

ORDINANCE NO. 2003 - 25

AN ORDINANCE of the City of Bainbridge Island, Washington, relating to appeals to the city council of hearing examiner decisions; amending sections 2.16.085(E), 2.16.100(L) and (M), 2.16.150, 3.88.230(G), 15.20.090(E), 15.16.040(E)(1), 16.12.350, 16.12.380(C)(4), 16.12.380 (Figure 7-2), 16.22.115, 18.108.100(B), 18.111.080(B) and 18.111.090; and repealing section 2.16.140 of the Bainbridge Island Municipal Code.

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

Section 1. Section 2.16.085(E) of the Bainbridge Island Municipal Code is amended as follows:

E. Notice of Decision and Appeal Period.

1. A notice of decision shall be issued upon a final decision on a land use application. Notice of decision shall include:
 - a. A statement indicating that the application is approved, approved with modifications, denied or remanded;
 - b. A statement of any conditions included as part of a decision for approval or approval with modifications;
 - c. A statement of facts upon which the decision, including any conditions, is based and the conclusions of law derived from those facts;
 - d. The SEPA threshold determination and mitigation conditions as specified in Chapter 16.04 BIMC, if applicable; and
 - e. Procedures for appeal under BIMC 2.16.130, if applicable.
2. The decision maker shall distribute the notice of decision by mail, fax, or personal service to the applicant, the applicable department director and any persons requesting notice or submitting comments on the application prior to the decision.

Section 2. Section 2.16.100(L) and (M) of the Bainbridge Island Municipal Code is amended as follows:

Effect of Decision.

L. 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. Section 2.16.150 of the Bainbridge Island Municipal Code is amended as follows:

2.16.150 Review procedures under Chapters 2.16 and 2.18.

Application Type	Administrative	Planning Commission	Hearing Examiner	City Council
SEPA	D		A	
Site plan and design review	D	(R)	A	
LM and BP site design	D	R	A	
CUP - Administrative	D	(R)	A	
CUP - Regular		(R)	D	
Variance - Administrative	D	(R)	A	
Variance - Regular		(R)	D	
Shoreline SSDP and variance	D	(R)	A	
Shoreline variance and CUP		(R)	D/R to DOE	
Short plat	D		A	
PUD		(R)	R	D
Subdivision			R	D
Rezone			R	D

Rezone - Legislative		R		D
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Section 4. Section 3.88.230(G) of the Bainbridge Island Municipal Code is amended as follows:

- G. The decision of the hearing examiner shall be final unless, within 21 days after issuance, it is appealed in accordance with Chapter 36.70C RCW.

Section 5. Section 15.16.040(E)(1) of the Bainbridge Island Municipal Code is amended as follows

E. Variance Procedure.

1. Appeal Board.

- a. Pursuant to Section 2.16.100, the hearing examiner shall hear and decide appeals and requests for variances from the requirements of this chapter, and appeals alleging error in any requirement, decision, or determination made by the building official in the enforcement or administration of this chapter.
- b. The decision of the hearing examiner shall be final unless, within 21 days after issuance, it is appealed in accordance with Chapter 36.70C RCW.
- c. In passing upon such applications, the applicable city official or appeal entity shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
 - i. The danger that materials may be swept onto other lands to the injury of others;
 - ii. The danger to life and property due to flooding or erosion damage;
 - iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- iv. The importance of the services provided by the proposed facility to the community;
 - v. The necessity to the facility of a waterfront location, where applicable;
 - vi. The availability of alternative locations for the proposed uses which are not subject to flooding or erosion damage;
 - vii. The compatibility of the proposed use with existing and anticipated development;
 - viii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - x. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,
 - xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- d. Upon consideration of the above factors and the purposes of this chapter, the applicable official or city entity may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
 - e. The building official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

Section 6. Section 15.20.090(E) of the Bainbridge Island Municipal Code is amended as follows:

- E. Right of Appeal. All actions of the hearing examiner shall be final and conclusive, unless an appeal of the hearing examiner's decision is filed pursuant to BIMC 2.16.100.

Section 7. Section 16.12.350 of the Bainbridge Island Municipal Code is amended as follows:

16.12.350 General.

The administrative system is designed to assign responsibilities for implementation of the master program and shoreline permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by the master program are treated in a fair and equitable manner. Figure 7-1 illustrates the shoreline substantial development permit (SSDP) process and Figure 7-2 illustrates the shoreline variance and conditional use process.

A. Director.

1. The city of Bainbridge Island director of planning and community development or his/her designee, hereinafter known as the director, is vested with the following:
 - a. Overall administrative responsibility for the master program;
 - b. Authority to grant statements of exemption from shoreline permits;
 - c. Authority to approve, approve with conditions, or deny shoreline substantial development permits and permit revisions in accordance with the policies and regulations of the master program; provided, that the decision may be appealed in accordance with BIMC 16.12.370;
 - d. Authority to decide whether a shoreline variance permit application is minor, qualifying it for administrative decision; if the shoreline variance is not minor, it will be processed following the procedures in BIMC 16.12.380.C.4;
 - e. Authority to approve, approve with conditions, or deny shoreline variance permit applications determined to be minor; provided, that the decision may be appealed in accordance with BIMC 16.12.370;

- f. Authority to refer any application for a shoreline substantial development permit, or a shoreline variance or conditional use to the planning commission for a recommendation; and
 - g. Authority to determine compliance with Chapter 43.21C RCW, State Environmental Policy Act, or its successor.
2. The duties and responsibilities of the director shall include:
- a. Specifying the required application forms and submittal requirements including the type, details, and number of copies for substantial development, conditional use, and shoreline variance permits. At a minimum, the application shall include the information required in WAC 173-14-110 or its successor.
 - b. Advising interested citizens and applicants of the goals, policies, regulations, and procedures of this program.
 - c. Making administrative decisions and interpretations of the policies and regulations of this program and the Shoreline Management Act.
 - d. Determining whether a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance permit is required.
 - e. Collecting applicable fees.
 - f. Determining that all applications and necessary related information are provided.
 - g. Making field inspections.
 - h. Conducting a thorough review and analysis of permit applications and related materials, and making written findings and conclusions.
 - i. Making decisions pursuant to subsection A.1 of this section.

- j. Referring applications to the planning commission for recommendations when requested by the applicant or when the director deems appropriate.
- k. Submitting applications and all relevant information and materials along with written findings and recommendations to the hearing examiner pursuant to subsection A.1 of this section.
- l. Providing technical and administrative assistance to the council, as needed, for effective and equitable implementation of this program and the Act.
- m. Providing a summary report of shoreline management permits issued during the past calendar year to the council in February of each year. The report should include findings and conclusions on significant administrative determinations and appeals, identification of problem areas, and recommendations on how the master program can be improved.
- n. Proposing amendments to this program as deemed necessary to more effectively and equitably achieve its goals and policies.
- o. Seeking remedies for alleged violations of this program, the provisions of the Act, or of conditions of any approved shoreline permit.
- p. Coordinating information with affected agencies.
- q. Forwarding shoreline permits to Ecology for filing or appropriate action.
- r. Deciding whether to require any applicant granted a shoreline permit to post a bond or other acceptable security to assure that the applicant and/or the applicant's successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 100 percent of the estimated development cost, including attached conditions. Such bonds or securities shall be approved as to form by the city attorney.

B. Hearing Examiner.

1. The city of Bainbridge Island hearing examiner is vested with authority to:
 - a. Approve, approve with conditions, or deny shoreline variance and shoreline conditional use permit applications after a public hearing and after considering the findings and recommendations of the director, which shall be given substantial weight; provided, that decisions may be appealed in accordance with BIMC 16.12.370(B).
 - b. Affirm, affirm with modifications, or reverse decisions on shoreline substantial development permit applications, minor shoreline variance applications, and shoreline exemptions on appeal.
2. Further duties and responsibilities of the hearing examiner shall include:
 - a. Ensuring that proper notice is given to appropriate persons and the public for all hearings before the hearing examiner.
 - b. Referring applications to the planning commission for recommendations, when appropriate.
 - c. Considering recommendations of the planning commission when requested by the applicant or the director.
 - d. Basing all decisions on shoreline permits and administrative appeals on the criteria established in the Act and the master program.
 - e. Deciding whether to require any applicant granted a shoreline permit to post a bond or other acceptable security to assure that the applicant and/or the applicant's successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bond or securities shall have a face value of at least 100 percent of the estimated development cost, including attached conditions. Such bonds or securities shall be approved as to form by the city attorney.

C. City Council.

1. The city council is vested with authority to:
 - a. Review and act upon any recommendations of the director for amendments or revisions of the master program. To become effective any amendments to the program must be reviewed and approved by the Department of Ecology, pursuant to RCW 90.58.190 or its successor and Chapter 173-19 WAC or its successor.

Section 9. Section 16.12.380(C)(4) of the Bainbridge Island Municipal Code is amended as follows:

4. Applications for shoreline variances not determined by the director to be minor and all shoreline conditional use permits shall be decided by the hearing examiner following the procedures in BIMC 2.16.100, or its successor, supplemented by the following provisions:
 - a. The director shall prepare a staff report identifying the approval criteria, providing available information on the application, analyzing the proposal, making a recommendation on the proposal, making recommended findings of fact and conclusions of law, and including any other information or recommendations which the director believes are appropriate. The director shall send a copy of the staff report to the applicant and the hearing examiner.
 - b. The director may refer the application to the planning commission for a recommendation.
 - c. In making the decision, the hearing examiner shall consider the applicable criteria in subsections B and C of this section. The applicant has the burden of proof to show that the proposal complies with the decision criteria and all applicable requirements. (RCW 90.58.140(7) or its successor.)
 - d. The hearing examiner may refer the application to the planning commission for a recommendation.
 - e. The decision of the hearing examiner shall be the final city decision, and may be appealed in accordance with BIMC 16.12.380(C)(5)-(8)

Section 10. Section 16.12.380 (Figure 7.2), of the Bainbridge Island Municipal Code is amended as follows:

The reference to "Appeal to City Council" is deleted.

Section 11. Section 16.22.115 of the Bainbridge Island Municipal Code is amended as follows:

16.22.115 Appeals.

The decision of the hearing examiner shall be final unless, within 21 days of issuance, it is appealed in accordance with Chapter 36.70C RCW.

Section 12. Section 18.108.100(B) of the Bainbridge Island Municipal Code is amended as follows:

- B. Appeal of a Hearing Examiner Decision. A decision on a regular conditional use shall be final unless, within 21 days of issuance, it is appealed in accordance with Chapter 36.70C RCW.

Section 13. Section 18.111.080(B) of the Bainbridge Island Municipal Code is amended as follows:

- B. Appeal of a Hearing Examiner Decision. A decision on a regular variance shall be final unless, within 21 days of issuance, it is appealed in accordance with Chapter 36.70C RCW.

Section 14. Section 18.111.090 of the Bainbridge Island Municipal Code is amended as follows:

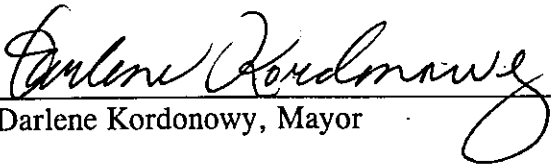
The reference to "Appeal to City Council" is deleted.

Section 15. Section 2.16.140 of the Bainbridge Island Municipal Code is repealed.

Section 16. This ordinance shall take effect and be in force five days from and after its passage, approval and publication as required by law.

PASSED by the City Council this 11th day of June, 2003.

APPROVED by the Mayor this 12th day of June, 2003.


Darlene Kordonowy, Mayor

ATTEST/AUTHENTICATE:


Susan Kasper, City Clerk

APPROVED AS TO FORM:

Rod Kaseguma, City Attorney

FILED WITH THE CITY CLERK:	May 7, 2003
PASSED BY THE CITY COUNCIL:	June 11, 2003
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