ordinance concurrent with, or after it considers its 2004 Comprehensive Plan Amendments.

Rationale: The Growth Management Act requires that all development regulations be consistent with the Comprehensive Plan. Since the City's proposed Comprehensive Plan amendments are extensive and very significant, they will trigger the need for a development regulation consistency analysis. The provisions of Ordinance 352 must be analyzed for consistency with the Comprehensive Plan, and could also be used as a vehicle to enact any additional provisions that the Comprehensive Plan amendments may require in order to ensure consistency.

All of the proposed amendments were "docketed" by the Planning Director. The docketing procedure was specifically authorized by the Growth Management Act to be used in conjunction with Comprehensive Plan Updates. The use of the docketing process strongly suggests that the amendments should be considered as part of the current comprehensive plan update review.

Amendment #1

Recommendation: On line three, after: "...bikeways, and" delete "parking"

Rationale: Parking is being added for the first time to the City's definition of Right-of-Way. This fact is not disclosed in the staff summary of the amendment, and should have been.

The City's authority to acquire parking is different, logically and legally, from its authority to acquire land for transportation and utility purposes. Parking should have its own definition, and not be included under Right-of-Way.

Amendment #2

Recommendation: Deny

Rationale: The current code limits site development permits to those "...improvements required as a condition of preliminary approval of a subdivision..." 20.30.430
Therefore, under the current code, site development permits can only be issued after a subdivision has already gone through all of the processes necessary for the issuance of preliminary approval. This serves to minimize the potential problems associated with piecemeal review and "partial" permits.

The proposed amendment does far more than "clarify" the existing rule as the staff report suggests. The amendment extends the use of site development permits to all development proposals, and does so without establishing guidelines or criteria for their use.

Site development permits are potentially problematic because they encourage piece-meal review and development. For example, they may be issued before final surface management plans are submitted, inviting the potential for flooding and erosion. They may be issued prior to critical areas review, inviting environmental damage.

It is widely recognized that the consideration of a complete development proposal is more effective than the consideration of segments. The staff reports states that for projects subject to SEPA, the "development as a

whole is reviewed" before any permit is issued. However, there is nothing in the proposed amendment that specifically states this. In fact, an applicant may be able to argue that a site development application is categorically exempt. Furthermore, applications of considerable public significance are currently exempt already, and for those, the issuance of a preliminary permit to clear, grade and do extensive development without benefit of an over-all permit review will reduce the effectiveness of the City's permit process, and the public's confidence in those processes.

The Council should not authorize the Director to issue what amounts to "partial permits", on his authority alone, for every type of application. The Council should reject this blanket amendment, and require an analysis of specific applications where extending the site development permit authority would be warranted. Moreover, no such authority should be granted without setting forth the requirements and criteria for the issuance of such permits.

Amendment #3

Recommendation: Direct staff to draft specific amendment language to ensure public notice for commercial projects that increase building footprint.

Rationale: The staff should not be allowed to frustrate the Council's direction to prepare and consider an amendment. The staff's statement that "Staff has had difficulty developing specific amendment language" is an affront to the Council's legislative authority and status as the only elected representatives of the City.

Other jurisdictions allow for public notice of certain ministerial actions for many good reasons. The public often has specific site and vicinity knowledge that can assist permit review. Additionally, public notice can build a sense of trust and community between the applicant, agencies, and the public. The minimal staff time required to provide public notice and review those comments is hardly likely to result in "an overall slowdown of essential governmental functions" as the staff report absurdly states. Only a relative small portion of commercial projects expand building footprint, and subjecting these to public notice and a two week delay is not likely to "slow down economic improvement". In fact, a fourteen-day notice period can probably be incorporated into the current 120-day target time limit.

Amendment #4

No Comment

Amendment #5

General Comments:

The City's Variance Authority is authorized and limited by State Law. **RCW 35A.63.110 states:**

(2) Applications for variances from the terms of the zoning ordinance, the official map ordinance or other land-use regulatory ordinances under procedures and conditions prescribed by city ordinance, which among other things shall provide that no application for a variance shall be granted unless the board of adjustment finds:

(a) the variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

(b) that such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

(c) that the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

It is well established in case law that a City's authority to grant variances may be more restrictive, but not less restrictive than set forth in state law. 125 Wn.2d 196, BUECHEL v. DEPARTMENT OF ECOLOGY
The proposed amendment contains several provisions that violate this test in that they are less restrictive than the state standard found in the RCW. We suggest that the amendment should state the RCW standard verbatim, and then set forth any more restrictive standards that the Council may wish to impose.

An additional consideration is the requirement for consistency found in the Growth Management Act. If a system of variances exists that is so lenient that it can create a cumulative inconsistency with the zoning code, then that system is vulnerable to a finding of inconsistency. In such an instance, the exception could be said to have "consumed the rule", thus negating it.

Specific Recommendations by Section:

Section C1.: delete: "trees"

Rationale: Variance standard must follow RCW unless it is more restrictive.

Section C2.: delete: "or practical difficulties"

Rationale: Variance standard must follow RCW unless it is more restrictive. "Practical difficulties" is not defined and overly broad. Nearly every applicant could cite such a standard!

Section C3.: Retain existing language

Rationale: Correctly states RCW standard and should be included

Section C4.: Delete: ..."unless the action" through "defined in this title"

Rationale: Variance standard must follow RCW unless it is more restrictive.

Amendment would allow an applicant to "game" the variance system by deliberately applying for lot line adjustments and other actions that would create the need for a future variance. For example, an applicant could purposely apply for a lot line adjustment that would transfer all of a site's critical area to a "non-building lot", then apply for a variance to build on it! This problem is recognized by nearly every other jurisdiction in the State, as well as the City's current code, and is the very reason the current language is used.

Section C6.: Delete: ..."based on" and add "and"

Retain: " b. The zone in which the subject property is located".

Rationale: Variance standard must follow RCW unless it is more restrictive.

Proposed amendment would eliminate the consideration of impacts to potential uses authorized by the zone, and limit them to the consideration of existing development. Our suggested language clarifies that impacts to other property, existing development, future uses authorized by the zone, and nonconforming uses shall all be considered.

Section C8.: See comments under Section C10

Section C10.: Retain existing language

Rationale: This language is stated in the "Purpose" section, but should also be stated in the "Decision Criteria" section in order to provide clear guidance to staff and applicants.

The proposed amendment See C.8 adds a requirement that the variance shall: "not conflict with the *purpose* of the zone in which the proposal is located" (emphasis added). Unless the deleted language in Section 10 is retained, the decision criteria in C.8 might be incorrectly interpreted to implement the purpose section and over-ride it.

Existing language in Section 10 refers specifically to conformity with "the zone", not "the purpose" of the zone as set forth in the amendment's suggested replacement language. "The purpose" of the zone is overly broad and ill defined. The City would have to enunciate "the purpose" of each zoning designation. The application of such a standard would be inherently subjective and difficult to administer.

The RCW uses the term "zone", and does not allow for replacing it with the "purpose of the zone." Unless the language in C8 and C10 are both retained in the Decision Criteria section, the suggested amendment is less restrictive than the RCW and thus prohibited.

Section C11.: Retain existing language.

Rationale: Existing language is used in nearly every other jurisdiction.

By law, a variance is intended to provide relief for a specific and enunciated special condition. Any authorization of relief that goes beyond that which is necessary to address the specified condition would be, by definition, outside the scope of the variance authority.

The staff argument that "minimum necessary" is subjective and difficult to prove contradicts many years of experience in other jurisdictions. Retaining the current standard is consistent with the RCW, and enables the City to maintain and enforce its development regulations.

Amendment #6
Recommendation: Deny

Rationale: The proposed amendment would eliminate any restriction of use for Rights-of-Way. This is inconsistent with the City's purposes and authority in acquiring and designating these Rights-of-Way.

Some of these Rights-of-Way have been acquired for specific purposes, and other uses may not be permitted by State and Federal law.

The staff report omits reference to "parking". (See our comments under Amendment #1). We believe that parking is a unique and special use that requires its own designation process, not just to be included into all Rights-of-Way.

The Council should specifically enumerate uses that are compatible with Rights-of-Way. In the absence of such specificity, the City may be inundated with requests for incompatible uses.

Amendments 7 through 11
No Comment

Amendment #12
Recommendation:

20.70.40 Retain existing section E

Rationale: This amendment would eliminate public access dedications to watercourses. This is contrary to the public interest, and was not mentioned in the staff report.

20.70.230 Retain Sections B and C

Rationale: There is no discussion in the staff report about why this language was deleted. The deleted language provides important criteria for the establishment of non-motorized facilities and should be retained.

Technical Amendments T1 through T14

General Comments:

Some of these so-called technical amendments are not technical, and should have been evaluated as substantive amendments. These amendments should be referred to the Planning Commission for additional analysis as substantive amendments. In the alternative, staff should : T2, 5, 6, 7, 13,

T2 This amendment is unclear, and may have unintended consequences. A more detailed explanation should be requested.

T5 This amendment may prejudice the appeal rights on projects in the pipeline. A more detailed explanation should be requested.

T6 This amendment eliminates a public notice requirement. A more detailed explanation should be requested.

T7 This amendment is unclear, and may reduce zoning standards. A more detailed explanation should be requested.

T13 This amendment may reduce the frequency of undergrounding utilities. A more detailed explanation should be requested.

Special Comment as to Alternative Amendments

The staff report suggests that any Council initiated additional amendments should be subject to re-advertisement and an additional Public Hearing and Planning Commission recommendation. It is our view that Council generated changes that are directly related to the proposed amendments, and which reduce the potential for adverse environmental impacts would be exempt from these requirements.

Thank you for considering these comments and suggested changes. Please feel free to contact us for any additional information. We are available to discuss these issues at your convenience.

Sincerely,

Brian Derdowski
President, Public Interest Associates

Michele McFadden
Attorney at Law