

Issue	Discussion Notes	Status
<p>1. Can the City be a party of an appeal to superior court? (Phil Miller)</p>	<p><u>Planning Commission Discussion</u> (3/15) Commissioners discussed whether the City could still be a party to an appeal for Superior Court. (3/22) They were satisfied with the information provided and closed this issue.</p> <p><u>Staff Response/Recommendation</u> (3/16) This issue must be discussed with the City attorney for a definitive answer and more time is needed to research this question. (3/21) The City can appeal or be a party to an appeal to Superior Court. It is not common and not know by the City’s Attorney if any community has appealed its own decision.</p>	<p>Opened 3/15 Closed 3/22</p>
<p>2. What are the grounds for appeals? (Sara Baker)</p>	<p><u>Planning Commission Discussion</u> (3/15) Commissioners discussed what would be the typical grounds for appeal that someone could challenge regarding a hearing examiner decision. (3/22) They were satisfied with the information provided and closed this issue.</p> <p><u>Staff Response/Recommendation</u> (3/16) Per RZC 21.76.060, any party of record may appeal a land use decision. A person appealing a Type I or II decision must submit a completed appeal form which sets forth: 1) Fact demonstrating that the person is adversely affected by the decision; 2) A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria; 3) The specific relief requested; and 4) Any other information reasonably necessary to make a decision on the appeal.</p> <p>The decision criteria related to Type I & II permits are as follows as stipulated by RZC 21.76.070:</p> <ul style="list-style-type: none"> a. Consistency. Land use permits are reviewed by the City to determine consistency between the proposed project and the applicable regulations and Comprehensive Plan provisions. <ul style="list-style-type: none"> i. A proposed project’s consistency with the City’s development regulations shall be determined by consideration of: 	<p>Opened 3/15 Closed 3/22</p>

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	<ul style="list-style-type: none"> A. The type of land use; B. The level of development, such as units per acre or other measures of density; C. Availability of infrastructure, including public facilities and services needed to serve the development; and D. The character of the development, such as development standards. <p>ii. Upon review of a land use permit and accompanying site plan, the decision maker shall determine whether building design and/or site design complies with the following provisions:</p> <ul style="list-style-type: none"> A. The Comprehensive Plan, RZC 21.02, <i>Preface</i>, RZC Article, <i>Zone-Based Regulations</i>, RZC Article I, <i>Citywide Regulations</i>, and the Appendices that carry out these titles; B. The provisions of RMC Title 15, Buildings and Construction, that affect building location and general site design; C. The Washington State Environmental Policy Act (SEPA) if not otherwise satisfied; D. RZC Article V, <i>Review Procedures</i>, to the extent it provides the procedures to ensure compliance with the requirements in subsections B.3.a.ii.B and B.3.a.ii.C of this section. E. Both within and outside Transition Overlays, decision makers authorized by the RZC to decide upon discretionary approvals may condition such approvals and development permits, including but not limited to site plan approvals, to minimize adverse impacts on other properties and uses, and to carry out the policies of the Comprehensive Plan. 	

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<p>3. How is the Hearing Examiner selected? (Roy Captain)</p>	<p><u>Planning Commission Discussion</u> (3/15) Commissioners discussed how the Hearing Examiner becomes selected by the City. (3/22) They were satisfied with the information provided and closed this issue.</p> <p><u>Staff Response/Recommendation</u> (3/16) The City sends out a Request for Proposal (RFP) for the Hearing Examiner position specifically looking for land use attorney. Once all the proposals come in, City Council reviews the proposals and selects the best applicant. The position is hired under a two-year contract and is revisited in two-year cycles by City Council.</p>	<p>Opened 3/15 Closed 3/22</p>
<p>4. Does City Council currently deal with any other quasi-judicial matters outside of land use decisions? (Scott Biethan)</p>	<p><u>Planning Commission Discussion</u> (3/15) Commissioners discussed what other quasi-judicial matters City Council deals with besides land use matters. (3/22) After a brief discussion Commissioners were satisfied with the information provided and closed this issue.</p> <p><u>Staff Response/Recommendation</u> (3/16) The Zoning Code has six (6) permit types ranging from Type I being small administrative processes to Type VI being legislative. The proposed amendments only deal with Type I and Type II which are decided on by directors and technical committee. With these, City Council only gets involved in a quasi-judicial decision if there is a second appeal.</p> <p>Permit Types IV and above involve quasi-judicial decisions by Council though this does not also involve the appeal process. Examples include but are not limited to development agreements, plat alterations, plat vacations, long term temporary use permits, and zoning map amendments for specific properties that are consistent with the Comprehensive Plan. For these permit types, City Council is the decision maker. Council decisions are appealable to Superior Court.</p> <p>(3/21) At this time and based off staff's research, City Council does not deal with any quasi-judicial matters outside of land use or business licenses. The only time that Council recuses themselves would be for "appropriation of fairness." The typical reasons would be any ex parte communications, family involvement or monetary benefits.</p>	<p>Opened 3/15 Closed 3/22</p>

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<p>5. What is the cost benefit analysis for the proposed change? (Jeff MacNichols)</p>	<p><u>Planning Commission Discussion</u> (3/15) Commissioners discussed the cost implications of removing City Council from the appeal process and having the matter going to superior court, specifically regarding legal fees. (4/12) - The Commissioners discussed the difficulty of determining litigation costs if appellants were required to go to court. They acknowledged that legal fees could be very costly. An additional benefit derived from the proposed appeals process could be a shorter appeals process for appellants. Commissioners agreed to close Issue 5 pending Commissioner’s MacNichols satisfaction with the staff’s response. (4/13) Commissioner MacNichols emailed staff that he was satisfied with closing the issue.</p> <p><u>Staff Response/Recommendation</u> (3/16) The cost implications to an appellant are difficult to determine. In both the administrative and judicial appeals scenarios, legal representation is not mandated by law. It is highly probable that staff would be involved before Superior Court or City Council. The goal of the amendment is to reduce the timing for appeals to hopefully reduce cost for all. The only cost that staff knows with certainty is the appeal fee and staff review time frame which is further explained below.</p> <p>The city recently passed a fee resolution regarding appeals in December 2017. The city requires a \$500.00 deposit for an appeal. In the event of a successful appeal, the \$500.00 deposit is refunded to the appellant. This is to partially defray the city’s cost (staff, time, and hearing examiner time) to hear an appeal. An analysis was done on the amount of time and money spent on appeals by the city.</p> <p>On average, a smaller project (like a residential short plat) appeal takes approximately 15.5 hours to review and process. A larger residential plat appeal requires approximately 25 hours to review and process. Large commercial or multi-family projects take an approximate 52 hours for the review and process of an appeal. The aforementioned hours involved in the review/process only include the review time of the lead planner assigned to the project. Other reviewers, such as storm water, engineering, utilities, transportation, manager, administrative staff, and public notice preparation are not included in these estimates. The inclusion of all staff time would likely increase the hours required to review an appeal quite dramatically.</p> <p>Translating the amount of hours a planner requires to prepare an appeal into a dollar figure (\$122.78/hr.) are as follows:</p>	<p>Opened 3/15 Closed 4/12</p>

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	Small Sized Project (i.e. short plat) - \$1,903.09 Medium Sized Project (i.e. plat) - \$3,069.50 Large Sized Project (i.e. Multi-Family/Commercial) - \$6,384.56	
6. Number of recent appeal & CUP proceedings? (Phil Miller)	<p><u>Planning Commission Discussion</u> (3/15) Commissioners discussed how many recent projects went through the appeal and conditional use process (3/22) They were satisfied with the information provided and closed this issue.</p> <p><u>Staff Response/Recommendation</u> (3/16) In our research,</p> <ul style="list-style-type: none"> • For Type I and type II permits in the last three (3) years, there have been nine (9) appeals. Of the nine (9) appeals, only two (2) have gone before City Council at this time. • Conditional Use Permits in the last three (3) years, only four (4) applications have been submitted. 	Opened 3/15 Closed 3/22
7. Additional public input sought (Scott Biethan)	<p><u>Planning Commission Discussion</u> (3/22) Commissioners discussed how this code change was communicated to the public and asked what means were used to seek input. Special direction was provided to reach out to the School district and past appeals process. (4/12) Chair Biethan acknowledged the input received from stakeholders and closed the issue.</p> <p><u>Staff Response/Recommendation</u> (4/7) Additional requests for comments/feedback were sent to Tom Markl of Nelson Properties and One Redmond, the Lake Washington School District, Sound Transit, and several past appellants. Tom Markl, Tom Hinman and Paige Norman have been the only respondent as of this date.</p> <p><u>Public Comment</u> Tom Markl and his colleagues were in support of the proposed code amendment while Tom Hinman and Paige Norman were in support of not changing the code. Their emails are attached.</p>	Opened 3/22 Closed 4/12

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<p>8. Positives and Negatives for appeal process change (Sherri Nichols)</p>	<p><u>Planning Commission Discussion</u> (3/22) Commissioners discussed who would gain and lose from the appeal process code change. (4/12) Chair Biethan asked for any discussion regarding this issue. Commissioners acknowledged that the staff did as good a job as possible to lay out how the code change may impact stakeholders. Commissioner Miller observed that the proposed appeal process would likely diminish the community connection between residents and the City elected officials. Commissioner Nichols stated that she was satisfied with staff's response in the issue matrix. The issue was closed.</p> <p><u>Staff Response/Recommendation</u> (4/5) Potential gains and losses are as follows:</p> <p><u>Developers/Property Owners:</u></p> <ul style="list-style-type: none"> + : Streamline review and appeal process + : Free communication to elected officials regarding appeal matters without jeopardizing any quasi-judicial decision + : Removes a closed record proceeding where City Council could reverse or uphold a decision + : Make it quicker for the building community to appeal to superior court - : Removes a closed record proceeding where City Council could reverse or uphold a decision - : Make it quicker for the neighborhood to appeal to superior court <p><u>Community:</u></p> <ul style="list-style-type: none"> + : Quicker path to a final land use decision + : Free communication to elected officials regarding appeal matters without jeopardizing any decision + : Make it quicker for the community to appeal to superior court - : Removes a closed record proceeding where City Council could reverse or uphold a decision - : Appeal process could be viewed as too quick for anyone used to the current process - : Make it quicker for the developer to appeal to superior court 	<p>Opened 3/22 Closed 4/12</p>