

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: A-5 Quasi-Judicial Revisions
DATE: April 26, 2007
SUBJECT: Quasi-Judicial Revisions City Council and Hearing Examiner
CONTACT PERSON: Rick Cisar, Director of Community Development

SUMMARY:

Staff is requesting Council's authorization to proceed with the development of a revised Permit Matrix system for quasi-judicial and legislative responsibilities of the Council including the schedule and times lines to complete the revision process.

At the April 12 City Council Meeting, Staff provided the Council, with an overview of the Council's quasi-judicial and legislative responsibilities under the Sultan Municipal Code (SMC) Chapter 16 Unified Development Code. At the conclusion of this discussion item, Council directed staff to develop a Permit Matrix as recommended in the staff report (Attachment B) but with the final approval of variances being retained by the City Council as discussed at the meeting. In consideration of Council's direction staff has prepared the following schedule to implement a new Permit Matrix system.

STAFF RECOMMENDATION:

City staff recommend the City Council approve the proposed schedule for the revised Permit Matrix system described as follows:

Permit Matrix Development Schedule

May 1 to July 31	Develop Draft Permit Matrix and procedures. (City Attorney, staff, and Peer review) Identify and prepare necessary changes to other affected code sections (e.g. Section 2.26 Hearing Examiner)
August 9	City Council discussion on Draft Matrix and other affected code sections
August 21	Planning Board Discussion Draft Matrix and other affected code sections
August 23	Conduct Environmental review Matrix and Procedures (45 days)

Permit Matrix Development Schedule (Continued)

August 23	Start 60-day State Community Trade and Economic Development (CTED) review of Matrix and Procedures
October 2	Planning Board Discussion of Matrix, Procedures, and review comments.
October 16	Planning Board Public Hearing Permit Matrix and Procedures
November 8	City Council Public hearing and Planning Board Recommendation on Matrix and Procedures
November 22	1 st reading Ordinance adopting revised Matrix and Procedures
December 13	2 nd reading Ordinance and adoption of revised Matrix and Procedures
January 1, 2008	Implement new Permit Matrix and Procedures.

RECOMMENDED PERMIT MATRIX:

The recommended revised Matrix reviewed by the City Council on April 12, 2007 is outlined below and provides, with the exception of variances, the majority of decisions by the Hearing Examiner appealable to Superior court.

REVISED MATRIX (TEXT)

Administrative Actions:

Type I Administrative Decision by Director of Community Development for Compliance with Planned Unit Development or Conditional Use Requirements and determination of Impact Fees. **(Administrative Decision by Staff appealable to Hearing Examiner).**

Type II Administrative Decision by Director of Community Development for Boundary Line Adjustment, Short Plat, Minor Amendments to PUD and Landscaping Plans, Approval of Comprehensive Signage Plan, Home Occupations. **(Administrative Decision by Staff appealable to Hearing Examiner).**

Land Use Actions:

Type III Administrative Appeal (of a staff action), Critical Areas Appeal, and Variances. **(Final Decision by Hearing Examiner).**

Type IV Variances
(Recommendation by Hearing examiner to City Council appealable to Superior Court)

Land Use Actions: (Continued)

- Type V** Preliminary Plats, Shoreline Development Permit, Commercial over 20,000 sq ft, Condo, MF, and MHP Projects, Binding Site Plans, and Conditional Use Permits. **(Decision by Hearing Examiner appealable to Superior Court and Shoreline Permits appealable to the State Shoreline Hearings Board).**
- Type VI** Final Plat and Final Planned Unit Development, Final Binding Site Plan, Street Vacation Petitions, expansion of Nonconforming Uses. **(Decision by City Council appealable to Superior Court. Hearing Examiner has no role in the final approval process. Staff advises City Council that all conditions of preliminary approval have been met).**

Legislative Actions:

- Type VII** Rezones, Comp Plan Amendments, Development Regulations, Zoning Code, and Map Amendments. **(Recommendation to City Council by Planning Board appealable to Superior Court and Growth Management Hearings Board).**

This matrix and permit types would provide for a recommendation on Variances (Type IV Permit) from the Hearing Examiner to the City Council, preliminary approvals (Type V Permits) by the Hearing Examiner and Final Approvals (Type VI) by the City Council.

Appeals of the Type I and Type II Permits (actions by staff) would go to the Hearing Examiner while Permit Types IV, V, and VI would go to Superior Court with the exception of Shoreline Permits that are appealable to the State Shorelines Hearings Board.

Type VII permits, recommendations of Planning Board to the City Council are appealable to Superior Court and Growth Management Hearing Board

The City Council would not consider any Appeals of decisions by the Hearing Examiner under this Permit Matrix. However, City Council would retain final action and approval of all Variance requests.

ANALYSIS:

Impact of Matrix

The proposed matrix, in addition to amending the Unified Development Code Chapter 2.17, Planning Commission, and Chapter 2.26 Hearing Examiner will also necessitate the updating of the relevant zoning and development standards and criteria to insure the adopted policies of the City Council, and the intent and interpretation of those polices, are correctly administered by the Hearing Examiner and Staff (e.g. transit requirements for Planned Unit Developments).

Regulatory Reform Goals

The revised matrix will, as explained to the Council at the April 12 meeting, follow the guidelines of the "regulatory reform" legislation (ESHB 1724). The goal of this legislation was to develop a permit system that defines, for an applicant, all the requirements and steps necessary to obtain a permit for their project from the time of the preapplication meeting with staff to the final approval by the City Council or Hearing Examiner. The processing time or notice of decision time established by ESHB 1724 was 120 days from the issuance of the "Technically Complete Application" notice by the City to the applicant. The 120-day timeline, provides "certainty" and "predictability" to the applicant in processing their permit.

Council's Decision Making Authority

The proposed matrix, will again, redefine the role of the City Council and limit the Council's involvement in approving for example, Final Plats, Planned Unit Developments, Binding Site Plans and Variances as shown on Exhibit A. The Hearing Examiner will have approval authority for Conditional Use Permits, Preliminary Plats , Planned Unit Developments, and Shoreline Permits. The Examiner, as recommended by the Council on April 12, would continue to prepare a recommendation to the City Council on Variance requests. Council must be satisfied with the adopted policies, development standards, and their implementation by the Hearing Examiner and Staff under this revised program.

Fiscal Impact

The cost of revising the permit matrix system will involve an extensive amount of staff time and thereafter the City Attorney in reviewing the work products as they are developed. Staff will, in and effort to reduce costs, develop a peer review group of local planning officials and consultants to evaluate the matrix and procedures as they are drafted.

Comprehensive Plan Goals

The Comprehensive Plan does not specifically address the development permitting process. However, the revisions to the our permitting matrix and the timelines within each of the permit types will assist the City in our economic development efforts particularly as they relate to commercial and industrial development. The "certainty" and predictability of a process and timelines involved are key elements of any successful economic development program.

Impact on Applications

The impact on land use applicants, whether their project involves a commercial, industrial, residential, or setback variance is a defined and predicable process with associated time lines. The same is true for individual who may want to participate in the public review of the application.

REQUESTED ACTION:

Staff is requesting City Council's approval of the proposed schedule for the revised Permit Matrix system.

Attachments:

Exhibit A - Revised Development Permit Approval Process
Exhibit B - April 12, 2007 Agenda Cover and Attachments

EXHIBIT A

Revised Development Permit Approval Process.

Permits	Administrative Approval	Public Hearing Required	Council Action	Appeals
Boundary Line Adjustment	City Planner	None	No Action	To Hearing Examiner
Short Plat (up to 4 lots)	City Planner	None	Acceptance of Final Short Plat dedications and improvement	To Hearing Examiner
Formal Plat (5 + lots)		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner. Hearing Examiner Decision final on Preliminary Plat.	Final Plat approval upon completion of Preliminary Plat requirements	Sno. Co. Sup. Court
Shoreline Substantial Development Permit		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner Hearing Examiner Decision final. On Shoreline Permit	No Action	State Shoreline Hearings Board
Commercial 20,000 sq. ft., Condo, Multifamily, Mobile Home Park		Conduct Open Record Hearing on Preliminary development before Hearing Examiner Hearing Examiner Decision Final on preliminary plan.	Final Development approval upon completion of Preliminary Development Plan requirements.	Sno. Co. Sup. Court

Revised Development permit approval process (Continued)

Permits	Administrative Approval	Public Hearing Required	Council Action	Appeals
Binding Site Plan		Conduct Open Record Hearing on Preliminary Binding Site Plan before Hearing Examiner Hearing Examiner Decision Final on Preliminary Binding Site Plan.	Final Binding Site Plan approval upon completion of Preliminary Binding Site Plan requirements. X	Sno. Co. Sup. Court
Variance		Conduct Open Record Hearing on Variance Request Hearing Examiner Recommendation to City Council	1 Conduct .Closed Record Hearing on Hearing Recommendation on Variance 2.Final Variance approval	Sno. Co. Sup. Court
Conditional Use		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner. Hearing Examiner Decision Final On Conditional Use Permit	No Action	Sno. Co. Sup. Court

LEGISLATIVE ACTIONS

Permits	Administrative Approval	Public Hearing Required	Council Action	Appeals
Site Specific Rezones		Conduct Public Hearing before Planning Board Planning Board Recommendation to City Council	1. Conduct Public Hearing and consider recommendation of Planning Board 2. Final Action on Rezone	To Superior Hearing Examiner
Code Amendments		Conduct Public Hearing before Planning Board. Planning Board Recommendation to City Council	1. Conduct Public Hearing and consider recommendation of Planning Board 2.. Final Action on Amendment	To Superior Court or Growth Management Hearings Board
Comprehensive Plan Amendment		Conduct Public Hearing before Planning Board. Planning Board Recommendation to City Council	1. Conduct Public Hearing and consider recommendation of Planning Board 2. Final Action on Amendment	Growth Management Hearings Board

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: D - 1 Discussion Quasi-Judicial Alternatives

DATE: April 12, 2007

SUBJECT: Discussion Quasi-Judicial Alternatives City Council and Hearing Examiner

CONTACT PERSON: Rick Cisar, Director of Community Development

SUMMARY: **The City Council requested an overview of the Council's quasi-judicial responsibilities under the Sultan Municipal Code (SMC) Chapter 16 Unified Development Code. This staff report provides background information to begin the discussion. Staff recommends the Council discuss the alternatives and give direction to staff on how to proceed.**

Current Approval Process

The final change to the current Development Permit Approval Process (16.120.050) occurred in January of 2002 when the review of Short Plats (4 lots or less) was delegated to the City Planner for administrative approval. With this last amendment in 2000 the permit process matrix (Attachment A) for land use permits has remained unchanged.

Land Use

The role of the City Council since the adoption of the Development Permit approval process in 1990 has not changed. The City Council remains the Final Approving authority for the land use permit activities shown on Attachment A, "Section 16.120.050 Development permit approval process". Specifically,

Formal plats,
Shoreline Development permits,
Commercial projects over 20,000 square feet,
Condominiums, Multifamily (MF) and
Mobile Home Park (MHP) developments,
Binding Site Plans,
Variances and,
Conditional Use Permits.

In the case of these permit applications, the Hearing Examiner conducts the Open Record Hearing and forwards his/her recommendation to the City Council for final action and approval at a Closed Record Hearing. Final actions by the City Council on these landuse applications may be appealed to Snohomish County Superior Court.

At the same time, the Examiner's recommendation, based on the Open Record Hearing, may be appealed to the City Council which has been the case with some recent developments (SMC 2.26.140).

Code Changes

The Rezone, Code (text) Amendments and Comprehensive Plan Amendments identified in the permit approval matrix are considered by the Planning Board at a Public Hearing. The recommendation of the Planning Board is forwarded to the City Council for (1) consideration at a second Public Hearing held by the Council and (2) Final action or approval of the request. The final actions by the City Council on a rezone, code or comprehensive plan amendment are appealable to the Hearing Examiner.

Attachment A, Development Permit Approval Process summarizes the individual permit types in Section 16.120.050 of the Sultan Municipal Code.

BACKGROUND:

In July of 1990 the Sultan Town Council adopted Ordinance 550 which established the Hearing Examiner position. The duties of the Examiner under Ordinance 550 only included **appeals** of the following applications:

- A.** Denials of conditional use permits;
- B.** Denials of variance;
- C.** Appeals of short plats and subdivisions;
- D.** Appeals from administrative determination of the town's land use regulation codes.

The final action by the Hearing Examiner was final unless appealed to the Town Council. The council's decision was final and conclusive with the right of appeal to Superior Court.

The Planning Commission at this time was responsible to conduct the required public hearings on the following applications:

1. Rezones;
2. Conditional Use Permits;
3. Variances;
4. Short subdivision plats;
5. Preliminary plats for formal subdivisions;
6. Planned residential developments;
7. Binding site plan, if required;
8. Draft environmental impact statement;
9. Shorelines substantial development permits;
10. Amendments to the zoning ordinance;
11. Amendments to the comprehensive plan;
12. Other actions requested by the Town Council

The Planning Commission's recommendation on any of the above applications was then forwarded to the Town Council for an additional public hearing and final action.

In July of 1995, the City adopted new Development standards that were identified as Title 16, Unified Development Code.

The code provisions under the new Title 16 regulations maintained the Planning Commission's role in conducting the public hearing for development applications with a recommendation to the City Council for final action.

In March of 2000 the City Council amended Title 16 to provide for a new "Development Permit Approval Process". This new process basically transferred **the review and recommendation role** from the Planning Commission to the Hearing Examiner for:

1. Short Plats;
2. Formal Plats;
3. Shoreline Development;
4. Commerical 20,000 sq. ft., Condo, MF, MHP;
5. Binding Site Plan;
6. Variance;
7. Conditional Use;

The Hearing Examiner conducted the Open Record Hearing and forwarded his/her recommendation to the City Council who would conduct a Closed Record Hearing. The recommendation of the Examiner was appealable to the City Council (SMC 2.26.140). The council's final decision was final and conclusive with the right of appeal to Superior Court.

The Planning Commission, however, continued to review and prepare recommendations to the City Council on;

1. Rezones
2. Code Amendments
3. Comprehensive Plan Amendments

The council's final decision was final and conclusive unless with the right of appeal to the Hearing Examiner.

In 1995 the State Legislature adopted "regulatory reform" legislation (ESHB1724) for the purpose of simplifying and integrating the various state land use and environmental regulations.

Project permits under this legislation were categorized into types based on the action required for review and approval.

For example, Administrative actions by staff are considered by some cities a Type I or II permit. Appeals to the examiner a Type III permit. Preliminary Plats, Conditional Use Permits, Shoreline Development, Binding Site Plans a Type IV Permit. Final Plats, Final Planned Unit Developments, and Final Binding Site Plan a Type V Permit. Rezones, Code Amendments and Comprehensive Plan amendments a Type VI Permit.

Cities vary on the number of Permit Types but include administrative actions by Staff, actions by the Hearing Examiner, and final actions or approvals by the City Council.

ALTERNATIVES:

In October of last year, staff contacted John Galt the City's Hearing Examiner regarding the procedures and actions other cities followed in finalizing applications and handling appeals. Mr. Galt's response, that staff previously provided to the City Council, was:

Most of the jurisdictions served by Mr. Galt have made all or most of the Hearing Examiner's Actions final. There are two different models:

1. Final with right of Closed Record Appeal to the City Council; and
2. Final with right of Appeal directly to Superior Court.

The Cities of Lynnwood, Monroe, Stanwood and Sultan currently provide for a closed record appeal to the City Council. However, the Cities of Bothell, LakeForest Park, Duvall, Covington, Redmond and Sammamish provide for Final Action by the Hearing Examiner with an appeal to Superior Court. Attachment B summarizes the permit types and actions by these Cities.

In addition to Mr. Galt's summary, staff contacted Municipal Research in February to request information they may have available (pro and con) of a City allowing the Hearing Examiner to be the final decision maker on land development permits and with that decision only being appealable to Superior Court. Ms Sue Enger, Planning Consultant, of the MRCS Staff responded with the following information:

Ms. Enger noted that MRSC Attorneys do not believe that a Code City may delegate final decision authority to the Hearing Examiner for several types of land use decisions.

Rezoning are specifically excluded from the delegation authority of the Hearing Examiner RCW 35A.63.170 (2) (c).

Under RCW 58.17.100 "Sole authority to approve final plats, 6+ and to adopt or amend platting ordinances shall reside in the legislative bodies." In the opinion of MRSC attorneys, a city may not delegate authority to approve final plats to a hearing examiner, or other official. Even so, there is some confusion in the statutes. MRSC is aware that a few cities, such as Bellevue, have delegated decision authority for final plat authority to the hearing examiner. Bellevue has a requirement for a hearing examiner signature on the final plat. MRSC has consistently advised that a city hearing examiner can be authorized to make a final decision on a preliminary plat under RCW 58.17.330 and RCW 35.63.130 and RCW 35A.63.170.

As a result, MRSC does not recommend that the City delegate final decision authority for final subdivision plats or rezoning to the Hearing Examiner.

Ms. Enger, noted MRSC has an article on Hearing Examiners that summarizes pros and cons of using a Hearing Examiner system, - Use of Hearing Examiners by Cities and Counties in Washington, MRSC Focus, May 1999. Staff has attached a copy of this article for the City Council's consideration.

In her closing comments, Ms. Enger explained that perhaps the most important precaution to address is the City Council's loss of direct control when using a Hearing Examiner is to assure that any delegation of authority is accompanied by adequate review standards and criteria.

It would appear from the information that cities vary in their application of the "regulatory reform" legislation, and the Hearing Examiner System as well as appeals of final actions or decisions to Superior Court.

ISSUES:

The issues to consider in delegating additional authority to the Hearing Examiner are:

1. What permit types will be considered by the City Council?
2. What permit types will be considered by the Hearing Examiner?
3. What permit types will be considered by Staff?
4. Appeals of all City Council Decision to Superior Court?
5. Appeals of all Hearing Examiner's Decisions to Superior Court?
6. Appeals of Administrative (Staff Decisions) to Hearing Examiner?

**RECOMMENDED
PERMIT MATRIX:**

To provide the City Council with an example of the various Permit Types referenced in regards to the "regulatory reform" legislation (ESHB 1724), the Municipal Research information, and Mr. Galt's comments, staff has prepared the following matrix for the City of Sultan that provides for the majority of approvals by the Hearing Examiner with all appeals to Superior court.

Permit Types Examples:

Administrative Actions:

Type I Administrative Decision by Director of Community Development for Compliance with Planned Unit Development or Conditional Use Requirements and determination of Impact Fees. **(Administrative Decision by Staff appealable to Hearing Examiner).**

Type II Administrative Decision by Director of Community Development for Boundary Line Adjustment, Short Plat, Minor Amendments to PUD and Landscaping Plans, Approval of Comprehensive Signage Plan, Home Occupations. **Administrative Decision by Staff appealable to Hearing Examiner).**

Land Use Actions:

Type III Administrative Appeal (of a staff action), Critical Areas Appeal and Variances. **(Final Decision by Hearing Examiner).**

Type IV Preliminary Plats, Shoreline Development Permit, Commercial over 20,000 sq ft, Condo, MF, and MHP Projects, Binding Site Plans, and Conditional Use Permits. **(Final Decision by Hearing Examiner appealable to Superior Court).**

Type V Final Plat and Final Planned Unit Development, Final Binding Site Plan, Street Vacation Petitions, expansion of Nonconforming Uses. **(Decision by City Council appealable to Superior Court. Hearing Examiner has no role in the final approval process. Staff advises City Council that all conditions of preliminary approval have been met).**

Type VI Rezones, Comp Plan Amendments, Development Regulations, Zoning Code, and Map Amendments. **(Recommendation to City Council by Planning Board appealable to Superior Court).**

The above matrix and permit types would provide for preliminary approvals (Type IV Permits) by the Hearing Examiner and Final Approvals (Type V) by the City Council.

Appeals of Type I and Type II Permits (actions by staff) would go to the Hearing Examiner while Permit Types IV, V, and VI would go to Superior Court. The City Council would not consider any Appeals under this proposal.

ANALYSIS:

Modifications to the Unified Development Code to incorporate revisions to the Land Use Development Permitting Matrix will also require a revision to Chapter 2.17, Planning Commission, Chapter 2.26, Hearing Examiner and Title 16 Unified Development Code to include the new Planning Board Powers and Duties. The revisions to the regulations will require an Environmental Review under the State Environmental Policy Act (SEPA), review by the State Department of Community Trade and Economic Development, public out reach, and Public Hearings before both the Planning Board and City Council.

The estimated time to complete the revision process is approximately six months which can be coordinated with scheduled code revisions beginning in September.

FISCAL IMPACT:

Staff time in rewriting and processing the code amendments and public outreach. City Attorney and Consultant review .

RECOMMENDED ACTION:

Discuss the various Quasi-Judicial alternatives and give staff direction on how to proceed.

COUNCIL ACTION:

DATE:

Attachments:

Attachment A 16.120.050 - Development Permit Approval Process.
Attachment B Final Decision Chart
MRSC Article Use of Hearing Examiners by Cities and Counties in Washington

EXHIBIT A

16.120.050 Development Permits Approval Process.

Permits	Administrative Approval	Public Hearing Required	Council Action	Appeals
Boundary Line Adjustment	City Planner	None		To Hearing Examiner
Short Plat (up to 4 lots)	City Planner	None	Acceptance of Final Short Plat dedications and improvement	To Hearing Examiner
Formal Plat (5 + lots)		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner	<ol style="list-style-type: none"> 1. Conduct Closed Record Hearing on Hearing Examiner Recommendation on Preliminary Plat. 2. Consider Appeal of Hearing Examiner's recommendation on Preliminary Plat. 3. Final Plat approval 	Sno. Co. Sup. Court
Shoreline Development		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner	<ol style="list-style-type: none"> 1. Conduct Closed Record Hearing on Hearing Recommendation on Preliminary Plat. 2. Consider Appeal of Hearing Examiner's recommendation on Preliminary Plat. 3. Final Plat approval 	Shoreline Hearings Board
Commercial 20,000 sq. ft.+, Condo, Multifamily, Mobile Home Park		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner	<ol style="list-style-type: none"> 1. Conduct Closed Record Hearing on Hearing Recommendation on Preliminary Plat. 2. Consider Appeal of Hearing Examiner's recommendation on Preliminary Plat. 3. Final Plat approval 	Sno. Co. Sup. Court

16.120.050 Development permit approval process.

Permits	Administrative Approval	Public Hearing Required	Council Action	Appeals
Binding Site Plan		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner Recommendation to City Council	1. Conduct Closed Record Hearing on Hearing Examiner's Recommendation on Preliminary Plat. 2. Consider Appeal of Hearing Examiner's recommendation on Preliminary Plat. 3. Final Plat approval	Sno. Co. Sup. Court
Variance		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner Recommendation to City Council	1. Conduct Closed Record Hearing on Hearing Examiner's Recommendation on Preliminary Plat. 2. Consider Appeal of Hearing Examiner's recommendation on Preliminary Plat. 3. Final Plat approval	Sno. Co. Sup. Court
Conditional Use		Conduct Open Record Hearing on Preliminary Plat before Hearing Examiner Recommendation to City Council	1. Conduct Closed Record Hearing on Hearing Examiner's Recommendation on Preliminary Plat. 2. Consider Appeal of Hearing Examiner's recommendation on Preliminary Plat. 3. Final Plat approval	Sno. Co. Sup. Court
Rezone		Conduct Public Hearing before Planning Board Recommendation to City Council	1. Conduct Public Hearing and consider recommendation of Planning Board 2. Consider Appeal of Planning Board's recommendation 3. Final Action on Rezone	To Hearing Examiner
Code Amendments		Conduct Public Hearing before Planning Board Recommendation to City Council	1. Conduct Public Hearing and consider recommendation of Planning Board 2. Final Action on Amendment	To Hearing Examiner
Comprehensive Plan Amendment		Conduct Public Hearing before Planning Board Recommendation to City Council	1. Conduct Public Hearing and consider recommendation of Planning Board 2. Final Action on Amendment	To Hearing Examiner

**EXHIBIT B
FINAL DECISION CHART**

Lynnwood

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Process 1 Permits, Conditional Use Permits, Variances				Closed Record to City Council
Process IV Preliminary Plat	City Council	Conducts "informal meeting" and prepares recommendation to City Council	Action on Preliminary Plat	

Bothell 5 Permit Types

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Type III Permits Conditional Use Permits, Variances, preliminary Plats, Shoreline Permits and administrative decisions	Hearing Examiner	Final		Superior Court State Shoreline Hearings Board

**EXHIBIT B
FINAL DECISION CHART**

Lake Forest Park 4 Permit Types

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Everything other than administrative decisions and rezones are Type 1	Hearing Examiner	Final		Superior court

Duval 6 Permit Types

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Type III permits include Conditional Use Permits, variances, preliminary plats, shoreline permits.	Hearing Examiner	Final		Superior Court State Shoreline Hearings Board

**EXHIBIT B
FINAL DECISION CHART**

Covington 4 Permit Types

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Type III permits, Plats, Conditional Use permits and Variances	Hearing Examiner	Final		Superior Court

Monroe

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Various types throughout code	Hearing Examiner	Final		City Council and Superior Court

Stanwood 5 Permit Types

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Type III Permits	Hearing Examiner	Final		City Council

**EXHIBIT B
FINAL DECISION CHART**

Redmond

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Type III permits, preliminary plats, variances	Hearing Examiner	Final		Superior Court
Type IV Conditional Use Permit and Planned Unit Developments		Recommendation to City Council	Final	

Sammamish 4 Permit Types

Permit Type	Public Hearing Required	Hearing Examiner Action	City Council Action	Appeals To
Type III and IV, Preliminary Plats, zone reclassifications, Planned Unit Developments, Shorelines	Hearing Examiner	Final	None	Superior Court State Shoreline Hearings Board

Use of Hearing Examiners by Cities and Counties in Washington

What is a Hearing Examiner and Hearing Examiner System?

Local governments in Washington State have the option of hiring or contracting with a hearing examiner to conduct required quasi-judicial hearings, usually in place of local bodies such as the planning commission, the board of adjustment, the board of county commissioners, or the city council. A hearing examiner is an appointive officer who acts in a manner similar to a judge and typically is an attorney. The basic purpose of having a hearing examiner conduct these hearings is to have a professionally-trained individual make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows local legislative and advisory bodies that might otherwise conduct these hearings to better concentrate on policy-making, and it can reduce local government liability exposure.

A board of county commissioners or a city council has considerable discretion in drafting an ordinance creating a local hearing examiner system. The position of hearing examiner, the type of issues the hearing examiner is authorized to consider and decide, the effect of the hearing examiner's decision, and whether an appeal of any final decision is provided should all be determined by the local legislative body and set out in the enabling ordinance. A hearing examiner's decision, as defined by the local legislative body, can have the effect of either a recommendation to or a decision appealable to the ultimate decision-maker (typically the board of county commissioners or the city council), or it can be a final decision (appealable to superior court).

Counties and cities use hearing examiners, often in place of planning commissions, primarily for hearing and deciding land development project applications and/or administrative appeals of land use decisions. Hearing examiners are particularly useful where the rights of individual property owners and the concerns of citizens require formal hearing procedures and preparation of an official record. State land use planning and growth management laws provide cities and counties with specific

authority to establish a hearing examiner system to conduct hearings and make recommendations or decide a variety of land use issues. Hearing examiners may also conduct hearings and make recommendations or decisions on other local matters.

This focus paper describes the use of a hearing examiner, the pros and cons of such systems, and options available to Washington counties and cities. References are provided for further information available from the MRSC library and through our Web site.

Establishing a Hearing Examiner System

The office or position of hearing examiner must be established by ordinance. That ordinance should identify what matters the examiner is empowered to hear and what will be the effect of the examiner's decision on those matters. A common approach in such an ordinance is to establish the framework for the hearing examiner system, while leaving it to the examiner to adopt specific, detailed rules for the conduct of hearings. Hearing examiner ordinances typically address: the appointment and term of the hearing examiner; qualifications of the examiner; conflicts of interest and freedom from improper influence; powers and duties, including matters heard; hearing requirements; effect of decisions; reconsideration of decisions, if allowed; and appeals. MRSC has many examples of hearing examiner ordinances and has a compilation of articles and ordinances relating to the hearing examiner system in this state. See <http://www.mrsc.org/library/compil/cphearex.htm>.

Use of the Hearing Examiner System for Land Use, Environmental, and Related Decisions

Most commonly, hearing examiners are used to hear and decide land use project permit applications where a hearing is required, such as in the case of applications for subdivisions, shoreline permits, conditional use permits, rezones, and variances. The recent trend in state law, particularly in conjunction with regulatory reform, has been to allow local governments to give more authority to the hearing examiner to make final decisions on quasi-judicial project permit applications. For example, RCW 58.17.330, as amended by 1995 regulatory reform legislation, provides that the local legislative body can specify that the legal effect of a hearing examiner's decision on a preliminary plat approval is that of "a final decision of the legislative body."

The hearing examiner's role in the project permit process can include:

- open record hearings on project permit applications;

- appeals of administrative SEPA determinations, which in most cases are combined with the open record hearing on the application;
- closed record appeals of administrative decisions made by the local planning staff, including appeals of SEPA determinations where an administrative appeal is provided;
- land use code interpretations to satisfy the statutory requirement that cities and counties planning under the Growth Management Act adopt procedures for such “administrative interpretations” (RCW 36.70B.110(11));
- land use code enforcement proceedings.

Other Issues Assigned to Hearing Examiners

The local legislative body may, by ordinance, authorize a hearing examiner to hear other types of contested matters, in addition to land use permit applications and code enforcement. Examples of other types of decisions and/or administrative appeals that could be handled by a local hearing examiner include:

- discrimination complaints under local personnel policies;
- employment decisions and personnel grievances;
- ethics complaints by citizens or employees;
- local improvement districts – formation hearing and/or assessment roll determinations;
- public nuisance complaints;
- civil infractions;
- property forfeiture hearings under the Uniform Controlled Substances Act (RCW 69.50.505(e));
- tax and licensing decisions and appeals;
- whistleblower retaliation claims.

Pros and Cons of Using Hearing Examiners

Pros

- More professional and timely decisions insuring fairness and consistency.

A professional hearing examiner prepares for and conducts hearings in a manner insuring procedural fairness. Hearings are less emotional and more expeditious. Hearing examiners develop a high level of expertise and specialization, saving time in making decisions and improving their quality and consistency.

- Time-saving for legislative body, freeing legislators to focus on legislative policy and other priority issues.

Conducting public hearings and making quasi-judicial decisions is time-consuming. Local legislators can free themselves from many of their hearing duties by delegating them to a hearing examiner. The local legislative body can still choose to make final decisions or to hear appeals of the examiner's decisions, and those appeals will be facilitated by a thorough and organized record. The use of hearing examiners is especially time-saving for routine decisions and for complex land use decisions requiring formal hearings, citizen participation, and subject matter expertise.

- Separation of policy-making or advisory functions from quasi-judicial functions.

Use of hearing examiners for quasi-judicial hearings separates legislative and administrative functions from quasi-judicial functions. This can improve decision-making by clarifying roles and avoiding conflicts. For jurisdictions with planning commissions, use of a hearing examiner system allows the planning commission to function as an advisory body. The legislative body can focus on policy-making while the planning department concentrates on administration. For counties with three-member boards of commissioners, use of a hearing examiner to conduct quasi-judicial proceedings can greatly assist commissioners who already responsible for a number of legislative and administrative functions.

- Improved compliance with legal requirements, including due process, appearance of fairness, and record preparation.

Hearing examiners have special expertise in managing legal procedural requirements and avoiding appearance of fairness and conflict of interest

issues. The hearing examiner assures procedural fairness, especially in cases where one side is represented by an attorney while the other side is not. Participants are often more satisfied with the proceedings, regardless of the outcome. A properly conducted hearing also results in a complete and well organized written record.

- Reduced liability relating to land use decisions and/or procedural challenges to decisions.

Using a hearing examiner system has been shown to reduce land use liability exposure. Improved hearing procedures, better records, and more consistent and documented decisions are typical of professional hearing examiners. At least one local government insurance authority has officially endorsed the use of hearing examiners for land use decisions based on a survey providing evidence of a lower risk profile for jurisdictions using a hearing examiner system for land use proceedings.

- Improved land development review integration under chapter 36.70B RCW (ESSB 1724).

A number of jurisdictions have adopted hearing examiner systems since the 1995 regulatory reform legislation mandating integration and consolidation of environmental and land use regulatory review for development projects. Use of a specialized land use hearing examiner is an effective method of consolidating and coordinating multiple review processes. For jurisdictions with a mandatory board of adjustment, adoption of a hearing examiner system eliminates the requirement for a board of adjustment.

- Opportunity for feedback to improve plans and regulations from professional hearing officer familiar with comprehensive plans and development regulations.

A professional hearing examiner has familiarity with the local comprehensive plan and development regulations and possibly those of other jurisdictions. Areas where plans, regulations, and policies are weak or inconsistent can be identified and referred to the planning staff, planning commission, or legislative body, providing feedback for continuous improvement.

- Removal of quasi-judicial decision-making from the political arena.

It may be difficult for elected local government officials to entirely eliminate political considerations from their quasi-judicial decision-making. Professional hearing examiners should be immune from political pressures.

Cons

- Cost to county or city for hiring a hearing examiner and staff.

There are costs in hiring hearing examiners and, if necessary, support staff. Counties and cities should consider whether savings in council and commission time, improvements in decision-making, and reduced liability justify the costs. Alternatives such as use of personal service contracts for hearing examiners can reduce costs.

- Increased cost to the parties due to more formal decision-making procedures.

Hearing examiners can increase the formality of the hearing process, although many of the procedural requirements and formalities are already required under state law. This formality can provide the advantage of increased appearance of fairness and impartiality in decision-making.

- Lack of accountability to voters for appointed hearing examiner making decisions or hearing administrative appeals.

Some people maintain that important decisions should be made by elected officials who are accountable to the voters. However, these concerns can be addressed by making the hearing examiner's decision a recommendation to the council or commissioners or by providing for an administrative appeal to the legislative body.

Options for Efficient and Effective Use of Hearing Examiners for Smaller Counties and Cities

Smaller local governments may be reluctant to establish a hearing examiner system because of cost considerations and concerns about whether there will be enough occasions to justify using a hearing examiner. Here are some ideas about addressing these concerns:

- Contract for hearing examiner services. Counties and cities may establish a contractual relationship with a hearing examiner in which the examiner is compensated, on an hourly or other basis, only as needed.
- Share use of a hearing examiner with other jurisdictions. Some local governments in the state have entered into interlocal agreements to contractually share the services of a hearing examiner.
- Increase the number of matters heard by hearing examiner. Doing this could reduce costs relating to use of staff that would otherwise be occupied with those matters.
- Fund the hearing examiner system from permit review fees. Local governments can add and/or increase permit fees and appeal fees to help cover the cost of maintaining a hearing examiner system.

Qualifications of Hearing Examiners

There are no state statutes that establish the minimum qualifications of hearing examiners. As noted above, hearing examiners are often attorneys; however, a law degree is not required. A background in the area in which the examiner will perform would obviously be helpful. Since hearing examiners operate mostly in the land use arena, some local governments use examiners with a planning, rather than legal, background. Keep in mind that the land use decision-making process requires a thorough knowledge of legal procedures, and relevant statutes, local ordinances, and case law. In the ordinance establishing the office of hearing examiner, it is a good idea to identify the minimum qualifications that the legislative body deems necessary for a hearing examiner.

Support, Resources, and Training for Hearing Examiners

- Washington Association of Professional Hearing Examiners; Jim Driscoll, President; 101 Yesler, Suite 607; Seattle, WA 98104; (206) 628-0039. This organization provides periodic training conferences and maintains a list of hearing examiners in the state.

MRSC Library Resources

The following MRSC Library resources provide more detailed information concerning use of hearing examiners and the land use hearing examiner system, including sample ordinances and rules of procedure:

- "Hearing Examiner System in Washington State: A Compilation of Articles and Ordinances," MRSC, July 1997.
- "A Citizen Guide to the Office of Hearing Examiner," City of Seattle, revised 1994.
- "The Hearing Examiner in Washington State: A Reference Manual for Local Government," Washington State Planning and Community Affairs Agency (no longer in existence), June 1980.
- A Short Course on Local Planning, Planning Association of Washington and the Washington Department of Community, Trade and Economic Development, Version 3.2, March 1997.
- "You Be the Judge: A Handbook for the Land Use Decision Maker," by Jim Driscoll and Ted Hunter, prepared for the Association of Washington Cities (1993).
- Other MRSC Library resources, including sample ordinances establishing the office of hearing examiner, hearing examiner rules of practice and procedure, hearing examiner job descriptions, hearing examiner contracts, and citizens' guides to the hearing examiner process.