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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

AMENDED ORDINANCE NO. 01-013

REVISING PROCEDURES
FOR ADMINISTRATIVE APPEAL OR REVIEW OF DECISIONS RELATING
TO TRAFFIC IMPACTS OF LAND DEVELOPMENT, INCLUDING IMPACT
FEES AND CONCURRENCY DETERMINATIONS, AND AMENDING
TITLE 26B SCC

WHEREAS, on June 28, 1995, the Snohomish County Council adopted Amended Ordinance No. 95-039 which amended Title 26B SCC to implement provisions of the Growth Management Act (GMA) and the County's GMA comprehensive plan governing developer contributions for road purposes and related conditions of land use approvals, including road system concurrency requirements; and

WHEREAS, on August 23, 1995, the Snohomish County Council adopted Amended Ordinance No. 95-070 which amended Title 26B SCC to provide for road system impact fees pursuant to Chapter 82.02 RCW; and

WHEREAS, on November 14, 2000, the Snohomish County Planning Commission recommended that the County Council further amend Title 26B SCC to provide for review of road system concurrency determinations by the Hearing Examiner at an open record hearing, subject to closed record review by the County Council; and

WHEREAS, the County Executive proposed legislation to implement the Planning Commission's recommendation and make other changes relating to administrative appeals; and

WHEREAS, additional public testimony during the public hearing process expressed a need to further clarify the administrative appeals provisions for Title 26B SCC concurrency determinations and other Title 26B issues; and

WHEREAS, staff prepared revised language for consideration by Council and the Council has provided additional opportunity for review and comment on the proposed language changes; and

WHEREAS, having considered the recommendations of the Planning Commission and County Executive and the additional public review and comment, the County Council finds that amendment of Title 26B SCC is appropriate to simplify county land use permit processes and to assure that those processes are consistent with state laws governing administrative hearings and appeals.

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NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council hereby adopts the foregoing recitals as findings of fact and conclusions.

Section 2. Snohomish County Code Section 26B.52.130, last amended by Amended Ordinance No. 95-039 on June 28, 1995, is amended to read:

26B.52.130 Director authorization for administrative policies and technical procedures.

The director is hereby authorized to (~~produce and maintain~~) adopt administrative policies and technical procedures in order to administer this title. The policies and procedures shall cover the various aspects of processing land use applications and shall set forth any necessary procedural requirements for developers to follow in order for their applications to be processed by the staff in an efficient manner. The director shall (~~produce~~) adopt administrative policies and technical procedures on at least the following topics:

- (1) Traffic studies: scoping, elements, processing;
- (2) Level-of-service determination: methodology, data collection, forecasting;
- (3) Transit compatibility: transit supportive criteria for arterials, compatibility of development;
- (4) Inadequate road conditions: criteria for identification;
- (5) Frontage improvements: standards, variables;
- (6) Mitigation measures: extent, timing, agreements; and
- (7) Master road improvement programs: processing.

The decisions of the director on matters relating to the (~~administration of the adopted~~) adoption of administrative policies and procedures shall be final and not subject to review except as expressly provided by this title.

Section 3. A new section is added to Chapter 26B.55 of the Snohomish County Code to read:

26B.55.022 Review of impact fees.

(1) Any person aggrieved by a decision applying an impact fee under this title to a development application may appeal such decision to the hearing examiner pursuant to chapter 2.02 SCC. Where there is an administrative review or appeal process before the hearing examiner for the underlying application, appeals of an impact fee under this title must be

combined with administrative review or appeal of the underlying application. Where there is no administrative review or appeal process before the hearing examiner for the underlying application, the appeal shall be limited to application of the impact fee. The department of planning and development services shall provide notice of the determinations relating to impact fees and the opportunity for administrative review or appeal as set out in SCC 32.50.060 or SCC 32.50.130.

(2) An open record hearing conducted under this section shall be consolidated with any other open record hearing relating to the same application. At the hearing, the appellant shall have the burden of proof, which burden shall be met by a preponderance of the evidence. The impact fee may be modified upon a determination that it is proper to do so based on the application of the criteria contained in SCC 26B.55.020. Appeals under this section shall be limited to application of the impact fee provisions to the specific development activity for which application is made, and the provisions of this title shall be presumed valid.

(3) The decision of the hearing examiner pursuant to subsection (2) shall be final and conclusive with an optional right of reconsideration as provided in SCC 2.02.167 and may then be reviewable by filing a land use petition in Snohomish County superior court as provided in Chapter 2.02 SCC; except as may be limited by Chapters 43.21C RCW, 197-11 WAC and 23.40 SCC.

Section 4. A new section is added to Chapter 26B.55 of the Snohomish County Code to read:

26B.55.035 Concurrency determination review or appeal.

(1) Any aggrieved person may seek review of or appeal a preapplication concurrency decision or a concurrency determination as provided in this section. No review or appeal is provided for a concurrency determination made pursuant to SCC 26B.55.030(4). The scope and standard for review of the preapplication concurrency decision or concurrency determination is as provided in SCC 26B.55.039.

(2) Any aggrieved person may request the hearing examiner to review a concurrency determination that is combined with an application for a permit or approval over which the hearing examiner exercises original jurisdiction at the open record predecision hearing on the underlying application.

(a) The department of planning and development services shall provide notice of the concurrency determination in accordance with SCC 32.50.060. The notice shall be combined with the notice of public hearing for the underlying application and shall describe the requirements for review of a concurrency determination. Notice is not required for a concurrency determination made pursuant to SCC 26B.55.030(4).

(b) The aggrieved person must provide written documentation to the hearing examiner demonstrating why the concurrency determination fails to satisfy the requirements of this title.

(c) The decision of the hearing examiner is final and conclusive with an optional right of reconsideration as provided in SCC 2.02.167 and may then be appealed to the county council pursuant to chapter 2.02 SCC together with an appeal of the underlying permit or approval decision.

(3) Any aggrieved person may appeal a concurrency determination made for an application for a permit or approval over which the hearing examiner does not exercise original jurisdiction by filing an appeal to the hearing examiner pursuant to the administrative appeal provisions of chapter 2.02 SCC.

(a) The department of planning and development services shall provide notice of the concurrency determination and the time period for filing an administrative appeal in accordance with SCC 32.50.060 and SCC 32.50.130. Notice is not required for a concurrency determination made pursuant to SCC 26B.55.030(4).

(b) An open record appeal hearing conducted under this subsection shall be consolidated with any other open record appeal hearing relating to the underlying permit or approval decision.

(c) The decision of the hearing examiner is final and conclusive with an optional right of reconsideration as provided in SCC 2.02.167 and may then be reviewed by filing a land use petition pursuant to SCC 2.02.195 together with an appeal of the underlying permit or approval decision.

(4) Any aggrieved person may appeal a preapplication concurrency decision made pursuant to SCC 26B.55.034 by filing an appeal to the hearing examiner pursuant to the administrative appeal provisions of chapter 2.02 SCC. The appeal shall follow the procedure specified in SCC 26B.55.035(2) or (3), depending on whether the development to be applied for will require a permit or approval over which the hearing examiner exercises original jurisdiction, except that consolidation with the underlying application or appeal of the underlying permit or approval decision is not required.

(5) Section 5. A new section is added to Chapter 26B.55 of the Snohomish County Code to read:

26B.55.039 Concurrency determination – standards of review.

(1) A concurrency determination by the department creates a rebuttable presumption of validity. The hearing examiner may vacate a concurrency determination upon a showing that the determination is clearly erroneous. The department's professional judgment and expertise shall be entitled to substantial weight. The party challenging the concurrency determination shall have the burden of proof.

(2) Any county council review of the hearing examiner's decision on a concurrency determination or preapplication concurrency decision shall be governed by chapter 2.02 SCC.

Section 6. Snohomish County Code Section 26B.57.005, adopted by Amended Ordinance No. 95-039 on June 28, 1995, is amended to read:

26B.57.005 ((Administrative appeals)) Application for deviation.

(1) Prior to the issuance of any decision ~~((regarding the provisions))~~ applying requirements of this title, ~~((any))~~ a developer may ~~((appeal))~~ submit a written request to the director for deviation from ~~((the))~~ those requirements ~~((of this title))~~ where the mitigation and/or concurrency requirements of this title are considered to be disproportionate, or not reasonably related, to the impacts and/or timing of the proposed development. If the director determines that the ~~((purpose))~~ purposes of this title would be best served by deviation from such requirements, the director shall include as part of the director's recommendation under SCC 26B.55.010, the reason for such deviation and any alternative mitigation measures that are determined to be necessary.

(2) The approving authority, upon consideration of such a recommendation, shall determine whether the ~~((purpose))~~ purposes of this title would be best served by deviation from the requirements of this title, and may permit such deviation and impose as a condition of approval any alternative mitigation measures that are determined to be necessary and are recommended by the director.

(3) Nothing in this section shall be construed to allow a violation of the Growth Management Act.

Section 7. A new section is added to Chapter 26B.57 of the Snohomish County Code to read:

26B.57.010 Review by hearing examiner.

(1) Any person aggrieved by a decision of the department applying this title to a development application may raise the decision as an issue in the hearing examiner review or appeal process that applies to the underlying application, if any. Where there is no administrative review or appeal process before the hearing examiner for the underlying application, the decision of the department is final and not subject to administrative review or appeal.

(2) If a decision of the department is raised as an issue in the course of review by the hearing examiner, the party challenging the decision shall have the burden of proof which shall be met by a preponderance of the evidence.

(3) This section shall not apply to a decision for which an administrative review or appeal is specifically provided by this title or to a decision that is described in this title as final or not subject to administrative review or appeal. Unless specifically provided for in this title, there is no independent right of administrative appeal.

(4) Administrative review of determinations of inadequate road conditions, impact fees, preapplication concurrency decisions and concurrency determinations is governed by SCC 26B.52.070, 26B.55.022, and 26B.55.035 through .039, respectively.

Section 8. Snohomish County Code Section 26B.57.015, adopted by Amended Ordinance No. 93-077 on September 8, 1993, and last amended by Amended Ordinance No. 96-003 on February 21, 1996, is repealed.

Section 9. Severability and savings. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by the Growth Management Hearings Board (Board), or a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

PASSED this 19th day of Sept, 2001.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ATTEST:

Sheila McCallister
Clerk of the Council, *asst.*

Dave Sam
Chair

- APPROVED
 EMERGENCY
 VETOED

Date: 10/04/01

Robert J. Drewel
County Executive

ATTEST:

Pamela S. Sandez

Approved as the form only:

Barbara Dykes 9/7/01
Barbara Dykes
Deputy Prosecuting Attorney

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