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State of Washington

72809-1

NO. 72809-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DANIEL THOMPSON and THEODORE MISSELWITZ,

Appellants,

vs.

CITY OF MERCER ISLAND,

Respondent,

ON THE ROCK, LLC and ANDERSON ARCHITECTURE,

Additional Parties.

**APPENDIX
TO
BRIEF OF RESPONDENT CITY OF MERCER ISLAND**

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**APPENDIX
TO
BRIEF OF RESPONDENT CITY OF MERCER ISLAND**

EXHIBIT 1

Chapter 36.70C RCW

JUDICIAL REVIEW OF LAND USE DECISIONS

Complete Chapter

RCW Sections

- 36.70C.005** Short title.
- 36.70C.010** Purpose.
- 36.70C.020** Definitions.
- 36.70C.030** Chapter exclusive means of judicial review of land use decisions -- Exceptions.
- 36.70C.040** Commencement of review -- Land use petition -- Procedure.
- 36.70C.050** Joinder of parties.
- 36.70C.060** Standing.
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- 36.70C.080** Initial hearing.
- 36.70C.090** Expedited review.
- 36.70C.100** Stay of action pending review.
- 36.70C.110** Record for judicial review -- Costs.
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- 36.70C.140** Decision of the court.
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36.70C.005 << 36.70C.010 >> **36.70C.020**

RCW 36.70C.010

Purpose.

The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review.

[1995 c 347 § 702.]

36.70C.010 << 36.70C.020 >> 36.70C.030

RCW 36.70C.020

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

Where a local jurisdiction allows or requires a motion for reconsideration to the highest level of authority making the determination, and a timely motion for reconsideration has been filed, the land use decision occurs on the date a decision is entered on the motion for reconsideration, and not the date of the original decision for which the motion for reconsideration was filed.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

(5) "Renewable resources" has the same meaning provided in RCW 19.280.020.

[2010 c 59 § 1; 2009 c 419 § 1; 1995 c 347 § 703.]

36.70C.030 << 36.70C.040 >> 36.70C.050

RCW 36.70C.040

Commencement of review — Land use petition — Procedure.

(1) Proceedings for review under this chapter shall be commenced by filing a land use petition in superior court.

(2) A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served on the following persons who shall be parties to the review of the land use petition:

(a) The local jurisdiction, which for purposes of the petition shall be the jurisdiction's corporate entity and not an individual decision maker or department;

(b) Each of the following persons if the person is not the petitioner:

(i) Each person identified by name and address in the local jurisdiction's written decision as an applicant for the permit or approval at issue; and

(ii) Each person identified by name and address in the local jurisdiction's written decision as an owner of the property at issue;

(c) If no person is identified in a written decision as provided in (b) of this subsection, each person identified by name and address as a taxpayer for the property at issue in the records of the county assessor, based upon the description of the property in the application; and

(d) Each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered. Persons who later intervened or joined in the appeal are not required to be made parties under this subsection.

(3) The petition is timely if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issuance of the land use decision.

(4) For the purposes of this section, the date on which a land use decision is issued is:

(a) Three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available;

(b) If the land use decision is made by ordinance or resolution by a legislative body sitting in a quasi-judicial capacity, the date the body passes the ordinance or resolution; or

(c) If neither (a) nor (b) of this subsection applies, the date the decision is entered into the public record.

(5) Service on the local jurisdiction must be by delivery of a copy of the petition to the persons identified by or pursuant to RCW 4.28.080 to receive service of process. Service on other parties must be in accordance with the superior court civil rules or by first-class mail to:

(a) The address stated in the written decision of the local jurisdiction for each person made a party under subsection (2)(b) of this section;

(b) The address stated in the records of the county assessor for each person made a party under subsection (2)(c) of this section; and

(c) The address stated in the appeal to the quasi-judicial decision maker for each person made a party under subsection (2)(d) of this section.

(6) Service by mail is effective on the date of mailing and proof of service shall be by affidavit or declaration under penalty of perjury.

[1995 c 347 § 705.]

36.70C.050 << 36.70C.060 >> **36.70C.070**

RCW 36.70C.060

Standing.

Standing to bring a land use petition under this chapter is limited to the following persons:

(1) The applicant and the owner of property to which the land use decision is directed;

(2) Another person aggrieved or adversely affected by the land use decision, or who would be aggrieved or adversely affected by a reversal or modification of the land use decision. A person is aggrieved or adversely affected within the meaning of this section only when all of the following conditions are present:

(a) The land use decision has prejudiced or is likely to prejudice that person;

(b) That person's asserted interests are among those that the local jurisdiction was required to consider when it made the land use decision;

(c) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the land use decision; and

(d) The petitioner has exhausted his or her administrative remedies to the extent required by law.

[1995 c 347 § 707.]

36.70C.060 << 36.70C.070 >> 36.70C.080

RCW 36.70C.070

Land use petition — Required elements.

A land use petition must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner's attorney, if any;
- (3) The name and mailing address of the local jurisdiction whose land use decision is at issue;
- (4) Identification of the decision-making body or officer, together with a duplicate copy of the decision, or, if not a written decision, a summary or brief description of it;
- (5) Identification of each person to be made a party under RCW 36.70C.040(2) (b) through (d);
- (6) Facts demonstrating that the petitioner has standing to seek judicial review under RCW 36.70C.060;
- (7) A separate and concise statement of each error alleged to have been committed;
- (8) A concise statement of facts upon which the petitioner relies to sustain the statement of error; and
- (9) A request for relief, specifying the type and extent of relief requested.

[1995 c 347 § 708.]

36.70C.070 << 36.70C.080 >> **36.70C.090**

RCW 36.70C.080

Initial hearing.

(1) Within seven days after the petition is served on the parties identified in RCW 36.70C.040 (2), the petitioner shall note, according to the local rules of superior court, an initial hearing on jurisdictional and preliminary matters. This initial hearing shall be set no sooner than thirty-five days and no later than fifty days after the petition is served on the parties identified in RCW 36.70C.040(2).

(2) The parties shall note all motions on jurisdictional and procedural issues for resolution at the initial hearing, except that a motion to allow discovery may be brought sooner. Where confirmation of motions is required, each party shall be responsible for confirming its own motions.

(3) The defenses of lack of standing, untimely filing or service of the petition, and failure to join persons needed for just adjudication are waived if not raised by timely motion noted to be heard at the initial hearing, unless the court allows discovery on such issues.

(4) The petitioner shall move the court for an order at the initial hearing that sets the date on which the record must be submitted, sets a briefing schedule, sets a discovery schedule if discovery is to be allowed, and sets a date for the hearing or trial on the merits.

(5) The parties may waive the initial hearing by scheduling with the court a date for the hearing or trial on the merits and filing a stipulated order that resolves the jurisdictional and procedural issues raised by the petition, including the issues identified in subsections (3) and (4) of this section.

(6) A party need not file an answer to the petition.

[1995 c 347 § 709.]

36.70C.110 << 36.70C.120 >> 36.70C.130

RCW 36.70C.120

Scope of review — Discovery.

(1) When the land use decision being reviewed was made by a quasi-judicial body or officer who made factual determinations in support of the decision and the parties to the quasi-judicial proceeding had an opportunity consistent with due process to make a record on the factual issues, judicial review of factual issues and the conclusions drawn from the factual issues shall be confined to the record created by the quasi-judicial body or officer, except as provided in subsections (2) through (4) of this section.

(2) For decisions described in subsection (1) of this section, the record may be supplemented by additional evidence only if the additional evidence relates to:

(a) Grounds for disqualification of a member of the body or of the officer that made the land use decision, when such grounds were unknown by the petitioner at the time the record was created;

(b) Matters that were improperly excluded from the record after being offered by a party to the quasi-judicial proceeding; or

(c) Matters that were outside the jurisdiction of the body or officer that made the land use decision.

(3) For land use decisions other than those described in subsection (1) of this section, the record for judicial review may be supplemented by evidence of material facts that were not made part of the local jurisdiction's record.

(4) The court may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record.

(5) The parties may not conduct pretrial discovery except with the prior permission of the court, which may be sought by motion at any time after service of the petition. The court shall not grant permission unless the party requesting it makes a prima facie showing of need. The court shall strictly limit discovery to what is necessary for equitable and timely review of the issues that are raised under subsections (2) and (3) of this section. If the court allows the record to be supplemented, the court shall require the parties to disclose before the hearing or trial on the merits the specific evidence they intend to offer. If any party, or anyone acting on behalf of any party, requests records under chapter 42.56 RCW relating to the matters at issue, a copy of the request shall simultaneously be given to all other parties and the court shall take such request into account in fashioning an equitable discovery order under this section.

[2005 c 274 § 273; 1995 c 347 § 713.]

Notes:

Part headings not law -- Effective date -- 2005 c 274: See RCW 42.56.901 and 42.56.902.

58.17.050 << 58.17.060 >> 58.17.065

RCW 58.17.060

Short plats and short subdivisions — Summary approval — Regulations — Requirements.

(1) The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions or alteration or vacation thereof. When an alteration or vacation involves a public dedication, the alteration or vacation shall be processed as provided in RCW 58.17.212 or 58.17.215. Such regulations shall be adopted by ordinance and shall provide that a short plat and short subdivision may be approved only if written findings that are appropriate, as provided in RCW 58.17.110, are made by the administrative personnel, and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat, or alteration or vacation thereof, for record in the office of the county auditor: PROVIDED, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat, except that when the short plat contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five-year period to create up to a total of four lots within the original short plat boundaries: PROVIDED FURTHER, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief.

An ordinance requiring a survey shall require that the survey be completed and filed with the application for approval of the short subdivision.

(2) Cities, towns, and counties shall include in their short plat regulations and procedures pursuant to subsection (1) of this section provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.

[1990 1st ex.s. c 17 § 51; 1989 c 330 § 2; 1987 c 354 § 5; 1987 c 92 § 1; 1974 ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

Notes:

Severability -- Part, section headings not law -- 1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

**APPENDIX
TO
BRIEF OF RESPONDENT CITY OF MERCER ISLAND**

EXHIBIT 2

19.08.020 Application procedures and requirements.

A. Applications for short subdivisions and lot line revisions or alteration or vacation thereof shall be reviewed by the code official. Applications for long subdivisions or alteration or vacation thereof are reviewed by the planning commission and the city council.

B. The planning commission may grant a variance, with restrictions if deemed necessary, from the four-acre limitation for purpose of permitting short subdivision of property containing more than four acres into four or less lots when all of the following circumstances shall be found to apply:

1. That there are special circumstances applicable to the particular lot, such type of ownership, restrictive covenants, physiographic conditions, location or surroundings, or other factors;
2. That the granting of the variance will not result in future uncoordinated development nor alter the character of the neighborhood; and
3. That granting the variance will not conflict with the general purposes and objectives of the comprehensive plan or the development code.

C. Applicants shall prepare a concept sketch of the proposal for the preapplication meeting required under MICC 19.09.010(A).

D. Preliminary Application Contents. In addition to any documents, information, or studies required under Chapter 19.07 MICC, Critical Areas, an application for a long subdivision, short subdivision, or a lot line revision shall include the documents set forth below and any other document or information deemed necessary by the code official upon notice to the applicant. All documents shall be in the form specified by the code official and shall contain such information as deemed necessary by the code official. The applicant shall submit the number of copies of each document specified by the code official.

1. Development Application Cover Form. The development application cover form shall be signed by all current property owners listed on the plat certificate, and shall list the legal parcel numbers of all property involved in the project.
2. Long Subdivision, Short Subdivision, or Lot Line Revision Plan. The applicant shall provide copies of fully dimensioned plans of the project prepared by a Washington registered civil engineer or land surveyor, meeting the requirements of Chapter 19.07 MICC, Environment, and containing any other information deemed necessary by the code official. The city engineer may waive the requirement that an engineer or surveyor prepare the plans for a short subdivision or lot line revision. The submitted plans shall demonstrate that a building pad has been designated for each proposed lot per MICC 19.09.090. No cross-section dimension of a designated building pad shall be less than 20 feet in width.
3. Plat Certificate. Applicant shall provide a plat certificate issued by a qualified title insurance company not more than 30 days before filing of the application showing the ownership and title of all parties interested in the plat. If the plat certificate references any recorded documents (i.e. easements, dedications, covenants, etc.) copies of those documents shall also be provided.

4. Legal Documents. Applicants shall provide copies of each of the following documents (if applicable):

- a. Proposed restrictive covenants.
- b. Draft deeds to the city for any land to be dedicated.
- c. Proposed easements.

5. Project Narrative. Applicants shall provide a clear and concise written description and summary of the proposed project.

6. Neighborhood Detail Map. Applicants shall provide copies of a map drawn at a scale specified by the code official showing the location of the subject site relative to the property boundaries of the surrounding parcels within approximately 1,000 feet, or approximately 2,500 feet for properties over four acres. The map shall identify the subject site with a darker perimeter line than that of the surrounding properties.

7. Topography Map. The applicant shall provide copies of a topographical map showing the existing land contours using vertical intervals of not more than two feet, completed and signed by a Washington licensed surveyor. For any existing buildings, the map shall show the finished floor elevations of each floor of the building. Critical slopes exceeding 30 percent must be labeled and delineated by a clearly visible hatching.

8. Detailed Grading Plan. If the grade differential on the site of the proposed project will exceed 24 inches and/or if the amount of earth to be disturbed exceeds 50 cubic yards, the applicant shall provide copies of a detailed grading plan drawn by a Washington licensed engineer.

9. Street Profiles. The applicant shall provide copies of a street profile showing the profiles and grades of each street, together with typical cross sections indicating:

- a. Width of pavement;
- b. Location and width of sidewalks, trails, bike lanes, ditches, swales, etc.; and
- c. Location of any utility mains.

10. Geotechnical Report. The applicant shall provide a geotechnical report meeting the requirements of Chapter 19.07 MICC, Critical Lands. This requirement may be waived by the city Engineer under the criteria set out in MICC 19.07.010.

11. Utility Plan. Conceptual plan showing the locations of existing and proposed utilities.

E. Notice.

1. Short Subdivisions and Lot Line Revisions. Public notice of an application for a short subdivision or a lot line revision shall be made in accordance with the procedures set forth in MICC 19.15.020.

2. Long Subdivisions.

a. Public notice of a long subdivision application shall be made at least 10 days prior to the open record hearing on the application in accordance with the procedures set forth in MICC 19.15.020 for an administrative or discretionary act; provided, notice shall also be published at least 10 days prior to the hearing in a newspaper of general circulation within the city.

b. If the owner of a proposed long subdivision owns land adjacent to the proposed long subdivision, that adjacent land shall be treated as part of the long subdivision for notice purposes, and notice of the application shall be given to all owners of lots located within 300 feet of the proposed long subdivision or the applicant's adjacent land.

3. The city shall provide written notice to the Department of Transportation of an application for a long subdivision or short subdivision that is located adjacent to the right-of-way of a state highway. The notice shall include a legal description of the long subdivision or short subdivision and a location map.

F. Preliminary Application Procedure.

1. Findings of Fact. All preliminary approvals or denials of long subdivisions or short subdivisions shall be accompanied by written findings of fact demonstrating that:

a. The project does or does not make appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;

b. The public use and interest will or will not be served by approval of the project; and

c. The project does or does not conform to applicable zoning and land use regulations.

2. Short Subdivisions and Lot Line Revisions. The code official shall grant preliminary approval for a short subdivision or lot line revision if the application is in proper form and the project complies with the design standards set out in MICC 19.08.030, the comprehensive plan, and other applicable development standards.

3. Long Subdivisions.

a. At an open record hearing the planning commission shall review the proposed long subdivision for its conformance with the requirements of MICC 19.08.030, the comprehensive plan, and other applicable development standards.

b. The planning commission shall make a written recommendation on the long subdivision, containing findings of fact and conclusions, to the city council not later than 14 days following action by the planning commission.

c. Upon receipt of the planning commission's recommendation, the city council shall at its next public meeting set the date for the public hearing where it may adopt or reject the planning commission's recommendations.

d. Preliminary approval of long subdivision applications shall be governed by the time limits and conditions set out in MICC 19.15.020(E); except the deadline for preliminary plat approval is 90 days, unless the applicant consents to an extension of the time period.

4. Conditions for Preliminary Approval. As a condition of preliminary approval of a project, the city council in the case of a long subdivision, or the code official in the case of a short subdivision or lot line revision, may require the installation of plat improvements as provided in MICC 19.08.040 which shall be conditions precedent to final approval of the long subdivision, short subdivision, or lot line revision.

5. Expiration of Approval.

a. Once the preliminary plat for a long subdivision has been approved by the city, the applicant has five years to submit a final plat meeting all requirements of this chapter to the city council for approval.

b. Once the preliminary plat for a short subdivision has been approved by the city, the applicant has one year to submit a final plat meeting all requirements of this chapter. A plat that has not been recorded within one year after its preliminary approval shall expire, becoming null and void. The city may grant a single one-year extension, if the applicant submits the request in writing before the expiration of the preliminary approval.

c. In order to revitalize an expired preliminary plat, a new application must be submitted.

6. No Construction Before Application Approval. No construction of structures, utilities, storm drainage, grading, excavation, filling, or land clearing on any land within the proposed long subdivision, short subdivision, or lot line revision shall be allowed prior to preliminary approval of the application and until the applicant has secured the permits required under the Mercer Island City Code. (Ord. 10C-07 § 2; Ord. 08C-01 § 4; Ord. 99C-13 § 1).

19.08.030 Design standards.

A. Compliance with Other Laws and Regulations. The proposed subdivision shall comply with arterial, capital facility, and land use elements of the comprehensive plan; all other chapters of the development code; the Shoreline Management Act; and other applicable legislation.

B. Public Improvements.

1. The subdivision shall be reconciled as far as possible with current official plans for acquisition and development of arterial or other public streets, trails, public buildings, utilities, parks, playgrounds, and other public improvements.

2. If the preliminary plat includes a dedication of a public park with an area of less than two acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city shall adopt the designated name.

C. Control of Hazards.

1. Where the project may adversely impact the health, safety, and welfare of, or inflict expense or damage upon, residents or property owners within or adjoining the project, other members of the public, the state, the city, or other municipal corporations due to flooding, drainage problems, critical slopes, unstable soils, traffic access, public safety problems, or other causes, the city council in the case of a long subdivision, or the code official in the case of a short subdivision or lot line revision, shall require the applicant to adequately control such hazards or give adequate security for damages that may result from the project, or both.

2. If there are soils or drainage problems, the city engineer may require that a Washington registered civil engineer perform a geotechnical investigation of each lot in the project. The report shall recommend the corrective action likely to prevent damage to the areas where such soils or drainage problems exist. Storm water shall be managed in accordance with the criteria set out in MICC 15.09.030 and shall not increase likely damage to downstream or upstream facilities or properties.

3. Alternative tightline storm drains to Lake Washington shall not cause added impact to the properties, and the applicant shall submit supportive calculations for storm drainage detention.

D. Streets, Roads and Rights-of-Way.

1. The width and location of rights-of-way for major, secondary, and collector arterial streets shall be as set forth in the comprehensive arterial plan.

2. Public rights-of-way shall comply with the requirements set out in MICC 19.09.030.

3. Private access roads shall meet the criteria set out in MICC 19.09.040.

4. Streets of the proposed subdivision shall connect with existing improved public streets, or with existing improved private access roads subject to easements of way in favor of the land to be subdivided.

E. Residential Lots.

1. The area, width, and depth of each residential lot shall conform to the requirements for the zone in which the lot is located. Any lot which is located in two or more zones shall conform to the zoning requirements determined by the criteria set out in MICC 19.01.040(G)(2).

2. Each side line of a lot shall be approximately perpendicular or radial to the center line of the street on which the lot fronts.

F. Design Standards for Special Conditions.

1. Subdivisions abutting an arterial street as shown on the comprehensive arterial plan shall be oriented to require the rear or side portion of the lots to abut the arterial and provide for internal access streets.

2. Where critical areas meeting the criteria set out in Chapter 19.07 MICC are present within the subdivision, the code official or city council may:

- a. Require that certain portions of the long subdivision or short subdivision remain undeveloped with such restrictions shown on the official documents;
- b. Increase the usual building set-back requirements; and/or
- c. Require appropriate building techniques to reduce the impact of site development.

G. Optional Standards for Development. In situations where designing a long subdivision or short subdivision to the requirements of subsections A through F of this section would substantially hinder the permanent retention of wooded or steep areas or other natural features; preclude the provision of parks, playgrounds, or other noncommercial recreational areas for neighborhood use and enjoyment; or would negatively impact the physiographic features and/or existing ground cover of the subject area, the applicant may request that the project be evaluated under the following standards:

1. The use of the land in the long subdivision or short subdivision shall be one permitted in the zone in which the long subdivision or short subdivision is located.
2. The number of lots shall not exceed the number that would otherwise be permitted within the area being subdivided, excluding the shorelands part of any such lot and any part of such lot that is part of a street.
3. An area suitable for a private or public open space tract shall be set aside for such use.
4. The lots may be of different areas, but the minimum lot area, minimum lot width, and minimum lot depth shall each be at least 75 percent of that otherwise required in the zone in which the long subdivision or short subdivision is located. In no case shall the lot area be less than 75 percent of that otherwise required in the zone. Lot size averaging must be incorporated if lot width or depth requirements are 75 percent of the minimum that would otherwise be required for the zone without utilizing the optional development standards. Any designated open space or recreational tract shall not be considered a lot.
5. The ownership and use of any designated open space or recreational tract, if private, shall be shared by all property owners within the long subdivision or short subdivision. In addition, a right of entry shall be conveyed to the public to be exercised at the sole option of the city council if such area shall cease to be an open space or recreational tract.
6. The open space or recreational tract must remain in its approved configuration and be maintained in accordance with approved plans. Any deviation from the foregoing conditions must receive expressed approval from the planning commission. (Ord. 08C-01 § 4; Ord. 99C-13 § 1).

19.08.040 Plat improvements.

A. Streets, Utilities and Storm Drainage. The long subdivision, short subdivision, or lot line revision shall include provisions for streets, water, sanitary sewers, storm drainage, utilities and any easements or facilities necessary to provide these services. All utilities shall be placed underground unless waived by the city engineer. Detailed plans for these provisions shall not be required until after

Chapter 19.15 ADMINISTRATION

Sections:

- 19.15.010 General procedures.
- 19.15.020 Permit review procedures.
- 19.15.030 Enforcement.
- 19.15.040 Design commission.

19.15.010 General procedures.

A. Purpose. Administration of the development code is intended to be expedient and effective. The purpose of this chapter is to identify the processes, authorities and timing for administration of development permits. Public noticing and hearing procedures, decision criteria, appeal procedures, dispute resolution and code interpretation issues are also described.

B. Objectives. Guide customers confidently through the permit process; process permits equitably and expediently; balance the needs of permit applicants with neighbors; allow for an appropriate level of public notice and involvement; make decisions quickly and at the earliest possible time; allow for administrative decision-making, except for those decisions requiring the exercise of discretion which are reserved for appointed decision makers; ensure that decisions are made consistently and predictably; and resolve conflicts at the earliest possible time.

C. Roles and Responsibilities. The roles and responsibilities for carrying out the provisions of the development code are shared by appointed boards and commissions, elected officials and city staff. The authorities of each of these bodies are set forth below.

1. City Council. The city council is responsible for establishing policy and legislation affecting land use within the city. The city council acts on recommendations of the planning commission in legislative and quasi-judicial matters, and serves as the appeal authority on discretionary actions.

2. Planning Commission. The role of the planning commission in administering the development code is governed by Chapter 3.46 MICC. In general, the planning commission is the designated planning agency for the city (see Chapter 35A.63 RCW). The planning commission is responsible for final action on a variety of discretionary permits and makes recommendations to the city council on land use legislation, comprehensive plan amendments and quasi-judicial matters. The planning commission also serves as the appeal authority for some ministerial and administrative actions.

3. Design Commission. The role of the design commission in administering the development code is governed by Chapter 3.34 MICC and MICC 19.15.040. In general, the design commission is responsible for maintaining the city's design standards and action on sign, commercial and multiple-family design applications.

4. Building Board of Appeals. The role of the building board of appeals in administering the construction codes is governed by Chapter 3.28 MICC. In general, the building board of appeals

is responsible for hearing appeals of interpretations or application of the construction codes set forth in MICC Title 17.

5. Development Services Group. The responsible officials in the development services group act upon ministerial and administrative permits.

a. The code official is responsible for administration, interpretation and enforcement of the development code.

b. The building official is responsible for administration and interpretation of the building code, except for the International Fire Code.

c. The city engineer is responsible for the administration and interpretation of engineering standards.

d. The environmental official is responsible for the administration of the State Environmental Policy Act and shoreline master program.

e. The fire code official is responsible for administration and interpretation of the International Fire Code.

6. Hearing Examiner. The role of the hearing examiner in administering the development code is governed by Chapter 3.40 MICC.

D. Actions. There are four categories of actions or permits that are reviewed under the provisions of the development code.

1. Ministerial Actions. Ministerial actions are based on clear, objective and nondiscretionary standards or standards that require the application of professional expertise on technical issues.

2. Administrative Actions. Administrative actions are based on objective and subjective standards that require the exercise of limited discretion about nontechnical issues.

3. Discretionary Actions. Discretionary actions are based on standards that require substantial discretion and may be actions of broad public interest. Discretionary actions are only taken after an open record hearing.

4. Legislative Actions. Legislative actions involve the creation, amendment or implementation of policy or law by ordinance. In contrast to the other types of actions, legislative actions apply to large geographic areas and are of interest to many property owners and citizens. Legislative actions are only taken after an open record hearing.

E. Summary of Actions and Authorities. The following is a nonexclusive list of the actions that the city may take under the development code, the criteria upon which those decisions are to be based, and which boards, commissions, elected officials, or city staff have authority to make the decisions and to hear appeals of those decisions.

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Ministerial Actions			

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Right-of-Way Permit	City engineer	Chapter <u>19.09</u> MICC	Hearing examiner
Home Business Permit	Code official	MICC <u>19.02.010</u>	Hearing examiner
Special Needs Group Housing Safety Determination	Police chief	MICC <u>19.06.080(A)</u>	Hearing examiner
Lot Line Adjustment Permit	Code official	Chapter <u>19.08</u> MICC	Hearing examiner
Design Review – Minor Exterior Modification Outside Town Center	Code official	MICC <u>19.15.040</u> , Chapters <u>19.11</u> and <u>19.12</u> MICC	Design commission
Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC <u>17.14.010</u>) Less Than \$100,000	Code official	Chapters <u>19.11</u> and <u>19.12</u> MICC, MICC <u>19.15.040</u>	Design commission
Design Review – Minor Exterior Modification in Town Center with a Construction Valuation (as defined by MICC <u>17.14.010</u>) \$100,000 or Greater	Design commission	Chapters <u>19.11</u> and <u>19.12</u> MICC, MICC <u>19.15.040</u>	Hearing examiner
Final Short Plat Approval	Code official	Chapter <u>19.08</u> MICC	Planning commission
Seasonal Development Limitation Waiver	Building official or city arborist	MICC <u>19.10.030</u> , <u>19.07.060(D)(4)</u>	Building board of appeals
Development Code Interpretations	Code official	MICC <u>19.15.020(L)</u>	Planning commission
Shoreline Exemption	Code official	MICC <u>19.07.110</u> and <u>19.15.020(G)(6)(c)(i)</u>	Hearing examiner ¹
Administrative Actions			
Accessory Dwelling Unit Permit	Code official	MICC <u>19.02.030</u>	Hearing examiner
Preliminary Short Plat	Code official	Chapter <u>19.08</u> MICC	Planning commission
Deviation	Code official	MICC <u>19.15.020(G)</u> , <u>19.01.070</u> , <u>19.02.050(F)</u> , <u>19.02.020(C)(4)</u> and (D) (3)	Planning commission
Critical Areas Determination	Code official	Chapter <u>19.07</u> MICC	Planning commission
Shoreline – Substantial Development Permit	Code official	MICC <u>19.07.110</u> and <u>19.15.020(G)(6)</u>	Shoreline hearings board

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
SEPA Threshold Determination	Code official	MICC <u>19.07.120</u>	Planning commission
Short Plat Alteration and Vacations	Code official	MICC <u>19.08.010(G)</u>	Hearing examiner
Long Plat Alteration and Vacations	City council via planning commission	MICC <u>19.08.010(F)</u>	Superior court
Temporary Encampment	Code official	MICC <u>19.06.090</u>	Superior court
Wireless Communications Facility	Code official	MICC <u>19.06.040</u>	Hearing examiner
Wireless Communications Facility Height Variance	Code official	MICC <u>19.01.070</u> , <u>19.06.040(H)</u> and <u>19.15.020(G)</u>	Hearing examiner
Minimum Parking Requirement Variances for MF, PBZ, C-O, B and P Zones	Code official via design commission and city engineer	MICC <u>19.01.070</u> , <u>19.03.020(B)(4)</u> , <u>19.04.040(B)(9)</u> , <u>19.05.020(B)(9)</u> and <u>19.15.020(G)</u>	Hearing examiner
Discretionary Actions			
Conditional Use Permit	Planning commission	MICC <u>19.11.130(B)</u> , <u>19.15.020(G)</u>	Hearing examiner
Reclassification (Rezone)	City council via planning commission ²	MICC <u>19.15.020(G)</u>	Superior court
Design Review – Major New Construction	Design commission	MICC <u>19.15.040</u> , Chapters <u>19.11</u> and <u>19.12</u> MICC	Hearing examiner
Preliminary Long Plat Approval	City council via planning commission ²	Chapter <u>19.08</u> MICC	Superior court
Final Long Plat Approval	City council via code official	Chapter <u>19.08</u> MICC	Superior court
Variance	Hearing examiner	MICC <u>19.15.020(G)</u> , <u>19.01.070</u>	Planning commission
Variance from Short Plat Acreage Limitation	Planning commission	MICC <u>19.08.020</u>	City council
Critical Areas Reasonable Use Exception	Hearing examiner	MICC <u>19.07.030(B)</u>	Superior court

ACTION	DECISION AUTHORITY	CRITERIA	APPEAL AUTHORITY
Street Vacation	City council via planning commission ²	MICC <u>19.09.070</u>	Superior court
Shoreline Conditional Use Permit	Code official and Department of Ecology ³	MICC <u>19.15.020(G)(6)</u>	State Shorelines Hearings Board
Shoreline Variance	Code official and Department of Ecology ³	MICC <u>19.15.020(G)(6)</u>	State Shorelines Hearings Board
Impervious Surface Variance	Hearing examiner	MICC <u>19.02.020(D)(4)</u>	Superior court
Legislative Actions			
Code Amendment	City council via planning commission ²	MICC <u>19.15.020(G)</u>	Growth management hearings board
Comprehensive Plan Amendment	City council via planning commission ²	MICC <u>19.15.020(G)</u>	Growth management hearings board
¹ Final rulings granting or denying an exemption under MICC <u>19.15.020(G)(6)</u> are not appealable to the shore hearings board (SHB No. 98-60).			
² The original action is by the planning commission which holds a public hearing and makes recommendations the city council which holds a public meeting and makes the final decision.			
³ Must be approved by the city of Mercer Island prior to review by DOE per WAC <u>173-27-200</u> and RCW <u>90.58.140(10)</u> .			

(Ord. 13C-12 § 5; Ord. 11C-05 § 2; Ord. 11C-04 § 2; Ord. 10C-06 § 5; Ord. 10C-01 § 5; Ord. 08C-01 § 8; Ord. 06C-06 § 2; Ord. 06C-05 § 2; Ord. 05C-12 § 9; Ord. 04C-12 § 16; Ord. 04C-08 § 3; Ord. 03C-08 §§ 9, 10; Ord. 02C-04 § 5; Ord. 02C-01 § 6; Ord. 99C-13 § 1).

19.15.020 Permit review procedures.

The following are general requirements for processing a permit application under the development code. Additional or alternative requirements may exist for actions under specific code sections (see MICC 19.07.080, 19.07.110, and 19.08.020).

A. Preapplication. Applicants for development permits are encouraged to participate in informal meetings with city staff and property owners in the neighborhood of the project site. Meetings with the staff provide an opportunity to discuss the proposal in concept terms, identify the applicable city requirements and the project review process. Meetings or correspondence with the neighborhood serve the purpose of informing the neighborhood of the project proposal prior to the formal notice provided by the city.

B. Application.

H. Notice of Decision.

1. Unless the city and applicant have mutually agreed in writing to an extension of time, project review shall be completed within 120 days from the date the application is determined to be complete. Time required for the submittal of additional information, preparation of environmental impact statement, and hearing of appeals shall be excluded from this 120-day period.
2. Written notice of the decision shall be provided to the applicant and all parties of record. Notice of decision shall also be provided in the biweekly DSG bulletin.

I. Optional Consolidated Permit Processing.

1. An application that involves two or more permits may be processed concurrently and the decision consolidated at the request of the project applicant. If an applicant elects the consolidated permit processing, the code official shall determine the appropriate application and review procedures for the project.
2. If a project requires action from more than one hearing body, the decision authority in the consolidated permit review shall be by the decision body with the broadest discretionary powers.

J. Appeals.

1. Any party of record on a decision may file a letter of appeal on the decision. Appeals shall be filed with the city clerk within 14 days after the notice of decision or after other notice that the decision has been made and is appealable.
2. Appeals shall include the following information:
 - a. The decision being appealed;
 - b. The name and address of the appellant and his/her interest in the matter;
 - c. The specific reasons why the appellant believes the decision to be wrong. The burden of proof is on the appellant to demonstrate that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by evidence in the record, or that the decision is in conflict with the standards for review of the particular action;
 - d. The desired outcome or changes to the decision; and
 - e. The appeals fee, if required.
3. Authority for appeals is specified in MICC 19.15.010(E).
4. Public notice of an appeal shall be provided in the manner specified in subsection E of this section.
5. The rules of procedure for appeal hearings shall be as follows:

- a. For development proposals that have been subject to an open record hearing, the appeal hearing shall be a closed record appeal, based on the record before the decision body, and no new evidence may be presented.
- b. For development proposals that have not been subject to an open record hearing, the appeal hearing shall be an open record appeal and new information may be presented.
- c. The total time allowed for oral argument on the appeal shall be equal for the appellants and the applicant (if not the appellants). If there are multiple parties on either side, they may allocate their time between themselves or designate a single spokesperson to represent the side. All testimony shall be given under oath.
- d. If the hearing body finds that there has been substantial error, or the proceedings were materially affected by irregularities in procedure, or the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria, it may:
 - i. Reverse the decision.
 - ii. Modify the decision and approve it as modified.
 - iii. Remand the decision back to the decision maker for further consideration.
- e. If the hearing body finds that none of the procedural or factual bases listed above exist and that there has been no substantial error, the hearing body may adopt the findings and/or conclusions of the decision body, concur with the decision of the decision body and approve the development proposal as originally approved, with or without modifications.
- f. Final decision on the appeal shall be made within 30 days from the last day of the appeal hearing.
- g. The city's final decision on a development proposal may be appealed by a party of record with standing to file a land use petition in King County superior court. Such petition must be filed within 21 days of the issuance of the decision.

K. Expiration of Approvals. Except for building permits or unless otherwise conditioned in the approval process, permits shall expire one year from the date of notice of decision if the activity approved by the permit is not exercised. Responsibility for knowledge of the expiration date shall be with the applicant.

L. Code Interpretations. Upon request or as determined necessary, the code official shall interpret the meaning or application of provisions of the development code. The code official may also bring any issue of interpretation before the planning commission for determination. Anyone in disagreement with an interpretation by the code official may also request a review of the code official's interpretation by the planning commission. (Amended during 3/15 supplement; Ord. 13C-12 § 6; Ord. 10C-06 § 6; Ord. 08C-01 § 8; Ord. 02C-04 § 7; Ord. 02C-01 § 6; Ord. 99C-13 § 1).

19.15.030 Enforcement.

Chapter 19.16 DEFINITIONS

Sections:

19.16.010 Definitions.

19.16.010 Definitions.

Words used in the singular include the plural and the plural the singular.

Definitions prefaced with (SMP) are applicable only to the shoreline master program, MICC
19.07.110.

A

Accessory Buildings: A separate building or a portion of the main building, the use of which is related to and supports that of the main building on the same lot.

1. **Attached Accessory Building:** An accessory building that shares a portion of one of its walls with the main building, is separated from the main building by less than five feet, or is attached to the main building by a structure other than a fence.

2. **Detached Accessory Building:** An accessory building that does not share a portion of any of its walls with the main building and is separated from the main building by more than five feet and is not attached to the main building by a structure other than a fence or a pedestrian walkway.

Accessory Dwelling Unit (ADU): A habitable dwelling unit added to, created within, or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation.

Accessory Use: A use customarily incidental and accessory to the principal use of a site or a building or other structure located upon the same lot.

Adult Entertainment: An adult retail establishment or adult theater. "Adult entertainment" shall not be considered to be included under any other permitted use in this code as either a primary or accessory use, and is not permitted in any zone unless specifically stated. For purposes of adult entertainment, the following definitions apply:

1. **Adult Retail:** An establishment in which 10 percent or more of the stock in trade consists of merchandise distinguished or characterized by a predominant emphasis on the depiction, description, simulation or relation to specified sexual activities or specified anatomical areas.

2. **Adult Theater:** A facility used for presenting for commercial purposes motion picture films, video cassettes, cable television, live entertainment or any other such material, performance or activity, distinguished or characterized by a predominant emphasis on depiction, description, simulation or relation to specified sexual activities or specified anatomical areas for observation

Temporary Encampment Managing Organization: A group or organization that has the capacity to organize and manage a temporary encampment. A temporary encampment "managing organization" may be the same entity as the temporary encampment sponsor.

Temporary Encampment Sponsor: A place of worship which owns the property or has an ownership interest in the property, for which a temporary encampment is to be located, and that has an agreement with the temporary encampment managing organization to provide basic services and support for the residents of a temporary encampment and liaison with the surrounding community and joins with the managing organization in an application for a temporary encampment permit. A "sponsor" may be the same entity as the managing organization.

Temporary Erosion and Sediment Control Plan: A plan that details the location and type of temporary physical, structural and/or managerial practices an applicant will use to reduce erosion, prevent pollution of water with sediment and comply with the adopted storm water manual pursuant to Chapter 19.09 MICC.

Theaters: Establishments primarily engaged in either (1) producing live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists, and other performing artists or (2) exhibiting motion pictures or videos.

Top and Toe of Slope: The points at which a critical slope decreases to less than 30 percent slope. The upper edge is the "top" of the slope and the bottom is the "toe."

Townhouse: A single-family dwelling unit at least two stories in height constructed in a group of two or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides and a separate means of ingress and egress.

Tract: A piece of land designated and set aside as either public or private open space. No dwelling shall be constructed on the tract, and only those structures that are in keeping with the tract's use as open space shall be allowed.

Trailer: A vehicle without motor power designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, including a mobile home or trailer coach and any self-propelled vehicle having a body designed for or converted to the same uses as an automobile trailer without motor power.

Transportation/Utility: A facility primarily engaged in providing transportation services, including automobile service stations and transit stations; the generation, transmission, distribution of energy; or the collection of waste and recycled materials.

Tree: Any living woody plant species other than a shrub, characterized by one main trunk or few dominant trunks and many branches, known to achieve a typical mature height of at least 15 feet.

Tree Permit: A permit issued by the city arborist under Chapter 19.10 MICC.

U

Uplighting: Illumination of an object by methods that project light upward and onto the object to be illuminated, primarily to enhance visual interest at night.