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COUNCIL MEMBER'S and MAYOR'S ROLES



OVERVIEW



WHAT WE WILL COVER:

- Classifications of Cities
- Forms of Municipal Government
- Roles and Responsibilities of Council Members and Mayor
 - Legislative
 - Administrative
 - Quasi-judicial



The Foundation

IT ALL STARTS WITH THE CONSTITUTION:

- Article XI, Section 10:

...the legislature, by general laws, shall provide for the incorporation, organization and classification... of cities and towns...

City Classifications

First Class City

- Over 10,000 population
- RCW 35.22

Second Class City

- Minimum 1,500
- RCW 35.23

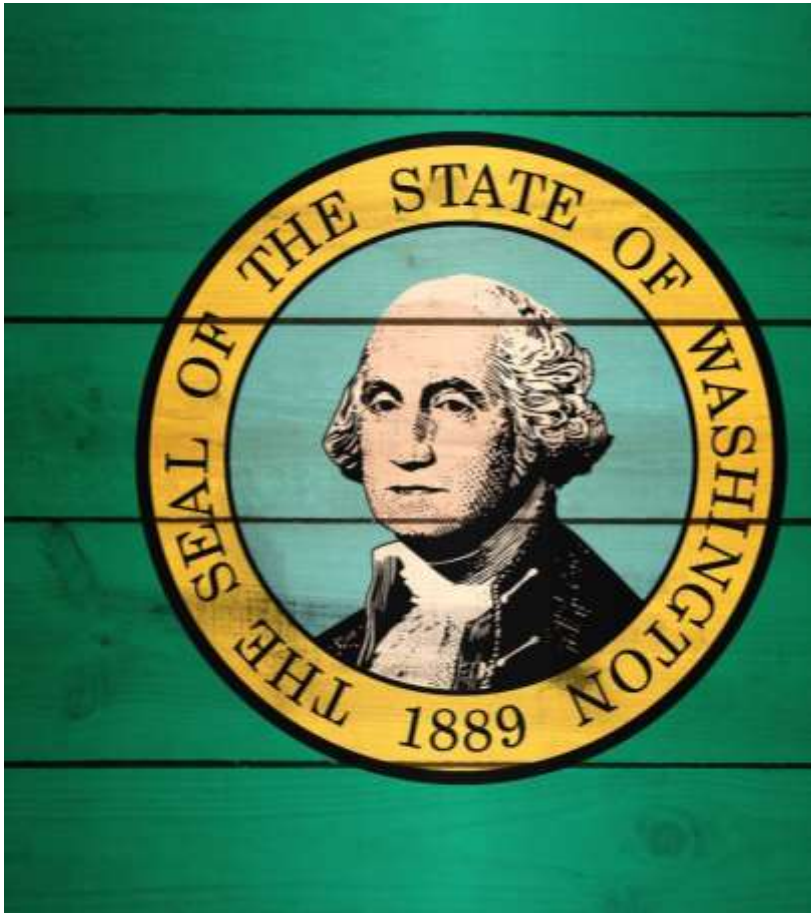
Code City

- RCW 35A

Towns

- RCW 35.27

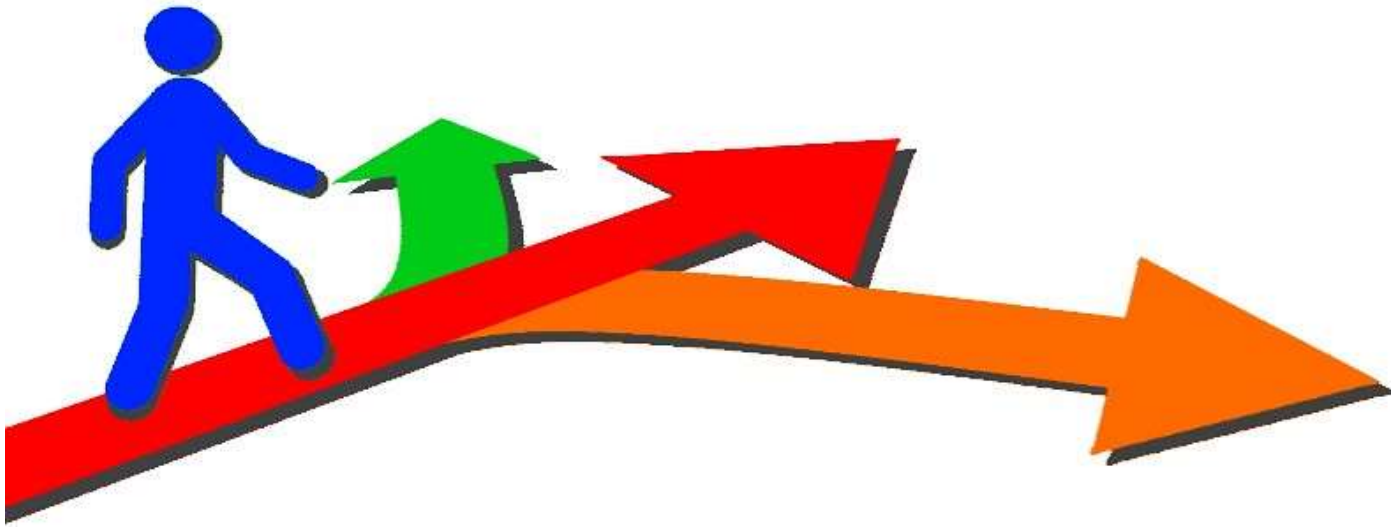




Camas

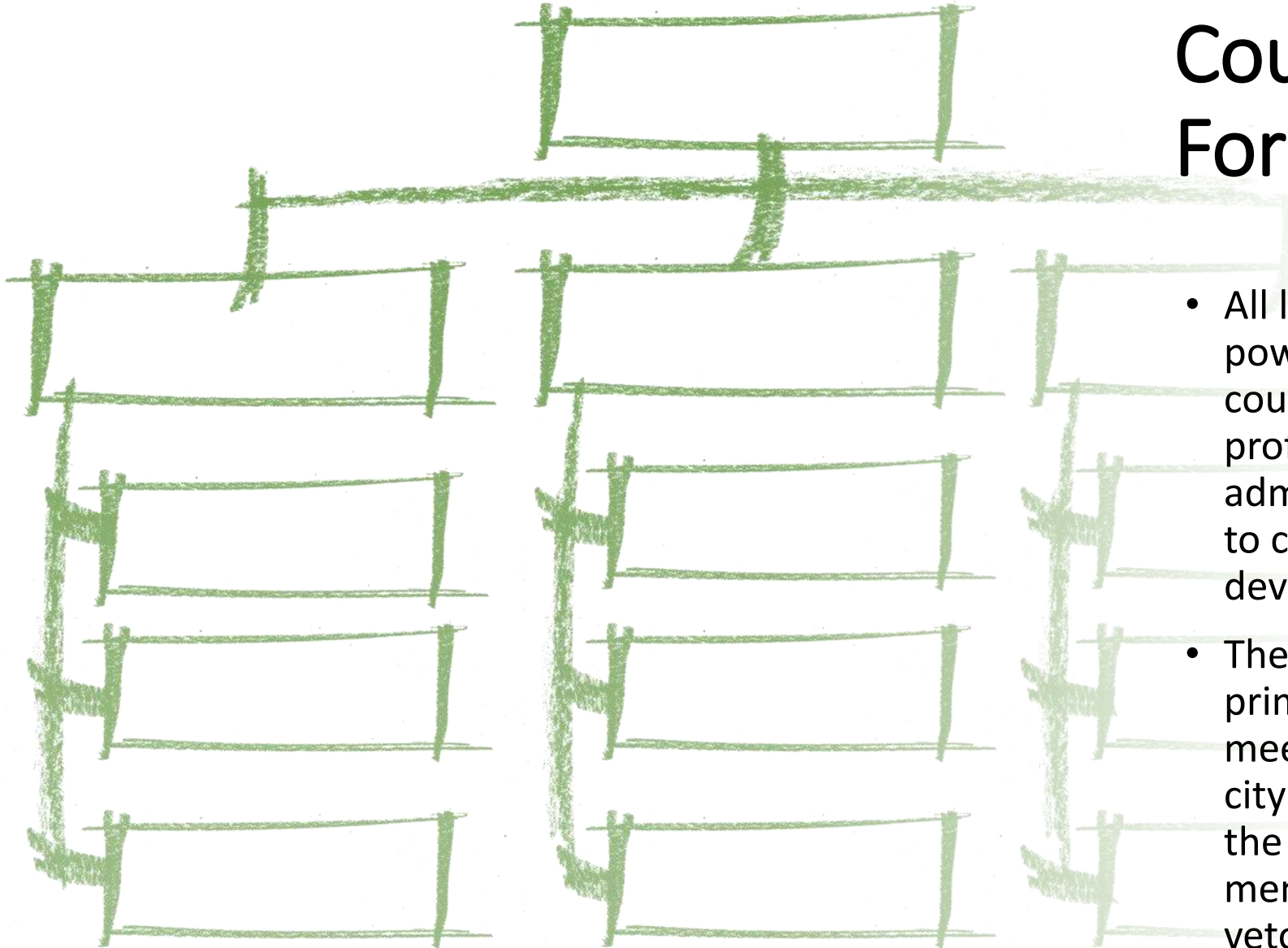
- Camas is a “code city” operating under the Optional Municipal Code form of government authorized by the legislature in 1967
- Of the 281 cities in Washington, 197 are code cities
- Advantage of “code city” status is broad powers

Forms or Plans of Government



- ❑ **Mayor–Council** (RCW 35A.12)
- ❑ **Council–Manager** (RCW 35A.13)
- ❑ **Retained Commission** (RCW 35.17)
 - Which form of government a city operates under impacts the roles of the mayor and councilmembers
 - The form or “plan” of government may be changed by a vote of the people caused by council resolution or voter 10% petition

Council-Manager Form of Government



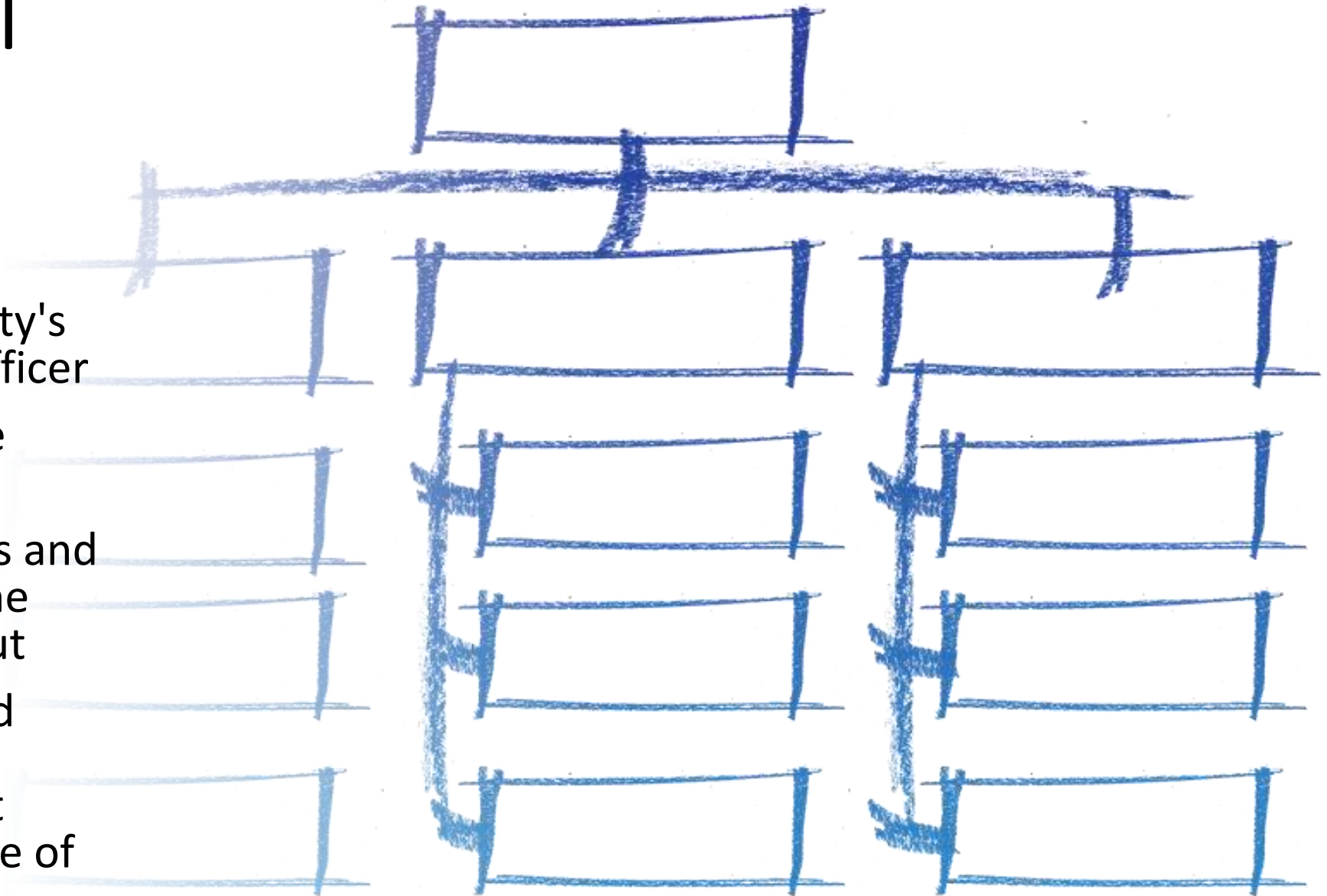
- All legislative and policymaking powers are vested in the city council; the council employs a professionally-trained public administrator, the city manager, to carry out the policies it develops
- The mayor's responsibilities are primarily to preside at council meetings, and act as head of the city for ceremonial purposes; the mayor votes as a council member and does not have any veto power

Commission Form of Government

- The commission form gives one elective body combined authority over both the executive and legislative functions of municipal government
- The commissioners, sitting as a body, are authorized to determine by ordinance the powers and duties of all officers and employees of each department. Each commissioner administers a separate department
- The mayor has essentially the same powers as other members of the commission. The mayor has no veto power or any power to direct general city administration other than in their own department (RCW 35.17). Currently, there are no cities that operate under the commission form of government
- Think Portland

Mayor-Council Form of Government

- Mayor serves as the city's chief administrative officer
- A council serves as the legislative body
- The **council** formulates and adopts policies, and the **mayor** carries them out
- The mayor attends and presides over council meetings but does not vote, except in the case of a tie





Mayor / Council

- This is a team process – nothing is accomplished alone
- Progress happens when all involved take the time to listen
- Every perspective or view is partial but has some truth

***“If you want to go fast, go alone.
If you want to go far, go together.”***

- African Proverb



Resolving and Preventing Mayor-Council Conflict

- It is essential that mayors and council members understand their roles and how they relate to each other and staff
- Many conflicts in city governments happen due to role confusion, resulting in overstepping the boundaries between the respective roles

Council Authority – In General

- In general, it is the council's role to adopt **policies** for the city and it is the mayor's role to administer or carry out those policies
- The council, being legislative, has the power to enact **laws and policies**, consistent with state law, usually through the enactment of ordinances and resolutions



Council Authority – In Detail

RCW 35A.12.190 and RCW 35A.11.020

- Enact a city budget
- Enact ordinance to protect public health, safety and welfare
- Define the powers, functions, and duties of city officers and employees
- Fix the compensation of officers and employees
- Establish the working conditions of officers and employees
- Enter into contracts
- Impose taxes, if not prohibited by state law
- Regulate the acquisition and disposition of real property
- Provide governmental, recreational, educational, cultural, and social services
- Cause the city to own and operate utilities
- Approve claims against the city
- Grant franchises for the use of public ways
- License, for the purpose of revenue and regulation, most any type of business

Mayor's Authority – In General

- As the chief executive and administrative officer of the city, the mayor or city manager is in charge of carrying out the policies set by the council
- The mayor or city manager is basically in charge of the day-to-day operation of the city, including the supervision of all appointed officials and employees
- The mayor oversees the hiring and firing of all appointed officers and employees



Mayor's Authority – In Detail

RCW 35A.12.090 and 100

- Chief executive and administrative officer of the city
- In charge of all departments and employees
- Enforces contracts
- Bring lawsuits, with council approval
- Preside over council meetings
- Exercise some tie-breaking authority with respect to council votes
- Veto authority over ordinances
- Call special meetings of the council
- Prepare a proposed budget
- Report to the council on the financial and other affairs and needs of the city
- The mayor performs as ceremonial head of the city



Mayor / Council Conflicts

- Personnel and performance
- Hiring and firing
- Contract administration and enforcement
- Budget



Liability

Legislative Immunity

RCW 4.24.470

- An appointed or **elected official** or member of the governing body of a public agency is immune from civil liability for damages for any **discretionary decision** or failure to make a discretionary decision **within his or her official capacity**, but liability shall remain on the public agency for the tortious conduct of its officials or members of the governing body
- To be immune, the act complained of must have been a discretionary action and one within your official capacity

Mission Springs v. City of Spokane

- After a building permit had been issued, the city council directed staff to hold up issuance of grading permits for a 790-unit apartment building due to citizen opposition
- The city attorney advised the council that the issuance of the grading permit was an administrative action, not a policy or legislative matter and the council didn't have the authority to delay the permit issuance
- Council member said, "We have the opportunity to put a stop to this and let's just see what happens. Let's see how confident they are. If they bring a suit, we can always turnaround and issue the permit, that's an option still available to us"

Continued....

Mission Springs v. City of Spokane *contd.*

The Court Held

- “Therefore, we have rather a straightforward situation where clear legal rights of the citizen were violated by city council members acting in excess of their lawful authority..”

AND

- ... “The motion passed by the Spokane City Council was not legislation... It was administrative, not legislative. and therefore legislative immunity is not available here”

After incurring \$1.2 million in defense costs, the city paid the developer \$250,000



Examples

- Would legislative immunity apply to decision to not include the cost of a road repair in the budget?
- Would legislative immunity apply to directing building official to approve a building permit?
- Would legislative immunity apply to decision to rezone an area of the city?
- Would legislative immunity apply to telling landowner that they could make a specific use of their property?

Who is Covered By Insurance?



WCIA Liability Coverage

Elected officials and officers acting in the course and scope of their official duties

Quasi-Judicial Role

Applies to

- Planned Residential Developments
- Civil regulatory orders

Following actions are NOT quasi-judicial

- Adoption, amendment, or revision of comprehensive plans
- Adoption of area-wide zoning ordinances
- Adoption of area-wide zoning amendments

Gray Area

- Comprehensive Plans with Re-Zone
- Development Agreements



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Hearing Examiner System

CMC Chapter 2.15, adopted 2005

- Qualified, independent hearing officer to decide land use matters
- Appeals directly to Superior Court
- No person, including city officers, elective or appointive, shall attempt to influence an examiner in any matter pending before the hearing examiner. CMC 2.15.050
- Avoid creating a record in pending matter

A hand holding a wooden sign that says "FAIRNESS". The sign is rectangular and has the word "FAIRNESS" written in capital letters, underlined. The background is a blurred image of a person in a white lab coat.

Bases for Disqualification

Appearance of Fairness Doctrine

- Originally a judicial doctrine established in 1969
- The Legislature codified it in 1982
- Chapter 42.36 RCW prohibits:
 - Bias
 - Prejudice
 - Prejudgment
- It requires fairness both in fact and in appearance

Examples

Potential Bias

- Financial gain
- Property ownership
- Employed by interested party
- Associational or membership ties
- Family or social relationships

How Do We Tell if There Was Bias?

Test for Bias

- Has the decision been made solely on the basis of matters of record?
- Would a fair-minded person, observing the proceedings, be able to conclude that everyone had been heard who should have been heard?
- Did decision-makers give reasonable faith and credit to all matters presented, according to the weight and force they were reasonably entitled to receive?



Ex Parte Contact

- During pendency of quasi-judicial matter, no ex parte contact **unless**:
 - Place substance of contact on the record; and
 - Announce right of parties' right to rebut the substance of the communication RCW 42.36.060
- Prior participation as a planning commission member does not preclude participation at a quasi-judicial matter RCW 42.36.070



Object or Lose Right to Claim Unfair Hearing

If the potential basis to claim a violation of the right to a fair hearing is placed on the record and an opportunity to rebut is provided, a party claiming a violation must raise the challenge as soon as the basis for disqualification is made known or lose the right to challenge.

RCW 42.36.080

What Could Possibly Go Wrong?

SEATTLE POST-INTELLIGENCER | THURSDAY, DECEMBER 8, 2005

Burien slapped with \$10.5 million verdict

Developer alleged project was delayed

BY JAKE ELLISON
P-I reporter

A Federal Way developer has won \$10.5 million in damages from the city of Burien after a 15-year battle over plans to build a housing complex.

A Snohomish County Superior Court jury decided last week that Burien officials illegally dragged out negotiations with Westmark Development Corp. over possible environmental impacts and building permits in the 1990s.

The company had planned to build a 216-unit complex overlooking Seahurst Park and Puget Sound, and later revised the project down to 176 units. Company officials said Wednesday they again will seek a building permit for the site.

Burien likely will appeal the verdict, said Lisa Marshall, the city's attorney. She said the court did not allow the city to present evidence it needed to make its case. Any delays in Westmark's permits were caused by the company's failure to file plans and

supporting information on time, Marshall said.

The jury agreed with the company that the delays were designed to thwart the developers and that Burien's "biggest mistake was failure to take any action at all," said Jon Ferguson, the attorney for Westmark.

The Federal Way company is run by four brothers who have developed about 20 housing and hotel projects in Federal Way and are working on a \$5.5 million hotel project in Tacoma, said Badru Sayani, one of the brothers. They also operate hotels and condominium buildings in Vancouver, B.C., he said.

The brothers have developed more than \$200 million worth of property since emigrating from Uganda in 1972, Sayani said. The brothers' other partner in Westmark is 90-year-old Alice Dobson, who owned the property in Burien.

Ferguson told the Snohomish jury that the company was on its way to getting a permit from King County until 1993, when its requests were transferred to the

newly incorporated city of Burien.

At that point, "an anti-growth citizens group that organized itself into the city of Burien" halted the project and sat on it for a year, Ferguson said.

Westmark sued for delay and, in 1998, believed it had a settlement with the city. Westmark sued again when the city denied it had made a settlement. During that suit, Westmark found out the settlement was no good because the city had not followed open meeting laws.

The company sued again in 2003 over the original delay and the delay caused by the open meeting issue, which Burien officials knew about years before they told Westmark, Ferguson said.

"The city was just incorporated and didn't have enough experience," Sayani said. "Someone should have advised them to negotiate (with the company), rather than hiding the files and just not responding."

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What Could Possibly Go Wrong?

SeaTac News (July 14, 2016)

- City of SeaTac slapped with \$18.3 million judgment in land
- Use case; Judge calls for formal sanctions
- The trial judge also concluded the former SeaTac mayor wanted condos built on the site, believing they would price out Somalis who had moved into “his neighborhood”

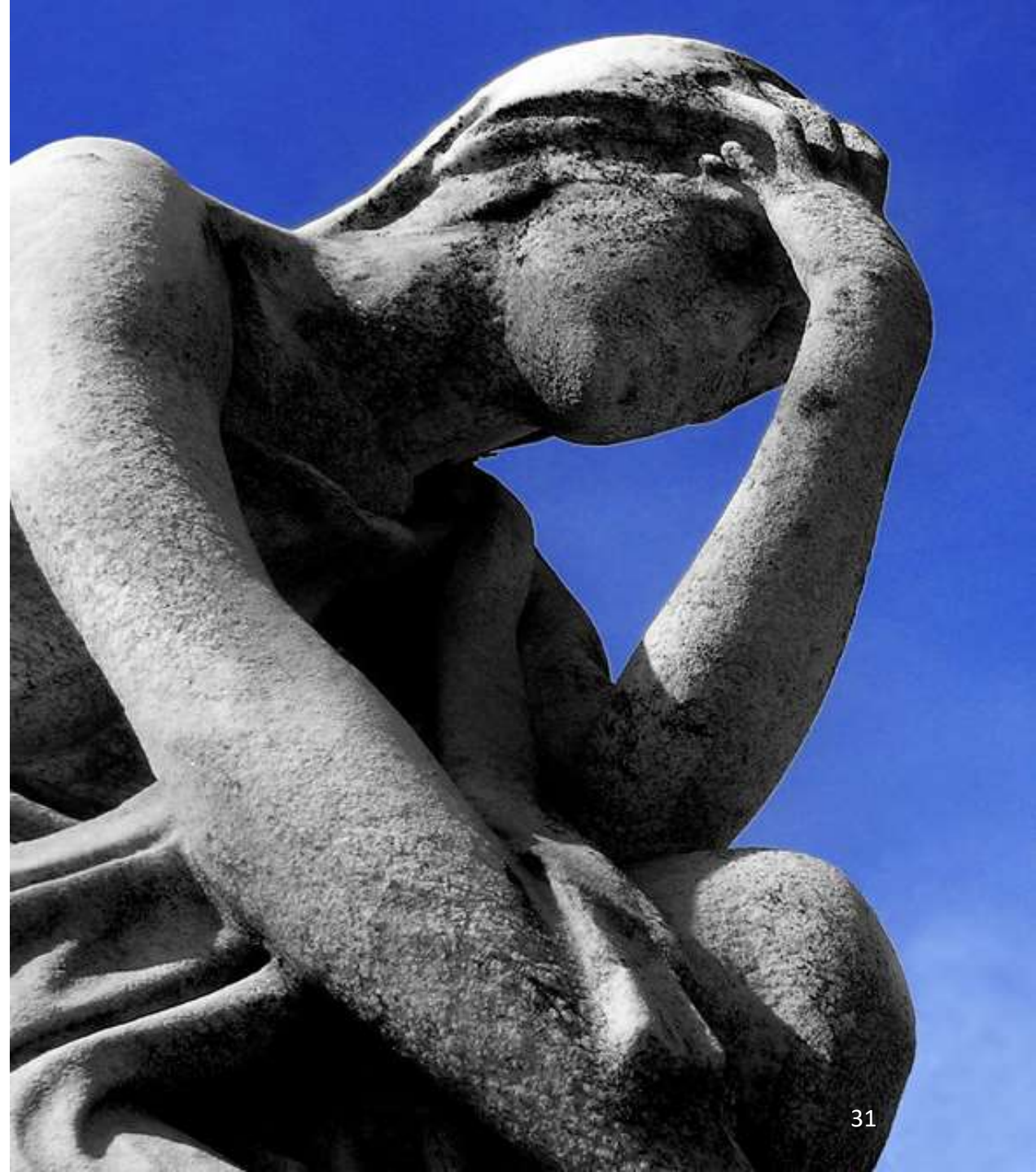
What Could Possibly Go Wrong?

Embarrassment - A Tongue Lashing By the Court of Appeals

*“It is apparent that the Council gave **little consideration to the merits** of Maranatha's application, and that it **disregarded the facts** set forth in the examiner's findings. The Council seems to have heard **clearly the citizen complaints and the comments of one of its own members** while **disregarding the record**. We cannot escape the conclusion, in view of the evidence in support of Maranatha's application, that the Council **based its decision on community displeasure and not on reasons backed by policies and standards as the law requires.**”*

- Maranatha was allowed to move forward with its claims against the county

Maranatha Mining v. Pierce County



Conclusion

- You desire to do what you feel is best for the city
- But you can't do whatever you like
- Your authority and roles are legally prescribed and limited
- Stick to your roles, stay in your lane, work as a team and you will go far





Any
Questions?