Council Meeting Date: November 14, 2011 **Agenda Item:** 9(b)

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion regarding Transferring Review Authority for all Quasi-judicial Hearings from the Planning Commission to the Hearing Examiner; and Amending Chapter 2.20.060 and Table 20.30.060 of the Shoreline Municipal Code
DEPARTMENT:	Planning and Community Development
PRESENTED BY:	Joseph W. Tovar, FAICP, Planning Director Steven Cohn, Senior Planner
ACTION:	____Ordinance ____Resolution ____Motion _x__Discussion

PROBLEM/ISSUE STATEMENT:

The Shoreline Municipal Code (SMC) Chapter 2.20 sets forth the duties of the Planning Commission. SMC Chapter 2.15 states that the Hearing Examiner shall hold public hearings on land use actions that are not otherwise assigned. It also states that the Hearing Examiner has the ability to make both recommendations and decisions on land use matters.

The Planning Commission's work program for the foreseeable future is burdened with high-priority legislative tasks (e.g., updating of the Comprehensive Plan and amendments to the Development Code), which greatly reduces its capacity to reach quasi-judicial hearing items in a timely fashion. Because prompt and expeditious processing of development permits is a City Council priority (Council Goal 1 calls for a "timely, clear, and predictable permit process" and Council Goal 3 calls for "improving economic development opportunities in Shoreline," which includes expediting development permit applications) it is appropriate to permanently shift the hearing responsibility for all open record, quasi-judicial permit hearings from the Planning Commission to the Hearing Examiner.

In order to give the Council a broad range of choice about which quasi-judicial permits it wishes to retain for final decisions the proposal, that was the subject of the Planning Commission public hearing on August 18 for application 301702, proposed that the hearing examiner be authorized to both hear and decide on <u>all</u> quasi-judicial permits, <u>except</u> for the following:

- Preliminary formal subdivisions (five or more lots)
- Final Formal Subdivision (Planning &Community Development Director makes an administrative recommendation and Council makes decision)
- Quasi-judicial rezones.

For these latter three types of quasi-judicial permits, the Hearing Examiner would conduct the public hearing and forward a recommendation to the City Council for the final decision.

As recommended by the Planning Commission, the City Council would not make the final decisions on:

- Special Use Permits
- Secure Community Transition Facilities
- Campus Master Development Plans (see "Commission comment" below)
- Critical Area Special Use and Reasonable Use Permits
- Appeals of decisions made by the City's SEPA Responsible Official.

The Planning Commission voted 5-0 to recommend that the City Council adopt the proposed recommendations. Table 20.30.060 of the City's Development Code summarizes the Planning Commission's recommendation and is Attachment E.

Commission comment: Though the Commission's recommendation included modifying the current process for Campus Master Development Plans (MDPs), the Commissioners wanted to add a caveat that they believe that this piece of the recommendation is a deviation from past Council decisions and may deserve further discussion. An MDP may include elements that are similar to both Comprehensive Plan Amendments and rezones. This raises the following policy questions: 1) Should the public hearing be held by the Hearing Examiner or by the Planning Commission, and 2) Should the decision maker be the Hearing Examiner or the City Council? The City Council should provide final direction to staff on their preferred alignment of responsibilities regarding MDPs.

RESOURCE/FINANCIAL IMPACT:
This action will not have any financial impact to the City. There will be an added cost to pay for the Hearing Examiner's time which would be borne by the applicant. The impact to staff resources will be minimal because staff currently prepares a recommendation to the Planning Commission and attends the public hearing.

RECOMMENDATION

No action is required at this meeting. Council is scheduled to take action on this item on November 28 with adoption of proposed Ordinance No. 621 (Attachment A). Staff recommends that Council discuss the Commission recommendation and provide additional direction if appropriate, particularly in regards to the hearing and decision process for Master Development Plan Permits.

Approved By: City Manager _____ City Attorney _____

INTRODUCTION

Under Shoreline's Development Code (Table 20.30.060), the Planning Commission is empowered to hold hearings on most quasi-judicial land use matters and to forward recommendations to the City Council which acts as the decision-making body. Table 20.30.360 is also the basis for the Hearing Examiner's authority to hold hearings for some land use matters (Critical Areas Special Use Permit and Critical Areas Reasonable Use Permit), and act as the decision authority in these cases.

For the past few years, the Council adopted limited-term ordinances that temporarily modified the process and transferred hearing authority for quasi-judicial matters such as rezones and street vacations to the Hearing Examiner. The most recent Council ordinance that directed this change, Ordinance 568, expired on December 31, 2010. (The interim ordinance did not affect two permits, which stayed with the Planning Commission for hearing: Master Development Plan Permits (such as CRISTA and the Public Health Lab) and a rezone in a subarea that is the subject of a subarea study. Since then, all quasi-judicial land use matters have been heard by the Planning Commission.

The Shoreline Municipal Code (SMC) Chapter 2.20 sets forth the duties of the Planning Commission. SMC Chapter 2.15 states that the Hearing Examiner has the ability to make recommendations to the City Council on certain quasi-judicial matters and final decisions on others.

The Planning Commission's work program for the foreseeable future is burdened with high-priority legislative tasks (e.g., updating of the Comprehensive Plan and amendments to the Development Code), which greatly reduces its capacity to reach quasi-judicial hearing items in a timely fashion. Because prompt and expeditious processing of development permits is a high City Council priority (Council Goal 1 calls for a "timely, clear, and predictable permit process" and Council Goal 3 calls for "improving economic development opportunities in Shoreline," which includes expediting development permit applications) it is appropriate to permanently shift the hearing responsibility for all open record, quasi-judicial permit hearings from the Planning Commission to the Hearing Examiner.

PLANNING COMMISSION'S RECOMMENDED AMENDMENTS

The Planning Commission held a public hearing on the proposed amendments on August 18, 2011. Attachment C is the public hearing record and list of exhibits provided to the Planning Commission.

To implement the proposed changes, both the Shoreline Municipal Code (SMC 2.20.060) and the Development Code would need to be modified. However, since the SMC is not within the jurisdiction of the Planning Commission, the Commission's recommendation only dealt with modifying Table 20.30.060 in the Development Code. Proposed Ordinance No. 621 (Attachment A) includes the required modifications to SMC 2.20.060 and the Development Code.

Under this proposal, the Hearing Examiner would continue to hear appeals on specified Type A and Type B actions. For Type C actions where the Hearing Examiner is the

hearing body, the Examiner will hear the associated State Environment Policy Act (SEPA) appeal, if there is one. The Examiner's decision is appealable to Superior Court, as are final decisions of the City Council. SMC 2.15 which addresses the Hearing Examiner functions is attached as Attachment B as background information only; there is no proposal to modify it.

Even if the Hearing Examiner becomes the sole body responsible for hearing all quasi-judicial permits in Shoreline, the City Council may choose to retain some or all of its final decision-making authority for certain quasi-judicial permits.

In order to give the Council a broad range of choice about which quasi-judicial permits it wishes to retain for final decisions, the proposal that was the subject of the Planning Commission public hearing for application 301702 proposed that the hearing examiner be authorized to both hear and decide on all quasi-judicial permits, except for the following:

- Preliminary formal subdivisions (five or more lots)
- Final Formal Subdivision (Planning &Community Development Director makes an administrative recommendation and Council makes decision)
- Quasi-judicial rezones.

For these latter three types of quasi-judicial permits, the Hearing Examiner would conduct the public hearing and forward a recommendation to the City Council for the final decision.

As recommended by the Planning Commission, the City Council would not make the final decisions on:

- Special Use Permits
- Secure Community Transition Facilities
- Campus Master Development Plans
- Critical Area Special Use and Reasonable Use Permits
- Appeals of decisions made by the City's SEPA Responsible Official

Commission comment: Though the Commission's recommendation included modifying the current process for Campus Master Development Plans (MDPs), the Commissioners wanted to add a caveat that they believe that this piece of the recommendation is a deviation from past Council decisions and may deserve further discussion. An MDP may include elements that are similar to both Comprehensive Plan Amendments and rezones. This raises the following policy questions: 1) Should the public hearing be held by the Hearing Examiner or by the Planning Commission, and 2) Should the decision maker be the Hearing Examiner or the City Council? This is discussed further in the alternatives analysis section of this staff report.

How would this amendment change the appeals process?
The Hearing Examiner would continue to hear appeals on specific Type A and Type B actions. For Type C actions where the Hearing Examiner is the hearing body, the Examiner would hear the associated SEPA appeal, if there is one. (Currently, if the

Planning Commission holds a public hearing on a quasi-judicial matter, the public is precluded from appealing a SEPA determination decision until the Council takes action on the Commission's recommendation. The SEPA determination decision together with the underlying Council decision would be appealed to Superior Court.) Under the proposal, the Examiner's decision is appealable to Superior Court as are decisions of the City Council. Appeals of legislative decisions would be to the Superior Court as they are today.

ALTERNATIVES TO THE PROPOSAL

The alternatives available for consideration range from doing nothing (i.e., adopt no amendments) up to adopting all of the amendments contained in Ordinance No. 621. The Council could choose to adopt any or all of the changes shown in Ordinance No. 621.

There are several arguments for retaining a greater number of quasi-judicial permits for hearing by the Planning Commission and final decision by the City Council. Some argue that citizens are better served by a hearing body and decision-makers who live in the community rather than a hearing examiner who does not. Another argument is that the hearing process before the Planning Commission and public meeting where the Council deliberates and takes action is less formal-looking than the proceeding before a hearing examiner. A final argument for Council retaining authority over appeals is that it is easier and less expensive for citizens to file an appeal with the Council than to appeal an examiner's decision to Superior Court.

On balance, the Commission concluded that the merits of the proposed amendments (enhances economic development, reduces City costs and legal/fiscal risks, enables elected officials to be accessible to citizen concerns) outweigh the above summarized arguments against it. Note that even if the Planning Commission recommendation is adopted, state law would still require that certain quasi-judicial decisions remain with the Council: quasi-judicial rezones, street vacations, and preliminary formal plats.

In addition, the Commission believes that the Council may want to consider retaining decision-making authority for Campus Master Plans. These are large sites with potential major impacts on the community, such as Fircrest and the Shoreline Community College. It appears unlikely that the City will receive an application for the former in the foreseeable future; the latter has a current application which is being modified and is expected to be reviewed soon.

Though the Commission's recommendation included modifying the current process for Campus Master Development Plans (MDPs) so that the hearing examiner would conduct the public hearing and act as the decision authority, the Commissioners wanted to add a caveat that they believe that this portion of the recommendation is a deviation from past Council decisions and may deserve further Council discussion. An MDP may include elements that are similar to both Comprehensive Plan Amendments and rezones. This raises the following policy questions: 1) Should the public hearing be held by the Hearing Examiner or by the Planning Commission, and 2) Should the decision maker be the Hearing Examiner or the City Council?

PUBLIC INVOLVEMENT

This item was the subject of a public hearing and subsequent deliberations by the Planning Commission at its August 18, 2011 meeting. The minutes of that meeting are included in Attachment C.

TIMING AND SCHEDULE

The proposed action is exempt from SEPA per WAC197-11-800(19). The notice of Public Hearing was given on July 20, 2011 and again on August 1, 2011. The Commission held a public hearing on August 18, 2011.

DISCUSSION

Commission conclusions on responses to Development Code Amendment Criteria
Section 20.30.350 lists the decision criteria for amendments to the Development Code. The proposed amendments have been reviewed for consistency with the following criteria:

1. *The amendment is in accordance with the Comprehensive Plan.*

The City's Comprehensive Plan must be consistent with the Goals and Requirements of the Growth Management Act (GMA). Two of the relevant provisions are as follows:

> RCW 36.70A.020(7) Permit Processes. "Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability."
>
> RCW 36.70A.040(3)(d) ". . . if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan."
> (Underlined emphases added.)

The Planning Commission historically has focused on both legislative policy-related issues and site-specific quasi-judicial issues. These have to be addressed within the constraints of the Planning Commission schedule and abilities of volunteer Commissioners to hold additional meetings. This has become less of an immediate issue in the recent past because of the relatively small number of quasi-judicial permit applications, but is likely to be more of an issue in the coming years for two reasons.

First, the City Council has assigned a very heavy legislative workload to the Planning Commission, starting with the update of the Comprehensive Plan. Second, as the economy begins its recovery, the city expects to see an increasing number of permit applications, including quasi-judicial permits.

The Hearing Examiner's role is more focused, dealing only with quasi-judicial hearings and decisions, not legislative policy items like the Comprehensive Plan and development code amendments. The Hearing Examiner also has more leeway as to the frequency and available times that a hearing can be held. This flexibility and the change that would allow the Examiner (rather than the City Council) to be the decision

authority on some items would result in a more timely, clear, and predictable permit process. This is likely to become more important as the economic recovery results in upticks in permit activity in 2013 and beyond.

2. *The amendment will not adversely affect the public health, safety or general welfare.*

The public will see little change—notice requirements for public hearings will not change, the formats for hearings of the Hearing Examiner and the Planning Commission hearings are quite similar, and most hearings will likely be held in the evening to make it convenient for members of the public to attend. The major difference that the public will notice is that the Hearing Examiner generally does not make a ruling or a recommendation the night of the hearing; rather, the recommendation will be released about two weeks after the hearing.

As to Special Use Permits, Secure Community Transition Facility (SCTF) permits and appeals, and Master Development Plan Permits, the Commission recommends that the Hearing Examiner make the final decision. As to quasi-judicial rezones, formal plats, and street vacations, the recommendation is that the City Council would continue to make the final decisions.

3. *The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.*

It is in the best interest of the citizens and property owners that they be able to communicate their concerns about development in Shoreline, however, the ex parte prohibitions of a quasi-judicial process prevent that communication from taking place until after the final decision has been made. By having the Hearing Examiner become the decision-maker on these quasi-judicial decisions, Councilmembers would then be free to discuss with individual citizens their concerns regarding the project. Currently, such discussions can only happen after the fact (i.e., after all decisions and appeals have been exhausted), which limits accessibility of citizens to their elected officials.

While the Council could not intervene or influence such a project while underway through the Hearing Examiner process, they would be aware of the issues and concerns of citizens as they occur and could ask, after that particular project's permit process has been completed, for a debrief from staff. In this way, the Council could identify areas where decision criteria may require amendment or addition that would apply to future permit applications. Some jurisdictions invite an annual report from their Examiners to see if there are criteria that perhaps might merit a review and possible clarification.

It is also in the interest of citizens and property owners that the City's permit process not place the City at financial risk. Quasi-judicial decisions must be made according to the facts in the record and the specific criteria listed in the adopted regulations for the permit in question. A letter from the City's insurance carrier, the Washington Cities Insurance Authority (WCIA) advised its member jurisdictions as follows:

> "We strongly urge the [town or city] to maintain its use of a professional hearing examiner for quasi-judicial land use decision making. And, in the interest of good

> legal risk management, economic efficiency and customer service, we also recommend that the town consider modifying the [ordinance] to make the decision of the hearing examiner on those identified matters a "final" and binding decision, appealable only to Superior Court. We encourage the [town or city] to make the fullest use of a professional hearing examiner for all quasi-judicial matters authorized by law and to make those hearing examiner decisions final decisions, appealable only to Court."
>
> Letter from WCIA legal counsel Michael Walter, Exhibit 5 in the Planning Commission record.

A number of cities have followed this advice by divesting their Councils entirely of involvement in quasi-judicial permit decision making and appeals, including Sultan, Kirkland, Kent, and Tacoma. Staff believes that these cities are at a competitive advantage in attracting investment decisions from developers who crave a process that is timely, fair, and predictable.

Commission recommendations
On August 18, 2011, the Commission held a public hearing. There was no public testimony, either written or oral. The Commissioners deliberated and voted 5-0 (Commissioners Wagner and Broili absent) to recommend the attached proposal to modify the Development Code. The Commissioners discussed the pros and cons of maintaining Master Development Plan Permits as a Commission hearing, and ultimately concluded that they preferred to leave that policy choice to the City Council.

COUNCIL GOAL ADDRESSED

The City Council, in its Goals for 2010-2011, has identified as a major priority the implementation of the community's vision which includes an objective to create permit processes that are more timely and predictable.

Goal 1: Implement the adopted Community Vision by updating the Comprehensive Plan and key development regulations in partnership with residents, neighborhoods, and businesses.

Major Objectives:

- Adopt amendments to the City's development regulations to make the permit process more timely, clear and predictable, e.g., administrative design review, planned actions, subarea plans, and other appropriate planning tools.
- Adopt amendments to the tree regulations, adopt a policy of increasing tree canopy through voluntary programs, and become a Tree City USA
- Amend the citywide Comprehensive Plan to make it consistent with the adopted 2029 Vision and Framework Goals while also reducing its length and complexity
- Adopt the Town Center Subarea Plan and code

RECOMMENDATION

No action is required at this meeting. Council is scheduled to take action on this item on November 28 with adoption of proposed Ordinance No. 621 (Attachment A). Staff

recommends that Council discuss the Commission recommendation and provide additional direction if appropriate, particularly in regards to the hearing and decision process for Master Development Plan Permits.

ATTACHMENTS

A. Proposed Ordinance No. 621
B. Hearing Examiner functions – SMC 2.15
C. Planning Commission Public Hearing Record including
   Ex. 1 August 18, 2011 Staff report
   Ex. 2 Proposed Amended Table 20.30.060
   Ex. 3 Notice of August 18, 2011 Public Hearing
   Ex. 4 Feb. 3, 2011 Planning Commission study session minutes
   Ex. 5 Email from J. Tovar to Planning Commission with WCIA opinion attached
D. Minutes of August 18, 2011 Planning Commission hearing
E. Summary of Type C Actions, Review Authority and Decision-Making Authority as Recommended by the Planning Commission

Attachment A

ORDINANCE NO. 621

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON TRANSFERING REVIEW AUTHORITY FOR ALL QUASI-JUDICIAL HEARINGS FROM THE PLANNING COMMISSION TO THE HEARING EXAMINER; AND AMENDING CHAPTER 2.20.060 AND TABLE 20.30.060 OF THE SHORELINE MUNICIPAL CODE.

WHEREAS, a public participation process was conducted to develop and review the proposed amendment to the Development Code to transfer review authority for quasi-judicial hearings from the Planning Commission to the Hearing Examiner, including:

WHEREAS, t~~T~~he Planning Commission held a Public Hearing on August 18, 2011, where it formulated its recommendation to Council on the proposed amendments;

WHEREAS, the proposed action is exempt from SEPA under WAC 197-11-800(19); and

WHEREAS, the proposed amendments were submitted to the State Department of Commerce on February 10, 2011 for comment pursuant to RCW 36.70A.106; and

WHEREAS, no comments were received from the State Department of Commerce; and

WHEREAS, the Council finds that the amendments adopted by this ordinance meet the criteria in SMC 20.30.350 for adoption of amendments to the Development Code;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Shoreline Municipal Code 2.20.060 is amended as follows:

2.20.060 Duties – Responsibilities

[A-H unchanged]

~~I. The planning commission shall make recommendations to the city council regarding the subdivision of land pursuant to RCW 58.17.100 and in conformity with other ordinances of the city.~~

J. The planning commission shall have such other duties and powers as may be conferred upon the commission from time to time by ordinance, resolution or motion of the city council.

K. Unless otherwise assigned by ordinance to another body, all public hearings required to be held in the course of adoption or amendment to the comprehensive plan, the zoning code, ~~adoption or amendment of the zoning map,~~ or adoption or amendment of regulations for the subdivision of land, shorelines management and environmental protection regulations shall be heard by the planning commission.

Section 2. Amendment. Shoreline Municipal Code Table 20.30.060 is hereby amended as follows:

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Review Authority, Decision Making Authority, and Target Time Limits for Decisions

Action	Notice Requirements for Application and Decision [3], [4]	Review Authority, Open Record Public Hearing	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
Type C Permits:					
1. Preliminary Formal Subdivision	Mail, Post Site, Newspaper	HE [1], [2] ~~PC [3]~~	City Council	120 days	20.30.410
2. Rezone of Property ~~[2]~~ and Zoning Map Change	Mail, Post Site, Newspaper	HE [1], [2] ~~PC [3]~~	City Council	120 days	20.30.320
3. Special Use Permit (SUP)	Mail, Post Site, Newspaper	HE [1], [2] ~~PC [3]~~	HE ~~City Council~~	120 days	20.30.330
4. Critical Areas Special Use	Mail, Post Site, Newspaper	HE [1], [2]		120 days	20.30.333
5. Critical Areas Reasonable Use	Mail, Post Site, Newspaper	HE [1], [2]		120 days	20.30.336
6. Final Formal Plat	None	Review by Director	City Council	30 days	20.30.450
7. SCTF – Special Use Permit	Mail, Post Site, Newspaper	HE [1], [2] ~~PC [3]~~	HE ~~City Council~~	120 days	20.40.505
8. Street Vacation	~~PC [3],~~ Mail, Post Site, Newspaper	HE [1], [2] ~~PC [3]~~	City Council	120 days	See Ch. 12.17 SMC
9. Master Development Plan	Mail, Post Site, Newspaper	HE [1], [2] ~~PC [3]~~	HE ~~City Council~~	120 days	20.30.353

[1] Including consolidated SEPA threshold determination appeal, [2] ~~The rezone must be consistent with the adopted Comprehensive Plan~~, [2] HE = Hearing Examiner, [3] Notice of application requirements are specified in SMC 20.30.120, [4] Notice of decision requirements are specified in SMC 20.30.150

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date and Publication. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. The ordinance shall take effect and be in full force five days after passage and publication

PASSED BY THE CITY COUNCIL ON NOVEMBER 28, 2011.

_____
Mayor Keith McGlashan

ATTEST:

_____
Scott Passey
City Clerk

APPROVED AS TO FORM:

_____
Ian Sievers
City Attorney

Date of Publication:
Effective Date:

Attachment B

Chapter 2.15
HEARING EXAMINER

Sections:

2.15.010 Purpose.

The purpose of this section is to provide an administrative land use regulatory system which will best satisfy the following needs:

A. Provide a single, efficient integrated land use, shorelines management and environmental protection regulatory hearing system;

B. Render land use regulatory decisions and recommendations to the city council;

C. Provide a greater degree of fairness and due process in land use regulatory hearings;

D. Separate the city's land use planning program from the land use regulatory process;

E. Protect the community's general health, safety and welfare as provided for in Chapter 35A.63 RCW. [Ord. 38 § 1, 1995]

2.15.020 Created.

There is created the office of hearing examiner for the conduct of hearings on such matters involving the interests of the city and its citizens over which jurisdiction from time to time is conferred on the hearing examiner by the city council. In addition to the grant of the power to the hearing examiner to determine those land use matters set forth in this chapter, the city manager is authorized to refer to the hearing examiner for a determination on those matters which from time to time are believed appropriate. [Ord. 38 § 2, 1995]

2.15.030 Independence.

The hearing examiner shall be free of any supervision or other influence from the city manager or any official or employee of the city with respect to any decision or recommendation made by the hearing

examiner on a specific case, issue, or permit. Nothing in this section may be construed to prohibit the city manager or any employee or official of the city from appearing before or submitting written information to the hearing examiner in the normal process of conducting public hearings for the city. No hearing examiner shall conduct or participate in any hearing or decision in which the hearing examiner has a direct or substantial financial interest. [Ord. 38 § 3, 1995]

2.15.040 Appointment.

The city manager shall employ or contract with one or more persons to fill this position. The hearing examiner shall be appointed and compensated consistent with the general personnel and/or procurement laws of the city. [Ord. 38 § 4, 1995]

2.15.050 Qualifications.

Hearing examiners shall have such training or experience as the city manager believes necessary to qualify hearing examiners to conduct administrative or quasi-judicial hearings on land use regulatory, shorelines management and environmental protection matters. Hearing examiners on non-land use matters shall have such qualifications as the city manager may from time to time determine. Hearing examiners shall hold no other appointive or elected public office or position in the city government except as hearing examiners. [Ord. 38 § 5, 1995]

2.15.060 Division of responsibilities between hearing examiner and city manager or designee.

A. The city manager or designee is authorized to make decisions on land use matters to the extent permitted under Washington law and the King County Code sections adopted by reference by the city, including permit applications.

B. Any person aggrieved by a final decision made by the city manager or designee shall have the right to an appeal before the hearing examiner; provided, that for land use applications which are required to have a public hearing, except as otherwise set forth by ordinance, the hearing examiner shall conduct the public hearing and issue a final decision. [Ord. 405 § 1, 2006; Ord. 76 §§ 1, 2, 1996; Ord. 38 § 6, 1995]

2.15.070 Powers – Duties.

In the performance of duties prescribed by this chapter or other ordinance, the hearing examiner is authorized to:

A. Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive evidence, and conduct discovery procedures which may include propounding interrogatories and taking oral depositions; provided, that no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law;

B. Issue summons for and compel the appearance of witnesses or production of documents, upon the request of a city officer or any party, or upon the hearing examiner's own volition; provided, that any such subpoena shall state the name and address of the witness sought, and, if for the production of books, documents or things, shall specifically identify the same and the relevance thereof to the issues involved;

C. Regulate the course of the hearing in accordance with rules of this chapter and other applicable ordinances;

D. Hold conferences for the settlement or simplification of the issues by consent of the parties;

E. Dispose of procedural requests or similar matters;

F. Make such decisions or recommendations as are contemplated herein and by other ordinances conferring jurisdiction on the hearing examiner;

G. Take any other action authorized by ordinance;

H. Make rules for the conduct of hearings, notices and other proceedings and procedures not inconsistent with this chapter and any other applicable ordinance. An audio or video record of the hearing proceedings shall be maintained and shall be made available for public review;

I. Make recommendations for revision to relevant codes and ordinances which will clarify or otherwise improve the development review process. [Ord. 405 § 2, 2006; Ord. 38 § 7, 1995]

2.15.080 Staff support.

Administrative staff support including, but not limited to, preparation of staff reports and notice of hearings shall be provided to the hearing examiner. [Ord. 38 § 8, 1995]

2.15.090 Public hearings.

There shall be only one open record public hearing on each land use application that is required by state statute to have a public hearing. That public hearing shall occur before the hearing examiner, unless otherwise provided by ordinance. A public hearing may be continued by the hearing examiner if appropriate. [Ord. 38 § 9, 1995]

2.15.100 Decisions – Recommendations.

The hearing examiner must issue a final decision on all land use applications and other matters within 10 working days from the close of the record unless the applicant consents to additional time. The hearing examiner may issue a recommendation to the council on a quasi-judicial rezone application. [Ord. 38 § 10, 1995]

2.15.110 Judicial appeals.

Decisions made by the hearing examiner shall be appealable directly to King County superior court. [Ord. 38 § 11, 1995]

TOC < >

CITY OF SHORELINE

PUBLIC HEARING RECORD

Development Code Amendment regarding Quasi-Judicial Public Permit and Appeal matters

August 18, 2011 | List of Exhibits

Exhibit 1 August 18, 2011 Staff Report "Application 301702, a proposal to modify portions of Table 20.30.060 in the Shoreline Development Code regarding Planning Commission, Hearing Examiner and City Council roles in certain quasi-judicial permit and appeal matters"

Exhibit 2 Proposed Amended Table 20.30.060

Exhibit 3 Notice of August 18, 2011 Public Hearing

Exhibit 4 February 3, 2011 Planning Commission minutes of study session

Exhibit 5 Email (with one attachment) from Joe Tovar, Director Planning & Community Development, to Plancom regarding "WCIA opinion regarding Hearing Examiner System", sent 8/16/11

- Att 1 – Letter from Eric B. Larson, Assistant Executive Director of WA Cities Insurance Authority, RE: Legal Opinion Hearing Examiner System

Planning Commission Meeting Date: August 18, 2011 **Agenda Item: 7.A**

PLANNING COMMISSION AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Application 301702, a proposal to modify portions of Table 20.30.060 in the Shoreline Development Code regarding Planning Commission, Hearing Examiner and City Council roles in certain quasi-judicial permit and appeal matters
DEPARTMENT:	Planning and Community Development
PRESENTED BY:	Joseph W. Tovar, FAICP, P&CD Director Steven Cohn, Senior Planner

RECOMMENDATON

The City staff recommends that the Planning Commission conduct a public hearing on Application 301702 on August 18, 2011 after which we recommend that you forward your hearing record and recommendations to the City Council.

BACKGROUND

The Shoreline Municipal Code (SMC) Chapter 2.20 sets forth the duties of the Planning Commission. SMC Chapter 2.15 states that the Hearing Examiner has the ability to make recommendations to the City Council on certain quasi-judicial matters and final decisions on others.

Under Shoreline's Development Code (Table 20.30.060), the Planning Commission is empowered to hold hearings on most quasi-judicial land use matters and to forward recommendations to the City Council for final decision. Table 20.30.360 is also the basis for the Hearing Examiner's authority to hold hearings for some land use matters (Critical Areas Special Use Permit and Critical Areas Reasonable Use Permit), and act as the decision authority in these cases.

For the past few years, the Council adopted limited-term ordinances to temporarily re-assign from the Planning Commission to the Hearing Examiner the hearing responsibility for two quasi-judicial matters: rezones and street vacations. The most recent Council ordinance that directed this change, Ordinance 568, expired on December 31, 2011.

The Planning Commission's work program for the foreseeable future is burdened with high-priority legislative tasks (e.g., updating of the Comprehensive Plan and amendments to the Development Code), which greatly reduces its capacity to reach quasi-judicial hearing items in a timely fashion. Because prompt and expeditious

processing of development permits is a high City Council priority (Council Goal 1 calls for a "timely, clear, and predictable permit process" and Council Goal 3 calls for "improving economic development opportunities in Shoreline," which includes expediting development permit applications) it is appropriate to permanently shift the hearing responsibility for all quasi-judicial permit hearings from the Planning Commission to the Hearing Examiner.

Even if the Hearing Examiner becomes the sole body responsible for hearing all quasi-judicial permits in Shoreline, the City Council may choose to retain some or all of its final decision-making authority for certain of those quasi-judicial permits. In order to give the Council a broad range of choice about which quasi-judicial permits it wishes to retain for final decisions, the staff has given notice of the public hearing for application 301702 to include having the hearing examiner be authorized to both hear and decide on all quasi-judicial permits, except for the following:

- Preliminary formal subdivisions
- Final Formal Subdivision (P&CD Director makes administrative recommendation, Council makes decision)
- Quasi-judicial rezones.

For these latter three types of quasi-judicial permits, the Hearing Examiner would conduct the public hearing and forward a recommendation to the City Council for the final decision.

This means that, as proposed by the City staff, the City Council would not make the final decisions on:

- Special Use Permits
- Secure Community Transition Facilities
- Campus Master Development Plans
- Critical Area Special Use and Reasonable Use Permits
- Appeals of decisions made by the City's SEPA Responsible Official.

THE PROPOSAL

To implement the proposed change, both the Shoreline Municipal Code (SMC) and the Development Code would be modified. However, since the SMC is not within the jurisdiction of the Planning Commission, the Commission would only develop a recommendation on modifying the Development Code.

This proposal would modify Table 20.30.060 in the Shoreline Development Code as shown in Attachment A.

The Hearing Examiner will continue to hear appeals on certain Type A and Type B actions. For Type C actions where the Hearing Examiner is the hearing body, the

Examiner will hear the associated SEPA appeal, if there is one. The Examiner's decision is appealable to Superior Court, as are final decisions of the City Council.

ALTERNATIVES TO THE PROPOSAL

The alternatives available for consideration by the Commission and Council range from do nothing (i.e., adopt no amendments) all the way up to adopt all of the amendments contained in Attachment A. Both the Commission and Council can weigh the choices shown on the table in Attachment A for the different type of quasi-judicial permits/appeals listed there.

There are several arguments for retaining a greater number of quasi-judicial permits for hearing by the Planning Commission and final decision by the City Council. Some argue that citizens are better served by a hearing body and decision-makers who live in the community rather than a hearing examiner who does not. Another argument is that the hearing process before the planning commission and public meeting where the Council deliberates and takes action is less formal-looking than the proceeding before a hearing examiner. Another argument for Council retaining authority over appeals is that it is easier and less expensive for citizens to file an appeal with the Council than to appeal an examiner's decision to Superior Court.

On balance, the staff believes that the arguments in support of the proposal outweigh the merits of the above summarized arguments against it. Moreover, if the City is serious about positioning Shoreline as an attractive choice for the development community as the economy recovers, it is very powerful to be able to say that the City's permit decision-making process, especially the quasi-judicial portion, is handled by professional administrators and hearing examiners. Developers are wary of the added, time, delay, uncertainty and politicization of the permit process, and for that reason are very attracted to communities that rely heavily on the hearing examiner process for decisions.

Having said that, however, several quasi-judicial decisions must continue to be made by the Council because state law requires it: quasi-judicial rezones, street vacations, and Preliminary Formal Plats. In addition, staff believes that the Council may also wish to consider retaining decision-making authority for Campus Master Plans. These are large sites with potentially major impacts, including the Fircrest and Shoreline Community College. However, it appears unlikely that we will see an application for the former in the foreseeable future, and the latter is already vested under the current process which will mean a hearing before the Planning Commission this fall and subsequent decision by the City Council.

PUBLIC REVIEW AND COMMENT ON THE PROPOSAL

This item was discussed at a Planning Commission study session on February 3, 2011. The minutes of that meeting are attached. The minutes of the August 18, 2011 public

hearing should also be forwarded to the City Council, together with any written materials that are submitted prior to the close of the public hearing.

TIMING AND SCHEDULE

The proposed action is exempt from SEPA per WAC197-11-800(19). The notice of Public Hearing was given on July 20, 2011 and again on August 1, 2011. The public hearing is scheduled for August 18, 2011.

CONSISTENCY WITH CODE AMENDMENT CRITERIA

Initial Responses to Development Code Amendment Criteria

Section 20.30.350 lists the decision criteria for amendments to the Development Code. The proposed amendments have been reviewed for consistency with the following criteria:

1. *The amendment is in accordance with the Comprehensive Plan.*

The City's Comprehensive Plan must be consistent with the Goals and Requirements of the Growth Management Act (GMA). Two of the relevant provisions are as follows:

> RCW 36.70A.020(7) Permit Processes. "Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability."
>
> RCW 36.70A.040(3)(d) ". . . if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan."
>
> Underlined emphases added.

The Planning Commission has historically had a number of priorities, addressing both legislative policy-related issues and site-specific quasi-judicial issues. These all have to be addressed within the constraints of the Planning Commission schedule and abilities of volunteer Commissioners to hold additional meetings. This has become less of an immediate issue in the recent past because of the relatively small number of quasi-judicial permit applications, but would become more of an issue in the coming years for two reasons.

First, the City Council has assigned a very heavy legislative workload to the Planning Commission, starting with the updating of the Comprehensive Plan. Second, as the economy begins its recovery, we hope and expect to see an increasing number of permit applications, including quasi-judicial permits.

The Hearing Examiner's role is more focused, dealing only with quasi-judicial hearings and decisions, not legislative policy items like the Comprehensive Plan and development code amendments. The Hearing Examiner also has more leeway as to the available times that a hearing can be held. This flexibility and the change that allows the Examiner (rather than the City Council) to be the decision authority on some items will result in a more timely, clear, and predictable permit process.

2. *The amendment will not adversely affect the public health, safety or general welfare.*

The public will see little change—notice requirements for public hearings will not change, the formats for hearings of the Hearing Examiner and the Planning Commission hearings are quite similar, and most hearings will likely be held in the evening to make it convenient for members of the public to attend. The major difference that the public will see is that the Hearing Examiner generally does not make a ruling or a recommendation the same night that the hearing is held; rather, it will be released about 2 weeks after the hearing.

As to Special Use Permits, SCTF permits and appeals, the Hearing Examiner would make the final decision. As to, Quasi-judicial rezones, Formal Plats, and Street Vacations, the City Council would continue to make the final decisions.

3. *The amendment is not contrary to the best interest of the citizens and property owners of the City of Shoreline.*

It is in the interest of both the citizens and property owners to have timely, clear, fair, and predictable processes. Having a Hearing Examiner, who is extremely familiar with land use law make recommendations, and in some cases, decisions, would result, over time, in a more predictable process that is timely, clear and predictable. This outcome would implement both State Law (RCW 36.70A.020(7), and Shoreline City Council Goals #1 and #3 for 2011-12.

It is also in the interest of citizens and property owners in Shoreline that the City's permit process not place the City at financial risk. Quasi-judicial decisions must be made according to the facts in the record and the specific criteria listed in the adopted regulations for the permit in question. The number of people on one side or the other of the issue is legally irrelevant, but if a Council yields to political pressure rather than the facts and criteria relevant to the permit, the City could be exposed to significant fiscal risk. On the other hand, by sticking to the legally required facts and criteria, but making a locally unpopular decision, a Council can incur political consequences from voters who are unmoved by the legal constraints that govern quasi-judicial decisions.

The City's insurance carrier, the Washington Cities Insurance Authority (WCIA) has advised its member cities wherever possible to remove the City Council from the quasi-judicial decision-making process. By relying on a professional hearing examiner to render many, but not all, quasi-judicial decisions, the City would protect its fiscal solvency as well as the personal liability of individual Council members. A number of

cities have moved all the way in this direction to divest themselves entirely of involvement in quasi-judicial permit decision making, including Sultan, Kirkland, Kent, and Tacoma.

Also, by removing the Council from quasi-judicial decisions, they are free to discuss with individual citizens their concerns regarding the project. Currently, that can only happen after the fact (i.e., after all decisions and appeals have been exhausted), which limits accessiblility of citizens to their elected officials. While the Council could not intervene or influence such a project while underway through the Hearing Examiner process, they would be aware of the issues and concerns of citizens as they occur and could ask, after that particular project's permit process has been completed, for a debrief from staff. In this way, the Council could identify areas where decision criteria may require amendment or addition that would apply to future permit applications. Some jurisdictions invite an annual report from their examiners to see if there are criteria that perhaps might merit a review and possible amendment.

RECOMMENDATION

The staff recommends that the Planning Commission forward its recommendation to the City Council to modify portions of Table 20.30.060 in the Shoreline Development Code to transfer the responsibility from the Planning Commission to the Hearing Examiner for conducting Public Hearings and making recommendations to the City Council, or in some cases, making final decisions on certain quasi-judicial matters.

NEXT STEPS

The Commission will hold a public hearing on August 18 and forward the recommendation to the City Council for action. The Commission may choose to accept, reject, or modify the staff proposal.

The Shoreline Municipal Code is amended by the Council. If the Council decides to modify the existing hearing/recommendation process in the Development Code, City staff will draft appropriate amendments to the Municipal Code for Council's action consistent with that direction.

If you have questions about the proposal, contact Senior Planner Steven Cohn at scohn@shorelinewa.gov or 206-801-2511.

ATTACHMENTS

A. Proposed Amended Table 20.30.060
B. Public Hearing Notice
C. Minutes from February 3, 2011 Commission study session

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Review Authority, Decision Making Authority, and Target Time Limits for Decisions

Action	Notice Requirements for Application and Decision (5), (6)	Review Authority, Open Record Public Hearing	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
Type C Permits:					
1. Preliminary Formal Subdivision	Mail, Post Site, Newspaper	HE (1), (4) ~~PC (3)~~	City Council	120 days	20.30.410
2. Rezone of Property ~~(2)~~ and Zoning Map Change	Mail, Post Site, Newspaper	HE (1), (4) ~~PC (3)~~	City Council	120 days	20.30.320
3. Special Use Permit (SUP)	Mail, Post Site, Newspaper	HE (1), (4) ~~PC (3)~~	HE ~~City Council~~	120 days	20.30.330
4. Critical Areas Special Use	Mail, Post Site, Newspaper	HE (1), (4)		120 days	20.30.333
5. Critical Areas Reasonable Use	Mail, Post Site, Newspaper	HE (1), (4)		120 days	20.30.336
6. Final Formal Plat	None	Review by Director	City Council	30 days	20.30.450
7. SCTF – Special Use Permit	Mail, Post Site, Newspaper	HE (1), (4) ~~PC (3)~~	HE ~~City Council~~	120 days	20.40.505
8. Street Vacation	~~PC (3),~~ Mail, Post Site, Newspaper	HE (1), (4) ~~PC (3)~~	City Council	120 days	See Ch. 12.17 SMC
9. Master Development Plan	Mail, Post Site, Newspaper	HE (1), (4) ~~PC (3)~~	HE ~~City Council~~	120 days	20.30.353

(1) Including consolidated SEPA threshold determination appeal, ~~(2) The rezone must be consistent with the adopted Comprehensive Plan~~, (proposed for deletion since this is a criteria and addressed in another part of the code) (3) PC = Planning Commission, (4) HE = Hearing Examiner, (5) Notice of application requirements are specified in SMC 20.30.120, (6) Notice of decision requirements are specified in SMC 20.30.150

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(1) Including consolidated SEPA threshold determination appeal, ~~(2) The rezone must be consistent with the adopted Comprehensive Plan~~, (proposed for deletion since this is a criteria and addressed in another part of the code) (3) PC = Planning Commission, (4) HE = Hearing Examiner, (5) Notice of application requirements are specified in SMC 20.30.120, (6) Notice of decision requirements are specified in SMC 20.30.150

ATTACHMENT C

The Seattle Times

seattletimes.com

PO Box 70, Seattle, WA 98111

SHORELINE CITY OF
KIM SULLIVAN/PLANNING DEPT
17500 MIDVALE AVE N
SHORELINE, WA 981334905

Re: Advertiser Account #6391000
Ad #: 798761600

Affidavit of Publication

4135827 / 2

STATE OF WASHINGTON
Counties of King and Snohomish

The undersigned, on oath states that he/she is an authorized representative of The Seattle Times Company, publisher of The Seattle Times of general circulation published daily in King and Snohomish Counties, State of Washington. The Seattle Times has been approved as a legal newspaper by orders of the Superior Court of King and Snohomish Counties.

The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

Newspaper	Publication Date
The Seattle Times	**08/01/11**

Agent Marilyn Peredo Signature Marilyn Peredo

Subscribed and sworn to before me on August 1, 2011 (DATE)

Christina C. McKenna
(NOTARY SIGNATURE) Notary Public in and for the State of Washington, residing at Seattle

Christina C. McKenna

CHRISTINA C. MCKENNA NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 10-29-12

ATTACHMENT C

The Seattle Times

seattletimes.com

Re Advertiser Account #6391000 Ad # 798761600

Ad TEXT: The City of Shoreline Notice of Public Hearing of the Planning Commission

Application Number: 301702

Description of Proposal: Modify portions of Table 20.30.060 in the Shoreline Development Code to transfer the responsibility from the Planning Commission to the Hearing Examiner for conducting Public Hearings on certain quasi-judicial matters, and making recommendations on some actions to the City Council, and acting as the decision-making authority on other actions.

Interested persons are encouraged to provide oral and/or written comments regarding the above project at an open record public hearing. The hearing has been rescheduled for 7 p.m., August 18, 2011, in the Council Chambers at Shoreline City Hall. Copies of the proposal are available at City Hall.

To be added to the hearing record, written comments must be received at the address listed below before 5:00 p.m. on August 18 or presented at the hearing. Please mail, fax (206) 546-8761 or deliver comments to the Shoreline City Hall: Attn: Steven Cohn, 17500 Midvale Avenue North, Shoreline, WA 98133 or email to

scohn@shorelinewa.gov.

Questions or More Information: Please contact Steven Cohn, Planning and Development Services at (206) 801-2511.

Any person requiring a disability accommodation should contact the City Clerk at (206) 801-2230 in advance for more information. For TTY telephone service call (206) 546-0457. Each request will be considered individually according to the type of request, the availability of resources, and the financial ability of the City to provide the requested services or equipment.

series of rain gardens. He provided a map to illustrate where the rain garden features are currently being proposed. He emphasized that this project is still in the pre-design phase, and they anticipate construction will begin in 2013.

Commissioner Moss said it appears from the map that rain gardens have been proposed on properties that are currently developed as single-family residential. Mr. Landau explained that all the features would be constructed within the City's rights-of-way. The shaded areas are intended to show the areas that feed into the rain gardens.

Commissioner Behrens pointed out that he lives close to the rain garden that is proposed near Serpentine Place, which he believes is a good location. Mr. Landau agreed but said gaining public support for the project will likely be a challenge. Commissioner Behrens observed that there is already enough open space in the area to accommodate the rain garden and there are already significant drainage problems.

Chair Wagner asked staff to forward Commissioners Kaje and Broili a link to the PowerPoint presentation.

Commissioner Moss asked about the source of the grant funding. Mr. Landau answered that the grant dollars will come from the Washington State Department of Ecology. They were particularly interested in ready-to-build projects, and about $25 million in LID/Stormwater Retrofit Grants were awarded. He noted that the City does not have a signed grant agreement yet.

Study Session: Development Code Amendment to Make the Hearing Examiner the Permanent Quasi-Judicial Hearing Body/Decision Maker

Mr. Tovar reminded the Commission that over two years ago, the City Council adopted an interim regulation saying that most quasi-judicial permits were going to be temporarily reassigned from the Planning Commission to the Hearing Examiner. For the past two years, any zoning applications that would have been heard by the Planning Commission were directed to the Hearing Examiner, with the exception of master development plan permits and rezones of properties that are the subject of a subarea plan. He noted that there has been very little permit activity over the past two years, so no quasi-judicial applications were actually sent to the Hearing Examiner.

Mr. Tovar noted that because the interim regulation expired in January, all rezone and special use permits must now be heard by the Planning Commission. The proposed Development Code amendment would make this re-assignment to the Hearing Examiner permanent. He said that in addition to the proposed development code amendment, staff will also have a discussion with the City Council on February 14th about whether or not it would be appropriate for them to divest themselves from being the final decision makers on quasi-judicial permits. He cited the following reasons to support the proposed changes:

- If the City is paying close enough attention to the criteria and standards in the Development Code, the outcome of a quasi-judicial process should be fairly prescribed. He referred to

background information provided by staff to identify how other jurisdictions process quasi-judicial permit applications. Many cities have decided that their city councils are responsible for adopting the regulations and establishing the criteria for review (policy makers), but they should not become involved in administering or adjudicating the permit applications.

- Taking the Planning Commission and City Council out of the quasi-judicial decision-making process would free agenda time. He reminded the Commission that their agenda will be full for the next three to four years with updating the Comprehensive Plan, reviewing Development Code amendments, reviewing subarea plan proposals, revising the tree regulations, etc. Over the past year, the City Council's agenda have been much more manageable because very few quasi-judicial matters came before them, but the situation could change once the economy improves. He emphasized that quasi-judicial permit applications are oftentimes very contentious and time consuming.
- City Council Goal 1 (see Comprehensive Plan) talks about the City Council's desire to implement the vision in a number of ways, including a permit process that is more timely, fair and predictable. Divesting the City Council and Planning Commission from quasi-judicial decisions would provide certainty to the private sector that when an application would be approved if it meets all the requirements and criteria. The development community is particularly concerned about how long it takes to obtain a decision and how predictable the decisions are for projects that meet the code requirements.
- Having elected officials involved in the quasi-judicial permit process tends to place them in an awkward position, particularly when there is a highly-controversial project. On one hand, the City Council must be responsive to citizens. However, if they do their duty and base their decision on the regulations and criteria in the record, they could suffer the consequences at the next election. If they try to be responsive in ways that depart from the record or ignore the criteria, they risk a legal judgment against them.
- The Washington Cities Insurance Authority has recommended that member jurisdictions limit their exposure by divesting their councils and commissions from quasi-judicial responsibilities. Instead, they recommend cities rely more on the hearing examiner process. At a presentation before the Anacortes City Council, they indicated they may consider revising the premiums cities pay or increase their deductible if they insist on their city councils being the quasi-judicial decision makers.

Mr. Tovar summarized that if the City Council implements this change, it will be very important to pay more attention to the details in the Development Code. The City has put a lot of time into their Comprehensive Plan, and they will spend more time updating it in the coming year to implement the vision. The Development Code should also be updated to implement the vision. It is important to be to be clear to the community about the importance of taking part in the Development Code amendment process, since the Development Code will be used as the basis for reviewing future land-use applications.

Mr. Tovar recalled that the City Council recently decided there would be no local SEPA appeal for quasi-judicial projects where the Planning Commission is the hearing body, but an appeal could be filed to Superior Court after the City Council has taken action on the Commission's recommendation. He noted that, as currently proposed, the Fircrest and Shoreline Community College Master Plans would

come before the Planning Commission for a hearing and recommendation to the City Council. Any SEPA issues associated with these master plans would be dealt with after the City Council has taken action on the Commission's recommendation. He referred the Commission to an email from Debbie Kellogg suggesting that if the Hearing Examiner is responsible for most quasi-judicial decisions, SEPA decisions could also be rendered at the Hearing Examiner level. This would give citizens a local appeal process on all issues. He suggested the Commission provide further direction about whether or not they would support the approach outlined by Ms. Kellogg.

Commissioner Esselman asked whether the Planning Commission would hear street vacations. Mr. Tovar explained that the Hearing Examiner conducts street vacation hearings in many jurisdictions, but the ultimate decision must be made by the City Council because they are the only ones with the authority to dispose of real property and easements. He clarified that the language in Section II.2 of the Staff Report (Page 22) was intended to make it clear that although the Hearing Examiner would hear street vacation applications, the final decision would be made by the City Council.

Commissioner Moss requested background information related to the interim regulation that recently expired. Mr. Tovar answered that the interim regulation was adopted because the Commission's work schedule was very full, and the numerous rezone hearings were consuming a lot of their time. The Commission will be busy with the Comprehensive Plan update for at least a few years and perhaps beyond.

Commissioner Behrens observed that it is important for the City Council to resolve this issue and identify the role of the Planning Commission so they can choose Commissioners who have the appropriate skills to perform the required duties. Mr. Tovar recalled that five years ago, the Commission considered numerous quasi-judicial rezone applications each year, and 8 of the 9 Commissioners had technical skills related to land use issues. There is now an acknowledgment that the Commission needs to be highly involved in less technical projects such as the Comprehensive Plan update, tree regulations, and subarea plans. Having the Commission focus on legislative issues rather than quasi-judicial issues might broaden the range of citizens who will feel comfortable participating on the Commission. In addition to people with planning background, everyone who lives in Shoreline should be considered an expert when determining the values of the City.

Vice Chair Perkowski asked how the proposed changes would impact the Town Center Subarea Plan. Mr. Tovar answered that once the Town Center Subarea Plan has been adopted, the uses allowed in each zone would be spelled out, and the design criteria would be used to review development applications. While the code currently allows quasi-judicial rezones in parts of the City that are not included in subarea plans, staff would like the Commission and City Council to consider opportunities to move away from quasi-judicial rezones in the future by making the zoning more consistent with the Comprehensive Plan as required by the Growth Management Act.

Commissioner Moss asked if staff anticipates more subarea plans in other parts of the City in the future. Mr. Tovar reported that at their next retreat, the City Council will discuss the future of subarea planning in Shoreline. He said that although the Growth Management Act defines a comprehensive plan as "a generalized policy statement," most jurisdictions have adopted very detailed plans. The City Council

has expressed frustration that because there are so many policies in the City's Comprehensive Plan, it is possible to find four or five policy statements to oppose or support virtually any action the City might take. He summarized that the more policies, the greater the potential for a conflict between policies. The staff and City Council have discussed the possibility of creating generalized policy statements that apply for the vast majority of the City and then providing more detailed plans for unique areas such as Town Center, Point Wells, Aldercrest, etc. However, he does not anticipate a subarea plan would be created for every area in the City.

Commissioner Behrens suggested that the need for a subarea plan might be triggered by something unique such as a transit station. A subarea planning process would allow the City to identify and address the associated impacts. Mr. Tovar reported that staff has been talking to Sound Transit regarding the alignment decision they will be making in the next few years (Interstate 5 or Highway 99). However, the City intends to update their Comprehensive Plan in 2013, and they don't anticipate an answer from Sound Transit until approximately 2014. Commissioner Behrens observed that the City can talk about the general need for planning around a station in the Comprehensive Plan without specifying where the stations will be located. Regardless of where the transit stations are located, common things will be needed to support them. Mr. Tovar summarized that if Interstate 5 is chosen, the City will have to have a plan that identifies how the land within a certain radius of the stations should be used. The Planning Commission would be involved in the process of completing station plans for light rail, if necessary.

Commissioner Moss asked staff to describe the two types of special use permits. Mr. Tovar explained that certain uses, such as utility yards, require special use permits in order to be located in certain zones. These applications could be heard by either the Planning Commission or the Hearing Examiner, and staff is recommending the Hearing Examiner would be the appropriate hearing body for this type of site-specific project. He added that siting facilities for sexual offenders is the most controversial of all land uses. A lot of emotion is involved and the hearings are very difficult. However, the City has never received an application for this type of use.

Commissioner Moss asked if a property owner would be allowed to request a rezone after a subarea plan has been adopted. Mr. Tovar answered that a property owner can always request a rezone, but the criteria would screen out frivolous requests. It is highly unlikely the City would receive a rezone request for property located within a subarea plan because applicants would be required to persuade the Hearing Examiner that a zone other than the one identified in the subarea plan is appropriate. The Hearing Examiner would evaluate the rezone request and determine if it consistent with the subarea plan. A change in the subarea plan requires a Comprehensive Plan amendment, which must come before the Planning Commission for a public hearing.

The Commission discussed how Table 20.30.060 would have to be altered if the hearing responsibilities were transferred to the Hearing Examiner as per the proposed amendment. Further changes would be required if the City Council decides to divest themselves of the quasi-judicial decision making process. He reminded the Commission that they would need further direction from the City Council before they proceed with a hearing on an amendment that would eliminate their role in quasi-judicial actions.

To address a concern raised by Commissioner Moss, Mr. Tovar explained that the criteria and process would remain the same for quasi-judicial site-specific rezone applications regardless of whether or not the City Council adopts a regulation to reassign site specific rezone applications from the Planning Commission to the Hearing Examiner. The public would still have an opportunity to present their concerns, and a SEPA review would be conducted.

Commissioner Moss asked staff to describe a preliminary formal subdivision. Mr. Tovar said this is the first look at the way a parcel of land is proposed to be divided. In the past, the Commission has held a public hearing on these applications and forwarded a recommendation to the City Council. Once the preliminary plat has been approved and the developer has met the outlined requirements, the City Council takes final action by ordinance. The proposed amendment would transfer preliminary formal subdivision applications to the Hearing Examiner, but the City Council would still be required to approve the final plat by ordinance. He further explained that short plats of four or fewer lots would be an administrative process, and no public hearing would be held. However, the applicant would be required to conduct a neighborhood meeting, and the public would be invited to submit written comments to the Planning Director. The administrative decision can be appealed to the Hearing Examiner. Short plats never come before the Planning Commission or City Council.

Commissioner Behrens questioned how qualified the Commissioners would be to review Master Development Plan Permits in the future if they do not have sufficient experience with quasi-judicial hearings. He noted, on the other hand, that Hearing Examiners have extensive experience dealing with quasi-judicial hearings. Commissioner Esselman noted the same concern would apply to the City Council. Mr. Tovar explained that if the Commission is the hearing body for Master Development Plan applications, SEPA appeals would be heard by Superior Court after the City Council has acted on the Commission's recommendation. Ms. Kellogg and others have suggested that if the hearings are conducted by the Hearing Examiner, SEPA appeals could be considered simultaneously. The City could grant the Hearing Examiner the authority to either make the final decision or make a recommendation to the City Council.

Mr. Tovar reminded the Commission that the counsel from the Washington Cities Insurance Authority was related to ex parte communications, which can occur at both the Planning Commission and City Council levels. Legal exposure can also occur when the City Council departs from the decision-making criteria. The insurance authority's goal is to manage risk and minimize liability, and they have recommended that Hearing Examiners should make quasi-judicial decisions. If the City Council feels the Hearing Examiner has too much room to interpret, they have the legislative authority to adopt more specific decision-making criteria to provide additional guidance. Perhaps it would be appropriate for the Hearing Examiner to provide an annual report to the City Council with suggestions for how to make the decision-making criteria more specific.

Vice Chair Perkowski said he can see the benefits of having the Hearing Examiner conduct quasi-judicial hearings and make the final decision. However, if the City Council decides to retain their role, changing the Planning Commission's role would lose some of its value. Mr. Tovar agreed that the change would have less value and there would be some risk if the City Council retains their ability to make the final decision. Commissioner Behrens said if the City Council decides they do not want the

final decisions on Master Development Plans, there would be no reason for the Commission to make a recommendation. Chair Wagner observed that having a larger body forward a recommendation to the City Council could result in a split vote, which would not be the case with the Hearing Examiner. In addition, Hearing Examiners are less likely to place themselves at legal risk.

Mr. Tovar said some people have anxiety about appearing before a single decision maker. They feel their peers in the community are more approachable and sympathetic to their concerns. However, in his experience, Hearing Examiners are aware of the law, the procedures and the scope of their decision making latitude. In addition, Hearing Examiners do not typically place a time limit on public testimony. The Commission does not have the same luxury, and they generally limit public comments to two or three minutes each. Hearing Examiners do not render judgments at the conclusion of their hearings. They spend a few weeks reviewing the comments received, the decision making criteria, and all relevant facts and then issue a decision based on their findings. Hearing Examiners are aware of their limits and they understand the criteria. They can be more deliberative on quasi-judicial matters where a lot of facts and testimony have been presented because they do not have to make a decision immediately following a hearing.

Commissioner Behrens asked if Hearing Examiners allow people to submit written comments after a hearing has been closed. Mr. Tovar said that, usually, Hearing Examiners require that all testimony be provided before the hearing is closed so that others have the ability to respond. Written comments can be submitted prior to the hearing. He summarized that a hearing before the Hearing Examiner has a judicial aspect in terms of the facts being weighed, the testimony and record being made legally sufficient, and then deliberation based on the applicable criteria and regulations. Hearing Examiner decisions are appealable to Superior Court.

Commissioner Behrens asked if the City would hire a single Hearing Examiner or a board of examiners. Mr. Tovar said the City currently has a contract with the City of Seattle to use their examiners. There is also a Hearing Examiners Association with approximately 50 examiners. He said that, in his experience, those jurisdictions that have moved towards a system where the Hearing Examiner makes the final decision have not regretted it. They believe it works for them, and city councils end up spending less time addressing land use issues.

To clarify for Commissioner Moss, Mr. Tovar explained that, as per State law, there can only be one comment period at the open record public hearing. The City Council's review and subsequent action would be based at the record that was formed at the initial public hearing. He said the City Council City Council can remand an item back to the hearing body and request further clarification of a finding and/or recommendation, but they cannot conduct another round of hearings. He summarized that the open record hearing is the public's opportunity to have their say via written comments presented prior to the hearing and/or verbal comments at the hearing. Once the record is closed, the public will not have another opportunity to address the decision maker. Commissioner Behrens pointed out that the public would not be allowed to submit new information as part of an appeal because the appeal authority can only consider the information provided during the open record hearing.

Commissioner Moss observed that, in some respects, it is in the public's favor to have the Hearing Examiner conduct open record hearings because he/she has a more comprehensive and substantial background to understand land use matters. Mr. Tovar added that this approach would narrow the number of people involved in hearing the matter and rely on someone with a fair amount of expertise in the field to ask follow up questions to clearly understand what is being said.

Commissioner Behrens suggested the Commission also consider the benefits associated with having the Planning Commission conduct quasi-judicial hearings. Some members of the public may feel the Commissioners, who they interact with in the community, have a better understanding of their issues and concerns. Mr. Tovar cautioned that the Commissioners cannot discuss quasi-judicial applications outside of the public hearing.

PUBLIC COMMENT

No one in the audience expressed a desire to address the Commission during this portion of the meeting.

DIRECTOR'S REPORT

Point Wells

Mr. Tovar announced that the City Council would formally receive and likely take action on the Commission's recommendation regarding the Point Wells Subarea Plan amendment at their business meeting on February 14th.

Mr. Tovar advised that on February 2nd, staff filed the opening briefs to the Growth Management Hearings Board for the case City of Shoreline/Town of Woodway/Save Richmond Beach vs. Snohomish County. A hearing has been scheduled for March 2nd, and the Hearings Board has until April 25th to make a decision.

Mr. Tovar explained that Snohomish County code requires the developer, Blue Square Real Estate, to conduct a neighborhood meeting at least 30 days before submitting permit applications, and one was held on January 27th at the Shoreline Center. About 230 people attended the event where some very impressive presentations were provided by competent professionals. The entire project presentation is available on the developer's web site. They are currently proposing 3,100 residential units, buildings up to 17 or 18 stories high, 100,000 square feet of commercial space, a police and fire station on site, a Sounder station, and some very innovative LEED Platinum environmentally responsible building and landscape construction.

Mr. Tovar advised that the City received notification from Snohomish County that developer is going to apply for a permit on March 4th, which is just two days after the Growth Management Hearings Board hearing. This is of concern to the City because the proposal is estimated to generate approximately 10,000 to 11,000 vehicle trips per day. He recalled that the City's current Point Wells Subarea Plan identifies 8,250 as the maximum vehicle trips per day, and the proposed amendment the Commission forwarded to the City Council would further limit the number of vehicle trips per day to 4,000.

From: Joe Tovar
Sent: Tuesday, August 16, 2011 1:55 PM
To: Plancom
Subject: Washington Cities Insurance Authority Opinion regarding use of the Hearing Examiner for quasi-judicial permits
Attachments: WCIA opinion regarding Hearing Examiner System.pdf

In the staff report for this Thursday's public hearing on application #301702, at the bottom of page 21 of the packet, the report states:
"The City's insurance carrier, the Washington Cities Insurance Authority (WCIA) has advised its member cities wherever possible to remove the City Council from the quasi-judicial decision-making process. By relying on a professional hearing examiner to render many, but not all, quasi-judicial decisions, the City would protect its fiscal solvency as well s the personal liability of individual Council members."

Attached is a copy of an April 18, 2000 Legal Opinion by Michael Walter, the WCIA's land use attorney in which he expands on the reasoning for the WCIA position cited in the staff report. Both this email and the attached WCIA Legal Opinion should be entered into the hearing record as Exhibits. The Planning Commission is free to read the entire letter, but I would call your attention specifically to the following:

"We urge the Town to make full use of its hearing examiner, authorizing that individual to make final decisions on all authorized quasi-judicial applications. This will provide the greatest benefit to the citizens [of Woodway] and will provide the highest level of risk management to the Town and to its elected officials." Page 2.

"Some of the many advantages of a hearing examiner system for land use decision-making include:

- More professional decisions.
- No political influence or pressure.
- Hearing examiners are technically adept, with specialized land use knowledge.
- More efficient process and more timely decisions.
- More cost effective decision making.
- Improved compliance with legal requirements and due process.
- Substantial reduction in potential legal claims against the city/town.
- Eliminates potential claims against elected officials/citizen decision-makers personally.
- A hearing examiner helps ensure predictability and consistency.
- Instills public confidence in decision-making process.
- Improved permit review and integration requirements under the Regulatory Reform Act.
- Frees up council/planning commission time for planning and law-making functions.
- Segregates and delineates quasi-judicial functions from legislative functions.
- Opportunity for feedback and correction of code ambiguities and conflicts.
- Good Customer Service." Pages 4 through 8.

The WCIA Opinion does list three disadvantages to the hearing examiner system:

- "Cost to the city or town for hearing examiner and staff.
- Increased potential costs to parties.
- Lack of involvement by elected officials/citizen boards in decision-making process." Page 9.

The Opinion concludes that "The advantages of a professional properly administered hearing examiner system for adjudication of land use matters overwhelmingly outweighs the few disadvantages – most of which can be mitigated" and "We encourage the Town to make the fullest use of a professional hearing examiner for all quasi-judicial matters authorized by law and to make those hearing examiner decisions final decisions, appealable only to Court." Pages 9-10.

Joe Tovar
P&CD Director

ATTACHMENT C

WA cities
Insurance Authority

P.O. Box 1165
Renton, WA 98057

Phone: 425-277-7237
Fax: 425-277-7242

SENT BY FAX

April 18, 2000

Jan Taylor Drummond
Mayor
Town of Woodway
23920 113th Place W
Woodway, WA 98020

RE: Legal Opinion
Hearing Examiner System

Dear Mayor Drummond:

In response to Lorraine Taylor's request enclosed is a legal opinion on the advantages of a Hearing Examiner system. The Authority strongly supports Mike C. Walter's recommendation to maintain its use of a professional Hearing Examiner. The Authority also supports the recommendation to expand the Hearing Examiner duties to authorize the Hearing Examiner to make final decisions appealable only to the Snohomish County Superior Court of those duties currently in Section 8.C of Ordinance No. 99-368.

The Town should be commended for establishing the office of the Hearing Examiner. To abolish the Hearing Examiner would be quite a step backward for the Town of Woodway. The advantages of a Hearing Examiner System, as outlined by Mr. Walter, far outweigh the disadvantages. Again, the Authority hopes the Town of Woodway continues it use of a Hearing Examiner.

Please call if you have any questions.

Sincerely,

Eric B. Larson
Assistant Executive Director

Enclosure

KEATING, BUCKLIN & MCCORMACK, INC., P.S.

JOHN L. McCORMACK
MARK R. BUCKLIN
RANDAL W. EBBERSON
WILLIAM P. SCHOEL
STEVEN L. THORSRUD
MICHAEL C. WALTER
ANDREW G. COOLEY
STEWART A. ESTES
DEBORAH D. BROOKINGS

ATTORNEYS AT LAW
800 FIFTH AVENUE, SUITE 4141
SEATTLE, WASHINGTON 98104-3175
PHONE: (206) 623-8861
FAX: (206) 223-9423
E-MAIL: kbmlawyers@uswest.net

CHLOETHIEL W. DeWEESE
JAYNE L. FREEMAN
JAMES A. BURTON
STEPHANIE E. CROLL
MICHAEL D. TREGER
RICHARD B. JOLLEY
BRENDA L. BANNON

MARY ANN MCCONAUGHY
(OF COUNSEL)

ROBERT C. KEATING (RET.)

April 17, 2000

Mayor Jan Taylor Drummond
Town of Woodway
23920 113th Place West
Woodway, WA 98020

RE: Legal Opinion
Advantages of Hearing Examiner System

Dear Mayor Drummond:

The Town of Woodway's request for a legal opinion on the propriety and advantages of a hearing examiner system directed to Mr. Eric Larson at Washington Cities Insurance Authority (WCIA) has been forwarded to our office for a response. As discussed in more detail in this letter, from a legal, economic, political and practical perspective, we believe the use of a professional hearing examiner is unsurpassed and provides the greatest benefit to the Town and its citizens. For the reasons set forth below, we strongly urge the Town of Woodway to continue using the hearing examiner system it established one year ago, and to consider expanding its use to the fullest extent authorized by law for final, quasi-judicial decision making.

FACTS/BACKGROUND

We understand that approximately one year ago the Town of Woodway passed Ordinance no. 99-368, which created a hearing examiner system and dissolved the Town's Board of Adjustment. The Town's hearing examiner office was created pursuant to RCW Ch. 35A.63 and Ch. 58.17, and was empowered to interpret, review and implement land use regulations, and to perform other quasi-judicial functions as delegated by ordinance. The ordinance was passed on April 19, 1999, and the hearing examiner office became effective five days thereafter on April 25, 1999.

Pursuant to Ordinance No. 99-368, the Town's hearing examiner is authorized to render **final decisions**, appealable only to the Snohomish County Superior Court pursuant to a LUPA action (RCW Ch. 36.70C), on the following matters: (1) applications for variances from the zoning ordinance; (2) applications for special property uses; (3) appeals from administrative

determinations or code interpretations; and (4) such other quasi-judicial and administrative determinations as may have been (previously) delegated to the board of adjustment.

Under the Ordinance, the hearing examiner is authorized to render a **recommendation** only to the Town Council on the following matters: (1) applications for short subdivisions; (2) applications for preliminary plat approvals; (3) applications for plat modifications; (4) applications for plat alterations; (5) applications for quasi-judicial rezones; and (6) such other quasi-judicial and administrative determinations as may have been (previously) delegated to the planning commission.

We understand that one (or more) members of the Town's Planning Commission would like to have the quasi-judicial functions now delegated to the Town's Hearing Examiner reinstated to the Planning Commission. You have requested a legal opinion on the propriety of this suggestion, and the advantages of continuing with the Town's hearing examiner system.

II. SUMMARY OF LEGAL OPINION

We believe the Town took a prudent step one year ago by establishing the office of hearing examiner and delegating to that individual quasi-judicial functions formerly given to the Planning Commission. By creating a hearing examiner system, the Town joined over 73 cities and 17 counties state-wide (as of February 1998) using a hearing examiner for land use decision-making. Those numbers grow every year. We **strongly** urge the Town to not only maintain the office of hearing examiner and preserve the duties assigned to the Hearing Examiner pursuant to Section 8 of Ordinance No. 99-368, but to **expand** those duties to authorize the Hearing Examiner to make **final** decisions appealable only to the Snohomish County Superior Court of those duties presently set forth in Section 8.C. of Ordinance No. 99-368, which are presently authorized as recommendations to the Town Council. We urge the Town to make full use of its hearing examiner, authorizing that individual to make final decisions on all authorized quasi-judicial applications. This will provide the greatest benefit to the citizens of Woodway, and will provide the highest level of risk management to the Town and to its elected officials.

III. LEGAL ANALYSIS

A. Nature of Hearing Examiner System.

A hearing examiner is an appointed officer who hears and adjudicates quasi-judicial matters in a manner similar to a trial court judge. By statute, local governments in Washington have the option of hiring or contracting with a hearing examiner to conduct quasi-judicial hearings, in place of local bodies such as city or town councils, planning commissions, boards of

adjustment, zoning boards, building code boards, design review boards and other elected or appointed adjudicative bodies.

RCW 35A.63.170 provides that a city or town council may adopt a hearing examiner system as an alternative to delegating to a planning commission the power and duty to hear and report on any proposal to amend a zoning ordinance where the amendment applied for is not of general applicability. The legislative body, pursuant to this statute, may also vest in the hearing examiner the power to hear and decide other land use matters such as:

1. Applications for conditional uses;

2. Applications for variances;

3. Applications for shoreline permits;

4. Any other class of applications for or pertaining to the development of land or land use;

5. Appeals of administrative decisions or determinations; and

6. Appeals of administrative decisions or determinations pursuant to SEPA, RCW Ch. 43.21.C.

In 1995, as part of the Regulatory Reform Act, the legislature amended the state subdivision statute to expressly authorize local government to use a hearing examiner system for adjudication of short plats and final decisions on preliminary plats. RCW 58.17.330 gives local government the option of having those decisions be in the form of a "recommendation" to the city or town council, or given the effect of an administrative decision appealable within a specified time limit to the city council, or a decision given the effect of a final decision of the city or town council.

Additionally, a hearing examiner may be appointed to serve as the building code board of appeals pursuant to the State Uniform Building Code RCW Ch. 19.27. Thus, a hearing examiner can be appointed to hear and decide appeals that arise under the Uniform Building Code.

B. Other Decisions Handled by Hearing Examiner.

In addition to making recommendations or final decisions on quasi-judicial land use matters, the city or town council may, by ordinance, authorize a hearing examiner to hear a variety of other contested matters, including:

- Civil infractions;
- Tax and licensing decisions and/or administrative appeals;
- Public nuisance complaints and/or appeals;
- Whistle blower or retaliation claims;
- Complaints of ethics violations and/or administrative appeals;
- The formation hearing and/or assessment role determinations for local improvements districts (LID) or utility local improvement districts (ULID);
- Employment decisions and personnel grievances and/or appeals; and
- Discrimination complaints under local personnel policies.

C. Advantages of Hearing Examiner System.

If properly implemented, a hearing examiner system has numerous advantages over traditional methods of making quasi-judicial land use decisions and over resolving administrative appeals from such decisions. We believe that the advantages of a properly implemented hearing examiner system so far outweigh any potential disadvantages that there is really no good reason for a city or town to not use a hearing examiner to the fullest extent authorized by law.

Some of the many advantages of a hearing examiner system for land use decision-making include:

- **More professional decisions.** Hearing examiners are specially trained – usually lawyers and/or land use professionals – and, as a result, conduct more professional and timely hearings which help ensure procedural fairness and avoid legal pitfalls. Hearing examiners have a high level of expertise and specialization.

- **No political influence or pressure.** Most legal claims over quasi-judicial land use decisions have their genesis in political influence and political "agendas." Such political influence in the context of quasi-judicial land use decision making is not permitted, and can result in invalidation of the decision and possible personal liability against the decision maker. It is frequently difficult for elected local government officials to eliminate political considerations and influence from their quasi-judicial decision making; for this reason, a professional hearing examiner should be used to eliminate this influence and substantial liability risk.

- **Hearing examiners are technically adept, with specialized land use knowledge.** Most professional hearing examiners have broad knowledge of physical land development constraints, technical issues and some esoteric aspects of a land use law and land development. With these specialized technical skills, they typically make more thoughtful and legally sustainable decisions.

- **More efficient process and more timely decisions.** Professional hearing examiners, because of their knowledge and specialization, conduct hearings in a more efficient and timely manner. Hearings tend to be less emotional and better organized. As a result, the hearing process is faster, more expedient and decisions are made more timely, thus substantially reducing risk of delayed damage lawsuits and claims of undue delay in the decision making process.

- **More cost effective decision making.** While there are costs in hiring a hearing examiner, overall, the use of a hearing examiner is generally more cost-effective to cities and towns through a more efficient adjudicative process, through substantial reduction in appeals of decisions, and through a substantial reduction in civil judicial challenges to the decisions. A professional hearing examiner can frequently resolve land use matters much more timely and efficiently and thus handle more applications in a given period of time with a substantial reduction in requests for reconsideration, administrative appeal or civil litigation. Moreover, many of the direct costs of a hearing examiner can be passed on to individual permit applicants.

- **Improved compliance with legal requirements and due process.** Because hearing examiners have special expertise in legal procedural requirements, conflict of interest issues and appearance of fairness issues, they better ensure compliance with statutory hearing requirements and, most importantly, constitutional due process requirements. Better-run hearings, with decisions based on logic and application of the facts to the law, rather than politics or

emotion, help ensure compliance with state Regulatory Reform Act requirements and federal and state constitutional guarantees of due process and equal protection.

- **Substantial reduction in potential legal claims against the city/town.** There is no doubt that the use of a professional hearing examiner for final quasi-judicial decision making results in a substantial reduction in legal challenges and claims for monetary damages against the city or town. Because of improved hearing procedures, a better record, better compliance with regulatory reform and due process requirements, as well as more consistent and documented decisions, the risk of legal challenges or claims for damages is substantially reduced. For example, in our office's experience, the majority of claims for damages against cities and towns over quasi-judicial land use decisions arise out of decision making by city or town councils, planning commissions or boards of adjustment. Conversely, in our experience, it is rare to have a legal challenge or claim for damages asserted against a city or town for a quasi-judicial land use decision by a professional hearing examiner. Those few cases that do arise against a hearing examiner are, for the most part, substantially more defenseable than those of elected officials or citizen boards or commissions.

- **Eliminates potential legal claims against elected officials/citizen decision-makers personally.** When a professional hearing examiner is used for making **final** decisions on quasi-judicial land use decisions, and elected officials and citizen decision makers are removed from the **final** decision-making process, legal claims against the elected officials or citizen decision-makers are eliminated. As a general rule, there is no basis for legal claims against a city or town council member, planning commission member, board member or other citizen decision-maker personally when those individuals do not render **final** quasi-judicial decisions. Any potential personal liability is generally only against the hearing examiner in those instances where the hearing examiner renders the final quasi-judicial decision.

- **A hearing examiner helps ensure predictability and consistency.** For the reasons above, the use of a professional hearing examiner helps ensure procedural fairness and consistent decisions. Because professional hearing examiners are removed from political pressure and influence, they tend to make more consistent and defenseable decisions, thus avoiding constitutional claims of violation of equal protection.

- **Instills public confidence in decision-making process.** Professional hearing examiners, because of their knowledge, expertise and efficient administration of hearings generally instills public confidence in the quasi-judicial decision making process. Rather than watching or participating in hearings which are based on emotion, argument and political agenda, citizens watching or participating in a hearing examiner hearing see a more professionally run hearing based on logic and common sense and rules of order. The process makes the city or town (and its elected officials) appear much more professional and organized, thus instilling confidence in the decisions being made.

- **Improved permit review and integration requirements under the Regulatory Reform Act.** The use of a professional hearing examiner system is authorized by various amendments to state law under the 1995 Regulatory Reform Act, RCW Ch. 36.70B. The use of a hearing examiner helps satisfy these state law requirements for both streamlining the regulatory process, administrative review and appeals, and in consolidating environmental review with substantive permit decision-making. A hearing examiner is an effective method of consolidating and coordinating multiple review processes, and can eliminate the need for use of other boards or commissions for adjudication of quasi-judicial permits and approvals.

- **Frees up council/planning commission time for planning and law-making functions.** Conducting public hearings and making quasi-judicial decisions is laborious, time-consuming and sometimes frustrating to elected officials and citizen bodies. City or town council members and citizen advisory bodies can free themselves from the time-drain and frustration of quasi-judicial decision making by delegating those responsibilities to a professional hearing examiner. This, then, frees up council and/or planning commission time for important policy-making, long-term planning and law making functions which, typically, are their primary duties and responsibilities. The use of a hearing examiner can be a substantial time-savings for routine decisions and for complex land use decision-making which requires review of substantial documents, lengthy formal hearings, citizen participation and education into the nuances of land use decision-making. A professional hearing examiner is better equipped to handle all of these matters.

- **Segregates and delineates quasi-judicial functions from legislative functions.** A high percentage of legal claims and damages lawsuits from land use decision-making are precipitated by confusion and conflict between the dual roles of city

or town council members: legislative (law-making) and quasi-judicial (adjudicating contested claims) functions. Using a professional hearing examiner for quasi-judicial hearings clearly separates and delineates the quasi-judicial functions (which the hearing examiner handles) from the legislative, visioning and administrative functions (required of council members). From this segregation, council members can concentrate on directly responding to citizen concerns and desires, and on "visioning" for the future through various legislative actions, without worrying about those matters improperly influencing quasi-judicial decisions (which must not include those legislative, planning or visioning matters).

- **Opportunity for feedback and correction of code ambiguities and conflicts.** Because professional hearing examiners are skilled in the law and in understanding, interpreting and applying nuances of municipal codes, land use regulations and general legal principals, they are in a unique and useful position to identify potential problem areas in municipal codes or development regulations, and to recommend that those be corrected legislatively. A professional hearing examiner has familiarity with local comprehensive plans, zoning standards and development regulations of the particular jurisdiction, as well as other jurisdictions, and can offer unique insight into potential problem areas. In this respect, a professional hearing examiner can offer feedback to the elected officials to correct comprehensive plans, zoning regulations and general development regulations to avoid vague or unconstitutional provisions, and to identify and correct conflicts within the code or between the code and comprehensive plan and/or other development regulations. A professional hearing examiner can identify where plans, regulations and development standards are weak, inconsistent or unenforceable, providing feedback for continuous improvement and redevelopment.

- **Good customer service.** Finally, the use of a professional hearing examiner is simply "good business", and provides the highest level of good customer service. In dealing with a professional hearing examiner, applicants for quasi-judicial land use approvals feel they are getting treated more fairly and equitably, and receive more consistent and timely "service" through an improved process, a more professional environment, and a more consistent and thoughtful decision. Similarly, the citizenry, due to a more professional and well-run process, sees that its needs and interests are being more fairly and objectively incorporated into the final decision.

D. Disadvantages of Hearing Examiner System.

The advantages of a professional properly administered hearing examiner system for adjudication of land use matters overwhelmingly outweighs the few disadvantages – most of which can be mitigated. There are essentially only three potential disadvantages to a hearing examiner system, and they are:

- **Cost to city or town for hearing examiner and staff.** While there are additional costs in the hiring and use of a professional hearing examiner and, where necessary, support staff, these increased costs can be mitigated in several ways. First, all or part of the direct costs can be passed on to applicants through either application fees or permit processing fees, properly adopted through ordinance. Second, cities and towns can (and frequently do) "share" a professional hearing examiner so that similar quasi-judicial hearings are "consolidated", and the time and costs are shared. Third, alternatives such as use of a personal service contract can help reduce the cost of a hearing examiner. Finally, any marginal increase in cost for the use of a professional hearing examiner is typically outweighed by the significant potential cost of more frequent administrative appeals and expensive civil lawsuits. The cost of defending alone just one large damages lawsuit against a city or town arising out of a quasi-judicial decision by elected officials or a citizen body can easily exceed annual cost of a professional hearing examiner, which would more-likely-than not have prevented the error which precipitated the lawsuit.

- **Increased potential costs to parties.** While there may be an increase in costs to applicants due to the use of a professional hearing examiner, typically those costs are *de minimus* in relation to overall application costs and to the value to the applicant for a more professional and timely decision. Indeed, any additional costs to the applicant are typically outweighed by the probable time savings and more efficient decision-making process. The moderately increased cost and formality of hearing examiner system eliminates the "hidden" costs of delay, inefficiency, multiple hearings, requests for review, administrative appeals and expensive legal action.

- **Lack of involvement by elected officials/citizen boards in decision-making process.** While some believe that the use of a professional hearing examiner to eliminate the decision-making and involvement in quasi-judicial decisions by elected officials and citizen bodies is a "disadvantage", in fact this result is in reality a substantial **advantage** to a city or town. One of the key purposes of

using a professional hearing examiner is to remove elected officials and citizen board members from quasi-judicial decision-making to avoid the political influence, the emotion and the potential prejudice which frequently undermines land use decisions by those individuals or those entities. Moreover, elected officials can maintain their "accountability" to voters by more properly concentrating on their role as **legislators** to achieve long term planning goals and "visioning" for the community, rather than trying to establish their "accountability" in the quasi-judicial decision making process (where it does not belong).

IV. CONCLUSION

For the foregoing reasons, we strongly urge the Town of Woodway to maintain its use of a professional hearing examiner for quasi-judicial land use decision making. And, in the interest of good legal risk management, economic efficiency and customer service, we also recommend that the Town consider modifying the duties of its hearing examiner, as established in Section 8.C of Ordinance No. 99-368, to make the decision of the hearing examiner on those identified matters a "final" and binding decision, appealable only to the Snohomish County Superior Court pursuant to a LUPA action under RCW Ch. 36.70C. We encourage the Town to make the fullest use of a professional hearing examiner for all quasi-judicial matters authorized by law and to make those hearing examiner decisions **final** decisions, appealable only to Court.

We hope this information is of value to the Town of Woodway. If we can provide any additional information on this topic, please let us know.

Very truly yours,

Michael C. Walter

MCW/ks

cc: Lorraine Taylor, Clerk-Treasurer
Lewis Leigh, Executive Director, WCIA
Eric B. Larson, Assistant Direct, WCIA

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These Minutes Approved September 1st, 2011

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION MINUTES OF REGULAR MEETING

August 18, 2011 | Shoreline City Hall
7:00 P.M. | Council Chamber

Commissioners Present
Vice Chair Perkowski
Commissioner Behrens
Commissioner Esselman
Commissioner Kaje
Commissioner Moss

Staff Present
Joe Tovar, Director, Planning & Development Services
Steve Cohn, Senior Planner, Planning & Development Services
Jessica Simulcik Smith, Planning Commission Clerk

Commissioners Absent
Chair Wagner
Commissioner Broili

CALL TO ORDER

Vice Chair Perkowski called the regular meeting of the Shoreline Planning Commission to order at 7:00 p.m.

ROLL CALL

Upon roll call by the Commission Clerk the following Commissioners were present: Vice Chair Perkowski and Commissioners Behrens, Esselman, Kaje and Moss. Chair Wagner and Commissioner Broili were absent.

APPROVAL OF AGENDA

The agenda was approved as presented.

DIRECTOR'S COMMENTS

Mr. Tovar did not provide any comments during this portion of the meeting.

APPROVAL OF MINUTES

The minutes of July 21, 2011 were approved as presented.

GENERAL PUBLIC COMMENT

There was no one in the audience.

LEGISLATIVE PUBLIC HEARING ON DEVELOPMENT CODE AMENDMENT: Transferring responsibility from the Planning Commission to the Hearing Examiner for conducting public hearings on certain quasi-judicial matters, making recommendations on some actions to the City Council, and acting as the decision-making authority on others.

Vice Chair Perkowski announced that the legislative public hearing is on a proposed Development Code amendment that would modify portions of Table 20.30.060, regarding Planning Commission, Hearing Examiner and City Council roles in certain quasi-judicial permit and appeal matters. He reviewed the rules and procedures for the public hearing and then opened the hearing.

Staff Overview and Presentation of Preliminary Staff Recommendation

Mr. Tovar referred to the Staff Report, which summarizes the proposed amendment and provides an analysis of the Growth Management Act, Comprehensive Plan, and City Council Goals that support the proposed amendment. He specifically referred to Table 20.30.060, which lists the nine Type C quasi-judicial permits and identifies the existing review and decision making authority for each one. He explained that, at this time, the Planning Commission is the hearing body for preliminary formal subdivisions, rezones of property and zoning map changes, special use permits, special use permits for secure community transition facilities, street vacations and master development plans. As proposed in the amendment, the Hearing Examiner would become the hearing body for all of these permits. He noted that critical areas special use and reasonable use permits are already heard by the Hearing Examiner and no change are proposed.

Mr. Tovar further reviewed that, at this time, the Hearing Examiner makes the final decision on critical areas special use and reasonable use permits, and the City Council is the decision maker for all other Type C quasi-judicial permits. As per the proposed amendment, the Hearing Examiner would make the final decision for special use permits, special use permits for secure community transition facilities, and master development plans. He noted that the Staff Report provides additional information to support the proposed amendment. In addition, he forwarded via Plancom a memorandum that cited portions of a letter written by an attorney for the Washington Cities Insurance Authority to the Town of Woodway in 2000. At that time, the Town of Woodway was considering replacing their hearing examiner system. The letter cautioned against the change and provided rationale for why the hearing examiner system should be maintained. It was the Washington Cities Insurance Authority's point of view that the Town of Woodway should not only have the hearing examiner conduct public hearings on quasi-judicial items, but also make the final decision whenever possible.

Mr. Tovar reminded the Commission of City Council Goal 1, which calls for creating a City permit review process that is more timely, clear and predictable. He also referred to City Council Goal 3 that talks about encouraging economic development in the City, which includes encouraging development.

He noted that one of the most effective ways to encourage development is to make the development permit process more timely, fair, clear and predictable.

Mr. Tovar reviewed that, at this time, most of the items that come before the Commission are related to Comprehensive Plan and Development Code amendments. He reminded the Commission that they reviewed the master development plan for CRISTA, and an application will soon be completed for a master development plan for Shoreline Community College. He said staff is particularly seeking a recommendation from the Commission as to whether master development plans should be heard by the Hearing Examiner or the Planning Commission. They should also make a recommendation as to whether the City Council or Hearing Examiner should make the final decision on the permit. He noted that master development plan permits are different than other types of quasi-judicial permits because they deal with large campuses and numerous options for building, parking and access locations.

Mr. Tovar pointed out that, as per State law, every jurisdiction must have a permit process to allow secure community transition facilities, which is housing for offenders. He noted these permits are typically controversial and very difficult to process and may not be something the Commission and City Council should spend their timing dealing with. He reminded the Commission that while the City can condition these uses, they cannot outright deny them.

Mr. Cohn briefly explained that a hearing examiner public hearing is run by a single individual who typically has a legal and/or planning background. The hearing examiner must operate under the same rules as the Commission and City Council. They are very careful about quasi-judicial hearings, and City staff is not allowed to talk to the hearing examiner about the substance of a case. A hearing examiner hearing is usually informal and would be run the same as Planning Commission hearings. He noted that the main difference is that the hearing examiner rarely makes a decision immediately following a hearing. State law allows them 10 working days to issue a final decision, which is then sent out to parties of record. If the hearing examiner is responsible for conducting the hearing and making the final decision, he/she could hear SEPA appeals at the same time. This would allow SEPA decisions to be decided at a lower level rather than by the Superior Court. Mr. Tovar added that, typically, there is a strict time limit for those giving testimony to the Planning Commission on a quasi-judicial item. However, a hearing examiner does not typically limit the length of each person's testimony. This approach allows people to offer more testimony than would normally be allowed at a Planning Commission hearing.

Questions by the Commission to Staff

Commissioner Kaje asked staff to remind the Commission of what the City Council decided about institutional uses at Aldercrest. Mr. Tovar answered that the City Council decided that institutional uses would require a special use permit. Commissioner Kaje asked staff to describe the process for a special use permit. Mr. Tovar responded that a hearing notice would be mailed, posted on site, and published in the newspaper. The Hearing Examiner would conduct a hearing and the public would be invited to provide either written or oral testimony. The examiner would typically issue a decision within 10 days following the conclusion of the public hearing. The target time limit of 120 days (in the Code) is a requirement of State law and contemplates the involvement of commissions and councils in the

decision-making process. The City is not required to use the entire 120-day limit, and the City Council has expressed a desire to make decision more quickly. Commissioner Moss asked if the hearing examiner would have the ability to continue a hearing to obtain additional information. Mr. Tovar answered affirmatively.

Commissioner Behrens noted that when quasi-judicial items come before the Commission for review, they can recommend either approval of denial. He asked if the hearing examiner would have additional authority to condition his/her approval based on public testimony. Mr. Tovar answered that the criteria for the permit would be the same no matter who conducts the hearing. The authority to impose conditions would be the same, as well. Depending on the nature of the permit, the hearing examiner would have the discretion to impose conditions based upon the facts in the record and City policies. This is similar to the discretion allowed the Planning Commission and City Council at this time. He pointed out that because the Planning Commission is currently the hearing body, the City Council does not have the ability to request additional information after the public record has been closed. Their only option is to deny the permit or remand it back to the Commission for an additional hearing. The hearing examiner can allow written comment after the hearing, as long as all parties of record are allowed an opportunity to respond in writing. However, hearing examiners typically like to have all comments submitted before the public hearing is closed.

Vice Chair Perkowski asked if the hearing examiner would have the ability to add conditions that were not discussed at the hearing but were brought to her attention as she analyzed the proposal. Mr. Tovar said the hearing examiner's ability to condition a proposal would be limited to the facts and information provided in the record. The hearing examiner could either agree or disagree with the information that was presented as part of the record, but could not look for other issues to resolve and impose conditions on. Prior to a public hearing, the examiner reviews the staff report, zoning criteria, comprehensive plan policies and any other information submitted prior to the hearing. The examiner can also ask questions of the applicant and those who provide testimony. This enables the hearing examiner to obtain all the facts needed before the record is closed. Once the record is closed, it is very difficult to add new facts. Hearing examiners are very well trained to follow the law and stick to the facts and criteria in the code when making a decision.

Commissioner Behrens said that at a previous meeting, staff indicated the City would use the City of Seattle's panel of hearing examiners. However, it now appears there are only two potential hearing examiners the City would use. Mr. Tovar said the City currently has a contract with two examiners from the City of Seattle. Some cities contract with law firms and others have their own hearing examiners. Typically, cities the size of Shoreline contract for a hearing examiner. Commissioner Behrens expressed concern that if there are only two hearing examiners to choose from, the public may get the perception that the hearing examiner is a "stacked deck." He said he would like to see a more random process for selecting a hearing examiner. Mr. Tovar said the City does not ask for one examiner over another. They notify the City of who will take the case. He explained that the contract runs for a two-year period. If the City is unhappy with the examiner at the end of the contract, changes can be made using a competitive bid process. He said that in jurisdictions where a lot of issues come before the hearing examiner, the hearing examiner prepares an annual report to review the issues that have been dealt with and make recommendations on how the code and criteria could be strengthened and/or changed.

Mr. Cohn pointed out that it is important for the hearing examiner to know the City's code well. Requiring numerous hearing examiners to learn the City's code might be a lot to ask given that only a small number of items are sent to the hearing examiner each year.

Commissioner Moss recalled that in their subarea plan discussions they have talked about potentially rezoning some areas. She asked how the proposed amendments would impact this process. Mr. Tovar pointed out that rezones associated with subarea planning would be considered legislative actions and would not fall under the purview of the hearing examiner. He referred to the legislative hearing that is scheduled for September 1st regarding proposed Development Code amendments to implement the Southeast Neighborhoods Subarea Plan. The City initiated this legislative process to create consistency with the Comprehensive Plan. The proposed amendment to Table 20.30.060 would only apply to site-specific rezone proposals and zoning map changes. Because an ordinance is required to amend the zoning map, the City Council must make the final decision on site-specific rezones and zoning map changes.

Commissioner Esselman noted that, as proposed, applications for preliminary formal subdivisions, rezones, final formal plats and street vacations would all go to the City Council for a final decision. She asked staff to clarify why they are not recommending the City Council also be the decision-making body for master development plan applications. Mr. Tovar said the City Council has indicated that they like the simple process contained in the Town Center Development Code language because it makes it very appealing for developers to apply for permits. They were interested in having the Economic Development Manager solicit people to look at the City's new code and consider Town Center as a good place to make an investment decision. Master development plans are different in that the City does not have to solicit developers to apply for permits. Mr. Tovar emphasized that staff does not have a strong feeling either way on the process used for master development plans.

Commissioner Kaje asked if the hearing examiner could conduct study sessions when considering proposals such as master development plans. Mr. Tovar answered no. He recalled that pre-application and neighborhood meetings are required before a master development plan application is considered complete. The purpose of these two meetings is to identify issues that should be considered as part of the proposal. Staff would attend the pre-application and neighborhood meetings to answer questions, but the hearing examiner would not hold a separate study meeting.

Commissioner Moss asked if it is possible for the Planning Commission to conduct the public hearing for master development plans, but then allow the hearing examiner to make the final decision rather than the City Council. Mr. Tovar said he has never heard of this type of process being used. Typically, the Planning Commission makes a recommendation and the City Council takes action, the hearing examiner makes a recommendation and the City Council takes action, or the hearing examiner holds the hearing and takes action.

Commissioner Moss recalled that the Commission has heard from a number of citizens that they would like to have a broader, more open process for master development plans. Although they anticipate few applications of this type now, more master development plan amendments may be submitted in the

future. She said concern has also been raised that the City Council may not be as well versed in the law as a hearing examiner when being called upon to make unpopular decisions. Mr. Tovar agreed to seek legal counsel from the City Attorney regarding the option of having the Commission conduct a public hearing and the Hearing Examiner take action. Commissioner Behrens clarified that there is no legal requirement that the hearing examiner must make the decision on master development plans. Mr. Tovar concurred.

Commissioner Kaje said the Commission previously explored this question when discussing the SEPA appeal issue. Following the path through the Washington Administrative Code and the City's Development Code, they concluded that it is not possible to go from the Commission to the hearing examiner. There is some language in State law about how a recommendation from an appointed Commission must go before elected officials for a final decision. Commissioner Kaje asked if it would be possible for the Commission to play an advisory role to review master development plan applications and help build the record before the application is sent before the hearing examiner for a public hearing and final action. Mr. Tovar agreed to review the Commission's By-laws to determine if they could be granted the authority to play an advisory role if they are not the hearing body. For example, the Commission could recommend that they be invited to participate in the pre-application or neighborhood meeting.

Vice Chair Perkowski said another option would be for master development plans to go to the hearing examiner for a public hearing, but the City Council would retain the ability to make the final decision. He expressed concern that if this option were used, many of the advantages of going to the hearing examiner discussed by the Washington Cities Insurance Authority would be lost. Therefore, there would be little benefit associated with reducing the Commission's role by shifting hearing responsibility to the hearing examiner. Mr. Tovar reported that he has talked to staff from other cities that uses the hearing examiner system to make quasi-judicial decisions. He reviewed that in the judgments rendered by courts over the last few years finding damages against cities for the way quasi-judicial matters have been handled, the planning commissions have not been the source of the problems.

Commissioner Behrens asked if it is possible for the Commission to help create the record that goes to the hearing examiner. Mr. Tovar noted that the Commissioners have a right, as citizens of the City, to submit oral and written comments to the hearing examiner. Commissioner Behrens asked if the Commission could conduct a formal review of a master development plan proposal prior to the application being presented to the hearing examiner. Mr. Tovar agreed this would be possible, but he cautioned that it would create an additional step in the process. If the Commission is not the hearing body for master development plans, the staff could brief the Commission on the application during a study meeting. Individual Commissioners could then submit written and/or oral testimony to the hearing examiner.

Commissioner Behrens said allowing the Planning Commission to conduct a formal review would allow the public to voice their thoughts about all the various elements contained in a proposed master development plan before it is presented to the hearing examiner. Mr. Tovar expressed his belief that a hearing before the Commission would be a redundant step in the process since a public hearing would be held before the examiner. He suggested this may confuse the public about their best opportunity to

provide comments regarding a particular proposal. Having a single hearing before the hearing examiner would allow the public an opportunity respond to each other, as well.

Mr. Tovar said that over the last several years the City Council has expressed a desire to reduce the time required for them to review land use issues so they can deal more specifically with code criteria and standards. Because there is clearly written criteria to enable the hearing examiner to make appropriate decisions, they would likely support the proposed amendment. However, they may want to retain their ability to make the final decision on master development plans. The City Council is also interested in freeing up Commission time so they can concentrate on the Comprehensive Plan update, Development Code regulations, subarea plans, etc.

Commissioner Kaje asked why staff is proposing that the hearing examiner have review authority and the City Council have decision-making authority for preliminary formal subdivisions, rezones of property and zoning map changes, and street vacations. Mr. Tovar said State Law requires subdivisions to be approved by the City Council and street vacations and rezones can only be adopted through a City Council ordinance. In addition, the City has proprietary interest in street vacations.

Mr. Tovar explained that the proposed amendment would allow the City to say to the development community that while the City of Shoreline has very rigorous plans and codes and specific criteria, they also have a simple and quick permitting process for projects that are designed to meet the criteria and standards.

Commissioner Moss asked staff to provide additional information about preliminary formal subdivisions. Mr. Tovar said a subdivision is the exercise of dividing land into lots to convey independently. The size of the lots is determined by the zoning. A formal subdivision starts at five lots, and there has only been one application in the past six years for a five-lot plat. The remaining subdivisions have been for four lots or less (short plat). Short plats are handled administratively with no City Council action required. He said he does not anticipate a large number of formal subdivision applications in the future.

Mr. Cohn reviewed the exhibits as follows:

- Exhibit 1 – Staff Report dated August 11, 2011
- Exhibit 2 – Proposed mended Table 20.30.060
- Exhibit 3 – Notice of August 18, 2011 Public Hearing
- Exhibit 4 – February 3, 2011 Planning Commission Minutes of study session
- Exhibit 5 – Email from Joe Tovar to Plancom regarding "WCIA opinion regarding hearing examiner system, sent August 16, 2011. This exhibit includes a letter from Eric B. Larson, Assistant Executive Director of Washington Cities Insurance Authority (Attachment 1)

Public Testimony

There was no one in the audience to participate in the hearing.

Final Questions by the Commission

None of the Commissioners had additional questions.

Deliberations

COMMISSIONER BEHRENS MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF TABLE 20.30.060 AS PROPOSED IN ATTACHMENT A. COMMISSIONER KAJE SECONDED THE MOTION.

Commissioner Behrens said he supports the changes as proposed, but he recognized the Commission may want to reconsider the proposed changes related to Master Development Plans (Item 9).

Commissioner Esselman noted that the proposed amendment would result in a more timely permitting process and more professional decisions. In addition, the amendment addresses the City's goal to attract development in Shoreline.

COMMISSIONER BEHRENS MOVED TO AMEND THE MAIN MOTION TO ALTER ITEM 9 SO THAT MASTER DEVELOPMENT PLANS ARE HEARD BY THE HEARING EXAMINER, BUT THE CITY COUNCIL WOULD RETAIN THE DECISION-MAKING AUTHORITY. COMMISSIONER ESSELMAN SECONDED THE MOTION.

Commissioner Behrens pointed out that master development plan permits are rare occurrences. Because they can have a major impact on the City, he feels it is appropriate for the City Council to review the hearing examiner's recommendation and make the final decision. This would allow the public to voice their concerns about the hearing examiner's findings before a final decision is made. Mr. Cohn noted that because master development permits are quasi-judicial actions, the record would be closed after the hearing examiner's hearing, and the City Council would be unable to accept additional testimony.

Mr. Tovar said the City Council may want to retain the decision making authority for master development plans in case they do not support the hearing examiner's recommendation. However, more than one City Council Member has indicated they were frustrated because they could not talk to the public before making a final decision about the CRISTA application because master development plans are quasi-judicial. If the hearing examiner makes the final decision, the City Council would be allowed to discuss the proposal with their constituents, but they would not have the ability to influence the final decision. The City Council would retain their ability to make decisions about policy and code requirements, with the goal of narrowing down the range of the hearing examiner's discretion as much as possible. However, some level of judgment must take place when making quasi-judicial decisions. The hearing examiner would be paid to play a judge-like role to examine the facts and make a final decision.

Commissioner Moss said she did not participate in the Planning Commission's review of the CRISTA Master Development Plan, but she did attend the meetings. Because of the extensive discussion that took place, she recalled some check-in points were established that require the property owner to do certain things at specific points as development progresses. She suggested this was a response by the Planning Commissioners because they live in the City and have an investment in the City's future. She suggested that perhaps hearing examiners would operate under a different mindset if they don't live in Shoreline. She suggested this may differentiate the way the hearing examiner and Planning Commission approach a proposed action. The Planning Commission would attempt to balance the best interests of the citizens of the City. She summarized that she sees some value in the Planning Commission retaining the role of being the review authority since it would expand the thinking by having five to seven people looking for ways to put checks and balances in place.

Commissioner Kaje pointed out that if a developer were to propose something other than a campus type use for the Fircrest site, both the Comprehensive Plan and zoning map would have to be amended. Mr. Tovar explained that the current master campus zone only allows the existing uses. Changing the uses would require amendments to the Comprehensive Plan and Development Code, both of which would come before the Commission for review. The City Council would be the decision-making authority in both cases. Commissioner Kaje said he is leaning towards supporting the proposed amendment related to master development plans as currently proposed. He reminded the Commission that, as per the motion on the floor, the City Council would still not have the ability to participate in the public hearing and deliberation process. He said he does not have a strong enough read on the City Council's position to suggest something other than what staff has recommended. Commissioner Behrens said he would no longer support his motion to amend the main motion based on the Commission and staff's discussion. Commissioner Esselman noted that the City Council would consider the Commission's deliberation and make a decision about what they want their role to be in the master development plan review process.

THE MOTION TO AMEND THE MAIN MOTION FAILED 0-5.

Commissioner Kaje pointed out that because the proposed amendment would eliminate the Planning Commission's role in all nine of the Type C permits listed in Table 20.30.060, Footnote 3 (referencing the Planning Commission) should also be deleted. The remaining footnotes should then be renumbered.

COMMISSIONER KAJE MOVED TO AMEND THE MAIN MOTION BY AMENDING TABLE 20.30.060 TO ELIMINATE FOOTNOTE 3 (REFERENCING THE PLANNING COMMISSION) AND RENUMBER THE REMAINING FOOTNOTES. COMMISSIONER BEHRENS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

Vice Chair Perkowski asked if the "time limit for decisions" would need to be altered, as well. Mr. Tovar responded that the time limits reflect the current State law and do not need to be changed. He explained that the proposed amendments would actually shorten the time required for review.

Vote by the Commission to Recommend Approval or Denial or Modification

THE MAIN MOTION TO RECOMMEND APPROVAL OF TABLE 20.30.060 AS PROPOSED IN ATTACHMENT A, WITH THE FOOTNOTE AMENDMENT, WAS UNANIMOUSLY APPROVED.

Closure of Public Hearing

The public hearing was closed.

DIRECTOR'S REPORT

Ms. Simulcik Smith advised that Commissioners Moss, Wagner and Esselman have confirmed their desire to participate in the American Planning Association Conference in October. Mr. Tovar announced that six staff members are planning to attend, as well.

Mr. Tovar reported that staff has been meeting with representatives from Blue Square Real Estate, the developer of the Point Wells site, to identify potential traffic impacts and mitigation measures. He noted that any agreement the developer commits to would also have to be approved by the City Council. The City Council has given direction for staff to attempt to arrange an agreement that controls the amount of impacts, ensure that impacts are mitigated, and implements the City's Comprehensive Plan Policies for Point Wells. While a number of citizens have expressed interest in the issue, staff has been unable to respond because the negotiations are confidential. Staff will present a proposal to the City Council when they feel they have reached an acceptable agreement, and then the public would be invited to respond. He said he anticipates a draft proposal will be available in the near future. Again, he emphasized that while the negotiations are confidential, the public will have an opportunity to provide comment before the City Council enters into an agreement with the developer. He added that if the City is unable to reach an agreement with the developer, their only recourse will be further litigation.

Mr. Tovar reminded the Commission that a joint Planning Commission/City Council Meeting is scheduled for October 12th.

Mr. Tovar announced that the Shoreline School District has put their Aldercrest property on the market. They are using a website to solicit Requests for Proposals from developers. Staff has been contacted by developers asking what is and is not allowed on the site and what the neighborhood concerns are. He invited them to read through the current regulations, which were written specifically to deal with certain peculiarities of the site and the vicinity. He informed one developer that no hearing would be required if the development proposal is consistent with the code. Another developer asked if a park could actually be developed as part of the project rather than just dedicating the six to seven acres required by the code. He informed the developer that the City would be interested in this concept. He explained that while the site has been included in the PROS Master Plan to aid the City in its efforts to secure grant funding, they do not currently have funds to do a detailed park design. He summarized that the development community has expressed a lot of interest in the Aldercrest property.

Commissioner Kaje said he and his neighbors were pleased to see that the School District framed the Request for Proposals to be very clear and upfront about the special conditions and that they intend to evaluate proposals partly on what they think is the best fit for the neighborhood.

UNFINISHED BUSINESS

No unfinished business was scheduled on the agenda.

NEW BUSINESS

No new business was scheduled on the agenda.

REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS

Commissioner Kaje announced that the Ballinger Neighborhood, together with North City and some grant funding from the City, is hosting the Third Annual Outdoor Movie Night on August 27th at the Aldercrest site. It will be a fun event and two local bands will play before the movie. He referred the Commission to the Ballinger Neighborhood Association's website for more information.

AGENDA FOR NEXT MEETING

Mr. Cohn announced that a public hearing on the Southeast Neighborhoods legislative rezone proposal is scheduled for September 1st. Staff included the Staff Report for this item in the Commission's August 18th packet, and the Commission received the attachments earlier, as well. He announced that parliamentary procedure training is scheduled for September 15th.

Mr. Cohn explained that the City Council has spent some time reviewing the Transportation Master Plan (TMP), and they have now decided they want the Planning Commission to make a recommendation regarding policies and code changes. In order to complete this additional work, staff is suggesting the Commission hold a special meeting on September 22nd or September 29th. He explained that staff anticipates two study sessions will be required before the public hearing. An additional study session would be scheduled for the Commission's regular meeting on October 6th. At that time, the Commission could also wrap up their deliberations on the Southeast Neighborhoods legislative rezone.

Mr. Cohn reminded the Commission of the joint Planning Commission/City Council Meeting on October 10th, at which they will discuss the Commission's future work program. The focus will likely be on the Comprehensive Plan update. At that point, the Commission will have had two study sessions on the TMP Comprehensive Plan and Development Code amendments, and they may want to discuss certain elements of the plan with the City Council. Mr. Tovar added that also on October 10th, the City Council will be presented with a proclamation of National Community Planning Month in Shoreline. There will also be a presentation on the International Green Building Code. He suggested Commissioners may be interested in both of these items, as well.

Mr. Cohn noted that the Commission's regularly scheduled meeting of October 20th conflicts with the American Planning Association Conference. Staff is suggesting this meeting be rescheduled to October 27th for a public hearing on the Comprehensive Plan policies and Development Code amendments related to the TMP. The Commission may need to extend their deliberations regarding the TMP to the November 3rd regular meeting. The Commission would also conduct a study session on November 3rd on a code amendment related to medical marijuana/collective gardens, with a public hearing tentatively scheduled for November 17th. The Commission could have a discussion about the Shoreline Master Program on December 1st and the tree code amendments on December 15th.

Ms. Simulcik Smith agreed to contact Commissioners via email to discuss their availability for the special meeting dates.

ADJOURNMENT

The meeting was adjourned at 8:35 P.M.

Ben Perkowski
Vice Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission

Attachment E

Planning Commission Recommendation

From Table 20.30.060: Summary of Type C Actions, Review Authority, and Decision Making Authority

Action	Review Authority, Open Record Public Hearing	Decision Making Authority (Public Meeting)
Type C Permits:		
1. Preliminary Formal Subdivision	HE (1), (2) ~~PC~~ (3)	City Council
2. Rezone of Property ~~(2)~~ and Zoning Map Change	HE (1), (2) ~~PC~~ (3)	City Council
3. Special Use Permit (SUP)	HE (1), (2) ~~PC~~ (3)	HE ~~City Council~~
4. Critical Areas Special Use	HE (1), (2)	
5. Critical Areas Reasonable Use	HE (1), (2)	
6. Final Formal Plat	Review by Director	City Council
7. SCTF – Special Use Permit	HE (1), (2) ~~PC~~ (3)	HE ~~City Council~~
8. Street Vacation	HE (1), (2) ~~PC~~ (3)	City Council
9. Master Development Plan	HE (1), (2) ~~PC~~ (3)	HE ~~City Council~~

(1) Including consolidated SEPA threshold determination appeal, (2) HE = Hearing Examiner,