

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of)	No. PLN-50880 SPR/CUP
)	
Michael & Darden Burns, LLC,)	
On Behalf of Madison Avenue)	Winslow Hotel SPR/CUP
Development, Inc.)	
)	
For Approval of Major Site Plan/ Design Review and Approval of <u>A Major Conditional Use Permit</u>)	DECISION ON KJELL STOKNES'S REQUEST FOR RECONSIDERATION

BACKGROUND

The Hearing Examiner issued a decision in this matter on February 28, 2020, granting a request for a conditional use permit. On March 13, 2020, the Hearing Examiner received a Request for Reconsideration of the Hearing Examiner's decision from Kjell Stoknes. Mr. Stoknes's request alleges errors of law involving the City Planning Director's interpretation of the definition of a hotel in Bainbridge Island Municipal Code (BIMC).

BIMC 2.16.100(C)(7) governs motions for reconsideration of the Hearing Examiner's decision. It provides that:

A motion for reconsideration may be filed to correct substantive errors. Such motion shall be filed in writing 10 days from the date the hearing examiner's decision was filed. The motion shall be decided on the record unless, at the hearing examiner's discretion, further public hearing is necessary. If a timely and appropriate request for reconsideration is filed, the appeal period shall begin from the date the decision on the reconsideration is issued.

Section 1.9.5 of the Rules of Procedure for the Hearing Examiner states:

The Hearing Examiner shall respond to the request for reconsideration within five (5) working days by affirming in writing the previous decision, reopening the record and hearing process, or taking further action as appropriate. Prior to granting a request for reconsideration, the Hearing Examiner may request a response from all parties of record. No response from parties of record is necessary prior to a denial of a request for reconsideration.

ANALYSIS

In his reconsideration motion, Mr. Stoknes contends that the City Planning Director erred when determining that the proposed development fell within the definition of a hotel in BIMC

*Decision on Kjell Stoknes's Request for Reconsideration
City of Bainbridge Island Hearing Examiner
Winslow Hotel SPR/CUP
No. PLN 50880 SPR/CUP*

18.36.030.130 because the proposed development would include features such as a banquet space, meeting rooms, retail space, and a spa. He asserts that the proposed development, if approved, would exacerbate a problem first created by the Planning Director when she did not use the formal code interpretation process to make her determination that a hotel could include features such as those proposed by the Applicant. Therefore, he argues that any approval would constitute approval of a non-conforming use, which must be reversed until such time as the code interpretation process described in BIMC 18.03.090 is used to interpret the meaning of the word hotel. The requestor, Mr. Stoknes, made this same assertion in his written comments and in his testimony at the January 23, 2020, open record hearing.

The Hearing Examiner fully considered this issue in his February 28, 2020, decision. As discussed in that decision, hotels are allowed in the Mixed Use Town Center, Central Core (MUTC-CC) zoning district with the approval of a conditional use permit (CUP). BIMC 18.36.030.130 defines a “hotel” as “a building or group of buildings containing guest rooms where, for compensation, lodging is provided for transient visitors. A hotel or motel may contain one or more restaurants.” Although this definition of a hotel does not explicitly include the other planned uses of the proposed development, the February 28, 2020, decision also explains that entertainment facilities, personal services, and retail services are permitted outright in the MUTC-CC zone. *BIMC 18.09.020*. Accordingly, inclusion of such features as a banquet space, meeting rooms, retail space, and a spa within the proposed development would be authorized uses under the City code and would not require approval separate from the proposed hotel.

Mr. Stoknes points out that the Planning Director has the authority to make code interpretations but contends that interpretations must be done pursuant to the process in BIMC 18.03.090, which provides for an appeal if one disagrees with the interpretation. He argues that, because this process was not followed, the interpretation must be invalidated as an improper interpretation. The Hearing Examiner disagrees. Although any person may request a formal code interpretation (including the requestor), there is no requirement that one do so. The Planning Director may engage in code interpretation without a formal request and, indeed, is often required to do so.

The authority to issue code interpretations, within the context of a formal process, is only one source of authority for the Planning Director to interpret the zoning code. Implicit in the designation of a public official as a Planning Director is the authority to apply and interpret the code, being the one charged with its implementation. It is an axiom of administrative law that deference is given to the administrator of the law under review. *See, e.g., Ford Motor Co. V. City of Seattle, Executive Services Dep’t*, 160 Wn.2d 32, 42 (2007) (officials charged with enforcing ordinances are given “considerable deference” in their interpretation of the ordinance.); *Haley v. Medical Disciplinary Board*, 117 Wn.2d 720, 728 (1991) (substantial weight is accorded to an agency’s interpretation of law). In a land use permit hearing such as the one held on the proposed hotel, the City Council directs the Planning Director prepare a staff recommendation and present it to the Hearing Examiner who must then make a decision based upon the record. *BIMC 2.16.100*. Here, the Hearing Examiner relied upon the expertise of the

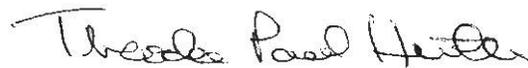
Decision on Kjell Stoknes’s Request for Reconsideration
City of Bainbridge Island Hearing Examiner
Winslow Hotel SPR/CUP
No. PLN 50880 SPR/CUP

Planning Director, having found the interpretation to be consistent with the zoning code, while also being aware of contrary interpretations by others, who disagreed with the Planning Director, but who were not charged with administering the zoning code. Greater weight is given to the one charged with administering the zoning code when a disagreement arises. *Ford Motor Co.*, 160 Wn.2d at 32; *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 866 (1997). The Hearing Examiner properly followed the law.

DECISION

Because there was no substantive error of law in the interpretation of the definition of “hotel” made by the Planning Director when reviewing the application for the proposed development, the motion for reconsideration is denied, and the February 28, 2020, decision is affirmed.

So ordered this 19th day of March 2020.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center