

# Planning Commission General Training

VANCOUVER  
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**Vancouver**  
WASHINGTON

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Vancouver Planning Commission  
Workshop

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# Presentation Overview

Informational review of the work of the Planning Commission including:

- Washington State Land Use Planning Framework
- Vancouver Municipal Code Guidance
- Other Legal Considerations – Appearance of Fairness Doctrine, Conflicts of Interest, Open Public Meetings Act, and Constitutional Protections

# 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

# Growth Management Act Requirements (cont.)

- Provide for a range of housing types and densities, with adequate provisions for all economic segments of the community
- 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

## Growth Management Act Requirements (cont.)

- 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

## Growth Management Act Requirements (cont.)

- 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



## Growth Management Act Requirements (cont.)

- 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 eight years, including UGAs
- 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 governing cooperative and regional planning issues
- Vancouver Strategic Plan
- Vancouver Comprehensive Plan and Land Use and Development (Zoning) Code (Title 20 of Vancouver Municipal Code)

# Planning Commission Guidance

- **City Charter Section 8.02**, Planning Commission – Recognizes creation and purpose of Planning Commission
- **City Council Policy 100-06** – Appointments to Citizen Boards and Commissions
- **VMC Chapter 20.220**, Review Bodies – Specifically, Section 20.220.010 establishes Planning Commission and sets parameters for Commission membership, authority, and responsibilities
- **Planning Commission Bylaws** – Governing rules by which the Commission operates
- **VMC 20.285**, Text and Map Amendments – provides review process and substantive criteria for changes to maps or text of the Comprehensive Plan

# Planning Commission Guidance (cont.)

Planning Commission currently serves as review body for:

- Almost all Comprehensive Plan and zoning map designation changes, and any accompanying Development Agreements
- All Comprehensive Plan or zoning text changes, except fees
- Planned Developments or Mixed-Use Master Plans

# Questions

Pause for Commissioner questions related to the Washington State Growth Management Act and the PC role in land use decisions

# Planning Commission Conduct

The conduct of Planning Commission meetings and members is primarily regulated by state law and the Commission's Bylaws, which adopt Robert's Rules of Order parliamentary procedures

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

# Appearance of Fairness Doctrine (Chapter 42.36 RCW)

- A rule of law enacted in Chapter 42.36 of the Revised Code of Washington (RCW)
- Requires government representatives to conduct administrative decision-making proceedings in a way that is procedurally fair and unbiased in both appearance and fact – free of any actual or implied partiality, impropriety, conflict of interest, or prejudgment
- Applies only to quasi-judicial land use decisions; not to advisory recommendations or legislative proceedings (RCW 42.36.010)

## Appearance of Fairness (cont.)

- **Quasi-Judicial:** Actions of the Commission that determine the legal rights, duties, or privileges of specific, identifiable parties in a public hearing or other contested case by result in a ruling
- **Advisory or Legislative:** Making recommendations, establishing rules of general application, or adopting policy decisions such as comprehensive plans, area-wide zoning ordinances, or other land use planning documents



## Appearance of Fairness (cont.)

Most Planning Commission decisions are legislative or advisory:

- VMC Title 20 code amendments
- Amendments to the Comprehensive Plan
- Area-wide zoning and subarea/district plans
- Informal or advisory review of studies, analysis or reports related to land use matters

# Appearance of Fairness (cont.)

## Examples of Quasi-Judicial Decisions:

- Site-specific rezones
- Conditional uses and land-use variances
- Subdivision plat approvals
- Land-use permits
- Final determinations on SEPA appeals
- Other zoning changes requiring application of general policy to a discrete situation affecting specific parties

## Appearance of Fairness (cont.)

### ***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 recommendation
- Fact that rezone would have been approved even without the self-interested commissioner's vote was not enough to overcome
- "The self-interest of one member of the planning commission infects the action of the other members of the commission regardless of their disinterestedness."

## Appearance of Fairness (cont.)

### ***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, he relinquished his position as chair, moved to the audience, and did not vote
- Violation occurred because the chair had prepared the SEPA checklist and remained involved questioning witnesses and giving procedural advice to another commissioner – a “corrupt motive” was not required; zoning decision was invalidated

# Appearance of Fairness (cont.)

## Planning Commissioner Duties:

- Disclose any actual or perceived personal interest (conflicts), prejudice, bias, or *ex parte* communications at start of proceeding
- *Ex parte* communications occur in connection with a matter currently under the Commission's consideration and take place in any format (e.g. oral, electronic) outside the formal proceeding (RCW 42.36.060)
- May require recusal; must allow an opportunity for participants to raise a challenge and disqualify member (RCW 42.36.080)

# Appearance of Fairness (cont.)

## Doctrine of Necessity (RCW 42.36.090):

- If a Planning Commission member's disqualification would prevent a vote from occurring by causing a lack of quorum or failure to obtain a majority vote, the challenged member will be permitted to fully participate in the proceeding and vote as if the challenge hadn't occurred
- *Provided* that the member has first publicly disclosed the basis for disqualification

# Questions

Pause for Commissioner questions related to the Appearance of Fairness Doctrine

# Conflict of Interest (RCW 42.23.070)

State Code of Ethics prohibits a municipal officer from:

- Using position to secure special privileges or exemptions for their own benefit or the benefit of others
- Receiving, directly or indirectly, any outside compensation or reward for a matter connected with the officer's duties
- Accepting a position or engaging in an activity that might induce disclosure of confidential information
- Disclosing confidential information gained by reason of the position or using it for personal gain or benefit



## Conflict 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

# Open Public Meetings Act (Chapter 42.30 RCW)

The OPMA requires that all meetings of governing bodies of public agencies be open to the public:

- Commission may only transact public business at a public meeting
- A “meeting” happens any time a quorum gathers with the intent to transact governing body’s business on any medium
- Not a violation to only discuss scheduling a meeting
- Meetings do not require physical presence – can occur by phone, or voicemail, email, social media or text exchanges, or a mix

# Open Public Meetings Act (cont.)

Executive Sessions are exempt from OPMA:

- Governing body may meet in closed session during an open public meeting, for limited purposes specified in RCW 42.30.110
- Examples include agency cybersecurity plans and assessments; consideration of minimum price or site acquisition for real estate purchase, conduct employee evaluations or evaluate candidate qualifications, or discuss litigation with legal counsel
- Must follow certain procedures – announce purpose, time, place, and length of meeting before convening session
- Unlikely to occur during PC meetings

# Open Public Meetings Act (cont.)

## Training and Procedural Requirements:

- Members must complete OPMA training within 90 days of assuming duties; refresh every four years (RCW 42.30.205)
- Must provide sufficient public notice in advance of all meetings
- Must be open and accessible to all – no registration requirements
- Quorum must be present with intent to take action, which includes discussion and deliberation as well as voting
- No secret ballots

# Open Public Meetings Act (cont.)

## Consequences for Violation of OPMA:

- 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

## Open Public Meetings Act (cont.)

***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

# Open Public Meetings Act (cont.)

## Best Practices for Electronic Communications:

- Only share scheduling information, documents, and factual information, not opinions, electronically
- Begin emails: “For informational purposes only. Do not reply.”
- Do not “reply all” – use “BCC” for other Commissioners
- Rely on City staff to circulate documents and factual 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 42.56 RCW)

- PRA is a strongly worded mandate for broad disclosure of public records: “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” (RCW 42.56.030)
- Applies to those appointed to a board or commission
- “Public records” include e-mails (use City-provided e-mail address), text messages, tweets, voicemails – if it contains data pertaining to the conduct of government, it may be a public record



## Public Records Act (cont.)

- PRA requires that all public records maintained by state and local agencies be made available to all members of the public, with very narrow statutory exemptions – no justification required
- Requests don't have to be submitted formally; they can come to you
- Agencies 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.)

- City has designated Public Records Officer (Raelyn McJilton) as point of contact
- Public records can be requested using a form accessed on the city's website at <http://www.cityofvancouver.us/fms/page/public-records>, but use of this 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

## Public Records Act (cont.)

***West v. City of Puyallup***, 2 Wn. App. 2d 586 (2018)

PRA request to 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 (cont.)

## Judicial Review & Penalties for Violation:

- 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

Pause for Commissioner questions related to Conflict of Interest, Open Public Meetings Act, or Public Records Act

# Takings Clause – 5<sup>th</sup> Amendment

Constitutional protection prohibiting states from taking private property for public use, without just compensation – a “taking” can occur when a government action results in:

- Physical appropriation of real property; or
- Regulatory control that:
  - denies all economically viable use of the land;
  - requires landowner to allow trespass;
  - has no reasonable relationship to impact of project; or
  - has a less intrusive, effective option available

# Takings Clause (cont.)

## Exactions – Real Property Law Construct:

- Conditions imposed on land use development to offset the costs of that development to the municipality and mitigate negative 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

Constitutional protection prohibiting states from depriving “any person of life, liberty, or property, without due process of law.”

- Procedural Rights (fundamental fairness)
  - Notice
  - Opportunity to be heard
  - Impartial tribunal
- Substantive Rights (individual privileges; permitted infringements)
  - Serve a legitimate government interest
  - Rationally related to that public purpose
  - Not unduly oppressive



## Due Process Clause (cont.)

- Test of Reasonableness – Government may deprive individual rights; due process prevents unjust or mistaken deprivation
- Application: 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 (*Smith v. Skagit County*, 75 Wash. 2d 715 (1969))

# 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

# Questions and Discussion

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