

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Extension of Hearing Examiner Review of Quasi-Judicial Items
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Joseph W. Tovar, FAICP, Director Steven Cohn, Senior Planner

PROBLEM/ISSUE STATEMENT:

The draft 2010 Planning Work Program anticipates a busy year. In the first half of the year alone, the Planning Commission is scheduled to hold public hearings on two Subarea Plans and two Master Development Permits, to review and make recommendations on a set of Development Code amendments and work on several other items. Over the past two years, the Council has opted to refer most quasi-judicial matters to the Hearing Examiner to make sure that the Commission has the time to consider other pressing longer-range issues.

Staff is requesting that you re-affirm this decision to allow this process to continue through 2010. As in the past, the Hearing Examiner would hold public hearings on items sent to her and make a recommendation for Council decision. The City Council retains its decision-making authority on all quasi-judicial items.

This action is meant as an interim measure, which requires a public hearing prior to adoption. The hearing and consideration of action is scheduled for next week, January 11.

FINANCIAL IMPACT:

No additional cost to the City. Staff and noticing costs are unchanged. The cost of hiring the Hearing Examiner is borne by the applicant.

Approved By:  City Manager _____ City Attorney _____

BACKGROUND

Though the Council has not had the opportunity to review the Draft 2010 Planning Work Program (Attachment A), it reflects an ambitious schedule for the Planning Commission, including work on two Subarea Plans, two Master Development Permits and several complicated issues including Design Review and Tree Code Amendments.

Staff views this as a full work program, but one that is probably attainable if the staff and Commission remain focused on these tasks. If new tasks are added, work items will most likely take longer to accomplish this year; some may not be addressed until next year.

The Work Program schedule incorporates an expectation that the Council will extend its decision to route most quasi-judicial items to the Hearing Examiner for public hearing and recommendation. The exceptions are: Master Development Permits, Special Use Permits, and rezones within the Town Center Subarea. These items would come to the Planning Commission for public hearing and recommendation. If more quasi-judicial items are sent to the Commission, it would either increase the number of meetings for Commissioners or cause some items on the work program to slide, possibly into next year.

Sending items such as rezones and plats to the Hearing Examiner seems to be working well—the Council has not identified any issues with the process. The Examiner has been hearing these items for more than a year and, to staff's knowledge, the community is satisfied with the process and its outcomes. In addition, the City's 2009 audit by the Washington Cities Insurance Authority pointed out that greater use of the hearing examiner system would decrease legal risk for the City and personal liability for Council members.

What is a quasi-judicial decision?

There are three types of Land Use Decisions: *Legislative*, *Administrative*, and *Quasi-Judicial* (See Attachment B). *Legislative Decisions* tend to be policy-oriented and are applied to a class of properties (i.e., properties with some defining characteristic). An example of this would be changing the allowable building height on all properties within a specific zoning. The hearing body (Planning Commission) and decision body (City Council), in making policy decisions, wield a great deal of discretion.

At the other end of the spectrum are *Administrative Decisions* such as building permits. These are ministerial permits: if someone who applies for a permit meets the criteria in the code, they have a right to the permit. There is no discretion about issuing the permit, either on the part of staff or by the Commission or City Council.

There are a set of permits in the middle, where an element of discretion is allowed. These are *Quasi-Judicial Decisions*. These decisions (such as site-specific rezones, Master Development Plan permits, and subdivisions) use review criteria that allow some discretion on the part of the hearing body. There is usually a public hearing involved.

In these types of decisions, there may be disagreement as to whether the applicant has met the criteria. Often the basis for judgment is the interpretation of technical analysis. In many Washington cities, Hearing Examiners are used for Quasi-Judicial hearings. Examiners tend to have many years of experience in the Planning field, usually as land-use lawyers or long-time planners. Their experience provides the basis for reviewing the staff analysis and the oral and written testimony, and acting in a manner resembling a judge (i.e., quasi-judicial) in developing findings of fact, applying applicable Comprehensive Plan policies, analyzing the appropriate municipal code requirements, developing conclusions and providing a recommendation. The recommendation is sent to the City Council which retains its decision-making authority on quasi-judicial actions. One key distinction is that the Council must base its decision on the written record from the Planning Commission or the Hearing Examiner and may not accept new evidence or testimony.

Proposal

Staff recommends that the Council adopt another interim ordinance to continue this approach through December, 2010, aware that staff will likely return to the Council later in the year with an evaluation of how the process has worked and a recommendation as to whether the interim approach should be made permanent, or alternatively, whether in staff's judgment, another approach would be appropriate.

RECOMMENDATION

No action required. This item is scheduled for hearing and action at your January 11 meeting.

ATTACHMENT

- A. Draft 2010 Planning Work Program
- B. Types of Land Use Decisions in Shoreline

TYPES OF LAND USE DECISIONS

