in Section 20.30.350 (attachment 1); i.e., that the amendments are in accordance with the Comprehensive Plan, will not adversely affect the public health, safety or general welfare, and are not contrary to the best interest of the citizens and property owners of the City of Shoreline. In fact, quite the opposite is true. Also, the City Council authorized criteria in Section 20.30.350 does not include determinations by the City Attorney.

Third, the proposed code amendments do not comply with the requirements of Section 36.70B.030 – Project Review and Section 36.70B.040 – Determination of consistency in the Growth Management Act (attachment 2.) It would be inconsistent to require that single-family developments follow the subdivision process while excusing a different form of single-family ownership, "Air Condos", from that process. Another example of inconsistency is requiring fifteen feet of separation between structures for single-family development while allowing five feet of separation for "Air Condo" developments.

Fourth, documents that are important to the Planning Commission's evaluation of the proposed code amendments have not been provided to the Commission.

- State subdivision law regulating condominiums (attachment 3)
- Staff note regarding a code amendment to the site development permit process, to include a public hearing before the Planning Commission and approval by the City Council, and the benefits of such an amendment (attachment 4).
- A request from a Commissioner that his earlier requests for an "outside" or "third party" attorney be shared with all Planning Commissioners (attachment 5).

Fifth, the Commission needs to be made aware of the fact that it appears that the City has not been enforcing the requirements of the Condominium Act, RCW 64.34 for "Air Condo" or single-family detached condominium development. Sections of the Condominium Act needing enforcement are:

- RCW 64.34.090 - Obligation of good faith (attachment 6)
- RCW 64.34.300 - Unit owners' association – Organization (attachment 7)
- RCW 64.34.352 – Insurance (attachment 8)
- RCW 64.34.410 - Protection of Condominium Purchasers (attachment 9)

The most reliable method to ensure that developers comply with the Condominium Act is to retain the current Development Code requirement that all proposed "Air Condo" or single-family detached condominium developments larger than four units have to go through the subdivision process, since the City Council could not approve the Final Plat without those documents being prepared by the developer and included in the official file.

The response to the question asked at the December 4, 2008 meeting, "How would taxes be assessed on condominium properties?" is answered by attachment 10.

Sixth, during the December 4th meeting, the Assistant City attorney stated that "interests" and "condominiums" are terms that are not included in the subdivision statute. Attachment 3 shows that statement was incorrect. "Interests" and "condominiums" are included not only in the Subdivision Act, but also in the Condominium Act as shown by attachments 9 and 10.

Lastly, the agenda packet for the February 26th meeting of the Planning Commission misstates the concerns of the Highland Terrace neighborhood. At the December 4th meeting, no concerns were expressed about the ability to "round up". We did express serious concerns about trees falling on adjacent homes unless a study is performed by a certified arborist to indentify which trees need to be

saved for public safety. The same applies to the proposed amendment of Section 20.30.410(4), which would also lessen public safety by removing review of off-site impacts like tree-falls and overflow parking into the adjacent neighborhood from all proposed "Air Condo" or single-family detached condominium developments. Section 64.34.410(y) of the Condominium Act requires the City of Shoreline to address such concerns, as highlighted in attachment 9.

Apparent staff attitudes and feelings, that the public safety concerns of the Highland Terrace neighbors and the requirements of state law should be disregarded by the Planning Commission, are unfortunate at best. Staff's closing statement, "We believe adoption of the amendments will have no impact on the issues raised by residents of the Highland Terrace neighborhood", could not be more wrong.

Attachment 1

20.30.350 Amendment to the Development Code (legislative action).

A. Purpose. An amendment to the Development Code (and where applicable amendment of the zoning map) is a mechanism by which the City may bring its land use and development regulations into conformity with the Comprehensive Plan or respond to changing conditions or needs of the City.

B. Decision Criteria. The City Council may approve or approve with modifications a Proposal for the text of the Land Use Code if:

1. **The amendment is in accordance with the Comprehensive Plan; and**
2. **The amendment will not adversely affect the public health, safety or general welfare; and**
3. **The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.**

(Ord. 238 Ch. III § 7(g), 2000).

RCW 36.70B.030 - Project review -- Required elements -- Limitations.

(3) Given the hundreds of jurisdictions and agencies in the state and the numerous communities and applicants affected by development regulations and comprehensive plans adopted under chapter 36.70A RCW, **it is essential to establish a uniform framework for considering the consistency of a proposed project with the applicable regulations or plan. Consistency should be determined in the project review process by considering** four factors found in applicable regulations or plans: The type of land use allowed; the level of development allowed, such as units per acre or other measures of density; infrastructure, such as the adequacy of public facilities and services to serve the proposed project; and **the character of the proposed development, such as compliance with specific development standards.** This uniform approach corresponds to existing project review practices and will not place a burden on applicants or local government. **The legislature intends that this approach should be largely a matter of checking compliance with existing requirements** for most projects, which are simple or routine, while more complex projects may require more analysis. RCW 43.21C.240 and 36.70B.030 establish this uniform framework and also direct state agencies to consult with local government and the public to develop a better format than the current environmental checklist to meet this objective.

RCW 36.70B.040 - Determination of consistency.

(1) **A proposed project's consistency with a local government's development regulations** adopted under chapter 36.70A RCW, or, in the absence of applicable development regulations, the appropriate elements of the comprehensive plan adopted under chapter 36.70A RCW shall be decided by the local government during project review by consideration of:

(a) The type of land use;

(b) The level of development, such as units per acre or other measures of density;

(c) Infrastructure, including public facilities and services needed to serve the development; and

(d) The characteristics of the development, such as development standards.

The proposed Development Code amendments (Application #301543) would remove all condominiums from the subdivision law. That is permitted by State subdivision law only if binding site plans pertain to the creation of condominiums. However, Shoreline's Development Code does not treat binding site plans for residential development. If condominiums are removed from the subdivision law, then they must be added to the binding site plan section of the Development Code. The relevant statute is RCW 58.17.040 listing exceptions from State subdivision law. Part (7) says:

"(7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW (the Condominium Act) subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more ***condominiums*** *or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial* ***interest****; (c) a city, town, or county has approved the binding site plan for all such land (emphasis added); (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains there on the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more* ***condominiums*** *or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial* ***interest****. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) In connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan;"*

20.30.315 Site development permit.

A. Purpose. The purpose of a site development permit is to provide a mechanism to review activities that propose to develop or redevelop a site, not including structures, to ensure conformance to applicable codes and standards.

B. General Requirements. A site development permit is required for the following activities or as determined by the Director of Planning and Devleopment Services:

1. The construction of two or more detached single-family dwelling units on a single parcel;

2. Site improvements associated wtih short and formal subdivisions; or

3. The construction of two or more nonresidential or multifamily structures on a single parcel.

C. Review Criteria. A site development permit that complies with all applicable development regulations and requirements for construction shall be approved. (Ord. 439 § 1, 2006).

D. A Site Development Permit for two or more detached single-family dwellings on a single parcel will be processed as a Type B application (refer to 20.30.050).

E. A Site Development Permit for 5 or more homes on a single parcel are subject to the procedural requirements of a preliminary formal subdivision (or any other Type C Permit) as found in Table 20.30.060-Summary of Type C actions.

This amendment will make developing 5 or more homes (Single-family detached, single-family attached, duplexes, triplexes, etc...) subject to the requirements of any other Type C quasi-judicial action. Type C actions require a pre-application meeting with staff, a neighborhood meeting, a public hearing before the Planning Commission, and final approval through the City Council. Type C actions also require posted, mailed and advertised notice to property owners within 500 feet of the subject parcel.

By including Site Development Permits of 5 or more units as Type C actions, the public process will mimic the process of other type C permits giving the public an opportunity to attend meetings, provide input to staff and Planning Commission. The developer is not circumventing the public hearing process but at the same time allows the developer to establish ownership anyway they see fit.

Look at Summit Start for Support Policies.

From: Janne Kaje [jkaje@comcast.net]
Sent: Wednesday, December 24, 2008 5:21 PM
To: Jessica Simulcik Smith
Subject: FW: RE: **Please forward to Commission and relevant staff**

Janne Kaje
jkaje@comcast.net

———— Forwarded Message: ————
From: jkaje@comcast.net (Janne Kaje)
To: "Steve Cohn" <scohn@shorelinewa.gov>
Subject: RE: Please forward to Commission and relevant staff
Date-Thu, 11 Dec_2008 17:19:25 +0000

Thanks, Steve. I'll look forward to seeing what they have written up.

While I generally agree that we should ask the City Attorney to clarify legal issues, there are some limitations to that approach. First of all, as in this case, the city attorney did brief the commission and I wasn't even sure what follow up questions to ask, but I knew that we had not received enough information to make an informed decision in the future.
Second, I assume every attorney has a bias to some degree, including the City attorney, and I don't mean that as a criticism -just a reality. So, whatever information I received from my friend I also assume to have some bias. As a citizen representative I felt like I needed to educate myself on this issue and didn't have time to do legal research myself.

I think you know that this issue could tie our council in knots if they are only provided with the information we received so far. A clear articulation of the fundamental legal issues regarding subdivision statutes and condominium statutes, whether by the City attorney or a 'third party' attorney, would likely make things go smoother.

Janne Kaje
jkaje@comcast.net

———— Original message ————
From: "Steve Cohn" scohn@shorelinewa.gov

Janne,

The City Att'ys office is writing a few comments; I think they generally agree with your analysis, but want to add a few things. I hope to see something from them today, but it may not be ready till tomorrow. When its ready, I'll send it out with your email.

By the way, the way the Att'y would prefer to handle something like this in the future is that, rather than doing your own research, you ask them the question, and they will research it. Their concern is that your attorney acquaintance may have a vested interest (unknown to you) or some other perspective that might color his or her conclusions.

Steve

——Original Message—-

From; Janne Kaje [mailto:jkaje@comcast.net]
Sent: Tuesday, December 09, 2008 8:40 AM
To; Steve Cohn
Cc: Jessica Simulcik Smith
Subject: RE; Please forward to Commission and relevant staff

That's fine. Just let me know. If needed, I will capture these points as my own observations based on research, and will pose some of the specific points raised in the attorney comments as questions for our City attorney to answer as we move forward. Just to be clear, I believe now that the proposed change in the
Code is likely a correct one that is consistent with State law. **That being said, the City might choose one of the other tools used by other jurisdictions to 'force' additional review on projects like these. I am frankly worried that our Council could go round-and-round on this issue for many meetings, mainly because the salient legal issues are not adequately well communicated. Does the City ever utilize outside attorneys to help out on specific issues? A broader, 'outside' expert might be helpful, even if only to 'educate' Council and Commission on the relevant legal considerations.**

Janne Kaje
jkaje@comcast.net

RCW 64.34.090 - Obligation of good faith.

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [1989 c 43 § 1-112.]

RCW 64.34.300 Unit owners' association — Organization.

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control.
[1992 c 220 § 14; 1989 c 43 § 3-101.]

RCW 64.34.352 - Insurance.

(1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

ARTICLE 4: PROTECTION OF CONDOMINIUM PURCHASERS

RCW 64.34.410 Public offering statement — General provisions.

(1) A public offering statement shall contain the following information:

(a) The name and address of the condominium;

(b) The name and address of the declarant;

(c) The name and address of the management company, if any;

(d) The relationship of the management company to the declarant, if any;

(e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;

(f) The nature of the interest being offered for sale;

(g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;

(h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;

(i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;

(j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;

(k) A list of the limited common elements assigned to the units being offered for sale;

(l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;

(m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(n) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) **A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;**

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall

apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(11);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995;

(ll) A notice that is substantially in the form required by RCW 64.50.050;

(mm) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty;

(nn) A statement that the building enclosure has been designed and inspected as required by RCW 64.55.010 through 64.55.090, and, if required, repaired in accordance with the requirements of RCW 64.55.090; and

(oo) If the association does not have a reserve study that has been prepared in accordance with RCW 64.34.380 and 64.34.382 or its governing documents, the following disclosure:

"This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element."

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more, the association's current reserve study, if any, and the inspection and repair report or reports prepared in accordance with the requirements of RCW 64.55.090.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [2008 c 115 § 10; 2005 c 456 § 19; 2004 c 201 § 11; 2002 c 323 § 10; 1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

Notes: Captions not law -- Effective date--2005 c 456: See RCW 64.55.900 and 64.55.901.

RCW 64.34.040 Separate interests — Taxation.

1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.
2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.
3) If a development right has an ascertainable market value, the development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed to the declarant.
4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law.
[1992 c 220 § 3; 1989 c 43 § 1-105.]

Jessica Simulcik Smith

Subject: Highland Terrace Comment Letter on Development Code Amendments (PC 12/04/08)

From: Artmaronek@comcast.net
To: william.hall@yahoo.com, dpyle@ci.bellevue.wa.us, jkaje@comcast.net, mbroili@harvestrain.net, repiro@aol.com, kuboi@earthlink.net, jebwa52@aol.com, michelle.wagner@gmail.com
CC: ceggen@ci.shoreline.wa.us, rhansen@ci.shoreline.wa.us, dmcconnell@ci.shoreline.wa.us, kmcglashan@ci.shoreline.wa.us, cryu@ci.shoreline.wa.us, cindy4shoreline@yahoo.com, tscott@ci.shoreline.wa.us, jway@ci.shoreline.wa.us, rolander@ci.shoreline.wa.us
Sent: 11/30/2008 2:44:34 P.M. Pacific Standard Time
Subj: Request to Planning Commission

Members of the Shoreline Planning Commission:

On December 4th, you will be asked to approve amendments to the Development Code in support of a badly designed "air condo" or "single-family condominium" development at 15208/15222 Greenwood Avenue North. The adjacent Highland Terrace neighbors have opposed that design since September 2007, repeatedly testified before the City Council about our concerns, and wrote multiple letters to planning staff about the dangers to public safety from the current design.

Two written legal opinions were prepared in response. The first legal opinion was issued by the City Attorney on March 31, 2008 (copy attached), and states that "single-family condominium" developments are subject to the requirements of the Development Code, just as non-condominium single-family developments are.

The second legal opinion was issued by our attorney on September 10, 2008 and shared with the City (copy attached). This legal opinion added to the City Attorney's opinion by detailing how "single-family condominium" developments of over four stuctures remain subject to the Formal Subdivison process as required by the Development Code and state law.

The proposed amendments on your December 4th agenda appear to be intended to do two things. First, the Formal Subdivision requirement now applicable to "single-family condominium" developments would be removed, but retained for all other forms of single-family development over four structures in size. Such a discriminatory favoring of "single-family condominiums" would clearly cause developers to choose that form of development in the future, because the oversight provided by open public hearings, review by the Planning Commission, and approval by the City Council would be removed.

Second, the proposed amendments would transfer all future liability for negative off-site impacts such as tree-falls, view blockage, shadowing from sunlight, overflow parking, etc. from developers to the City of Shoreline.

Such significant changes to the Development Code, and the negative impacts on the character of Shoreline's neighborhoods that would result, should be fully disclosed to the City Council for public discussion, rather than being considered by the Planning Commission as minor word changes. In addition, any legal opinion by the City Attorney that supports the proposed

amendments should be shared with the City Council, the Planning Commission, and Shoreline's citizens before any decisions are made.

Because of these concerns, we request that the Planning Commission not approve the proposed changes to Section 20.30.370 Purpose, Section 20.30.370.A. and Section 20.30.410. A.4. of the Development Code which are on your December 4th agenda.

Highland Terrace neighbors

CITY OF SHORELINE

Memorandum

DATE: 3/31/08

TO: Joe Tovar, Director of Planning and Development Services
Bob Olander, City Manager

FROM: Ian Sievers, City Attorney

RE: **Condominium Development of Single Family Residences**

This memo expands upon my March 21, 2007 memo discussing the request for a moratorium on the creation of detached homes using a condominium. Specifically it responds to Mr. Maronek's letter of March 20, 2008.

Mr. Maronek requests a code interpretation for the proper land use district standard that should apply to "Single-family Condominium" if in fact it is permitted at all. He acknowledges RCW 64.34.050 restricts the ability of the City to bar condominium development where a physically identical development under a different form of ownership is allowed under local land use regulations. And Mr. Maronek's statement that the "Development Code requirements applicable to Single-family Detached use are, under state law, equally applicable" is correct. The use of this parcel is for single family detached and it is not a separate use based on the form of ownership.

The inquiry is whether single family detached development allows several such dwellings on a single parcel or whether this use requires a separate parcel for each. Mr. Maronek states that the Code requires that building seven single-family homes "would be required to go through the Formal Subdivision process per City code. No citation to the Code is included in support of this statement, and I find that the Code clearly allows multiple principal residences on the same lot.

Zoning codes are not consistent in using a limitation on the number of principal residences as a density control in addition to dwelling units per area of land, lot coverage and setbacks. For example, in *Upper Brookville v Torr* , 158 NYS2d 899 (1957), the court found that a zoning ordinance prescribing a minimum lot area and a maximum building area as a percentage of lot area envisaged a "lot" sufficiently large to permit more than one single-family detached principal building that otherwise complied with the frontage, height, and set-back requirements. In *McGlasson Builders, Inc. v Tompkins,*

203 NYS2d 633 (1960), the question was whether the land around an old residence located on a corner lot could be used for the construction of new homes, under an ordinance requiring a minimum lot area for a family residence, and minimum setbacks. The court granted the permits, finding that each of the proposed new residences and the old residence would have the area and set-backs required by the ordinance.

Zoning codes limiting the number of principal residences allowed for each lot have also been upheld. Such a restriction of the Skagit County Code stated: "Not more than one (1) dwelling unit shall be allowed on any lot, except by legal means as provided in this Ordinance." *Dykstra v. County of Skagit,* 97 Wash.App. 670, 985 P.2d 424 (1999).

Shoreline's zoning code has no restriction on principal uses similar to the Skagit County Code under its lot or dwelling unit definitions or other code regulations. In fact, the Code expressly acknowledges that multiple dwellings need not require a separate lot for each. Exception (5) to SMC Table 20.50.020(1) applicable to front and rear yards for residential zones including R-4 and R-6 states: "For developments consisting of three or more dwellings located on a single parcel, the building setback shall be 15 feet along any property line abutting R-4 or R-6 zones." Exception (7) to SMC Table 20.50.020(1) states: "the base density for single-family detached dwellings on a single lot that is less than 14,400 square feet shall be calculated using a whole number, without rounding up." In other words, if a R-4 lot has 14,400 feet two dwellings are permitted and lots greater the 14,400 may even use a rounding up rule to gain an additional residence on the same lot without adding a full 7200 sq. feet per unit to the lot area.

The code is clear when it does limit the number of units allowed on a single lot, notably in applying bonus densities. *See* SMC 20.40.230 [affordable housing density bonus not allowed for "the construction of one single-family dwelling on one lot that can accommodate only one dwelling based upon the underlying zoning designation"]; and SMC 20.40.210 (A) [only one accessory dwelling unit per lot, not subject to base density calculations].

Reliance on development standards for density and placement of dwellings rather than subdivisions of land, does not appear to conflict with other policy objectives of the Code. The obvious concern might be that spacing of homes may be closer if interior lot lines and side yards can be avoided, relying on the building code alone for fire safety.[1] However, single family attached dwellings, including townhomes are permitted in R-4 and R-6 provided any of six special conditions is met, such as the retention of trees. SMC 20.40.120; 20.40.510. Consistent with the Code citations above, "[t]ownhomes may be located on a separate (fee simple) lot or several units may be located on a common parcel." SMC 20.30.016. "Zero lot line" development is also permitted for an R-4 and R-6 development where individual lots exist. SMC 20.50.02(1). Thus appearance of single-family homes on a single adequately-sized parcel is not significantly different than the same number of homes on separate lots.

[1] According to the Building Official separation is currently six feet with no extraordinary fire resistive construction.

To conclude, so long as the density, surface coverage, building coverage and yards standards of SMC 20.50.020(1) are met, multiple single family residence may be constructed òn a single parcel, and therefore may be also be developed under a condominium form of ownership.

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September 10, 2008

Via Email: artmaronek@comcast.net
and by U.S. Mail

Mr. Art Maronek
15234 Greenwood Avenue North
Shoreline, WA 98133

Re: Land Division Laws Pertaining to Condominium Ownership

Dear Mr. Maronek:

You have asked us whether a land developer may avoid the rigors of the laws pertaining to land division in this state, namely RCW 58.17 regarding subdivisions and binding site plans, and relevant requirements of the zoning code for density, bulk, setback, and the like; by declaring his project to be a condominium. Briefly, we conclude that he may not. To the contrary, he must follow either a subdivision process, or else an alternative provided by the City, such as a binding site plan process, even though he is creating condominiums. In the case of Shoreline, it appears that no binding site plan ordinance is available for residential property, so that State and local subdivision law, and the constraints of the local zoning ordinance, will pertain to the proposed residential project.

Factual Basis for Inquiry. A land developer who owns parcels located at 15208 and 15222 Greenwood Avenue North has proposed to eliminate the lot line between those two lots, then to develop 7 free-standing, single-family residences on the site. Both lots are zoned R-6 (up to 6 dwelling units per acre are permitted.) Your discussions with the City, and your examination of papers that you receive from the City about the project under the public disclosure law, leave you wondering what land division laws, and what public process, will pertain to the project.

Information in Support of Opinion. In support of this opinion, we have researched state subdivision and condominium statutes, and the cases interpreting them, and we have examined the documents you have received from the City under your requests for public disclosure. From your requests and the City's response, that appears to be all drawings, memoranda, notes, correspondence, and copies of relevant portions of the Shoreline code. We have also examined those portions of the Code pertaining to land use processes and development standards for single family detached dwelling units.

Analysis. Whether or not ownership of a parcel will be held by owners in common under a condominium declaration, creation of a condominium constitutes a division of land within the meaning of State subdivision law and the City code. The City may not discriminate against the proponent of a condominium project because his project will be held, ultimately, by condominium owners. On the other hand, a developer is not excused from meeting any of the requirements of a zone simply because his project will be held in common ownership.

Two statutes pertain. The first is RCW 64.34.050(1), which prohibits discrimination against condominiums, but also subjects them to the same regulations as other structures or uses in the same zone. It says:

> A zoning, subdivision, building code, or other real property law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

The second statute that pertains is the State subdivision law, that pertains to all subdivisions unless they are specifically exempted. Ch. 58.17 RCW. It provides an exception for the creation of condominiums, but only if a binding site plan ordinance pertains. RCW 58.17.040 says that the following are exempt from subdivision law:

> ...
> (7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a

> binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) In connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan.

Restated, the creation of a condominium must follow subdivision law unless a binding site plan ordinance pertains. That interpretation was sustained by the State Court of Appeals,

and the State Supreme Court declined to review that opinion, in the case of Strauss v. City of Sedro-Woolley, 88 Wash App 376, 944 P. 2d. 1088 , rev. den. 135 Wash. 2d 1002, 959 P. 2d 127 (1997). In that case, owners of a mobile home park sought to convert their parcel into condominium ownership without following either a subdivision or binding site plan process. The Court said,

> "Under Ch. 58.17 RCW, two methods exist for subdivision of land into individual lots, parcels, tracts or units. One is the traditional subdivision process under RCW 58.17.033. The other method, at issue here, is an alternative to the traditional subdivision process: RCW 58.17.035 allows municipalities to adopt by ordinance procedures for the division of land by use of a binding site plan as an alternative to traditional subdivision . The statute provides that municipalities may use this alternative means in three situations, the third of which is at issue here: "divisions of property as provided for in RCW 58.17.040(7).' RCW 58.17.035. RCW 58.17.040(7) applies to the creation of condominiums for which a binding site plan has been approved...."

Strauss, at p. 381.

The City of Shoreline Municipal Code recognizes that State subdivision law pertains in the City. SMC 20.30.390 regarding exemptions from the subdivision law says that the chapter does not apply to exemptions specified in state law. The corollary is that if a state exemption does not apply, neither does a local exemption, and the formal subdivision process is required. The City code provides that in case of a conflict with State law, RCW 58.17 prevails. SMC 20.10.030.

The City of Shoreline Municipal Code does not provide the use of a binding site plan to the developer of a residential parcel that will be owned under condominium ownership. Rather, its binding site plan law addresses only commercial and industrial zoned parcels. SMC 20.30.480.

Because no binding site plan alternative is available to the developer, his project falls under all of the development standards of the subdivision and zoning code that are applicable to detached single family residences, as set forth in SMC. 20.50.060 through SMC 20.50.115.

The type of land use review required of this process is that described in SMC 20.30.060 for "Type C" procedures, which pertains to "preliminary formal subdivisions," since the creation of 7 new dwelling units for sale is essentially a subdivision, even though 7 new lots will not be created. The SMC 20.30.370 describes the purpose of the subdivision law, and specifies that the subdivision law pertains to the division of land into tracts, parcels, lots or "interests" for sale. The offering of a share of common ownership in a condominium, together with exclusive ownership of a house, and possible limited common ownership of a yard, constitutes the creation of new "interests" for sale, within the meaning of the city code, so must be treated as a subdivision. SMC 20.30.410 specifies that a preliminary subdivision calls for a "Type C" process.

Documents provided by the City mention, without further analysis, that given condominium ownership, no lot lines exist, so that separation between buildings would be only what is required by the Building Code. We respectfully disagree. The equivalent of a "lot line" would be the line designating limited common areas between structures; or alternatively, if no limited common area were created between structures, then the twice the distance normally required between a lot line and the required building setback line would appear to be the appropriate distance between structures. That would apply the City's zoning law as equally as possible to structures divided by lot lines and to those separated by common areas.

The City Attorney has commented that SMC 20.50.020(1) pertains, and we agree. That section of the City Code establishes detailed design standards for the R-6 zone. The City Planner Brian Lee wrote to Dante Palmaffy on August 23, 2007, listing many additional rules, regulations, and engineering standards that pertain. Among other development requirements that are of special interest to the neighborhood, the City's tree conservation law at SMC Ch. 20.50 pertains.

Because the creation of units held in condominium ownership is subject to the subdivision law, and because seven units are proposed (more than can be considered as a short plat), development of the site should follow at "Type C" process of administration as contemplated by Ch. 20.30 SMC. Our opinion does not vary significantly from the opinion of the City Attorney dated March 31, 2008 regarding the land division process, because his letter does not address the land division process. Rather, his focus is upon whether more than one dwelling unit may be placed on a single parcel, and we do not dispute that point, especially where the proposed development will be held in condominium ownership.

Conclusion. Creation of seven detached residential units is subject to the subdivision process of the City even though the underlying parcel on which they are constructed will be held under the common ownership of a condominium homeowner's association. All of the City's zoning laws regarding height, bulk, setback, tree preservation, and access standards, and all of its administrative requirements, including those for public hearing, remain in effect. The hearing process should be "Type C" for formal subdivisions. Under that process, neighbors will receive notice of proceedings. Findings will be made by the Planning Commission, and the subdivision must be approved, if at all, by the Council.

Very truly yours,

SUSAN RAE SAMPSON, INC., P.S.

Susan Rae Sampson

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SRS:mmk