

CITY OF ELLENSBURG  
Revised DRAFT 1 LAND DEVELOPMENT CODE UPDATE - January, 2013  
ARTICLE SUMMARY

**NOTE:** Revisions have altered some of the section numbering below and will be identified with both the November 2012 summary numbering and with the revised January 2013 numbering in *italics*. The Revision has addressed comments received to date on Draft 1 in a track changes format and includes some specific changes, however the summary content of the revised Articles remains the same. The Revised Draft 1 document is available on the City's Web page [www.ci.ellensburg.wa.us](http://www.ci.ellensburg.wa.us)

**Article 2      Permits and Procedures**

Totally reorganizes the land development permit review processes and procedures into a simpler and consistent format.

**NOTE:** *The biggest proposed change is that the new LDC will utilize a Hearing Examiner to hear and make the final decision on most quasi-judicial permit applications in order to ensure a consistent decision-making process that is supported by legally defensible findings and conclusions. That includes Conditional Use applications now heard and decided by the Planning Commission, Variance applications now heard by the Board of Adjustment, and design review applications now heard by the Landmarks and Design Commission. Council will still be the final decision body for Plats and Rezones.*

*If approved as drafted:*

- *the Planning Commission will serve as a recommendatory body for site specific rezones and will handle appeals of variance decisions in addition to being the recommendatory body for legislative actions such as comp plan adoption/amendment, area-wide rezones, and annexations;*
- *the Board of Adjustment will no longer have a Code function and would be eliminated; and,*
- *the Landmarks and Design Commission will serve as a recommendatory body for major design review applications, landmark register listings, landmark register demolitions, and landmark Certificate of Approval for projects and signs involving landmark register properties.*

**NOTE:** *In initial review of this draft both the Planning Commission and the Landmarks and Design Commission are recommending against using the Hearing Examiner system and desire to continue to handle quasi-judicial matters. Legal review has strongly recommended for the Hearing Examiner system due to the legal complexity involved in quasi-judicial matters.*

- 15.21 Establishes **5 basic permit review process types** based on level of public notice and review process requirements, who makes the final decision, the type of public hearings involved in the decision, and available appeal opportunities.
- **Type I** simple administrative decisions by the decision-maker (typically the Director) based on compliance with specific non-discretionary and non-technical

standards.

- SEPA is not involved
- No notice is required
- Very limited administrative review
- No appeal opportunity except to Court via the Land Use Petition Act (LUPA)
- Examples:
  - Permitted use decisions
  - Boundary line adjustments
  - Non-conforming use determinations
  - Site development permits (*NEW* - a permit will be required for all site development activity including clearing and grading)
  - Home occupations
- **Type II** relatively simple administrative decisions based on standards and clearly identified criteria. The activity could have some minimal impact on surrounding properties.
  - SEPA review may be involved
  - Some public notice is required but typically do not require a public hearing prior to the decision
  - Conditions may be imposed based on public notice comments or due to identified adverse, but mitigatable impacts from the activity
  - Decision must be in writing with supporting documentation for approval, for approval with modifications, or for denial of the application
  - Appeal is to the Hearing Examiner through an open record hearing where new facts and testimony can be provided
  - Examples:
    - Code interpretations
    - Departures (*NEW* process to allow some administrative flexibility of project design standards in Article 5)
    - Major and minor design review
    - Sign permits
    - Short subdivisions of 9 or fewer lots
    - Some critical area determinations (exemptions and initial determinations that a Critical Area Report is or is not required)
    - Landmark Register activities
- **Type III** involve applications that are site-specific, that have a likelihood of some impact on the surrounding properties and that require the use of discretionary judgment in the review and decision on the application.
  - SEPA review may be involved
  - Public notice is required through mailing and/or posting of the property and/or publication
  - Public hearing is required - an open record hearing with new testimony and evidence allowed
  - Conditions may be imposed based on public comments or due to identified adverse, but mitigatable impacts from the activity
  - Decision must be in writing with formal findings of fact and conclusions of law
  - Appeal is typically to City Council
  - Examples:

- Conditional use permits
  - Variances permits
  - Critical area Exceptions for public agency or reasonable use
- **Type IV** Same as Type III except
    - the public hearing is held by the City Council
    - the appeal is to Superior Court
    - Examples:
      - Preliminary subdivision applications
      - Master site plans for regional retail commercial projects
      - Site specific rezones
- **Type V** legislative, non-project actions that apply to large areas of the city or to the entire City of Ellensburg
    - SEPA may be involved
    - Public notice may be required
    - Public hearing may be required
    - Decision by City Council
    - Appeal is to Superior Court or to Growth Management Hearings Board if GMA action
    - Examples:
      - Adoption/amendment of Comprehensive Plan
      - Adoption/amendment of development regulations and codes
      - Area-wide rezones
      - Annexations

***NOTE: Initial legal review has recommended that the Type V permit process be removed from the Land Development Code because they involve legislative non-project actions rather than project specific actions. The concern is that the processes for legislative versus quasi-judicial matters are very different and could get confused with other "process" steps detailed in Chapter 2. Staff is considering how best to approach this as most other jurisdictions include it as a permit type with the other permit types.***

- 15.22 and 15.23 Provide **detailed new permit review procedures** for each permit review Type, including notice, hearing and appeal procedures
- 15.24 Revises current **nonconforming use and structure** provisions and creates two levels of non-conformity
- **Benign nonconformity** buildings and structures that do not have a negative impact on the health and safety of the public, but may impact the welfare of the public such as:
    - Insufficient landscaping
    - Insufficient off-street parking
    - Insufficient setbacks

- Can typically be repaired, maintained and rebuilt in same footprint so long as no increase in nonconformity
- **Detrimental nonconformity** has a negative impact on the health and safety of the public such as:
  - Offensive or dangerous use in a residential zone
  - May be maintained and repaired
  - May be rebuilt in same footprint within 1 year of natural destruction

***NOTE: Initial legal review has struggled with this novel approach to nonconforming uses. The general rule is to eliminate nonconforming uses over time, yet this proposal would allow some nonconforming uses that are "benign" to be rebuilt.***

***This approach was developed in response to the large percentage of nonconforming uses in our city that involve just a building (typically a garage) being located in the required rear or side yard setback areas. Over time those garages have deteriorated with age and the owners want to replace them with new garages. Traditional nonconforming use theory would say that they cannot replace them because the goal is to eliminate all nonconforming uses over time. But the result is that the structures only get in poorer and poorer shape and detract from property values.***

***Staff's view is that the these types of nonconforming structures were in existence before setbacks became a development requirement and the neighborhood has over time accepted them as the developed pattern of the neighborhood. So why not allow someone to replace an old deteriorated garage in a setback with a modern garage that meets all code except for those setback requirements?***