

# BINGEN MUNICIPAL CODE

## Chapter 16.12

### PROCESSING LAND DIVISION AND BOUNDARY LINE ADJUSTMENT APPLICATIONS

#### Sections:

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#### **16.12.010 Initiation and Withdrawal of Action.**

- A. Applications may be initiated only by:
  - 1. All the owners and all the contract purchasers of the subject property, or any person authorized in writing to act as agent of the owners or contract purchasers. Contract purchasers shall indicate in writing that the contract vendor(s) has been notified of the application;
  - 2. The City Council; or
  - 3. The City Administrator.
- B. No application shall be deemed complete and further processed if it is determined that any necessary authorization to file has not been obtained.
- C. The City Administrator may withdraw any application or petition for review at the request of the applicant or petitioner. Once accepted as complete, however, the applicant or petitioner shall be entitled to withdraw by right only if the City Administrator determines that written consent to withdraw an application has been obtained from a majority of the owners or contract purchasers or the majority interest holders in the property, or all signers of the petition for review.
- D. If an application, petition for review, or motion for reconsideration is withdrawn after public notice has been provided and the approval authority has not rendered a decision, the City Administrator shall provide written notification of the withdrawal to all persons that were entitled to be mailed a public notice of pending review and all persons who submitted written comments.

- E. When applications and petitions for review are withdrawn at the request of the applicant, the application fees shall be refunded, less the actual costs incurred by the City. (Ord. 507 §2, 2004).

**16.12.020 Pre-Application Conference.**

- A. No application for a land division or boundary line adjustment shall be received by the Administrator unless the applicant or the applicant's representative has attended a pre-application conference with the City Administrator.
- B. The purpose of the pre-application conference is to acquaint the applicant or representative with the requirements of this title, Title 17 – Zoning as now or hereafter amended, the Comprehensive Plan as now and hereafter amended, and other relevant criteria. It is designed to assist the applicant. It is impossible, however, for the conference to be an exhaustive review of all potential issues and failure of the City Administrator to provide any information required by this title or otherwise shall not constitute a waiver of the policies, standards, or criteria relevant to the application.
- C. Pre-application conferences shall be scheduled by the City Administrator at the earliest reasonable time.
- D. Another pre-application conference is required if an application is submitted more than 6 months after the pre-application conference is held. (Ord. 507 §2, 2004).

**16.12.030 Application.**

- A. Applications for development actions shall be submitted in accordance with the format and upon such forms as may be established by the City Administrator.
- B. A complete application contains the information required to address the relevant standards of the Comprehensive Plan and this title. It shall include at least the following:
  - 1. A completed original application form; signed and notarized by all people having ownership or interest in the subject property;
  - 2. A current radius search showing the tax parcel number and ownership of the subject property and all properties within 300 feet of the subject property;
  - 3. Relevant public facilities information;
  - 4. A SEPA checklist, as provided in Chapter 15.20 of the Bingen Municipal Code, for land division applications, unless expressly exempted from SEPA review under WAC 197-11-800(6)(a) as now or hereafter amended;
  - 5. A subdivision guarantee from a recognized title company;

6. Additional information directly related to the applicable standards of this title or the Comprehensive Plan as deemed essential by the City Administrator to evaluate adequately the specific application for compliance with those criteria and standards. (Ord. 507 §2, 2004).

**16.12.040 Application Submittal and Acceptance.**

- A. Applications shall be submitted to the City Administrator in the number specified on the application form. The City Administrator, however, may waive copies of specific documents, maps, or exhibits upon a determination that the difficulty or burden of copying outweighs the usefulness of the copies.
- B. No application shall be received by the City for determination of completeness without the appropriate application fee. The applicable fees adopted by the City Council are hereby incorporated by reference as the fees herein. These fees may be amended by resolution.
- C. The date of submission shall be recorded. Within 7 calendar days for boundary line adjustment decisions and 20 calendar days for land division decisions, the City Administrator shall determine whether the application is complete. The City Administrator shall notify the applicant when the application is accepted as complete or rejected as incomplete if deficiencies are found. Resubmitted applications shall be subject to another 7 or 20 calendar day completeness check.
- D. Upon determination of completeness, applications shall be accepted immediately. The date of acceptance shall be recorded. The City Administrator shall notify the applicant that the application is complete. Within 14 calendar days of determining completeness, the City Administrator shall initiate the notice procedure set out in 16.12.050 and set a hearing date for the land division application to be heard by the City Council. Unless otherwise directed by the City Council, applications shall be processed in the order accepted.
- E. Rejection by the City Administrator for incompleteness shall be based solely on failure to address the relevant standards or supply required information and shall not be based on differences of opinion as to quality or accuracy. Acceptance indicates only that the application is ready for review. The applicant shall be notified in writing what is necessary to make the application complete.
- F. Upon rejection for incompleteness, the applicant may object in writing to any alleged deficiencies and direct the City Administrator to process the application. (Ord. 507 §2, 2004).

**16.12.050 Notice of Development Actions.**

**A. General Provisions**

1. All public notices shall be deemed to have been provided or received upon the date the notice is deposited in the mail or personally delivered, whichever occurs first.
2. The records of the Klickitat County Assessor shall be used for determining the property owner of record. Persons not on file with that department at the time an application is filed need not be notified. Failure actually to receive notice shall not invalidate an action if a good faith attempt was made to notify all persons entitled to notice. A sworn certificate of mailing issued by the person conducting the mailing shall be conclusive evidence of a good faith attempt to contact all persons listed in the certificate.
3. For notice purposes, the boundary of the subject property shall be the property, which is the subject of the application, together with all contiguous property under identical ownership.

**B. Solicitation of Agency Comments**

1. Distribution

Within 14 days of determining that an application is complete, the City Administrator shall send notice of the land division application to affected agencies for review and comment. The agency representatives will be asked to provide detailed comments within 20 calendar days regarding any aspect of the proposed land division as it relates to each agency's area or regulatory authority. These agencies will also be requested to provide suggested conditions of land division approval as appropriate. The following agencies shall be notified if applicable:

- a. Klickitat County Health Department;
- b. City of White Salmon;
- c. Washington Fish and Wildlife;
- d. Washington State Historic Preservation Office;
- e. Washington Department of Ecology;
- f. Washington Department of Transportation; and
- g. Other potentially affected agencies as determined by the City

Administrator.

2. Notice Contents

This agency notice shall include:

- a. Date of application completeness and mailing of agency notice;
- b. A description of the proposed land division and related project permits in the form of either a vicinity location sketch or a written description other than a legal description (See RCW 58.17.090(2).);
- c. The identification of other permits not included in the land division application to the extent known by the City Administrator;
- d. The proposed hearing date, time, and location before the City Council, and
- e. SEPA threshold determination, if applicable.

**C. Boundary Line Adjustment Review**

1. No public notice of review is required.
2. Written notice of the decision of the City Administrator shall be provided to the applicant.
3. Notification of pending actions and decisions shall be provided to affected jurisdictions upon request.

**D. Subdivision and Short Plat Review**

1. Public notice of land division hearing shall be sent by mail at least 20 calendar days before the hearing.
2. The notice of public hearing shall be mailed to:
  - a. The applicant or representative;
  - b. All property owners of record within 300 feet of the subject property, and
  - c. Newspaper of general circulation within the county (See RCW 58.17.090(a)). Notice published in the newspaper may be summarized.
3. The notice of public hearing shall contain:
  - a. The name of the applicant or owner;

- b. A description of the proposed subdivision or short plat;
  - c. A description of the subject property reasonably sufficient to inform the public of its location;
  - d. The designation of the City Council as the approval authority and the time, date, and place of hearing;
  - e. A statement that all interested persons may appear and provide testimony and that only those who submit written comments or testify at the hearing shall be entitled to appeal;
  - f. The applicable review criteria that apply to the application;
  - g. A statement that failure of an issue to be raised in the hearing, in person or by letter, or failure to provide sufficient specificity to afford the City Council an opportunity to respond to the issue precludes appeal to the Superior Court based on that issue;
  - h. The City telephone number where additional information may be obtained;
  - i. A statement that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
  - j. A statement that a copy of the staff report, if any, will be available for inspection at no cost at least 7 calendar days prior to the hearing and will be provided at reasonable cost; and
  - k. A general explanation of the requirements for submission of testimony and the procedure for conduct of hearings. A statement that the record of the hearing shall remain open if a request is made before the close of the public hearing.
4. In addition to all other notice, at least 10 calendar days before the public hearing, notice shall be provided in a newspaper of general circulation in the city, and the city shall post a notice, visible from a public right-of-way, if possible, on the subject property.
  5. Additional notice of any hearing may be required by the City Council.
  6. Notice of the decision shall be provided to all persons who submitted written comments or testified during the hearing. The notice shall contain:

- a. A brief summary of the decision and conditions of approval, if any;
- b. A description of the subject property reasonably sufficient to inform the public of its location;
- c. The date the decision was provided and the due date for an appeal;
- d. A statement that the decision is final and any further appeals must be pursued through Superior Court;
- e. A statement that the complete case, including findings and conclusions, and conditions of approval, if any, are available for review at the City.

**E. Notice of Hearing and Notice of Decision on Appeal**

Notice of a public hearing conducted by the City Council to review a boundary line adjustment decision by the City Administrator shall be provided in the same manner as required for City Council actions. Notice of decision on appeal shall be provided to all parties of record. (Ord. 507 §2, 2004).

**16.12.060 Staff Report.**

- A. A staff report is not required for boundary line adjustment decisions.
- B. All full subdivision decisions shall be made with a staff report. Staff reports shall be provided for short subdivisions if the City Administrator determines one is needed. This report shall be provided to the applicant without charge. All others may obtain a copy upon request and payment of a reasonable fee to cover the cost of reproduction, overhead, and mailing.
- C. A staff report shall be available no later than 7 calendar days before a City Council hearing. Staff reports are mailed approximately 7 calendar days prior to the public hearings to the applicant and interested parties who request them. Mailing the report does not guarantee sufficient time prior to the public hearing to respond to the conditions of approval. Obtaining a copy of the staff report in person at the City best assures ample time for review and comment at the public hearing.
- D. Notwithstanding the above, the staff report may be amended as necessary to address issues or information not reasonably known at the time the report is due.
- E. If staff submits additional evidence or an amended staff report regarding the application, any party shall be entitled to a continuance of the hearing. (Ord. 507 §2, 2004).

**16.12.070 Decisions.**

**A. Decision Types**

After review of all evidence is submitted to the record, the approval authority may:

1. Approve or deny all or part of the application;
2. Approve all or part with modifications or conditions of approval as described in Section 16.12.070 F.;
3. Defer a decision as provided in Subsection 16.12.070 H.; and
4. Dismiss without prejudice due to procedural error or remand to correct a procedural error.

**B. Announcement of Decision**

No decision is final for the purposes of reconsideration or appeal until it has been reduced to writing and signed by the approval authority or its designee. If a public hearing has been held, the approval authority may announce a tentative decision at the close of the public hearing, but shall in any case announce a date certain on which the decision shall be adopted or issued. If no public hearing has been held, the decision shall be announced in writing and made available to all parties as simultaneously as reasonably possible. The City shall release such a decision within 90 days of the date the application was determined to be complete. Extensions to this time limit may be extended as provided in RCW 58.17.140.

**C. Basis for Decision**

An approval or denial of a subdivision, short plat, or boundary line adjustment shall be based upon substantial evidence in the record that addresses the pertinent standards and criteria set forth in the applicable provisions of state law, the Comprehensive Plan, this title, and other applicable laws as determined by the approval authority.

**D. Findings and Conclusions – Land Divisions**

For land division decisions, the City Council shall provide brief and concise findings of fact, conclusions of law, and an order for all application approvals, conditional approvals, or denials. The findings and order shall set forth the criteria and standards considered relevant to the decision, state the facts relied upon, and briefly indicate how those facts support the decision. In the case of denial, it shall be sufficient to address only those standards upon which the applicant failed to carry the burden of proof or, when appropriate, the facts in the record that support denial.

**E. Re-application**

No new application for a boundary line adjustment or land division that is the same or substantially similar to an action that was denied shall be accepted for a period of 1 year from the date of the City's final decision of denial.

**F. Conditions of Approval**

1. The approval authority may impose conditions on any boundary line adjustment or land division approval. Such conditions shall be designed to protect the public from potential adverse impacts of the proposed use or development or to fulfill an identified need for public services within the impact area of the proposed development. Conditions shall not restrict residential densities to less than that authorized by the development standards of this or Bingen Municipal Code Title 17 – Zoning as now and hereafter amended.

2. In addition to conditions imposed pursuant to Section 16.12.070 F.1., a condition is valid and enforceable when the applicant has:

- a. Requested the condition; and
- b. Consented to the condition in writing or testimony at a public hearing.

3. Assurance of Compliance with Conditions

A bond, cash deposit, or other security acceptable to the approval authority may be required from the applicant in an amount sufficient to ensure compliance with a condition of approval.

4. Time Limits on Conditions

Conditions shall be fulfilled within the time limitations set forth or prior to completion of the development approved by the City if no time limitations are specified. Failure to fulfill a condition within said time may result in initiation of revocation of the approval, citation, or such other enforcement action as the City deems appropriate.

5. Failure to Fulfill Previous Conditions

Notwithstanding any other provision, the approval authority shall refuse to issue an approval with conditions, and deny an application, upon a determination that the applicant, or any officer, or principal of the applicant, willfully has failed to fulfill conditions of approval imposed in any previous boundary line adjustment, land division, or other development action and a determination that such a decision would encourage compliance or is necessary to protect the public from future noncompliance.

6. Modification or Removal of Conditions

Modification or removal of conditions of approval may be sought on appeal or as a new land division or boundary line adjustment application. A new application shall be processed through the same procedure as was used to impose the conditions.

**G. Development Agreements**

For subdivisions, the city may elect to enter into a development agreement as provided in RCW 36.70B.170 through 210, as amended. Such an agreement shall be considered as part of the subdivision application and shall be adopted by resolution or ordinance.

**H. Deferral**

For land division applications, the City Council may continue the public hearing and defer a decision to a date certain. No new notice is required for hearings continued to a date certain. Any deferral to a date certain that exceeds 90 days from the date an application was found to be complete by the City Administrator may only be extended as provided in RCW 58.17.140.

**I. Date of Final Decision**

1. Decisions of the City Administrator on a boundary line adjustment application shall be deemed final and effective upon expiration of the appeal period if no petition for review is filed within that time. Once final and effective, the decision cannot be appealed.
2. Decisions of the City Council on a land division application or boundary line adjustment appeal shall be deemed final as follows:
  - a. If no petition for reconsideration is filed within 7 calendar days, the decision shall be deemed final on the date notice of the decision was provided to the parties; or
  - b. If no appeal has been filed with the Superior Court within 21 calendar days of the City Council's final order. (Ord. 507 §2, 2004).

**16.12.080 Burden of Proof.**

Except as otherwise provided, the applicant initially, or the appealing party on appeal, shall bear the burden of proof that the proposal is in compliance with the applicable standards. (Ord. 507 §2, 2004).