New to the Planning Commission? FAQ's

Serving on the planning commission is one of the most rewarding ways you can serve your community. As a commissioner, you will help set the long-term direction or vision for your community's future. Although the planning commission is an advisory body which rarely makes final decisions, it is one of the most important groups in local government. In recent years, growth management and environmental legislation have emphasized the importance of land use issues.

You will be advising your community on these issues through adoption or amendment of the comprehensive plan, and will help implement its subdivision, zoning, and shoreline regulations. You may review applications for individual projects ranging from mobile home parks to shopping centers. New planning commissioners must get up to speed quickly on the structure of local government and the laws and procedures that govern their actions.

Following are the answers to 10 questions that are commonly asked; we suggest you read them before conducting your first public meeting. Chapter references refer to the Resource Manual, available on the web page for the Short Course on Local Planning ***www.commerce.wa.gov/serving-communities/growth-management/short-course/***

1. Who are the key actors in the planning process and what do they do?

Four groups have key roles:

1) **City council or board of county commissioners**
   Both are elected bodies which appoint planning commission members (or the board of adjustment, discussed below). The city council or board of county commissioners has ultimate decision-making authority for all land use planning issues.

2) **Planning commission**
   The planning commission makes recommendations to the city council or board of county commissioners for changes and updates in the comprehensive plan and the zoning code. In most jurisdictions, the planning commission also reviews individual applications for variances, conditional use permits, site plans, subdivisions, shoreline permits, and rezones.

3) **Board of adjustment**
   This body hears appeals on land use decisions. In some communities, the planning commission acts as the board of adjustment. In others, the city council or board of county commissioners assumes this role.

4) **Hearings examiner**
The decision to have a hearings examiner is a local option. When a community does have one, this hired professional replaces the board of adjustment. The hearings examiner takes the place of the planning commission in hearing applications for land use permit applications, such as variances and conditional use permits. Having a hearings examiner frees up the planning commission to deal with policy issues and long-term concerns of the community.

2. Can you tell me more about the planning commission?

In Washington state, a planning commission is an advisory body appointed by the city council or board of county commissioners to provide advice and recommendations on land use issues at the local level.

Although the key word here is advisory and planning commissions don't normally make the final decision, it is probably one of the most important bodies in local government.

You'll spend lots of evenings in meetings. (Don't be fooled if those who invited you to serve on the planning commission gave you a sales pitch that sounded something like "You only meet twice a month for a couple of hours.") In a survey done for the City of Renton, it was found that the planning commission met more often than all other advisory boards combined, and more often than the city council itself. We're stating this up front so that you'll understand the amount of serious work that is expected of most planning commissions. Being a planning commissioner means making a serious time commitment for the required preparation and for the commission meetings.

3. What if our elected officials (city council/county commissioners) ignore a recommendation of the planning commission, but we all know it's a good one?

When it happens–and sooner or later it will–you have several choices:

First, you can swallow hard, accept the political decision, and continue to do your best to provide thorough and thoughtful recommendations. It's important to keep in mind that both the planning commission and the elected body which appointed you are working from the same set of policies and regulations. If there are differences in interpretation, then these differences need to be clarified. One strategy for keeping communication clear is presented below.

Second, you can resign in protest. Although this sometimes seems like the only ethical option, we encourage you to think very carefully before you exercise it. If you quit, it

deprives the commission of your experience and expertise, and it always takes time for a new person to get up to speed once appointed.

Third, most effective planning commissioners have decided that they can increase the number of times their recommendations are accepted with minimal or no modification by actively working to maintain good communications with the city council or board of county commissioners.

There are a number of strategies that have been used successfully around the state over the years, and we encourage you to use one of them (or invent one of your own).

One of our favorites approaches is to have the planning commission and city council sit down together twice each year to discuss issues and concerns. Each session is followed by a bus tour of the city, so everyone can see first-hand the sites and locations which are the focus of local land use issues.

Another good option is to send out a newsletter, like the one distributed by the Thurston Regional Planning Council. In this concise and well-written newsletter, anyone who's interested can find out exactly where the county and all of its cities are in progress on key growth management planning elements.

4. If you were to identify the one factor which can spell success or failure for a planning commission, what would it be?

There are really two answers to this question.

First, the **initial appointments** made to the planning commission are crucial. Elected officials must appoint quality, committed individuals, who represent the community's diverse social and political interests, as well as its geographic diversity.

Second, the planning commission needs a **strong chairperson**. Regardless of whose "turn" it is to serve as Chair, if you pick a nice but unassertive person who can't control controversial meetings, and who isn't willing to put in the time necessary to get the agenda together and make reminder phone calls, then the commission as a whole will suffer. Your Chair needs to be a dedicated, no-nonsense, reasonably high-energy person-someone who can run a tight meeting with a sense of fairness.

5. When is an "executive session" appropriate? Under the "Open Public Meetings Act," does all business of the planning commission have to be conducted in public?

Our planning commission Chair called for an "executive session" during a meeting a few weeks ago, so we could discuss the qualifications of candidates who had applied for our City Planner position. Someone in the audience stood up and said what we were doing was illegal, because of the "Open Public Meetings Act," and that all business of the planning commission had to be conducted in public.

Your Chair was perfectly justified in calling an executive session, because you were evaluating qualifications of applicants for public office.

It should be stressed, however, that there are very few times when your planning commission will need to hold an executive session. (See Chapter 2 for more information on the Open Public Meetings Act.)

Had you been talking about the salary, wages, or general conditions of employment for the planner position, the discussion should have been public. But personnel matters, including performance reviews, can be conducted in executive session; as can discussions of litigation or potential litigation with your attorney, and real estate negotiations where publicity is likely to cause an increase in the price your city, town, or county will have to pay.

If you plan to hold an executive session, the planning commission Chair must take specific procedural steps (see Chapter 2).

Regular Meetings
The basic intention of the Open Public Meetings Act is that the public's business be conducted in public; and that the planning commission must establish a time for its regular meetings.

Special Meetings
If you need to hold a special meeting, either your chairperson or a majority of the members can call for it. But you will need to notify all members of the planning commission, as well as media representatives who are on record as having requested notification (i.e., newspapers, local radio, and television stations). Your notice must be in writing, at least 24 hours prior to the special meeting, and state the place and nature of the business to be transacted. You will be limited in making final decisions to those announced business items at the special meeting.

6. I've been on the planning commission for a while now, and I'm still not clear on the difference between our "legislative" and "quasi-judicial" activities.

Everything you do as a planning commissioner will fall into one of these two categories.

It's important to be clear on the difference, because when you're operating in a quasi-judicial mode, you're subject to the Appearance of Fairness Act.

Some basic definitions:

First**,** a **legislative action** is one which will affect the entire community, not just an individual property owner or single piece of land. Examples include updating or revising your community's comprehensive plan and adopting zoning code text amendment ordinances. When you change the community's comprehensive plan or zoning code, the rules change for everyone. No one is seeking or being granted special consideration.

A **quasi-judicial action** is one in which you're sitting "like a judge," evaluating a specific case or proposal submitted to you by individual parties. Examples include applications for variances, special use permits, and subdivisions. In each case, you are being asked to make a decision that affects an individual (or family, partnership, or corporation), but not the entire community. You are acting like a judge, weighing the merits of an individual case before the court. Guilty or not guilty? Grant the variance or deny it?

When you're dealing with these individual applications and project proposals, you are held to very high levels of scrutiny. These are contained in the **Appearance of Fairness Doctrine** (see Chapter 2 for a detailed discussion). Basically, all of your actions when you are in your quasi-judicial role must not only be fair in fact, but must appear fair to the average person.

The question you must ask yourself is: Would a disinterested person, apprised of the totality of your personal interest or involvement in the matter which the planning commission is considering, be reasonably justified in thinking that your involvement might affect your judgment in reaching a decision?

The place where most planning commissioners get into trouble on this one is a direct result of their well- intentioned attempts to be open and accessible to their friends and neighbors. Its really difficult to cut someone off when they call you up at home, or approach you on the street or at the coffee shop and start to tell you what they think about a particular proposal which you're considering, or are about to consider, at the planning commission.

But when you listen to their thoughts outside a regular meeting of the planning commission, regardless of whether they are for or against the proposed project, you are engaging in what the law calls an **"ex parte" communication**. Ex parte communications are forbidden, because they violate the intent of the Appearance of Fairness Doctrine: Regardless of whether any single "off the record" conversation influenced your final vote on a proposed project or application, it just doesn't look right. The law says your actions must appear fair as well as be fair in fact.

So what do you do if you **get a letter at home**, and read it through before you realize it's an attempt to lobby you to approve a new 80-home subdivision? Or what if **a friend grabs your**

arm at the post office and blurts out his deeply held thoughts that the thus-and-so project, if approved, is going to change forever the rural character of your town? (He knows this because he worked for years as a real estate appraiser in a very similar community in California, and he can tell you as a real estate professional exactly what a proposal like this one did to that town and its tax base.)

When a situation like one of these occurs, you need to take immediate action at the next planning commission meeting. You'll need to announce and place on the record at the beginning of the discussion of that item the substance of any written or oral ex parte communication which you've received. If you feel that, regardless of this contact, you'll still be able to render a fair decision, you need to state that for the record as well.

At this point in the meeting, you've opened yourself up for a challenge from anyone who feels that you've been tainted by the ex parte communication. If you're challenged, and don't step down for the duration of the discussion and decision on the proposal under consideration, you've left yourself and the commission wide open for a legal challenge after you've rendered your recommendation.

Our advice if you're challenged? Consult with your city attorney or county prosecutor, if that person is available: You may be able to stay and participate. But in the absence of legal advice to the contrary, step down and leave the room. Don't take a seat in the audience, from where you can later be accused of sending "baseball signals" to the remaining members of the commission to influence their votes on the proposal. Instead, go home and take a well-deserved evening off.

After the Doctrine of Appearance of Fairness was first enacted, it didn't take long for clever applicants to figure out that if they could just taint those members of the commission who would probably oppose their application, they could then challenge them on the grounds of having received an ex parte communication. These planning commissioners would then be forced to step down and--bingo! an approved application.

The problem with this sneaky strategy is that if enough members are disqualified, the planning commission lacks a quorum, and can't do business. A clever legal solution called the **Doctrine of Necessity** was enacted to counter this lack of a quorum. Basically, if enough members of the planning commission are challenged to make it impossible to obtain either a quorum or a majority vote, then those challenged members can return to their seats and participate fully in the debate and the decision. All they have to do is disclose publicly the reason for their disqualification before they render their decision.

A simple three step ounce-of-prevention strategy is definitely worth a pound of cure on this one. We recommend that the Chair inquire at the beginning of the discussion of each agenda item if any member of the planning commission has any ex parte oral or written contacts to report for the record. The Chair should then ask if any member of the planning

commission is aware of any appearance of fairness violations which would prevent his or her participation on the quasi-judicial matter before the commission. Once these have been reported, the Chair should solicit from members of the audience any challenges they wish to pose to individual commissioners based on what the commissioners have just said. These three steps should take place before testimony on the project or proposal begins.

It's worth noting at this point that if no one in the audience raises any challenges right here, then they've waived their right to challenge the participation of any member of the commission later on. This is their one opportunity. If they're silent, they're agreeing to let all unchallenged members of the commission hear the testimony and render a decision.

Short Form of Procedures For Quasi-judicial Public Hearings

1. **Chairman declares the public hearing is open.**

2. **Chairman states that everyone present will be given an opportunity to be heard;** however, the commission or council does have a policy of closing meetings at 10:00 p.m. (or your own closing time). State that the hearing is being recorded and that prior to speaking, individuals should state their names and addresses.

3. **Appearance of Fairness.**

    a. Chairman requests anyone who objects to the Chairman's participation, or any other commission or council member's participation, to please state so now and give the reasons for the objection.

    b. Chairman asks the commission or council members if any have an interest in the property or issue. Chairman asks commission or council members if they can hear and consider this matter in a fair and objective manner.

    c. Chairman requests any member of the commission or council to place on record the substance of any communication each has had outside of the hearing with opponents or proponents on the issue to be heard. After the communication is placed on the record, the Chairman should request whether any interested parties wish to rebut the substance of the communication.

4. **Chairman requests staff to make its presentation.**

5. **Applicant invited to comment.**

6. **Chairman invites comments from citizens in favor of the proposal.**

7. **Chairman invites comments from citizens against the proposal.**

8. **Chairman invites applicant to rebut the opposition.**

9. **Additional comments from those against and those for the proposal should be recognized, if needed.**

10. **Chairman requests whether the commission or council members have questions of the applicant, citizens, or staff.**

11. **Chairman declares the public hearing closed.**

12. **Commission or council deliberates on the record, discussing Findings of Fact and Conclusions.**

7. What should we be doing, as far as record keeping goes?

> **At our planning commission meetings, we do a pretty good job taking minutes of the major issues and decisions. But one of our members heard recently that having hand-written minutes may not be good enough. (Our secretary does type them up later so they're nice and neat.)**

You really need to tape record all of your hearings. If one of your decisions is appealed, you must produce a word-for-word ("verbatim") transcript of the hearing for the reviewing court. If you can't provide this verbatim transcript, the court may order you to re-hear the issue.

It has been suggested–not entirely in jest--that every new planning commissioner should have to transcribe at least one hearing tape onto paper. Why? Because it proves **how difficult it is to make sense of a poorly done meeting tape.** All you need is a podium microphone which isn't working well, a couple of commissioners conversing privately in front of a desk-top microphone, somebody else coughing or rustling a stack of papers, and you've got a real auditory mess. Add to this a series of exhibits (informally identified as "that big map," "the other map," and "the second site plan you showed us,") and you'll have a hearing tape which is nearly impossible to transcribe.

To produce accurate, word-for-word meeting tape transcripts that will stand up on appeal:
Have speakers **identify themselves each time** they speak.
The Chair must **control the testimony** and discussion: Allow only one speaker at a time.
Assign each exhibit a **letter or number designation**. Be sure speakers reference those designations in their testimony.

If the meeting is packed with a large group organized to support or oppose an application, the Chair should **limit redundant testimony** to save time. Members of the group should be instructed to state that they agree with the previous speakers' testimony. You can further limit each participant's testimony to a 5-to-10-minute summary. (Planning commission meetings shouldn't run until 1:00 or 2:00 a.m. Adopt a reasonable cut-off time, such as 10:00 p.m., publicize it in your rules of procedure, and stick to it. If you need to continue after the cut-off

time, do so another night.)

If any members of the public become unruly or obnoxious, the planning commission can expel them. If the meeting still cannot be controlled, it can be adjourned to a different place and time and can exclude the public, except the media.

Before closing a hearing to further testimony, be sure **both sides** of the issue have adequate time and opportunity to present their cases and arguments. Regardless of public sentiment in your community, the applicant is always entitled to a fair hearing.

8. After our commission has heard all the testimony and it's time to make a decision, our Chairperson likes to go around the group, kind of informally, and see what each of us thinks, before we actually vote. How do you feel about this as a procedure?

It's not a procedure we recommend. Although the Chair may ask if anyone has further questions or needs additional information, a planning commission meeting is not the place for informal "straw votes." Once testimony has ended, the Chair should call for a motion, facilitate a full and complete discussion, and call for a formal vote on the issue before the commission.

> **Always cite the conditions in your local ordinance or code which pertain to the application at hand.**

The Chair should cite the relevant ordinance or code, and conditions to be satisfied. In the City of Brewster, for example, variance applications must satisfy three conditions. The Chair should restate them for the record. (See Appendices 1 and 2 of Chapter 5. Although it's intended primarily for city councils, the material is relevant for planning commissioners.)

> **Always cite the evidence presented which, in your judgment, supports granting or denying the application.**

Each member should cite the convincing evidence in his/her vote to approve or deny the application. After citing the evidence, the person should state how he or she voted. The combined results, tallied in the vote, will provide the basis for formal collective findings and conclusions. (See Chapter 2.)

9. As a planning commissioner, can I be sued for the actions of our planning commission?

Yes. You owe it to yourself to check with your city or county to make sure the municipality you serve has **errors and omissions insurance**, or a self-insurance program which *specifically*

covers you as a planning commissioner.

As a member of an advisory committee, your actions are normally not the cause of any decision which would result in damages. A different result could arise if a proponent (or opponent) of a project before the planning commission was able to demonstrate a hidden financial interest on your part or an intent on your part to hinder the project, independent of the applicable rules and regulations.

In those rare cases where liability is found, it normally runs to the municipality. The key to peace of mind is to assure yourself that an adequate insurance program is in place. An insurance program provides a defense whether or not there is liability and coverage for any damages found.

The only exception to this general rule is a violation of the Open Public Meetings Act, for which you can personally be assessed a penalty of $500 for the first knowing violation, and $1,000 for subsequent ones. (Please see Chapter 2 for a detailed discussion.)

10. It seems to me that our planning commission wastes a lot of time at meetings. We're always waiting for a couple of commissioners to wade through their information packets before we can get on with the evening's business. Any suggestions?

In most communities, planning commissioners have a lot of reading to do. There are staff reports, draft planning documents, applications, zoning text amendments, training materials, and a host of other documents.

You really owe it to yourself--not to mention your fellow commissioners--to set aside the time necessary to read through all this stuff before the start of the meeting. You also need to attend the meetings. If you don't, there may not be a quorum, and no business can be transacted. A good chairperson can help motivate people. But it's really a matter of taking your personal obligation seriously. Many people, including the elected body which appointed you, are counting on your good work. And that means staying current on your reading. Please spend the time necessary to come to meetings prepared.

It's fair to say that your service on the planning commission will go through phases. There will probably come a time when you know in your heart of hearts that it's time for you to do something else. Perhaps you've accomplished everything you set out to do when you agreed to serve. Perhaps personal, family, or business obligations are demanding more time than they used to. Perhaps community service of another sort has caught your interest. You will leave a generous legacy to the commission and to your community if you recognize these symptoms, and step aside in a timely way so that someone else can serve in your place. This is perhaps the ultimate act of dedication.