

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure  
PUBLIC COMMENT – Accept public comment on off agenda items  
ORDINANCE 2016-15 HISTORIC PRESERVATION PROGRAM – Public Hearing  
PUBLIC COMMENT ON COMPREHENSIVE PLAN UPDATE  
2016 COMPREHENSIVE PLAN UPDATE – Study Session on Water Resources Element  
PUBLIC COMMENT ON COMPREHENSIVE PLAN UPDATE  
GENERAL LTD. SHORELINE MASTER PROGRAM AMENDMENT – Study Session  
NEW/OLD BUSINESS  
ADJOURN

---

**CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure**

Chair Mack Pearl called the meeting to order at 6:03 PM. Commissioners in attendance were Michael Lewars, Maradel Gale, Jon Quitslund, William Chester and Michael Killion. Lisa Macchio was absent and excused. City Staff present were Planning Director Gary Christensen, Senior City Planners Heather Wright and Christy Carr, Water Resource Specialist Cami Apfelbeck and City Consultant Joseph Tovar.

The agenda was reviewed and there were not any conflicts disclosed.

**PUBLIC COMMENT – Accept public comment on off agenda items**

**Charles Schmid, Citizen** – Requested that it be easier to find the present Comprehensive Plan on the website saying there were too many steps to go through to actually find the current plan, NOT the drafts being worked on now.

**ORDINANCE 2016-15 HISTORIC PRESERVATION PROGRAM – Public Hearing**

Senior City Planner Heather Wright gave an overview of the process the Historic Preservation Ordinance had gone through to arrive at this public hearing including response to Planning Commission and citizen comments. Ms. Wright also mentioned the Commissioners had received three different pieces of public comment today, which all the Commissioners had received copies of before the start of the meeting.

Chair Pearl asked Ms. Wright to outline the differences between the previous historic register process and the proposed process. Commissioner Lewars asked about the difference between “register eligible” (house is on this due to its age) and actually being “on” the historic register (the owner must apply for and agree to be on the historic register). She stated the main difference is that owners of register eligible homes would have to engage in a discussion with the Historic Preservation Commission before making changes whereas the owner of a home on the historic register would be obligated to meet certain requirements before making changes to the home.

Ms. Wright mentioned the City had received a State grant to create a list of register eligible properties. Commissioner Lewars asked for more clarity of the impositions for a property on the register eligible list. Commissioners Pearl and Gale felt they should go with Option A which was inclusive of all buildings. Commissioner Pearl asked that buildings in the core district would be eligible to become a home again even though City Code did not currently allow that.

The Public Hearing was opened at 6:29 PM. Public comment has been transcribed verbatim.

**Ellen Lockert, Citizen and Representative for Nina Jackson** – See attached written testimony which Ms. Lockert read.

**Nancy Sheldon, Citizen** – “On the registry, I am opposed to automatically having the right to classify my house as a heritage home without my consent.”

**Bruce Brunton, Citizen** – “Good evening. My wife, Peggy, and I live at 9675 Battle Point Drive. We own some mixed-use property in lower Ericksen. My last comment tonight, I’ll give you first: I think, after the hearing you have tonight, I hope you leave the record open because there is a lot more discussion to be had and a lot of your own really right points that need to be filled out and discussed further. This Ordinance comes nose to nose with private property rights and preservation ambitions exceed legal authority, in my opinion. This Ordinance is very complicated and I’m impressed with the number of you that have apparently read the Ordinance back and forth because it is complicated. There are a lot of hidden problems in there and the affected public has very little understanding or knowledge of its impact. We don’t even know how many people in the public can be or will be affected by it until the lists start going together. I think your obligation is to publicize and explain this Ordinance and again, it is really complicated. The scheme in this Ordinance is to create property lists. Categories put on lists without knowledge or consent of the owner. That’s the problem I have as a property owner. There’s what they call the basic list and that switches the theory notebook in the Planning Department starting to build up over a number of years and they’re going to grandfather that and then they add on these other lists. I don’t want as a property owner, to be put on any list without knowledge or my consent. I don’t want to find out about it later and then have a problem with administration of bureaucracy that I didn’t know was there. Because once on the list, you’re in the mix. When I read the Ordinance, it doesn’t matter even if you’re just on the Eligible List, you’re in the mix and you have to deal with the City and that’s not right. It’s up to this time, I think the Historic Preservation Program has been voluntary. Now apparently the Historic Preservation Commission business hasn’t been good enough so they have to look for other ways to get more properties on the list. I don’t blame them, but I don’t want to be one of them unless I have knowledge ahead of time and consent. There’s one thing in the Ordinance that really bothers me and that is in a lot of these categories, the owner has to endure (Chair Pearl let Mr. Brunton know his time was just about up). You guys have been working on this Ordinance for a couple of years and it’s been undercover, hard to find, hard to participate in until now. And so, I

think I deserve more than three minutes to talk about this if you'll bear with me. If not, then we'll take the next step." Mr. Brunton then asked for and received someone else's three minutes. "The other problem as a property owner is that if I am put on the list, I'm involved then. I have to defend my own property to avoid or defer review and that's the wrong burden of proof and that's backwards. You need to start the other way and convince property owners of the benefit of this and provide some incentives or approach it that way. If my property is put on a list of any kind downtown, people who are interested in financing, buying or remodeling my property, are going to go down to City Hall, check as they should and they're a lot of things already, when you're on the list, that will affect your ability to sell or borrow or improve or use your property. Basically, entry of this program should be voluntary by the property owner and that's the first thing I think you need to do. This again, is a very complicated Ordinance. Somebody in this process referred to this Ordinance as being innocuous. Further from the truth. It is really complicated and has some hidden things in it. So I'm asking you to hold the record open, apply some resources to go out to the public so they know specifics and understand what's in here and not just a public meeting without having any Ordinance to look at without having someone to explain to the guy on the street what's in it. Thank you very much. Incidentally, I have a letter I squeezed out of Dennis Reynolds today too. I'd like to leave copies of it for you." (See attached.) Chair Pearl stated they already had it in front of them.

**Piper Thornburgh, Citizen** – "Good evening, my name is Piper Thornburgh. We own two of the historic properties, three buildings, over on lower Ericksen. I wanted to first mirror some of the comments about the process that I'm concerned about. This is an issue that my husband and I became aware of, went to the open house in February. That was the first we gained knowledge that this was in action. We went to the open house, we received very limited information from the City that were handouts that night. It wasn't until closer to the April 28<sup>th</sup> meeting, I believe the study session that you had, that we actually saw a draft of the Ordinance. I've gone through that draft and I've made notes on it and looked at it with green sticky notes and then apparently, there were some revisions and then I received THIS draft which is the latest draft and I made that with yellow sticky notes trying to compare the two and see where there were changes. And I did listen very carefully at the April meeting trying to discern what some of the concerns were of the Commission. I don't feel that specifically the criteria were addressed sufficiently by the City in making the changes. The criteria are still very vague and open as to what would apply for heritage properties. Let me shift back, I wanted to address something about this conversation that's been going on here about this being a dialogue and just a conversation that's triggered by being on the Register Eligible. It is NOT just a dialogue, it's under 18.24.060.a.1. It states very plainly 'the applicant shall prepare a report for the Commission analyzing the following alternates.' And it gives a list A-H of things that will require of the applicant to spend money to in fact create this report that then is given to the HPC so we can engage in this conversation. These are not inexpensive items and I just will talk about cost shifting there. Also, I do like the idea of having the HPC be the one who takes the photographs to record this. That's something I've recommended to the Historic Preservation Commission members I've had an opportunity to

meet with. I do have a letter that I would like to submit to the Commission tonight for review and I also would ask that the record be left open. I do go through Register Eligible. I am concerned about the 45 day limit. It is unclear to me. It also triggers a 21 day limit after the 45 day limit for the public process that is triggered under this. Furthermore, there are rules for review that are referring to the Federal register and the Federal record, outside of anything in Bainbridge Island, and I will cite you to that, in terms of Heritage Properties and also Register Eligible, this goes to owner's consent. That is the biggest problem. This is not a voluntary process for either of those and you moved the goalpost for those who are already on the Local Register. There are many new provisions here that change the rules for the people who are already on the Local Register. I'll submit my written comments and if those could be given to the Commission and made part of the record and I am asking for the record to be left open." (See attached written comments.)

**Charles Schmid, Citizen** – "I don't know if citizens can have a conflict of interest, but I have a house that's 100 years old this year. I agree that we should look through Section A. There's a whole bunch of things here that I'm going to skip most of them to get within my three minutes. On page 3, The director may waive and modify standards including lot coverage, buffers and so on. I think this should also go to the Historic Preservation Commission to at least comment on these changes to make sure they fall within what their goals are to preserve the historical nature of things. Page 8, skip that; page 11, that's just a clarification. The review process: there are Item 5 and Item 6. One has Commission AND Director's decision and the other is Commission OR the Director's determination. So it's just a question of why those aren't in parallel. Most of these are questions to go over. I think it won't be hard to do. Item 14: "The Commission shall submit to the Planning Director," I would like to add "comments on the rank and substance of Items 1A through 1H to say what they are supposed to submit just like the Design Review Board goes through a whole bunch of steps now to make sure that's quantified. My personal opinion is you should not list all these mitigation measures. I think that's just going to make the decision process jump to the mitigation measures and you should actually just say there are mitigation measures and you really don't have to say what they all are because the HPC is smart enough they don't have to see a list. I think it channels thoughts in both the decision process and also the other things. I think the other things are minor. I'd like to thank the members of the Historic Preservation Committee for their work to improve the ability of the Island to save special history we all enjoy. When we think of this Island it has a lot of historical facts that make it different than other communities. Also, I'd like to see incentives because there is this problem of what these requirements you are putting on property owners and they should be getting some incentive, something back for their participation in this project. Thank you."

**Eric Fredericks, Citizen** – "I just had a question as a property owner of the Ambrose Grow House along with a couple of other people that are co-owners with me. I would like to know if that is on the current register of historical (that's why I called you earlier, Heather, and you were kind enough to call me back but I missed the answer to that question) and the second question to

go along with that is what are the incentives.” Ms. Wright confirmed the Ambrose Grow House was not on the register. She also outlined tax incentives and a discount card from certain local vendors if your property was currently on the register.

**Kelly Muldrow, Citizen** – “I’ll try to be quick because I think I gave some of my time to Bruce. I am a commercial broker with Windermere here on Bainbridge. Thanks for the opportunity to speak. I’m here specifically to speak on the effect of historic nature or any sort of being on a register and its effect on the value of the property. I appreciate protecting the Island’s special character, I really do. I’d much rather see a seven-unit apartment project downtown than seven new septic fields on a strawberry farm somewhere. But the problem I see is that saving historic properties in Winslow might preserve old buildings for a while but it definitely has a monstrous negative financial impact on property owners. I’ve worked with at least three property owners in the past few years that have been unable to sell their properties in large part due to the restrictions of having to deal with the uncertain future of a historic property. These owners’ financial future depends on their ability to sell but they can’t and adding restrictions practically decimates the pool of willing buyers for these properties. We talk a lot about smart growth in this community and sometimes, smart growth means replacing something old with something new. I love my 83 Volkswagen Westfalia but there came a time when it cost too much to operate and maintain. It stopped working the right way it was supposed to, it wasn’t a fit for me and my family and it just wasn’t safe. Restrictions on historic properties zoned for commercial use impedes smart growth where we need it most, in Winslow. And maybe it is nice to see that 100 year old home on Ericksen or Madison when we drive by, but the owners can’t sell it for what the HPC wants it to be because the demand for inefficient, expensive to maintain and in some cases, barely tenable historic properties, is practically non-existent. The law of supply and demand which is a law, it’s not suggestions about supply and demand, it’s not good ideas about supply and demand, say that it’s very simple: when you reduce the demand for a thing, you reduce its value. And for the owner of a historic property in a commercial zone, you are significantly reducing the value of their financial future. Thank you.”

**John Eisenhower, Citizen** – “I’m managing partner of Madison Avenue Real Estate. We own the Pavilion, the former Four Swallows property and the car wash above it. Specifically speaking to the potential nightmare represented by the former Four Swallows building that has ill-conceived additions that are more than 50 years old. For two years we have tried desperately to find a financially viable restaurant to occupy a space but to bring that back up to a reasonable code, we’d need the words “financially reasonable and feasible” somewhere in this because even though one of the reasons we haven’t made any efforts to do anything with that building is that we value its historic charm. That doesn’t mean we can afford to keep it there forever. This is the next point, a 50-year old building now is going to be 60 years old in 10 years and without having financially reasonable and feasible language in here someplace, there comes a point when we have to take the Westfalia and tow it away. So I do agree with that. Other issues of concern you’ve talked about but I want to reiterate: The notion of being register eligible and local

register is kind of moot throughout this document because as soon as you get to the part where I want to demolish it or modify it, it refers to both equally so it wouldn't matter if I'd consented if you decided that it's eligible, I'm subject to exactly the same conditions so please reconsider that. Second, along with that heritage language and local register language is not consistent with each other in that heritage does not require my consent. I would encourage you to be homogenous throughout the document and involve the property owner in the conversation. Again, there is subjective not objective language in here that comes down to an opinion; do you think it's significant, do you think it's contributing and you're not asking the owners opinion of that, you are forming an opinion and then the appeals process goes back to the same people who made that opinion in the first place. So if there isn't an external appeal process that has a third party that says that wasn't an objective answer, then that's very difficult for me to figure out what I'm supposed to do about that other than simply be saddled with a building I can't sell or maintain. Thanks for your time. I'd be delighted to have a longer conversation with anybody who wants one. Thanks."

**Nina Jackson, Citizen** – "Good Evening. I own a property that's an old building. It's older than I am, so you know it's old. It's down on Madison and I'm here this evening to put a face to a lot of property owners that are my age and older that have been on this island as long as I have, maybe even been born here. I've only been here 33 years. They're people living in homes that they've paid for, they've paid taxes on, they've raised families but now it's time. They need the money for a retirement home and if these folks live in a building that is 50 years or over and they're having trouble selling it because of restrictions and without their consent, these folks aren't going to have enough money to go into retirement or assisted living. I've done a lot of work with the elderly. I'm an advocate of the elderly and the disabled and I hate to see any older person that might be older than I am that's having mentation problems being forced into something that is not going to be feasible for them going forward. So please think of the faces and the people that are living in homes that they've paid for, lived in, paid taxes on that can really be the losers here. Thank you."

Chair Pearl felt they should leave the public hearing open and Commissioner Quitslund stated they needed another study session. Commissioner Lewars agreed to leave the public hearing open but was concerned that the process would get bogged down so he felt it should be left open to their next meeting and then closed out. Commissioner Killion thought there needed to be some more study and that it would be good to find out whether other cities had problems with property value for properties on historic registers. Commissioner Quitslund asked to meet with the Historic Preservation Commission to talk through some of the ways to bring more clarity into the wording of the ordinance. Commissioner Chester asked how a building that started as a residence but was now a commercial building would be affected.

#### **PUBLIC COMMENT ON COMPREHENSIVE PLAN UPDATE**

None.

### **2016 COMPREHENSIVE PLAN UPDATE**

Discussion of the revised History Section of the Introduction was begun with Commissioners questioning the length and flow of the proposed history. Mr. Tovar suggested the document be sent back to the HPC who would work with Mr. Christensen and Ms. Wright to tighten up and organize the document.

Mr. Tovar presented the focus of the night's review of Comprehensive Plan Elements stating they would be looking at editing changes. Commissioner Gale felt the Land Use Element was ready for moving forward other than one small editorial change. Commissioner Quitslund thought the Transfer of Development Rights should be a priority.

Minor editorial changes in the Housing Element were made with Chair Pearl asking for square footage limits but Commissioner Gale feeling that was to be determined in the regulations and should not be included in the policy. Commissioner Chester agreed it should not be included.

Commissioner Quitslund's edits of the Economic Element were reviewed with conversation around the need for business opportunities and vitality and removing redundant phrases. Review of Commissioner Killion's rewrite of the Economic Element Vision occurred. The Vision Statement was referred over to the Drafting Committee for further review and revision.

Commissioners provided editing comments for the Water Resources Element with Commissioner Quitslund asking Ms. Apfelbeck to consider Robert Dashiell's public comment received that afternoon. Commissioner Killion felt it was important to continue the salt water intrusion modeling. Ms. Apfelbeck confirmed there were follow-up actions to any well that had salt water intrusion.

### **PUBLIC COMMENT ON COMPREHENSIVE PLAN UPDATE**

**Charles Schmid, Citizen** – Spoke about the law of marketing and how you could look at the newspaper and see exactly one of the driving forces on this island and that's all the ads for houses. Mr. Schmid had heard that a small house in Winslow was \$100,000 just for the land. He said that certainly the number of real estate buildings was probably larger than any other business in town. He mentioned he saw construction in the Vision and bet that a lot of the construction workers lived off-island.

### **GENERAL LTD. SHORELINE MASTER PROGRAM AMENDMENT – Study Session**

Senior City Planner Christy Carr provided an overview of the goal of the limited amendment to change language to make the intent of the Shoreline Master Program (SMP) clear and fix errors. She also outlined the two criteria the limited amendment must fit in order to be considered. She described the review process as similar to the Comprehensive Plan process in that certain changes or areas, would be flagged for another look at a later date. Ms. Carr gave examples of

staff implementation to illustrate the types of changes being made. Frustration was expressed by some of the Commissioners on continued overview of the process as opposed to performing actual document review at this time.

### Public Comment

**Mike Juneau, Arborist** – Stated he did 95% of his work on the Island. Mr. Juneau also said they did a lot of consulting for customers answering questions like, “What’s wrong with my tree” as well as risk assessment, hazard trees and a lot of work on the shorelines. He mentioned he had been working along the Bainbridge Island shoreline for 20 years and that he had a pretty good sense of what had been done in the past, what worked and what didn’t work. Mr. Juneau stated he made the commitment last Fall to work within the Code and stated 75-90% of work that was done in buffers, including the shoreline jurisdiction, was out of compliance and it did not seem like a big issue just because it had not been enforced. Mr. Juneau presented a slide show highlighting the type of work his company did (pruning, topping, etc.) everywhere as well as along the shoreline to preserve trees while also preserving water views. He referenced specific regulations in the Shoreline Management Program stating that any cut over 2.99” was a problem and not taking any more than 25% of a hedge of a period of 3 years was too restrictive. He also brought up the critical areas ordinance that trumped the regulations in the SMP. He felt they should be able to control invasive noxious weeds on slopes and right now they were not able to do so. Mr. Juneau was hopeful some of these issues could be resolved before they became a big problem and he felt the main reason people were not upset about this was because of lack of enforcement at this time. People and contractors did not know about at this time.

Commissioner Lewars asked for a specific list of issues from Mr. Juneau.

### NEW/OLD BUSINESS

None.

### ADJOURN

The meeting was adjourned at 8:45 PM.

Approved by:

  
\_\_\_\_\_  
J. Mack Pearl, Chair

  
\_\_\_\_\_  
Jane Rasely, Administrative Specialist





Proposed Historic Planning Commission Ordinance  
Testimony to Planning Commission  
6.23.16

My name is Ellen Lockert. I help Nina Jackson manage her historical building at 219 Madison, currently housing the Madrona School.

We are 33 year Bainbridge Island residents. We love this island and moved here for what it was in 1983: Friendly, rural, authentic and undeveloped. We have built and sold two businesses here that employed scores of island residents. I served on the Arts and Humanities Council. Nina served as a volunteer firefighter/EMT for some years.

We are deeply grateful to members of both the Historic Planning Commission and Planning Commission for making time to hear our concerns and integrate them in this new version of the proposed ordinance. We are especially grateful for the offer of zoning relief for the 219 Madison building if a new owner chooses to register and maintain it as a historical residence rather than mixed use building. Thank you.

Despite the best efforts of Commission and staff to make changes to the proposed ordinance, our original concerns about this ordinance remain.

**REQUIREMENTS AND EXPENSE.** This ordinance will create new requirements and expense for a *vast* new group of Bainbridge homeowners somewhere between the 200 in the current historical register and the 2000 who received the postcard mailing for the public meeting. Or more.

It appears that any home may be vulnerable to these new restrictions either because of age or "exceptional importance" and 12 other broad categories. (18.24.030)

Requirements on property owners could range from delay and expense associated with application to Historical Commission, attorney costs, remediation and/or, requirements to maintain an aging building. It could also limit owner ability to sell the building for highest and best use by discouraging potential buyers.

It appears that decisions about the status of these homes can be decided by a committee of as few as two people. (18.24.020.F.3)

**UNINTENDED CONSEQUENCES.** We believe the burden of these requirements and expense will fall unequally on less affluent, older, long term Bainbridge residents who are counting on these older properties as “nest eggs”. When this is the case, these are owners who can ill afford additional expense. If we are genuinely interested in maintaining an economically diverse population on Bainbridge, we must assure economic well being for older home owners, many of who are already struggling to meet growing tax bills.

**A BETTER PATH.** We encourage the City of Bainbridge Island to:

- Identify successful international models of historical preservation that are based on positive incentives.
- Begin a pro-active outreach to owners of those historical properties already identified outlining their opportunities to preserve, get tax breaks and recognition. Example: zoning change for 219 Madison Building
- Create an awareness campaign to excite and engage new historical building owners to preserve their buildings.
- Work with citizens who are committed to historical preservation to create a Building Trust that would work like a land trust to save significant buildings.

We are in agreement with your desire to preserve historical Bainbridge. But, if we do so at the cost of some of the most vulnerable among us, what have we gained?

Ellen Lockert  
[ealockert@gmail.com](mailto:ealockert@gmail.com)  
206.650.6476



## Dennis D. Reynolds Law Office

200 Winslow Way W. Suite 380 Bainbridge Island, WA 98110

Land Use • Fisheries Law • Environmental Law • Business Law • Indian Law • Real Estate  
206.780.6777 206.780.6865 fax www.ddrlaw.com

June 23, 2016

By Email (pdc@bainbridgewa.gov) Only

City of Bainbridge Island Planning Commission

Mike Lewars, Position 1 (michael.lewars@cobicommittee.email)

Mack Pearl, Chair, Position 2 (mack.pearl@cobicommittee.email)

Maradel Gale, Position 3 (maradel.gale@cobicommittee.email)

Jon Quitslund, Position 4 (jon.quitslund@cobicommittee.email)

William Chester, Position 5 (william.chester@cobicommittee.email)

Lisa Macchio, Position 6 (lisa.macchio@cobicommittee.email)

Michael Killion, Position 7 (michael.killion@cobicommittee.email)

Sarah Blossom, Council Liaison (sblossom@bainbridgewa.gov)

280 Madison Avenue North

Bainbridge Island, WA 98110

Re: Comments on Proposed Historic Preservation Ordinance 2016-15

Dear Planning Commission Members:

My firm represent Bruce and Peggy Brunton. They own mixed-use property within the City of Bainbridge Island. The property is on lower Erickson Avenue. Their property may be affected by the proposed ordinance. My clients are coordinating comment with other affected property owners.

Mr. and Mrs. Brunton want to be clear: they do not oppose historic preservation in general and are willing to consider reasonable regulation.

Their concerns at this point in the process are three: (1) the lack of opportunity to date for the public to meaningfully participate and comment on the proposal; (2) the obligation to consider statutory and constitutional limits on government to regulate private property rights; and (3) needed drafting to make the proposal more understandable, internally consistent and compliant with legal requirements.

The latter will be addressed by other speakers and property owners; the Bruntons set out their comments on (1) and (2), immediately below.

Mr. Brunton will orally provide comment tonight on a related, but slightly separate matter, that is, how the Historic Preservation Commission designates properties on its Inventory of Historic Places, List of Register-Eligible Properties and List of Properties Designated for Listing On Local Register of Historic Places, and how this designation can negatively impact private ownership rights.

**Process.**

An historic preservation ordinance is a development regulation under the Growth Management Act, RCW 36.70A. Thus, its possible adoption invokes the procedural requirements of the Act. These include notice and provision of adequate opportunity of the public to participate and meaningfully comment. See RCW 36.70A.035. I refer the Planning Commission to Resolution No.2014-23(Public Participation Program) for the detailed requirements, responsibilities and obligations.

Mr. Brunton believes there has not been fair opportunity for the public to participate in drafting the proposal nor opportunity to comment on new drafts. He will explain his concerns on this in more detail this evening, as we expect will other speakers.

**Statutory/Constitutional Limitations.**

(1) The Protected Property Right

The term “property” refers to the collection of protected rights inhering in an individual’s relationship to his or her land. *United States v. General Motors Corp.*, 323 U.S. 373, 378, 65 S. Ct. 357, 89 L. Ed. 311 (1945). Among these are the rights to possess, use, exclude others, and dispose of the property. *Id.*; see also *Wash. ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 121 (1928) (One of the defining characteristics of property ownership is the right to make reasonable use of one’s land.). Each of these property rights are protected by the constitution. *Manufactured Hous. Communities of Washington v. State*, 142 Wn.2d 347, 355, 13 P.3d 183 (2000).

For purposes of protection under the Washington State and Federal Constitutions, “[p]roperty in a thing consists not merely in its ownership and possession but also in the unrestricted right of use, enjoyment and disposal.” *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 364, 13 P.3d 183 (2000) (emphasis supplied). Such ownership and development rights constitute a fundamental attribute of property ownership. *Id.* The right to build on one’s property is a fundamental attribute of property ownership and exists without regard to zoning laws, which operate as restrictions on the use of property. *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 833 n.2 (1987) (the “right to build on one’s own property – even though its exercise can be subjected to legitimate permitting requirements – cannot remotely be described as a ‘governmental benefit.’”); *River Park v. City of Highland Park*, 23 F.3d 164, 166 (7th Cir. 1994) (“An owner may build on its land; that is an ordinary element of a property interest.

Zoning classifications are not the measure of the property interest but are legal restrictions on the use of property.”); *Harris v. County of Riverside*, 904 F.2d 497, 503 (9th Cir. 1990) (It is well established that “[t]he right of [an owner] to devote [her] land to any legitimate use is properly within the protection of the Constitution.”) (citations omitted). This concept is

**Jon & Piper Thornburgh  
16021 Euclid Avenue NE  
Bainbridge Island, WA 98110**

City of Bainbridge Island  
Planning Commission  
280 Madison Avenue N  
Bainbridge Island, WA 98110

June 23, 2016

Re: Comments on Proposed Historic Preservation Ordinance 2016-15

Dear Planning Commission Members,

We are submitting our concerns of the proposed ordinance 2016-15 as it creates new requirements of property owners of historic property without sufficient engagement and allows for the register eligible designation to be applied to a property without the consent of the property owner. The ordinance as written empowers the Historic Preservation Commission (HPC) to identify these properties and categorize them as “eligible” on a local register of historic places. This will trigger new requirements affecting an owner’s rights to make changes to their property. Also of concern is the new designation for heritage properties. The ordinance would allow the heritage designation to apply to property without the consent of the owner. Additionally the zoning relief proposed may undermine the goal of historic preservation. The following comments will address these concerns.

Register eligible

Identification of property as “Register- eligible” creates new obligations on the part of owners when his/her property is identified as “Register-eligible” by a non-elected City sponsored committee without the property owner’s consent.

In particular:

- Proposed 18.24.020(E)(7) requires review by HPC.
- Proposed 18.24.050 “*Review Required. No person shall alter, reconstruct, remodel or restore the exterior of a historic or register eligible property without a review by the commission. .... [A]nd register eligible require review and comments from the commission.*”
  - o “(2) (a) *Properties identified as register eligible receive comments from the commission after review of the building permit application. The commission may request the applicant to attend a meeting to discuss the proposal. The building official shall not issue a permit without comments from the commission.*”

It appears from subsection (3) that a 45 day limit applies, but it is not clear in reading (2) what occurs if there are no comments issued as it states: “*The building official shall not*

*issue a permit without comments from the commission*"; there remains no option for the building official to issue a permit in the absence of comments.

This provision is concerning as it places new burdens on the owners of "eligible" property which is chosen by an unelected body, forcing property into a category requiring further review and comment that are not applied to owners of "non-historic" structures, all without the owner's consent. This will delay any contemplated project and ultimately result in more money spent on a project.

- "Rules for review" as proposed at 18.24.050 (A) in stricken paragraph (2) (below (c)) are new and contain reference to standards and guidelines at the federal level that will control the review: "*Reviews shall be based on the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, 48 CFR 44716, as updated and supplemented by the National Park Service, and the Secretary of the Interior's Standards for Rehabilitation, 37 CFR 67, as amended*). This is a concern as the property is being subjected to additional standards and guidelines without having consented to be on the list of historic eligible properties or agreeing to be bound to federal standards on historic preservation".

There does not appear to be a provision for removing a property for "register eligible" status or obtaining a decision from the HPC on whether a property will be considered "register eligible" or not. The ordinance is written from the perspective that owners would want to be considered "register eligible" rather than the perspective that owners may not want to draw into this designation.

#### Heritage Properties and Owner Consent

This designation does not require owner consent as does the local register; while the proposed ordinance does contain two Options, A and B, it does not require owner consent whether it be Option A, that could apply to any property owner of a potential heritage property or to the City, Option B, being publicly owned, the consent language should be included as it is with local register properties. Owners need to provide consent otherwise it risks creating an adversarial situation that will undermine the objective of preservation and could become highly politicized and costly.

#### Lack of Objective Criteria

While the HPC explained to the Planning Commission at the April 28<sup>th</sup> meeting that this will be limited in application and is meant only for buildings of historic significance on the island and the examples were of homes in Port Madison specifically, the Shelton House, Captain Farnum's house, also the various Halls around the island, and Bay Hay & Feed in Rolling Bay, however, the actual criteria listed in Proposed Ord. at 18.24.030 (B) could apply to numerous 50+ year old structures on the island. These criteria were specifically called out at the "study session" and identified as too subjective, making enforcement challenging. I do see there have been two minor changes in (2) language added in criteria that it must be eligible for two of the eligibility criteria for the Local Register of Historic Places, and (3) removed "most" limiting this criteria, but it still leaves significant subjectivity to interpreting this criteria.

The proposed criteria are too broad and subjective presenting the risk that numerous buildings owned by unsuspecting/uninformed citizens could get drawn into this designation, without their consent, which has significant implications. Questions of the criteria in particular:

- How will the commission measure “loss would mean a diminution of the Island’s special character”?
  - o How is diminution measured- it seems any loss would result in a diminution?
  - o What is meant by special?
  - o What is loss? (complete demo, alteration, certain % alteration, affecting % of square footage)?
- How will the HPC interpret: “It must retain its original architectural integrity, having no major exterior alterations or additions.”
  - o How will the HPC measure/determine architectural integrity?
  - o How will the commission measure/quantify “having ‘no major’ exterior alterations or additions”?
- How will the HPC determine whether a structure/building is “a ‘significant contributor’ to its neighborhood’s character”?

#### Will the Ordinance Result in Preserving Historic Structures?

The goal stated at the study session by the HPC was to allow HPC to now have notice of when demolition permits are issued on any structure over 50 years old, so that they may review, with the hope to engage the property owner in advance of the demolition to advise of the incentives available and in cases of an historically significant structure to perhaps avoid the demolition. It seems the burden should be shouldered by the HPC or the City to engage with property owners before demolition permits are requested rather than shifting the burden to property owners to be required to participate in a longer, more involved and costly review process as set out in the proposed ordinance with the further possibility of expensive mitigation measures and perhaps ultimate denial of a permit. The additions contained in this proposed ordinance will create yet more hoops for owners to jump through as they consider the best use of their property. It is not fair for the City to require property owners to maintain a museum like structure, or provide excessive and costly justification for changes, for the perceived benefit of the community.

The approach to preservation that places the full burden of preservation on the property owner is not an effective method to ensure that important historical properties valued by the community are preserved. While property owners may feel the historic nature is important, the loss in value that may occur as a result of being designated as “register eligible” or “heritage” is not something that will be welcome for most property owners who bear the financial realities of property ownership unless it is gained through their consent. Many of the older buildings in Winslow are no longer at their highest and best use and their property has been rezoned for higher density specifically so Winslow can accept a large portion of islands future growth. Restricting the ability to redevelop to the full extent allowed under the current zoning code will reduce the value of the property, particularly in the case of commercial zoned properties.

#### Zoning Relief

There is a great potential for unintended consequences using this tool affecting set backs and lot coverage. There are no controls in the proposed ordinance for architectural studies that would

make sure the allowed development would not actually jeopardize the historic site. Density bonuses may prove helpful to a developer, but will likely yield poor results when applied to try and save an historic building. While the structure may be “saved” the surrounding area will be compromised by allowing development with additional density.

Further, there is nothing contained in the proposed ordinance addressing non-conformity. The current code is written with new development in mind. A result of code changes over time, many historic buildings are now non-conforming. These structures cannot be reconstructed/expanded as they are or placed in the same footprint/location on the property if more than 50% is damaged in a fire or earthquake, for instance. It is critical to address and provide relief to historic structures that have become non-conforming so that they can be preserved and reconstructed, when necessary, in the same location.

Reduction in Value for Commercial Property

The designation as “register eligible” will have a varying impacts on property that is residential versus commercial property. The uncertainty, added restrictions, and potential prevention of demolition will impact the ability to develop or sell to a developer to bring the commercially zoned property up to its highest and best use and will prevent long-time owners to realize the rise in value of their property over time who, in many cases, have relied on this as their nest egg.

Thank you for your consideration of these comments.

Sincerely,



Jon Thornburgh



Piper Thornburgh

To: Members of the Planning Commission  
Cc: Planning Director  
Heather Beckmann Wright, Senior Planner  
From: Charles Schmid, Association of Bainbridge Communities (ABC), 365 Ericksen Ave. #327  
Date: June 23, 2016  
Subject: Public Hearing - Comments on Historic Preservation Ordinance Revisions, 2016-15

I have the following few comments which are listed below according to page numbers on the document:

Page 3

*18.24.10 C Zoning Code Relief*

This addition allows the director to “approve said use through an Administrative Conditional Use (BIMC 2.16.050). The director may also waive or modify development standards such as setbacks, open space, lot coverage, landscape buffers and parking requirements.” Is it possible to add language to allow the Historic Preservation Commission (HPC) to comment on the proposed changes as to the effect these modifications will have on the historic character of the property?

Page 8

Minor: Subtract one from item numbers 7, 8 and 9 to account for deleting item 6.

Page 11

*18.24.050* The underlined “Historic properties require a certificate of appropriateness or a waiver and register eligible require review and comments from commission.” This was unclear to me, and should be clarified, including the “or” and “and” sequence requirements.

Page 13

*18.24.050 5 Review Process*

Item 5 has The Commission **and** director’s decision, and Item 6 has The commission **or** director’s determination. Is this difference in authority for these two instances intended?

Page 14

*18.24.060* Item 5: Please add the following underlined words for clarity: “The commission shall submit comments on the rank and substance of items 1.a through 1.h to the Planning Director, including suggestions for mitigation.”

My personal opinion is that item “6 - Possible mitigation measures include” should be deleted since these are standard topics and could well influence the rating items of items 1a-1h in item 1.

Also note the “Planning Director” and “Director” are capitalized in various places in the document, while lower case elsewhere. Perhaps a global search could be done to make this term consistent.

Pages 15-19

Comments from items 13-14 above might apply to this section as I not sure about the differences in language for these two approaches.

**Process for Designating Heritage Trees**

Has the City’s ad-hoc tree committee reviewed this section?

My thanks to staff and members of Historic Preservation Committee for their work to improve the ability of this Island to save its special history for all to enjoy.



June 23, 2016

Heather Beckmann  
Senior Planner  
City of Bainbridge Island  
280 Madison Ave. North  
Bainbridge Island, WA 98119

RE: Proposed Revisions to the Historic Preservation Ordinance

Dear Ms. Beckmann,

The Washington Trust for Historic Preservation greatly appreciates the opportunity to provide comments on the proposed revisions to Bainbridge Island's Historic Preservation Ordinance. Bainbridge Island has a rich history, with interwoven narratives significantly connected to the broader patterns of economic, social and cultural development of the Puget Sound region. Residents are fortunate to have the presence of historic structures across the island able to convey this significance and provide touchstones to Bainbridge Island's heritage. The Washington Trust believes the revised historic preservation ordinance as proposed will work to safeguard these touchstones for future generations.

As the process for considering revisions moves forward, we do respectfully submit a few suggestions, as follows:

Section 18.24.030 List of heritage properties identifies two options for establishing criteria for listing as a "Heritage Property." The Washington Trust recommends adoption of Option A. Option A allows for both privately and publicly owned buildings to be listed as Heritage Properties. Restricting the list of Heritage Properties to publicly owned structures and sites unnecessarily limits the pool of historic resources eligible for designation as Heritage Properties. Establishing a separate classification for what is likely to be a small sample size is inefficient and, moreover, eliminates the possibility of many other highly significant structures on the island achieving the distinction of being named a Heritage Property.

The Washington Trust strongly supports the inclusion of language in Section 18.24.040.C.6 addressing minimum maintenance. Failure to provide regular maintenance over time results in critical loss to historic, character-defining features of significant structures. As written, however, stewards of listed buildings are simply "expected" to provide ordinary maintenance. We recommend replacing "expected" with "required" to avoid confusion regarding this responsibility. Additionally, language should be developed in this section that addresses enforcement mechanisms when minimum maintenance requirements are not met.

Ms. Heather Beckmann  
June 23, 2016  
Page 2

Sections 18.24.060 and 18.24.070 includes the review process for demolition of register eligible properties and historic properties, respectively. In each case, the process requires any applicant seeking demolition to submit a report to the historic commission that analyzes alternatives to demolition. Presently, the list of alternatives includes relocating the structure to another property; salvaging historically significant building elements; and documentation (identified as alternatives f-g in each case). None of these constitute alternatives to demolition, as each would result in the resource being removed from its original site. Rather than include f-g as alternatives to be analyzed, we recommend including these items as possible mitigation measures should demolition be deemed the only course of action.

Overall, the Washington Trust is pleased to see revisions to Bainbridge Island's historic preservation ordinance aimed at identifying, honoring, and preserving sites and structures associated with the island's illustrious past! Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Moore". The signature is written in a cursive, flowing style.

Chris Moore  
Executive Director

Cc: Glenn Hartmann, Co-Chair, Bainbridge Island Historic Preservation Commission  
Dave Williams, Co-Chair, Bainbridge Island Historic Preservation Commission

## Jane Rasely

---

**From:** Robert Dashiell <rgdimages@aol.com>  
**Sent:** Thursday, June 23, 2016 12:47 PM  
**To:** PCD  
**Subject:** Public Comment on Historic Guide for Comp Plan

Members of the Planning Commission,

This is a very difficult subject to write a public comment since valued members of the community crafted a draft history to replace the existing Comp Plan history.

One could write an entire book on Bainbridge History, and so going line by line into either the original or draft would be a long and controversial process.

I prefer the existing Historical Guide to the proposed draft, but there are some controversial statements in both.

In the bigger picture, the Comprehensive Plan is a land use planning document.

You could eliminate historical controversies by not having a history section, and I fail to see anything in either history documents that will directly apply to land use planning.

It does not appear to be a required element per RCW of a Comp Plan.

Recommendation here is to delete the historical section to avoid historical controversies and shorten the physical mass of the Comp Plan. It's already approaching the size of the IRS Tax Codes.

If the Planning Commission/City Council want the historical section retained, the significant factual historical points could be put in bullet form and with intent to eliminate personal historical perceptions.

Respectfully,

Robert Dashiell  
6370 NE Tolo Rd