

MINUTES

PLANNING COMMISSION MEETING

October 21, 2021

5:30 p.m.

VIA ZOOM

PRESIDING: Cody Cornett, Chair

COMMISSIONERS PRESENT: Karly Aparicio, Alan Easling, Philip Mascher, Linda Miller, one position vacant

COMMISSIONERS ABSENT: Mark Poppoff

STAFF PRESENT: Director Alice Cannon, Secretary Paula Webb

CALL TO ORDER

The meeting was called to order by Chair Cornett at 5:33 p.m.

PLEDGE OF ALLEGIANCE

Chair Cornett led the Pledge of Allegiance.

APPROVAL OF AGENDA

It was moved by Aparicio and seconded by Miller to approve the agenda as submitted. The motion carried 5/0; Aparicio, Cornett, Easling, Mascher, and Miller voting in favor, none opposed, Poppoff absent, one position vacant.

APPROVAL OF MINUTES

It was moved by Easling and seconded by Aparicio to approve the minutes as presented. The motion carried 5/0; Aparicio, Cornett, Easling, Mascher, and Miller voting in favor, none opposed, Poppoff absent, one position vacant.

PUBLIC COMMENT

None.

PLANNING COMMISSIONER TRAINING

Director Cannon introduced Scott Edelman, Oregon Department of Land Conservation and Development (DLCD). Mr. Edelman provided training on Oregon's land use planning laws and programs, Exhibit 1.

Chair Cornett commented it was a great, very informative presentation.

STAFF COMMENTS / PROJECT UPDATES

Director Cannon stated City Council set a goal to update the Community Vision. An email will invite participation in a kickoff event scheduled November 15, 5:30-7:00 p.m., at the Senior Center. **[Note to Commissioners: This in-person event has since been canceled, in light of COVID-19 health concerns. The project will instead promote involvement in an online survey, open from November 8 through December 6.]** A second survey will be available in January or February 2022. Project completion is scheduled in February or March 2022. Director Cannon encouraged the Commission to share the survey throughout the community.

The November 4, 2021 Planning Commission meeting is cancelled due to lack of business. The November 18, 2021 meeting will include a legislative hearing on the Shelter Housing Code. The Commission's recommendation will go to City Council in December.

A legislative update summary will be provided as time allows.

COMMISSIONER COMMENTS / QUESTIONS

Commissioner Aparicio asked when in person meetings would resume. Director Cannon replied COVID numbers were still high; the Planning Commission will follow City Council's decision for in person meetings.

Chair Cornett stated he looked forward to in person meetings. Cornett is excited by the energy returning to town. Commissioner Miller said that energy showed at the Neon Sign Museum during the mural presentation. Director Cannon mentioned Quiet Riot was featured at the Granada Theatre.

Director Cannon stated she had interest from two separate developers for housing projects in the downtown area next year.

ADJOURNMENT


Chair Cornett adjourned the meeting at 7:11 p.m.

Submitted by/
Paula Webb, Secretary
Community Development Department

SIGNED:


Cody Cornett, Chair

ATTEST:


Paula Webb, Secretary
Community Development Department

Oregon's Statewide Planning Program

The Dalles Planning Commission

DLCD

October 21, 2021
Scott Edelman,
Central Region Representative

Tom McCall, 1973

There is a shameless threat to our environment and to the whole quality of life, an unfettered despoiling of the land. Sagebrush subdivisions, coastal "condomania" and the ravenous rampage of suburbia in the Willamette Valley all threaten to mock Oregon's status as the environmental model for the nation. We are dismayed that we have not stopped misuse of the land, our most valuable finite resource... The interests of Oregon for today and in the future must be protected from the grasping wasters of the land.

PLANNING IN OREGON

Oregon Land Use Act of 1973 (SB 100)

Resulted in:
Land Conservation and Development Commission

Department of Land Conservation and Development



State and Local Responsibilities
Oregon Statewide Planning Program

State (LCDC, DLCD)

- Sets land use policy of statewide significance (goals and rules)
- Acknowledges city and county plans
- Helps enforce goals
- Reviews local government plan and zoning amendments
- Provides technical & financial assistance



State and Local Responsibilities
Oregon Statewide Planning Program

Cities and Counties

- Address local vision and needs
- Adopt and amend plans and codes in compliance with statewide goals
- Enforce codes and ordinances
- Make land use decisions



**Statewide
Planning Goals**

1. Citizen Involvement
2. Land Use Planning
3. Agricultural Lands
4. Forest Lands
5. Natural Resources, Scenic and Historic Areas, and Open Space
6. Air, Water and Land Resources Quality
7. Areas Subject to Natural Hazards
8. Recreational Needs
9. Economic Development
10. Housing
11. Public Facilities and Services
12. Transportation
13. Energy Conservation
14. Urbanization
15. Willamette River Greenway
16. Estuarine Resources
17. Coastal Shorelands
18. Beaches and Dunes
19. Ocean Resources



“Process” Goals

- **Goal 1 – Citizen Involvement**
- **Goal 2 – Land Use Planning**



➤ **Goal 3 – Agricultural Lands**

➤ **Goal 4 – Forest Lands**

“Rural” Goals
(resource lands)



➤ **Goal 9 – Economic Development**

➤ **Goal 10 – Housing**

➤ **Goal 11 – Public Facilities**

➤ **Goal 12 – Transportation**

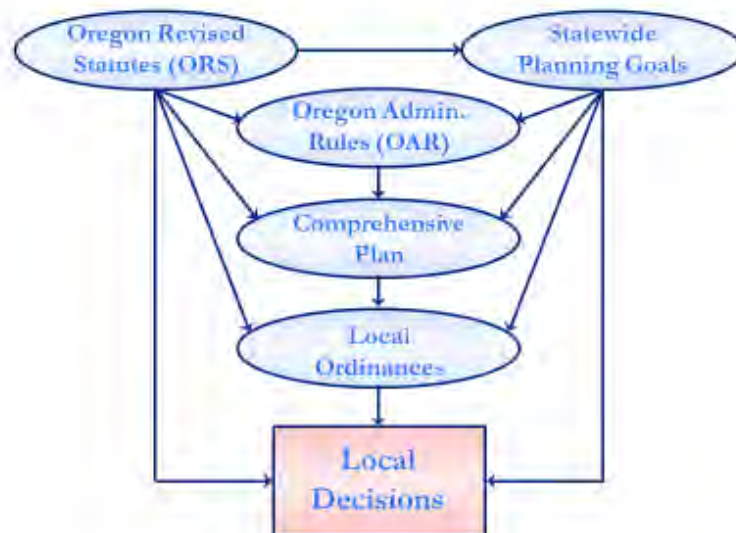
➤ **Goal 14 – Urbanization**

➤ **Goal 8 – Recreation**

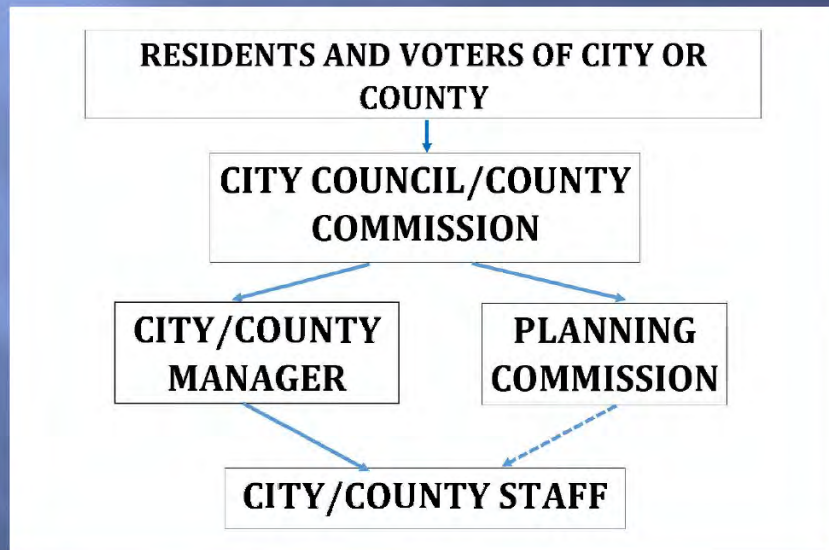
“Urban” Goals



- **Goal 5 - Natural Resources, Scenic and Historic Areas, and Open Spaces**
- **Goal 6 – Air, Land & Water Quality**
- **Goal 7 – Areas Subject to Natural Hazards**



Planning Commission - Structurally



PLANNING COMMISSION RESPONSIBILITIES

- ❑ Reflect Community Values
- ❑ Recommend Policies to City Council/County Commission
- ❑ Visioning and Long-Range Planning for the City/County
- ❑ Educate the public and provide a public forum
- ❑ Make Land Use Decisions

RELATIONSHIP WITH ELECTEDS

- ❑ Clearly understand of responsibilities and authority vs. responsibilities and authority of the city council
- ❑ Make sound recommendations with adequate findings to ensure your reasoning is clear to the council
- ❑ Communicate regularly with the governing body
- ❑ Do not be afraid to give governing body advice on planning matters - that is your role

RELATIONSHIP TO STAFF

- ❑ Not Supervisory
- ❑ Staff is a resource - communication - trust - respect - "work as a team" - BUT THAT DOESN'T MEAN YOU HAVE TO ALWAYS AGREE WITH A STAFF RECOMMENDATION
- ❑ Respect staff's competing priorities (applications, public, other city staff)
- ❑ Planning Commission is a "conduit" for the public to the staff
- ❑ "Staff" sometimes includes a government attorney

RELATIONSHIP WITH PUBLIC

- iii "Golden Rule for public decision making - BE FAIR
 - iv Follow open meeting law
 - iv Do your homework
 - iv Conduct quasi-judicial hearings according to the required rules
 - iv Be respectful to everyone, especially each other.
 - iv Keep to the topic- don't digress, and don't let the participants digress either
 - iv A "delicate balance" between thoroughness and efficiency

PLANNING COMMISSION TOOLS: Comprehensive Plan

- Overarching document that guides land use, infrastructure development, conservation of natural resources, housing, and economic development, etc.
- A comp plan includes the following components:
 - Factual base – natural, social, and economic information
 - Goals and policies – statements of intent, used to guide implementing measures
 - Maps – future land use and zoning



Zoning & Development Code

- Specific regulations designed to implement comprehensive plan policies
- Regulates uses, location, density, height, setbacks, etc.
- Sets forth the criteria or standards that each application must meet in order to be approved
- Includes zoning, permitting procedures, development standards, and subdivision and partition standards

CONTRACT WITH THE COMMUNITY



Types of Decisions

➤ Legislative Land Use Decision

- Adoption and amendment of policies and ordinances
- Large geographic area, many ownerships
- No decision is required
- Adopted by elected officials
- Role of planning commission is to make a recommendation
- Less procedural restrictions apply
- Decision-makers sit as lawmakers
- Information used in making a decision may come from many sources (ex parte contact is allowed)
- Findings are less specific, but some are needed
- No specific state-mandated notice requirements other than "Measure 56" notice

EXAMPLE: ZONING ORDINANCE AMENDMENT



Types of Decisions

➤ Quasi-judicial Land Use Decision

- Decision-makers sit as an impartial tribunal
 - Application of pre-existing criteria and requiring exercise of discretion
 - Single or few ownerships
 - Action required
 - Planning staff, hearings officer, or planning commission makes the initial decision; local appeal possible
 - Opportunity for a hearing is required
- Impartiality requires
- Treat all parties fairly
 - Allow all parties to know what the decision makers "know"
 - Ex parte contacts must be announced so all parties know what information was provided to the receiver, and
 - Information considered by the decision maker should be factual
 - The process allows information placed before the Planning Commission to be challenged
 - To challenge information the parties need to know what has been submitted

EXAMPLES: LAND DIVISION, CONDITIONAL USE PERMIT, VARIANCE, DESIGN REVIEW



Types of Decisions

➤ Ministerial Action

- Application of pre-existing criteria and requiring **no** exercise of discretion
- Usually one site
- Action required
- Staff makes the decision, with no appeal opportunity
- No hearing, no notice

EXAMPLE: BUILDING PERMIT





Legislative Decisions
HEARING

➤ **Legislative Hearing Procedures**

- Ensure everyone has the opportunity to participate
- No need to separate proponents and opponents
- No concerns with ex parte contact or bias, but conflict of interest concerns remain

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Quasi – Judicial Decisions

What happens before the public hearing process

- Pre-application discussion
- Application submitted – review for completeness
- Additional materials submitted for incomplete applications

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Quasi – Judicial Decisions

NOTICE – who gets it

- Notice to applicant
- Notice to nearby property owners – 100, 250, or 500 feet
- To recognized neighborhood association
- To DLCD if applicant requests

PLANNING COMMISSION



Quasi – Judicial Decisions

NOTICE – required contents

- Explain the nature of the application and the proposed use or uses which could be authorized;
- List the applicable criteria from the ordinance and the plan that apply to the application at issue;
- Set forth the street address or other easily understood geographical reference to the subject property;
- State the date, time and location of the hearing;
- State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;
- Be mailed at least twenty days before the evidentiary hearing; or if two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;
- Include the name of a local government representative to contact and the telephone number where additional information may be obtained;
- State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
- State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and
- Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

PLANNING COMMISSION



Quasi – Judicial Decisions

HEARING
Use a Script

- **Chair opens hearing**
 - Chair describes proceedings – rules of conduct for hearing
 - Raise-it-or-waive-it statement
 - Right to a continuance if the first hearing
 - Announcement of criteria
 - Declaration of ex parte contact, bias, conflict of interest
- **Staff report**
 - Proposed findings and recommendation



Quasi – Judicial Decisions

HEARING

- **Testimony** – time, place, manner set by commission rules
 - Applicant
 - Other Proponents
 - Opponents
 - Neutral
 - Applicant's rebuttal
- **Requests for continuance and leaving the record open** – automatic at least 7 days
- **Chair closes hearing**
- **Decision**
 - Discussion
 - Motion and second
 - Deliberation and amendments to motion
 - Vote
- **After the hearing** – written findings

The 120 Day Rule

- Final action on quasi-judicial applications required within 120 days inside urban growth boundaries, 150 days outside of urban growth boundaries.
- Extensions can be granted by the applicant through a written request.
- What happens if a city does not act in 120 days?
 - City loses jurisdiction to make a decision
 - A court may order approval without detailed conditions
 - A partial refund may be ordered



Findings

- Findings include statements of:
 - Relevant facts
 - How each approval criterion is satisfied by the facts
 - The facts relied upon and the justification for the decision
- Purposes of findings include:
 - Aiding careful consideration of criteria by the reviewing body
 - Establishing what evidence the reviewing body relied on
 - Explaining how the conclusions are supported by substantial evidence



Findings

- **Tips for making good findings:**
 - Identify all of the applicable criteria
 - Address each criterion separately
 - State the fact that leads to the conclusion
 - Where there is inconsistent evidence, state there was conflicting evidence, but the hearings body believed certain evidence for certain reasons
 - Articulate the link between the project impact and the conditions being imposed
 - Put them in clear, understandable language



Findings

- **Common problems with findings:**
 - Failure to address each criterion
 - Deferring a necessary finding to a condition of approval
 - Generalizing or making a conclusion without sufficient facts
 - Failure to establish causal relationship between facts and conclusions



The Record

- The record includes:
 - The written minutes of the hearing
 - Tape or video of the hearing
 - The decision including conditions of approval and findings
 - Everything "placed before" the Planning Commission during the hearing
 - The application, studies, testimony of the applicant and its advisors, maps, photographs, drawings, etc.
 - The notice of hearing, staff report, comments from officials
 - Letters, emails, testimony, documents from public



Burden of Proof

- The applicant (proponent) has the burden of proving that all elements necessary to grant the proposed application are met. All applicable criteria must be met.
- The burden is met by submitting a complete application with substantial evidence showing compliance with each applicable criterion.
- The applicant should respond to all issues raised by opponents by pointing to evidence in the record or bringing forward more evidence.
- Applicants should not rely on staff presentations alone to meet the burden.
- If an applicant provides new information at a hearing, the public must be given a chance to rebut it.



Continuance and Keeping the Record Open

- A continuance is mandatory if requested by any participant prior to the closure of the first evidentiary hearing. Or, someone can request the record be left open to present additional information.
- If there is a request: continue the hearing by scheduling a date to finish the hearing (a continuance) or leave the record open for at least seven days for additional written evidence, argument or testimony.
- Consider the 120 or 150 Day Rule. Unless requested by the applicant, the clock rolls.
- At what point in the hearing will you pick up the hearing? Who will be able to speak at the next hearing? Be clear when you grant the continuance.
- If the record is left open to accept additional information, how will it be handled? A possible scenario:
 - Seven days to submit additional written information (including applicant)
 - Seven days for rebuttal opportunity to address new information submitted into the record- by any party
 - The applicant has the right to the final word, limited to addressing issues raised by opponents



Raise It Or Waive It

- The burden is on the local government to properly issue notice as required by ORS 197.763.
- By complying with the requirement, a local government benefits because participants must raise issues during local proceedings. Any issues not raised are waived if the matter is appealed to LUBA.
- The benefit to a local government is less appeals are remanded by the Land Use Board of Appeals (LUBA) to address new issues raised for the first time at LUBA.



Impartial Tribunal

- Parties to a quasi-judicial land use proceeding have a right to an “impartial tribunal” – the hearing body must be free of personal interest or bias.
- Members of the hearing body may have certain situations arise that challenge the ability of the hearing body to make an impartial decision.
- The situations arise when there are ex parte contact, conflicts of interest, and bias.



Ex Parte Contacts

- What are they?
 - Contacts by a party on a fact in issue under circumstances which do not involve all parties to the proceedings
 - Contacts may be oral or in writing.
 - Ex parte communications should be discouraged in favor of the public hearing process.
 - If ex parte contact occurs, action can be taken to address the issue: disclosure, make a record, continue without influence.



Ex Parte Contact – Planning Commission

- If an ex parte contact takes place, what should you do?
 - Disclose - put the matter on the record at the next hearing on the matter before any testimony is received and before any proceedings on the matter take place.
 - Describe the substance of the contact or communication.
 - Be sure the disclosure is noted in the record of the hearing.
 - The Commission should provide a right to comment on the statement of the communication.



Site Visits

- During a site visit a commissioner may gain information outside the public hearing which may or may not otherwise be part of the record..
- Site visits are OK – if there is disclosure.
- What should a commissioner do if they make a site visit:
 - Make a disclosure as early as possible on the record to give other interested parties a chance to rebut the evidence, and
 - State on the record in detail what was observed, who was talked to, what was discussed, etc. during the site visit.



Conflict of Interest - Potential

- "Potential conflict of interest" means any ... decision ... by a person acting in a capacity as a public official, the effect of which **could be** to the private pecuniary benefit or detriment of
 - You
 - Your relative
 - Member of the household, or
 - Business with which you, your relative, or member of the household is associated
- You must declare but "may" participate in a decision, action or recommendation



Conflict of Interest - Potential

- What should you do if you have a potential conflict?
 - Publicly announce the potential conflict prior to participating in debate and voting on an issue – provide details
 - Announce the potential conflict when the chair calls for declarations before the hearing is opened, have it recorded
 - If the conflict is not apparent until the hearing has begun, ask to be recognized and make the disclosure as soon as possible
 - When there is a potential conflict, the commissioner can take part in the hearing. But, be concerned about appearance.
 - If there is more than one hearing on the matter – announce each time the matter is on the agenda.



Conflict of Interest - Actual

- "Actual conflict of interest" means any ... decision ... by a person acting in a capacity as a public official, the effect of which **would be** to the private pecuniary benefit or detriment of
 - You
 - Your relative
 - Member of the household, or
 - Business with which you, your relative, or member of the household is associated
- You must declare and must not participate in a decision, action or recommendation.



Conflict of Interest - Actual

- What should you do if you have an actual conflict?
 - Publicly announce the conflict prior to participating in the hearing, and
 - Refrain from participating in a debate on the issue or from voting on the issue
 - Have the declaration go into the minutes of the hearing
 - Make the announcement at each meeting the matter is on the agenda
 - Best practice tip: leave the hearing room after making the declaration. You can return for the next agenda item.



Actual Conflict of Interest - Exception

- ORS 244.120(B) provides an exception if an official's vote is necessary to meet a minimum number of votes to take official action.
- The exception is limited to "be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises."
- Be cautious.



Personal Bias

- Bias is when a commissioner cannot render fair judgment in a matter because of:
 - An acquaintance or relationship
 - With someone or something in the land use case.
- Personal bias differs from conflict of interest because there is no potential for financial gain only the existence of a relationship.



Bias: What to Do

➤ When bias exists a commissioner should:

- Disclose the nature of the bias
- State whether or not in their opinion it requires disqualification

Simple bias does not require disqualification, but if you cannot be fair and impartial in the matter, you should step down.

Best practice: when there is a sufficient quorum to conduct business without participation of a commissioner who has been challenged for bias, they should consider recusal.



QUESTIONS?

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