

2007 Transportation Symposium Short Course on Local Planning

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What's Up?

- Implementation of Comprehensive Plans
 - Regulations
 - Coordinated Planning
 - Legislative Decisions
- Roles in the Planning Process
- When & How To Comment
 - Legislative
 - Quasi-Judicial
- Effective Comments
 - Specifics of SEPA (only if there's time!)



A Plan Is Implemented Through

Development Regulations that ensure the growth and development of the community are consistent with the vision of the comprehensive plan

- Zoning ordinance,
- Subdivision ordinance,
- Development standards for streets, sidewalks, water and sewer systems, storm water systems, lighting, etc...
- Procedural Codes
- SEPA



And Through

Coordination of utility/facility/service plans, both internal to a local government and externally

- Local Government's = comprehensive water and sewer system plans, plans for expansion of police and fire services, etc.
- Other Municipal Entities = school districts, special purpose districts, community/civic organizations, etc.



And Through

Local Government's capital budgeting and other decision making processes.

- Where the comp plan says an area is commercial, the water/sewer system plans will have appropriately sized facilities identified to serve it, the capital facilities element of the comp plan will describe a 6-year financial plan for construction and O&M of those facilities, and the annual budget will reflect those costs.
- Annexations – whether or not the city will actively pursue them, whether they are financially feasible, what the timing and progression will be, etc.



Zoning Code

The basic purpose is to...

- Divide the community into different areas/zones
- Regulate the uses within those zones
- Regulate the placement of those uses (ie. the height, bulk, setbacks, etc.)
- Optional/innovative items (eg. planned developments, design standards, etc.)



Subdivision Code

Generally, it...

- Regulates the division and/or redivision of land.
- Typically covers subdivisions, short subdivisions and binding site plans.
- May include provisions for boundary line adjustments, plat alterations, plat vacations, etc.



Development Standards Code

Can take different forms and cover a variety of issues

- May be a stand-alone code or may be part of some other code, usually subdivision.
- Describes the design and construction details for public improvements that are required for new or altered development.
- Generally covers water, sewer, storm drainage, street and sidewalk standards, but may also include others such as parking, landscaping, sign standards, etc.



Environment/Critical Areas Code

May be separate from or included within other codes such as the zoning or development standards codes.

- Regulates/protects critical areas: wetlands, flooded areas, geological hazard areas, aquifer recharge areas, fish/wildlife habitat.
- May preclude development in those areas, or may establish acceptable mitigation measures to alleviate negative impacts to critical areas.
- Now required to use Best Available Science.



Procedural Code (RCW 36.70B)

Development Project Permit Procedures

- Adopted by the Legislature in 1995, local governments were required to establish local ordinances to comply with this law by March of 1996 – No \$ allocated!
- Standardizes local land use permitting processes - citizens and developers know what to expect, and permit issuance is more timely.
- Consolidates the State Environmental Policy Act (SEPA) review with the rest of the project review.
- De-politicizes the quasi-judicial permit process - everyone is treated the same.



Details on Reg Reform

Affects how all fully planning GMA jurisdictions process development project permit applications.

- Determination of Completeness
- Notice of Application with a comment period
- One “open-record” public hearing ONLY!
- Decision must be in writing with findings of fact
- Can have one “closed-record” appeal public hearing



SEPA

- Purpose: To ensure that environmental concerns are addressed when decisions are being made by local and state governmental agencies.
- Unless an action is specifically listed as “categorically exempt” in the WAC, all government actions require an environmental review.
- An “action” can either be “non-project” (legislative) or “project” (quasi-judicial).
- SEPA gives local and state governmental agencies a mechanism for considering and mitigating the potential negative impacts of a proposal.
- Trigger = Agency Action: SEPA does not directly regulate the private sector...The government agency taking an action must comply.
- “Agency” = “...any state or local government body, board, commission, department or officer authorized to make law, hear contested cases or otherwise take the actions...” that are described in the WAC (excluding the judiciary and state legislature).



Legislative -vs- Quasi-Judicial

Legislative is “Policy-Making” ...

- Comprehensive Plans
- Zoning Ordinances
- Annexations
- General Infrastructure Financing
- Ordinances

Quasi-Judicial is “Judge-Like” Decision...

- Subdivision & Planned Development Approvals
- Conditional Use Permit
- Variances
- Property-Specific Rezones



Characteristics of Each

Legislative...

- Generally NOT property- or applicant-specific; Has general application across the jurisdiction; Creating the vision, policies, goals and regulations in the best interest of the overall community.

Quasi-Judicial...

- The issue is property- or applicant-specific; Decision impacts specific parties as opposed to the whole community; The process is “trial-like”, with decision makers considering evidence (testimony, exhibits) and resulting in approval, approval with conditions or denial.



Roles ~ Who Does What

Citizens

- Elect Mayor and Council
- Participate in developing comprehensive plan (legislative)
- Participate in creating development regulations to implement the plan (legislative)
- Participate in land use permit process by commenting on applications and providing testimony to the hearing examiner (quasi-judicial)
- Appeal decisions of the hearing examiner on permit applications (quasi-judicial)



Roles ~ Who Does What

Legislative Body: City Council/Board of Commissioners

- Chief legislative authority –final decision makers.
- Review Planning Commission recommendation and conduct additional public process to adopt comprehensive plan and development regulations (legislative).
- May be final decision maker or appeal body on permit applications (quasi-judicial).
- Make final decisions on annexation proposals (legislative).
- Set and adopt a budget (legislative).
- Pass general application ordinances (legislative).



Roles ~ Who Does What

Planning Commission

- Act as a fact-finding and advisory board to the Legislative body.
- Research and draft the comprehensive plan and implementation regulations, conduct a public review process on the drafts and make formal recommendations to the Council (legislative).
- Conduct other long-range planning and/or fact-finding projects as requested by the Council (legislative).
- May be pre-decision public meeting or public hearing decision making body for development permit applications (quasi-judicial).



Roles ~ Who Does What

Hearing Examiner (Board of Adjustment)

- Quasi-judicial hearing officer and decision-maker.
- City may choose to have decisions appealable to City Council or Superior Court, in most cases.
- Applies the goals and policies of the comprehensive plan and the requirements of the implementation regulations to site-specific permit applications.
- Provides feedback to Council and Planning Commission regarding the effectiveness and/or recurring issues with the comprehensive plan and implementation regulations.



Roles ~ Who Does What

Local Government Staff

- Facilitate and coordinate the development permit review process through assistance to the customers (citizens) and staff support to the Decision Making Body (quasi-judicial).
- Provide technical resource with regard to regulatory requirements and good planning techniques and/or practices for both development permit reviews and long-range planning processes (legislative).
- Facilitate all planning processes, making sure **EVERYONE** has a chance to participate (both!)



Roles ~ Who Does What?

State Agencies

- Assist staff with technical needs pertaining to an agency's expertise: **data, data and MORE data.**
- Participate in **legislative** planning processes as technical resource to communities: reviewing, commenting, making suggestions on comprehensive plan policies, development regulations.
- Participate in **quasi-judicial** permit review processes as technical resource to communities: reviewing projects, commenting on issues related to an agency's expertise, particularly during the early application review (SEPA) stages, but also during the public hearing process(es).



When & How To Comment

- Know what type of process you're participating in! Legislative or Quasi-judicial?
 - If you're providing policy-level comments during the review of a specific development permit application, you're too late!
- State agencies have a vested interest in the outcomes of both types of processes
 - **Legislative:** RCW 36.70A.103 “State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter except as otherwise provided in RCW [71.09.250](#) (1) through (3), [71.09.342](#), and [72.09.333](#).”
 - **Quasi-judicial:** Adequate and appropriate conditions of approval and/or public improvements as development happens.



Legislative Comments

- Early and continuous: **before!** the 60-day review process
 - Committees? Open houses? Staff-to-staff? Find out what the LG process and ask to get involved **up front!** It's easier to identify and deal with conflict issues early in the process as opposed to later!
- During the 60-day review – don't wait till Day 59 to provide substantive comments!
- Don't forget the development regulations!
 - Remember the implementation tools at the beginning?
- **Please** provide alternatives when you identify a problem/issue! Don't just tell the LG that something is wrong, help them identify ways to approach complications!



Quasi-judicial Comments

- **First** chance may be pre-application meeting – attend or send written comments. Optimal!
- **Second** chance is Notice of Application comment period (14 days, by statute), need to be in writing. Adequate.
- **Last** chance is prior to or at the public hearing. Too Late!



Effective Comments

- Don't assume the LG knows you're out there
 - Provide a specific contact person for the types of processes you want to be involved in.
- Provide substantive comments, let the LG fix their typos and grammatical errors!
 - Identify the issues, the impacts **and** alternatives to address the issues
- Make sure the comments are applicable to the specific project/process – general comments are frustrating!
 - Sometimes regional staff may be more effective?!
- Be timely! Understand the LG's process and time constraints, statutory and political!
- Give LG benefit of the doubt! Most of us are trying!



SEPA ~ Government Actions

- There are 2 types of government actions: “Project” and “Non-project”
- “**Project Actions**” are agency decisions on a specific project...
 - *Quasi-judicial* activities such as land divisions, large construction projects, road building, conditional use permits, planned developments, etc.
 - Does NOT include variances, most short subdivisions, nor annexations.
- “**Non-project Actions**” are agency decisions on policies, plans or programs.
 - *Legislative* activities such as adoption or amendment of a comprehensive plan or development regulations such as zoning codes, subdivision codes, development standards codes, etc.



SEPA ~ Review Process...(Project Actions)

- Determine if an environmental review is required...is it categorically exempt under 197-11-800? If not, **do the review!!**
- Determine lead agency...
 - For most land use actions (legislative and quasi-judicial) the lead agency is the city or county with jurisdiction, **however**, if there is no local permit required...
 - Agency proposing project is lead agency, and
 - Certain special designations for specific proposals (197-11-938)
- Lead agency reviews environmental checklist and issues a threshold determination...DNS, MDNS, or DS
- Depending on the threshold determination and any subsequent environmental review that's required (EIS, development of mitigation measures, etc.) the lead agency takes action on the proposal



SEPA ~ Types of Determinations

- There are 4 possible threshold determinations...
- Determination of Nonsignificance (DNS) that does NOT require a comment period (most commonly occurs when there is no other agency with jurisdiction, e.g. minor land use and building permits)
- DNS requiring a comment period...this may include conditions as it is issued, or as a result of comments received during the comment period.
- Mitigated DNS (MDNS)...this indicates that the applicant has made specific changes, clarifications or conditions have been imposed **prior to** the threshold determination to reduce probable significant adverse impacts to non-significant levels.
- Determination of Significance (DS)...this is a determination by the lead agency that the proposed action has a probable significant adverse environmental impact, triggering an EIS to evaluate **specific, identified** adverse impacts identified in a scoping process.



SEPA ~ Which happens most?

- Typically, the majority of project actions will fall either into a DNS with a comment period or an MDNS...
- **NOT** necessarily a bad thing...
 - Both avenues allow for conditioning and/or altering a project to implement mitigation measures...like an EIS.
 - Both avenues are expedited, negotiated ways to get to the mitigation measures that are generally the outcome of the more expensive, time consuming EIS process, and the scope isn't necessarily limited as it must be for an EIS.
 - It is a cooperative, give and take process to revise and improve a proposal, evolving project mitigation through the commenting process, with the added benefit (hopefully) of consensus building among the participants.
 - State agency participation is VERY important in both processes.

SEPA ~ Opportunities

- SEPA is a safety net...it is a supplemental regulatory tool, it adds to existing authority of government agencies, empowering them to protect the environment when carrying out their other functions.
- Some jurisdictions have complete, comprehensive, detailed regulations in place, while many others may not, for a variety of reasons.
 - It is **more likely** that the reasons are related to a lack of resources, both technical and financial...AND...it is **less likely** that the reasons are based on a policy of deliberately defying the responsibility for enacting better regulations...
- SEPA fills the holes that are left by existing regulations by allowing protection and mitigation measures to be developed on a site-specific basis...General application rules and regulations can't do that.
- **HOWEVER**, the authority to mitigate and/or deny proposals is **NOT** “carte blanche”...there are limitations!



SEPA ~ Limitations

- Mitigation Measures imposed pursuant to SEPA...
 - “...shall be based on policies, plans, rules, or regulations formally designated by the agency as a basis for the exercise of substantive authority...” {197-11-660(1)(a)}
 - “...shall be related to specific, adverse environmental impacts clearly identified in an environmental document...” {197-11-660(1)(b)}
 - “...shall be reasonable and capable of being accomplished...” {197-11-660(1)(c)}
 - “...may be imposed...only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.” {197-11-660(1)(d)} (Cooperation, consensus, etc.)
 - “Before requiring mitigation measures...shall consider whether local, state or federal requirements and enforcement would mitigate an identified significant adverse impact...” {197-11-660(1)(e)}



SEPA ~ Limitations

- If a GMA county or city determines that the requirements for environmental analysis, protection and mitigation measures in their plans and/or regulations adopted under GMA, or in other applicable local, state or federal laws or rules, provide adequate analysis and mitigation for the specific adverse environmental impacts, the “shall not impose additional mitigation under this chapter.” 197-11-660(1)(g)
- Denying a project based on SEPA is possible, but only after the following has occurred...
 - The agency must find that the proposal would be likely to result in significant adverse environmental impact identified in a final or supplemental EIS (i.e. to deny it you have to have done an EIS) ...AND...
 - Reasonable mitigation measures are insufficient to mitigate the identified proposal.



SEPA ~ State Agencies' Role

- **Technical Resource!!!**
- Most local governments don't have biologists, geologists, etc. on staff.
- As such, the technical expertise resource agencies bring to the table is vital, particularly during the project review process, to developing appropriate mitigation measures
 - Smaller jurisdictions may even need assistance in identifying impacts of a project, in addition to developing appropriate mitigation measures.
 - Jurisdictions that do not have professional planning staff may not understand or be aware of the requirements for a project outside of their own action (e.g. a small city may not know that a gravel pit that requires a CUP from them may also require a surface mining permit from DNR and a temporary air quality permit from Ecology.)



SEPA ~ Protocols...

- SEPA has specific provisions for lead agencies to consult with other agencies with jurisdiction and/or agencies with technical expertise.
- The most appropriate and effective way to convey the technical information is to **comment on project referrals from local governments!!!** Many local governments rely heavily on agency expertise, please take the time to review and comment on projects.
- What if an agency doesn't comment in the allotted time frame? *"...If a consulted agency does not respond with written comments within the time periods for commenting...the lead agency may assume that the consulted agency has not information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise. Any consulted agency that fails to submit substantive information...in response to a draft EIS is thereafter barred from alleging any defects in the lead agency's compliance with...these rules."* {197-11-545(1)}

