CITY OF KIRKLAND
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MEMORANDUM

To: Planning Commission

From: Jon Regala, Senior Planner
Joan Lieberman-Brill, AICP, Senior Planner
Paul Stewart, AICP, Deputy Planning Director
Eric Shields, AICP, Planning Director

Date: May 13, 2010

Subject: 2010 ZONING CODE AMENDMENTS – PHASE I
FILE ZON10-00002

I. RECOMMENDATION

Conduct a study session on the proposed Kirkland Zoning Code (KZC) amendments and provide feedback to staff for the public hearing to be held on May 27, 2010.

II. BACKGROUND DISCUSSION

Planning staff periodically forwards miscellaneous KZC amendments to the Planning Commission for consideration. The amendments are selected from an on-going list of issues, code interpretations, requests from the public, requests from City Council, and needs identified by staff. This memo contains the most recent set of proposed amendments.

Zoning Code amendments are reviewed through either a Process IV (KZC Chapter 160) or Process IVA (KZC Chapter 161). Process IVA is an abbreviated process intended for amendments that promote clarity, eliminate redundancy, or correct inconsistencies. Because some of the current amendments go beyond those purposes, all 2010 KZC amendments will be reviewed using Process IV.

This year, the code amendments will be reviewed in two phases. A list of all proposed 2010 Zoning Code Amendments can be found in Attachment 1. Phase I amendments will be considered and adopted first. Phase I bundles together amendments located outside Houghton Community Council's (HCC) jurisdiction. This group contains one amendment request by the City Council along with those with either relatively minor or no policy implications. Since the Phase I amendments are not applicable within the HCC jurisdiction, they require only the review of the Planning Commission and City Council. The Planning Commission public hearing for the Phase I code amendments is scheduled for May 27, 2010.

Phase II contains a more comprehensive list of code amendments, which are within the disapproval jurisdiction of the HCC. These proposed amendments are subject to change and/or may be reorganized. The final list will be presented to the Planning Commission at the June 24, 2010 study session. The public hearing for the Phase II amendments is tentatively scheduled for September 2010.

III. PHASE I AMENDMENTS - SUMMARY

While some of the amendments in Phase I are simple and presumably non-controversial, others raise policy issues that should be considered. The Planning Commission should discuss and provide feedback regarding the proposed changes at the May 13th study session. Staff will be available to answer questions and/or address concerns regarding the proposed changes. Based on the Planning Commission's direction, staff will revise the proposals and present the updated information at the public hearing.

The following is a breakdown of the proposed Phase I code amendments categorized by their policy level implications. A separate category is also used to reflect proposed changes to several of the Zoning Code's review processes. Staff has provided a brief summary followed by the rationale for the proposed code changes.

A No Policy Changes

1. *KZC 53.59.010(2) RH 5C Zoning District – Eliminate outdated references to KZC 95.25 and 95.45 and replace with the actual landscape buffer standards and easement dedication language.*

   In January 2006, the City Council approved KZC amendments codifying the NE 85th Street Subarea Plan (Rose Hill Business District). The RH 5C zoning standards contain a reference to landscape buffer requirements that are no longer a part of KZC Chapter 95 since changes made to the chapter in 2006. The proposed change is in regards to the RH 5C use zone listing: *Accessory parking for commercial use located in RH 5A fronting on NE 85th Street*.

   Before the 2006 code amendments to KZC Chapter 95, KZC Section 95.25 contained the standards for a 15' wide landscape buffer and KZC Section 95.45 contained language giving the City the authority to require easements to ensure compliance with landscaping requirements. These codes sections were either revised or eliminated with the changes made to KZC Chapter 95 in 2006 and were not reflected in the RH 5C zoning chart. Staff is recommending adding the previously referenced code language to the RH 5C special regulations to be consistent with the intent of the code section prior to the 2006 amendments.

   Is the Planning Commission in agreement with this approach?

2. *Codify Interpretation 09-3 – make KZC 115.20 Special Regulation 6 applicable to lots northeast of Bridle Trails Park (in the Bridle View Annexation)*

   The Bridle View Annexation became effective on October 2, 2009. The proponents sought annexation because of the common characteristics the area shares with the Bridle Trails neighborhood lying immediately to the west. In particular, both areas are characterized by large lots, many of which contain horses. In Kirkland, equestrian zoning protects areas of at least 10,000 square feet to insure the potential for future equestrian use. This protection is not accommodated in King County.

   Existing *KZC Section 115.20 - Special Regulation 6* requires all properties zoned RS and RSX 35, **north** of the Bridle Trails State Park to follow special performance standards regulating among other things, the number of horses allowed and the size and design of horse paddock areas. The problem is that the Bridle View annexation is located **northeast** of the Bridle Trails State Park

rather than north of the park, thus not explicitly including this area in the regulation.

Interpretation 09-3 (see Attachment 2), approved by the Planning Director on Oct. 15, 2009, determined that because the intent of the annexation is to protect and preserve the equestrian character of Bridle View the same as properties immediately north of the Bridle Trails State Park and since the zoning in the two areas is the same, the City will apply the existing KZC regulations to the Bridle View annexation, which is located *northeast* of the Bridle Trails State Park. Staff recommends codifying the interpretation to explicitly include the newly annexed Bridle View equestrian subdivision by expanding its application to include the area northeast of the Park.

Does the Planning Commission agree with this change?

3. *Codify Interpretation 09-3 – make KZC 17.10.010 Special Regulation 5 applicable to lots northeast of Bridle Trails Park (in the Bridle View Annexation)*

   Similar to the previous proposed amendment, requirements spelled out in this regulation specify that detached dwelling units in the RSX 35 zone, located **north** of the Bridle Trails State Park, must contain a minimum area of 10,000 permeable square feet and comply with *KZC 115.20 Special Regulation 6*, as explained in Amendment #2 above. The rationale for this amendment is the same as explained in #2 above. Staff recommends adding **northeast** to the area regulated by KZC 17.10.010 Special Regulation 5, to implement the intent of the Bridle View annexation.

   Does the Planning Commission agree with this change?

4. *Add references KZC Section 50.62 - Building Height Provisions in the CBD*

   Kirkland's downtown is made up of 8 zoning districts, CBD 1 through 8 with the development regulations listed in use zone charts KZC Sections 50.05 through 50.52. However, additional height provisions for all CBD zones are located in a separate section *after* the CBD use zone charts (KZC Section 50.62). These height provisions provide additional detail on measuring building height, ground floor story height requirements, and exceptions to the height regulations. Not all CBD use zone charts reference this section. Therefore, staff is recommending that a reference to KZC Section 50.62 be added to the general regulations of the appropriate CBD use zone charts.

   Does the Planning Commission agree with this change?

B. Process Related Changes

1. *KZC 105.103.2 - Remove the Design Review Board (DRB) as the decision maker of modifications to KZC Chapter 105 and replace the DRB with the Planning Official.*

   KZC Section 105.103 contains the review process and criteria required to modify regulations in KZC Chapter 105 – *Parking Areas, Vehicle and Pedestrian Access, and Related Improvements*. An applicant, through application of this code section may propose to modify the following standards:

   - Access easement standards

- Parking area design standards
- Pedestrian access requirements
- Number of required parking spaces
- Location of required parking stalls
- Curbing requirements
- Screening requirements for access easements or tracts
- Surface materials for parking areas and driveways

If the proposed development requires approval through Process I (Planning Director), IIA (Hearing Examiner), or IIB (City Council), then a modification to the parking and related standards is required to be reviewed as part of that process, otherwise, the Planning Official makes the final decision. In these review processes, a modification to number of required parking spaces is based upon a recommendation of the Public Works traffic engineer pursuant to KZC Chapter 105 decisional criteria. The Planning Director, Hearing Examiner, and Planning Commission are responsible for considering technical code requirements.

In June 2007, the City Council adopted miscellaneous KZC code amendments (Ordinance O-4097). One of the changes inadvertently added Design Review to the list of review processes described above. Consequently, the DRB is now required to review proposed modifications to parking and access related standards as part of a Design Board Review application. While it makes sense for the DRB to decide on design related modifications to parking lot design standards and/or pedestrian access issues, it was not the intention for the DRB to decide on modifications to more technical standards found in this chapter.

An example of the technical nature of these modifications involves a request to reduce the number of required parking stalls. A decision regarding this type of request would be based upon a recommendation by the City Traffic Engineer. In order for the City Traffic Engineer to make a recommendation, the following is required by code:

> *For a modification to KZC 105.20 and 105.45, a decrease in the required number of spaces may be granted if the number of spaces proposed is documented by an adequate and thorough parking demand and utilization study to be sufficient to fully serve the use. The study shall be prepared by a licensed transportation engineer or other qualified professional, and shall analyze the operational characteristics of the proposed use which justify a parking reduction.*
>
> *The scope of the study shall be proposed by the transportation engineer and approved by the City traffic engineer. The study shall provide at least two days of data for morning, afternoon and evening hours, or as otherwise approved or required by the City traffic engineer. Approval of a parking reduction shall be solely at the discretion of the City.*
>
> *A decrease in the minimum required number of spaces may be based in whole or part on the provision of nationally accepted TDM (transportation demand management) measures. Data supporting the effectiveness of the*

TDM measures shall be provided as part of the parking demand and utilization study and approved by the City traffic engineer.

Based on the requirements described above, approval to reduce the number of required parking stalls is more of a technical matter where the Planning Official relies on the expertise of the City's Traffic Engineer. In contrast, the DRB's primary responsibility is to review projects for consistency with the design guidelines for the associated design district as authorized by KZC 142.35.3.

Staff recommends that the DRB not be involved with modifications regarding the number of required parking stalls, access easement standards, location of parking areas, curbing requirements, screening requirements for access easement or tracts, and surface materials for parking areas and driveways. These items were not intended to be a part of the DRB's purview with the June 2007 code amendments.

Does the Planning Commission have concerns with this approach? Is the Planning Commission in agreement with the proposed change?

2. *KZC 142.40 - Change Design Response Conference (DRC) appeal hearing from City Council to Hearing Examiner*

KZC 142.40 requires that an appeal of a DRB decision be heard at an open public record hearing as follows:

142.40 Appeals of Design Review Board Decisions

1. Jurisdiction – Appeals of the decision of the Design Review Board will be heard as follows:

a. If a related development permit requires an open record public hearing, then the appeal shall be heard at that hearing and decided upon by the hearing body or officer hearing the related development permit.

b. If there are no other open record hearings required for related development permits, then the decision of the Design Review Board shall be heard at an open record hearing by the City Council.

Recently, the majority of the City Council expressed concern that the DRB appeal process did not fit the Council's legislative role (Council members are not required to be design professionals), the process took time from their legislative/policy making duties, and increased the Council's liability in making land use decisions. The City Council therefore asked staff to look at changing the open record hearing DRC process to be heard by the Hearing Examiner instead of the City Council.

Currently, the City uses a Hearing Examiner in the review of a variety of zoning permit and appeal process. The following chart summarizes how the Hearing Examiner is currently being utilized by the City.

PERMIT AND APPEAL DECISION MAKERS CHART

Process	Planning Official Decision	Planning Director Decision	DRB Decision	Hearing Examiner Decision (Public Hearing)	Hearing Examiner Appeal Hearing	City Council Decision/Appeals
Wireless Administrative Decision	X				Hears SEPA & Permit appeals	
Administrative Design Review (ADR)	X				Hears SEPA appeals	
Design Response Conference (DRC)			X		Hears SEPA appeals	Hears DRC appeals
Process I		X			Hears SEPA & Permit appeals	Hears appeals with new ROW Access
Process IIA				X	Hears SEPA appeals	Hears Process IIA appeals
Process IIB				Recommendation to Council		Council makes final decision
Code Enforcement					Hears appeals	

The Hearing Examiner currently holds appeal hearings for a variety of land use permits and SEPA appeals as shown above. For additional background on using a Hearing Examiner, Attachment 3 contains a report by Municipal Research and Services Center (MRSC) that describes the pros and cons of using a Hearing Examiner. The pros and cons are summarized below.

Pros

- More professional and timely decisions insuring fairness and consistency
- Time-saving for legislative body, freeing legislators to focus on legislative policy and other priority issues
- Separation of policy-making or advisory functions from quasi-judicial functions
- Improved compliance with legal requirements, including due process, appearance of fairness, and record preparation
- Reduced liability relating to land use decisions and/or procedural challenges to decisions

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

Cons

- Cost to City for hiring a hearing examiner and recording secretary
- Increased cost to the parties due to more formal decision-making procedures
- Lack of accountability to voters for appointed hearing examiner making decision or hearing administrative appeals

Based on the chart above, Process IIA appeals are also heard by the City Council. Does the Planning Commission have any thoughts on whether or not it makes sense to remove the City Council from hearing Process IIA appeals as well?

For additional background information, Attachment 4 contains a chart that shows how other local jurisdictions handle design review decision appeals.

IV. ATTACHMENTS

1. 2010 Miscellaneous Code Amendment List
2. Interpretation 09-3
3. MRSC Article– Use of Hearing Examiners by Cities and Counties in Washington May 1999
4. DRB Appeals – Local Jurisdictions

2010 ZONING CODE AMENDMENTS

PHASE I (Not applicable in Houghton)

No Policy Changes

1. KZC 53.59.010(2) RH 5C Zoning District – Eliminate outdated references to KZC 95.25 and 95.45 and replace with the actual landscape buffer standards and easement dedication language.
2. Codify Interpretation 09-3 – make KZC 115.20 Special Regulation 6 applicable to lots northeast of Bridle Trails Park (in the Bridle View Annexation)
3. Codify Interpretation 09-3 – make KZC 17.10.010 Special Regulation 5 applicable to lots northeast of Bridle Trails Park (in the Bridle View Annexation)
4. Add references KZC Section 50.62 - Building Height Provisions in the CBD

Process Related Changes

1. KZC 105.103.2 - Remove the Design Review Board (DRB) as the decision maker of modifications to KZC Chapter 105 and replace the DRB with the Planning Official.
2. KZC 142.40 - Change Design Response Conference (DRC) appeal hearing from City Council to Hearing Examiner

PHASE II (list subject to change prior to PC Study Session on Phase II amendments)

No Policy Changes

1. Use the term "maximum horizontal façade' in all applicable zones
2. For mini-school/mini-daycare uses reference State standards instead of DSHS
3. KZC 115.08 – move last sentence to be the third sentence and add at the end "which may further limit its size".
4. Reference in 115.07 the height restrictions in 115.08
5. KZC 115.20 – Various corrections and reformatting changes
6. Delete 115.95.1.b – refers to watercraft noise standards. WAC section doesn't exist. Municipal Code already addresses this.
7. KZC 150.85 – change 'verbal' to 'written'
8. Eliminate special regulation 6 – 25.10.20 (PR/PRA zone)
9. Add special regulation 6 – 45.05 (BC) & 48.5 (LIT)
10. Clarify that voluntary use of affordable housing regulations in Chapter 112 is allowed throughout City where affordable housing is not required.
11. Clarify the rounding language for affordable housing in KZC 112.15
12. Fix KMC 22.32.050 to reference KZC 110.60.7 instead of KZC 110.60.9

Minor Policy Changes

1. Clarify ground floor area limits for residential uses (includes assisted living)
2. Codify Interpretation 09-1 – Retail not required along alley/side service streets in CBD 1
3. KZC 50.10 CBD 1A & 1B General Regulation 3 – Allow Parks, Public Utility, Government, and Community Facility uses as a street front use?
4. KZC 48.15.190 (LIT) – delete special regulation 1 which requires special buffering for outdoor auto repair. Change in other zones?

5. KZC 117.65.8 – clarify to allow antennas on historic buildings – not towers…antennas on historic buildings will need design standards?
6. Allow for more than one monument sign based on street frontage length KZC 100.35.3.c
7. Add regulations for electronic vehicle infrastructure per new state law
8. KZC 142.35.3.c – Add NRHB (& other design districts?) as subject to design principals in Appendix C. Clarify if Appendix C is only for standalone MF or mixed use.
9. Consider adding affordable housing requirement to three zones with density limits (PLA 6G, BC1, BC2) that were not considered during recent amendments.
10. Add modification to lot size provisions in the subdivision regulations (KMC 22.28) for developments that are allowed additional density in exchange for affordable housing.
11. Clarify whether projects undergoing a subdivision to create detached units on individual lots in multifamily and commercial zones are required to provide affordable housing.
12. KZC 5.10.250 – Revise definition of 'dwelling unit' to be consistent with IRC and IBC definitions

Moderate Policy Changes

1. Lower fence heights along collector and arterials
2. Clarify if antennas can be placed on railings at base of water tower roofs
3. Clarify how posts are measured in determining parking stall widths
4. Sidewalk café standards (KMC)
5. RH 8 – Eliminate special regulations that prohibit retail & restaurant uses above the first floor
6. KZC 115.95 – Consider eliminating the adoption of residential noise standards
7. Should dance and martial arts training be added as permitted uses in LIT zones? Now allowed only if non-profit community facility.
8. Add schools in LIT zones as permitted uses (Interpretation 09-2)

Major Policy Changes

1. Add parking standard for multi-tenant developments (shopping centers) in appropriate zones
2. Change CBD parking requirements for multi-family uses to one stall per bedroom
3. Loosen CBD ground floor retail requirements – particularly in fringe areas
4. Establish single parking rate for uses in shopping centers. Treat all of downtown as a shopping center?

Process Related Changes

1. Ask HCC to allow administrative variances in Houghton. KZC 120.12
2. KZC 135.15, 25 & 160.15 - Determine best approach for the public to request changes to KZC
3. Assure 90 day review time for co-location of wireless facilities per FCC ruling
4. KZC 90.140.8 – Eliminate or revise so that lapse of approval is the same as required with underlying review process (Process I or IIA).
5. Review and reduce approval processes in KZC Chapter 90
6. Change HE hearing notice from 17 days to 14 days 170.40.5.d.1, 95.23.4.b, 95.55.10.e, and 117.95.1
7. Change decision maker for driveway surface modifications to PW Director 105.103.3

8. Eliminate KZC Chapter 155 – Process III

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MEMORANDUM

To: Interpretation No. 09-3

From: Eric R. Shields, AICP, Planning Director

Date: October 15, 2009

Subject: **KZC 17.10.010 Special Regulation 5 and KZC 115.4 Special Regulation 6 (chart) -Regulations for keeping horses in the Bridle View Subdivision**

ISSUE

Is the Bridle View Subdivision, annexed into Kirkland on October 2, 2009, required to comply with KZC Section 17.10.010 Special Regulation 5 and KZC Section 115.20 (4) Special Regulation 6 addressing large domestic animals, specifically horses?

INTERPRETATION

The RSX 35 Use Zone Chart for Detached Dwelling Units (KZC 17.10.010 Special Regulation 5), and Special Regulation 6 for large domestic animals in KZC115.20 (4) (chart) establish regulations for equestrian activities in the Bridle Trails neighborhood. Both of those regulations only explicitly address the area *north* of Bridle Trails State Park. The regulations, however, are equally applicable to the recently annexed Bridle View Subdivision located *north-east* of the park and shall also be enforced there.

BACKGROUND

The Bridle View Annexation was initiated in order to preserve and protect the equestrian character of that area the same as existing equestrian developments in the Bridle Trails neighborhood in Kirkland, with which it shares common characteristics. In particular, both areas are characterized by large lots, many of which contain horses. In Kirkland, equestrian zoning protects the equestrian character by requiring a minimum lot size of 35,000 sq. ft. and permeable areas of at least 10,000 square feet to ensure the potential for future equestrian use. This protection is not accommodated in Redmond, or King County.

Kirkland's intent is to amend the KZC to implement the regulations in this area. In order to bridge the gap between the annexation effective date and Code amendment, this interpretation is necessary.

INTERPRETATION CRITERIA

KZC 170.60(1) authorizes the Planning Director to issue interpretations of any of the provisions of the Zoning Code. This section requires the Planning Director to base a decision on three considerations, addressed below:

A. The defined or common meaning of the words of the provision.

This is not an issue.

B. The general purpose of the provision as expressed in the provision.

The general purpose of the special paddock regulations established in KZC 17.10.010 Special Regulation 5 and KZC Section 115.20 (4) Special Regulation 6 (chart) are to ensure that large domestic animals, specifically horses, proposed on lots zoned RS or RSX 35 in the Bridle Trails neighborhood, have sufficient land area both in dimension and usability for placement of a paddock or grazing area, barn, and manure storage area, and that the location will not impact adjacent residents or septic systems on the subject property.

This interpretation is intended to ensure that these regulations, which clearly apply north of Bridle Trails Park, also apply in the newly annexed Bridle View annexation located north-east of the park.

C. The logical or likely meaning of the provision viewed in relation to the Comprehensive Plan.

The Kirkland Comprehensive Plan provides policy direction regarding horse keeping in the equestrian developments in the Bridle Trails Neighborhood. Pursuant to the Living Environment section of the Bridle Trails Neighborhood chapter of the Comprehensive Plan, very low density residential developments should permit private stable facilities on large lots. Bridle View is a low density residential area, with existing equestrian facilities. The intent of the Comprehensive Plan is to provide the same level of protection for equestrian activity throughout the equestrian areas Bridle Trails.

CONCLUSION

Since the intent of the Bridle View annexation is to protect and preserve the equestrian character of Bridle View the same as properties immediately north of the Bridle Trails State Park, and since the zoning in the two areas is the same, the City will apply the existing KZC regulations to the newly annexed Bridle View annexation. Specifically, special regulation 5 of KZC 17.10.010 and special regulation 6 of KZC 115.20.4 will apply north east of the park in the Bridle View Subdivision.

MRSC FOCUS

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 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

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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.

MRSC *Focus* is published periodically by the Municipal Research & Services Center of Washington, 1200 Fifth Avenue, Suite 1300, Seattle, WA 98101-1159, and addresses issues of current interest to cities, towns, and counties in Washington State.

- 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.

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JURISDICTION	DRB ACTION	STAFF DECISIONS	HEARING EXAMINER ACTION	CITY COUNCIL ACTION
Kirkland	Holds public meetings and makes final decision		None	Holds open record appeal hearing on appeals of DRB decisions
Redmond	Holds public meetings and makes joint decision with Technical Committee	Technical Committee makes joint decision with DRB (non-design issues) and issues final combined decision	Holds open record hearing on appeal	Holds closed record hearing on appeals of appeals?
Edmonds	Architectural Design Board Holds public hearing and makes final decision on cases not involving hearing examiner decision. If hearing examiner decision required, makes recommendation to hearing examiner		None, unless other land use decisions are consolidated with design review where hearing examiner holds open record hearing on consolidated project	Holds closed record appeal hearing on appeals of design review or hearing examiner decision
Gig Harbor	Holds public meeting and makes recommendation to the hearing examiner		Holds open record hearing on appeal and makes final decision	None
Issaquah	Development Commission holds public hearing and makes recommendation to City Council			Make final decision on Development Commission recommendation
Mercer Island	Design Commission holds open record hearing and makes final decision		Holds closed record hearing on appeal	None
Mill Creek	Holds open record hearing and makes final decision		None	Holds closed record hearing on appeal
Seattle	Holds public meetings and makes recommendation to Planning Director	Planning Director makes decision on Master Use Permit (MUP) which is a consolidated decision of all underlying land use actions	Holds open record appeal hearing on appeal of MUP and makes final decision	None