



**CITY OF FIRCREST
PLANNING COMMISSION
A G E N D A**

August 21, 2018
6:00 p.m.

City Hall
115 Ramsdell Street

- 1) Roll Call**
- 2) Approval of the July 19, 2018 Minutes**
- 3) Citizen Comments (For Items Not on The Agenda)**
- 4) Public Hearing**
 - None
- 5) Unfinished Business**
 - a) None
- 6) New Business**
 - a) Hearing Examiner – Update and Discussion
 - b) 2018 Comprehensive Plan – Introduction and Discussion
- 7) Adjournment**

**CITY OF FIRCREST PLANNING COMMISSION
REGULAR MEETING MINUTES**

July 19, 2018
6:00 PM

Fircrest City Hall
115 Ramsdell Street

CALL TO ORDER

Chair Patjens called the regular meeting of the Fircrest Planning Commission to order at 6:00 p.m.

ROLL CALL

Commissioners Kathy L. McVay, Cameron McGinnis, Karen Patjens, Sarah Hamel, and Karissa Carpenter were present. Absent: None. Excused: None. Staff present: Planning and Building Administrator Angelie Stahlnecker, Principal Planner Jeff Boers, Permit Technician Jayne Westman, and Public Works Director Jerry Wakefield.

APPROVAL OF MINUTES

The minutes for the meeting of April 03, 2018 were presented for approval.

Moved by McVay and seconded by McGinnis to approve the minutes as amended. Upon vote, motion carried unanimously.

PUBLIC HEARING

Case No. 18-05 - Proposed Chick-Fil-A Restaurant with Drive-Thru – Major Variance

Case No. 18-06 - Proposed Chick-Fil-A Restaurant with Drive-Thru – Administrative Use Permit

Case No. 18-07 – Proposed Chick-Fil-A Restaurant with Drive-Thru – Major Preliminary Site Plan

Patjens opened the public hearing for Case Nos. 18-05, 18-06, 18-07 at 6:02 p.m.

Planning and Building Principal Planner Jeff Boers presented the staff report for the proposed amendments. Staff recommended the approval of the major variance, preliminary major site plan, and the administrative use permit.

Chick-Fil-A Project Engineer Carlos Arias presented a PowerPoint presentation detailing the project scope and stated their justification for the major variance.

Patjens invited public comments.

David Nelson, 2010 65th Ave West, stated he is representing three owners and raised concerns about the median of 19th Street. He also inquired as to how Chick-Fil-A will tie into the Tacoma sewer system. He is concerned about the traffic impact that a large restaurant chain may bring to 19th Street.

Public Works Director Jerry Wakefield addressed Mr. Nelson's concerns as it pertains to the sewer connection.

Maria Koumantaros, 6402 19th St W, stated she works on 19th Street and is concerned about the traffic impact that Chick-Fil-A could bring to 19th Street. She is concerned about the people who illegally turn U-turns around existing barriers and is concerned that these maneuvers could increase with more traffic.

Chick-Fil-A's Traffic Engineer presented information related to their traffic impact and drive-thru stacking.

Patjens closed the public hearing at 6:43 p.m.

Discussion included:

- Drive-Thru stacking lanes capacity at peak hours
- Quantity of compact parking stalls
- Diameter of trees to be planted on-site

Moved by McVay and seconded by McGinnis to adopt Resolution No. 18-05, a resolution of the Planning Commission of the City of Fircrest, Washington granting a major variance to exceed the maximum off-street parking limit. Ayes: Kathy L. McVay, Cameron McGinnis, Karen Patjens, Sarah Hamel, and Karissa Carpenter.

Moved by McVay and seconded by McGinnis to adopt Resolution No. 18-06, a resolution of the Planning Commission of the City of Fircrest, Washington approving an administrative use permit for the construction of a drive-thru facility in conjunction with a Chick-Fil-A Restaurant. Ayes: Kathy L. McVay, Cameron McGinnis, Karen Patjens, Sarah Hamel, and Karissa Carpenter.

Moved by McVay and seconded by McGinnis to adopt Resolution No. 18-07, a resolution of the Planning Commission of the City of Fircrest, Washington approving a major preliminary site plan to demolish three existing buildings and construct a 4,706 square foot Chick-Fil-A Restaurant with drive-thru facility. Ayes: Kathy L. McVay, Cameron McGinnis, Karen Patjens, Sarah Hamel, and Karissa Carpenter.

ADJOURNMENT

Moved by McVay and seconded by McGinnis to adjourn the meeting at 7:23 p.m. Upon vote, motion carried unanimously.

Karen Patjens
Planning Commission Chair

Angelie Stahlnecker
Planning/Building Administrator



THE CITY OF FIRCREST

115 RAMSDELL STREET • FIRCREST, WASHINGTON 98466-6999 • (253) 564-8901 • FAX (253) 566-0762

Memo

DATE: August 21, 2018
TO: Planning Commission
FROM: Angelie Stahlnecker, Planning & Building Administrator
SUBJECT: Proposed use of Hearing Examiner

Introduction

At the July 16, 2018 City Council Study Session, the Council gave consensus to move forward with transitioning to a hearing examiner system.

Process

As this is legislative in nature, the Planning Commission would develop draft amendments that would be recommended back to the City Council for final approval. At the August 21st meeting, staff is providing an update and seeking any Commission comments or discussion. Staff would like to schedule a public hearing on the draft document for October 2, 2018.

Summary

One of the topics at the 2018 Joint City Council-Planning Commission meeting was studying the option of using a hearing examiner for quasi-judicial public hearings and approval. The use of a hearing examiner for quasi-judicial planning applications was originally recommended by our Land Use Attorney, Carol Morris, as a way to reduce liability exposure, ensure all legal procedures are followed, and free the City Council from the Appearance of Fairness Doctrine when questioned by constituents on hot topics.

Instead of the current system, the hearing examiner system would use a professionally trained individual to review land use applications. The Examiner's decision is final unless appealed to Pierce County Superior Court.

The Planning Commission would still maintain its legislative role as the research and fact-finding agency for the City Council, including studying and updating the comprehensive plan and development code amendments, holding public hearings on proposed changes and report with recommendations on those changes to the City Council. This is the means by which the City maintains local control, by establishing the rules and procedures the hearing examiner would adhere to.

Attachments

1. MRSC Focus – Use of Hearing Examiners by Cities and Counties in Washington
2. Hearing Examiner Comparisons

Use of Hearing Examiners by Cities and Counties in Washington

What is a Hearing Examiner and Hearing Examiner System?

Local governments in Washington State have the option of hiring or contracting with a hearing examiner to conduct required quasi-judicial hearings, usually in place of local bodies such as the planning commission, the board of adjustment, the board of county commissioners, or the city council. A hearing examiner is an appointive officer who acts in a manner similar to a judge and typically is an attorney. The basic purpose of having a hearing examiner conduct these hearings is to have a professionally-trained individual make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows local legislative and advisory bodies that might otherwise conduct these hearings to better concentrate on policy-making, and it can reduce local government liability exposure.

A board of county commissioners or a city council has considerable discretion in drafting an ordinance creating a local hearing examiner system. The position of hearing examiner, the type of issues the hearing examiner is authorized to consider and decide, the effect of the hearing examiner's decision, and whether an appeal of any final decision is provided should all be determined by the local legislative body and set out in the enabling ordinance. A hearing examiner's decision, as defined by the local legislative body, can have the effect of either a recommendation to or a decision appealable to the ultimate decision-maker (typically the board of county commissioners or the city council), or it can be a final decision (appealable to superior court).

Counties and cities use hearing examiners, often in place of planning commissions, primarily for hearing and deciding land development project applications and/or administrative appeals of land use decisions. Hearing examiners are particularly useful where the rights of individual property owners and the concerns of citizens require formal hearing procedures and preparation of an official record. State land use planning and growth management laws provide cities and counties with specific

authority to establish a hearing examiner system to conduct hearings and make recommendations or decide a variety of land use issues. Hearing examiners may also conduct hearings and make recommendations or decisions on other local matters.

This focus paper describes the use of a hearing examiner, the pros and cons of such systems, and options available to Washington counties and cities. References are provided for further information available from the MRSC library and through our Web site.

Establishing a Hearing Examiner System

The office or position of hearing examiner must be established by ordinance. That ordinance should identify what matters the examiner is empowered to hear and what will be the effect of the examiner's decision on those matters. A common approach in such an ordinance is to establish the framework for the hearing examiner system, while leaving it to the examiner to adopt specific, detailed rules for the conduct of hearings. Hearing examiner ordinances typically address: the appointment and term of the hearing examiner; qualifications of the examiner; conflicts of interest and freedom from improper influence; powers and duties, including matters heard; hearing requirements; effect of decisions; reconsideration of decisions, if allowed; and appeals. MRSC has many examples of hearing examiner ordinances and has a compilation of articles and ordinances relating to the hearing examiner system in this state. See <http://www.mrsc.org/library/compil/cphearex.htm>.

Use of the Hearing Examiner System for Land Use, Environmental, and Related Decisions

Most commonly, hearing examiners are used to hear and decide land use project permit applications where a hearing is required, such as in the case of applications for subdivisions, shoreline permits, conditional use permits, rezones, and variances. The recent trend in state law, particularly in conjunction with regulatory reform, has been to allow local governments to give more authority to the hearing examiner to make final decisions on quasi-judicial project permit applications. For example, RCW 58.17.330, as amended by 1995 regulatory reform legislation, provides that the local legislative body can specify that the legal effect of a hearing examiner's decision on a preliminary plat approval is that of "a final decision of the legislative body."

The hearing examiner's role in the project permit process can include:

- open record hearings on project permit applications;

- appeals of administrative SEPA determinations, which in most cases are combined with the open record hearing on the application;
- closed record appeals of administrative decisions made by the local planning staff, including appeals of SEPA determinations where an administrative appeal is provided;
- land use code interpretations to satisfy the statutory requirement that cities and counties planning under the Growth Management Act adopt procedures for such “administrative interpretations” (RCW 36.70B.110(11));
- land use code enforcement proceedings.

Other Issues Assigned to Hearing Examiners

The local legislative body may, by ordinance, authorize a hearing examiner to hear other types of contested matters, in addition to land use permit applications and code enforcement. Examples of other types of decisions and/or administrative appeals that could be handled by a local hearing examiner include:

- discrimination complaints under local personnel policies;
- employment decisions and personnel grievances;
- ethics complaints by citizens or employees;
- local improvement districts – formation hearing and/or assessment roll determinations;
- public nuisance complaints;
- civil infractions;
- property forfeiture hearings under the Uniform Controlled Substances Act (RCW 69.50.505(e));
- tax and licensing decisions and appeals;
- whistleblower retaliation claims.

Pros and Cons of Using Hearing Examiners

Pros

- More professional and timely decisions insuring fairness and consistency.

A professional hearing examiner prepares for and conducts hearings in a manner insuring procedural fairness. Hearings are less emotional and more expeditious. Hearing examiners develop a high level of expertise and specialization, saving time in making decisions and improving their quality and consistency.

- Time-saving for legislative body, freeing legislators to focus on legislative policy and other priority issues.

Conducting public hearings and making quasi-judicial decisions is time-consuming. Local legislators can free themselves from many of their hearing duties by delegating them to a hearing examiner. The local legislative body can still choose to make final decisions or to hear appeals of the examiner's decisions, and those appeals will be facilitated by a thorough and organized record. The use of hearing examiners is especially time-saving for routine decisions and for complex land use decisions requiring formal hearings, citizen participation, and subject matter expertise.

- Separation of policy-making or advisory functions from quasi-judicial functions.

Use of hearing examiners for quasi-judicial hearings separates legislative and administrative functions from quasi-judicial functions. This can improve decision-making by clarifying roles and avoiding conflicts. For jurisdictions with planning commissions, use of a hearing examiner system allows the planning commission to function as an advisory body. The legislative body can focus on policy-making while the planning department concentrates on administration. For counties with three-member boards of commissioners, use of a hearing examiner to conduct quasi-judicial proceedings can greatly assist commissioners who already responsible for a number of legislative and administrative functions.

- Improved compliance with legal requirements, including due process, appearance of fairness, and record preparation.

Hearing examiners have special expertise in managing legal procedural requirements and avoiding appearance of fairness and conflict of interest

issues. The hearing examiner assures procedural fairness, especially in cases where one side is represented by an attorney while the other side is not. Participants are often more satisfied with the proceedings, regardless of the outcome. A properly conducted hearing also results in a complete and well organized written record.

- Reduced liability relating to land use decisions and/or procedural challenges to decisions.

Using a hearing examiner system has been shown to reduce land use liability exposure. Improved hearing procedures, better records, and more consistent and documented decisions are typical of professional hearing examiners. At least one local government insurance authority has officially endorsed the use of hearing examiners for land use decisions based on a survey providing evidence of a lower risk profile for jurisdictions using a hearing examiner system for land use proceedings.

- Improved land development review integration under chapter 36.70B RCW (ESSB 1724).

A number of jurisdictions have adopted hearing examiner systems since the 1995 regulatory reform legislation mandating integration and consolidation of environmental and land use regulatory review for development projects. Use of a specialized land use hearing examiner is an effective method of consolidating and coordinating multiple review processes. For jurisdictions with a mandatory board of adjustment, adoption of a hearing examiner system eliminates the requirement for a board of adjustment.

- Opportunity for feedback to improve plans and regulations from professional hearing officer familiar with comprehensive plans and development regulations.

A professional hearing examiner has familiarity with the local comprehensive plan and development regulations and possibly those of other jurisdictions. Areas where plans, regulations, and policies are weak or inconsistent can be identified and referred to the planning staff, planning commission, or legislative body, providing feedback for continuous improvement.

- Removal of quasi-judicial decision-making from the political arena.

It may be difficult for elected local government officials to entirely eliminate political considerations from their quasi-judicial decision-making. Professional hearing examiners should be immune from political pressures.

Cons

- Cost to county or city for hiring a hearing examiner and staff.

There are costs in hiring hearing examiners and, if necessary, support staff. Counties and cities should consider whether savings in council and commission time, improvements in decision-making, and reduced liability justify the costs. Alternatives such as use of personal service contracts for hearing examiners can reduce costs.

- Increased cost to the parties due to more formal decision-making procedures.

Hearing examiners can increase the formality of the hearing process, although many of the procedural requirements and formalities are already required under state law. This formality can provide the advantage of increased appearance of fairness and impartiality in decision-making.

- Lack of accountability to voters for appointed hearing examiner making decisions or hearing administrative appeals.

Some people maintain that important decisions should be made by elected officials who are accountable to the voters. However, these concerns can be addressed by making the hearing examiner's decision a recommendation to the council or commissioners or by providing for an administrative appeal to the legislative body.

Options for Efficient and Effective Use of Hearing Examiners for Smaller Counties and Cities

Smaller local governments may be reluctant to establish a hearing examiner system because of cost considerations and concerns about whether there will be enough occasions to justify using a hearing examiner. Here are some ideas about addressing these concerns:

- Contract for hearing examiner services. Counties and cities may establish a contractual relationship with a hearing examiner in which the examiner is compensated, on an hourly or other basis, only as needed.
- Share use of a hearing examiner with other jurisdictions. Some local governments in the state have entered into interlocal agreements to contractually share the services of a hearing examiner.
- Increase the number of matters heard by hearing examiner. Doing this could reduce costs relating to use of staff that would otherwise be occupied with those matters.
- Fund the hearing examiner system from permit review fees. Local governments can add and/or increase permit fees and appeal fees to help cover the cost of maintaining a hearing examiner system.

Qualifications of Hearing Examiners

There are no state statutes that establish the minimum qualifications of hearing examiners. As noted above, hearing examiners are often attorneys; however, a law degree is not required. A background in the area in which the examiner will perform would obviously be helpful. Since hearing examiners operate mostly in the land use arena, some local governments use examiners with a planning, rather than legal, background. Keep in mind that the land use decision-making process requires a thorough knowledge of legal procedures, and relevant statutes, local ordinances, and case law. In the ordinance establishing the office of hearing examiner, it is a good idea to identify the minimum qualifications that the legislative body deems necessary for a hearing examiner.

Support, Resources, and Training for Hearing Examiners

- Washington Association of Professional Hearing Examiners; Jim Driscoll, President; 101 Yesler, Suite 607; Seattle, WA 98104; (206) 628-0039. This organization provides periodic training conferences and maintains a list of hearing examiners in the state.

MRSC Library Resources

The following MRSC Library resources provide more detailed information concerning use of hearing examiners and the land use hearing examiner system, including sample ordinances and rules of procedure:

- “Hearing Examiner System in Washington State: A Compilation of Articles and Ordinances,” MRSC, July 1997.
- “A Citizen Guide to the Office of Hearing Examiner,” City of Seattle, revised 1994.
- “The Hearing Examiner in Washington State: A Reference Manual for Local Government,” Washington State Planning and Community Affairs Agency (no longer in existence), June 1980.
- A Short Course on Local Planning, Planning Association of Washington and the Washington Department of Community, Trade and Economic Development, Version 3.2, March 1997.
- “You Be the Judge: A Handbook for the Land Use Decision Maker,” by Jim Driscoll and Ted Hunter, prepared for the Association of Washington Cities (1993).
- Other MRSC Library resources, including sample ordinances establishing the office of hearing examiner, hearing examiner rules of practice and procedure, hearing examiner job descriptions, hearing examiner contracts, and citizens’ guides to the hearing examiner process.

Hearing Examiner Comparison

July 10, 2018

By Population

City	Pop.	County
Sultan	5030	Snohomish
Wapato	5040	Yakima
Blaine	5075	Whatcom
Connell	5450	Franklin
Prosser	5965	Benton
Woodland	6035	Cowlitz/Clark
Ocean Shores	6055	Grays Harbor
Union Gap	6220	Yakima
Steilacoom	6410	Pierce
Brier	6560	Snohomish
Normandy Park	6595	King
North Bend	6605	King
Fircrest	6640	Pierce
Stanwood	6785	Snohomish
Pacific	6910	King/Pierce
Ridgefield	7235	Clark
Clarkston	7250	Asotin
Sequim	7280	Clallam
Quincy	7370	Grant
Chehalis	7500	Lewis
Duvall	7500	King
Selah	7630	Yakima
Orting	7835	Pierce
Milton	7900	King/Pierce

By Location

City	Pop.	County
Algona	3180	King
Black Diamond	4335	King
Covington	19850	King
Enumclaw	11450	King
Milton	7900	King/Pierce
Pacific	6910	King/Pierce
Bainbridge Island	23950	Kitsap
Bremerton	40630	Kitsap
Port Orchard	13990	Kitsap
Poulsbo	10510	Kitsap
Bonney Lake	20500	Pierce
Buckley	4670	Pierce
DuPont	9385	Pierce
Edgewood	10420	Pierce
Fife	10100	Pierce
Fircrest	6640	Pierce
Gig Harbor	9560	Pierce
Lakewood	59,280	Pierce
Orting	7835	Pierce
Ruston	975	Pierce
Steilacoom	6410	Pierce
Sumner	9920	Pierce
Tacoma	208,100	Pierce
University Place	32,600	Pierce

Uses Hearing Examiner

Does Not Use a Hearing Examiner



THE CITY OF FIRCREST

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Memo

DATE: August 21, 2018
TO: Planning Commission
FROM: Angelie Stahlnecker, Planning & Building Administrator
SUBJECT: 2018 Comprehensive Plan Update

Introduction

The Planning Commission reviews the Fircrest Comprehensive Plan annually and updates as necessary. At the August meeting, staff intends to conduct a refresher on the Comprehensive Plan and encourage discussion in anticipation of the 2018 draft amendments.

Process

Comprehensive Plan amendments are reviewed by the Planning Commission and a recommendation is forwarded to the City Council for final approval. Staff would like to schedule a public hearing on the draft document for October 2, 2018.

Summary

Chapter 23.06 Comprehensive Plan Amendments establishes the process by which the Fircrest Comprehensive Plan can be updated and amended each year. This year's update will incorporate the new annexed area, any state requirements, and updates to the Six-Year Capital Improvement Program.

On March 6, 2018, the Planning Commission approved the 2018 update schedule and submission period. No private applications have been received.

Attachments

Please review the current Comprehensive Plan which is found on the website at:

<https://www.cityoffircrest.net/government/planning-and-building-department/adopted-plans/>