

6a. Staff Report - Subdivision Vacation Development Code Amendments

Planning Commission Meeting Date: June 17, 2021

Agenda Item: 6a.

PLANNING COMMISSION AGENDA ITEM CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing on the Subdivision Vacation Development Code Amendments		
DEPARTMENT:	Planning & Community Development		
PRESENTED BY:	Cate Lee, AICP, Senior Planner		
<input checked="" type="checkbox"/> Public Hearing	<input type="checkbox"/> Study Session	<input type="checkbox"/> Recommendation Or	
<input type="checkbox"/> Discussion	<input type="checkbox"/> Update	<input type="checkbox"/> Other	

INTRODUCTION

Tonight, the Planning Commission is holding a public hearing on the proposed Development Code amendments related to Subdivision Vacations.

Amendments to Shoreline Municipal Code (SMC) Title 20 (Development Code) are processed as legislative decisions. Legislative decisions are non-project decisions made by the City Council under its authority to establish policies and regulations. The Planning Commission is the reviewing authority for legislative decisions and is responsible for holding an open record Public Hearing on the proposed Development Code amendments and making a recommendation to the City Council on each amendment.

The proposed Development Code amendments create a new subsection that has standards for applicability, application, review procedure and criteria, recording and appeal of Subdivision Vacations (**Attachment A**).

BACKGROUND

RCW 58.17.212 provides for the vacation of a subdivision and the proposed development code amendments will establish a process within the SMC for such vacations. A plat vacation is different than a plat alteration, which the City adopted regulations for in 2019, now codified in SMC 20.30.425, as provided in RCW 58.17.215 - .218. Plat alterations generally result in substantial revisions to an approved subdivision, such as removal of conditions of approval, but do not eliminate the subdivision itself. In contrast, a Subdivision Vacation results in the abandonment of approved plans, designs and conditions associated with an existing subdivision. In other words, a vacation returns the land to its pre-subdivision state.

A Subdivision Vacation may be a total vacation or a partial vacation. A total vacation eliminates the entire subdivision, including all lots and public rights-of-way, as well as any restrictions that may have been contained on the plat. A partial vacation eliminates only the designated lots, public rights-of-way, and/or plat restrictions indicated in the

Approved By: Project Manager _____

Planning Director _____

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vacation document. Land dedicated to the public in the original plat is required to be deeded to the City unless retaining the land does not benefit the City. This vacation process is not used when the applicant only wants to vacate a city street; in those situations the procedures in SMC 12.17 Street Vacation are used.

May 20, 2021, Planning Commission Study Session

Staff introduced the initial draft of the Subdivision Vacation Development Code amendments to the Commission on May 20. The staff report and attachments for that meeting can be found here:

<https://www.shorelinewa.gov/home/showpublisheddocument/51644/637565132529330000>. A link to the meeting video recording page can be found here: https://shoreline.granicus.com/MediaPlayer.php?view_id=9&clip_id=1197.

COMMISSION QUESTIONS

The Commission raised questions at the May 20 study session, which were answered by staff at the meeting and are further addressed below.

- *Question:* Who can apply for a subdivision vacation?
 - *Staff Response:* Under the proposed code, an individual or entity can make application for a subdivision vacation once they have received permission from all property owners within the subdivision requested to be vacated, or all property owners within the portion to be vacated (see **Attachment A**, proposed SMC 20.30.427(B)(1)).

- *Question:* This process applies to recorded subdivisions, what about unrecorded subdivisions?
 - *Staff Response:* The short answer is no—unrecorded plats are not officially recorded, meaning no land has been officially subdivided or legally recorded, so therefore do not need to be vacated. Unrecorded plats do exist in the City. There are many properties legally described as “Lot x of the unrecorded plat of x” but they also usually give the metes and bounds description for the property. In 1948 the King County Commissioners (predecessors to the King County Council) adopted a resolution stating that all “unrecorded plats” are to be treated as preliminary plats. If a survey was done for the plat, then that was to be recorded and it would become the final, recorded plat. This “unrecorded plat is a preliminary plat” was in the King County Code that the City adopted at incorporation but it was repealed years ago and the “unrecorded plat” verbiage is not currently used by City staff, instead the term “preliminary plat” is used.

- *Question:* What happens to an easement on a subdivision that is being vacated?
 - *Staff Response:* The easement would be extinguished and no longer exist if the City was the holder of the easement and it was in the public interest to have it extinguished. If the subdivision contained a private easement that

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benefitted an adjacent property, even if granted through the subdivision, it could not be extinguished by the vacation because it is a property right for that adjacent property and they would need to consent.

- *Question:* Is the subdivision vacation all or nothing? Or can the decision be to vacate certain aspects of the subdivision and not others?
 - *Staff Response:* A subdivision vacation is not all or nothing, but also may not be the most appropriate tool to accomplish the purpose for which the application was submitted. At the pre-application stage, City staff would discuss with the applicant if a plat alteration or subdivision vacation is most appropriate. The proposed SMC 20.30.427(A) (see **Attachment A**) states that subdivision vacation provides a process to vacate a previously recorded subdivision, short subdivision, binding site plan, or any portion thereof. This means that if a subdivision has twenty (20) lots, and an applicant would only like to vacate five (5) lots, then the remaining fifteen (15) lots would be left intact, essentially removing the five (5) lots.
- *Question:* What would happen if the City doesn't adopt this subdivision vacation process? What does that mean for the redevelopment of these sites that are being assembled in the station areas?
 - *Staff Response:* If the City doesn't adopt the subdivision vacation process, any request for a subdivision vacation would be subject to the state law, RCW 58.17.212 and 58.17.217. While that statute provides some guidelines it does not provide the City with a specific process. What it means for redevelopment is that they either apply for a plat alteration to accomplish their purpose, or they pursue a subdivision vacation process through the RCW (see **Attachment B**), for which the City has no process. Processes allowed by State law which the City has not adopted procedures generally result in the Director determining how the application will be processed in accordance with State law. This authority is granted in SMC 20.10.050 Roles and Responsibilities.
- *Question:* In the example that was given of a tree protection area on a short plat, if people from the community didn't want this tree protection area to be extinguished, what would happen in the public hearing?
 - *Staff Response:* The Hearing Examiner hears and takes into consideration all of the public comments at the hearing. If the Hearing Examiner decides it is not in the public interest to extinguish the tree protection area then it will remain and may make redevelopment of the site difficult. In which case it is likely the applicant of the subdivision vacation would file an appeal as allowed by the proposed SMC 20.30.427(E) (see **Attachment A**). A public hearing and potential subsequent appeal are all appropriate processes in which to determine if the public interest is served.

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DRAFT DEVELOPMENT CODE AMENDMENTS

No changes were made to the Subdivision Vacation Development Code amendments presented at the May 20, 2021 Commission meeting (**Attachment A**).

PUBLIC COMMENT

The notice of this public hearing appeared in the *Seattle Times* on May 28, 2021, was posted on the City's land use action and planning notices [webpage](#), and it was also sent via email to neighborhood association chairs. City staff received questions via email from one notified chair requesting a more layperson explanation of the proposed amendments. City staff responded with an explanation and details on how a subdivision vacation is different from a plat alteration, with which the inquirer is familiar. As of the date of this report was finalized, this was the only public comment received.

DEVELOPMENT CODE AMENDMENT DECISION CRITERIA

In accordance with SMC 20.30.350(A), an amendment to the Development Code is a mechanism by which the City may bring its land use and development regulations into conformity with the Comprehensive Plan or respond to changing conditions or needs of the City.

The Planning Commission makes a recommendation to the City Council, which is the final decision-maker on whether to approve or deny an amendment to the Development Code. The following are the Decision Criteria used to analyze a proposed amendment:

1. ***The amendment is in accordance with the Comprehensive Plan***

The proposed amendments create a process that will allow the land to return to its pre-subdivision state, including the removal of restrictions and easements associated with existing single-family development which may facilitate redevelopment of the MUR zoning districts, as well as zoning districts Citywide, for their intended purposes as stated in the following Comprehensive Plan Goals and Policies

Staff has determined that the proposed amendments are consistent with the following Comprehensive Plan Goals and Policies:

Goal LU I: Encourage development that creates a variety of housing, shopping, entertainment, recreation, gathering spaces, employment, and services that are accessible to neighborhoods;

LU8: Provide, through land use regulation, the potential for a broad range of housing choices and levels of affordability to meet the changing needs of a diverse community.

LU11: The Station Area 1 (SA1) designation encourages Transit Oriented Development (TOD) in close proximity of the future light rail stations at I-5

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and 185th Street and I-5 and 145th Street. The SA1 designation is intended to support high density residential, a mix of uses, reduced parking standards, public amenities, commercial and office uses that support the stations and residents of the light rail station areas. The MUR-70' Zone is considered conforming to this designation.

LU12: The Station Area 2 (SA2) designation encourages Transit Oriented Development (TOD) in areas surrounding the future light rail stations at I-5 and 185th Street and I-5 and 145th Street. The SA2 designation is intended to provide a transition from the SA1 designation and encourages the development of higher density residential along arterials in the subarea, neighborhood commercial uses, reduced parking standards, increased housing choices, and transitions to lower density single family homes. The MUR-45' Zone is considered conforming to this designation.

LU13: The Station Area 3 (SA3) designation encourages Transit Oriented Development (TOD) in area surrounding the future light rail stations at I-5 and 185th and I-5 and 145th. The SA3 designation is intended to provide a transition from the SA1 and SA2 designation and transitions to lower density designations and encourages the development of medium density residential uses, some neighborhood commercial uses, increased housing choices, and transitions to low density single-family homes. The MUR-35' Zone is considered conforming to this designation.

Staff Analysis: The proposed amendments create a process that will allow the land to return to its pre-subdivision state, including the removal of restrictions and easements associated with existing single-family development which may facilitate redevelopment of the MUR zoning districts, as well as zoning districts Citywide, for their intended purposes.

2. *The amendment will not adversely affect the public health, safety or general welfare.*

The proposed amendment will not adversely affect the public health, safety, or general welfare of the residents of Shoreline. If any aspects of a subdivision sought to be extinguished by an applicant are contrary to the public interest, this will be evaluated and taken into consideration by the Hearing Examiner.

3. *The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.*

The proposed amendments are not contrary to the best interest of the residents and property owners of the City of Shoreline. The amendments provide a process by which both applicant interests and community interests can be heard in a public hearing.

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Staff Recommendation

Staff recommends that the Planning Commission make findings and conclusions to recommend approval of the proposed Subdivision Vacation Development Code Amendments (**Attachment A**) to the City Council.

Next Steps

July 19, 2021 City Council Meeting – City Council will discuss the Planning Commission’s recommendation on the Subdivision Vacation Development Code amendments.

August 16, 2021 City Council Meeting – City Council is scheduled to consider adoption of the Subdivision Vacation Development Code amendments.

Attachments

Attachment A – Proposed Subdivision Vacation Code Amendments

Attachment B – RCW 58.17.212

Att. A - Proposed Subdivision Vacation Code Amendments

20.30.060 Quasi-judicial decisions – Type C.

These decisions are made by the City Council or the Hearing Examiner, as shown in Table 20.30.060, and involve the use of discretionary judgment in the review of each specific application.

Prior to submittal of an application for any Type C permit, the applicant shall conduct a neighborhood meeting to discuss the proposal and to receive neighborhood input as specified in SMC 20.30.090.

Type C decisions require findings, conclusions, an open record public hearing and recommendations prepared by the review authority for the final decision made by the City Council or Hearing Examiner. Any administrative appeal of a SEPA threshold determination shall be consolidated with the open record public hearing on the project permit, except a determination of significance, which is appealable under SMC 20.30.050.

There is no administrative appeal of Type C actions.

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Review Authority, Decision Making Authority, and Target Time Limits for Decisions

Action	Notice Requirements for Application and Decision ⁽³⁾ , ⁽⁴⁾	Review Authority, Open Record Public Hearing	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
Type C:					
1. Preliminary Formal Subdivision	Mail, Post Site, Newspaper	HE ^{(1), (2)}	City Council	120 days	20.30.410
2. Rezone of Property and Zoning Map Change	Mail, Post Site, Newspaper	HE ^{(1), (2)}	City Council	120 days	20.30.320
3. Site-Specific Comprehensive Plan Map Amendment	Mail, Post Site, Newspaper	HE ^{(1), (2)}	City Council		20.30.345

Att. A - Proposed Subdivision Vacation Code Amendments

Action	Notice Requirements for Application and Decision ⁽³⁾ , ⁽⁴⁾	Review Authority, Open Record Public Hearing	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
4. Special Use Permit (SUP)	Mail, Post Site, Newspaper	HE ^{(1), (2)}		120 days	20.30.330
5. Critical Areas Special Use Permit	Mail, Post Site, Newspaper	HE ^{(1), (2)}		120 days	20.30.333
6. Critical Areas Reasonable Use Permit	Mail, Post Site, Newspaper	HE ^{(1), (2)}		120 days	20.30.336
-7. Secure Community Transitional Facility – Special Use Permit	Mail, Post Site, Newspaper	HE ^{(1), (2)}		120 days	20.40.502
8. Essential Public Facility – Special Use Permit	Mail, Post Site, Newspaper	HE ^{(1), (2)}		120 days	20.30.330
9. Master Development Plan	Mail, Post Site, Newspaper	HE ^{(1), (2)}		120 days	20.30.353
10. Plat Alteration with Public Hearing ⁽⁵⁾	Mail	HE ^{(1), (2)}		120 days	20.30.425
<u>11. Subdivision Vacation</u>	<u>Mail, Post Site, Newspaper</u>	<u>HE ^{(1), (2)}</u>		<u>120 days</u>	<u>20.30.427</u>

(1) Including consolidated SEPA threshold determination appeal.

(2) HE = Hearing Examiner.

(3) Notice of application requirements are specified in SMC 20.30.120.

(4) Notice of decision requirements are specified in SMC 20.30.150.

(5) A plat alteration does not require a neighborhood meeting.

Att. A - Proposed Subdivision Vacation Code Amendments

20.30.427 Vacation of recorded subdivisions.

A. Applicability. A subdivision vacation provides a process to vacate a previously recorded subdivision, short subdivision, binding site plan, or any portion thereof, or any area designated or dedicated for public use. The subdivision vacation results in the nullification of the recorded subdivision or portion thereof.

1. Any person seeking a subdivision vacation shall comply with the applicable requirements set forth in Chapter 58.17 RCW and this section in effect at the time a complete application is submitted to the City.
2. If the application is for the vacation of a subdivision together with the public rights-of-way, the procedures of this section shall apply except as prohibited by RCW 35.79.035, as amended, or other applicable law.
3. This section shall not apply to the:
 - a. Vacation of any plat of State-granted tide- or shorelands.
 - b. Vacation specifically of public rights-of-way which shall adhere to SMC 12.17.

B. Application. A request to vacate a recorded subdivision shall be submitted on official forms prescribed and provided by the Department along with the applicable fees.

1. The application shall contain the signatures of all persons having an ownership interest in the subject subdivision or portion to be vacated.
2. If the subdivision is subject to restrictive covenants which were recorded at the time of the approval of the subdivision, and the application for vacation would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the vacation of the subdivision or portion thereof.

C. Review Procedure and Criteria.

1. The City will provide notice of the application for subdivision vacation and public hearing as provided in SMC 20.30.120 and 20.30.180.
2. The City shall hold a public hearing, review the submittal materials, and may approve or deny after a determination is made whether the public use and interest will be served by the vacation. Such determination shall be in writing and supported by findings of fact.
 - a. If any portion of the land contained in the subdivision to be vacated was dedicated to the public for public use or benefit, such land, if not

Att. A - Proposed Subdivision Vacation Code Amendments

deeded to the City, shall be deeded to the City unless the decision-making authority sets forth findings that the public use would not be served in retaining title to those lands.

- b. Title to the vacated property shall vest as provided in RCW 58.17.212, as amended.

D. **Recording.** No later than 30 calendar days after approval of the subdivision vacation, the applicant shall file, at their sole cost and expense, the approval of the vacated subdivision with the King County Recorder.

E. **Appeal.** The decision of the Hearing Examiner on the subdivision vacation shall be the final decision of the City; no administrative appeal is provided. Appeals of the final decision may be appealed to superior court pursuant to Chapter 36.70C RCW, Land Use Petition Act.

RCW 58.17.212**Vacation of subdivision—Procedure.**

Whenever any person is interested in the vacation of any subdivision or portion thereof, or any area designated or dedicated for public use, that person shall file an application for vacation with the legislative authority of the city, town, or county in which the subdivision is located. The application shall set forth the reasons for vacation and shall contain signatures of all parties having an ownership interest in that portion of the subdivision subject to vacation. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for vacation would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the vacation of the subdivision or portion thereof.

When the vacation application is specifically for a county road or city or town street, the procedures for road vacation or street vacation in chapter **36.87** or **35.79** RCW shall be utilized for the road or street vacation. When the application is for the vacation of the plat together with the roads and/or streets, the procedure for vacation in this section shall be used, but vacations of streets may not be made that are prohibited under *RCW **35.79.030**, and vacations of roads may not be made that are prohibited under RCW **36.87.130**.

The legislative authority of the city, town, or county shall give notice as provided in RCW **58.17.080** and **58.17.090** and shall conduct a public hearing on the application for a vacation and may approve or deny the application for vacation of the subdivision after determining the public use and interest to be served by the vacation of the subdivision. If any portion of the land contained in the subdivision was dedicated to the public for public use or benefit, such land, if not deeded to the city, town, or county, shall be deeded to the city, town, or county unless the legislative authority shall set forth findings that the public use would not be served in retaining title to those lands.

Title to the vacated property shall vest with the rightful owner as shown in the county records. If the vacated land is land that was dedicated to the public, for public use other than a road or street, and the legislative authority has found that retaining title to the land is not in the public interest, title thereto shall vest with the person or persons owning the property on each side thereof, as determined by the legislative authority. When the road or street that is to be vacated was contained wholly within the subdivision and is part of the boundary of the subdivision, title to the vacated road or street shall vest with the owner or owners of property contained within the vacated subdivision.

This section shall not be construed as applying to the vacation of any plat of state-granted tide or shore lands.

[**1987 c 354 § 3.**]

NOTES:

***Reviser's note:** After amendment by 1987 c 228 § 1, RCW **35.79.030** no longer prohibited vacations of streets. Limitations on vacations of streets abutting bodies of water are now found in RCW **35.79.035**.