



January 24, 2012

The Honorable Dean Takko
Chair, House Local Government Committee
Joint Legislative Office Building 336
Olympia, WA 98504

RE: HB 2201: Relating to the use and governance of hearing examiners

Dear Chair Takko:

On behalf of the Washington Chapter of the American Planning Association, I would like to thank you and the committee for the opportunity to express our strong support for HB 2201. I would like to take this opportunity to memorialize my remarks and provide brief responses to concerns expressed by other speakers at the hearing.

The purpose of HB 2201 is to assist the state's economic recovery by expressing the legislature's intent that the land use permit process in the fifty largest cities of six high growth counties become more "timely, fair, and predictable." The bill would serve this purpose in two ways: (1) by making reforms strengthening the independence, objectivity and transparency of the hearing examiner system, and (2) by providing incentives for certain cities to use professional hearing examiners to make quasi-judicial land use decisions, including appeals of administrative decisions.

As was pointed out at the hearing, forty-eight of these fifty cities already have a hearing examiner system in place to conduct the open record public hearing on certain land use permits and appeals. However, only a handful (e.g., Sultan, Shoreline, Tacoma, and Kent) have already done what HB 2201 encourages others to do, which is to have the city hearing examiner not only conduct the public hearing, but also issue the actual decision. This has greatly improved the timeliness, fairness, and predictability of the permit process in those cities.

APA Washington supports amendments that we understand will be offered by the bill's sponsors to respond to several concerns expressed at the hearing. For example, AWB expressed concern that the bill not



require different appeal fees to be charged to a project's sponsor as opposed to its opponents. APA Washington supports removing that language from the bill. Master Builders of King and Snohomish Counties asked for clarification that the provision in Section 2 of the bill regarding default judgments for non-payment of appeal fees not be undermined by some of the language in sections 4, 5, 6, and 7 regarding timing of issuance of the decision. APA Washington supports adding clarifying language to these latter sections to the effect "in accordance with Section 2 of this act."

AWC expressed concern that HB 2201 was needless because many of these cities "already have a hearing examiner in place." As noted above, almost all of the affected cities do already have an examiner system in place; however, simply adopting a hearing examiner system is not the point of HB 2201 – the point is to encourage the other cities to fully achieve the benefits of timely, fair, and predictable permit process by extending authority to their hearing examiners to also decide appeals and quasi-judicial permits.

AWC also expressed concern that having to make an opt-in or opt-out choice imposed costs on cities. This arguably was a concern with the timing provisions of the bill as originally drafted, which appeared to first require a city to opt in before opting out.

However, as I said at the hearing, this is easily remedied by moving the opt-in date to one month after the opt-out date; for example, opt-out by March 31, 2012, and opt-in by April 30, 2013. Note that by the bill's specific terms, opting out requires only a motion – it does not require the costs associated with notice, preparing findings, or adopting or publishing a resolution or ordinance. Also, the bill states that exercising the opt-out option is not subject to an appeal of any sort.

Bottom line, there is no expense and no risk for a City which chooses to opt-out.

In summary, HB 2201 is about regulatory certainty. Prospects for our state's economic recovery, including increasing job opportunities and meeting pent-up demand for housing, will depend on having city permit processes that facilitate, rather than retard or thwart, applications for development permits.



American Planning Association
Washington Chapter

Making Great Communities Happen

We urge the Committee's favorable action on HB 2201 with amendatory language as discussed above. Thank you again for the opportunity to provide comment on this important issue.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Tovar', with a long, sweeping horizontal stroke extending to the right.

Joseph W. Tovar, FAICP
Legislative Committee Liaison
Washington Chapter of the American Planning Association

cc Members of the House Local Government Committee