

15.15.400 Geologically hazardous area designations.

A. Geologically hazardous areas include erosion hazards, landslide hazards, mine hazards, volcanic hazards and seismic hazards, and shall be designated consistent with the definitions provided in **WAC 365-190-080(4)**.

16.08.050 Topographical and surface hazards – Protective improvements.

Land having topographical or subsurface conditions hazardous to the health, safety or general welfare of persons or property in or near a proposed subdivision shall not be subdivided unless the construction of protective improvements will eliminate the hazards or unless land subject to the hazard is restricted to uses which will not expose persons or property to the hazard.

Protective improvements consistent with the standards established in Subchapter VI shall be constructed, prior to final plat approval unless a performance bond acceptable to the city engineer is filed in lieu of the improvements. (**Ord. 1220 § 2, 1992**).

05/29/2013

SCOTT G. THOMAS CITY OF BURLINGTON ATTORNEY, IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION I, EXPLAINING THAT ORDINANCES MUST BE CONSTRUED TO EFFECTUATE THEIR LEGISLATIVE INTENT; EXCERPTS AS FOLLOWS:

To determine whether the City misinterpreted its own Code, this Court must give unambiguous ordinances their plain meaning. *Pasco v. Public Employment Relations Cornm'n*, 119 Wn.2d 504, 507, 833 P.2d 381 (1992). An unambiguous ordinance is one that is susceptible to only one reasonable interpretation. *Lakeside Indus, v. Thurston County*, 119Wn. App. 886, 83 P.3d 433, (2004).

If, on the other hand, an ordinance is ambiguous, the Court must defer to the City's interpretation of its own laws, rules and regulations. RCW 36.70C.130(1)(b) ("allowing for such deference as is due the construction of a law by a local jurisdiction with expertise"); *Dev. Servs. v. Seattle*, 138 Wn.2d 107, 117, 979 P.2d 387, 392 (1999) ("[I]n any doubtful case, the court should give great weight to the contemporaneous construction of an ordinance by the officials charged with its enforcement.").

Second, ordinances must be construed to effectuate their legislative intent. *Milestone Homes, Inc. v. Bonney Lake*, 145 Wn. App. 118, 126, 186 P.3d 357 (2008); see also *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 472, 61 P.3d 1141 (2002)

("Courts must reasonably construe ordinances with reference to their purpose.").

11/18/2013

DECLARATION OF MARGARET FLEEK LYING ABOUT NO EARLIER CRITICAL AREAS ORDINANCE; EXCERPTS AS FOLLOWS:

On **February 8, 1999**, the City received a preliminary plat application for the Tinas Coma subdivision from the project's developer, Defendant Property Investors; the design of the plat placed the majority of the lots on the crown of Burlington Hill, so as to take advantage of views that are available. The plat design would require the developers to construct a roadway to serve the plat and access the lots. This roadway, called Hillcrest Drive, provided an entrance to the proposed subdivision from the northwest, and another entrance from the opposite of Burlington Hill on the southeast.

The Tinas Coma plat application was reviewed in accordance with the City's development regulations that were in place as of February 8, 1999. At that time, the City had not adopted any development regulations that addressed the development or redevelopment of former rock quarries or mining sites. I have read Plaintiffs' Motion to Strike, in which Plaintiffs' allege that the City's Code designated sites such as Burlington Hill as being "subject to special review." The City's Critical Areas Ordinance, which addresses geologically hazardous areas, was not adopted by the City of Burlington until 2002; the Tinas Coma subdivision was completed in 2000. No earlier ordinance addressed geologic hazards, or mining.

On **March 11, 1999**, the Burlington City Council granted preliminary plat approval to the Tinas Coma subdivision. On **June 8, 2000**, the Final Plat of the Tinas Coma Addition was approved by the Burlington City Council. Attached hereto and identified as **Exhibit "C"** is a copy of the City's ordinance **No. 1429**, approving the final plat. The City Engineer at the time, Rod Garrett, and I approved the Tinas Coma Plat Map on **August 10, 2000**, and signed it that same day. The Plat Map was recorded by the Skagit County Auditor on **August 11, 2000**, at which time the subdivision's roadways were dedicated to public use.

10/29/2014

DECLARATION OF MARGARET FLEEK RESPONSE TO PLAINTIFFS MOTION FOR TEMPORARY INJUNCTION; LACKING EMPATHY FOR THE RESIDENCE OF BURLINGTON HILL; EXCERPTS AS FOLLOWS:

In the mid-1990's, and pursuant to the then-recently enacted Growth Management Act, Skagit County included Burlington Hill in the City of Burlington's Urban Growth Area ("UGA"). As set out in the Growth Management Act, cities and towns are most able to provide municipal services, **RCW 36.70A.110(4)**, and nearly all such UGA property is intended to be ultimately annexed into a city or town.

If a moratorium is placed on construction on Burlington Hill, it will have a substantial financial impact to the City of Burlington. The City will lose revenue from building permits, taxes and other sources, especially from the development of currently 14 vacant lots, but also from permitted construction on existing structures.

In addition to the building permit revenue for the undeveloped lots, the City of Burlington would expect additional revenue resulting from taxes and other standard fees that may be collected by the City. Given the uncertain nature of those taxes and fees, it is difficult to calculate what they may be, but I believe they would be significant over time.

A property with improvements generates a much higher property tax than does an undeveloped lot.

There are intangible losses to the city, in terms of future desirability, and growth. If a moratorium on construction on Burlington Hill is put in place, I believe it would likely drive developers and builders elsewhere, as well as create a stigma about development on Burlington Hill in general.

ORDINANCE NO. 1429

AN ORDINANCE APPROVING THE FINAL PLAT
OF THE TINAS COMA ADDITION PURSUANT
TO TITLE 16, SUBCHAPTER III, REVIEW OF FINAL
PLAT.

WHEREAS, the final plat of the Tinas Coma Addition is in substantial conformance with the approved preliminary plat, and

WHEREAS, the requirements imposed when the preliminary plat was approved have been met, and

WHEREAS, the requirements of state law and the Burlington Municipal Code which were in effect at the time of preliminary plat approval have been satisfied by the subdivider.

NOW, THEREFORE, THE CITY OF BURLINGTON DO ORDAIN AS FOLLOWS:

Section 1. The final plat of the Tinas Coma Addition is hereby approved.

Section 2. The subdivision shall be governed by the terms of approval of the final plat and any lots created thereunder shall be deemed to meet lot requirements imposed by the City of Burlington Zoning Code for a period of no less than five (5) years.

Section 3. Effective date. This ordinance shall be in full force and effect five days after its passage, approval and publication as provided by law.

INTRODUCED AND PASSED and approved at a regular meeting of the City Council this 8th day of June, 2000.

THE CITY OF BURLINGTON

BY: Roger Tjeerdsma
Roger A. Tjeerdsma, Mayor

ATTEST:

Richard A. Patrick
Richard Patrick, Finance Director

APPROVED AS TO FORM:

Marilyn Nitteberg
Marilyn Nitteberg, City Attorney

FILED WITH THE CITY CLERK:	06/02/2000
PASSED BY CITY COUNCIL:	06/08/2000
SIGNED BY THE MAYOR:	06/08/2000
PUBLISHED:	06/14/2000
EFFECTIVE:	06/19/2000

FLEEK DECLARATION EXH. C