



## Memorandum

**DATE:** January 24, 2011

**TO:** Shoreline Planning Commission

**FROM:** Joseph W. Tovar, FAICP, Planning and Development Services Director  
Steven Cohn, Senior Planner *smc*

**RE:** February 3 Study Session on transferring all quasi-judicial hearings to the Hearing Examiner who will issue decisions on these matters

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### I. Introduction

The Shoreline Municipal Code (SMC) Chapter 2.20 sets forth the duties of the Planning Commission. SMC Chapter 2.15 states that the Hearing Examiner shall hold public hearings on land use actions that are not otherwise assigned. It also states that the Hearing Examiner has the ability to make both recommendations and decisions on land use matters, and specifically, in the case of a quasi-judicial rezone, will make a recommendation and the recommendation will go to Council for a decision.

For the past few years, the Council has directed that quasi-judicial (QJ) decisions such as rezones and street vacations are to be heard by the Hearing Examiner. There are two exceptions to this rule: Master Development Plan Permits (such as CRISTA and the Public Health Lab) and rezones in a subarea that is the subject of a subarea study.

### II. Discussion

At your last joint meeting with the City Council (*November 8, 2010*), some of the Commissioners noted that they would not be averse to the concept of sending all quasi-judicial hearings to the Hearing Examiner, leaving the Commission free to work on policy tasks such as Town Center, Aldercrest and the Comprehensive Plan Update.

Under local code, the Planning Commission is empowered to only make recommendations, not final decisions. Therefore, when the Hearing Examiner was directed to conduct the hearings on certain QJ matters, it was clear that the Hearing Examiner was likewise to make recommendations only.

To memorialize this change, an amendment would be made to the Table 20.30.060, which lists all Type C (quasi-judicial) actions, notice requirements, review authority, decision making authority, and target time limits.

The Type C Actions that would be affected by the change are:

- Preliminary Formal Subdivision
- Rezone
- Special Use Permit
- SCTF – Special Use Permit
- Street Vacation
- Master Development Plan

As the Development Code is currently written, these Actions go to Commission for hearing and recommendation and to Council for approval. (As noted above, for the past two years, the City operated under interim regulations that assigned most quasi-judicial matters to the hearing examiner. The interim regulations have expire. These proposed amendments would now make this a permanent change.)

### **III. Recommendation**

After speaking with staff for other cities which use the Hearing Examiner system, reviewing applicable state law and adopted City Council goals, the staff concludes that it would be appropriate to amend the Shoreline Code. We have two specific amendments to propose for quasi-judicial permit process:

1. All QJ actions assigned to the Planning Commission in Table 20.30.060 should be permanently transferred to the Hearing Examiner.
2. The Hearing Examiner should be authorized to make decisions in all cases except for Master Development Plan Permits and Street Vacations, which should still be decided by the Council. The Master Development Plan Permits should continue to be heard by the Planning Commission with a recommendation then made to the Council for final decision. The Street Vacation applications should be heard by the Hearing Examiner with a subsequent recommendation then made to Council for final decision.

### **IV. Background Supporting the Staff Recommendation**

#### **A. Survey of other Cities' use of the Hearing Examiner System**

As preparation for the upcoming study session, staff prepared some additional research to share with the Commission and public. We investigated what other cities use Hearing Examiners to hold a public hearing and make a decision on rezones, subdivisions and street vacations.

In this region, a number of cities use Hearing Examiners for a wide variety of hearings. Several progressive cities, both large and small, use Hearing Examiners for virtually all quasi-judicial matters currently assigned to the Shoreline Planning Commission, and several have the City Council entirely removed from a quasi-judicial role. Here are some examples:

**City of Bothell** (population 33,250)

The Examiner conducts the hearing and issues the decision on quasi-judicial matters

**City of Covington** (population 19,000)

The Hearing Examiner hears and decides all quasi-judicial permits and appeals.

**City of Kent** (population 85,000)

Conditional Use Permits (CUPs), Sign Variances, Home Occupations, Variances, Shoreline, CUP's, Preliminary Plats, and Planned Unit Developments go to the Hearing Examiner for both the hearing and the final decision.

**City of Mercer Island** (population 22,720)

The Examiner hears some QJ matters; the Commission hears others. The Examiner issues the decision on the matters that he/she hears.

**City of Mountlake Terrace** (population 20,960)

The Examiner hears some QJ matters including rezones that don't require a Comprehensive Plan Amendment. The Examiner issues a decision.

**City of Redmond** (population 52,000)

Appeals of administrative decisions, Preliminary Plats, Reasonable Use Exceptions, Shoreline CUP's, Shoreline Variances, and Variances go the Hearing Examiner for both the hearing and the final decision.

**City of Sultan** (population 3,334)

All quasi-judicial applications go to the Hearing Examiner for both the hearing and the final decision.

**City of Tacoma** (population 199,000)

The Hearing Examiner hears all appeals, Open Space Classifications, Rezones, and Plats of 10 lots or more. Tacoma has a Land Use Administrator that hears the majority of land use applications. The City Council hears no appeals and takes no action on quasi-judicial permits.

### **B. Perspective of the Washington Cities Insurance Authority**

The Washington Cities Insurance Authority is a self-insured liability property pool with 125 members in Washington State, including Shoreline. Its Risk Services Manager told the Anacortes City Council in January 2011 that, the WCIA prefers the City Council to "be out of the picture" when it comes to quasi-judicial duties, such as land-use change

requests. She said that WCIA members are becoming concerned about the increasing cost of defending land use changes, and that raised deductibles or some other increased cost, may be passed along to cities that don't use a Hearing Examiner.

**C. Adopted City Council Goal No. 1**

Modifying Shoreline's process to make more use of the Examiner as the City's land use hearing and appellate body would support City Council goal 1, particularly the underlined portions emphasized below:

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

**Goal Overview:** To implement the adopted Community Vision, which integrates the Environmental Sustainability, Housing and Economic Development Strategies with citizen input received at the vision and values workshops conducted in 2008. This will be accomplished through drafting various elements of the Comprehensive Plan, Southeast Area Neighborhoods Subarea Plan, Town Center Subarea Plan, new tree regulations and permit process adjustments.

**Major Objectives:**

- Adopt Southeast Area Neighborhoods Subarea Plan
- Adopt updated tree regulations, including citywide goals for urban forest canopy
- Complete draft Urban Design, Capital Facilities, and Transportation elements of the Comprehensive Plan
- Adopt the Town Center Subarea Plan
- Make the permit process clear, timely and predictable through Subarea Plans, Planned Actions and other appropriate planning tools

**D. Adopted Growth Management Act Planning Goal No. 7**

City Council Goal #1 mirrors Planning Goal 7 of the Washington Growth Management Act, which provides:

RCW 36.70A.020(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

**V. Next Steps**

The February 3 study session will provide time for staff to further discuss the proposed amendments with the Commission, listen to concerns and respond to questions. After the study session discussion, the staff will draft final proposed code text and schedule the proposal for a public hearing before the Commission that would be scheduled in early March.

If you have questions or ideas that you would like staff to address at the study session, please contact Steve Cohn, [scohn@shorelinewa.gov](mailto:scohn@shorelinewa.gov), or call him at 206-801-2511.