

# The best laid plans...avoiding the pitfalls for planning commissions

By Lisa Knapton

Great communities don't just happen. They require careful planning and commitment to ensure plans are implemented consistently. The planning commission provides citizen review and recommendations on planning-related matters on a voluntary basis. Planning commissions are comprised of three to twelve members, appointed by the mayor or city/town manager and confirmed by the council.

Planning commissions generally serve two specific functions. The first function is the development and revision of the community's comprehensive plan and land use regulations. They serve this role in an advisory capacity providing their recommendations to the community's governing body. Second, not all but some planning commissions review development applications and may be responsible for holding public hearings. Typically, the commission recommends a decision to the governing body that the governing body can approve or disapprove or approve with modifications, yet some commissions make decisions on some land use actions that would be appealable to the governing body. Procedural errors can lead to time consuming rework or worse. Costly lawsuits which, even when the city or town prevails, can run up legal expenses.

Commissions can run afoul in other areas as well. Planning commissions are subject to the Open Public Meetings Act (OPMA). The law requires all commission meetings be open to the public when a quorum is created and action transpires. A meeting is any event where a quorum of commission members is present and takes action, including but not limited to retreats, workshops, study sessions, email or text chains, or a series of phone calls between the members. Beware! Even a gathering of a quorum in a parking lot, cocktail party or site inspection can be perceived by the public as a meeting. Taking action means hearing public testimony, deliberating or discussing and voting. Violation of the OPMA can result in a \$500 civil penalty and the action taken can be declared null and void. It can also lead to loss of public trust.

Some planning commissions hold quasi-judicial hearings on land use applications which subject them to the Appearance of Fairness Doctrine. The Appearance of Fairness Doctrine is a rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact. Members should have a method for disqualifying decision-makers who have bias in favor of one side, have prejudged the issues, have a conflict of interest (either financial or personal) or who cannot otherwise be impartial. During the pendency of any hearing, the commission members should not have any ex parte

communication (communication taking place outside the formal hearing process) with opponents or proponents of the case being heard. Should contact occur, the involved commission members must place on the record the substance of the communication and offer an opportunity for rebuttal to the opposing side. The Appearance of Fairness Doctrine does not apply if it results in loss of quorum or majority needed to approve a pending matter. Disqualification of a member of the commission must be done so by disclosing the basis for disqualification prior to the rendering of the decision. If a decision-maker's participation in a quasi-judicial decision violates the Appearance of Fairness Doctrine and that participation is challenged in a timely manner, a court can invalidate the decision. A new hearing and decision will then need to be made without the disqualified decision-maker.

As City/Town Officers, planning commissioners are also subject to the Public Records Act which requires all public records maintained by local agencies be made available to members of the public with very narrow statutory exemptions. Public records of government agencies are presumed open and include paper files, email, recordings, web content and records created on personal electronic devices or non-agency email accounts. The Public Records Act is enforced by the courts and civil penalties, including the requester's attorney fees, may be imposed on an agency in violation of the act even absent proof of damages.

Given the complexity of land use decision making and the various laws commissions are subject to, Members should require planning commission training and support it with a modest budget. There are training resources available at low to no cost to provide commissioners with knowledge, skills and procedures they will need to be successful. "The Planning Short Course" is coordinated through the WA State Department of Commerce, is available at no charge to planning commissioners, elected officials and interested citizens. Usually taught as a three hour evening session, the Short Course provides an overview of the legal framework for planning. Members may contact Short Course Coordinator Anne Fritzel if interested in hosting a Short Course. She can be reached at [Anne.Fritzel@commerce.wa.gov](mailto:Anne.Fritzel@commerce.wa.gov) or (360) 725-3064. Also, attendance at a Short Course training satisfies a core training element of the WCIA COMPACT! WCIA also offers funding assistance at the Planning Association of WA (PAW) Boot Camps. For further information regarding how WCIA can assist, please contact your Risk Management Representative.