Recommendations for Revised Development Planning and Regulatory Framework

December 2003

Report Prepared for The City of Bellingham Planning and Community Development Department
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The City of Bellingham
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Executive Summary

IDENTIFICATION OF ISSUES

Like most cities in western Washington, the City of Bellingham has grown dramatically in recent decades. That trend is expected to continue. The population of the Bellingham urban area is forecasted to increase by as many as 42,000 people by the year 2022. Bellingham’s framework for regulating development needs to be updated with sufficient densities to accommodate the forecasted growth, but the framework is not currently structured in a manner that can be updated efficiently.

The City of Bellingham has a long history of planning for growth by developing planning documents and development regulations under the Growth Management Act (“GMA”) framework. Unlike most cities, however, the City of Bellingham has used its neighborhood planning process to document and implement most of its City-wide planning policies and development regulations. The Neighborhood Plans have been the City’s primary mechanism for articulating development standards and identifying infrastructure improvements. While the City has taken some steps toward drawing this information into the City-wide Comprehensive Plan and the City’s Development Code, most of the development standards and capital improvement priorities are still maintained in the Neighborhood Plans and are simply referenced in the City-wide documents.

SUMMARY OF RECOMMENDATIONS

Our assessment is that the City would be well served by restructuring its framework for regulating development. Specifically, we recommend several steps to distill pertinent standards and priorities out of the Neighborhood Plans and incorporate them into the City-wide Comprehensive Plan and Development Code. Doing so will make policies and regulations more clear, concise, consistent and defensible. Failing to do so, coupled with the difficulty of identifying, interpreting and updating development standards within 23 different Neighborhood Plans, could discourage economic development, present unnecessary opportunities for legal challenge, and overwhelm limited planning resources.

Our primary recommendations, each of which is described in more detail below, are as follows:

- Collect and synthesize all development regulations into a single Development Code applicable City-wide;
- Develop a City-wide Zoning Map that is distinct from the Comprehensive Plan land use map;
- Refine the role of Neighborhood Plans and separate them from the City-wide Comprehensive Plan and City-wide Development Code; and,
- Limit reliance on the “Planned” use qualifier.

Our recommendations are based on a review of the City’s current regulatory framework, requirements of state law (e.g., the Growth Management Act), and practical considerations.
1. **Collect and Synthesize all Development Regulations into one City-wide Code**

First and foremost, we strongly recommend furthering the City's efforts to establish City-wide development standards by collecting and synthesizing all development regulations into a single City-wide Development Code. The primary task is to separate all development regulations from the Comprehensive Plan and the Neighborhood Plans, consistent with the requirements and structure of the state GMA. The existing framework intermingles development regulations and permitting decisions within the Comprehensive Plan and Neighborhood Plans, making it difficult to differentiate between development controls with regulatory effect and planning policies without regulatory effect.

Separating the development regulations from City planning documents would better differentiate between these mandatory and legally distinct GMA functions. Separating development regulations from planning documents would also further the City's objectives of providing requirements that are fair, clear, concise, consistent and more accessible to both current and future members of the community. As a result, the City should reduce the risk of permitting appeals that could arise from potentially vague standards.

Centralizing all development regulations within a single City-wide Development Code would also allow the City to reduce the number of unique "zones" (i.e., unique combinations of densities and development standards), which would further the City goals of improving consistency and efficiency. Currently there are 150 different combinations of densities and development standards. Since many of the development standards are similar from area to area, however, centralizing standards could dramatically reduce the number of different combinations that currently exist, while maintaining the character of each neighborhood.

The City-wide Development Code should include a provision clarifying the role of the centralized development regulations relative to the Comprehensive Plan and Neighborhood Plans during project review (i.e., as discussed below, development regulations govern project permitting decisions, as provided by state law (Ch. 36.70B. RCW), with additional review for consistency with the Comprehensive Plan only in absence of applicable development regulations or ambiguity in applicable development regulations). The City-wide Development Code should also include concise definitions and reference guides for project applicants regarding permitted uses and development standards applicable in each zone under newly codified regulations. The City-Wide Development Code should also include an updated and strengthened concurrency ordinance, including any impact fees, to clearly articulate the City's and developers' respective responsibilities for constructing infrastructure improvements and providing public services as prioritized in the Comprehensive Plan.

2. **Develop Separate Zoning Map and Comprehensive Land Use Map**

Second, we recommend developing a zoning map that is distinct from the required GMA Comprehensive Plan future land use map, to differentiate between generic future land use types (in the Comprehensive Plan) and site-specific designations with regulatory effect (in the Zoning Map). This would provide greater flexibility to fine tune development standards and, where appropriate, administratively rezone property outside the legislative annual Comprehensive Plan amendment cycle. It would also help the City in planning for future growth, as required by GMA, by facilitating Comprehensive Plan mapping of both existing and future land uses at a more conceptual level. Accordingly, the City would be better equipped to plan how to accommodate projected urban growth, as required by the GMA, and would, in turn, be better able to protect against the risk of appeals concerning appropriate urban densities.
3. Refine Role of Neighborhood Plans

Third, we strongly recommend refining the role of the Neighborhood Plans. While the Neighborhood Plans should continue to be the grassroots tool for generating and collecting input into City-wide documents, the City should renew its efforts to distill that grassroots input and incorporate it into a) the City-wide Comprehensive Plan and b) the City-wide Development Code.

The Neighborhood Plans should be separated from the City-wide Comprehensive Plan for two reasons. One, as the City grows, updating 23 or more Neighborhood Plans on an annual amendment cycle is increasingly difficult, if not impossible, and undermines the City’s objectives for improving efficiency and maintaining compliance with GMA, including its consistency requirements. By reducing the potential for inconsistency, separating the Neighborhood Plans should reduce the risk of potential permitting and plan appeals. Two, limited City budgets necessitate prioritizing the capital improvements that are currently identified within the Neighborhood Plans on a City-wide basis, and the City-wide Comprehensive Plan is the most efficient tool for prioritizing such infrastructure improvements. In other words, the Neighborhood Plans should be used to facilitate neighborhood visioning and to develop input for the City-wide Comprehensive Plan and City-wide Development Code.

The Neighborhood Plans should also be separated from the City-wide Development Code. As discussed under our first recommendation, because the GMA functions of a) planning and b) regulation are separate and distinct legal requirements, they should be implemented through separate documents (i.e., Comprehensive Plan and Neighborhood Plans on the one hand, and City-wide Development Code on the other).

4. Limit Use of “Planned Use” Designation

Fourth, we recommend limiting use of the “Planned” use qualifier and resulting development agreements for regulation of future development. Because development agreements are project permitting tools, they cannot take the place of development regulations. Once City-wide development standards are codified within a single set of development regulations, contractual development agreements should become the exception rather than the rule. This would lead to greater certainty for developers and their neighbors, and should also reduce the risk of appeals of land use decisions. It would also help facilitate planning for future growth.

GRAPHIC SUMMARY OF CURRENT AND PROPOSED FRAMEWORKS

Diagrams on the next two pages visually summarize the current land use planning and regulatory framework, in which there is extensive overlap between the neighborhood plans, comprehensive plan and development regulations, as well as our proposed framework, in which these documents are complimentary but separate to reflect their distinct purposes within the GMA framework.
A. EXISTING CITY PLANNING AND REGULATORY FRAMEWORK

The City of Bellingham has grown dramatically in recent decades and that trend is expected to continue. The population of the Bellingham urban area is forecasted to increase by as many as 42,000 people by the year 2022. The City has been planning for this growth by developing planning documents and development regulations under Washington's mandatory Growth Management Act ("GMA") framework.

To date, Neighborhood Plans have been the City's primary mechanism for developing planning documents and development regulations. While the City has taken some steps toward drawing this information down into the City-wide Comprehensive Plan and the City's Development Code, most of the capital improvement priorities and development standards are still maintained within the Neighborhood Plans and are simply referenced in the City-wide documents. See Existing Land Use Planning and Regulatory Framework Graphic, page 6. The result is a complex proliferation of 150 distinct combinations of densities and development standards, that vary only slightly from different standards applied elsewhere in the City. And that number is growing with each Neighborhood Plan update.

While most cities that have Neighborhood Plans use them to articulate more specific goals, policies and recommendations than are provided in the City-wide Comprehensive Plan, Bellingham has adopted its 23 Neighborhood Plans as part of the Comprehensive Plan and the City-wide Land Use Development Code, often using them in lieu of City-wide policies and regulatory standards. Consequently, Bellingham's Neighborhood Plans currently have both policy and regulatory effect, contrary to the basic GMA framework which distinguishes between policy and regulatory functions. For example, Bellingham's basic "zoning" classifications, allowed densities and lot sizes are located within the Neighborhood Plans. Plans may also contain special regulations (i.e., setbacks, height limits, bulk and scale considerations, design standards, critical areas criteria, etc.) for specific subareas. Bellingham does not have a consolidated Zoning Code or a zoning map that is separate and distinct from the Comprehensive Plan land use map. Rather, Bellingham's Zoning Map and Comprehensive Plan land use map have been combined into one map that attempts to serve both purposes (on the one hand specifically regulating individual development, and on the other planning for future land use and growth in a broad sense). The existing map is drawn from the Neighborhood Plans, which assign "zoning" classifications, densities and other special regulations to each sub-area within each neighborhood.

The City needs to complete the process of drawing the information from the Neighborhood Plans into the City-wide Comprehensive Plan and the City's Development Code to make its policies and regulations clearer, more concise, more consistent and more defensible. For while the existing framework has maximized diversity between and within each neighborhood, as the City continues to grow, the complexity of identifying, interpreting and updating development regulations within 23 different Neighborhood Plans could discourage economic development, present opportunities for legal challenge and overwhelm limited planning resources.

B. PROBLEM STATEMENT AND IDENTIFICATION OF ISSUES

The City has identified a number of problems fostered by its existing land use planning and regulatory framework:
• Neighborhood Plans have been used to modify regulations contained in other land use codes such as the Land Use Development Code or Subdivision Code. Consequently, different standards may be applied to each area within each neighborhood. Bellingham currently has over 150 different combinations of density and use regulations (zoning) represented in these areas. Other special regulations added to the areas further increase the variations. With over 300 areas in the City, the potential variety of regulations will make it increasingly difficult to interpret and administer if Bellingham continues this practice.

• Because the Neighborhood Plans have both policy and regulatory effect, it is often difficult to determine which statements in the Neighborhood Plan are Comprehensive Plan policies and which are development (zoning) regulations. This creates confusion during project review and permitting because policies can only be applied to discretionary permits that have criteria requiring consistency with neighborhood or comprehensive plan policy, whereas zoning regulations are mandatory requirements for all applications. Moreover, regulations contained within the Neighborhood Plans are sometimes vague, complicated or lack coordination with procedures and regulations in other City-wide Codes and Neighborhood Plans.

• Bellingham’s “rezone” process is currently tied to its annual Comprehensive Plan amendment process. All changes in land use classification are seen as changes to the Comprehensive Plan land use map and/or Neighborhood Plan text. This was not an issue when the system was initiated in 1982, but subsequent state GMA legislation requires comprehensive plan amendments to be processed together, no more than once per year.

• Substantial staff resources are used in developing customized regulations in each Neighborhood Plan for issues that could be more efficiently addressed through City-wide development regulations.

• It is not clear that density or any of the regulatory language in the Neighborhood Plans can be changed without a Comprehensive Plan amendment process. Most communities maintain all of their zoning and land use regulations in their Municipal Codes. The trend appears to be toward unified Codes containing all aspects of land use regulation. This allows rules to be standardized and coordinated.

• Developing a Comprehensive Plan one neighborhood at a time makes it more difficult to consider planning and land use issues and patterns on a City-wide scale. Bellingham has no Comprehensive Plan maps other than the compilation of the Neighborhood Plan maps, which also serve as the Zoning map.

• Extensive use of the “Planned” use qualifier in the Neighborhood Plans and lack of specific standards for “Planned” districts in the Land Use Development Code cause a lack of predictability for applicants and consume substantial staff resources at the project review stage. Bellingham’s reliance on development agreements in the “Planned” districts also creates another layer of regulation that may be an inappropriate encumbrance on both the City and the landowner. Bellingham currently has over 400 “Planned” development agreements, recorded as covenants that regulate individual land parcels.

• Bellingham’s current land use planning and regulatory framework and terminology is not as user friendly as it could be. Multiple texts and documents must be studied and often interpreted to determine what regulations and policies apply during project review and permitting, and to interpret what uncommon terms such as “use qualifier” mean.
C. CITY GOALS AND OBJECTIVES

To resolve these problems, the City seeks to retain the vital grassroots input from its neighborhood planning process, while taking further steps to provide standardized City-wide planning policies and development standards that are: fair, clear, concise, consistent, efficient and customer-oriented. Specifically, the City seeks an alternative land use planning and regulatory framework that:

- Is more customer oriented, clear, concise and consistent;
- Effectively implements Comprehensive Plan goals and policies;
- Is manageable and sustainable as the community grows, even if City administrative resources remain static or limited;
- Retains Neighborhood Plans as important planning tools and clarifies their appropriate function;
- Maintains those elements of the existing system that work well to achieve planning goals and objectives;
- Facilitates maintenance of neighborhood character as identified through the neighborhood planning process and in the Neighborhood Plans;
- Facilitates an efficient and streamlined development review process;
- Accommodates use of a wide range of existing and potential regulatory tools and processes such as design review, planned unit development, transfer of development rights, development contracts, site plan review and other innovative regulatory tools;
- Accommodates a balance between predictability of permit decision outcome while allowing the flexibility needed for creative design;
- Separates regulation from plans and policies to the extent needed for clarity and to provide a practical legal framework;
- Allows necessary “rezones” and regulatory amendments to be considered outside the GMA-defined legislative annual Comprehensive Plan amendment process;
- Minimizes the City’s potential legal liability and complies with State laws; and
- Minimizes the potential for regulatory conflicts within the system.

D. STATE-WIDE STATUTORY AND REGULATORY CONTEXT – THE BASIC GMA FRAMEWORK

The City’s goals and objectives must be met within the state-wide statutory and regulatory context for land use. The basic land use planning and regulatory framework is set forth in the state Growth Management Act (“GMA”), Ch. 36.70A RCW. The GMA framework is further explained by related state laws governing local project review, Ch. 36.70B RCW; the GMA implementing regulations, Chs. 365-190, 195 and 197 WAC, Growth Management Hearings Board cases, and related court cases, all of which provide additional context and establish core concepts for land use planning and regulation.
1. **Planning for Projected Growth**

Under the GMA, cities are the focal point for urban growth. “Each city . . . shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city . . . each urban growth area shall permit urban densities . . .” RCW § 36.70A.110(2). Cities must accommodate the Office of Financial Management’s (“OFM’s”) GMA population projection within their urban growth areas (“UGAs”) and UGAs must not be larger than needed to support the OFM maximum population projections. Diehl v. Mason County, 94 Wash. App. 645, 653 (1999). See also Clark County Natural Resources Council v. Clark County Citizens, 94 Wash. App. 670, 972 P.2d 941 (1999). Comprehensive plans must include a future land use map identifying, at the plan level, the proposed general distribution and general location and extent of future uses of land. RCW 36.70A.070 and .070(1).

The GMA provides cities with discretion in establishing their comprehensive plans to decide how to accommodate urban growth within their boundaries. RCW 36.70A.110(2). Cities have discretion to allocate the projected population among various areas / designations, “but in doing so the [c]ity must conduct a proper analysis and comply with the goals and requirements of the [GMA].” Berschauer v. City of Tumwater, 1994 GMHB LEXIS 165, *9 (July 1994) (No. 94-02-002). In this context, “a proper analysis” includes a city’s analysis regarding land supply and density rates. In other words, densities must be sufficient to accommodate projected growth within the UGA.¹

2. **The Basic Framework – Three Mandatory and Distinct Functions**

The GMA identifies three separate, mandatory and distinct functions within the basic land use planning and regulatory framework:

- Planning documents, like the City’s Comprehensive Plan and Neighborhood Plans, which serve as broad planning guides for future growth across the City;
- Development regulations, like the City’s Land Use Development Code, Zoning Code, Subdivision Code and Critical Areas Ordinance, which serve as specific controls on individual development proposals; and,
- Permitting decisions, including development agreements, which serve as review mechanisms governing individual project development rights.

a. **Comprehensive Planning**

A comprehensive plan is a broad land use plan that is used as a tool for planning for growth across the entire City or County that is undertaking planning. A comprehensive plan is defined by the GMA as “a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter [the GMA].” RCW 36.70A.030(4). Under the GMA, comprehensive plans, sub-area plans (e.g., neighborhood plans) are land use planning guides, not regulatory decision-making tools; they

¹ The Western Washington Growth Management Hearings Board (“WWGMHB”) has approved of a ratio of four dwelling units per acre as a minimum urban density level. Klein v. San Juan County, 2002 GMHB LEXIS 53, *17. According to the WWGMHB, .5-acre and 1-acre lots within a properly established UGA do not constitute urban growth, nor do they satisfy the anti-sprawl goals and requirements of the GMA. Larson v. City of Sequim, 2002 GMHB LEXIS 9, *8, citing Berschauer v. Tumwater, 1994 GMHB LEXIS 165. The WWGMHB stated that a “one dwelling unit per acre or higher” density was not a proper measure for urban densities within UGAs. Klein v. San Juan County, 2002 GMHB LEXIS 53, *17.
cannot substitute for development regulations. The Washington State Court of Appeals (Division III) has held that “[a neighborhood] comprehensive plan, even when specifically addressing the ‘concepts’ for a particular area, does not provide the necessary specific criteria for land use decisions.” Pinecrest Homeowners Association v. Cloninger, 115 Wn. App. 611, 620-622, 62 P. 3d 938 (2003).

b. Development Regulations

Development regulations, on the other hand, are specific land use controls that implement a comprehensive plan and govern individual project review. The GMA defines development regulations as “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…” RCW 36.70A.030(7). Development regulations provide the standards and decision-making tools that both implement the comprehensive plan on the one hand, and govern project review and permitting on the other.

c. Project Review and Permitting

Project review and permitting decisions serve yet another separate function from comprehensive plans and development regulations. The GMA clearly distinguishes between development regulations and permitting decisions. “... [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.” RCW 36.70A.030(7). A project permit is defined as “any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or sub-area plan, but excluding the adoption or amendment of a comprehensive plan, sub-area plan, or development regulations except as otherwise specifically included in this subsection.” RCW 36.70B.020(4). Thus, project permitting decisions affecting individual property rights cannot be tied to policy or regulatory changes of broader import.

A development agreement is a specific type of contract-based project permitting tool. As such development agreement must be consistent with development regulations. RCW 36.70B.170(1). Further, because development agreements are project permitting tools, they cannot take the place of development regulations. RCW 36.70A.030(7).

3. The Consistency Requirements – Four Internal and External Aspects

The GMA requires three distinct aspects of consistency within and among land use plans and development regulations:

- Comprehensive Plans, Neighborhood Plans and Development Regulations must each be internally consistent;
- Comprehensive Plans must be consistent with sub-area plans such as Neighborhood Plans that are incorporated into the Comprehensive Plan; and
- Comprehensive Plans must be consistent with the Development Regulations that implement them.
RCW 36.70A.040(3); 36.70A.070; 36.70A.080(2).

The related state statute governing local project review, Ch. 36.70B RCW, requires one additional aspect of consistency – between development regulations and project review and permitting decisions:

- Project review and permitting decisions must be consistent with the Development Regulations that govern them.

RCW 36.70B.040(1).

The GMA requires that a comprehensive plan be an internally consistent document. RCW 36.70A.070. The GMA implementing regulations indicate that internal consistency consists of at least two aspects: “(1) the ability of physical aspects of the plan to coexist on the available land; and (2) the ability of the plan to provide that adequate public facilities are available when the impact of developments occur (concurrency).” WAC 365-195-500.

A jurisdiction that incorporates neighborhood or sub-area elements into its comprehensive plan must ensure that the resulting neighborhood or sub-area plans are consistent with the comprehensive plan. RCW 36.70A.080(2). Where conflicting, according to the Western Washington Growth Management Hearings Board (WWGMHB), a city is “required to adjust one or the other.” Berschauer v. City of Tumwater, 1994 GMHB LEXIS 165, *26 (July 1994) (No. 94-02-002).2 “[A sub-area or neighborhood plan] must comply with the requirements and goals of the Growth Management Act, be consistent with county-wide planning policies and be consistent with the elements of the City’s own comprehensive plan.” Moreover, each sub-area plan must be consistent with one another, pursuant to the overall goals of the comprehensive plan. Id. Otherwise, “[t]he sub-area planning mechanism could become a handy device to politicize the decision-making process. Such decision-making is contrary to the basic thrust of the GMA which is to make decisions based on uniform policies and standards.” Id., citing RCW 36.70A.010.

The GMA also requires consistency between development regulations and the comprehensive plans they implement. The GMA requires eligible counties and cities to “adopt a comprehensive plan . . . and development regulations that are consistent with and implement the comprehensive plan . . .” RCW 36.70A.040(3). However, Washington courts have held that in land use decision-making, where a zoning ordinance is inconsistent with the underlying comprehensive plan, the zoning ordinance generally prevails. Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 947 P.2d 1208 (1997); Weyerhaeuser v. Pierce County, 124 Wn.2d 26, 873 P.2d 498 (1994); Hansen v. Chelan County, 81 Wn. App. 133, 913 P.2d 409 (1996).

4. The Role of Sub-Area Plans or Neighborhood Plans under the GMA

Under the GMA, sub-area plans or neighborhood plans can be incorporated into comprehensive plans. However, if sub-area plans or neighborhood plans are incorporated into the comprehensive plan, as they are in Bellingham, they must be consistent with the comprehensive plan. RCW 36.70A.070; Berschauer. This internal consistency requirement can be quite cumbersome, as it can potentially necessitate updating sub-area plans and neighborhood plans on the same annual amendment cycle as the Comprehensive Plan. With 23 Neighborhood Plans, this may become virtually impossible for the City of Bellingham.

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2 Berschauer is referred to as a “long-standing” case by later WWGMHB decisions. See, e.g., Larson v. City of Sequim, 2002 GMHB LEXIS 9, *8 (February 2003) (No. 01-2-0021).
Alternatively, under the GMA, sub-area plans or neighborhood plans can also be used as a pre-plan mechanism for identifying and then distilling issues to be included in the comprehensive plan and development regulations. This alternative approach preserves the grassroots function of these plans as the primary mechanism for identifying each neighborhood’s priorities and character, while providing for City-wide planning policies and development standards. Neighborhood plans could also possibly be used to provide policy guidance during City planning activities and discretionary review of certain projects, and to guide project applicants on priorities and character of the relevant area.

5. The Role of Plans and Development Regulations during Project Review

Project review and permitting decisions are governed by development regulations, not comprehensive plans. While a proposed land use decision must generally conform to the county’s comprehensive plan, the provisions in the plan are to be used as a planning guide, not a land use decision-making tool. Schofield v. Spokane County, 96 Wn. App. 581, 980 P.2d 277 (1999). See also Barrie v. Kitsap County, 93 Wn. 2d 843, 613 P.2d 1148 (1980). Only in the absence of development regulations, or when such regulations do not speak to a certain issue or are ambiguous, should project review be governed by consistency with comprehensive plans. “The review of a proposed project’s consistency with applicable development regulations, or in the absence of applicable regulations the adopted comprehensive plan, under RCW 36.70B.040 shall incorporate the determinations under this section.” RCW 36.70B.030(1); see also RCW 36.70B.040(1). These limitations apply equally to Bellingham’s Neighborhood Plans, because they are elements of the City’s Comprehensive Plan. Further, during project review, the local government may not reexamine the fundamental land use planning decisions reflected in the comprehensive plan and development regulations. RCW 36.70B.030(3); see also statement of legislative intent accompanying RCW 36.70B.030 at par. (1).

E. RECOMMENDATIONS - PROPOSED CITY PLANNING AND REGULATORY FRAMEWORK

As discussed below, our recommendations for achieving the City’s goals and objectives are designed to meet the state-wide statutory and regulatory requirements discussed above. They fall into four major categories:

- Collecting and synthesizing all development regulations into a single Land Use Development Code applicable City-wide;
- Developing a City-wide Zoning Map that is distinct from the Comprehensive Plan future land use map;
- Refining the role of Neighborhood Plans and separating them from the City-wide Comprehensive Plan and City-wide Development Regulations; and,
- Limiting reliance on the “Planned” use qualifier.

1. Collect and Synthesize all Development Regulations into one City-wide Code

First and foremost, we recommend furthering the City’s efforts to establish City-wide development standards by collecting and synthesizing all development regulations into a single City-wide Development Code. The existing land use framework intermingles development regulations and permitting decisions within the Comprehensive Plan and Neighborhood Plans, making it difficult to differentiate between development controls with regulatory effect and planning policies without regulatory effect. Separating the development regulations from City planning documents would better differentiate between these mandatory and legally distinct GMA functions.
Separating the development regulations from the Comprehensive Plan and the Neighborhood Plans would also provide clearer, more concise and more consistent standards to govern project review and permitting. As a result, the City should reduce the risk of permitting appeals that could arise from potentially vague standards. Instead of having to identify the applicable standards within existing City-wide Codes and in one of the 23 Neighborhood Plans, all development regulations would be located in one City-wide Code that would incorporate standardized zoning criteria, development standards, critical areas standards, and sub-division requirements, etc. The City-wide development regulations would synthesize the 150 existing combinations of densities and development standards into a more consistent and manageable number of variations, while preserving the differences that define neighborhood character.

The primary elements of our first recommendation are:

- Collect all development regulations into one clearly identified location applicable City-wide, so that requirements are clear, concise and accessible to both current and future members of the community, and are clearly distinguished from policy recommendations contained in adopted plans.

- Reduce number of unique “zones” (i.e., unique combinations of densities and development standards) to a manageable number City-wide to improve consistency and efficiency. Since development standards are already quite similar in many areas, centralizing standards can dramatically reduce the 150 variations that currently exist, while maintaining the character of each neighborhood.

- Include a provision clarifying the role of development regulations relative to the Comprehensive Plan and Neighborhood Plans during project review, consistent with Chs. 36.70A and 36.70B RCW (i.e., development regulations govern project permitting decisions, with additional review for consistency with the Comprehensive Plan only in absence of applicable development regulations or ambiguity in applicable development regulations). As appropriate, Neighborhood Plans could be used to provide guidance to applicants and the City on issues such as design that may not be clearly addressed in the development regulations and Comprehensive Plan.

- Provide concise definitions and reference guides for project applicants regarding permitted uses and development standards applicable in each zone. This should be further illustrated with customer-oriented, user-friendly guides and tables to make the criteria governing project review and permitting more accessible to current and future members of the community.

- Include an updated and strengthened concurrency ordinance, including any impacts fees, to clearly articulate the City’s and developers’ respective responsibilities for constructing infrastructure improvements and providing public services as prioritized in the Comprehensive Plan.

- Review and update non-conforming use provisions, as needed, to accommodate in as fair a manner as practicable any existing lots and uses that may not quite meet new development regulations (e.g., review grand-fathering provisions and evaluate against development policies such as encouraging infill and against legal considerations such as protecting against any potential takings claims).

There are a number of secondary elements to our first recommendation, which could be phased-in over time, including:

- Review and update variance procedures, as needed, to accommodate infill where desirable uses do not meet new development regulations. Consider supplementing variance procedures with innovative
regulatory tools (e.g., transfer of development rights), to create incentives for infilling and making the best use of lots.

- Review and update critical areas maps and ordinances, as needed, removing the need for “special qualifiers” from the current Neighborhood Plans as appropriate.

2. **Develop Separate Zoning Map and Comprehensive Land Use Map**

Second, we recommend developing a Zoning map that is distinct from the GMA-required Comprehensive Plan future land use map. This would allow the City to differentiate between generic future land use types (in the Comprehensive Plan map) and site-specific designations with regulatory effect (in the Zoning map). This would provide greater flexibility to “rezone” property and adjust applicable development regulations outside the legislative annual Comprehensive Plan amendment cycle. It would also help the City in planning for future growth, as required by GMA, by facilitating Comprehensive Plan mapping of generic existing and future land uses at a conceptual City-wide level.

The GMA requires the City to accommodate projected population growth within its urban growth area. The City may decide how it chooses to accomplish this, but the City’s development regulations must allow sufficient urban densities to do so. Separating the Zoning Map from the Comprehensive Plan Map would help the City with this planning effort, and so should, in turn, reduce the risk of potential appeals concerning sufficient urban growth densities.

3. **Refine Role of Neighborhood Plans**

Third, we recommend continuing to refine the role of the Neighborhood Plans. While the Neighborhood Plans should continue to be the grassroots tool for generating and collecting input into the City-wide Comprehensive Plan and City-wide Development Code, they should be separated from the Comprehensive Plan for two reasons. One, as the City grows, updating 23 or more Neighborhood Plans on an annual cycle and ensuring internal and external consistency as required under GMA is increasingly challenging. Separating the Neighborhood Plans from the Comprehensive Plan would make it easier to achieve consistency, and should, therefore, reduce the risk of permitting or plan appeals on the basis of consistency. Two, limited City budgets necessitate prioritizing capital improvements identified within the Neighborhood Plans on a City-wide basis, and the City-wide Comprehensive Plan is the most efficient tool for prioritizing such improvements. The Neighborhood Plans should be used to facilitate neighborhood visioning and the City should renew its efforts to distill input from the Neighborhood Plans into the City-wide Comprehensive Plan and City-wide Development Code.

The Neighborhood Plans should also be separated from the City-wide Development Code. As discussed under our first recommendation, because the two GMA functions of planning and regulation are separate and distinct legal requirements, they should be implemented through separate documents (i.e., comprehensive plan and Neighborhood Plans on the one hand, and City-wide Development Code on the other).

Under this recommendation, Bellingham’s Neighborhood Plans would still provide the primary input into the City-wide Comprehensive Plan and into the City-wide development regulations, by articulating the vision for neighborhoods, including each neighborhood’s policy preferences, improvement priorities and preferred development standards for designated areas. However, the information from the Neighborhood Plans would be distilled into consistent City-wide policies, incorporated into and prioritized within City-wide capital budgets, and reflected in City-wide Zoning, Development and Critical Areas regulations. Input from the Neighborhood Plans,
rather than the Plans themselves, would be incorporated into City-wide Comprehensive Plan policies and budgets and City-wide development regulations. See Proposed Land use Planning and Regulatory Framework Graphic, page 7. The Neighborhood Plans themselves would remain a resource for project proponents to better understand their neighbors’ preferences and could also be used by the City as policy guidance on issues not clearly addressed in the development regulations or Comprehensive Plan.

4. Limit Use of “Planned Use” Designation

Fourth, we recommend limiting use of the “Planned” use qualifier and resulting development agreements for regulating future development. Because development agreements are project permitting tools, they cannot take the place of development regulations. Once City-wide development standards are codified within a single set of development regulations, contractual development agreements should become the exception rather than the rule. This would lead to greater certainty for developers as well as their neighbors, and should also reduce the risk of appeals of land use decisions. It would also help facilitate planning for future growth.

Overuse of the “Planned” use qualifier and development agreements could raise concerns of arbitrariness and “spot zoning” that could, in turn, undermine the City’s comprehensive land use planning effort. “Spot zoning” is a zoning action by which a smaller area is singled out of larger area or district and specially zoned for a use classification different from, and inconsistent with, the classification of surrounding land, and not in accordance with the applicable Comprehensive Plan. Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 875, 947 P.2d 1208 (1997), citing Lutz v. City of Longview, 83 Wn.2d 566, 573-574, 520 P.2d 1374 (1974); Save Our Rural Environment v. Snohomish County, 99 Wn.2d 363, 662 P.2d 816 (1983). Generally, spot zoning is improper. Pierce v. King County, 62 Wn.2d 324, 382 P.2d 628 (1963). Limiting the use of the “Planned” use qualifier would help the City to plan for future land use more comprehensively than on a development by development basis, and should, therefore, help reduce the risk of appeals of land use decisions.

F. SUMMARY OF MACRO-PROCESS FOR IMPLEMENTING RECOMMENDATIONS

Our recommendations are set forth in general order of priority, starting with the most important first step of collecting and synthesizing all development regulations within a single location. However, all of our recommendations have independent utility. Therefore, the order of the subsequent recommendations could easily be modified and recommendations could be phased-in over time, as practicable.

There are up-front administrative costs associated with implementation of each of these recommendations that must be considered. However, these costs must be balanced against the on-going and escalating costs of administering the existing framework.

Further, each recommendation that involves changing elements of the City’s GMA comprehensive plan also presents the potential for plan-level appeals of those changes. However, such appeals are possible under the current framework whenever the City amends parts of its comprehensive plan (e.g., whenever it amends the City-wide plan or one of the Neighborhood Plans). In addition, the potential for such plan-level appeals must be balanced against the potential for additional project-level appeals under the current framework.

To facilitate this analysis, some of the advantages and challenges of each recommendation are presented below.
G. ANALYSIS OF PROPOSED CITY PLANNING AND REGULATORY FRAMEWORK –
THE PROS AND CONS

1. Collect and Synthesize all Development Regulations into one City-wide Code

Advantages

The GMA and related Growth Board cases clearly differentiate between planning and regulatory functions. Having development regulations interspersed within the Comprehensive Plan and Neighborhood Plans creates unnecessary potential for confusion of these distinct functions with attendant possibility for ambiguity, inconsistent interpretation, delay, and appeal of land use decisions. Separating the City’s development regulations from its Comprehensive Plan and Neighborhood Plans and centralizing them in a single City-wide Land Use Development Code would advance objectives of being customer-oriented, clear, concise and consistent and should, therefore, reduce the risk of appeals that could arise from potentially vague or arbitrary standards.

Separating development regulations from the Comprehensive Plan and Neighborhood Plans would also help to clarify the regulatory hierarchy for project review and permitting decisions. During project review, development regulations would govern, as provided by state law (Ch. 36.70B. RCW), with additional review for consistency with the Comprehensive Plan only in the absence of applicable development regulations or ambiguity in applicable development regulations. This would result in greater certainty for applicants and would advance the City goal of reducing potential legal challenges of the City’s project permitting decisions.

Having one set of City-wide development regulations would remove the need to repeatedly address similar regulatory issues for each Neighborhood Plan, including particularly the 13 Plans that have not been updated since adoption of the 1995 Comprehensive Plan. This long-term cost-saving should more than offset the short-term investment of resources in developing City-wide development regulations.

Reducing the number of unique “zones” would reduce the need for planning department interpretations of unique regulations and should, therefore, reduce the potential for appeal of such interpretations. Some development regulations are located in the current Land Use Development Code. More are located within the 23 different Neighborhood Plans. Between these various sources, there are currently 150 different combinations of densities and development standards. The complexity of this system and the proliferation of different combinations creates uncertainty, which in turn causes City planners to spend a significant and growing portion of their resources simply interpreting the standards. If the development standards were collected and synthesized into one clear and concise Development Code, the need for such interpretations would be greatly reduced. This would advance the City’s objectives of clarity, consistency and efficiency.

Reducing the number of times particular regulatory issues are addressed (i.e., once in a City-wide Development Code as opposed to 23 times in individual Neighborhood Plans) would also reduce the potential for inconsistency, which could also lead to appeals. The potential for inconsistency exists in the regulations themselves, between the regulations and the comprehensive plan, and in the related interpretations that City planners more and more frequently must provide. With a single City-wide Code it would be clear that any interpretations that are required apply City-wide and not just to some unique aspect of a Neighborhood Plan. This would further the City’s goals of fair, consistent, efficient and defensible implementation of development regulations.
Having all development regulations apply to all similar zones City-wide would increase flexibility and efficiency for the City in implementing policy decisions with a regulatory component. The GMA limits Comprehensive Plan amendments to a once-a-year cycle. However, the GMA allows for more frequent fine-tuning of development regulations. Under the City’s existing framework, the City cannot take advantage of this flexibility to adjust development regulations more frequently than the annual cycle because its development regulations are located within the Neighborhood Plans, which are, in turn, part of the City-wide Comprehensive Plan. Having one set of City-wide development regulations would facilitate real-time “rezones” and other regulatory adjustments necessary for flexible and efficient administration.

Having one set of City-wide development regulations would also facilitate implementation of innovative regulatory “tools” (e.g., binding site plan review, planned unit developments, transfer of development rights, etc.), further advancing the City’s objective of efficient administration. Having a single City-wide code would help in two ways. First, it would allow the City to effectively implement such tools across the City without having to amend all 23 Neighborhood Plans. Second, it would allow implementation and refinement of such tools on their own schedule, without the once-a-year limitation inherent in any change that affects the Comprehensive Plan or any of the Neighborhood Plans under the current system (e.g., adoption of the planned unit development).

Finally, the process of developing City-wide development regulations offers an opportunity to check the GMA requirement of consistency between development regulations and the Comprehensive Plan. This is extremely challenging with development regulations distributed throughout 23 Neighborhood Plans. A single set of development regulations would also make it easier to ensure consistency between related Codes, such as the City’s Zoning Code, the Critical Areas Ordinances, the Subdivision Code and the Infrastructure Codes. This would advance the City’s consistency goal and should also reduce the risk of appeals of land use decisions.

**Challenges**

The process of collecting and synthesizing all development regulations into a single City-wide Development Code would require substantial up-front investment of resources to determine the appropriate standards for the new “zones.” Necessary resources include planning staff time, public education and involvement, and Planning Commission and City Council time. However, there would also be countervailing efficiencies and time-savings in the long run because resolution of these issues on a City-wide basis will obviate the need to address them again and again in each of the individual Neighborhood Plans, including the 13 yet to be updated.

If any areas are to be “down-zoned,” they may experience a development pulse (or application pulse) from applicants trying to vest under existing regulations. However, this effect may be mitigated somewhat by adopting development standards that are very similar to those already in effect and using the process to simply standardize development regulations that are already quite similar in many areas of the City rather than to make substantial density or other regulatory changes. This effect may also be mitigated through review of, and, as necessary, amendment of non-conforming use regulations to provide fair and reasonable rules on transition (e.g., grand-fathering provisions). Use of these two approaches would also minimize the risk of any potential takings claims.
2. Develop Separate Zoning Map and Comprehensive Land Use Map

Advantages

Separating the Zoning map from the GMA-required Comprehensive Plan map would facilitate continued GMA planning for future growth. The Comprehensive Plan map would become less of a reflection of specific localized development standards, and more of a conceptual tool in City-wide planning for future growth, as required by GMA. This would allow the citizens of Bellingham to compare the existing generic land use designations with future generic land use designations without necessarily having to change zoning until the appropriate time. This would advance the City’s goal of compliance with statutory and regulatory standards.

Separating the comprehensive plan future land use map from the zoning map would also provide the City greater flexibility to “rezone” property and adjust applicable development regulations outside of the annual legislative Comprehensive Plan amendment cycle.

Finally, separating the Zoning map from the Comprehensive Plan map would help the City to meet the GMA requirements to accommodate projected population growth within its urban growth area and to allow sufficient urban densities to do so. Separating the Zoning Map from the Comprehensive Plan Map will help the City with this planning effort by facilitating evaluation of generic existing and future land uses at a conceptual City-wide Comprehensive Plan level, rather than at the very specific development standard level reflected in the current zoning map. This should, in turn, reduce the risk of appeals concerning sufficient urban growth densities.

Other Considerations / Challenges

While not directly related to separating the Comprehensive Plan map from the Zoning Map, as planning for future growth continues, the process of establishing and mapping future land use would require up-front investment of resources including planner time, public education and involvement, and Commission and Council time. However, there would also be countervailing efficiencies and time-savings in the long run as City planners would be able to plan more effectively for growth. Further, planning for growth on a City-Wide basis, rather than a neighborhood-by-neighborhood basis, is consistent with the “basic thrust of the GMA which is to make decisions based on uniform policies and standards.” Berschauer v. City of Tumwater, 1994 GMHB LEXIS 165, *26 (July 1994) (No. 94-02-002).

Again, while not directly related to separating the Comprehensive Plan map from the Zoning Map, as planning for future growth continues, areas that are planned for increased growth may experience greater need for services and capital facilities investments. However, distilling capital improvements from the Neighborhood Plans and prioritizing them with the capital facilities elements of the Comprehensive Plan and transportation plans would make it easier to provide those services in the long run.

3. Refine Role of Neighborhood Plans

Advantages

Using the neighborhood planning process as a grassroots visioning and pre-plan and pre-regulation distillation process would focus the Neighborhood Plans on the most appropriate topics, like unique local vision and characteristics, while avoiding unnecessary effort on topics that are more appropriately City-wide in nature (like development standards), and that are more efficiently addressed in a centralized City-wide process. The result would be a more focused, manageable and efficient neighborhood planning process.
Separating Neighborhood Plans from the City-wide Comprehensive Plan would have several benefits. First, it would remove the need to run Neighborhood Plan amendments through the annual Comprehensive Plan amendment process. Second, it would remove the statutory obligation to review and, as necessary, update all Neighborhood Plans on a recurrent 7-year cycle. RCW 36.70A.130(4)(a). This would advance the City’s efficiency goals. Third, distilling policies and improvements identified in the Neighborhood Plans into a single City-wide Comprehensive Plan would help to facilitate public discussion of priorities for Comprehensive Plan capital facilities budgets and planned infrastructure and transportation improvements. Finally, it would help to maintain internal and external consistency as required under GMA, which would, in turn reduce the risk of plan and permit appeals on the basis of consistency.

As discussed in recommendation 1, Separating Neighborhood Plans from the City-wide Development Code would advance the City objectives of being more customer-oriented, clear, concise, consistent and defensible. Distilling development regulations from the Neighborhood Plans into a single City-wide Development Code would reduce the complexity of the existing framework and provide greater certainty to both current and future members of the community. It would also increase administrative efficiency and defensibility by minimizing the need for administrative interpretations of unique regulatory standards. Finally, the process of developing consolidated City-wide development regulations would provide a good opportunity to ensure the consistency required by GMA – both within the development regulations and between the regulations and the comprehensive plan.

**Challenges**

Refining the role of the Neighborhood Plans may require a significant up-front investment of effort on the part of staff, the Commission and Council, in that it may be seen as a significant change from the existing system. Importing more information from the Neighborhood Plans into the City-wide Comprehensive Plan and City-wide development regulations would also require additional investments of resources on an on-going basis, in terms of planner time and Commission and Council time. It may also require some additional public process. However, there would be countervailing efficiencies and time-savings in the long run as City planners would not have to update Neighborhood Plans as frequently. Further, any additional public process associated with importing neighborhood priorities into the Comprehensive Plan and development regulations could be made part of the neighborhood planning process, rather than something free-standing or new.

Neighborhoods may also perceive the proposed refinement of the role of Neighborhood Plans as a disadvantage because Neighborhood Plans would not automatically have the force and effect of the Comprehensive Plan or development regulations. However, because our proposal contemplates that key goals and policies of the Neighborhood Plans would be incorporated into the Comprehensive Plan and embodied in the development regulations, the outcome of the neighborhood planning process would continue to be vital and direct involvement in establishing the policies and enforceable standards the govern development at the local level. Further, the Neighborhood Plans themselves would remain as a resource for project proponents to better understand their neighbors’ preferences, and could also be used by the City as policy guidance on issues not clearly addressed in the development regulations or Comprehensive Plan.
4. Limit Use of “Planned” Use Qualifier

Advantages

Having permitting requirements for future developments flow from standardized codified development regulations, as opposed to from individual development agreements, would provide greater certainty to planners, the public and project proponents. This would advance the City objectives of making its development standards more customer-oriented, clear, concise, consistent and defensible.

Requiring that all development in certain areas or of certain types be governed by development agreements places a very substantial administrative burden on the City as well as project proponents. Our understanding is that a disproportionate amount of staff time is required to negotiate these agreements. Having planned development agreements available as an option for certain projects, rather than a requirement for all projects in certain areas, would preserve project-level flexibility while reducing unnecessary administrative burdens.

Having large areas of the City governed by private development agreements may also limit the ability of the City, property owners and neighborhoods to respond to future changes in circumstances.

Finally, limiting the use of the “Planned” use qualifier should reduce the risk of appeals of land use decisions on the basis of arbitrariness or “spot zoning” and would help the City to plan for future land use more comprehensively than on a development-by-development basis.

Challenges

Limiting use of development agreements would require up-front investment of time to plan and zone new areas and areas currently covered by “planned” use qualifiers. However, there would be greater efficiencies and time-savings in the long run as City planners would not have to negotiate development standards through individual contracts on a project-by-project basis.

Limiting use of development agreements could also reduce project-level flexibility. However, other innovative regulatory tools (i.e., site plan review, planned unit developments, transfer of development rights, etc.) could provide flexibility within the new development standards, and these other innovative regulatory tools would be easier to implement under codified standardized development regulations. Also, if planned development agreements are retained as an option (rather than a requirement), then the City could retain flexibility while avoiding the current administrative burden associated with requiring such agreements for all developments in certain areas.