Pre-GMA Planning Context

1970's and 1980's
- Plans optional - advisory
- Zoning - governs
- SEPA – largely project specific
- SMA – 200' of shoreline
- EFSEC – major energy facilities

Pre-1990 conditions
- Not Comprehensive
- Piecemeal...yields:
  - Sprawl
  - Congestion
  - Loss of open space, critical areas and resource lands

GMA – A “sea change” in Planning

Densest & Fastest Growing Plan

Basic Planning Questions

- **What do we have?** – Inventories, needs assessments
- **What do we need and want?** – Accommodate 20 year population projections from the State in a manner consistent with community vision – Guide Growth!
- **How are we going to get it?** – Plan lays out goals, objectives, policies, standards, costs and strategies to guide *implementation*
Basic Implementation Strategies

- Regulation
- Acquisition
- Taxation
- Spending*

Navigating GMA Waters

1990 Growth Management Act
Chapter 36.70A RCW

- Key Changes to land use planning (continued):
  - No plan or development regulation can preclude the siting of essential public facilities – EPPS [RCW 36.70A.200]
  - All plans must accommodate the allocated share of the State’s forecast population for the subsequent 20 years [RCW 36.70A.110, .115]
  - Public Participation is the bedrock of GMA [RCW 36.70A.020(1), .035, .130 and .140]
  - Counties allocate forecasted population to its cities and draw Urban Growth Areas – UGAs [RCW 36.70A.110, .115]
  - Concurrency of infrastructure and development is required [RCW 36.70A.020(12), .070(6)]
  - Plans can be amended only once a year, periodic updates are required every seven years [RCW 36.70A.130]

The GMA’s Goals

[RCW 36.70A.020]

ALL PLANS AND DEVELOPMENT REGULATIONS MUST BE GUIDED BY THE FOLLOWING GOALS

[Each Goal is backed by a GMA requirement]:

1. Urban growth - Encourage development in urban areas [.070, .110, .115]
2. Reduce sprawl - Reduce the inappropriate conversion of undeveloped land [.070, .110, .115]
3. Transportation - Encourage efficient multimodal transportation [.070]
4. Housing - Encourage the availability of affordable housing to all economic segments [.070]
5. Economic Development - Encourage economic development throughout the state [.070]
6. Property Rights - Preserve private property rights [.370]
7. Permits - Process permits in a timely and fair manner [.120, .200, .040]
GMA Planning Process and Timelines

- Coordination and Communication: County-wide Planning Policies (CPPs) developed to guide planning among jurisdictions within the county – 1991
- The Land Speaks First: Natural Resource Lands and Critical Areas identified, designated, conserved and protected - 1992
- UGAs: Urban Growth Areas drawn outside of which urban growth cannot occur – 1992
- Implementing Development Regulations adopted within 6 months of Plan adoption
  - Plan Amendments – no more often than once a year
  - Plan Updates every 7 years
  - UGA Updates at least every 10 years
- Public Participation throughout all stages

GMA Comprehensive Plans

(RCW 36.70A.070)

- Three fundamental types of land: Urban, Rural, and Natural Resource Lands – Critical Areas are found on all lands.
- All cities are Urban – within UGAs – must allow urban uses and intensities, urban densities, and ensure urban services are adequate and available to support growth. ([infill, mixed uses, transit oriented design, and TDRs]
- GMA specifies mandatory elements for each Plan. Each element includes inventories, needs projections and sets out policies and programs to shape the future and meet needs (financing plans are required for capital facilities and transportation)

Required Elements of GMA Comprehensive Plans

(RCW 36.70A.070)

- Each comprehensive plan shall include (maps and text) for each of the following elements (mandatory elements)
  - Land Use*
  - Housing
  - Capital Facilities*
  - Utilities
  - Rural [Counties only]
  - Transportation*
  - Economic Development (in updates if funded)
  - Parks and Recreation (in updates if funded)
  - Ports (Seattle and Tacoma)
- Subareas plans are permitted as are other optional elements such as Environment, Energy and Natural Resources
  * = inextricably linked

Land Use, Transportation, and Capital Facilities Elements – Linkages!

<table>
<thead>
<tr>
<th>Capital Facilities Element</th>
<th>Transportation Element</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inventory of existing facilities</td>
<td>Inventory of existing modes</td>
</tr>
<tr>
<td>Forecast of future needs</td>
<td>Needs assessment – LOS standards</td>
</tr>
<tr>
<td>Six-year financing plan to fund needed facilities</td>
<td>Multi-year financing plan to fund needed facilities</td>
</tr>
<tr>
<td>Reassess land use element if funding falls short</td>
<td>Reassess land use element if funding falls short</td>
</tr>
<tr>
<td>Proposed locations and capacity of needed facilities</td>
<td>Assumptions on land use and traffic – Demand management</td>
</tr>
</tbody>
</table>

Public Participation “early and continuous”

(RCW 36.70A.035, 130, 140)

- Notice: newspapers, posting, websites, media
- Public meetings
- Public Workshops
- Charettes
- Citizen Advisory Committees
- Public Hearings
- Always opportunity for written comment
- Elected officials decide!
- Pool of Potential “Petitioners”

Urban Growth Areas - UGAs

- OFM forecasts 20-year population by county
- County, in consultation with Cities, allocates population
- Land capacity analysis – land supply
- Density assumptions, and ability to serve
- UGAs drawn by County to accommodate growth
Conservation of Natural Resource Lands and Protection of Critical Areas

• All jurisdictions must identify, designate and conserve Natural Resource Lands:
  - Agricultural lands, Forest lands and Mineral lands of long-term commercial significance
  - These provisions are intended to protect the related natural resource industries
• All jurisdictions must identify, designate and protect (using the "best available science") Critical Areas:
  - Wetlands, Aquifers, Fish and Wildlife Habitat Conservation areas, Frequently Flooded areas and Geologically Hazardous areas
  - These provisions are to protect the function and values of the critical areas and public safety
  - Critical areas are found in urban areas, rural areas and on resource lands

GMA Enforcement!
• All plans, development regulations, and amendments thereto, must be submitted to the State Department of Commerce (DOC provides technical assistance and limited funding support) for circulation to other agencies for their review and comment prior to adoption.
• There is no requirement for GMA plans to be approved by any state agency or department – they are presumed valid upon adoption.
• Enforcement of the GMA is through appeal to the Growth Management Hearings Board – 3 regional panels.
  - If the Board finds Noncompliance and remands: affects certain state funding priorities (all), can invalidate (not so rare), recommend gubernatorial sanctions (rare).

Enforcement!
Sometimes trouble! Always help available

Updates to the Plan
An opportunity to improve plans and regulations:
• Review vision, goals and policies
• Address new issues [climate change, regional transit]
• Assess plan performance – is it working? [buildable lands]
• Assess land availability for needs [population, housing, jobs, etc.]
• Incorporate new and updated data and information [statutory changes, case law, etc.]
• Refine how it all fits together.

Where Urban Growth Has Been Guided

Urban Growth Areas
Physical Geography

Smooth [GMA] Waters
Ed McGuire
E.G. McGuire & Associates LLC
(513) 732-8837 egmguire@harbornet.com
Short Course on Local Planning
Robin McClelland, FAICP
WA APA Conference October 1, 2013

• Roles of the Planning Commission
• Tools for effective meetings
• Relationships with the public, staff, and elected officials
• Rewards

Roles: Keepers of the Plans
Guardians of the Comprehensive Plan, other policy documents, and development codes (Zoning Ordinance, Shoreline Master Program)

Offer recommendations that reflect community input, professional staff advice, and thoughtful commission deliberation.

Provide the ground work for elected officials to make decisions.

Review and Update

• Evaluate implementation strategy: What have we accomplished?
• Re-energize “Vision Statement”: What’s changed? Where are we headed?
• Make sure Vision, CPPs, and the Comprehensive Plan are internally consistent and are coordinated with implementation strategy: Are there conflicts?

Tools: Structure and Procedures

1. Adopt and Review By-laws
   • Reporting function
   • Establish meeting procedures
   • Number of members, residency
   • Terms, rotation of speakers

2. Apply Meeting Procedures

3. Use Ground Rules when necessary
   • Set terms for public comment (time limits, etc.)
   • Agree on a protocol for public meetings
   • Post ground rules at meetings, online

The Effective Planning Commissioner

• Know your town and your people
• Bring knowledge, experience
• Learn how to make the best of available tools to fulfill your community vision
• Rely on staff for expertise, clarification
• Get out and about: attend open houses and community events, take field trips
• Attend conferences to keep current

Know Your Meetings

Always know the purpose:
• Regular meeting with agenda
• Community meeting for gathering input
• Pre-hearing informational meeting
• Public hearing (transcribed)

Always know and follow the procedures:
• Use staff instructions, guide sheets

Work as a team.

It’s an adventure.

Know when to tap the gavel.
The Effective Meeting

- Read all packet materials
- Come prepared to take action
- Start on time; end at a reasonable hour
- Use a "timed" agenda
- Chair keeps meeting on task
- Discourage grandstanding, "speechifying"

Learn from staff.

Listen to the public.

Robin McClelland, FAICP

Relationship to Public

Public = neighbors, shopkeepers, school children, employees, elderly, old-timers and newcomers, business and property owners, builders, employers, neighboring towns

Planning Commissioners are entrusted to look out for many faces and all kinds of needs

- Make site visits, read comment letters, view the issues from many sides
- Listen and be attentive
- During public hearings keep testimony pertinent to the subject

Plan for those busy doing other things.

Robin McClelland, FAICP

Relationship to staff

- Treat staff with respect
- Understand demands unrelated to Planning Commission
- Develop a work program
  - Necessary work (updates)
  - Interesting work (design)
  - Parking lot (sign code)
- Ask for additional information prior to the meeting
- Be mindful of open meeting law and public disclosure constraints

Make the most of your professional expertise.

Robin McClelland, FAICP

Your Packet: What’s in it?

- Agenda: order of the day
- Staff Report: narrative description of the topics; may include maps, illustrations, graphics
- Comment letters
- Facts, findings, conclusions
- Environmental review: SEPA documents, technical appendix

Read it!

It’s important.

Robin McClelland, FAICP

Relationship to elected officials

Elected officials appoint Commissioners and rely on you to:

- Reflect the interests of the community
- Know the Comprehensive Plan and other policy documents, ordinances, and procedures
- Conduct public meetings as required to hear concerns
- Use insight to amend, revise policies
- Make recommendations that officials will adopt

Conduct periodic joint meetings with Councilmembers other boards to discuss issues.

Robin McClelland, FAICP

Reap the Rewards

- Keepers of the community’s vision for now and the future
- Important link in the legal (hearing) process
- Sometimes say “no” to keep things from happening
- Knowledge of how the city and your government work
- Experienced, seasoned, respected - ready to run for elected office

YOU ARE A WINNER!

Robin McClelland, FAICP
THE LEGAL BASES OF PLANNING IN WASHINGTON

Presented by:
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WHAT'S OUR AGENDA?
Introduction to Land Use Law and Local Planning
Substantive Laws
Constitutional Standards
Public Procedural Laws
Public Hearings

I. SUBSTANTIVE LAWS

The Development of Land Use and Planning Law

THE LEGAL BASES OF PLANNING IN WASHINGTON

HOW IT STARTED

Village of Euclid v Ambler Realty Co. (1926)
Planning Enabling Act (1935)
RCW Chapter 36.70
Planning Commission/Agency
Comprehensive Plan (Land Use; Circulation)
Planning Players
Staff & Planning Commissioners
Board of Adjustment / Hearing Examiner
City Council

SUBDIVISION CODE

The City legislative body . . . shall determine if appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and school grounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and determine whether the public interest will be served by the subdivision and dedication.

RCW 58.17 (since 1857)

FAIRNESS MATTERS

The Appearance of Fairness Doctrine
Smith v. Skagit County, 75 Wn.2d 715 (1969)
RCW 42.36 (1982)

The General Rule
Hearings must not only be fair, they must appear to be fair

Washington Statutory Basics
ACTIVISM IN THE 1970s

Open Public Meetings Act (1971)  
RCW 42.30

State Environmental Policy Act (1971)  
RCW 43.21C

Shorelines Management Act (1971)  
RCW 90.58

Public Disclosure Act (1972)  
Now Public Records Act  
RCW 42.56

STATEWIDE PLANNING (AT LAST)

Growth Management Act (1990)  
RCW 36.70A  
Coordinated Planning  
Mandatory Comprehensive Plans  
Consistent Development Regulations  
Growth Areas & Concurrency  
Critical Areas Protection

REGULATORY REFORM ACT (1)

RCW 36.70B  
“Local Project Review”

Overall Goals
- Integrate SEPA and GMA
- Avoid duplicative environmental analysis and mitigation

Effects
- Streamlined SEPA threshold determinations
- Streamlined project review process

REGULATORY REFORM ACT (2)

How it Works: Nuts and Bolts
- Concurrent project review
- Only one open record hearing
- Emphasized use of regulations to condition, approve and mitigate
- Distinguished between GMA impact fees and SEPA mitigation fees
- Vested status for complete applications
- 120 day decision period

LAND USE PETITION ACT (1)

RCW Chapter 36.70C  
“LUPA”

Overall Goals
- Simplify land use appeal process
- Speed up land use appeal process
- Make land use appeal process uniform

Effects
- All of the above

MAJOR PLANNING UPGRADES

Regulatory Reform Act (1995)  
SEPA – GMA Integration

Land Use Petition Act (1995)  
Uniform (and Expedited) Land Use Appeals

More from Other Speakers
LAND USE PETITION ACT (2)

How it Works: Nuts and Bolts
- 21-day appeal period
- Record review
- Project-based (not planning-based)
- Deference to underlying decision
- 5-6 month court schedule

II. CONSTITUTIONAL STANDARDS

How the Federal and Washington Constitutions Affect Land Use Planning and Decisions

Fundamental Rights at Ground Level

PLANNING AND PROPERTY RIGHTS

The basic rule in land use law is still that, absent more, an individual should be able to utilize his land as he sees fit.

Norco Construction v. King County, 97 Wn.2d 680 (1982)

PLANNING AND TAKINGS

U.S. Constitution (Fourth Amendment)
- Nor shall private property be taken for public use without just compensation

Washington Constitution (Art. I, § 16)
- Private property shall not be taken for private use
- No private property shall be taken or damaged for public or private use without just compensation having been first made....

TAKINGS, EXACTIONS & DEDICATIONS

Physical Takings
- Appropriation of land/property

Regulatory Takings
- Deprivation of all economic use

Exactions & Dedications
- Nexus + Proportionality
- Reasonable Use Exceptions
- Critical areas

PLANNING AND DUE PROCESS

Procedural Due Process (5th & 14th Amend.)
- Notice and opportunity to be heard
- Intelligent participation
- Reasonable laws; Void for vagueness

Substantive Due Process
- Uniquely Washington
- Unduly burdensome outcome
PLANNING AND PERSONAL RIGHTS

Equal Protection (5th & 14th Amend.)
Protected Classes
Discriminatory Basis

Free Expression & Religion (1st Amend.)
Churches, Temples and Mosques
Adult Businesses & Entertainment

III. PUBLIC PROCEDURAL LAWS

The Open Public Meetings Act
And
Appearance of Fairness Doctrine

* * * * *
Transparency in Process

WHO IS COVERED?

Multi-Member Boards For Sure
City Council
Planning Commission
Civil Service Commission
Board of Adjustment

Maybe Others
Library Boards
Park Boards
Council Committees

OPEN PUBLIC MEETINGS ACT

Basic OPMA Elements
Open meetings required
Executive sessions allowed
Expulsion of meeting participants
Basic requirements for meetings
Penalties
Exemptions

OPEN MEETINGS REQUIRED

All meetings of the governing body of a public agency
Shall be open and public
All persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

RCW 42.30.030

OPEN PUBLIC MEETINGS ACT

RCW Chapter 42.30
Purpose
All public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof
Exist to aid conduct of the people’s business
Intent of this chapter that their actions be taken openly and that their deliberations be conducted openly

RCW 42.30.010
WHAT CONSTITUTES A MEETING?

County/ City Councils & Planning Comm’ns
Quorum + Action

Committees, When They.....
Hold hearings
Take public comment
Make decisions

IMPROPER MEETINGS

OPMA Problems
No “cooked” decisions
No vote trading
No decisions outside of public meetings
Serial phone calls
Serial emails
Texting and messaging
Personal computers

COMMON EXECUTIVE SESSIONS

Personnel
Review charges and performance

Litigation and Legal Advice
Ongoing and potential cases/threats
Potential financial harm

Real Estate
Affect price

TYPES OF PUBLIC MEETINGS

Regular Meetings
Scheduled by code

Special Meetings
24 hours notice

Adjourned Meetings
Posted notice
“Regular” in all other respects

EXPULSION OF PARTICIPANTS

Options
Recess meeting
Adjourn meeting
Remove offenders
Adjourn to a new location/time

OPMA PENALTIES

Violation by Member
Knowing violation
$100 fine

Violation by City
Actions taken during illegal meetings are null and void
Pay attorney fees
APPEARANCE OF FAIRNESS DOCTRINE

Common Law Origin
“It is axiomatic that, whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in substance, but fair in appearance as well.”
“A public hearing, if the public is entitled by law to participate, means then a fair and impartial hearing.”
Smith v. Skagit County, 75 Wn.2d 715, 739 (1969)

APPEARANCE OF FAIRNESS DOCTRINE

Overview
Codified RCW Chapter 42.36 (1982)
Only 11 sections
No purpose statement
Limited to quasi-judicial application
Creates objective & subjective standards
“Full employment” for attorneys?

APPEARANCE OF FAIRNESS DOCTRINE

Legal Standard
Would a reasonable person
Apprised of the totality of a member’s personal interest or involvement
Be reasonably justified in thinking
That the involvement might affect the member’s judgment?
Swift v. Island Co., 87 Wn. 348 (1976)

APPEARANCE OF FAIRNESS DOCTRINE

Ex-parte Contacts
The Rule
No ex parte contacts with opponents or proponents during pendency of quasi-judicial action
The Exception
Disclose the substance of communication
Offer an opportunity for rebuttal
Exception: Conduct of regular public business allowed

“No members of a local decision-making body may be disqualified by the appearance-of-fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body.”

RCW 42.36.020

Exception: Loss of Quorum

Doctrine does not apply if it results in loss of quorum or majority needed to approve pending matter

RCW 42.36.090

Exception: Disclosure

Disclosing basis for disqualification prior to rendering decision enables participation in proceedings

RCW 42.36.080

Exception: Waiver of Objection / Estoppel

Anyone seeking to rely on the AFD

Seeking to disqualify a member of a body

Must raise the challenge as soon as the basis for disqualification is made known to the individual.

Where the basis is known or should reasonably have been known prior to the issuance of a decision and it is not raised, it may not be relied on to invalidate the decision.

RCW 42.36.080

Exception: Campaign Statements

No public discussion or expression of an opinion

By a person subsequently elected to office

On any pending or proposed quasi-judicial action

Shall be a violation of the doctrine

If made prior to declaring as a candidate or while campaigning for public office as defined in RCW 42.17.020(5) and (25)

RCW 42.36.040

Exception: Campaign Contributions

A candidate for public office

Who complies with all applicable public disclosure and ethics laws

Shall not be limited from accepting campaign contributions to finance a campaign

And it is not a violation of the doctrine to accept such campaign contributions

RCW 42.36.050

Exception: Prior Participation in Advisory Action

Participation by a member of a decision-making body

In earlier proceedings that result in an advisory recommendation to a decision-making body

Shall not disqualify that person from participating in any subsequent quasi-judicial proceeding

RCW 42.36.070
APPEARANCE OF FAIRNESS DOCTRINE

Violations & Consequences
Action Taken Will be Void
[Do not pass Go; Do not collect $200]
Civil Damages May be Available
Bad intent
Abuse/misuse of authority
Delay of decision/action

GUIDING PRINCIPLES FOR PUBLIC HEARINGS

Quasi-judicial Forum
Think ahead

Procedures Count
Always think of the record
Always follow the rules
Get advice from your attorney
Be Fair

APPEARANCE OF FAIRNESS DOCTRINE

Compliance Strategies
Poll Council/Board for Conflicts
At start of hearing
Make a record
Ask Audience for Objections
Recuse Yourself from Participation
Leave the room
Start Over
From the starting point of the problem

PUBLIC HEARING RECORD

Verbatim transcript
Audio / Video vs. Stenographic
Speaker identification and recognition
Control the flow

Physical Exhibits
Identify them
Track them
Refer to them

IV. PUBLIC HEARINGS

The Basics of Public Hearings

* * * * *

Rules & Procedures

MANAGING PUBLIC HEARINGS

Know the Rules
Codified vs. Adopted
Announce them
Follow them
Use and Manage Time Limits
Handling Repetition
Handling Crowds
OPENING THE HEARING

Open Hearing
Introductory Comments
  Topic
  Purpose/goal
  Hearing and decision schedule
  Order of hearing presentation
Poll Council/Board for Conflicts

TYPICAL HEARING PROCESS (1)

Staff Presentation
  Testimony
  Power point
  Exhibits
Commission/Council Q&A of Staff
  To clarify project, issues, etc.
Proponent Presentation
  [Same as Staff]

TYPICAL HEARING PROCESS (2)

Public Comment
  Signed in
  Not signed in
Proponent Rebuttal
Commission/Council Q&A
  To staff, proponent, public
Close Hearing
  No further evidence permitted

DELIBRATION

Discussion, Evaluation & Deliberation
  Remember the record........
  Identify important issues/components of project or application
  State facts and reasons, based on record, supporting approval or disapproval
  Tie position to code/statutory criteria
  Determine positions and/or consensus for action
  Do not seek new evidence, though argument and comment may be allowed; a fine line

DECISION PROCESS

Motion to Approve or Disapprove
  Needs second for discussion
  State reasons; I identify criteria, law, evidence
Amendments
  Life is easier if you follow RRO
Votes
  Approve as presented
  Approve as amended
  Disapprove

DECISION DOCUMENT

Ordinance vs. Resolution
Prepared Decision Documents Help
  Fully justified decision
  Timing
Unexpected/Complicated Outcomes
  Instruct staff to prepare draft findings and conclusions per discussion
  Presentation for final approval
IMPORTANCE OF FINDINGS

Judicial Deference Applies
Especially on credibility issues
Supports “Upstream“ Decision Maker
Hearing examiner
Council
Courts
Supports Final City Position & Plans
Serves the Parties
Maximizes Probability of Sustaining Decision

CONSIDERATIONS

Appropriate Exercise of Power
Scope of authority
Base Decision on the Record
Future LUPA/ Other Appeal
Typical review standard (is there substantial evidence in the record to support the decision)
Judicial deference

AND WE’RE DONE!

Questions?

Feel Free to Get in Touch
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