ISLAND COUNTY
PLANNING & COMMUNITY DEVELOPMENT

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~ MEMORANDUM ~

TO: **Planning Commission**

FROM: **Hiller West, Community Development Director**

DATE: **February 2, 2016**

SUBJECT: **Amendments to Island County's Administrative Appeals Process**

BACKGROUND

At the January 25th meeting of the Planning Commission, staff introduced proposed amendments to Ch. 16.13 and 16.19 of Island County Code, in order to remove the Board of Commissioners from hearing administrative appeals. A public hearing on the proposed amendments is scheduled for the February 8th meeting. A copy of the proposed amendments is attached.

On October 21, 2015 the Island County Board of Commissioners discussed the administrative appeals process in Island County Code for certain types of permits. The Board's consensus, based on a recommendation of the Washington Counties Risk Pool, was to direct staff to prepare these draft amendments to Island County Code.

RECOMMENDATION

On January 25th, the Planning Commission requested that staff bring back information regarding appeals procedures in other Washington counties. It was not possible to gather this information in time for the packets, however I will have it for discussion at the February 8th meeting. Dan Mitchell, Chief Civil Deputy Prosecuting Attorney, will be present at the meeting as well to provide comments and respond to questions.

Following the public hearing, the Planning Commission can request further staff input, hold its discussion, then direct staff to prepare findings and conclusions in support of the Planning Commission's determination.

If you have any questions, please let me know.

EXHIBIT "A"

16.13.100 - Powers.

The examiner shall receive and examine available information, conduct public hearings and prepare a record thereof, and enter decisions as provided for herein.

A. Final decisions (Type I and Type II). The decision of the hearing examiner on the following Type I and Type II decision appeals shall be final unless such decision is appealed to Superior Court or, in the case of an appeal of a SEPA threshold determination issued for a legislative action initiated pursuant to Chapter 36.70A RCW, to the Growth Management Hearings Board as provided in section 16.19.205 or RCW 90.58.180 (Shorelines Hearings Board appeals):

1. Appeals from decisions of the short plat administrator; appeals of planned residential development decisions for projects of four (4) dwelling units or less;
2. Appeals of shoreline substantial development permits, conditional use and variance decisions; appeals of rescissions of such permits;
3. Appeals of administrative decisions based upon recommendations of the Historic Preservation District Advisory Committee;
4. Flood elevation variances and appeals of administrative decisions/interpretations of the flood damage prevention ordinance;
5. Administrative appeals regarding Zoning Code enforcement; zoning variances; interpretations of the Zoning Code; certificates of zoning compliance; and zoning setback reduction;
6. All State Environmental Policy Act (SEPA) threshold determination appeals,
7. Appeals of enforcement orders issued by the Planning Director, including those orders where the civil penalties for violation are set forth in RCW 90.58.210;
8. Revocation of approvals or permits issued under title 16 or 17;
9. Appeal of site plan review for conditional uses classified as a Type II decision under chapters 17.03 and 16.19;
10. Appeals of charges pursuant to sections 15.02.130 and 15.02.075.B.4. regarding the storm and surface water utility, Marshall Drainage Basin, and appeals of rate adjustments and classification changes pursuant to sections 15.03.130 and 15.03.075.B.4.;
11. Appeals of Type I decisions as provided in ICC 16.19.190.A ~~of the Public Works Director under chapters 11.02, 11.03 and 11.04~~;
12. Appeals of decisions of the Island County Building Official under chapter 14.01A; and
13. Appeals of Type II decisions issued under chapter 17.02B.

B. ~~Appealable~~ Final decisions (Type III). The decision of the examiner on the following matters shall be a final land use decision. ~~unless~~ Ssuch decision, as a final county land use decision, is appealed as provided in section 16.19.1790, WAC 173-27-290 (shoreline civil penalties), or chapter 16.21 (shoreline administration), or is appealed in accordance with RCW 90 58 180 (Shorelines Hearings Board appeals) or chapter 36 70C RCW (Land Use Petition Act), or as otherwise provided by state law:

1. Shoreline substantial development permit, conditional use, and variance permits when the underlying permit requires a hearing; rescission of such permits;
2. Preliminary plat applications;
3. Critical area alterations as provided in chapter 17.02;

4. Site plan review for conditional uses classified as Type III decisions in chapters 17.03 and 16.19;
5. Planned residential development applications for five (5) or more dwelling units;
6. Civil penalties associated with shoreline cease and desist orders;
7. Commercial agriculture zoning verifications;
8. Rezones classified Type III decisions by chapters 17.03 and 16.19; and
9. Critical area variance requests as provided in chapter 17.02B.

. . .

16.13.110 - Limited jurisdiction.

The examiner shall have no jurisdiction over:

A. Any proposal that requires a legislative action (Type IV decision) such as, but not limited to, an area-wide rezone, a comprehensive plan map change, or a Shoreline Master Program amendment;

B. The placement of property in deferred tax classification programs such as open agriculture, classified forest, or designated forest;

C. Final plat approval; or

D. The placement of liens~~; or~~

~~E. Type I decisions~~.

Such proposals shall be solely within the jurisdiction of the board, upon recommendation from the Planning Commission; except that ~~Type I decisions or~~ the placement of liens shall not require action by the Planning Commission.

. . .

16.19.180 – Hearing examiner decisions

Within fourteen (14) days of the conclusion of an open record predecision hearing for a Type III decision or open record appeal hearing for an appealable Type I or a Type II decision, unless . . .

. . .

16.19.190 - Administrative appeals.

A. Type I decisions.

1. Except as provided in [subsections] A.2., 3., 4. and 5. below, a Type I decision is a final county land use decision not subject to administrative appeal.

2. Except as provided in subsections A.3., 4. and 5. below, a~~A~~n applicant may appeal a denial of a Type I application~~, except for appeals to the hearing examiner of Marshall Drainage Basin and clean water utility charges under subsections A.3. and A.4. below, or a Type I capacity determination issued under chapter 11.04~~ to the ~~Board of Island County Commissioners~~ hearing examiner. A written statement of appeal, accompanied by a fee must be filed with the ~~clerk of the board~~ hearing examiner by the applicant, within fourteen (14) days following the mailing of the director's decision. A more comprehensive statement setting forth in detail alleged errors and/or the basis for appeal must be submitted by the ~~appealing person or department~~ applicant within thirty (30) days following mailing of the director's

decision, or the appeal is not properly filed and will be dismissed without hearing. The appeal shall be an open record appeal hearing and the written decision of the ~~board~~ hearing examiner, in the format provided under section 16.19.180, shall be rendered within fourteen (14) days of the conclusion of the hearing, unless a longer period is agreed to in writing by the applicant.

3. A property owner may appeal to the hearing examiner a Type I Public Works Director's decision on charges and denials of rate adjustments pursuant to sections 15.02.130 and 15.02.075.B.4. regarding the storm and surface water utility, Marshall Drainage Basin, under the procedure set forth in section 15.02.130.

4. A property owner may appeal to the hearing examiner a Type I Public Works Director's decision on denials of rate adjustments and classification changes of the clean water utility pursuant to sections 15.03.130 and 15.03.075.B.4. A written statement of appeal, accompanied by a fee, must be filed with the hearing examiner by the property owner within fourteen (14) days following the mailing of the Public Works Director's decision. A more comprehensive statement setting forth in detail alleged errors and/or the basis for appeal must be submitted by the appealing person within thirty (30) days following mailing of the director's decision, or the appeal is not properly filed and will be dismissed without hearing. The appeal shall be an open record appeal hearing and the written decision of the hearing examiner, in the format provided under section 16.19.180, shall be rendered within fourteen (14) days of the conclusion of the hearing, unless a longer period is agreed to in writing by the property owner.

5. An applicant may appeal a Type I clearing and grading decision issued under chapter 11.02 to the hearing examiner as established in sections 11.02.250.A., 16.13.100.A., and 16.19.040.

B. Type II decisions. The appeal of a Type II decision shall be an open record appeal.

1. Administrative decisions of the director on Type II applications shall be final and conclusive unless within fourteen (14) days following mailing of the director's decision, a written statement of appeal, accompanied by a fee except when submitted by a county department, is filed with the hearing examiner by the applicant, a department of the county, or any aggrieved person. A more comprehensive statement setting forth in detail alleged errors and/or the basis for appeal must be submitted by the appealing person or department within thirty (30) days following mailing of the director's decision, or the appeal is not properly filed and will be dismissed without hearing.

2. A SEPA threshold determination issued for a Type IV legislative action that is initiated pursuant to Chapter 36.70A RCW may be appealed to the hearing examiner within fourteen (14) days following the completion of the public comment period. An appeal shall be accompanied by a written statement of appeal and the applicable fee. Appeals may be filed by a county department or any aggrieved person. A more comprehensive statement setting forth in detail alleged errors and/or the basis for appeal must be submitted by the appealing person or department within thirty (30) days following the completion of the public comment period, or the appeal is not properly filed and will be dismissed without hearing.

C. Type III decisions. Decisions of the examiner on Type III applications shall be final county land use decisions ~~conclusive. unless~~ These final county land use decisions may be appealed in accordance with RCW 90.58.180 (Shorelines Hearings Board appeals) or chapter 36.70C RCW (Land Use Petition Act), or as otherwise provided by applicable state law~~within fourteen (14) days following mailing of such decision a written statement of appeal is filed with the board by the applicant, a department of the county, or party of record, who is also an aggrieved person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the board; provided that such appeal fee shall not be charged to a department of the county or to other than the first appellant. The appeal of a Type III decision shall be a closed record appeal~~.

D. For Type I and Type II Decisions, t~~T~~he timely filing of an administrative appeal shall stay the effective date of the decision until such time as the appeal is heard and decided or is withdrawn. The burden of proof regarding modification or reversal shall rest with the appellant.

E. Within seven (7) days following the timely filing of an appeal for a Type I and Type II Decision, notice thereof and of the date, time, and place for the appeal hearing shall be mailed to the applicant, the appellant,

and to all other parties of record. Such notice, which shall provide a general description of the appeal and of the property location, shall additionally indicate the deadline for submittal of written comments.

F. A decision on the appeal of a Type I and Type II Decision shall be rendered no later than ninety (90) days after the timely filing of an appeal.

G. Shoreline substantial development, conditional use and variance permit decisions whether classified as Type I, ~~or~~ Type II, or Type III are appealable pursuant to Chapter 90.58 RCW, chapter 173-27 WAC, and chapter 16.21 ICC.