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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.

<u>Register eligible</u>
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.*"
    - *"(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 drawn 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 28th 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"?
    - How is diminution measured- it seems any loss would result in a diminution?
    - What is meant by special?
    - 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."
    - How will the HPC measure/determine architectural integrity?
    - 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