

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4960

AN ORDINANCE relating to corrections in the process of the Land Use Code and Environmental Procedures Code to be consistent with state law; amending Sections 20.35.070, 20.35.250, 20.35.440, and 22.02.080 of the Bellevue City Code.

WHEREAS, RCW 43.21C.075 permits State Environmental Policy Act ("SEPA") appeal proceedings to occur prior to a final decision on a proposed action only if the appeal is heard at a proceeding where the hearing body will render a final recommendation or decision on the proposed underlying governmental action; and

WHEREAS, the City of Bellevue Hearing Examiner has no authority to make a final decision or recommendation on legislative matters (Process IV Land Use Code decisions); and

WHEREAS, SEPA goals and policies are not furthered by providing for a SEPA appeal after the City Council has made a final decision on a legislative matter; and

WHEREAS, it is the intent of the Bellevue City Council to remove superfluous procedures from the Land Use Code in an effort to continue its commitment to regulatory reform; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 20.35.070 of the Bellevue Land Use Code is hereby amended as follows:

20.35.070 Appeal of City land use decision to Superior Court.

A. A final City decision on a land use permit application (Process I-III), except for shoreline permits, may be appealed to Superior Court by filing a land use petition meeting the requirements set forth in Chapter 36.70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled. An appeal of a shoreline substantial development permit, a shoreline conditional use permit, or a shoreline variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days as set forth in RCW 90.58.180.

B. A final City action on a legislative non-project land use proposal (Process IV) may be appealed by petition to the Growth Management Hearing Board as set forth in LUC 20.35.440.C and RCW 36.70A.290.

Section 2. Section 20.35.250 of the Bellevue Land Use Code is hereby amended as follows:

20.35.250 Appeal of Process II decisions.

A. Process II decisions, except for shoreline permits and SEPA Threshold Determinations on Process IV actions, may be appealed as follows:

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1. Who May Appeal. The project applicant or any person who submitted written comments prior to the date the decision was issued may appeal the decision.
2. Form of Appeal. A person appealing a Process II decision must file a written statement setting forth:
 - a. Facts demonstrating that the person is adversely affected by the decision;
 - b. A concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria;
 - c. The specific relief requested; and
 - d. Any other information reasonably necessary to make a decision on the appeal.

The written statement must be filed together with an appeal notification form available from the Office of the City Clerk. The appellant must pay such appeal fee, if any, as established by ordinance or resolution at the time the appeal is filed.

3. Time and Place to Appeal. The written statement of appeal, the appeal notification form, and the appeal fee, if any, must be received by the City Clerk no later than 5:00 p.m. on the 14th day following the date of publication of the decision of the Director; except that if the Director's decision is consolidated with a threshold Determination of Non-significance under the State Environmental Policy Act for which a comment period pursuant to WAC 197-11-340 must be provided, the appeal period for the consolidated decision shall be 21 days.

B. Shoreline Permit Appeals.

An appeal of a shoreline substantial development permit or a shoreline variance shall be to the State Shoreline Hearings Board and shall be filed within 21 days as set forth in RCW 90.58.180.

C. SEPA Threshold Determinations on Process IV Actions.

An appeal of a SEPA Threshold Determination on a Process IV action shall be filed together with an appeal of the underlying Process IV action. The appeal shall be by petition to the Growth Management Hearings Board and shall be filed within the 60-day time period set forth in RCW 36.70A.290.

D. Notice of Appeal Hearing.

If a Process II decision is appealed, a hearing before the City Hearing Examiner shall be set and notice of the hearing shall be mailed to the appellant, the applicant, and all parties of record by the applicable Department Director. Notice shall be mailed no less than 14 days prior to the appeal hearing; except that if the Process II decision has been consolidated with a recommendation on a Process I or Process III application, any appeal of the Process II decision shall be consolidated with the Process I or Process III public hearing. No separate notice of a Process II appeal need be provided if the public hearing has already been scheduled for the Process I or Process III component of an application.

E. Hearing Examiner Hearing.

The Hearing Examiner shall conduct an open record hearing on a Process II appeal. The appellant, the applicant, and the City shall be designated parties to the appeal. Each party may participate in the appeal hearing by presenting testimony or calling witnesses to present testimony. Interested persons, groups, associations, or other entities who have not appealed may participate only if called by one of the parties to present information; provided, that the Examiner may allow non-parties to present relevant testimony if allowed under the Examiner's Rules of Procedure.

F. Hearing Examiner Decision on Appeal.

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Within 10 working days after the close of the record for the Process II appeal, the Hearing Examiner shall issue a decision to grant, grant with modifications, or deny the appeal. The Examiner may grant the appeal or grant the appeal with modification if:

1. The appellant has carried the burden of proof; and
2. The Examiner finds that the Process II decision is not supported by a preponderance of the evidence.

The Hearing Examiner shall accord substantial weight to the decision of the applicable Department Director and the Environmental Coordinator.

G. Appeal of Hearing Examiner Decision.

A final decision by the Hearing Examiner on a Process II application may be appealed to Superior Court as set forth in LUC 20.35.070.

H. Time Period to Complete Appeal Process.

In all cases except where the parties to an appeal have agreed to an extended time period, the administrative appeal process shall be completed within 90 days from the date the original administrative appeal period closed. Administrative appeals shall be deemed complete on the date of issuance of the Hearing Examiner's decision on the appeal.

Section 3. A new subsection is added to Section 20.35.440 of the Bellevue Land Use Code, as follows:

20.35.440 City Council action.

C. Effect of City Council action.

The action of the City Council on a Process IV proposal may be appealed together with any SEPA Threshold Determination by filing a petition with the Growth Management Hearings Board pursuant to the requirements set forth in RCW 36.70A.290. The petition must be filed within the 60-day time period set forth in RCW 36.70A.290(2).

Section 4. Section 22.02.080 of the Bellevue City Code is hereby amended as follows:

22.02.080 Appeal of threshold determination.

A. General. Except as provided in this section, the decision of the environmental coordinator in making a threshold determination may be appealed to the Hearing Examiner using the appeal provisions for Process II decisions (see LUC 20.35.200 et seq.); provided, however, when the threshold determination is a determination of significance which has been agreed to by the proponent, it shall not be appealable; provided further, however, when the threshold determination is issued on a legislative non-project land use proposal (Process IV), it shall not be appealable. Any provisions of this section which conflict with LUC 20.35.200 et seq. control over those sections.

B. Who May Appeal. Any person adversely affected by a threshold determination may appeal the decision; provided, however, only those persons who submit comments prior to issuance of the threshold determination may appeal the determination unless a showing is made to demonstrate that environmental issues raised in the appeal were not known to the appellants and could not reasonably have been known to the appellants in time to submit comments before the decision was made.

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C. Issues on Appeal. Appeals are limited to those issues raised through the comment period; provided, that new issues may be raised if the appellant shows that the project has changed substantially from what was identified in the public notice or information on expected environmental impacts was not reasonably available prior to issuance of the threshold determination.

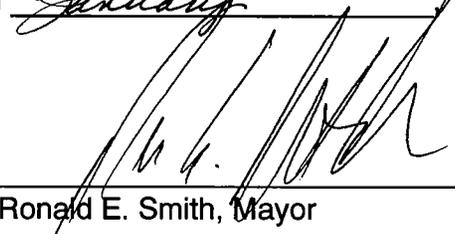
D. Time to Appeal. A written statement appealing the threshold determination of the environmental coordinator must be filed with the City Clerk within 14 days of the date of publication of the threshold determination or, if there is a comment period under WAC 197-11-340 or 197-11-350, within 21 days of the date of publication of the threshold determination.

E. Court Review. The decision of the hearing examiner on a threshold determination may only be appealed to superior court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075, the State Environmental Policy Act. Any such appeal must be brought within the time limits specified in RCW 36.70C.040.

Section 5. This ordinance shall take effect and be in force thirty (30) days after passage by the City Council.

PASSED by the City Council this 6th day of January, 1997, and signed in authentication of its passage this 6th day of January, 1997.

(SEAL)



Ronald E. Smith, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Richard Gidley, Deputy City Attorney

Attest:



Myrna L. Basich, City Clerk

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