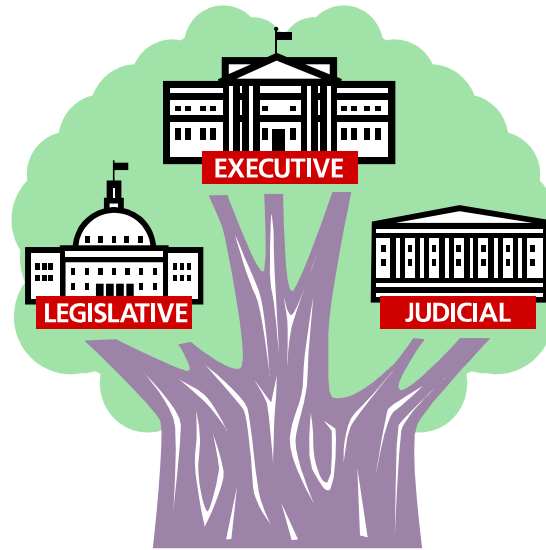


# Quasi-judicial Hearings



Presented by: Craig Knutson  
Weed, Graafstra and Benson  
360-568-3119

# Legislative vs. Quasi-judicial

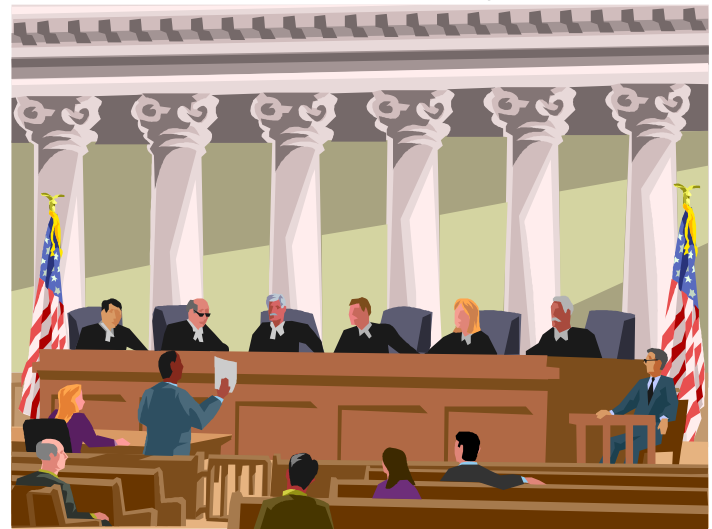
“To Legislate”

“To Enact Laws”



“To Adjudicate”

“To determine the rights of a party”



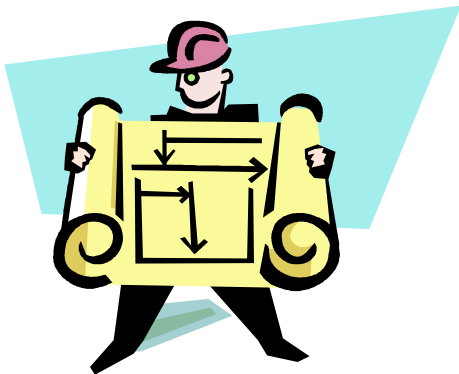
# Legislative Examples

- Comprehensive Plan & Comprehensive Plan Amendments.
- Area Wide Zoning and Area Wide Rezones
- Enact New Critical Areas Ordinance
- Enact a New Sign Code
- Enact Design Standards



# Quasi-judicial Examples

- To grant approval for a Subdivision or Plat.
- To grant approval for a Site Specific Rezone.
- To grant approval on a Conditional Use Permit or a Variance.
- To grant approval on a Shoreline Permit.
- To grant Design approval



# Substantive Standards

## Legislative vs. Quasi-judicial

- Consistency with GMA, other applicable State Law, and Comprehensive Plan
- Rational Basis
- Submitted Plans and record contains Substantial Evidence & Compliance with criteria of laws and code.

# Process Legislative

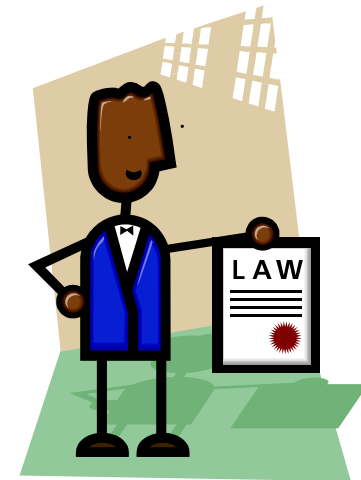
- Appearance of Fairness Doctrine does not apply.
- Public Participation Process  
Open House, Workshops, Public Meetings including GMA processes.



# Process Quasi-judicial



- Appearance of Fairness Doctrine applies, No Conflicts, No Ex-parte Communications, No Non-record Information, Full Disclosure.
- Due Process Public Hearings
  - a. On the Record
  - b. Applicant Burden of Proof
  - c. Witnesses Sworn in  
(Possible Cross examination)
  - d. Written Decision on the Record



# Decision

## Legislative vs. Quasi-judicial

- Enactment of Ordinance



- Written Decision consisting of Findings of Fact and Conclusions, usually in form of Resolution or Ordinance for the specific application.
- An Ordinance for Site Specific Rezone.

# Appeal

## Legislative vs. Quasi-judicial

- 60 day window  
Petition for Review to  
the Growth  
Management  
Hearings Board.
- 21 day window  
Land Use Petition Act  
(LUPA) appeal to  
Superior Court.

# The Hybrid - the combined Comp Plan Amendment and Site Specific Rezone

- If Processed Separate

First, Comp Plan Amendment is processed as a “legislative” matter.

Second the Site Specific Rezone is processed as a “quasi-judicial” matter

- If Processed Together

Because there can only be one “Open Record Public Hearing” for the Site Specific Rezone, both should be processed through the one “Open Record Public Hearing” in the quasi-judicial process and proceeding.

# Design Review

## Legislative vs. Quasi-judicial

- Adoption of Design Standards.
  - Compliance with GMA process?
  - If 1<sup>st</sup> Amendment Rights affected – then “Compelling Interest” required.
  - “Void For Vagueness”
- Application of Design Standards.
  - Appearance of Fairness applies.
  - All other Quasi-judicial procedures and due process apply.

# Problem Areas in Quasi-judicial Design Review

- Process
  - Regulatory Reform permits only one (1) open record hearing, and only one (1) closed record hearing.
- Substance
  - Standards must give “effective or meaningful guidance” to applicants.
  - Nebulous standards such as “harmony,” “interesting,” and “not monotonous” are not enforceable. *Anderson v. Issaquah*.
  - Decision Maker must be able to articulate a standard and a reason for requiring a design change and may not rely on “feelings” or personal images of what is “Good” or “Bad.”
  - An application that complies with the standards must be approved.

# RCW 36.70B Local Project Review

- Public Hearings limited for each permit:
  - One “Open Record” hearing (Planning Advisory Board)
    - Pre-decision hearing
    - Appeal from administrative determination
  - One “Closed Record” appeal (City Council)
- Consolidated hearings encouraged to combine hearings for all permits and with other jurisdictions.

# Public Hearings & Meetings

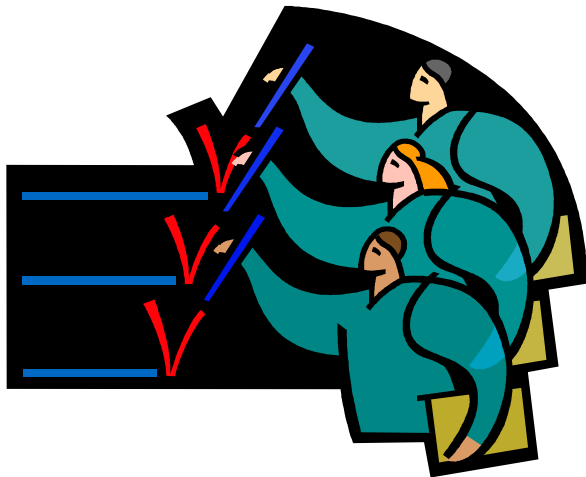
- Permit applicants are deemed parties and have right to participate. RCW 36.70B.110
- Deliberations re: approval or disapproval
  - Discussion – why supporting approval or disapproval.
  - Focus on determining consistency with development regulations.
  - May not deny based upon public sentiment or unpopularity.
  - Factual Findings must be based upon written exhibits or oral testimony. Consider the evidence and what you find credible.
  - Motion to approve or disapprove should instruct the staff to prepare draft findings and conclusions in line with the discussion to be presented at the next regular meeting for final approval and passage by the Board.

# RCW 36.70B Local Project Review

- Written decision with factual findings and legal conclusions addressing decision criteria is required. Decision may be prepared by staff or parties and adopted by governing body.
- Written decision required within 120 days of letter of completeness, unless all parties consent.
- Notice of Decision must specify any administrative appeal procedures.
- Notice of Decision must be provided to applicant, parties requesting notice, persons submitting comments, and county assessor.

# RCW 36.70C Land Use Petition Act

- Appellant must exhaust local administrative remedies.
- Review based upon record created by local government hearings.

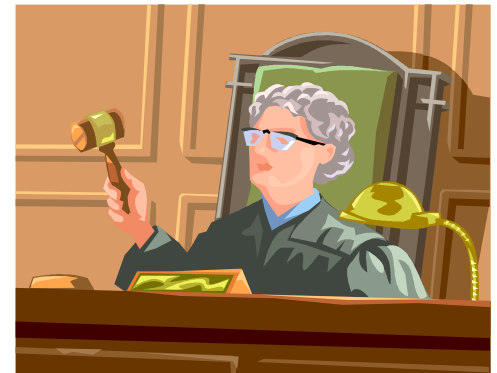


# RCW 36.70C Land Use Petition Act

- RCW 36.70C.130 – Standard of review based upon:
  - a. Unlawful procedure, unless the error was harmless.
  - b. Erroneous interpretation of the law, after allowing for deference due to the construction of a law by a local jurisdiction with expertise.
  - c. Substantial Evidence Test.
  - d. Clearly Erroneous Test – application of the law to the facts.
  - e. Outside the authority or jurisdiction of the decision-maker.
  - f. Violates the applicant’s constitutional rights.

# RCW 36.70C Land Use Petition Act

- How can be sure our decision will be upheld?
  - Detailed written decision prepared by staff or attorney.
  - Make factual findings on all required project elements.
  - Refer to evidence in you findings. Explain what was persuasive, what was not and why.
  - State what laws apply and how you interpret those laws.
  - Don't rely upon community sentiment.



# How to Reduce Appeals in Legislative Matters

- Review the record with the City Attorney.
- Have City Attorney review and approve any final ordinance.
- If there is a Threat of Petition For Review/GMHB.
- Consult with the City Attorney!
- Update Codes to insure they establish clear and consistent processing mechanisms.



# How to Reduce Appeals and Claims for Damages in Quasi-judicial Matters.

- Establish a professional hearing examiner system for all quasi-judicial matters.
- If not or until, have City Attorney attend all (but the most mundane) quasi-judicial proceedings and follow hearing script.
- Report all threats of litigation to City Attorney for legal advice and possible referral to City's Insurance Carrier.

# Points to Remember

- In a quasi-judicial proceeding, decisions must be made on the record. Decision makers cannot rely on personal knowledge or expertise.
- In a quasi-judicial proceeding, the Appearance of Fairness Doctrine remains in effect until all avenues of appeal are exhausted.