

RESOLUTION NO. 92-R-545

A RESOLUTION PRESCRIBING RULES OF PROCEDURE FOR QUASI-JUDICIAL HEARINGS OF LAND USE ISSUES FOR THE CITY OF BROOKINGS, AND REPEALING RESOLUTION NO. 78-R-213.

WHEREAS, ORS Chapter 197 requires local governing bodies to make final decisions in certain land use matters; and

WHEREAS, the Oregon Supreme Court has ruled that interested parties are entitled to a fair and open tribunal in said land use matters;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Brookings that the rules listed herein shall be adhered to by the Planning Commission and by the Common Council of this city while either body is conducting quasi-judicial hearings on land use matters.

Section 1. Decision Making Body members. Planning Commission members and city council members will hereinafter be referred to as the Decision Making Body.

Section 2. Nature and conduct of hearings.

A. Interested parties are entitled to an opportunity to be heard, to present and rebut evidence to a tribunal which is impartial, to have the proceedings recorded, and to have a decision based on evidence.

B. No person shall be disorderly, abusive or disruptive of the orderly conduct of the hearing.

C. No person shall speak without obtaining permission from the presiding officer at the first opportunity.

D. No person shall testify without first receiving recognition from the presiding officer and stating his/her full name and residence address.

E. No person shall present irrelevant, immaterial or repetitious testimony or evidence.

F. There shall be no audience demonstrations, such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

G. The presiding officer and Decision Making Body members may question and cross-examine any person who testifies.

H. Appeals from administrative and/or Planning Commission decisions shall be de novo. The Decision Making Body shall, however, be entitled to rely on documents and written materials previously submitted to staff or the Planning Commission.

Section 3. Presiding officer. The chair of the Decision Making Body shall be the presiding officer at all hearings unless the Decision Making Body designates a city officer or employee to act as presiding officer. A presiding officer, if not a member of the Decision Making Body, shall have no vote on the question in determination of the matter, but shall have authority to:

- A. Regulate the course and decorum of the hearing;**
- B. Dispose of procedural requests or similar matters;**
- C. Rule on offers of proof and relevancy of evidence and testimony;**
and
- D. Take such other action appropriate for conduct commensurate with the nature of the hearing.**
- E. Impose time limits on those appearing before the Decision Making Body.**

Section 4. Burden of proof.

A. The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal in an area, the greater is the burden upon the proponent.

B. On appeals, the burden of proof is upon the person appealing a decision.

Section 5. Record of proceedings.

A. The clerk of the Decision Making Body or a designee of the presiding officer shall be present at each hearing and shall provide that the proceedings be electronically recorded.

B. The presiding officer shall, where practicable, cause to be received all physical and documentary evidence presented on behalf of proponent or opponent. Such exhibits shall be retained by the Decision Making Body until after any applicable appeal period has expired at which time the exhibit shall be released upon demand to the person identified thereon.

Section 6. Order of procedure. The presiding officer, in the conduct of the hearing, shall follow the rules here listed:

A. Commencement of hearing.

- 1. Announce the nature of the hearing.**
- 2. List the applicable substantive criteria;**
- 3. State that "testimony and evidence must be directed toward the criteria listed or other criteria in the comprehensive plan or land use regulation which the person believes applies to the decision"; and**
- 4. State that "failure to raise an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal on that issue."**

B. Disclosure of ex-parte contacts. Request that members of the Decision Making Body disclose ex-parte contacts as follows:

- 1. The affected member of the Decision Making Body shall place on the record the substance of any written or oral ex-parte communication concerning the decision or action; and**

2. The presiding officer shall make a public announcement following the disclosure of the content of any ex-parte communications that: "The parties have a right to rebut the substance of the communication at the hearing where action will be considered or taken on the subject to which the communication related."

C. Call for abstentions. Inquire of the Decision Making Body to determine whether any member wishes to abstain from participating in the decision. Any member then announcing an abstention shall not participate in discussion of the proposal, or vote on the proposal. Read the following:

"Pursuant to ORS 227.035, a member of the Decision Making Body shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: the member, or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member, any business in which the member has been serving or has served within the previous two years, or any business within which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the Decision Making Body where the action is proposed to be taken."

D. Objections to jurisdiction. Inquire as to whether there are any objections to jurisdiction of the Decision Making Body to hear the matter and, if such objections are received, conduct the necessary inquiry to determine the question. If it is determined that there is substantial evidence that the Decision Making Body lacks jurisdiction or that the procedural requirements of ordinances and/or state statutes were not met, the matter shall be terminated and, if the defect can be remedied, the matter should be rescheduled.

E. Staff report. (Staff report follows applicants case on appeal to city council.)

F. Applicant's case. Allow the applicant or representative to present the applicant's case including all witnesses the applicant may wish to call. All testimony by interested parties who wish to testify on behalf of the applicant in favor of the proposal.

G. Cross-examination of proponent witnesses. Upon recognition by the chair, allow the submission of questions to proponent witnesses.

H. Opponent's case. Allow opponents to the proposal to be heard in the following order:

- 1. Groups represented by counsel or a spokesperson;**
- 2. Persons who receive notice of the hearing or who were entitled to receive notice of the hearing; and**
- 3. Persons who did not receive notice or were not entitled to notice and who wish to speak in opposition to the proposal.**

I. Cross-examination of opponent witnesses. Allow cross-examination as was allowed of proponent witnesses.

J. Public agencies. Allow representatives of any public agency to be heard.

K. Interested Parties. Allow persons who identify themselves as neither proponents or opponents of the application to be heard.

L. Rebuttal evidence. Allow the proponent to offer rebuttal evidence and testimony. Allow next opponents to offer rebuttal evidence and testimony.

M. Close of hearing and deliberation by Decision Making Body. Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven (7) days after the hearing.

After the presiding officer concludes the hearing and the record is completed, the Decision Making Body shall deliberate the proposal. The Decision Making Body either makes its decision and states its findings, which may incorporate findings proposed by the proponents or opponents, or it may continue its deliberation and shall not allow for additional evidence or testimony except upon decision of the Decision Making Body.


If the record is to remain open to admit new evidence or testimony upon request of any person, any person may raise new issues which relate to the new evidence, testimony or criteria for the decision making which apply to the matter at issue.

N. Final order. The decision of the Decision Making Body shall be incorporated with the adopted findings into a written Final Order. A Final Order may be adopted at the conclusion of the hearing or at a succeeding meeting of the Decision Making Body.

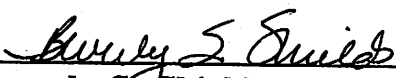
O. Appeal. At the conclusion of the hearing the presiding officer shall announce the time limit and procedure for appealing the decision of the Decision Making Body.

Section 7. Repeal of Resolution No. 78-R-213. Resolution No. 78-R-213, adopted October 17, 1978 is hereby repealed in its entirety.

PASSED by the council and signed by the mayor this 10th
day of August, 1992.


Fred Hummel
Mayor

ATTEST:


Beverly S. Shields
Finance Director/Recorder