Webb, Taylor K.

From: Kershner, Lindsay M.
Sent: Wednesday, September 6, 2023 8:43 AM
To: Webb, Taylor K.
Subject: FW: Re new house build @ 830 Briar Rd now early planning stages

From: Kershner, Lindsay M.
Sent: Wednesday, July 12, 2023 8:42 AM
To: Jonathan Franklin <drjtfranklin@hotmail.com>
Cc: Cynthia Franklin <cwfranklin13@gmail.com>
Subject: RE: Re new house build @ 830 Briar Rd now early planning stages

Thank you for your comments on the potential conditional use permit application at 830 Briar Rd. It will be included in the record when an application is accepted by the city.
Also, please note that when the application is deemed complete by the city, you will receive a notice of the application.

Let me know if you have any questions, best,

Lindsay Kershner *(she/her/hers)*
Planner II
City of Bellingham
Planning and Community Development
210 Lottie Street, Bellingham, WA 98225
Phone: 360-778-8369
Email: lkershner@cob.org

Please utilize the Permit Center's online resources here: https://www.cob.org/services/permits

The Permit Center is open for in-person services during the following hours:
Mon, Tues, Thurs 8:30am – 3:30pm/Wed: 9:30am – 3:30pm/Fri: Closed to in-person services

We are available by phone 360.778.8300 and email permits@cob.org Mon-Fri 8am-5pm and eTRAKiT portal https://permits.cob.org/etrakit 24/7.

Please note: My incoming and outgoing email messages are subject to public disclosure requirements per RCW 42.56

From: Jonathan Franklin <drjtfranklin@hotmail.com>
Sent: Thursday, July 6, 2023 2:58 PM
To: Kershner, Lindsay M. <lkershner@cob.org>
Cc: Cynthia Franklin <cwfranklin13@gmail.com>
Subject: Re new house build @ 830 Briar Rd now early planning stages

You don't often get email from drjtfranklin@hotmail.com. Learn why this is important

Hello Ms Kershner:
My wife and I live at 829 Briar Rd and our new neighbors(The Peck's) have notified us as to the tentative design for a new home at the 830 Briar Rd. site across the street. They sent following statement and rendering to me:

"Our architects are gearing up for the conditional use permitting process (since we went over the 5500sf threshold by 563 sf.) and here is a rendering of the house"
https://www.instagram.com/p/Cn5ltxNpGt0/?utm_source=ig_web_copy_link&igshid=MzRlODBiNWFlZA==

My wife, Cindy, and I have **NO objection** to the 563 sf overbuild if it complies with the city regulations... and assuming the build does not extend into our guaranteed view corridor by the property site CC & R's.

Both my wife and I are most willing to chat with you about this exciting new project.

Respectfully,
Jonathan

Jonathan Franklin MD.

Webb, Taylor K.

From: DCLongwell <DCLongwell@comcast.net>
Sent: Monday, November 20, 2023 8:35 AM
To: Webb, Taylor K.
Subject: USE2023-0017 Re: Hearing with the Bellingham Hearing Examiner

To:
Taylor Webb,
Planner II
Planning & Community Development Department

I would like to attend & testify in person at the public hearing concerning the proposed development at 830 Briar Road.
I also want to submit some documentation in person at the public hearing for the consideration of the applicant and the Hearing Examiner.

I also want to know whether the Hearing Examiner well be attending this hearing in person or will be conducting this meeting via Zoom.

Please email me a PDF copy of the following prior to the Meeting with the Hearing Examiner.
The applicant's:

1. Permit application.
2. Submitted site plan
3. Title report
4. Copies of any agreements with any adjoining neighbors if the proposed development violates a deed restriction that benefits a neighbor or the immediate neighborhood.

My email address is:
DCLONGWELL@COMCAST.NET

FYI:
This area of Edgemoor is covered by deeded restrictive covenant requirements where the City has no jurisdictional authority to interpret the restrictions or issue a building permit that violates a deeded restriction without the written authorization of the adjoining homeowners and neighbors that benefit from the restrictions. To clarify; if the applicant proposes a development the violates a deed restriction; the applicant is required to enter into an agreement with the adjoining neighbors that benefit from the restrictions prior to commencing construction. To meet the RCW requirements for having a complete and valid building permit application the agreements need to be recorded within the Whatcom County's Auditor's Office as part of the public record before the City is allowed to issue a building permit..

Re: Providing in person testimony:
Please let me know if I have to register directly with the Hearing Examiner Office to testify in person at this public hearing.

Thank you

Dean Longwell
Architect (retired)
621 Linden Road

Date: November 23, 2023

To: Hearing Examiner's Office
City of Bellingham, WA.

Re: Public Hearing on November 29, 2023 at 6:00 PM at Bellingham City Hall.

Subject: Case # HE-23-PL-014
Applicants: Steve and Heather Peck
USE2023-0017
Conditional Use Permit (CUP)
Single-Family House
830 Briar Road, Bellingham WA.

I will be at the public hearing at City Hall to provide testimony pertaining to the short comings within the Peck permit submittal. The attachments to this cover letter contain my written testimony and submittals of fact supporting my claims.

At the moment the permit submittal is missing some key elements where I and the public can not confirm whether the permit application complies with RCW 19.27.095. RCW 19.27.095 states permit applications must be complete and valid.

In addition the attachments challenge a practice by the City of Bellingham of knowingly issuing building permits where a material fact of a restrictive covenant or deed restriction would prohibit construction.

Yours truly

Dean Longwell - Architect (Retired)
621 Linden Road
Bellingham, WA

Attachments:
Exhibits A, B, C, D, E, F, G, H
Copy of Legislative House Bill HB 1110 (Full Text)

Exhibit "A"

Legal Lot Determination Requirements

The attached City of "Bellingham Legal Determination Requirements" requires a copy of any binding covenant that binds a permit applicant's property to an adjoining lot. When a developer creates a community covenant or deed restriction it is settle law that this action is meant as a binding benefit for future homeowners and their neighbors.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE ATTACHED IS TRUE AND CORRECT.

DATED this 23 day of November, 2023 Bellingham, Washington

Dean C. Longwell

Testimony and attachment:

- **The permit application failed to provide a site survey prepared with the benefit of a title report.**
- **This failure makes it impossible to determine whether the applicant's permit application is valid per RCW 19.27.095 requirements. See Exhibits "B" & "C"**

Separate binding covenant requirements can be established by previous property owners at any time without establishing a Homeowner's Association (HOA). A deeded covenant requirement remains active until it is rescinded by the beneficiaries of the requirement. The HOA Agreement supplied by the applicant as proof of lack of binding covenant requirements does not meet the standards of a "Title Report" for full disclosure of deed restrictions. Complete records are contained within Whatcom County's Auditor's Office.

A site plan prepared with the benefit of a title report requires a licensed land surveyor to FULLY INTERPRET DEED RESTRICTIONS as shown in a title report followed by graphically representing them in a site plan that includes his/hers professional licensure stamp and signature indicating all information provided is true and correct. A partial list of information to be provided is as follows:

1. All deed restrictions and/or restrictive covenant requirements that run with the land including setbacks and buffer requirements that may benefit adjoining property owners.
2. Any recorded encumbrances, easements, servitudes and restrictive covenant requirements burdening a property.

For an example of a site plan prepared with the benefit of a title report is provided in Exhibit "C"

Please note; Blake Lyon, Director of the Planning and Community Development Department for the City of Bellingham has stated the City does not have the jurisdictional authority to interpret a covenant or deed restriction. See Exhibit "D".

Permit Center
210 Lottie Street, Bellingham, WA 98225
Phone: (360) 778-8300 Fax: (360) 778-8301 TTY: 711 (WA Relay)
Email: permits@cob.org Web: www.cob.org/permits

LEGAL LOT DETERMINATION SUBMITTAL REQUIREMENTS

(PLEASE PRINT CLEARLY OR TYPE IN BLUE OR BLACK INK)

Application Requirements:

- ☐ A completed Land Use Application form
- ☐ All of the materials and information required by this form
- ☐ Application fee payment

Project Data:

1. Street address of Subject Property: _____
2. Size of Parcel (square feet): _____
3. Have you ever submitted a building permit application or other land use application for this property? _____ If so, please provide the application number: _____
4. Have any covenants been recorded to bind this lot to an adjoining lot? _____ If so, please attach a copy. (This information can be obtained at a title company).
5. Are there any structures located on the property or encroaching onto the property? _____ If so, provide a scaled site plan showing property lines, location, and use of structures.

Submittal Requirements:

Please attach the following information, which may be obtained through a title company.

1. If the parcel is not a whole lot in an approved subdivision, provide a deed or sale contract dated prior to September 10, 1964 containing the same division of land as the subject property (the same legal description). If the land division was created after this date, provide a copy of the first deed that contains the current land description.
2. If the lot size is substandard, provide copies of deeds or sales contracts showing the ownership of the subject parcel and all abutting parcels on April 27, 1982. Provide a chain of deed or sale on contract showing the last transfer of ownership prior to April 27, 1982 and the first transfer after that date for the subject property and all abutting parcels.
3. The Planning and Community Development Department may request a survey to determine the location of structures.

Exhibit "B"

The attached **Lauer v. Pierce County, 173 Wn.2d 242 (2011), Washington State Supreme Court Decision** clarifies legislative intent as it relates to permit submittal requirements and the restrictions on Cities and Counties to issue land use and building permits.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE ATTACHED IS TRUE AND CORRECT.

DATED this 23 day of November 2023 Bellingham Washington

Dean C. Longwell

Testimony and case law attachment:

This cover page contains a partial summary of Court justification for termination of a building permit issued by Pierce County.

The full text of Lauer v. Pierce County, 173 Wn. 2nd 242 (2011) is attached

1. Common law requires only that an application be "sufficiently complete," while the legislature decided that the application must be "fully complete." To clarify the legislature has abrogated the common law rule when it substituted "fully" for "sufficiently," "taking a "zero tolerance approach to completeness."
2. Pierce County requires submission of a building permit application that includes a site plan that in turn includes "all required set backs for buildings." Incomplete applications shall not be accepted."
    a. Looking just to the definition of "a fully completed application" in Pierce County law, the Garrisons' application was not fully completed. The site plan in their building permit application omitted required elements and falsely represented the site where they proposed to build the new house.
3. A permit application must also be valid. "Valid" is not defined by statute or in case law. Forcing this question of "completeness," however, ignores that under RCW 19.27.095, vesting requires more than full completeness. RCW 19.27.095(1) also requires that a building permit application be "valid" and "permitted under the zoning or other land use control ordinances in effect on the date of the application" in order to vest under the law at the date of the application.
4. A permit application that is not allowed under the regulations in place at the time it is submitted and is issued under a knowing misrepresentation or omission of material fact confers no rights upon the applicant.

Supreme Court of Washington, En Banc.

Louise LAUER and Darrell de Tienne, Petitioners, v. PIERCE COUNTY; Mike and Shima Garrison and Betty Garrison, Respondents.

No. 85177–8.

Decided: December 15, 2011

Margaret Yvonne Archer, Attorney at Law, Tacoma, WA, for Petitioners. Gregory Austin Jacoby, Jennifer Anne Irvine Forbes, McGavick Graves PS, Jill Guernsey, Pierce County Prosecutor's Office, Tacoma, WA, for Respondents.

1. Louise Lauer and Darrell de Tienne separately own properties that neighbor a lot owned by Mike and Shima Garrison. Through a Land Use Petition Act (LUPA) petition, chapter 36.70C RCW, Lauer and de Tienne challenge a fish and wildlife variance granted to the Garrisons by Pierce County (the County) to build a single family residence within the protective buffer zone of a stream that runs across the Garrisons' property. The central issue before us is whether the Garrisons' rights vested in 2004 when they submitted their building application. The Garrisons also raise questions about the standing and timeliness of Lauer and de Tienne's claim, as well as whether the relevant critical area regulation even applies to the Garrisons' shoreline property. We hold that Lauer and de Tienne properly petitioned the superior court for review and that, because the Garrisons' building permit application contained misrepresentations of material fact, the Garrisons' rights did not vest in 2004.

FACTS

2. In December 2002, the Garrisons purchased a waterfront parcel of property on Henderson Bay in Gig Harbor, Washington. The property included an existing single-family residence. A Department of Natural Resources (DNR) Type 4 or Type 5 watercourse—specifically, a nonfish-bearing stream—runs southward across the southwest portion of the Garrisons' property. Petitioners Lauer and de Tienne are the Garrisons' neighbors to the east and west, respectively.

3. A few months after purchasing their property, the Garrisons illegally cleared vegetation from within the property's watercourse and its buffer. Former Pierce County Code (PCC) 18E.60.050(C), (D) (1997) required a 35–foot–wide buffer on both sides of "DNR Water Type 1 through 5" rivers and streams and an 8–foot–wide setback from the buffer for any construction over a certain size. See also Pierce County Ordinance 97–84, § 8 (Dec. 30, 1997). Current regulations require that the buffer be at least 65 feet wide. PCC 18E.40.060(B)(3).[1] Upon receiving a complaint about the clearing, the County investigated and issued a stop work order on March 7, 2003, instructing the Garrisons to stop clearing and requiring that they revegetate the area.

As part of that process, the Garrisons submitted a planting plan to the County, including a diagram of their property, which depicted the "existing drainage" and, north of that, an "existing trail." Clerk's Papers at 96–98.

4. In March 2004, the Garrisons filed a building permit application for a single-family residential dwelling between their existing home and the shoreline. The site plan diagram submitted with the application did not label the watercourse or its buffer and mislabeled the trail as an "existing drive."[2] Administrative R. (AR) at 263. The proposed residence was squarely within the 35–foot buffer of the watercourse. The County approved the permit, and the Garrisons began construction. In October 2004, the County conducted another site visit and issued another cease and desist order because the Garrisons were building within the drainage buffer. The building permit was suspended, and the Garrisons were directed to apply for a fish and wildlife variance within 60 days.

5. Instead, the Garrisons challenged the cease and desist order, and the County held a hearing on the matter. The Garrisons specifically claimed that a stream did not exist on their property and, alternatively, if it did, it was actually drainage that was illegally directed onto their parcel by de Tienne. A hearing examiner denied the Garrisons' claim, upholding the cease and desist order. The hearing examiner found that "[t]he drainage course [on the Garrisons' property] meets the definition of a DNR Type 4 or 5 watercourse and therefore requires a 35 foot wide, undisturbed buffer." AR at 90. The hearing examiner also found that the 2003 site plan prepared by the appellants in response to a Pierce County enforcement action regarding illegal clearing shows a "trail" alongside the drainage course in the same location as the "existing drive." Numerous exhibits and substantial testimony show that a trail and not a "drive" existed historically along the east side of the drainage course. Appellants cannot, therefore, assert that they justifiably relied upon the Pierce County inspector's approval of the footing location.

Id. at 98 (emphasis added). The Garrisons' motion for reconsideration was denied.

6. The Garrisons appealed the hearing decision to the superior court in a LUPA petition. According to the Garrisons, they voluntarily withdrew the petition based on an agreement with the County that they could "seek a variance and the County would process the variance under the regulations that were in effect in 2004." Br. of Appellants Garrison at 8–9. Neither the LUPA petition nor the supposed agreement is part of the record before us, and therefore, we do not consider them.

7. Effective on March 1, 2005, the County changed the required buffer for streams like the one on the Garrisons' property from 35 feet to 65 feet. Pierce County Ordinance 2004–56s, § 4 (Oct. 19, 2004) (codified as PCC 18E.40.060(B)(3)). Besides the buffer increase, the County's requirements for acquiring a variance also became more stringent. Compare former PCC 18E.10.070(D)(4) (1997), with PCC 18.40.060(C)(2).

8. On August 9, 2007, over two years after the buffer and variance criteria changes, the Garrisons filed for a fish and wildlife variance. Lauer and de Tienne participated in the hearing, opposing the variance. In particular, Lauer and de Tienne argued that the applicable provisions for determining whether to grant the variance were the current regulations, not those in effect when the building permit was submitted in 2004. At the hearing, the County supported the Garrisons' efforts to get a variance, agreeing that the Garrisons' rights vested in 2004.

9. Following the hearing, a county deputy hearing examiner applied the 2004 regulations, finding that the Garrisons' rights had vested in March 2004, and approved the variance in December 2007. Lauer and de Tienne filed a request of reconsideration of the variance decision, which was denied on March 4, 2008.

10. Lauer and de Tienne then filed a LUPA petition on March 27, 2008, with the Pierce County Superior Court, pursuant to chapter 36.70C RCW. In August 2008, the superior court reversed the hearing examiner's decision to grant the Garrisons' variance based on regulations in effect at the time the building permit was submitted. The superior court held that Lauer and de Tienne were not barred from bringing the suit and that the hearing examiner erroneously applied the law to the facts when he found the Garrisons' March 2004 building permit application to be complete. The Garrisons appealed. The Court of Appeals held that the building permit application was complete as a matter of law under RCW 36.70B.070(4)(a). Lauer v. Pierce County, 157 Wash.App. 693, 709, 238 P.3d 539 (2010). Lauer and de Tienne sought, and we granted, discretionary review. Lauer v. Pierce County, 171 Wash.2d 1008, 249 P.3d 182 (2011).

ANALYSIS

11. Judicial review of land use decisions is governed by LUPA. Abbey Rd. Grp., LLC v. City of Bonney Lake, 167 Wash.2d 242, 249, 218 P.3d 180 (2009). LUPA authorizes the reversal of a local land use decision if the party seeking relief carries the burden of establishing one of six statutorily enumerated standards. RCW 36.70C.130(1).

12. In this case, the following three standards are implicated:

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts.

Id. Whether a decision involves an erroneous interpretation of the law under standard (b) is a question of law that courts review de novo. Abbey Rd. Grp., 167 Wash.2d at 250, 218 P.3d 180.

The substantial evidence standard of review, under standard (c), requires the court to determine whether a fair-minded person would be persuaded by the evidence of the truth of the challenged findings. Id. Under this standard, the court "consider[s] all of the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority." Id. Finally, under standard (d), a decision is clearly erroneous if, "although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed." Phoenix Dev., Inc. v. City of Woodinville, 171 Wash.2d 820, 829, 256 P.3d 1150 (2011).

13. We now sit in the same position as the superior court and generally confine our consideration to the administrative record before the hearing examiner. HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs., 148 Wash.2d 451, 468, 61 P.3d 1141 (2003). We hold that Lauer and de Tienne have carried their burden of establishing that the land use decision to grant a variance involved an erroneous interpretation of the law, pursuant to RCW 36.70C.130(1)(b).

I. Standing

14. The Garrisons challenge whether Lauer and de Tienne have standing to file a LUPA petition and whether, once challenged in Pierce County Superior Court, Lauer and de Tienne were permitted to support their standing with facts that were not already contained in the administrative record. We affirm the superior court's finding that Lauer and de Tienne have standing.

15. Under LUPA, a person other than the owner of the property that is the subject of the land use decision has standing if that person is or would be "aggrieved or adversely affected" by the decision. RCW 36.70C.060(2). A person is "aggrieved or adversely affected" when (1) the person is prejudiced or likely to be prejudiced by the decision, (2) the local jurisdiction was required to consider that person's asserted interests in making its decision, (3) a favorable judgment would redress or substantially eliminate the prejudice, and (4) the person has exhausted her administrative remedies. Id.

16. As a preliminary matter, the Garrisons argue that the superior court erred in considering evidence of Lauer and de Tienne's standing that was not in the administrative record. This challenge is easily rejected based on the plain statutory language of LUPA. First, a LUPA petitioner must establish facts supporting standing. RCW 36.70C.070(6). This requirement plainly indicates that the legislature anticipated later consideration of facts related to judicial standing. Moreover, while judicial review of factual issues under LUPA is generally limited to the administrative record, the statute expressly provides that this limitation applies only when "the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues." RCW 36.70C.120(1). Lauer and de Tienne participated in the administrative hearing, but the Garrisons never challenged their standing before the hearing examiner.

As such, no record was developed on the question of standing; it simply was not a relevant issue at the hearing. Because there was no opportunity to make a record on

the issue, "the record for judicial review may be supplemented byevidence of material facts that were not made part of the local jurisdiction's record." RCW 36.70C.120(3).

17. The Garrisons also challenge each of the conditions necessary for standing. Lauer and de Tienne satisfy each of the conditions and therefore have standing. First, Lauer and de Tienne have established that they have been or would be prejudiced. An adjacent landowner who alleges the proposed project will injure his or her property has standing. Chelan County v. Nykreim, 146 Wash.2d 904, 934–35, 52 P.3d 1 (2002). Here, Lauer and de Tienne own properties adjacent to the Garrisons' property, and they allege that the clearing and development within the buffer zone that have already occurred and that would be permitted by the variance, have already caused specific injuries and will further injure their properties.

18. Second, Lauer and de Tienne's interests are those that the local government is required to consider. Local law provides that adjacent property owners are to be notified about an application for a variance allowing a buffer reduction and that there be a public hearing. PCC 18.80.020. This indicates that the local government is committed to considering Lauer and de Tienne's interests as neighboring property owners when considering the request for a variance. Thus, the second condition is met.

19. Third, the requested relief would eliminate or redress the prejudice asserted by Lauer and de Tienne. Consideration of the variance under the current variance standards would assure that Lauer and de Tienne's interests are more protected, again because the new standards are stricter and look to more factors. Compare former PCC 18E.10.070(D)(4) (1997), with PCC 18E.40.060(C)(2).

20. Finally, Lauer and de Tienne have exhausted their administrative remedies. The Garrisons specifically argue that Lauer and de Tienne failed to exhaust administrative remedies when they did not challenge the "final determination" that the building permit application was complete, which the Garrisons allege happened in 2004. See RCW 36.70C.020(2) (" 'Land use decision' means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals."). However, Lauer and de Tienne only had to exhaust the administrative remedies that were available to them. See Citizens for Mount Vernon v. City of Mount Vernon, 133 Wash.2d 861, 868–71, 947 P.2d 1208 (1997) (holding that where the only administrative remedy available was participation in a public hearing, and where the petitioners participated, they satisfied the exhaustion requirement). "The [LUPA] statute states nothing of the degree of participation or the specificity with which issues must be raised to seek judicial review." Id. at 868, 947 P.2d 1208. There is no indication that Lauer and de Tienne were given notice of the building permit application or its approval. They did, however, participate in the hearing where the Garrisons appealed the cease and desist order. At that point, the determination of whether the application was complete was not a relevant issue. Lauer and de Tienne participated at the administrative level regarding the relevant issues.

21. The administrative process affirmed the cease and desist order, which prevented the Garrisons from building within the buffer zone without a variance. Ultimately, there was no further administrative action for Lauer and de Tienne to take; their position prevailed. The Garrisons suggest that Lauer and de Tienne were required to intervene in the Garrisons' LUPA petition, but this is not an administrative remedy. "The rationale for the exhaustion requirement is that the administrative officer or agency may possess special expertise necessary to decide the issue, and that an administrative remedy may obviate the need for judicial review." Valley View Indus. Park v. City of Redmond, 107 Wash.2d 621, 633, 733 P.2d 182 (1987). This does not require parties to participate in litigation. Once they learned of the Garrisons' construction plan, Lauer and de Tienne fully participated in every step of administrative review related to this case, exhausting all remedies.

II. Timeliness

22. The LUPA petition was timely filed. To be timely, a petition must be filed within 21 days of the relevant land use decision, including a ruling on a motion for reconsideration. RCW 36.70C.040(3); Mellish v. Frog Mountain Pet Care, 172 Wash.2d 208, 257 P.3d 641 (2011). This petition was filed 20 days after the motion for reconsideration was denied. Therefore, the petition was timely.

III. Equitable Estoppel

23. The Garrisons assert that Lauer and de Tienne are equitably estopped from raising the claims asserted in their LUPA petition because they did not intervene in the Garrisons' LUPA petition, appealing the cease and desist order. This is another claim related to the failure of Lauer and de Tienne to take further action prior to the variance hearing. The Garrisons misunderstand the doctrine of equitable estoppel, and we hold that Lauer and de Tienne are not equitably estopped from arguing the claims in their LUPA petition.

To establish equitable estoppel requires proof of (1) an admission, statement or act inconsistent with a claim later asserted; (2) reasonable reliance on that admission, statement, or act by the other party; and (3) injury to the relying party if the court permits the first party to contradict or repudiate the admission, statement or act.

Dep't of Ecology v. Theodoratus, 135 Wash.2d 582, 599, 957 P.2d 1241 (1998). It is not clear what statement that Lauer and de Tienne allegedly made that the Garrisons relied on. Rather, the Garrisons seek to bind Lauer and de Tienne to the County's statement, though not in the record, that the variance request would be considered under 2004 law

24. Lauer and de Tienne are not equitably estopped from making their claims herein because they made no statement that the Garrisons could have relied on. The alleged statement made by the County is not even included in the record. Moreover, "where the representations allegedly relied upon are matters of law, rather than fact, equitable estoppel will not be applied." Id. Whether rights pursuant to a land use application vest is a question of law as raised in this case. No major factual disputes

exist—only questions of statutory interpretation. Accordingly, equitable estoppel does not apply.

IV. Futurewise

25. The Garrisons also preliminarily assert that Lauer and de Tienne's claim is moot as a result of this court's decision in Futurewise v. Western Washington Growth Management Hearings Board, 164 Wash.2d 242, 189 P.3d 161 (2008). In Futurewise, a plurality of this court held that critical areas within the jurisdiction of the Shoreline Management Act of 1971, chapter 90.58 RCW, are governed only by that act, not by local critical area regulations adopted pursuant to the Growth Management Act, chapter 36.70A RCW, or those still pending approval by the Department of Ecology (Department). Id. at 244–45, 189 P.3d 161. "A plurality opinion has limited precedential value and is not binding." In re Pers. Restraint of Isadore, 151 Wash.2d 294, 302, 88 P.3d 390 (2004). Thus, Futurewise was never binding.

26. Since Futurewise, the legislature amended the law, clarifying its intent that critical area regulations apply to shoreline properties pending action by the Department. Laws of 2010, ch. 107, § 1. The Garrisons allege that the regulations do not apply, absent approval by the Department, which did not occur until after the variance hearing. The legislature stated that it "intends for this act to be remedial and curative in nature, and to apply retroactively to July 27, 2003." Laws of 2010, ch. 107, § 1(4).[3] With the new legislative amendments, Futurewise does not render Lauer and de Tienne's claim moot. The County's critical area regulations applied to the Garrisons even prior to the Department's approval of the local shoreline regulations.

V. Vesting

27. Washington recognizes a "date certain" standard for vesting. Abbey Rd. Grp., 167 Wash.2d at 251, 218 P.3d 180. Developers are entitled to the benefit of "the regulations in effect at the time a complete building permit application is filed, regardless of subsequent changes in zoning or other land use regulations." Id. at 250, 218 P.3d 180. In Washington, the vesting rule originated as a common law doctrine and was later codified by the legislature. Erickson & Assocs. v. McLerran, 123 Wash.2d 864, 867–68, 872 P.2d 1090 (1994).

28. Regarding building permits, RCW 19.27.095 provides in relevant part:

(1) A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

(2) The requirements for a fully completed application shall be defined by local ordinance.

The common law required only that an application be "sufficiently complete," while the legislature decided that the application must be "fully complete." Compare id., with Valley View Indus. Park, 107 Wash.2d at 638, 733 P.2d 182. The legislature abrogated the common law rule when it substituted "fully" for "sufficiently," "taking a 'zero tolerance' approach to completeness." Friends of the Law v. King County, 123 Wash.2d 518, 524 n. 3, 869 P.2d 1056 (1994).

29. The legislature made the definition of "a fully completed application" contingent upon local law. RCW 19.27.095(2). Since at least 1999, Pierce County has defined completeness for vesting purposes related to a building permit application as follows: "Pursuant to RCW 19.27.095, a fully complete building permit application shall be any application including payment of all required fees and containing all the components that are applicable in Table 17C.10–1–H. Incomplete applications shall not be accepted." PCC 17C.10.140; see also Pierce County Ordinance 99–24s, Ex. "C" (Sept. 28, 1999) (codified as former PCC 17C.20.160 (1999)). The referenced table requires, in relevant part, that a building permit application include a site plan that in turn includes "all set backs from buildings." PCC 17C.10.140, Tbl. 17C.10–1–H; accord former PCC 17C.20.160, Tbl. 17.20–1–A–9. The same table also requires that "[a]ny land use permits required to approve the building permit application shall be applied for prior to or with the building permit application." PCC 17C.10.140, Tbl. 17C.10–1–H.

30. Looking just to the definition of "a fully completed application" in Pierce County law, the Garrisons' application was not fully completed. The site plan in their building permit application omitted required elements and falsely represented the site where they proposed to build the new house. The site plan did not include the stream running through their property, the required buffer on both sides of the stream, or the required setback from the buffer of the residence that they proposed building.[4] In fact, they proposed building a new home within the buffer zone but without indicating the protected nature of the site. The Garrisons, while they may have disputed the determination of the waterway as a protected stream, knew or should have known of the requirement for the buffer based on previous rulings by the County. The Garrisons also falsely represented in their site plan that there was an "existing drive" where in fact there was only a trail. This is significant in that the existing development regulation at the time the building permit was submitted reduced the buffer requirement starting at the point of existing development. Former PCC 18E.60.050(A)(2). Accordingly, even if the County officials who reviewed the building permit application were aware of the stream and need for a buffer, the existence of a drive would have eliminated that concern.

31. Finally, in addition to the misrepresentations in the site plan, the Garrisons did not apply for a variance "prior to or with the building permit application." PCC 17C.10.140, Tbl. 17C.10–1–H; accord former PCC 17C.20.160, Tbl. 17.20–1–A–9. Because County regulations required a 35–foot buffer from the stream and an 8–foot setback from the buffer to a building, former PCC 18E.60.050(C), (D), and because the Garrisons proposed building their house within that buffer zone, a variance was legally required in order to approve the building permit application. Accordingly, a variance application was required prior to or at the time of the building permit application for that application to be complete under local law.

32. Looking just to the plain language of RCW 19.27.095, and in turn to local law defining a complete application, the Garrisons' building permit application is not fully complete. However, the Garrisons argue that another statute, RCW 36.70B.070, controls, and that their rights vested by operation of law. Chapter 36.70B RCW was passed by the legislature in order to address the regulatory burden created by increased land use permit requirements with separate review processes, which "has significantly added to the cost and time needed to obtain local and state land use permits." RCW 36.70B.010(1), (3). This statute provides, in relevant part, that a project permit application will be deemed complete "if the local government does not provide a written determination to the applicant that the application is incomplete" within 28 days of receipt. RCW 36.70B.070(1), (4)(a). The Garrisons assert that their building application was made complete by operation of law. In other words, because the County did not inform them that their application was incomplete, it became complete, under RCW 36.70B.070(4)(a), sometime in April 2004. It is on this basis that the Court of Appeals reinstated the variance granted to the Garrisons. Lauer, 157 Wash.App. at 709, 238 P.3d 539.

33. Forcing this question of "completeness," however, ignores that under RCW 19.27.095, vesting requires more than full completeness. RCW 19.27.095(1) also requires that a building permit application be "valid" and "permitted under the zoning or other land use control ordinances in effect on the date of the application" in order to vest under the law at the date of the application. Cf. RCW 58.17.033 (vesting statute for subdivision plats, which requires only that the application be "fully completed" to vest); Friends of the Law, 123 Wash.2d at 525 n. 4, 869 P.2d 1056 (interpreting RCW 58.17.033 to not require compliance with existing zoning ordinances in order to vest).

34. The Garrisons' 2004 building permit application did not comply with then-existing ordinances because the proposed project was squarely within the required 35–foot buffer of a Type 4 or Type 5 DNR water type stream. Because the building permit submitted in 2004 did not comply with ordinances in effect at the time of the application, the Garrisons' rights did not vest. See Kelly v. Chelan County, 157 Wash.App. 417, 425, 237 P.3d 346 (2010)

35. A permit application must also be valid. "Valid" is not defined by statute or in case law. See Eastlake Cmty. Council v. Roanoke Assocs., 82 Wash.2d 475, 483, 513 P.2d 36 (1973) ("Since the permit grant itself was patently impermissible, we need not decide if the application was also defective."). The plain meaning of "valid" is "[l]egally sufficient" or "[m]eritorious." Black's Law Dictionary 1690 (9th ed.2009). It is clear that the Garrisons were in violation of an existing ordinance and that they made knowing misrepresentations in their application. See AR at 33–36, 98. It is hard to conceive of any meaning of the term "valid" that would include knowing misrepresentations. By way of comparison, this court has previously required governments to act in good faith and not subvert the legitimate efforts of a developer to vest his or her rights. See Valley

View Indus. Park, 107 Wash.2d at 638–39, 733 P.2d 182 (citing Parkridge v. City of Seattle, 89 Wash.2d 454, 465–66, 573 P.2d 359 (1978)). The requirement that a building application be "valid" assures that the good faith requirement is not only one

way. Accordingly, under RCW 19.27.095, the Garrisons' rights did not vest because their building application, which contained knowing misrepresentations of material fact, was not valid.

36. Further, the Garrisons' interpretation of RCW 36.70B.070(4)(a) would yield a troubling result: building permit applicants could misrepresent facts on their application, and the County would have the daunting task of investigating every application to determine its accuracy within a 28–day period. Failure on the part of the County to do so would cause the dishonest applicants' rights to vest. This court has held "that statutes should receive a sensible construction to effect the legislative intent and to avoid unjust consequences." State v. Vela, 100 Wash.2d 636, 641, 673 P.2d 185 (1983). Under these unique facts, where the Garrisons have submitted knowing misrepresentations of fact, we hold that the Garrisons' building permit did not vest because it was not valid and did not comply with the regulations in place at the time it was submitted. Failure by the hearing examiner to consider these factors in his determination of when the Garrisons' rights vested was an erroneous interpretation of the law.

CONCLUSION

37. We hold that Lauer and de Tienne have standing under LUPA, that they timely filed their petition, and that the issues that they raised therein have not been rendered moot by this court's holding in Futurewise. Finally, we hold that the Garrisons' rights did not vest when their building permit was filed in 2004. A permit application that is not allowed under the regulations in place at the time it is submitted and is issued under a knowing misrepresentation or omission of material fact confers no rights upon the applicant. We reverse the decision of the Court of Appeals.

OWENS, J.

WE CONCUR: BARBARA A. MADSEN, Chief Justice, CHARLES W. JOHNSON, GERRY L. ALEXANDER, TOM CHAMBERS, MARY E. FAIRHURST, JAMES M. JOHNSON, DEBRA L. STEPHENS, and CHARLES K. WIGGINS, Justices.

Exhibit "C"

Binding Covenant Disclosure Example

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE ATTACHED IS TRUE AND CORRECT.

DATED this 23 day of November, 2023 Bellingham, Washington

Dean C. Longwell

Testimony and testimonial attachment:

Bellingham's permit submittal requirement "Bellingham Legal Determination Requirements" requires a copy of any covenant that binds a permit applicant's property to an adjoining lot.

Blake Lyon, Director of the Planning and Community Development Department for the City of Bellingham has stated the City does not have the jurisdictional authority to interpret a covenant or deed restriction thus the attached drawing suggests a possible solution for this issue.

The attached site plan prepared with the benefit of a "Title Report" shows a binding covenant setback or buffer that prohibits construction near a road boundary. This covenant provides an open space or buffer benefit for an adjoining property and is not subject to interpretation by City staff.

- The setback shown in the attached site plan is a deeded requirement that runs with the land and can not be rescinded or encroached upon without the consent of the beneficiaries of the covenant.
- The setback requirement shown in the attached drawing is not noted or part of any Homeowner's Association Agreement. This issue along with other deeded restrictions is common within the City of Bellingham's Edgemoor neighborhood.

Compliance with City Council Action Item #160: See Exhibit "E".

- The setback shown provides additional fire safety defensible space between properties because a structure cannot be built within the setback without the consent of the beneficiaries of the covenant. Fire fighters and first responders will have more accessible space than code minimum when responding to a fire or during an emergency operation.
- The setback shown ensures open ground remains untouched and permeable so on-site surface water (rain & snow) can be absorbed by the ground.

This site plan is not the Peck property at 830 Briar Road and is only provided to show how a survey can be updated by a licensed land surveyor with information provided by a title report.

This drawing is also meant to show a means to resolve the City's lack of expertise and jurisdictional authority to interpret a covenant or deed restriction.

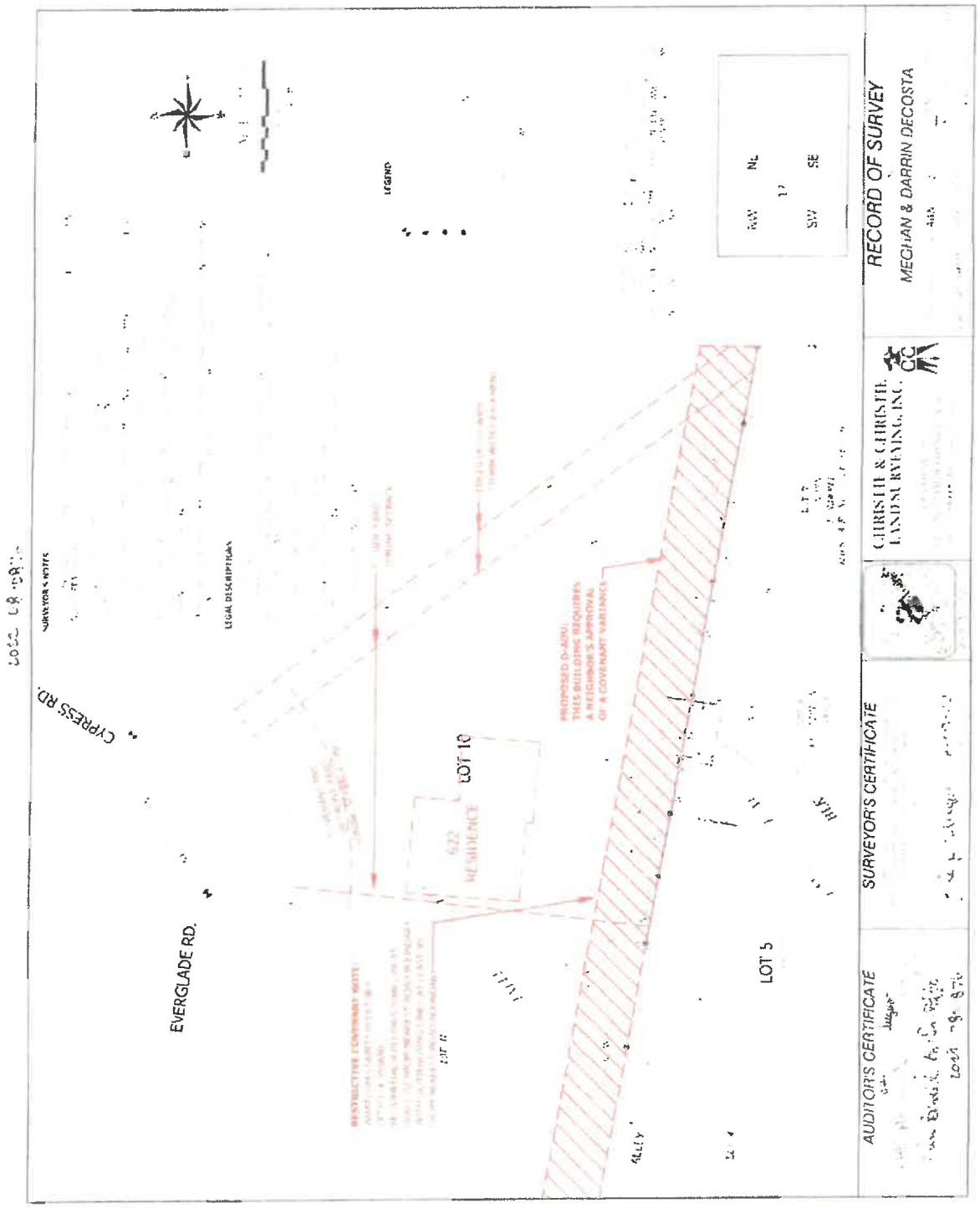


Exhibit "D"

City Emails Related to Binding Covenant Enforcement

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 23 day of November, 2023 Bellingham, Washington

Dean Longwell

Dean C. Longwell

Testimony with attachments of Blake Lyon Email + Examples of Recorded Deed Restrictions:

This page contains my understanding of my conversations with Mr. Blake Lyon, Director of Planning & Community Development Department, City of Bellingham.

The attached email on page two of this exhibit shows a "Request for Information" response regarding issuing a building permit when the City knows a permit application is not valid due to a setback requirement or a use of property restriction established by a binding covenant.

Mr. Lyon without providing any evidence of statute or case law basically stated the following: *Additional comment notes in italics have been added by Dean Longwell:*

1. With regards to covenant requirements, the City has no responsibility to force compliance with RCW 19.27.095 which requires FULLY complete and FULLY valid building permit applications.

    a. *RCW 19.27.095 a permit application must be valid. "Valid" is not defined by statute or case law however it is hard to conceive of any term of the word "valid" that includes the City knowing of a material fact that would prohibit construction and then issuing a building permit with unjust consequences. (See Exhibit "B" for Lauer v. Pierce County (2011) case law).*

2. The City intends to ignore the material facts of a recorded covenant that would prohibit or restrict construction on a permit applicant's property.

3. The City intends to issue building permits with an understanding that neighbors who benefit from a binding covenant placed on a permit applicant's property will need to file a lawsuit against the City to have the building permit revoked by court order.

    a. *It appears the City is content with knowingly transferring the responsibilities of permit applicants to provide proof they can build their land to neighbors that may not have the time, expertise and financial resources to show our court system that a developer cannot build on a public safety setback or a community buffer.*

4. The City is OK with knowingly issuing a building permit with unjust consequences.

    a. *In appears the City has no intention to comply with the norms of our court system to have government always acting in good faith.*

Blake Lyon email:

Mr. Longwell.

I am not a lawyer either and therefore rely on the City Attorney's office for their review of the circumstances, applicable laws, and case law.

I am concerned that your continued desire to meet to discuss the RCW and deed restrictive covenant will not be a productive use of our time. The City attorney's office has provided clear directions on this matter, and I have attempted to pass that on to you.

The City does not have jurisdiction to interpret or enforce privately recorded covenants. As a result, the City will not be taking any action to enforce or uphold local HOA covenants or restrictions.

If there is something else you would like to discuss, such as how to make the development regulation more objective, rather than subjective, as the state law requires, then I would be happy to meet.

Blake Lyon

Director of Planning & Community Development
City of Bellingham
210 Lottie Street
Bellingham, WA 98225
Office: 360-778-8308
Email: blyon@cob.org

Please note that email messages are subject to public disclosure requirements per RCW 42.56.

Note to Hearing Examiner:

I have asked for a copy of the statute or case law which supports Mr. Lyon's position that compels the city to issue a permit he knows a covenant prohibits construction without success.

The attached excerpts from Warranty Deed 755690 on page three (3) of this exhibit should be viewed in the context of Mr. Lyon's email and considered with the following question in mind: What statute or case law compels or allows issuance of a permit?

The attached excerpts provide an example of a binding covenant which is not noted in a Homeowner's Association Agreement. This situation is common in the City and the covenant shown is common within the Edgemoor Neighborhood.

VOL. 389 PAGE 390

755690

BEULAH JOHNSON 1983 EXEMPT REAL ESTATE EXCISE TAX TREASURER OF WHATCOM COUNTY WASHINGTON

CORRECTION WARRANTY DEED

THE GRANTOR, MARY B. LARRABEE, (sometimes designated as MARY BROWNLIE LARRABEE, a widow), individually and as Executrix of the estate of Charles F. Larrabee, deceased, of Orchard Terrace, Bellingham, Whatcom County, Washington, for and in consideration of furnishing a correction deed, conveys and warrants to CLARK A. HALLEY and LYLA B. HALLEY, his wife, of Bellingham, 2105 New Street. Washington, the following described real estate situate in the County of Whatcom, State of Washington, to-wit:

Tract E. A tract of land marked "Reserve" in the northwest corner of the Bartlett Estate Co.'s Subdivision, now a part of the consolidated City of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 6 of Plats, Page 15, in the Auditor's Office of said county and state.
ALSO, a tract of land in Section 12, Township 37 North, Range 2 East. W.M.. described as follows. to-wit:

Warranty Deed 755690 restrictive covenants require setbacks from road boundaries that are in excess of those required by the City's zoning. These open space setbacks provide additional public safety benefits for adjoining property owners and cannot be rescinded or built upon without the consent of the covenant beneficiaries.

3. Grantees for themselves, their heirs and assigns, agree that said premises are to be used only for single detached private residential purposes and that the building line shall be at least twenty (20') feet from the nearest existing road boundaries with outbuilding lines at least eighty (80') feet from the nearest existing road boundaries.

Warranty Deed 755690 restrictive covenants are permanent and run with the land.

7. All covenants on the part of the grantees herein contained shall run with the land hereby conveyed and shall bind all subsequent owners and occupants thereof in like manner as though the provisions of this instrument were recited and stipulated at length in each and every future deed or other instrument of grant or conveyance.

Exhibit "E"

City Council Requires Consideration of Covenants and Deeded Restrictions

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 23 day of November, 2023 Bellingham, Washington

Dean C. Longwell

Testimony and Exhibit "E" Attachments,

Attachment #1: Taylor Webb email exchange

Attachment #2: Whatcom Watch report re: August 7th City Council Action Taken

Attachment #3: Page 20 & 21 from Legislative House Bill HB 1110 2023-24

The City's Attorney and the Department of Planning and Community Development assert the position the "City has no responsibility to consider or enforce a Homeowner's Association Agreement (HOA), a deeded covenant or a deed restriction". This position is being applied in an overly broad manner and is at odds with the legislative intent expressed by the Bellingham City Council and the legislature.

This city position is at odds with statute and case law when the city gathers the facts and then knowingly issues a building permit where a material fact prohibits construction. Case law is clear the city is absolutely barred from issuing a building permit by statute from knowingly issuing a building permit with unjust consequences. Lauer v. Pierce County 173 Wn 2nd 242 (2011).

The city practice of gathering facts and then issuing a building permit with a stipulation that neighbors will have to file a lawsuit to have the permit revoked does not meet the legal standards of governments acting in good faith. In the absence of statute and case law there is nothing a permit applicant can do to compel any city into issuing a building permit based on a permit application that is not FULLY valid.

Exhibit "E" Attachment #1: Email exchange with Taylor Webb, Planner II, City of Bellingham

This email demonstrates city staff is not trained in real estate law or on the differences between irrelevant clauses in an overly broad HOA Agreement versus a restrictive covenant or deed restriction that prohibits construction.

Taylor Webb's comments are at odds with the Exhibit "A', "B" and the legislative intent expressed in Exhibit "E" attachments #2 and #3.

Hi Dean,

Thank you. The full staff report and supporting materials (including a site plan) will be available tomorrow. If you still have questions or concerns after reading through everything, please reach out and/or attend the hearing examiner meeting. However, Director Lyon is correct that it is not the responsibility of the City to enforce private covenants such as those set forth by neighborhood associations. I look forward to discussing more with you at the upcoming meeting.

Thank you,

Taylor

Taylor Webb, Planner II

City of Bellingham Planning and Community Development

210 Lottie Street Bellingham, WA 98225

Email: tkwebb@cob.org

Phone: (360)778-8311

My incoming and outgoing email messages are subject to public disclosure requirements per RCW 42.56

Hi Taylor,

Thanks for getting back to me so quickly.

I will not be able cite the specific deed restriction until I see a site specific title report or a site plan prepared with the benefit of a title report. The permit applicant has an obligation to provide and prove that they can developed their site as proposed thus I need to see their permit submittal information and your informational packet before I can respond to your question.

As a heads up:

I well send you an email copy of correspondence I had with Blake Lyon the Director of the City of Bellingham Planning & Development Department tomorrow in which he states the City does not have the jurisdiction authority to interpret a deeded restriction or restrictive covenant. Mr. Lyon also erred in this same correspondence by stating that the City will not be enforcing any deed restrictions with full knowledge that neighbors would then have to file a lawsuit against the City to terminate the building permit. In this scenario nobody wins; the applicants loses because the courts will invalidate the permit, the neighbors lose because they will need to spend money on attorneys, the city loses because the City attorneys spend time and tax payer money

defending a Planning Department position that is based on an invalid permit application and where the City is prohibited by statute from knowingly conferring any rights onto a permit applicant with unjust consequences.

For the applicant and City this issue is centered on permit application compliance with the RCWs that require FULLY complete and FULLY valid permit applications before the City can issue a building permit coupled with the knowledge that the City is barred by statue from knowingly conferring any rights to an applicant that misrepresents or omits a material fact that would prohibit or restrict a proposed development.

I well send you a copy of the Washington State Supreme Court case law that clarified RCWs legislative intent by stating all permit applications must be FULLY complete and FULLY valid without misrepresentation or omissions.

Please note the City's current limited permit submittal requirements, permit submittal protocols and procedures have not yet been aligned with this RCW clarification.

Regards

Dean Longwell

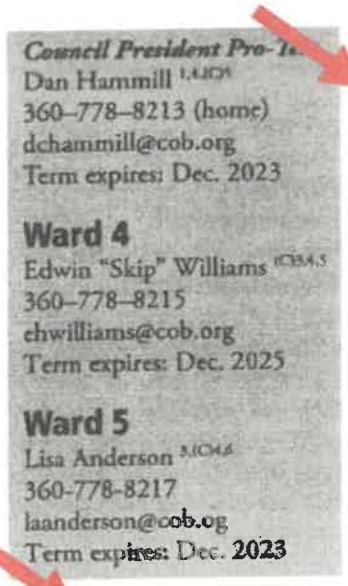
Architect (Retired)

621 Linden Road

Exhibit "E" Attachment #2 shows legislative intent of Bellingham City Council requiring city staff to consider restrictive covenants and deed restrictions.

This excerpt is from a Whatcom Watch newspaper article and shows the action taken at the Bellingham City Council on August, 7th 2023. Whatcom Watch is a community forum newspaper that provides focused coverage on government, environmental issues and media.

Action 160. States a city or county that issues a permit for construction of an ADU may not be held civilly liable on the basis that the construction would violate the restrictive covenant or deed restriction created after the effective date of the act.


Council President Pro-Te
Dan Hammill
360–778–8213 (home)
dchammill@cob.org
Term expires: Dec. 2023

Ward 4
Edwin "Skip" Williams
360–778–8215
ehwilliams@cob.org
Term expires: Dec. 2025

Ward 5
Lisa Anderson
360-778-8217
laanderson@cob.og
Term expires: Dec. 2023

mill excused.

160. **Amend the city code relating to accessory dwelling units (ADUs)?** This ordinance incorporates the city code with new state regulations on ADUs, which expands housing options by easing barriers to the construction and use of ADUs. Declarations or governing documents for condominiums, homeowners' associations, and common interest communities created after the effective date of the act may not prohibit the construction, development, or use of an ADU within an urban growth area unless such declarations or governing documents were created to protect public health and safety or to protect ground and surface waters from on-site wastewater. A city or county that issues a permit for the construction of an ADU may not be held civilly liable on the basis that the construction would violate the restrictive covenant or deed restriction created after the effective date of the act. AB23800 (Ordinance 2023-08-022) **Approved 6-0, Daniel Hammill excused.**

(Discuss

168. Au
$32,432
with the
Program
a bicycle
ware ($
would k
data.(Al

169. **Th**
Parks a
Advisor
designe
parks ar
the peo

This City Council directive is at odds with Blake Lyon's Exhibit "D" email because the Council is acknowledging the City can be held civilly liable for approving an ADU in any area where a binding covenant existed before the act was adopted by the City. Note: The state legislature adopted a new ADU act last spring and the City Council integrated that act into the City's zoning code on August 7th, 2023.

Per this directive the Planning Department is required to consider every private covenant or deed restriction that was created before August 7th, 2023.

Increasing middle housing in areas traditionally dedicated to single-family detached housing

This legislation shows the intent of the state legislature by requiring all cities and counties in the state to consider pre-existing restrictive covenant, deed restrictions and HOA agreements that may prohibit placement of construction in single-family zoned neighborhoods. If a restriction existed prior to the activation of HB 1110 then the restriction shall governed.

HB 1110 states no new restrictive covenant, deed restriction or HOA agreement that limits placement of multi-family housing may be created after HB 1110 is activated. The legislature has recognized and acknowledged it has no authority to retroactive remove pre-existing deed restrictions that would prohibit placement of multi-family housing in areas where a deed restriction prohibits the act.

This legislation requires the city to consider binding covenant, deed restrictions and HOA Agreements if they prohibit construction and if the restriction existed before the enactment of this legislation. The City of Bellingham is an old city with pre-established neighborhoods with most of them having deed restrictions put in place for the benefit of homeowners and their neighbors.

The following example is a covenant or deed restriction created in 1953 the City is required to consider.

Excerpt from recorded deed of sale for a large block of pre-platted, pre-developed land in the Edgemoor Neighborhood, Whatcom County Auditor's Office # 755690

3. Grantees for themselves, their heirs and assigns, agree that said premises are to be used only for single detached private residential purposes and that the building line shall be at least twenty (20') feet from the nearest existing road boundaries with outbuilding lines at least eighty (80') feet from the nearest existing road boundaries.

7. All covenants on the part of the grantees herein contained shall run with the land hereby conveyed and shall bind all subsequent owners and occupants thereof in like manner as though the provisions of this instrument were recited and stipulated at length in each and every future deed or other instrument of grant or conveyance.

Excerpt from Legislative House Bill HB 1110 2023-24 Effective Date: 7/23/2023
Theses sections clarify legislative intent in a reverse sort of way they dictate a requirement for cities to consider pre-existing deed restrictions that may restrict new construction:

associated with the proposed regulation were specifically addressed in the prior environmental review;

(2) Amendments to development regulations that are required to ensure consistency with a shoreline master program approved pursuant to RCW 90.58.090, where the shoreline master program was previously subjected to environmental review pursuant to this chapter and the impacts associated with the proposed regulation were specifically addressed in the prior environmental review;

(3) Amendments to development regulations that, upon implementation of a project action, will provide increased environmental protection, limited to the following:

(a) Increased protections for critical areas, such as enhanced buffers or setbacks;

(b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdiction; and

(c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with minimum standards contained in state law, including the following:

(a) Building codes required by chapter 19.27 RCW;

(b) Energy codes required by chapter 19.27A RCW; and

(c) Electrical codes required by chapter 19.28 RCW.

(5) Amendments to development regulations to remove requirements for parking from development proposed to fill in an urban growth area designated according to RCW 36.70A.110.

NEW SECTION. **Sec. 10.** A new section is added to chapter 64.34 RCW to read as follows:

A declaration created after the effective date of this section and applicable to an area within a city subject to the middle housing requirements in section 3 of this act may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. **Sec. 11.** A new section is added to chapter 64.32 RCW to read as follows:

A declaration created after the effective date of this section and applicable to an association of apartment owners located within an area of a city subject to the middle housing requirements in

Excerpt from Legislative House Bill HB 1110 2023-24 Effective Date: 7/23/2023
Theses sections clarify legislative intent in a reverse sort of way they dictate a requirement for cities to consider pre-existing deed restrictions that may restrict new construction:

section 3 of this act may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. **Sec. 12.** A new section is added to chapter 64.38 RCW to read as follows:

Governing documents of associations within cities subject to the middle housing requirements in section 3 of this act that are created after the effective date of this section may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. **Sec. 13.** A new section is added to chapter 64.90 RCW to read as follows:

Declarations and governing documents of a common interest community within cities subject to the middle housing requirements in section 3 of this act that are created after the effective date of this section may not actively or effectively prohibit the construction, development, or use of additional housing units as required in section 3 of this act.

NEW SECTION. **Sec. 14.** The department of commerce may establish by rule any standards or procedures necessary to implement sections 2 through 7 of this act.

NEW SECTION. **Sec. 15.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

Passed by the House April 18, 2023.
Passed by the Senate April 11, 2023.
Approved by the Governor May 8, 2023.
Filed in Office of Secretary of State May 10, 2023.

--- END ---

Exhibit "F"
Understanding Covenant Setback Benefits

A deeded covenant provides certainty and way of life protections when there are unanticipated changes in the city's zoning code.

A deeded setback provides certainty a neighbor will not crowd a structure next to a homeowner's property line without their consent.

Large setbacks and buffers provide properties additional space for pubic health, public safety and ensures land will remain untouched and permeable so on-site surface water (rain & snow) can be absorbed by the ground.

These examples demonstrate housing placed per the City's minimal zoning requirements.

1. Defensive fire separation distance to dissipate radiant heat during a fire event is minimal.

2. No access for fire fighters and first responders during a fire or an emergency event between properties.

3. Public Health separation between operational windows is minimal.

4. Privacy is non-existent.

5' Setback **Property Line** 5' Setback

This picture demonstrates:
1. No space for trees or landscaping to screen either building.

2. No light, air or privacy between buildings.

3. Ground space between buildings is too narrow to be functionally used by either neighbor.

4. No consideration for the needs of fire fighters or first emergency responders that need space during emergency operations.

5' Setback **Property Line** 5' Setback

This land is essentially unusable space.

A deeded 20' setback covenant can be used to protect public safety & old growth trees:

Example of a foundation being installed 5 feet 4 inches from a property line. This side yard setback exceeds zoning requirements by 4 inches.

The 5 feet 4" width of this excavation is the same as proposed by the Heck permit application.

Property Lines

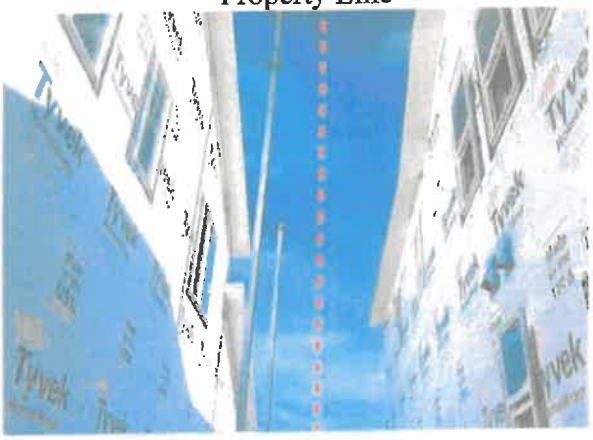
This example tree requires a "CRITICAL ROOT PROTECTION ZONE RADIUS" (CRZ) with a radius of forty-two (42') feet per PNW-ISA certified arborist's standards. Cutting the roots at the property line creates a dangerous tree that may die and fall.

This tree is partially protected by a DEEDED SETBACK COVENANT that prohibits all construction within twenty (20') feet of this property line.

If the foundation shown in the adjacent picture had been installed next to this tree, the lost of supporting roots would make this tree unstable. **This tree is one hundred (120') feet tall and 42" diameter at breast height and is located within a high wind area similar to the trees on the Heck property.**

A deeded setback covenant can be used by neighbors and/or city staff to force sensitive community design that protects adjacent properties.

Property Line



This picture demonstrates:
1. No space for trees or landscaping to screen either building.

2. Minimal light, air or privacy between buildings.

3. No usable ground space between buildings.

4. No consideration for the needs of fire fighters or first emergency responders that need space during emergency operations

ADU

This picture demonstrates:
1. No space for trees or landscaping to screen ADU windows from the neighbor's property.

2. Lost of: privacy, sunlight, view, air and ventilation on neighbor's property.

3. This ADU was placed with no consideration of a neighbor's current or future use of their property. If the neighbor builds a similar ADU the two roof eaves would create a dry pocket where fire between the structures would be difficult to access during a fire event.

These two developments could be considered toxic by a neighbor but are allowed by the City's zoning code.

A covenant or deed restriction can be used to encourage modest development that is in line with City Council goals of providing modest affordable housing that easily fit into existing neighborhoods

This design does not impose or overwhelm neighboring properties thus there is a better chance the neighbors will not object to the construction of this ADU. Size, bulk and scale are minimal and a neighbor's privacy is maintained by controlling sightlines into the neighbor's yard.

These pictures demonstrate why having a 20' fire and public health setback created by binding covenant is better than having a 5' setback as required by the City's zoning code.

This Edgemoor home caught fire in March 2022. The Bellingham Fire Department arrived on site within 5 minutes of getting the call for help. In this case the fire fighters were able to protect the adjoining properties on all sides because they had access to large setback areas on all sides.

This house was moved to this Edgemoor site with full approval of the City of Bellingham's Planning Department. The distance to the common property line for both houses is 5' – 4". The existing fence posts are not on the property. In this case fire fighters would not be able to contain a fire if one of these structures caught fire. The placement of operable windows is not coordinated so transmission of airborne disease from one home to another is possible.

Neither house has window placement that would contain fire to one structure. In addition the City does not the jurisdictional authority to require design coordination between the two properties.

This is what happens when buildings are placed without consideration for neighbors.

Exhibit "G"

Single-Family Site Plan Checklist Submittal Requirements

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 23 day of November 2023 Bellingham, Washington

Dean C. Longwell

Testimony and attachment:

- **The permit application failed to provide a site survey prepared with the benefit of a title report.**
- **This failure makes it impossible to determine whether the applicant's permit application is valid per RCW 19.27.095 requirements.**

The attached City of Bellingham Single-Family Permit Submittal Site Plan Checklist notes:

> "Locations of all **critical areas or buffers,** both on-site and on adjacent properties, including, but not limited to, shorelines, wetlands, streams, steep slopes, flood zones and habitats."

The attached checklist states: All **critical areas <u>or</u> buffers;** this statement clearly states all buffers and does not exclude a buffer created by binding covenant thus permit applicants are required to include setbacks created by a covenant on permit submittal site plans.

Site Plan Checklist

(see previous page for example)

Whenever a site plan is required, the following items shall always be provided:

- ☐ **Property Information:** Include the address(es), parcel size & parcel number or legal description
- ☐ **Scale:** Label the drawing scale (minimum 1"=20')
- ☐ **A North Arrow**
- ☐ **Property Lines:** Including dimensions of the project site.
- ☐ **Structures:** Identify new vs. existing structures, and/or show area of work. Include the location of and distances between all existing and proposed structures.
- ☐ **Setbacks:** Show distances from all property lines to all proposed and existing buildings.
- ☐ **Streets/Right-of-ways:** Label the right-of-way and street names and locations for all streets from which the lot is accessed and adjacent.
- ☐ **Utilities:** Show the location of all existing and proposed public and on-site utility structures and lines, such as water, sewer and stormwater lines or on-site stormwater facilities or septic systems.
- ☐ **Special Locations:** Please note if property is within special land-use areas such as, but not limited to, the Lake Whatcom Watershed, an Urban Village, Cordata Design Review or a FEMA flood zone. Additional info may be required
- ☐ Show on plans and number **parking**, include surface material and dimensions of spaces

When the work is **new construction**, an **addition** or includes any **land disturbance**, the following items shall be provided in addition to the above items:

- ☐ Location of **critical areas or buffers**, both on-site and on adjacent properties, including, but not limited to, shorelines, wetlands, streams, steep slopes, flood zones and habitats
- ☐ **Landscaping Plan:** For duplexes, or if the project site is within a shoreline designation or has critical areas on-site, all existing vegetation proposed to remain and all proposed landscaping, including location and type.
- ☐ Stormwater Information (see additional info on next page)
  - 300 – 2,000 ft² new and/or replaced hard surface:
    - ☐ Show location of construction entrance and silt fence
    - ☐ Construction entrance and silt fence detail drawings
    - ☐ Construction Stormwater Pollution Prevention Plan (SWPPP)
    - ☐ Hard surface area calculation table
    - ☐ **If under 2000 sq ft of hard surface AND a new SFR or duplex:**
      - Show on-site stormwater management BMPs (e.g. infiltration trench, dispersion trench or perforated stub out)
      - Detail drawing and installation guidelines for the selected on-site BMP
  - > 2,000 ft² - < 5,000 ft² new and/or replaced hard surface
    - ☐ All Level-1 requirements above
    - ☐ Show on-site stormwater management BMP locations and details (e.g. infiltration trench, dispersion trench or perforated stub out), or connection to storm system if onsite management is infeasible
    - ☐ 13-element Stormwater Pollution Prevention Plan (SWPPP)
    - ☐ Show BMP T 5.13 Soil Amendment detail.
    - ☐ A soils report as outlined in the stormwater submittal guidelines
  - >5,000 ft² of new and/or replaced hard surface
    - ☐ Drainage Report
    - ☐ Hydrological modeling files
    - ☐ Hard surface area calculation table
    - ☐ Signed civil plans
- ☐ **Easements:** Show the location of all existing and proposed easements.
- ☐ **Access:** Existing and proposed vehicular access to the site, including the size and location of driveways and curb cuts.
- ☐ **Topography:** Show five-foot contour lines showing existing and proposed grades. If lot is flat, label lot as "flat lot".
- ☐ **Other Structures:** Show the location of proposed and existing retaining walls, rockeries and fences.
- ☐ **Elevation Benchmark:** Show location, description and elevation of permanent benchmark for measuring height of building.
- ☐ **Trees:** Locate all significant trees* and identify the species (or label as no significant trees). Label trees that will be retained and removed. Show critical root zone (7 times the tree's root flare** diameter) fencing around retained trees. Note that replacement trees may be required for all removed trees. Discuss required number of replacement trees with a planner. *Six inches (6") in diameter at breast height (dbh). **Where the tree trunk meets the roots and "flares" out.

For duplexes, the following items shall be provided in addition to the above items:

- ☐ **Lot Coverage** (the building footprint): List the allowed maximum (35%) and the proposed coverage.
- ☐ **Open Space** (area of pervious ground surface remaining after development): List the minimum required (25%) and the proposed open space.
- ☐ **Usable Space:** List the minimum required (250 sq. ft. per unit) and proposed amounts of usable space.
- ☐ **Optional Development Regulations:** (See planning staff for an explanation of available options): Describe options, setbacks and/or lot coverage used, if any.

Exhibit "H"

Lack of Tree Plan Problem & WDFW Approval

Testimony and attachment:

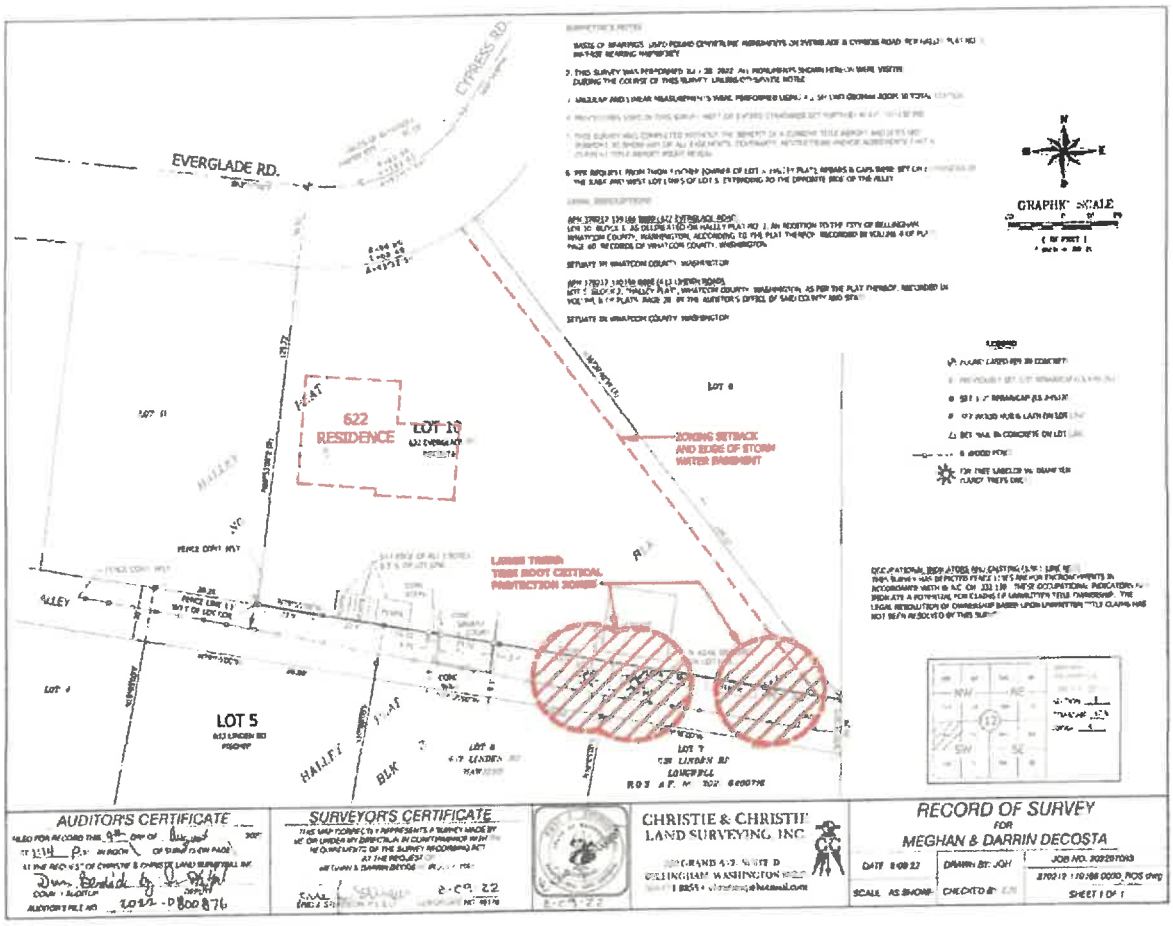
- **The permit application failed to provide a tree plan based on industry standards for large trees growing in a high wind location.**
- **This failure makes it impossible to determine whether the applicant's permit application meets public safety requirements and is valid per RCW 19.27.095 requirements.**
- **The permit applicant's lot is in the middle of a known eagle roosting location under the supervision of the Washington State Department of Fish and Wildlife. (WDFW). The application failed to provide a valid letter of approval for tree removal from WDFW.**

The site plan has a number of large trees referenced as "retain if possible". This is a steep site where heavy construction equipment will be needed to excavate the ground for footings. Common sense and experience is not being applied because none of these "retain if possible" trees will survive the construction process. In some cases on trees marked as "protect" future damage to the neighboring properties may occur due to loss of critical root zone (CRZ).

With regards to WDFW approval; WDFW needs to see a creditable site plan prepared per PNW-ISA standards that shows the critical root zones (CRZ) for each tree in excess of 6" in diameter when measured at breast height. They also need to see a creditable tree protection plan. Both Washington's Department of Natural Resources (DNR) and Oregon State University have online examples based on PNW-ISA standards.

The City does not have the expertise or the jurisdictional authority to grant the removal of any trees in an eagle protection area.

The attached site plan shows how CRZ should be graphically shown, this drawing and a copy of PNW-ISA Certified Arborists standards is being provided for your reference.



Pacific Northwest ISA
International Society of Arboriculture

Critical root zone radius distances calculated by tree diameter at breast height

Tree diameter	Critical root zone radius	Total protection zone diameter, including trunk
2 inches	2 feet	4+ feet
6 inches	6 feet	13.5 feet
20 inches	20 feet	42 feet
46 inches	46 feet	96 feet

Note: A valid Tree Risk Assessment requires a certified arborist that has successfully passed a PNW-ISA Tree Risk Assessment Qualification Workshop Exam.

PNW-ISA requires educational workshops and recertification exams every three (3) years to keep arborist up to date on best practices for tree management. Bellingham does not have any arborists that meet this standard.

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1110

Chapter 332, Laws of 2023

68th Legislature
2023 Regular Session

GROWTH MANAGEMENT ACT—MINIMUM DEVELOPMENT DENSITIES IN RESIDENTIAL ZONES

EFFECTIVE DATE: July 23, 2023

Passed by the House April 18, 2023
Yeas 79 Nays 18

LAURIE JINKINS

Speaker of the House of Representatives

Passed by the Senate April 11, 2023
Yeas 35 Nays 14

DENNY HECK

President of the Senate

Approved May 8, 2023 1:11 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1110** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 10, 2023

Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1110

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington **68th Legislature** **2023 Regular Session**

By House Appropriations (originally sponsored by Representatives Bateman, Barkis, Reed, Taylor, Riccelli, Berry, Fitzgibbon, Peterson, Duerr, Lekanoff, Alvarado, Street, Ryu, Ramel, Cortes, Doglio, Macri, Mena, Gregerson, Thai, Bergquist, Farivar, Wylie, Stonier, Pollet, Santos, Fosse, and Ormsby)

READ FIRST TIME 02/24/23.

AN ACT Relating to creating more homes for Washington by increasing middle housing in areas traditionally dedicated to single-family detached housing; amending RCW 36.70A.030, 36.70A.280, 43.21C.495, and 43.21C.450; adding new sections to chapter 36.70A RCW; adding a new section to chapter 64.34 RCW; adding a new section to chapter 64.32 RCW; adding a new section to chapter 64.38 RCW; adding a new section to chapter 64.90 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The legislature finds that Washington is facing an unprecedented housing crisis for its current population and a lack of housing choices, and is not likely to meet the affordability goals for future populations. In order to meet the goal of 1,000,000 new homes by 2044, and enhanced quality of life and environmental protection, innovative housing policies will need to be adopted.

Increasing housing options that are more affordable to various income levels is critical to achieving the state's housing goals, including those codified by the legislature under chapter 254, Laws of 2021.

There is continued need for the development of housing at all income levels, including middle housing that will provide a wider

variety of housing options and configurations to allow Washingtonians to live near where they work.

Homes developed at higher densities are more affordable by design for Washington residents both in their construction and reduced household energy and transportation costs.

While creating more housing options, it is essential for cities to identify areas at higher risk of displacement and establish antidisplacement policies as required in Engrossed Second Substitute House Bill No. 1220 (chapter 254, Laws of 2021).

The state has made historic investments in subsidized affordable housing through the housing trust fund, yet even with these historic investments, the magnitude of the housing shortage requires both public and private investment.

In addition to addressing the housing shortage, allowing more housing options in areas already served by urban infrastructure will reduce the pressure to develop natural and working lands, support key strategies for climate change, food security, and Puget Sound recovery, and save taxpayers and ratepayers money.

Sec. 2. RCW 36.70A.030 and 2021 c 254 s 6 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative design review" means a development permit process whereby an application is reviewed, approved, or denied by the planning director or the planning director's designee based solely on objective design and development standards without a public predecision hearing, unless such review is otherwise required by state or federal law, or the structure is a designated landmark or historic district established under a local preservation ordinance. A city may utilize public meetings, hearings, or voluntary review boards to consider, recommend, or approve requests for variances from locally established design review standards.

(2) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

((~~(2)~~)) (3) "Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed thirty percent of the monthly income of a household whose income is:

(a) For rental housing, sixty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development; or

(b) For owner-occupied housing, eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(3)~~)) (4) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

((~~(4)~~)) (5) "City" means any city or town, including a code city.

((~~(5)~~)) (6) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

((~~(6)~~)) (7) "Cottage housing" means residential units on a lot with a common open space that either: (a) Is owned in common; or (b) has units owned as condominium units with property owned in common and a minimum of 20 percent of the lot size as open space.

(8) "Courtyard apartments" means up to four attached dwelling units arranged on two or three sides of a yard or court.

(9) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

((~~(7)~~)) (10) "Department" means the department of commerce.

((~~(8)~~)) (11) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls,

planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

((~~(9)~~)) (12) "Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

((~~(10)~~)) (13) "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

((~~(11)~~)) (14) "Extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below thirty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(12)~~)) (15) "Forestland" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forestland is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forestland to other uses.

((~~(13)~~)) (16) "Freight rail dependent uses" means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development for purposes of this chapter. "Freight rail dependent uses" does not include buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of coal, liquefied natural gas, or "crude oil" as defined in RCW 90.56.010.

((~~(14)~~)) (17) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

((~~(15)~~)) (18) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

((~~(16)~~)) (19) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(17)~~)) (20) "Major transit stop" means:

(a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;

(b) Commuter rail stops;

(c) Stops on rail or fixed guideway systems; or

(d) Stops on bus rapid transit routes.

(21) "Middle housing" means buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing.

(22) "Minerals" include gravel, sand, and valuable metallic substances.

((~~(18)~~)) (23) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is

at or below 120 percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(19)~~)) (24) "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

((~~(20)~~)) (25) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

((~~(21)~~)) (26) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

((~~(22)~~)) (27) "Recreational land" means land so designated under RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

((~~(23)~~)) (28) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

((~~(24)~~)) (29) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

((~~(25)~~)) (30) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems((~~,~~)) and fire and police protection services((~~, transportation and public transit services, and other public utilities~~)) associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

((~~(26)~~)) (31) "Short line railroad" means those railroad lines designated class II or class III by the United States surface transportation board.

((~~(27)~~)) (32) "Single-family zones" means those zones where single-family detached housing is the predominant land use.

(33) "Stacked flat" means dwelling units in a residential building of no more than three stories on a residential zoned lot in which each floor may be separately rented or owned.

(34) "Townhouses" means buildings that contain three or more attached single-family dwelling units that extend from foundation to roof and that have a yard or public way on not less than two sides.

(35) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

((~~(28)~~)) (36) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

((~~(29)~~)) (37) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

((~~(30)~~)) (38) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below fifty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

((~~(31)~~)) (39) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road,

street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70A RCW to read as follows:

(1) Except as provided in subsection (4) of this section, any city that is required or chooses to plan under RCW 36.70A.040 must provide by ordinance and incorporate into its development regulations, zoning regulations, and other official controls, authorization for the following:

(a) For cities with a population of at least 25,000 but less than 75,000 based on office of financial management population estimates:

(i) The development of at least two units per lot on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies;

(ii) The development of at least four units per lot on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies, within one-quarter mile walking distance of a major transit stop; and

(iii) The development of at least four units per lot on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies, if at least one unit is affordable housing.

(b) For cities with a population of at least 75,000 based on office of financial management population estimates:

(i) The development of at least four units per lot on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies;

(ii) The development of at least six units per lot on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies, within one-quarter mile walking distance of a major transit stop; and

(iii) The development of at least six units per lot on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies, if at least two units are affordable housing.

(c) For cities with a population of less than 25,000, that are within a contiguous urban growth area with the largest city in a county with a population of more than 275,000, based on office of

financial management population estimates the development of at least two units per lot on all lots zoned predominantly for residential use, unless zoning permitting higher densities or intensities applies.

(2)(a) To qualify for the additional units allowed under subsection (1) of this section, the applicant must commit to renting or selling the required number of units as affordable housing. The units must be maintained as affordable for a term of at least 50 years, and the property must satisfy that commitment and all required affordability and income eligibility conditions adopted by the local government under this chapter. A city must require the applicant to record a covenant or deed restriction that ensures the continuing rental of units subject to these affordability requirements consistent with the conditions in chapter 84.14 RCW for a period of no less than 50 years. The covenant or deed restriction must also address criteria and policies to maintain public benefit if the property is converted to a use other than which continues to provide for permanently affordable housing.

(b) The units dedicated as affordable must be provided in a range of sizes comparable to other units in the development. To the extent practicable, the number of bedrooms in affordable units must be in the same proportion as the number of bedrooms in units within the entire development. The affordable units must generally be distributed throughout the development and have substantially the same functionality as the other units in the development.

(c) If a city has enacted a program under RCW 36.70A.540, the terms of that program govern to the extent they vary from the requirements of this subsection.

(3) If a city has enacted a program under RCW 36.70A.540, subsection (1) of this section does not preclude the city from requiring any development, including development described in subsection (1) of this section, to provide affordable housing, either on-site or through an in-lieu payment, nor limit the city's ability to expand such a program or modify its requirements.

(4)(a) As an alternative to the density requirements in subsection (1) of this section, a city may implement the density requirements in subsection (1) of this section for at least 75 percent of lots in the city that are primarily dedicated to single-family detached housing units.

(b) The 25 percent of lots for which the requirements of subsection (1) of this section are not implemented must include but are not limited to:

(i) Any areas within the city for which the department has certified an extension of the implementation timelines under section 5 of this act due to the risk of displacement;

(ii) Any areas within the city for which the department has certified an extension of the implementation timelines under section 7 of this act due to a lack of infrastructure capacity;

(iii) Any lots designated with critical areas or their buffers that are exempt from the density requirements as provided in subsection (8) of this section;

(iv) Any portion of a city within a one-mile radius of a commercial airport with at least 9,000,000 annual enplanements that is exempt from the parking requirements under subsection (7)(b) of this section; and

(v) Any areas subject to sea level rise, increased flooding, susceptible to wildfires, or geological hazards over the next 100 years.

(c) Unless identified as at higher risk of displacement under RCW 36.70A.070(2)(g), the 25 percent of lots for which the requirements of subsection (1) of this section are not implemented may not include:

(i) Any areas for which the exclusion would further racially disparate impacts or result in zoning with a discriminatory effect;

(ii) Any areas within one-half mile walking distance of a major transit stop; or

(iii) Any areas historically covered by a covenant or deed restriction excluding racial minorities from owning property or living in the area, as known to the city at the time of each comprehensive plan update.

(5) A city must allow at least six of the nine types of middle housing to achieve the unit density required in subsection (1) of this section. A city may allow accessory dwelling units to achieve the unit density required in subsection (1) of this section. Cities are not required to allow accessory dwelling units or middle housing types beyond the density requirements in subsection (1) of this section. A city must also allow zero lot line short subdivision where the number of lots created is equal to the unit density required in subsection (1) of this section.

(6) Any city subject to the requirements of this section:

(a) If applying design review for middle housing, only administrative design review shall be required;

(b) Except as provided in (a) of this subsection, shall not require through development regulations any standards for middle housing that are more restrictive than those required for detached single-family residences, but may apply any objective development regulations that are required for detached single-family residences, including, but not limited to, set-back, lot coverage, stormwater, clearing, and tree canopy and retention requirements to ensure compliance with existing ordinances intended to protect critical areas and public health and safety;

(c) Shall apply to middle housing the same development permit and environmental review processes that apply to detached single-family residences, unless otherwise required by state law including, but not limited to, shoreline regulations under chapter 90.58 RCW, building codes under chapter 19.27 RCW, energy codes under chapter 19.27A RCW, or electrical codes under chapter 19.28 RCW;

(d) Shall not require off-street parking as a condition of permitting development of middle housing within one-half mile walking distance of a major transit stop;

(e) Shall not require more than one off-street parking space per unit as a condition of permitting development of middle housing on lots smaller than 6,000 square feet before any zero lot line subdivisions or lot splits;

(f) Shall not require more than two off-street parking spaces per unit as a condition of permitting development of middle housing on lots greater than 6,000 square feet before any zero lot line subdivisions or lot splits; and

(g) Are not required to achieve the per unit density under this act on lots after subdivision below 1,000 square feet unless the city chooses to enact smaller allowable lot sizes.

(7) The provisions of subsection (6)(d) through (f) of this section do not apply:

(a) If a local government submits to the department an empirical study prepared by a credentialed transportation or land use planning expert that clearly demonstrates, and the department finds and certifies, that the application of the parking limitations of subsection (6)(d) through (f) of this section for middle housing will be significantly less safe for vehicle drivers or passengers,

pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location for the same number of detached houses. The department must develop guidance to assist cities on items to include in the study; or

(b) To portions of cities within a one-mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

(8) The provisions of this section do not apply to:

(a) Lots designated with critical areas designated under RCW 36.70A.170 or their buffers as required by RCW 36.70A.170;

(b) A watershed serving a reservoir for potable water if that watershed is or was listed, as of the effective date of this section, as impaired or threatened under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1313(d)); or

(c) Lots that have been designated urban separators by countywide planning policies as of the effective date of this section.

(9) Nothing in this section prohibits a city from permitting detached single-family residences.

(10) Nothing in this section requires a city to issue a building permit if other federal, state, and local requirements for a building permit are not met.

(11) A city must comply with the requirements of this section on the latter of:

(a) Six months after its next periodic comprehensive plan update required under RCW 36.70A.130 if the city meets the population threshold based on the 2020 office of financial management population data; or

(b) 12 months after their next implementation progress report required under RCW 36.70A.130 after a determination by the office of financial management that the city has reached a population threshold established under this section.

(12) A city complying with this section and not granted a timeline extension under section 7 of this act does not have to update its capital facilities plan element required by RCW 36.70A.070(3) to accommodate the increased housing required by this act until the first periodic comprehensive plan update required for the city under RCW 36.70A.130(5) that occurs on or after June 30, 2034.

NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW to read as follows:

(1)(a) The department is directed to provide technical assistance to cities as they implement the requirements under section 3 of this act.

(b) The department shall prioritize such technical assistance to cities demonstrating the greatest need.

(2)(a) The department shall publish model middle housing ordinances no later than six months following the effective date of this section.

(b) In any city subject to section 3 of this act that has not passed ordinances, regulations, or other official controls within the time frames provided under section 3(11) of this act, the model ordinance supersedes, preempts, and invalidates local development regulations until the city takes all actions necessary to implement section 3 of this act.

(3)(a) The department is directed to establish a process by which cities implementing the requirements of section 3 of this act may seek approval of alternative local action necessary to meet the requirements of this act.

(b) The department may approve actions under this section for cities that have, by January 1, 2023, adopted a comprehensive plan that is substantially similar to the requirements of this act and have adopted, or within one year of the effective date of this section adopts, permanent development regulations that are substantially similar to the requirements of this act. In determining whether a city's adopted comprehensive plan and permanent development regulations are substantially similar, the department must find as substantially similar plans and regulations that:

(i) Result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the specific provisions of this act were adopted;

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

(c) The department may also approve actions under this section for cities that have, by January 1, 2023, adopted a comprehensive plan or development regulations that have significantly reduced or

eliminated residentially zoned areas that are predominantly single family. The department must find that a city's actions are substantially similar to the requirements of this act if they have adopted, or within one year of the effective date of this section adopts, permanent development regulations that:

(i) Result in an overall increase in housing units allowed in single-family zones that is at least 75 percent of the increase in housing units allowed in single-family zones if the specific provisions of this act were adopted;

(ii) Allow for middle housing throughout the city, rather than just in targeted locations; and

(iii) Allow for additional density near major transit stops, and for projects that incorporate dedicated affordable housing.

(d) The department may determine that a comprehensive plan and development regulations that do not meet these criteria are otherwise substantially similar to the requirements of this act if the city can clearly demonstrate that the regulations adopted will allow for a greater increase in middle housing production within single family zones than would be allowed through implementation of section 3 of this act.

(e) Any local actions approved by the department pursuant to (a) of this subsection to implement the requirements under section 3 of this act are exempt from appeals under this chapter and chapter 43.21C RCW.

(f) The department's final decision to approve or reject actions by cities implementing section 3 of this act may be appealed to the growth management hearings board by filing a petition as provided in RCW 36.70A.290.

(4) The department may issue guidance for local jurisdictions to ensure that the levels of middle housing zoning under this act can be integrated with the methods used by cities to calculate zoning densities and intensities in local zoning and development regulations.

NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW to read as follows:

Any city choosing the alternative density requirements in section 3(4) of this act may apply to the department for, and the department may certify, an extension for areas at risk of displacement as determined by the antidisplacement analysis that a jurisdiction is

required to complete under RCW 36.70A.070(2). The city must create a plan for implementing antidisplacement policies by their next implementation progress report required by RCW 36.70A.130(9). The department may certify one further extension based on evidence of significant ongoing displacement risk in the impacted area.

Sec. 6. RCW 36.70A.280 and 2011 c 360 s 17 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; ((~~or~~))

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous; or

(f) That the department's final decision to approve or reject actions by a city implementing section 3 of this act is clearly erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental

subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

NEW SECTION. **Sec. 7.** A new section is added to chapter 36.70A RCW to read as follows:

(1) Any city choosing the alternative density requirements in section 3(4) of this act may apply to the department for, and the department may certify, an extension of the implementation timelines established under section 3(11) of this act.

(2) An extension certified under this section may be applied only to specific areas where a city can demonstrate that water, sewer, stormwater, transportation infrastructure, including facilities and transit services, or fire protection services lack capacity to accommodate the density required in section 3 of this act, and the city has:

(a) Included one or more improvements, as needed, within its capital facilities plan to adequately increase capacity; or

(b) Identified which special district is responsible for providing the necessary infrastructure if the infrastructure is provided by a special purpose district.

(3) If an extension of the implementation timelines is requested due to lack of water supply from the city or the purveyors who serve

water within the city, the department's evaluation of the extension must be based on the applicable water system plans in effect and approved by the department of health. Water system plan updates initiated after the effective date of this section must include consideration of water supply requirements for middle housing types.

(4) An extension granted under this section remains in effect until the earliest of:

(a) The infrastructure is improved to accommodate the capacity;

(b) The city's deadline to complete its next periodic comprehensive plan update under RCW 36.70A.130; or

(c) The city's deadline to complete its implementation progress report to the department as required under RCW 36.70A.130(9).

(5) A city that has received an extension under this section may reapply for any needed extension with its next periodic comprehensive plan update under RCW 36.70A.130 or its implementation progress report to the department under RCW 36.70A.130(9). The application for an additional extension must include a list of infrastructure improvements necessary to meet the capacity required in section 3 of this act. Such additional extension must only be to address infrastructure deficiency that a city is not reasonably able to address within the first extension.

(6) The department may establish by rule any standards or procedures necessary to implement this section.

(7) The department must provide the legislature with a list of projects identified in a city's capital facilities plan that were the basis for the extension under this section, including planning level estimates. Additionally, the city must contact special purpose districts to identify additional projects associated with extensions under this section.

(8) A city granted an extension for a specific area must allow development as provided under section 3 of this act if the developer commits to providing the necessary water, sewer, or stormwater infrastructure.

(9) If an area zoned predominantly for residential use is currently served only by private wells, group B water systems or group A water systems with less than 50 connections, or a city or water providers within the city do not have an adequate water supply or available connections to serve the zoning increase required under section 3 of this act, the city may limit the areas subject to the requirements under section 3 of this act to match current water

availability. Nothing in this act affects or modifies the responsibilities of cities to plan for or provide urban governmental services as defined in RCW 36.70A.030 or affordable housing as required by RCW 36.70A.070.

(10) No city shall approve a building permit for housing under section 3 of this act without compliance with the adequate water supply requirements of RCW 19.27.097.

(11) If an area zoned predominantly for residential use is currently served only by on-site sewage systems, development may be limited to two units per lot, until either the landowner or local government provides sewer service or demonstrates a sewer system will serve the development at the time of construction. Nothing in this act affects or modifies the responsibilities of cities to plan for or provide urban governmental services as defined in RCW 36.70A.030.

Sec. 8. RCW 43.21C.495 and 2022 c 246 s 3 are each amended to read as follows:

(1) Adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions taken by a city to implement: The actions specified in section 2, chapter 246, Laws of 2022 unless the adoption of such ordinances, development regulations and amendments to such regulations, or other nonproject actions has a probable significant adverse impact on fish habitat; and the increased residential building capacity actions identified in RCW 36.70A.600(1), with the exception of the action specified in RCW 36.70A.600(1)(f), are not subject to administrative or judicial appeals under this chapter.

(2) Amendments to development regulations and other nonproject actions taken by a city to implement the requirements under section 3 of this act pursuant to section 4(3)(b) of this act are not subject to administrative or judicial appeals under this chapter.

Sec. 9. RCW 43.21C.450 and 2012 1st sp.s. c 1 s 307 are each amended to read as follows:

The following nonproject actions are categorically exempt from the requirements of this chapter:

(1) Amendments to development regulations that are required to ensure consistency with an adopted comprehensive plan pursuant to RCW 36.70A.040, where the comprehensive plan was previously subjected to environmental review pursuant to this chapter and the impacts

Date: November 28, 2023

To: Hearing Examiner's Office
City of Bellingham, WA.

Re: Public Hearing on November 29, 2023 at 6:00 PM at Bellingham City Hall.

Additional last minute written testimony and exhibits

Subject: Case # HE-23-PL-014
Applicants: Steve and Heather Peck
USE2023-0017
Conditional Use Permit (CUP)
Single-Family House
830 Briar Road, Bellingham WA.

I will be at the public hearing at City Hall to provide testimony pertaining to a possible short coming in the Peck permit submittal. Attached to this cover letter are two (2) additional exhibits of fact and my written testimony for your consideration.

The attachments demonstrate a lack of Planning Department compliance with legislative intent.

This issue needs to be discussed as part of the Peck permit application to ensure their building permit application is fully complete and valid.

Yours truly

Dean Longwell - Architect (Retired)
621 Linden Road
Bellingham, WA

Attachments:
Exhibit J includes:
Copy of City of Bellingham ADU code, adopted August 14, 2023 (Full Text)
Copy of Legislative House Bill HB 1337 (Full Text)

Exhibit "J"

ADU Code Errors & Omissions

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE ATTACHED IS TRUE AND CORRECT.

DATED this 28 day of November, 2023 Bellingham, Washington

Dean C. Longwell

Testimony and the following attachments:

Attachment #1, **Bellingham Municipal Code Section: 20.10.036 Accessory Dwelling Units. (ADU)**

Attachment #2, **Legislative House Bill HB 1337: An act to expand housing options by easing barriers to the construction and use of accessory dwelling units.**

The City's adoption of House Bill "HB 1337" failed to construct an ADU Code that sensibly complies with statute and legislative intent. This harms the public and exposes ADU owners, occupants and neighbors to misunderstandings, the financial hardships of litigation and the loss of a dwelling unit due to court order.

This failure was done with intentional goals as follows:

1. Maintaining a Planning Department opinion that the City has no responsibility to consider a private restrictive covenant of any kind.
    a. This city policy has created a culture of: "hear no evil", "see not evil" and "speak no evil" within city staff.
2. Maintaining a Planning Department policy that the city can knowingly issue a building permit where a permit applicant can misrepresents or omits a material fact that would prohibit construction in their application.
3. Intimidation of neighbors lacking knowledge, access to expertise and financial resources with the expense and hardship of litigation.

4 of this act and the department's recommendations under subsection (1) of this section.

NEW SECTION. **Sec. 9.** A new section is added to chapter 64.34 RCW to read as follows:

(1) Except a declaration created to protect public health and safety, and ground and surface waters from on-site wastewater, a declaration created after the effective date of this section and applicable to a property located within an urban growth area may not impose any restriction or prohibition on the construction, development, or use on a lot of an accessory dwelling unit that the city or county in which the urban growth area is located would be prohibited from imposing under section 4 of this act.

(2) For the purposes of this section, "urban growth area" has the same meaning as in RCW 36.70A.030.

(3) A city or county issuing a permit for the construction of an accessory dwelling unit may not be held civilly liable on the basis that the construction of the accessory dwelling unit would violate a restrictive covenant or deed restriction.

NEW SECTION. **Sec. 10.** A new section is added to chapter 64.32 RCW to read as follows:

(1) Except a declaration created to protect public health and safety, and ground and surface waters from on-site wastewater, a declaration created after the effective date of this section and applicable to a property located within an urban growth area may not impose any restriction or prohibition on the construction, development, or use on a lot of an accessory dwelling unit that the city or county in which the urban growth area is located would be prohibited from imposing under section 4 of this act.

(2) For the purposes of this section, "urban growth area" has the same meaning as in RCW 36.70A.030.

(3) A city or county issuing a permit for the construction of an accessory dwelling unit may not be held civilly liable on the basis that the construction of the accessory dwelling unit would violate a restrictive covenant or deed restriction.

NEW SECTION. **Sec. 11.** A new section is added to chapter 64.38 RCW to read as follows:

20.10.036 Accessory dwelling units.

A. *Purpose and Authority.*

1. It is the purpose of this legislation to implement policy provisions of the city's comprehensive plan promoting increased housing options and innovation that will help meet the needs of the many sectors of the community, including smaller households, students, millennials, baby boomers, people with disabilities, and low-income families; make more efficient use of public infrastructure and services; are within walking distance to shops, jobs, and amenities; encourage well-designed infill development; and improve the economic and social well-being of the community.

2. The director shall have the authority to approve accessory dwelling units (ADUs) which are consistent with the regulations and provisions herein.

3. *Enforcement.* The city retains the right (with reasonable notice) to inspect the ADU for compliance with this section.

4. Any property owner with an unpermitted ADU on its property shall be in violation of this subsection and subject to the penalties in Chapter 20.52 BMC.

5. Any property owner with an ADU on its property that is in violation of any standard in subsection (B) of this section shall be in violation of this subsection and subject to the penalties in Chapter 20.52 BMC.

B. *Standards and Criteria.*

1. Accessory dwelling units (ADUs) may be allowed in general use types where listed as a permitted use if they comply with the requirements listed in this section, except on property regulated by Chapter 16.80 BMC, Lake Whatcom Reservoir Regulatory Provisions.

2. An ADU shall comply with all zoning code provisions for the primary dwelling unit, including height, setbacks, floor area, accessory buildings and open space, except as provided in this section. This provision shall also apply to ancillary structures attached to a D-ADU such as garages, carports, garden sheds and workshops.

3. Applicants may request minor modifications to the development and design standards for ADUs. A minor modification is a request by the applicant to meet or exceed a particular ADU standard through the use of a technique or alternative standard not otherwise listed under the applicable requirement. Minor modifications are not variances and are not required to meet all of the criteria typically associated with a variance application. The director may grant a minor modification if the following criteria are met:

a. The site is physically constrained due to, but not limited to, unusual shape, topography, easements, existing development on site, or critical areas; or

b. The granting of the modification will not result in a development that is less compatible with adjacent neighborhood land uses; and

c. The granting of the modification will not be materially detrimental to the public welfare or injurious to other land or improvements in the vicinity and district in which the property is situated; and

d. The granting of the modification is consistent with the purpose and intent of this section; and

e. All reasonable mitigation measures for the modification have been implemented or assured.

4. *Ownership and Occupancy.*

a. The land on which the ADU is located shall not be subdivided from the land on which the primary dwelling unit is located, but the ADU may be segregated in ownership from the primary dwelling unit.

b. Owner occupancy is required for properties that include an ADU (or ADUs) in areas zoned residential single until occupancy requirements are preempted by the state law. Prior to implementation of state law, the following applies. The property owner shall submit an affidavit, approved by the director, acknowledging the owner occupancy requirement for as long as the ADU is maintained on the property or until owner occupancy requirements are preempted by the implementation of state law. The property owner shall submit the affidavit to the city prior to issuance of the building permit. The affidavit shall specify the requirements for owner occupancy and purchaser registration as follows:

i. An owner of the subject property shall reside on the premises, whether in the primary or accessory dwelling; provided, that:

(A) In the event of illness, death or other unforeseeable event which prevents the owner's continued occupancy of the premises, the director may, upon a finding that discontinuance of the ADU would cause a hardship on the owner and/or tenants, grant a temporary suspension of this owner-occupancy requirement for a period of one year. The director may grant an extension of such suspension for one additional year, upon a finding of continued hardship.

(B) In the case of bringing an unpermitted ADU into compliance with this section, if the property on which the ADU is located complies with all of the requirements of this section except owner-occupancy, the property may continue without occupancy by the owner for the remainder of the lease(s) on the property, not to exceed one year. Thereafter, the property shall be occupied by the owner, or transferred to a different owner who will reside on the premises.

ii. Purchasers of homes with an ADU shall register with the planning and community development department within 30 days of purchase.

5. *Site Requirements.*

a. No more than two ADUs shall be permitted in conjunction with the primary dwelling unit on a single lot of record. The lot may not contain more than one primary dwelling unit. The ADUs are exempt from density limitations and may be in any configuration of attached or detached units.

b. The ADU main entrance shall have direct access to a street via a lighted pedestrian path, driveway or alley.

6. *ADU Size.*

a. *Attached and Detached ADUs.* An ADU shall not exceed 1,000 square feet.

b. *Attached ADUs (A-ADU).* The maximum floor area in subsection (B)(6)(a) of this section does not apply when the basement of a primary dwelling unit is converted to an A-ADU and the primary dwelling unit has been on the site for at least five years.

c. *Detached ADUs (D-ADU).* The floor area for D-ADUs shall be calculated to include all attached ancillary space (garage, workshop, garden shed, etc.). Maximum allowed floor area limits are as follows:

i. A D-ADU with ancillary space may exceed 1,000 square feet when approved by the hearing examiner by conditional use permit pursuant to Chapter 20.16 BMC.

ii. When an oversized detached accessory building approved by conditional use permit has been on site for at least five years, conversion of said building to a D-ADU may occur without subsequent conditional use permit approval.

iii. For subsections (B)(6)(c)(i) and (ii) of this section, the floor area of the D-ADU, sans ancillary space, shall not exceed that specified in subsection (B)(6)(a) of this section.

7. *Minimum Yards for D-ADUs.*

a. Front and side-flanking yards shall comply with the zoning code provisions for the primary dwelling unit except that when the vehicular entrance to an attached garage or carport faces a street, the entrance shall be set back a minimum of 25 feet from the front property line, and 10 feet from a side flanking property line.

b. A five-foot side and rear yard setback shall be provided, measured from the property line to the foundation of the structure, except as follows:

i. When abutting an alley, there is no required side or rear yard setback from the alley.

ii. A D-ADU may be located in a rear yard and in the rear 22 feet of an interior side yard, provided:

(A) If a D-ADU is to be located less than five feet from any common property line, a joint agreement with the adjoining property owner(s) must be executed and recorded with the Whatcom County auditor's office and thereafter filed with the city prior to issuance of building permit; or

(B) If site characteristics warrant such that, in the opinion of the director, impacts to abutting property would be negligible due to, but not limited to, one or more of the following:

(1) The existing use and development pattern on abutting property.

(2) Minimal disruption of solar access to outdoor recreation or garden space on abutting property compared to what may otherwise occur with the application of standard development regulations.

(3) Site characteristics such as building a D-ADU downslope from abutting property.

(4) Conversion of a detached accessory building that is at least five years old and has had no additions within the required side or rear yard within that time period.

(5) Any minor modification from standard development regulations requested pursuant to this subsection (B)(7)(b)(ii) shall be processed as a request for minor modification pursuant to subsection (B)(3) of this section.

c. A minimum six feet of separation is required between the primary dwelling unit and a D-ADU.

8. *Building Height for D-ADUs.* A D-ADU shall be no higher than 24 feet under BMC 20.08.020, height definition No. 1 or 12 feet under height definition No. 2.

9. *Parking.* Parking required for an ADU is in addition to that required for the primary dwelling unit.

a. One on-site parking stall is required for an ADU, except as follows:

i. No parking is required when improved public street parking is available on at least one side of the block face whereon the ADU is proposed, on-street parking is constructed, or the ADU is within one-half mile walking distance to a major transit route.

ii. The director may waive parking based on the applicant's demonstration of site-specific factors that justify a lower standard. Any request for a parking waiver shall be processed as a request for minor modification pursuant to subsection (B)(3) of this section.

b. Parking stalls shall be at least nine feet by 18 feet.

c. Parking shall not be located in required front or side street setbacks. Parking in the front portion of the lot shall be discouraged.

d. If the lot abuts an alley or private access easement, parking shall be accessed from said facility except when the director determines that such access is impractical or environmentally constrained. Any request to forgo alley access shall be processed as a request for minor modification pursuant to subsection (B)(3) of this section.

e. Parking accessed from a street or lane shall be limited to one driveway per frontage with a maximum width of 20 feet.

10. *Privacy.* Where practical, locate and design the ADU to minimize disruption of privacy and outdoor activities on adjacent properties. Strategies to accomplish this include, but are not limited to:

a. Stagger windows and doors to not align with such features on abutting properties.

b. Avoid upper level windows, entries and decks that face common property lines to reduce overlook of a neighboring property.

c. Install landscaping as necessary to provide for the privacy and screening of abutting property.

11. *Repealed by Ord. 2023-08-022.*

12. *Utilities.*

a. *Water, Sewer, Storm.* A primary dwelling unit and ADU(s) may have a shared water service to a water system, a shared sewer service to a sewer system and a shared storm service to a stormwater management system, in which case the primary dwelling unit will be responsible for all billing and maintenance of the services. Separate and independent services from each building may be required to meet the city's adopted plumbing code. In all cases, the water service shutoff must be accessible to occupants of all units.

b. *Electrical.* A primary dwelling unit and ADU(s) are permitted to have one shared electrical service if a single building or separate electrical services if separate buildings. A separate meter is permitted to serve an ADU, subject to compliance with the city's adopted electrical code. A single main service panel may be allowed; provided, that occupants of all dwelling units have access to the overcurrent devices supplying their occupancy.

c. *Gas.* A primary dwelling unit and ADU(s) may share natural gas services. An accessible shut-off valve must be upstream of the gas meter, on the exterior of the structure(s).

d. Any utility lines being installed or altered must have their connections inspected as part of the building permit process.

13. *Compliance With Applicable Codes.* ADUs shall comply with all standards for health and life safety as set forth in the International Building Code, International Residential Code, Uniform Plumbing Code, National Electrical Code, International Mechanical Code, International Fire Code, and Washington State Energy Code as each code is adopted by the city; and any other applicable codes or regulations, except as provided in this section.

14. *Accessibility.* To encourage the development of housing units for people with disabilities, the director may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the city adopted building code.

C. *Existing Illegal Units.*

1. Application may be made for any accessory dwelling unit existing prior to January 1, 1995, to become legally permitted, pursuant to the provisions of this section. Whether an ADU permit is approved or denied, the owner of any nonpermitted unit shall be subject to the penalties provided in this code.

2. An application to legalize an existing ADU shall include an application for an ADU permit and a building permit application, showing changes made to the primary dwelling unit or detached accessory building to

accommodate the ADU. Approval shall be consistent with the ADU regulations and process outlined in this section. The ADU shall be reviewed using the current editions of building codes in place at the time its owner brings the unit forward for permit.

3. Nothing in this section shall require that the city permit existing ADUs that are determined to be dangerous.

D. *Permitting Process.* An ADU is required to obtain approval following the procedures established in Chapter 21.10 BMC. [Ord. 2023-08-022 § 2 (Exh. A); Ord. 2021-12-053 § 3; Ord. 2018-05-009 § 5].

The Bellingham Municipal Code is current through Ordinance 2023-08-023, passed August 14, 2023.

Disclaimer: Users should contact the Deputy City Clerk for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: www.cob.org
City Telephone: (360) 778-8000

Hosted by Code Publishing Company, A General Code Company.

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1337

68th Legislature
2023 Regular Session

Passed by the House April 14, 2023
Yeas 85 Nays 11

Speaker of the House of Representatives

Passed by the Senate April 6, 2023
Yeas 39 Nays 7

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1337** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED HOUSE BILL 1337

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By Representatives Gregerson, Barkis, Berry, Christian, Duerr, Fitzgibbon, Taylor, Ramel, Reeves, Simmons, Walen, Graham, Bateman, Reed, Lekanoff, Doglio, Tharinger, Cortes, Macri, and Stonier

Read first time 01/16/23. Referred to Committee on Housing.

AN ACT Relating to expanding housing options by easing barriers to the construction and use of accessory dwelling units; amending RCW 36.70A.696, 43.21C.495, and 36.70A.280; adding new sections to chapter 36.70A RCW; adding a new section to chapter 64.34 RCW; adding a new section to chapter 64.32 RCW; adding a new section to chapter 64.38 RCW; adding a new section to chapter 64.90 RCW; creating a new section; and repealing RCW 35.63.210, 35A.63.230, 36.70A.400, 36.70.677, and 43.63A.215.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The legislature makes the following findings:

(a) Washington state is experiencing a housing affordability crisis. Many communities across the state are in need of more housing for renters across the income spectrum.

(b) Many cities dedicate the majority of residentially zoned land to single detached houses that are increasingly financially out of reach for many households. Due to their smaller size, accessory dwelling units can provide a more affordable housing option in those single-family zones.

(c) Localities can start to correct for historic economic and racial exclusion in single-family zones by opening up these

neighborhoods to more diverse housing types, including accessory dwelling units, that provide lower cost homes. Increasing housing options in expensive, high-opportunity neighborhoods will give more families access to schools, parks, and other public amenities otherwise accessible to only the wealthy.

(d) Accessory dwelling units are frequently rented below market rate, providing additional affordable housing options for renters.

(e) Accessory dwelling units can also help to provide housing for very low-income households. More than 10 percent of accessory dwelling units in some areas are occupied by tenants who pay no rent at all; among these tenants are grandparents, adult children, family members with disabilities, friends going through life transitions, and community members in need. Accessory dwelling units meet the needs of these people who might otherwise require subsidized housing space and resources.

(f) Accessory dwelling units can meet the needs of Washington's growing senior population, making it possible for this population to age in their communities by offering senior-friendly housing, which prioritizes physical accessibility, in walkable communities near amenities essential to successful aging in place, including transit and grocery stores, without requiring costly renovations of existing housing stock.

(g) Homeowners who add an accessory dwelling unit may benefit from added income and an increased sense of security.

(h) Accessory dwelling units provide environmental benefits. On average they are more energy efficient than single detached houses, and they incentivize adaptive reuse of existing homes and materials.

(i) Siting accessory dwelling units near transit hubs, employment centers, and public amenities can help to reduce greenhouse gas emissions by increasing walkability, shortening household commutes, and curtailing sprawl.

(2) The legislature intends to promote and encourage the creation of accessory dwelling units as a means to address the need for additional affordable housing options.

Sec. 2. RCW 36.70A.696 and 2021 c 306 s 2 are each amended to read as follows:

The definitions in this section apply throughout RCW 36.70A.697 ((~~and~~)), 36.70A.698, and sections 3 and 4 of this act unless the context clearly requires otherwise.

(1) "Accessory dwelling unit" means a dwelling unit located on the same lot as a single-family housing unit, duplex, triplex, townhome, or other housing unit.

(2) "Attached accessory dwelling unit" means an accessory dwelling unit located within or attached to a single-family housing unit, duplex, triplex, townhome, or other housing unit.

(3) "City" means any city, code city, and town located in a county planning under RCW 36.70A.040.

(4) "County" means any county planning under RCW 36.70A.040.

(5) "Detached accessory dwelling unit" means an accessory dwelling unit that consists partly or entirely of a building that is separate and detached from a single-family housing unit, duplex, triplex, townhome, or other housing unit and is on the same property.

(6) "Dwelling unit" means a residential living unit that provides complete independent living facilities for one or more persons and that includes permanent provisions for living, sleeping, eating, cooking, and sanitation.

(7) "Gross floor area" means the interior habitable area of a dwelling unit including basements and attics but not including a garage or accessory structure.

(8) "Major transit stop" means:

(a) A stop on a high capacity transportation system funded or expanded under the provisions of chapter 81.104 RCW;

(b) Commuter rail stops;

(c) Stops on rail or fixed guideway systems, including transitways;

(d) Stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes; or

(e) Stops for a bus or other transit mode providing actual fixed route service at intervals of at least fifteen minutes for at least five hours during the peak hours of operation on weekdays.

((~~(8)~~)) (9) "Owner" means any person who has at least 50 percent ownership in a property on which an accessory dwelling unit is located.

((~~(9)~~)) (10) "Principal unit" means the single-family housing unit, duplex, triplex, townhome, or other housing unit located on the same lot as an accessory dwelling unit.

(11) "Short-term rental" means a lodging use, that is not a hotel or motel or bed and breakfast, in which a dwelling unit, or portion

thereof, is offered or provided to a guest by a short-term rental operator for a fee for fewer than 30 consecutive nights.

NEW SECTION. **Sec. 3.** A new section is added to chapter 36.70A RCW to read as follows:

(1)(a) Cities and counties planning under this chapter must adopt or amend by ordinance, and incorporate into their development regulations, zoning regulations, and other official controls the requirements of this section and of section 4 of this act, to take effect six months after the jurisdiction's next periodic comprehensive plan update required under RCW 36.70A.130.

(b) In any city or county that has not adopted or amended ordinances, regulations, or other official controls as required under this section, the requirements of this section and section 4 of this act supersede, preempt, and invalidate any conflicting local development regulations.

(2) Ordinances, development regulations, and other official controls adopted or amended pursuant to this section and section 4 of this act must only apply in the portions of towns, cities, and counties that are within urban growth areas designated under this chapter.

(3) Any action taken by a city or county to comply with the requirements of this section or section 4 of this act is not subject to legal challenge under this chapter or chapter 43.21C RCW.

(4) Nothing in this section or section 4 of this act requires or authorizes a city or county to authorize the construction of an accessory dwelling unit in a location where development is restricted under other laws, rules, or ordinances as a result of physical proximity to on-site sewage system infrastructure, critical areas, or other unsuitable physical characteristics of a property.

(5) Nothing in this section or in section 4 of this act prohibits a city or county from:

(a) Restricting the use of accessory dwelling units for short-term rentals;

(b) Applying public health, safety, building code, and environmental permitting requirements to an accessory dwelling unit that would be applicable to the principal unit, including regulations to protect ground and surface waters from on-site wastewater;

(c) Applying generally applicable development regulations to the construction of an accessory unit, except when the application of

such regulations would be contrary to this section or to section 4 of this act;

(d) Prohibiting the construction of accessory dwelling units on lots that are not connected to or served by public sewers; or

(e) Prohibiting or restricting the construction of accessory dwelling units in residential zones with a density of one dwelling unit per acre or less that are within areas designated as wetlands, fish and wildlife habitats, flood plains, or geologically hazardous areas.

NEW SECTION. **Sec. 4.** A new section is added to chapter 36.70A RCW to read as follows:

(1) In addition to ordinances, development regulations, and other official controls adopted or amended to comply with this section and section 3 of this act, a city or county must comply with all of the following policies:

(a) The city or county may not assess impact fees on the construction of accessory dwelling units that are greater than 50 percent of the impact fees that would be imposed on the principal unit;

(b) The city or county may not require the owner of a lot on which there is an accessory dwelling unit to reside in or occupy the accessory dwelling unit or another housing unit on the same lot;

(c) The city or county must allow at least two accessory dwelling units on all lots that are located in all zoning districts within an urban growth area that allow for single-family homes in the following configurations:

(i) One attached accessory dwelling unit and one detached accessory dwelling unit;

(ii) Two attached accessory dwelling units; or

(iii) Two detached accessory dwelling units, which may be comprised of either one or two detached structures;

(d) The city or county must permit accessory dwelling units in structures detached from the principal unit;

(e) The city or county must allow an accessory dwelling unit on any lot that meets the minimum lot size required for the principal unit;

(f) The city or county may not establish a maximum gross floor area requirement for accessory dwelling units that is less than 1,000 square feet;

(g) The city or county may not establish roof height limits on an accessory dwelling unit of less than 24 feet, unless the height limitation that applies to the principal unit is less than 24 feet, in which case a city or county may not impose roof height limitation on accessory dwelling units that is less than the height limitation that applies to the principal unit;

(h) A city or county may not impose setback requirements, yard coverage limits, tree retention mandates, restrictions on entry door locations, aesthetic requirements, or requirements for design review for accessory dwelling units that are more restrictive than those for principal units;

(i) A city or county must allow detached accessory dwelling units to be sited at a lot line if the lot line abuts a public alley, unless the city or county routinely plows snow on the public alley;

(j) A city or county must allow accessory dwelling units to be converted from existing structures, including but not limited to detached garages, even if they violate current code requirements for setbacks or lot coverage;

(k) A city or county may not prohibit the sale or other conveyance of a condominium unit independently of a principal unit solely on the grounds that the condominium unit was originally built as an accessory dwelling unit; and

(l) A city or county may not require public street improvements as a condition of permitting accessory dwelling units.

(2)(a) A city or county subject to the requirements of this section may not:

(i) Require off-street parking as a condition of permitting development of accessory dwelling units within one-half mile walking distance of a major transit stop;

(ii) Require more than one off-street parking space per unit as a condition of permitting development of accessory dwelling units on lots smaller than 6,000 square feet before any zero lot line subdivisions or lot splits; and

(iii) Require more than two off-street parking spaces per unit as a condition of permitting development of accessory dwelling units on lots greater than 6,000 square feet before any zero lot line subdivisions or lot splits.

(b) The provisions of (a) of this subsection do not apply:

(i) If a local government submits to the department an empirical study prepared by a credentialed transportation or land use planning

expert that clearly demonstrates, and the department finds and certifies, that the application of the parking limitations of (a) of this subsection for accessory dwelling units will be significantly less safe for vehicle drivers or passengers, pedestrians, or bicyclists than if the jurisdiction's parking requirements were applied to the same location for the same number of detached houses. The department must develop guidance to assist cities and counties on items to include in the study; or

(ii) To portions of cities within a one mile radius of a commercial airport in Washington with at least 9,000,000 annual enplanements.

(3) When regulating accessory dwelling units, cities and counties may impose a limit of two accessory dwelling units, in addition to the principal unit, on a residential lot of 2,000 square feet or less.

(4) The provisions of this section do not apply to lots designated with critical areas or their buffers as designated in RCW 36.70A.060, or to a watershed serving a reservoir for potable water if that watershed is or was listed, as of the effective date of this section, as impaired or threatened under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1313(d)).

NEW SECTION. **Sec. 5.** A new section is added to chapter 36.70A RCW to read as follows:

To encourage the use of accessory dwelling units for long-term housing, cities and counties may adopt ordinances, development regulations, and other official controls which waive or defer fees, including impact fees, defer the payment of taxes, or waive specific regulations. Cities and counties may only offer such reduced or deferred fees, deferred taxes, waivers, or other incentives for the development or construction of accessory dwelling units if:

(1) The units are located within an urban growth area; and

(2) The units are subject to a program adopted by the city or county with effective binding commitments or covenants that the units will be primarily utilized for long-term housing consistent with the public purpose for this authorization.

Sec. 6. RCW 43.21C.495 and 2022 c 246 s 3 are each amended to read as follows:

(1) Adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions taken by a city to implement: The actions specified in section 2, chapter 246, Laws of 2022 unless the adoption of such ordinances, development regulations and amendments to such regulations, or other nonproject actions has a probable significant adverse impact on fish habitat; and the increased residential building capacity actions identified in RCW 36.70A.600(1), with the exception of the action specified in RCW 36.70A.600(1)(f), are not subject to administrative or judicial appeals under this chapter.

(2) Adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions taken by a city or county consistent with the requirements of sections 3 and 4 of this act are not subject to administrative or judicial appeals under this chapter.

Sec. 7. RCW 36.70A.280 and 2011 c 360 s 17 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance ((~~with RCW 36.70A.5801~~)) based on a city or county's actions taken to implement the requirements of sections 3 and 4 of this act within an urban growth area;

(b) That the ((~~twenty-~~)) 20-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within ((~~sixty~~)) 60 days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70A RCW to read as follows:

(1) By December 31, 2023, the department must revise its recommendations for encouraging accessory dwelling units to include the provisions of sections 3 and 4 of this act.

(2) During each comprehensive plan review required by RCW 36.70A.130, the department must review local government comprehensive plans and development regulations for compliance with sections 3 and

4 of this act and the department's recommendations under subsection (1) of this section.

NEW SECTION. **Sec. 9.** A new section is added to chapter 64.34 RCW to read as follows:

(1) Except a declaration created to protect public health and safety, and ground and surface waters from on-site wastewater, a declaration created after the effective date of this section and applicable to a property located within an urban growth area may not impose any restriction or prohibition on the construction, development, or use on a lot of an accessory dwelling unit that the city or county in which the urban growth area is located would be prohibited from imposing under section 4 of this act.

(2) For the purposes of this section, "urban growth area" has the same meaning as in RCW 36.70A.030.

(3) A city or county issuing a permit for the construction of an accessory dwelling unit may not be held civilly liable on the basis that the construction of the accessory dwelling unit would violate a restrictive covenant or deed restriction.

NEW SECTION. **Sec. 10.** A new section is added to chapter 64.32 RCW to read as follows:

(1) Except a declaration created to protect public health and safety, and ground and surface waters from on-site wastewater, a declaration created after the effective date of this section and applicable to a property located within an urban growth area may not impose any restriction or prohibition on the construction, development, or use on a lot of an accessory dwelling unit that the city or county in which the urban growth area is located would be prohibited from imposing under section 4 of this act.

(2) For the purposes of this section, "urban growth area" has the same meaning as in RCW 36.70A.030.

(3) A city or county issuing a permit for the construction of an accessory dwelling unit may not be held civilly liable on the basis that the construction of the accessory dwelling unit would violate a restrictive covenant or deed restriction.

NEW SECTION. **Sec. 11.** A new section is added to chapter 64.38 RCW to read as follows:

(1) Except governing documents of associations created to protect public health and safety, and ground and surface waters from on-site wastewater, governing documents of associations created after the effective date of this section and applicable to a property located within an urban growth area may not impose any restriction or prohibition on the construction, development, or use on a lot of an accessory dwelling unit that the city or county in which the urban growth area is located would be prohibited from imposing under section 4 of this act.

(2) For the purposes of this section, "urban growth area" has the same meaning as in RCW 36.70A.030.

(3) A city or county issuing a permit for the construction of an accessory dwelling unit may not be held civilly liable on the basis that the construction of the accessory dwelling unit would violate a restrictive covenant or deed restriction.

NEW SECTION. **Sec. 12.** A new section is added to chapter 64.90 RCW to read as follows:

(1) Except declarations and governing documents of common interest communities created to protect public health and safety, and ground and surface waters from on-site wastewater, declarations and governing documents of common interest communities created after the effective date of this section and applicable to a property located within an urban growth area may not impose any restriction or prohibition on the construction, development, or use on a lot of an accessory dwelling unit that the city or county in which the urban growth area is located would be prohibited from imposing under section 4 of this act.

(2) For the purposes of this section, "urban growth area" has the same meaning as in RCW 36.70A.030.

(3) A city or county issuing a permit for the construction of an accessory dwelling unit may not be held civilly liable on the basis that the construction of the accessory dwelling unit would violate a restrictive covenant or deed restriction.

NEW SECTION. **Sec. 13.** The following acts or parts of acts are each repealed:

(1) RCW 35.63.210 (Accessory apartments) and 1993 c 478 s 8;

(2) RCW 35A.63.230 (Accessory apartments) and 1993 c 478 s 9;

(3) RCW 36.70A.400 (Accessory apartments) and 1993 c 478 s 11;

(4) RCW 36.70.677 (Accessory apartments) and 1993 c 478 s 10; and

(5) RCW 43.63A.215 (Accessory apartments—Development and placement—Local governments) and 1993 c 478 s 7.

--- END ---