

23 September 2013

TO: Mike Smith
Planning Commission

FROM: Nancy Lillquist

SUBJECT: LDCU Comments, September Draft

A few comments on the latest draft:

15.210.040C – Notice requirements – I believe we discussed adding public notice to the Notice of Decision. Otherwise, how would anyone other than the applicant know whether they need to appeal?

*STAFF RESPONSE: You are correct. **Public Notice of Decision will need to be added.***

15.300.040 I am confused by the Guide to Changes language... the amendment adds the MHP zone back in, but the NOTE says the zone is not included in the new code, even though manufactured homes and manufactured home parks are included at 15.340.030 and 040.

STAFF RESPONSE: Not certain what Note is being referred to. New 15.300.040(E) adds the Manufactured Home Park zone back into the document and it is subject to the standards established in 15.340.040. The rationale is that we currently have lands zoned MHP. The Manufactured Home Subdivision zone is no longer in the Code since we do not have any land currently zoned MHS and because State law requires jurisdictions to allow manufactured homes on any lot that allows a stick built home. A basic subdivision currently could be all Manufactured Homes provided they meet the conditions in 15.340.030 and the normal subdivision design standards.

Table 15.310.040 has added Manufactured Home Park back as a permitted use in the Manufactured Home Park (MHP) zoning district. It was originally omitted until we realized that there are currently lands zoned MHP and, if deleted from the use tables and the zoning district descriptions, we would have to rezone those properties to some other zone, which is beyond the scope of the Update project.

15.310.040 The Guide says Outlet Centers are added as a permitted use in the CT Zone, but page 3-18 shows them in the CH zone.

*STAFF RESPONSE: That is an incorrect reference. **Outlet Centers are currently allowed only in the C-H zone and that should be carried over to the Code Update.** When Outlet Centers were discussed by Council for inclusion in the code a year or so ago, inclusion in the C-T zone was considered but rejected by Council. There was also some discussion about making Outlet Centers similar to Regional Retail Commercial, but that was also rejected by Council.*

There was a comment made regarding defining Business Parks and adding them as a use to certain zones (IL and or CH?)... I don't recall if we decided not to do that, or to do it later, or if we intended to do it but it got dropped.

STAFF RESPONSE: Staff notes reflect the discussion, but no Council consensus was reached. It should be noted that the current Comp Plan Future Land Use Map does include a category for "Business/Office Parks" and has designated the R-O zone as the appropriate implementing zone.

15.310.050A5 – Did you decide that the CWU medical clinic fell within this section as worded? Or is it not included because of an oversight?

STAFF RESPONSE: The Director would interpret 15.310.050(1) as meaning that the CWU medical clinic or a Public Hospital District medical clinic or a County Health Department medical clinic would be an accessory use to the primary public use even if on a separate site, provided the site was zoned PR.

The specific language in 15.310.050(5) referring just to a public hospital medical office or dentist facility should be amended to refer to any medical office or dentist facility operated in the public reserve (P-R) zone in conjunction with the primary public permitted use.

15.420.030D (060 in the Guide) - Edges and fences – Adding the exception to reverse frontage lots raises a couple of other concerns that Council did not address in its discussion of this issue.

1. A provision should be made for sidewalk maintenance, especially snow removal. I propose adding the underlined text to the last sentence of the exception to read:

"The landscaped strip and adjacent sidewalks shall be maintained by a private homeowners' association."

STAFF RESPONSE: Staff has used the language provided by Steve Willard as directed by Council. Staff would be OK with this proposed amendment because as it would better address the snow on sidewalk maintainence issue.

2. A definition of Homeowner's Association should be included in chapter 1.
Examples:

STAFF RESPONSE: Staff agrees that a definition of an HA should be included and will work with the consultant to provide Council direction. This will need additional work by staff, consultant and attorney or Council may opt to choose any of the definitions provided below.

Snohomish County: 30.91H.140 Homeowners' association or association. 

"Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the associations jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapters [64.32](#) or [64.34](#) RCW.

Deer Park: 17.06.172 Homeowners association.

"Homeowners association" means an incorporated, nonprofit organization operating under recorded land agreements through which:

- A. Each lot owner is automatically a member; and
- B. Each lot is automatically subject to charge for a proportionate share of the expense for the organization's activities, such as maintaining common property; and
- C. A charge, if unpaid, becomes a lien against the property.

3. Homeowners Associations sometimes can be sustained over time, but sometimes lack leadership or the memory of what it was they were organized to do fades. If the City is to rely on homeowners associations to perform maintenance of landscaped strips (or trails, or open space, or stormwater detention facilities) the code should provide for the possibility that it won't get done at some point in the future. Some cities have provisions that allow the city to assume the responsibilities of the association and then bill the association or its members. Examples (highlighted and in italics):

Deer Park 18.62.030 Zero Lot Line Planned Developments

K. Open Space. Each zero lot line planned development shall provide area for common open space in accordance with DPMC [17.28.050](#)(B)(14)(a)(ii), which shall be:

- 1. Concentrated in large areas and designed to provide either passive or active recreation;
- 2. Owned and maintained as follows:
 - a. If under one ownership, owned and maintained by said ownership;
 - b. Held in common ownership by all the owners of the development by means of a homeowners association. Such homeowners association shall be responsible for maintenance of the common open space. *If such open space is not maintained in a reasonable manner, the city shall have the right to provide for the maintenance thereof and bill the homeowners association accordingly;* or
 - c. Dedicated for public use if accepted by the city's legislative authority or other appropriate public agency.

L. Maintenance of Common Areas. Where common ownership by a homeowners association is responsible for common open space maintenance, visitor parking areas, access drives, perimeter buffer areas, and any and all other common ownership aspects of the zero lot line planned development, there shall be a common maintenance agreement among all of the fee title dwelling unit owners. *Said agreement shall be reviewed and approved by the city as to form, content, and compliance with the intent of this chapter and said agreement shall be filed of record with the Spokane County auditor and shall run with the land and be binding upon all future dwelling unit owners.*

Stanwood : 17.147.110 Establishment of homeowners’ associations.

Homeowners’ associations or similar legal entities responsible for the maintenance and control of common areas, including recreational facilities and open space, shall be established in such a manner that:

- (1) Provision for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
- (2) The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas and facilities; and
- (3) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities;
- (4) The maintenance and liability for any such common areas and facilities shall be a continuing responsibility of the homeowner’s association or similar entity. *If said association or similar entity fails to maintain a common area in an acceptable manner, the city of Stanwood shall do or cause to be done such maintenance and bill the association or similar entity for this work. If the association or similar entity does not remit payment in a timely manner, the city shall have the right to place a lien on the property owners that comprise the association or similar entity.* (Ord. 948, 1996; Ord. 929 Ch. 10(M)(11), 1995).

15.420.050C3 – What happens if/when the “Provisions” made to keep the access clear fail? Would the provisions be a recorded document, part of the subdivision or short plat? On a private street, can the City enforce parking and other restrictions? If not, seems reasonable to add a provision here that would allow such enforcement as part of the plat approval process.

STAFF RESPONSE: This will need additional work by staff, consultant and the attorney. The Director would think that the Code language and/or definition for an Homeowner’s Association should address it similar to your highlighted text in the Stanwood example.

As to the private street enforcement question the Director does not believe that the City can enforce parking and other restrictions unless those restrictions are a specific condition in the City approval of the project. And if so, the Director questions whether criminal (police) citations could be utilized and instead thinks it would have to be civil enforcement.

15.420.050C5 and D4 – Delete “due to aerial apparatus access limitations.” The code does not need to explain why the height limitation is included.

*STAFF RESPONSE: **Staff would agree with this proposed amendment.** Even though the residential zone height limit in Table 15.320.030 is set at 35-feet which could support a 3-story structure, the lot designs referenced in 15.420.050(C)(5) and (D)(4) are the courtyard access lots and the pedestrian-only entry lots, both of which may limit aerial access to all of the lots. Should that situation change with fire apparatus improvement or other factors, the language could always be amended to allow the residential zoning height limit of 35-feet.*

Typos, etc.

15.130.040 Design review, minor 3b - “Non-residential”

15.210.040(A) Closed record appeal hearing Type II – “appealed”

*STAFF RESPONSE: Thank you. **Council will direct Staff to correct any identified typos, etc.***