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THIS LAND IS OUR LAND

CITIZEN ENGAGEMENT IN LAND USE DECISION-MAKING

ONE OF THE BEDROCKS of representative democracy is the engagement of citizens in the making of public policy. When it comes to land use decisions made by city governments under the Growth Management Act (GMA), such engagement is explicitly mandated, so cities need to respond accordingly.

To most effectively engage citizens while minimizing legal risk requires an understanding that there are three different types of land use decisions: (1) *legislative* decisions, including the adoption of GMA comprehensive plans and development regulations, which are the exclusive province of city councils; (2) *quasi-judicial* decisions like variances, conditional use permits, and subdivision approvals; and (3) *administrative* decisions, such as grading and building permits.

Citizen engagement in legislative policy-making

The heart of a city's duty for public participation in legislative land use decisions is set forth at RCW 36.70A.140, part of the GMA. That section provides that cities "shall establish and broadly disseminate to the public a public participation program identifying the procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans." While each city enjoys discretion in shaping its public participation program, the GMA requires that a city's locally adopted program be made available for the public's information—and that the city follow it.

Since the last round of comprehensive plan updates, new state population projections have been made, several GMA requirements have been amended, and new multicounty planning policies (Vision 2040) have been adopted in King, Pierce, Snohomish, and Kitsap Counties. The upcoming updates will thus be different and in some ways more complex. Engaging citizens early will be crucial to meeting the update deadlines.

A wide variety of methods have been used by cities to engage the public in their plan updates. In addition to posting information on the city website and publishing in the newspaper of record, many have made use of newsletters, social media like Facebook, and town hall meetings. An effective way to kick off the comprehensive plan update is with a "visioning process" that creates a broad, inclusive, public dialogue about community values, preferences, and priorities for the coming 20 years. One successful example is "What's Your Vision for Shoreline?" (www.youtube.com/watch?v=uUWWYDmvNfo).

Unfortunately, while many appellate court decisions interpret and clarify GMA's substantive requirements, the courts have been silent with respect to the act's public participation requirements. Although its cases do not constitute precedent, the Growth Board has decided many appeals on this issue, so consideration of its reasoning may be instructive.

In one case, the board held that citizens must be given a reasonable opportunity to comment on proposed legislative actions, but that this "does not equate to 'citizens decide.' The ultimate decision makers in land use matters under the GMA are the elected officials of cities . . ." (*City of Poulsbo v Kitsap County*, →

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1992). The board later considered whether last-minute changes by a council without a chance for public comment were consistent with the requirement for "early and continuous" public participation. The Board ruled that "the public must have an opportunity to review and comment on the proposed change before the legislative body votes on the proposed change" (*Andrus v. City of Bainbridge Island*, 1998).

Citizen engagement in quasi-judicial and administrative decisions

At the bottom of the land use decision-making hierarchy are the administrative decisions made by city staff, including the issuance, conditioning, or denial of applications for building, grading, or minor zoning permits. Staff discretion is proscribed by adopted standards, so the ability to respond to citizen concerns is very limited. It is important to note that administrative permits do not fall within the jurisdiction of elected officials, and that by inappropriately intervening elected officials expose their jurisdiction or even themselves to financial liability, as the state Supreme Court ruled in *Mission Springs Inc. v. City of Spokane,* (1998).

In between the legislative and administrative decisions are *quasi-judicial* permit decisions, which typically require a public hearing and mailed notice to nearby property owners and are governed by specific adopted criteria. Examples would be variances and planned unit development permits, for both of which a decision maker must build a factual re- cord, hear public testimony, and enter conclusions about how the proposal does or does not satisfy the relevant criteria.

Many city councils have adopted the hearing examiner system to remove themselves from quasi-judicial permits. A professional hearing examiner is employed to conduct the hearing and, in some cases, render a final decision. The two chief advantages of this system are: (1) it reduces a city's risk of liability for a mishandled permit decision, and (2) it enables the city council to focus on the comprehensive plans and regulations that govern all permit decisions.

By concentrating its time and attention at the policy level, a city council can focus on the key decisions that only the local legislative body can make—the policies, rules, side- boards, and direction that govern all other land use decisions. By delegating quasi-judicial hearings and decisions to professional hearing examiners and taking care not to inappropriately intervene in administrative decisions, city councils can minimize their financial risk while still providing for appropriate citizen engagement.