Planning Commission Workshop
January 9, 2020
Overview – Roles in Planning

• Planning Director: technical expertise, applicant’s point of contact, ensure procedures followed correctly, coordinate input from other departments of the City, and make recommendations

• Planning Commission: generally an advisory board, holds public hearings and makes recommendations for council action on quasi-judicial and legislative matters

• City Council: makes the final decision of the City
Quasi-Judicial versus Legislative Functions

- **Quasi-Judicial functions** are those which determine the legal rights, duties, or privileges of specific parties on specific properties. Examples include:
  - Variance applications
  - Site-specific rezones
  - Plat approval
  - LMC 17.03.040(A)

- **Legislative functions** affect the entire community. Examples include:
  - Adopting or amending the comprehensive plan
  - Amending development regulations
  - Area-wide zoning ordinances or amendments thereof
  - LMC 17.09.030
Common Quasi-Judicial Issues

• Planned Residential Developments (“PRDs”)
• Amendments of PRDs, other than minor amendments which are administratively approved
• Site-specific rezones
• Long plats/subdivisions
• Conditional use permits
• Variances, if accompanied by another development application
• LMC 17.03.040(A)
Quasi-Judicial v. Legislative Functions: Blurry Lines and Gray Areas

• A text amendment to the zoning code requested by a developer to allow a particular project to go forward, which was otherwise prohibited under the code
  LEGISLATIVE

• A rezone of over 250 acres of land in multiple contiguous parcels owned by four different owners who worked together to apply to upzone the land
  QUASI-JUDICIAL

• A decision between two locations for placement of a highway interchange
  LEGISLATIVE
Simplified Overview of Application Process

For quasi-judicial applications for which the planning commission makes a recommendation to City Council.

Pre-application meeting
- Between applicant, planning staff and/or planning commission.
- Purpose is to determine whether project may be acceptable to the City.

Submission of Application
- Submitted to planning staff. The planning department issues a notice of complete application if applicable.

TRC Review
- Planning staff facilitate a meeting of all impacted departments to provide comments.

Planning Department Review
- Planning staff review and generate a recommendation for the planning commission.

Open Record Hearing
- Planning commission holds an open record hearing, makes findings, and generates a recommendation to City Council.

Closed Record Hearing
- City Council makes the final decision of the city.

Planning staff may also generate a memo and recommendation for the council packet, represented by the dashed line.
Simplified Overview of Application Process

The focus of today’s presentation

Planning Director

Planning Commission

City Council

QUASI-JUDICIAL

Planning Department Review

Planning commission holds an open record hearing, makes findings, and generates a recommendation to City Council.

Open Record Hearing

Closed Record Hearing

City Council makes the final decision of the city.

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Planning staff review and generate a recommendation for the planning commission.
Role of the Planning Director

• Many kinds of applications require only administrative approval

• Roles include:
  • Provide technical expertise
  • Engage in fact finding and collect comments from other departments
  • Prepare a staff report for the planning commission with “findings, conclusions and proposed recommendations” - LMC 17.09.040

• LMC 17.03.020, Chs. 17.05, 17.07 and 17.09 LMC
Role of the Planning Director

LMC 17.09.040(A):
The director shall prepare a staff report on the development proposal or action summarizing the comments and recommendations of city departments, affected agencies and special districts, and evaluating the development proposal's consistency with the city's development code, adopted plans and regulations. The staff report shall include findings, conclusions and proposed recommendations for disposition of the development application.

(emphasis added)
# Role of the Planning Commission

- Conduct an open record hearing “for the purpose of taking testimony, hearing evidence, considering the facts... and evaluating the proposal for consistency with the city's development code, adopted plans and regulations.” LMC 17.09.040(B)

- After closing the hearing, make a recommendation to the City Council

- LMC 17.09.040 for quasi-judicial matters
The Open Record Hearing

- Public Participation
  - Adequate notice is required. LMC 17.07.030.
- Developing a Record
  - The record consists of all documents and testimony submitted at or prior to the open record hearing
  - This record will be all the information that City Council or a court see
  - You must base your decision solely on the information in the record
- LMC 17.09.040(B)
The Findings, Conclusion, and Recommendation

• Applicant has a right to have their application decided based on the criteria in the LMC.
• Criteria for specific project types will be listed in the LMC.
• There must be a finding stating the planning commission’s reasoning for each criterion.
• If the planning commission will recommend approval, it must make findings as to all criteria in LMC 17.09.040(C).
• The planning commission may recommend approval, denial, or approval or denial subject to conditions.
• Record in a Resolution per LMC 17.09.040(D).
Role of the City Council

• Make the final decision of the City to:
  • Approve as recommended
  • Approve with additional conditions
  • Modify, with or without the applicant's concurrence
  • Deny without prejudice
  • Deny with prejudice
  • Remand for further proceedings and/or evidentiary hearing

• The decision must be in writing and supported by findings.

• The decision does **NOT** have to be what the planning department or planning commission recommended.

• LMC 17.09.050
Remand

• LMC 17.09.090 – the City Council may remand an application back to the planning commission
  • Can be for a broad array of reasons, generally on the point that the city council does not have enough information to decide the application

• The planning commission holds a new open record hearing, supplementing the old record, and issues new findings with a new recommendation
Appeal

• Appeal – Final decisions of the City Council may be appealed to superior court
• The record the planning commission developed will be all the information before the court
• Superior court has authority to remand
• LMC 17.11.030 and various state laws
Quasi-Judicial Process Outlier: Shorelines

The planning commission must:
• Hold the open record hearing
• Develop the record
• Instead of a recommendation, make the *final decision*
  • Final decision should be in the same format as the recommendation and based on the specific criteria in the Lynden Shoreline Program.

• LMC 17.03.040(B)

Appeals go to the Shorelines Hearings Board (LMC 17.11.040)
Planning Commission - Legislative Functions

• Prepare and recommend adoption or amendment of:
  • City comprehensive plan
  • Urban Growth Areas
  • Annexations
  • Zoning ordinances
  • Development regulations

• Perform duties of the planning agency as described in Ch. 35A.63 RCW

• LMC 17.09.030
Planning Commission – Legislative Process

• Process is dictated by the GMA and LMC in most cases
• Proposals for changes can come from many sources
• Must hold at least one public hearing
• Recommendation of planning commission goes to city council
  • City council is not required to follow the recommendation
Appeal of Legislative Actions

• The final decision of the city council may be appealed
  • Most appeals will be based on violations of the Growth Management Act and will be appealed to the Growth Management Hearings Board
• An appeal may result in a remand
Appearance of Fairness Doctrine

• Ch. 42.36 RCW

• In a quasi-judicial function only, you are subject to the appearance of fairness doctrine.

• The purpose of the appearance of fairness doctrine is to “preserve the highest public confidence in those governmental processes which bring about zoning changes or which formulate property use and land planning measures.” *Swift v. Island Cty.*, 87 Wn.2d 348, 361 (1976).
Appearance of Fairness Doctrine

Test for the appearance of fairness doctrine: Would a disinterested person, having been apprised of the totality of a board member's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist?

- If yes, even if the official did not actually act with bias, the action will be void
- If no, the action will remain effective.

*Swift v. Island Cty.*, 87 Wn.2d 348, 361, 552 P.2d 175, 183 (1976)
Possible Appearance of Fairness Problems

• Personal Interest
  • A commissioner personally stands to gain or lose something, such as a project being awarded to their employer or their property value going up due to a nearby improvement

• Prejudgment of Issues/Partiality
  • A commissioner makes up their mind before the open record hearing
  • A commissioner considers matters outside the record in making their determination
Avoiding Appearance of Fairness Violations

• Announce a personal conflict and recuse yourself before proceedings get underway
• No ex parte communications
• If an ex parte communication occurs, summarize it for the record and recuse if appearance of a conflict cannot be cured
• Generally, avoid communication regarding the application outside an open public meeting
Open Public Meetings Act

- Ch. 42.30 RCW
- Applies to any meeting at which action is taken.
- “Action” is “the transaction of the official business... including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions...” RCW 42.30.020(3).
- A meeting occurs any time there is a quorum present in person, over the phone, or by email.
Open Public Meetings Act Requirements

• Meetings must be open to the public.
  • The public does not have to have an opportunity to speak.
  • No one can be required to sign in as a condition of attendance, but it is good practice to require people to identify themselves in order to speak.

• Appropriate notice of meetings is required for both regular and special meetings.

• An executive session (closed meeting) can be held under very limited circumstances.
Avoiding OPMA Violations

• Generally, do not discuss planning commission matters with fellow commissioners outside public meetings.
• Minutes must be taken and promptly made available
  • Taping meetings in addition to taking notes is critical
• A knowing violation of the OPMA = commissioner is personally liable for a $500 penalty for the first violation and $1000 for subsequent violations. RCW 42.30.120
Public Records Act

• Ch. 42.56 RCW

• Your documents related to planning commission business are public records
  • Any member of the public may request them and (with certain exceptions) the city must release them to the requestor
  • This includes meeting minutes and recordings and documents submitted to the planning commission as well as your emails, text messages, notes, etc. about planning commission business

• Staff coordinate responses to public records requests
  • They may ask you if you have records
  • Staff works with legal to determine whether exceptions apply
Avoiding PRA Violations

• Make sure staff is aware of the documents you have
• Do not destroy records
• Do not assume documents on your personal devices or to your personal email address or phone number are not public records
• Be aware of deadlines
Legal Advice

Requests for legal advice should be made through the planning director, who may seek the input of the city administrator or mayor before approving the request.