

ORDINANCE NO. 2010-20

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to review and appeals procedures of administrative decisions; and amending Sections 2.16.120 and 2.16.130 of the Bainbridge Island Municipal Code.

WHEREAS, Section 2.16.130(E) of the Bainbridge Island Municipal Code (BIMC) provides that any appeal of an administrative land use decision shall be heard at an open public record hearing; and

WHEREAS, RCW 36.70B.060 of the Regulatory Reform Act of 1996 provides that a project permit review process “shall provide for no more than one consolidated open record hearing and one closed record appeal”; and

WHEREAS, RCW 36.70B.020 defines closed record appeal, open record hearing, and public meeting; and

WHEREAS, in 2009, Washington Cities Insurance Authority (“WCIA”) (the City’s insurance provider) conducted an audit of the City’s land use and planning procedures and stated that the City’s municipal code must reflect the statutory requirement of a single closed record appeal hearing for those instances where an open record hearing has already been held with regard to the permit decision that is subject of the appeal; and

WHEREAS, accordingly, the City Council desires to amend BIMC 2.16.120 and 2.16.130 to reflect the requirement of RCW 36.70B.060 of a single closed record appeal hearing for those situations where an open record hearing has already been held with regard to the permit decision that is subject of the appeal, and to provide clarification by defining certain terms; now, therefore,

THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 2.16.120 of the Bainbridge Island Municipal Code is hereby amended as follows:

2.16.120 Consolidated project review.

A. An applicant for a single project proposal requiring more than one land use application may choose to follow the consolidated project review process. The procedures include consolidation of various land use applications, public notification of an application and opportunity for public comment prior to a final decision. Any combination of land use applications not otherwise exempted may be processed under the consolidated project review process.

B. Exemptions. The following land use applications are exempted from consolidated project review: boundary line adjustment, building and other construction permits and similar administrative decisions which are exempt from SEPA.

C. Procedures. A consolidated project permit application shall follow the application and notice procedures which require the most extensive review and decision process.

1. Environmental Review. For a consolidated land use application subject to Chapter 43.21C RCW and Chapter 16.04 BIMC, the SEPA threshold determination shall be issued and any required public comment period shall be completed prior to a public hearing.

2. Planning Commission or Hearing Examiner Recommendation. If a planning commission recommendation is required for any related consolidated land use application, the planning commission shall consider the land use application at a public meeting in accordance with BIMC 2.16.095.D.2. A public meeting shall have the same definition as set forth in RCW 36.70B.020(5), as may be amended in the future, and does not include an open record hearing. If a hearing examiner recommendation is required for any related consolidated land use application, the hearing examiner will consider the land use application at a public hearing in accordance with BIMC 2.16.100.D through J.

3. Public Hearing. If a public hearing is required for any of the related land use applications of a consolidated project, the public hearing shall combine all the applicable permit application requests. If the public hearing is held prior to a decision on the project permit application(s) then it shall be an "open record predecision hearing" as defined by RCW 36.70B.020(3), as may be amended in the future. A public hearing may be held on an appeal, to be known as an "open record appeal hearing" as defined by RCW 36.70B.020(3), as may be amended in the future, if no open record predecision hearing has been held on the project permit application(s).

a. Related applications requiring a public hearing shall be considered at only one public hearing.

b. If the SEPA threshold determination is appealed for a proposal under the consolidated project review process, the SEPA appeal hearing shall be combined with the public hearing for the consolidated project application.

Section 2. Section 2.16.130 of the Bainbridge Island Municipal Code is hereby amended as follows:

2.16.130 Appeal procedures – Appeal of an administrative decision to the hearing examiner.

A. Applicability. This section is applicable to all hearings conducted in response to appeals of administrative decisions, departmental rulings and interpretations made in accordance with administrative review procedures of BIMC 2.16.095 and administrative decisions made under BIMC 1.26.070. Appeals of decisions made in accordance with Chapter 16.04 BIMC, the city's SEPA rules, shall be made according to the procedures in that chapter and shall be combined with an appeal hearing as specified in subsection E of this section.

B. Form of the Appeal.

1. An appeal of an administrative decision shall be filed with the city clerk 14 days after the date of the decision or 21 days if the land use decision requires a

SEPA threshold determination public comment period pursuant to WAC 197-11-340, or within a time frame otherwise specified by law.

2. All appeals shall be filed in writing with the city clerk, shall identify the decision appealed and the date of the decision, and shall contain a summary of the grounds for the appeal.

3. The appropriate fee as established by city resolution must be paid upon filing of the notice of appeal. No appeal will be processed without receipt of the appropriate fee before expiration of the period for filing the appeal.

4. Following receipt of a notice of appeal and payment of the appropriate fee, a public hearing shall be set by the hearing examiner.

5. All written comments and related documents received prior to the appeal hearing shall be transmitted to the hearing examiner no later than the hearing date.

6. Any rules of procedure for appeal hearings adopted by the hearing examiner shall be kept on file with the office of the city clerk and the department of planning and community development, and shall be provided to any person filing an appeal.

C. Content of Appeal. Appeal hearings shall be limited to the issues specified in the written appeal.

D. Continuation of Hearing. A hearing may be continued to a date certain without additional notice.

E. Open Record Appeal Hearing. Except as otherwise provided in this section, the appeal shall be heard at an open record public appeal hearing. Participation in an open record appeal hearing is limited to the applicant, the applicant's representative, the appellant, the appellant's representative, appropriate city staff and consultants, any witnesses called by each and any nonparty who submitted written comments during the public comment period if the hearing examiner determines that the testimony will be relevant to the issue on appeal and nonrepetitive of the testimony of other witnesses.

F. Closed Record Appeal Hearing. If the appeal is an appeal of an administrative decision for which there has already been a public hearing, either an open record predecision hearing or an open record appeal hearing, then the appeal shall be heard at a closed record appeal hearing, as defined by RCW 36.70B.020(1), as may be amended in the future. The hearing examiner shall not take additional testimony, exhibits, or other evidence into the record, and only appeal argument is allowed; provided that, the hearing examiner may view the property and surrounding area to better understand the evidence.

F-G. Decision on the Appeal.

1. Hearing. In considering appeals, the hearing examiner shall do one of the following:

a. Affirm the decision;

b. Reverse the decision;

c. Affirm the decision with modifications; or

d. Remand the decision to the department director for further consideration. The hearing examiner shall include in the order the issues to be reviewed on remand.

2. Standard of Review. Upon completion of the appeal hearing the hearing examiner shall render a decision, in accordance with subsection F.4 of this section, giving substantial weight to the decision of the department director.

3. Conditions. The hearing examiner may include conditions as part of a decision granting, or granting with modifications an appeal to ensure conformance with this code, the city's comprehensive plan and other applicable laws or regulations.
4. Written Decision. Within 20 working days after completion of the appeal public hearing unless the appellant and the hearing examiner have consented to an extension of time, the hearing examiner shall issue a written decision on the appeal which contains the following:
 - a. The decision of the hearing examiner granting or denying the appeal in whole or in part;
 - b. Any conditions included as part of the decision on the appeal;
 - c. Findings of facts upon which the decision, including any conditions, is based and the conclusions of law derived from those facts; and
 - d. A statement of the right of a person with standing to appeal the decision of the hearing examiner in accordance with Chapter 36.70C RCW.
5. Distribution. The hearing examiner or designee body shall mail a copy of the written decision to the applicant, the appellant, the applicable department director, and any person requesting the written decision or who submitted substantive comments on the application prior to the decision.
6. Appeal of the Decision of the Hearing Examiner. The decision of the hearing examiner shall be final unless, within 21 days after issuance of a decision, a person with standing appeals the decision in accordance with Chapter 36.70C RCW.

Section 3. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication as provided by law.

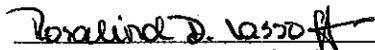
PASSED by the City Council this 23rd day of June, 2010.

APPROVED by the Mayor this 7th day of July, 2010.



 Bob Scales, Mayor

ATTEST/AUTHENTICATE:



 Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	June 1, 2010
PASSED BY THE CITY COUNCIL:	June 23, 2010
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