



Planning Commission

Deliberation: Code Amendment to Change Rezone Hearing Body

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Title

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Body

Issue:

Potential change to Development Code so that the Planning Commission, rather than the Hearing Examiner, holds public hearings and makes recommendation regarding proposed changes to the zoning map when a Comprehensive Plan amendment is not required.

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Presenter(s):

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Background and Analysis:

The Planning Commission holds a public hearing and makes recommendation to the City Council regarding most zoning map amendments. However, Chapter 18.58 of Olympia's development code provides that "privately initiated rezones" (zoning map amendments) that do not require a Comprehensive Plan amendment shall be heard by the Olympia Hearing Examiner and that the Examiner shall make a recommendation to the City Council. As required by state law, the Council makes the final decision for the City regarding all zoning and development code amendments. During the last twenty years the Examiner has rarely held such hearings because most rezones required a Plan amendment. In fact, senior staff cannot recall any examples of the Examiner holding a rezone hearing during this period.

The Commission and staff have recommended a more general Future Land Use map as part of the Comprehensive Plan update now pending before the City Council. If approved by the Council, this change in the Plan is likely to lead to more rezone proposals that do not require a Plan amendment - and thus the provision above would once again be more often applicable. When recommending the Plan update, the Commission also recommended the City reconsider whether privately-initiated zoning map amendments not requiring a Plan amendment should continue to be heard by the Examiner, or instead the development code should be changed to provide that the Commission holds hearings and makes recommendations regarding all zoning map amendments. Neither Olympia's Comprehensive Plan nor state law designate whether the Commission or the Examiner should hold such hearings and makes recommendation to the Council - so ultimately this choice of processes is at the Council's discretion.

The current key provisions of the Olympia Municipal Code read:

OMC 18.58.020 Authority -- The City Council may, upon its own motion, amend, supplement or change by ordinance, any of the provisions, use district boundaries or use district classifications herein established; provided, that in the case of privately initiated rezones, which do not require a Comprehensive Plan Amendment, the Council shall first review the recommendation of the Hearing Examiner, and that in the case of all other non-ministerial changes, including text amendments and privately initiated rezones which require a Comprehensive Plan Amendment, the Council shall first review the recommendation of the Planning Commission.

OMC 18.58.040 Rezone procedures --In the case of privately initiated rezones which do not require a Comprehensive Plan Amendment, the rezone application shall follow the procedures outlined in Sections 18.82.140 through 18.82.280, Hearing Examiner.

Specific proposed text for changing these and related code sections is attached. In general the code would be simplified to set forth a single process for rezones. Analysis of the two approaches - Examiner or Planning Commission hearing - is presented below. To date the City staff has elected not to make a specific recommendation regarding this issue, instead the staff recommends that the Commission consider the following:

1. Both the Hearing Examiner and Planning Commission membership are selected by the City Council. (If the regular Examiner is unable to hear a particular matter, a temporary Examiner is selected by the Community Planning and Development Director from a list pre-approved by the Council.)
2. The Examiner's deliberation occurs in private, while by law the Commission must deliberate in public.
3. Since deliberation must be conducted by the Commission at public meetings with due notice, review and recommendation by a Commission generally requires more time than if conducted by an Examiner.
4. Unlike a voting body such as the Commission, there is no risk that the Examiner's deliberation will result in a tie vote. (Note, tie votes could be avoided by a change in the Commission's rules of procedure to provide that the chair only votes when a tie occurs.)
5. Unlike a single Examiner, the recommendation of a Planning Commission can turn on the particular members who participate in the proceeding, and especially who attends the meeting where the final vote occurs.
6. Site specific rezones are 'quasi-judicial' matters subject to extraordinary procedural requirements. Among these are requirements such as the process not only be fair, but that it appear fair; contact with interested parties outside of the hearing is generally prohibited; and specific findings and conclusions supporting the decision are usually needed. In general professional hearing examiners are better trained in complying with these requirements than lay planning commissioners.
7. As noted site specific rezones are 'quasi-judicial' matters, while area-wide zoning changes are 'legislative matters' where the reviewing bodies have more procedural discretion - however the distinction between the two categories is not well defined.
8. Hearing Examiner's usually are responsible for reviewing development proposals, while Planning Commissions generally address broader policy questions. Site specific rezones include aspects of

both these types of decisions. Like development proposals, they must be decided based on specific criteria, but like broader code amendments they are changes in regulations.

9. Although site specific rezones must be reviewed according to court-mandated and adopted criteria, both proponents and opponents will often seek to have reviewing parties consider factors outside these standards.
10. Although rezone proposals must be judged against specific criteria including those in Olympia Municipal Code 18.59.050 (see below), these criteria are much broader in nature than the prescriptive measurements and criteria usually applicable to specific development proposals.
11. Site specific rezones not associated with a Comprehensive Plan amendment are subject to the Washington Local Project Review Act. Thus any appeal is to superior court instead of the Growth Hearings Board, and the court's review is different in form and substance from that of the Board. For instance, the court will review the City's decision for consistency with the Comprehensive Plan but not for consistency with the Growth Management Act.
12. Site specific rezones can be the subject of only one 'open-record' (evidentiary) hearing and must be decided within 120 days - unless another specific timeframe is set forth in City code.
13. The direct cost to a rezone applicant is greater when review is conducted by a Hearing Examiner since the City requires the applicant to reimburse the City for the cost of employing an Examiner.
14. Unlike a Comprehensive Plan amendment proposal, it may be necessary to consider any application for a site-specific rezone not requiring a Plan amendment on its merits, i.e., there is no 'screening' step. It is difficult to predict how many such applications will be received each year. In general the Hearing Examiner can adapt more easily than the Commission's calendar to workload surges.
15. The proposed amendment would not be applicable to the 'master planned development' approvals of 'centers and villages' which are a hybrid of development approval and zoning map amendment. Such master plans are reviewed by both the Hearing Examiner and the Design Review Board and subject to final action by the Council and unlike 'pure' rezones such map amendments simply add a note referencing the master plan approval consistent with the zoning.

Both the courts and the City Council have set forth criteria to be applied to rezone requests. Olympia's criteria are whether:

- The rezone is consistent with the future land use map and the Comprehensive Plan in general
- The rezone will maintain the public health, safety, or welfare
- The rezone is warranted in order to achieve consistency with the Comprehensive Plan, or because of a need for additional property in the proposed land use district classification, or because the proposed zoning classification is appropriate for reasonable development of the subject property
- The rezone will not be materially detrimental to uses or property in the immediate vicinity of the subject property

A survey of Olympia's peer cities (over a dozen similarly sized Washington cities plus Tumwater and Salem) revealed a broad range of approaches. For example, in Richland, Lacey, Tumwater, Longview and Edmonds all rezones are reviewed by their Planning Commissions. In contrast, in Salem and Bremerton all rezones are

reviewed by Hearing Examiners. Puyallup has the same split as Olympia now has, and Sammamish sends all site-specific rezones to the Examiner while the Commission handles area-wide zoning changes. Many cities responded that they have tried or considered alternatives and each approach has advantages and disadvantages. Note that some cities have not yet responded to the survey - thus additional information may be available at the hearing.

Neighborhood/Community Interests (if known):

On or before September 13, 2013, notice of this public hearing was published in The Olympian and emailed to all recognized neighborhood associations, neighboring cities, and other potentially interested agencies and organizations. This topic should be of interest to potential applicants and the public-at-large, but no comments have been received to date.

Public comments at the Commission's public hearing on September 23, 2013, generally favored the proposal. In addition, Bob Jacobs commented that the City should also consider moving development master plan review from the Hearing Examiner to the Commission. (Development master plans are documents adopted by Council ordinance to restrict and guide the future development of properties with Urban Village, Neighborhood Village, and Neighborhood Center land use zones.)

Options:

The Commission may elect to recommend either that the City Council adopt the proposed amendment, that the City Council not adopt the proposed amendment, or some alternative within this range. The Commission's findings, reasoning and/or conclusions regarding either recommendation would be of interest to the Council.

Financial Impact:

Included in base budget