



**Department of Planning and Community Development**

**Memorandum**

**Date:** March 19, 2019  
**To:** City Council  
**From:** Christy Carr, AICP  
 Senior Planner  
**Subject:** **Ordinance 2019-03: Subdivision Update – Planning Commission Recommendation**

At their February 28, 2019 meeting, the Planning Commission made a recommendation to the City Council on Ordinance 2019-03 (Attachment A). Their motions to transmit this recommendation to the City Council are provided as part of the draft minutes of the February 28, 2019 Planning Commission meeting (Attachment B). The ordinance includes proposed revisions to several sections within Title 17 and 18 of the Bainbridge Island Municipal Code (BIMC), in sum referred to as the “subdivision update.”

This memorandum provides a “road map” to the ordinance itself, an overview of the conceptual approach, a note on cluster development, a summary of procedural history and public comment, a summary of key changes, and staff input on the Planning Commission’s recommendation including comments addressing both housekeeping items and policy questions for the City Council’s consideration.

**Ordinance 2019-03 – A Road Map**

The City’s subdivision regulations are generally found in BIMC Title 17 (Subdivisions and Boundary Line Adjustments). Subdivision development is also required to be consistent with applicable substantive standards in BIMC Title 18 (Zoning). As such, Ordinance 2019-03 includes proposed revisions to each of these sections. For the most part, the ordinance deletes regulations related to subdivisions from Title 18 and integrates them into Title 17. Proposed revisions are presented in four parts:

Ordinance 2019-03:	The ordinance itself includes changes in the following sections: <ul style="list-style-type: none"> <li>• BIMC 17.04 and 17.08 – Purpose statement and administration</li> <li>• BIMC 18.12 – Subdivision dimensional standards table deleted (relocated to BIMC 17.12)</li> <li>• BIMC 18.15 – Landscaping and parking requirements related to subdivisions deleted (relocated to BIMC 17.12)</li> </ul>
Ordinance 2019-03 – Exhibit A:	The ordinance proposes to repeal and replace Section 17.12. Exhibit A is the new Section 17.12. The majority of the proposed changes are in this section.

Ordinance 2019-03 – Exhibit B:	Exhibit B includes revisions to BIMC 17.28, Definitions (related only to subdivisions).
Ordinance 2019-03 – Exhibit C:	New residential subdivision design guidelines are proposed. The City’s existing design guidelines are located in BIMC 18.18. Exhibit C is the proposed subdivision design guidelines, that will be codified in BIMC 18.18.

Note: For purposes of compliance with RCW Title 58 (Boundaries and Plats) or its successors, the Bainbridge Island subdivision regulations consist of Title 17, as well as applicable substantive standards in BIMC Titles 15 (Buildings and Construction), 16 (Environment), and 18 (Zoning), applicable procedures set forth in BIMC Title 2 (Administration and Personnel), and related local regulations or ordinances adopted in accordance with state law. Subdivisions must also comply with RCW Title 58.

As a reminder, the subdivision update includes three components:

1. New review procedures including early conceptual meetings and a review and recommendation role for both the Design Review Board and Planning Commission;
2. New design guidelines focusing on site planning to promote compatibility with site and neighborhood; and
3. Revised standards

**Ordinance 2018-20  
(complete)**

**Ordinance 2019-03**

**Overview of Conceptual Approach**

A concern expressed by the community is that recent subdivision development across the island has been inconsistent with the City’s 2017 Comprehensive Plan, particularly Guiding Principal #1, “*Preserve the special character of the Island -- winding, narrow and vegetated roadways and forested areas, meadows, farms, containing much of the Island’s wetlands and streams, aquifer recharge areas and fish and wildlife habitat.*” Members of the City Council and community have expressed general concerns regarding the adverse impacts of development, including subdivisions, under the City’s current development regulations due to threatened harm to the island’s fresh water aquifers; the loss of trees, forests, native vegetation and soils and their ecosystem services; and the serious challenge of promoting affordable housing. The broad concern is that the City’s existing subdivision regulations allow for indiscriminate clearing and grading followed by development of subdivisions wholly out of context with existing roadside and neighborhood character.

The new approach borrows key concepts from “conservation subdivisions.” This type of “conservation design” differs from “conventional design” by first protecting the important natural features of a site and then placing homesites on the remaining area instead of dispersing the development area throughout the site without regard to the site’s existing physical landscape. Typical subdivision development seeks to maximize the size of the lots and generally disregards the natural areas on site. An alternative approach is to encourage cluster development, which results in the same number of lots but clusters the development onto a smaller, buildable portion of the site. This approach to subdivision design is tailored to the characteristics of each site through a four-step design process completed early in the review phase. In general, the new approach combines the City’s two existing subdivision design options – the “open space option” and the “cluster option” – into a single set of standards. Subdivisions will include both the dedication of open space (renamed natural area) and clustering of homesites.

**The new approach achieves several key goals and policies of the Comprehensive Plan:**

- Discourages the land, energy, and natural resource consumptive pattern of large single-family homes
- Results in context-sensitive development

- Minimizes the development footprint and promotes low impact development
- Promotes development of a variety of housing types

### **A Note on Cluster Development**

The City's existing subdivision standards include two design options: the open space option and the cluster option. Current BIMC provisions related to cluster development in existing subdivision standards include:

BIMC 17.28 defines cluster development as, "a group of adjoining homesite areas situated in a suitable area of a property, designed in such a manner that facilitates the efficient use of land by reducing disturbed areas, impervious surfaces, utility extensions and roadways, while providing for the protection of valued open space features."

BIMC 17.12 includes the following standards:

- Homesite Clustering. The purpose of clustering is to facilitate the efficient use of land by reducing disturbed areas, impervious surfaces, utility extensions and roadways. Homesites shall be located in cluster groupings and the efficient location of infrastructure shall be used to maximize the undeveloped area. Four or more homesites shall constitute a cluster grouping in a long subdivision, and two or more homesites shall constitute a cluster grouping in a short subdivision.
- All homesites in a cluster grouping shall adjoin or be located a maximum of 25 feet apart from another homesite.
- In the R-0.4 and R-1 zoning districts, a homesite area with a maximum area of 10,000 square feet shall be provided for each lot. In the R-2 zoning district, a homesite area with a maximum area of 7,500 square feet shall be provided for each lot.

A key change proposed in the subdivision update is that there will no longer be an "open space" or "cluster" option – all residential subdivisions will follow the same set of standards. The new, single standard will essentially merge the two options, and include both the designation of open space (renamed "natural area") and cluster development.

The **public hearing draft of Ordinance 2019-03** included maximum homesite size (varying by zoning district) and, for subdivisions resulting in four or more lots, a requirement for homesite clustering. Homesite clustering would be achieved by a required dimensional standard for how far apart homesites and homesite cluster groupings can be located. To provide flexibility or alleviate any undue hardship due to specific site conditions, an administrative departure could be requested. If the applicant demonstrates that a subdivision layout without clustering is a better design solution, then clustering would not be required.

The **Planning Commission's recommendation of Ordinance 2019-03** includes a maximum homesite size but makes clustering the "preferred design model" rather than a requirement and deletes the required dimensional standards for how far apart homesites and homesite cluster groupings can be located. The Planning Commission's recommendation relies on the required four-step design process to allow the characteristics of the land to determine the most suitable location of homesites and allows for administrative departures from certain standards, if it is found that the departure achieves a better outcome.

In considering cluster development, it may be useful to think about at what scale it is required, and what it is that is being clustered. It is also important to keep in mind the objectives of cluster development,

which are – in brief – minimizing site disturbance and the development footprint and protecting valued natural resource features. In the R-0.4 zoning district, for example, the natural area requirement is 55 percent of the site and can be up to 65 percent if that higher number is the required aquifer recharge protection area. If the natural area is between 55-65 percent of the site, then the development area will effectively be “clustered” in 35-45 percent of the site. This scale of cluster development may achieve its objectives. A finer scale of cluster development could be achieved by clustering homesites and homesite groupings *within* the development area, although such clustering may not be necessary to achieve the objectives.

The approach that best meets the objective of clustering – at the site scale, clustering “natural area” and “development area,” or at the homesite scale, clustering homesites and homesite groupings within the development area – should be based on the size and characteristics of the site and will likely differ depending on the zoning district, since the required natural area decreases outside of the R-0.4 zoning district. Regardless of what standard is decided on and whether it is required or preferred, the selected approach should provide for a high level of certainty to achieve the goals of cluster development and the related goals and policies in the Comprehensive Plan.

### **Procedural History and Public Comment**

The Planning Commission began discussion of the subdivision update in March 2018, and held 20 study sessions related to review procedures, decision-making authority, subdivision design guidelines, and subdivision standards between March 2018 – February 2019. The Design Review Board discussed the subdivision update at 11 meetings between April – October 2018. In total, 31 properly noticed public meetings were held regarding the subdivision update. The Planning Commission held a public hearing on February 13, 2019 which was continued to February 28, 2019. In between the two dates of the public hearing, a subcommittee of Planning Commissioners made changes to the public hearing draft, which were made available to the public via an amended Planning Commission agenda on February 26, 2019. The public hearing draft showing the subcommittee’s comments is provided in Attachment C. The subcommittee’s amended version of the public hearing draft, with the addition of several revisions made at the February 28, 2019, Planning Commission meeting, is the Planning Commission’s recommended draft.

Two public comments were provided at each of the public hearings (a total of four comments from three different people). Minutes from the public hearings, including public comments, are provided in Attachment B.

Primary concerns expressed in public comment focused on the R-0.4, R-1, and R-2 zoning districts and related to concerns about a potential loss of privacy, inconsistency with the island’s rural character, and included comments that clustering is “theft” or a “taking of property.”

### **Summary of Key Changes**

Changes are proposed for each of the three major components outlined above: review procedures, design guidelines, and standards. New review procedures were approved with the adoption of Ordinance 2018-20. A new set of design guidelines was created for residential development within subdivisions. *These design guidelines do not apply to residential development outside of subdivisions.* The focus of the design guidelines is to generate context-sensitive subdivision development at the site, neighborhood, and island scale. Proposed design guidelines are provided in Ordinance 2019-03 – Exhibit C (Attachment A).

*Four-Step Design Process:* The four-step design process is required during the pre-application phase and is based on a detailed site analysis and context map. The four steps are: (1) delineate natural space, (2) locate homesites and community space, (3) define access, and (4) draw lot lines. The intent of the process is to allow the characteristics of the land to prioritize natural resource areas to be preserved and determine the most suitable location of homesites.

*Administrative Departures:* This is a new procedure through which an applicant could request a departure from, or alternative to, one or more standards to allow flexibility and site-specificity for subdivision design. It is not intended to be a separate process, such as a variance.

*Natural Area Requirement:* The existing “open space” requirement is renamed “natural area.” The new subdivision regulations require a percentage of the overall site to be designated as “natural area.” Natural area means the undeveloped portion of a subdivision that contains natural resource features such as critical areas, significant tree stands, forested areas, native vegetation, and/or designated wildlife corridors, that is preserved in perpetuity. The natural area requirement ranges from 5% of the site in the Mixed Use Town Center district to 55% of the site in the R-0.4 district. The natural area requirement in the R-1 and R-2 zoning districts is 45% and 30%, respectively. There are a number of allowed uses within the natural area. The proposed regulations include a list of 11 expressly allowed uses within the natural area, including utilities, trails, and small structures. The natural area can be on privately owned lots or within a common tract owned by a homeowners’ association or third party.

*Community Space Requirement:* This new requirement is intended to implement the Comprehensive Plan’s concept of livable neighborhoods, “... designed with pedestrians and non-motorized transportation in mind, where children can play safely outdoors, and where public spaces exist for recreation and for neighbors to gather and socialize.” Like natural areas, a percentage of the total site area is required to be designated as community space with requirements ranging from 5 to 15 percent of the site. Community space is not required for short subdivisions (4 or fewer lots) and applicants have the option of adding the community space requirement in the R-0.4 zoning district (5%) to the natural area.

*Homesite Requirement:* The existing subdivision regulations have a homesite requirement only for the “cluster option” subdivision design. The subdivision update includes a homesite requirement in all subdivisions. The homesite is defined as that portion of a lot depicted on the face of a plat that is intended for development of the primary residential dwelling and accessory buildings and necessary infrastructure within a subdivision. Each zoning district has a maximum homesite size ranging from 10,000 square feet in the R-0.4 district to 2,250 square feet in the R-14 and Mixed Use Town Center districts.

*Cluster Development:* The existing subdivision regulations include cluster development only for the “cluster option” subdivision design. The Planning Commission’s recommendation effectively maintains the optional status by calling it the “preferred design model.”

*General Standards:* The subdivision update also includes a number of changes to the general standards. New standards are added related to fencing, landscaping, and design diversity. Some existing standards are revised to improve clarity and consistency with the Comprehensive Plan and other City planning documents, including those related to streets and access, stormwater facilities, and septic systems.

### **Staff Input on Planning Commission Recommendation**

Staff has the following comments on the Planning Commission’s recommendation, which are highlighted and numbered in Exhibit A of Ordinance 2019-03 (see Attachment A). Housekeeping corrections were

discovered when updating the Planning Commission's recommended draft, and those corrections are included as well.

1. The Planning Commission changed "design guidelines" to "development standards;" however, the section relates to design guidelines, not development standards.
2. Staff suggests adding "natural" in front of "resources" to clarify that the first step in the four-step design process gives the highest priority to natural resources.
3. Staff recommends that the "or" is replaced with "and" to clarify that a request for a departure must meet all of the listed criteria.
4. The Planning Commission recommended deleting this criterion, noting it would be too challenging to implement. While it may be challenging to implement, staff suggests that the criteria should include the requirement that an applicant demonstrates that there has been a serious effort to comply with the standards and that the City may want to consider the economic implications of either denying or granting a departure.
5. The Planning Commission added the language "the director shall review the record and render a decision on the specified departure(s), subject to review by the hearing examiner." This process is not possible without a separate application and would make the director's decision on the departure subject to appeal. The intent of the "administrative departure" is not to require a separate process, application, or fee. Rather, a request for an administrative departure would be considered at the Design Guidance Review meeting and both the Design Review Board and members of the Planning Commission would provide a recommendation at that point. The departure, if it is an affirmative recommendation, would be included in the pre-application. The Planning Commission and staff agreed that whether or not a departure will be granted needs to be known early in the process.
6. The Planning Commission deleted "one or more of" the following objectives. It is likely that a designated natural area will not support all of the stated objectives. However, without the modifier "one or more of," and applicant would be required to demonstrate just that.
7. The Planning Commission changed "adjacent" to "any" in terms of what a designated natural area should connect to. Staff suggests that "any" is too broad and notes that one of the objectives of conservation subdivisions is to develop connected systems of natural area, which is why the term adjacent was used.
8. The Planning Commission added "as are gates" to the allowance for fencing around natural areas. While gates in and of themselves are not problematic, it should be clarified that the gate should meet the definition of low-impact fencing (e.g., allow for wildlife movement). A chain link gate, for example, would not meet this definition.
9. This is a housekeeping correction – "open space" should be "natural area."
10. Homesite clustering. See "A Note on Cluster Development," above. Staff suggests that clustering should be a requirement with a departure available from the standard rather than the "preferred design model," as recommended by the Planning Commission. A reliance on the four-step design process to "allow the characteristics of the land to determine the most suitable location of homesites" – with no standard – would be problematic to implement. For example, if a property in the R-1 zoning district contains 25 percent native vegetation, the natural area requirement would be 30 percent. Site development could then be dispersed throughout the remaining 70 percent of the property because there is no standard to determine which portion/s of the 70 percent are "the most suitable location" for homesites. If the intent is to minimize site disturbance and the overall development footprint, a standard is needed to

achieve that – guidelines and preferences will not. That said, as noted earlier, dimensional standards that cluster homesites and homesite groupings within the development area are likely not necessary to achieve the intent.

11. Site disturbance. The Planning Commission’s recommended language references the City’s stormwater code for land disturbing activities, which means, “any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land disturbing activity. Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.” The recommended language states that land disturbing activities “shall be limited to the minimum required for site preparation and construction.” Implementation of this standard would almost certainly bring up a variety of questions, such as: Site preparation and construction of what? Who decides what the “minimum required” is? Is site disturbance allowed outside the homesite? If an overall objective of the subdivision standards is to limit site disturbance, the standard needs to be more specific.
12. This is a housekeeping correction. The Planning Commission corrected it via motion in the dimensional standards table, but it was missed in this section.
13. Landscaping: The public hearing draft included a maximum amount of turf grass and minimum requirement for native vegetation allowed on lots and within Community Space, based loosely on the innovative site development requirements to receive incentives in the City’s current HDDP program (providing <20% turf or >60% native plants receive four points each toward earning incentives). The Planning Commission’s recommended language – “should be retained and maintained where possible” and “should be responsive to the natural contours” – does not provide any backstop for City staff to require any specific type of landscaping. While the City may not wish to manage people’s yards, specific metrics are more useful than general language if the City wishes to have any sort of requirements related to landscaping.
14. Staff suggests that “public and private streets” should not be allowed in perimeter buffers. This was erroneously copied from roadside buffers, where streets would be permitted to cross, and was missed during Planning Commission review.
15. This is a housekeeping correction – “perimeter” should be “roadside.”
16. The Planning Commission discussed that the road *into* the subdivision should be able to cross the roadside buffer (otherwise there would be no access to the subdivision). Staff suggests that the intent was not to allow driveways (for individual lots) to cross the roadside buffer and that this language/word choice should be clarified that it is the road into the subdivision that may cross the roadside buffer.
17. The Planning Commission changed “maximum density” to “minimum lot area” because the first term is confusing. Staff concurred with this change but notes it follows a row titled “minimum lot area,” but has different requirements – which is confusing. Staff suggests (possibly) using the term “allowable lots” for the dimensional standard title and moving the existing note so that it is located directly beneath the title, so that the note would state: The maximum number of lots permitted shall be calculated by dividing the total lot area of the property (without deducting areas to be dedicated as public rights-of-way or areas to be encumbered by private road easements) by the minimum lot area for standard lots in the zone district. “Minimum lot area” could then be changed to “Minimum lot area for standard lots in the zone district,” to clarify

that it is not a minimum lot size for the subdivision but a means to calculate the number of allowable lots.

18. The Planning Commission pointed out that the maximum homesite size for subdivisions in the R-0.4, R-1, and R-2 districts (10,000, 7,500, and 6,500, respectively) conflicts with the minimum development area allowed with the aquifer recharge protection area (ARPA), which is 12,500 square feet in all zones. The 12,500 number for the ARPA was based on the minimum lot size in the subdivision standards at the time the ARPA was established. Staff suggested that the ARPA standards (BIMC 16.20.100) be changed to be consistent with the homesite size: “A lower percentage is allowed if necessary to achieve a development area of at least 12,500 square feet on a parcel or the maximum allowable homesite size within a subdivision.” The Planning Commission agreed with this change, although changes to BIMC 16.20 were not included in the Planning Commission’s recommendation. Note that the subdivision update includes no minimum lot size – lot size in areas with on-site septic systems would be determined by the Kitsap Public Health District. The Health District regulations include a number of alternatives for determining minimum lot size, one of which is opting for the prescriptive standard of 12,500 square feet.
19. The City’s current subdivision regulations allow for zero lot lines (attached buildings) in all zoning districts. This was a change made in 2017 to support low impact development and affordable housing goals in the Comprehensive Plan. The consultant recommended maintaining the zero lot line option in all zoning districts if the individual buildings (homes) are less than 1,600 square feet, while the Planning Commission recommended that the zero lot line option should not be allowed in the R-0.4 zoning district regardless of home site. Staff notes that the Planning Commission recommendation reverses the change made in 2017, which was made at that time to support the Comprehensive Plan.
20. The Planning Commission changed “public right of way” to “internal access” because “public right of way” could mean the frontage road and the likelihood is that property owners do not want garages that are zero feet from a frontage road. Staff agrees that this is confusing and notes that the City needs a term and definition for internal roads within a subdivision. “Internal access” is not a currently used or defined term. Staff is considering this issue and will provide a recommendation to the City Council.