



CITY OF
BAINBRIDGE ISLAND

**SPECIAL CITY COUNCIL MEETING
MONDAY, AUGUST 27, 2018**

BAINBRIDGE ISLAND CITY HALL
280 MADISON AVENUE N.
BAINBRIDGE ISLAND, WASHINGTON

AGENDA

1. **CALL TO ORDER/ROLL CALL - 6:00 PM**
2. **LAND USE WORKSHOP**
 - 2.A Land Use Workshop 3 Hours
 - [Jim Haney Memo re Roles of Land Use Approval Bodies](#)
 - [Summary of Land Use Review and Approval Procedures](#)
 - [Staff Memo PC Recommendations re Land Use Review and Approvals](#)
3. **ADJOURNMENT - 8:30 PM**

GUIDING PRINCIPLES

Guiding Principle #1 - Preserve the special character of the Island, which includes downtown Winslow's small town atmosphere and function, historic buildings, extensive forested areas, meadows, farms, marine views and access, and scenic and winding roads supporting all forms of transportation.

Guiding Principle #2 - Manage the water resources of the Island to protect, restore and maintain their ecological and hydrological functions and to ensure clean and sufficient groundwater for future generations.

Guiding Principle #3 - Foster diversity with a holistic approach to meeting the needs of the Island and the human needs of its residents consistent with the stewardship of our finite environmental resources.

Guiding Principle #4 - Consider the costs and benefits to Island residents and property owners in making land use decisions.

Guiding Principle #5 - The use of land on the Island should be based on the principle that the Island's environmental resources are finite and must be maintained at a sustainable level.

Guiding Principle #6 - Nurture Bainbridge Island as a sustainable community by meeting the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding Principle #7 - Reduce greenhouse gas emissions and increase the Island's climate resilience.

Guiding Principle #8 - Support the Island's Guiding Principles and Policies through the City's organizational and operating budget decisions.



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CITY OF
BAINBRIDGE ISLAND

Special City Council Meeting Agenda Bill

MEETING DATE: August 27, 2018

ESTIMATED TIME: 3 Hours

AGENDA ITEM: Land Use Workshop

STRATEGIC PRIORITY: Green, Well-Planned Community

PRIORITY BASED BUDGETING PROGRAM:

AGENDA CATEGORY: Presentation

PROPOSED BY: Executive

RECOMMENDED MOTION:

Presentation and Discussion.

SUMMARY:

This City Council land use workshop is being conducted at the behest of the Council to allow for an in-depth Council discussion about various options related to the Council's moratorium work plan item to consider land use review procedures. A specific proposal that will be discussed and considered is the Planning Commission's proposal for the Council to take on a direct role in making decisions regarding certain land use applications. The Council was introduced to the Planning Commission's proposal at the Council's July 24, 2018, meeting. The staff memo from that agenda item is attached.

The workshop will include:

- A brief introduction by the Mayor.
- Brief introductory remarks by the City Attorney.
- A presentation by and Council discussion with Jim Haney, who represents the City in land use litigation and Hearing Examiner appeals. Jim will discuss with the Council the legal principles and considerations that he analyzed in the June 1, 2018, memorandum that he prepared (see attached) at the request of the City Attorney for the Council, Planning Commission, and Design Review Board ("DRB") related to this topic.
- A brief presentation from the City's Hearing Examiner, Ted Hunter, related to the process involved in hearing and deciding land use application matters.
- A presentation by and Council discussion with Mike Walter, who is one of the attorneys who defends the City (and many other cities) as part of the services provided by the City's insurance provider, the Washington Cities Insurance Authority ("WCIA"). Mike will provide information and discuss with the Council various legal considerations related to his decades of experience defending cities in lawsuits concerning land use matters. More specifically, he'll discuss legal issues that the Council should be aware of regarding the Planning Commission's proposal related to the Council's role, based on real-world examples, case law, and

recommendations from WCIA.

The Planning Commission and the DRB have been invited to attend the workshop. The meeting is scheduled as a joint meeting of the Council, Planning Commission, and the DRB in the event that a majority of the Planning Commission and the DRB attend, but the primary audience for this workshop is the Council because the Council is the decision-maker regarding the land use process changes that are at issue.

FISCAL IMPACT:

Amount:	
Ongoing Cost:	
One-Time Cost:	
Included in Current Budget?	

BACKGROUND:

ATTACHMENTS:

[Jim Haney Memo re Roles of Land Use Approval Bodies](#)

[Summary of Land Use Review and Approval Procedures](#)

[Staff Memo PC Recommendations re Land Use Review and Approvals](#)

FISCAL DETAILS:

Fund Name(s):

Coding:

MEMORANDUM

TO: Mayor Medina and Bainbridge Island City Council
Douglas Schulze, City Manager
Joe Levan, City Attorney
Gary Christensen, Director of Planning and Community Development
City of Bainbridge Island Planning Commission
City of Bainbridge Island Design Review Board
City of Bainbridge Island Hearing Examiner

FROM: James E. Haney

DATE: June 1, 2018

RE: Roles of City Council, Planning Commission, Design Review Board, and Hearing Examiner in Land Use Permits

I. INTRODUCTION

I have been asked by the City Attorney to provide you with a memorandum outlining the ways in which the roles of the City Council, Planning Commission, Design Review Board, and Hearing Examiner could be altered in order to increase (and possibly decrease) those roles in the review of land use project permits. This memorandum incorporates significant input from the City Attorney.

As a preliminary matter, it is important to remember that Chapter 36.70B RCW (the Regulatory Reform Act) places some specific constraints on the land use permitting process, including a requirement that there be ***no more than one public hearing on any land use permit and no more than one closed record appeal***. The City has flexibility in determining which of its land use approval bodies holds any required public hearing and which, if any, of its land use approval bodies holds the closed record appeal, but the law constrains the City to have only one of each and that plays a significant role in how the various land use approval bodies must interact.

It's also important to consider as a threshold matter the sheer complexity of land use law and the requirement that every land use permitting decision for which a hearing is required must be supported by written findings and conclusions. Professional hearing examiners, for example, are more used to preparing such findings and conclusions than city councils and citizen advisory bodies and this can serve a city well for the sake of clarity and in situations in which a decision is challenged. City councils and advisory bodies can certainly learn to draft or enter quality

findings, but that task often falls to city planning staff and/or to the city attorney when there is no hearing examiner involved. As a general rule, hearing examiners are much more familiar with the rules that govern those who are acting in a quasi-judicial (i.e., administrative court-like) capacity than is the case for members of city councils and advisory bodies, and that familiarity can be significant in having a system that is legally fair and impartial, both in reality and as a matter of perception.

With such preliminary considerations in mind, the remainder of this memorandum lays out the role envisioned for each of the land use approval bodies in state law, the role laid out for these bodies in the Bainbridge Island Municipal Code (BIMC), and the ways in which those roles might be restructured to provide more or less involvement from each of the land use approval bodies.

II. BAINBRIDGE ISLAND CITY COUNCIL

State Law Role:

While the role of a city council in legislative matters such as the adoption and amendment of comprehensive plans and development regulations is clearly defined under state law, its role in land use permit approvals is more flexible and is generally governed by whatever land use permitting ordinances the city adopts. With respect to the adoption and amendment of comprehensive plans and development regulations, state law requires that the “planning agency” of the city (the planning commission) hold at least one public hearing on the adoption or amendments. The city council must then adopt or amend the comprehensive plan or development regulations and may, but is not obligated to, hold additional public hearings of its own prior to taking final action. Because the adoption or amendment is legislative and must be accomplished by ordinance, a city council cannot delegate this power and must be the final step in the process.

With respect to land use permits, however, this power is generally administrative, and the council may delegate it or keep it as it sees fit, unless state law specifically requires council involvement. Site specific rezones is the one activity where council involvement is required, because site specific rezones must be approved by ordinance and the council is the only body that has the authority to adopt ordinances.

BIMC Role:

Under the BIMC as it currently exists, the City Council has retained a role in three land use project permit decisions: (a) the approval of final long subdivisions; (b) the approval of site-specific rezones; and (c) the approval of permits considered under consolidated permit review whenever the council is the approval authority on any one of the consolidated permit applications.

Possible Changes to Increase Council Involvement:

If the City Council desires to increase its involvement in land use permit matters, there are multiple ways in which the City Council could do so. First, the hearing examiner system the City currently has is optional under state law. In other words, while the City has the authority to create a hearing examiner and to delegate authority to that examiner to hear and decide certain types of applications, like conditional use permits, preliminary plats, shoreline permits, etc., and to hear and decide appeals from SEPA and permitting decisions made by staff, the Council does not have to delegate that authority and could abolish the hearing examiner system and retain authority over any or all of the decisions that are currently delegated.

Pros of such an approach include:

- The Council would have decision-making authority in some or all of the matters now decided by the Hearing Examiner.

Cons of such an approach include:

- The workload currently shouldered by the Hearing Examiner would be transferred to the Council.
- The Council would also have new constraints on its ability to communicate with its constituents on land use permitting matters since the appearance of fairness statutes, which are intended to prohibit communications outside of the hearing process, would apply.

Second, state law provides that the City Council may, by ordinance, specify that a hearing examiner's decision has either (a) the effect of a recommendation to the Council, or (b) on every type of land use permit other than a site-specific rezone, the effect of a final decision. If the Council wants to retain the hearing examiner system but to gain more authority over the land use permits considered by the Hearing Examiner, the Council could change the effect of the Hearing Examiner's decisions from the current final decision to a recommendation. Again, one must keep in mind that land use permitting processes are limited to one open record hearing and one closed record appeal, so if the Hearing Examiner conducted the public hearing on a land use permit application before making a recommendation, the Council's review would be limited to the record created by the Examiner and the Council could not take additional evidence.

Pros of this approach include:

- The Council would have the final decision-making authority in some or all of the matters now decided by the Hearing Examiner, but without taking on all of the Hearing Examiner's workload.

Cons of this approach include:

- The additional workload that would get shifted from the Hearing Examiner to the Council;
- Appearance of fairness constraints;
- The limitation on taking additional evidence;
- Since no additional evidence can be taken, it may be difficult to support a decision that differs from the Hearing Examiner’s recommendation.

Third, if the Council wants to retain the hearing examiner system and continue to have the Hearing Examiner make final decisions, the Council could insert itself as an appellate body above the Hearing Examiner and prior to court review. Under the Land Use Petition Act, Chapter 36.70C RCW, all final land use decisions of a city are appealable to superior court within 21 days after the decision is issued.

Currently, the City has provided in the BIMC for decisions by the Hearing Examiner to be appealable directly to the superior court. If the Council wanted to increase its involvement, it could amend the BIMC to make Hearing Examiner decisions appealable to the Council and only final Council decisions appealable to the courts. The Hearing Examiner would hold the hearing and make a decision and because of the “one open record hearing, one closed record appeal” limitation, the Council could not take new evidence but would decide the appeal based on the Hearing Examiner’s record and appeal criteria that would have to be set forth in the City’s regulations.

Pros of this approach include:

- The Council would have final authority on some or all of the matters currently determined by the Hearing Examiner, but because the authority would be limited to appeals, not all of the Hearing Examiner’s workload would shift to the Council.

Cons of this approach include:

- Appearance of fairness limitations;
- The limitation on new evidence;
- The limitation on the ability to overturn the Hearing Examiner’s decision without finding that the Hearing Examiner erred in some way.

Possible Changes to Decrease Council Involvement:

The above discussion indicates how the City Council could increase its involvement in land use permits, but it is possible to decrease the Council’s role as well. Of the three roles the City Council has retained, two are mandated by state law. As noted above regarding the first role, state law requires that site-specific rezones be approved by ordinance (because they amend the zoning map, which is adopted by ordinance). Regarding the second role, the Regulatory Reform

Act mentioned above also requires the City to have a consolidated permit process whereby a developer seeking multiple permits that would ordinarily go to more than one land use approval body can have those permits consolidated for review by one body only, with that body being the highest city authority that would review any of the permits. In Bainbridge Island, that authority is the Council, and if the permits applied for are included a site-specific rezone, all consolidated permits could be elevated to the Council level.

However, regarding the third role over which the City Council has retained authority, final long subdivision approvals, such a role is not required for the Council by state law. In 2017, the state legislature amended the state subdivision law to allow city councils to delegate this authority to another land use approval authority, e.g., the hearing examiner, the planning director, or the planning commission. State law does not require the council to delegate the authority, so the Bainbridge Island City Council could remain the approval body for final long subdivisions, but it no longer has to. If the Council wants to decrease its involvement in land use permitting, this is a way it could do so.

Pros of such an approach include:

- As described below, some cities have, for example, delegated final long subdivision approval authority to the Hearing Examiner on the theory that the Examiner is in the best position to determine whether the conditions the Examiner imposed on the preliminary plat have been met.
- Other cities have delegated (or are considering delegating) final long subdivision approval authority to staff based on the theory that the decision is ministerial, and that staff is capable of making such a determination.
- Such a delegation would decrease the Council's workload to some extent, and allow the Council to remove itself from a quasi-judicial role in which it currently engages and which can be a difficult role for Councilmembers due to appearance of fairness considerations.

Cons of such an approach include:

- The Council would be delegating a decision its making currently to some other body or person (e.g., hearing examiner, planning director, planning commission) and would thereby reduce its decision-making authority.
- The workload of the Hearing Examiner, Director of Planning and Community Development, and/or Planning Commission would increase to some extent.

III. PLANNING COMMISSION

State Law Role:

As noted above, planning commissions have a clear role under state law in the legislative processes used in adopting and amending comprehensive plans and development regulations. As the "planning agency" of a city, the planning commission must hold at least one public hearing

on any proposed comprehensive plan or development regulation adoption or amendment and must make a recommendation on the same to the city's legislative body, i.e., the city council.

With respect to land use permitting actions, however, cities have the choice to decide what role to provide their planning commissions. The hearing examiner system is optional under state law and it is possible for a city to empower their planning commission to perform all of the functions that a hearing examiner can perform, e.g., hearing and deciding/making recommendations on project permits such as conditional use permits, preliminary plats, and shoreline permits, and hearing appeals from city staff decisions. The role of the planning commission is whatever the city decides it to be, within certain constraints, as described in more detail below.

BIMC Role:

Under the BIMC, the Bainbridge Island Planning Commission's role in land use permitting is limited to making recommendations on major site plan and design reviews and housing demonstration projects, and, when requested by the Director of Planning and Community Development or the Hearing Examiner, on other permits such as shoreline substantial development permits, major conditional use permits, and major variances. In order to avoid violating the "one open record hearing and one closed record appeal" requirement, the Planning Commission makes these recommendations after conducting a public meeting, not a public hearing.

Possible Changes to Increase Planning Commission Involvement:

If the City Council wishes to increase the Planning Commission's role in the permitting process, it has a couple of options. Because the hearing examiner system is an alternative to using the Planning Commission to conduct permit hearings, it would be possible to amend the BIMC to transfer all or any part of the Hearing Examiner's functions to the Planning Commission. The Planning Commission could replace the Hearing Examiner as the primary hearing authority on particular permit applications or on all permit applications.

Pros of such an approach include:

- To give the Planning Commission more input or control over those applications the Council decides to give the Planning Commission jurisdiction over.

Cons of such an approach include:

- Shifting some or all of the Hearing Examiner's workload to the Planning Commission and thereby detracting from the Commission's ability to complete its other work.
- Imposing the appearance of fairness limitations discussed above on the Planning Commission, and making it harder for the Commission to separate its legislative policy-making role from an adjudicatory permitting role.

- Most jurisdictions have gone to the hearing examiner system in order to avoid these negatives and the few jurisdictions that have continued to use a planning commission for such decisions are small enough that the commission's workload is not seen as an issue.

The other option to increase the Planning Commission's role is to work within the current construct and increase the Planning Commission's authority to make recommendations. As noted above, the Planning Commission is required to make recommendations on major site plan and design review projects and on housing demonstration projects, but the Commission makes a recommendation on other permits only if requested to do so. A way to increase the Planning Commission's role would be to expand the number of permit types on which the Planning Commission may weigh in or to make the receipt of a Planning Commission recommendation mandatory.

Pros of such an approach include:

- To give the Planning Commission a more formal and mandatory role in land use permitting.

Cons of such an approach include:

- The same cons as would be the case if the Planning Commission was substituted for the Hearing Examiner (although the workload shift would be less).
- Possible impacts on the timely processing of permits.
- Under the Regulatory Reform Act mentioned above, review of most permits is required to be completed within 120 days after a complete application is filed. Adding a mandatory Planning Commission recommendation into some permits could make this timeline difficult or impossible to meet and would, at the very least, lengthen the time by which such decisions are made.

Possible Changes to Decrease Planning Commission Involvement:

If the Council desires to decrease the Planning Commission's involvement in land use permitting, it could eliminate the Planning Commission's mandatory recommendation on major site plan and design review projects and housing demonstration projects, or on the ability of the Hearing Examiner or the Director of Planning and Community Development to request Planning Commission review in other matters. This would be done by amending the BIMC to change those roles. Because state law does not mandate Planning Commission involvement in any particular development application, the Council would be free to take any action to alter the Planning Commission's role that it sees fit.

Pros of such an approach include:

- The Planning Commission would have a decreased workload, which would require less of a commitment from its members.

- The Commission would have more time to focus on legislative matters, rather than matters involving specific projects.
- Less need for staff support in assisting the Planning Commission with its work.

Cons of such an approach include:

- Less of an opportunity to receive Planning Commission and public input on certain projects.
- Could increase the Council’s workload in considering matters for which the Council currently receives input from the Planning Commission.

IV. DESIGN REVIEW BOARD

State Law Role:

There are no state law provisions governing the matters that can be assigned to design review boards. The creation, composition, and duties of such boards are entirely within the discretion of the jurisdiction creating them.

BIMC Role:

Under the BIMC, the City’s Design Review Board (DRB) serves in an advisory capacity to the Director of Planning and Community Development, the Hearing Examiner, and the Planning Commission on site plan and design reviews, conditional use permits, and housing design demonstration project applications. Applications related to single-family residences such as family day care homes, minor/major home occupations, and single-family residential height variations are exempt from DRB consideration. In addition, applications related to utility facilities and to outdoor recreation facilities are exempt from DRB consideration. In order to avoid violation of the “one open record hearing and one closed record appeal” requirement, the DRB makes its recommendations after conducting a public meeting, not a public hearing.

Possible Changes to Increase DRB Involvement:

Because the DRB has no mandatory role in land use permitting under state law, the City Council is free to increase or decrease the DRB’s role from that currently prescribed by the BIMC. There are two ways in which the DRB’s role could be increased. First, the City could expand the number and type of permit types which the DRB reviews, i.e., remove the exceptions from DRB review that are set forth in the BIMC or extend the DRBs involvement beyond site plan and design review, conditional use permits, and review of housing design demonstration project applications. Second, the City Council could make the design standards used by the DRB even more robust than they are now. While either of these options is available, the ability to make them effective may be limited by the need to balance the roles of the land use approval bodies involved in the process and the desires of the community for more (or less) design regulation.

Pros of such an approach include:

- To give the DRB a more formal and mandatory role in land use permitting.
- To allow for enhanced adherence to design guidelines and standards.

Cons of such an approach include:

- Possible impacts on the timely processing of permits.
- As mentioned above, under the Regulatory Reform Act review of most permits is required to be completed within 120 days after a complete application is filed. Adding a mandatory DRB recommendation into some permits could make this timeline difficult or impossible to meet and would, at the very least, lengthen the time by which such decisions are made.

Possible Changes to Decrease DRB Involvement:

As far as decreasing the DRB's role, the City could do so in at least three ways: (a) decrease the number and type of permits for which design review is required; (b) make the City's design review standards less robust; or (c) assign design review to another body, e.g., the Planning Commission or Hearing Examiner. The City Council is free to expand or contract the DRB's authority as the Council believes is appropriate.

Pros of such an approach include:

- The DRB would have a decreased workload, which would require less of a commitment from its members.
- The DRB could focus more on legislative matters, rather than matters involving specific projects.
- Less need for staff support in assisting the DRB with its work.

Cons of such an approach include:

- Less of an opportunity to receive DRB and public input on certain projects.
- Could decrease adherence to design guidelines and standards.
- Could increase the Council's workload in considering matters for which the Council currently receives input from the DRB.

V. HEARING EXAMINER

State Law Role:

As mentioned a few times above, the hearing examiner system is optional under state law. Cities adopting the hearing examiner system have the option to decide which permit applications and

decisions will be assigned to the examiner. These may include, but are not limited to, applications for preliminary and final plat approval, conditional use permits, variances, and shoreline permits, appeals from administrative permit decisions, and appeals from SEPA threshold determinations and EIS adequacy decisions. Cities also have the option of: (a) giving the hearing examiner's decision the effect of a recommendation to the city council; or (b) giving the hearing examiner's decision the effect of a final decision subject to appeal to the city council within a specified time limit; or (c) except in the case of a site-specific rezone, giving the hearing examiner's decision the effect of a final decision appealable to the superior court (which is the current system for the City of Bainbridge Island).

BIMC Role:

Under the BIMC, the Hearing Examiner has been given the broadest authority that it is possible for the City to give a hearing examiner under state law, with one exception. The BIMC currently provides that the decision to approve or disapprove a final long subdivision lies solely with the City Council. While this was a requirement of state law prior to 2017, the state legislature amended the state subdivision law last year to allow a city council to delegate this function.

Possible Changes to Increase Hearing Examiner Involvement:

The only way to increase the Hearing Examiner's involvement in land use permitting in the City of Bainbridge Island would be to delegate the City Council's authority over the approval or disapproval of final long subdivisions to the Examiner.

Pros of such an approach include:

- Some cities have done this on the theory that the Hearing Examiner is in the best position to determine whether the conditions the Examiner imposed on the preliminary plat have been met.
- Other cities have delegated (or are considering delegating) final long subdivision approval authority to staff based on the theory that the decision is ministerial, and that staff is capable of making such a determination.
- Such a delegation from the Council to the Hearing Examiner would decrease the Council's workload to some extent, and allow the Council to remove itself from a quasi-judicial role in which it currently engages and which can be a difficult role for Councilmembers due to appearance of fairness considerations.

Cons of such an approach include:

- The City Council would lose some decision-making authority by delegating a decision its making currently to the Hearing Examiner.
- Such a delegation would increase the Hearing Examiner's workload to some extent.

Possible Changes to Decrease Hearing Examiner Involvement:

With respect to decreasing the Hearing Examiner's role in land use permitting, the options set forth above for increasing the Council's role, the Planning Commission's role, and the DRB's role virtually all involve a commensurate reduction in the role of the Hearing Examiner. Again, because the hearing examiner system is entirely optional and because there are various options for how to structure the authority of the hearing examiner within an adopted system, the Council has flexibility to determine what role best fits the City's needs.

Pros for this approach include:

- Would allow for an increase in the role of the Council, the Planning Commission, and/or the DRB in the land use permitting process.
- The City wouldn't have to pay to support the Office of the City's Hearing Examiner.

Cons for this approach include:

- A strong argument in favor of retaining the hearing examiner system and giving the Hearing Examiner a preeminent position in the City's land use permitting process is the complexity of land use law and the requirement that every land use permitting decision for which a hearing is required must be supported by written findings and conclusions.
- Professional hearing examiners are more used to crafting such findings and conclusions than city councils and citizen advisory bodies and this can serve a city well in terms of clarity and when a decision is challenged.
- Citizen advisory bodies can certainly learn to draft or enter quality findings, but that task often falls to the city planning staff and/or to the city attorney when there is no hearing examiner involved.
- If the City decides to decrease the role of the Hearing Examiner in land use permitting, it should consider how this function will be performed.

VI. CONCLUSION

The City of Bainbridge Island has many options for how it structures its land use permitting system. Currently, the City has given the Hearing Examiner the broadest possible powers that state law allows, with the exception of power over final long subdivision approvals. Washington law is very flexible, however, and provides few restraints on the way in which cities can structure the permitting process. The City Council can increase or decrease the role of any of its land use approval bodies in the process until it finds the right balance to meet the desires of those bodies and the community at large.



Land Use Review Procedures Draft Proposed Revisions

July 24, 2018

KEY None: No role R: Review and Recommendation D: Decision A: Appeal

RED text denotes a change

Type	Planning Commission		Director		City Council		Hearing Examiner	
	Current	Proposed	Current	Proposed	Current	Proposed	Current	Proposed
Subdivisions								
Large lot (preliminary)	None	R	D	None	None	D	A	None
Large lot (final)	None	None	D	D	None	None	A	A
Long (preliminary)*	None	R	R	None	None	D	D	None
Long (final)	None	None	R	D	None	None	None	A
Short (preliminary)**	None	Optional R	D	D	None	None	A	A
Short (final)	None	None	D	D	None	None	A	A
Site Plan and Design Review (SPR)								
Major	R	R	D	None	None	D	A	None
Minor***	Optional R	Optional R	D	D	None	None	A	A
Conditional Use Permits								
Major*	Optional R	R	R	None	None	D	D	None
Minor	Optional R	Optional R	D	D	None	None	A	A
Major Shoreline Conditional Use Permits*	None	R	R	None	None	D	D	A

*Quasi-judicial decision with public hearing

** Short subdivisions limited to 4 or fewer lots (currently up to 9 lots when open space incentive used)

***Planning Commission will provide recommendation for revised definition of minor SPR



July 24, 2018

SUMMARY OF KEY RECOMMENDED CHANGES (RED TEXT IN TABLE)

Large Lot Subdivisions

- Planning Commission review and recommendation (change from no review)
- Preliminary approval by City Council (change from administrative decision by Director)

Long Subdivisions (5 or more lots)

- Planning Commission review and recommendation (change from no review)
- Preliminary approval by City Council (change from HEX)
- Final approval by Director (change from City Council)

Short Subdivisions (2-4 lots)

- Planning Commission optional review and recommendation (change from no review)

Site Plan and Design Review (SPR)

- Decision by City Council (change from Director)

Major Conditional Use Permits (CUP)

- Planning Commission review and recommendation required (change from optional)
- Decision by City Council (change from HEX)

Major Shoreline Conditional Use Permits (SCUP)

- Planning Commission review and recommendation required (change from no review)
- Decision by City Council (change from HEX)



Department of Planning and Community Development

Memorandum

Date: July 24, 2018
To: City Council
From: Christy Carr, AICP
Senior Planner
Subject: Planning Commission Action Related to Moratorium Work Plan
Recommendations Related to Land Use Review Procedures and Approval Authority

I. PURPOSE OF AGENDA ITEM

The Planning Commission has made several recommendations to the City Council related to land use review procedures and approval authority.

The purpose of the agenda item is for the City Council to:

- Discuss Planning Commission recommendations and provide input to staff.
- Provide direction to staff to prepare a draft ordinance related to revisions to BIMC 2.14 and 2.16 based on Council review of Planning Commission recommendations.
- Schedule a public hearing on such a proposed ordinance.

II. BACKGROUND

Land Use Policy 6.8 of the City's Comprehensive Plan states:

Review and specify the authority and the role of the Design Review Board, Hearing Examiner, Planning Commission and City Council in the land use development review and decision-making process. Land use actions can be ministerial, quasi-judicial and legislative in nature. As part of this review, consider a role for the Planning Commission and/or Design Review Board in reviewing preliminary long subdivisions.

This policy is included in the City's current moratorium on acceptance of certain development applications, including site plan and design reviews, conditional use permits, and all subdivisions; therefore, review of land use review procedures and approval authority is included in the City's moratorium work plan.

Roles and responsibilities for review and approval of land use applications are codified in BIMC 2.14, Land Use Approval Bodies, and BIMC 2.16, Land Use Review Procedures. The Planning Commission's recommendations include revised review procedures and approval authority intended to improve

consistency of land use actions with the City's Comprehensive Plan. In addition, during the course of its discussions, the Planning Commission made a recommendation to suspend the current Housing Design and Demonstration Projects program, also contained in BIMC 2.16.

BIMC 2.14 and 2.16 are available through the City's website:

<http://www.codepublishing.com/WA/BainbridgeIsland/#!/BainbridgeIsland02/BainbridgeIsland02.html>

III. Summary of Planning Commission Recommendations

A narrative summary of proposed revisions to BIMC 2.14 and 2.16 is provided below. In some cases, specific language recommended by the Planning Commission is provided in strikethrough/underline text. Where specific language is not provided, the recommendation is provided in concept and strikethrough/underline text will be provided in a draft ordinance.

A. Revisions to BIMC 2.14: Land Use Approval Bodies.

This chapter of the municipal code describes the purpose and role, duties and responsibilities, and function and composition (e.g., quorum and voting, membership) of the City's land use approval bodies. The Planning Commission recommends the following revisions:

1. Roles and responsibilities of each land use approval body are described in Chapter 2.14. The Planning Commission recommends revisions to roles and responsibilities as shown in the attached table, "Land Use Review Procedures – Draft Proposed Revisions." The language in Chapter 2.14 will be revised to reflect the revisions.
2. Revisions to BIMC 2.14.020, Planning Commission:
 - a. BIMC 2.14.020.B.2, Roles and responsibilities (added) -- Consider the location, character, extent, and effect of any proposed dedication of any street or other area for public use, including parks, public ways, public buildings or public structures, with reference to the comprehensive plan, pursuant to RCW 35A.63.080.
 - b. BIMC 2.14.020.B.4 (added) -- Review and make recommendations on all large lot subdivisions, long subdivisions (preliminary and final), major site plan and design reviews, major conditional use permits, and major shoreline conditional use permits, taking into consideration the recommendation from the Design Review Board and a comprehensive review of the project at a public meeting.
 - c. BIMC 2.14.020.B.6 (revised) -- Create the planning commission agenda prior to its publication, ~~per~~ in consultation with the director's ~~recommendation~~; and
 - d. BIMC 2.14.020.B. 7 (deleted) -- ~~Report annually to the city council prior to the start of the budget process.~~
 - e. Several, non-substantive revisions to improve organization and clarity.

B. Revisions to BIMC 2.16.010. Land use procedures summary table and related changes throughout BIMC 2.16.

The Planning Commission made a recommendation to revise Table 2.16.010-1 as shown in the attached table, "Land Use Review Procedures – Draft Proposed Revisions." Related changes throughout BIMC 2.16 will be made to reflect/support the changes to the table.

- C. Revisions to BIMC 2.16.180.D: Land Use Review Procedures, Legislative review of regulations and area-wide rezones, Planning Commission review and recommendation.

This section provides that Planning Commission review and recommendation is required only for amendments to the BIMC related to Title 18, Zoning. The Planning Commission recommends that the language be revised to reflect the full breadth of development regulations the Planning Commission generally reviews, including Chapters 2.14 and 2.16, Title 16 (Environment), and Title 17 (Subdivisions and Boundary Line Adjustments).

Staff also identified potential improvements that could be made regarding department practice and specific code language in the applicability section related to which body (Planning Commission, City Council, or both) is required to hold a public hearing to amend the municipal code related to land use review. The code language could also be clarified regarding when a public hearing is required for any change to the municipal code. Specific sections to be revised include (the following is existing text from BIMC):

1. BIMC 2.16.180.B -- Applicability. This section applies to adoption of or amendments to the BIMC, including area-wide rezones initiated by the city and area-wide rezones accompanying privately initiated amendments to the comprehensive plan.
2. BIMC 2.16.180.D. Planning Commission Review and Recommendation.
 1. Planning Commission review and recommendation is only required for amendments to BIMC Title 18, area-wide rezones initiated by the city, or area-wide rezones associated with a privately initiated amendment to the comprehensive plan.
 2. The planning commission shall hold a public hearing for all amendments to the official zoning map and zoning code of the city prior to issuing a recommendation to the city council.
3. BIMC 2.16.180.F. City Council Review.
 1. The city council shall hold a public hearing on the proposed amendment at the second reading of the proposed regulation. Any person may participate in the public hearing. The city council has discretion to limit testimony to relevant, nonrepetitive comments and to set time limits.

Suspension of BIMC 2.16.020.Q: Housing Design and Demonstration Projects (HDDP)

The Planning Commission has recently reviewed several HDDP projects and expressed a general dissatisfaction with the program due to the review process, subjectivity of the scoring system, and perspective that the projects are not resulting in sufficient community benefit (e.g., affordable housing, water conservation measures). The HDDP program was also discussed by the Planning Commission within the context of their review of subdivision standards as part of the moratorium work plan. Current drafts of proposed subdivision design guidelines and standards include some of the HDDP program's requirements to receive incentives (e.g., diversity of housing types, use of native vegetation).

The Planning Commission recommends suspending the HDDP program until its review of revised subdivision standards is completed. Once their work is complete, it is anticipated the Planning Commission will make a recommendation to the City Council related to the future of the HDDP program. Note: The current HDDP program is set to expire on December 31, 2019, per Ordinance 2016-27.