



MEMORANDUM

COMMUNITY & ECONOMIC DEVELOPMENT

Date: February 1, 2013
To: Planning Commission Members
From: Gary Schenk, Interim Director, Department of Community and Economic Development
Subject: Upcoming Meeting – Tuesday, February 5, 2013

Agenda items for Tuesday's meeting are as follows:

1) Draft Minutes of January 15, 2013 Planning Commission Meeting

Background:

Draft minutes of the previous meeting presented for approval.

Exhibits Associated with this Item:

Exhibit A: City of SeaTac, Planning Commission, Draft Minutes, January 15, 2012

2) Election of Officers

Presenter:

Mike Scarey, Senior Planner

Background:

Section 7.1 of the Planning Commission Bylaws reads as follows:

The officers of the Commission shall consist of a Chairperson and Vice-Chairperson, elected from the appointed members of the Commission. The election of officers shall take place the first regular meeting of February of each year, unless otherwise directed by the Chairperson. The term of office for each officer shall run until the next subsequent election of new officers; provided, however, that any officer may be removed at any time by a majority vote of the entire Commission.

Exhibits Associated with this Item:

None

Anticipated Schedule for this Item:

There is no schedule associated with this item.

3) Briefing on Open Public Meetings Act, Conflict of Interest Issues, and Public Records

Presenter:

Mark Johnsen, Senior Assistant City Attorney

Attached is a memo from Mark Johnsen on the topic of the Open Public Meetings Act, and the Appearance of Fairness Doctrine. These topics are important to the conduct of the Commission's official business, so we feel that it is important to review this information at the beginning of each year, especially when there has been a new Commissioner appointed. Mr. Johnsen will provide an overview of these topics and respond to any questions you may have.

Exhibits Associated with this Item:

Exhibit B (This is the same memo you received in your packet for the January 15, 2013 meeting)

Anticipated Schedule for this Item:

There is no schedule associated with this item.

If you have any questions or comments about Tuesday's meeting, please feel free to call me or Mike Scarey at (206) 973-4750.

**CITY OF SEATAC
PLANNING COMMISSION MEETING**

Tuesday, February 5, 2013

**Council Chambers, SeaTac City Hall, 4800 S. 188th Street
5:30 p.m. to 6:30 p.m.**

MEETING AGENDA

1. Call to Order/Roll Call – 5:30 P.M.
2. Approve Minutes of January 15, 2013 Planning Commission Meeting – 5:30 P.M. to 5:35 P.M.
3. Old Business – None
4. New Business – 5:35 P.M. to 6:15
 - a. Election of Officers
 - b. Briefing on Open Public Meetings Act, Conflict of Interest Issues, and Public Records
5. Detailed Commission Liaisons' Reports – 6:15 P.M. to 6:20 P.M.
6. Community & Economic Development Director's Report – 6:20 P.M. to 6:25 P.M.
7. Planning Commission Comments (*including suggestions for next meeting's agenda*) – 6:25 P.M. to 6:30 P.M.
8. Adjournment – 6:30 P.M.

CITY OF SEATAC
PLANNING COMMISSION

DRAFT Minutes of January 15, 2013
Regular Meeting

Members Present: Daryl Tapio, Chairman, Roxie Chapin, Vice-Chair, Tom Dantzler, Joe Adamack, Jim Todd

Members Absent: None

Staff Present: Gary Schenk, Interim Director, Planning and Community Development Department; Mike Scarey, AICP, Senior Planner; Albert Torrico, Senior Planner; Kate Kaehny, Senior Planner; Anita Woodmass, Associate Planner

1. **Call to Order:**

Chairman Tapio called the meeting to order at 5:32 p.m.

2. **Approve Minutes of the December 4, 2012 Meeting:**

On a motion by Commissioner Chapin, 2nd by Commissioner Dantzler, the December 4, 2012 meeting minutes were moved and accepted as presented, by a 5-0 Commission vote.

4. **New Business:** None

3. **Old Business:**

A. Planning Commission Recommendation on Proposed City Center Park-and-Fly Code Amendments

- Ms. Woodmass provided an overview of the discussion items, which she noted would include 1) a brief recap of project milestones and key elements of the proposed new code; 2) highlights from the December 4, 2012 Public hearing; 3) a potential recommendation from the Planning Commission; and 4) next steps.
- Regarding applicability, the proposed code would apply to park-and-fly structures in the City Center
- Key changes in the proposed code would affect:
 - The number of park-and-fly stalls allowed:
 - Maximum number of base stalls allowed changed from 300 to 1,000;
 - Bonus system requires smaller developer contributions to gain additional park-and-fly stalls;
 - The design and function of buildings; and
 - Site design and amenity requirements

- Ms. Woodmass then reminded the Commission that, although not part of the changes to the park-and-fly-related code amendments, the issue of the City Center road standards was part of the SEPA review:
 - The Ad Hoc Committee (AHC) originally proposed removing the City Center road standards, but
 - The SEPA review found that removing the road standards would not implement the City Center Plan;
 - The Planning Commission subsequently recommended that the road requirements be maintained, but that the related Comprehensive Plan/City Center Plan policies be reviewed at a later date; and
 - The City Council subsequently directed that the City Center road standards be maintained for park-and-fly developments
- Ms Kaehny then recapped highlights from the December 4, 2012 Public Hearing, noting that four (4) speakers spoke in support of adopting the proposed code, and three (3) speakers spoke against adopting it. One of the arguments put forward for not adopting the proposed code stated that the proposed code didn't implement the Comprehensive Plan.
- Ms. Kaehny took a moment to remind the Commission that the independent SEPA review found the proposed code to be consistent with the Comprehensive Plan, except for the AHC proposal to remove the City Center road standards. She emphasized that the Zoning Code is intended to implement the Comprehensive Plan policies, and that SEPA review for code amendments always makes a determination regarding compliance with Comprehensive Plan policies.
- The Planning Commission's options for recommendations were then outlined as follows:
 - Adopt the proposed code;
 - Propose revisions to the code and recommend that for adoption; or
 - Do not adopt the proposed code
- In response to a question from Commissioner Dantzler, as to whether the existing park-and-fly structure projects were developed with the City Center road standards in place, Ms. Kaehny responded that yes, they were.
- Commissioner Chapin recommended that the Commission stay with their November 6 Preliminary recommendation, which was to adopt the proposed code and keep the existing City Center Road Standards, but to recommend review of the City Center & Comp Plan policies at a later date.
- There was considerable discussion about the road standards, how they affected the current developments, and how they might have an impact on future developments. The discussion also included the idea that below ground parking not be subject to the base stall maximum or the bonus program.
- The discussion also touched on a comment made at the Public Hearing that the proposed standards would result in lower quality development. Staff responded that the proposed standards require rigorous building design standards to modulate and break up the appearance of large structures, increased aesthetic requirements for structures on corner lots, and other provisions that ensure high quality development.
- Chairman Tapio moved that the Commission's preliminary recommendation from the November 6, 2012 meeting be the final recommendation to Council (to adopt the

proposed code and keep the existing City Center Road Standards, but to recommend review of the City Center & Comp Plan policies at a later date). The motion was seconded by Commissioner Dantzler, and carried by unanimous vote of the Commission.

- It was decided that the concept of having the maximum stall limit and the bonus program provisions only apply to above ground parking be reviewed as a separate discussion item at a later date.

6. Detailed Commission Liaison's Report:

Commissioner Dantzler asked that Commissioner Adamack provide a report from the Legislature from time to time, especially regarding transportation projects or funding for same [because Commissioner Adamack serves as a staff member to the legislature].

7. Community & Economic Development Director's Report:

Interim Director Schenk noted that the Commission was scheduled to elect Commission Officers (Chair and Vice chair at the next meeting, February 5).

8. Planning Commission Comments (including suggestions for next meeting's agenda)

8. Adjournment:

By the consensus of the Commission, the meeting was adjourned at 6:25 p.m.

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LEGAL DEPARTMENT MEMORANDUM

TO: Planning Commission
FROM: Mark S. Johnsen, Senior Assistant City Attorney *MSJ*
DATE: January 9, 2013
SUBJECT: Open Public Meetings Act ("OPMA") and Appearance of Fairness

With the beginning of a new year and the addition of a new Planning Commissioner, it was suggested that I (again) provide the Planning Commission with a memo pertaining to the Open Public Meetings Act ("OPMA") and the Appearance of Fairness Doctrine. I plan on attending the February 5, 2013 Planning Commission meeting to answer any questions regarding the information contained in this memo or discuss any other legal questions that the Commission would like to address. If there are specific issues you would like to bring to my attention in advance of the February 5, 2013 meeting, feel free to email me at mjohnsen@ci.seatac.wa.us or call me at 206.973.4635.

Open Public Meetings Act.

To whom does the OPMA apply?

The basic mandate of the Open Public Meetings Act is as follows:

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

The OPMA applies to "meetings" of a "governing body" of a public agency. A "governing body" is defined in the OPMA as follows:

"Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment."

Therefore, the OPMA applies to more than just meetings of the whole Council. It also applies to committee meetings and meetings of other boards such as the Planning Commission.

When does the OPMA apply?

In order for the OPMA to apply, there must be a “meeting” of a governing body. Sometimes it is very clear that a “meeting” is being held that must be open to the public, but other times it isn't. To determine whether a governing body is having a “meeting” that must be open, it is necessary to look at the OPMA’s definitions. The OPMA defines “meeting” as follows:

“Meeting” means meetings at which action is taken.”

“Action,” as referred to in the above definition of “meeting,” is defined as follows:

“Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.”

Since the Planning Commission can transact business when a quorum (majority) of its members are present, it is conducting a meeting subject to the requirements of the OPMA whenever a majority of its members¹ meet together and deal in any way with City business. This includes formal discussions or simply discussing some matter having to do with City business.

Must meetings be held in person in order for the OPMA to apply?

No. Because members of a governing body may discuss the business of that body by telephone or e-mail, it is not necessary that the members be in the physical presence of each other for there to be a meeting subject to the Act. Issues related to email communication as it relates to the OPMA are discussed below.

What is a regular meeting?

A regular meeting is one that requires notice by adopting an Ordinance or Resolution according to a schedule adopted by Ordinance or Resolution. Currently, Planning Commission meetings held on the first and third Mondays of each month are regular meetings.

What is a special meeting?

A special meeting is any meeting that is not a regular meeting. In other words, special meetings are not held according to a fixed schedule. This includes retreats which are not held at the regularly scheduled time. Under the OPMA, special meetings have specific notice requirements. Planning Commissions can hold special meetings similar to the City Council.

¹ In the case of the City Council, a quorum would mean four or more Councilmembers. In the case of the five-member Planning Commission, a quorum would be three members.

What notice requirements are required for a Special Meeting?

Notice of special meetings of the public agency must be accomplished by providing notice to each Commission Member and providing 24 hours notice to a local newspaper of general circulation and posting the notice and the agenda at established public places (such as City Hall and the fire Stations).

A special meeting may be called by the presiding officer of the Commission or a majority of the whole Commission, provided that the notice requirements listed above are met.

What about emergency situations when there is no time for notice to be given before a meeting?

An emergency suspends the notice requirements under the OPMA.

At a special meeting, can topics not on the agenda be discussed?

Generally, no. The purpose of the notice requirement is to advise interested parties what action a governing body will be taking so that they may make a decision as to whether they should attend the meeting. Due to the broad definition of "action" under the statute, discussions are likely "action" under the statute. It should be noted that this requirement only applies to special meetings. Agendas for regular meetings can be changed, and topics not on the agenda can be discussed.

Must meetings be held in a specific place?

No. As far as the Open Public Meetings Act is concerned, the meeting may be held at any place inside or outside the territorial jurisdiction of the City. However, no final action may be taken on an Ordinance or Resolution if the meeting is held outside the corporate limits of the municipality.

Would discussions of city business between only two Commissioners be considered a council meeting subject to the Open Public Meetings Act?

No. Because less than a quorum of the Commission is present, it would not be considered a meeting subject to the OPMA.

Are social gatherings covered by the OPMA?

No. Social gatherings are not subject to the OPMA, unless official business is discussed or transacted at the gatherings.

Is it possible to hold a meeting by e-mail?

Yes. Due to the ability of email to link people together and allow them to share and respond to ideas almost immediately, it is possible for members of the Commission to join one another in a

meeting, even though the members of the body are in different locations. These inadvertent meetings would not comply with the OPMA.

In a recent Court of Appeals case, the Court stated:

“In light of the OPMA’s broad definition of “meeting” and its broad purpose, and considering the mandate to liberally construe this statute in favor of coverage, we conclude that the exchange of e-mails can constitute a “meeting.” In doing so, we also recognize the need for balance between the right of the public to have its business conducted in the open and the need for members of governing bodies to obtain information and communicate in order to function effectively. Thus, we emphasize that the mere use or passive receipt of e-mail does not automatically constitute a “meeting”.”

May an unlawful meeting by e-mail be cured by making the meeting public?

No. The problem with an inadvertent and, therefore, unlawful meeting is that it is inherently unlawful. It is not scheduled, written notice has not been given, and the public is excluded. There is no way that the “unlawfulness” can be cured.

Does this mean that Commissioners cannot receive or share information by e-mail?

No. However, it does mean that Commissioners may not use e-mail to “meet” and take action with other Commissioners. Receiving or sending out information would not violate the OPMA, but *replies and comments* shared with a majority of the Commission, or decisions made and shared on-line as result of an e-mail could be in violation. In order to avoid a potential OPMA violation, it is advised that one Commissioner should refrain from sending an email to more than two other Commissioners at one time.

Furthermore, the OPMA does not preclude email communication with constituents. However, Commissioners should remain aware that any email communication is subject to public disclosure.

Is there a problem if a member of the public or a staff member e-mails information to all of the elected officials?

No. Passive receipt of information from members of the public or City staff is not a violation. However, if the information received is discussed with other Commissioners via email, there may be a violation.

Appearance of Fairness Doctrine.

What is the Appearance of Fairness Doctrine (RCW 42.36)?

The Appearance of Fairness doctrine requires government decision-makers to conduct non-court land use hearings and proceedings in a way that is fair and unbiased in both appearance and fact.

It was developed as a method of assuring that due process protections, which normally apply in courtroom settings, extend to certain types of administrative decision-making hearings, such as rezones of specific property.

Why is the Appearance of Fairness Doctrine important?

The Appearance of Fairness doctrine is intended to protect against actual bias, prejudice, improper influence, or favoritism. It is also aimed at curbing conditions that create suspicion, misinterpretation, prejudgment, partiality, and conflicts of interest. The Appearance of Fairness doctrine is designed to guarantee that strict procedural requirements are followed so that land use hearings are not only fair, but also appear to be fair. The goal of the doctrine is to instill and maintain confidence in the fairness of government proceedings.

Public officials act more like judges than administrators or legislators when they participate in hearings subject to the Appearance of Fairness doctrine. This means that they must listen to and evaluate testimony and evidence presented at a hearing; they must determine the existence of facts; they must draw conclusions from facts presented and then decide whether the law allows the requested action.

When does the Appearance of Fairness Doctrine apply?

The Appearance of Fairness doctrine applies to local land use decisions and shall be limited to the *quasi-judicial actions* of local decision-making bodies.

What is a quasi-judicial action?

A quasi-judicial action of a local decision-making body includes actions by the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a public hearing or other contested case proceeding.

Some principle characteristics of quasi-judicial proceedings are:

- Quasi-judicial proceedings generally have a greater impact on specific individuals than on the entire community.
- The proceedings are aimed at arriving at a fact-based decision between two distinct alternatives, i.e., pro or con.

Are there specific times when the Appearance of Fairness doctrine does not apply?

The doctrine *does not* apply to local legislative policy-making actions of the type which adopt, amend, or revise comprehensive, community, or neighborhood plans, street vacations, or other

land use planning documents. It also does not apply to the passage of area-wide zoning ordinances, or to the adoption of zoning amendments which are of area-wide significance².

Quasi-Judicial Proceedings	Not Quasi-Judicial Proceedings
Conditional Use Permits	Comprehensive Plan amendments
Subdivisions	Street Vacations
Variances	Area-wide zoning ordinances
Rezoning a specific site	Annexation
Preliminary plat approval	
Appeal of a decision of the Hearing Examiner	

What are the rules related to ex parte contact?

A basic principle of fair hearings is that decisions are made entirely on the basis of evidence presented at the proceedings. All parties to a conflict should be allowed to respond and state their case. Consequently, while a quasi-judicial proceeding is pending, no member of a decision-making body is allowed to engage in *ex parte* (one-sided or outside the record of the hearing) communications with either proponents or opponents of a pending proceeding.

However, a decision-maker may cure a violation caused by an ex parte communication by:

- Placing the substance of any oral or written communications or contact on the record; and
- *At each hearing* where action is taken or considered on the subject, (1) making a public announcement of the content of the communication, and (2) allowing involved parties to rebut the substance of the communication.

This rule does not prohibit written correspondence between a citizen and a decision-maker on the subject matter of a pending quasi-judicial matter if the correspondence is *made a part of the record of the proceedings*.

What are the potential consequences to the underlying action if the Appearance of Fairness Doctrine is violated?

The remedy for an Appearance of Fairness violation is to invalidate the local land use decision, and the matter would need to be reheard. Damages, however, cannot be imposed for a violation of the doctrine. Any new hearing must be conducted without the participation of any disqualified decision-maker.

² Even though a zoning amendment might affect specific individuals, if it applies to an entire zoning district, it will be considered legislative.