

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

<p>AGENDA TITLE: The Role of the Applicant</p> <p>DEPARTMENT: Planning and Development Services</p> <p>PRESENTED BY: Steven Szafran, Planner II</p>
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I. INTRODUCTION

The applicant's role in the land use hearing process is to present their proposal in a clear and concise manner so the Planning Commission can make a recommendation and the Council or Hearing Examiner can make an informed decision.

The Planning Commission has the opportunity to offer suggestions to better define the applicant's role so the hearing process can be smoother and less time consuming.

This report will outline how the current process works and look at other models being used.

II. DISCUSSION

Currently the hearing process starts out by the Chair of the Commission going over the Appearance of Fairness Doctrine and the general Rules of Procedure approved by the City Council for the conduct of public hearings. Planning staff then introduce the agenda items. Staff goes over the request, surrounding land uses, site information, the comprehensive plan designations, how the project conforms or does not conform to adopted codes, how item meets/ does not meet goals and policies of the Comprehensive Plan, and presents a staff recommendation on the item which may or may not include conditioning the project.

The applicant then presents the project in their own words. This is the applicant's chance to further explain how their project meets the criteria for the proposed land use action. The applicant may use drawings, models, elevations, etc... of the proposed project to illustrate what might be possible on the site should the land use application be approved. The applicant may also use this time to address written and oral comments regarding the project. The presentation also offers the applicant an opportunity to ask the Commission to consider alternatives to staff recommendations including conditions.

Other Models

A model for the procedural agenda published by the Association of Washington Cities begins with an introduction by the Planning Commission Chair. The introduction includes the request being heard and going over ground rules.

1. Initial presentation of facts is made by the Planning Staff and includes: a) an identification of the requested application; b) a description of the land that is involved with the request; c) a discussion of the impact of the request to the land and surrounding properties; and d) a recommendation from the Planning Staff.
2. Presentation by the applicant- The applicant has the burden of proof and must present testimony or evidence to support the request. This is an opportunity to dispute any issues raised by Planning Staff or residents.
3. Testimony by the public- As published in the City of Shoreline Planning Commission By-laws, the public testimony or comments follow the Staff Report. The Chair has the discretion to limit or extend time limitations and the number of people permitted to speak. Furthermore, the Rules of Procedure for Administrative Hearings of the City of Shoreline states that the Planning Commission may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. This is different from the General Public Comment Period where each member of the public is limited to two minutes and a maximum time limit for all public comment of 20 minutes.
4. Response by the Planning Department
5. Rebuttal by the applicant.
6. Decision or recommendation by the hearing body.

In conclusion, there are opportunities for Planning Commission and Staff can brainstorm ideas to better define the applicant's role in the Planning Commission hearing process. This may involve a dialogue with past applicants about what works and what does not work and possibly looking at similar jurisdictions processes.

III ATTACHMENTS

Attachment A - City of Shoreline Rules of Procedure for public hearing before the Planning Commission

IV: HEARINGS BEFORE THE PLANNING COMMISSION

SECTION 1. JURISDICTION

Rules under this Part IV shall apply to open record pre-decision hearings on matters for which the SMC designates the Planning Commission as the review authority and to any other matters designated by the City Council. These rules will also apply to pre-decision hearings held by the Hearing Examiner.

SECTION 2. RIGHTS AND RESPONSIBILITIES OF PARTICIPANTS

2.1 Rights of City. The City staff shall have the right to present evidence and testimony, object, make motions, arguments, recommendations and all other rights essential to a fair hearing.

2.2 Rights of Applicant. Every applicant shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing. The applicant shall have right to timely access of the City's staff report.

2.3 Rights of Other Hearing Participants. Every hearing participant shall have the right to present evidence and testimony. The right of participants to cross-examine, object, submit motions and arguments shall be at the discretion of the Planning Commission. The Planning Commission may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony.

As provided under RCW 42.17, hearing participants may obtain copies of public materials from the City. The participant requesting the material shall pay the cost of such copying according to the City's adopted fee schedule.

2.4 Responsibilities of City Staff. City Staff shall provide a staff report as set forth below to the applicant and Commission; provide notice of hearings; present materials at the hearings; provide the Planning Commission with documentation relevant to each case; and provide revised plans if received within fourteen (14) days of a hearing. The staff report on a land use application shall include the following, if relevant to the application:

- a. Names and addresses of the owner(s) and applicant(s) of the subject property and his/her property interest in the property that is the subject of the hearing.
- b. A brief summary of the requested action and the citation of the relevant codes and/or ordinance controlling the request.
- c. A legal description of the subject property.
- d. A statement as to which zoning code regulations for City of Shoreline apply to the request.
- e. A technical data summary of the Comprehensive Plan designation and zoning designation of the subject property; the current development of the

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- subject property and the adjoining properties; topographical information; information on the vegetation on the property; and, any other technical and environmental information germane to the case.
- f. An in-depth analysis of the proposed project. This analysis may include, but not be limited to, the following elements of review:
 - 1. Natural features;
 - 2. Housing;
 - 3. Transportation;
 - 4. Government jurisdiction boundaries;
 - 5. Neighborhoods;
 - 6. Land use plans; and,
 - 7. Land use regulations.
 - g. The compatibility and impact of the proposal on the existing development.
 - h. A summary of the reports or recommendations of any other agencies consulted.
 - i. Appropriate maps of the subject property.
 - j. The results of the determination pursuant to the State Environmental Policy Act.
 - k. Staff's conclusions and recommendations.

The staff report shall be distributed to the Planning Commission, the applicant and made available to the public.

2.5 Responsibilities of Applicant. Whenever possible the applicant shall, prior to the hearing, provide the Planning Commission with material that supports his/her application; and be prepared for questions by the Planning Commission.

2.6 Pre-Hearing Reports and Memoranda. Unless otherwise specified, all forms of legal authority, including briefs, staff reports and other legal memoranda upon which a participant will be relying or presenting at a hearing before the Planning Commission, must be submitted to the Planning Commission at least fourteen (14) days in advance of the scheduled hearing date.

2.7 Presence of Legal Counsel at Public Hearings. At the request of any department, a representative of the City of Shoreline City Attorney's Office may be present at the public hearings to advise on matters of law and procedure. If there is no representative of the City Attorney's office at the hearing, the Planning Commission shall have authority to seek a memorandum on legal issues raised at hearing from the City Attorney.

SECTION 3. CONDUCT OF HEARING

- 3.1 Notice Requirements of Hearings
 - a. All notice and time requirements and methods of notification shall be consistent with the provisions as set forth in City ordinances.
 - b. An affidavit of publication attesting to the notice given to a public hearing before the Planning Commission, including dates and places of

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publication, and an affidavit of mailing attesting to the list of those to whom the notice was mailed, shall be made part of the hearing record.

3.2 Hearings shall be presided over by the presiding officer of the Planning Commission, hereinafter referred to as the "Chair." The Chair shall have all of the authority and duties as granted in State statutes, SMC and other City rules or ordinances. Included in the duties of the Chair are the following: to conduct fair and impartial hearings; to take all necessary action to avoid delay in the disposition of proceedings; and, to maintain order. The Chair shall have all powers necessary to that end, including the following:

- a. To administer oaths and affirmations;
- b. To rule upon offers of proof and receive evidence;
- c. To regulate the course of the hearings and the conduct of the participants and their agents;
- d. To question anyone presenting testimony at the hearing;
- e. To hold conferences for settlement, simplification of the issues, or any other proper purpose;
- f. To require briefs on legal issues;
- g. To consider and rule upon all procedural and other motions appropriate to the proceedings; and
- h. To execute on behalf of the Planning Commission findings and recommendations which reflect the decision of the Commission.

3.3 Interference. In the performance of adjudicative functions, the Planning Commission shall not be subject to the supervision or direction of any elected official, officer, employee or agent of any municipal department.

3.4 The Planning Commission may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as necessary for a full disclosure of the facts, but the Planning Commission shall control the amount and style of cross-examination.

3.5 Hearing Presentation. A hearing usually will include, but not be limited to, the following elements:

- a. A brief introductory statement of the hearing process by the Chair;
- b. A report by the departmental staff that shall include introduction of the official file, reference to visual aids and may include a recommendation, or recommended options, of the Department;
- c. Testimony by the applicant and witnesses called;
- d. Testimony in support;
- e. Testimony in opposition;
- f. Opportunity for cross-examination and rebuttal; and,
- g. Opportunity for questions by the Planning Commission.

3.6 Evidence.

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- a. Burden of proof. The applicant shall have the burden of establishing that the application is in compliance with applicable City and State ordinances, statutes and laws and regulations.
- b. Admissibility. The hearing generally will not be conducted according to strict legal rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is the type that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law. The Planning Commission shall have discretion on the admissibility of all evidence.
- c. Copies. Documentary evidence may be received in the form of copies of excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. It is advisable to provide an extra copy of all documents to the Planning Commission as a working copy.
- d. Judicial Notice. The Planning Commission may take judicial notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within its specialized knowledge. The Planning Commission shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.
- e. The Planning Commission may allow a document to be filed after the close of testimony but before the hearing record is closed.
- f. All parties will be allowed opportunity to make a record of evidence admitted or denied during the course of the hearing. This record shall include offers of proof.

SECTION 4. RECORD OF HEARING.

4.1 Hearings shall be electronically recorded and such recordings shall be a part of the official record. Copies of the electronic recordings shall be made available to the public on request. The cost of such copying shall be paid by the requester according to the City's adopted fee schedule.

- 4.2 Content of the Record. The record of a hearing conducted by the Planning Commission shall include, but not be limited to, the following materials:
- a. The application;
 - b. The departmental staff reports;
 - c. All evidence received which shall include oral testimony given at the hearing, all exhibits and other materials admitted as evidence;
 - d. A statement of all matters officially noticed;
 - e. A recommendation containing the findings and conclusions of the Planning Commission;
 - f. Recordings made on electronic equipment; and
 - g. Any Environmental Impact Statement prepared for the project or action.

SECTION 5. RECOMMENDATIONS

5.1 Written Recommendations. Within fourteen (14) days after the close of the hearing, the Planning Commission shall issue a written report of findings, conclusions and recommendation. The findings, conclusions and recommendation shall indicate how the recommendation carries out the goals, policies, plans and requirements of the SMC and other City or State regulations.

- 5.2 Content of Recommendation. A recommendation shall include a statement of:
- a. The nature and background of the proceeding.
 - b. Findings of Fact. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed. The Findings of Fact shall consist of a concise statement of facts necessary to support conclusions and each fact found upon each contested issue of fact.
 - c. Conclusions. Conclusions of Law shall be made that are necessary for a recommendation on each issue. Each conclusion shall be based on one or more finding of fact. Whenever practical, the conclusions shall be referenced to specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same. The conclusions shall make reference to the effect of the recommendation with reference to the Comprehensive Plan, if relevant, and on the general public.
 - d. The appropriate rule, order or relief. The recommendation shall be based upon a consideration of the whole record and supported by substantial evidence.