ISLAND COUNTY
PLANNING & COMMUNITY DEVELOPMENT

PHONE: (360) 679-7339 ■ from Camano (360) 629-4522, Ext. 7339 ■ from S. Whidbey (360) 321-5111, Ext. 7339 FAX: (360) 679-7306 ■ 1 NE 6th Street, P. O. Box 5000, Coupeville, WA 98239-5000. Internet Home Page: http://www.islandcounty.net/planning/

~ MEMORANDUM ~

TO: **Planning Commission**

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

DATE: **March 28, 2016**

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

For the April 11 meeting: At its March 14th regular meeting, the Planning Commission voted in favor of a motion in support of the proposed amendments that included a reconsideration procedure for decisions on Type I, II, and III permits. The reconsideration procedure would provide the Board of Island County Commissioners an opportunity to review the decision by the Island County Hearing Examiner and hold its own closed record hearing, at its option. In the event the Board decided not to hold a hearing, any further appeal would be heard in Island County Superior Court or the Washington Shoreline Hearings Board.

The proposed amendments have been revised to reflect the amended motion by the Planning Commission. They are attached as exhibit 'A'. The Prosecuting Attorney's Office has recommended a second public hearing be held due to the revisions to the proposal. The public hearing is scheduled for the April 11th meeting.

BACKGROUND

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

Staff has previously recommended approval of the proposed amendments. As previously noted, the Board's direction was to remove the Board from the appeals process for land use permits. Staff recommends approval of the amendments without the reconsideration process.

If you have any questions, please let me know.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING ISLAND COUNTY'S ADMINISTRATIVE APPEAL PROCESS AMENDING CHAPTER 16.13 AND CHAPTER 16.19 OF THE ISLAND COUNTY CODE	ORDINANCE NO. C- -16 PLG-001-16

WHEREAS, the Island County Code currently provides that the Board of Island County Commissioners ("Board") shall hear administrative appeals of certain Type I decisions issued by local county directors as well as Type III decisions that are issued by the Island County Hearing Examiner; and

WHEREAS, on October 21, 2015 at a regularly scheduled public meeting work session, the Board discussed Island County's administrative appeal process and expressed a desire, based on the recommendation of the Washington County Risk Pool, to amend the County Code so as to no longer provide for the Board to hear administrative appeals; and

WHEREAS, the Board recognizes that Island County takes on an additional risk of liability if the Board were to continue to hear administrative appeals of certain Type I decisions and Type III decisions; and

WHEREAS, the Board desires that the certain Type I decisions that are currently appealable to the Board shall be appealable to the hearing examiner so that a local county record could be built at an open record appeal hearing. The Board desires that Type III decisions issued by the Island County hearing examiner, except for Type III zoning amendment decisions, become final county land use decisions that are still appealable as allowed under applicable state law, i.e., the Land Use Petition Act or the Shoreline Management Act, as well as any other applicable laws if any;

NOW, THEREFORE,

IT IS HEREBY ORDAINED by the Board of County Commissioners of Island County, Washington, that the official controls attached hereto as Exhibit A amending Island County Code Chapters 16.13 and 16.19 are hereby approved and adopted. Material underlined is added and material lined through is deleted. The Board of County Commissioners also adopts the Findings of Facts, attached herein as Exhibit B.

ADOPTED this _____ day of _____, 2016, and effective immediately.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

_____
RICHARD M. HANNOLD, Chair

_____
JILL JOHNSON, Member

_____
HELEN PRICE JOHNSON, Member

ATTEST: _____
DEBBIE THOMPSON
Clerk of the Board

APPROVED AS TO FORM:

_____
Daniel B. Mitchell
Deputy Prosecuting Attorney
& Island County Code Reviser

EXHIBIT "A"

Chapter 16.13 – Hearing Examiner

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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 a request for reconsideration is timely made pursuant to ICC 16.19.190.H. ~~s~~Such final decision, except as provided in ICC 16.19.190.H, ~~is~~ may be 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.2 through A.5 ~~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 and chapter 17.03.

B. ~~**Appealable**~~ **Final decisions (Type III).** The decision of the hearing examiner on the following matters, unless a request for reconsideration is timely made by an aggrieved party of record pursuant to ICC 16.19.190.H, shall be a final land use decision. ~~unless~~ Ssuch final decision, except as provided in ICC 16.19.190.H, ~~is~~ may be appealed as provided in section 16.19.1~~7~~90, 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~~Zoning Amendments classified Type III decisions by chapters 17.03 and 16.19; and
8. ~~Rezones classified Type III decisions by chapters 17.03 and 16.19; and~~ Critical area variance requests as provided in chapter 17.02B.
9. ~~9.~~

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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, except as provided in ICC 17.03.260.H.~~; 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.

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Chapter 16.19 – Land Use Review Process

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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 and A.4 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. The written decision of the hearing examiner shall be a final land use decision, except as provided in ICC 16.19.190.H.

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. The written decision of the hearing examiner shall be the final administrative decision, except as provided in ICC 16.19.190.H.

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. The written decision of the hearing examiner shall be the final administrative decision, except as provided in ICC 16.19.190.H.

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~~ To file a written statement of appeal to the hearing examiner, the written statement of appeal must be received within fourteen (14) days following the mailing of the director's decision by either personally delivering the written statement of appeal to the office of the director that issued the decision, or by mailing the written statement of appeal to the following address: Island County Hearing Examiner, P.O. Box 5000, Coupeville, WA 98239.

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, unless an optional request for reconsideration is filed as provided below in subsection H~~conclusive~~. ~~unless~~ Unless an optional request for reconsideration is filed in accordance with ICC 16.19.190.H, final county land use decisions made by the hearing examiner 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. The timely filing of an administrative appeal of an appealable Type I or Type II Decision 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 administrative 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. The notice shall specify that the appeal hearing shall be an "open record appeal hearing" as described in ICC 16.19.030.

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. The written decision of the hearing examiner shall be a final land use decision, except as provided in ICC 16.19.190.H.

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.

H. Request for Reconsideration. Any aggrieved party of record, including a county agency, who disagrees with a a decision on the appeal of a Type I or Type II decision, or a Type III decision of the hearing examiner may, as an optional administrative remedy, file a written request for reconsideration. The request for reconsideration must be received by the Clerk of the Board of Island County Commissioners within ten (10) days of the hearing examiner's written decision. Filing a request for reconsideration is not a prerequisite to filing an appeal of the county's final land use decision pursuant to ICC 16.19.200. If a request for reconsideration is timely filed to the Clerk of the Board, the date of the county's final land use decision will be deemed to occur on the date a decision is entered on whether to grant or deny the request for reconsideration, and not the date of the original decision for which the request for reconsideration was filed. However, the hearing examiner's decision on an appeal of a Type I or Type II decision, or the original Type III decision will be the final county land use decision if a request for reconsideration is not timely made.

A request for reconsideration may be based only on one of the following grounds:

1. The hearing examiner exceeded his or her jurisdiction;
2. The hearing examiner failed to follow the applicable procedures in reaching a decision;
3. Irregularity in the proceedings before the hearing examiner caused a party to not obtain a fair hearing;

4. The hearing examiner committed an error of law or misinterpreted the applicable statute, county code section, ordinance or resolution, law or regulation;
5. The hearing examiner's findings, conclusions or conditions are not supported by the record;
6. Clerical mistakes in the official file or record transmitted to the hearing examiner, including error arising from inadvertence, oversight, or omission, which may have materially affected the hearing examiner's decision on the matter.

For a timely filed request for reconsideration, the Board of County Commissioners will either issue a decision to deny the request for reconsideration or a decision to grant the reconsideration. Upon reconsideration, the Board may issue the county's final land use decision, or remand the matter back to the hearing examiner.