

City of Selah
Planning Commission Minutes
of
October 27, 2014

Selah Council Chambers
115 W. Naches Ave.
Selah, Washington 98942

A. Call to Order

The meeting was called to order by Chairman Quinnell at 5:35 p.m.

B. Roll Call:

Members Present: Commissioners: Miller, Torkelson, Smith, and Quinnell
Members Absent: Commissioner Pendleton,
Staff Present: Dennis Davison, Community Planner; Caprise Groo, Secretary
Guests:

C. Agenda Change None

D. Communications

1. Oral -None.
2. Written – None

E. Approval of Minutes

Chairman Quinnell had a revision to the minutes on page four, under OTHER FINDINGS number two. The maximum number of dwelling units allowed on the subject property under its current Low Density Residential land designation is **20 (4.07 x 5)**. The proposed density based on the Planned Development of 33 dwelling units increases the planned number of dwelling units in the urban growth area by 13. This section was corrected to state: The maximum number of dwelling units allowed on the subject property under its current Low Density Residential land designation is **24 (4.7 x 5)**. The proposed density based on the Planned Development of 33 dwelling units increases the planned number of dwelling units in the urban growth area by 9.

Mr. Davison: In these issues, Mr. Samples Comprehensive Plan Amendment and rezone and the Code Amendment to allow for duplexes in Preliminary Plats were remanded back to the Planning Commission. The duplex in the R-1 zone has been rescheduled. Mr. Durant and I will meet with Mr. Sample and get more information so the City Administrator can tell us how to proceed with his application.

Mr. Torkelson: So the next meeting will be the 4th.

Mr. Davison: Unless there is an emergency, then yes it has already been advertised. I am trying to get Mr. Smeback, Mr. Schmid and Mr. Sample together to discuss what options there are other than a duplex permitted in a Preliminary Plat. Mr. Sample would like to see if the lot can be split. I am against it. You would have a 4500 sq. ft. lot instead of a true duplex lot of 9000 sq. ft. So the three of us are going to sit down and discuss what they think is acceptable. Then I will report to you and if we adopt something, it will then then go back to the Council unless there is nothing adopted.

Chairman Quinnell: Requests the approval or disapproval of the minutes.

Commissioner Smith motioned to approve the Minutes with the revision stated.

Commissioner Torkelson seconded the motion.

Chairman Quinnell called for a voice vote and the minutes were passed with a vote of 4-0.

Commissioner Miller: Questioned a section on the June minutes. On page 8, a revision to the 3-0 vote was changed to 3-1 and all 4 commissioners signed the document.

Commissioner Quinnell: We do not have those minutes here. We can note it for the meeting but it's not on the agenda.

Commissioner Torkelson: Were those minutes approved at the last meeting?

Mr. Davison: Yes they were. We can still make the correction.

Commissioner Smith: Let's put it on the agenda for the next Commission meeting.

Chairman Quinnell:

F. Public Hearing

1. Old Business - None
2. New Business - None

G: General Business

1. Old Business – None
2. New Business- The Short Course on Local Planning: Section ii-2, iii-2-iii-14 and 2-i-2-30

Chairman Quinnell: Has every one had a chance to read that? (The Short Course on Local Planning: Section ii-2, iii-2-iii-14 and 2-i-2-30 attached)

Mr. Davison: We sent this to you because the Council is going to get a copy of this too. It comes out of the Short Course on local Planning. Mr. Davison highlights Appearance of Fairness, Conflict of Interest, how to develop conclusions, what Commissioners are responsible for, Freedom of Information, what type of meetings, etc. Mr. Davison stated that Mr. Noe was unavailable tonight, but that if the Commissioners had questions for him to please write them down so that Mr. Noe could respond to them later in the week. Mr. Davison also discusses legislative and quasi-judicial activities.

Mr. Torkelson believes more Executive Sessions and Study Sessions are needed to make informed decisions.

Mr. Davison discusses Open Public Meetings and the difficulties of Public forums, continuing a meeting and ex parte contact.

Commissioner Miller: So in some ways there is a risk in doing that?

Mr. Davison: Sure.

Mr. Davison and Mr. Miller discuss ex parte contact and what a Commissioner should do.

Commissioner Smith: Who do I talk to if I have a specific question?

Mr. Davison: You could talk to the City Attorney. Are there any questions for the City Attorney or about the information in the packet?

Mr. Miller: Does the city have errors and omissions insurance? (Page iii-12 number 9)

Mr. Davison: The City has insurance. Discussion ensues. There is an application so you can become members of the Planning Association of Washington. Discussion ensues. Any other questions?

Chairman Quinnell: Any other questions? Lisa will head the next meeting.

Commissioner Smith: Why?

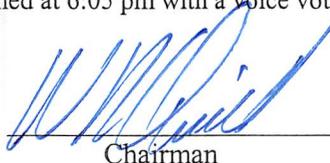
Commissioner Quinnell: I am recusing myself. Commissioner Smith is Vice Chair.

H. Reports/Announcements

1. Chairman –
2. Commissioners –.
3. Staff –

I. Adjournment

Chairman Quinnell asked for a motion to adjourn .Commissioner Torkelson moved to adjourn and Commissioner Miller seconded the motion. The meeting was adjourned at 6:05 pm with a voice vote of 4-0.



Chairman

Introduction

The Short Course on Local Planning has been a service of PAW to the citizens of Washington state for more than 30 years. Over 25,000 people have attended PAW sponsored training sessions, and many have benefited from the Short Course training and materials. The Short Course has always been the work of dedicated volunteers. This edition of the Short Course mirrors the objectives originally identified 30 years ago to provide:

- **An introduction to planning and the planning process, which will demystify planning and make the process more understandable and, therefore, more accessible to the public**
- **A guide for planning commissioners and council members, who, in formulating their local plans and regulations, must confidently be able to follow established procedures for hearings and decision-making**
- **A source of practical problem-solving information, giving insight as to how a commissioner, council member, or citizen participant can be successful in the planning arena**
- **A resource guide that will aid in understanding technical planning issues and guide further research**
- **A guide that may be used to teach planning issues, using selected chapters as teaching outlines**

This Short Course is dedicated to you, the devoted men and women who serve our communities as planning commissioners and city and county representatives, who give so much to make our communities a better place to live.

*Planning Association of Washington
Chris Parsons, AICP
President*

How This Manual is Organized

The Planning Association of Washington's Short Course on Local Planning provides a detailed overview of the planning process, its legal basis in Washington state, and specific legislation, tools, and techniques that can be used in local planning efforts. It will answer many of your basic questions, but is not intended as legal advice. For specific information on legal issues, you should consult the appropriate legal counsel in your jurisdiction.

Topics included in Chapters 1-4 of this Short Course proceed from essential background on the legal and practical objectives of planning and the public process, to highlights of growth management legislation and constitutional rights and responsibilities. Chapters 5-8 present specific information on development tools and techniques, environmental legislation, shoreline management, and county/tribal planning issues. Chapter 9 provides information on transportation planning and Chapter 10 reviews annexation procedures. A brief summary of each chapter follows.

Short Course at a Glance

The first section of this manual, "New to the Planning Commission? Some Key Questions Answered," raises a number of issues which arise frequently at Short Course sessions around the state. This section provides basic information only; we encourage you to read the detailed treatment of these topics contained in the manual.

Next, is a one-page explanation of "How to Arrange a Short Course" for your community.

Chapter 1 provides an in-depth look at the "Legal and Practical Objectives of Planning," including how planning is done in Washington state, and its constitutional and statutory basis.

Chapter 2 is crucial reading for any planning commissioner or elected official. Addressing "Citizen Participation and The Public Process," it covers the practical and legal aspects of how to involve community residents in land use planning; how to hold meetings, the proper treatment of public and confidential documents, the Appearance of Fairness doctrine, and guidelines for making public decisions and creating records.

Chapter 3 presents a thorough overview of the Growth Management Act (GMA), which defines land use planning in Washington state. Requirements of the GMA are detailed for local planning, including comprehensive planning, development regulations, official controls, and the concept of "concurrency."

Chapter 4 deals with "Constitutional Issues and Responsibilities in Planning." Two key concepts are presented and discussed: due process and the taking issue.

Chapter 5, "Development Tools and Techniques," covers the platting process, site plan review, common platting problems, and vested rights.

Chapter 6 discusses Planning and Environmental Legislation, including the State Environmental Policy Act and Water Quality legislation.

Chapter 7 summarizes the purpose and intent of the Shoreline Management Act and its shoreline master program and permit processes.

Chapter 8 introduces County/Tribal Planning Issues, with information on coordinating with tribal governments and fact sheets on Indian Tribes in Washington State.

Chapter 9 provides fundamentals to Transportation Planning, including transportation improvement programs and steps in developing a transportation plan.

Chapter 10 outlines the Annexation procedures and implications when a city annexes property into its jurisdictional boundaries.

*New to the Planning Commission?
Some Key Questions Answered*

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New to the Planning Commission? Some Key Questions Answered

Serving on the planning commission is one of the most rewarding ways you can serve your community. As a commissioner, you will help set the long-term direction or vision for your community's future. Although the planning commission is an advisory body which rarely makes final decisions, it is one of the most important groups in local government.

In recent years, growth management and environmental legislation have emphasized the importance of land use issues. You will be advising your community on these issues through adoption or amendment of the comprehensive plan, and will help implement its subdivision, zoning, and shoreline regulations. You may review applications for individual projects ranging from mobile home parks to shopping centers.

New planning commissioners must get up to speed quickly on the structure of local government and the laws and procedures that govern their actions. Following are the answers to 10 questions that are commonly asked; we suggest you read them before conducting your first public meeting.

1. I'm new to our planning commission. I don't really have a sense of the key players in the planning process. Who are they and what do they do?

Four groups have key roles:

- 1) **City council or board of county commissioners.** Both are elected bodies which appoint planning commission members (or the board of adjustment, discussed below). The city council or board of county commissioners has ultimate decision-making authority for all land use planning issues.
- 2) **Planning commission.** The planning commission makes recommendations to the city council or board of county commissioners for changes and updates in the comprehensive plan and the zoning code. In most jurisdictions, the planning commission also reviews individual applications for variances, conditional use permits, site plans, subdivisions, shoreline permits, and rezones.
- 3) **Board of adjustment.** This body hears appeals on land use decisions. In some communities, the planning commission acts as the board of adjustment. In others, the city council or board of county commissioners assumes this role.

4) **Hearings examiner.** The decision to have a hearings examiner is a local option. When a community does have one, this hired professional replaces the board of adjustment. The hearings examiner takes the place of the planning commission in hearing applications for land use permit applications, such as variances and conditional use permits. Having a hearings examiner frees up the planning commission to deal with policy issues and long-term concerns of the community.

2. **Can you tell me more about the planning commission?**

In Washington state, a planning commission is an advisory body appointed by the city council or board of county commissioners to provide advice and recommendations on land use issues at the local level.

Although the key word here is *advisory* and planning commissions don't normally make the final decision, it is probably one of the most important bodies in local government.

You'll spend lots of evenings in meetings. (Don't be fooled if those who invited you to serve on the planning commission gave you a sales pitch that sounded something like "You only meet twice a month for a couple of hours.") In a survey done for the City of Renton, it was found that the planning commission met more often than all other advisory boards combined, and more often than the city council itself. We're stating this up front so that you'll understand the amount of serious work that is expected of most planning commissions. Being a planning commissioner means making a serious time commitment for the required preparation and the commission meetings.

3. **What if our elected officials (city council/county commissioners) ignore a recommendation of the planning commission, but we all know it's a good one?**

When it happens—and sooner or later it will—you have several choices:

First, you can swallow hard, accept the political decision, and continue to do your best to provide thorough and thoughtful recommendations. It's important to keep in mind that both the planning commission and the elected body which appointed you are working from the same set of policies and regulations. If there are differences in interpretation, then these differences need to be clarified. One strategy for keeping communication clear is presented below.

Second, you can resign in protest. Although this sometimes seems like the only ethical option, we encourage you to think very carefully before you exercise it. If you quit, it deprives the commission of your experience and expertise, and it always takes time for a new person to get up to speed once appointed.

Third, most effective planning commissioners have decided that they can increase the number of times their recommendations are accepted with minimal or no modification by actively working to maintain good communications with the city council or board of county commissioners.

There are a number of strategies that have been used successfully around the state over the years, and we encourage you to use one of them (or invent one of your own).

One of our favorites comes from Bob Patrick, former Community Development Director at the City of Lacey. In Lacey, the planning commission and city council sit down together twice each year to discuss issues and concerns. Each session is followed by a bus tour of the City, so everyone can see first hand the sites and locations which are the focus of local land use issues.

Another good option is to send out a newsletter, like the one distributed by the Thurston Regional Planning Council. In this concise and well-written newsletter, anyone who's interested can find out exactly where the county and all of its cities are in progress on key growth management planning elements.

4. If you were to identify the one factor which can spell success or failure for a planning commission, what would it be?

There are really two answers to this one.

First, the initial appointments made to the planning commission are crucial. Elected officials must appoint quality, committed individuals, who represent the community's diverse social and political interests, as well as its geographic diversity.

Second, the planning commission needs a strong chairperson. Regardless of whose "turn" it is to serve as Chair, if you pick a nice but unassertive person who can't control controversial meetings, and who isn't willing to put in the time necessary to get the agenda together and make reminder phone calls, then the commission as a whole will suffer. Your Chair needs to be a dedicated, no-nonsense, reasonably high-energy person—someone who can run a tight meeting with a sense of fairness.

5. Our planning commission Chair called for an "executive session" during a meeting a few weeks ago, so we could discuss the qualifications of candidates who had applied for our City Planner position. Someone in the audience stood up and said what we were doing was illegal, because of the "Open Public Meetings Act," and that all business of the planning commission had to be conducted in public. Yes or no?

Your Chair was perfectly justified in calling an executive session, because you were evaluating qualifications of applicants for public office. It should be stressed, however, that there are very few times when your planning commission will need to hold an executive session. (See Chapter 2 for more information on the Open Public Meetings Act.)

Had you been talking about the salary, wages, or general conditions of employment for the planner position, the discussion should have been public. But personnel matters, including performance reviews, can be conducted in executive session; as can discussions of litigation or potential litigation with your attorney, and real estate negotiations where publicity is likely to cause an increase in the price your city, town, or county will have to pay.

If you plan to hold an executive session, the planning commission Chair must take specific procedural steps (see Chapter 2).

Regular Meetings

The basic intention of the Open Public Meetings Act is that the public's business be conducted in public; and that the planning commission must establish a time for its regular meetings.

Special Meetings

If you need to hold a special meeting, either your chairperson or a majority of the members can call for it. But you will need to notify all members of the planning commission, as well as media representatives who are on record as having requested notification (i.e., newspapers, local radio, and television stations). Your notice must be in writing, at least 24 hours prior to the special meeting, and state the place and nature of the business to be transacted. You will be limited in making final decisions to those announced business items at the special meeting.

6. I've been on the planning commission for a while now, and I'm still not clear on the difference between our "legislative" and "quasi-judicial" activities.

Everything you do as a planning commissioner will fall into one of these two categories. It's important to be clear on the difference, because when you're operating in a quasi-judicial mode, you're subject to the Appearance of Fairness Act.

Some basic definitions:

First, a legislative action is one which will affect the entire community, not just an individual property owner or single piece of land. Examples include updating or revising your community's comprehensive plan and adopting zoning code text amendment ordinances. When you change the community's comprehensive plan or zoning code, the rules change for everyone. No one is seeking or being granted special consideration.

A quasi-judicial action is one in which you're sitting "like a judge," evaluating a specific case or proposal submitted to you by individual parties. Examples include applications for variances, special use permits, and subdivisions. In each case, you are being asked to make a decision that affects an individual (or family, partnership, or corporation), but not the entire community. You are acting like a judge, weighing the merits of an individual case before the court. Guilty or not guilty? Grant the variance or deny it?

When you're dealing with these individual applications and project proposals, you are held to very high levels of scrutiny. These are contained in the Appearance of Fairness Doctrine (see Chapter 2 for a detailed discussion). Basically, all of your actions when you are in your quasi-judicial role must not only be fair in fact, but must appear fair to the average person.

The question you must ask yourself is: Would a disinterested person, apprised of the totality of your personal interest or involvement in the matter which the planning commission is considering, be reasonably justified in thinking that your involvement might affect your judgment in reaching a decision?

The place where most planning commissioners get into trouble on this one is a direct result of their well-intentioned attempts to be open and accessible to their friends and neighbors. It's really difficult to cut someone off when they call you up at home, or approach you on the street or at the coffee shop and start to tell you what they think about a particular proposal

which you're considering, or are about to consider, at the planning commission.

But when you listen to their thoughts outside a regular meeting of the planning commission, regardless of whether they are for or against the proposed project, you are engaging in what the law calls an "ex parte" communication. Ex parte communications are forbidden, because they violate the intent of the Appearance of Fairness Doctrine: Regardless of whether any single "off the record" conversation influenced your final vote on a proposed project or application, it just doesn't look right. The law says your actions must appear fair as well as be fair in fact.

So what do you do if you get a letter at home, and read it through before you realize it's an attempt to lobby you to approve a new 80-home subdivision? Or what if a friend grabs your arm at the post office and blurts out his deeply held thoughts that the thus-and-so project, if approved, is going to change forever the rural character of your town? (He knows this because he worked for years as a real estate appraiser in a very similar community in California, and he can tell you as a real estate professional exactly what a proposal like this one did to that town and its tax base.)

When a situation like one of these occurs, you need to take immediate action at the next planning commission meeting. You'll need to announce and place on the record at the beginning of the discussion of that item the substance of any written or oral ex parte communication which you've received. If you feel that, regardless of this contact, you'll still be able to render a fair decision, you need to state that for the record as well.

At this point in the meeting, you've opened yourself up for a challenge from anyone who feels that you've been tainted by the ex parte communication. If you're challenged, and don't step down for the duration of the discussion and decision on the proposal under consideration, you've left yourself and the commission wide open for a legal challenge after you've rendered your recommendation.

Our advice if you're challenged? Consult with your city attorney or county prosecutor, if that person is available: You may be able to stay and participate. But in the absence of legal advice to the contrary, **step down and leave the room**. Don't take a seat in the audience, from where you can later be accused of sending "baseball signals" to the remaining members of the commission to influence their votes on the

proposal. Instead, go home and take a well-deserved evening off.

After the Doctrine of Appearance of Fairness was first enacted, it didn't take long for clever applicants to figure out that if they could just taint those members of the commission who would probably oppose their application, they could then challenge them on the grounds of having received an ex parte communication. These planning commissioners would then be forced to step down and—bingo!—an approved application.

The problem with this sneaky strategy is that if enough members are disqualified, the planning commission lacks a quorum, and can't do business. A clever legal solution called the Doctrine of Necessity was enacted to counter this lack of a quorum. Basically, if enough members of the planning commission are challenged to make it impossible to obtain either a quorum or a majority vote, then those challenged members can return to their seats and participate fully in the debate and the decision. All they have to do is disclose publicly the reason for their disqualification before they render their decision.

A simple three step ounce-of-prevention strategy is definitely worth a pound of cure on this one. We recommend that the Chair inquire at the beginning of the discussion of each agenda item if any member of the planning commission has any ex parte oral or written contacts to report for the record. The Chair should then ask if any member of the planning commission is aware of any appearance of fairness violations which would prevent his or her participation on the quasi-judicial matter before the commission. Once these have been reported, the Chair should solicit from members of the audience any challenges they wish to pose to individual commissioners based on what the commissioners have just said. These three steps should take place before testimony on the project or proposal begins.

It's worth noting at this point that if no one in the audience raises any challenges right here, then they've waived their right to challenge the participation of any member of the commission later on. This is their one opportunity. If they're silent, they're agreeing to let all unchallenged members of the commission hear the testimony and render a decision.

The following guide covers key procedures for a successful quasi-judicial public hearing:

SHORT FORM OF PROCEDURES FOR QUASI-JUDICIAL PUBLIC HEARINGS

- 1 Chairman declares the public hearing is open.
- 2 Chairman states that everyone present will be given an opportunity to be heard; however, the commission or council does have a policy of closing meetings at 10:00 p.m. (or your own closing time). State that the hearing is being recorded and that prior to speaking, individuals should state their names and addresses.
- 3 Appearance of Fairness.
 - (a) Chairman requests anyone who objects to the Chairman's participation, or any other commission or council member's participation, to please state so now and give the reasons for the objection.
 - (b) Chairman asks the commission or council members if any have an interest in the property or issue. Chairman asks commission or council members if they can hear and consider this matter in a fair and objective manner.
 - (c) Chairman requests any member of the commission or council to place on record the substance of any communication each has had outside of the hearing with opponents or proponents on the issue to be heard. After the communication is placed on the record, the Chairman should request whether any interested parties wish to rebut the substance of the communication.
- 4 Chairman requests staff to make its presentation.
- 5 Applicant invited to comment.
- 6 Chairman invites comments from citizens in favor of the proposal.
- 7 Chairman invites comments from citizens against the proposal.
- 8 Chairman invites applicant to rebut the opposition.
- 9 Additional comments from those against and those for the proposal should be recognized, if needed.
- 10 Chairman requests whether the commission or council members have questions of the applicant, citizens, or staff.
- 11 Chairman declares the public hearing closed.
- 12 Commission or council deliberates on the record, discussing Findings of Fact and Conclusions.

7. At our planning commission meetings, we do a pretty good job taking minutes of the major issues and decisions. But one of our members heard recently that having hand-written minutes may not be good enough. (Our secretary does type them up later so they're nice and neat.) What should we be doing, as far as record keeping goes?

You really need to tape record all of your hearings. If one of your decisions is appealed, you must produce a word-for-word ("verbatim") transcript of the hearing for the reviewing court. If you can't provide this verbatim transcript, the court may order you to re-hear the issue.

It has been suggested—not entirely in jest—that every new planning commissioner should have to transcribe at least one

hearing tape onto paper. Why? Because it proves how difficult it is to make sense of a poorly done meeting tape. All you need is a podium microphone which isn't working well, a couple of commissioners conversing privately in front of a desk-top microphone, somebody else coughing or rustling a stack of papers, and you've got a real auditory mess. Add to this a series of exhibits (informally identified as "that big map," "the other map," and "the second site plan you showed us,") and you'll have a hearing tape which is nearly impossible to transcribe.

To produce accurate, word-for-word meeting tape transcripts that will stand up on appeal:

1. Have speakers identify themselves each time they speak.
2. The Chair must control the testimony and discussion: Allow only one speaker at a time.
3. Assign each exhibit a letter or number designation. Be sure speakers reference those designations in their testimony.
4. If the meeting is packed with a large group organized to support or oppose an application, the Chair should limit redundant testimony to save time. Members of the group should be instructed to state that they agree with the previous speakers' testimony. You can further limit each participant's testimony to a 5-to-10-minute summary. (Planning commission meetings shouldn't run until 1:00 or 2:00 a.m. Adopt a reasonable cut-off time, such as 10:00 p.m., publicize it in your rules of procedure, and stick to it. If you need to continue after the cut-off time, do so another night.)
5. If any members of the public become unruly or obnoxious, the planning commission can expel them. If the meeting still cannot be controlled, it can be adjourned to a different place and time and can exclude the public, except the media.
6. Before closing a hearing to further testimony, be sure both sides of the issue have adequate time and opportunity to present their cases and arguments. Regardless of public sentiment in

your community, the applicant is always entitled to a fair hearing.

8. After our commission has heard all the testimony and it's time to make a decision, our Chairperson likes to go around the group, kind of informally, and see what each of us thinks, before we actually vote. How do you feel about this as a procedure?

It's not a procedure we recommend. Although the Chair may ask if anyone has further questions or needs additional information, a planning commission meeting is not the place for informal "straw votes." Once testimony has ended, the Chair should call for a motion, facilitate a full and complete discussion, and call for a formal vote on the issue before the commission.

Always cite the conditions in your local ordinance or code which pertain to the application at hand.

The Chair should cite the relevant ordinance or code, and conditions to be satisfied. In the City of Brewster, for example, variance applications must satisfy three conditions. The Chair should restate them for the record. (See Appendices 1 and 2 of Chapter 5. Although it's intended primarily for city councils, the material is relevant for planning commissioners.)

Always cite the evidence presented which, in your judgment, supports granting or denying the application.

Each member should cite the convincing evidence in his/her vote to approve or deny the application. After citing the evidence, the person should state how he or she voted. The combined results, tallied in the vote, will provide the basis for formal collective findings and conclusions. (See Chapter 2.)

9.

As a planning commissioner, can I be sued for the actions of our planning commission?

Yes. You owe it to yourself to check with your city or county to make sure the municipality you serve has errors and omissions insurance, or a self-insurance program which specifically covers you as a planning commissioner.

As a member of an advisory committee, your actions are normally not the cause of any decision which would result in damages. A different result could arise if a proponent (or opponent) of a project before the planning commission was able

to demonstrate a hidden financial interest on your part or an intent on your part to hinder the project, independent of the applicable rules and regulations.

In those rare cases where liability is found, it normally runs to the municipality. The key to peace of mind is to assure yourself that an adequate insurance program is in place. An insurance program provides a defense whether or not there is liability and coverage for any damages found.

The only exception to this general rule is a violation of the Open Public Meetings Act, for which you can personally be assessed a penalty of \$100. (Please see Chapter 2 for a detailed discussion.)

10. It seems to me that our planning commission wastes a lot of time at meetings. We're always waiting for a couple of commissioners to wade through their information packets before we can get on with the evening's business. Any suggestions?

In most communities, planning commissioners have a lot of reading to do. There are staff reports, draft planning documents, applications, zoning text amendments, training materials, and a host of other documents.

You really owe it to yourself—not to mention your fellow commissioners—to set aside the time necessary to read through all this stuff before the start of the meeting. You also need to attend the meetings. If you don't, there may not be a quorum, and no business can be transacted.

A good chairperson can help motivate people. But it's really a matter of taking your personal obligation seriously. Many people, including the elected body which appointed you, are counting on your good work. And that means staying current on your reading. Please spend the time necessary to come to meetings prepared.

It's fair to say that your service on the planning commission will go through phases. There will probably come a time when you know in your heart of hearts that it's time for you to do something else. Perhaps you've accomplished everything you set out to do when you agreed to serve. Perhaps personal, family, or business obligations are demanding more time than they used to. Perhaps community service of another sort has caught your interest. You will leave a generous legacy to the commission and to your community if you recognize these symptoms, and step aside in a timely way so that someone else

can serve in your place. This is perhaps the ultimate act of dedication.

How to Arrange a Short Course

To arrange a short course for your community, please contact:

Short Course Coordinator
Growth Management Services Program
Washington State Department of Community, Trade and
Economic Development
P.O. Box 42525
Olympia, Washington 98504-2525
Telephone: (360) 725-3000
Fax: (360) 753-2950
E-mail: shortcourse@cted.wa.gov

Municipal Short Courses typically are three hours long and are held in the evening. Speakers usually include a land use attorney and two planning directors or senior planners. All are volunteers dedicated to improving the quality of local land use planning in Washington state.

Topics covered during the Short Course generally include the legal basis of planning in Washington state, comprehensive planning and citizen participation, and plan implementation and the role of the planning commission. Additional topics can be covered in response to your community needs. There is no charge for the course or the handout materials.

PAW is committed to providing regional Short Courses whenever possible, which provide training to larger audiences than the basic municipal course. Regional Short Courses can be half or full day events, and are often held in conjunction with other conferences and workshops. PAW has a policy of providing financial support to communities and organizations wishing to host regional Short Courses. Please contact the Short Course Coordinator for more information on hosting a regional Short Course.

PAW
Planning Association of Washington

Membership Application

Membership Options

Institutional: \$60.00

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Growth management challenges Washington communities to deal effectively with difficult issues. Addressing these issues requires a thorough understanding of citizen participation and the legal requirements of the public process.

The first part of this chapter, *Citizen Participation*, focuses on the role of community residents in land use planning. It also introduces the most popular public involvement techniques local governments can use to encourage citizen participation, and guidelines for planning successful public meetings and work sessions.

The *Public Process*, which follows, provides an overview of the legal requirements for public involvement, meetings, and access to records. It also outlines how to introduce properly, deliberate, and adopt municipal codes and ordinances, including the Appearance of Fairness doctrine.

Part I: Citizen Participation

A. What is Citizen Participation?

Citizen participation in community affairs is as old as democracy; yet any attempt to define citizen participation is difficult. Citizen participation means different things to different people. Some view it as the task of electing representatives and voting on specific issues. Others define it as having an active voice in influencing local government decisions.

In land use activities, for example, citizens can testify at a public hearing; attend a workshop to create goals for the community comprehensive plan; serve a term on the planning commission; or answer a public opinion survey to identify community planning priorities. In other words, citizen participation in local government involves the people, in some fashion, in land use decisions. The traditional roots of contemporary participation are found in the town hall form of direct democracy. The fundamental justification for citizen participation is the premise that people have a right to participate in decisions that affect them.

Citizen participation is an established part of the land use planning and regulatory process in Washington state. All state planning laws require citizen participation—through public hearings—before plans or regulations are adopted, or before granting land development permits.

Emphasis on citizen participation in Washington has increased significantly following the Growth Management Act of 1990. The goals of the Act include, "Encourage the involvement of citizens in the planning process."¹ Although the Act does not further define citizen participation, the procedural criteria for adopting comprehensive plans and development regulations stress "that the process should be a 'bottom up' effort, involving early and continuous public participation, with the central locus of decision-making at the local level."²

The Growth Management Act also states:

*"Each county and city...shall establish . . . procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments."*³

This requirement provides overall guidance, but leaves local governments free to tailor a more detailed definition of citizen participation to fit community needs.

B. Who Should Be Involved?

State planning laws and local ordinances spell out the need to involve elected and appointed officials closely in local land use planning. A broad range of citizen groups and committed individuals (generally referred to as "citizens" or "the public") must also be involved. A brief overview of these participants includes:

City councils and boards of county commissioners set policy, make final decisions on plans and land development

permits, adopt ordinances, approve budgets for planning, and appoint members of the planning commission.

Planning commissioners are volunteer citizens with legal responsibility to review plans and projects. They do not make final decisions, but must make recommendations before elected officials can adopt comprehensive plans. Planning commissioners are non-partisan appointed officials who represent the general values of the community in land use decision making. They also serve as a sounding board for new ideas, promote community interest in planning, and furnish leadership in formal citizen participation programs.

Most larger cities in Washington state and its 39 counties have a professional planning staff, who bring technical expertise and knowledge to the land use planning process. Historically, the planning staff serves as advisers to elected officials and planning commissions. They conduct studies, administer planning regulations (such as zoning and subdivision ordinances), and are a resource for the public on land use planning activities. In smaller communities without professional staff, consultants sometimes are hired on a limited basis to provide technical assistance.

Typically, nearly everyone outside this formal structure who could be involved in the land use planning process is termed "the citizens" or "the public"—neither entirely appropriate. Citizens in a community are not a single homogeneous entity. They represent a broad spectrum of ideas and opinions, often with conflicting goals and values. The "citizens" are a diverse collection of individuals and groups: neighborhood associations; public interest groups, such as the local chapter of the Sierra Club; or special interest groups like the local chamber of commerce. Many are individuals intensely interested in planning issues, while there are citizens who pay little or no attention to the community's land use planning activities.

What these diverse groups share is a willingness to volunteer some of their free time for community planning activities. Motivations to participate range from believing that citizens must be involved in community affairs to maintain the rights and privileges of a free democratic society; to reasons of self interest, prestige, professional recognition, or an increase in business contacts.

Not everyone is interested in a formal citizen participation program. However, all citizens in the community must be given an opportunity to express their views and concerns, and

have them considered as decisions are made. Local government must make opportunities for citizen participation in land use planning accessible to everyone. It is up to the citizens to take full advantage of these opportunities.

C. Citizen Involvement: A Matter of Timing

No matter when officials invite or recruit citizen participation in land use planning, it will not be soon enough for some interest groups. Others will complain that participation is starting too early. Controversy over the topic of when to invite or recruit citizen involvement can only be settled by local officials. Citizens can be involved from the beginning, or at selected steps in the process.

Citizen mistrust, or lack of support for plans and projects, often has more to do with a lack of opportunity to participate early in the project than on its merits. Citizen participation in the earliest stages of land use planning will save time and agony for officials and planners in the long run. The longer participation is put off, especially in major planning or development issues, the more likely that rumor and misinformation will spread. When this happens, officials spend more time explaining what is not true than reviewing the pros and cons of the project.

Another good reason for early participation is to identify disagreements or conflicts. Conflicts are abundant in land use planning. A healthy airing of conflicting views early on encourages creative problem solving and productive conflict management. Delaying citizen participation does not reduce or avoid conflicts. Conflict can cause poor utilization of resources, delay important planning efforts, and, on occasion, result in the loss of desirable development projects.

Citizen participation efforts will fail if the deciding officials have not defined their expectations and responsibilities at the beginning. Elected and appointed officials must make a strong public commitment to announced citizen participation activities. They must define clearly what the purpose of any formally announced participation program will be; and there should be a written document that clearly states how officials will invite, review, and process citizens' information. People are more likely to devote time and energy to local planning activities if they know their officials are accountable.

D. Methods for Encouraging Citizen Participation

Citizen participation must be carefully planned and organized. Activities should be simple, straightforward, and manageable by officials, planning commissioners and staff; and designed to fit local values and available resources.

The extent and intensity of any participation activity should match the importance of the issue. Widespread participation is desirable when comprehensive plans or land development ordinances are being created or updated. Participation efforts can be on a smaller scale if the issue mainly interests a particular neighborhood or area.

The best that can be done in any community is to see that citizen participation activities are open and accessible to anyone who wishes to be involved; that they do not require citizens to have special technical knowledge; and that there are clear lines of responsibility and accountability.

Two methods are key to successful citizen participation: interaction and public information. Public information methods are a time-honored way to inform citizens about land use plans and projects. Interactive methods create a dialog between citizens, elected and appointed officials, and professionals.

1. Public Information

Citizens need to be informed about land development plans and projects, and armed with the facts they need to participate constructively. Citizens must also be informed of specific opportunities for involvement and how their participation will influence land use decisions. Public information methods reach large audiences, stimulate interest in community planning, announce citizen participation activities and events, provide notice of public hearings, and inform the public of actions and decisions.

Following are just a few examples of traditional public information methods:

Public Information Methods

Newspaper, Television, and Radio		
Feature Story	Press Conference	News Coverage
Legal Notice	Insert	Paid Advertisement
Editorial	Talk Show	Public Service Message
Other		
Direct Mail	Newsletter	Video Tape/Slide Show
Hotline	Displays & Exhibits	Documentary Films
Speakers Bureau	Telephone Tree	Brochures

The best way to select public information tools is to identify the objective and audience to be informed, and choose the methods based on skills and available budget. Cooperation from the local media is one key to maintaining a solid public information program. Local planning agencies should include funding for public information activities in their yearly budgets.

2. Citizen Interaction

If citizen participation is to be effective and not simply "window-dressing" people need opportunities to:

- *clarify values and attitudes*
- *express their opinions and priorities*
- *create proposals for plans and projects*
- *develop alternative approaches*
- *resolve conflict*

Interactive methods encourage two-way communication and innovative solutions. All of these methods create a dialog among decision makers, professionals, and citizens who will be affected by those decisions. Some interactive methods, such as workshops, are effective throughout a planning process. Others, like surveys, are best limited to specific steps. Interactive methods most frequently used in Washington state are public hearings, public meetings, citizen advisory committees and community surveys.

3. Public Hearings

A public hearing is a special meeting which allows the public to comment on proposed plans and projects before officials make a final decision. Operating under a set of laws and formal procedures, it is an open public meeting. All citizens must be permitted to present their views for the official record, verbally and in writing, before the hearing body makes its decision.

Public hearings are conducted by city councils, boards of county commissioners, planning commissions, and, for certain designated zoning issues, the board of zoning adjustment. Some jurisdictions in Washington have hearings examiners who conduct quasi-judicial public hearings related to land development permits.

It is in the community's best interest to see that public hearings are carefully planned. In addition to the legal aspects of conducting a hearing, the points listed below can significantly increase the productivity of public hearings.

Before a hearing takes place:

- 1) The responsible agency should carefully examine the proposal or application to see that it is complete, and that all procedures and regulations have been followed.
- 2) All interested parties should receive ample notice of the hearing.⁴
- 3) Members of the hearing body should visit the site of all specific development proposals.
- 4) At least several working days prior to the hearing, staff reports, environmental assessments, economic analysis, and any other documents relevant to the hearing should be available for members of the hearing body and the general public.
- 5) Printed copies of the hearing body's rules and procedures should be on hand.

HOW TO CONDUCT A PUBLIC HEARING

- 1 The Chair calls the hearing to order, explains the purpose of the hearing and the procedures to be followed.
 - 2 The Chair is responsible for conducting the hearing in a fair, evenhanded manner, and should request that all questions and comments be addressed through him/her.
 - 3 A brief summary description of the proposal or plan is given by the Chair or a member of the planning staff. A lengthy description of the proposal is not necessary, as the subject of the hearing needs to be announced sometime before the hearing.
 - 4 All visual aids, such as maps and slides showing specific sites or development proposals, must be visible to everyone in the hearing room.
 - 5 The Chair opens the hearing for public testimony when the description of the proposal or plan is completed.
 - 6 Typically, proponents will be heard first, followed by opponents and a short rebuttal by proponents; however, some hearing bodies ask people to sign up if they wish to testify and then call for testimony based on the order of the sign up sheet.
 - 7 The Chair closes the hearing after all testimony is presented; however, it may be necessary to continue the hearing to a future date if there is a great deal of testimony.
 - 8 The Chair thanks all citizens in attendance for their testimony. The hearing body will either debate, deliberate, and make a decision; or take all the information under advisement and make a decision at the next meeting, or announce a specific date when the decision will be made.
-

Members of the hearing body need to keep a fair and open mind until all testimony is presented. Citizens should be adequately prepared to testify, know the hearing rules and procedures, have a clear statement of purpose for their testimony, and back up their statements with solid information. It is also helpful to the hearing body if citizens prepare written testimony and present only summary remarks at the hearing.

Public hearings are required both for legislative and quasi-judicial decisions. Legislative hearings are conducted to seek citizen views on general land use plans and ordinances. Quasi-judicial hearings deal with individual property. Quasi-judicial hearings (such as rezoning a property from residential to commercial or subdividing several acres in a rural area) are frequently surrounded by conflict. These conflicts often make front page news and are sometimes resolved in the courts, rather than the community.

The standard public hearing provides proponents and opponents of land development projects an opportunity to comment, but it does not work very well as a technique to solve problems or resolve conflicts. For this reason, many private developers are initiating their own citizen participation sessions. They are meeting and consulting with neighborhood

groups in the design stages of project development. These private initiatives have been successful across the state.

Legally required public hearings offer only a limited opportunity for two-way communication. They are most effective if used in combination with other citizen participation methods. Public hearings are not a very expedient method for resolving conflict and can be counter-productive if used as a method to rubber-stamp plans or projects. The advantage of public hearings is that they guarantee citizens' comments on land use issues will be heard.

4. Public Meetings

Designed to inform, educate, or facilitate extensive interaction and dialogue, public meetings⁵ are a widely used form of citizen participation. Information and educational meetings are a valid first step in any citizen participation process. Technical information can be distributed, along with an orientation to citizen participation opportunities and general or detailed descriptions of plans and projects.

Problems, however, can occur when the purpose of a public meeting is not clearly stated. Citizens become frustrated and angry if they attend a meeting believing they will be able to express their views, only to discover that the meeting was designed to educate or inform them about plans or projects. The purpose of a public meeting must be announced openly and honestly in pre-meeting publicity.

5. Community Workshops

One of the most popular citizen participation methods is the community workshop. Encouraging extensive interaction, workshops offer a structure that divides many people into small work groups of six to nine individuals. The value in this method is the data citizens develop in the work groups. Each small group prepares a written report, communicated at the end of the workshop to all attendees. Data developed at community workshops can be used throughout the planning process. When people see the goals, priorities, and ideas they have developed in community workshops reflected in land use decisions, they are more likely to support local government plans and projects.

Other advantages of this method are: 1) everyone can participate at meetings; 2) it is an excellent means of developing community consensus; and 3) it is relatively

inexpensive. To be successful, workshop managers must have good group facilitation and data management skills.

Keys to Planning and Conducting Successful Public Meetings and Community Workshops

- 1 Tell people the purpose of the meeting and have a written agenda.
 - 2 Make sure that the meeting date and time is convenient for the people who are being asked to attend.
 - 3 Notify people well in advance, approximately one to two weeks before the meeting date.
 - 4 The meeting site should be easy to get to, serviced by public transportation, and have ample parking.
 - 5 Select a meeting room that is appropriate for the size of the expected audience. Avoid rooms with pillars, other structural supports, and fixed seats.
 - 6 Make certain there is adequate lighting, ventilation, and a comfortable room temperature.
 - 7 Assure that people will be able to hear speakers and converse in small groups.
-

PRACTICE TIP: People appreciate having the announced starting and ending times observed. One note of warning: speak in English, not planning jargon, at public meetings. Using technical terms that people do not understand has been the downfall of many carefully planned public meetings. Paying attention to details can reduce problems and make public meetings more enjoyable for everyone involved.

A few words on meeting formats: Information and education meetings are usually set up in a formal manner with a podium and chairs set in rows. Informal arrangements with chairs and tables for small groups are appropriate for workshops. Meeting sponsors often serve coffee, tea, or juice as a way to make people comfortable and help them become acquainted during meeting breaks. Having materials for people to look at and study prior to a meeting, and setting up audio visual equipment well in advance of the starting time are other simple ways to make meetings less stressful for organizers and participants.

6. Citizen Advisory Committees

Citizen advisory committees, which give advice to local officials on a particular plan, project, or program, are very popular for citizen participation. Community or neighborhood committees range in size from small, select groups of individuals appointed by local officials, to large groups of 50-100 volunteers. Advisory committees assure that community values and attitudes are represented in the planning process. They can also underscore obstacles to plans and projects, generate interest in land use planning, and help resolve conflicts among interest groups.

Appointed advisory committees are most efficient when they represent a cross-section of community interests. Volunteer advisory committees are best suited to educate and inform, create interest in community planning issues, and to get feedback on plans and projects. They generally do not represent all viewpoints in the community and may be strongly biased.

In all cases, whether an advisory committee is appointed by local government officials or composed of volunteers, staff support must be supplied to deal with technical and organizational tasks.

7. Citizen Surveys

A citizen survey is often used to gather information about citizen attitudes, values, and priorities. It can also gather data about a community's residents, such as age, income, and employment. Surveys are not a truly interactive participation method; citizens do not communicate directly with decision-makers in a survey, but they can express their opinions on land use issues.

Several types of surveys are used in land use planning. The formal scientific survey systematically measures community attitudes, values, and priorities. Data collected by scientific surveys can statistically represent all citizens' views in a quantifiable manner. Crucial elements in a formal scientific survey are properly designed questionnaires, careful tabulation of results, and a written analysis and interpretation of the data. Survey results must be reported in a straightforward manner and be widely distributed throughout the community. If the local government staff is not experienced in survey design and analysis, they should seek assistance.

The community self-survey is popular in smaller communities. This method makes extensive use of community volunteers with a minimum of outside assistance. Citizens organize and conduct all aspects of the survey, from developing and distributing questionnaires to tabulating and distributing results to the community. The advantages of this type of survey are that it encourages broad citizen participation and it collects information about community attitudes and priorities. Conducting a community self-survey is a large undertaking. This method should be chosen only if enough volunteers are available and when the survey results are not needed immediately.

Informal methods to survey public opinion include questionnaires printed in the local newspaper, or call-in answers on a talk show. Such surveys will not represent all community views, but can help focus on or uncover land use planning issues. They should not be relied on to develop community plans.

Many other methods have been used successfully in communities across the state. Mediation techniques, for example, can help disputing parties resolve conflicts over land use plans and projects. New methods, such as interactive computer simulations and cable television, are being introduced in citizen participation activities. In selecting among these, communities should be open to new and innovative techniques. However, they must carefully evaluate their ability to execute a particular method. Guiding factors in making a selection are 1) match the appropriate method to each citizen participation objective; and 2) have the skills and resources to carry out the method properly.

A SEVEN STEP GUIDE TO CREATING AN EFFECTIVE CITIZEN PARTICIPATION PROGRAM

- 1 **DETERMINE OBJECTIVE(S)** of the participation program. Write them down, in plain English, so everyone can understand the purpose of the program.
- 2 **IDENTIFY WHO** should be involved by identifying who will be impacted by the plan, ordinance, or project. These are the citizens who need an invitation to participate.
- 3 **DECIDE WHEN** to invite/recruit citizen involvement. This step must be consistent with Step 1. For example, if the objective is to have citizens develop initial ideas for plans, people must be involved at the beginning of the process. If the objective is to have people review and comment, it will not be necessary to plan for involvement until draft proposals are available.
- 4 **IDENTIFY AND EVALUATE A VARIETY OF METHODS** that are appropriate to carry out the program objective(s). Typical evaluation criteria are: the cost of the method; the ability of staff (volunteer and professional) to administer the method; the amount of time needed by citizens; the amount of time needed by staff to process data generated; and the quality of that data.
- 5 **SELECT THE BEST METHOD(S)** to achieve each program objective. Be sure they are within the resource capabilities, both financial and human, of the community.
- 6 **CARRY OUT** the citizen participation program.
- 7 **EVALUATE THE PROGRAM** when it has been completed. Decide if objectives have been met, list what went well and what could be changed or improved for the next time.

Part 2: The Public Process

Public involvement in local planning and land use decisions in Washington communities takes place within a formal structure established by law. Procedures governing how public meetings are conducted relate to the general statutes and case law governing the conduct of public officials. Some of these requirements apply specifically to planning commissions; all of them, however, are important in conducting public agency business.⁶

A. Public Meetings/Executive Sessions

I. Open Public Meetings—In General

Planning commissions, hearings examiners, and city and county governing bodies operate under the umbrella of the state's public meeting and public document laws.

With a few exceptions, the Open Public Meetings Act⁷ requires the governing bodies of public agencies to keep all meetings at which action is taken open and accessible to the public. Multi-member planning commissions are considered governing bodies of public agencies under the Act.⁸

"Action," as used here, includes substantive deliberations or the receipt of evidence, as well as formulating findings or taking final votes.⁹ Thus, if a quorum of a governing body meets at any time or place and engages in any discussion or deliberation about agency business, the result is a meeting that must comply with open meetings requirements. Subcommittees of a governing body also are considered governing bodies if they exercise delegated powers, hold hearings, or take testimony or public comment.¹⁰

Open meeting requirements of the Act (including proper procedures for notice and conduct) apply to all regular or special meetings, even when they are called "work sessions" or "study sessions." There are times, however, when the public does not have a right to participate in all activities of an "open" meeting. While agendas, staff input, commission deliberations, work sessions, and briefings are all activities proper at public meetings, the commission or council may permit or exclude public participation, as appropriate to the circumstance. Only at specific public hearings is the commission or council required to solicit and listen to public input on a specific subject.¹¹

Planning commissions and city or county legislative bodies hold two types of meetings:

a. Regular Meetings

A regular meeting is held at fixed times established by ordinance, resolution, or similar rule. Once properly established, regular meetings require no separate public notice. A regular meeting normally follows an agenda; but all business of the body may be transacted at such a meeting, including matters raised at the meeting but not listed on the agenda.¹²

b. Special Meetings

Any meeting not set by resolution for general meeting purposes is a special meeting.¹³

To hold special meetings, public agencies must comply with additional rules. First, written notice of the meeting identifying the time, place, purpose, and agenda items to be discussed must be delivered to each member of the body at least 24 hours in advance, either by mail or personal delivery. This requirement is waived by attending the meeting, and may be waived in writing either before or after the meeting, by any person entitled to notice.

Written notice of special meetings, including the agenda, must be sent to every newspaper, radio station, or other organization or person that has requested in writing to be notified of special meetings.

Board action at special meetings is limited to matters identified on the agenda and published in the special notice. Thus, matters not on the special notice cannot come before the board for action. While technically permitted, it is best to avoid "discussion" of non-agenda items. This often leads to *de facto* decisions, which violate the Act and may invalidate later formal action.

2. Closed Meetings—"Executive Sessions"

Meetings at which the public may be excluded from deliberations ("executive sessions") are narrowly defined. These include matters pertaining to certain personnel matters, real estate acquisition, selling or leasing property, and, under

certain circumstances, consultations with the agency's legal counsel.¹⁴

"Executive sessions" commonly involve sensitive personnel matters (such as evaluations of individual employees) and sensitive legal consultations. Closed discussions of agency enforcement actions and "litigation or potential litigation" which may involve the agency or its officials are permitted by statute when public knowledge of the discussions would harm the agency.¹⁵ The exemption generally includes discussions of legal alternatives, where the agency's decision could result in litigation. Most other legal discussions pertaining to non-controversial agency business must take place in open meetings.

Note: The statute generally allows only "discussion" or "consideration" of specified matters in executive session. Any final action must be taken in the subsequent open session.

Notice rules that apply to public meetings also apply to executive sessions. Before the executive session begins, the public meeting is convened and the presiding officer announces:

- *The board is going into executive session.*
- *The purpose of the session and the reason it is exempt.*
- *The length of time the session will last.*¹⁶

When the session ends, the presiding officer returns the meeting to public session and discloses the nature of the meeting for the record. He or she may adjourn the meeting if there is no other business before the board, or proceed to other agenda items.

3. Conduct of Meetings

The Open Public Meetings Act encourages public attendance at meetings.¹⁷ Any conduct that could discourage attendance (such as requiring all attendees to sign up for the meeting) is prohibited.¹⁸ Sign-up sheets for those who wish to speak at a public hearing, however, are appropriate and recommended. When large crowds are expected, sign-in sheets should be numbered so testimony can be taken in order. If attendees behave in a disorderly manner, the body may expel the offenders or relocate the meeting.¹⁹ For an accurate record of

the proceedings, persons who want to speak may be required to identify themselves.

By law, minutes must be taken and recorded promptly for all public meetings, except executive sessions.²⁰ Stenographic notes and tapes are not considered minutes unless they are officially adopted as such. If a public agency does not produce written minutes, the adoption of tapes or notes of previous meetings as the "official meeting record" should be an agenda item at every meeting. Under the public records law, these documents may be subject to public inspection.

If proper notice or procedures for open meetings are not followed, any action taken will be invalidated.²¹ Persons who violate the Open Public Meetings Act are also subject to a \$100 penalty for each violation, so responsibility rests with the deliberative body (and usually the presiding officer) to check for procedural compliance before taking action.²²

While state law does not prescribe any specific meeting protocol, communities are encouraged to adopt, publish, and follow an agenda format. A consistent agenda format will make it easier to follow community business. Some communities publish upcoming subjects for future meetings in the agenda package. Advance notice allows everyone interested in the topics to prepare and spread the word, increasing public participation.

Written staff reports should be available several days in advance. This will give the commissioners or council members and other participants time to understand the case and prepare their comments. A staff or committee presentation of matters to be decided is common at public hearings. Where projects are involved, the applicant usually has the opportunity to address the proposal and its consistency with local codes and ordinances.

At large hearings, testimony should be organized so everyone is heard and the evidence is presented in a logical fashion.

Acceptable alternatives for large hearings include (a) testimony taken in order of sign up, (b) all testimony in favor, then all opposed, or (c) alternating favorable and opposition testimony. Time limits may be imposed, although written comments should be solicited when the subject cannot be covered in a brief public comment. Finally, groups should be given more time to organize joint comments or presentations, reducing the number of comments needed.

If a meeting runs overtime or needs to be continued, the presiding officer must adjourn the meeting to a stated time and place.²³ A notice of adjournment is then posted promptly on the door where the meeting was held. If the adjourned meeting was a special meeting, written notice of adjournment must be mailed to all who are given notices of special meetings. Once reconvened, the meeting may continue as if there were no adjournment. There is no limit to the number of times a meeting may be continued.²⁴ However, one must bear in mind that certain actions of the deliberative body are to be taken within independently established deadlines. For instance, a preliminary plat application must be either approved, denied, or returned for modifications within ninety days from filing and a final plat application within thirty days, unless either time period is extended.²⁵ Other deadlines may apply as well, either by state law²⁶ or local ordinance. The governing body must therefore be careful when it repeatedly continues matters to subsequent meetings.

B. Public Documents/Confidential Documents

1. Public Records or Freedom of Information

Washington's open public records provisions,²⁷ modeled after the federal Freedom of Information Act,²⁸ are sometimes called the state's Freedom of Information Act. Washington adopted its Public Records Act by initiative in 1972.²⁹

The public purpose of the Freedom of Information Act is stated boldly in broad, sweeping language.³⁰ The definition of records, for instance, is so broad that it suggests members of the public can inspect and copy any transcription of thought or speech in the agency's possession related to agency business.³¹ There are exceptions, of course, designed to protect the public interest as well as privacy rights of individuals in some cases.³²

2. Duty of Public Agency to Facilitate Access to Records

An agency must establish procedures for providing access to its records. Indexes should be created and published.³³

All records must be available for public inspection and copying during customary office hours. If an agency has no regular office hours, the hours are set by statute.³⁴

The agency must make its facilities available for the public to make copies of its records, or must make the copies itself upon request. The agency may charge for the cost of making copies, but only at the actual cost. The agency may not charge for making record searches or allowing inspections.³⁵

3. What Records May Be Withheld

The Public Records Act provides a variety of specific, narrowly construed exemptions. One exemption from disclosure that might be involved during the planning process is for "Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss."³⁶ Note the requirement of "public loss."

There is an exemption for records of archaeological sites and for certain business records protected under other statutes.³⁷ Washington appellate courts have held on several occasions that agencies cannot simply create confidentiality for records—for instance, by agreement with a private party—without statutory authority. For example, an agency or public official cannot accept an employment application with the understanding that the applicant's business records submitted with it will be confidential. An exemption for this purpose was sought during several legislative sessions, but has yet to be enacted.

An agency may apply to a court for an exemption for a particular record when disclosure would harm "vital governmental functions."³⁸ However, this standard is difficult and uncertain to meet.

4. Procedures for Access—Remedies

An agency must make its records available promptly on request. It must provide a reason for denying access and must establish procedures for reviewing requests. The law establishes schedules for prompt action by the agency. Municipalities should adopt ordinances or resolutions identifying the method and manner for requesting public documents, the person or persons responsible, and the time within which answers should be provided.³⁹

A person whose request for inspection or copying is wrongfully denied has the right to sue the agency and force it to produce the record. If successful, the requesting person might be entitled to reimbursement for legal costs and may be awarded up to \$100 per day for each day the request was denied. Generally, the agency has the burden of proving its denial was justified.⁴⁰

5. Conflicts of Interest

The law strictly forbids public officials, including planning commissions, to have personal financial interests in contractual matters they are supervising.

*No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.*⁴¹

These rules rarely apply in planning cases; they are usually limited to situations where the municipality is contracting for consultants to review a project or proposal, or make studies for the community.

6. Nonfinancial Conflicts

The rule of incompatible offices is a nonfinancial conflict which may arise. Courts generally hold that a public official may not hold two offices simultaneously that are incompatible with each other,⁴² unless expressly permitted by statute. Examples include two offices in which one has supervision over the other, or offices that at times may hold opposing duties, such as the simultaneous appointment of one person as (a) mayor and planning director; or (b) council member and planning commissioner; or (c) boundary review board member and elected official involved in annexations.

C. Appearance of Fairness

Appearance of fairness is a judicial doctrine that may arise when (1) public hearings are required, (2) a decision must be made based on evidence in the record, and (3) the decision is based on applying policy to a specific situation, rather than creating a new policy for the community.⁴³ The appearance

of fairness doctrine arises from the judicial perspective that certain actions of local officials must not only be fair in fact, but conducted in a manner that is fair in appearance.⁴⁴

The courts divide zoning and planning actions into two functions. Actions that involve the public as a whole (rather than a particular project or proposal) are called "legislative actions." Examples include area-wide zoning actions or comprehensive plan modifications. But when a project or proposal is at issue, especially if policy is applied to a specific parcel or small group of parcels, the action is termed "quasi-judicial."⁴⁵

The distinction between the two is that broad public policy declarations are legislative actions; applying that policy to a particular situation through hearing, findings, and creating a record is a quasi-judicial proceeding.⁴⁶

In the quasi-judicial setting, the appearance of fairness doctrine holds that the decision-maker must not have conflicting interests or preconceived views on a project. This ensures that: (1) the decision is made on the record; (2) the decision-maker has no entangling alliances that would make it appear that he or she might favor one side over the other; and (3) the proceedings are conducted in a manner that appears fair.

As stated by the Supreme Court when the doctrine was first articulated:

It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in substance, but fair in appearance as well.⁴⁷

The reasoning behind the appearance of fairness doctrine is twofold:

The first applies if the community establishes a policy applicable to a certain situation. Each participant in the proceeding has the right to have a matter judged on its merits by unbiased officials who are not influenced by financial or personal interests.

Second, because any quasi-judicial decision is open to court review, all factors in a decision must be on record for the court's evaluation. Where one or more of the decision-makers have interests or contacts outside the record that influence the

decision, the rights of all parties to have the matter decided on the record may be compromised. This is why the court articulated the appearance of fairness doctrine.

The doctrine has now been codified and clarified by statute.⁴⁸ Key points to keep in mind include:

DOCTRINE OF FAIRNESS

- The doctrine applies only to actions that determine the legal rights of specific parties in a hearing or contested case proceeding.
- Contact with a constituent by a decision-maker will not result in an appearance of fairness claim if the contact is during the course of the official's business and does not involve issues in a contested hearing.⁴⁹
- Where ex parte contacts occur (i.e., between an official and only one of the interested persons in a case), the official must disclose the contact and substance of the contact on the hearing record.⁵⁰ Disqualification may still follow if the contact could prevent the official from fairly deciding the case on the record.⁵¹
- Persons will not be disqualified for comments they made before declaring for public office, or while campaigning for public office.⁵²
- Persons may not be disqualified on the basis of campaign contributions, if they follow campaign disclosure laws.⁵³
- Planning commission members, having made a recommendation to county or city officials, are not barred from participating in further proceedings.⁵⁴
- The appearance of fairness doctrine cannot be used to defeat a quorum if the member or members first disclose the basis for their disqualification.⁵⁵
- None of the exceptions to the doctrine apply if the result is a hearing that is actually unfair (due process violation), as opposed to simply appearing unfair.⁵⁶

Here are three keys to a successful quasi-judicial proceeding:

1. **Keep an accurate record of the hearing.** All applications, exhibits, reports, letters, and written and oral comments on the project should be part of the record.
2. **All decision-makers should disclose special interests they may have in any matter before the particular body.** When a decision-maker has a vested interest or predisposition to a specific outcome

(such as a financial or other personal interest that would prevent an unbiased decision, or a personal relationship with the applicant or the opponent), that decision-maker should withdraw from consideration and voting on the matter.

3. The decision should be written and on the record (see discussion below).

D. Public Decisions and Creation of Records

1. Conduct of the Initial Hearing

The manner in which hearings and meetings are conducted is important in two respects. 1) Meetings must be conducted so they are fair, both in fact and appearance, to persons affected by their outcome. 2) Planning agency action or non-action involving factual questions must be defended effectively on appeal through the case record.

2. The Requirements for an Adequate Record

Washington courts make it clear that an adequate record is the key to successful land use decisions.⁵⁷ When any decision is to be made on the record, the municipality must maintain an adequate record of all proceedings.

The record should contain the following elements:

AN ADEQUATE RECORD

- The application and supporting documentation.
- The environmental determination and any supporting documentation.
- Any staff report and prehearing correspondence pertaining to the case, including all agency or department comments and letters from interested citizens.
- A verbatim record (usually taped) of any hearing in the case.
- Any exhibits offered during the hearing should be numbered and kept as part of the record.
- Nothing is part of the record unless it appears on the tapes or in exhibits offered as evidence in those proceedings.
- Comments must appear on the record before they can be considered in evaluating an application. All oral comments to be considered should be made into a microphone provided

for that purpose. This will ensure they appear on the record. The Chair should instruct persons offering comments or testimony to speak into the microphone and identify themselves. Otherwise, the Chair should ask them to repeat the remarks into the microphone for the benefit of the record. This same requirement applies to testimony by staff and officials. Comments not so recorded may not be considered in making the final decision.

- If a tape ends, the Chair should stop the proceeding and forbid any further testimony until a new tape is inserted and playing. Using the microphone, the Chair should announce that the tape has just been changed. Anyone whose testimony was made after the previous tape had run out, should be invited to repeat his or her comments for the record, with a warning that comments not on the tape will be disregarded.
- No map, drawing, or sketch should be discussed unless the document is offered, marked or labeled, identified on tape, and kept as a part of the record. When a document is accepted as an exhibit, the secretary should affix an exhibit designation to it. In some instances (as with an exhibit of substantial value to the owner) an exact copy of the document is acceptable for the record. The name and nature of the document should be noted on the tape; and in whose possession the original document will remain, if it is needed for evidence. The exhibit should be photographed or copied for the record.
- Hearings should be closed formally by motion. When a hearing ends, deliberations should be initiated promptly, and no other testimony or evidence considered by the hearing body.

The decision-making body may begin deliberation or may continue the proceeding to a new work session or meeting. If new evidence is to be received, the commission or council must take steps to reopen the record and properly receive the new materials.

Failing to maintain an accurate record when using tape recordings will cause problems for a municipality. The Court of Appeals gave the following admonition in a case where an inadequate record caused significant problems:

We strongly urge that where proceedings are electronically recorded great care be taken to ensure usable recordings. To that end, we suggest:

1. *If possible, high quality multi-track recording equipment with multiple microphones should be used. This would enable the transcriber to play back one track—hence one voice—at a time.*
2. *Proceedings must be organized to facilitate recording. Thus, speakers must be required, and reminded if necessary, to speak into the*

microphones; to identify themselves before speaking, spelling out their names; to stay at the microphones while speaking; and to talk rather than rely upon bodily gestures to convey meaning.

3. *The person operating the recorder should monitor the recording, check the tape after periods of increased background noise to determine whether testimony was recorded, and ask the speaker to repeat the testimony if it is inaudible.⁵⁸*

3. The Need for Findings and Conclusions

Written findings of fact and conclusions state the principal factual and legal basis for a decision. A finding does not recite the evidence, but rather demonstrates that the criteria for a decision have been met. (Take, for example, a plat in a 4 dwelling units per acre minimum zone. Finding: The plat has a density of 4.25 dwelling units per acre. Conclusion: The density requirements of the code have been met.) If the record does not support the findings, or the findings do not support the conclusions, or if neither support the decision, a reviewing court may reverse the decision.

Statutes governing the actions of quasi-judicial officials require adequate findings:

Both the board of adjustment and the zoning adjuster shall, in making an order, requirement, decision or determination, include in a written record of the case the findings of fact upon which the action is based.⁵⁹

Written findings and conclusions are also required when any jurisdiction decides to use a hearings examiner;⁶⁰ or, when subdivision actions are taken.⁶¹

The requirement for adequate records and findings applies to more than quasi-judicial project approvals. Under the Planning Enabling Act,⁶² planning commissions must act by a majority of the whole, not simply of the quorum, and must produce adequate findings.

*The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action....*⁶³

The Planning Enabling Act also requires that the commission's recommendations be accompanied by the motion and a statement of factors considered at the hearing, with an analysis of controlling findings.⁶⁴

4. The Administrative Appeal

Local governments are no longer required to provide for administrative appeals.⁶⁵ If no administrative appeal is provided, then a challenge to a local land use decision is directly to superior court.

If an administrative appeal is provided, the legislative body has appellate jurisdiction. When operating by appellate jurisdiction, the decision is based only on the record made before the hearing official. Under this system, the legislative body does not conduct a second hearing,⁶⁶ and will not take testimony for its record.

The only questions needed in an appellate model are: (a) are the decision-makers' findings supported by evidence in the record, and (b) did the decision-makers correctly apply adopted county/city policy? The legislative body may not adopt new findings based on the evidence before the decision-maker, or hold hearings to elicit new evidence. The record below is the sole basis for the decision on appeal.

5. Superior Court Appeal

Once local officials make a final decision, further appeal is by a petition to superior court under the Land Use Petition Act ("LUPA").⁶⁷ The reviewing court generally considers only the record created at the local level. This is why an accurate record of all proceedings must be maintained. If the only record available is inaccurate or incomplete, the court will usually void the local action and remand the case for a new (de novo) hearing. A verbatim (word-for-word) transcript of the proceedings is usually required.

Reviewing courts have identified these prerequisites for adequate judicial review:

- c *A well-defined record, identifying the nature of the decision and its basis.*
- c *Findings that identify the standards considered and the factual basis for action.*
- c *A clear expression of action taken by the decision-making body, the persons or entities affected by the action, and the extent of such effects.*

Communities can take comfort in the fact that few cases are ever appealed to court, and only a small percentage of them rule against the city or county. Accuracy and clarity of the record is a community's first line of defense in such cases.

An appeal under LUPA must be filed within 21 days of the issuance of a land use decision.⁶⁸ The 21-day limitations period contained in LUPA, together with the Act's service requirements, must be adhered to carefully. In a recent court of appeals case, the dismissal of a petition was upheld where service of the petition occurred 20 minutes after normal office hours on the last day of the 21-day period.⁶⁹ An appeal period may begin to run on the date of an oral decision at a public meeting where the decision rendered is final and conclusive.⁷⁰ The appeal period for written decisions, including "decision documents" prepared in advance of a vote, begins to run three days after the written decision is mailed.⁷¹

To obtain judicial review under LUPA, the petitioner must first exhaust all of his or her administrative remedies.⁷² If the only administrative remedy available to a project opponent is participation in a public hearing process, the remedy may be exhausted by writing and speaking against the proposed decision.⁷³ A number of other recent opinions have further clarified what constitutes the exhaustion of administrative remedies for purposes of LUPA.⁷⁴

LUPA requires courts to accord due deference to a local jurisdiction's construction of a statute or ordinance. Where a municipal ordinance is unambiguous, the court will look to the plain meaning of the language used in the statute. Where a legislative enactment, or ordinance, is ambiguous, the court may seek the expertise of the agency when construing its meaning.⁷⁵

The doctrine of res judicata bars the retrial of the same claim in a subsequent action. The doctrine applies in the quasi-judicial administrative context and stands for the general proposition that "a controversy should be resolved once, not more than once."⁷⁶ Res judicata will bar a claim when a prior final resolution is similar in four respects to a subsequent proceeding: There must be a common identity of (1) subject matter; (2) cause of action; (3) persons or parties; and (4) the quality of the persons for or against whom the claim is made. Thus, under LUPA, where an agency has previously rendered a final decision on a landowner's application, that landowner may not retry the same claim at a later date unless there has been a substantial change in circumstance or conditions relevant to the application, or a substantial change in the application itself.⁷⁷

Finally, the superior courts have inherent authority under the Constitution to review agency action by writ of certiorari to determine if the action is arbitrary and capricious or contrary to law.⁷⁸ Agency action is considered arbitrary and capricious if it is willful and unreasoning, taken without consideration and in disregard of the facts and circumstances.⁷⁹

ENDNOTES FOR CHAPTER 2

- 1 RCW 36.70A.020(11).
- 2 WAC 365-195-010(3).
- 3 RCW 36.70A.140.
- 4 RCW 36.70B.110(11) requires a public comment period and sets forth specific requirements for providing notice of a land use project hearing.
- 5 RCW 36.70B.020(5).
- 6 For a more detailed analysis of this subject, readers should consult *Knowing the Territory*, published and periodically updated by the Municipal Research & Services Center of Washington, November, 1991.
- 7 Chapter 42.30 RCW.
- 8 RCW 42.30.020(1)(c).
- 9 RCW 42.30.020(3).
- 10 RCW 42.30.020(2).
- 11 RCW 42.30.030 requires meetings be open and all persons be permitted to attend any meeting; it does not require that persons be permitted to participate.
- 12 RCW 42.30.070 &.075.
- 13 RCW 42.30.080.
- 14 RCW 43.30.110.
- 15 RCW 42.30.110(1)(i).
- 16 RCW 42.30.110(2).
- 17 See RCW 42.30.010 & .030.
- 18 RCW 42.30.040.
- 19 RCW 42.30.050.
- 20 RCW 42.32.030.
- 21 RCW 42.30.060.
- 22 RCW 42.30.120(1).
- 23 RCW 42.30.090.
- 24 RCW 42.30.100.
- 25 RCW 58.17.140.
- 26 See, e.g., RCW 36.70B.070 & .090.
- 27 RCW 42.17.250 - .348.
- 28 5 U.S.C. § 552.
- 29 Initiative Measure No. 276, approved November 7, 1972, eff. January 1, 1973.
- 30 RCW 42.17.290.
- 31 RCW 42.17.250 & .260.
- 32 RCW 42.17.310 & .315.
- 33 RCW 42.17.260 & .290.
- 34 RCW 42.17.280.
- 35 RCW 42.17.300.
- 36 RCW 42.17.310(1)(h) (emphasis added); *Servais v. Port of Bellingham*, 127 Wn.2d 820, 904 P.2d 1124 (1995). But see *Lindberg v. Kitsap County*, 82 Wn. App. 566, 919 P.2d 89, review granted, 130 Wn.2d 1025,

930 P.2d 1229 (1996) (site and drainage plans for proposed residential development were not exempt from copying under The Public Records Act).

37 RCW 42.17.310(1)(k) & (m)(o)(r)(z)(bb) & (ff).

38 RCW 42.17.330.

39 RCW 42.17.250 & .320.

40 RCW 42.17.340.

41 RCW 42.23.030.

42 Kenneth v. Levine, 50 Wn.2d 212, 310 P.2d 244 (1957).

43 Smith v. Skagit County, 75 Wn.2d 715, 739, 453 P.2d 32 (1969); but cf. Polygon Corp. v. Seattle, 90 Wn.2d 59, 67-68, 578 P.2d 1309 (1978) (holding that the appearance of fairness doctrine does not apply to administrative actions, such as the issuance of a building permit, except where a public hearing is required by statute).

44 Id.

45 Raynes v Leavenworth, 118 Wn.2d 237, 821 P.2d 1204 (1992).

46 Zehring v. Bellevue, 99 Wn.2d 488, 663 P.2d 823 (1983).

47 Smith, 75 Wn.2d at 739.

48 Chapter 42.36 RCW.

49 RCW 42.36.020; See Organization to Preserve Agricultural Lands v. Adams Cy., 128 Wn.2d 869, 913 P.2d 793 (1996) ("OPAL") (an ex parte communication between a member of an administrative quasi-judicial decision making body and an interested party that occurs before a matter is set to be heard by the body does not render the subsequent decision invalid if all parties have been given extensive opportunity for input on the issues or if the party challenging the appearance of fairness is unable to demonstrate that the communication concerned the proposal which is the subject of the quasi-judicial proceeding).

50 An administrative decision maker's failure to disclose an ex parte communication does not render the administrative decision invalid if the communication has, in fact, been rebutted in the course of the administrative proceeding. OPAL, 128 Wn.2d at 889.

51 RCW 42.36.060.

52 RCW 42.36.040.

53 RCW 42.36.050.

54 RCW 42.36.070.

55 RCW 42.36.090.

56 RCW 42.36.110.

57 Bennett v. Board of Adjustment, 29 Wn. App. 753, 755 n.2, 631 P.2d 3 (1981).

58 Bennett, 29 Wn. App. at 755 n.2 (emphasis in original).

59 RCW 36.70.900.

60 RCW 36.70.970(3).

61 RCW 58.17.110.

62 Chapter 36.70 RCW.

63 RCW 36.70.600.

64 RCW 36.70.610.

65 RCW 36.70B.110(9).

66 In fact, only one hearing at which testimony is heard and evidence is taken can be conducted on any project permit application. RCW 36.70B.060(6).

67 Chapter 36.70C RCW.

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- 68 RCW 36.70C.040.
- 69 San Juan Fidalgo Holding Co. v. Skagit County, 87 Wn. App. 703, 943 P.2d 341 (1997).
- 70 Kilpatrick v. City of Anacortes, 84 Wn. App. 327, 927 P.2d 227 (1996).
- 71 Hale v. Island County, 88 Wn. App. 764, 946 P.2d 1192 (1997).
- 72 RCW 36.70C.060(2).
- 73 Citizens for Mount Vernon v. Mount Vernon, 133 Wn.2d 861, 947 P.2d 1208 (1997) (citizens for Mount Vernon also rejected the argument that a city council's approval of a land use project must be appealed to the Growth Management Hearings Board in order to comply with LUPA's exhaustion requirement).
- 74 Smoke v. Seattle, 132 Wn.2d 214, 937 P.2d 186 (1997) (an applicant was not required to seek a code interpretation by the Director in order to exhaust its remedies); Phillips v. King County, 87 Wn. App. 468, 943 P.2d 306 (1997) (the court rejected King County's argument that the landowner was required to challenge the County's approval of a development by filing a writ action before he could pursue other courses of action); Ward v. Board of Skagit County Commissioners, (the court of appeals affirmed that the exhaustion requirement contained in LUPA applies to all who seek judicial review.)
- 75 McTavish v. City of Bellevue, 89 Wn. App. 561, 949 P.2d 837 (1998).
- 76 Davidson v. Kitsap County, 86 Wn. App. 673, 937 P.2d 1309 (1997).
- 77 Davidson, 86 Wn. App. at 681.
- 78 Washington State Constitution, Article IV § 6.
- 79 Saldin Sec. v. Snohomish County, 134 Wn.2d 288, 949 P.2d 370 (1998); Crosby v. City of Spokane, 87 Wn. App. 247, 941 P.2d 687 (1997); Department of Corrections v. Kennewick, 86 Wn. App. 521, 931 P.2d 1119 (1997).