



MEMORANDUM

DATE: May 4, 2010

TO: Chair Sheffels, Members of the Planning Commission

FROM: Catherine A. Drews, Legal Planner, Development Services Department

SUBJECT: Staff Recommendation—FEMA Consistency LUCA, File No. 10-106986
AD

This memorandum presents the report and recommendation of the Development Services Department (DSD) on the proposal to amend the Land Use Code (LUC) for consistency with the Federal Emergency Management Agency's (FEMA) minimum floodplain management requirements. This proposed land use code amendment implements requirements necessary to harmonize the city's floodplain management standards with FEMA's and the state's floodplain management requirements. A copy of the proposed Land Use Code amendment ordinance is included with this memorandum as Attachment A.

Following the public hearing scheduled for May 26, 2010, and consideration of public comment, staff requests the Planning Commission to prepare a recommendation to the City Council on the proposed code amendments included in Attachment A.

I. Background

On April 14, 2010, staff sought, and received, concurrence from the Planning Commission to initiate code amendments to harmonize the City's floodplain regulations with FEMA's minimum requirements. As discussed below, harmonizing the city's floodplain provisions with federal and state requirements is required to participate in FEMA's National Flood Insurance Program (NFIP).

The NFIP was created in 1968 to offer an alternative to disaster assistance for properties facing flood damage. The NFIP provides flood insurance to residents in participating communities, and in return, participating communities agree to regulate development in the floodplain consistent with criteria set forth in the NFIP. Consistency with the NFIP minimum criteria is required to participate in the program. Except as discussed below, the City's Areas of Special Flood Hazard provisions, Chapter 20.25H, Section IX, LUC, satisfies FEMA's requirement to regulate development in floodplains.

In 2009, staff requested the Washington State Department of Ecology, who administers the state floodplain management program, to review the City's floodplain provisions to confirm they satisfy the NFIP minimum criteria and the State Floodplain Management

Standards, Chapter 86.16 RCW. Ecology's review identified minor inconsistencies that the City must correct to maintain its standing in the NFIP program. Ecology also found that the City's floodplain program in many instances significantly improved on FEMA's minimum standards.

II. PROPOSAL

The proposed ordinance was prepared in response to Ecology's 2009 review of the city's floodplain regulations, review of Chapter 20.25H Part IX (Areas of Special Flood Hazards), and discussion with staff regarding how the city's floodplain management regulations satisfy FEMA and the state's flood plain regulations. At the April 14, 2010, study session, staff advised the Planning Commission that staff was reviewing two additional issues to see if amendments were necessary. That review concluded that no additional amendments to the land use code are necessary.

Staff recommends approval of the proposed code amendments to harmonize the city's floodplain regulations with federal and state requirements. Questions posed by the Planning Commission during the April 14, 2010, study session are addressed in the discussion of the corresponding proposed code amendment. Specifically, staff recommends the following code amendments:

LUC Part 20.25H, Areas of Special Flood Hazards

1. 20.25H.175.A.2. Update reference of Flood Insurance Study from December 1978 to April 19, 2005.
2. 20.25H.180.C.2. The Executive Director of the Board of Registration for Professional Engineers and Land Surveyors has determined that only professionally licensed surveyors may complete elevation certificates. Therefore, the City must delete licensed engineers as persons who may complete elevation certificates.
3. 20.25H.180.C.2. Add record retention requirement consistent with 44 CFR 60.3(b)(5)(iii).
4. 20.25H.177. The following definitions must either be added or amended, and apply only to regulations for the area of special flood hazard:
 - Correct code reference in definition of "Lowest Floor."
 - Amend "Substantial Improvement" for consistency with NFIP by replacing "replacement value" with "market value."
 - Define development consistent with state and federal definition:

"Development" means any man-made change to improved or unimproved real estate in the Regulatory Floodplain, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

During the April 14 study session, Planning Commission members requested that staff compare the proposed definition of “Development” to that found in the land use code. Development is defined at LUC 20.50.016 and 20.25E.017 (Shoreline Overlay District). The respective definitions are:

- LUC 20.50.016 defines development as: “All structures and other modifications of the natural landscape above and below ground or water, on a particular site. ...”
- LUC 20.25E.017 defines development as:

A use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling, removal of any sand, gravel or minerals, bulkheading, driving of piling, placing of obstructions, or any other project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this Master Program at any state of water level.

The three definitions differ in their application. The general LUC definition is broadly worded and applies throughout the LUC. The definition of development applicable in the shoreline jurisdiction addresses development and activities that typically occur in the shoreline. Likewise, the proposed FEMA definition is specific to the development and activities in the floodplain, and is consistent with the definition of development in the shoreline jurisdiction. Additionally, both of these definitions apply only to the regulations in their respective sections.

III. STATE ENVIRONMENTAL POLICY ACT

It is anticipated that the Environmental Coordinator for the City of Bellevue will determine that this proposal will not result in any probable, significant, adverse environmental impacts. A likely final threshold determination of nonsignificance (DNS) will issue on or before May 13, 2010. The final threshold determination will be attached to this memorandum as Attachment B before the public hearing scheduled for May 26, 2010.

IV. PUBLIC NOTICE, PARTICIPATION, COMMENT AND RESPONSE

The FEMA Consistency Code amendment was introduced at a study session with the Planning Commission on April 14, 2010. During that study session, the Planning Commission directed staff to proceed to a public hearing on the proposed amendment, scheduled for May 26, 2010. Notice of the Public Hearing before the Planning Commission was published in the Weekly Permit Bulletin on May 6, 2010.

The proposed amendments to the LUC are within the jurisdiction of the East Bellevue Community Council. A courtesy hearing is scheduled with EBCC at their regular meeting on May 4, 2010. Notice of the courtesy hearing was published on April 27, 2010.

Under the requirements of the Growth Management Act, state agencies must be given an opportunity to review and comment on proposed amendments to the LUC. Copies of the draft FEMA Consistency code amendment ordinance were provided to the state agencies for review on April 15, 2010. No comment letters were received by DSD before release of this staff report. Comments received after release of the staff report will be forwarded to the Planning Commission before to the public hearing.

V. APPLICABLE DECISION CRITERIA – LAND USE CODE PART 20.30J

The Planning Commission may recommend and the City Council may approve or approve with modifications an amendment to the text of the Land Use Code if:

A. The amendment is in accord with the Comprehensive Plan; and

The proposed amendment is consistent with the Comprehensive Plan. The proposed amendments assure the city's floodplain regulations are consistent with state and federal requirements, and consequently preserve the 100-year floodplain, and protect property from flood damage. The proposed code amendment is supported by Environmental and Land Use Comprehensive Plan policies:

Policy EN-40. Preserve and maintain the 100-year floodplain in a natural and undeveloped state, and restore conditions that have become degraded.

Policy EN-44. Regulate land use and development to protect topographic, geologic, vegetational, and hydrological features.

B. The amendment bears a substantial relationship to the public health, safety or welfare; and

The proposed amendment protects the public health and safety of the public by protecting structures from the 100-year flood and by restricting development in the floodplain and reducing corresponding flood damage.

C. The amendment is not contrary to the best interest of the citizens and property owners of the City of Bellevue.

Participating in the NFIP is in the best interests of Bellevue citizens because the NFIP provides cost-effective flood insurance programs, while managing development in floodplains to reduce damages associated with flooding. The public interest is advanced through this proposal because the amendments have been identified as necessary for Bellevue's continued participation in the NFIP.

VI. RECOMMENDATION

Recommend the FEMA Consistency Code amendment as drafted in Attachment A and transmit the ordinance on to the City Council for final approval.

ATTACHMENTS

- A. Draft FEMA Consistency Amendment Ordinance.
- B. Final DNS published on or before May 13, 2010.

ATTACHMENT A

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE amending the Bellevue Land Use Code relating to consistency with the Federal Emergency Management Agency's National Flood Insurance Program and internal consistency, specifically amending sections 20.25H.175, 20.25H.177, and 20.25H.180 of the Bellevue Land Use Code; providing for severability and establishing an effective date.

WHEREAS, the City of Bellevue participates in the Federal Emergency Management Agency's National Flood Insurance Program; and

WHEREAS, participation in the National Flood Insurance Program requires consistency with FEMA's minimum criteria for floodplain management as set forth in 40 C.F.R. Part 60; and

WHEREAS, review of the City's floodplain regulations by the Washington State Department of Ecology identified minor inconsistencies with FEMA's minimum criteria; and

WHEREAS, the Environmental Coordinator for the City of Bellevue determined that this proposal will not result in any probable, significant, adverse impacts and as such a final threshold determination of non-significance (DNS) was issued on May 13, 2010; and

WHEREAS, the Planning Commission held a public hearing on May 26, 2010, about the proposed Land Use Code amendments contained herein; and

WHEREAS, the Planning Commission recommends that the City Council approve such proposed amendments, now, therefore;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Sections 20.25H.175.A.1 and 20.25H.175.A.2 are hereby amended as follows:

20.25H.175 Designation of critical area.

A. Designation of Critical Area.

Areas of special flood hazard shall include:

1. Land Subject to One-Hundred-Year Flood. The land in the floodplain subject to the flood having a one percent chance or greater of being equaled or exceeded in any given year as determined by customary methods of statistical analysis defined in the City of Bellevue Utilities Department Storm and Surface Water Engineering Standards, January 2010, or as hereafter amended (Utility Code, Chapter 24.06 BCC. Also referred to as the 100-year flood.

2. Areas Identified on the Flood Insurance Rate Map(s). Those areas identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Bellevue" dated ~~December 1978~~ April 19, 2005, with an accompanying flood insurance map(s) and any revisions thereto. The Flood Insurance Study and accompanying map(s) are hereby adopted by reference, declared part of this part, and are available for public review at the City of Bellevue.

....

Section 2. Section 20.25H.177 is hereby amended as follows:

20.25H.177 Definitions.

For purposes of the regulations for the area of special flood hazard, the following definitions apply:

"Base flood elevation (BFE)" means the flood having a one percent chance of being equaled or exceeded in any given year as determined by customary methods of statistical analysis defined in the Utility Code, Chapter 24.06 BCC. Also referred to as the 100-year flood.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Development" means any man-made change to improved or unimproved real estate in the Regulatory Floodplain, including but not limited to, building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

....

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as

to render the structure in violation of the applicable nonelevation design requirements of this part found in LUC 20.25H.180.D.1.a.

....

“Substantial improvement” includes the following: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the replacement-market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged, and is being restored, before the damage occurred. For the purpose of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places.

Section 3. Section 20.25H.180.C.2 is hereby amended as follows:

20.25H.180 Development in the area of special flood hazard.

No use, development or activity may occur in an area of special flood hazard except as specifically allowed by this part. All use, development or activity which is allowed is subject to the performance standards of this subsection and shall not result in a rise in the BFE. The requirements of this section may not be modified through a critical areas report.

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C. General Performance Standards.

Where use or development is allowed pursuant to LUC 20.25H.055, the following general performance standards apply.

1. Intrusion Over the Area of Special Flood Hazard Allowed. Any structure may intrude over the area of special flood hazard if:

a. The intrusion is located above existing grade, and does not alter the configuration of the area of special flood hazard; and

b. The intrusion is at an elevation and orientation which maintains the existing vegetation of the area of special flood hazard in a healthy condition. Solar access to vegetation must be maintained at least 50 percent of daylight hours during the normal growing season.

Development not meeting the requirements of this subsection C.1 may be allowed pursuant to LUC 20.25H.055 and only in accordance with the requirements set forth in the remainder of this section C.

2. Elevation Certificate Following Construction. Following construction of a structure within the area of special flood hazard, where the base flood elevation is provided, the applicant shall obtain an elevation certificate. The elevation certificate shall be completed by a surveyor or engineer licensed in the state of Washington and shall be submitted to City of Bellevue, Utilities Department. The Director of ~~Planning and Community Development~~ shall obtain and transmit to the Director of the Utilities Department the elevation in relation to City of Bellevue vertical datum (NAVD 88) of the lowest floor, including basement, and attendant utilities of a new or substantially improved structure permitted by this part.

....

Section 4. If any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 5. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this _____ day of _____, 2010 and signed in authentication of its passage this _____ day of _____, 2010.

(SEAL)

Don Davidson, DDS, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Lacey Madche, Assistant City Attorney

Attest:

Myrna L. Basich, City Clerk

Published _____