



CITY OF OAK HARBOR

NOTICE OF APPEAL Application Fee \$366.00

TO: The City of Oak Harbor

Please take notice that the below named person seeks review of certain decisions related to development of property as follows:

Name of Appellant _____

Mailing Address _____

City _____ **State** _____ **Zip Code** _____

Telephone Number _____

Are you represented by an attorney in the appeal? _____ (yes/no)

If so, please list name, address and telephone number of your attorney.

Claim standing to appeal _____

(Appellant for permit, property owner, neighboring property owner or other bases giving right to seek review of the decision)

Permit or review process being appealed _____

(Number and Name)

Decision(s) being appealed _____

Claimed errors _____

Dated _____

Appellant's Name

Appellant's Signature

You must prepare a separate appeal notice for each permit which is the subject of an appeal.

Please refer to OHMC 18.20.510-550 and OHMC 18.40.120 (Attached) when filing an appeal.

18.20.510 Hearings and appeals.

- (1) Hearing examiner decisions of appeal of permit application Types I and II shall be final except for those provided closed record appeals to city council. Appeal of a hearing examiner's final decision is to the Island County superior court pursuant to Chapter 36.70C RCW. Appeals of the planning commission's final decision shall be to the Island County superior court.
- (2) Planning commission open public hearings shall be in the form of recommendations which shall be reviewed by the city council in closed record review. Decisions of the city council shall be final and subject only to review by the Island County superior court pursuant to Chapter 36.70C RCW.
- (3) Review process VI – final plat decision by city council shall be final and appealable only to Island County superior court pursuant to Chapter 36.70C RCW. (Ord. 1376 § 32, 2004; Ord. 1278 § 30, 2001).

18.20.515 Closed record appeal on certain Type I review processes.

- (1) The following Type I and Type II review processes shall be subject to closed record appeal to the city council by an aggrieved party or the city:
 - (a) Transportation concurrency;
 - (b) Transportation impact fees;
 - (c) Park impact fees;
 - (d) Dedication in lieu of park impact fees;
 - (e) Other permits or variances under OHMC Title 13.
- (2) Appeals for closed record review shall be filed within 10 days of the date of the decision with the city clerk's office with a fee for appeal of \$50.00.
- (3) If other permits are to be issued prior to determination of the closed record appeal, the person, if appellant, is required to pay the fees or complete other actions and shall post a bond, cash or other assurances acceptable to the city sufficient to cover the fee or assessments or complete the requirements appealed; provided further, that the city shall not be required to post fees, cash or other assurances. If the city appeals, issuance of permits will be conditional upon payment of fees or completing conditions if the city should win.
- (4) A closed record appeal shall be considered solely on the record and decision of the hearing examiner.
- (5) Issues of law shall be reviewed de novo.
- (6) Issues of fact shall be reviewed on the basis that the determinations of the hearing examiner shall stand unless there is found to be no substantial evidence supporting the same.
- (7) The city council may adopt such other procedures to effect closed record appeals as are needed by motion or resolution.
- (8) Decision of city council is final, subject to appeal to the superior court of Island County under Chapter 36.70C RCW. (Ord. 1376 § 33, 2004; Ord. 1278 § 31, 2001).

18.20.520 Consolidated appeals – Concurrent review process.

- (1) No more than one consolidated open record hearing shall be provided.
- (2) All appeals of review process I or II project permit decisions, and any appeal of environmental determinations other than an appeal of a determination of significance (DS) under SEPA, shall be considered together in a single consolidated open record appeal hearing before the highest level body designated for public review of a permit applied for under this code.
- (3) Any appeal of a SEPA determination (other than a DS) for a review process IV land use permit decision shall be considered in a single consolidated open record hearing before the highest level body designated for public review of a permit applied for under this code. The reviewing authority shall hold a single consolidated hearing on the SEPA appeal and the land use permit application. The reviewing authority on both the SEPA appeal and the land use application shall be final.
- (4) An appeal of a determination of significance, if filed within 14 calendar days of its issuance in accordance with OHMC 18.20.530 in a separate open record hearing, prior to the further processing of the land use permit application or issuance of a decision. (Ord. 1376 § 34, 2004; Ord. 1278 § 32, 2001).

18.20.530 Appeal deadline and filing requirements.

- (1) Any administrative appeal of the project decision shall be combined with any appeal of any

environmental determinations, and shall be filed within 14 calendar days after the notice of the decision or after other notice that the decision has been made and is appealable.

- (2) All appeals must be filed on forms provided by the department and will not be considered valid unless the appeal form is filled out clearly, completely and legibly and is accompanied by the applicable fee.
- (3) Appeals must be received by the department by 5:00 p.m. on the last business day of the appeal period, and may be delivered to the department by hand or by mail.
- (4) For purposes of computing the time period for appeal, the day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. Legal holidays are prescribed in RCW 1.16.050 and by city ordinance. (Ord. 1376 § 35, 2004; Ord. 1278 § 33, 2001).

18.20.540 Standing.

Standing to bring a land use appeal for a review process I, II, III and IV decision under this title is limited to the following persons:

- (1) The applicant and the owner of property to which the land use decision is directed; and
- (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 city was required to consider when it made the land use decision; and
 - (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. (Ord. 1376 § 36, 2004; Ord. 1278 § 34, 2001).

18.20.550 Reports by city staff and applicant/appellant.

- (1) For any appeal heard pursuant to this title, the following procedure shall apply:
 - (a) Within 10 calendar days of filing the appeal and at least 20 calendar days prior to the date of the scheduled hearing on the appeal, the appellant shall file with the reviewing authority a memorandum setting forth the appellant's arguments and authority. Such arguments and authority shall be restricted to those issues set forth in the appellant's written appeal statement;
 - (b) At least 10 calendar days prior to the date of the scheduled hearing, city staff shall file with the office of the reviewing authority and provide the appellant with a staff report responding to the appellant's memorandum concerning the appeal; and
 - (c) At least five calendar days prior to the date of the scheduled hearing, the appellant shall file with the office of the reviewing authority any reply memorandum which the appellant desires to file. The scope of the reply memorandum shall be restricted to responding to issues raised in the staff report.
- (2) Failure to comply with the requirements of this title may result in the reviewing authority taking such action in regard to the failure as is appropriate including, but not limited to, continuing the hearing, postponing the hearing or limiting testimony at the hearing. (Ord. 1376 § 37, 2004; Ord. 1278 § 35, 2001).

18.40.120 Form of appeal.

Unless otherwise specified, any person entitled to an appeal of a decision made by an official, agency or department of the city may appeal from the notice and order or any action complained of by filing at the office of the city clerk a written appeal containing:

- (1) A caption reading: "Appeal of _____," and giving the names of all appellants participating in the appeal;
- (2) A brief statement setting forth the legal interest of each of the parties applying for review in the matter in the notice and order and/or part thereof;
- (3) A brief statement in ordinary and concise language of that specific order or action protested, together with any material facts claimed to support the contentions of the appellant;
- (4) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed and how the protested order or action would be reversed, modified or otherwise set aside;
- (5) The signatures of all parties named as appellants and their official mailing addresses;
- (6) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The appeal shall be filed within 14 days from the date of such order or action. (Ord. 1375 § 13, 2004).