



CITY OF BLACK DIAMOND
PLANNING COMMISSION MEETING AGENDA
February 9, 2010 7:00 PM
25510 Lawson Street, Black Diamond, Washington

- 1) CALL TO ORDER, ROLL CALL
- 2) PUBLIC COMMENTS: Individuals wishing to address the Planning Commission regarding any item not on this meeting's agenda may do so at this time.
- 3) APPROVAL OF MINUTES – January 12, 2010
- 4) INTRODUCTION OF NEW COMMISSION MEMBER, SHERI ROTH
- 5) CONTINUED WORK SESSION ON POTENTIAL AMENDMENTS TO TREE PRESERVATION CODE (Aaron Nix, Natural Resources Director)
- 6) REFERRAL FROM CITY COUNCIL: POTENTIAL AMENDMENT TO BDMC 18.08.220 REGARDING PRESCRIPTIVE TIMELINES FOR CONSIDERATION OF APPEALS
- 7) DEPARTMENT REPORT
- 8) ADJOURNMENT



CITY OF BLACK DIAMOND
PLANNING COMMISSION
25510 Lawson Street, Black Diamond, Washington

M E M O R A N D U M

Date: February 5, 2010
To: Planning Commission
From: Steve Pilcher
Re: Tuesday's meeting

Attached are materials for your meeting on Tuesday. Per your direction, Natural Resources Director Aaron Nix refined the suggested revisions to the Tree Preservation Ordinance. At this time, staff is seeking your comments in order to take these back to the Parks Committee of the City Council and then to full Council for action.

The remainder of the paperwork concerns a potential amendment to section 18.08.220 of the Zoning Code, which deals with the amount of time provided for resolving an appeal. Two of the appellants of the two MPD Final Environmental Impact Statements approached the City Council on February 4 and requested that the code be revised to allow the Hearing Examiner greater flexibility for his consideration of appeals and rendering a decision. Their suggested revision is located at the end of the packet, grouped after an email communication from Ms. Cindy Proctor.

In front of those materials is a copy of the current wording of 18.08.220, plus two communications from City Attorney Noel Treat. His February 4th email contains his suggested language to address this issue, while the February 2nd email provides some background information and commentary.

The Council intends to act on this item at its February 18th meeting, so a recommendation from the Planning Commission would be appreciated.

See you all next Tuesday evening. Feel free to give me a call if you have any questions.

**BLACK DIAMOND
PLANNING COMMISSION
MINUTES OF JANUARY 12, 2010 MEETING**

CALL TO ORDER

Chairman Bob Kaye called the meeting to order at 7:00 p.m. with the introduction of the role and duties of the Planning Commission.

ROLL CALL

Present: Commissioners Bob Kaye, Keith Watson, Greg Thesenvitz, Daryl Buss, Ron Taylor; Pam O'Brien
Absent: none
Staff: Community Development Director Steve Pilcher; Natural Resources/Parks Director Aaron Nix

APPROVAL OF MINUTES

Moved by Commissioner Taylor, seconded by Commissioner Watson, to approve the minutes of the December 8, 2009 meeting as drafted. Passed 6-0.

PUBLIC COMMENTS

None.

ELECTION OF OFFICERS

By consensus, both Chairman Bob Kaye and Vice-Chair Greg Thesenvitz were re-elected to their positions.

WORKSESSION ON POTENTIAL AMENDMENTS TO THE TREE PRESERVATION CODE, 19.30

Mr. Nix reviewed the history of the adoption of the Tree Preservation Code, which occurred in July 2008. He noted that Council directed staff to prepare a draft ordinance for its consideration, based upon some incidences of trees being cleared from lots around Lake Sawyer prior to building construction.

Since adoption of the code, staff has heard concerns from both ends of the spectrum: some feel the regulations aren't strict enough, while others feel they unreasonably interfere with private property rights. The issue for the City is to balance the desire to preserve trees vs. the rights of individuals to care and manage their own properties. Staff is looking for input from the Commission before they take this matter back to the Council's Parks Committee (Councilmembers Goodwin and Saas).

Mr. Nix reviewed the definition of "nonsignificant tree," i.e., those trees that are not subject to the regulations. He also noted that the tree plan permit fee is \$250 for a Level 1 plan and \$500 for a Level 2 plan, as established in the City's fee resolution. Fee amounts are intended to recuperate staff costs for review and site inspections.

Commissioner O'Brien noted that with there being an option of paying \$50 for every significant tree removed, the cost of the tree permit doesn't seem to correlate very well.

Commissioner Taylor stated he feels the \$250 permit fee is too high and expressed reservations of there being too much government intervention on individual properties.

Commissioner Thesenvitz noted that trees serve important stormwater and groundwater functions, so there is a degree of overall community interest in preserving trees.

Mr. Nix then led the Commission through a section-by-section review of the remainder of the Tree Preservation Code.

19.30.030 addresses definitions of terms. There was consensus on the listing of "nonsignificant trees" and all other definitions.

19.30.040 addresses the need to retain significant trees. Commission members felt the language in this section could use a bit of clarification to ensure it relates properly to the rest of the code.

19.30.050 deals with exemptions from the code. Item "D" allows the removal of six (6) trees within a 3-year period, subject to certain conditions. Mr. Nix pointed out a question had been raised about whether this number should be lowered, perhaps to no more than four. After discussion, the Commission agreed the exempt level should stay at its current level of six.

Item "E" allows for all trees to be removed within 10 feet of the foundation line of a single family house or accessory structure. It was suggested that the measurement should be revised to have the off-set be from the tree's drip line instead, acknowledging that 10 feet may be too large of a setback.

Item "G" is similar to State law and is intended to prevent an individual from basically logging a site and then making application for subdivision or other land use approval.

19.30.060 Tree permit section, which establishes to two types of tree permits. The Commission had no recommended changes to this section.

19.30.070 concerns tree replacement for when significant trees are removed. Most discussion focused around section D, which allows for a paying \$50 per removed tree into a tree replacement fund, in lieu of replanting trees. Commissioners questioned whether \$50 per tree is a realistic amount, given the cost of trees and their planting and care. They also suggested that the fee should be assigned to number of trees that would be required to be planted per the table in section C. The main concern is to ensure there is a better balance between actually replacing trees vs. simply "pay and go."

The Commission also wished to reduce the size of replacement trees required in section C5 to 1.5" for deciduous trees and 6 ft. for evergreen trees.

19.30.070.E is a special provision that was included based upon comments staff and Council received from YarrowBay. They had expressed concern about being required to comply with the tree preservation code since they will be preserving much of their site in open space. The Commission noted there is no guarantee that the 40% of open space would necessarily be forested; it could be a wetland or open water body. The Commission felt this section should be deleted.

19.30.080 concerns measures to protect trees during construction. There were no objections to this section.

19.30.090 addresses “heritage trees,” which are trees of significant historical or biological interest to the community. The Commission supports the concept, but believes there needs to be a penalty clause for the removal of any heritage tree.

Mr. Nix stated he will draft changes per the Commission’s suggestions and bring those back for its review.

DEPARTMENT REPORT

Mr. Pilcher noted there will be a “Planning Short Course” next week in Covington. He asked if any Commission members were interested in attending; no one indicated plans to do so.

He also noted that revised MPD applications were submitted by YarrowBay on 12/31/09 and are available for viewing on the City’s webpage and at the public library. He also noted that appeals were filed of the two Final EIS documents. Consideration of those appeals will occur in conjunction with the MPD hearings.

ADJOURNMENT

Moved by O’Brien, seconded by Watson to adjourn. Passed 6-0. The meeting then adjourned at 8:50 p.m.

ATTEST:

Bob Kaye, Chairman

Planning Commission Secretary

Chapter 19.30

TREE PRESERVATION

Sections:

19.30.010	Intent
19.30.020	Applicability
19.30.030	Additional Definitions
19.30.040	Retention of Significant Trees
19.30.050	Exemptions
19.30.060	Tree Removal Permits
19.30.070	Tree Replacement
19.30.080	Protection of Trees During Construction
19.30.090	Heritage Trees

19.30.010 Intent

A. The City recognizes the importance of trees for the benefits they provide to property values and to the environment. Trees stabilize soil and control water pollution, conserve energy, reduce storm water runoff, improve air quality, provide habitat to wildlife, and preserve the forested character of the Pacific Northwest that citizens value. Preserving trees in large quantities also contributes to a reduction in global warming.

B. The objectives of this chapter include reducing tree loss during construction and development; reducing indiscriminate removal and destruction of trees; and mitigating tree loss by requiring replacement of trees.

19.30.020 Applicability

The requirements of this chapter shall apply any time of any land alteration, whether pursuant to a permit for clearing, grading, land alteration, land disturbance, building construction or land development, or on an existing developed site.

19.30.030 Additional Definitions

A. Caliper : Standard for trunk diameter measurement of nursery stock. Caliper of the trunk shall be the trunk diameter measured at DBH (Diameter at Breast Height), which is four and one-half feet above grade.

B. Drip Line: An area encircling the base of a tree delineated by a vertical line descending from the outer limit of a tree's branch tips to the ground.

C. Heritage Tree: A tree of unique significance to the community that may be associated with historic figures, events or properties; be of rare or unusual species; or may have aesthetic value worthy of preservation for the health and general welfare of the community.

D. Significant Tree: Any healthy tree that is at least six (6) inches in caliper, excepting nonsignificant trees. A tree growing with multiple stems shall be considered significant if at least one of the stems, as measured at a point six (6) inches from where the stems digress from the main trunk, is at least four (4) inches in diameter. Any tree that is planted to fulfill requirements of this chapter shall be considered significant, regardless of size or species.

E. Nonsignificant Tree: any tree under six (6) inches caliper or those included on the following list, regardless of size:

1. Black locust (*Robinia pseudoacacia*);
2. Cottonwood (*Populus fremontii*);
3. Native alder (Native *Alnus* only);
4. Native willow (Native *Salix* only);
5. Lombardy poplar (*Populus nigra*).

19.30.040 Retention of Significant Trees

No person, corporation, agency or other entity shall remove any significant tree, as defined in this chapter, without first obtaining a tree removal permit pursuant to this chapter. Provided, a permit shall not be required for situations specifically exempted by this chapter.

The City shall not accept and/or issue any land use or building permit for a period of six years from the date of verification that any significant tree has been removed from a site if a tree removal permit was not first obtained pursuant to this chapter. Whenever trees are removed in violation of this chapter, replacement shall be required per 19.30.070 prior to the City accepting and/or issuing ~~and any~~ land use or building permit. A tree replacement plan shall be approved by the Natural Resources Director prior to commencing planting.

19.30.050 Exemptions

The following actions are exempt from the provisions of this chapter:

- A. Emergency removal of any hazardous trees necessary to remedy an immediate threat to persons or property;
- B. Removal of trees within or adjacent to public rights-of-way or easements, at the direction of the City, for the protection of the public safety (such as obstructions inhibiting visibility at intersections);
- C. Removal of ~~obviously~~ dead or diseased trees as identified by a certified arborist. A certified arborist report, identifying the tree or trees and the status its health, must be submitted and approved by the City prior to removal;
- D. Removal of no more than six (6) trees in any thirty-six (36) consecutive months, subject to the following conditions:
 1. There is no current application for construction or development on the subject site;
 2. The tree is not within an easement protecting a regulated critical area, designated primary or secondary open space, or a required buffer area; and
 3. The tree is not one of the last two significant trees on the property;
- E. The removal of trees for the construction of a new or addition to an existing single family dwelling or duplex, where the tree driplines are located within three (3) feet of the building exterior wall or less than ten (10) feet from the building exterior walls, driveways, or utilities;
- F. Trees that have been grown for the purpose of sales of Christmas trees or commercial landscaping materials by commercial nurseries and tree farms;
- G. Harvesting with a Class II or Class III forest practices permit issued by the Washington State Department of Natural Resources under RCW 76.09.050. Provided that, the City shall not accept and/or issue any land use or building permit for six years from the date of approval of a Class II or Class III forest practices permit; and

19.30.060 Tree Removal Permits

A. A permit is required for the removal of trees that are subject to this chapter. A tree plan, meeting the following requirements and standards, shall be submitted as part of a permit application for tree removal.

B. Existing Development/Level I Tree Plan.

1. A Level I Tree Plan is required for changes to existing development, including all residential, commercial, industrial or institutional sites that involve a land disturbance or expansion of buildings or parking. The following information shall be provided as part of the plan:

- a. All proposed development of structures, parking, driveways, roadways, lanes, sidewalks and pathways, and retaining walls.
- b. All significant trees located within the property.
- c. Planting plan including location, species, and size of new trees to be planted.

2. For existing development subject to a Level I Plan, all significant trees within any required perimeter planting area, critical area, buffer, designated primary or secondary open space, or native growth protection area shall be retained, except for driveways, lanes, or streets necessary for access and as approved by the City. In all other areas, site design should integrate significant trees into required landscaping.

C. New Development/Level II Tree Plan

1. A Level II Tree Plan is required for new development, including residential, commercial, industrial or institutional developments that involve land disturbance, parking areas, roads, buildings, or other construction. The Tree Plan must be completed by a certified professional forester, arborist, or landscape architect and must provide the following information:

- a. Information required for a Level I Plan; and
- b. Description of off-site trees that could be affected by proposed activity.

2. For new development subject to a Level II Plan, all significant trees within any required perimeter planting area, buffer, designated primary or secondary open space, or native growth protection area shall be retained, except for driveways, lanes, or streets necessary for access and as approved by the City. In all other areas, site design should integrate significant trees into required landscaping.

19.30.070 Tree Replacement

A. Each Level I and Level II Tree Removal Permit shall require a tree replacement plan. With the exception of significant trees that are relocated, each significant tree removed shall be replaced by new trees based on Diameter at Breast Height (DBH) as required by the table below.

B. Replacement trees shall be planted on the property parcel ~~site~~ from which significant trees are removed or, if on-site replacement is demonstrated to be impractical, at an appropriate offsite location.

~~on an off-site location determined by the City.~~

C. Replacement trees must meet the following criteria:

1. Significant trees must be replaced with an equivalent number of trees based on Diameter at Breast Height (DBH);
2. New trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock;
3. New trees shall be planted in locations appropriate to the species' growth habit and horticultural requirements;

4. New trees must be located away from areas where damage is likely.
5. Deciduous replacement trees shall be a minimum of ~~one and half~~^{three} (1.5~~3~~) inch in caliper (DBH), evergreen trees ~~must~~^{shall} be a minimum of ~~six~~^{twelve} (6~~12~~) feet in height, ~~and~~
6. Trees shall be watered as necessary to ensure survival and growth during their first two growing seasons after planting.

Size of Tree Removed (DBH)	Number of Replacement Trees Required
6" – 9"	3
9" – 12"	4
12" – 16"	5
>16"	6

D. In lieu of onsite tree replacement, the City shall create a "Significant Tree" removal mitigation fund. As an option, an applicant can pay a flat fee of ~~\$50~~¹⁰⁰.00 per tree in accordance with the tree replacement ratios identified in section 19.30.070.C.6~~each tree removed into this fund~~. These funds will be utilized in replanting projects throughout the City of Black Diamond, as determined by the City.

~~E. When at least forty percent (40%) of the total site area is preserved as non-disturbed open space, critical areas and their associated buffers, or other areas subject to a conservation easement, the tree replacement requirement shall not apply. Provided, however, the Natural Resources Director shall require the retention of significant trees in areas that will be located in public right-of-ways, landscape and open space areas that will be open to the public or owned and controlled by an association, unless the Director determines preservation of the trees would unreasonably interfere with the construction of needed infrastructure.~~

19.30.080 Protection of Trees During Construction

The following best management practices shall be applied to protect trees during development or construction activities.

- A. All construction activities, including staging and traffic areas, shall be prohibited within five feet of the drip line of protected trees.
- B. Tree protective fencing shall be installed along the outer edge and completely surround the drip line of significant trees to be protected prior to any land disturbance.
- C. Tree protective fencing shall be a minimum of four feet high and be highly visible. Signs must be posted on the fence reading "Tree Protection Area."
- D. Trees to be retained shall be watered appropriately during and immediately after construction and shall be protected from erosion and sedimentation.
- E. The grade shall not be changed within 5 feet of the drip line of the trees to be preserved, nor shall any impervious surface be installed within 5 feet of the drip line of the trees to be preserved.
- F. Directional felling shall be used to avoid damaging trees designated for protection.

19.30.090 Heritage Trees

The purpose of the heritage tree designation is to recognize trees with a unique significance to the community , to establish a register of these trees, and to provide additional means for their

protection. Heritage trees may be associated with historic figures, events or properties; be of rare or unusual species; or may have aesthetic value worthy of preservation for the health and general welfare of the community.

A. The City shall maintain a heritage tree register and map, which may be amended at any time pursuant to the process in this section.

1. Trees can be nominated for designation by individual citizens, community groups, city staff, or any board or commission of the City.

2. Staff shall review an application, verify willingness of the affected property owner and make a recommendation to the City Council, which shall have the final authority for designating heritage trees.

3. Trees designated as heritage trees shall be classified as follows:

a. Historical – a tree which by virtue of its age, its association with or contribution to a historical structure or district, or its association with a noted citizen or historical event;

b. Specimen – age, size, health and quality factors combine to qualify the tree as unique among the species in Black Diamond and Washington State;

c. Rare – one or very few of a kind, or is unusual in some form of growth or species;

d. Significant grove – outstanding rows or groups of trees that impact the city's landscape.

B. Upon receipt of a nomination, the Natural Resources Director shall review the request and provide mailed notice of the nomination to the property owner and provide other public notice such as to invite public comment for a period of not less than ten (10) days. The director shall inspect the tree, consider public comments, and formulate a recommendation to the City Council for its consideration at a regular Council meeting no less than 60 days after the nomination is made.

C. Each property owner who has one or more registered heritage trees shall be notified by first class mail of the designation within thirty (30) days of the Council's action.

D. Heritage tree declassification. Any heritage tree may be removed from heritage tree status by action of the City Council following the written request of the property owner, provided that if the request is based upon whether the tree is of poor health, diseased or no longer alive, the Natural Resources Director may approve the request.

1. The request shall be filed with the Natural Resources Director. If the request for decertification is based upon the health of the tree, and a visual inspection by the director cannot establish that the tree is dead, diseased, or hazardous, the applicant shall pay for an outside certified arborist or forester to make a determination. If it is determined that the tree is dead, diseased, or otherwise hazardous and cannot be saved, the director may approval the removal. If the tree is determined to be healthy, or with treatable infestation or infection, the director may deny the permit.

2. In its evaluation of whether to declassify a heritage tree, the City Council shall consider the following:

a. if the tree may be considered hazardous according to this chapter;

b. if the tree no longer meets the criteria for initial designation as specified in subsection (A) of this section;

c. retention of the tree would make reasonable use of the property allowed under the current zoning district impractical or impossible in that development would not be allowed to meet the maximum density/intensity allowed by that zoning district.

E. Heritage tree warrant protection from unnecessary removal. Removal of heritage trees shall be subject to a \$1,000 fine and require replacement in accordance with the ratios identified in section 19.30.070C.

- G. Limitation on new appeal issues. No new substantive appeal issues may be raised or submitted after the close of the time period for filing of the original appeal. The hearing examiner may allow an appellant not more than 15 days to perfect an otherwise timely filed appeal.

18.08.220 Appeal process.

- A. Within 14 calendar days following timely filing of an administrative appeal, the department shall mail notice of the date time and place for the appeal hearing to all parties who received notice of the decision.
- B. Appeals shall be heard and decided within 90 days from the date the appeal is filed.
- C. The hearing shall be limited to the issues included in the written appeal statement. Participation in the appeal shall be limited to the City, the applicant, and those persons or entities which have timely filed complete written appeal statements and paid the appeal fee.
- D. The appellant shall carry the burden of proof in the appeal. The burden of proof shall be met by a preponderance of the evidence in order for the appellant to prevail; provided that in any appeal of a SEPA decision, the decision of the department shall be given substantial weight and may be overturned only if it is clearly erroneous.

18.08.230 Judicial review.

- A. No person may seek judicial review of any decision of the City, unless that person first exhausts the administrative remedies provided by the City.
- B. Any judicial appeal shall be filed in accordance with State law. If there is not a statutory time limit for filing a judicial appeal, the appeal shall be filed within 21 calendar days after a final decision is issued by the City.

Steve Pilcher

From: NOEL TREAT [NOEL@kenyondisend.com]
Sent: Thursday, February 04, 2010 12:08 PM
To: NOEL TREAT
Subject: 18.08

B. Appeals shall be heard and decided within 90 days from the date the appeal is filed, unless the Examiner determines by written findings that a specified amount of additional time is necessary because the matter is of unusual complexity or scope or for other good cause shown. The period of time for hearing and deciding an appeal shall be excluded in calculating the 120 day period for permit issuance established pursuant to BDMC 18.08.100 or state law.

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Steve Pilcher

From: Brenda Martinez
Sent: Tuesday, February 02, 2010 4:58 PM
To: Steve Pilcher
Subject: FW: Consideration of Amendments to BDMC 18.08.220.B

FYI

-----Original Message-----

From: NOEL TREAT [mailto:noel@kenyondisend.com]
Sent: Tuesday, February 02, 2010 2:51 PM
To: Rebecca Olness
Cc: Brenda Martinez
Subject: Consideration of Amendments to BDMC 18.08.220.B

Mayor: This is a follow up to the recent inquiries regarding possible amendments to BDMC 18.08.220.B.

As Mike Kenyon's email yesterday indicated, the issue of amending BDMC 18.08.220.B. is legislative, and not quasi-judicial, in nature. As such, council may consider such an amendment at this time and is not subject to the limits imposed by the Appearance of Fairness Doctrine. In particular, Council may have communications with interested parties about potential amendments. However, given the related pending quasi-judicial matters regarding the Yarrow Bay MPDs and EIS, it is important that such discussions not stray into any of the substantive matters at issue in the MPD and EIS hearing process.

It has also been asked if state law mandates use of the 90 day period in BDMC 18.08.220.B. In short, state law does not necessarily mandate the 90 day provision. However, the City should be mindful that state law strongly favors expedited conclusion to finality of the permit decision process and, in some cases, imposes liability on cities for untimely decisions. For example, RCW 36.70B.080(1) requires that final city action on most land use permits occur within 120 days of a completed application. In some cases, these state law deadlines could be difficult to meet if a related City appeal process had not concluded sooner. Nonetheless, I think a properly crafted exception to the 90 day provision could be developed.

Another issue that has been raised is the appeal timeframe used by other cities. Emails from constituents have suggested that other cities (Covington, Maple Valley, and others) use a 120 day timeline for the consideration and decision on appeals. However, this is not correct. The city codes cited by the constituents are not on point and reference sections of city codes that address a different timeframe than that for appeals. In fact, Covington (CMC 13.45.030) and Maple Valley (MVMC 18.110.120.B.3.) have adopted a 90 day appeal timeframe similar to that of Black Diamond. A number of other cities I canvassed also have a 90 day appeal timeframe (I have not yet found a city with an expressly longer period than 90 days). In this respect, the existing 90 day provision in Black Diamond's code is consistent with the practice of other cities.

Finally, I wanted to again note that under existing city ordinances, any amendment to BDMC Title 18 (including a proposal to change the 90 day appeal period) should first be considering by the Black Diamond Planning Commission. The Commission is charged with, among other things, reviewing any proposed amendments to Title 18 and making a recommendation to the Council prior to Council action. Council could legally decide to not have the Commission review a proposed amendment to BDMC 18.08.220 in this instance, but that approach may require amendment to the Commission's underlying authorizing ordinance or Council adoption of an exception to the usual process.

I hope this is helpful. I can help draft proposed ordinances or answer any questions you or members might have.

Noel R. Treat
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027

Steve Pilcher

From: Brenda Martinez
Sent: Tuesday, February 02, 2010 4:56 PM
To: Steve Pilcher
Subject: FW: Agenda Packet
Attachments: Proposed Changes to BDMC 18.08.220.pdf; MCMC_Covington MC.pdf
FYI

From: Cindy Proctor [mailto:proct@msn.com]
Sent: Tuesday, February 02, 2010 3:53 PM
To: Brenda Martinez
Subject: FW: Agenda Packet

Brenda,

Attached are two documents:

The Proposed BDMC 18.08.220 Change (Includes language, RCW, and excerpts from several local Municipal Codes)
The second large item is really the full chapter code for Maple Valley and Covington (40 pages total) and I just added it in case any council members wanted for reference.

Let me know if this is sufficient.

Regards,
Cindy Proctor

"To celebrate diversity we must first understand and respect the achievements, art, music, tradition and values of all cultures."~ Alfonso Ortiz

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2/5/2010

18.08.220 Appeal process.

A. Within 14 calendar days following timely filing of an administrative appeal, the department shall mail notice of the date time and place for the appeal hearing to all parties who received notice of the decision.

B. Appeals shall be heard and decided within 90 days from the date the appeal is filed. If the matter is of unusual scope or complexity, or good cause otherwise exists, the Examiner shall enter written findings and extend the deadline by the amount of time necessary to allow all parties an adequate opportunity to present their case and an adequate time for the Examiner to deliberate and render a written decision.

C. The hearing shall be limited to the issues included in the written appeal statement. Participation in the appeal shall be limited to the City, the applicant, and those persons or entities which have timely filed complete written appeal statements and paid the appeal fee.

D. The appellant shall carry the burden of proof in the appeal. The burden of proof shall be met by a preponderance of the evidence in order for the appellant to prevail; provided that in any appeal of a SEPA decision, the decision of the department shall be given substantial weight and may be overturned only if it is clearly erroneous.

RCW 36.70B.080 (1) (emphasis supplied):

Development regulations adopted pursuant to RCW 36.70A.040 must establish and implement time periods for local government actions for each type of project permit application and provide timely and predictable procedures to determine whether a completed project permit application meets the requirements of those development regulations. The time periods for local government actions for each type of complete project permit application or project type should not exceed one hundred twenty days, **unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types.**

The development regulations must, for each type of permit application, specify the contents of a completed project permit application necessary for the complete compliance with the time periods and procedures.

LOCAL ORDINANCES PROVIDING FLEXIBILITY ON TIME LIMITS

FEDERAL WAY (FMC 19.65.100 (1) (b))

b) *Timing.* The director will endeavor to issue his or her decision on the land use and design components of the process III project permit approval within 120 days of the issuance of the letter of completeness.

* * *

(iv) If the director is unable to issue his or final decision on the land use or design review components of a process III project permit application as provided in this subsection, the city shall provide written notice of this fact to the applicant. The notice shall include a statement of reasons why the decision has not been issued within the 120-day period, and an estimated date for issuance of the notice of final decision.

COVINGTON (CMC 14.35.050 (3))

3) If the Department is unable to issue its final decision within the time limits established by this section, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the notice of final decision.

MAPLE VALLEY (MVMC 18.100.120)

A. One-Hundred-Twenty-Day Time Period. All decisions on project permit applications for Process 1, 2, and 3 applications shall be made within 120 days of a determination of technical completeness, as limited by subsections (B) and (C), below.

* * *

D. Failure to Meet Time Limit. If the City is unable to issue its decision within the time limits provided in this chapter, it shall provide written notice of this fact to the project applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of a final decision. The City is not liable for damages due to the City's failure to make a final decision within the time limits established in this chapter. (Ord. O-99-109 § 1).

SUMNER (SMC 18.56.185) (emphasis supplied)

C. Except as otherwise provided in this section or otherwise agreed to by the applicant, notice of final decision for land use decisions on applications filed on or after April 1, 1996, shall be made within 120 days after the local government notifies the applicant that the application is complete. **In determining the number of days that have elapsed after the notice of complete application, consistent with RCW 36.70B.090, periods for pending plan corrections, environmental impact statement preparation, and submission of additional information, and administrative appeals shall be excluded.**