

ORDINANCE NO. 903

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S PROCEDURES FOR CLOSED RECORD APPEAL HEARINGS ON PROJECT PERMIT APPLICATIONS, ELIMINATING ALL ADMINISTRATIVE APPEALS TO THE CITY COUNCIL, WITH THE EXCEPTION OF APPEALS OF SITE SPECIFIC REZONES (IN GHMC SECTION 17.100.035), AND CLARIFYING THE STANDARD OF APPELLATE REVIEW OF THE HEARING BODY/OFFICER'S DECISION IN A CLOSED RECORD APPEAL; AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 19.01.003 AND 19.06.005.

WHEREAS, RCW 36.70B.060(6) provides that a local government may allow an administrative appeal for some but not all project permit decisions; and

WHEREAS, the City Council desires to amend Title 19 to eliminate all closed record appeals that currently are held by the City Council, with the exception of administrative appeals of site specific rezones, which are defined as "project permits" (RCW 36.70B.020(4)); and

WHEREAS, the City's SEPA Responsible Official determined that this Ordinance is categorically exempt under WAC 197-11-800(20); and

WHEREAS, the City Community Development Director forwarded a copy of this Ordinance to the Washington State Office of Community Development on January 31, 2002 pursuant to RCW 36.70A.106; and

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of February 11, 2002; and

WHEREAS, the City Council further considered this Ordinance during its regular City Council meeting of February 25, 2002; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS
AS FOLLOWS:

Section 1. Section 19.01.003 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.01.003 Project permit application framework.

A. Action Type.

| | PROCEDURE FOR PROJECT PERMIT APPLICATIONS (TYPE I -IV) | | | | | LEGISLATIVE |
|-----------------------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------|-------------------------------------------------------|--------------|-----------------------------------------------------------------------|
| | TYPE I | TYPE II | TYPE III | TYPE III-A | TYPE IV | TYPE V |
| Recommendation made by: | N/A | N/A | N/A | N/A | N/A | Planning commission |
| Final decision made by: | Director | Director | Hearing examiner | Hearing examiner | City council | City council |
| Notice of application: | No | No | Yes | Yes | Yes | No |
| Open record public hearing or open record appeal of a final decision: | No | Only if appealed, open record hearing before hearing examiner | Yes, before hearing examiner to render final decision | Yes, before hearing examiner to render final decision | No | Yes, before planning commission which makes recommendation to council |

| | | | | | | |
|--------------------------------------|-----|-----|----------------------------------------------------------------------------------|-----|----------------------------------------------|--------------------------------------------|
| Closed record appeal/final decision: | No | No | No, only if <u>site-specific rezone</u> appealed, then before council | No | Yes, before council to render final decision | Yes, or council could hold its own hearing |
| Judicial appeal: | Yes | Yes | Yes | Yes | Yes | Yes |

B. Decisions.

| TYPE I | TYPE II | TYPE III | TYPE III-A | TYPE IV | TYPE V |
|-----------------------------------------------|-------------------------------------------|--------------------------------------------------------------------------|---------------------|---------------|---------------------------------------------------------|
| Permitted uses not requiring site plan review | Short plat | Plat vacations and alterations | Preliminary plats | Final plats | Comp. plan amendments |
| Boundary line adjustments | Sign permits | Site plan/major amendments to site plans | Preliminary PRD/PUD | Final PRD/PUD | Development regulations |
| Minor amendments to PUD/PRD | Design review | CUP, general variances, sign permit variances, and site specific rezones | | | Zoning text amendments; area-wide zoning map amendments |
| Special use permits | Land clearing/grading | Shoreline substantial development, shoreline variance | | | Annexations |
| Temporary construction trailers | Revisions to shoreline management permits | Major amendments to PRD and PUD | | | |
| | Administrative variances | Amendment to height restriction area map | | | |
| | Administrative interpretations | Mobile/manufactured home park or subdivision | | | |

Home occupation
permit

Hardship variance,
sign code

Modification to
landscape plans

Minor amendment to
PRD or PUD

Section 2. Section 19.06.005 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.06.005. Procedure for closed record decision/appeal.

A. Closed record appeals shall be on the record established at the open record hearing before the hearing body/officer whose decision is being appealed, which shall include the written decision of the hearing body/officer, a transcript or tape recording of the proceedings, and copies of any exhibits admitted into the record.

B. No new testimony or evidence will be accepted by the appeal body/officer except: (1) new information that was unknown to the parties at the time of the hearing which could not reasonably have been discovered by the parties and is necessary for a just resolution of the appeal; and (2) relevant information that, in the opinion of the appeal body/officer council, was improperly excluded by the hearing body/officer. Appellants who believe that information was improperly excluded must specifically request, in writing prior to the closed record appeal hearing, that the information be made part of the record. The request shall describe the information excluded, its relevance to the issues appealed, the reason(s) that the information was excluded by the hearing body/officer, and why the hearing body/officer erred in excluding the information. No reference to excluded information shall be made in any presentation to the appeal body/officer council on the merits, written or oral, until the appeal body/officer council has determined that the information should be admitted.

C. ~~4.~~ Parties to the appeal may present written and/or oral arguments to the appeal body/officer council. Argument shall describe the particular errors committed by the hearing body/officer, with specific references to the appeal administrative record. The appellant shall bear the burden to demonstrate that substantial evidence does not exist in the administrative record to support the decision of the hearing body/officer.

D. 2. The hearing shall commence with a presentation by the director or the director's designee, of the general background of the proposed development and the issues in dispute. After the director's presentation, the appellants shall first present oral argument, and then the other parties of record shall make their arguments. ~~Council members~~ The appeal body/officer may question any party concerning disputed issues, but shall not request information not in the administrative record.

E. 3. The ~~council~~ appeal body/officer shall determine whether there is substantial evidence in the administrative record to support the decision of the hearing body/officer. The appeal body/officer may affirm, modify or reverse the decision of the hearing body/officer. Upon written agreement by the applicant ~~to waive the statutory prohibition against more than one open record and one closed record hearing, and, if needed,~~ to waive the requirement for a decision within the time periods set forth in RCW 36.70B.0980, as allowed by RCW 36.70B.080(3), the appeal body/officer may remand the decision to the hearing body for additional information.


B. F. Open Record Appeal Hearings. An open record appeal hearing shall be conducted in the manner set forth in chapter 19.05 GHMC.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor
this 25th day of March, 2002.

CITY OF GIG HARBOR


GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: Molly M. Jowslee
MOLLY FOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 2/7/02
PASSED BY THE CITY COUNCIL: 3/25/02
PUBLISHED: 4/3/02
EFFECTIVE DATE: 4/8/02
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