

AGENDA PLANNING COMMISSION REGULAR MEETING



Thursday, August 18, 2011
7:00 p.m.

Shoreline City Hall
Council Chamber
17500 Midvale Ave. N

	<u>Estimated Time</u>
1. CALL TO ORDER	7:00 p.m.
2. ROLL CALL	7:01 p.m.
3. APPROVAL OF AGENDA	7:02 p.m.
4. DIRECTOR'S COMMENTS	7:03 p.m.
5. APPROVAL OF MINUTES	7:08 p.m.
a. July 21 Regular Meeting	
6. GENERAL PUBLIC COMMENT	7:10 p.m.
<p><i>During the General Public Comment period, the Planning Commission will take public comment on any subject which is not of a quasi-judicial nature or specifically scheduled later on the agenda. Each member of the public may comment for up to two minutes. However, the General Public Comment period will generally be limited to twenty minutes. The Chair has discretion to limit or extend time limitations and the number of people permitted to speak. Speakers are asked to come to the front of the room to have their comments recorded and must clearly state their first and last name, and city of residence. The rules for procedure for Public Hearings before the Planning Commission are further defined in Resolution No. 182.</i></p>	
7. PUBLIC HEARING <i>Legislative Public Hearing</i>	7:15 p.m.
Development Code Amendment	
a. <i>Transferring 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 others</i>	
1. Staff Overview and Presentation of Preliminary Staff Recommendation	
2. Questions by the Commission to Staff	
3. Public Testimony	
4. Final Questions by the Commission	
5. Deliberations	
6. Vote by Commission to Recommend Approval or Denial or Modification	
7. Closure of Public Hearing	
8. DIRECTOR'S REPORT	8:15 p.m.
9. UNFINISHED BUSINESS	8:20 p.m.
10. NEW BUSINESS	8:22 p.m.
11. REPORTS OF COMMITTEES & COMMISSIONERS/ANNOUNCEMENTS	8:24 p.m.
12. AGENDA FOR September 1	8:26 p.m.
13. ADJOURNMENT	8:30 p.m.

The Planning Commission meeting is wheelchair accessible. Any person requiring a disability accommodation should contact the City Clerk's Office at 801-2230 in advance for more information. For TTY telephone service call 546-0457. For up-to-date information on future agendas call 801-2236.

WHO WE ARE

The Shoreline Planning Commission is a 7-member volunteer advisory body to the City Council. The purpose of the Planning Commission is to provide guidance and direction for Shoreline's future growth through continued review and improvement to the City's Comprehensive Plan, Development Code, shoreline management, environmental protection and related land use documents. The Planning Commission members are appointed by the City Council and serve a four year term.

WHAT IS HAPPENING TONIGHT

Planning Commission meetings may have several items on the agenda. The items may be study sessions or public hearings.

Study Sessions

Study sessions provide an opportunity for the Commissioners to learn about particular items and to have informal discussion with staff prior to holding a public hearing. The Commission schedules time on its agenda to hear from the public; however, the Chair has discretion to limit or extend time limitations and the number of people permitted to speak. The public is encouraged to provide written comment to the Commission; however, since Commissioners are volunteers and may not have time to check email every day, if written comments are not included in the agenda packet and are offered during a study session, they may not have time to read them until after the meeting.

Public Hearing

The main purpose of a public hearing is for the Commission to obtain public testimony. There are two types of public hearings, legislative and quasi-judicial. Legislative hearings are on matters of policy that affect a wide range of citizens or perhaps the entire jurisdiction and quasi-judicial hearings are on matters affecting the legal rights of specific, private parties in a contested setting. The hearing procedures are listed on the agenda. Public testimony will happen after the staff presentation. Individuals will be required to sign up if they wish to testify and will be called upon to speak generally in the order in which they have signed. Each person will be allowed 2 minutes to speak. In addition, attendees may want to provide written testimony to the Commission. Speakers may hand the Clerk their written materials prior to speaking and they will be distributed. For those not speaking, written materials should be handed to the Clerk prior to the meeting. The Clerk will stamp written materials with an exhibit number so it can be referred to during the meeting. Spoken comments and written materials presented at public hearings become part of the record.

CONTACTING THE PLANNING COMMISSION

Written comments can be emailed to plancom@shorelinewa.gov or mailed to Shoreline Planning Commission, 17500 Midvale Avenue N, Shoreline WA 98133.

www.shorelinewa.gov/plancom

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION MINUTES OF REGULAR MEETING

July 21, 2011
7:00 P.M.

Shoreline City Hall
Council Chamber

Commissioners Present

Chair Wagner
Vice Chair Perkowski
Commissioner Behrens
Commissioner Broili
Commissioner Esselman
Commissioner Kaje
Commissioner Moss

Staff Present

Steve Cohn, Senior Planner, Planning & Development Services
Alicia McIntire, Senior Transportation Planner, Public Works
Brian Landau, Surface Water Manager
Jessica Simulcik Smith, Planning Commission Clerk

CALL TO ORDER

Chair Wagner 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: Chair Wagner, Vice Chair Perkowski and Commissioners Behrens, Broili, Esselman, Kaje and Moss.

APPROVAL OF AGENDA

The agenda was accepted as presented.

DIRECTOR'S COMMENTS

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

APPROVAL OF MINUTES

The minutes of June 30, 2011 were approved as amended.

GENERAL PUBLIC COMMENT

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

STAFF REPORTS

Mr. Cohn advised that while the Transportation Master Plan, Surface Water Master Plan and Parks, Recreation and Open Space Master Plan are not part of the Comprehensive Plan, they are reflected in the goals and policies contained in the Comprehensive Plan. The purpose of tonight's discussion is to review the proposed updates to the three plans.

Transportation Master Plan (TMP) Update

Ms. McIntire reported that staff is in the final stages of developing the draft TMP, which provides guiding direction for developing the City's transportation network. The document contains goals, and policies with a similar purpose as those found in the Comprehensive Plan. In addition, the TMP includes implementation strategies, which identify specific actions the City can take in order to implement a specific goal and/or policy.

Ms. McIntire advised that staff received direction from the City Council on many of the goals and policies contained in the draft TMP during a series of meetings last spring and summer. They met again with the City Council last week to discuss five of the chapters, and they will discuss the remaining chapters on August 1st. They hope to release the entire draft TMP for environmental and public review in mid August. A public hearing before the City Council is scheduled for September 12th, with final adoption on September 26th. She briefly reviewed the eight chapters of the draft TMP as follows:

- **Sustainability and Quality of Life** – This chapter talks about the City's neighborhood involvement and neighborhood traffic safety programs and the neighborhood traffic action plans. It also discusses transportation demand and system management, commute trip reduction, complete streets, street lighting, stormwater management, maintenance, freight and mobility, and regional coordination. As directed by the City Council, staff took a "complete street" approach of looking at the system as a whole. System plans for bicycles and pedestrians, as well as a three-phase transit plan were developed. As opposed to identifying numerous large new projects, staff considered opportunities for integrating new facilities into the existing roadways to increase capacity for all modes of transportation.
- **Master Street Plan** – This chapter contains cross sections for all arterials and local primary streets (previously neighborhood collector streets) to identify the City's future plans for the streets. As proposed, the majority of the transit network would be located on arterials, with very little transit service on local primary streets that are not generally built to manage the impacts associated with transit service. Because the City does not have the capacity to develop a cross section for each of the secondary streets (residential), a pallet of cross sections would be prepared to provide guidance if and when the City acquires funding or determines a sidewalk is appropriate in a particular location. Again, the goal is to avoid large, expensive capital projects

and/or cause massive disruption to the existing system. The City is primarily residential, and building wider streets in residential neighborhoods would require the City to purchase additional right-of-way, which is not something they are interested in doing at this time.

- **Bicycle Plan** – The Bicycle System Plan shows the location of the different facilities necessary to build a complete system. The Interurban Trail is the spine of the system, and most of the facilities are located on arterials. The system plan includes two connector routes between the Interurban and Burke Gilman Trails. The Bicycle Plan is comprised almost entirely of new policies that call for implementation of the Bicycle System Plan, development of standards for bicycle facilities and their maintenance, creation of a funding strategy to develop the City’s bicycle system and expanded public outreach and education regarding bicycling and bicycle safety. Funding for implementation will be the City’s biggest challenge affiliated with the Bicycle System Plan.
- **Pedestrian Plan** – The goal of the Pedestrian System Plan is to create a complete pedestrian system that connects neighborhoods to transit, retail and commercial areas, schools, and parks. The general concept is that all arterial and local primary streets will have sidewalks on both sides. Sidewalk widths would be determined by the adjacent land uses. Some types of uses (schools, parks, commercial, etc.) merit wider sidewalks because they draw more pedestrians, whereas narrower sidewalks are sufficient in residential neighborhoods. The Pedestrian Plan also contains many new policies that emphasize implementation of the Pedestrian System Plan, construction of sidewalks as priority projects, pedestrian safety, creation of a funding strategy for sidewalk construction, and the allowance of flexible standards for sidewalks. There are some places where sidewalks on both sides might be technically unfeasible and/or extremely expensive. They may also need to avoid critical areas and/or existing vegetation.
- **Transit Plan** – Based on anticipated future changes to transit service in the City, including implementation of bus rapid transit (BRT) and light rail service, staff developed a three-phase transit plan. The goals and strategies in the Transit Plan are generally affiliated with different stages of the light rail implementation and construction, which will drastically change transit service in the City. The plan includes short-range (until 2021), medium-range (2021-2023) and long-range (2023+) plans. It also includes general policies for making transit a more convenient and appealing option for residents and encouraging development that is supportive of transit. She referred to Metro’s recently adopted strategic plan, which drastically changes how they look at providing service. Rather than focusing on political boundaries to dictate areas of service, Metro will consider land uses, where people live and work, productivity, etc. If the City wants to advocate for and justify additional transit service, it is important to consider the criteria developed by Metro since they are the primary provider of transit service in the City. While staff is not advocating that the entire City be rezoned to be transit-supportive, they should think about having transit-supported densities within the transit corridors.

The short-range plan focuses on what will happen from now until light rail service begins at Northgate, which is currently scheduled to be 2021. The plan advocates for improved and expanded existing transit service (particularly east/west), increasing ridership, enhancing the

quality of service and overall improvements to facilities. BRT service would begin on Aurora Avenue North during this time frame, traveling from downtown Seattle to the Aurora Transit Center. The City should consider options for relocating all or a portion of the Aurora Transit Center function to the Shoreline Park and Ride at North 192nd Street so bus transfers can easily occur on Aurora Avenue North. Staff will continue to participate in planning efforts with Sound Transit, which is still in the process of defining the alignment for light rail. Because the alignment and station locations are not yet known, the Transit Plan addresses the concerns but does not call out a preferred alignment.

The medium-range plan focuses on the time when light rail service begins at Northgate (2021). Bus service will be restructured to feed the light rail station at Northgate, making bus transportation a convenient and appealing option for Shoreline residents. Staff anticipates this will include commuter routes to collect people in Shoreline for transfer to light rail at Northgate. The BRT service will still be in place so it will be important to have a good network of feeders for this system, as well. At this time, construction would also be underway to extend the light rail service from Northgate to Shoreline.

The long-range plan focuses on the time when light rail service will be operational to Shoreline. The conceptual plan presented with the Sound Transit package in 2008 identified an Interstate 5 alignment, with stations at 145th and 185th. The proposed Transportation Plan anticipates that, regardless of the alignment, there will still be two stations in the City. Sound Transit is currently considering potential alignments on Highway 99 and Interstate 5. The intent is that bus service would be adapted to feed into the light rail stations. Regardless of the alignment location, BRT along Highway 99 would likely be maintained. The long-range plan also calls for the City to look for other high-capacity transit corridors. Once light rail service to Shoreline has been established, the City will likely see interest in development around the transit stations. When the station locations have been identified, the City can develop subarea plans for each area. As Sound Transit examines additional system expansions, the City could also advocate for street car service or light rail expansions into the City.

During the development of the Master Street Plan, staff examined the way different streets operate throughout the City. As part of this analysis, several streets were identified for reclassification. The streets already function in the capacity recommended with respect to existing traffic volumes, speeds, striping and connectivity. Additionally, staff recommends renaming two street classifications in order to minimize confusion and more accurately identify the characteristics of each street type. For example, “neighborhood collector streets” have been renamed “local primary streets.” Arterial streets are high priorities for non-motorized transportation opportunities and where most transit service is located. Arterials have center line striping and are not generally eligible for traffic calming treatments.

- **Concurrency** – Understanding the future nature and volume of traffic in the City makes it possible to recommend appropriate transportation facility improvements. This information builds upon an understanding of existing traffic volumes and flow patterns in the City. The City contracted with DKS Associates to develop three models to analyze future traffic volumes and

anticipated problems affiliated with growth. To develop the models, the consultant evaluated three land use scenarios, each one based upon the City's assigned growth targets for 2030 of 5,000 new households and 5,000 new jobs. Each of the scenarios included the two light rail station locations identified in the Sound Transit 2 package (along Interstate 5 at Northeast 145th Street and Northeast 185th Street). Parking for 500 vehicles was assumed at each station. Growth was dispersed differently in each of the three scenarios: spread throughout the City, along Aurora Avenue North, and within transit nodes. However, regardless of the way the growth was dispersed, the problems showed up in the exact same locations. In response to these results and current planning efforts, staff created a Transit Oriented Development (TOD) Enhanced scenario, which assumes concentrations around the transit hubs and in Town Center.

The Growth Management Act (GMA) requires the City to have a concurrency standard for transportation, which shows that the City has capacity in their transit network concurrent with growth. Concurrency can be measured in a variety of ways. In an effort to look at the transportation system holistically, the consultant is in the process of developing a concurrency program that focuses on the vehicle capacity, but also gives credits and assigns incentives for developers who put in non-motorized facilities to enhance transit. While some jurisdictions have multi-modal concurrency standards, they are very complicated to develop and implement.

The draft policy language recommends that the City adopt LOS D for all signalized intersections on arterials, with additional volume and capacity standards for Principal and Minor Arterials. With this standard, the City will accept intersections that operate at LOS D or better. The current standard is LOS E. The recommended concurrency standard would result in improvements to both roadway segments and intersections that will help traffic flow throughout the City. It would also result in improvements for pedestrians, bicyclists and transit through implementation of Shoreline's complete street standards for roads.

- **Projects** – The TMP identifies many transportation projects, including seven that are needed to accommodate growth in the Meridian/Interstate 5/North 175th Street area. In addition, bicycle and pedestrian projects will be needed to implement the system plans. Because not all of the projects identified in the system plans can be implemented within the 20-year planning period, criteria would be used to prioritize the projects. The TMP also identifies projects to correct existing safety problems and to conduct corridor studies to help identify solutions for large, corridor-wide projects.
- **Funding** – Impact fees are allowed by State law as a mechanism to make growth pay for growth. The fee is affiliated with the number of trips created by each development and can only be used to fund costs associated with the seven projects needed to accommodate growth. State and Federal grants are available to fund the remaining projects, but this funding is generally conditional and can only be used for specific projects. Grants are highly competitive, and the City has been incredibly successful in securing grants for the Aurora Corridor Project, which was funded 90% by grants and 10% by City money. Local funding sources are also available, such as the Transportation Benefit District (TBD), which funds the roadway maintenance program through a \$20 vehicle license fee. The TBD can be increased up to \$100 by a vote of

the public. Current funding sources (gas tax, property tax, and general fund) are not as robust as they used to be.

Commissioner Kaje said he still has some concerns and suggestions related to bicycle, pedestrian and transit opportunities in the northeast portion of the City. In reviewing the current draft materials, he suggested that perhaps not enough time was spent trying to understand the peculiar challenges of getting in and out of this area with anything but a private vehicle. He suggested that minor things could be done to significantly improve access for the residents in this very dense area of the City. While constructing a bike lane down 15th Avenue would be expensive and would not likely occur in the near future, there are some feasible alternatives that could be achieved with simple signage and perhaps some striping. He agreed to forward his individual comments and ideas to staff in writing.

Commissioner Moss observed that none of the express bus routes are listed in the short, medium and long-range plans. Ms. McIntire said the map in the plan identifies the all-day routes, but staff is aware of the express routes, as well. She noted that Routes 373 and 330 are currently peak-only routes, but they are shown on the short-range plan as all-day routes to be consistent with Metro's Strategic Plan.

Commissioner Moss asked if staff has considered a TBD as an opportunity to fund transit service in the future. Ms. McIntire agreed that TBD funding is one option, but it would require a fairly hefty TBD to establish a basic circulator route. She noted that because there are no routes that just serve the City of Shoreline, a partnership with the City of Seattle would likely be necessary.

Commissioner Behrens pointed out that, at this time, a rider required to pay two sets of fees when transferring from a Metro bus to a Community Transit bus. He suggested they look at options to improve travel opportunities to the north. Ms. McIntire observed that the City of Shoreline is located at the end of both lines, and staff has focused their efforts on interagency coordination. She noted that Metro and Community Transit used to honor interagency transfers between service providers, but this practice was discontinued when the ORCA system was implemented in January 2009. She explained that the ORCA card allows people to transfer from a Metro bus to a Community Transit Bus at the transfer station and only pay the difference between the two fares. She expressed her belief that convincing the transit providers to go back to accepting interagency transfers would be very difficult. Instead, they should focus on encouraging people to purchase ORCA cards. Commissioner Moss said she participated on the ORCA Team, and she expects that Metro will eventually phase out paper transfers, as well.

Chair Wagner recognized the inter-jurisdictional challenges associated with Northeast 145th Street, and questioned how the street would be addressed in the TMP. Ms. McIntire noted that the street is not included on the system plans because it is not located within Shoreline. However, the regional coordination section discusses the option of annexing all or part of the street, and the City has started conversations with the City of Seattle and the State of Washington. The TMP provides policies that encourage regional coordination to address concerns related Northeast 145th Street, particularly if a light rail station is located on the street. She said the City's goal is to iron out the inter-jurisdictional issues first before making plans for improvements.

Commissioner Moss asked Ms. McIntire to share staff's vision for a Transit-Oriented Development (TOD). Ms. McIntire said TOD's are mentioned in the draft TMP as sustainability and transit issues. While the plan does not provide a definition for TOD, she would describe it as housing that is served by enough transit that you don't have to own a car. The housing element in a TOD would generally be accompanied by retail and commercial uses to serve the residents who live in the area.

Commissioner Moss asked if Meridian Avenue North would be reclassified to a Principal Arterial if the recommended improvements are made to accommodate growth. Ms. McIntire answered that the proposed street classifications are intended to match what currently exists. However, it would be possible to reclassify the street after the improvements have been made.

Commissioner Behrens asked how the newly adopted subarea plans and the TMP would work together. Ms. McIntire answered that the draft TMP addresses the anticipated impacts and transportation demands on arterial streets within the Town Center and Southeast Neighborhoods Subareas, and programs such as the Neighborhood Safety Program can be used to specifically address impacts to local neighborhood streets as growth occurs.

Mr. Cohn advised that the Urban Land Institute conducted a study in the Seattle/Shoreline area, looking at three sites for potential TOD. One site was located on Aurora Avenue North at Northeast 192nd Street and another at roughly Northeast 130th Street and Aurora Avenue North. He agreed to forward the Commission a link to the study.

Surface Water Master Plan Update

Mr. Landau explained that the previous Surface Water Master (SWM) Plan Update was done in 2005, and a lot of work has been done on the City's infrastructure and programs since that time. The purpose of the current update is to identify and prioritize the City's needs and develop affordable long-term solutions that meet the regulatory requirements and reflect the community's priorities. The SWM Plan is totally funded by surface water fees from the residents of Shoreline.

Mr. Landau briefly reviewed the accomplishments from the 2005 SWM Plan, which include numerous flood reduction projects throughout the City. There have also been improvements in the maintenance of the existing infrastructure. The City has consistently met the requirements of the National Pollutant Discharge Elimination System (NPDES) permit, established a water quality monitoring and assessment program and implemented outreach programs. In addition, the City completed its first Federal Emergency Management Agency (FEMA) floodplain study last year.

Mr. Landau explained that the update will place a greater emphasis on water quality, sustainability, aquatic enhancement, and floodplain management from a basin perspective. In addition, the construction of new surface water management infrastructure requires a review of the maintenance program needs and associated costs. The plan must also address the aging drainage pipes and facilities and identify an asset management program for the existing infrastructure. Staff is currently reviewing financial options to fund the utility for the next five years. He summarized that updating the SWM Plan

requires the City to balance competing objectives such as the completion of new capital improvements, the maintenance of existing surface water management infrastructure, and affordable rates.

Mr. Landau advised that the goals of the Surface Water Utility include flood hazard reduction, water quality protection, and aquatic habitat protection and enhancement. He provided a brief overview of the programs that are managed within the Surface Water Utility such as a capital program, regulatory compliance, basin planning, administration and management, operations and maintenance, public outreach and education, technical assistance and code enforcement, and monitoring and research. The update also includes the creation of a new asset inventory and management program.

Mr. Landau reviewed that last May staff met with City Council to obtain direction on the following issues:

- **Repair and Replacement vs. New Capital Facilities** – The goal is to preserve what they currently have and get a better idea of its condition. More emphasis should be put into repairing and replacing existing infrastructure versus all new capital facilities.
- **Rate Credits for Low-Impact Development (LID) Improvements** – Staff recommends that instead of providing rate credits to property owners, it would be better to establish an incentive program to encourage residents to implement LID improvements.
- **Private Property and Public Drainage Systems** – Staff recommends the utility establish a more defined policy to provide consistent guidance on the use of public funds to improve and/or maintain drainage systems that cross through private property. He explained that a lot of the storm water systems the City inherited from King County cross through private properties where the City does not have easement rights. It is also difficult to address issues related to open channels or streams that are located on private properties.
- **Non-Commercial Car Washes** – The water from non-commercial car washes runs into the stormwater system, and the City has tried to address the issue through education and outreach. They also offer carwash kits that allow the car washes to be performed in an environmentally safe manner. Staff is recommending that non-commercial car washing events become a permitted activity administered by the Surface Water Utility and the Planning and Development Services Department. The City could issue a no-cost permit as a method to reduce the illicit discharge associated with the use.

Mr. Landau pointed out that a greater emphasis on repair and replacement projects would have an impact on the existing operations and maintenance program and the proposed asset inventory and management program. LID incentives, rate issues, and car wash permits would impact the public outreach program. All of the proposed changes would have a positive impact on water quality aquatic habitat.

Mr. Landau reviewed that staff would make a presentation to the City Council on August 8th regarding levels of service and rates to meet the program recommendations. The draft SWM Plan will be available for public comment in mid to late August. A public hearing and discussion of the surface water management policy for private property is scheduled for September 6th. Staff anticipates the City Council would adopt the final SWM Plan in the fall of 2011.

Commissioner Kaje asked if staff discussed potential grants to help implement rain gardens on private property. Mr. Landau agreed the utility could establish and/or support a program to provide discount rain barrels, technical assistance on constructing rain gardens, or other types of low-impact best management practices (BMP) on private properties. Encouraging private property owners to implement these LID techniques would benefit the entire storm water system. While the SWM Plan calls for development of a program in the next few years, staff does not have detailed information about what it might look like.

Vice Chair Perkowski asked if staff has researched other municipalities' policies for management of storm water infrastructure and open water channels on private property. Mr. Landau answered that staff has done some research and learned that many do not have policies in place. As currently proposed, the policy would allow the utility to fund a project to address a problem that occurs on private property if it is determined to have a significant environmental or life-safety threat to the public or would impact existing infrastructure. The purpose of the policy is to justify how the utility funds are spent and give the City the ability to say no to certain project on private property.

Commissioner Behrens said he is aware of two housing developments near his home where storm drainage systems were installed but were never connected to the City's system. These situations have caused flooding problems on adjacent properties. He asked if these situations are common throughout the City. He also asked how staff determines whether or not the City will address the problems. Mr. Landau explained that the City is responsible for runoff that comes from the right-of-way. The goal is to keep the water within the right-of-way so it can flow into the City's system. However, the City does not have the jurisdiction to address runoff that flows from one private property to another. Mr. Landau said the City investigates every complaint they receive about storm water runoff to determine if it is within the City's jurisdiction to address the problem.

Commissioner Kaje noted that the City still has numerous open-ditch storm water systems. Instead of automatically retrofitting these systems with pipes, some municipalities have chosen to modify the existing ditch systems to improve infiltration rates. Mr. Landau advised that the City has an open-ditch policy that does not allow open ditches within the rights-of-way to be filled in or replaced with pipes. Commissioner Kaje pointed out that there are numerous situations where open ditches were filled by private property owners to accommodate parking, etc. Mr. Landau agreed that there are many cases in the City where private property owners have filled ditches with gravel. He said the open-ditch policy was not adopted until two years ago. Prior to that time, filling an open ditch was allowed with a permit.

Mr. Landau said staff's goal is to have the draft SWM Plan available for public review by August 19th.

Parks, Recreation and Open Space Plan Update (*memorandum only, no presentation*)

Mr. Cohn announced that the Parks, Recreation and Open Space Plan Update has been forwarded to the City Council for review and is scheduled for a public hearing on July 25th. A copy of the plan was provided at a past meeting to the Commissioners for information purposes.

PUBLIC COMMENT

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

DIRECTOR'S REPORT

Mr. Cohn did not have any additional items to report to the Commission.

UNFINISHED BUSINESS

Planning Commission Retreat Follow-Up and Review of Bylaws

Mr. Cohn reviewed that at their 2011 retreat in May, the Commission discussed how they could become more effective and efficient. The purpose of the discussion is to check in to see if the Commission believes their meetings and decision-making process have improved as a result of implementing the concepts discussed at the retreat.

Commissioner Moss said she appreciates receiving staff reports two weeks in advance for public hearings. This allows the Commission to submit follow up questions to staff in a timely manner. Commissioner Esselman said she felt the process the Commission used to work through the Town Center Subarea Plan was effective. Highlighting the major issues and then working through the proposal page-by-page seemed to be an efficient approach.

Ms. Simulcik Smith requested feedback from the Commission about whether or not the color coding used to track changes was helpful. Chair Wagner suggested that rather than tracking all changes, it would be sufficient to track just those changes made since the Commission's last discussion. Commissioner Moss agreed and added that this would make it easier to identify the issues that still need to be addressed. Mr. Cohn suggested that once the Commission has discussed a proposed change and reached a consensus, the change could be identified with an underline. Chair Wagner said she liked the brief notes that were imbedded in the draft document to remind the Commissioners of their previous discussions regarding the proposed changes.

Commissioner Kaje said he was uncomfortable when Director Tovar requested feedback from the Commissioners regarding some suggested changes submitted a City Councilmember related to the Town Center Subarea. While he felt it was appropriate for the Commission to provide some clarification regarding their recommendation, he felt awkward evaluating additional changes outside of the hearing process. Mr. Cohn explained that the intent of Director Tovar's request was to allow the Commission to inform staff of their thoughts so staff could provide a response to the City Council. Commissioner Kaje observed that Director Tovar's request was not problematic because there was general agreement amongst the Commission related to the Town Center Subarea. However, a similar request for a different case could be awkward if the Commission's recommendation was not unanimous. He summarized that while he does not want to discourage staff from requesting clarification from the Commission, it is important to be thoughtful about the process. Vice Chair Perkowski said he was also uncomfortable with Director Tovar's request for the Commission to weigh in on proposed amendments put forth by a

City Councilmember. It could be problematic to use just the comments of Commissioners who happened to reply to formulate a response.

Mr. Cohn said staff is making an effort to get staff reports to the Commissioners at least two weeks before a public hearing. He noted that a public hearing is scheduled in two weeks (August 4th), and staff will attempt to provide a draft report to the Commission via email by July 22nd.

Ms. Simulcik Smith announced that a consultant has been hired to provide a training session to the Commission on September 15th regarding Roberts Rules of Order. The consultant would discuss how to run good meetings, making and amending motions, and raising and responding to points of information and points of order. The session would also include an interactive role play opportunity.

Ms. Simulcik Smith referred the Commissioners to the draft changes to the Planning Commission Bylaws, which were discussed at the retreat. She briefly reviewed each one.

Commissioner Moss noted that one proposed change would allow the Commission to cancel a public hearing for lack of a quorum. She asked if the Commission could also cancel other meetings such as study sessions for lack of a quorum. Mr. Cohn pointed out that, as per Roberts Rules of Orders, the Commission cannot convene a meeting without a quorum present. Ms. Simulcik Smith noted that Section 2 of Article VI states that “four members constitutes a quorum and is required for the Commission to take any action other than to adjourn.” The Commission agreed that the last paragraph of Section 1 of Article V should be changed to add “or a quorum” after “lack of agenda items.”

Ms. Simulcik Smith referred to Section 3 of Article V and said staff is suggesting just one order of business and calling Item 7 “Study Items/Public Hearings. Allowing public comment after each study session would eliminate making the public wait until the end of the meeting to speak on a topic. The Commission agreed it would be appropriate to add a footnote stating that “in the event of multiple study sessions, each session would include a staff presentation followed by public comment.”

Ms. Simulcik Smith referred to Section 4 of Article V and noted that the current bylaws allow each member of the public to comment for up to two minutes. At their retreat, the Commission agreed to increase the time to three minutes. The Commission discussed that the three-minute time limit worked well at their last three meetings. To address the concern of having a large number of people who want to comment, Ms. Simulcik Smith referred to the City Council’s bylaws, which include a provision that reduces the time limit to two minutes if more than 15 people have signed up. Rather than establishing a total time limit, the Commission discussed the idea of allowing the Chair the discretion to set the time limit on a case-by-case basis depending on the number of people who want to participate. Ms. Simulcik Smith agreed to incorporate the time limit language from the City Council’s Bylaws for further Commission discussion. Chair Wagner suggested the title of Section 4 be clarified to make it clear that the rules would apply to general public comments, comments on study session items, and public hearing testimony.

Commissioner Broili recalled that the Commission has been called on the carpet in the past for allowing a person with particular expertise additional time to answer Commission questions. He asked how the

language could be crafted to allow this type of dialogue in the future. Chair Wagner suggested that instead of asking a member of the public to comment as an expert, the Commission could address their questions to staff, and staff could use that person as a resource to prepare a response for the Commission. Mr. Cohn recalled that the City Attorney suggested the Commission should allow equal time for the proponents and opponents of a specific proposal to comment, and he agreed to seek additional feedback from the City Attorney.

Commissioner Behrens asked the purpose of the general public comment period. Mr. Cohn answered that it allows an opportunity for a member of the public to address the Commission regarding an issue that is not scheduled on the agenda. Commissioner Behrens noted that the Commission does not immediately address general public comments because they have to move forward with their scheduled agenda. Perhaps it would be better to invite members of the public to submit written general comments instead. Most of the Commissioners were in favor of continuing the general public comment period, recognizing that the Chair would have the ability to limit the comments if necessary. The Commission also discussed that if a person goes over their allotted time during a public hearing, the Chair could invite them to put the rest of their comments in writing. Ms. Simulcik Smith cautioned that if the Commission invites written public comments during a public hearing, they should establish a formal process for collecting and reviewing the comments prior to closing the public hearing and making a final recommendation to the City Council. The Commission agreed it would be appropriate to allow the public to submit written comments during the public hearing. However, each of the written comments should be formally entered into the public hearing record.

Ms. Simulcik Smith pointed out that new language was added to Section 4 of Article V to allow members of the public who are representing the official position of a State registered non-profit organization or agency or a City-recognized organization to speak for five minutes. Their comments would be recorded as the official position of the organization they represent. The Commission discussed how they would know if a person has been designated as an official representative of a group or organization. It was noted that sometimes after a group representative has spoken for five minutes, individuals from the group also speak before the Commission for three minutes. To address this issue, they discussed the idea of limiting all public comments to three minutes. Vice Chair Perkowski expressed concern about adding language to the bylaws that allows group representatives to speak for five minutes and recording their comments as the official position of an organization. Ms. Simulcik Smith said the proposed language came from the City Council's rules of procedure. Mr. Cohn clarified that Roberts Rules of Order do not require the Commission to allow organization representatives to speak for five minutes, but that is what the Commission has allowed historically. It was noted that, as currently proposed, an attorney representing a property owner or a group of property owners would not be allowed additional time because the five-minute provision is limited to non-profit or City-recognized organizations.

Ms. Simulcik Smith referred to the proposed new article to address how a Commissioner should handle his/her personal opinions that are different than the official recommendation of the Commission. The Commissioners indicated support for the concept outlined in the new language, but they agreed further clarification would be appropriate. Commissioner Kaje recalled that the new language was proposed to address situations where individual Commissioners are invited to participate on various committees or

groups such as neighborhood meetings. While a Commissioner could provide insight based on his/her experience as a Commissioner, they should make it clear that they are representing their personal view and not the collective opinion of the Commission. Commissioner Broili further recalled that this issue came up when a Commissioner testified before the City Council to provide a counter opinion on a recommendation the Commission had sent forward.

Ms. Simulcik Smith referred to Section 1 of Article VI and pointed out that the proposed changes are intended to be consistent with the Commission's current practice for absences. Staff agreed to seek feedback from the City attorney about potentially combining Article VIII (Conflict of Interest) and Article IX (Appearance of Fairness).

Commissioner Moss recalled that the bylaws currently state that Commissioners who vote against a motion should publicly state the reasons for their decision. Commissioner Kaje clarified that Commissioners are not required to say why they voted for or against a particular motion. However, it is important to provide as much information as possible so the City Council and public have a clear understanding of the content of the discussion. He summarized that while they do not need to defend every vote, they should clearly communicate their intent.

The Commissioners agreed to continue their review of the bylaws after they have completed their Roberts Rules of Order training on September 15th.

NEW BUSINESS

No new business was scheduled on the agenda.

REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS

None of the Commissioners provided an announcement or report during this portion of the meeting.

AGENDA FOR NEXT MEETING

Mr. Cohn announced that the August 4th meeting is scheduled as a public hearing on transferring quasi-judicial actions to the Hearing Examiner. Staff would provide draft language and a recommendation to the Commission by July 22nd.

ADJOURNMENT

The meeting was adjourned at 10:00 P.M.

Michelle Linders Wagner
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission

DRAFT

TIME STAMP
July 21, 2011

CALL TO ORDER

ROLL CALL: 0:23

APPROVAL OF AGENDA: 0:43

DIRECTOR'S COMMENTS: 0:51

APPROVAL OF MINUTES: 1:01

GENERAL PUBLIC COMMENT: 2:41

STAFF REPORTS: 2:53

- Transportation Master Plan Update: 3:47
- Surface Water Master Plan Update: 56:30
- Parks, Recreation and Open Space Master Plan Update: 1:23:46

PUBLIC COMMENT: 1:25:03

DIRECTOR'S REPORT: 1:25:07

UNFINISHED BUSINESS: 1:25:17

- Planning Commission Retreat Follow-up & Review of Bylaws: 1:25:17

NEW BUSINESS: 2:27:27

REPORTS OF COMMITTEES & COMMISSONERS/ANNOUNCEMENTS: 2:27:31


AGENDA FOR NEXT MEETING: 2:27:37

ADJOURNMENT

DRAFT

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 

RECOMMENDATION

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 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 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	<u>HE</u> ^{(1), (4)} <u>PC</u> ⁽³⁾	City Council	120 days	20.30.410
2. Rezone of Property ⁽²⁾ and Zoning Map Change	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (4)} <u>PC</u> ⁽³⁾	City Council	120 days	20.30.320
3. Special Use Permit (SUP)	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (4)} <u>PC</u> ⁽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	<u>HE</u> ^{(1), (4)} <u>PC</u> ⁽³⁾	HE City Council	120 days	20.40.505
8. Street Vacation	<u>PC</u> ⁽³⁾ , Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (4)} <u>PC</u> ⁽³⁾	City Council	120 days	See Ch. 12.17 SMC
9. Master Development Plan	Mail, Post Site, Newspaper	<u>HE</u> ^{(1), (4)} <u>PC</u> ⁽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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Christina C. McKenna



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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 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.