AGENDA

Lynnwood Planning Commission

Meeting

Thursday, November 12, 2015 — 7:00 pm

Council Chambers, Lynnwood City Hall

19100 44th Ave. W, Lynnwood, WA 98036

A. CALL TO ORDER – ROLL CALL

B. APPROVAL OF MINUTES

1. October 22, 2015 meeting

C. CITIZEN COMMENTS – (on matters not scheduled for discussion or public hearing on tonight's agenda) Note: Citizens wishing to offer a comment on a non-hearing agenda item, at the discretion of the Chair, may be invited to speak later in the agenda, during the Commission's discussion of the matter. Citizens wishing to comment on the record on matters scheduled for a public hearing will be invited to do so during the hearing.

D. PUBLIC HEARINGS

1. Fee Simple Unit Lot Subdivisions (CAM-003247-2015)

E. WORK SESSION TOPICS

1. Outdoor Lighting Standards (CAM-001429-2014)

F. OTHER BUSINESS

G. COUNCIL LIAISON REPORT

H. DIRECTOR'S REPORT

I. COMMISSIONERS' COMMENTS

J. ADJOURNMENT

The public is invited to attend and participate in this public meeting. Parking and meeting rooms are accessible to persons with disabilities. Upon reasonable notice to the City Clerk's office (425) 670-5161, the City will make reasonable effort to accommodate those who need special assistance to attend this meeting.

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CITY OF LYNNWOOD
PLANNING COMMISSION MINUTES
October 22, 2015 Meeting

Commissioners Present:	**Staff Present:**
Richard Wright, Chair	Todd Hall, Planning Manager
Robert Larsen	Michele Szafran, Associate Planner
Maria Ambalada	
George Hurst, Second Vice Chair	
Doug Jones	
Michael Wojack	
Commissioners Absent:	**Other:**
Chad Braithwaite, Vice Chair (excused)	Councilmember Van AuBuchon

Call to Order

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

Approval of Minutes

1. October 8, 2015 Meeting Minutes

Motion made by Commissioner Jones, seconded by Commissioner Hurst, to approve the minutes as presented. **Motion** passed unanimously (6-0).

Citizen Comments

None.

Public Hearing

1. Amendments to Chapter 21.18 LMC (School Parking) (CAM-003183-2015)

Associate Planner Michele Szafran proposed the amendment initiated by the Edmonds School District to reduce the required parking for elementary schools. The school district has requested this reduction in preparation of upgrading existing school properties while providing parking that meets the actual parking needs. Edmonds School District has provided a traffic study completed by Gibson Traffic Consultants and has collected data from several elementary schools. A briefing was held before the Planning Commission on August 13 and at a Work Session on October 10 where the Planning Commission recommended bringing the item forward for a public hearing. Currently the Lynnwood MMC requires one parking space

per four students capacity. This refers to the designed capacity of the school.

Staff has researched how nearby jurisdictions address elementary school parking ratios and summarized the findings in the comparison chart on page 17 of the packet which includes Shoreline, Bothell, Edmonds, Mountlake Terrace, Snohomish County, Mill Creek, and Mukilteo. The comparison chart outlines the current City of Lynnwood required parking for both Lynnwood Elementary School and Spruce Elementary School. Currently 158 spaces would be required for Lynnwood Elementary and 150 spaces for Spruce. The requirement is substantially higher than the majority of surrounding jurisdictions.

The Edmonds School District has projected that the parking needs for both Lynnwood and Spruce Elementary are 88 spaces for Lynnwood and 84 spaces for Spruce. Based on this review staff has proposed a reduction from 1 parking space per 4 students to 3.5 parking spaces per classroom. Staff has proposed 3.5 spaces per classroom in order to still meet the parking need and to leave room to demonstrate how special event parking will be provided. The proposed required parking for Lynnwood Elementary School would be 112 spaces and 101.5 spaces for Spruce Elementary. The school district may still be able to apply for administrative parking reduction per Lynnwood Municipal Code 21.18.820. This may allow a maximum of up to a 20% reduction which could result in 89.6 spaces for Lynnwood and 81.2 spaces for Spruce.

Staff has found that the current parking requirement is substantially higher than the majority of surrounding jurisdictions. All necessary legislative steps have been completed, and public notice has been given in preparation of this hearing. She stated that staff recommends approval of the draft amendments as written, approval of the draft amendments as amended by the Planning Commission, or direction to staff to prepare revisions for the Commission's review at a future meeting.

The public testimony portion of the public hearing was opened at 7:06 p.m. and solicited public comment. There was none.

Commission Discussion:

Commissioner Jones asked about the purpose of the reduction. Ms. Szafran explained that the purpose is to align the actual need with the requirements. Commissioner Jones asked what the school district would be doing with the extra space. Planning Manager Todd Hall commented that by lessening the required amount of parking, the money would presumably go toward the facility itself. This would be a cost efficiency and could better serve the students. He acknowledged that Lynnwood's

requirements are above and beyond what other jurisdictions require. Commissioner Jones spoke in support of the amendments, but noted that he did not have children.

Commissioner Hurst asked who would make the determination on administrative parking reduction if the applicant applies for that. Planning Manager Hall replied it would be the Community Development Director. Upon application, the applicant is required to provide empirical evidence that the reduction should be granted. This can be done through either a parking study or a parking analysis. Staff would draft a report making a recommendation, and then the Director would either approve or deny it. He noted that administrative parking reductions are generally approved for cases that warrant it.

Commissioner Hurst asked the school district what would happen to the space that would not need to be paved for parking. Matt Finch, Edmonds School District, said they were not sure, but they felt the less paving the better. Presumably it would go into the building footprint, if necessary, or it would go into greenscape/landscaping.

Commissioner Ambalada asked the school district about improvements the school district might be making to address safety concerns. Mr. Finch explained that the district has made parking lot improvements to separate bus and parent traffic to keep pedestrians safe. Also, in general, security is a very high priority in the district and they plan on addressing that district-wide.

Commissioner Wojack asked staff if a public hearing notice went out on this item. Planning Manager Hall said staff contemplated doing that but because of the significant cost issue did not send them out. He stated that this is not a site-specific amendment so the City is not required to send out notices.

Commissioner Wojack noted that enrollment numbers can change over time and sometimes portable buildings are added. He asked if there is a time limit on the length of the permit. Planning Manager Hall thought it would depend on how the portable units are approved. For the most part schools are permitted until they decide to expand or remodel the school. In terms of parking, staff would monitor parking each time a request came in.

Commissioner Wojack thanked Mr. Finch for providing the additional information the Planning Commission had requested. He referred to the chart provided and asked for clarification about “FTE”. Mr. Finch stated this referred to Full Time Equivalent. Commissioner Wojack comment that he likes the Snohomish County and Mukilteo versions better because he

worries about planned school events or community events. He likes how those are tied to the assembly areas and auditoriums in those codes.

Chair Wright expressed reservation about the reductions. He noted that Lynndale Elementary has to regularly encourage parents to be neighborly about driving and parking. He also expressed concerns related to safety of people parking off-site. Mr. Finch acknowledged those concerns. He stated that the new Spruce Elementary will be built to meet the current enrollment which is nearly 600 students. This will account for the students that are already there today so parking will be increased; the district just doesn't want to increase it to the extent that the current code would call for. He noted that for community events they allow for parking along the fire lane and along the bus loop. One of the things the school district has been working on with its design team is Safe Routes to School. He stated that what is being proposed will be a significant improvement to what is there today without providing a large number of stalls that would be vacant the majority of the time. Chair Wright expressed appreciation for his response and acknowledged that the City plays a role in Safe Routes to School as well. He stated he still has a hard time with reducing the amount of parking given the large community events.

Commissioner Larsen commented that they are looking at three different standards of comparison – stalls per classroom, stalls per student, and stalls based on capacity. Currently the City of Lynnwood's analysis is based on capacity. He said he appreciated the movement toward stalls per classroom which he feels standardizes it better. He added that it's not just classroom, but it's the demand and capacity of the school to have special events. He likes the idea of the Director having that latitude to make adjustments with that 20%. He recommended that the decision by the Director be based in part on traffic studies for each school so they know what the particular needs and demands of that school are. Also, he pointed out that Lynnwood has a great relationship with the Edmonds School District, but acknowledged that the school district answers to its own elected officials. In general he spoke in support of the staff recommendations.

Commissioner Ambalada recommended building flexibility into the requirements in order to address Commissioners' concerns. She spoke in support of having a partnership with the Edmonds School District in the way that the City has a partnership with Edmonds Community College.

Commissioner Hurst asked what constitutes a classroom. Associate Planner Michele Szafran replied this wasn't clearly defined by any of the definitions, but typically a classroom would be where the instruction happens. Mr. Finch agreed there are different ways to look at this, but a practical approach would be to consider general education classrooms.

Commissioner Hurst asked how open classrooms would be considered. Mr. Finch replied they are looking closely at enrollment projections. They also intend to master plan each site considering where future portables might go if they were to ever need them. They will work closely with traffic engineers and consultants to put that in the report provided to the City.

Commissioner Jones commented on his experience attending schools in Lynnwood and the related parking situations. He spoke in support of the school district applying for a reduction in parking spots with supporting materials. He likes the idea of fewer stalls, but commented they don't know what the future holds for Lynnwood. Mr. Finch commented that the school district doesn't want elementary schools much larger than 600 students. They recently did a boundary adjustment to address this. They are also looking at potentially building another elementary school.

Commissioner Wojack asked why Lynndale Elementary was listed as having no parking spots on the chart provided by the school district. Planning Manager Hall clarified that there are 67, and there is also a shared parking agreement with the park next door. Commissioner Wojack asked Mr. Finch about the boundary area for elementary schools. Mr. Finch explained it is not necessarily defined by distance or by any particular shape. Commissioner Wojack referred to section 2 amendments on line 74 of page 13 and said he didn't see any adjustment allowed by the Director for elementary school parking other than religious schools currently. Planning Manager Hall agreed that currently the Director cannot make the 20% adjustment.

Commissioner Ambalada recommended that the school district visit the Edmonds School District Resource Center on Broadway as an example of space flexibility.

Commissioner Larsen pointed out that the provision for the Director's 20% reduction in parking could be added in the table at the bottom of page 12. He commented that this is a complicated subject, but the Planning Commission's main concern is safety. Planning Manager Hall referred to Commissioner Wojack's comment about line 74 on page 13 and agreed that the 20% reduction could be added to the table on page 12 as suggested by Commissioner Larsen.

Commissioner Wojack asked for clarification about what the proposed amendments actually say. He stated he does agree with the Director having the ability to approve an additional 20% off if the City reduces the parking ratio. Planning Manager Hall commented that the chart in the packet shows what would happen if an additional 20% reduction were granted. Associate Planner Szafran explained that section 21.18.820 is the administrative adjustment to parking or staffing lane capacity or

compact parking limitation. It also describes the evidence that would need to be included in order to be granted that reduction. Commissioner Wojack commented that his interpretation of that is that it is in conflict. Chair Wright agreed that it is in conflict and additionally it uses the ¾ mile metric that may not always apply the same to each elementary school.

Planning Manager Hall reviewed staff's intentions and options available to the Commission. There was disagreement about what the verbiage actually said. Chair Wright also spoke against the 20% language if there is a reduction to 3.5 stalls per classroom.

Commissioner Larsen recommended just focusing on the change in metric and the new amount, but not mentioning the 20% reduction at all if that was the consensus of the Planning Commission. Commissioner Jones agreed that they need to define what a classroom is in order to get an accurate count.

Planning Manager Hall commented that staff's interpretation is that a classroom is the home room of the children or their main instruction room throughout the day. They may go to another room such as a computer lab or a library, but those other spaces are considered as flex space. Staff also looks at office spaces for parking requirements within a school. Mr. Finch agreed with that description and with the idea that this needs more definition and clarification. He commented that part of the additional space that is needed is due to the state-mandated reduced class sizes. He indicated he could go back to the school district to get clarification on a definition for a classroom and what staff's recommendation is. He reiterated that the school district is actually proposing increasing parking at both sites even though it would be a reduction in the code. He added that if the 20% option is removed, it would be helpful if they could have a discussion about an option for informal parking that wouldn't necessarily be striped stalls and would be vacant most of the time. For example, a hardscape playground area could be used for overflow parking when not used as a playground. There appeared to be consensus from the Planning Commission to look into the informal parking topic. Planning Manager Hall commented that staff would have to make sure there are no safety issues associated with that.

Commissioner Ambalada commented that to her every room in a school setting is a classroom because they are designated places for the children to learn.

Chair Wright proposed the following: *A classroom for the purposes of this ordinance shall be defined as any room used for educational purposes for the majority of the day with an assigned permanent instructor.*

Commissioner Larsen commented that the homeroom would make more sense for accounting purposes because that is where head counts are taken. If that doesn't work, he suggested going back to the original capacity number as it is more of a fixed number. He indicated that the Planning Commission may not be ready to make a decision tonight. He added that without a traffic study per school and good information he would not support a 20% reduction capability by the Director, but if they do have that information it might be good to let the Director have that kind of ability.

Commissioner Ambalada agreed that they need room for flexibility. The main concern is for children's safety and learning.

Commissioner Jones asked for clarification about how administrative staff fits into the parking requirements. Planning Manager Hall clarified that for schools the only metric they currently use is the 1 per 4 student capacity. Commissioner Jones spoke in support of a reduction to 1 per 3.5 if they define what a classroom is, but spoke against the option for any additional reductions by the Director.

Chair Wright asked how many schools were built with the current ratio. Staff was not sure. Commissioner Ambalada asked for Chair Wright's perspective on school needs since he has a child who attends an elementary school in Lynnwood. Chair Wright explained that it was different this year because the kids are at Woodway Elementary School which is a temporary site while Lynndale is getting rebuilt and the parking situation there is even worse. Lynndale has a unique situation because it shares a parking lot with the neighboring park. He explained that each school has a different situation. His experience is that parking has been challenging for parents. His concern is about being neighborly and also about keeping people safe. He spoke in support of the parking ratios as proposed without the additional ability for reductions. Commissioner Ambalada again reiterated the need for flexibility.

Commissioner Hurst agreed with the idea of returning to capacity as the metric for determining parking spaces. This seems clearer than the classroom concept. He then referred to page 12 where they are changing the number of parking stalls required, and noted that this includes junior high schools. There was discussion about the definition of junior high schools.

Mr. Finch acknowledged concerns about challenging parking situations at some schools, especially Spruce. He commented that the school district is aware of those, and is proposing to make those better; however, he noted that adding more parking could have a significant negative impact on the circulation of traffic. Regarding the potential administrative reduction, he

stated that the school district would prepare a handful of reports to be submitted to city staff to be vetted before the request ever got to the Director. They would also look at the off-site situation.

Commissioner Larsen commented that even with the proposed reductions, Lynnwood's parking requirements are significantly higher than other jurisdictions. He invited Mr. Finch to discuss why the school district felt this change was necessary. Mr. Finch explained that the school district thinks the current code requires considerably more parking than what is needed operationally. He noted that the Gibson traffic report speaks to off-peak times, but does not speak to special events. He acknowledged that concerns related to special events are absolutely valid, but doesn't think that necessarily providing formally striped parking would solve that. As an example, he referred to Spruce Elementary School site and noted that if they had to provide the amount of stalls that are currently required, they would essentially have to take away the playground and the grass playfield and build a whole separate parking lot up there. The school district believes they need approximately 85 to 90 stalls for both Spruce and Lynnwood. The 3.5 ratio with the potential for a 20% reduction was just slightly above that. Mr. Finch thought that the school district could work with city staff to come up with a recommendation on how to define a classroom.

Chair Wright solicited a recommendation.

Commissioner Ambalada recommended discussing this at another meeting.

Commissioner Jones recommended changing verbiage on line 74 on the amendment to remove the Director's 20%. He spoke in support of the recommendation to change it to 3.5 stalls per classroom, but said he would like more discussion.

Commissioner Wojack suggested continuing the public hearing to the next meeting and bringing in new information.

There was consensus to continue the public hearing and to direct staff to bring back clarification on:

1. *A clear definition of classroom*
2. *Drop the reference to .820*
3. *Examples from the school district of how a good parking lot drop off/pick up configuration could work most efficiently*
4. *An analysis of the current junior high/middle school parking situation*

Work Session

1. Outdoor Lighting Standards (CAM-001429-2015)

In consideration of time constraints, this item was moved to the next available meeting date.

Other Business

None

Council Liaison Report

Councilmember AuBuchon:

- He commented on the impact of the state's unfunded mandate to reduce class sizes on the schools.
- He thanked the Planning Commission for their hard work, noting that they have helped the Council a lot by clearing up these kinds of items.

Director's Report

Planning Manager Hall had the following comments:

- Director Krauss is on vacation, but would hopefully be at a meeting in the near future.
- He and Councilmember AuBuchon have been involved with the Council retreat this week where directors discussed trends over the next five to ten years in various departments around the City. Corbitt Loch and Finance Director Sonja Springer put on a very good presentation regarding the budget projections for the next several years which was very enlightening.
- He has corrections to the lighting code which will be available for the next meeting. There was also a memo distributed written by Chanda Emery with her responses to the Planning Commission comments which were placed on the dais for their information.

Commissioners' Comments

Commissioner Wojack commented how much he enjoyed working with the other commissioners and staff.

Chair Wright commented that the unfunded mandate to reduce classes wasn't really an unfunded mandate because Initiative 732 which reduced class sizes went to a vote of the people in 2000 and has been ignored for the past 15 years. He stated he also thoroughly enjoyed the discussion at this meeting.

Commissioner Jones thought the discussion was fantastic. He is looking forward to the next meeting, but noted he would be out of town on November 12.

Commissioner Hurst expressed appreciation for the Planning Commission. He expressed appreciation to Chair Wright for his openness about an endorsement his wife received from Master Builders and that fact that he had been a member when they were discussing a proposal that was endorsed by Master Builders. In comparison, he expressed disappointment that there were no councilmembers who volunteered that information at a recent Council meeting, but a citizen made the public aware of that.

Commissioner Ambalada commented on the commissioners' dedication to their work. She commended Chair Wright for doing his job so well.

Adjournment

The meeting was adjourned at 8:57 p.m.

_____
Richard Wright, Chair

LYNNWOOD WASHINGTON

Planning Commission
Meeting of November 12, 2015

Topic: Fee-Simple Unit Lot Subdivisions

Agenda Item: D.1

- [x] Public Hearing
- [ ] Work Session
- [ ] Other Business
- [ ] Information
- [ ] Miscellaneous

Staff Report

Staff Contact: Chanda Emery, AICP, Senior Planner, Community Development

Summary

This staff report is provided for your review for the public hearing on November 12, 2015. The Planning Commission was briefed on a proposal known as "Fee Simple Unit Lot Subdivisions" on October 8, 2015. The Planning Commission recommended that staff move forward and prepare fee simple unit lot subdivision code amendments.

Action

The Community Development Department recommends APPROVAL of the attached ordinance as proposed.

Introduction

This is a nonproject proposal to amend Lynnwood Municipal Code (LMC) Titles 17 and 21 to provide for the subdivision of townhouse developments into individual fee-simple unit lots in any zone in which townhouse dwellings are a permitted use.

Background

Many jurisdictions have adopted code language to address the concept commonly referred to as a "unit lot subdivision" or "fee simple unit lots". Fee simple ownership is the absolute and unqualified legal title to real property, including both buildings and land. This is the most commonly used type of ownership in America. All single family homes are fee simple ownership.

However, in Lynnwood, people who live in a condo or a townhouse have complete access to the land, but they don't actually own it. Someone who is living in a condo or townhouse will own their unit and not the land on which the development is built.

Over the past few years, cities have updated their codes to modernize and clarify existing language to allow citizens to increase home ownership opportunities while also working within existing land use designations. Development standards such as access, setbacks, lot area, lot coverage, open space etc., are applied to

the underlying development site, as opposed to the individual unit lots. Townhouses by nature are well-suited to this configuration, because each dwelling unit rests directly on the land. Once constructed, a townhouse unit lot subdivision has the same "look and feel" as townhouse development that is not subjected to unit lot subdivision. The only difference is the form of ownership.

The desire to adopt the unit lot subdivision concept is driven by difficulties relating to construction financing and insurance, as well as mortgage financing for developments subjected to condominium ownership. Such issues are eliminated when fee simple ownership is proposed. Further, many prospective homeowners have found it difficult to obtain financing for the purchase of townhouse units due to requirements of the condominium financing guidelines of the country's major mortgage lenders (FHA, VA, FNMA and FHLMC). By allowing townhouse units to be placed on, and owned in conjunction with an individual fee-simple lot, such mortgage financing issues are eliminated, as the purchase of each unit would not fall under the condominium financing guidelines mentioned above.

The unit lot subdivision concept is not new or unique to the City of Lynnwood. Several other cities (i.e. - Mountlake Terrace, Bothell, Snohomish, Redmond, Seattle, Des Moines, Kent, Tukwila, Lacey) have successfully implemented regulations for unit lot subdivisions.

Discussion

As noted above, developers are experiencing difficulties in obtaining construction financing and insurance required for the construction of townhouse developments. This is due to the fact that most townhouse developments in the City are subjected to the Condominium Act, chapter 64.34 RCW. For the same reason, and perhaps more importantly, potential homeowners face difficulties in obtaining mortgage financing for the purchase of individual townhouse units. The Condominium Act provides for condominium ownership of the dwelling units (often from the "inside of the walls to the inside of the walls"), but does not provide for the creation of fee simple lots on the land on which the units are placed.

Amending city code to allow for the subdivision of townhouse dwellings under this concept would not reduce or change current standards applicable to townhouse development. Impacts to the surrounding community would not be increased. The end result is the built environment would have the same "look and feel" as townhouse development that is not subjected to unit lot subdivision.

A graphic illustration is provided (attachment 4) that shows three types of townhouse ownership: single or unified ownership of entire development; condominium ownership; and unit lot ownership. Note that there are no changes to access, open space, landscaping, building coverage, setbacks, etc., as applied to the underlying site. The only difference is the form of ownership.

Townhouse dwellings are permitted in the following zones: RML (Multiple Residential Low Density), RMM (Multiple Residential Medium Density), RMH

(Multiple Residential High Density), and PCD (Planned Community Development). Standards applicable to townhouse development, including those specific to the underlying zone, are the same as would be applied to townhouse unit lot subdivisions.

The Community Development Department proposes to adopt regulations that would allow for the subdivision of townhouse dwellings into individual unit lots, while applying only those development standards applicable to the underlying site as a whole. The adoption of such regulations will provide for an alternative form of ownership and should eliminate the challenges related to construction and mortgage financing of townhouse developments that would otherwise be subjected to the Condominium Act. Based on substantial research, it is expected that with the adoption of the proposed amendments, the City will have an increase in home ownership opportunities for its citizens combined with a stimulation of the local economy as new townhouse developments are constructed. Adoption of the proposed amendments would not change the standards applicable to the underlying planning method. The only difference is the form of ownership.

It should be noted that this proposal does not prohibit townhouse development from being subjected to the Condominium Act. It does, however, provide an additional form of ownership for townhouses in all zones in which townhouse dwellings are permitted in the City of Lynnwood.

Analysis

The following sections provide a summary and analysis of the proposed additions and amendments to Lynnwood Municipal Code:

New Definitions:

The proposal adds seven new definitions to Chapter 21.02 Definitions of Title 21 Zoning. These definitions are meant to clarify and define key terms used in the intake and review of fee simple unit lot subdivision proposals. These definitions are also applicable to the existing subdivision code.

Definition of “Condominium”

“Condominium” means a development subjected to Chapter 64.32 or 64.34 RCW.

Definition of “Common Areas”

“Common areas” means portions of the subdivision not subdivided for individual lots or not dedicated to the city as public streets, utility systems or other public areas or facilities.

Definition of “Homeowners’ Association”

“Homeowners’ Association” means a corporation, unincorporated association, or other legal entity, whereas each member is an owner of an individual lot within the unit lot subdivision.

Definition of “Owner”

“Owner” means the owner of a lot, but does not include a person who has an interest in a lot solely as security for an obligation. “Owner” also means the vendee, not the vendor, of a lot under a real estate contract.

Definition of “Parent Site”

“Parent site” means a parcel of land which may be subdivided into unit lots through the unit lot subdivision process of this chapter.

Definition of “Unit Lot”

“Unit lot” means a subdivided lot within a development approved through the unit lot subdivision process of this chapter.

Definition of “Unit Lot Subdivision”

“Unit Lot Subdivision” means a division or redivision of land in which one or more boundaries of the individual lots coincide with the interior walls of a structure which separate individual attached single family dwelling units. Sites developed or proposed to be developed with townhouses may be subdivided into individual unit lots to allow the separate ownership of each residential unit, as permitted in the applicable zones.

New Section – Chapter 19.40 of Title 19 Subdivisions:

Please refer to Attachment 3 for the proposed code amendments.

Compliance with State Law and the City of Lynnwood Comprehensive Plan

Growth Management Act (GMA) Planning Goals

The GMA planning goals adopted in RCW 36.70A.020 guides the development and adoption of comprehensive plans and development regulations. The goals are not priority listed. The GMA planning goals are addressed in the City of Lynnwood’s Comprehensive Plan. The City Council adopted updates to the 2035 Comprehensive Plan on June 22, 2015. This document guides the development of regulations required under RCW 36.70A.040. The regulations proposed by this ordinance are reasonably related to and necessary for the advancement of the following GMA goals:

1. GMA Goal 1 “Urban Growth” – The provisions in this ordinance will encourage development in urban areas where adequate public facilities and services exist, or can be provided in an efficient manner.

2. GMA Goal 4 “Housing” – The provisions in this ordinance will encourage the availability of affordable housing and will contribute to a variety of residential housing types. The proposed amendments address difficulties in obtaining mortgage financing for individual townhouse units that would otherwise be subject to the Condominium Act.

3. GMA Goal 5 “Economic Development” – The provisions in this ordinance address the difficulties that the region’s construction industry is experiencing in obtaining mortgage financing for townhouse development that would otherwise be subjected to the Condominium Act.

4. GMA Goal 6 “Property Rights” – The proposed amendments and ordinance outlined in this staff report do not result in a taking of private property and the property rights of the land owners will not be subjected to arbitrary and discriminatory actions.

5. GMA Goal 11 “Citizen Participation and Coordination” – The legislative drafting process undertaken complies with GMA and the City’s public participation requirements as outlined in LMC Titles 1 and 2 and in the goals and policies of the City of Lynnwood’s Comprehensive Plan.

<u>City of Lynnwood Comprehensive Plan Goals and Policies</u>

The proposal complies with the City of Lynnwood’s Comprehensive Plan which sets forth the following goals and policies related to the proposed regulations:

1. *Housing Element – Goal – “Provide for sufficient availability and a variety of opportunities for safe, decent, and affordable housing in strong, cohesive neighborhoods to meet the needs of present and future residents of Lynnwood.”*
    - *Policy H-10 – “Provide opportunities for housing that is responsive to market needs within our region, including both ownership and rental opportunities.”*
    - *Policy H-14 – “Provide for diverse, safe, and decent housing opportunities that meet local housing needs without encroachment into established single-family neighborhoods.”*
    - *Policy H-15 – “Within the College District and areas where Transit-Oriented Development (TOD) is desired, apply development regulations that allow alternative housing types and mixed-use development.”*
    - *Policy H-19 – “Continue to update the Zoning Code (Title 21 LMC) to remove unnecessary development obstacles and allow greater innovation in design and construction.”*
    - *Policy H-21 – “Encourage the development of affordable housing for all income levels.”*

- *Policy H-30 – "The City shall facilitate affordable home ownership and rental opportunities by promoting an increased supply of lower-cost housing types, such as small lots, townhouses, multiplexes, and mixed-use housing."*

2. *Land Use Element – Goal – "The scale, character, and configuration of land uses throughout Lynnwood will preserve and protect existing residential neighborhoods, protect environmentally sensitive areas, support physical activity and public health, minimize the threat of natural and manmade hazard, promote commerce and business, and accommodate population and employment growth.*
    - *Policy LU-6 – "Land use policies and regulations should:*
        - *Be consistent with federal and state law, including the Growth Management Act.*
    - *Policy LU-31 – "Subdivision regulations and standards shall promote public health, safety, aesthetics, and general welfare. Such regulations and standards shall allow for efficient use of land, minimize adverse impacts on surrounding development, provide adequate public utilities, proper access and traffic circulation, streets, sidewalks, and other public facilities.*

3. *Economic Development Element – Goal – "Provide high-quality development and infrastructure projects."*
    - *Strategy 3.2 Housing: "Encourage the development of a range of housing types to ensure balanced housing options within the City of Lynnwood."*

<u>Constitutional Issues</u>

Potential constitutional issues related to the regulations proposed by this ordinance were considered. The proposed regulations will not result in a permanent or temporary physical occupation of private property. They would not deprive affected property owners of all economically viable uses of their properties. The proposed regulations will not deny or substantially diminish a fundamental attribute of property ownership. They will not require a property owner to dedicate a portion of property or to grant an easement and will not have a severe impact on the property owners' economic interests. The proposed regulations do provide a benefit to the health, safety, and welfare of the general public, and do not benefit any particular person or class of persons.

<u>Impacts</u>

The proposed regulations are consistent with and help to implement the goals and policies in the City's Comprehensive Plan. The proposal provides for the subdivision of townhouse unit lots while applying development standards to the development as a whole. The proposed amendments do not change or decrease development standards applicable to townhouse development, and do provide for additional financing and ownership opportunities.

Environmental Review

A State Environmental Policy Act (SEPA) Determination is required for the proposed amendments. A Determination of Non Significance (DNS) was issued on October 30, 2015. No written comments have been received on the DNS.

Notification of State Agencies

Pursuant to RCW 36.70A.106, a notice of intent to adopt the proposed regulations and standards was transmitted to the Washington State Department of Commerce for distribution to state agencies. No comments were received.

Attachments

1. Section Summary of Proposed Ordinance

2. Proposed Draft Ordinance titled: RELATING TO TOWNHOUSE DEVELOPMENT REGULATIONS, ADOPTING PROVISIONS FOR TOWNHOUSE UNIT LOT SUBDIVISIONS AND AMENDING LYNNWOOD MUNICIPAL CODE CHAPTERS 19 AND 21

3. Chapter 19.40 Fee Simple Unit Lot Subdivisions

4. "Fee Simple Lot" Division: Subdivision vs. "Airspace" Condominium Prepared by the Law Offices of James C. Middlebrooks, Prepared for City & County Elected Officials and Governmental Staff, 2013.

5. Graphic Comparison of Townhouse Development Forms of Ownership

6. Minutes Excerpt from October 8, 2015 Planning Commission Meeting

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Section Summary of Proposed Ordinance

Relating to Townhouse Development Regulations, Adopting Provisions for Townhouse Unit Lot Subdivisions

Section 1. States that the city council adopts the foregoing findings.

Section 2. States that the city council makes conclusions that the proposal is consistent with the goals, objectives, and policies of the Growth Management Act; that the proposal is consistent with state law and Lynnwood Municipal Code; that the city has complied with all applicable SEPA requirements; that the regulations proposed do not result in an unconstitutional taking of private property for a public purpose; and that the amendments are necessary to address issues related to construction and mortgage financing related to condominium ownership.

Section 3. States that the city council bases its findings and conclusions on the entire record of the City Council, including all testimony and exhibits.

Section 4. Adds a new Chapter 19.40, Fee Simple Unit Lot Subdivisions, to Title 19 Subdivisions and adds new definitions to Title 21. Provides for the subdivision of townhouse dwellings into individual unit lots, while applying only those standards applicable to the parent site as a whole.

Section 5. Sets effective date, and authorizes Community Development to take actions necessary to implement the ordinance on the effective date.

Section 6. States the terms of severability for the ordinance.

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CITY OF LYNNWOOD

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING TITLE 19 AND TITLE 21 IN THE LYNNWOOD MUNICIPAL CODE, RELATING TO REQUIREMENTS FOR TOWNHOUSE UNIT LOT SUBDIVISIONS, AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

WHEREAS, under Chapters 35A.11 and 35A.63 RCW the City Council of the City of Lynnwood has the authority to adopt ordinances relating to the use of real property located within the City; and

WHEREAS, the City of Lynnwood Planning Commission ("Planning Commission") held a public hearing on November 12, 2015, to receive public testimony concerning the code amendment contained in this ordinance; and

WHEREAS, providing for the creation of individual townhouse unit lots should provide additional ownership opportunities for future home buyers;

WHEREAS, at the conclusion of the Planning Commission's public hearing, and all persons wishing to be heard were heard; the Planning Commission voted to recommend adoption of the proposed code amendment contained in this ordinance, as shown in its recommendation letter dated November ___, 2015; and

WHEREAS, on December ___, 2015, the City of Lynnwood SEPA Responsible Official issued a Determination of Non-Significance (DNS) on the proposal; and

WHEREAS, on December ___, 2015, the proposed code amendments were sent to the Washington State Department of Commerce in accordance with RCW 36.70A.106; and

WHEREAS, following the public testimony portion of the public hearing, the Planning Commission deliberated on the draft legislation and by regular motion voted to recommend that the Lynnwood City Council adopt the amendments to the Lynnwood Municipal Code; and

WHEREAS, on January ___, 2016, the Lynnwood City Council held a public hearing on proposed amendments to the Lynnwood Municipal Code relating to townhouse unit lot subdivisions and all persons wishing to be heard were heard; and

DRAFT

WHEREAS, on January ___, 2016, the Lynnwood City Council adopted Ordinance No. ____ which amended Title 19 and Title 21 of the Lynnwood Municipal Code by adding a new code section, Title 19.40 Fee Simple Unit Lot Subdivisions; and

WHEREAS, the City Council has determined that it is in the best interest of the City and necessary for the protection of public health, safety, property and peace including the land use policies embodied in the City of Lynnwood Comprehensive Plan and zoning code to amend the Lynnwood Municipal Code in order to address these issues and to clarify the meaning and intent of the affected sections of the Lynnwood Municipal Code; now, therefore

THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. The recitals above are adopted as findings that support passage of this ordinance.

Section 2. Conclusions. The City Council makes the following conclusions:

A. The proposal is consistent with the goals, objectives, and policies of the City of Lynnwood's Comprehensive Plan.
B. The proposal is consistent with Washington State Law.
C. The City has complied with all SEPA requirements in respect to this non-project action.
D. The regulations proposed by this ordinance do not result in an unconstitutional taking of private property for a public purpose.
E. The proposed amendments are needed to address construction financing and mortgage difficulties related to condominium ownership of townhouse developments.

Section 3. Public Testimony and Exhibits. The City Council bases its findings and conclusions on the entire record of the City Council, including all testimony and exhibits. Any finding which should be deemed a conclusion, and any conclusion which should be deemed a finding, is hereby adopted as such.

Section 4. Amendments. Lynnwood Municipal Code Chapter 19.40 of Title 19 and Definitions of Title 21, is hereby amended as follows:

XXXX

DRAFT

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 6. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

PASSED BY THE CITY COUNCIL, the ___ day of ___, 2016.

APPROVED:

_____

Nicola Smith, Mayor

ATTEST/AUTHENTICATED:

_____

Sonja Springer
Finance Director

APPROVED AS TO FORM:

_____

Rosemary Larson
City Attorney

FILED WITH ADMINISTRATIVE SERVICES: _____
PASSED BY THE CITY COUNCIL: ___, 2016
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NUMBER: _____

DRAFT

On the ___ day of ___, 2016, the City Council of the City of Lynnwood, Washington, passed Ordinance No. xxxx. A summary of the content of said ordinance, consisting of the title, provides as follows:

> AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING TITLE 19 AND TITLE 21 IN THE LYNNWOOD MUNICIPAL CODE, RELATING TO REQUIREMENTS FOR TOWNHOUSE UNIT LOT SUBDIVISIONS AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

The full text of this Ordinance will be mailed upon request.

DATED this ____ day of ____, 2016.

DRAFT

Chapter 19.40

FEE SIMPLE UNIT LOT SUBDIVISIONS

Sections:

19.40.010 Purpose and applicability.

19.40.020 Administration.

19.40.030 Procedure for preliminary fee simple unit lot subdivision.

19.40.040 Requirements for a complete application.

19.40.050 Review of fee simple unit lot subdivision application.

19.40.060 Criteria for approval.

19.40.070 Time limitation for final decision.

19.40.080 Effect of preliminary fee simple unit lot subdivision approval – Expiration.

19.40.090 Deadline for submission of final fee simple unit lot subdivision application.

19.40.100 Revisions to an approved fee simple unit lot subdivision.

19.40.010 Purpose and applicability.

The purpose of this chapter is to establish the fee simple unit lot subdivision procedure for the following limited circumstances only:

A. To divide land for townhouses where all of the following conditions apply:

1. Underlying zoning standards otherwise allow multiple units of these housing types on a single lot or parcel without subdividing the land; and

2. Fee simple unit lot subdivisions are specified as a permissible type of development in the underlying zoning district wherever townhouse development is a permitted use.

19.40.020 Administration.

Fee simple unit lots subdivisions are subject to the provisions of Chapters 19.50 (short subdivisions), 19.20 (preliminary plat procedures), and 19.25 LMC (final plat procedures), based upon the number of lots created through the fee simple unit subdivision process.

19.40.030 Procedure for preliminary fee simple unit lot subdivision.

The following steps shall be followed in the processing of preliminary fee simple unit lot subdivision applications:

A. LMC 1.35.015, determination of complete application;

B. LMC 1.35.020, notice of application;

C. Chapter 17.02 LMC, SEPA;

D. LMC 1.35.070, determination of consistency with the development regulations and comprehensive plan;

E. LMC 1.35.140, notice of public hearing;

F. LMC 1.35.160-180, notice of decision;

H. LMC 1.35.XXX, administrative appeal (for nine lots or less); or

I. LMC 1.35.XXX, judicial appeal (for more than nine lots).

19.40.040 Requirements for a complete application.

The following materials shall be submitted to the City for a complete preliminary fee simple unit lot subdivision application.

A. Application Form. An application form provided by the City along with the applicable fee as established by the City in a resolution for this purpose. The application form shall be completed and contain the following information:

1. The proposed name of the proposed fee simple unit lot subdivision, which shall not be the same as the name of any other subdivision or development in the City;

2. Name, address and telephone number of the subdivider and of the owner(s) of the property to be subdivided;

3. Signature of the applicant;

4. Signature(s) of property owner(s) or owner's authorized representative(s);

5. A verified statement by the applicant(s) that the property affected by the application is in the exclusive ownership of the applicant(s), or, if the property is not in the exclusive ownership of the applicant, a verified statement that the applicant has submitted the application with the consent of all owners of the affected property;

6. Legal description of the property to be subdivided;

7. Other information specified and requested on the application form.

B. Title Report. A title report dated by the title company within 30 days of the date the application was submitted to the City, confirming that the title of the land as described and shown in the plat is in the name of the applicant.

C. Lot Descriptions. Legal descriptions of all proposed lots, boundaries and approximate dimensions, including square feet of lot area for all lots and parcels within the application, together with the numbers to be assigned to each lot.

D. Certificate of Consent and Dedication. A certificate giving full and complete descriptions of the lands divided as they appear on the fee simple unit lot subdivision, including a statement that the fee simple unit lot subdivision has been made with free consent and in accordance with the desires of the owner(s). If the fee simple unit lot subdivision includes a dedication, the certificate shall also contain the dedication of all streets and other areas to the public and individual(s), religious society or societies or to any corporation, public or private, as shown on the subdivision plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of any road(s). Prior to final plat approval, the certificate shall be signed and acknowledged before a notary public by all parties having any interest in the lands divided.

E. Site Plan. One original 18-inch by 24-inch drawing, and seven copies, containing the following information:

1. The location and size of all proposed lots, tracts and easements, consistent with separately attached plat map required in subsection F of this section;

2. Proposed site improvements and structures;

3. Any existing structures or site improvements intended to be retained on the site;

4. All proposed uses, including existing uses intended to be retained;

5. The location of proposed or existing open space, including any required landscaped areas;

6. The location and identification of critical areas;

7. Adjacent streets, access easements and proposed locations and dimensions of driveways providing access to the site;

8. The layout of an internal vehicular and pedestrian circulation system, including proposed ingress and egress for vehicles and emergency vehicle access; parking shall be calculated and designed for each lot in compliance with Chapter 21.42 LMC, although parking required for a dwelling may be provided on a different lot or tract within the parent lot as long as the right to use that parking is formalized by an easement declared on the plat. Where parking for detached single-family buildings is provided on a different lot or tract, parking allowances for detached single-family residences in Chapter 21.42 LMC, including tandem parking and backing into a street, shall not apply.

9. Location of existing and proposed fire hydrants;

10. The number and location of proposed or existing parking spaces on the site, and on streets directly abutting the site;

11. The location of utilities and drainage systems proposed to serve the site;

12. The location and size of water bodies and drainage features, both natural and manmade;

13. A layout of sewers and the proposed water distribution system;

14. Proposed easements and access;

15. Proposed freestanding signage;

16. Depictions of easements, deed restrictions and other encumbrances referenced in subsections F and T of this section.

F. Plat Map. One original 18-inch by 24-inch drawing, and seven copies of a map labeled, “Plat of _____ Fee Simple Unit Lot Subdivision” (insert name of plat) showing only existing and proposed lot and tract lines, easement lines (including necessary maintenance and/or construction easements for buildings with zero setbacks from property lines), rights-of-way lines, dimensions, bearings, monuments,

lot numbers, and other descriptions and illustrations of how the site is to be legally accessed, divided and described, consistent with separately attached site plan required under subsection E of this section. For divisions of nine or fewer lots, the plat map shall be formatted as prescribed in LMC 19.50 (short subdivisions). For divisions of 9 or more lots, the plat map shall meet the requirements of LMC 19.20) (preliminary subdivision plats) and 19.25 (final subdivision plats).

G. Elevation and Floor Plans. One original 18-inch by 24-inch drawing, and seven copies of elevation drawings and floor plans as known.

H. Utilities Plan. One original 18-inch by 24-inch drawing, and seven copies of a utilities plan showing the location and size of utility trunk lines, lateral lines, water, electric, gas, and telecommunication lines, utility vaults and transformers both existing and proposed to serve the site.

I. Topography Map. One original 18-inch by 24-inch drawing, and seven copies of a topography map.

J. Grading Plan. One original 18-inch by 24-inch drawing, and seven copies of a grading plan showing proposed clearing and tree retention and the existing and proposed topography, detailed to two-foot contours, unless smaller contour intervals are otherwise specified by the City code.

K. Drainage Plan. One original 18-inch by 24-inch drawing, and seven copies of a drainage plan which will accommodate the maximum proposed square footage of impervious surface, including the maximum proposed square footage of impervious surface exposed to vehicular use, subject to the requirements of the City's stormwater drainage design standards.

L. Drainage Analysis. A downstream drainage analysis or any other requirement specified in the City's surface water design manual, site development regulations or Surface Water Policy Ordinance.

M. SEPA Checklist. A completed SEPA environmental checklist (if applicable).

N. Common Area Documents. All covenants, easements, maintenance agreements or other documents regarding mutual use of easements, common open space, parking and access.

O. Sewer Availability Certificate. Sanitary sewer availability certificate from the public sanitary sewer service provider, if other than the City, for an area not served by or intended to be served by the City.

P. Water Availability Certificate. Water availability certificate from the water purveyor providing service to the property if other than the City for an area not served by or intended to be served by the City.

Q. Existing Encumbrance Documents. Copies of all easements, deed restrictions or other encumbrances restricting the use of the site.

R. Phasing Plan. A phasing plan and time schedule, if the site is intended to be developed in phases.

S. Fees. The payment of all applicable fees as prescribed in the City's fee schedule.

T. Proposed Restrictions. Draft covenants, conditions and restrictions labeled "CC&Rs" or any other restrictions or easements that may apply.

U. Additional Information as Required for Short and Preliminary Plats. Any additional information required under Title 19 Subdivisions (depending on number of lots in proposed fee simple unit lot subdivision).

V. Statement of Waiver. For divisions of nine or fewer lots (short plats), the application must include a written statement of the applicant waiving his or her rights to the 30-day review period under RCW 58.17.140.

19.40.050 Review of fee simple unit lot subdivision application.

A. Transmittal for Review and Comment. Once the preliminary fee simple unit lot subdivision application has been determined complete, the Director shall transmit for review and comment a copy of the site plans, together with copies of any document the Director determines are appropriate, to the following:

1. The Public Works Director, who shall review the elements of the application relating to traffic, utilities, storm drainage, streets, alleys, public ways, sidewalks, water, sanitary sewer, drainage, and determine whether it satisfies the requirements of LMC 19.40.060;

2. The City Fire Marshal, who shall review the elements of the application relating to conformance to the Fire Code and emergency access;

3. Any other City officer, department, utility provider, or school district, as the Director deems appropriate;

4. If the proposed preliminary fee simple unit lot subdivision is located adjacent to the right-of-way of a state highway, the Director shall give written notice of the application, including a legal description of the fee simple unit lot subdivision and a location map, to the State Department of Transportation; and

5. If the proposed preliminary fee simple unit lot subdivision is located in whole or in part in a designated floodplain as provided in Chapter 86.16 RCW, the Director shall give written notice of

the application, including a legal description of the fee simple unit lot subdivision and a location map, to the State Department of Ecology.

B. In addition to the transmittal of copies of the application materials to the officers, departments and agencies identified in subsection A of this section, the Director shall also specify the deadline for submission of any comments or determinations of said officers, departments and agencies as to the conformance of the application with the criteria for approval in LMC 19.40.060

19.40.060 Criteria for approval.

A. Required Findings for Applicant. The applicant for a preliminary fee simple unit lot subdivision must demonstrate that the application complies with all of the following:

1. All applicable statutory provisions, including but not limited to RCW 58.17.195;

2. All applicable provisions of Chapter 19.50 LMC (short subdivisions) for divisions of nine lots or fewer;

3. All applicable provisions of Chapter 19.20 LMC (preliminary plats) for divisions of 10 lots or more;

4. The City's Comprehensive Plan and all related elements, including, but not limited to the Comprehensive Plan's capital facilities, water, sewer and transportation elements;

5. Easements have been provided for maintenance of and access to walls, roofs and features of structures that are accessible only across abutting parcels;

6. Encroachment easements have been provided for any minor encroachments that may extend into abutting parcels, such as eaves, window sills, bay windows, and similar features purposefully designed to encroach over individual property lines within the fee simple unit lot subdivision.

7. And, the submitted proposal and site plan complies with the underlying zoning requirements for the zone in which the project is located.

B. Required Findings and Conclusions for City Approval. A proposed preliminary fee simple unit lot subdivision application shall not be approved unless the City makes written findings and conclusions that:

1. All of the requirements in subsection A of this section are satisfied;

2. The collective lots in the property included in the preliminary fee simple unit lot subdivision will function as one site with respect to, but not limited to, lot access, interior circulation, open space, landscaping, drainage facilities, facility maintenance and parking;

3. Appropriate provisions are made for the public health, safety and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, and parks and recreation;

4. The public use and interest will be served by the approval of the fee simple unit lot subdivision;

5. The fee simple unit lot subdivision includes the following statement:

All development and use of the land described herein shall be in accordance with this fee simple unit lot subdivision, as it may be amended with the approval of the City, and in accordance with other governmental permits, approvals, regulations, requirements and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more units or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This fee simple unit lot subdivision shall be binding upon all persons or entities now or hereafter having any interest in the land described herein.

6. The conditions of use, maintenance and restrictions on redevelopment of shared open space, parking, access and other improvements are identified and enforced by the covenants, easements or other similar mechanisms;

7. The applicant agrees to install and dedicate all public facilities prior to the City's approval of the final fee simple unit lot subdivision, unless the applicant has executed a subdivision improvement agreement and has provided the necessary security for the agreement.

19.40.070 Time limitation for final decision.

A preliminary fee simple unit lot subdivision application shall be approved, approved with conditions or denied within 120 days after a complete application has been submitted, unless the applicant consents to an extension in writing of such time period; provided, that if an environmental impact statement is required as provided in RCW 43.21C.030, the 120-day period shall not include the time spent preparing and circulating the environmental impact statement by the City.

19.40.080 Effect of preliminary fee simple unit lot subdivision approval – Expiration.

A. Approval of the preliminary fee simple unit lot subdivision by the City shall constitute direction to the applicant to develop construction plans and specifications for the required public facilities, in strict conformance with the approved preliminary fee simple unit lot subdivision, the street and utility standards adopted by the City and any special conditions imposed on the approval.

B. Permission shall not be granted for installation of required public facilities until all construction plans and specifications have been approved in writing by the City, pursuant to Chapter 19.75 LMC.

C. Preliminary fee simple unit lot subdivision approval shall expire if a final fee simple unit lot subdivision plat application has not been submitted pursuant to the deadlines established in LMC 19.XX (for divisions of 10 or more lots) or 19.XX (for divisions of nine or fewer lots)

19.40.090 Deadline for submission of final fee simple unit lot subdivision application.

A. For divisions of nine lots or less, all improvements and construction must be completed before short plat recordation unless the applicant has entered into a subdivision improvement agreement with the City (as allowed by Chapter 19.XX LMC), in which the subdivider contracts with the City to either construct or defer required public facilities, contingent upon the posting of the necessary security.

B. For divisions of 10 lots or more, a final fee simple unit lot subdivision application meeting all of the requirements of the preliminary fee simple unit lot subdivision approval and this title shall be submitted to the City within five years of the date of preliminary fee simple unit lot subdivision approval. Final fee simple unit lot subdivisions shall be processed according to Chapter 19.XX LMC.

19.40.100 Revisions to an approved fee simple unit lot subdivision.

An application for a revision to an approved preliminary fee simple unit lot subdivision may be submitted before a final fee simple unit lot subdivision application is submitted, as follows:

A. Minor Revisions to an Approved Preliminary Fee Simple Unit Lot Subdivision. The Director is authorized to make the determination on a minor revision to an approved fee simple unit lot subdivision without a public hearing.

1. Defined. Minor revisions to an approved preliminary fee simple unit lot subdivision are those which do not change: (a) the outer boundaries of the fee simple unit lot subdivision (other than for survey discrepancies); (b) the dimension of lot lines within the fee simple unit lot subdivision by more than two percent; (c) the conditions of preliminary fee simple unit lot subdivision approval; (d) road alignments or connections and/or do not increase the number of lots.

2. Application. A complete application for a preliminary fee simple unit lot subdivision revision shall consist of the following:

a. Application form and filing fee;

b. Site plan showing the proposed modification, using the same plan format as in the original approval;

c. Explanation in narrative form of the requested modification.

3. Processing. The following steps shall be followed in the processing of an application for a minor revision:

a. LMC 1.35.015, determination of complete application;

b. LMC 1.35.020, notice of application;

c. Chapter 17.02 LMC, SEPA (unless exempt under WAC 197-11-800);

d. LMC 1.35.070, determination of consistency with the development regulations and comprehensive plan;

e. Chapter 1.35 LMC, notice of decision;

f. Chapter 1.35 LMC, administrative appeal.

4. Criteria for Approval. The Director shall approve or approve with conditions a proposed preliminary fee simple unit lot subdivision revision application, as long as the applicant demonstrates that all of the following criteria are satisfied:

a. The proposed revision meets the criteria in LMC 19.40.050(A);

b. The revision will not be inconsistent with, or cause the fee simple unit lot subdivision to be inconsistent with, the findings, conclusions or decision made by the City in its approval of the preliminary fee simple unit lot subdivision; and

c. Approval of the revision will not affect the ability of the collective lots in the property included in the preliminary fee simple unit lot subdivision to function as one site with respect to, but not limited to, lot access, interior circulation, open space, landscaping, drainage facilities, facility maintenance and parking.

5. Time Limitation for Final Decision. The minor preliminary fee simple unit lot subdivision revision application shall be approved, approved with conditions or denied within 120 days after a complete

application is submitted, unless the applicant consents to an extension in writing of such time period; provided, that if an environmental impact statement is required as provided in RCW 43.21C.030, the 120-day period shall not include the time spent preparing and circulating the environmental impact statement by the City.

6. Deadline for Submission of Final Fee Simple Unit Lot Subdivision Not Extended. Approval of a minor preliminary fee simple unit lot subdivision revision shall not extend the deadline set forth in LMC 19.40.090 for submission of a final fee simple unit lot subdivision application to the City.

B. Major Revisions to an Approved Fee Simple Unit Lot Subdivision. Major revisions to approved preliminary fee simple unit lot subdivision are defined and processed as follows:

1. Defined. A major preliminary fee simple unit lot subdivision revision is any application for a revision of a preliminary fee simple unit lot subdivision that does not meet the definition of a minor preliminary fee simple unit lot subdivision revision.

2. Application. An application for a major preliminary fee simple unit lot subdivision revision shall include all of the elements of a complete preliminary fee simple unit lot subdivision application.

3. Criteria for Approval, Time Limitation for Final Decision. The criteria for approval and the time limitation for a final decision of a major preliminary fee simple unit lot subdivision revision shall be the same as those for a preliminary fee simple unit lot subdivision application.

4. Deadline for Submission of Final Fee Simple Unit Lot Subdivision Not Extended. Approval of a major preliminary fee simple unit lot subdivision revision shall not extend the deadline set forth in LMC 19.40.090 for submission of a final fee simple unit lot subdivision application to the City.

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"FEE SIMPLE LOT" DIVISION

Subdivision *vs.* "Airspace" Condominium

Prepared by

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Prepared for

City & County Elected Officials and Governmental Staff
Business & Professional Organizations
Business & Professional Individuals
(Those Focused on Affordable & High Density Housing)

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"FEE SIMPLE LOT" DIVISION
Subdivision *vs.* "Airspace" Condominium

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<u>"FEE SIMPLE LOT" DIVISION</u>
Subdivision *vs.* "Airspace" Condominium

POLICY STATEMENT

A. "Housing Policies" Relating to Fee Simple Lot Division.

1. **Housing Alternatives**. Strive to: **(a)** Maintain a balance of ownership of housing units; **(b)** Provide for a variety of housing types that offer housing options; and **(c)** Promote homeownership.
2. **Single Family/Multiple Family Housing**. Promote single family and multiple family housing design (including subdivision, site and building design), which: **(a)** Enhances the community image; **(b)** Ensures compatibility with surrounding development; and **(c)** Promotes energy, transportation, historic preservation, urban design, parks and recreation goals and policies.

B. Purpose of Fee Simple Lot Division.

1. **Subdivision Density Loss.** Typical local subdivision codes do not prohibit creation of fee simple attached and detached dwelling lots within multi-family residential zones, but the Subdivision requirements effectively preclude them. When attempting to provide separate ownership of dwellings on a single site that is otherwise legal, the additional Subdivision requirements (including minimum Lot size, maximum Lot coverage, and minimum structure setbacks) result in losing 10% to 50% of the authorized density. These Subdivision requirements: **(a)** Do ***not*** apply to single site developments containing attached and detached dwellings; **(b)** Do ***not*** apply to detached and attached dwelling "Airspace" Condominiums; but **(c)** Frustrate achieving the "Housing Policies".
2. **Condominium Related Problems**. Increasingly, homebuilders, and both prospective and existing homeowners, are encountering serious problems with using the condominium form of ownership for single family attached and detached dwelling developments.
3. **Fee Simple Lot Division Solution**. Cities and counties should adopt "**Fee Simple Lot Division**" subdivision code amendments to: **(a)** Avoid unwarranted Subdivision density loss; and **(b)** Facilitate use of the subdivision (rather than the condominium) process to permit ownership of single family attached and detached dwellings.

C. Concept.

1. **Parent Site.** Maintain existing required setbacks around the outside perimeter of a development site ("***Parent Site***").
2. **Offspring Lots.** Reduce internal setbacks (to be based on building and fire code building separation standards) to allow for suitably smaller yards between dwellings placed on fee simple lots ("***Offspring Lots***") within the "Parent Site".
3. **Fee Simple Lots**. Such smaller internal setbacks: **(a)** Provide appropriate spacing between attached and detached dwellings in scale with the type of development; and thus **(b)** Facilitate the creation of fee simple lots so that homeowners may own both their dwelling and the land on which it is located.

D. No Negative Impacts with Fee Simple Lot Divisions.

1. **No Loss of Local Control.** Local government does not lose control over what is developed on a particular site.
2. **No Impact on Fire Codes.** All fire and building codes remain in full effect including all building separation, fire personnel access, and other life safety standards.
3. **No Impact on Zoning or Density**. Existing comprehensive plan designations and zoning classifications are not changed.
4. **No Impact on Private Streets/Infrastructure.** Street and infrastructure requirements are not changed and their maintenance continues to be the responsibility of the Owners and their Association.

E. Consistent with Housing Policies. Fee Simple Lot Division is consistent with and promotes the "Housing Policies".

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"FEE SIMPLE LOT" DIVISION

Subdivision *vs.* "Airspace" Condominium

I. "FEE SIMPLE LOT" DIVISION - OVERVIEW

A. Housing Policies.

1. **Housing Alternatives**. [2]
   Strive to:
   - **a.** Maintain a balance of ownership of housing units;
   - **b.** Provide for a variety of housing types that offer housing options; and
   - **c.** Promote homeownership.
2. **Single Family/Multiple Family Housing**. [3]
   Promote single family and multiple family housing design (including subdivision, site and building design), which:
   - **a.** Enhances the community image;
   - **b.** Ensures compatibility with surrounding development; and
   - **c.** Promotes energy, transportation, historic preservation, urban design and parks and recreation goals and policies.

B. Purpose.

1. **Condominium Related Problems**.
   Increasingly, homebuilders, and both prospective and existing homeowners, are encountering serious problems with using the condominium form of ownership for single family attached and detached dwellings. (See **Section IV below**)
2. **Fee Simple Lot Division Solution**.
   Cities and counties are adopting "**Fee Simple Lot Division**" subdivision code amendments to facilitate use of the subdivision (rather than condominium) process to permit ownership of single family attached and detached dwellings.

C. Concept. [4]

1. **Parent Site.**
   Maintain existing required setbacks around the outside perimeter of a development site ("***Parent Site***").
2. **Offspring Lots.**
   Reduce internal setbacks (to be based on building and fire code building separation standards) to allow for suitably smaller yards between dwellings placed on their own fee simple lots ("***Offspring Lots***") within the "Parent Site".
3. **Fee Simple Lots**.
   Such smaller internal setbacks provide appropriate spacing between attached and detached dwellings in scale with the type of development, and thus facilitate the creation of fee simple lots so that homeowners may own both their dwelling and the land on which it is located.

II. COMPARISON OF SUBDIVISION & CONDOMINIUM

A. Techniques to Create Separate Parcel.

1. **Separate (Legal) Parcel.**
   The phrase "separate parcel" (or "legal parcel") generally means a defined parcel of land which, without further governmental approval or processing, is legally recognized as a separate parcel of real property for all purposes including conveyancing (sale or lease), mortgaging, title insuring, real estate taxation and Federal income tax benefits.
2. **Subdivision.**
   A **Subdivision** [5] separate parcel is referred to as a "Lot" [6]**,** and is created pursuant to the "Subdivision Statute" (RCW 58.17, as implemented and controlled by local subdivision ordinances [7]).

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3. **Condominium.**
   A **Condominium** [8] separate parcel is referred to as a "Unit" [9], and is created pursuant to the "Washington Condominium Act" (RCW 64.34, a unified state law ***not*** implemented or controlled by local ordinances [10], [11]).
4. **"Airspace" Condominium.**
   This material addresses in particular the use of the "**Airspace**" **Condominium** alternative to traditional **Subdivision** land division.

B. Subdivision *vs.* Condominium Comparison.

1. **In General**.
   Although the creation of a subdivision and a condominium involve different state statutes, the end result involves very few meaningful differences – particularly with a Subdivision and an "Airspace" Condominium – except for the "***Subdivision Density Loss***" discussed in **Section III-C** below.
2. **Subdivision & Condominium Comparison Table**

1. GENERAL DEVELOPMENT RULES	**SUBDIVISION**	**CONDOMINIUM**
State Environmental Policy Act, Growth Management Act, Shorelines Management Act, and building, fire, health & safety codes	Apply equally and uniformly to Subdivisions and Condominiums.	
2. OWNERSHIP ATTRIBUTES	**SUBDIVISION**	**CONDOMINIUM**
a. Exclusive Ownership (fee simple)	Yes	Yes
b. Conveyance (sale, lease, easement, will)	Yes	Yes
c. Mortgage (security for obligation)	Yes	Yes
d. Construction and use of improvements	Yes	Yes
e. Regulation of use and occupancy	Yes	Yes
f. Separate real estate taxation	Yes	Yes
g. Title Insurable (owner and mortgagee)	Yes	Yes
h. Federal Income Tax benefits	Yes	Yes
3. EXCLUSIVE & COMMON OWNERSHIP	**SUBDIVISION**	**CONDOMINIUM**
a. Lot/Unit What is owned exclusively; a legally recognized parcel of real property for purpose of conveyance, title insurance and real property taxation.	**Lot**	**Unit**
b. Common Areas/Common Element Lot owners have joint ownership, use, maintenance and administration of **Common Areas/Common Elements**	**"Common Areas"** owned by: **1)** Lot owners as tenants in common; ***OR*** **2)** owners association	**"Common Elements"** owned by: 1) ownership ***must*** vest in the Unit owners as statutory tenants in common **2)** ***not*** owners association

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3. OWNERSHIP RESPONSIBILITIES	**SUBDIVISION**	**CONDOMINIUM**
a. Lot/Unit Owner ***vs.*** Owner Association responsibility for maintenance, repair, replacement and insuring of the land, improvements (both Lots/Units and Common Areas/Elements) is determined by the project's governing documents (CC&R's) and by local and state law.	Governed by: **1)** Homeowner Association Act (RCW 64.38); **2)** Declaration and Plat CC&R's; **3)** State and local Law	Governed by: **(1)** Condominium Act (RCW 64.34); **(2)** Declaration and Survey CC&R's; **(3)** State and local Law
5. LOT/UNIT BOUNDARY	**SUBDIVISION**	**CONDOMINIUM**
Surveyed Plane *vs.* Physical Feature **a.** "Vertical" boundaries = the sides. **b.** "Horizontal" boundaries = the top	**Lot** vertical and horizontal boundaries established by: **1)** surveyed planes shown on Plat map **2)** ***not*** established by physical features.	**Unit** vertical and horizontal boundaries established by: **1)** surveyed planes shown on Survey map ("***Airspace***" Condominium) ***OR*** **2)** physical feature (e.g., perimeter floors, walls and ceilings) shown on Survey map and plans ("T***raditional***" Condominium)
6. CC&R's/DECLARATION	**SUBDIVISION**	**CONDOMINIUM**
a. Declaration (CC&R's) – In General	**1)** Declaration ***may*** impose covenants, conditions, restrictions, reservations and easements ("**CC&R's**") which govern the subdivision and Lots. **2)** Plat map ***may*** also contain "CC&R's"	**1)** Declaration ("CC&R's") complying with Condominium Act, ***must*** be recorded and impose covenants, conditions, restrictions, reservations and easements which govern the condominium and Units. **2)** Survey map ***may*** also contain "CC&R's".
Declaration (CC&R's) – Requirements	Subdivisions "CC&R's are governed by: **(1)** Homeowner Association Act (RCW 64.38); **(2)** Subdivision Statute; and **(3)** Local ordinance.	Condominium "CC&R's are governed by: **(1)** Washington Condominium Act; **(2)** ***not*** Homeowner Association Act **(3)** ***not*** Subdivision Statute; and **(4)** ***not*** Local ordinance
7. PLAT/SURVEY	**SUBDIVISION**	**CONDOMINIUM**
a. Subdivision Plat; **b. Condominium Survey**	Subdivision Plat is governed by: **1)** Subdivision Statute; and **2)** Local ordinance	Condominium Survey is governed by: **(1)** Washington Condominium Act; **(2)** ***not*** Subdivision Statute; and **(3)** ***not*** Local ordinance.
8. CREATION/IMPLEMENTATION	**SUBDIVISION**	**CONDOMINIUM**
a. State Statutes & Local Ordinances	**1) Subdivision Statute --** RCW 58.17 ("Subdivision Statute")	**1) Condominium Statute --** RCW 64.34 (Washington

	governs creation of Subdivision and "Lots"/"Common Areas" **2) Local Ordinances** – implement, control and enforce Subdivision Lot/Common Area creation.	Condominium Act, "WCA") – ***not*** Subdivision Statute – governs creation of Condominium and "Units"/"Common Elements" **2) Local Ordinances** – do ***NOT*** implement, control and enforce Condominium Unit/Common Element creation.
b. Creation	Subdivisions and "Lots"/"Common Areas" are created by recording: **1)** "Plat" depicting the Lots & "Common Areas"; and **2)** "Plat CC&R's"	Condominiums and "Units"/"Common Elements" are created by recording: **1)** "Survey" depicting the Units & "Common Elements"; and **2)** "Declaration" ("CC&R's")

C. Description of Boundaries.

1. **Distinguish from Other Parcels.**
   All of the primary attributes of real property ownership are predicated on having a precise and predictable description of the boundaries of the parcel so that the parcel may be located and distinguished from any other parcel. [12]
2. **Governing Laws.**
   The primary Washington laws governing the creation of a parcel boundary include the Record of Survey Act (RCW Title 58), the Subdivision Statute and the Condominium Act.
3. **Land Is 3-Dimensional.**
   Air, Surface & Subsurface ─ Land is often considered a 2-dimensional concept -- the survey map shows the parcel boundary; corner stakes on the ground visually determine the boundary. But real property is a 3-dimensional concept -- you own "*From Heaven above, To Hell below*" -- you own the air, land surface, and subsurface (and all improvements that become permanently affixed to the land).
4. **Real Property Is a "Box"**.
   Thus, a parcel of real property is a "box" – the **vertical** boundaries form the sides; the **horizontal** boundaries form the top and bottom.
5. **Subdivision Lot Boundaries.**
   Subdivision Lot boundaries are surveyed planes - ***not*** established by physical features. The "vertical" boundaries (the sides) are depicted on the Plat map; the "horizontal" boundaries (the top and bottom) are the upper and lower limits of legal ownership of land, and are ***not*** depicted or dimensioned.
6. **Condominium Unit Boundaries**. [13], [14]
   a. **"Traditional" (multifamily) Condominium**. In Condominiums comprised of one or more multifamily buildings (containing dwelling units attached vertically and horizontally to one another), the Unit boundaries are established by physical features (e.g., the interior surfaces of the perimeter walls, floor and ceiling surrounding the Unit).
   b. **"Airspace" (single family attached/detached) Condominium.** In Condominiums comprised of traditional single family attached and detached dwellings, the Unit boundaries (like a Subdivision Lot) are surveyed planes - ***not*** established by physical features. The "vertical" boundaries (the sides) are depicted on the Survey map; the "horizontal" boundaries (the top and bottom) are the upper and lower limits of legal ownership of land, and are ***not*** depicted or dimensioned.
7. **Attached/Detached Dwelling Projects**.
   Subdivision *vs.* "Airspace" Condominium.
   a. **Attached Dwelling Subdivision Lot**.
      (1) **FIGURE 1** below illustrates a typical ***attached*** dwelling Subdivision.
      (2) Two adjoining Lots were created by a traditional Subdivision process.
      (3) A dwelling was constructed on each Lot, with the dwellings joined by a common party wall on the adjoining Lot line.

(4) Each Lot Owner has fee title to (along with the exclusive right to use) the Lot, entire dwelling structure, yards, driveway and other Lot improvements.

(5) Any Common Areas (e.g., private roadways, entry, parks, etc.) would either be owned by all Lot Owners as tenants in common, or by an Owners Association of which all Lot Owners were members.

(6) Typically, each Lot owner would have the sole responsibility to maintain, repair and replace the Lot, dwelling structure, yards, driveway and other Lot improvements; and, the Owners as a group or their Association, would have similar responsibilities for the Common Areas.

(7) However, state law generally allows the maintenance, repair and insuring of Lots, dwellings, Lot improvements and Common Areas to be allocated among Owners and their Association on whatever basis is provided under the governing CC&R's.

b. Attached Dwelling "Airspace" Condominium Unit.

(1) If a Condominium Unit Owner has the exclusive right to use (and the sole obligation to maintain and repair) the dwelling structure, yard and driveway, why not have the boundary of the Unit reflect reality? Make the boundary of each Unit surveyed planes identical to the boundaries in the **FIGURE 1** for the ***attached*** dwelling Subdivision Lot.

(2) **FIGURE 2** below illustrates a typical ***attached*** dwelling "Airspace" Condominium.

(3) Two adjoining Units were created by the "Airspace" Condominium process.

(4) A dwelling was constructed on each Unit, with the dwellings joined by a common party wall on the adjoining Unit line.

(5) Each Unit Owner has fee title to (along with the exclusive right to use) the Unit, entire dwelling structure, yards, driveway and other Unit improvements.

(6) Any Common Elements (e.g., private roadways, entry, parks, etc.) ***must*** be owned by all Unit Owners as statutory tenants in common. [15]

(7) Typically, each Unit owner would have the sole responsibility to maintain, repair and replace the Unit, dwelling structure, yards, driveway and other Unit improvements; and, the Owners Association would have similar responsibilities for the Common Elements.

(8) However, state law generally allows the maintenance, repair and insuring of Units, dwellings, Unit improvements and Common Elements to be allocated among Owners and their Association on whatever basis provided under the governing CC&R's.

(9) The result is an Airspace Condominium involving attached dwellings, which in every important respect is the same as the more traditional attached dwelling Subdivision.

c. Detached Dwelling Subdivision Lot.

(1) **FIGURE 3** below illustrates a typical ***detached*** dwelling Subdivision. As with the ***attached*** dwelling example:

(2) Two adjoining Lots were created by a traditional subdivision process;

(3) A dwelling was constructed on each Lot;

(4) Each Lot owner holds fee title to (along with the exclusive right to use) the Lot, dwelling, yards, driveway and other Lot improvements.

(5) The issues of maintenance, repair, and insurance of Lots (and Lot improvements) and Common Area are determined by the CC&R's.

d. Detached Dwelling "Airspace" Condominium.

(1) **FIGURE 4** below illustrates the same detached dwellings illustrated in **FIGURE 3** for ***detached*** dwelling Subdivision, but the separate ownership is established by means of an "Airspace" Condominium rather by the Subdivision process.

(2) The boundary of each Unit is a surveyed plane in space identical to the boundaries in **FIGURE 3** for ***detached*** dwelling Subdivision Lot.

(3) Two adjoining Units were created by the "Airspace" Condominium process;

(4) A dwelling was constructed on each Unit;

(5) Each Unit owner holds fee title to (along with the exclusive right to use) the Unit, dwelling, yards, driveway and other Lot improvements.

(6) The issues of maintenance, repair, and insurance of Units (and Unit improvements) and Common Elements are determined by the CC&R's.

(7) The result is an Airspace Condominium involving detached dwellings, which in every important respect is the same as the more traditional detached dwelling Subdivision.

e. Fee Simple Lot *vs.* "Airspace" Condominium Unit "3/D"

(1) **FIGURE 5** below is a "3/D" illustration of the Vertical and Horizontal boundaries of a detached dwelling in a Fee Simple Lot and "Airspace" Condominium Unit ─ the boundaries are the same.

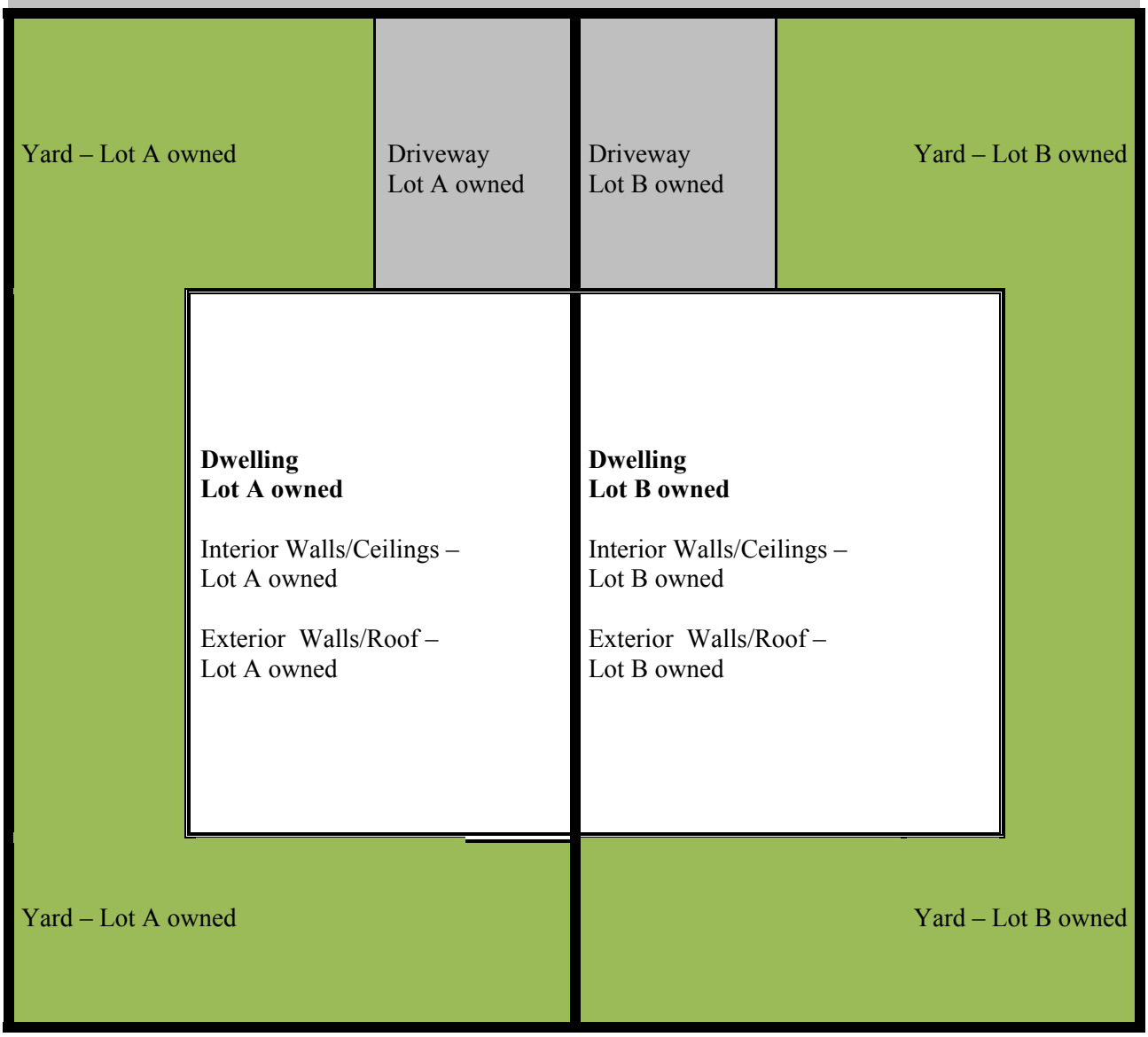
f. Typical Attached & Detached Dwelling "Airspace" Condominiums

See Appendix A Dwelling Photo, Site Plan & Survey Map for typical projects.

FIGURE 1 – ATTACHED DWELLING SUBDIVISION.

PRIVATE ROAD (Owned & Maintained by Owner Association)

Thick line = Lot boundary line

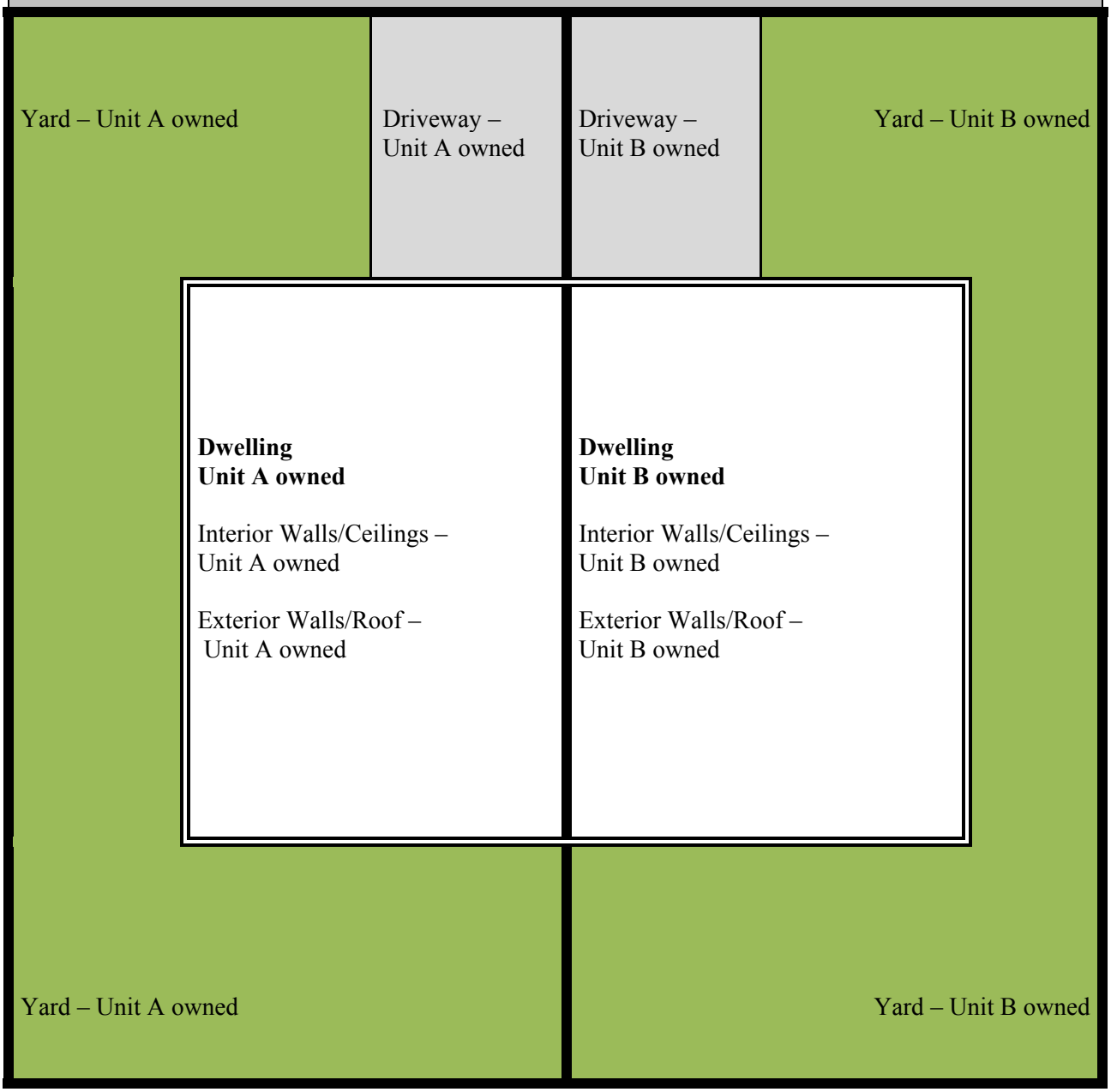


- **Exclusive Ownership for *ONE* Owner:** Interior walls & ceilings, Exterior walls, roof & foundation (the ***entire structure***); yards & driveway.
- **Common Ownership for *ALL* Owners:** Private road

FIGURE 2–ATTACHED DWELLING "AIRSPACE" CONDOMINIUM.

PRIVATE ROAD (Common Element; Maintained by Owner Association)

Thick line = Unit boundary line

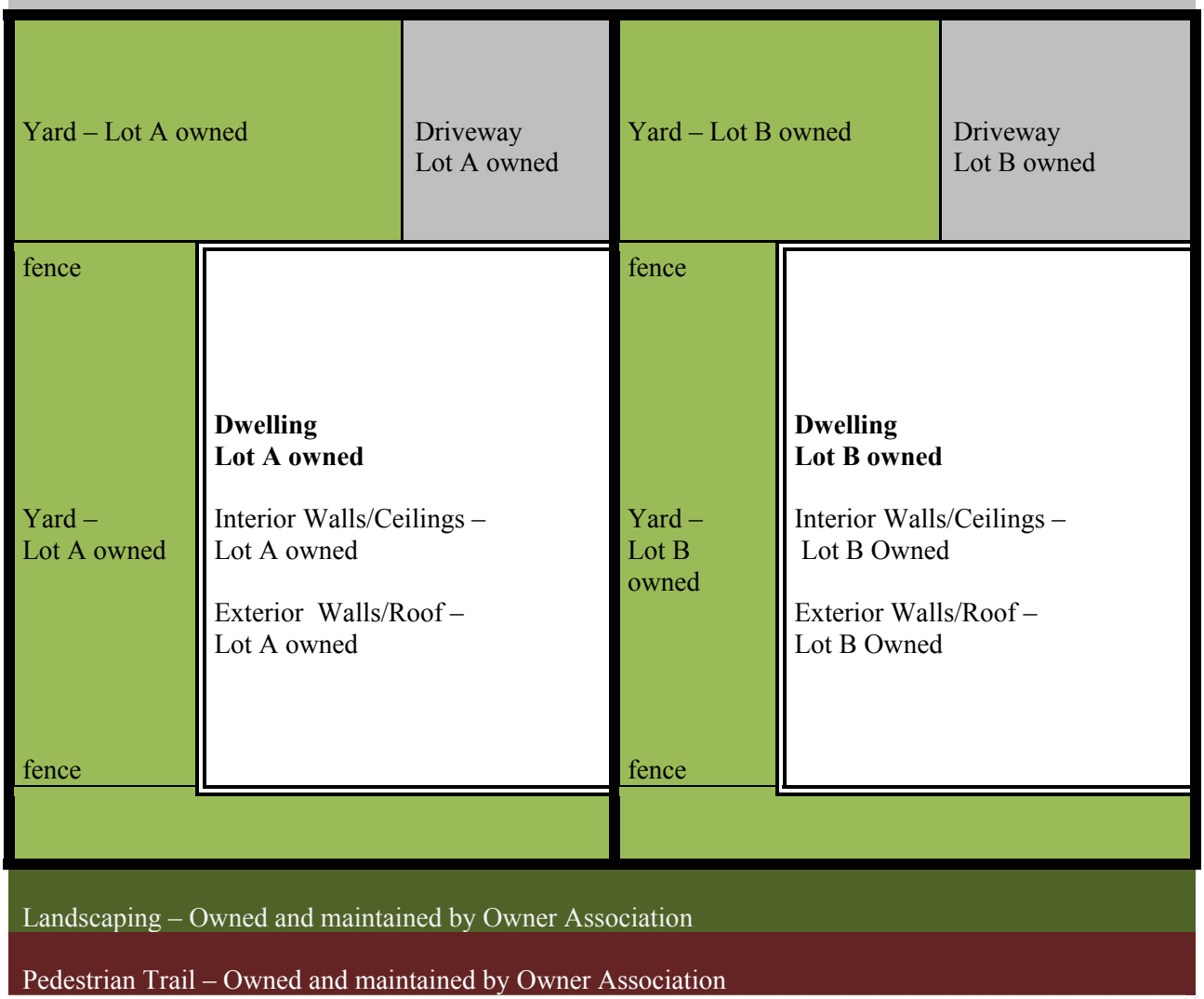


- **Exclusive Ownership for *ONE* Owner:** Interior walls & ceilings, Exterior walls, roof & foundation (the ***entire structure***); yards & driveway.
- **Common Ownership for *ALL* Owners:** Private road

FIGURE 3 – DETACHED DWELLING SUBDIVISION.

PRIVATE ROAD, LANDSCAPING, PEDESTRIAN TRAIL (Owned & Maintained By Owner Association)

Thick line = Lot boundary line

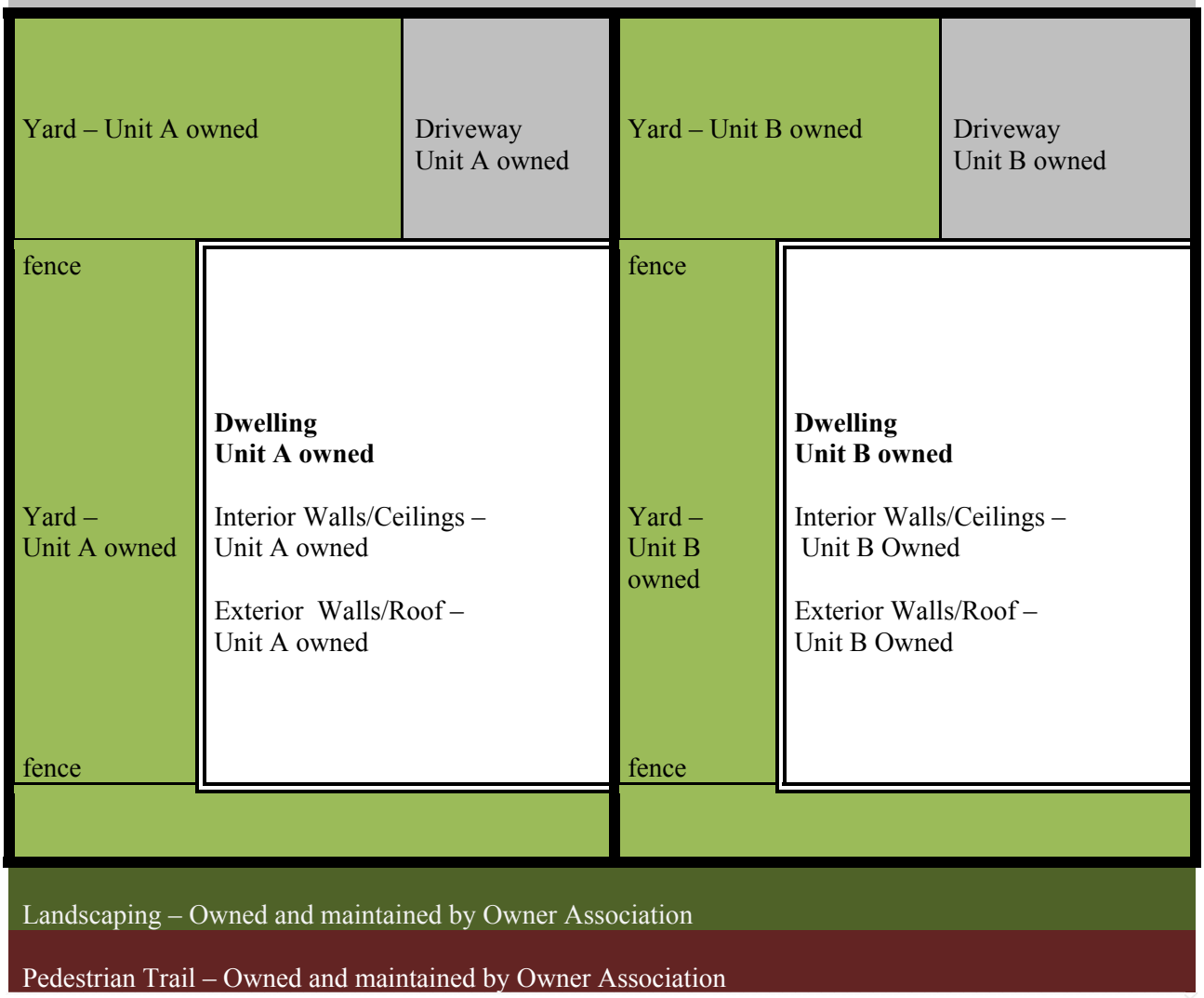


- **Exclusive Ownership for *ONE* Owner:** Interior walls & ceilings, Exterior walls, roof & foundation (the ***entire structure***); yards & driveway.
- **Common Ownership for *ALL* Owners:** Private road, Landscaping & Pedestrian Trail

FIGURE 4 – DETACHED DWELLING "AIRSPACE" CONDOMINIUM.

PRIVATE ROAD, LANDSCAPING, PEDESTRIAN TRAIL (Owned & Maintained By Owner Association)

Thick line = Lot boundary line



- **Exclusive Ownership for *ONE* Owner:** Interior walls & ceilings, Exterior walls, roof & foundation (the ***entire structure***); yards & driveway.
- **Common Ownership for *ALL* Owners:** Private road, Landscaping & Pedestrian Trail

D. Regulation of Use of Land & Improvements.

1. In General.

The permissible use of land, and the type and manner of constructing and using improvements, are governed primarily by State and local laws (including State Environmental Policy Act, Growth Management Act, Shorelines Management Act and other land use laws), and zoning, building, fire, health and safety codes.

2. Subdivision/Condominium.

The Subdivision Statute and the Condominium Act were ***both*** intended to provide a ***method*** for creating separate parcels of real property -- regardless of the permissible use of, or improvements on, the parcels. Thus, the laws and ordinances referred in in Section D-1 will generally produce the same development result on a particular site (except for the "***Subdivision Density Loss***" discussed in **Sections III-C & D** below), regardless of whether Subdivision or Condominium is used to create separate parcels.

III. WHY "AIRSPACE" CONDOMINIUM, NOT SUBDIVISION?

A. Since July 1, 1990.

If the attached and detached dwelling "Airspace" Condominium is in all material respects the same as the traditional attached and detached dwelling Subdivision, why since July 1, 1990 (the effective date of the Condominium Act), has the "Airspace" Condominium process been used to create separate ownership of the dwellings?

B. Multiple Reasons.

There are many reasons including Subdivision processing delays, additional public hearings, and higher governmental and professional fees.

C. Primary Reason - Subdivision Density Loss.

But the primary reason is "***Subdivision Density Loss***" – when a request is made to provide separate ownership of dwellings on a single site that is otherwise legal, the additional Subdivision requirements (including minimum Lot size, maximum Lot coverage, and minimum structure setback from Lot lines) result in losing 10% to 50% of the authorized density. These Subdivision requirements do ***not*** apply to a single site development and do ***not*** apply to the "Airspace" Condominium.

D. City of Bothell Analysis. [16]

In connection with the recent Bothell "Fee Simple Lot" subdivision ordinance, the City of Bothell staff:

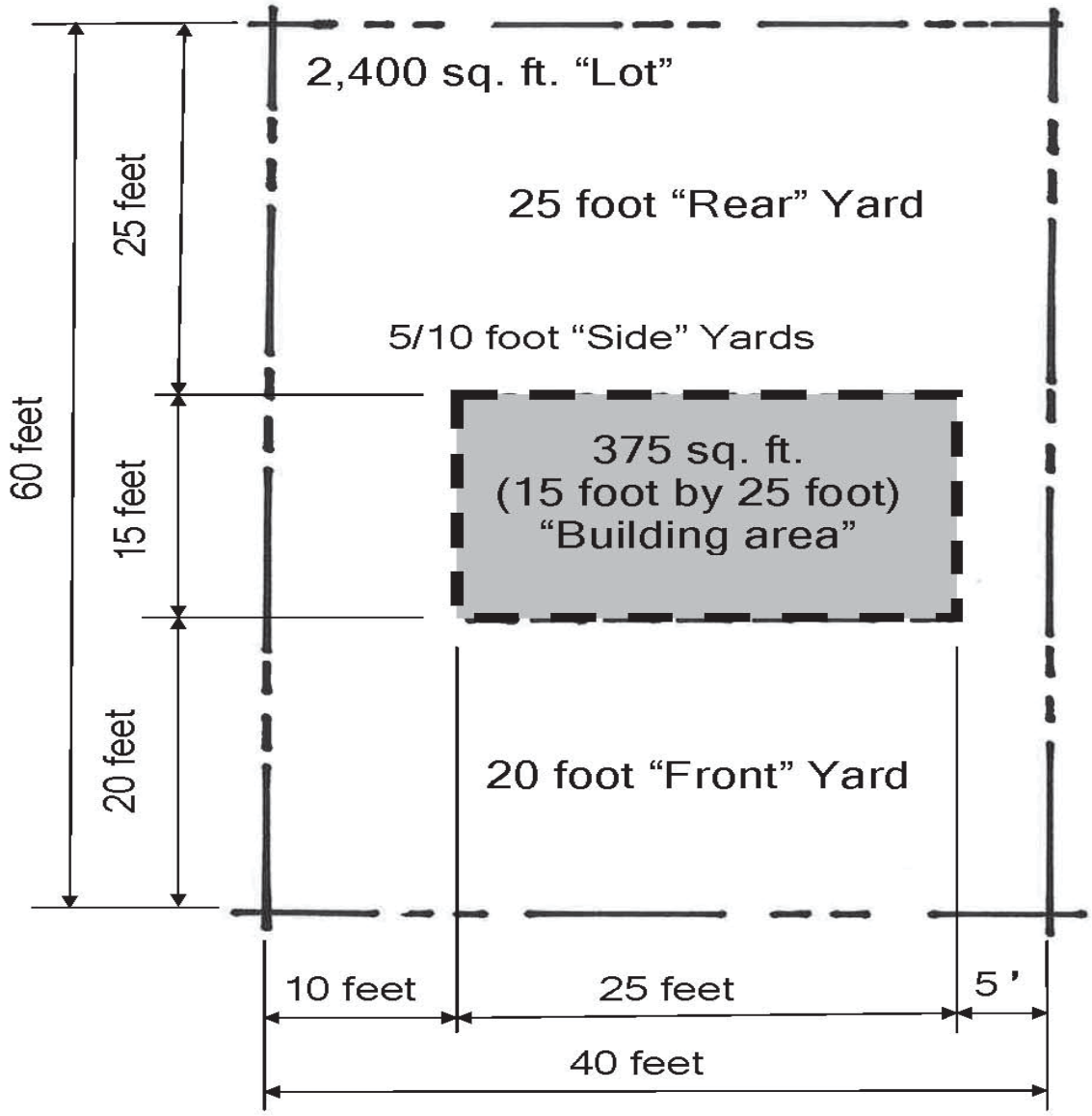
1. Described and illustrated this "***Subdivision Density Loss***"; and
2. As a test, applied the proposed "Fee Simple Lot" subdivision to four existing detached dwelling "Airspace" Condominium projects.

Set forth below are the Bothell staff discussion of "***Subdivision Density Loss***" and illustrations of existing detached dwelling "Airspace" Condominium projects.

APPLYING CURRENT SETBACKS OF [TYPICAL LOCAL SUBDIVISION CODE] TO FEE SIMPLE LOT WITHIN MULTI-FAMILY RESIDENTIAL ZONE.

"While the [Typical Local Subdivision Code] does not prohibit creation of fee simple lots within multi-family residential zones, the setback provisions of [a Typical Local Subdivision Code] effectively precludes them because when these setback dimensions are applied to the fee simple lot lines the resulting buildable area is quite restricted. The diagram below illustrates the impact of applying the current setbacks of [a Typical Local Subdivision Code] to a lot within a multi-family residential zone."

[TYPICAL SUBDIVISION LOT SETBACK REQUIREMENTS



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STREET VIEWS OF FOUR TYPICAL DETACHED CONDOMINIUM NEIGHBORHOODS

NORTH CREEK COTTAGES – STREET VIEW

WATERFORD – STREET VIEW

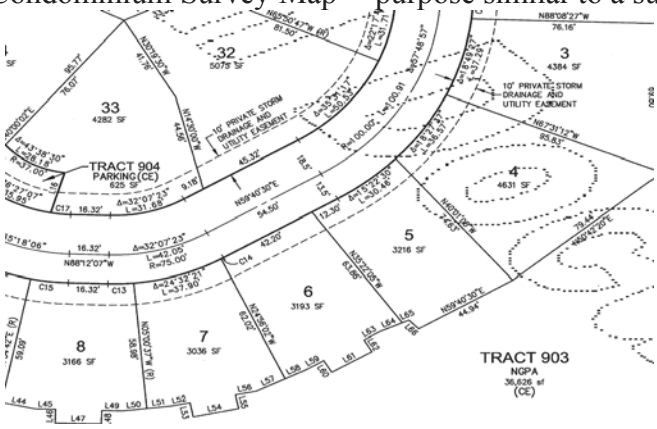
WOODRIDGE NORTH – STREET VIEW

WOODRIDGE – STREET VIEW

WOODRIDGE NORTH – AERIAL VIEW OF THE NEIGHBORHOOD

WOODRIDGE NORTH CONDOMINIUM SURVEY

"Woodridge North Condominium Survey Map ─ purpose similar to a subdivision plat map."



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WOODRIDGE NORTH NEIGHBORHOOD – BEFORE AND AFTER APPLICATION OF FEE SIMPLE LOTS

"The illustration below depicts a portion of the Woodridge North neighborhood before and after application of Fee Simple Lots. The purpose of this illustration is to demonstrate there is no physical difference to the layout, households, streets, and yards through the application of this Fee Simple Lot Code amendment. All that changes is the legal basis of the lot which would become based upon RCW 58.17 (fee simple) versus RCW 64.34 (condominium)."

Woodridge North – The location of houses, yards, streets, parking, etc. was established by the developer through the Condo survey map (see above) and the Conditions, Covenants and Restrictions (CC&Rs).	Woodridge North – The yellow lines depict lot lines that would be applied through a fee simple lot process. The location of yards, streets, parking etc., would not change and would be reflected on a new plat map and new Homeowner's Association CC&Rs.

CONCLUSION

"The Fee Simple Lot Code amendment is in the best interests of a local jurisdiction and the residents within the jurisdiction's existing condominium neighborhoods and residents of future for sale multi-family residential developments."

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IV. PROBLEMS WITH "AIRSPACE" CONDOMINIUMS

A. Lenders Reluctant to Finance.
In recent years, banks have shown increasing reluctance to finance construction and subsequent sales of individual Condominium Units, in part due to concerns about potential costs to repair future project-wide problems such as water intrusion, and the financial ability or inability of Owners Associations to effect those repairs.

B. Developer & Buyer Concerns.
Developers, and prospective and existing home owners, have had better success obtaining financing when for-sale multifamily developments consist of attached and detached dwellings on fee-simple Subdivision Lots, rather than on "Airspace" Condominium Units.

C. Existing Unit Owner Concerns.
Existing "Airspace" Condominium Unit Owners have expressed concerns when refinancing detached "Airspace" Condominium Units versus single family Subdivision homes relating to: higher interest rates, lower market values, lack of comparables and limited marketing options (when these properties are listed as multi-family properties/condominiums rather than single family homes).

D. FNMA/FHLMC/FHA/VA.
FannieMae, FreddieMac, FHA and VA impose various onerous requirements on Condominiums that are not imposed on Subdivisions, including:

1. More than half of the Condominium Units must be owner occupied;
2. No one person may own more than 10% of the Units;
3. No more than 15% of Unit Owners can be over 30 days delinquent on HOA dues;
4. At least 51% to 70% of the Condominium Units in the project or subject phase must be sold;
5. All amenities must be completed if the development is more than 12 months old;
6. Buyers who make a down payment of less than 25% will pay an additional .75% of the loan amount at closing or a higher interest rate of about .25%; and
7. Both the Buyer and the Condominium Owners Association may have to be approved by FNMA, FHLMC, FHA and/or VA.

E. Developer & Association Insurance.
For Developers, Owners and Owner Association, insurance coverage may be more limited and premiums higher for Condominiums than for Subdivisions.

V. SOLUTION TO "AIRSPACE" CONDOMINIUM PROBLEMS.

A. Facilitate Subdivision.
Facilitate the Subdivision of existing and future attached and detached dwelling developments, so that each dwelling may stand upon its own fee simple Subdivision Lot.

B. Key Features of Fee Simple Lot Division:

1. **In General**.
   - **a.** Once a local jurisdiction has approved the ***concepts*** behind the Fee Simple Lot Division, the difficult job beings to identify all of the Codes that must be amended (both to amend existing sections and adding new sections) to accommodate the Fee Simple Lot Division concept. Because local ordinances differ greatly among local jurisdictions, no "template" will work for all jurisdictions.
   - **b.** The following is an overview "checklist" of the topics that must be addressed. Cross reference is made to **Appendix A - Sample Fee Lot Division Code Amendments** containing specific

provisions in the Bothell Municipal Code "Fee Simple Lot Division" amendments – which are illustrative of the possible required Code amendments.

2. **Definitions – New/Revised.**
   a. **In General**: Create new, and revise existing, definitions of terms to accommodate the Fee Simple Lot Division concept.
3. **Definitions – Parent Site; Offspring Lots.**
   a. "**Parent Site**": Refers to the overall development site, and is a fairly descriptive term for the concept -- a large lot within which the detached or attached dwellings (Condominium Units) are or would be placed. (See **Appendix A, § I-D-1**)
   b. "**Offspring Lot**": Refers to the individual Lots placed within the Parent Site upon which the detached or attached dwellings (Condominium Units) are or would be placed -- conveys the special relationship with the "Parent Site", which is what these Code amendments are intended to do -- subdivide a Parent Site into smaller Fee Simple Lots. (See **Appendix A, § I-B-2**)
4. **Definitions – Condominium.**
   a. "**Condominium**": Define "condominium" consistent with the Condominium Act (RCW 64.34.020(10) [17] . (See **Appendix A, § I-A-1**)
5. **Definitions – Real Property.**
   a. "**Real Property**": Define "real property" consistent with the Condominium Act (RCW 64.34.020(32) [18] . (See **Appendix A, § I-C-1**)
6. **Setbacks**.
   a. To avoid the "***Subdivision Density Loss***" discussed in **Sections III-C & D** above, establish special setback provisions for the Parent Site and Offspring Lots:
   b. Identify the specific zoning classifications within which Offspring Lots may be created.
   c. Use existing setback requirements for the perimeter of the Parent Site.
   d. Use the building and fire code building separation standards to establish Offspring Lot setbacks.
   e. Maintain the existing minimum setback from driveways, drive aisles, streets, or alley.
   f. Establish a zero or common lot line provision;
   g. Allow existing developments to utilize these setback provisions; and
   h. Add illustrations to visually demonstrate the setback requirements.
   i. **Bothell "Setback" Provisions**. See **Appendix A: § III-A-1 & 3; § III-B**.
7. **Vesting**.
   a. **Special Vesting Provisions.** Establish special vesting provisions for:
      1) Existing detached and detached condominium developments which may seek to create Fee Simple Lots for the existing individual Units but otherwise make no changes to the properties; and
      2) Proposed detached and detached condominium developments for which permits have been issued but are not complete.
   b. **Vested Standards**.
      1) The "Vested Standards" would be the standards in effect at the time the development (grading or building permit) application was deemed complete, which is a traditional vesting date.
      2) This will include surface water, transportation, and other infrastructure improvements or mitigation standards, and traffic concurrency.
   c. **Bothell "Vesting" Provisions**. See **Appendix A: § II-A & B; § V-A-1; § V-B**.
8. **Submittal Requirements**.
   a. **Application Submittal Requirements.** Make adjustments and additions to the submittal requirements for subdivision applications proposing to create Offspring Lots within a Parent Site.

b. **Bothell "Submittal" Provisions**. See **Appendix A: § IV-A-1**.

9. **Process**.
   a. **RCW 57.17.035 & .040 Binding Site Plan**. The Binding Site Plan process provided under RCW 58.17.040(7) ("**Condominium BSP**") to create the Fee Simple Lot Division ***cannot*** be used because the Condominium BSP process requires that the improvements be contained in a condominium. The purpose of the Fee Simple Lot approach is to abandon or avoid being a Condominium.
   b. **General Binding Site Plan**. Condominium BSP process will have to be replaced with the preliminary plat and final plat process (public hearing and a decision by the Hearing Examiner) using a general binding site plan.
   c. **Administrative Process**. The process will be a Type II administrative process.
   d. **Bothell "Process" Provisions**. See **Appendix A: § II-A**.
10. **Existing and New Developments**.
   a. **Both**. The Fee Simple Lot regulations are intended to be available to both existing and new developments.
   b. **New**. New developments that utilize the Fee Simple Lot provisions will undertake a process that is similar to that employed for single family residences: approval of the preliminary subdivision; construction of the infrastructure; and construction of the housing units on the Offspring Lots.
   c. **Existing.** Allow the proposed internal zoning lot line setbacks to apply to existing developments, so that current owners of detached and attached condominiums could pursue subdivision into Fee Simple Lots if they so desired, without having to bring their developments into compliance with regulations that might have been adopted since their homes were constructed.
11. **Binding Site Plan Update**.
   a. **Existing Local BSP Ordinances**. The BSP ordinances of most local jurisdictions are ***not*** in sync and in compliance with the provisions of RCW 58.17.035 [19] and .040(3) [20] , (4) [21] and (7) [22] .
   b. **BSP Important Tool**. Although the RCW 58.17.035/.040 BSP process is not used with the Fee Simple Lot concept, the BSP process is still an important development tool.

VI. LOCAL GOVERNMENT CONCERNS

A. Loss of Local Control?

1. **No Loss of Local Control.**
   Will local government lose control over what is developed on a particular site, if the condominium form of ownership (which is governed exclusively by the Condominium Act, and not by local ordinances) is used instead of the subdivision form of ownership (which is governed by local ordinances),? The answer is "***NO***".
2. **Condominium Act.**
   RCW 64.34.050(1) provides in part that: "....[Except for prohibiting restrictions on the condominium form of ownership] no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property law, ordinance, or regulation."
3. **Key Question - Is the Use/Improvement Legal?**
   a. Assuming a single site is involved, the key question for both the builder and local government is: "***Assuming generally applicable laws, rules and procedures are followed, would the proposed development (including proposed use, improvements and manner of construction) be legal on a single site?"***

b. If the answer to that question is "Yes", then the result is not changed by applying the condominium form of ownership to the development.

c. Conversely, if the answer to that question is "No", then the condominium form of ownership will not change that result. You cannot make an illegal project legal by using the condominium form of ownership.

B. Impacts on Fire Department?

No impacts are anticipated to the Fire Department and Firefighters. All Fire and Building codes remain in full effect including all building separation, fire personnel access, and other life safety standards.

C. Re-Zone Properties or Increase Density?

The existing Comprehensive Plan designations and zoning classifications will not change.

D. May Existing Condominium Convert to Fee Simple Lots?

1. **Owner/Association Choice**.
   The existing detached and attached condominium would be in total control of any actions regarding their property, including whether they desire to convert to fee simple lots. The Owners and their Association which would approach the local jurisdiction, which has no authority or interest in requiring a detached and attached condominium to convert to fee simple Subdivision lots.
2. **Compliance with Condominium Act/CC&R's**.
   Further, each Condominium (Owners and their Association) would be required to comply with the Condominium Act and Condominium governing documents (including amending the Condominium Declaration/CC&R's and Condominium Survey). (See **Appendix A: § IV-A-1-(C 2&3)**.)

E. What Happens to Private Streets/Infrastructure?

1. **No Changes**.
   All street and infrastructure improvements and their maintenance would continue to be the responsibility of the Owners and their Association. Most existing detached and attached condominium developments are served by private roads, private access drives and private parking areas.
2. **Public Road Standards Not Feasible**.
   Private roads are constructed to a different standard than those utilized for a public right-of-way. This would make conversion from a private to a public street impractical.

F. What Assurance an Association Will Exist?

1. **Condominium Act Requirements.**
   The Condominium Act requires that before the first Unit sale the Owners Association be incorporated, and the Act and Condominium Declaration (CC&R's) provide comprehensive rules governing the rights, duties and obligations of Unit Owners and the Association [23] .
2. **Require HOA Incorporation**. (See **Appendix A - § V-A-2**)
   The local Subdivision ordinance should require that, upon recording the final Plat, the Owners Association be incorporated.
3. **Require HOA CC&R's.** (See **Appendix A - § V-A-2**)
   The local Subdivision ordinance should require that upon recording the final Plat the Developer record a Declaration (CC&R's) which shall provide for maintenance of all Common Areas and facilities consistent with the provisions of the Homeowners Association Act [24].

G. Are Other Jurisdictions Allowing Fee Simple Lots?

Yes. A number of jurisdictions have recently adopted regulations allowing fee simple lots within multi-family zones, including: Snohomish County; the City of Mountlake Terrace; the cities of

Mountlake Terrace, Kirkland, Burien, and several other jurisdictions.

ENDNOTES – CITATION OF SUPPORTING AUTHORITY

1.1.3 _____

[1] **James C. (Pete) Middlebrooks**, Attorney at Law

Education: University of Washington; Economics (BA); Law (JD); Law Review (Associate Editor)

Clientele: 40+ years, representing individual, corporate and institutional clients for residential and commercial development, land use, acquisition, investment and financing.

Prior Experience: 3,000+ projects (urban/suburban/rural/resort); subdivision, condominium, rental apartment, shopping center, retirement, planned community, marinas, mixed use, mobile and manufactured homes.

Editorial: UW Law Review; NW Real Estate Forum; WSBA Real Property Desk Book

Lecturer: Real Estate Development/Investment/Financing for legal, business and professional organizations

Boards/Committees (Chair/Director): WSBA (Legislative & CLE Committee, Creditor/Debtor & Real Property Sections); AWB (Credit Task Force); MBA/BIAW (Board & Legislative Policy Committee)

Legislation (Co-Drafting Lawyer): Timeshare, Condominium, Land Development, Trust Deed, Landlord-Tenant & Homeowner Association Acts.

[2] See for example, **City of Bothell Comprehensive Plan Housing Element Policies HO-P1 and HO-P15.**

[3] See for example, **City of Bothell Comprehensive Plan Housing Element Policy HO-P2**.

[4] See for example, **Bothell City Council Agenda Bill Summary** [Fee Simple Lots] (including Executive Summary, Staff Report, and Planning Commission Findings, Conclusions and Recommendation), June 11, 2013.

[5] **RCW 58.17.020 (1)** [Definition] ─ "'**Subdivision**' is the division or redivision of land into five or more Lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership, except as provided in subsection (6) of this section."

[6] **RCW 58.17.020 (9)** [Definition] ─ "'**Lot**' is a fractional part of divided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels."

[7] **RCW 58.17.033(1)** [Subdivision Local Controlled] ─ "A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, ***has been submitted to the appropriate county, city, or town official.***" [Emphasis added]

[8] **RCW 64.34.020(9)** [Definition] ─ "'**Condominium**' means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the ***common elements are vested in the unit owners***, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter." [Emphasis added]

[9] **RCW 64.34.020 (31)** [Definition] ─ "'**Unit**' means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a Unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the Unit from the condominium."

[10] **RCW 64.34.050(1)** [Condominium Not Local Controlled] ─ "A zoning, subdivision, building code, or other real property law, ordinance, or regulation ***may not prohibit the condominium form of ownership or impose any requirement upon a condominium*** which it would not impose upon a physically identical development under a different form of ownership." [Emphasis added]

[11] **Official Comments, RCW 64.34.050(1)** [Condominium Not Local Controlled] ─ **"**The first sentence of this section prohibits discrimination against condominiums by local law-making authorities. Thus, this section makes it ***unlawful to impose a local law, ordinance or regulation on a condominium if it would not be applied if all of the property constituting the condominium were owned by a single owner***. For example, in the case of a high-rise apartment building, if a local requirement imposing a minimum number of parking spaces per apartment would not prevent a rental apartment building from being built, this Act would override any requirement that might impose a higher number of spaces per apartment merely by virtue of the same building being owned as a condominium." [Emphasis added]

[12] **Official Comments, RCW 64.34.204(1)** [Legal Description] ─ "It is important for title purposes and other reasons to have a clear guide as to precisely which parts of a condominium constitute the units and which parts constitute the common elements."

[13] **RCW 64.34.204** [Unit boundaries] ─ "***Except as provided by the declaration***: (1) The walls, floors, or ceilings are the boundaries of a unit, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements. (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements. (3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit. (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit."

[14] **Official Comments, RCW 64.34.204(1)** [Unit boundaries] ─ **". . . .** For example, in a townhouse project structured as a condominium, it may be desirable that the boundaries of the unit constitute the exterior surfaces of the roof and exterior walls, with the centerline of the party walls constituting the perimetric boundaries of the units in that plane, and the undersurface of the bottom slab dividing the unit itself from the underlying land. Alternatively, the boundaries of the units at the party walls might be extended to include actual division of underlying land itself. In the second alternative, it would not be appropriate for walls, floors and ceilings to be designated as boundaries, and the declaration would describe the boundaries in the above manner. . . ."

[15] **RCW 64.34.020(9**) [Condominium Owners Own Common Elements] ─ " . . . Real property is not a condominium unless the ***undivided interests in the common elements are vested in the unit owners***, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter. . . ." [Emphasis added]

[16] See **Bothell City Council Agenda Bill Summary** [Fee Simple Lots] (including Executive Summary, Staff Report, and Planning Commission Findings, Conclusions and Recommendation), June 11, 2013.

[17] **RCW 64.34. 020(10)** [Definition] ─ "'**Condominium**' means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely

by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter."

[18] **RCW 64.34. 020(32)** [Definition] ─ "'**Real property**' means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. ***"Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.***" [Emphasis added]

[19] **RCW 58.17.035** [Alternative method of land division -- Binding site plans] ─

"A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan."

"The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval."

"The binding site plan, after approval, and/or when specific lots are administratively approved, shall be filed with the county auditor with a record of survey. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by the local zoning ordinances."

"All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan."

"Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW."

[20] **RCW 58.17.0 40(4)** [Commercial/Industrial BSP] ─ "[The provisions of RCW 58.17 shall not apply to] Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;"

[21] **RCW 58.17.0 40(5)** [Mobile Home/Trailers BSP] ─ "[The provisions of RCW 58.17 shall not apply to] A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;"

[22] **RCW 58.17.0 40(7)** [Condominium BSP] ─ "Divisions of land into lots or tracts if: (a) ***Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land***; (b) ***the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums*** or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city,

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

[23] **RCW 64.34 Article 3** [Management of Condominiums]

[24] **Homeowners Association Act, RCW 64.38**. [Management of Subdivisions]

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"FEE SIMPLE LOT" DIVISION
Subdivision *vs.* "Airspace" Condominium

APPENDIX A – Typical Attached & Detached "Airspace" Condominium Projects

APPENDIX A CONTENTS

1. **Fee Simple Lot & "Airspace" Condominium Unit** (*Boundary/Ownership Illustration*)
   [Diagram visually demonstrating that the Fee Simple Lot & "Airspace" Condominium Unit boundaries (and components of what is owned exclusively) ***are the same***.]

   Sample "Airspace" Condominium Projects (existing)
   ● Photo of dwelling ● Marketing site plan ● Recorded condominium survey map

   - **Locations** ─ Everett, Lynnwood, Edmonds, Marysville;
   - **Dwelling Types** ─
     - Attached (2, 3 or more dwelling units; 1 or more stories);
     - Detached ; and
     - Mixture of Attached & Detached;
   - **Project Size** ─ 16 homes to 371 homes;
   - **Architectural Style** ─ Traditional & modern;
   - **Development Process** ─ Single phase & multiple phase construction;
   - **Project Builder** ─ Single builder & multiple builders;
   - **Density** ─ All high density;
   - **Affordability** ─ All affordable

2. **GREENFIELD PARK, A Single Family Condominium** (74 detached Dwellings; *Everett, WA*)

3. **DANBURY, A Single Family Condominium Community** (16 detached Dwellings; *Lynnwood, WA*)

4. **SERRANO, A Single Family Condominium Community** (53 detached/attached Dwellings; *Marysville, WA*)

5. **HAWKSTONE, A Condominium Community** (143 [max.] detached Dwellings; *Marysville, WA*)

6. **TIMBERWOOD RIDGE, A Single Family Condominium** (22 detached Dwellings; *Edmonds, WA*)

7. **LAKE SERENE VISTA, A Residential Condominium** (18 detached Dwellings; *Lynnwood, WA*)

8. **di MODA Condominium** (97 detached Dwellings; *Lynnwood, WA*)

9. **MCKENDREE PARK, A Family Condominium Community** (84 attached Units; *Marysville, WA*)

10. **MEADOWS IN MARYSVILLE, A Condominium Community** (287 detached & 84 attached Dwellings; *Marysville, WA)*

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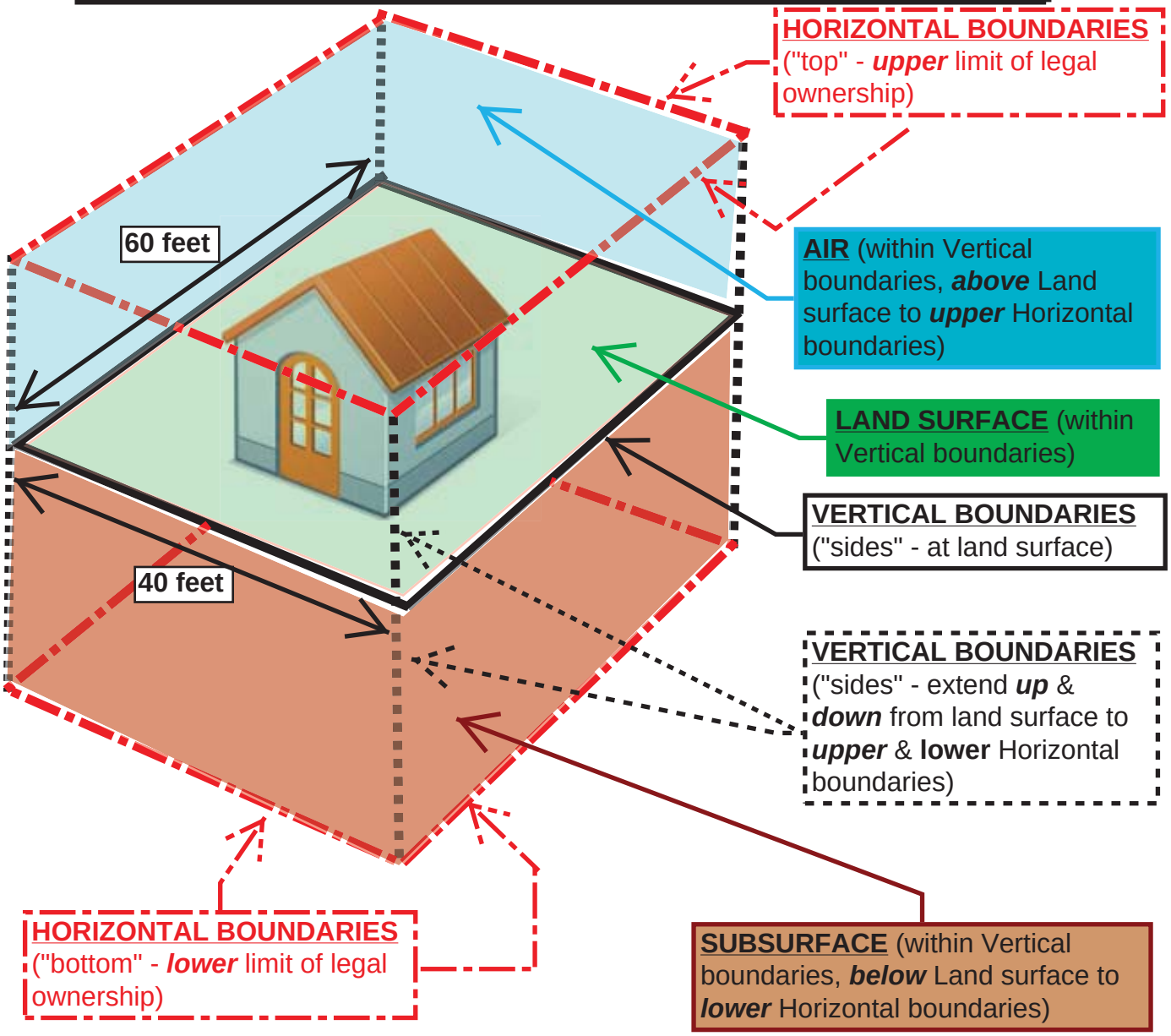
FEE SIMPLE LOT & "AIRSPACE" CONDOMINIUM UNIT • Vertical & Horizontal boundaries are the same



FEE SIMPLE LOT & "AIRSPACE" CONDOMINIUM UNIT

Boundaries are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

Ownership includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
2. **Land Surface** (within Vertical boundaries);
3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
4. **Dwelling structure (**and all other improvements within Vertical & Horizontal boundaries).

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GREENFIELD PARK, A SINGLE FAMILY CONDOMINIUM
74 detached Dwellings – Everett, Washington

<u>"Airspace" Condominium Unit Boundaries</u> are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

<u>"Airspace" Condominium Unit Ownership</u> includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
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3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
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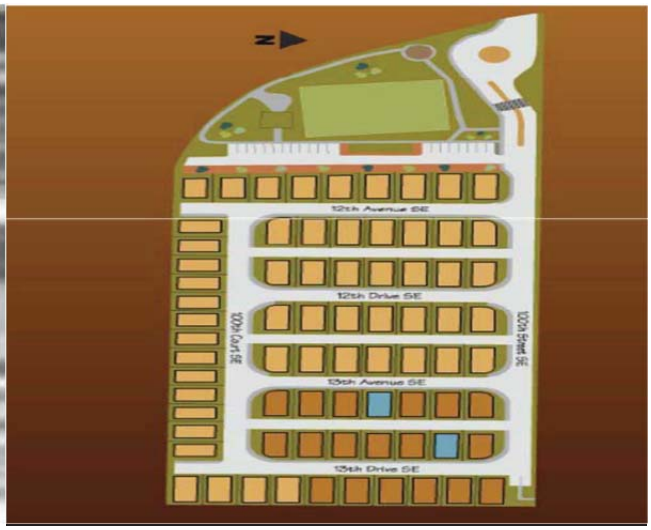
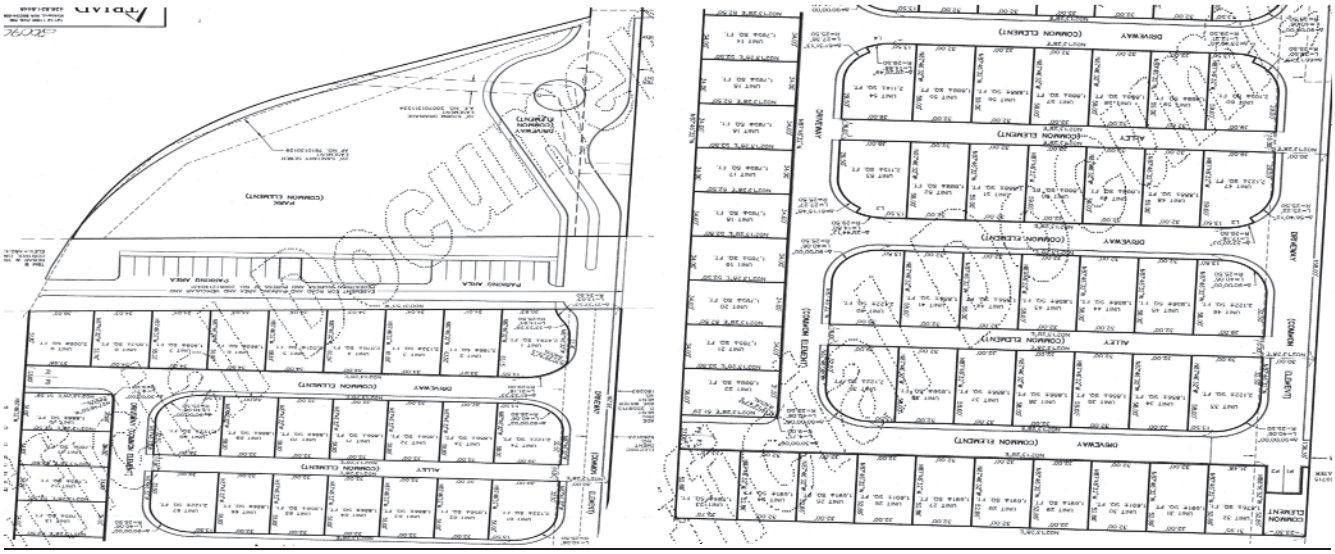
<u>DWELLING</u> **<u>SITE PLAN</u>**



RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP

<u>Unit Boundaries</u>. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space.



DANBURY, A SINGLE FAMILY CONDOMINIUM COMMUNITY
16 detached Dwellings – Lynnwood, Washington

<u>"Airspace" Condominium Unit Boundaries</u> are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

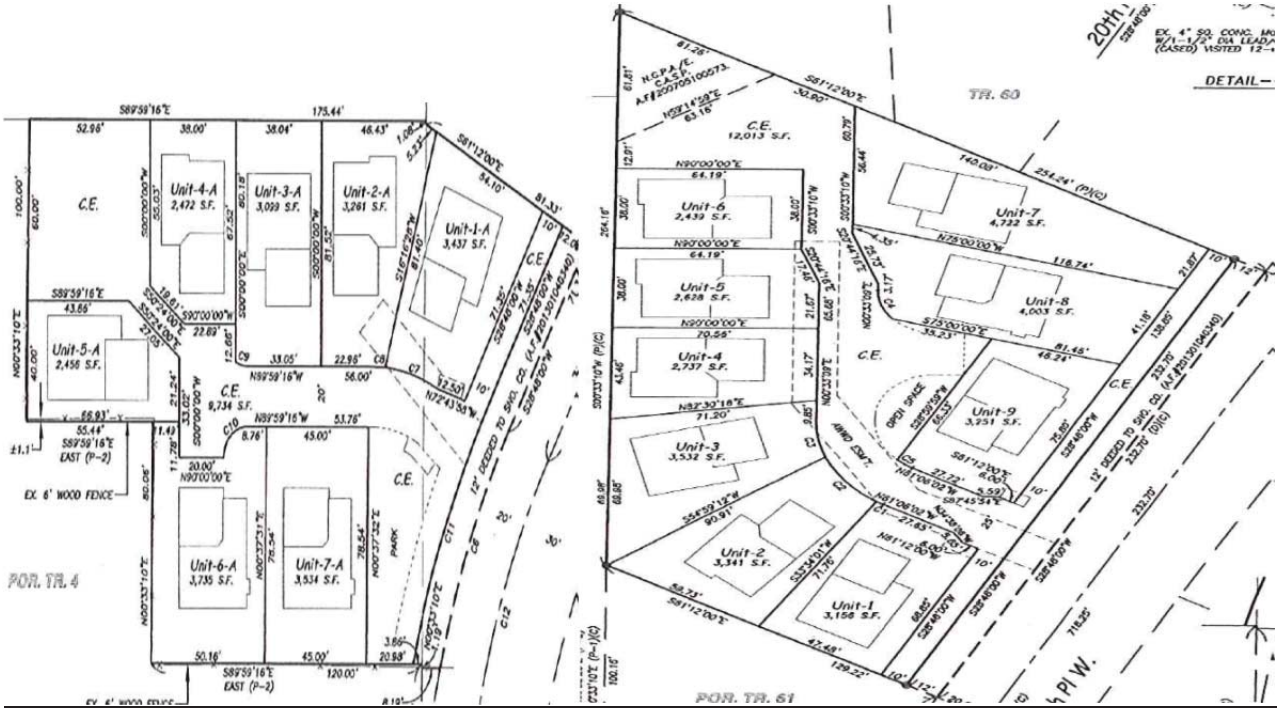
<u>"Airspace" Condominium Unit Ownership</u> includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
2. **Land Surface** (within Vertical boundaries);
3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
4. **Dwelling structure (**and all other improvements within Vertical & Horizontal boundaries)

<u>DWELLING</u> **<u>SITE PLAN</u>**

RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP

<u>Unit Boundaries</u>. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space.



SERRANO, A SINGLE FAMILY CONDOMINIUM COMMUNITY
53 detached/attached Dwellings – Marysville, Washington.

<u>"Airspace" Condominium Unit Boundaries</u> are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

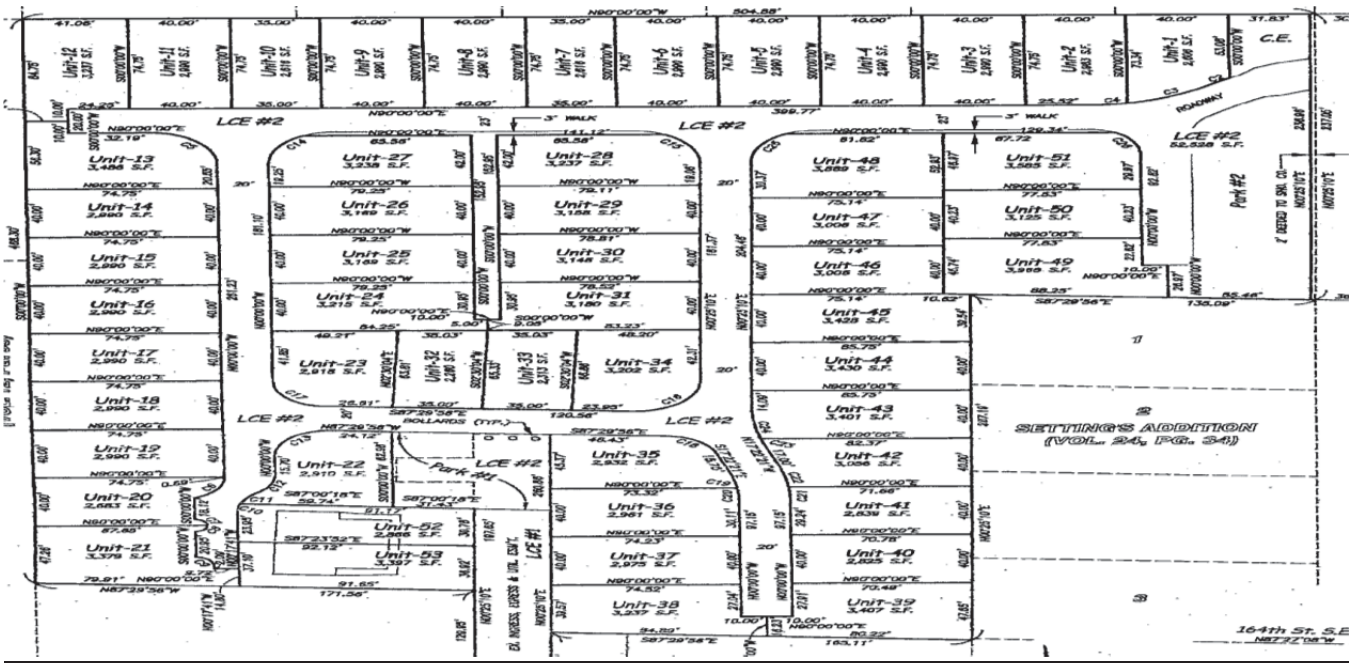
<u>"Airspace" Condominium Unit Ownership</u> includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
2. **Land Surface** (within Vertical boundaries);
3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
4. **Dwelling structure (**and all other improvements within Vertical & Horizontal boundaries)

<u>DWELLING</u> **<u>SITE PLAN</u>**

<u>RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP</u>

<u>Unit Boundaries</u>. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space



HAWKSTONE, A CONDOMINIUM COMMUNITY
143 [max.] detached Dwellings – Marysville, Washington

"Airspace" Condominium Unit Boundaries are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

"Airspace" Condominium Unit Ownership includes:

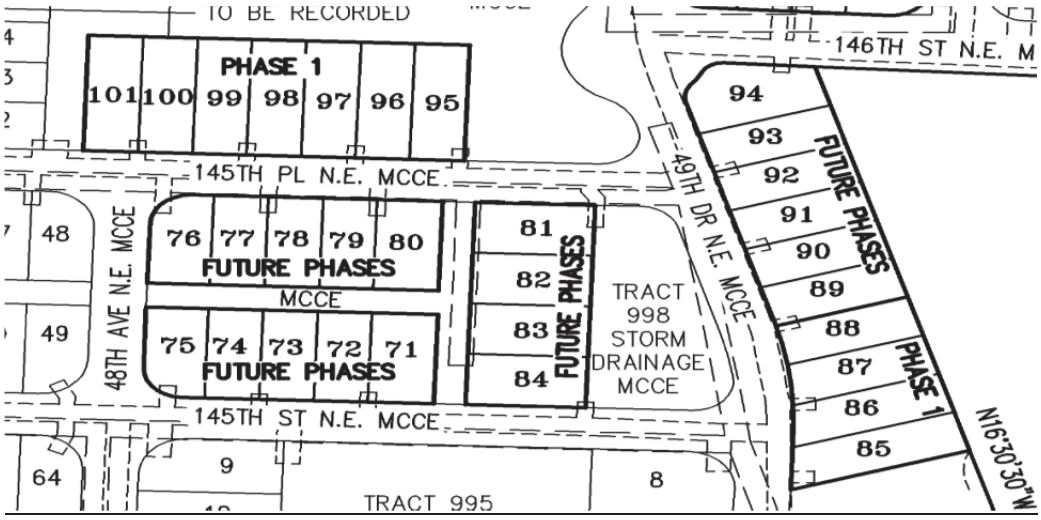
1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
2. **Land Surface** (within Vertical boundaries);
3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
4. **Dwelling structure (**and all other improvements within Vertical & Horizontal boundaries)

DWELLING

SITE PLAN

RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP

Unit Boundaries. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space



TIMBERWOOD RIDGE, A SINGLE FAMILY CONDOMINIUM
22 detached Dwellings – Edmonds, Washington

<u>"Airspace" Condominium Unit Boundaries</u> are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

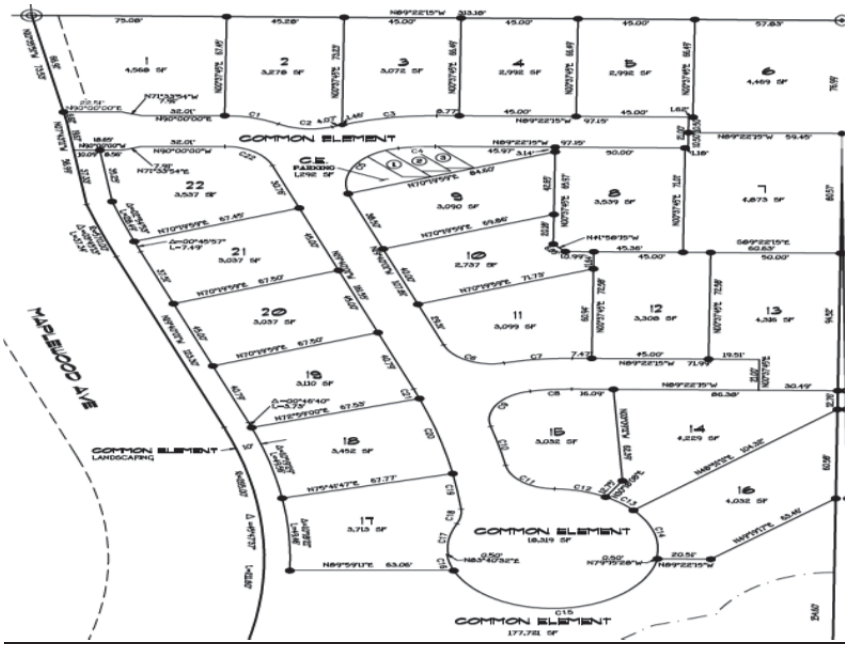
<u>"Airspace" Condominium Unit Ownership</u> includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
2. **Land Surface** (within Vertical boundaries);
3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
4. **Dwelling structure (**and all other improvements within Vertical & Horizontal boundaries)

<u>DWELLING</u> **<u>SITE PLAN</u>**

<u>RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP</u>

<u>Unit Boundaries</u>. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space



LAKE SERENE VISTA, A RESIDENTIAL CONDOMINIUM
18 detached Dwellings – Lynnwood, Washington

<u>"Airspace" Condominium Unit Boundaries</u> are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

<u>"Airspace" Condominium Unit Ownership</u> includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
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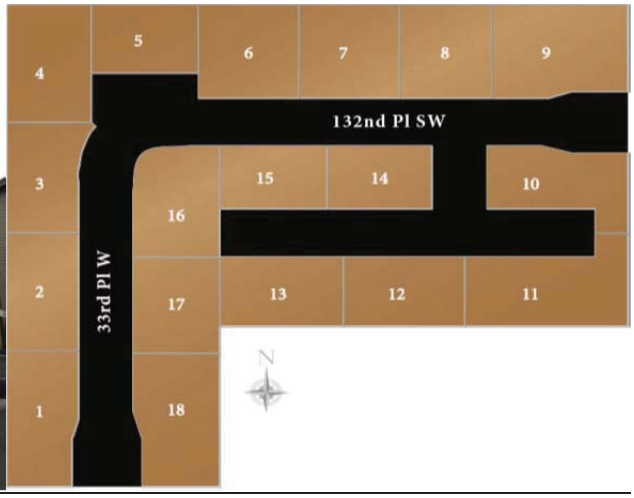
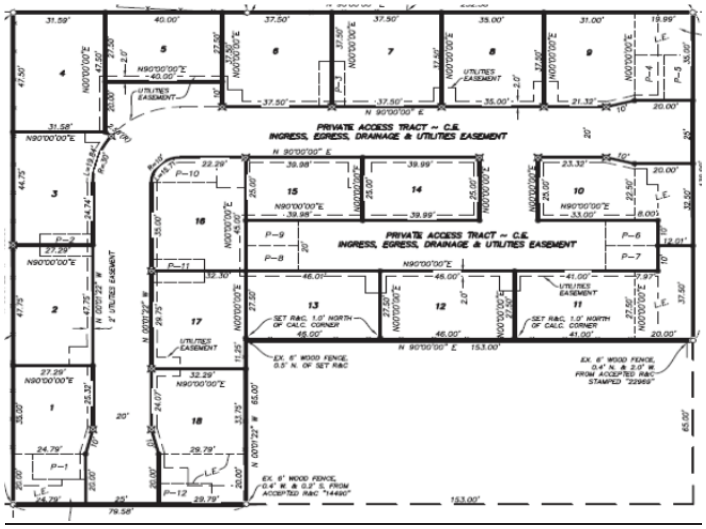
4. **Dwelling structure (**and all other improvements within Vertical & Horizontal boundaries)

<u>DWELLING</u> **<u>SITE PLAN</u>**



<u>RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP</u>

<u>Unit Boundaries</u>. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space.



di MODA CONDOMINIUM
97 detached Dwellings – Lynnwood, Washington

<u>"Airspace" Condominium Unit Boundaries</u> are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

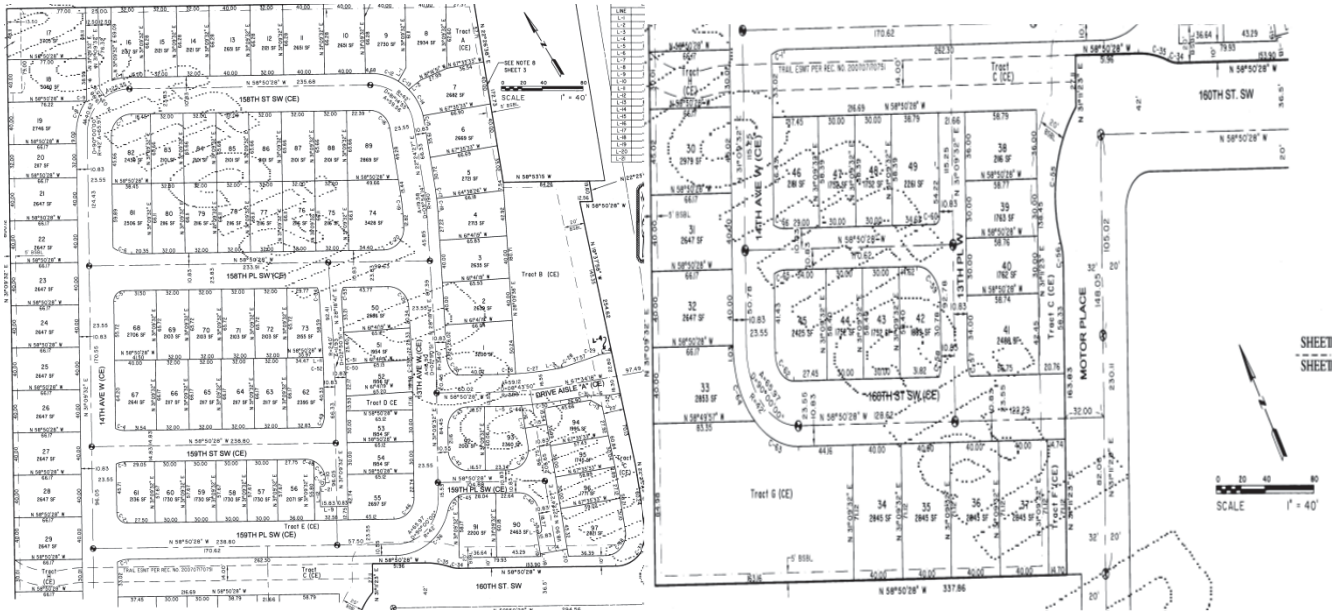
<u>"Airspace" Condominium Unit Ownership</u> includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
2. **Land Surface** (within Vertical boundaries);
3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
4. **Dwelling structure (**and all other improvements within Vertical & Horizontal boundaries)

<u>DWELLING</u> **<u>SITE PLAN</u>**

<u>RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP</u>

<u>Unit Boundaries</u>. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space.



MCKENDREE PARK, A Family Condominium Community
84 attached Units; Marysville, WA

"Airspace" Condominium Unit Boundaries are:

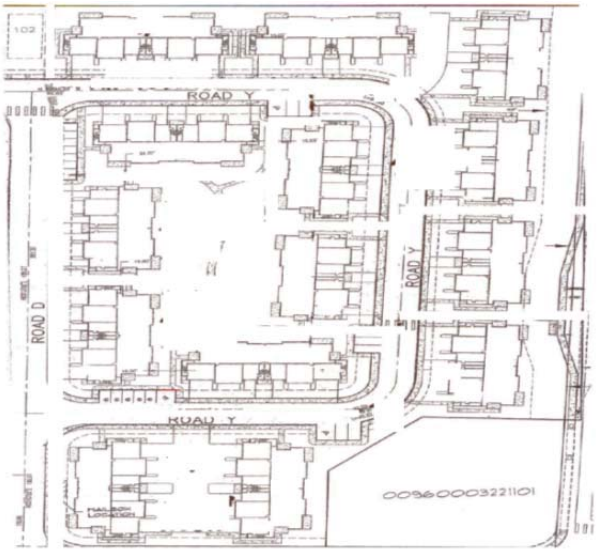
1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

"Airspace" Condominium Unit Ownership includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
2. **Land Surface** (within Vertical boundaries);
3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
4. **Dwelling structure** (and all other improvements within Vertical & Horizontal boundaries)

DWELLING

SITE PLAN



RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP

Unit Boundaries. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space.

MEADOWS IN MARYSVILLE, A Condominium Community
287 detached & 84 attached Dwellings – Marysville, Washington

<u>"Airspace" Condominium Unit Boundaries</u> are:

1. **Vertical boundaries** ("sides", dimensioned on Plat & Survey);
2. **Horizontal boundaries** ("top" & "bottom"; upper & lower limits of legal ownership; not dimensioned on Plat & Survey).

<u>"Airspace" Condominium Unit Ownership</u> includes:

1. **Air** (within Vertical boundaries, from Land Surface to upper Horizontal boundary);
2. **Land Surface** (within Vertical boundaries);
3. **Subsurface** (within Vertical boundaries, from Land Surface to lower Horizontal boundary); and
4. **Dwelling structure (**and all other improvements within Vertical & Horizontal boundaries)

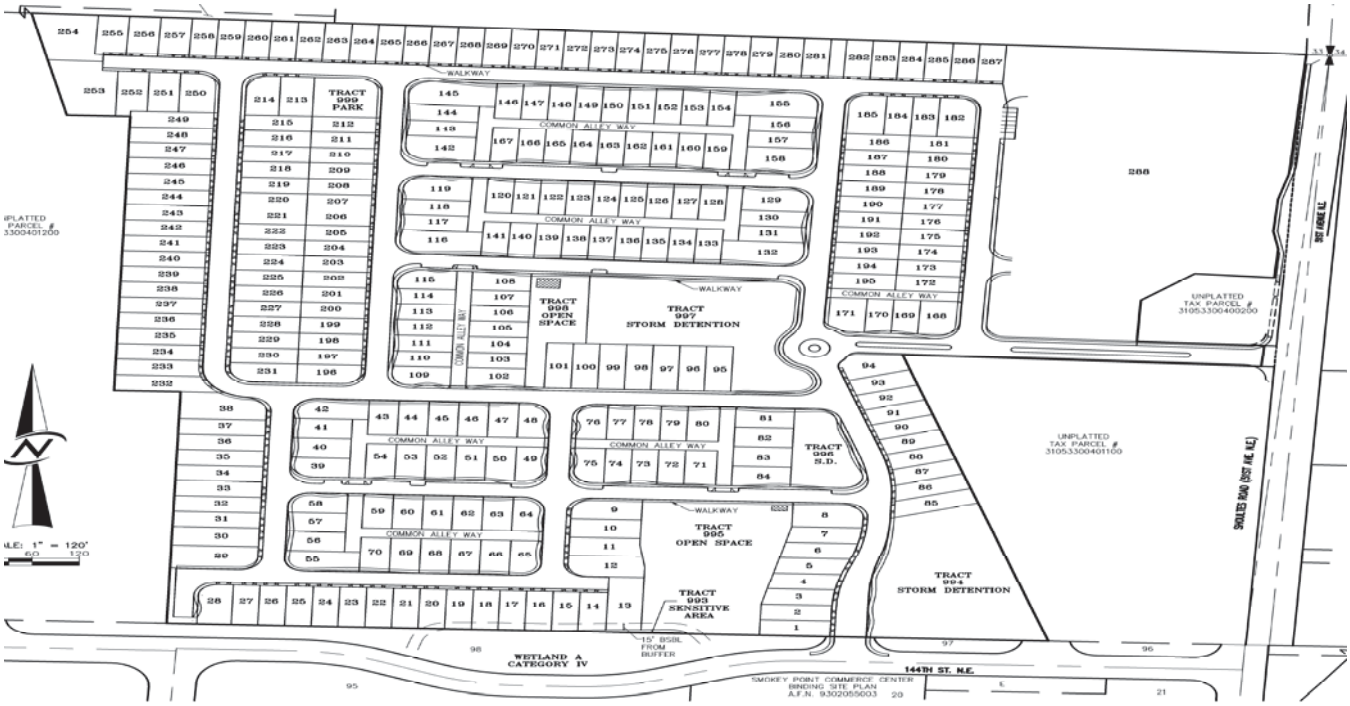
<u>DWELLING (detached)</u>

<u>DWELLING (attached)</u>

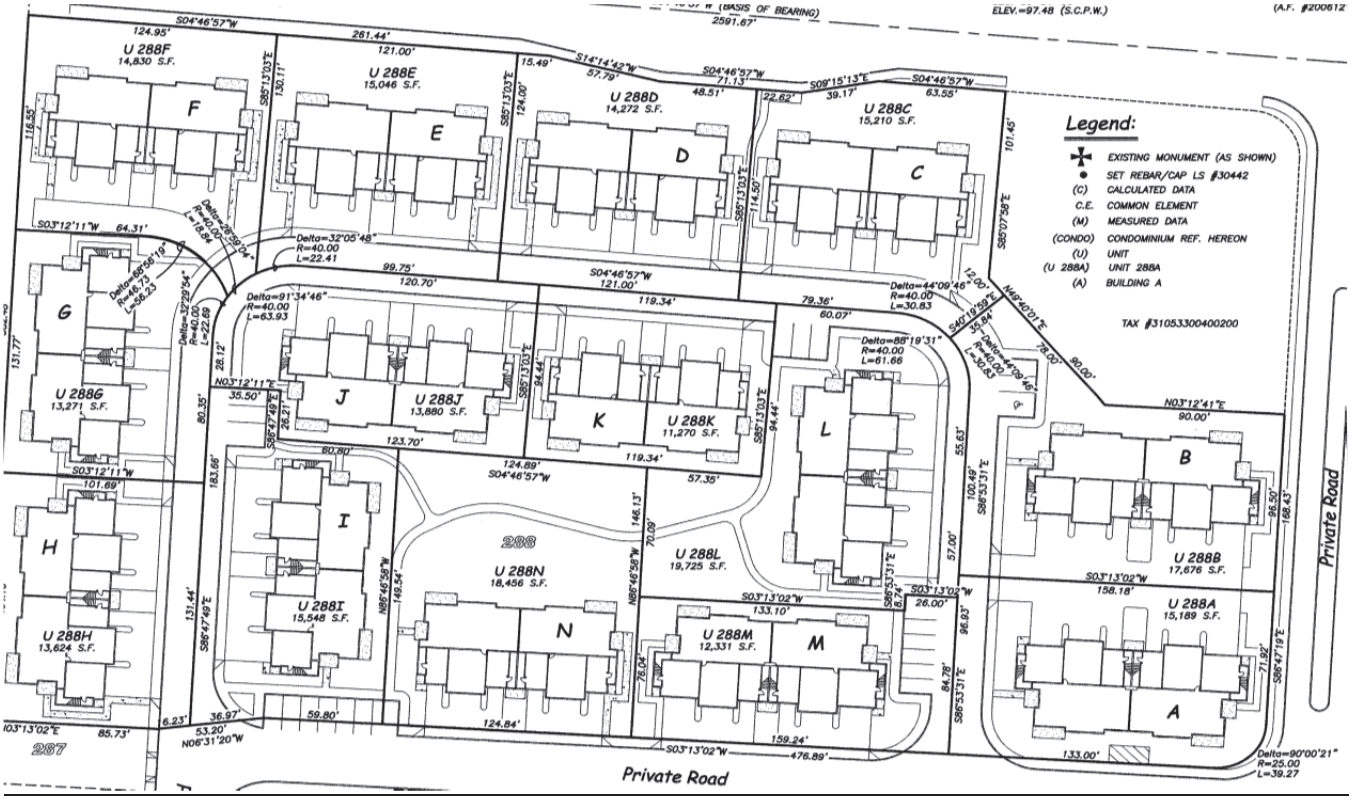
<u>RECORDED "AIRSPACE" CONDOMINIUM SURVEY MAP</u>

<u>Unit Boundaries</u>. Units shall consist of an envelope of space, the perimeter boundaries of which are on the surface of the land as located and depicted on the Survey Map and Plans and which boundaries extend below and above the ground elevation for each Unit as shown on the Survey Map and Plans. A Unit shall include all structures, improvements, and fixtures now or hereafter located within said space

DETACHED DWELLING SURVEY MAP



ATTACHED DWELLING SURVEY MAP



<u>"FEE SIMPLE LOT" DIVISION</u>
Subdivision *vs.* "Airspace" Condominium

APPENDIX B – SAMPLE FEE LOT DIVISION CODE AMENDMENTS
(City of Bothell)

Once a local jurisdiction has approved the concepts behind the Fee Simple Lot Division, the difficult job beings to identify all of the Codes that must be amended (both to amend existing sections and adding new sections) to accommodate the Fee Simple Lot Division concept. Because the local ordinances differ greatly among local jurisdictions, no "template" will work for all jurisdictions.

The following are the Bothell Municipal Code "Fee Simple Lot Division" amendments – which is illustrative of the possible required Code amendments.

City of Bothell
Fee Simple lots within Multi-family Residential Zones 3rd Draft Code amendments – April 3, 2013

*[Additions shown as **<u>underline</u>** and deletions shown as **~~strikethrough~~**]*

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Title 11 Code Amendments

I. Chapter 11.02 - Definitions

.*.*.

A. 11.02.004 "C".

1. "Condominium"

means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to Chapter 64.34 RCW. (RCW 64.34.020(10)

.*.*.

B. 11.02.040 "L"

1. "Lot"

means a fractional part of subdivided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels.

2. "Lot, offspring"

means an individual fee simple lot created within the boundaries of a "parent site" and is applied exclusively to residential zoning classifications in which attached and detached dwelling units are allowed.

..*.*

C. 11.02.100 "R"

1. "Real property"

means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water. (RCW 64.34.020(32)

.*.*.

D. 11.02.110 "S"

1. "Site, parent"

means a property having a residential zoning classification that allows attached or detached dwelling units where the lot may be subdivided into individual fee simple offspring lots. Parent sites are located exclusively within the R 5,400a, R 4,000, R 2,800, DC, DT, DN, GDC, or R-AC zoning classifications.

II. Chapter 11.04 – Types of Project Permit Applications

.*.*.

A. 11.04.003 Project permit application framework.

A. Table of land use actions arranged by type (Exempt, Type I, II, III, IVA, IVB and V), indicating hearing body where appropriate.

Exempt (per BMC 11.04.007)	Type I	Type II	Type III	Type IVA	Type IVB	Type V
		General Binding site plan (HE if appealed) **Final ~~Specific~~** binding site plan (HE if appealed)				
			Abbreviations for Hearing Body: CC: City Council HE: Hearing Examiner PC: Planning Commission SB: Shorelines Board # May be appealed, see BMC 11.04.008 * Unless delegated by the council to the planning commission or shorelines board, where applicable for specific applications involving new regulations			

.*.*.

B. 11.04.010 Vesting of development rights.

1. B. Applications for subdivisions that propose to create offspring lots within a parent site comprising existing detached condominiums or attached townhouses for which a grading or building permit has been issued shall vest to the site development requirements and standards in effect at the time such grading or building permit application was determined to be complete by the City.

*** * * ***

No other amendments to Title 11

* * * *

TITLE 12 CODE AMENDMENTS

III. Chapter 12.14 – Area, Dimensions, Design

A. 12.14.030 Residential area and dimensions.

1. A. **Development Standards Table**.

2. B. Notes.

3. Multifamily Minimum and Maximum Density.

c. In the R 5,400a through R 2,800 zones, land area in roads and other rights-of-way, surface storm water retention/detention/water quality facilities, critical areas, critical area buffers, or land dedicated to the city shall not be counted in the calculation of number of units or **fee simple lots** allowed, unless so stated in the conditions of an approved planned unit development, in accordance with Chapter 12.30 BMC.

3. [**Offspring Lots**]

7. **Lands with a zoning classification of R 5,400a, R 4,000, R 2,800, DC, DT, DN, GDC, or R-AC where offspring lots are proposed to be created within a parent site through the subdivision provisions of BMC Title 15 may apply setback dimensions to the offspring lots**

as set forth in 12.14.085.

B. 12.14.085 Setbacks –Offspring lot setbacks applicable within attached residential zones Lands with a zoning classification of R 5,400a, R 4,000, R 2,800, DC, DT, DN, GDC, or R-AC where offspring lots are created through the subdivision provisions of BMC Title 15 may apply the following special setbacks to offspring lots within a parent site, provided however that setbacks from the exterior lot lines of the parent site shall be consistent with 12.14.030(A), 12.14.050, 12.14.060, 12.14.060, and 12.14.080(B):

A . Side and rear yard setbacks from offspring lot lines that are not a parent site lot line may be based upon the building separation requirements of the applicable building and fire codes, provided that zero, common, or shared lot lines may be allowed as set forth within Paragraph C below;

B Front yard setbacks from internal private access streets and/or access drives shall be at least 5 feet or shall be set back from the internal private access street and/or access drive tract or easement line sufficient to provide a straight line length of at least 25 feet from the access point of the garage, carport or parking area to the opposite edge of the private access street and/or access drive tract or easement. No portion of a garage or any garage door which may be in motion may cross any lot line;

C Zero, common, or shared lot lines may be permitted subject to the standards of the applicable building and fire codes;

D . Existing developments comprising detached condominiums or common wall townhouses may utilize the setback provisions of this section if converting to fee simple lots as provided by the subdivision process of BMC Title 15; and

E . Figure 12.14.085 - 1 provides a visual example of the parent site and offspring lot line setback requirements as set forth within 12.14.085(A), (B), and (C) and Figure 12.14.085 – 2 provides a visual example of zero, common, or shared offspring lot line requirements as set forth within 12.14.085(C).

Figure 12.14.085 - 1 – Parent site and offspring lot setback illustration

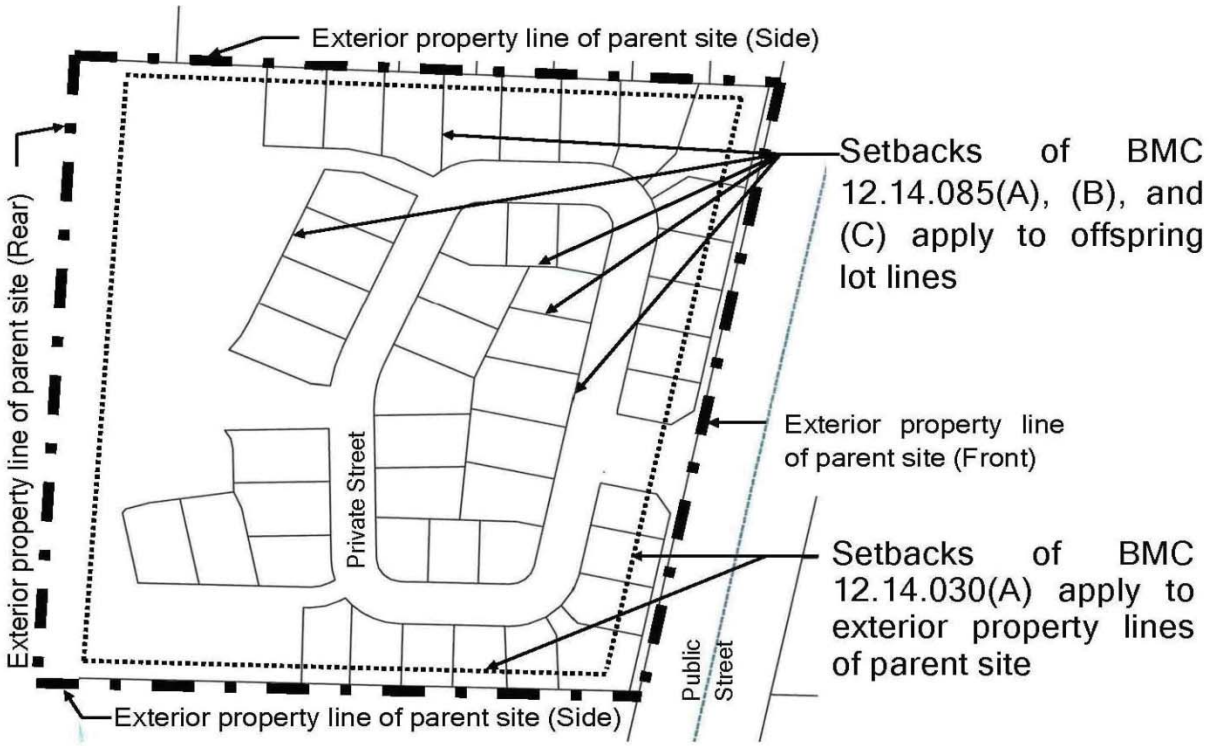
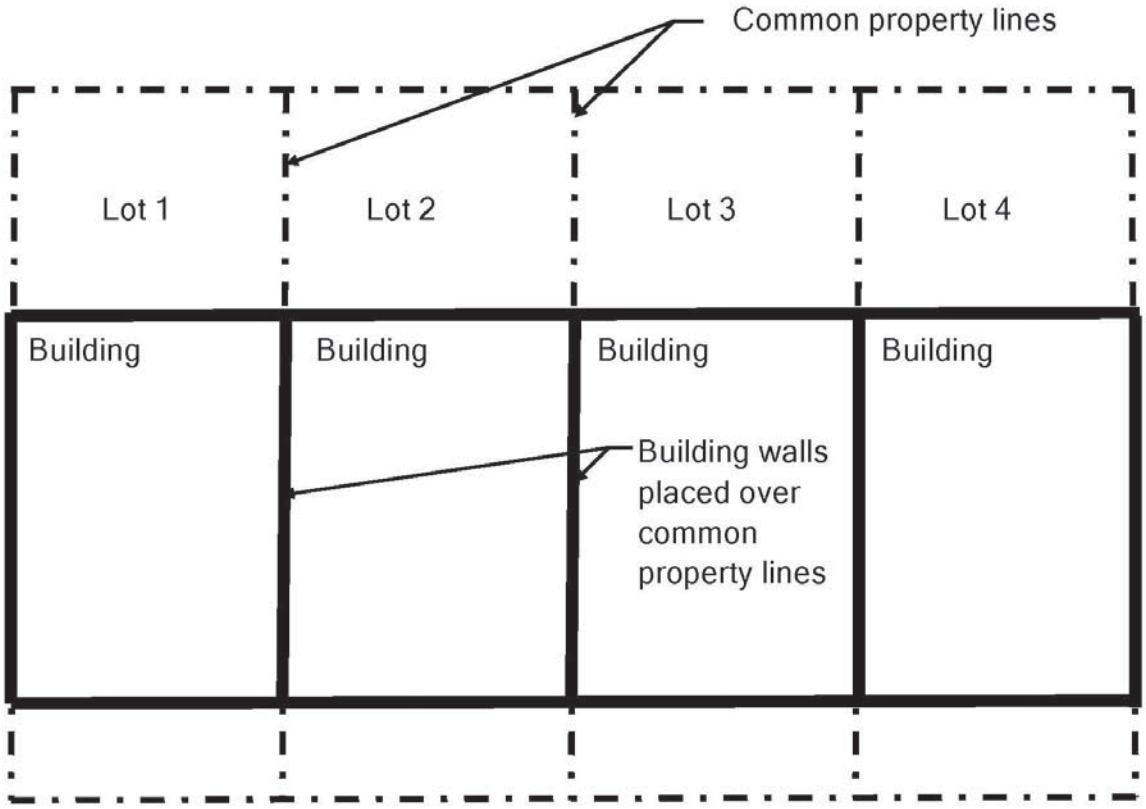


Figure 12.14.085 – 2 - Zero, common, or shared offspring lot lines for Townhouses or zero lot lines



* * * *

No additional amendments to 12.14

* * * *

TITLE 15 CODE AMENDMENTS

IV. Chapter 15.08 – Preliminary Plats

A. 15.08.020 Requirements for a complete application.

These requirements are in addition to the minimum application requirements in BMC 11.06.002.

Application contents:

1. [Parent Site/Offspring Lot – Existing]

C. In addition to the application submittal requirements of 15.08.020(A) above, the following application submittal items shall be submitted for subdivisions of parent sites comprising existing detached condominium developments or existing attached townhouse developments:

. 1. A copy of the site plan for the parent site as approved by the City through the grading or building permit, planned unit development or other development application process;

. 2. A copy of any existing, recorded or proposed, covenants, conditions and restrictions, property owners' association bylaws and incorporation documents, and all other private restrictions or provisions currently applicable or which may become applicable to the

subject property;

. 3. Evidence of the vote or applicable association/community approval authorizing the submittal of the application; and

. 4. A copy of a title company certification (current within 60 days from filing of the preliminary plat) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the application or plat map.

V. Chapter 15.16 - General Requirements For Subdivision Approval

A. 15.16.010 General requirements for approval of subdivisions.

In addition to the criteria for approval applicable to an individual application, all subdivisions, short subdivisions, plat alterations and plat vacations must meet the following general requirements in order to be approved:

1. B. **Concurrency.**

No subdivision shall be approved without compliance with Chapter 17.03 BMC, Concurrency **provided, that applications for subdivisions that propose to create offspring, fee simple lots within a parent site comprising existing detached condominiums or attached townhouses for which a grading or building permit has been issued, where no increase in the number of dwelling units is proposed and where concurrency has previously been satisfied for the existing detached condominium or attached townhouse development shall not be required to comply with concurrency as part of the subdivision.**

2. D. **Homeowners' Associations**.

Where a proposed subdivision contains common areas and/or facilities including but not limited to critical area tracts, (including any perimeter fencing, signage or other appurtenances), noncritical open space tracts, private recreational area tracts, private street tracts, and storm water facilities, protective covenants (CC&Rs) shall provide for the establishment of a homeowners' association which shall be responsible for maintenance of all such common areas and facilities. Such protective covenants shall be submitted to the department of community development for review and approval prior to the issuance of any certificate of occupancy or approval of the Final Plat. The CC&Rs shall be written to prohibit changes that would allow removal of these requirements, or discontinuance of the homeowners' association.

The CC&Rs shall be recorded along with the necessary documents establishing the homeowners' association as a nonprofit corporation, registered and incorporated with the state of Washington. The homeowners' association shall be incorporated prior to final certificate of occupancy. The covenants shall make special provisions for the maintenance of all common areas, drive aisles, recreation space and play structures, lighting fixtures, fencing, native vegetation areas, and landscaping.

B. 15.16.040 Compliance with Public Works Standards.

Construction of all improvements in all applications shall comply with the city's adopted department of public works standards **provided, that the subdivision of a parent site into offspring lots comprising existing detached condominiums or attached townhouses for which a grading or building permit has been issued and where no increase in the number of dwelling units and no increase in impervious surface cover is proposed shall be deemed vested to the public works standards in effect at the time the grading or building permit application for the existing detached condominiums or attached townhouses was determined to be complete by the City.**

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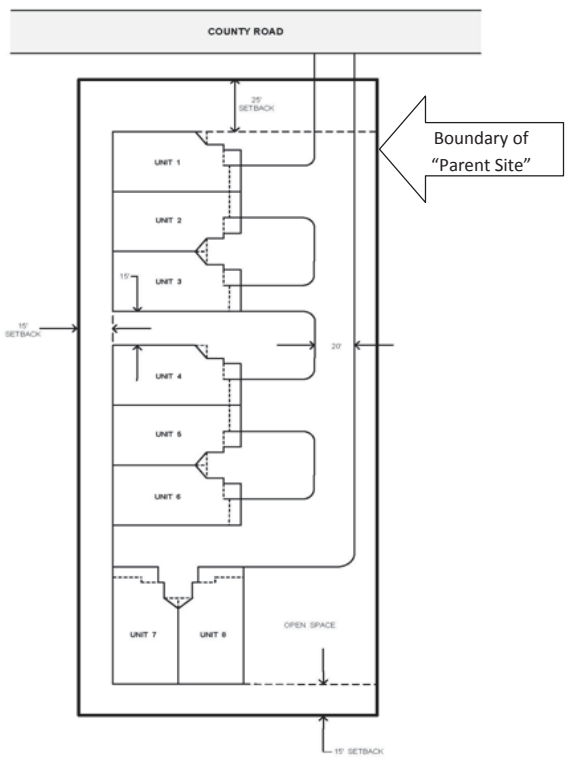
COMPARISON OF TOWNHOUSE DEVELOPMENT UTILIZING DIFFERENT FORMS OF OWNERSHIP

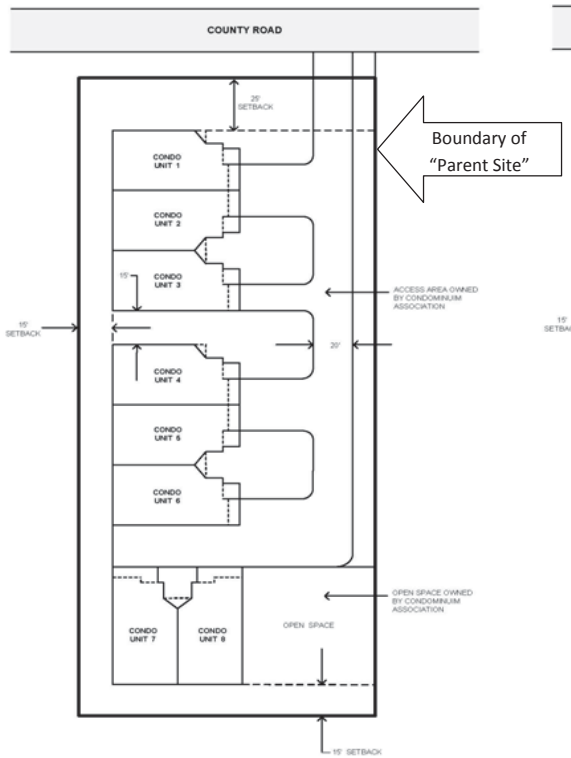
- **IN EACH EXAMPLE THE DEVELOPMENT STANDARDS APPLIED ARE ONLY THOSE APPLICABLE TO THE UNDERLYING PARENT SITE AS A WHOLE.**
- **THERE IS NO CHANGE IN SITE DESIGN – THE ONLY DIFFERENCE IS FORM OF OWNERSHIP.**
  - **PARENT SITE: THE OVERALL SITE TO WHICH DEVELOPMENT STANDARDS ARE APPLIED**
  - **UNIT LOT: THE INDIVIDUAL LOTS CREATED FROM THE SUBDIVISION OF A PARENT SITE FOR THE EXCLUSIVE USE OF TOWNHOUSES.**

OFFICIAL SITE PLAN



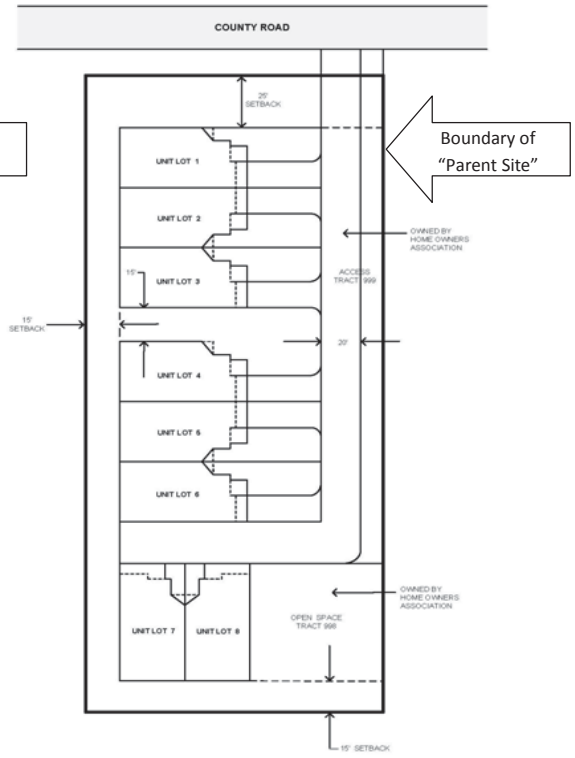
- The entire development is held in single ownership, and individual units are rented/leased to the inhabitants.
- There are no separate tracts for common areas, access, etc.
- Development standards are applied to the entire site as a whole.

CONDOMINIUM



- Provides for ownership of individual units, but not for land on which the units are placed.
- The land on which the units are placed, and common areas such as internal access ways and open space are owned in common by a condominium association.
- Development standards are as required for the underlying "parent site".

UNIT LOT SUBDIVISON



- Provides for ownership of individual units and the land on which they are placed.
- Common areas such as internal access ways and open space are placed in tracts owned by a homeowner's association.
- Development standards are as required for the underlying "parent site" as opposed to being applied to the individual unit lots.

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Title 19 – Fee Simple Unit Lot Subdivisions

Excerpt – Planning Commission Meeting Minutes, October 8, 2015 Public Hearing

Work Session

1. Fee-Simple Unit Lot Subdivisions

Senior Planner Chanda Emery explained that her presentation would be about equity and home ownership. Fee-simple refers to the ownership style. It means that the home owner owns both the buildings and the land as opposed to a condominium where the condo owner owns the condo or townhouse, but not the land. It creates new housing options that will accommodate a financially diverse population and continues to use the existing land use designations. This has come up as a result of mortgage lenders' financing restrictions. By allowing townhouse units to be placed on, and owned in conjunction with an individual fee-simple lot, such mortgage and financing issues are eliminated.

Fee-Simple Unit Lot Subdivisions will continue to meet the existing code for lot area and lot width; building setbacks; parking; and design guidelines. It allows for lot lines to be drawn around individual dwelling units and incidental areas. Each dwelling will sit on the individual lot owned by the homeowner, and common areas are still owned and maintained by the homeowners association. The proposed changes would not change permitted densities or zoning standards. It would be applicable for new attached and detached development in multi-family zones. It may be retroactively applied to already-approved attached or detached condominium developments. Fee-simple is in line with the Growth Management Act. It is in compliance with state law and the City of Lynnwood's Comprehensive Plan.

Additionally, the proposal to draft an ordinance and regulations will not result in permanent or temporary physical occupation of private property. They will not deprive affected property owners of all economically viable uses of their property, and they will not deny or substantially diminish the fundamental attribute of property ownership. They also will not require the property owner to dedicate a portion of property or grant and easement. They will not have a severe impact on a property owner's economic interest. The regulations would benefit the health, safety, and welfare of the general public. Other local jurisdictions have already adopted fee-simple code amendments.

In summary, fee-simple would provide another housing option for citizens; would promote affordable housing opportunities; and would make no physical difference on the ground. It is staff's recommendation to move forward with fee-simple as it would provide a benefit to the community and to the City of Lynnwood.

Questions and Comments:

Commissioner Wojack said he searched for information about disadvantages with fee-simple or problems with fee-simple and found very little. He asked how fast the Federal Housing Administration (FHA) has responded to changes in fee-simple. Director Krauss explained that the day after it passes, a property owner would be allowed to divide property in this way. Until somebody does it, however, it would not be available. His understanding is that the FHA is accepting of that type of property ownership. He pointed out that it is just a different way to own property. It doesn't change Lynnwood's standards for these types of developments in any way.

Commissioner Wojack asked if individual lots and homes would have to comply with the condo's rules. Ms. Emery stated it would be up to the people who live there to determine how they want to handle that. Some choose to keep a homeowners association, and some choose not to. Commissioner Wojack asked how retroactive changes would apply to a condo that wants to switch to fee-simple. Director Krauss replied that they would come in for a subdivision and would go through the usual planning process.

Commissioner Ambalada discussed concerns related to mobile home parks. She wondered if fee-simple could apply to mobile home parks too to protect senior housing opportunities. Director Krauss replied that this might be an option for a mobile home park owner and people who lease to create ownership, but it wouldn't change anything unless the owner of the land and all the owners of the individual units were willing and financially able to buy it. Commissioner Ambalada suggested that mobile home park owners who wanted to sell their property could be mandated to offer it to the mobile home owners. Director Krauss commented that there used to be a law that gave people who lived in mobile home parks the first right of refusal when a sale was going to occur, but it was struck down by the court. He noted there is no way you can require somebody to sell their property to another property. Ms. Emery added that the Growth Management Act supports affordable housing, and mobile home parks fall under that category.

Commissioner Hurst asked for clarification about the slide that referred to a 15% delinquency rate and asked if that referred to homeowner association dues or mortgages. Mr. Emery replied that it referred to homeowner association dues.

Commissioner Hurst then referred to a photo showing a private road and asked if having a private road meant it was a condominium. Director Krauss replied that you can have a private road under a lot of different scenarios. The question is how the private road is owned. He noted the LDMRs in the county all have private roads. Some are condos, and some are fee-simple, but all the roads are private and held in some common ownership or by the association. Commissioner Hurst noted that condos have shared walls and a shared roof. He asked how that works with fee-simple. Ms. Emery explained the architectural style could be any style – shared walls, not shared walls, etc. Fee-simple only

refers to ownership of the ground beneath the home. Vice Chair Braithwaite commented that with a fee-simple structure there will still generally be documents that would be recorded with all of the houses' reciprocal easement agreements that would lay out if there were common walls or a common roof and how expenses are shared. Commissioner Hurst spoke in support of idea of fee-simple unit lot subdivisions.

Commissioner Ambalada asked if this would be similar to the popcorn homes that are prohibited in the City of Lynnwood. Director Krauss replied she was referring to the LDMRs. He reiterated that staff was not proposing changing any development standards. The problems with LDMRs in the county have to do with the development standards, not the ownership style. The development standards in the county allowed them to build private roads that were too narrow for the purpose and to put the buildings too close together and too close to the street.

Vice Chair Braithwaite asked if it would be important to have a requirement for things like reciprocal easement agreements as part of the subdivision process. Director Krauss commented that they could. He noted that the City would do that for access roads and common space anyway because the City needs to gain access for emergency services. Vice Chair Braithwaite asked if this would apply to any multi-level buildings. Director Krauss replied it would not. Vice Chair Braithwaite asked if there are any developments under consideration now in the City that this would apply to. Director Krauss replied that there are not, but noted that the last time he was asked about it was related to Perrinville. Vice Chair Braithwaite observed that some of the communities that most embraced condo developments were hardest hit in the economic downturn in 2008, but stated he supported the idea of fee-simple unit lot subdivisions.

Commissioner Wojack referred to local cities that have gone to fee-simple, and asked if they have noticed an influx of more applications. Ms. Emery offered to look into that. Commissioner Wojack spoke in support of this.

Commissioner Ambalada asked if this is what Pat Crosby was referring to. Planning Manager Hall thought that Mr. Crosby does primarily short plats. This might be something that he would consider, but he typically purchases larger single family lots and short plats those.

It was the consensus of the Planning Commission to move this forward to a public hearing.

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LYNNWOOD WASHINGTON

Planning Commission
Meeting of November 12, 2015

Topic: Outdoor Lighting Standards – Chapter 21.17 (New Chapter)

Agenda Item: E.1

- ☐ Public Hearing
- ☒ Work Session
- ☐ Other Business
- ☐ Information
- ☐ Miscellaneous

Staff Report

Staff Contacts: Todd Hall, Planning Manager, Community Development

Summary

The purpose of this agenda item is to introduce draft legislation that creates a new chapter to regulate exterior lighting within the City of Lynnwood. This new chapter would be Chapter 21.17 – Outdoor Lighting Standards.

Action

None required.

Background

A proposed outdoor lighting code is proposed to regulate outdoor lighting within the City of Lynnwood. The following is the purpose of the code:

1. To regulate exterior lighting in order to avoid unsafe and unpleasant conditions as the result of poorly designed or installed exterior lighting.

2. To minimize the impact of exterior lighting on views of the night sky by minimizing glare, obtrusive light and artificial sky glow and limiting outdoor lighting that is misdirected, excessive or unnecessary.

3. To implement the energy conservation policies of the Comprehensive Plan.

4. To regulate the type of light fixtures, lamps and standards.

5. To protect low- and medium-density residential zones from the ill effects associated with nonresidential and multi-family exterior lighting.

6. To ensure exterior lighting is in compliance with the State of Washington Energy Code.

Previous Planning Commission / City Council Action

Previous presentations held at the March 27, 2014 (Todd Hall, PP presentation) and the April 23, 2014 (George Hurst, lighting fixtures) meetings.

Adm. Recommendation

Unless the Planning Commission instructs otherwise, staff will schedule a public hearing for this matter.

Attachments

1. Draft 21.17 LMC – Outdoor Lighting Standards
2. Planning Commission Meeting Excerpt, March 27, 2014

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EXISTING REGULATIONS
(to be repealed and replaced)

17.05.110 Light and glare.

It is the policy of the city that any activity shall not produce light or glare so as to create a nuisance beyond the parcel within which the use is located. In particular:

A. Building materials with high light reflective qualities should not be used in construction of buildings where reflected sunlight or artificial light would throw intense glare on adjacent areas or streets.

B. Sources of artificial illumination, including signs, shall be hooded or shaded in those instances where direct light from high-intensity lamps would result in glare upon surrounding areas or cast excessive light upon any residential use or street. Where necessary, the height or location of light sources shall be modified in order to reduce the impact of light or glare, or to enhance the capability of shielding or screening light sources, and the intensity and/or orientation of light sources shall be modified where necessary to reduce light and glare to tolerable levels.

C. Landscaping shall be the preferred means of screening emission of light and glare to nearby properties, but should be supplemented where necessary by solid or other sight and glare barriers. (Ord. 1416 § 2, 1984)

21.18.600 Parking lot illumination.

Lighting for Off-street parking areas shall be arranged so as to not constitute a nuisance or hazard to passing traffic. Where lots share a common boundary with any “R” classified property, and where any RM zone lot shares a boundary with an RS zone, the illumination shall be directed away from the more restrictively classified property. (Ord. 2730 § 1, 2008; Ord. 2020 § 9, 1994; Ord. 478 § 1, 1969; Ord. 190 Art. XI § 11.4, 1964)

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DRAFT – PROPOSED REGULATIONS

21.17 Outdoor Lighting Standards

21.17.010 Purpose.
21.17.020 Definitions.
21.17.030 Exemptions.
21.17.040 Applicability.
21.17.050 General Requirements.
21.17.060 Lighting Standards for Uses within 50 feet of Residential Zones.
21.17.070 Existing Lighting.
21.17.080 Lighting Zones.
21.17.090 Non-Residential Lighting.
21.17.100 Lighting by Special Permit Only.
21.17.110 Tables.

21.17.010 Purpose.

A. This code is established for the following purposes:

1. To regulate exterior lighting in order to avoid unsafe and unpleasant conditions as the result of poorly designed or installed exterior lighting.

2. To minimize the impact of exterior lighting on views of the night sky by minimizing glare, obtrusive light and artificial sky glow and limiting outdoor lighting that is misdirected, excessive or unnecessary.

3. To implement the energy conservation policies of the Comprehensive Plan.

4. To regulate the type of light fixtures, lamps and standards.

5. To protect low- and medium-density residential zones from the ill associated with nonresidential and multi-family exterior lighting.

6. To ensure exterior lighting is in compliance with the State of Washington Energy Code.

21.17.020 Definitions.

The following definitions shall only apply to this chapter:

A. "Accent lighting" means any luminaire that emphasizes a particular object or draws attention to a particular area for aesthetic purposes.

B. "Backlight" means for an exterior luminaire, lumens emitted in the quarter sphere below horizontal and in the opposite direction of the intended orientation of the luminaire. For luminaires with symmetric distribution, backlight will be the same as the front light.

C. "BUG" means a luminaire classification system that classifies backlight (B), uplight (U) and glare (G).

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D. “Canopy” means a covered, unconditioned structure with a least one side open for pedestrian and/or vehicular access. (An unconditioned structure is one that may be open to the elements and has no heat or air conditioning).

E. “Curfew” means a time defined by the City when outdoor lighting is reduced or extinguished.

F. “Cut-off angle” (of a luminaire) means the angle, measured from the lowest point between a vertical line from the center of the lamp extended to the ground and the first line of sight at which the bare source is not visible.

G. “Fixture” (also called a “luminaire”) means a complete lighting unit including the lamps, together with the parts required to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply.

H. “Footcandle” means a measure of illuminance or a measure of how bright a light appears to the human eye. One foot-candle is equal to one lumen/sq. ft. As an example, a typical 60-watt incandescent lamp (840 lumens) produces an illuminance of 0.1 foot-candles at a distance of about 25 feet.

I. “Glare” means lighting entering the eye directly from luminaires or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.”

J. “Hardscape” means permanent hardscape improvements to the site including parking lots, drives, entrances, curbs, ramps, stairs, steps, medians, walkways and non-vegetated landscaping that is 10 feet or less in width. Materials may include concrete, asphalt, stone, gravel, etc.

K. “Hardscape area” means the area measured in square feet of all hardscape. It is used to calculate the Total Site Lumen Limit in both the Prescriptive Method and Performance Methods. Refer to Hardscape definition.

L. “Hardscape perimeter” means the perimeter measure in linear feet is used to calculate the Total Site Lumen Limit in the Performance Method. Refer to Hardscape definition.

M. “IESNA” means Illuminating Engineering Society of North America

N. “Lamp” means the light-producing mechanism of a luminaire.

O. “Light pollution” means any adverse effect of artificial light.

P. “Light trespass” means light falling where it is not wanted or needed; spill light; obtrusive light.

Q. “Lighting zone” means and overlay zoning system establishing legal limits for lighting for particular parcels, areas or districts in a community.

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R. “Lumen” means a unit of luminous flux; the flux emitted within a unit solid angle by a point source with a uniform luminous intensity of one candela. One footcandle is one lumen per square foot. One lux is one lumen per square meter.

S. “Luminaire” means the complete lighting unit, including the lamp, the fixture and other parts.

T. “Lux” means the SI unit of illuminance. One lux is one lumen per square meter. 1 Lux is a unit of incident illuminance approximately equal to 1/10 footcandle.

U. “Mounting height” means the height of the photometric center of a luminaire above grade level.

V. “Outdoor lighting fixture” means a luminaire outside of an enclosed building or structure or any luminaire directed such that it primarily illuminates outdoor areas.

W. “Shielding” means an opaque or solid material that blocks the transmission of light.

X. “Sky glow” means the brightening of the nighttime sky that results from scattering and reflection of artificial light by moisture and dust particles in the atmosphere. Skyglow is caused by light directed or reflected upwards or sideways and reduces one’s ability to view the night sky.

Y. “Spotlight” means a fixture designed to light only a small, well-defined area.

Z. “Time Switch” means an automatic lighting control device that switches lights according to time of day.

AA. “Uplight means for an exterior luminaire, flux radiated in the hemisphere at or above the horizontal plane.

BB. “Vertical illuminance” means illuminance measured or calculated in a plane perpendicular to the site boundary or property line.

21.17.030 Exemptions.

A. The following are exempt from the provisions of this chapter:

1. Traffic control signals and devices.

2. Street lights on public streets which are covered by other design standards adopted by the City.

3. Temporary emergency lighting (i.e., fire, police, repair workers) or warning lights.

4. Moving vehicle lights.

5. Navigation lights (i.e., radio/television towers, docks, piers, buoys) or any other lights where state or federal statute requires lighting that cannot comply with this chapter.

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6. Seasonal decorations.

7. Outdoor lighting approved by the Director for temporary or periodic events (e.g., fairs, nighttime construction).

8. Internally and externally illuminated signs regulated by Chapter 21.16 LMC.

9. Exterior egress lighting as required by National Fire Protection Association (NFPA).

21.17.040 Applicability.

A. The provisions of this chapter shall apply to:

1. Exterior lighting undertaken in conjunction with development requiring Project Design Review.

2. Redevelopment or expansion when the redevelopment increases the gross floor area or valuation by the criteria established in Chapter 21.12.200.C LMC.

B. The provisions of this chapter shall not apply to:

1. Exterior lighting for individual dwellings, such as porch lights and accent lighting, with the exception of common areas which are regulated. Examples of common areas include, but are not limited to pathways, clubhouses, shared driveways, parking lots and play areas.

2. Lights within the public right-of-way not conflicting with City streetlight standards and design criteria.

3. Lighting necessary for emergency equipment and work conducted in the interests of law enforcement or for the safety, health, or welfare of the community.

4. Temporary lighting for theatrical purposes, including performance, stage, film production and video production.

21.17.050 General Requirements.

A. The following general requirements shall apply to all proposed exterior lighting:

1. Site lighting trespass onto adjacent residential properties shall be minimized.

2. Site lighting shall minimize light spillage into the night sky.

3. Exterior lighting shall be controlled by either a combination of a photo sensor and a time switch or an astronomical time switch. All time switches shall be capable of retaining programming and the time setting during loss of power for a period of at least 10 hours.

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4. Fixtures and lighting systems used for safety and security shall be maintained in good working order and in a manner that serves the original design intent of the system.

5. The applicant shall submit to the City a site lighting plan to enable a determination that the applicable provisions will be satisfied.

   The exterior lighting plan shall include the following:

   a. Manufacturer specification sheets, cut-sheets or other manufacturer provided information for all proposed lighting fixtures.

   b. The proposed location, mounting height, and aiming point of all exterior lighting fixtures.

   c. If building elevations are proposed for illumination, drawings shall be provided for all building elevations showing fixtures, portions of the elevations to be illuminated, illumination levels of the elevations, and the aiming point for any remote light fixture.

   d. If needed to review proposed exterior lighting installations, the City may request additional information following the initial lighting plan submittal, such as:

      i. A brief written narrative, with accompanying plan or sketch, which demonstrates the objectives of the lighting.

      ii. Photometric data, BUG ratings as defined by the Illuminating Engineering Society of North America (IESNA), Color Rendering Index (CRI) of all lamps, or LED's, and other descriptive information on the fixtures, or designation as IESNA "cutoff fixtures."

      ii. Computer generated photometric grid showing footcandle readings every 10 feet within the property or site, and 10 feet beyond the property lines. Iso-footcandle contour line style plans are also acceptable.

      iv. Landscaping information that indicates mature vegetation in order to evaluate the long-term and seasonal effectiveness of lighting or screening of lighting.

21.17.060 Lighting Standard Requirements within 50 feet of Residential Zones.

A. Exterior lighting installations and fixtures within 50 feet residential zones shall comply with the following requirements:

   1. Lighting fixtures shall be no higher than 15 feet above grade.

   2. Lighting fixtures shall be designed and shielded in a manner that does not directly

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illuminate on adjacent residential zones. Fixtures should be of a type or adequately shielded so as to prevent glare from normal viewing angles

3. Where feasible, additional landscaping may be required by the City to provide light screening between commercial zones and residential zones to help prevent light trespass. Where landscaping is used for light screening, the City shall take into consideration the applicable landscaping standards and Citywide Design Guidelines.

B. The height restrictions of this section shall not apply to lighting used to illuminate outdoor performance areas, sport and recreation facilities, and playfields, except where such lighting fixtures are located within 50 feet of the property line of a low- and medium-density residential use or vacant residential lot. Lighting of outdoor performance areas, sport and recreation facilities, and playfields shall also meet the standards in 21.17.070.

21.17.070 Existing Lighting

Lighting installed prior to the effective date of this ordinance shall comply with the following:

A. Amortization. On or before (amortization date), all outdoor lighting shall comply with this Code.

B. New Uses or Structures, or Change of Use. Whenever there is a new use of a property (zoning or variance change) or the use on the property is changed, all outdoor lighting on the property shall be brought into compliance with this Ordinance before the new or changed use commences.

C. Additions or Alterations.

1. Major Additions. If a major addition occurs on a property, lighting for the entire property shall comply with the requirements of this Code. For purposes of this section, the following are considered to be major additions:

   a. Additions of 25 percent or more in terms of additional dwelling units, gross floor area, seating capacity, or parking spaces, either with a single addition or with cumulative additions after the effective date of this Ordinance.
   b. Single or cumulative additions, modification or replacement of 25 percent or more of installed outdoor lighting luminaires existing as of the effective date of this Ordinance.

2. Minor Modifications, Additions, or New Lighting Fixtures for Non-residential and Multiple Dwellings. For non-residential and multiple dwellings, all additions, modifications, or replacement of more than 25 percent of outdoor lighting fixtures existing as of the effective date of this Ordinance shall require the submission of a complete inventory and site plan detailing all existing and any proposed new outdoor lighting. Any new lighting shall meet the requirements of this Ordinance.

3. Resumption of Use after Abandonment. If a property with non-conforming lighting is abandoned for a period of six months or more, then all outdoor lighting shall be brought into compliance with this Ordinance before any further use of the property occurs.

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21.17.080 Lighting Zones

A. The Lighting Zone shall determine the limitations for lighting as specified in this Ordinance. The Lighting Zones shall be as follows:

Table 21.17.01

LIGHTING ZONE	Recommended Uses or Areas	Zoning Considerations
LZ-1	Lighting Zone 1 pertains to areas that desire low ambient lighting levels. These typically include single and two-family residential communities, rural town centers, business parks, and other commercial or industrial/storage areas typically with limited nighttime activity. May also include the developed areas in parks and other natural settings.	**Recommended default zone for low density residential areas.** Includes residential single or two family; business parks; open space including preserves in developed areas.
LZ-2	Lighting Zone 2 pertains to areas with moderate ambient lighting levels. These typically include multifamily residential uses, institutional residential uses, schools, churches, hospitals, hotels/motels, commercial and/or business areas with evening activities embedded in predominately residential areas, neighborhood serving recreational and playing fields and/or mixed use development with a predominance of residential uses. Can be used to accommodate a district of outdoor sales or industry in an area otherwise zoned LZ-1.	Recommended default zone for light commercial business districts and high density or mixed use residential districts. Includes neighborhood business districts, churches, schools and neighborhood recreation facilities, and light industrial zoning with modest nighttime uses or lighting requirements.
LZ-3	Lighting Zone 3 pertains to areas with moderately high lighting levels. These typically include commercial corridors, high intensity suburban commercial areas, town centers, mixed use areas, industrial uses and shipping and rails yards with high night time activity, high use recreational and playing fields, regional shopping malls, car dealerships, gas stations, and other nighttime active exterior retail areas.	Recommended default zone large cities' business district. Includes business zone districts; commercial mixed use; and heavy industrial and/or manufacturing zone districts.
LZ-4	Lighting zone 4 pertains to areas of very high ambient lighting levels. LZ-4 should only be used for special cases and is not appropriate for most cities. LZ-4 may be used for extremely unusual installations such as high density entertainment districts, and heavy industrial uses.	Not a default zone. Includes high intensity business or industrial zone districts.

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B. Lighting Zones Defined

1. LZ-1: Low ambient lighting: ~~Areas where the natural environment will be seriously and adversely affected by lighting. Impacts include disturbing the biological cycles of flora and fauna and/or detracting from human enjoyment and appreciation of the natural environment. Human activity is subordinate in importance to nature. The vision of human residents and users is adapted to the darkness, and they expect to see little or no lighting. When not needed, lighting should be extinguished.~~ Areas where lighting might adversely affect flora and fauna or disturb the character of the area. The vision of human residents and users is adapted to low light levels. Lighting may be used for safety and convenience but it is not necessarily uniform or continuous. After curfew, most lighting should be extinguished or reduced as activity levels decline.

2. LZ-2: Moderate ambient lighting: Areas of human activity where the vision of human residents and users is adapted to moderate light levels. Lighting may typically be used for safety and convenience but it is not necessarily uniform or continuous. After curfew, lighting may be extinguished or reduced as activity levels decline.

3. LZ-3: Moderately high ambient lighting: Areas of human activity where the vision of human residents and users is adapted to moderately high light levels. Lighting is generally desired for safety, security and/or convenience and it is often uniform and/or continuous. After curfew, lighting may be extinguished or reduced in most areas as activity levels decline.

4. LZ-4: High ambient lighting: Areas of human activity where the vision of human residents and users is adapted to high light levels. Lighting is generally considered necessary for safety, security and/or convenience and it is mostly uniform and/or continuous. After curfew, lighting may be extinguished or reduced in some areas as activity levels decline.

C. The following chart determines which Lighting zone generally applies to each zoning district on the Official Zoning Map. However, specific uses shall supersede the zoning district when determining which lighting zone should be applied.

Table 21.17.02

LIGHTING ZONE	ZONING DISTRICT	USES
LZ-1	RS-8, RS-7, RS-4, RML, RMM, P1	Single-family, low/medium density multi-family, mobile home parks, city low-use neighborhood parks
LZ-2	RMH, MHP, B1, B2, B3, P1	High-density multi-family, mobile home parks, neighborhood-oriented business, churches, schools, larger city parks
LZ-3	CG, PRC, PCD, CC-C, CC-W, CC-N, MU, CDM, HMU, BTP, LI, P1, ACC	High-intensity commercial areas along arterials, Alderwood Mall, Transition Area, EDCC, Meadowdale Playfields, medium-intensity light industrial
LZ-4	CG, LI	Car dealerships, high-intensity light industrial areas

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21.17.090 Non-Residential Lighting

A. Prescriptive Method. An outdoor lighting installation complies with this section if it meets the requirements of subsections 1 and 2 below:

1. Total Site Lumen Limit. The total installed initial luminaire lumens of all outdoor lighting shall not exceed the total site lumen limit. The total site lumen limit shall be determined using either the Parking Space Method (Table 21.17.03) or the Hardscape Area Method (Table 21.17.04). Only one method shall be used per permit application, and for site with existing lighting, existing lighting shall be included in the calculation of total installed lumens.

2. Limits to Off Site Impacts. All luminaires shall be rate and installed according to Tables 21.17.05-.07

3. Light Shielding for Parking Lot Illumination. All parking lot lighting shall have no light emitted above 90 degrees.

    a. Exception. Ornamental parking lighting shall be permitted by special permit only, and shall meet the requirements of Table 21.17.05 for Backlight, Table 21.17.06 for Uplight, and Table 21.17.07 for Glare, without the need for external field-added modifications.

B. Performance Method.

1. Total Site Lumen Limit. The total installed initial luminaire lumens of all lighting systems on the site shall not exceed the allowed total initial site lumens. The allowed total initial site lumens shall be determined using Tables 21.17.08 and 21.17.09. For sites with existing lighting, existing lighting shall be included in the calculation of total installed lumens.

    The total installed initial luminaire lumens of all is calculated as the sum of the initial luminaire lumens for all luminaires.

2. Limits to Off Site Impacts. All luminaires shall be rated and installed using either Option A or Option B. Only one option may be used per permit application.

    Option A: All luminaires shall be rated and installed according to Tables 21.07.05-.07.
    Option B: The entire outdoor lighting design shall be analyzed using industry standard lighting software including inter-reflections in the following manner:

    a. Input data shall describe the lighting system including luminaire locations, mounting heights, aiming directions, and employing photometric data tested in accordance with IES guidelines. Buildings or other physical objects on the site within three object heights of the property line must be included in the calculations.

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b. Analysis shall utilize an enclosure comprised of calculation planes with zero reflectance values around the perimeter of the site. The top of the enclosure shall be no less than 33 feet above the tallest luminaire. Calculations shall include total lumens upon the inside surfaces of the box top and vertical sides and maximum vertical illuminance (footcandles and/or lux) on the sides of the enclosure.

c. The design complies if:

i. The total lumens on the inside surfaces of the virtual enclosure are less than 15% of the total site lumen limit; and

ii. The maximum vertical illuminance on any vertical surface is less than the allowed maximum illuminance per Table 21.07.10.

21.17.100 Lighting By Special Permit Only

A. High Intensity and Special Purpose Lighting. The following lighting systems are prohibited from being installed or used except by special use permit:

1. Temporary lighting in which any single luminaire exceeds 20,000 initial luminaire lumens or the total lighting load exceeds 160,000 lumens.
2. Areal lasers.
3. Seachlights (unless permitted by LMC 21.16.310.H).
4. Other very intense lighting defined as having a light source exceeding 200,000 initial luminaire lumens or an intensity in any direction of more than 2,000,000 candelas.

B. Upon special permit issued by the City, lighting not complying with the technical requirements of this ordinance but consistent with its intent may be installed for complex sites or uses or special uses including, but not limited to, the following applications:

1. Sports facilities, including but not limited to unconditioned sports facilities (fields, stadiums, courts, etc.)
2. Construction lighting.
3. Lighting for industrial sites having special requirements, such as petrochemical manufacturing or storage, shipping piers, etc.
4. Parking structures.
5. Urban parks.
6. Ornamental and architectural lighting of bridges, public monuments, statuary and public buildings.
7. Correctional facilities.

To obtain such a permit, applicants shall demonstrate that the proposed lighting installation:

a. Has sustained every reasonable effort to mitigate the effects of light on the environment and surrounding properties, supported by a signed statement describing the mitigation measures. Such statement shall be accompanied by the calculations required for the Performance Method.

b. Employs lighting controls to reduce lighting at a Project Specific Curfew ("Curfew") time to be established in the Permit.

c. Complies with the Performance Method after Curfew.

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The City shall review each such application. A permit may be granted if, upon review, the City believes that the proposed lighting will not create unwarranted glare, sky glow, or light trespass.

21.17.110 Tables

Table 21.17.03 – Allowed Total Initial Luminaire Lumens per Site for Non-residential Outdoor Lighting, Per Parking Space Method
May only be applied to properties up to 10 parking spaces (including handicapped accessible spaces)

Table 21.17.03

LZ-1	LZ-2	LZ-3	LZ-4
490 lms/space	**630 lms/space**	**840 lms/space**	**1,050 lms/space**

Table 21.17.04 – Allowed Total Initial Lumens per Site for Non-residential Outdoor Lighting, Hardscape Area Method
May be used for any project. When lighting intersections of site drives and public streets or road, a total of 600 square feet for each intersection may be added to the actual site hardscape area to provide for intersection lighting.

LZ-1	LZ-2	LZ-3	LZ-4
Base Allowance			
1.25 lumens per SF of hardscape	2.5 lumens per SF of hardscape	5.0 lumens per SF of hardscape	7.5 lumens per SF of hardscape

Lumen Allowances in Addition to Base Allowance	**LZ-1**	**LZ-2**	**LZ-3**	**LZ-4**
Additional allowances for sales and service facilities. No more than two additional allowances per site. Use it or Lose It.				
Outdoor Sales Lots. This allowance is lumens per square foot of uncovered sales lots used exclusively for the display of vehicles or other merchandise for sale, and may not include driveways, parking or other nonsales areas. To use this allowance, luminaires must be within 2 mounting heights of sales lot area.	4 lumens per square foot	8 lumens per square foot	16 lumens per square foot	16 lumens per square foot
Outdoor Sales Frontage. This allowance is for lineal feet of sales frontage immediately adjacent to the principal viewing locations(s) and unobstructed for its viewing length. A corner sales lot may include two adjacent sides provided that a different principal viewing location exists for each side. In order to use this allowance, luminaires must be located between	0	1,000 per LF	1,500 per LF	2,000 per LF

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the principal viewing location and the frontage outdoor sales area.				
Drive Up Windows. In order to use this allowance, luminaires must be within 20 feet horizontal distance of the center of the window.	2,000 lumens per drive-up window	4,000 lumens per drive-up window	8,000 lumens per drive-up window	8,000 lumens per drive-up window
Vehicle Service Station. This allowance is lumens per installed fuel pump.	4,000 lumens per pump (based on 5 fc horiz)	8,000 lumens per pump (based on 10 fc horiz)	16,000 lumens per pump (based on 20 fc horiz)	24,000 lumens per pump (based on 20 fc horiz)

Table 21.17.05 – Maximum Allowable Backlight, Uplight and Glare (BUG) Ratings
May be used for any project. A luminaire may be used if it is rated for the lighting zone of the site or lower in number for all ratings B, U and G. Luminaires equipped with adjustable mounting devices permitting alteration of luminaire aiming in the field shall not be permitted.

	LZ-1	**LZ-2**	**LZ-3**	**LZ-4**
Allowed Backlight Rating*				
Greater than 2 mounting heights from property line	B3	B4	B5	B5
1 to less than 2 mounting heights from property line and ideally oriented**	B2	B3	B4	B4
0.5 to 1 mounting heights from property line and ideally oriented**	B1	B2	B3	B3
Less than 0.5 mounting height to property line and property oriented**	B0	B0	B1	B2

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* For property lines that abut public walkways, bikeways, bikeways, plazas, and parking lots, the property line may be considered to be 5 feet beyond the actual property line for purposes of determining compliance with this section. For property lines that abut public roadways and public transit corridors, the property line may be considered to be the centerline of the public roadway or public transit corridor for the purpose of determining compliance with this section. NOTE: This adjustment is relative to Table 21.17.05 and Table 21.17.07 only and shall not be used to increase the lighting area of the site.
**To be considered 'ideally oriented', the luminaire must be mounted with the backlight portion of the light output oriented perpendicular and toward the property line of concern.

Table 21.17.06 – Maximum Allowable Uplight (BUG) Ratings – Continued

	LZ-1	**LZ-2**	**LZ-3**	**LZ-4**
Allowed Uplight Rating	**U1**	**U2**	**U3**	**U4**
Allowed % light emissions	**0%**	**0%**	**0%**	**0%**

Table 21.17.07 – Maximum Allowable Glare (BUG) Ratings – Continued

	LZ-1	**LZ-2**	**LZ-3**	**LZ-4**
Allowed Glare Rating	**G1**	**G2**	**G3**	**G4**
Any luminaire not ideally oriented*** with 1 to less than 2 mounting heights to any property line of concern	**G0**	**G1**	**G1**	**G2**
Any luminaire not ideally oriented*** with 0.5 to 1 mounting heights to any property line of concern	**G0**	**G0**	**G1**	**G1**
Any luminaire not ideally oriented*** with less than 0.5 mounting heights to any property line of concern	**G0**	**G0**	**G0**	**G1**

*** Any luminaire that cannot be mounted with its backlight perpendicular to any property line within 2X the mounting heights of the luminaire location shall meet the reduced Allowed Glare Rating in Table 21.17.07.

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Table 21.17.08 – Performance Method Additional Initial Luminaire Lumen Allowances. All of the following are "use it or lose it" allowances. All area and distance measurements in plan view unless otherwise noted.

Lighting Application	LZ-1	LZ-2	LZ-3	LZ-4
Additional Lumens Allowances for All Buildings except service stations and outdoor sales facilities. A maximum of three (3) allowances are permitted. These allowances are "use it or lose it."				
Building Entrances or Exits. This allowance is per door. In order to use this allowance, luminaires must be within 20 feet of the door.	1,000	2,000	4,000	6,000
Building Facades. This allowance is lumens per unit area of building façade that are illuminated. To use this allowance, luminaires must be aimed at the façade and capable of illuminating it without obstruction.	0	8/SF	16/SF	24/SF
Sales or Non-sales Canopies. This allowance is lumens per unit area for the total area within the drip line of the canopy. In order to qualify for this allowance, luminaires must be located under the canopy.	3/SF	6/SF	12/SF	18/SF
Guard Stations. This allowance is lumens per unit area of guardhouse plus 2000 sf per vehicle lane. In order to use this allowance, luminaires must be within 2 mounting heights of a vehicle lane or the guardhouse.	6/SF	12/SF	24/SF	36/SF
Outdoor Dining. This allowance is lumens per unit area for the total illuminated hardscape of outdoor dining. In order to use this allowance, luminaires must be within 2 mounting heights of the hardscape area of outdoor dining.	1/SF	5/SF	10/SF	15/SF

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Drive Up Windows. This allowance is lumens per window. In order to use this allowance, luminaires must be within 20 feet of the center of the window.	2,000 lumens per drive-up windows	4,000 lumens per drive-up window	8,000 lumens per drive-up window	8,000 lumens per drive-up window

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Additional Lumens Allowances for Service Stations only. Service stations may not use any other additional allowances.				
Vehicle Service Station Hardscape. This allowance is lumens per unit area for the total illuminated hardscape area less area of buildings, area under canopies, area off property, or areas obstructed by signs or structures. In order to use this allowance, luminaires must be illuminating.	4/SF	8/SF	16/SF	24/SF
Vehicle Service Station Canopies. This allowance is lumens per unit area for the total area within the drip line of the canopy. In order to use this allowance, luminaires must be located under the canopy.	8/SF	16/SF	32/SF	32/SF
Additional Lumens Allowances for Outdoor Sales facilities only. Outdoor Sales facilities may not use any other additional allowances. **NOTICE**: lighting permitted by these allowances shall employ controls extinguishing this lighting after a curfew time to be determined by the City.				
Outdoor Sales Lots. This allowance is lumens per square foot of uncovered sales lots used exclusively for the display of vehicles or other merchandise for sale, and may not include driveways, parking or other non-sales areas and shall not exceed 25% of the total hardscape area. To use this allowance, Luminaires must be within 2 mounting heights of the sales lot area.	4/SF	8/SF	12/SF	18/SF
Outdoor Sales Frontage. This allowance is for lineal feet of sales frontage immediately adjacent to the principal viewing locations(s) and unobstructed for its viewing length. A corner sales lot may include two adjacent sides provided that a different principal viewing location exists for each side. In order to use this allowance, luminaires must be located between the principal viewing location and the frontage outdoor sales area.	**0**	1,000/LF	1,500/LF	2,000/LF

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Table 21.17.09 – Maximum Vertical Illuminance at any point in the plane of the property line

LZ-1	LZ-2	LZ-3	LZ-4
0.1 FC or 1.0 LUX	0.3 FC or 3.0 LUX	0.8 FC or 8.0 LUX	1.5 FC or 15.0 LUX

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Amendments to LMC, Chapter 21.17 – Exterior Lighting Standards (new chapter)

Excerpt – Planning Commission Meeting Minutes, March 27, 2014

Associate Planner Todd Hall gave a PowerPoint presentation regarding the proposed new exterior lighting code which included: fundamentals of lighting design, shielded versus unshielded lights, the harmful effects of poor or too much night lighting, highlights of the proposed code amendments.

Commissioner Larsen joined the meeting at 7:45 p.m.

Commissioner Jones thanked Associate Planner Hall for the presentation.

Commissioner Hurst suggested that they address how they want to regulate retail sales with lighting such as auto dealerships. He also recommended that they refer to the Washington State Energy Code because that contains a lot of lighting controls and regulations. Director Krauss commented that the Energy Code is adopted with the other codes so it is already a city requirement. It might be useful to reference it here, but it would not be necessary to cite it. Commissioner Hurst agreed.

Commissioner Larsen commented that the lighting information was very thorough. He referred to *General Requirements*, 5(d)(ii) which states that the City may require a computer-generated photometric grid showing footcandle readings. He asked if that is a reasonable request. Director Krauss said he was able to get these 20 years ago, and it is likely much easier now. Commissioner Hurst commented that this is a fairly typical requirement; most factories or industry representatives will do it at no charge.

Commissioner Ambalada suggested focusing on the environmental aspect of this like being able to see the stars at night.

Commissioner Wojack asked for clarification about the maximum permissible mounting height of open air parking lot lighting fixtures because he thought they had referenced a different number than listed here for Costco. Associate Planner Hall said he would confirm that. Commissioner Wojack asked if the city's nit meter would be used for the code enforcement for electronic signage. Director Krauss commented that the electronic signage code never progressed, and the City didn't end up getting a nit meter. He thinks that code amendment will start to move again soon.

Commissioner Hurst pointed out the need to address LED lighting, and specifically including BUG (Backlight, Uplight, and Glare) ratings as this is becoming the way to define fixtures. He asked if city streetlight standards would be addressed through the Comprehensive Plan too. Director Krauss noted that they are technically the PUD's streetlights.

Chair Wright spoke in support of new LED streetlights like the one that was just installed in front of his house.

Commissioner Ambalada suggested getting a lighting expert to help with the code.

Commissioner Wojack asked how the manufacturing ratings of lighting fixtures compare to International Dark Skies standards. Commissioner Hurst replied that it has become complicated with LEDs. The IES (Illuminating Engineers Society) created four different categories of lighting zones within cities with recommendations for each zone.

Commissioner Braithwaite thanked staff for putting together the presentation and bringing this issue forward. He commented on regulations in Arizona and California and noted that he didn't think the City needed to go that far. Director Krauss discussed the origins of these regulations. Commissioner Braithwaite recommended focusing on the streetlights. He also wondered what kind of fixtures were approved at the new Lynnwood Crossroads development.

Commissioner Braithwaite asked how these regulations would apply to areas that have design standards like the City Center. Director Krauss said there were standards in the City Center with respect to the poles and fixtures, but not with the light source. Commissioner Braithwaite asked if these regulations would apply to the mall. Director Krauss said they would not unless there was substantial redevelopment of a portion of the property.

Director Krauss commented that staff would refine the code further and bring it back for another work session.