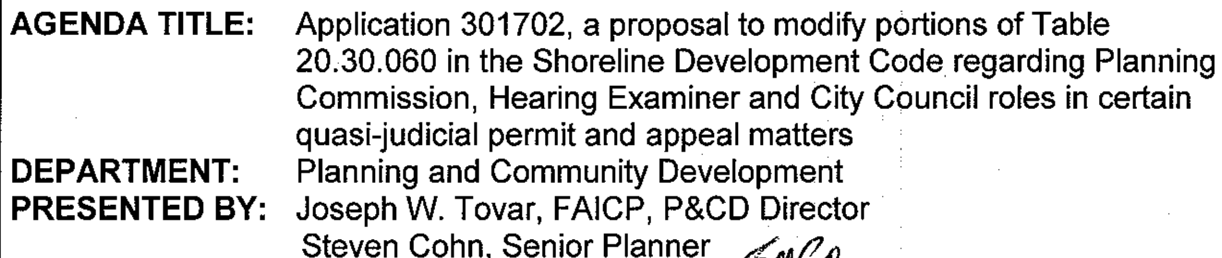
Planning Commission Meeting Date: August 18, 2011 **Agenda Item: 7.A**

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

Attachment A

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

This page intentionally blank

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

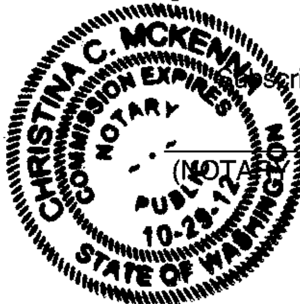
STATE OF WASHINGTON
Counties of King and Snohomish

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

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.