

Planning Association of Washington and  
Washington State Department of Commerce


## A Regional Short Course on Local Planning

Context of Comprehensive Planning  
& Implementation Basics

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## Physical Geography of Washington



Department of Commerce  
Innovation is in our nature.

## Pre-GMA Planning Context

| 1970's and 1980's  | Pre -1990 conditions   |
|--|--|
| <ul style="list-style-type: none"> <li>• Plans optional - advisory</li> <li>• Zoning - governs</li> <li>• SEPA – largely project specific</li> <li>• SMA – 200' of shoreline</li> <li>• EFSEC – major energy facilities</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Not Comprehensive</b></li> <li>• Piecemeal. . .yields:                             <ul style="list-style-type: none"> <li>– Sprawl</li> <li>– Congestion</li> <li>– Loss of open space, critical areas and resource lands</li> </ul> </li> </ul> |

## GMA – A “sea change” in Planning



## Densest & Fastest Growing Plan



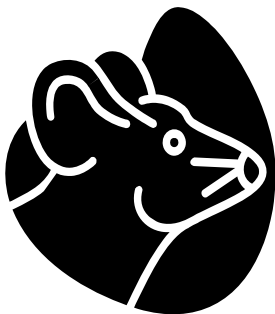

GMA Required to Plan: 1990-91 and 1992-93  
Fully Planning: 1994-95  
Open to Plan: 1996-97  
Critical Areas and Resource Lands

## Basic Planning Questions

- **What do we have?** – Inventories, needs assessments
- **What do we need and want?** – Accommodate 20 year population projections from the State in a manner consistent with community vision – Guide Growth!
- **How are we going to get it?** – Plan lays out goals, objectives, policies, standards, costs and strategies to guide **implementation**

## Basic Implementation Strategies


- **R**egulation
- Acquisition
- Taxation
- Spending\*



## Navigating GMA Waters



## 1990 Growth Management Act Chapter 36.70A RCW

- **Key Changes to land use planning:** 
  - **CONSISTENCY** [cannot conflict or thwart]
    - Plans and development regulations must be consistent with 14 State Goals [RCW 36.70A.020]
    - Development regulations must be consistent with and implement plans [RCW 36.70A.040, .070, .130]
    - All elements of plans must be internally consistent [RCW 36.70A.070, .130]
    - Plans must be consistent with the plans of adjacent counties and cities [RCW 36.70A.100]
    - Plans must be consistent with CPPs [RCW 36.70A.210]

## 1990 Growth Management Act Chapter 36.70A RCW

- **Key Changes to land use planning (continued):**
  - No plan or development regulation can preclude the siting of **essential public facilities** – EPFs [RCW 36.70A.200]
  - All plans must **accommodate the allocated share of the State's forecast population** for the subsequent 20 years [RCW 36.70A.110, .115]
  - **Public Participation** is the bedrock of GMA [RCW 36.70A.020(11), .035, .130 and .140]
  - Counties allocate forecasted population to its cities and draw **Urban Growth Areas** – UGAs [RCW 36.70A.110, .115]
  - **Concurrency** of infrastructure and development is required [RCW 36.70A.020(12), .070(6)]
  - Plans can be **amended only once a year**, periodic **updates** are required every seven years [RCW 36.70A.130]

## The GMA's Goals

[RCW 36.70A.020]

### ALL PLANS AND DEVELOPMENT REGULATIONS MUST BE GUIDED BY THE FOLLOWING GOALS

[Each Goal is backed by a GMA requirement]:

1. **Urban growth** - Encourage development in urban areas [.070, .110, .115]
2. **Reduce sprawl** – Reduce the inappropriate conversion of undeveloped land [.070, .110, .115]
3. **Transportation** - Encourage efficient multimodal transportation [.070]
4. **Housing** - Encourage the availability of affordable housing to all economic segments [.070]
5. **Economic Development** - Encourage economic development throughout the state [.070]
6. **Property Rights** - Preserve private property rights [.370]
7. **Permits** - Process permits in a timely and fair manner [.120, .200, .040]

## The GMA's Goals

[RCW 36.70A.020]

### GMA Goals (continued)


8. **Natural Resource Industries** – Maintain and enhance natural resource industries [.060, .170, .172]
9. **Open Space** - Retain open space [.070, .165]
10. **Environment** - Protect the environment [.070, .060, .170, .172, SEPA]
11. **Citizen Participation** - Encourage the involvement of citizens in the planning process [.035, .130, .140]
12. **Public Facilities and Services** - Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at occupancy [.070, .120]
13. **Historic Preservation** - Encourage the preservation of sites with historical and archeological significance [.070]
14. **Shorelines of the State** - The goals and policies of the Shoreline Management Act [RCW 90.58.020] are added to RCW 36.70A.020 [RCW 36.70A.480(1)]

### GMA Planning Process and Timelines

- **Coordination and Communication:** County-wide Planning Policies (CPPs) developed to guide planning among jurisdictions within the county – 1991
- **The Land Speaks First:** Natural Resource Lands and Critical Areas identified, designated, conserved and protected - 1992
- **UGAs:** Urban Growth Areas drawn outside of which urban growth cannot occur – 1992
- **Comprehensive Plans** adopted – 1994-95 . . .
- **Implementing Development Regulations** adopted within 6 months of Plan adoption
  - Plan Amendments – no more often than once a year
  - Plan Updates every 7 years
  - UGA Updates at least every 10 years
- **Public Participation throughout all stages**

### Public Participation “early and continuous”

[RCW 36.70A.035, .130, .140]



- Notice: newspapers, posting, websites, media
- Public meetings
- Public Workshops
- Charettes
- Citizen Advisory Committees
- Public Hearings
- Always opportunity for written comment
- Elected officials decide!
- Pool of Potential “Petitioners”

### GMA Comprehensive Plans

[RCW 36.70A.070]

- **Three fundamental types of land: Urban, Rural, and Natural Resource Lands – Critical Areas are found on all lands.**
- **All cities are Urban** – within UGAs – must allow urban uses and intensities, urban densities, and ensure urban services are adequate and available to support growth. [Infill, mixed uses, transit oriented design, and TDRs]
- GMA specifies **mandatory elements** for each Plan. Each element includes inventories, needs projections and sets out policies and programs to shape the future and meet needs [financing plans are required for capital facilities and transportation]

### Required Elements of GMA Comprehensive Plans

[RCW 36.70A.070]

- Each comprehensive plan shall include [maps and text] for each of the following elements [mandatory elements]
  - Land Use\*
  - Housing
  - Capital Facilities\*
  - Utilities
  - Rural [Counties only]
  - Transportation\*
  - Economic Development (in updates if funded)
  - Parks and Recreation (in updates if funded)
  - Ports (Seattle and Tacoma)
- **Subareas plans** are permitted as are other optional elements such as Environment, Energy and Natural Resources


\* = inextricably linked

### Land Use, Transportation, and Capital Facilities Elements – Linkages!

| Capital Facilities Element  | Transportation Element  |
|---|---|
| <ul style="list-style-type: none"> <li>• <b>Inventory</b> of existing facilities</li> <li>• Forecast of future <b>needs</b></li> <li>• <b>Six-year financing plan</b> to fund needed facilities</li> <li>• <b>Reassess land use element if funding falls short</b></li> <li>• Proposed locations and capacity of needed facilities</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Inventory</b> of existing modes</li> <li>• <b>Needs assessment</b> – LOS standards</li> <li>• <b>Multi-year financing plan</b> to fund needed facilities</li> <li>• <b>Reassess land use element if funding falls short</b></li> <li>• Assumptions on land use and traffic – Demand management</li> </ul> |

### Urban Growth Areas - UGAs

- OFM forecasts 20-year population by county
- County, in consultation with Cities, allocates population
- Land capacity analysis – land supply
- Density assumptions, and ability to serve
- UGAs drawn by County to accommodate growth



## Conservation of Natural Resource Lands and Protection of Critical Areas

[RCW 36.70A.050, .060, .170]

- **All jurisdictions must identify, designate and conserve Natural Resource Lands:**
  - Agricultural lands, Forest lands and Mineral lands of long-term commercial significance
  - These provisions are intended to protect the related natural resource industries
- **All jurisdictions must identify, designate and protect [using the “best available science”] Critical Areas:**
  - Wetlands, Aquifers, Fish and Wildlife Habitat Conservation areas, Frequently Flooded areas and Geologically Hazardous areas
  - These provisions are to protect the function and values of the critical areas and public safety
  - *Critical areas are found in urban areas, rural areas and on resource lands*



## GMA Enforcement!

- All plans, development regulations, and amendments thereto, must be submitted to the State Department of Commerce (DOC provides technical assistance and limited funding support) for circulation to other agencies for their review and comment prior to adoption.
- There is *no requirement for GMA plans to be approved by any state agency or department* – they are presumed valid upon adoption.
- **Enforcement of the GMA is through appeal to the Growth Management Hearings Board – 3 regional panels.**
- If the Board finds Noncompliance and remands: affects certain state funding priorities (all), can invalidate (not so rare), recommend gubernatorial sanctions (rare).

## Enforcement!

Sometimes trouble!

Always help available

## Updates to the Plan



An opportunity to improve plans and regulations:

- Review vision, goals and policies
- Address new issues [climate change, regional transit]
- Assess plan performance – is it working? [buildable lands]
- Assess land availability for needs [population, housing, jobs, etc.]
- Incorporate new and updated data and information [statutory changes, case law, etc.]
- Refine how it all fits together.

## Where Urban Growth Has Been Guided

Urban Growth Areas

Physical Geography

## Smooth [GMA] Waters

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## Short Course on Local Planning

Robin McClelland, FAICP  
WA APA Conference October 1, 2013

- Roles of the Planning Commission
- Tools for effective meetings
- Relationships with the public, staff, and elected officials
- Rewards



Work as a team.

Robin McClelland, FAICP

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## Roles: Keepers of the Plans

Guardians of the Comprehensive Plan, other policy documents, and development codes (Zoning Ordinance, Shoreline Master Program)



It's an adventure.

Offer recommendations that reflect community input, professional staff advice, and *thoughtful* commission deliberation.

Provide the ground work for elected officials to make decisions.

Robin McClelland, FAICP

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## Review and Update



What takes precedent?

- Evaluate implementation strategy: *What have we accomplished?*
- Re-energize "Vision Statement": *What's changed? Where are we headed?*
- Make sure Vision, CPPs, and the Comprehensive Plan are internally consistent and are coordinated with implementation strategy: *Are there conflicts?*

Robin McClelland, FAICP

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## Tools: Structure and Procedures

### 1. Adopt and Review By-laws

- Reporting function
- Establish meeting procedures
- Number of members, residency
- Terms, rotation of speakers



Know when to tap the gavel.

### 2. Apply Meeting Procedures

### 3. Use Ground Rules when necessary

- Set terms for public comment (time limits, etc.)
- Agree on a protocol for public meetings
- Post ground rules at meetings, online

Robin McClelland, FAICP

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## The Effective Planning Commissioner

- Know your town and your people
- Bring knowledge, experience
- Learn how to make the best of available tools to fulfill your community vision
- Rely on staff for expertise, clarification
- Get out and about: attend open houses and community events, take field trips
- Attend conferences to keep current



Keep an open mind.

Robin McClelland, FAICP

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## Know Your Meetings

Always know the purpose:

- Regular meeting with agenda
- Community meeting for gathering input
- Pre-hearing informational meeting
- Public hearing (transcribed)



Play by the rules.

Always know and follow the procedures:


- Use staff instructions, guide sheets

Robin McClelland, FAICP


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## The Effective Meeting

- Read all packet materials
- Come prepared to take action
- Start on time; end at a reasonable hour
- Use a "timed" agenda
- Chair keeps meeting on task
- Discourage grandstanding, "speechifying"



Learn from staff.



Listen to the public.

Robin McClelland, FAICP 7

## Relationship to Public

Public = neighbors, shopkeepers, school children, employees, elderly, old-timers and newcomers, business and property owners, builders, employers, neighboring towns

Planning Commissioners are entrusted to look out for many faces and all kinds of needs

- Make site visits, read comment letters, view the issues from many sides
- Listen and be attentive
- During public hearings keep testimony pertinent to the subject



Plan for those busy doing other things.



Robin McClelland, FAICP 8

## Relationship to staff

- Treat staff with respect
- Understand demands unrelated to Planning Commission
- Develop a work program
  - Necessary work (updates)
  - Interesting work (design)
  - Parking lot (sign code)
- Ask for additional information prior to the meeting
- Be mindful of open meeting law and public disclosure constraints




Make the most of your professional expertise.


Robin McClelland, FAICP 9

## Your Packet: What's in it?

- Agenda: order of the day
- Staff Report: narrative description of the topics; may include maps, illustrations, graphics
- Comment letters
- Facts, findings, conclusions
- Environmental review: SEPA documents, technical appendix



Read it!



It's important.

Robin McClelland, FAICP 10

## Relationship to elected officials

Elected officials appoint Commissioners and rely on you to:

- Reflect the interests of the community
- Know the Comprehensive Plan and other policy documents, ordinances, and procedures
- Conduct public meetings as required to hear concerns
- Use insight to amend, revise policies
- Make recommendations that officials will adopt





Conduct periodic joint meetings with Councilmembers other boards to discuss issues.

Robin McClelland, FAICP 11

## Reap the Rewards

- Keepers of the community's vision for now and the future
- Important link in the legal (hearing) process
- Sometimes say "no" to keep things from happening
- Knowledge of how the city and your government work
- Experienced, seasoned, respected - ready to run for elected office





YOU ARE A WINNER!

Robin McClelland, FAICP

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## THE LEGAL BASES OF PLANNING IN WASHINGTON

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## HOW IT STARTED

*Village of Euclid v Ambler Realty Co. (1926)*

**Planning Enabling Act (1935)**  
 RCW Chapter 36.70  
 Planning Commission/Agency  
 Comprehensive Plan (Land Use; Circulation)  
 Planning Players  
 Staff & Planning Commissioners  
 Board of Adjustment / Hearing Examiner  
 City Council

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## WHAT'S OUR AGENDA?

**Introduction to Land Use Law and Local Planning**

- Substantive Laws
- Constitutional Standards
- Public Procedural Laws
- Public Hearings

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## SUBDIVISION CODE

The City legislative body . . . shall determine if *appropriate provisions are made for, but not limited to, the public health, safety, and general welfare*, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and determine whether the *public interest will be served by the subdivision and dedication.*

RCW 58.17 (since 1857)

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## I. SUBSTANTIVE LAWS

The  
Development of Land Use  
and  
Planning Law

\* \* \* \* \*

Washington Statutory Basics

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## FAIRNESS MATTERS

**The Appearance of Fairness Doctrine**  
*Smith v. Skagit County*, 75 Wn.2d 715 (1969)  
 RCW 42.36 (1982)

**The General Rule**  
 Hearings must not only be fair, they must appear to be fair

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## ACTIVISM IN THE 1970s

- Open Public Meetings Act (1971)**  
RCW 42.30
- State Environmental Policy Act (1971)**  
RCW 43.21C
- Shorelines Management Act (1971)**  
RCW 90.58
- Public Disclosure Act (1972)**  
Now Public Records Act  
RCW 42.56

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## REGULATORY REFORM ACT (1)

**RCW 36.70B**  
"Local Project Review"

**Overall Goals**

- Integrate SEPA and GMA
- Avoid duplicative environmental analysis and mitigation

**Effects**

- Streamlined SEPA threshold determinations
- Streamlined project review process

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## STATEWIDE PLANNING (AT LAST)

**Growth Management Act (1990)**  
RCW 36.70A

- Coordinated Planning
- Mandatory Comprehensive Plans
- Consistent Development Regulations
- Growth Areas & Concurrency
- Critical Areas Protection

**More from Other Speakers**

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## REGULATORY REFORM ACT (2)

**How it Works: Nuts and Bolts**

- Concurrent project review
- Only one open record hearing
- Emphasized use of regulations to condition, approve and mitigate
- Distinguished between GMA impact fees and SEPA mitigation fees
- Vested status for complete applications
- 120 day decision period

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## MAJOR PLANNING UPGRADES

**Regulatory Reform Act (1995)**  
SEPA – GMA Integration

**Land Use Petition Act (1995)**  
Uniform (and Expedited) Land Use Appeals

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## LAND USE PETITION ACT (1)

**RCW Chapter 36.70C**  
"LUPA"

**Overall Goals**

- Simplify land use appeal process
- Speed up land use appeal process
- Make land use appeal process uniform

**Effects**

- All of the above

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## LAND USE PETITION ACT (2)

**How it Works: Nuts and Bolts**

- 21-day appeal period
- Record review
- Project-based (not planning-based)
- Deference to underlying decision
- 5-6 month court schedule

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## PLANNING AND TAKINGS

**U.S. Constitution (Fourth Amendment)**

Nor shall private property be taken for public use without just compensation

**Washington Constitution (Art. I, § 16)**

Private property shall not be taken for private use

No private property shall be taken or damaged for public or private use without just compensation having been first made....

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## II. CONSTITUTIONAL STANDARDS

**How the Federal and Washington Constitutions Affect Land Use Planning and Decisions**

\* \* \* \* \*

**Fundamental Rights at Ground Level**

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## TAKINGS, EXACTIONS & DEDICATIONS

**Physical Takings**  
Appropriation of land/property

**Regulatory Takings**  
Deprivation of all economic use

**Exactions & Dedications**  
Nexus + Proportionality

**Reasonable Use Exceptions**  
Critical areas

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## PLANNING AND PROPERTY RIGHTS

The basic rule in land use law is still that, absent more, an individual should be able to utilize his land as he sees fit.

*Norco Construction v. King County,*  
97 Wn.2d 680 (1982)

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## PLANNING AND DUE PROCESS

**Procedural Due Process (5<sup>th</sup> & 14<sup>th</sup> Amend.)**

- Notice and opportunity to be heard
- Intelligent participation
- Reasonable laws; Void for vagueness

**Substantive Due Process**

- Uniquely Washington
- Unduly burdensome outcome

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## PLANNING AND PERSONAL RIGHTS

**Equal Protection (5<sup>th</sup> & 14<sup>th</sup> Amend.)**  
 Protected Classes  
 Discriminatory Basis

**Free Expression & Religion (1<sup>st</sup> Amend.)**  
 Churches, Temples and Mosques  
 Adult Businesses & Entertainment

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## OPEN PUBLIC MEETINGS ACT

**Basic OPMA Elements**

- Open meetings required
- Executive sessions allowed
- Expulsion of meeting participants
- Basic requirements for meetings
- Penalties
- Exemptions

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## III. PUBLIC PROCEDURAL LAWS

**The Open Public Meetings Act**  
**And**  
**Appearance of Fairness Doctrine**

\* \* \* \* \*

**Transparency in Process**

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## OPEN MEETINGS REQUIRED

All meetings of the governing body of a public agency  
 Shall be open and public

All persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

RCW 42.30.030

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## OPEN PUBLIC MEETINGS ACT

**RCW Chapter 42.30**

**Purpose**

All public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof

Exist to aid conduct of the people's business

Intent of this chapter that their actions be taken openly and that their deliberations be conducted openly

RCW 42.30.010

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## WHO IS COVERED?

**Multi-Member Boards For Sure**

- City Council
- Planning Commission
- Civil Service Commission
- Board of Adjustment

**Maybe Others**

- Library Boards
- Park Boards
- Council Committees

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## WHAT CONSTITUTES A MEETING?

**County/City Councils & Planning Comm'ns**  
 Quorum + Action

**Committees, When They.....**  
 Hold hearings  
 Take public comment  
 Make decisions

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## EXPULSION OF PARTICIPANTS

**Options**  
 Recess meeting  
 Adjourn meeting  
 Remove offenders  
 Adjourn to a new location/time

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## IMPROPER MEETINGS

**OPMA Problems**  
 No "cooked" decisions  
 No vote trading  
 No decisions outside of public meetings  
 Serial phone calls  
 Serial emails  
 Texting and messaging  
 Personal computers

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## TYPES OF PUBLIC MEETINGS

**Regular Meetings**  
 Scheduled by code

**Special Meetings**  
 24 hours notice

**Adjourned Meetings**  
 Posted notice  
 "Regular" in all other respects

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## COMMON EXECUTIVE SESSIONS

**Personnel**  
 Review charges and performance

**Litigation and Legal Advice**  
 Ongoing and potential cases/threats  
 Potential financial harm

**Real Estate**  
 Affect price

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## OPMA PENALTIES

**Violation by Member**  
 Knowing violation  
 \$100 fine

**Violation by City**  
 Actions taken during illegal meetings are null and void  
 Pay attorney fees

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## APPEARANCE OF FAIRNESS DOCTRINE

**Common Law Origin**

"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.*"

"A public hearing, if the public is entitled by law to participate, means then a fair and impartial hearing."

*Smith v. Skagit County*, 75 Wn.2d 715, 739 (1969)

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## APPEARANCE OF FAIRNESS DOCTRINE

**Applies to Quasi-judicial Actions**

- Acting like a judge
- Making judicial-like decisions

**Quasi-judicial Characteristics**

- Retrospective
- Specific parties
- Applies existing law or rules to conform conduct
- Hearing or other contested forum/action
- Determines rights, duties or privileges

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## APPEARANCE OF FAIRNESS DOCTRINE

**Overview**

- Codified RCW Chapter 42.36 (1982)
- Only 11 sections
- No purpose statement
- Limited to quasi-judicial application
- Creates objective & subjective standards
- "Full employment" for attorneys?

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## APPEARANCE OF FAIRNESS DOCTRINE

**Quasi-judicial Examples**

- Development permit applications
  - Plats, subdivisions, BSPs, PUDs, PADs, variances, special use permits, CUPs
- Site-specific rezones

**But Not .....**

- Comprehensive plan amendments
- Area-wide rezones

**Query**

- What is site-specific?
- What about site-specific comprehensive plan amendments?

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## APPEARANCE OF FAIRNESS DOCTRINE

**Legal Standard**

- Would a reasonable person
  - Apprised of the totality of a member's personal interest or involvement
  - Be reasonably justified in thinking
  - That the involvement might affect the member's judgment?

*Swift v. Island Co.*, 87 Wn. 348 (1976)

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## APPEARANCE OF FAIRNESS DOCTRINE

**Ex-parte Contacts**

**The Rule**

- No *ex parte* contacts with opponents or proponents during pendency of quasi-judicial action

**The Exception**

- Disclose the substance of communication
- Offer an opportunity for rebuttal

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**APPEARANCE OF FAIRNESS DOCTRINE**

**Exception: Conduct of regular public business allowed**

"No members of a local decision-making body may be disqualified by the appearance-of-fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body."

RCW 42.36.020

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**APPEARANCE OF FAIRNESS DOCTRINE**

**Exception: Campaign Statements**

No public discussion or expression of an opinion  
By a person subsequently elected to office  
On any pending or proposed quasi-judicial action  
Shall be a violation of the doctrine  
If made prior to declaring as a candidate or while campaigning for public office as defined in RCW 42.17.020(5) and (25)

RCW 42.36.040

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**APPEARANCE OF FAIRNESS DOCTRINE**

**Exception: Loss of Quorum**

Doctrine does not apply if it results in loss of quorum or majority needed to approve pending matter

RCW 42.36.090

**Exception: Disclosure**

Disclosing basis for disqualification prior to rendering decision enables participation in proceedings

RCW 42.36.080

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**APPEARANCE OF FAIRNESS DOCTRINE**

**Exception: Campaign Contributions**

A candidate for public office  
Who complies with all applicable public disclosure and ethics laws  
Shall not be limited from accepting campaign contributions to finance a campaign  
And it is not a violation of the doctrine to accept such campaign contributions

RCW 42.36.050

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**APPEARANCE OF FAIRNESS DOCTRINE**

**Exception: Waiver of Objection / Estoppel**

Anyone seeking to rely on the AFD  
Seeking to disqualify a member of a body  
Must raise the challenge as soon as the basis for disqualification is made known to the individual.  
Where the basis is known or should reasonably have been known prior to the issuance of a decision and it is not raised, it may not be relied on to invalidate the decision.

RCW 42.36.080

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**APPEARANCE OF FAIRNESS DOCTRINE**

**Exception: Prior Participation in Advisory Action**

Participation by a member of a decision-making body  
In earlier proceedings that result in an advisory recommendation to a decision-making body  
Shall not disqualify that person from participating in any subsequent quasi-judicial proceeding

RCW 42.36.070

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## APPEARANCE OF FAIRNESS DOCTRINE

**Violations & Consequences**

- Action Taken Will be Void
  - [Do not pass Go; Do not collect \$200]
- Civil Damages May be Available
  - Bad intent
  - Abuse/misuse of authority
  - Delay of decision/action

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## GUIDING PRINCIPLES FOR PUBLIC HEARINGS

**Quasi-judicial Forum**

- Think ahead

**Procedures Count**

- Always think of the record
- Always follow the rules
- Get advice from your attorney

**Be Fair**

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## APPEARANCE OF FAIRNESS DOCTRINE

**Compliance Strategies**

- Poll Council/Board for Conflicts
  - At start of hearing
  - Make a record
- Ask Audience for Objections
- Recuse Yourself from Participation
  - Leave the room
- Start Over
  - From the starting point of the problem

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## PUBLIC HEARING RECORD

**Verbatim transcript**

- Audio / Video vs. Stenographic
- Speaker identification and recognition
- Control the flow

**Physical Exhibits**

- Identify them
- Track them
- Refer to them

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## IV. PUBLIC HEARINGS

The Basics of Public Hearings

\* \* \* \* \*

Rules & Procedures

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## MANAGING PUBLIC HEARINGS

**Know the Rules**

- Codified vs. Adopted
- Announce them
- Follow them

**Use and Manage Time Limits**

**Handling Repetition**

**Handling Crowds**

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## OPENING THE HEARING

**Open Hearing**

**Introductory Comments**

- Topic
- Purpose/goal
- Hearing and decision schedule
- Order of hearing presentation

**Poll Council/Board for Conflicts**

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## DELIBERATION

**Discussion, Evaluation & Deliberation**

- Remember the record.....
- Identify important issues/components of project or application
- State facts and reasons, based on record, supporting approval or disapproval
- Tie position to code/statutory criteria
- Determine positions and/or consensus for action
- Do not seek new evidence, though argument and comment may be allowed; a fine line

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## TYPICAL HEARING PROCESS (1)

**Staff Presentation**

- Testimony
- Power point
- Exhibits

**Commission/Council Q&A of Staff**

- To clarify project, issues, etc.

**Proponent Presentation**

- [Same as Staff]

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## DECISION PROCESS

**Motion to Approve or Disapprove**

- Needs second for discussion
- State reasons; Identify criteria, law, evidence

**Amendments**

- Life is easier if you follow RRO

**Votes**

- Approve as presented
- Approve as amended
- Disapprove

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## TYPICAL HEARING PROCESS (2)

**Public Comment**

- Signed in
- Not signed in

**Proponent Rebuttal**

**Commission/Council Q&A**

- To staff, proponent, public

**Close Hearing**

- No further evidence permitted

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## DECISION DOCUMENT

**Ordinance vs. Resolution**

**Prepared Decision Documents Help**

- Fully justified decision
- Timing

**Unexpected/Complicated Outcomes**

- Instruct staff to prepare draft findings and conclusions per discussion
- Presentation for final approval

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## IMPORTANCE OF FINDINGS

### **Judicial Deference Applies**

Especially on credibility issues

### **Supports "Upstream" Decision Maker**

Hearing examiner

Council

Courts

### **Supports Final City Position & Plans**

### **Serves the Parties**

### **Maximizes Probability of Sustaining Decision**

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## CONSIDERATIONS

### **Appropriate Exercise of Power**

Scope of authority

### **Base Decision on the Record**

### **Future LUPA/Other Appeal**

Typical review standard (is there substantial evidence in the record to support the decision)

Judicial deference

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## AND WE'RE DONE!

### **Questions?**

### **Feel Free to Get in Touch**

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