



CITY OF BAINBRIDGE ISLAND
DESIGN REVIEW BOARD
Regularly Scheduled Meeting Minutes
Monday, September 21, 2015 at 2:00 p.m.
City Council Conference Room
280 Madison Ave N
Bainbridge Island, Washington 98110

Call to Order (Attendance, Agenda, Ethics)

Approval of Minutes – September 21, 2015 Meeting

Discussion with City Attorney: Public Records / Public Meetings - Lisa Marshall (City Attorney)

Board Discussion of the Ericksen Avenue Design Guidelines - Piper and Jon Thornburg (Guest Speakers)

Board Discussion on Enhancing Design Review Board Processes and Interfacing

with Other Committees

Old and New Business

Adjournment

Call to Order (Attendance, Agenda, Ethics)

Chair Alan Grainger called the meeting to order at 2:13 PM. Other Design Review Board (DRB) members present were Chuck Depew and Jim McNett. Peter Perry arrived later and Susan Bergman was absent. City Staff in attendance were City Attorney Lisa Marshall, Planning Manager Joshua Machen and Administrative Specialist Nan Gladstein who monitored recording. Administrative Specialist Jane Rasely was not in attendance but prepared the minutes from the recording. Mr. Grainger disclosed that he had a business relationship with guest Jon Thornburgh's mother and Mr. McNett stated that he has had previous discussions with Jon Thornburgh regarding historic preservation.

Approval of Minutes – September 21, 2015 Meeting

Minutes were approved unanimously.

Discussion with City Attorney: Public Records / Public Meetings - Lisa Marshall (City Attorney)

Ms. Marshall gave a presentation regarding the Public Open Meetings Act (see attached copy of presentation) highlighting e-mail discussions and which topics were okay to e-mail as a quorum (i.e., attendance, running late or proposed topics of discussion for meetings, etc.) and when it was not okay to e-mail the entire DRB (i.e., project review). She also defined the difference between a "regular" meeting and a "special" meeting. Mr. Grainger asked whether a project's developer(s) could be excluded from the DRB's review of their project with the assigned Planner. Ms. Marshall stated the developer(s) did not have to miss that portion of the meeting and if they wanted to stay, they would be within their legal rights to do so.

Ms. Marshall continued her presentation with information about Washington State's Public Records Act. She stated this law had a very broad reach and cautioned the DRB to use ONLY their COBI Committee e-mail addresses. The DRB members did not have any questions. Mr. Schmid asked about a citizen speaking to a City

Council member one on one. Ms. Marshall stated that as long as their conversation was not about a quasi-judicial matter, it would be possible to speak one on one.

Board Discussion of the Ericksen Avenue Design Guidelines - Piper and Jon Thornburgh (Guest Speakers)

Jon and Piper Thornburgh, Bill Ransom, Deb Fenwick (Ericksen Avenue Property Owners) and David Williams from the Historic Preservation Commission were introduced before Mr. Thornburgh began his presentation (see attached copy). He distributed a copy of the current Ericksen Avenue Guidelines Overlay to the DRB. He outlined his concern that it was more difficult to preserve and maintain the historic buildings than take them down. He felt the overarching principle was not very supported by the actual guidelines. Discussion continued with a real life example presented in the form of a future project Mr. and Ms. Thornburgh were considering. The DRB and Mr. Machen weighed in on the process for changing the Ericksen Avenue Guidelines with the overall consensus being there was not enough strength to the argument for changing them. There was general concern about owner turnover where the new owners may not be interested in keeping the historical nature/feel of Ericksen and perhaps there need to be incentives to retain the older building. Mr. Williams questioned the 30 foot setback and what its purpose was. Mr. Machen stated it may have come from the 30% view requirement from the 1996 Shoreline Master Program. Conversation also canvassed the idea of the DRB recommending a Variance Permit for a project that meets the spirit of the guidelines without meeting the technical aspects of the guidelines. The words "should" and "shall" were debated. Ms. Thornburgh mentioned that Mayor Blair advised them to come to the Historic Preservation Commission (HPC) and DRB as a starting point to changing the word "shall" in the Ericksen Avenue Guidelines to "should."

Board Discussion on Enhancing Design Review Board Processes and Interfacing with Other Committees

Mr. Depew gave a recap of previous discussions regarding overlap of Citizen Commission work (i.e., have Historic Preservation Commission look over project documents and share their perspective). He presented a draft letter to City Council. Mr. Grainger recommended the letter be addressed to Kathy Cook. Everyone agreed. It was decided that Mr. Depew would re-draft the letter and address it to Kathy and that he would ask to discuss the contents of the letter at one of the next two DRB meetings.

Old and New Business

None.

Adjournment

Meeting was adjourned at 4:30 PM.

Approved by:


Alan Grainger, Chair


Jane Rasely, Administrative Specialist

THE OPEN PUBLIC MEETINGS ACT



City of Bainbridge Island

What Groups are Covered?

- “Governing body”... the multimember board, commission, committee, council, or other policy or rule-making body of a public agency....
- Applies to committees, commissions, and boards which conducts hearings, takes testimony, or public comment..
- The municipal code requires that all committee, commission and board meetings be open to the public - BIMC 2.34.040

What is a “Meeting”?

- “Meeting” means the gathering of a quorum at which “action” is taken.
- “Action” means the transaction of official business of a public agency.
- “Action” includes deliberations, discussions, as well as “final actions.”
- Purely social gatherings, travel, etc., not included IF city business is not discussed.
- Be careful of virtual meetings by email.

“Regular” Meetings

- A “Regular” meeting is one that is held according to a schedule adopted by ordinance, resolution, order, or rule.
- NEW!!! Regular meeting agendas must be made available online at least 24 hours in advance of the meeting. Doesn’t apply if the governing body doesn’t have a website or has fewer than 10 full-time employees.
- The governing body can conduct any business at a regular meeting.

“Special” Meetings

- A “Special” meeting is any meeting that is not a regular meeting.
- Notice of time, place, business is required:
 - ❖ To members of the governing body (unless waived)
 - ❖ To news organizations who have filed written requests
- Final action is allowed only on items listed in the notice.

“Executive Sessions”

Allowable Subjects

- Matters of national security
- Terms of real estate deals
- Reviewing complaints/charges against a public official or employee
- Evaluating applicants for public employment and reviewing performance of employees
- Legal advice on pending, potential litigation and legal risks

“Executive Sessions”

Process

- Must announce the purpose.
- Must announce the time it will end.
- May exclude any person not needed for the purpose.
- No final action may be taken in executive session.

Exempt Meetings

- Deliberations on “quasi-judicial” matters (such as disciplinary appeals.)
- Collective bargaining strategies.
- No notice or other restrictions for exempt gatherings.

Things to “Take Away”

- The City Council is a “governing body.”
- Business discussions, even emails, can be “meetings” governed by the law.
- Particular notice needed for special meetings.
- Executive sessions: limited purposes, no final actions.
- Deliberations on appeals are exempt.

OVERVIEW
OF THE
PUBLIC RECORDS ACT
RCW 42.56

City of Bainbridge Island

Public Records Act (PRA)

- Adopted by voters in 1972 as part of the “Public Disclosure Act.”
- In 2006 the public records parts were separated from the campaign/lobbying disclosure parts and moved to RCW 42.56 and renamed the “Public Records Act.”
- The Act is often still referred to as “Washington Public Disclosure Act” or “State Freedom of Information Act.”

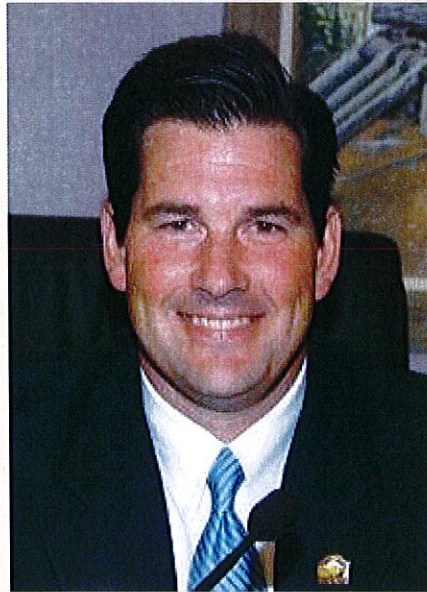
The Law Favors Disclosure

- If not specifically exempt, records get disclosed.
- Courts have narrowly defined the exemptions and construed the Act in favor of disclosure.
- *“Courts shall take into account the policy of this [Act] that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.”* RCW 42.56.550(3).

Why do we have the PRA?

“The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” *RCW 42.56.030*

First, a “cautionary tale...”



Obtained by Puyallup Herald, published widely in August 2010

From: Matt Richardson [mailto:mrichardson@ci.sumner.wa.us]

Sent: Friday, May 02, 2008 3:34 PM

To: ***** *****

Subject: RE: Hey there

Tuesday after 6 would be best, and yes this is secure. And no it's all blown over now. Things are not very good on that end though, very lonely in some ways. So, although this is city email and is subject to open records requests for abuse of city equipment or campaigning from city e-mail, conversations about business are good here. Personal things like meeting me at the Seattle Westin room 1708 on May 10 at 3, could be broken down to SWR1708-5/10-3 lol

I would change your passwords tonight to something really strange, just in case.

Talk to you next week,

M

PS delete this message :)

What is a Public Record?

- a “writing”
- relating to the “conduct of government”
- “prepared, owned, used or retained” by an agency

“Relating to Conduct of Government”

- In the end, almost all City records will relate to the conduct of government.
- A **personal** record on a City computer may not relate to government, but the existence of the document may be a public record. (e.g., purely personal e-mail sent from City computer or City email account)

“Relating to Conduct of Government”

- E-mails discussing City business sent from private computers and private email addresses constitute public records
- Phone logs, text messages, and emails concerning City business sent from your **personal cell phone** constitute public records
 - Nissen v. Pierce County, No. 44852-1-II, September 4, 2014:
County Prosecuting Attorney failed to produce phone logs and text messages sent from his personal cell phone.

Why use the City email address provided to you?

first.last@cobicommittee.email

- Saves you time:
 - When responding to a PDA request, your city-related emails are in one place and you don't have to rummage through your personal email account to find them

Why use the City email address provided to you? first.last@cobicommittee.email

- Complies with legally-mandated retention schedules.
- Retention schedules differ depending upon subject-matter. If personal email is used, you will have to comply by keeping the email for the designated length of time. Tedious. Onerous.
- If you have emails concerning City business in your personal email account, forward them to your City email address. You won't then have to worry about the appropriate retention schedule.

Why use the City email address ? first.last@cobicommittee.email

- Records retention schedules are located in
 - RCW 40.14
 - WAC 434-630
 - WAC 464-635
 - WAC 464-635
 - WAC 464-640
 - WAC 464-660
 - WAC 464-662
- Retention is by subject matter/category; the Washington State Archivist's table enumerating the above requirements is 36 pages long.

Why use the City email address provided to you?

first.last@cobicommittee.email

- Protects your privacy:
 - A PRA lawsuit filed in superior court will result in an order to produce City business-related emails sent from your private e-mail address. Failure to provide the ordered emails will result in a court order to produce your hard drive. The court will then review all personal emails to locate the City business-related emails.
 - Deleted emails can be found using forensic e-mail analysis.

“Prepared, Owned, Used, Retained”

A document may be a public record *even if not in the City's hands.*

Examples:

- The City reviews technical specifications for a public works project. The document is a public record even if retained by the private consultant.
- An employee works on City business at home. A document prepared on home computer is a public record.

“Writing”

“Handwriting, typewriting, printing, photostatting, photographing, and every other means of recording any form of communication or representation.”

Examples:

Papers, emails, maps, data tapes, photos, videos, discs, sound recordings, etc.

Is this a public record?

Date: Thu, 29 Nov 2007 22:51:57 -0700
From: ED HANSEN
To: "Emmert, Mark" <pres@u.washington.edu>,

Subject: conditional pledges of law school scholarship funding.

Dr. Emmert,

I have written two lengthy email letters to you in the last month expressing my disappointment regarding UW football coach Tyrone Willingham and athletic director Todd Turner. I know you are very busy as the President of the University of Washington and suspect that you have received hundreds if not thousands of letters discussing these subjects. Thus, I understand your failure to acknowledge or respond to either of my letters.

Assuming you have not read my letters, either because they were too lengthy or you were too busy, I will make this letter shorter and to the point. I hope someone on your staff will bring it to your attention.

Published by Seattle Times, and many others, January 2008

What about this...?

February, 2011

twitter

Login Join Twitter!

15 hours in Council today very hard hitting day and the usual collection of retards in public gallery spoiling it for real people.

about 13 hours ago via Twitter for BlackBerry®

Retweeted by 1 person



Johnfareham

John Fareham

Basic Equation

- Almost everything is a “public record”

AND

- All public records get disclosed unless exempt

Types of Exemptions*

- Personal info that would violate a right of privacy
- Active law enforcement investigative records
- Applications for public employment
- Valuable formulae and research data
- Preliminary drafts, recommendations, and intra-agency memos in which opinions are expressed
- Attorney work-product
- “Other Statutes”
- And dozens of very narrow exemptions, like:
 - Ginseng production records
 - Location of archeological sites

***without details**

So, this means...



- Work-related “writings” are *probably* Public Records
- Most Public Records get disclosed therefore:
- Don’t write things you wouldn’t want to see on the front page of the paper
(sometimes a visit or phone call would be better)

A few words about process...

Public Records Officer

- Agencies must appoint a public records officer whose responsibility is to serve as a point of contact for the public.
- Our Public Records Officer (PRO) is Christine Brown.
- Records requests should go to the PRO.
- Records are collected, redacted, and disclosed there – although many other people work on collecting and reviewing those records.

Forms of Request

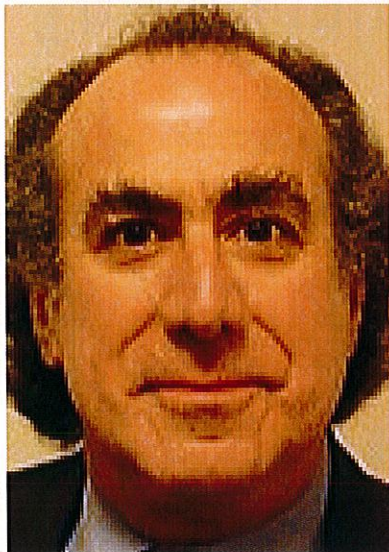
- The law does not require a particular format for requests.
- Requests can be made verbally, in writing, via e-mail, or fax.
- When an oral request is made, it should be turned into writing and verified.

Fine Points of Responses

- Negotiating a narrowed request
- Installments
- Redactions
- Explanations and Privilege logs
- Charges for copies

Fees, Costs, and Penalties

- If a requester wins a legal action against the City, the requester may be awarded **attorney's fees, costs, and penalties**.
- Daily penalties for improper withholding or denial



The Seattle Times

**Court lowers King
County disclosure
penalty to \$371,000**

-March 25, 2010

PRA Training Requirements, Effective July 1, 2014

- Every local elected official and every local government PRO must receive records training;
- This training must be completed no later than 90 days after these elected officials and PROs take their oath of office or assume their duties. They must also receive “refresher” training at intervals of no more than four years.

Retention of Records

- Destruction of public records is governed by lengthy “retention schedules”
- But One Thing is Clear: Once a public records request is made for a record, the document may not be destroyed.

If you forget everything else, remember the following:

- **Assume every kind of record may get disclosed**
 - Accidentally
 - By law
- **Use City email account, not personal email account for City business.**
- **Give some thought before creating a record**
 - Could it be better handled in person or on the phone?
 - How will it read to an outsider? In the paper?
- **When you're asked to search for records, be diligent the first time**
- **Don't destroy records after they are requested**

Ericksen Avenue Guideline Notes

The Ericksen Avenue Overlay District Guidelines provide important guidance in preserving the street but there are conflicts created between intent and the specific guidelines themselves. Examples of these are listed below.

Because each property and project is different flexibility is needed for Planning, the HPC and the DRB by allowing the projects to be reviewed on a case by case basis allows for the intent to be met.

SD1: Additions to existing structures shall be located to the rear...

In some cases adding on to the rear of the structure may not be the best option.

SD3: Reinforce the historic pattern of development by retaining open-air view corridors from Ericksen Avenue through to the Winslow Ravine:

This creates non conforming properties: 11 of the 18 properties are non-conforming when structures are considered. Most are non-conforming when trees, fences and mature landscaping are included. By creating non-conforming buildings it limits owner's ability to restore or replace the structures in the event of a loss.

Since the majority of the existing historic buildings do not conform to this pattern - It also limits the ability to replicate historic patterns of building placement.

SD4: Buildings shall be set back from the front property line in accordance with the zoning ordinance...

In some cases this creates additional nonconformity because existing historic building are set back too far from the street.

SD5: Landscaped Front Yards: ...

Encourage significant trees and mature landscaping to be saved where possible/feasible. Mature trees and landscaping contribute as much to the feeling of the street as the buildings.

BD2: Pitched Roofs: Roof pitches on main roofs shall have at least 8:12 and no more than 12:12.

In some cases existing historic building do not have a roof pitch as steep as 8:12.

The Overlay does not address that most of the historic buildings are non - conforming. Recognition of this and providing an flexibility for property owners who wish to rebuild, restore or remodel would make it much easier to retain the structures.

Preserving Erickson Avenue's Look, Feel and Historic Buildings

ENGAGEMENT

1. Develop an outreach plan that encourages the Historic Preservation Commission to develop a positive working relationship with the property owners of historic buildings. Invest time and energy up front to give the Historic Preservation Commission an opportunity to make owners aware of the value the community places on these buildings and potential advantages of owning historical buildings.

2. Building these relationships gives the Preservation Commission a chance to get to know the properties as well as their owners and develop an appreciation for the following realities facing property owners with historic structures.

a. Maintaining old structures is time consuming, expensive and many are not in good condition.

b. The buildings are generally small and have a relatively limited amount of rentable space. Most are no longer at the best and highest use for the property, so it is typically not a lucrative real estate investment for the current owner from a cash flow standpoint.

c. Most of the historic buildings are non-compliant with many aspects of the current zoning and building code. This covers everything from site placement, set backs, proximity to critical areas, storm water management, ADA accommodations and building structure.

d. Renovations and modifications are challenging because working on old buildings is often more difficult and expensive. Even needed repairs and changes can require some or all of the building and/or site to be brought up to current building code.

e. Many owners along Ericksen Avenue have owned their property for years and it is likely a large part of their nest egg. So while the historic nature is important to many, maximizing the value upon a sale may prove more compelling. This is even truer when a sale of the property is required to settle the estate.

f. Without the historic building designation there are no property tax breaks. The designation is difficult for owners who use their property for commercial purposes because it adds additional time, effort and expense to making modifications. Most property owners view the historic designation as something to avoid rather than as an asset.

These factors along with Ericksen Avenue's proximity to downtown Winslow and the ferry make it certain that in time that the historic structures will disappear if the entire burden for maintaining the historic buildings is placed on the property owners.

SOLUTIONS

If the community and the Historic Preservation Commission and Design Review Board deem Ericksen Avenue's look, feel and historical properties worth preserving the following approaches could result in the desired outcome of saving the historic structures and encouraging compatible redevelopment.

Update Ericksen Avenue Guidelines and Zoning

- Revisit and update the Ericksen Overlay Guidelines and zoning for Ericksen and to make sure intent/goals and requirements are synchronized. Many of the existing historic building elements (building scale, height and placement on lot) seen on Ericksen are exactly the elements worth preserving and encouraging in redevelopment. Since there are relatively few historic properties remaining, the goal should be to have zoning requirements and guidelines in place that easily make any rework or redevelopment capture, maintain and enhance the historic feel of the street.

Historic Designation

- Create an exemption to eliminate the non-conformity of historic buildings. The current zoning and code has made most of the historic buildings non-conforming. Most of the structures cannot be reconstructed or expanded as they are or placed in the same locations on the property if they were lost. Institute flexibility in the code and zoning to account for the unique situations that exist with current buildings and their placement on the property. Provide flexibility for renovations, modifications, and needed upgrades to historic structures so that they are not required to bring the entire building or site into compliance with the current building code. Empower planning and engineering with the flexibility to address and remove obstacles.

Create Incentives & Provide an Avenue to Address Obstacles

- Incentivize historic property owners through expedited permitting. Reduce or eliminate permitting connection and impact fees for historic property owners to keep and maintain their buildings. Since there are very few buildings that would be the impact to the city would be minimal.
- Develop a secondary tier designation for historic structures within BIMC 18:24 that has less stringent criteria that acknowledge the realities of working on historic structures and offer increased flexibility. This would provide incentives and benefits that encourage owners of "register eligible" property to participate.
- Address projects as a team – with the Planning Department, Historic Preservation Commission, Design Review Board and Applicant looking at each project on a case-by-case basis to insure the overarching principals of the Ericksen Avenue Design Guidelines are met and obstacles can be identified and addressed. Consider use on a case-by-case basis.

Long Term Approach

- Work with community members to develop a historic land trust type entity to purchase historically significant properties so the properties are preserved and maintained in perpetuity.
- Study how other communities have successfully addressed historic preservation and consider adopting successful approaches.