

# AGENDA PLANNING COMMISSION REGULAR MEETING



Thursday, February 3, 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. January 20 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.</i></p>	
7. STAFF REPORTS	
a. Stormwater Project Update	7:15 p.m.
b. Study Session: Development Code Amendment to make the Hearing Examiner the permanent quasi-judicial hearing body/decision maker	7:35 p.m.
8. PUBLIC COMMENT	8:30 p.m.
9. DIRECTOR'S REPORT	8:35 p.m.
10. UNFINISHED BUSINESS	8:40 p.m.
11. NEW BUSINESS	8:45 p.m.
12. REPORTS OF COMMITTEES & COMMISSIONERS/ANNOUNCEMENTS	8:50 p.m.
13. AGENDA FOR February 17	8:55 p.m.
14. ADJOURNMENT	9:00 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](mailto:plancom@shorelinewa.gov) or mailed to Shoreline Planning Commission, 17500 Midvale Avenue N, Shoreline WA 98133.

[www.shorelinewa.gov/plancom](http://www.shorelinewa.gov/plancom)

# CITY OF SHORELINE

## SHORELINE PLANNING COMMISSION MINUTES OF REGULAR MEETING

January 20, 2011  
7:00 P.M.

Shoreline City Hall  
Council Chamber

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### Commissioners Present

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

### Staff Present

Joe Tovar, Director, Planning & Development Services  
Steve Cohn, Senior Planner, Planning & Development Services  
Ian Sievers, City Attorney  
Kirk McKinley, Transportation Services Manager  
Jessica Simulcik Smith, Planning Commission Clerk

### CALL TO ORDER

Chair Wagner called the regular meeting of the Shoreline Planning Commission to order at 7:03 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. Tovar did not provide any comments during this portion of the meeting.

### APPROVAL OF MINUTES

The minutes of January 6, 2011 were approved as presented.

### GENERAL PUBLIC COMMENT

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

## **LEGISLATIVE PUBLIC HEARING ON POINT WELLS SUBAREA PLAN AMENDMENT**

Chair Wagner reviewed the rules and procedures for the public hearing. She announced that 21 comment letters were included as part of the Staff Report (See Items 10-01 through 10-21). In addition, the Commission would recess at some point during the meeting to review the additional 102 comment letters (desk packet) that were received after the Staff Report was assembled.

Ms. Simulcik Smith reviewed the exhibits included in the Commission packet as follow:

- Exhibit 1 – January 20, 2011 Staff Report “Public Hearing on Point Wells Subarea Plan Amendment and modification of Map T-18 (Street Classifications) in the Transportation Element of the Comprehensive Plan
- Exhibit 2 – Existing Street Classification Map
- Exhibit 3 – 2009 City of Shoreline Traffic Flow Map
- Exhibit 4 – Table T-14 General Description of Classified Streets
- Exhibit 5—Minutes from 12/3/09 Planning Commission Public Hearing on the Point Wells Subarea Plan
- Exhibit 6 – Minutes from 12/10/09 Planning Commission Public Hearing on the Point Wells Subarea Plan
- Exhibit 7 – Notice of Public Hearing
- Exhibit 8 – SEPA Checklist, Threshold Determination
- Exhibit 9 – 1/27/11 Pre-Application Neighborhood Meeting Notice from BSRE Point Wells, LP
- Exhibit 10 – Comment Letters

For the audience’s benefit, Ms. Simulcik Smith identified each of the comment letters in the desk packet (Items 10.22 through 10.123 of Exhibit 10).

## **Staff Overview and Presentation of Preliminary Staff Recommendation**

Mr. Tovar explained that this is a hearing to consider an amendment to the City’s Comprehensive Plan and involves two separate pieces: He advised that the proposed changes to both the text and map have been posted on the City’s website and have been reviewed by a number of people. The changes focus on the portion of the City’s street grid that is on Richmond Beach Drive, north of NW 199<sup>th</sup> Street. The proposal is to amend Map T-18 to classify this road segment as a “local access street.” There is also a proposal to amend the subarea plan by adding a new Policy PW-12 to read, *“In view of the fact that Richmond Beach Drive between NW 199<sup>th</sup> Street and NW 205<sup>th</sup> Street is a dead-end local access road with no opportunities for alternative access to dozens of homes in Shoreline and Woodway, the City designates this as a local access street with a maximum capacity of 4,000 vehicle trips per day. Unless and until either Snohomish County or the owner of the Point Wells Urban Center can provide to the City the Transportation Corridor Study and Mitigation Plan called for in Policy PW-9, as well as financial and legal guarantees that the necessary mitigations will be provided, the City should not consider*

*reclassifying this road segment as an arterial with a capacity of 8,250 vehicle trips per day. Intersection or other road improvements that would accommodate and encourage vehicle trips beyond those approved for the local access street (4,000) or arterial (8,200) classification should not be permitted.”* Mr. Tovar advised that copies of the proposed amendments have been sent to the Department of Commerce and State Environmental Policy Act (SEPA) compliance has been done (See Exhibit 8). He reminded the Commission that they can recommend approval of the amendment if they find it complies with one or more of the following criteria.

1. The amendment is consistent with the Growth Management Act and not inconsistent with the Countywide Planning Policies and other provisions of the Comprehensive Plan policies; or
2. The amendment addresses changing circumstances, changing community values, incorporates a subarea plan consistent with the Comprehensive Plan vision or corrects information contained in the Comprehensive Plan; or
3. The amendment will benefit the community as a whole, will not adversely affect community facilities, the public health, safety or general welfare.

Mr. Tovar referred the Commission to the Staff Report, which addresses how the proposed amendment meets each of the criteria.

### **Questions by Commission to Staff**

Chair Wagner asked if a separate Comprehensive Plan amendment process would be required for intersection or other road improvements that would accommodate or encourage vehicle trips beyond those approved for the local access street or arterial classification. Mr. Tovar answered that the intent is that another Comprehensive Plan amendment would be required to exceed the capacity of 4,000 vehicle trips per day. If the Commission does not want to allow this, the policy should specifically say that the City should not consider further amendment. Chair Wagner emphasized that, in addition to a Comprehensive Plan amendment, any increase in capacity beyond 4,000 would require the City to obtain guarantees from Snohomish County and the owner of the Point Wells Urban Center that the necessary mitigations would be provided. Mr. Tovar said staff would review the Transportation Corridor Study and Mitigation Plan, as well as the financial guarantees submitted by the applicant. If they find they are sufficient the City could consider a Comprehensive Plan amendment, which would require the same public process.

Chair Wagner asked if all of the tracked changes in Policies PW-10 and PW-11 would also be considered part of the proposed amendment. Mr. Cohn answered affirmatively and said the changes were intended to make the language more consistent. He noted that the most significant changes are found in Policy PW-12 and on Map T-18.

## **Public Testimony**

**Tom Whitson, Woodway**, said he lives right above Point Wells and is a member of the Woodway Town Council. He added Woodway's support to the effort to consider reclassifying Richmond Beach Drive to local access. He noted that the road extends into Woodway for a short while to provide access to some homes and has always been designated as local access.

**Caycee Holt, Shoreline**, said she represents the community organization, Save Richmond Beach, in offering support for the proposed amendment to Policy PW-12, which would reclassify a segment of Richmond Beach Drive to "neighborhood local access." She shared that Save Richmond Beach is a community organization dedicated to preserving the quality of life in Richmond Beach and the surrounding neighborhoods through responsible and sustainable planning. She referenced her written comments, as well as expert testimony from TENW, the engineering firm that assessed the impacts associated with expanding or upgrading Richmond Beach Drive. She said their report could be distilled down to one sentence, "Richmond Beach Drive residents in Shoreline will likely have their private property taken to even get the road up to neighborhood local standards with the maximum capacity of 4,000 average trips per day."

Ms. Holt said she agreed with Mr. Huff from Karr, Tuttle, Campbell that the second half of the amendment is inappropriate at this time. Any subsequent amendment to increase capacity should require the appropriate SEPA review and a finding of public use and necessity because of the impacts it would have on Richmond Beach Drive and the residents of the entire neighborhood. Acquisition of private property would likely be required to bring the street up to engineering standards. She said that if the Commission feels compelled to recommend approval of the second half of the amendment, language should be added to insure the residents of Shoreline that their private property would not be condemned for the benefit of a private Snohomish County development.

**Jan Bakken, Edmonds**, said he was present to speak on behalf of his parents, who reside on Richmond Beach Drive. They are concerned about the size of the development proposed at Point Wells and the impact it would have on the community. He said he initially laughed the proposal off, thinking there was no way it could go forward because Richmond Beach Drive is too narrow and confined to support the huge development. He emphasized that those living north of NW 199<sup>th</sup> Street have no other option but to use Richmond Beach Drive. With the traffic from the proposed 3,000 plus condominiums and retail development, he cannot imagine how difficult it would be for the residents on Richmond Beach Drive to get in and out of their driveways, especially during rush hour. From a safety perspective, if there was an emergency, Richmond Beach Drive would quickly bottleneck.

Mr. Bakken observed that, as it stands, 100% of the increased traffic from the development would come and go from this one dead-end street. In a remote, densely populated community that is miles from Interstate 5 and Highway 99 or any other real urban destination, people will be required to drive. Therefore, it is unrealistic to think that a few bus stops, carpools or water taxis would have a significant impact. Despite the railroad tracks in the vicinity, it has been made clear that there are no plans for a train station. He said he supports the proposed amendment that recognizes Richmond Beach Drive for what it is, a neighborhood access road. However, he asked that they revise the amendment to leave off

the provision to change the status back to collector arterial. He summarized that Snohomish County and the property owner should be held responsible for fitting the development within the community of Richmond Beach and Shoreline, not the other way around.

**Jack Malek, Shoreline**, said he is a resident of Richmond Beach and a realtor in the area. He applauded the City's effort to restrict or limit the number of trips through this very narrow road. He agreed it is a health, safety and welfare issue, and would truly allow development at the expense of existing home owners and the quality of life in Richmond Beach. He said he is glad the City has started the process of developing its own plan to identify what can and cannot happen in Shoreline and what would be required beyond simply using Richmond Beach Drive for access. He noted that even if they were to widen the road, it is important to keep in mind that it does not begin and end at this one point. It goes all the way through to Aurora Avenue North. He expressed his belief that it would be a travesty to allow 3,000 condominiums and retail space at the expense of the existing quality of life.

**Richard Kink, Shoreline**, recommended the City reclassify the entire length of Richmond Beach Drive as a local road. He observed that between NW 199<sup>th</sup> Street and NW 195<sup>th</sup> Streets there are 19 individual residential lots, but there are 32 residential lots on 27<sup>th</sup> Avenue NW for a total of 51 residential lots. There is an extremely limited opportunity for infill development, so future traffic volumes could more than be accommodated by a local street classification. He suggested that when considering future claims for taking of private property to increase the size of Richmond Beach Drive for the public benefit (park or other amenities), the City has only to look at Salt Water Park and the traffic count on 20<sup>th</sup> Avenue NW. In 2009, there was an average of 1,400 cars per day, not counting the residential properties located predominantly east of 20<sup>th</sup> Avenue NW, the number could quadruple and there would still be plenty of traffic volume that would fall under the 4,000 vehicle traffic count. Any request for additional traffic counts would be for the benefit of private development.

**Dennis Casper, Seattle**, said he had an opportunity to do some research on this stretch of Richmond Beach Drive some years ago. In the King County Archives, he found that before the road became part of Shoreline, it was just a neighborhood street. He said he obtained a second map from the King County Department of Transportation that verifies his original discovery. He questioned how the road was converted from a neighborhood street under King County to a major arterial under Shoreline. He summarized that, historically, the portion of roadway between NW 196<sup>th</sup> Street to NW 205<sup>th</sup> Street has been a neighborhood street. He submitted his documentation to the Commission, which was entered into the record as **Exhibit 11**.

Mr. Casper said he supports the first sentence of the amendment to Policy PW-12, which would reclassify the street to a neighborhood street. However, he is opposed to the remainder of the language, which appears to provide the developer with a roadmap for how to obtain the ability to use the road for access to development at Point Wells. Recent information from the consulting firm TENW indicates that some of the properties along the road would have to be condemned in order to make the road qualify, and he believes it would be unacceptable to take private property for public purposes.

**Laura Lind, Shoreline**, clarified that she sent two emails, but the second was intended to correct the first. She said she was present to speak on behalf of her family of seven. Her daughter is 15½ and will

soon be driving. She said she cannot imagine what it will be like if traffic doubles or even quadruples as a result of development at Point Wells. Not only are they proposing 3,000 to 4,000 residential units, but each unit will have more than one car per family. They will also have visitors and people who work and provide services in the Point Wells community. This added traffic is incomprehensible to her daughter. She said she recognizes that the Growth Management Hearings Board has indicated that they do not intend to visit the site, so the Planning Commission is her only hope to be a voice of reason. She said she lives off of 6<sup>th</sup> Avenue NW towards Boeing Creek Park, and the proposed development at Point Wells would not only effect the people living on Richmond Beach Drive, but residents all the way to Interstate 5. She highlighted that there are numerous unusual intersections on Richmond Beach Road, particularly with difficult crosswalks (near the old log road, near the corner store at 20<sup>th</sup> Avenue NW, near the Thai Restaurant and bowling alley, and at the intersection of N 185<sup>th</sup> Street and 8<sup>th</sup> Avenue NW). She summarized her belief that this is a ludicrous place to invite more traffic and accidents. She hopes the Commission will uphold the amendment. She expressed concern about the second half of the proposed amendment to Policy PW-12 because she does not want the City to provide any loopholes for future developers.

**Anthony Poland, Shoreline**, said he also supports the proposed language for the first sentence of Policy PW-12, but he is worried about the second half of the proposal. He said he leaves it in the Commission's hands to make the proper decision. He said he is known for thinking outside the box, and sometimes going over the top when it is required. He said he fully supports the concept of limiting the traffic on the roadway. He would hate to see anyone lose their home or any part of their yard to accommodate a wider roadway. He said he checked with the State and County and could not find any reason why the City could not install a toll gate on the roadway at the County line. He suggested the Commission consider this option as a stop gap measure should any of the other things they are trying to do fail.

**Jerry Germus, Shoreline**, said he is a resident of Richmond Beach. He noted there is only one access to the Point Wells property, which he does not believe is legal. He asked if at least two access roads are required for a development. He said that while writing a memoir for a 96-year-old man who worked at Point Wells, he learned there used to be another access road to Point Wells through the Town of Woodway. While he recognized that residents of Woodway would not likely support an access road through their town, he felt that two access roads should be required for the proposed development.

**Deborah Boyd, Shoreline**, said she supports the first sentence of the proposed language for Policy PW-12, but she has concerns about the remainder of the proposed policy. She suggested the road should remain as local access only.

**Mark Weber, Shoreline**, said his family moved to Richmond Beach nine years ago specifically for the quality of residential life it offered. He was enthused early on as he began to see ideas about sustainability and creating something intriguing and interesting. However, as the proposal began to unfold, it became clear that the impacts would be devastating, changing Richmond Beach forever. He voiced his absolute support for the full amendment and trusts the Commission to make the correct decisions.



**Laura Lind, Shoreline**, pointed out that not only would the Richmond Beach neighborhood be impacted, but people come up N 185<sup>th</sup> Street and cut down 8<sup>th</sup> Avenue NW and 6<sup>th</sup> Avenue NW to access N 175<sup>th</sup> Street. If the proposed project at Point Wells is developed, there would be a lot of short-cut traffic through the neighborhoods. She said she recently spoke to someone in that neighborhood that had no idea about what was being proposed and how it would impact her property. She suspects a lot of people would be horrified if they realized the impact the proposed project would have on their neighborhoods.

**Jerry Patterson, Shoreline**, recently moved to Richmond Beach and his home is the most northwesterly home in King County. He questioned if the language in the second half of the proposed amendment to Policy PW-12 (unless and until) has been used for any other street in the City. He invited the Commission to carefully discuss the staff's rationale for the second half of the proposed language.

**Lynn Dee Schwarz, Shoreline**, said she has lived in Richmond Beach for more than 20 years. She also works for a public transit agency, which typically makes decisions based on the legacy and quality of life they want to leave behind 50 to 100 years from now. She asked the Commission to keep this in mind as they move the amendment forward. She said she approves and supports the proposed amendment as presented.

**George Mayer, Shoreline**, said he also lives in Richmond Beach. He observed that so far the discussion seems to place the onus of transportation and access to Point Wells on the City of Shoreline. He urged the Commission to consider that the onus should be on Snohomish County to allow access to Point Wells.

### **Final Questions by the Commission**

Commissioner Behrens referred to Table T-14 and asked if citizens' ability to use bus transportation to access the park would be limited by the proposed amendment? Mr. McKinley noted that the Metro transit system stops short of the park, and the proposed amendment would not have an impact on the current situation.

Commissioner Kaje pointed out that Table T-14 provides two categories for local streets (neighborhood collector and local), with slightly different provisions for transit, maximum speeds, etc. On the other hand, the Staff Report refers to neighborhood streets. He requested staff clarify the terms. Mr. McKinley explained that there are two categories for local streets: neighborhood collector and local. The proposal would designate Richmond Beach Drive as a local street, which is the lower of the two.

Commissioner Kaje said that from the descriptions provided, both local and neighborhood collector streets are geared towards residential uses. He noted that, at this time, there is no residential use at Point Wells. He questioned what the reclassification would mean for current or future uses at Point Wells if the proposed project for multi-family residential does not move forward and the site is reoccupied with an industrial use. Mr. McKinley answered that rather than specific land uses, street classification are based on access, the number of people being served with driveways, and traffic volumes. Typically, the

lower classifications provide more access points (i.e. every property has a driveway) and have lower traffic volumes. The opposite is true for the higher classifications, and access is much more limited.

Commissioner Kaje asked if major changes to the roadway and its classification would be required if the property were to become an active industrial site at some point in the future. Mr. McKinley said that, depending on the amount of traffic and the types of vehicles that would use the roadway, a change in classification or improvements to the roadway may be appropriate to make it safer. Mr. Sievers recalled that the Brightwater use was a highly-intensive industrial use of the site and the City filed an appeal of this project under SEPA based on failure to mitigate the traffic on the corridor. They achieved an extensive list of mitigation improvements if heavy trucks were to use the corridor, which they did not do. Rather than a strict trip count, certain types of traffic associated with future industrial uses would be addressed through the SEPA process.

Chair Wagner referred to the Transportation Engineering Report that was submitted as an addendum to the letter from the organization, Save Richmond Beach (Exhibit 10-96). She recalled that a member of the audience also raised the question of whether a secondary access would be required for fire and other emergency services if a project reaches a certain level. The report references a King County standard for reaching a trigger at 100 residential units or an equivalent of 1,000 average daily trips (ADT). She asked staff to respond to this issue at some point in the discussion.

Chair Wagner invited staff to briefly summarize the Commission's previous conversations about potential access through the Town of Woodway and provide information about the requirements associated with building a roadway through the critical area. They also previously discussed the opportunity for an additional access point further north through Snohomish County. Mr. Tovar reviewed that the Commission first discussed the access issue in December 2009 when the draft Point Wells Subarea Plan was presented to them for review. At that time, they considered the option of providing access to the site from 238<sup>th</sup> Street Southwest in Woodway. While aerial photographs show vestiges of the old road, it was actually vacated by Snohomish County in 1962 as a result of slope failure. Re-engineering the road would be a challenge because it runs through a critical area. Also, there is no reason to believe the Town of Woodway would open the gate at 238<sup>th</sup> Street Southwest to admit traffic. Another issue would be cost, but he acknowledged that with enough money a road could be engineered to go almost anywhere. He summarized that the constraints are more political and legal. Chair Wagner added that Shoreline does not have the option of installing a gate on Richmond Beach Drive to prohibit traffic from Point Wells.

Mr. Tovar emphasized that the right-of-way that existed through Woodway was vacated in 1962. The only right-of-way serving the properties, including the Point Wells Urban Center, is Richmond Beach Drive through Shoreline. He further emphasized that the City does not have the legal authority to close the road. While the concept of creating a toll road has been suggested, it has not been seriously considered by the City. He summarized that the City has an interest in managing safety and improvements within their right-of-way, and it is City Council's discretion to provide direction to staff as to how to accomplish this.

Mr. Sievers acknowledged that Richmond Beach Drive runs through a City neighborhood, and the City has the authority to control what the character of the neighborhood will be. They have the legislative authority to exercise condemnation power to make the road happen or not, and the proposed directive would apply to permits for improvements and expansion of the roadway and intersections. It is intended to provide direction to the City staff that permits should not be issued until the road is reclassified if it exceeds the 4,000 ADT standard.

Chair Wagner asked staff to comment on the attachment submitted as part of Exhibit 10-96, as well as the other public comments that reiterated the assertion by the Transportation Engineer that there would be required taking of private property along the road. She noted that previous Commission discussion indicated that would not be the case. Mr. McKinley said the right-of-way is generally 60-foot wide, which is a standard size. Unfortunately, people sometimes do not know where the line is and they build improvements in the right-of-way, thinking they own the land. From the information they know without surveying to identify the exact edge of the right-of-way, staff believes there is adequate room to create two or three lanes, and a sidewalk. He acknowledged this could impact the front edge of some private properties and could creep close to the steep slopes. In their discussions with the potential developer, staff has indicated they would need to do a lot-by-lot engineering study and talk to each property owner about how to mitigate the impacts of a widened road to the east and/or west. He summarized that if the project moves forward as proposed, he is confident that roadway improvements could be built primarily within the City's existing right-of-way.

Chair Wagner asked staff to explain the process the City would follow if a particular property is impacted by the road improvements because additional right-of-way is needed. Mr. Sievers explained that if additional right-of-way is needed, the City would go through the condemnation process. He expressed his belief that the language suggested by Ms Holt in Exhibit 10-96 regarding SEPA and public use and necessity is unnecessary and would merely restate what is already required for major road projects. If additional right-of-way is required, the Shoreline City Council would have to make a legislative finding of public use and necessity. If the City Council is unable to settle to obtain the required property, the matter would be sent to court for a final decision. He summarized that a lot of deference is given to the City Council when making these legislative determinations, but they cannot be forced to condemn property.

Chair Wagner asked staff to share approximately how many properties would be impacted by the proposed road improvements. Mr. McKinley explained that the City needs to complete a corridor study to provide good numbers related to access. He noted that several members of the public commented about the need for emergency access on a two-lane road when one of the lanes is blocked or closed, and he said the City has this same concern. If development occurs at Point Wells, the City would attempt to provide a three-lane cross section so there is room for emergency vehicles to pass when one lane is blocked. There are also other options for addressing this concern such as two lanes, with a mountable sidewalk that could be used by emergency vehicles. He acknowledged that many of the properties on the east side of the road would be impacted by the project, but it is important to keep in mind that the impacts would be primarily within the City's right-of-way where residents have chosen to make improvements at their own risk.

Commissioner Behrens asked at what trip count it would become necessary to create the 3-lane road. Mr. McKinley said the traffic engineer would likely answer that there should be two lanes open for emergency access. However, he noted there are several ways to address the issue. A 3-lane road with sidewalks on both sides would be the standard cross section for this type of development, but other options for providing safety could be considered during the design process. Commissioner Behrens asked at what point a proposed development would make the current roadway inadequate. He observed that based on the type of buildings constructed and the number of daily trips, the roadway could rapidly become nonfunctional. Mr. Tovar emphasized that functionality would also be a part of the decision for whatever roadway improvements are made. From a pedestrian perspective, the street is not functional now. He reminded the Commission that the City's current Comprehensive Plan states that a multi-use development at Point Wells is appropriate and the City supports it, but not at the scale allowed by Snohomish County's Urban Center Designation. It further states that traffic implications associated with the development are important to the City as shown in the threshold of 8,250 ADT. It also calls for a lot-by-lot detailed transportation study of the City-owned right-of-way. He further reminded the Commission that the City has the discretion to use right-of-way for its purposes such as circulation, utilities, safety, and amenities. These are things the City has been contemplating all along with the subarea plan that was adopted by the City Council last April. The issue is now a matter of determining what improvements are needed. However, without the proposed amendment, the City would be unable to require the necessary analysis to make decisions. He emphasized that the City does not oppose the development of the property for mixed use, and they are not opposed to traffic coming to and from the property. The existing policy opposes development that creates traffic beyond 8,250 ADT. The proposed amendment would go one step further to limit traffic to 4,000 ADT unless and until either Snohomish County or the owner of the Point Wells Urban Center can provide the City with a Transportation Corridor Study and Mitigation Plan, as well as financial and legal guarantees that the necessary mitigations will be provided.

Mr. Tovar said the answer to the question raised by a citizen about whether or not the "unless and until" language is used in the code to address other City streets, is, it is not. With the proposed language, staff tried to deal with the unique circumstances of the roadway, as well as the division of authority and jurisdiction of permitting and plan making, as best they could.

Commissioner Broili asked if Town Councilmember Witson's comments reflected his personal position or the position of the entire Woodway Town Council. Councilmember Witson clarified that his comments were intended to express the position of the Woodway Town Council.

Commissioner Kaje referred to the traffic flow map that was created in 2009, which indicates that the average weekday traffic volume at the intersection of Richmond Beach Drive and 20<sup>th</sup> Avenue NW was 3,849. He asked staff to describe the process for collecting this measurement. Mr. McKinley answered that those counts are done twice a year, and they are kept out for the entire week. The numbers represent an average of four or five of the days. The information is statistically valid, and they have seen traffic decrease 1% to 2% per year over the past four years.

Recognizing that the City has already gone on record that they support the concept of mixed-use development at Point Wells, Commissioner Kaje asked if a developer could propose a scaled-down

project without any significant road improvements if it could be demonstrated that the traffic count would remain under 4,000 ADT. Mr. Tovar said any development proposal would be reviewed by Snohomish County as a permit application, and an environmental review would be required. The City would review the Environmental Impact Statement (EIS) and provide comments to Snohomish County, and appropriate mitigations could be required as conditions of SEPA. In addition, the City has independent authority as to how they use their right-of-way and what improvements they will allow. The City would be very interested in knowing what specific improvements would be necessary to make the street as safe and functional as possible; but as a matter of policy, the amendment states that the City would support development of the site as long as it does not generate more than 4,000 ADT. Mr. Sievers added that the City would have the ability to comment on SEPA, which does not have any recognized jurisdictional boundaries. The City would scrutinize the developer's assertions, and if they determine the trip level would require some improvements but stay below 4,000 ADT, they would allow the permits to take place.

Commissioner Moss asked if the City would be responsible for funding additional road improvements if a development is approved that does not exceed the maximum 4,000 ADT? Mr. Sievers answered that mitigation related to the development, even if the project is smaller and does not exceed 4,000 ADT, would be funded by the developer.

Commissioner Moss asked how the City would address a situation where instead of a large, planned development, development takes place piece-by-piece over time until the 4,000 ADT limit is exceeded. Mr. Tovar expressed his belief that this is a remote possibility, partly because a lot of remediation would be required before the site can be reused. However, if this were to occur, the City would find development proposals consistent with adopted policy until the threshold is exceeded. Mr. Sievers said this situation is no different than the standard concurrency model for intersections. Level of service at an intersection is approached incrementally as development occurs, and improvements would not be required until the threshold has been exceeded.

Vice Chair Perkowski questioned why the proposed language for Policy PW-12 uses the term "local access street" when the actual classification is "local street." He also referred to the last sentence and noted that "4,000" refers to the maximum traffic volume allowed for a local street as per Table T-14, but "8,250" did not come directly from the table. Mr. McKinley answered that "8,250" came from the traffic analysis that was done as part of the SEPA report. He agreed with Vice Chair Perkowski that the language is inconsistent.

Vice Chair Perkowski invited staff to share their rationale for the second half of the proposed language for Policy PW-12, beginning with the second sentence. Mr. Tovar answered that because the amendment only deals with the segment of Richmond Beach Drive between NW 199<sup>th</sup> Street and the County line, the language is necessary to be consistent with the City's overall threshold (8,250) of impacts they would accept from the Point Wells Urban Center. If the Commission recommends that the second half of Policy PW-12 be deleted, they would also need to make other changes in the preceding policies to remove any reference to 8,250. He reminded the Commission that the scope of the hearing is focused on the segment of road from NW 199<sup>th</sup> Street to the County line. A separate notice and hearing process may be required to go beyond this road segment. Mr. Sievers agreed the focus of the hearing

should remain on the road segment between NW 199<sup>th</sup> Street and the County line. To address the incongruous references noted by Vice Chair Perkowski, he recommended that a footnote be added on the table to list roads where lesser limits are designated. He expressed his belief that the proposed change is clear enough that the number “8,250” applies to just this particular arterial.

Commissioner Kaje noted the Commission received some important documents just prior to the meeting that pose some questions the Commission will want to address with staff. He suggested the Commission recess for a short time to read through the documents.

Commissioner Broili asked how the proposed re-designation of Richmond Beach Drive would impact the Point Wells property’s ability to once again function as it did at its peak. Mr. Sievers explained that as long as the existing use had not been abandoned or lapsed, no new permit would be required to re-energize the use of the tank farm as a non-conforming use. They would have non-conforming rights to operate and continue to put the traffic trips on the road corridor.

THE COMMISSION RECESSED AT 8:40 P.M. TO REVIEW THE DOCUMENTS IN THEIR DESK PACKET. THE MEETING RECONVENED AT 8:55 P.M.

Commissioner Kaje referred to Exhibit 10-122, a letter from Gary Huff of Karr Tuttle Campbell, which notes there are rules in State law about when the City can amend elements of a Comprehensive Plan. The letter states that the one exception to the need to follow an annual docketing process is the initial adoption of a subarea plan. He noted that the proposal is an amendment to the Point Wells Subarea Plan that was adopted earlier by the City Council. He questioned if amending the subarea plan outside of the annual docketing process is appropriate. Mr. Tovar referred to RCW 36.70A.130, which allows the City to adopt a subarea plan once a year outside of the normal annual cycle of Comprehensive Plan amendments and agreed that this particular provision could not be utilized in this situation because the City already has an adopted subarea plan for Point Wells. However, the RCW also states that the City can declare an emergency and amend its plan at any time. What constitutes an emergency is at the Council’s sole discretion, and no court will intrude on their decision. Staff believes there is some urgency, and it is important for the City to clarify what they think is appropriate for this road segment as soon as possible.

Chair Wagner recognized the presence of Shoreline City Councilmember McConnell.

Commissioner Behrens invited staff to comment further on the assertions made in Exhibit 10-122, a letter from Gary Huff, Karr Tuttle Campbell. Mr. Tovar explained that the City Council has the authority to adopt and amend the Comprehensive Plan, constrained only by the requirements of State Law. He disagreed with the assertions made in the letter suggesting inconsistencies and that good practice was not followed. He explained that if the proposed amendments are adopted by the City Council, the recourse for someone who disagrees would be to file an appeal to the Growth Management Hearings Board and make the case that the City either made a procedural error or there are inconsistencies. The worst case scenario is that the Growth Management Hearings Board would rule in favor of such an allegation and remand the issue back to the City. He said he does not believe the City

has exposure to liability if the Commission recommends approval and the City Council adopts the proposed amendment.

Mr. Sievers summarized that Mr. Huff (Exhibit 10-122) believes the prerequisites for reclassification are too rigid and specific. Mr. Sieves expressed his belief that the required study is not too rigid, but it is something the City expects to have and approve before they will consider the reclassification action again. He said he does not believe the other issues raised in the letter are a concern for passage of the proposed amendment, either.

Commissioner Kaje referred to the second sentence of the proposed amendment to Policy PW-12, which would require the developer to pay for the entire cost of a study, even though there are already traffic inefficiencies and dysfunction along the corridor. While he recognized this is common practice, he agreed with Mr. Huff's concern (Exhibit 10-122) that requiring an applicant to provide financial and legal guarantees that the necessary mitigations will be provided implies that all mitigations for all dysfunction of the roadway should be paid for by the developer. He suggested the language be changed slightly to make it clear that the developer would only be responsible for mitigation commensurate with the impacts of the development. It doesn't seem reasonable to ask a developer to fix all of the existing conditions in addition to the incremental changes that they produce. Mr. Sievers said he does not find this requirement to be illogical. Because the neighborhood is built out, additional improvements would only serve this one property, which is under single ownership. Therefore, it seems logical that the property owner or Snohomish County should be responsible for any mitigation that is required.

Commissioner Kaje pointed out that the required Transportation Plan would be much broader to look at traffic impacts all the way from the site to Highway 99. He asked if the proposed language would require this one developer to pay for all of the mitigations that might be needed in the entire area to address the cumulative impacts of past development as well as the proposed action. Mr. Tovar answered that there are two kinds of arguments. One is equity, or is it fair and reasonable, and people's opinions can differ on this issue. The other is whether the City has the legal authority to extract more out of this permit than they can demonstrate a rational connection. He advised that staff is aware of the legal constraints associated with mitigation. SEPA and concurrency are two good analogies; if you create the impact, you address the impact.

Commissioner Behrens recalled that the subarea plan required a study and plan to correct deficiencies for the whole area. However, he did not believe it required the developer to pay for every improvement that was necessary along the corridor. The intent was to require the developer to pay his portion to alleviate some of the impacts associated with the very large development.

Commissioner Kaje emphasized that the Commission must rely on the City Attorney and staff to advise them. It is not within their purview to determine the legal merits of the arguments posed in the letters. The Commission's responsibility is to focus on the language of the proposed amendment. He raised his concern about financial and legal guarantees because it is contained in the proposed language, and he wants to have a clear understanding of the amendment's intent and whether additional language is needed to clarify the proposed amendment. Mr. Tovar suggested the Commission move on with other

questions and allow staff some time to propose some language that responds to Commissioner Kaje's concern.

Commissioner Kaje referred to Table T-14, which identifies a daily traffic volume limit of 4,000 for local streets and between 3,000 and 9,000 for collector arterials. He asked if any other collector arterials in the City have a specific maximum daily traffic volume limit. Mr. Tovar answered no. Commissioner Kaje asked if the City could accomplish the same objective by maintaining the collector arterial designation, using the range of daily traffic volumes already identified in the table. Mr. Tovar agreed that could be possible, except there is explicit language in the Point Wells Subarea Plan that sets the maximum traffic volume at 8,250. The current proposal would not change this number. The Commission could recommend this change to the City Council, but it would move forward as a separate action.

Commissioner Kaje summarized that staff is proposing to change the street designation to "local" because they believe an appropriate level must be less than 4,000 until a transportation study has been completed. However, the definition of a collector arterial also entertains traffic volumes of 3,000 to 9,000. He suggested that rather than reclassifying the street, they could simply define a maximum volume as a collector arterial at 4,000. Mr. McKinley noted that the title of Table T-14 is "General Description of Classified Streets." Each classification has at least some overlap with the one above it or below it. There are also different descriptions and ranges for pedestrian access, etc. The numbers are not intended to be hard and fast. Instead, they are intended to characterize the types of uses on the various streets.

### **Deliberations**

**COMMISSIONER MOSS MOVED TO FORWARD A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL FOR AMENDMENTS TO THE POINT WELLS SUBAREA PLAN TEXT AND POLICY PW-12 AS PROPOSED ON PAGE 8 OF THE 1/20/11 MEETING PACKET. COMMISSIONER KAJE SECONDED THE MOTION.**

Mr. Sievers recommended that the second sentence be changed by replacing "as well as financial and legal guarantees that the necessary mitigations will be provided" be replaced with, "and financing for necessary mitigation is committed." This would allow funding to be provided through grants and/or the City's Capital Improvement Program (CIP), as well as the developer, to mitigate impacts associated with a proposed project. The City's concern is that money is available to address the impacts.

Mr. Tovar concurred with Vice Chair Perkowski's earlier recommendation that the word "access" be removed wherever it appears between the words "local" and "street." Commissioners Moss and Kaje accepted this change as a friendly amendment.

Vice Chair Perkowski suggested the last sentence of the draft language is confusing and does not really add anything to the policy. He recommended it be deleted. Commissioners Moss and Kaje accepted the change as a friendly amendment.



Chair Wagner suggested the first sentence be changed by replacing “dead end local access road” with “local road.” Using the term “dead end” is not necessary for clarity and the Commission typically tries to make the language more succinct. She referred to the letter from Mr. Huff of Karr Tuttle Campbell (Exhibit 10-122) noting that Richmond Beach Drive does not actually dead end with the residences but continues to Point Wells. It is a dead end street that also serves Point Wells. Commissioners Moss and Kaje accepted this change as a friendly amendment.

Commissioner Behrens suggested that the second sentence be changed by deleting the words “as an arterial.” He observed that arterial means something else in the code language, which could potentially have a figure higher than 8,250. Mr. Tovar agreed this change would be possible. Chair Wagner said she was intrigued by Commissioner Kaje’s comment that perhaps the “arterial” classification should be maintained for this segment of Richmond Beach Road. Changing the classification to “local” would limit the types of improvements that could be made in the future. Commissioner Moss suggested that instead of getting into the details about road capacity, perhaps the sentence should end after the words “road segment.” Mr. Tovar reminded the Commission that the language was drafted to be consistent with the policy statements in the Point Wells Subarea Plan. The language was intended to make it clear that the designation they are suggesting now is “local street” with a maximum capacity 4,000 ADT. However, if the transportation plan called for in Policy PW-9 is completed and funding is committed, the City would consider a request to reclassify this segment to allow a maximum capacity of 8,250 ADT. Because the City does not have the necessary study and financial commitment at this time, staff believes that 4,000 is the right number.

Commissioner Kaje referred to Policy PW-10, which states that the City’s 2009 Traffic Study indicates that if more than 8,250 vehicle trips per day enter the City’s road network from Point Wells it would result in a Level of Service “F” or worse at a number of City intersections. He summarized that 8,250 refers to the number of additional vehicle trips per day that enter the City’s road network from Point Wells, but the actual capacity of the roadway is much greater. He agreed with Commissioner Moss that the second sentence should be changed as recommended by Commissioner Moss. Commissioners Moss and Kaje agreed to the friendly amendment.

Commissioner Moss referred to staff’s recommended language for the second sentence, which is intended to imply that financing could include a host of options. She suggested the proposed language does not make it clear that the property owner and/or Snohomish County would be responsible for providing the Transportation Corridor Study and Mitigation Plan, but financing is a separate piece. Mr. Sievers suggested that to clarify the language, the sentence could be revised to read, “Unless and until 1) Snohomish County or the owner of the Point Wells Urban Center can provide to the City the Transportation Corridor Study and Mitigation Plan called for in Policy PW-9 and 2) sources of financing for necessary mitigation are committed, the City should not reconsider reclassifying the road segment.” Commissioners Moss and Kaje accepted this change as a friendly amendment.

Commissioner Behrens suggested there may be enough language in Policy PW-9 that no additional language is necessary in Policy PW-12. Commissioner Kaje expressed his belief that Policy PW-9 does not say the same thing as the amendment to Policy PW-12. It states that the study should identify

needed investments in services, but it does not commit anyone to provide financing. He suggested that Policy PW-12 should be considered on its own merits.

Vice Chair Perkowski suggested that in the second sentence, the word “or” should be replaced with “and/or.” He said the City should not eliminate the opportunity for the County and property owner to jointly provide the necessary financing. Commissioners Moss and Kaje agreed to this friendly amendment.

Commissioner Esselman suggested that the proposed number (4,000) more accurately reflects the existing context and conditions of this street segment, which is what the proposed development must respond to. Commissioner Kaje added that this is a unique road circumstance, and the proposed classification would allow up to 4,000 additional trips per day, which is a significant change for this particular street segment. While he will likely support the amendment, he emphasized that he does not believe it would be appropriate or reasonable to expect the City to deny projects simply because they add traffic to streets that historically have been quiet. There are streets in many communities that have experienced significant changes in their traffic patterns because of both private and public developments. However, because of the odd circumstance at this site and it really is a bottleneck section, the proposed amendment would be the prudent thing to do until they have the necessary information to make wiser decisions about allowing a higher capacity.

Commissioner Behrens clarified that he was not suggesting that Policy PW-12 be eliminated. He noted that, as per Policy PW-9 the owner is required to provide the study, but Policy PW-12 states that the study could be done by either Snohomish County or the property owner. Chair Wagner expressed her belief that the City would not have a problem with either Snohomish County or the property owner paying for the required study.

Commissioner Moss referred to Policy PW-11, which talks about the potential for a Level of Service “F” or worse at a number of City intersections. While the Commission has discussed that the traffic volume through this road segment is currently low, even ramping up the existing use to full capacity could result in intersection failure. Mr. Tovar explained that until the traffic volume reaches 8,250, the proposed policy would not differentiate between the types of vehicles and uses. Issues such as large trucks could be dealt with through the SEPA process. Chair Wagner explained that even if the industrial use is ramped up and the traffic volume exceeds the 8,250 limit, the trips would not likely be during commuter rush hour. The impact to the level of service would be largely during off-peak hours. Mr. Cohn noted that only portions of intersections failed. There is a big peak of traffic volume in the morning and evening in residential areas, and an industrial use would result in traffic throughout the day. He does not anticipate that an industrial use would result in intersection failure.

**Vote by Commission to Recommend Approval or Denial or Modification**

**THE COMMISSION UNANIMOUSLY APPROVED THE MOTION TO FORWARD A RECOMMENDATION OF APPROVAL TO THE CITY COUNCIL FOR AMENDMENTS TO THE POINT WELLS SUBAREA PLAN TEXT AS PROPOSED ON PAGE 8 OF THE 1/20/11**

**MEETING PACKET AND TO POLICY PW-12 AMENDED BY THE COMMISSION TO READ AS FOLLOWS:**

**“Policy PW-12 – In view of the fact that Richmond Beach Drive between NW 199<sup>th</sup> Street and NW 205<sup>th</sup> Street is a local road with no opportunities for alternative access to dozens of homes in Shoreline and Woodway, the City designates this as a local street with a maximum capacity of 4,000 vehicle trips per day. Unless and until 1) Snohomish County and/or the owner of the Point Wells Urban Center can provide to the City the Transportation Corridor Study and Mitigation Plan called for in Policy PW-9, and 2) sources of financing for necessary mitigation are committed, the City should not consider reclassifying this road segment.”**

**COMMISSIONER KAJE MOVED TO FORWARD TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL THE PROPOSED AMENDMENT TO TABLE T-18 OF THE TRANSPORTATION ELEMENT OF THE COMPREHENSIVE PLAN TO IMPLEMENT THE POLICY CHANGE AND SHOW THE SEGMENT OF RICHMOND BEACH DRIVE RECLASSIFIED AS A LOCAL STREET. COMMISSIONER ESSELMAN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**Closure of Public Hearing**

Chair Wagner closed the public hearing and thanked the audience for the thoughtful comments they provided.

**DIRECTOR’S REPORT**

Mr. Tovar did not provide a report during this portion of the meeting.

**UNFINISHED BUSINESS**

There was no unfinished business scheduled on the agenda.

**NEW BUSINESS**

No new business we scheduled on the agenda.

**REPORTS OF COMMITTEES AND COMMISSIONERS/ANNOUNCEMENTS**

None of the Commissioners provided reports during this portion of the meeting.

**AGENDA FOR NEXT MEETING**

Mr. Cohn reviewed that the February 3<sup>rd</sup> agenda would include a study session on a Development Code amendment that would permanently transfer all quasi-judicial hearings to the Hearing Examiner, who

would become both the hearing body and the decision maker. In addition, the Commission would have a study session on the Aldercrest Comprehensive Plan and zoning code amendments.

Chair Wagner asked if the Aldercrest Comprehensive Plan and zoning code amendments would be a legislative action. Mr. Tovar answered that the City Council directed that the amendments be added to the Planning Commission's work program, and he construes them to be a legislative action. However, staff will conduct the process as if it were quasi-judicial. Notices would be mailed to all property owners within 500 feet and not simply a notice in the newspaper. He cautioned the Commissioners to also conduct themselves as though the action is quasi-judicial.

Commissioner Broili recalled that the Commission previously requested feedback from staff about the quasi-judicial items that have gone before the Hearing Examiner over the past year. This would give them a better idea of how the current process works. Mr. Tovar reported that the Hearing Examiner has not conducted any hearings over the past year that would have previously come before the Commission for review. Mr. Cohn added that the Hearing Examiner heard one application for a street vacation, which would not have come before the Commission anyway.

### **ADJOURNMENT**

The meeting was adjourned at 9:54 P.M.

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Michelle Linders Wagner  
Chair, Planning Commission

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Jessica Simulcik Smith  
Clerk, Planning Commission



## 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.