## Planning Commission General Training February 14, 2023



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#### **Presentation Overview**



Planning Commission Role

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> Planning Commission Conduct

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#### Washington State Land Use Planning Framework

- 1962 Planning Enabling Act/1965 Planning Commission Act -General enabling authority for local planning commissions, comprehensive plans, and development regulations
- 1971 State Environmental Policy Act (SEPA) Requires identification and mitigation of probable significant environmental and related impacts for proposed projects, plans, and standards
- 1972 Shoreline Management Act (SMA) Protects shorelines through regulation of shoreline area, including requirement for local adoption of a Shoreline Master Program consistent with state guidelines



# State Framework – Growth Management Act (1990-91)

GMA requires 18 fastest growing counties and their cities to adopt Comprehensive Plans and implement regulations to further 14 aspirational goals:

- •Concentrated urban growth
- Sprawl reduction
- Regional transportation
- •Affordable housing
- •Economic development
- Property rights
- •Permit processing

- Natural resource industries
- Open space and recreation
- Environmental protection
- Early and continuous public participation
- Public facilities and services
- Historic preservation
- Shoreline management



#### **Growth Management Act Requirements**

- Comprehensive Plan Elements: Land Use, Housing, Capital Facilities, Utilities, Transportation, Economic Development, and Parks (mandatory); Conservation, Solar Energy, Recreation, and Subarea Plans (optional)
- Implemented through specific development regulations (zoning code)
- Include Comprehensive Plan map and implementing zoning designations map for all properties



- Plan for and accommodate preset number of housing units affordable in various income categories, including emergency housing, and address racially disparate impacts. New requirement, further legislation possible.
- Ensure capital facilities plan and transportation plans are consistent with land use plans and growth targets; identify existing facilities, future needs, and a financing plan covering at least 6 years
- Designate and protect critical areas using "best available science" to preserve critical area functions and value – wetlands, aquifer recharge areas, fish and wildlife habitat, flood areas, geologically hazardous areas



- Establish Urban Growth Area (UGA) boundaries with sufficient, but not excess, amount and density of land to accommodate adopted population and employment growth targets for 20 years
- UGA sufficiency must be demonstrated by land capacity analysis
- UGA boundaries, UGA growth targets, and countywide growth targets adopted by counties in consultation with cities
- Countywide population forecast must be within high/medium/low range provided by state Office of Financial Management



- Cities generally considered provider of urban services, counties provider of regional services
- Counties, in coordination with cities, adopt Countywide Planning Policies governing regional management issues
- UGAs anticipated to annex to cities
- With limited exception, no urban services or urban densities outside of UGAs
- Counties have no land use jurisdiction inside city limits



- Adopt Comprehensive Plan changes generally no more than once per year; development regulations proposed and adopted any time; annually consider updates proposed by any party
- Full review and update of Comprehensive Plan as needed at least every ten years, including UGAs. Currently underway.
- Comprehensive Plans and development regulations presumed valid upon adoption; may be appealed to State Growth Management Hearings Board



### Local Guidance

- Clark County Community Framework Plan also adopted by Vancouver and other local cities. Contains high level urban form guidance, and Countywide Planning Policies (CPPs). May need some updating.
- Vancouver Comprehensive Plan and Land Use and Development (Zoning) Code (Title 20 of Vancouver Municipal Code). Update underway.
- Vancouver Strategic Plan. Not part of GMA. Update underway.



<u>City Charter Section 8.02</u> – Recognizes creation and purpose of Planning Commission

<u>**City Council Policy 100-06**</u> – Appointments to citizen commissions

<u>VMC Chapter 20.220, Review Bodies</u> – VMC 20.220.010 establishes Planning Commission and sets parameters for Commission membership, authority, and responsibilities

**Planning Commission Bylaws** – Operating rules

<u>VMC 20.285, Text and Map Amendments</u> – provides review process and substantive criteria for changes to maps or text of the Comprehensive Plan





#### PC Guidance (cont.)

Planning Commission serves as a review body for:



- Most Comprehensive Plan and zoning map designation changes
- Land use Development
  Agreements
- Comprehensive Plan and zoning text changes (except fees)
- Planned Developments and Mixed-Use Master Plans

## **Questions?**

#### Washington Growth Management Act and PC Role



#### **Planning Commission Conduct**

State Law: Title 42 RCW –	Public Officers & Agencies
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Appearance of Fairness Doctrine – Chapter 42.36	<b>Open Public Meetings Act – Chapter 42.30</b>
Code of Ethics – Chapter 42.23	Public Records Act – Chapter 42.56



#### Appearance of Fairness Doctrine (Chapter 42.36 RCW)



- Quasi-judicial (administrative) land use decisions
- N/A = Advisory recommendations or legislative policy

Unbiased in both
 appearance and fact



## **Appearance of Fairness Doctrine (cont.)**

#### **Quasi-Judicial**

- Legal rights, duties, or privileges
- Specific, identifiable parties
- Public hearing or contested case
- PC determination results in a ruling

#### **Advisory or Legislative**

- Making recommendations
- Establishing rules of general application
- Adopting policy decisions

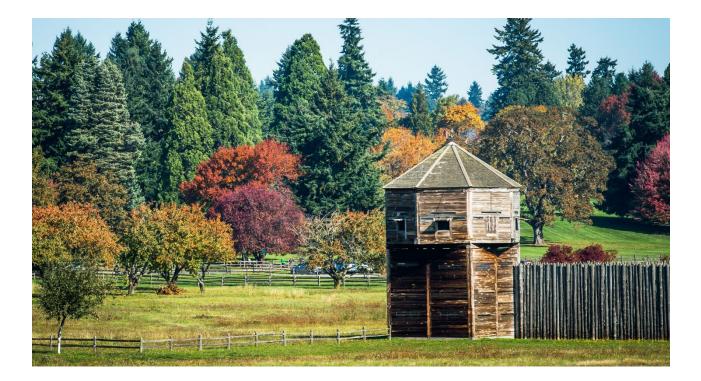


### Appearance of Fairness (cont.)

Most Planning Commission Actions are Legislative or Advisory



- VMC Code Amendments
- Comp Plan Amendments
- Area-Wide Zoning; District Plans
- Land Use Policy Recommendations



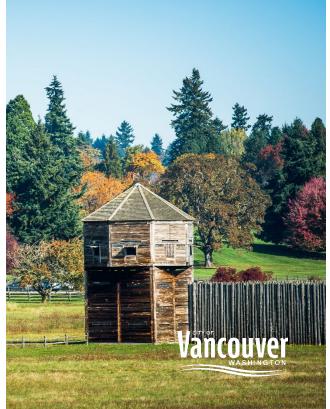
## **Quasi-Judicial Acts**

#### Appearance of Fairness Doctrine Applies to:

- Site-specific rezones
- Conditional uses and variances
- Subdivision plat approvals
- Land use permits
- Final determinations on SEPA appeals
- Discrete zoning changes affecting specific parties







#### Case Study: Buell v. Bremerton, 80 Wn.2d 518 (1972)

- Rezoning of a five acres from residential to commercial where planning commissioner owned adjacent property and potentially benefitted from commission's action
- Fact that rezone would have been approved even without the selfinterested commissioner's vote was not enough to overcome violation
- "The self-interest of one member of the planning commission infects the action of the other members of the commission regardless of their [respective] disinterestedness."



#### Case Study: Hayden v. Port Townsend, 28 Wn. App. 192 (1981)

- Chair advocated approval of a rezone application for land on which his employer held an option to purchase
- At the quasi-judicial public hearing, Chair relinquished his position as chair, moved to the audience, and did not vote
- Violation occurred because Chair had prepared the SEPA checklist and remained involved questioning witnesses and offering procedural advice to another commissioner – a "corrupt motive" was not required; zoning decision was invalidated



### Planning Commissioner Appearance of Fairness Duties



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•Disclose any actual or perceived personal interest (conflicts), prejudgment, bias, or *ex parte* communications at start of proceeding

•May require recusal; must allow an opportunity for participants to raise a challenge and disqualify member (RCW 42.36.080)



#### Appearance of Fairness Doctrine

*Ex Parte* Communications (RCW 42.36.060)



*Ex parte* communications occur in connection with a matter currently under consideration and take place in any format outside the formal proceeding



#### Doctrine of Necessity

#### (RCW 42.36.090)



- Commissioner disqualified under AOF Doctrine can participate if removal would result in lack of quorum
- Commissioner must have first publicly disclosed the basis for disqualification



#### Conflicts of Interest – Code of Ethics (RCW 42.23.070)



- Use of Position to secure privileges or receiving outside compensation
- Engaging in activity that would induce disclosure of confidential information
- Disclosing confidential information



### **Conflicts of Interest (cont.)**

Penalties for Violating Statutory Code of Ethics (RCW 42.23.050):

- \$500 civil penalty; liable to municipality
- Other civil or criminal liability or penalty as may otherwise be imposed upon the municipal officer by law
- May require forfeiture of office



## **Questions?**

#### **Appearance of Fairness Doctrine and Conflicts of Interest**



#### **Open Public Meetings Act (Chapter 42.30 RCW)**



 Commission may only transact business at a public meeting  Meeting: any time a quorum "gathers" to transact PC business  Gather: in-person, phone, voicemail, texts, social media, email, combo



#### **Open Public Meetings Act (OPMA)**

90 Days	Four Years	Notice	Open
Newly appointed members must complete OPMA training	Members must renew training (RCW 42.30.205)	Must provide public notice in advance of all meetings	Must be open and accessible to all

Quorum	"Business"	No Secrets
Majority of members present; intent to conduct business	Discussion, deliberation, and voting	Secret ballots not allowed

Basic Requirements – OPMA Applies to Planning Commission



## **Open Public Meetings Act Violations**

#### **Consequences**:

- Action taken at a meeting held in violation of the OPMA is null and void
- Members who knowingly violate the OPMA are personally liable for possible monetary penalties (\$500 first violation; \$1,000 each subsequent violation)
- Award of costs and reasonable attorney fees for any person prevailing in an action alleging an OPMA violation

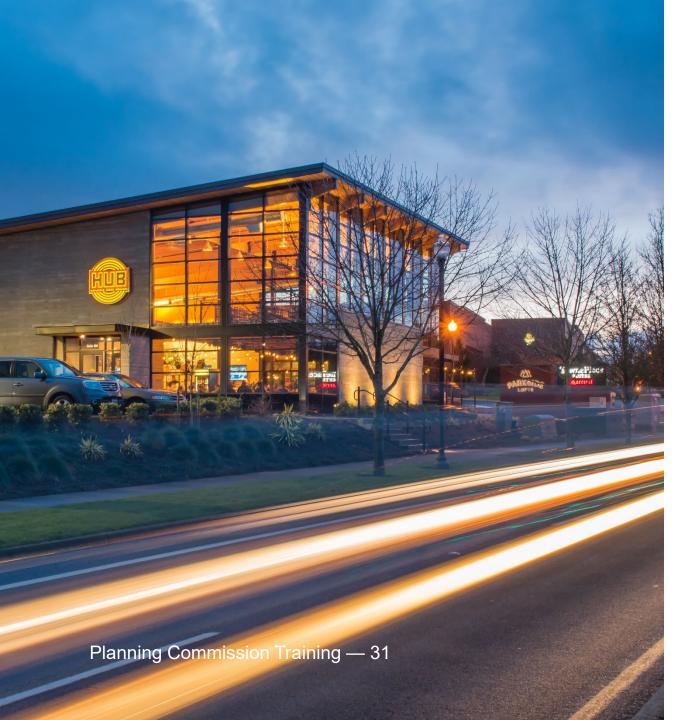


#### Case Study: Wood v. Battle Ground School District, 107 Wn. App. 550 (2001)

**Serial Meeting**: Does an exchange of emails regarding official board business among a quorum of board members violate OPMA?

- Meetings at which action is taken" broad enough to include exchange of emails between members
- \* "The active exchange of information and opinions in these emails, as opposed to the mere passive receipt of information, suggests a collective intent to deliberate and/or to discuss Board business."
- Egan v. City of Seattle, 471 P.3d 899 (2020): Combination of personal gatherings, emails, phone calls, texts, and hard copy distributions constituted a meeting; presence of quorum and awareness of others





## **OPMA Communication Best Practices**

- Only share scheduling information and factual data, not opinions
- Begin emails: "For informational purposes only. Do not reply."
- Never "Reply All" use "BCC" for other Commissioners
- Rely on City staff to circulate information
- Do not discuss PC business by exchanging voicemails, emails, texts, or on social media – be mindful of creating serial meetings or *ex parte* communications



#### Public Records Act (Chapter 42.53 RCW)



- PRA is a mandate for broad disclosure of public records
- "Public Records" include data pertaining to the conduct of government
- Any format or platform emails, text messages, tweets, voicemails, etc.





#### PRA Requirements

- City records must be made available to all members of the public – few and narrow exemptions
- Requests don't have to be submitted formally; they can come to you
- City must respond quickly within five business days
- Response can be: (1) fulfill the request,
  (2) deny the request, (3) give an estimated release date for responsive records, or (4) seek clarification



### Public Records Act (Cont.)

#### **Public Records Officer**

 City has designated Public Records Officer (Raelyn McJilton) as a primary point of contact

#### **Public Records Requests**

- Public records can be requested using a form accessed on the City's website
- Use of the public records request form is not required
- Certain records, or portions of records, may be withheld or redacted due to certain limited statutory exemptions – there is no general "right of privacy" exemption



#### Case Study: West v. City of Puyallup, 2 Wn. App. 2d 586 (2018)

**PRA Request**: Made to City of Puyallup for records relating to City Council member's Facebook page:

- Posts at issue were not public records because official did not prepare them within the scope of her official capacity
- But personal Facebook page posts can constitute public records if they relate to the conduct of government and are prepared within public official's scope of employment or official capacity, or address the conduct or performance of government functions



### **Public Records Act Violations**

#### **Penalties**:

- Burden on agency to prove exemption; no affirmative duty to create or interpret records
- Person who prevails against an agency awarded all costs, including attorney fees, incurred in connection with the lawsuit
- Court may award up to \$100 for each day a person was improperly denied the right to inspect or copy a public record



## **Questions?**

**OPMA** and **PRA** 



## **Constitutional Law**

**Procedural Protections and Private Rights** 



Takings Clause5th Amendment

Due Process Clause 14<sup>th</sup> Amendment

Freedom of Speech 1<sup>st</sup> Amendment



## Takings Clause

## Constitutional Protection:

- Prohibits the taking of private property for public use;
- By physical appropriation or regulation;
- Absent just compensation



#### Regulatory Taking





- Denies all economically viable use of the land;
- Requires landowner to allow trespass;
- No reasonable relationship to impact of project; or
- A less intrusive, effective option exists

#### Exactions

Land use conditions intended to offset infrastructure costs or mitigate impacts



May become a "taking" absent:

- An "essential nexus" between the condition imposed and the impact of the development; and
- A "rough proportionality" to the burden imposed on the public by allowing the proposed land use



### Due Process Clause – 14<sup>th</sup> Amendment

#### Procedural Rights – Fairness

- Notice
- Opportunity to be heard
- Impartial tribunal

#### Substantive Rights – Restrictions Permitted

- Serves a legitimate government interest
- Rationally related to that public purpose
- Not unduly oppressive
- \* Government may not deprive "any person of life, liberty, or property, without due process of law."



#### Case Study: Smith v. Skagit County, 75 Wash. 2d 715 (1969)

"**Spot Zoning**" = Rezoning of a small parcel of land within the limits of another zone:

- Illegal when done in a manner that is inconsistent with the comprehensive plan and surrounding land, or when arbitrary or discriminatory absent adequate public benefit
- Test of "Reasonableness" Government may deprive individual rights; due process prevents unjust or mistaken deprivation



#### Freedom of Speech – 1<sup>st</sup> Amendment

- First Amendment of the U.S. Constitution provides protection to, and opportunity for, free speech in public forums
- Public meetings are considered a "limited public forum," so time, place, and manner of speech can be regulated in a viewpoint neutral manner
- Purpose of Community Forum is for public to inform Commission of its views, not for dialogue or Q&A
- Regulation is by adoption of guidelines; Chair has authority to enforce:
  - Remarks are time limited and are to be directed to the Commission as a body, not the audience, staff, or an applicant
  - Information presented at public hearings to be factual and relevant



## Thank You

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