

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Quasi-Judicial Training
DEPARTMENT: Planning and Development Services
PRESENTED BY: Steven Szafran, Planner II

I. INTRODUCTION

This overview is to assist the Planning Commission in reaching decisions that are fair and equitable. Why is this important? Failure to follow the proper steps in a quasi-judicial proceeding can result in liability for the municipality and its officers.

Quasi-judicial decisions are those decisions made by the City Council or the Hearing Examiner and involve the use of discretionary judgment in the review of each specific application. Quasi-judicial decisions require findings, conclusions, an open record public hearing and recommendations prepared by the review authority for the final decision made by the City Council or Hearing Examiner.

The Planning Commission's role in quasi-judicial decisions is to conduct the public hearing and to make specific recommendations on the proposal. The Commission should consider the application and any public testimony and develop a recommendation for site specific land use applications such as rezones, special use permits, and formal subdivisions.

This memo will outline the framework of the quasi-judicial proceeding and identify the key elements of procedural due process.

II. BACKGROUND

The Planning Commission asked to receive periodic training on quasi-judicial proceedings in order to keep the rules of procedure current and up to date.

III. DISCUSSION

1. Framework of the quasi-judicial proceeding

A. Is this a quasi-judicial matter?

Two key questions must be answered: 1. Is a public hearing required? 2. Will the decision maker consider evidence for or against the proposal? If both of the answers are yes then two additional questions need to be asked: 3. Will the decision impact specific parties? 4. Will it have an area-wide impact of

community significance? If the answer to three is yes, then the proceeding is quasi-judicial. If the answer to three is no and the answer to four is yes, then it could possibly be legislative. When in doubt, treat the proceeding as a quasi-judicial proceeding.

2. Procedural Due Process

A. What is it?

Procedural due process is the legal method that must be used to reach a decision on a land use request. Failure to follow procedural due process requirements may result in a decision that is declared invalid.

For land use hearings, procedural due process includes the following: Appearance of fairness for decision makers, proper notice of hearing, a proper hearing process, a complete record, a decision based on the record that meets legal requirements. These elements will be discussed in more detail below.

3. Key Elements of Procedural Due Process

A. Fairness

Fairness exists in a public hearing when all of the participants are given an opportunity to present testimony and evidence to an unbiased decision maker. The Washington Supreme Court has held not only must the proceedings be fair; they must appear to be fair. The appearance of fairness doctrine is a legal doctrine created by the courts in the 1970s as a means of ensuring that decision makers act in an unbiased role when deciding land use requests. See Attachment A: fairness checklist. The Planning Commission receives a copy of the appearance of fairness doctrine for review prior to every quasi-judicial public hearing.

B. Notice

Notice is required because it provides advance warning to parties so that they can intelligently prepare for and participate in the hearing. Notice requirements are established by state statutes and the City of Shoreline ordinances (see Attachment B: Shoreline Development Code 20.30.120- Public Notices of Application). If a hearing has begun and it becomes apparent that proper notice has not been given, it should be rescheduled so proper notice can be given.

C. The Hearing

The hearing is a fact finding forum from which a decision must result. Elements that a hearing should include: Hearings should be held in a room that is appropriate for the proceeding; it is the responsibility of the Commission to keep the testimony and evidence relevant to the issues; all testimony and evidence should be tape recorded; testimony can be limited by time and content; a key

element of a hearing is crowd control; and the hearing should begin with an agenda.

D. The Record

All land use decisions must be based on the official record (testimony and exhibits) that is developed at the public hearing. This requirement is mandatory for two reasons: The record must provide the basis and support of the decision of the decision maker; and courts review and rely upon the official record to reach a decision on appeal. The record consists of all oral testimony and physical exhibits presented at the hearing. All testimony should be tape recorded. Testimony should be given by witnesses under oath. The Commission should remember that all oral comments made during a hearing are part of the record. The Planning staff report and all of its attachments should be part of the official record.

E. The Decision

The decision must be a result of a deliberative process after a review of all testimony and exhibits presented at the hearing. The decision must be expressed in a specific manner that will best withstand a legal challenge. The land use decision must relate to the land and not the owner. The owner's welfare should not be the basis for a decision. All decisions must be based on the record developed at the public hearing. If the criteria are satisfied, the permit must be approved. The criteria are found within the City of Shoreline's ordinances. Reliance on the criteria is the legal justification of the decision. The decision can be oral or written, but all decisions must be supported by Findings of Fact. A decision can be a denial, an approval, or an approval with conditions. If a request is approved or denied, the reasons should be stated.

4. Situational Examples

A. Fairness

Problem- On the afternoon before a hearing, an acquaintance calls a commissioner about a variance request.

Solution- The commissioner should inform the acquaintance they he/she can not talk about the case. All testimony should be presented at the hearing.

B. Notice

Problem- Mailed notice went to the mortgage holder, not the residents or buyers of a house.

Solution- If this meets City notice requirements, proper notice has been given. The City of Shoreline mails notices to owners of real property (20.30.120(C) (1)).

C. The Hearing

Problem- The witness wants to talk "apples" even though the request involves "oranges".

Solution- Limit testimony to “oranges” and cut off witnesses who stray from the relevant issues.

D. The Record

Problem- People giving testimony from the audience.

Solution- Have all witnesses speak into the microphone and identify themselves. Do not take testimony from the audience.

E. The Decision

Problem- One commissioner announces they will vote to deny a permit based on information presented to them outside of the public hearing.

Solution- The decision should be based on the record only, not on information presented outside the hearing. The commissioner should also announce the ex-parte contact.

Note- Ex-parte communications are those conversations outside of the public hearing between members of the public who may be for or against a specific proposal. Ex-parte communications do not include conversations with City staff about a specific agenda item unless the City is the applicant in the proposal. As long as informational requests are made part of the record, no wrong doing has been done.

5. Conclusion

In conclusion, procedural due process and the appearance of fairness are two major items in quasi-judicial proceedings. While all of the elements of procedural due process must be present, fairness and the appearance of fairness must be most present to make an unbiased recommendation. Ex-parte communications can raise fairness questions from members of the public but, if the fairness checklist is applied in every land use decision, the public should feel like they are receiving a fair and unbiased decision.

IV. Attachments

Attachment A - Fairness checklist

Attachment B - Shoreline Development Code Section 20.30.120

Fairness Checklist

***A decision maker must answer the first five questions “yes”
and the second five questions “no”
to participate fairly in a quasi-judicial proceeding...***

- If ex parte contacts have occurred, have you revealed them at this public hearing?
 - Has the opportunity been given to object to Planning Commission participation in this hearing because of ex parte contact?
 - Do you have a reasonable impartial attitude toward the request?
 - Are you free from any direct financial benefit that could result from the approval or denial of the request?
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- ❖
- Do you have any personal interest in which you stand to gain or lose by the decision?
 - Will there be any prospective employment for you or your family as a result of the decision?
 - Is there any business competition between you and any of the parties at this hearing?
 - Are there any family relationships between you and the parties at this hearing?
 - Have you made a final decision on the request before hearing any testimony or evidence?

ITEM 8.A - ATTACHMENT B**20.30.120 Public notices of application.**

- A. Within 14 days of the determination of completeness, the City shall issue a notice of complete application for all Type B and C applications.
- B. The notice of complete application shall include the following information:
1. The dates of application, determination of completeness, and the date of the notice of application;
 2. The name of the applicant;
 3. The location and description of the project;
 4. The requested actions and/or required studies;
 5. The date, time, and place of an open record hearing, if one has been scheduled;
 6. Identification of environmental documents, if any;
 7. A statement of the public comment period (if any), not less than 14 days nor more than 30 days; and a statement of the rights of individuals to comment on the application, receive notice and participate in any hearings, request a copy of the decision (once made) and any appeal rights;
 8. The City staff Project Manager and phone number;
 9. Identification of the development regulations used in determining consistency of the project with the City's Comprehensive Plan; and
 10. Any other information that the City determines to be appropriate.
- C. The notice of complete application shall be made available to the public by the Department, through any or all of the following methods (as specified in Tables 20.30.050 and 20.30.060):
1. **Mail.** Mailing to owners of real property located within 500 feet of the subject property;
 2. **Post Site.** Posting the property (for site-specific proposals);
 3. **Newspaper.** The Department shall publish a notice of the application in the newspaper of general circulation for the general area in which the proposal is located. This notice shall include the project location and description, the type of permit(s) required, comments period dates, and the location where the complete application may be reviewed.
- D. The Department must receive all comments received on the notice of application by 5:00 p.m. on the last day of the comment period. (Ord. 238 Ch. III § 4(e), 2000).