



PLANNING & DEVELOPMENT SERVICES

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MEMORANDUM

To: Skagit County Planning Commission and Interested Public

From: Carly Ruacho, Senior Planner
Jill Olson, Deputy Prosecuting Attorney

Date: April 10, 2008

Re: Department report for May 6, 2008, public hearing on proposed amendments to the Skagit County Code relating to the provision of sewer and the siting of schools within the Bayview Ridge UGA (Proposal 1)

This staff report will summarize the proposed amendments to the Skagit County Code relating to (1) provision of sewer within the Bayview Ridge UGA; (2) reorganization of SCC 14.28, Concurrency; and (3) school siting within the Bayview Ridge UGA. The amendments are proposed for the following reasons:

- 1) to address compliance issues relating to Western Washington Growth Management Hearings Board (Hearings Board) Case No. 07-2-0002;
- 2) to address inconsistencies in Chapter 14.28, Concurrency; and
- 3) to ensure that the Skagit County Code provides adequate options for siting a school within the Bayview Ridge UGA consistent with the Burlington-Edison School District's needs and desires.

I. SEWER REGULATIONS—GMA COMPLIANCE

A. Background

On August 6th, 2007, the Western Washington Growth Management Hearings Board issued its Final Decision and Order (FDO) in the Skagit County Growthwatch v. Skagit County (Case No. 07-2-0002) Growth Management Act (GMA) appeal relating to the County's adoption of the Bayview Ridge Subarea Plan and development regulations. The Hearings Board held that the County was compliant on a vast majority of the issues raised by petitioners; however, the Board found non-compliance on about a dozen issues and issued an order of invalidity for one code section. The Hearings Board held that SCC 14.28.105(4) relating to sanitary sewer on Bayview Ridge substantially interfered with Goal 12 of the GMA because "[the code] contains an exception to the requirement to connect to public sewer that allows urban levels of development, both residential and industrial, on holding tanks if there is no sewer line within 200 feet." FDO at 73. Goal 12 of the GMA requires that a local jurisdiction ensure that public facilities and services necessary to support development will be adequate to serve the development at the time the development is available for occupancy.

In response to the Hearings Board decision, the County adopted an interim ordinance on December 4, 2007, that removed the language from the sewer provision that would have allowed urban development within the Bayview Ridge UGA without connection to public sewers. (Ordinance #O20070011) On March 5th, 2008, the Hearings Board issued an Order Rescinding Invalidity in response to the County's action to adopt the interim ordinance. The order requires the County to file a progress report by May 1, 2008, to show that either the interim ordinance has been renewed or permanent regulations will be adopted that address the invalidity issue before the interim ordinance lapses. The interim ordinance expires on June 4th, 2008.

B. Proposed Sewer Regulations

Planning and Development Service ("the Department") has drafted new proposed regulations regarding provision of sewer within the Bayview Ridge UGA to permanently replace the interim ordinance adopted in December 2007. The proposed sewer regulations can be found in two sections of the Skagit County Code: Chapter 14.16, Zoning; and Chapter 14.28, Concurrency. (See Attachments A and B.) The proposed permanent regulations are intended to accomplish three goals: (1) to address the compliance issues identified by the Hearings Board in its August 6th, 2007, FDO; (2) to enact a regulatory scheme that considers the on-the-ground realities of development within the UGA; and (3) to correct some inconsistencies and confusion in the existing Concurrency Chapter, SCC 14.28. The Department believes the proposed regulations, like the interim ordinance, are compliant with the GMA because they no longer allow urban levels of development in the Bayview Ridge UGA without connecting to a public sewer system.

The sewer provisions that were invalidated by the Hearings Board were previously found in SCC 14.28.105(4). The Department is now proposing to remove the entire section SCC 14.28.105 from Chapter 14.28, Concurrency, and replace it with section SCC 14.16.215 in Chapter 14.16, Zoning. This section will cover street standards, provision of water, stormwater improvements, and sanitary sewer service. This reorganization is proposed because most of the regulations found in former section 14.28.105 are not truly concurrency requirements, but are rather development standards and therefore belong in Chapter 14.16, Zoning.¹ Chapter 14.28, Concurrency, will continue to address concurrency requirements within the Bayview Ridge UGA; however, the requirements can now be found within the general provisions of the Concurrency chapter. Below is a more detailed explanation of the sewer regulations contained in SCC Chapter 14.16, as well as the concurrency requirements in SCC Chapter 14.28.

1. Sewer Regulations in Proposed SCC 14.16.215

The Department reviewed several municipal codes² for guidance in developing permanent sewer regulations because, like cities, the County must ensure urban levels of service within the Bayview Ridge UGA. As a general rule, cities require that new development connect to public sewer. However, all city codes that the County surveyed did allow limited exceptions for certain types of development where

¹ A project subject to concurrency review may only proceed if the County is satisfied that adequate public facilities and services are available and the new development will not compromise the established level of service standards. A development requirement, on the other hand, ensures that pre-set criteria are met either prior to or as a condition of development.

² The Department reviewed a variety of municipal codes including the City of Bellevue, the City of Burlington, the City of Mount Vernon, the City of Auburn, the City of Sequim, and the City of Seattle.

public sewer service was not yet available. Typically, public sewer is considered unavailable if the proposed development is greater than a certain distance (usually 200 feet) from an existing public sewer line. If the proposed development is greater than this distance from an existing sewer line, the municipal codes generally do not require single family dwelling units or uses accessory thereto to connect. Many jurisdictions require the owner of the single family dwelling unit to sign an “agreement to connect” to sewer at such time as sewer becomes available (i.e. within 200 feet).

The Department has followed this general scheme in drafting the proposed permanent regulations, requiring connection to public sewer within the Bayview Ridge UGA unless the proposed development is a single family dwelling unit or a residential accessory use that is greater than 200 feet from an existing City of Burlington sewer line. The owner must sign an “agreement to connect” that runs with the land confirming that the owner will connect to public sewer at such time as it becomes available. These sewer requirements can be found at SCC 14.16.215(3)(d).

2. *Sewer Concurrency Regulations in SCC 14.28.070*

For the sewer concurrency requirements within the Bayview Ridge UGA, the Department is proposing new language to SCC 14.28.070, Non-transportation Concurrency. (See Attachment B) For those projects within the Bayview Ridge UGA subject to project concurrency review under SCC 14.28, “the owner must submit confirmation of sewer availability from the City of Burlington prior to development approval and must connect to the existing sewer line or extend the line to serve the project.” See SCC 14.28.070. This language ensures that adequate sewer service is available prior to urban development within the Bayview Ridge UGA.

II. Street, Water, and Stormwater Standards and Concurrency Requirements for the Bayview Ridge UGA

In addition to the sewer amendments, the Department is proposing minor amendments to other development standards and concurrency requirements applicable to the Bayview Ridge UGA. As with the sanitary sewer requirements, the development requirements relating to street standards, water service, and stormwater formerly found in the concurrency chapter at SCC 14.28.105 have been revised and moved to the zoning chapter at SCC 14.16.215. Again, the Department recommends moving these provisions to eliminate inconsistencies in the Concurrency chapter and to distinguish between concurrency requirements and development standards. Where there were actual concurrency requirements within former SCC 14.28.105 for streets, water, and stormwater, the Department has incorporated them into the general concurrency text. If the standard for Bayview Ridge UGA is different from the general concurrency requirements, the Department has added Bayview-specific language. See SCC 14.28.060 – 070.

Former SCC 14.28.105 included language requiring owners to sign an agreement not to protest a future Local Improvement District or other pro rata sharing of costs to pay for improvements to streets, sewer, stormwater facilities, water lines, and other public facilities. The County has already removed this “agreement not to protest” language in the interim sewer regulation. The Department is now proposing to permanently remove this language as it relates to sewers, streets, and water improvements, as well as the general section regarding “agreements not to protest” under SCC 14.28.105(5). With regard to sewers, a new development must connect to sewer unless a very limited exception for single family dwelling units applies. An agreement not to protest an LID is unnecessary in light of this strict requirement as well as the requirement to demonstrate concurrency. Similarly, an agreement not to protest water improvements

is unnecessary because PUD No. 1 already services the Bayview Ridge UGA and new development is required to hook-up prior to final approval of a project. Thus, there is not a need for future LID. For street improvements, the Department learned that a Local Improvement District cannot be formed for street improvements, so the reference to such under “Street Standards” was in error. The Department also understands that removal of this language from these sections does not foreclose the possibility of forming an LID or similar funding mechanism in the future. It simply removes the requirement that a landowner sign an agreement not to protest the formation. The Department is proposing to retain the “agreement not to protest” language within the “stormwater” subsection that is located in proposed SCC 14.16.215(3)(c).

The Department does not believe that any of the changes affecting street standards, water service, or stormwater are material. Neither the replacement of SCC 14.28.105 with SCC 14.16.215, nor the removal of the “agreement not to protest” language for sewer, streets, and water, create any significant changes to the actual regulation of development within the Bayview Ridge UGA. Instead, these changes are intended to improve upon the overall organization and consistency of the Code. The timing of these updates makes sense in light of the changes that needed to be made to the sewer requirements found within the same code section as the street, stormwater, and water requirements.

III. SCHOOL SITING

A. Background

As provided in SCC 14.16.335(4)(h), schools, both public and private, are currently allowed in the Bayview Ridge Residential (BR-R) zone as a Hearing Examiner special use. The siting of any school within the Bayview Ridge UGA must comply with specific criteria pertaining to airport safety zones, noise, air traffic, open space, transportation, and alternative siting. Prior to adoption of the existing development regulations both the Burlington-Edison School District as well as the Bayview Ridge majority property owner were consulted regarding the effect of restricting schools to the BR-R zone and at the time these regulations met the needs of both parties.

Since adoption of the subarea plan and the implementing development regulations in December 2006, discussions between the land owner and School District have continued. A conclusion has been reached that the regulations as currently written may no longer meet the needs and desires of both parties. The Department has been approached by both parties who have expressed their concerns with the regulations as they currently exist and have requested that the development regulations be revised to also allow the possibility of siting a school in the Bayview Ridge Community Center (BR-CC) zone.

B. Proposed School Siting Regulations

The Department is proposing amendments to SCC 14.16.155, Bayview Ridge Community Center, to allow schools as a Hearing Examiner special use in order to meet the needs and desires of the School District. As proposed, schools within BR-CC would also need to meet the same siting criteria currently required in the Bayview Ridge Residential zone with the exception of language requiring the school to be ‘sited as close to the outer edge of zone 6 as possible’. The Community Center zone is established in its location adjacent to the Residential zone and within Airport Safety Zone 6. The zone in its entirety totals only 40 acres and each parcel is located in substantially the same area within the safety zone. The Department believes that this change is compatible with the intended purpose of the Community Center zone as well as other proposed uses and the UGA as a whole. Related amendments are also proposed to

SCC 14.16.210, Airport Environs Overlay, to allow schools to exceed the current building size threshold of 15,000 square feet.

In proposing airport safety recommendations, the *Skagit Regional Airport Land Use Compatibility Study* acknowledges that there is “little established guidance available regarding how restrictive to make safety criteria for various parts of an airport’s environs.” Additionally, the study cited a need to balance “the airport sponsor’s objectives of promoting a high degree of airport land use compatibility and the broader planning considerations and development needs of the community.” While one of the main goals of the Bayview Ridge Subarea Plan is to preserve and protect the Skagit Regional Airport, the Plan also gives consideration to the economic and community implications of such protection.