



## ADMINISTRATIVE POLICY RELATING TO VESTED RIGHTS, INTERPRETING EXCEPTIONS AND NEXUS AND PROPORTIONALITY

### 1. Authority and Intent

Lake Stevens Municipal Code (LSMC) 14.04.120(a), allows city departments to administratively adopt guidelines, standards, reference materials, forms or other documents that aid the public, applicant, staff or decision-maker in interpreting the municipal code. Bolded sections emphasize key elements related to the municipal code, finding of fact and conclusions.

The Community Development Director has issued this guidance to ensure there is no confusion about vested rights, interpreting exceptions and evaluating nexus and proportionality as these principles apply to implementing development regulations and standards during the review of land use and building permit applications by city staff.

### 2. Issues

**Issue 1** – In Washington State there is a vested rights doctrine. **The purpose of vesting is to provide certainty and predictability in land use regulations upon permit application and ensure property owners retain rights to due process under the law.** State statute identifies three specific application types that establish vesting of a project to current development regulations upon filing of a complete application:

1. Building permits per the Revised Code of Washington (RCW) 19.27.095(1);
2. Subdivisions per RCW 58.17.033(1); and
3. Development agreements per RCW 36.70B.180.

Most applications under review by the city fall under one of these statutes. For those few projects outside of these broad categories it is still best practice to review against existing codes and standards. Examples may include pre-application reviews; site plan reviews or land disturbance permits. **Once deemed complete, an application within the scope of one of the three cited statutes is bound to the development regulations and standards in place at the time of filing the complete application with limited exceptions.** This means new or amended standards or other land use regulations cannot be applied to a vested project during its review. It also means neither the developer or city can pick and choose which standards to apply if regulations change during the review.

Vesting as a fundamental principle of land use law has been litigated in numerous reported state appellate court proceedings.

- Hull vs. Hunt (1958)
- West Main Associates vs the city of Bellevue (1986)
- Noble Manor vs. Pierce County (1997)
- Weyerhaeuser vs Pierce County (1999)
- Potala Village Kirkland vs City of Kirkland (2014) in which the Washington State Supreme Court made clear that vesting in Washington State was no longer regulated under principles of the common law but defined and regulated solely by Washington statutes.

**Issue 2** – When there are exceptions or allowances provided in development regulations and associated standards, these should be read and interpreted with the most concise and plain meaning or scope as it relates to the proposal. These are usually low-level actions that the legislative body (City Council) has specifically authorized staff to make. **In most cases, when there are simple exceptions to a process or standard, *prima facie* evidence should suffice to determine eligibility without requesting additional documentation from applicants,** which may add unneeded time and expense to a project. Whereas a formal variance or deviation request may require greater justification and documentation to approve. LSMC 14.14.014(a)(3) provides the most succinct guidance related to the permit review process stating,

“(3) To adopt a development review process that is:

- (i) Efficient, in terms of time and expense;
- (ii) Effective, in terms of addressing the natural, historic, and aesthetic resources and public facility implications of any proposed development, while also protecting and improving the quality of life in the City; and
- (iii) Equitable, in terms of consistency with established regulations and procedures, respect for the rights of all property owners, and consideration of the interests of the citizens and residents of the city.”

**Issue 3** – **When you evaluate and place conditions on land use permits, the state constitution requires a “nexus” or direct connection between the permit conditions and projected impact of the individual project.** Nexus and proportionality simply evaluate cause and effect. This is typically measured against a “concurrency” standard or adopted levels of service to mitigate anticipated, growth-related impacts. LSMC 14.04.014(a)(8) requires,

“... all new land development activity contribute its proportionate share of the funds, land, and/or public facilities necessary to accommodate the impacts that such new development has on public facilities and services having a rational nexus to the proposed development and for which the need is reasonably attributable to the proposed development.”

In Washington State, under the Growth Management Act cities most commonly impose impact fees as mitigation. Concurrency is usually satisfied through the implementation of local land use regulations and through the payment of impact fees. The LSMC evaluates concurrency in Chapters 14.100 School Impact Mitigation, 14.110 Concurrency Management System, 14.112 Traffic Impact Mitigation Fees and 14.120 Park Impact Mitigation Fees. The city has also addressed future impacts and mitigation through the adoption of three subarea plans with planned action ordinances. If there are special concerns to mitigate, these should be discussed with the project application decision-maker or recommendation body, as early as possible, to identify any legal authorities to impose additional requirements. Likewise, you should evaluate if an impact has already been mitigated in the past through a prior land use action. **If there has not been a substantive change in conditions or prescriptive standards since the prior mitigation that compels a new concurrency review as part a new application, there is no new impact to mitigate.**

### **3. Policy Framework**

The RCW and Washington Administrative Code (WAC) prescribe the standards and processes to be adopted by cities. The Growth Management Act (Chapter 36.70A RCW) lays the foundation for elements to be adopted into local comprehensive plans and development regulations and standards. The Local Project Review Act (Chapter 36.70B) defines the procedural requirements for cities to ensure a predictable process for the applicant and public. Multiple other statutes (RCWS) and rules (WAC) define specific areas.

The city of Lake Stevens has adopted a Comprehensive Plan and development regulations consistent with this codex and established legal principles. The city's comprehensive plan provides guidance on these issues across several chapters.

- **Introduction Goal 1.3** – Ensure that the city's development review process provides certainty and clarity in timelines and standards that results in a timely and predictable decision making process for all development applications.
  - Policy 1.3.1 Ensure development regulations implement the Comprehensive Plan and describe all significant development requirements and standards.
  - Policy 1.3.2 Ensure that the development regulations are clearly written, avoid duplicative or inconsistent requirements, and can be efficiently and effectively carried out.
- **Land Use Goal 2.3** – Apply the comprehensive plan as a guide for community development implemented through the city's development regulations to ensure preferred community growth patterns are achieved.
  - Policy 2.3.1 Review development standards and regulations to ensure that they possess an appropriate level of flexibility to promote efficient use of buildable land, balanced with the need for predictable decision-making.
- **Economic Development Goal 6.7** – Provide a predictable development atmosphere.
  - Policy 6.7.1 Create streamlined process for development projects that meet the city's land use goals.

The Lake Stevens Municipal Code (LSMC) codifies the general provisions for development review in Chapter 14.04 LSMC. Chapters 14.16A and 14.16B include process standards and the procedures for changing codes or standards. As noted previously Chapters 14.100, 14.110, 14.112 and 14.120 contain the city's concurrency framework. Multiple other titles, chapters, design documents and administrative guidelines make up the city's development regulations.

#### **4. Administrative Guidance and Implementation**

This policy considers various sections of State Law, the Lake Stevens Comprehensive Plan and Municipal Code along with case law. This guidance provides a legal framework for decision-making in Washington State and identifies best practices for plan reviewers to consider when making recommendations and decisions related to active land use and building permit applications.

**Actions taken by the city contrary to the standards in effect at the time of application, expansive interpretations or those actions that cannot show a nexus to the impact, may be deemed arbitrary and capricious** when these decisions are based on personal opinions or preferences, rather than following objective and adopted standards. Arbitrary and capricious actions are the most common reason for applicants to appeal decisions to the Hearing Examiner, Courts or Growth Hearings Board.

If you have questions about how to review projects or are unsure as to which regulations vest, please discuss these issues with me directly or senior planning staff. Based on professional experience, we are great sources of knowledge and can help provide guidance and context during pre-application meetings, technical staff meetings or during individual project reviews.

A standard methodology to apply when trying to interpret how decisions are made would be:

1. Start with a limited interpretation of the issue;
2. Review the definitions section(s) of the municipal code;

3. If there are contradictory elements, refer to the one that is more specific or adopted most recently;
4. Look at past practices and permits to see how others have interpreted the issue in the past;
5. Talk to your peers, other jurisdictions or supervisor;
6. Conduct research i.e., review the adopting ordinance and staff reports to determine legislative intent or review technical guidance that may be available on the Municipal Research and Service Center; and/or
7. Clarify with the City Attorney.



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Date