

66423-9

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**NO. 66423-9-I
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION I**

DEBORAH BUCK,

Appellant,

v.

**CITY OF SHORELINE, a municipality organized under the laws of
the State of Washington, and CRISTA MINISTRIES a Washington
nonprofit corporation,**

Respondents.

BRIEF OF RESPONDENT CITY OF SHORELINE

CITY OF SHORELINE

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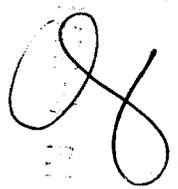


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I. INTRODUCTION

The City of Shoreline (hereafter “City”) incorporates and joins in Respondent CRISTA Ministries’ (hereafter “CRISTA”) response brief. The City files this separate response brief to address portions of Appellant Deborah Buck’s (hereafter “Buck”) exhaustion of administrative remedies argument unique to the City.

II. STATEMENT OF THE CASE

A. Counter Statement of Facts.

1. Master Development Permit Application

On March 6, 2009, Respondent CRISTA submitted an application to the City for a Master Development Plan (hereafter “MDP”) to guide the development of the CRISTA campus for the next fifteen to twenty years. Certified Appeal Board Record (hereafter “BR”) 1. The purpose of the MDP is to provide a long range, twenty-year growth and development plan for the CRISTA campus, which consists of approximately 57 acres currently developed with schools, assisted senior care residential units, independent senior living residential units, and broadcasting, and administrative offices. CP 13. The MDP proposed three phases of development (1-5 years, 5-10 years and 10-20 years) for remodeling,

replacing, or demolishing CRISTA's existing aging buildings, as well as development of a new athletic practice field. BR 405-409.

Under the Shoreline Municipal Code, consideration and approval of the MDP is a quasi-judicial process, requiring an open record public hearing before the Planning Commission prior to the City Council decision on the MDP. Shoreline Municipal Code SMC 20.30.060. At the open record public hearing, the public is invited to submit written comment and provide oral testimony. CP 47-48; BR 263-270, 298-300, and 344-349.

2. SEPA Environmental Review

As part of the permit approval process, the MDP is subject to environmental review under the State Environmental Policy Act (SEPA). BR 224-225. Using the optional SEPA process, the City issued a combined Notice of Master Development Plan Permit Application and Optional SEPA DNS Process. CP 77. Interested persons were invited to submit SEPA comments by December 4, 2009. *Id.* Appellant Buck submitted written SEPA comments to the City by letter dated December 4, 2009. CP 81-82. Ms. Buck's substantive environmental comments in her December 4, 2009 letter focused on traffic impacts related to the Early Childhood Center. *Id.* Ms. Buck's December 4, 2009 letter stated: "I adopt by this reference all of the comments of others that deal with

environmental effects and mitigations for our general neighborhood.” CP 81.

The City’s responsible SEPA official considered Buck’s letter, together with ninety-nine other comment letters and the SEPA checklist, then issued a final SEPA threshold determination - a Mitigated Determination of Non-Significance (hereafter “MDNS”) - on December 22, 2009. BR 413; CP 86-87. The SEPA mitigations included:

- To mitigate traffic impacts: limit enrollment and senior housing units, widen one roadway for a two-way left-turn lane and a second roadway to accommodate three lanes, construct left-turn pockets, and develop a traffic control plan for special events.
- To identify impacts to wildlife: submit a wildlife biologist report prior to issuance of practice field permit.
- To mitigate impacts to historic buildings: install signage, photos and narratives on the historic value of the property and nomination of certain exteriors for landmark status.
- To mitigate noise and aesthetic impacts: install landscape buffer and/or sound barrier between street and practice field.
- To mitigate impacts to air and quality: hazardous materials professional to inspect buildings prior to remodel or demolition, implementation of any suggested mitigations.

CP 86-87.

a. No SEPA Administrative Appeal

The City did not provide a SEPA administrative appeal for the MDNS associated with CRISTA'S MDP. CP 87. It is uncontested that a SEPA administrative appeal is *not* required by state law. See RCW 43.21C.075. The Director issued an Administrative Order¹ pursuant to the Shoreline Municipal Code, explaining the discrepancy between City Code and state law which ultimately led to the conclusion that no administrative appeal could be allowed in this case.² CP 94.

3. MDP Open Record Hearing

Following the MDNS issuance, the City scheduled a January 21, 2010 open record hearing in front of the Planning Commission to consider whether the MDP met the following criteria in the Shoreline Municipal Code:

1. Is the project site designated either campus or essential public facility in the Comprehensive Plan and Development Code, and is the proposal consistent with the goals and policies of the Comprehensive Plan?

¹ Shoreline Municipal Code 20.30.680E states in pertinent part: "the Department may adopt procedures under which an administrative appeal shall not be provided if the Director finds that consideration of an appeal would be likely to cause the Department to violate a...specific legal obligation." SMC 20.30.680(E) is attached as Appendix A.

² Shoreline subsequently amended its code to remove the conflict and make the code align with state law, eliminating the SEPA administrative appeal for actions heard by the Planning Commission. See page 7, §(A)(4) and (5) of Certified Copy of Ordinance No. 591, attached as Appendix B.

2. Does the proposal include a general phasing timeline of development and associated mitigation?
3. Does the proposal meet or exceed the current regulations for critical areas, if critical areas are present?
4. Does the proposed development use innovative, aesthetic, energy efficient and environmentally sustainable architecture and site design (including low impact development stormwater systems and substantial tree retention) to mitigate impacts to the surrounding neighborhoods?
5. Is there both sufficient capacity and infrastructure (e.g., roads, sidewalks, bike lanes) in the transportation system (motorized and nonmotorized) to safely support the development proposed in all future phases or will there be adequate capacity and infrastructure by the time each phase of development is completed?
6. Is there sufficient capacity within public services to adequately serve the development proposal in all future phases, or will there be adequate capacity at the time each phase of development is completed?
7. Does the proposal contain architectural design and site design standards, landscaping, provisions for open space or recreation areas, retention of significant trees, parking/traffic management and multimodal transportation standards that minimize conflicts and create transitions between the proposal site and adjacent neighborhoods and residential uses?
8. Has the applicant demonstrated that the proposed industrial, commercial or labor uses will be safe for the surrounding neighborhood and for other uses on the campus?

CP 83; BR 235-243 and 249-274.

Buck attended the hearing on January 21st and presented both written and verbal testimony with regard to the applicant's proposed MDP, both of which were entered into the official record. CP 95-101. Buck's

substantive comments were on traffic impacts from the Early Childhood Center. Id. She did not reference any other substantive concerns of others in her testimony.³ Id.

The hearing did not conclude on January 21st, and was duly continued, on the record, to February 18, 2010. BR 273. Buck also attended the February 18th hearing, and again addressed the Planning Commission verbally with her concerns regarding the MDP permit, specifically the traffic impacts from the Early Childhood Center. CP 102-103. No other concerns or comments of others were raised by Buck. Id. Buck's comments were entered into the record. Id.

The open public meeting did not conclude on February 18th either, and was continued to March 18, 2010. BR 316. Again, notice of the continuance was given at the February 18th hearing, on the record. Id. Buck attended the March 18th hearing and again addressed the Planning Commission with her concerns regarding the MDP permit, specifically the traffic impacts of the Early Childhood Center. CP 104-106. Buck also submitted a verbatim transcript of her oral testimony. CP 107-108. The open record public hearing concluded on this date. BR 372.

³ Buck's written submittal was a verbatim transcript of her oral testimony. She did include the following statement in her testimony: "other EIS comments were ignored" but did not elucidate these other comments. CP 101.

After three nights of hearings, the Planning Commission entered its Findings, Conclusions and Recommendation for approval, with twenty-four conditions. BR 405-428. The City Council considered the Commission's Findings, Conclusions and Recommendations at a closed record hearing, and approved the MDP, with twenty-two conditions, on May 10, 2010. CP 404-445.

B. Procedural History

Appellants filed a land use petition against the City and CRISTA challenging the City's SEPA environmental review and the MDP land use decision, requesting that the court review the following decisions:

1. The CRISTA Master Development Plan; and
2. Responsible Official's determination that no SEPA administrative appeal was available.

CP 3-43.

Furthermore, appellant sought the following relief under the land use petition act:

1. That the court conduct a standard civil trial on the SEPA issues; and
2. That the court issue a scheduling order similar to that set for all civil (non LUPA) trials; and
3. That the court review the City of Shoreline record with regard to issues other than SEPA; and

4. For an order reversing and vacating the City's decision to approve the MDP.

CP 10.

Two separate motions for partial summary judgment were filed, one by CRISTA and one by the City.

1. CRISTA'S Motion for Partial Summary Judgment

CRISTA filed a motion for partial summary judgment requesting the court dismiss all of Buck's claims other than the Early Childhood Center's traffic impact, based on Buck's failure to exhaust her administrative remedies and lack of standing. CP 131-137. The City filed a motion joining in CRISTA's motion for partial summary judgment. CP 138-139. Buck filed a response to CRISTA's motion. CP 143-161. CRISTA filed a reply and the City filed a separate reply. CP 306-311; CP 342-346.

2. City's Motion for Summary Judgment

The City filed a separate motion for summary judgment requesting the court deny and dismiss Buck's due process claims based upon lack of notice and failure to provide for a SEPA administrative appeal. CP 44-55. The City's motion also requested the court deny Buck's request to have the court conduct a standard civil trial (Prayer for Relief ¶5.1) and issue a

scheduling order similar to that set for non-LUPA trials (Prayer for Relief ¶5.2). CP 54.

Buck filed a Notice of Non-Opposition to City of Shoreline's Motion for Summary Judgment. CP 303.

3. Initial Hearing and Ruling on Summary Judgment Motions

At the initial hearing on August 6, 2010, and after oral argument by the parties on the summary judgment motions, the court entered an Order Granting the City's Unopposed Motion for Summary Judgment, denying and dismissing Buck's due process claims based upon lack of notice and failure to provide for an administrative hearing and denying and dismissing Prayers for Relief ¶5.1 and ¶5.2. CP 347-349. The Court also entered an Order Granting CRISTA's Motion for Partial Summary Judgment for Failure to Exhaust Administrative Remedies and Lack of Standing, denying and dismissing all of Buck's claims except her claims relating to the Early Childhood Center's traffic impacts. CP 350-351.

4. Land Use Petition Hearing and Ruling on Land Use Petition

Buck filed her LUPA opening brief on the one remaining issue of whether traffic impacts associated with the Early Childhood Center were adequately analyzed under SEPA. CP 352-364. CRISTA and the City filed separate response briefs, and Buck filed her reply. CP 374-386; CP

387-408; CP 409-417. The Land Use Petition hearing was held on November 3, 2010 and the court heard oral argument from the City, CRISTA, and Buck. CP 418-419. The court entered an order denying Buck's LUPA Petition and awarding the City costs of \$143.50 for production of a portion of the Administrative Record, and dismissing the Petition with prejudice. CP 418-420. Buck then filed this appeal. CP 421-422.

III. COUNTER STATEMENT OF ISSUES

1. Did Buck fail to exhaust her administrative remedies by not sufficiently raising her concerns to the City, beyond a simple hint and slight reference in a comment letter?
2. Does Buck lack standing to challenge the SEPA threshold determination in its entirety based on her failure to exhaust administrative remedies?
3. Is CR 11 implicated by the argument that Buck has not exhausted her administrative remedies?
4. Is the City owed attorney fees under RCW 4.84.370?

IV. LEGAL ARGUMENT

A. Standard of Review

The City adopts and incorporates the Standard of Review set forth in Brief of Respondent CRISTA Ministries.

B. Buck Did Not Exhaust Her Administrative Remedies

Throughout her Brief, Buck argues that since she did not have an administrative SEPA appeal, she did not have adequate opportunity to voice her concerns and thus exhaust her administrative remedies. For example, Buck states that the City “is responsible for limiting the available administrative remedies,” that she had “zero” opportunities to voice her concerns through an administrative appeal and that there was “a lack of a hearing to make a record”. Brief of Appellant Deborah Buck at 18, 19 and 22. This is inaccurate and misleading.

Furthermore, Buck is inappropriately raising an argument that she waived at the trial court level. Although not explicitly identified as an issue before this Court, Buck argues throughout her brief that the City improperly revoked a SEPA administrative appeal. The City’s motion for summary judgment, granted by the court, requested denial and dismissal of Buck’s due process claim of failure to provide for a SEPA administrative appeal. Buck filed a non-opposition to the City’s summary judgment motion. Additionally, Buck made it clear during oral argument on the summary judgment motion that she did not oppose the City’s summary judgment request to dismiss the claim regarding the SEPA administrative

appeal.⁴ See Partial Verbatim Report of Proceedings, page 5, ¶10-15.

Buck's continued challenge to whether an administrative SEPA appeal was properly revoked is inappropriately before this court as she waived it below. Buck did not preserve her due process claims in the trial court as required by RAP 2.5(a); indeed, Buck entered a Notice of Non-Opposition to the City's summary judgment motion, thus consenting to the order dismissing the due process claims with prejudice. Furthermore, Buck did not assign error to this dismissal in her Notice of Appeal or attach to the Notice of Appeal the Court's order granting the City's summary judgment motion, as required by RAP 5.3(a). Finally, although required by RAP 10.3(a)(g), Buck did not offer any authority or argument that the trial court erred in entering the City's unopposed order and thus has waived this issue. *Gronquist v. Dep't of Corrections*, 159 Wash. App. 576, 589, 247 P.3d 436 (2011).

1. It is Misleading to State There Was No Public Hearing.

Buck interchanges the terms "public hearing" and "administrative appeal" throughout her brief, thus presenting an inaccurate theme that the City did not provide a "public hearing" at which citizens could voice their concerns. See, for example, Brief of Appellant Deborah Buck at:

- Page 7: “The City repeatedly led its citizens to believe there would be a public hearing in which citizens could present their evidence...”
- Page 9: “December 8, 2009. City staff issues decision revoking right to public hearing....”
- Page 18: “This occurred when the City revoked the right to an administrative hearing and instructed concerned citizens to seek a judicial remedy.”
- Page 20: “The City made it clear that there would be an opportunity to make a record during a hearing.”
- Page 21: “When the City revoked the right to an administrative hearing...”
- Page 24: “That Buck should have used the hearing to make her points, when there was no hearing.”

While it is accurate to state that the City did not provide an administrative SEPA appeal, it is not accurate to state that the City did not provide a public hearing. First, contrary to Buck’s statements that the City “revoked the right to an administrative hearing,” Buck has no *right* to an administrative *appeal*. SEPA administrative appeals are discretionary under state law, not mandatory. RCW 43.21C.075. Furthermore, the City could not allow an administrative appeal as there was a conflict between SEPA requirements in the City’s Code and state law.⁵ Finally, although no administrative appeal was provided, the City did hold an

⁵ See CP 94.

extensive public hearing where Buck voiced her concerns.

2. Appellant Had the Opportunity to Voice Her Concerns at Three Nights of Public Hearing.

The permit issued here, CRISTA's Master Development Plan, required a public hearing in front of the Planning Commission prior to issuance. SMC 20.30.060. The City held three nights of public hearing for the MDP. BR 409. Buck attended all three nights of public hearing and submitted her concerns, both in written form and through oral testimony. CP 109-128. The three nights of public hearing on the MDP was Buck's opportunity to complete her record and to voice her concerns in a public record hearing. Notwithstanding these three opportunities to voice her concerns and make a complete record, Buck chose to raise only one issue throughout the three days of hearing, specifically the traffic impacts related to the Early Childhood center.

As explained by the Supreme Court, administrative remedies must be exhausted when: (1) a claim is cognizable in the first instance by an agency alone; (2) the agency has clearly established mechanisms for the resolution of complaints by aggrieved parties; and (3) the administrative remedies can provide the relief sought. *South Hollywood Citizens Ass'n v. King County*, 101 Wn. 2d 68, 73, 677 P.2d 114 (1984). Failure to raise an issue during the administrative hearing below precludes an appellant from

raising the issue on appeal. *Washington Shell Fish, Inc. v. Pierce County*, 132 Wash. App 239, 260, 131 P.3d 326 (Div 2, 2006), citing *Orion Corp. v. State*, 109 Wn.2d 621, 632, 747 P.2d 1062 (1987) (exhaustion of administrative remedies required under the Washington Constitution).

If Buck had additional concerns with CRISTA's land use application, she should have explicitly raised them during the permit's public hearing process, rather than relying on a vague statement in her SEPA comment letter to "adopt by reference" the comment of others that addressed environmental effects in her general neighborhood. "In order for an issue to be properly raised before an administrative agency, there must be more than simply a hint or a slight reference to the issue in the record." *King County v. Washington State Boundary Review Bd.*, 122 Wn.2d 648, 670, 860 P.2d 1024 (1994). While Buck is not expected to "raise technical, legal arguments with the specificity and to the satisfaction of a trained land use attorney during a public hearing,"⁶ she is at least expected to state her pertinent, specific concerns during the public hearing so the decision-makers can address and remedy those concerns by incorporating mitigations into the final permit.

Buck cites two exhaustion cases, *West v. Stahley*, 155 Wash. App. 691, 229 P.3d 943 (Div 2, 2010) and *Gardner v. Pierce Cty Bd of Commn'rs*,

⁶ Quoting Respondent Buck's brief at page 17, quoting *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 870, 947 P.2d 1209 (1997)

27 Wash. App 241, 243-244, 617 P.2d 743 (Div 2, 1980), to argue that exhaustion of remedies is not required where the failure to exhaust is a result of agency actions, not petitioner shortcomings. These cases are not on point because they focus on failure to exhaust based on failure to file a timely administrative appeal. In *West v. Stahley*, the petitioner did not file an administrative appeal within the time period set forth in the city's code. Petitioner argued that the court should excuse his failure to exhaust administrative remedies because the City did not give proper notice of the decision. The court, not persuaded by petitioner's argument, held that petitioner failed to exhaust his administrative remedies by not filing a timely administrative appeal. In *Gardner v. Pierce Cty Bd of Comm'n's*, the court excused the exhaustion requirement and allowed the petitioner's appeal even though an administrative appeal had not been filed, as the County had not provided notice of the initial administrative decision. These cases are not on point since they do not address the issue in this case: Buck's failure to fully raise her concerns with a land use application during the permit approval process.

There is no need for a citizen to hide her concerns with a permit until an administrative appeal; saving issues for an administrative appeal does not allow the City to fully address concerns during the permit approval process. The Supreme Court has stated that "one of the primary

purposes of the doctrine to exhaust administrative remedies is to provide a more efficient process and allow the agency to correct its own mistakes.” *Smoke v. City of Seattle*, 132 Wn.2d 214, 226, 937 P.2d 186 (1997). Thus, Washington courts hold that “[i]t is not unfair to expect citizen groups to use available administrative procedures. Fairness to the agency requires that would-be litigants try to clarify ambiguity before going to court.” *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 28, 785 P.2d 447 (1990). The doctrine is “founded upon the belief that the judiciary should give proper deference to that body possessing expertise in areas outside the conventional experience of judges.” *South Hollywood Citizens Ass’n v. King County*, 101 Wn. 2d 68 at 73.

There is nothing disingenuous about the argument that a citizen has to raise her issues below in order for the entity to be put on notice of such issues. Raising concerns during the open record hearing process allows decision-making bodies to consider those concerns and condition the permit with mitigating conditions. Here, it would not have been “futile,” as Buck argues, for her to have exhausted administrative remedies by raising all of her concerns at the hearing since the Planning Commission and the City Council had the ability to address those concerns. In sum, Buck’s failure to raise any issues at the open record hearing and during the permit approval process, besides the traffic impact issue related to the

Early Childhood Center, means she failed to exhaust her administrative remedies with regard to all other issues not raised.

3. The SEPA Determination and the MDP Decision Must Be Considered Together

Appellant has presented this case as a singular SEPA determination. It is not appropriate for Buck to suggest the court review the SEPA determination in a vacuum, without any acknowledgement of the MDP and its conditions, as well as the extensive public testimony considered by the Planning Commission during the MDP public hearing process. Bifurcation of the SEPA decision and the underlying government action is not allowed for purposes of judicial review. Judicial review under the SEPA statute shall “without exception be of the governmental action together with its accompanying environmental determinations.” RCW 43.21C.075(6)(c). In addition,

[b]ecause a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. [SEPA] is not intended to create a cause of action unrelated to a specific governmental action.

RCW 43.21C.075(1), (2)(a).

The purposes of the linkage requirement between the SEPA

determination and the underlying permit are to “preclude judicial review of SEPA compliance before an agency has taken final action on a proposal, foreclose multiple lawsuits challenging a single agency action and deny the existence of ‘orphan’ SEPA claims unrelated to any government action.” *State v. Grays Harbor County*, 122 Wn.2d 244, 251, 857 P.2d 1039 (1993). As noted by the *Gray’s Harbor* court, Professor Settle explains this linkage requirement as follows:

SEPA unequivocally declares that its right of judicial review “shall without exception be of the governmental action together with its accompanying environmental determinations.” This provision precludes judicial review of SEPA compliance until final agency action on the proposal. Then, and only then, are the agency's earlier SEPA determinations (concerning categorical exemption, threshold review, scoping, EIS preparation and adequacy) subject to judicial review. Even though administrative review of threshold determinations may be allowed prior to final agency action, interlocutory judicial review of SEPA compliance never is permitted. This limitation on SEPA's right of judicial review serves obvious, laudable purposes. Potential delay and costly litigation are greatly reduced. *SEPA compliance is not subject to piecemeal, isolated adjudication but must be evaluated as an integrated element of government decisionmaking....*

SEPA's absolute insistence upon simultaneous judicial review of all SEPA and any non-SEPA challenges of government action precludes multiple SEPA and non-SEPA lawsuits contesting various aspects of the same agency decision and the process by which it was reached.

Gray’s Harbor at 250-51 (italics added, footnotes omitted), quoting R. Settle, *The Washington State Environmental Policy Act* § 20, at 244-45

(1993).

Buck's continued attempt to shape this case as an isolated SEPA decision without consideration of the underlying action at issue is in error. Buck's attempt to do so ignores the fact that SEPA is assigned a "secondary role to...systematic mitigation of adverse environmental impacts through local development regulations." *Moss v. Bellingham*, 109 Wash. App. 6, 15, 31 P.3d 703 (Div 1, 2001), citing Richard L. Settle, *The Washington State Environmental Policy Act: a Legal and Policy Analysis*, Appendix E, p. 505 (1995).

Here, it is important for the Court to note that the City's MDP regulations cover environmental concerns and ensure development impacts to adjacent neighborhoods are mitigated. *See, e.g.*, criteria #4 (BR 416) and #7 (BR 421-422). The Planning Commission and the City Council had the ability to attach mitigating conditions to the MDP, based on the comprehensive MDP criteria, and they did so. *See* comprehensive MDP criteria at BR 414-423 and conditions at BR 443-445. Any failure to address concerns under SEPA is harmless error as SEPA takes a secondary role to the more comprehensive MDP regulations, which allow the Council to mitigate environmental concerns by attaching conditions to the permit. Indeed, twenty-two conditions were attached to the MDP, many of which addressed environmental concerns. BR 443-445.

In sum, the entire MDP process, from the SEPA threshold determination to Planning Commission hearings and the City Council's final MDP decision, must be considered together. Buck's one statement made during the permit review process that she adopts by reference the concerns of others is not enough to sustain a challenge on all environmental issues. Buck had an obligation to clarify her concerns during the permit application process so that the City could use its development regulations to address her concerns. Buck had numerous opportunities to do so throughout the process. Buck's slight hint in a written comment letter that she may have additional concerns beyond the traffic impact from the Early Childhood Center is not sufficient to exhaust her administrative remedies.

C. No Standing.

Since Buck failed to adequately raise issues below and thus failed to exhaust her administrative remedies, the trial court correctly concluded that she did not have standing on any issues other than the one issue she raised during her comments: traffic impacts of the Early Childhood center. RCW 36.70C.060.⁷

⁷ RCW 36.70C.060 states in pertinent part that a person who is aggrieved or adversely affected by a land use has standing, and that a person is aggrieved or adversely affected only when "the petitioner has exhausted his or her administrative remedies to the extent allowed by law."

D. CR 11 and Attorney Fees

Petitioner raised a CR 11 argument in her brief against the Respondents. This claim has no merit. CR 11 imposes a duty on attorneys to insure positions taken in litigation are done so in good faith and not for an improper purpose and is intended to defer baseless filing and to curb abuses of the judicial system. *Neigel v. Harrell*, 82 Wash. App 782, 919 P.2d 630 (1996). CR 11 allows a court to award sanctions if the attorney has acted frivolously or in bad faith in conducting litigation. Here, there is no bad faith or frivolous argument with regard to the Respondents' legal position; the issue of exhaustion of administrative remedies is legitimate. Petitioner's CR 11 claim simply does not apply.

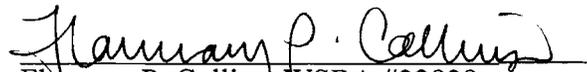
Furthermore, under RCW 4.84.370, if this court rules in favor of Respondents, the City is entitled to its attorneys fees as it is the prevailing party before both the trial court and this Court.

V. CONCLUSION

For the reasons set forth above and in CRISTA's response brief, the trial court's order on summary judgment should be affirmed and attorney fees should be awarded to the City per RCW 4.84.370.

DATED this 4th day of April, 2011.

CITY OF SHORELINE

A handwritten signature in black ink, appearing to read "Flannery P. Collins", written over a horizontal line.

Flannery P. Collins, WSBA #32939
Assistant City Attorney, City of Shoreline
Attorney for Respondent City of Shoreline

APPENDIX A

20.30.680 Appeals.

...

E. Notwithstanding the provisions of subsections (A) through (D) of this section, the Department may adopt procedures under which an administrative appeal shall not be provided if the Director finds that consideration of an appeal would be likely to cause the Department to violate a compliance, enforcement or other specific mandatory order or specific legal obligation. The Director's determination shall be included in the notice of the SEPA determination, and the Director shall provide a written summary upon which the determination is based within five days of receiving a written request. Because there would be no administrative appeal in such situations, review may be sought before a court of competent jurisdiction under RCW 43.21C.075 and applicable regulations, in connection with an appeal of the underlying governmental action. (Ord. 352 § 1, 2004; Ord. 238 Ch. III § 9(t), 2000).

APPENDIX B

ORIGINAL

ORDINANCE NO. 591

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING THE MUNICIPAL CODE TITLE 20, INCLUDING CHAPTERS 20.30 PROCEDURES AND ADMINISTRATION; 20.50 GENERAL DEVELOPMENT STANDARDS; AND 20.70 ENGINEERING AND UTILITIES DEVELOPMENT STANDARDS

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, City staff drafted amendments to the Development Code; and

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

- A study session before the Planning Commission on June 17, 2010;
- The Planning Commission held a Public Hearing on September 16, 2010;
- The Planning Commission held a second Public Hearing and formulated its recommendation to Council on the proposed amendments on November 4, 2010;

WHEREAS, a SEPA Determination of Nonsignificance was issued on June 30, 2010 in reference to the proposed amendments to the Development Code; and

WHEREAS, the proposed amendments were submitted to the State Department of Community Development on June 15, 2010 for comment pursuant WAC 365-195-820; and

WHEREAS, no comments were received from the State Department of Community Development; 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

WHEREAS, the Council finds that the amendments adopted by this ordinance meet the criteria in Title 20 for adoption of amendments to the Development Code;

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

Section 1. Amendment. Shoreline Municipal Code Chapters 20.30 and 20.50 are amended as set forth in Exhibit A, which is attached hereto and incorporated herein.

Section 2. Repeal; New Chapter. Shoreline Municipal Code Chapter 20.70 is repealed and a new Chapter 20.70, Engineering and Utility Development Standards, is adopted as set forth in Exhibit B, which is attached hereto and incorporated herein.

ORIGINAL

Section 3. 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.

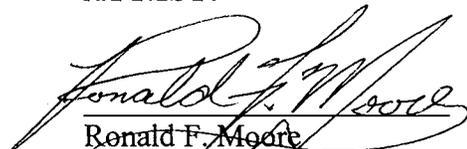
Section 4. Effective Date and Publication. A summary of this ordinance consisting of the title shall be published in the official newspaper and the ordinance shall take effect five days after publication.

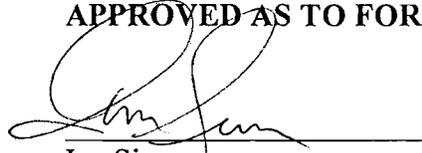
PASSED BY THE CITY COUNCIL ON DECEMBER 13, 2010.


Keith McGlashan, Mayor

ATTEST:

APPROVED AS TO FORM:


Ronald F. Moore
Deputy City Clerk


Ian Sievers
City Attorney

Date of Publication: December 16, 2010
Effective Date: December 21, 2010

CERTIFICATION

I, THE UNDERSIGNED, RONALD F. MOORE, DEPUTY CITY CLERK OF THE CITY OF SPOKANE, WASHINGTON, CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF

Ordinance No. 596 w/Exhibits A+B
SUBSCRIBED AND SEALED THIS 30th DAY OF March 20 11


RONALD F. MOORE
DEPUTY CITY CLERK

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Review Authority, Decision Making Authority, and Target Time limits for Decisions

Action	Notice Requirements for Application and Decision ^{(5),(6)}	Review Authority, Open Record Public Hearing ⁽⁴⁾	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
Type C:					
1. Preliminary Formal Subdivision	Mail, Post Site, Newspaper	PC ⁽³⁾	City Council	120 days	20.30.410
2. Rezone of Property ⁽²⁾ and Zoning Map Change	Mail, Post Site, Newspaper	PC ⁽³⁾	City Council	120 days	20.30.320
3. Special Use Permit (SUP)	Mail, Post Site, Newspaper	PC ⁽³⁾	City Council	120 days	20.30.330
4. Critical Areas Special Use Permit	Mail, Post Site, Newspaper	HE ⁽⁴⁾		120 days	20.30.333
5. Critical Areas Reasonable Use Permit	Mail, Post Site, Newspaper	HE ⁽⁴⁾		120 days	20.30.336
6. Final Formal Plat	None	Review by the Director – no hearing	City Council	30 days	20.30.450
7. SCTF – Special Use Permit	Mail, Post Site, Newspaper ⁽⁷⁾	PC ⁽³⁾	City Council	120 days	20.40.505
8. Street Vacation	PC ⁽³⁾	PC ⁽³⁾	City Council	120 days	Chapter <u>12.17</u> SMC
9. Master Development Plan ⁽⁸⁾	Mail, Post Site, Newspaper ⁽⁷⁾	PC ⁽³⁾	City Council	120 days	20

⁽¹⁾ Including consolidated SEPA threshold determination appeal.

⁽²⁾ The rezone must be consistent with the adopted Comprehensive Plan.

⁽³⁾ PC = Planning Commission

⁽⁴⁾ HE = Hearing Examiner

⁽⁵⁾ Notice of application requirements are specified in SMC 20.30.120.

⁽⁶⁾ Notice of decision requirements are specified in SMC 20.30.150.

⁽⁷⁾ a. ~~Notice of application shall be mailed to residents and property owners within 1,000 feet of the proposed site.~~

b. ~~Enlarged notice of application signs (a minimum of four feet by four feet) as approved by the City of Shoreline shall be posted on all sides of the parcel(s) that front on a street. The Director may require additional signage on large or unusually shaped parcels.~~

ORIGINAL

- ~~e. Applicants shall place a display (nonlegal) advertisement approved by the City of Shoreline in the Enterprise announcing the notice of application and notice of public hearing.~~
- ~~(8) Information regarding master development plans will be posted on the City's website and cable access channel regarding the notice of application and public hearing.~~

20.30.120 Public notices of application.

A. Within 14 days of the determination of completeness, the City shall issue a notice of complete application for all Type B and C applications.

B. The notice of complete application shall include the following information:

1. The dates of application, determination of completeness, and the date of the notice of application;
2. The name of the applicant;
3. The location and description of the project;
4. The requested actions and/or required studies;
5. The date, time, and place of an open record hearing, if one has been scheduled;
6. Identification of environmental documents, if any;
7. A statement of the public comment period (if any), not less than 14 days nor more than 30 days; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision (once made) and any appeal rights;
8. The City staff Project Manager and phone number;
9. Identification of the development regulations used in determining consistency of the project with the City's Comprehensive Plan; and
10. Any other information that the City determines to be appropriate.

C. The notice of complete application shall be made available to the public by the Department, through any or all of the following methods (as specified in Tables 20.30.050 and 20.30.060):

1. **Mail.** Mailing to owners of real property located within 500 feet of the subject property. Notice of application for SCTF and Master Development Plan permits shall be mailed to residents and property owners within 1,000 feet of the proposed site;
2. **Post Site.** Posting the property (for site-specific proposals). For SCTF and Master Development Plan permits enlarged notice of application signs (a minimum of four feet by four feet) as approved by the City of Shoreline shall be posted on all sides of the parcel(s) that front on a street. The Director may require additional signage on large or unusually shaped parcels;
3. **Newspaper.** The Department shall publish a notice of the application in the newspaper of general circulation for the general area in which the proposal is located. This notice shall include the project location and description, the type of permit(s) required, comments period dates, and the location where the complete application may be reviewed;
4. Information regarding Master Development Plan notice of applications will be posted on the City's website and cable access channel.

D. The Department must receive all comments received on the notice of application by 5:00 p.m. on the last day of the comment period. (Ord. 238 Ch. III § 4(e), 2000).

20.30.180 Public notice of public hearing.

Notice of the time and place of an open record hearing shall be made available to the public by the Department no less than 14 days prior to the hearing, through use of these methods:

- **Mail.** Mailing to owners of real property located within 500 feet of the subject property;
- **Newspaper.** The Department shall publish a notice of the open record public hearing in the newspaper of general circulation for the general area in which the proposal is located;
- **Post Site.** Posting the property (for site-specific proposals).
- Information regarding Master Development Plan public hearings will be posted on the City's website and cable access channel.

20.50.520 General standards for landscape installation and maintenance – Standards.

O. Landscape plans and utility plans shall be coordinated. In general, the placement of trees and large shrubs should adjust to the location of required utility routes both above and below ground. Location of plants shall be based on the plant's mature canopy and root mat width. Root mat width is assumed to be the same width as the canopy unless otherwise documented in a credible print source. Mature tree and shrub canopies may reach an above ground utility such as street lights and power-lines. Mature tree and shrub root mats may overlap utility trenches as long as approximately 80 percent of the root mat area is unaffected. Adjustment of plant location does not reduce the number of plants required for landscaping.

SiteSight distance triangle shall be established for visual clearance consistent with the Engineering Development Guide SMC 20.70.170 for all driveway exits and entrances and street corners.

20.30.550 Categorical exemptions and threshold determinations – Adoption by reference.

The City adopts the following sections of the SEPA Rules by reference, as now existing or hereinafter amended, as supplemented in this subchapter:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-800 Categorical exemptions (~~flexible thresholds~~).
- Note: the lowest exempt level applies unless otherwise indicated.*
- 197-11-880 Emergencies.
- 197-11-890 Petitioning DOE to change exemptions.

(Ord. 299 § 1, 2002; Ord. 238 Ch. III § 9(g), 2000).

20.30.560 Categorical exemptions – Minor new construction.

The following types of construction shall be exempt, except: 1) when undertaken wholly or partly on lands covered by water; 2) the proposal would alter the existing conditions within a critical area ~~or buffer~~; ~~or 23) a rezone is requested~~; or 4) ~~or~~ any license governing emissions to the air or discharges to water is required.

- A. The construction or location of any residential structures of four dwelling units.
- B. The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for 20 automobiles.
- C. The construction of a parking lot designed for 20 automobiles.
- D. Any landfill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation; any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder. (Ord. 324 § 1, 2003; Ord. 299 § 1, 2002; Ord. 238 Ch. III § 9(h), 2000).

20.30.680 Appeals

- A. Any interested person may appeal a threshold determination or and the conditions or denials of a requested action made by a nonelected official pursuant to the procedures set forth in this section and Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearings and Appeals. No other SEPA appeal shall be allowed.
- 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 administrative appeal of each threshold determination shall be allowed on a proposal. Procedural appeals shall be consolidated in all cases with substantive SEPA appeals, if any, involving decisions to approve, condition or deny an action pursuant to RCW 43.21C.060 with the public hearing or appeal, if any, on the proposal, except for appeals of a DS.
 - 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. All SEPA ~~an~~ appeals of a DNS for actions classified in SMC 20.30, Subchapter 2, Types of Actions, as Type A or B, or C actions for which the Hearing Examiner has review authority in Chapter 20.30 SMC, Subchapter 2, Types of Actions, must be filed within 14 calendar days following notice of the threshold determination as provided in SMC 20.30.150, Public notice of decision; provided, that the appeal period for a DNS for Type A, or B, or C actions issued at the same time as the final decision shall be extended for an additional seven calendar days if WAC 197-11-340(2)(a) applies.
 - 5. For Type C actions for which the Hearing Examiner does not have review authority or for ~~Type L~~ legislative 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.
 - 6. The Hearing Examiner shall make a final decision on all procedural SEPA determinations. The Hearing Examiner's decision may be appealed to superior court as provided in Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearings and Appeals.
- C. ~~The Hearing Examiner's consideration of procedural SEPA appeals shall be consolidated in all cases with substantive SEPA appeals, if any, involving decisions to condition or deny an application pursuant to RCW 43.21C.060 and with the public hearing or appeal, if any, on the proposal, except for appeals of a DS.~~
- D. ~~Administrative appeals of decisions to condition or deny applications pursuant to RCW 43.21C.060 shall be consolidated in all cases with administrative appeals, if any, on the merits of a proposal. See Chapter 20.30 SMC, Subchapter 4, General Provisions for Land Use Hearing and Appeals.~~

E.B. Notwithstanding the provisions of subsections (A) through (D) of this section, the Department may adopt procedures under which an administrative appeal shall not be provided if the Director finds that consideration of an appeal would be likely to cause the Department to violate a compliance, enforcement or other specific mandatory order or specific legal obligation. The Director's determination shall be included in the notice of the SEPA determination, and the Director shall provide a written summary upon which the determination is based within five days of receiving a written request. Because there would be no administrative appeal in such situations, review may be sought before a court of competent jurisdiction under RCW 43.21C.075 and applicable regulations, in connection with an appeal of the underlying governmental action

Amendment to SMC 20.30.340, adding a section to describe the CPA annual docket process

The City of Shoreline's process for accepting and reviewing Comprehensive Plan amendments for the annual docket shall be as follows:

- A. Amendment proposals will be accepted throughout the year. The closing date for the current year's docket is the last business day in December.
- B. Anyone can propose an amendment to the Comprehensive Plan.
 - There is no fee for submitting a General Text Amendment to the Comprehensive Plan.
 - An amendment to change the land use designation, also referred to as a Site Specific Comprehensive Plan amendment requires the applicant to apply for a rezone application to be processed in conjunction with the Comprehensive Plan amendment. There are separate fees for a Site Specific CPA request and a rezone application.
- C. At least three weeks prior to the closing date, there will be general public dissemination of the deadline for proposals for the current year's docket. Information will include a staff contact, a re-statement of the deadline for accepting proposed amendments, and a general description of the amendment process. At a minimum, this information will be available on the City's website and through a press release.
- D. Amendment proposals will be posted on the City's website and available at the Department of Planning and Development Services.
- E. The DRAFT Docket will be comprised of all Comprehensive Plan amendment applications received prior to the deadline.
- F. The Planning Commission will review the DRAFT docket and forward recommendations to the City Council.
- G. A summary of the amendment proposals will be made available, at a minimum, on the City website, in Currents, and through a press release.
- H. The City Council will establish the FINAL docket at a public meeting.
- I. The City will be responsible for developing an environmental review of combined impacts of the proposals on the FINAL docket. Applicants for site specific Comprehensive Plan Amendments will be responsible for providing current accurate analysis of the impacts from their proposal.
- J. The FINAL docketed amendments will be reviewed by the Planning Commission in publicly noticed meetings.
- K. The Commission's recommendations will be forwarded to the City Council for adoption.

Chapter 20.70 Engineering and Utilities Development Standards

Subchapter 1. General Engineering Provisions

- 20.70.010 Purpose.
- 20.70.020 Engineering Development Guide

Subchapter 2. Dedications

- 20.70.110 Purpose.
- 20.70.120 General.
- 20.70.130 Dedication of right-of-way.
- 20.70.140 Dedication of stormwater facilities.
- 20.70.150 Dedication of open space.
- 20.70.160 Easements and tracts.

Subchapter 3. Streets

- 20.70.210 Purpose.
- 20.70.220 Street classification.
- 20.70.230 Street plan.
- 20.70.240 Private streets.
- 20.70.250 Street naming and numbering.

Subchapter 4. Required Improvements

- 20.70.310 Purpose
- 20.70.320 Frontage improvements.
- 20.70.330 Stormwater drainage facilities.
- 20.70.340 Sidewalks, walkways, paths and trails.

Subchapter 5. Utility Standards

- 20.70.410 Purpose.
- 20.70.420 Utility installation and relocation.
- 20.70.430 Undergrounding of electric and communication service connections.

SUBCHAPTER 1. General Engineering Provisions

20.70.010 Purpose.

The purpose of this chapter is to establish engineering regulations and standards to implement the Comprehensive Plan and provide a general framework for relating the standards and other requirements of this Code to development.

20.70.020 Engineering Development Guide.

Pursuant to SMC Section 20.10.050 The Director is authorized to prepare and administer an "Engineering Development Guide". The Engineering Development Guide includes processes, design and construction criteria, inspection requirements, standard plans, and technical standards for engineering design related to development. The specifications shall include, but are not limited to:

- A. Street widths, curve radii, alignments, street layout, street grades;
- B. Intersection design, sight distance and clearance, driveway location;
- C. Block size, sidewalk placement and standards, length of cul-de-sacs, usage of hammerhead turnarounds;
- D. Streetscape specifications (trees, landscaping, benches, other amenities);
- E. Surface water and stormwater specifications;
- F. Traffic control and safety markings, signs, signals, street lights, turn lanes and other devices be installed or funded; and
- G. Other improvements within rights-of-way.

SUBCHAPTER 2. Dedications

20.70.110 Purpose.

The purpose of this subchapter is to provide guidance regarding the dedication of facilities to the City.

20.70.120 General

- A. Dedication shall occur at the time of recording for subdivisions, and prior to permit issuance for development projects.
- B. Dedications may be required in the following situations:
 - 1. When it can demonstrated that the dedications of land or easements within the proposed development or plat are necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply;
 - 2. To accommodate motorized and nonmotorized transportation, landscaping, utilities, surface water drainage, street lighting, traffic control devices, and buffer requirements as required in subchapter 4, Required Improvements, and subchapter 5, Utility Standards;
 - 3. Prior to the acceptance of a private street, private stormwater drainage system or other facility for maintenance;
 - 4. When the development project abuts an existing substandard public street and additional right-of-way is necessary to incorporate future frontage improvements as set forth in the Transportation Master Plan and the Engineering Development Guide for public safety; or

5. Right-of-way is needed for the extension of existing public street improvements necessary for public safety.

20.70.130 Dedication of Right-of-Way

- A. The Director may grant some reduction in the minimum right-of-way requirement where it can be demonstrated that sufficient area has been provided for all frontage improvements.
- B. The City may accept dedication and assume maintenance responsibility of a private street only if the following conditions are met:
 1. All necessary upgrades to the street to meet City standards have been completed;
 2. All necessary easements and dedications entitling the City to properly maintain the street have been conveyed to the City;
 3. The Director has determined that maintenance of the facility will contribute to protecting or improving the health, safety, and welfare of the community served by the private road; and
 4. The City has accepted maintenance responsibility in writing.

20.70.140 Dedication of stormwater facilities

- A. The City is responsible for the maintenance, including performance and operation, of drainage facilities which the City has accepted for maintenance. The City may require the dedication of these facilities.
- B. The City may assume maintenance of privately maintained drainage facilities only if the following conditions have been met:
 1. All necessary upgrades to the facilities to meet current City standards have been completed;
 2. All necessary easements or dedications entitling the City to properly maintain the drainage facility have been conveyed to the City;
 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:
 - a. Flooding;
 - b. Downstream erosion;
 - c. Property damage due to improper function of the facility;
 - d. Safety hazard associated with the facility;
 - e. Degradation of water quality or in-stream resources; or
 - f. Degradation to the general welfare of the community; and
 4. The City has accepted maintenance responsibility in writing.
- C. The Director may terminate the assumption of maintenance responsibilities in writing after determining that continued maintenance will not significantly contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:
 1. Flooding;
 2. Downstream erosion;
 3. Property damage due to improper function of the facility;

4. Safety hazard associated with the facility;
 5. Degradation of water quality or in-stream resources; or
 6. Degradation to the general welfare of the community.
- D. A drainage facility which does not meet the criteria of this section shall remain the responsibility of the persons holding title to the property for which the facility was required.

20.70.150 Dedication of open space.

- A. The City may accept dedications of open space and critical areas which have been identified and are required to be protected as a condition of development. Dedication of such areas to the City will be considered when:
1. The dedicated area would contribute to the City's overall open space and greenway system;
 2. The dedicated area would provide passive recreation opportunities and nonmotorized linkages;
 3. The dedicated area would preserve and protect ecologically sensitive natural areas, wildlife habitat and wildlife corridors;
 4. The dedicated area is of low hazard/liability potential; and
 5. The dedicated area can be adequately managed and maintained.

20.70.160 Easements and tracts

The purpose of this section is to address easements and tracts when facilities on private property will be used by more than one lot or by the public in addition to the property owner(s).

A. Easements.

1. Easements may be used for facilities used by a limited number of parties. Examples of situations where easements may be used include, but are not limited to:
 - a. Access for ingress and egress or utilities to neighboring property;
 - b. Design features of a street necessitate the granting of slope, wall, or drainage easements; or
 - c. Nonmotorized easements required to provide pedestrian circulation between neighborhoods, schools, shopping centers and other activity centers even if the facility is not specifically shown on the City's adopted nonmotorized circulation plan maps.
2. Easements granted for public use shall be designated "City of Shoreline Public Easement." All easements shall specify the maintenance responsibility in the recording documents.

B. Tracts

1. Tracts should be used for facilities that are used by a broader group of individuals, may have some degree of access by the general public, and typically require regular maintenance activities. Examples of facilities that may be located in tracts include private streets, drainage facilities serving more than one lot, or critical areas.

2. Tracts are not subject to minimum lot size specifications for the zone, although they must be large enough to accommodate the facilities located within them.
3. Tracts created under the provisions of this subchapter shall not be considered a lot of record unless all zoning, dimensional, and use provisions of this code can be met.

SUBCHAPTER 3. Streets

20.70.210 Purpose.

The purpose of this subchapter is to classify streets in accordance with designations of the Comprehensive Plan and to ensure the naming of new streets and assignment of new addresses occurs in an orderly manner.

20.70.220 Street classification.

Streets and rights-of-way are classified in the Transportation Master Plan.

20.70.230 Street plan.

Streets shall be designed and located to conform to the adopted plans. Where not part of an adopted plan, new streets shall be designed to provide for the appropriate continuation of existing streets.

The Public Works Department shall maintain a list of public streets maintained by the City.

20.70.240 Private streets.

Local access streets may be private, subject to the approval of the City. If the conditions for approval of a private street cannot be met then a public street will be required. Private streets may be allowed when all of the following conditions are present:

- A. The private street is located within a tract or easement; and
- B. A covenant, tract, or easement which provides for maintenance and repair of the private street by property owners has been approved by the City and recorded with King County; and
- C. The covenant or easement includes a condition that the private street will remain open at all times for emergency and public service vehicles; and
- D. The private street would not hinder public street circulation; and
- E. The proposed private street would be adequate for transportation and fire access needs; and
- F. At least one of the following conditions exists:
 1. The street would ultimately serve four or fewer single-family lots; or
 2. The private street would ultimately serve more than four lots, and the Director determines that no other access is available; or
 3. The private street would serve developments where no circulation continuity is necessary.

20.70.250 Street naming and numbering.

The purpose of this section is to establish standards for designating street names and numbers, and for addressing the principal entrances of all buildings or other developments.

- A. All streets shall be named or numbered in the following manner:
1. Public or private street names and/or numbers shall be consistent with the established grid system as determined by the Department. Named streets can only be assigned when the numbered grid is determined infeasible by the Department. The Department may change the existing public or private street name if it is determined to be inconsistent with the surrounding street naming system.
 2. All streets shall carry a geographic suffix or prefix. Streets designated as "Avenues" shall carry a geographic suffix and be in a north-south direction, and streets designated as "Streets" shall carry a geographic prefix and be in an east-west direction. Diagonal streets are treated as being either north-south or east-west streets. Names such as lane, place, way, court, and drive may be used on streets running either direction.
 3. Only entire street lengths or distinct major portions of street shall be separately designated.
 4. In determining the designation, the Department shall consider consistency with the provisions of this section and emergency services responsiveness including Emergency-911 services.
- B. Building addresses shall be assigned as follows:
1. New Buildings. The assignment of addresses for new buildings shall occur in conjunction with the issuance of a building permit.
 2. New Lots. The assignment of addresses for new lots created by subdividing shall occur during project review and be included in the recording documents.
 3. Previously Unassigned Lots. Lots with no address of record shall be assigned an address and the property owner shall be notified of the address.
 4. The assignment of addresses shall be based on the following criteria:
 - a. Even numbers shall be used on the northerly side of streets named as east-west and on the easterly side of streets named as north-south.
 - b. Odd numbers shall be used on the southerly side of streets named as east-west and on the westerly side of streets named as north-south. Addresses shall be assigned whole numbers only.
 - c. In determining the address assignment, the Department shall consider the consistency with the provisions of this section, consistency with the addressing needs of the area, and emergency services.
- C. All buildings must display addresses as follows:
1. The owner, occupant, or renter of any addressed building or other structure shall maintain the address numbers in a conspicuous place over or near the principal entrance or entrances. If said entrance(s) cannot be easily seen from the nearest adjoining street, the address numbers shall be placed in such other conspicuous place on said building or structure as is necessary for visually locating such address numbers from the nearest adjoining street.

2. If the addressed building or structure cannot be easily seen or is greater than 50 feet from the nearest adjoining street, the address numbers shall be placed on a portion of the site that is clearly visible and no greater than 20 feet from the street.
3. The address numbers shall be easily legible figures, not less than three inches high if a residential use or individual multifamily unit, nor less than five inches high if a commercial use. Numbers shall contrast with the color of the structure upon which they are placed, and shall either be illuminated during periods of darkness, or be reflective, so they are easily seen at night.

SUBCHAPTER 4. Required Improvements.

20.70.310 Purpose

The purpose of this subchapter is to provide safe and accessible transportation facilities for all modes of travel as described in the Comprehensive Plan, Transportation Master Plan, and the Parks, Recreation and Open Space Plan.

20.70.320 Frontage improvements.

Frontage improvements required for subdivisions pursuant to RCW 58.17 and SMC 20.30, Subchapter 7, and to mitigate identified impacts, shall be provided pursuant to this section. When required, frontage improvements shall be installed as described in the Transportation Master Plan and the Engineering Development Guide for the specific street classification and street segment

- A. Standard frontage improvements consist of curb, gutter, sidewalk, amenity zone and landscaping, drainage improvements, and pavement overlay to one-half of each right-of-way abutting a property as defined for the specific street classification. Additional improvements may be required to ensure safe movement of traffic, including pedestrians, bicycles, transit, and nonmotorized vehicles. The improvements can include transit bus shelters, bus pullouts, utility under grounding, street lighting, signage, and channelization.
- B. Frontage improvements are required for:
 1. All new multifamily, nonresidential, and mixed-use construction;
 2. Remodeling or additions to multifamily, nonresidential, and mixed-use buildings or conversions to these uses that increase floor area by 20 percent or greater, as long as the original building footprint is a minimum of 4,000 square feet, or any alterations or repairs which exceed 50 percent of the value of the previously existing structure;
 3. Subdivisions;
Exception:
 - i. Subdivisions, short plats, and binding site plans where all of the lots are fully developed.
 4. ~~New development on vacant lots platted before August 31, 1995.~~

- C. Exemptions to some or all of these requirements may be allowed if the street will be improved as a whole through a Local Improvement District (LID) or Capital Improvement Project scheduled to be completed within five years of permit issuance. In such a case, a contribution may be made and calculated based on the improvements that would be required of the development. Contributed funds shall be directed to the City's capital project fund and shall be used for the capital project and offset future assessments on the property resulting from an LID. An LID "no-protest" commitment shall also be recorded. Adequate interim levels of improvements for public safety shall be required.
- D. Required improvements shall be installed by the applicant prior to final approval or occupancy.
- E. For subdivisions the improvements shall be completed prior to final plat approval or post a bond or other surety as provided for in SMC 20.30.440.

20.70.330 Surface water facilities.

- A. All development and redevelopment as defined in the Stormwater Manual shall provide stormwater drainage improvements that meet the minimum requirements of 13.10 SMC.
- B. Development proposals that do not require City-approved plans or a permit must meet the requirements specified in 13.10 SMC.
- C. Required improvements shall be installed by the applicant prior to final approval or occupancy.
- D. For subdivisions the improvements shall be completed prior to final plat approval or post a bond or other surety as provided for in SMC 20.30.440.

20.70.340 Sidewalks, Walkways, Paths and Trails.

- A. Sidewalks required pursuant to SMC 20.70.320 and fronting public streets shall be located within public right-of-way or a public easement as approved by the Director.
- B. Walkways, paths or trails provided to mitigate identified impacts should use existing undeveloped right-of-way, or, if located outside the City's planned street system, may be located across private property in a pedestrian easement or tract restricted to that purpose.
- C. Required sidewalks on public and private streets shall be installed as described in the Transportation Master Plan and the Engineering Development Guide for the specific street classification and street segment.
- D. Installation, or a financial security of installation subject to approval by the Director, is required as a condition of development approval.

SUBCHAPTER 5. Utility Standards

20.70.410 Purpose.

The purpose of this subchapter is to establish when new and existing service connections including telephone, cable television, electrical power, natural gas, water, and sewer, are to be installed and/or placed underground.

20.70.420 Utility installation

Required utility improvements shall be installed by the applicant prior to final approval or occupancy. For subdivisions the applicant shall complete the improvements prior to final plat approval or post a bond or other surety with the utility provider.

20.70.430 Undergrounding of electric and communication service connections

- A. Undergrounding required under this subchapter shall be limited to the service connection and new facilities located within and directly serving the development from the public right-of-way, excluding existing or relocated street crossings.
- B. Undergrounding of service connections and new electrical and telecommunication facilities defined in chapter 13.20 SMC shall be required with new development as follows:
 - 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 property and improvements and involves the relocation of service.
 - 2. All new residential construction and new accessory structures or the creation of new residential lots.
 - 3. Residential remodels and additions where the total value of the project exceeds 50 percent of the assessed valuation of the property and improvements and involves the relocation of the service connection to the structure.
- C. Conversion of a service connection from aboveground to underground shall not be required under this subchapter for:
 - 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.

DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct, that on April 4, 2011, I served the Brief of Respondent City of Shoreline to be delivered in the manner indicated below to the following counsel of record:

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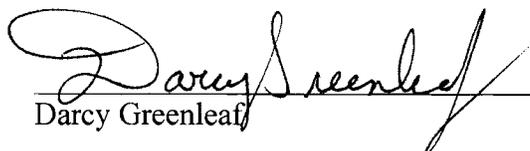
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DATED this 4th day of April, 2011, at Shoreline, Washington.


Darcy Greenleaf