

MINUTES

PLANNING COMMISSION MEETING

April 6, 2023

5:30 p.m.

City Hall Council Chambers
313 Court Street, The Dalles, Oregon 97058
Via Zoom / Livestream via City Website

PRESIDING: Cody Cornett, Chair

COMMISSIONERS PRESENT: Addie Case, Philip Mascher, Maria Pena, Mark Poppoff,
and Nik Portela (arrived at 5:36 p.m.)

COMMISSIONERS ABSENT: John Grant

STAFF PRESENT: Director Joshua Chandler, Secretary Paula Webb

CALL TO ORDER

The meeting was called to order by Chair Cornett at 5:35 p.m.

PLEDGE OF ALLEGIANCE

Chair Cornett led the Pledge of Allegiance.

APPROVAL OF AGENDA

It was moved by Case and seconded by Poppoff to approve the agenda as submitted. The motion carried 6/0; Case, Cornett, Mascher, Pena, Poppoff and Portela voting in favor, none opposed, Grant absent.

APPROVAL OF MINUTES

It was moved by Pena and seconded by Poppoff to approve the minutes of February 16, 2023 as submitted. The motion carried 6/0; Case, Cornett, Mascher, Pena, Poppoff and Portela voting in favor, none opposed, Grant absent.

PUBLIC COMMENT

None.

PRESENTATIONS

Planning Commission Training

Angie Brewer, Regional Representative for the Department of Land Conservation and Development (DLCD) provided training to the Planning Commission, highlighting land use planning laws and programs. Presentation attached.

Ms. Brewer invited the Commission to contact her for additional information on any topic. She will also facilitate requests for additional information from the DLCDC Housing Team or Urban Specialists.

Legal Requirements for Land Use Decisions

Director Chandler stated City Attorney Kara was unable to attend the meeting, but had prepared a memo detailing the legal requirements for land use decisions. Much of the information was covered in Ms. Brewer's presentation.

Director Chandler invited the Commission to contact himself or City Attorney Kara with any questions.

DISCUSSION ITEM

Planning Commission Bylaws

Due to the Covid-19 pandemic, the format of public meetings and actions by a body have changed slightly. The current Bylaws do not reflect those changes. Proposed amendments will address virtual meetings, attendance at virtual meetings, meeting participation, decorum and behavior for both the Commission and the public, among others.

Commissioner Mascher requested a redline version of the proposed revisions. Commission consensus postponed the discussion pending the redlined revisions.

STAFF COMMENTS / PROJECT UPDATES

The next meeting will include:

- Code "clean up" amendments,
- Changes to the RV Park Code, and
- Conditional Use Permit for a utility facility on Port property.

The May 4, 2023 meeting will be cancelled to avoid scheduling conflicts with the City budget meetings.

Chair Cornett will be unavailable June 13-17, 2023; he requested cancellation of the June 15, 2023 meeting.

Director Chandler stated an invitation to bid was issued for the hazardous waste abatement and demolition of the Tony's Building (401-407 E. 2nd Street). Bids will close mid-May.

After demolition, the Columbia Gateway Urban Renewal Agency (Agency) will issue a Request for Proposal to determine best use of the property. The Agency has emphasized their preference for a mixed-use development on the site.

COMMISSIONER COMMENTS / QUESTIONS

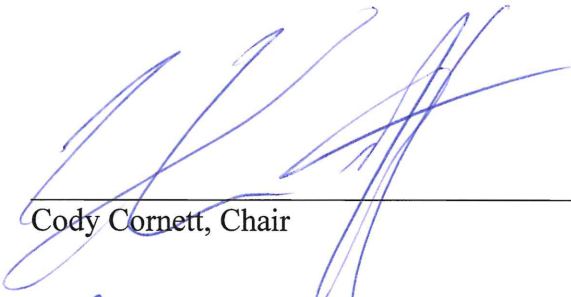
None.

ADJOURNMENT

Chair Cornett adjourned the meeting at 7:21 p.m.

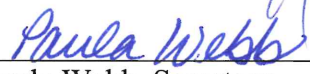
Submitted by/
Paula Webb, Secretary
Community Development Department

SIGNED:



Cody Cornett, Chair

ATTEST:



Paula Webb, Secretary
Community Development Department

Oregon's Statewide Planning Program & Planning Commission Basics






Angie Brewer, Central OR Regional Rep.
Community Services Division

OREGON LEGISLATIVE ASSEMBLY—181ST REGULAR SESSION

**Enrolled
Senate Bill 100**

Sponsored by Senator MACVIEHSON, HALLOCK

CHAPTER.....

AN ACT
relating to land use; creating new provisions; amending ORS 213.004, 213.008, 213.011, 213.020 and 403.240; and appropriating money.

Be It Enacted by the People of the State of Oregon:

PART 1 INTRODUCTION
PURPOSE

SECTION 1. The Legislative Assembly finds that:
(1) Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, conservation, property and welfare of the people of this state.
(2) To promote coordinated administration of land use consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with state-wide planning goals and guidelines.
(3) Except as otherwise provided in subsection (4) of this section, state and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.
(4) The promotion of coordinated state-wide land conservation and development requires the creation of a state-wide planning agency to promote planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state.
(5) The impact of proposed development projects constituting activities of state-wide significance upon the public health, safety and welfare, requires a system of permits reviewed by a state-wide agency to carry out state-wide planning goals and guidelines prescribed for application for activities of state-wide significance throughout this state.

POLICY STATEMENT

SECTION 2. The Legislative Assembly declares that, in order to assure the highest possible level of livability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:
(1) Must be adopted by the appropriate governing body at the local and state levels.
(2) Are expressions of public policy in the form of policy statements, general goals and standards and guidelines.
(3) Shall be the basis for more specific rules, regulations and ordinances which implement the policies expressed through the comprehensive plans.
(4) Shall be prepared to assure that all public actions are consistent and conformant with the policies expressed through the comprehensive plans; and

Planning in Oregon

**Oregon Land Use Act of 1973
(SB 100)**

**Land Conservation and
Development Commission (LCDC)**

**Department of Land
Conservation and Development
(DLCD)**

State & Local Responsibilities



LCDC & DLCD

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


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State & Local Responsibilities



Counties & Cities

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

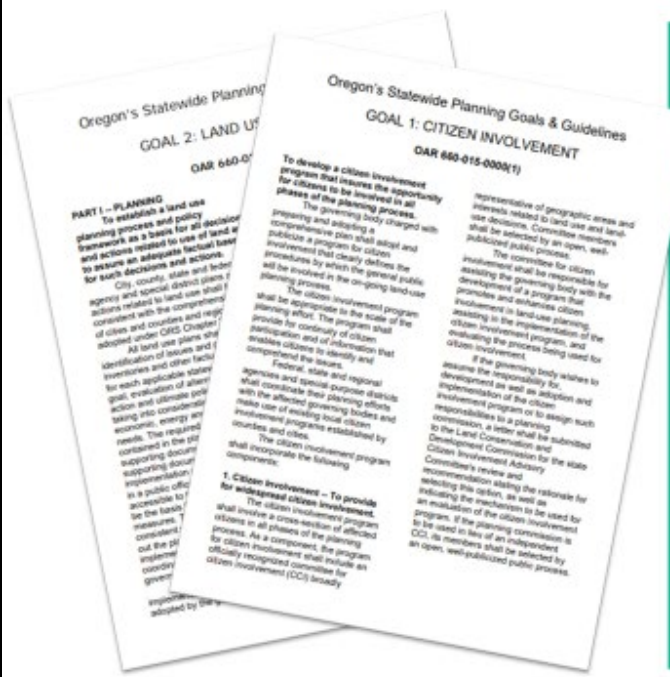
 Oregon has 36 counties & 241 incorporated cities

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19 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

“Rural” Goals

GOAL 3: Agricultural Lands

GOAL 4: Forest Lands

Collage of document pages showing Goal 3 and Goal 4 text.

“Urban” Goals

GOAL 8: Recreation

GOAL 9: Economic Development

GOAL 10: Housing

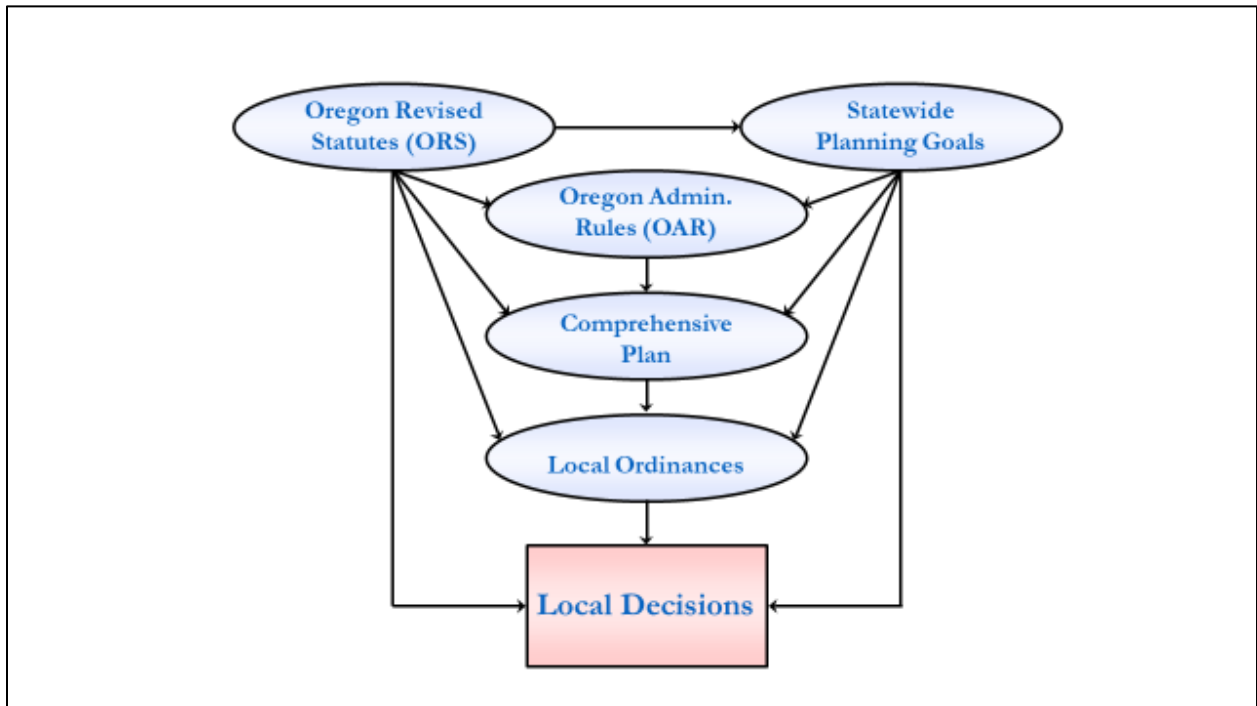
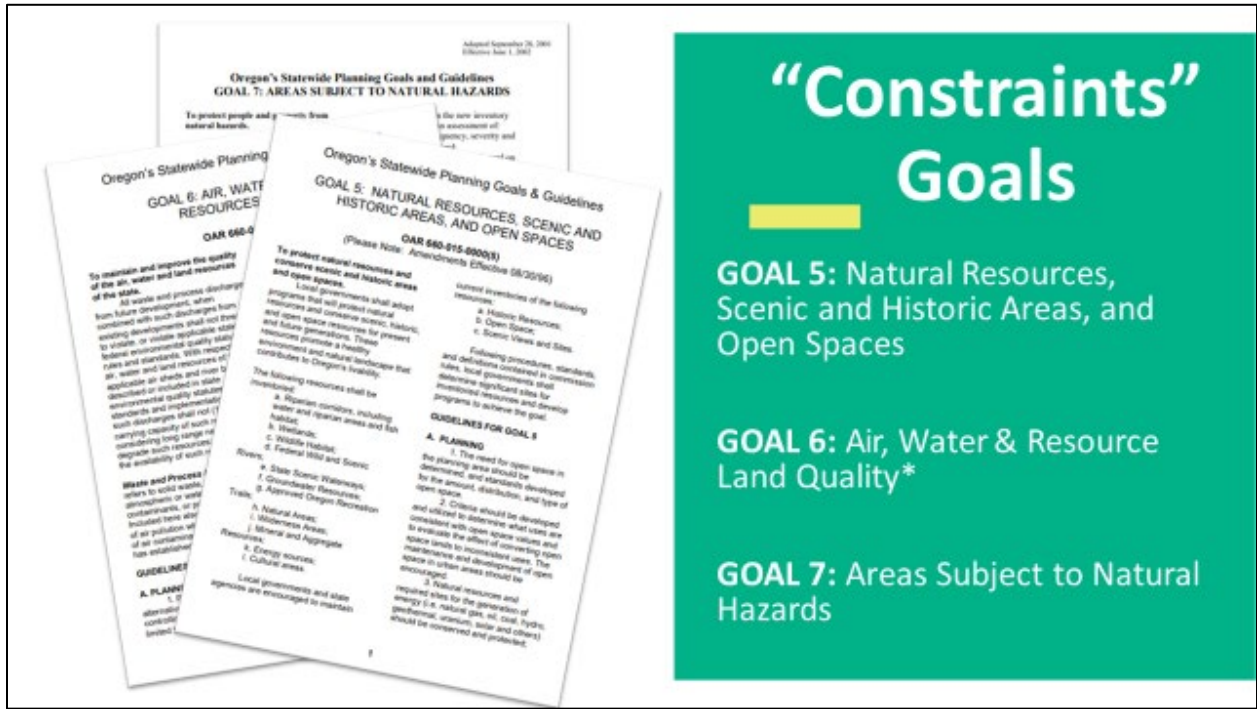
GOAL 11: Public Facilities

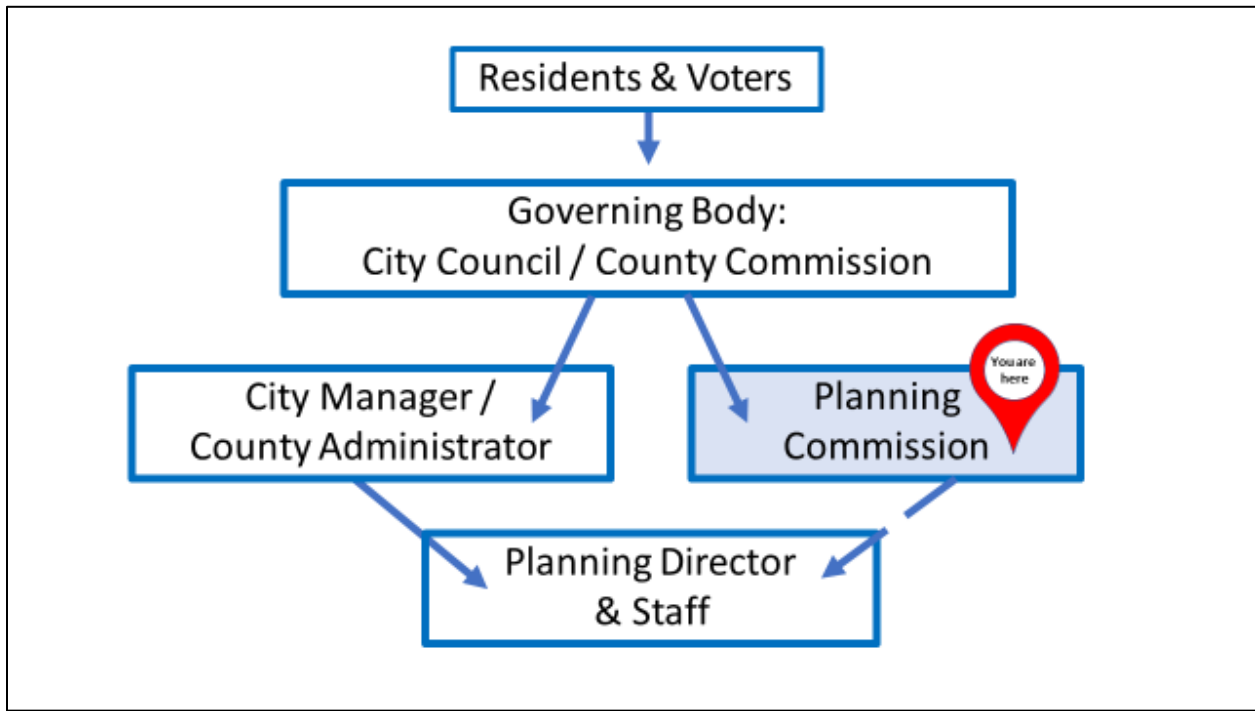
GOAL 12: Transportation

GOAL 13: Energy conservation*

GOAL 14: Urbanization

Collage of document pages showing Goal 9, Goal 10, and Goal 14 text.





Planning Commission Responsibilities

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

The graphic features a blue background with white icons. The icons include a sun, a house, a lightbulb, a group of people, a circular flow diagram, a thumbs-up icon, a megaphone, an hourglass, a speech bubble, and a document with a plus sign.

Planning Commission Relationships

Elected Officials

Staff

The Public

- Understand responsibilities & authority
- Provide sound recommendations, findings, clear reasoning
- Regular formal & informal communication
- Do not be afraid to give governing body advice on planning matters – that is your role

Planning Commission Relationships

Elected Officials

Staff

The Public

- You are not Supervisory
- Staff is a resource “work as a team”
- Remember it’s okay to disagree
- Respect staff’s competing priorities
- Planning Commission is a “conduit” for the public to the staff
- “Staff” sometimes includes a government attorney

Planning Commission Relationships

Elected Officials

Staff

The Public



- Golden Rule: **Be Fair**
- Follow Open Meeting Law
- Do your homework
- Conduct hearings according to the rules
- Be respectful to everyone - *especially each other*
- Stay on topic
- Maintain a balance of thoroughness and efficiency

Responding to Stressful Situations

Don't descend to the level of vitriol directed at you.

Don't be intimidated in your decision-making.

Remember that the anger is not directed at you personally.

- Adjourn the meeting.
- For Quasi-judicial decisions, reconvene online (*HB 2560, effective Jan. 1, 2022, requires local governments to provide for online option*).
- Legislative decisions are not time- sensitive; consider alternative meeting formats.

The diagram features a light green background. At the top left, the text 'Planning Commission Tools' is written in white. Below it is a small teal horizontal bar. In the center, a large white arrow with a blue outline points to the right, containing the text 'Comprehensive Plan'. Below the arrow, the text 'Zoning & Development Code' is written in white.

- Provides a framework to connect interrelated systems
- Provides a factual base
- Captures community vision
- Establishes goals and policies
- Guides land use, infrastructure, conservation of natural resources, economic development, and more.

The diagram features a light green background. At the top left, the text 'Planning Commission Tools' is written in white. Below it is a small teal horizontal bar. In the center, a large white arrow with a blue outline points to the right, containing the text 'Comprehensive Plan'. Below the arrow, the text 'Zoning & Development Code' is written in white.

- 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

Types of Decisions: Legislative Land Use Decisions

- Adoption and amendment of policies and ordinances
- Affect a 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

Types of Decisions: Quasi-judicial Land Use Decision

- Decision-makers are an impartial tribunal
 - Application of pre-existing criteria and requiring exercise of discretion
 - Affects single or few ownerships
 - Action required
 - Decision-maker varies by local codes and procedures
 - Opportunity for a hearing is required
- Impartiality requires:
- Treat all parties fairly
 - Allow all parties to know what the decision makers "know"
 - Disclose all ex parte contacts
 - Information considered by the decision maker should be factual
- (Examples include land visions, CUPs, variances)

Types of Decisions: Ministerial Action

- Staff decision
- Requires **no** exercise of discretion
- Application of pre-existing criteria
- Usually limited to one site
- Action required
- No notice, no hearing, no appeal opportunity

(Example: building permit)



Hearing Procedures

Legislative

Quasi-judicial

- Can be applicant or staff initiated
- Mailed notice to affected landowners (Measure 56 Notice)
- All have opportunity to participate
- No concerns with ex parte contact or bias, but conflict of interest concerns remain
- Recommendation to Board/Council

Hearing Procedures

Legislative

Quasi-judicial



Before the public hearing:

- Pre-application discussion
- Application submitted & reviewed for completeness
- Additional materials submitted for completeness
- Notice mailed at least 20 days before hearing to applicant & nearby property owners (within 100, 250 or 500 feet), recognized organizations, & any other local code requirements

Quasi-judicial Decisions

Hearing Notice: Required contents

- Explain nature of application
- List the applicable criteria from the ordinance and the plan
- Street address or geographical reference
- Date, time and location of the hearing
- "Raise it or waive it"
- Contact for additional information;
- Copy of application and all materials are available for review at no cost, or copy at reasonable cost
- Copy of staff report will be available for inspection at least seven days prior to the hearing or copy at reasonable cost
- Explanation of how to submit testimony and conduct of hearing

Quasi-judicial Decisions

Hearings Procedure: 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

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Quasi-judicial Decisions

Hearings Procedure: Use a script.

- Testimony – time, place, manner set by commission rules
- Requests for continuance and leaving the record open – automatic at least 7 days
- Chair closes hearing
- Decision
 - Discussion
 - Motion and second
 - Deliberation and amendments
 - Vote
- After the hearing – written findings

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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?
 - Applicant can file “writ of mandamus” in local circuit court

Findings

- Findings include statements of:
 - Relevant facts
 - How each approval criterion is satisfied by the facts
 - The facts relied upon 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

- 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

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

Burden of Proof

- Applicant's responsibility. All applicable criteria must be met.
- Applicant must submit a complete application with substantial evidence showing compliance with each applicable criterion.
- Applicant must 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.
- BUT – city or county cannot use matters not part of the approval criteria to make judgment on the application

Continuance and Keeping the Record Open

- Mandatory if requested by applicant or anyone else prior to close of first evidentiary hearing – minimum seven days
- Consider the 120 or 150 Day Rule. Unless requested by the applicant, the clock rolls.
- Figure out where the hearing will pick up and make clear when granting the continuance
- One Scenario:
 - Seven days to submit additional written information and comments
 - Seven days for rebuttal opportunity to address new information submitted into the record – by any party
 - Seven days for the applicant to address issues raised by opponents

Raise it or Waive It

If a local government has provided proper notice:

Participants must raise issues during local proceedings. Any issues not raised are waived if the matter is appealed to LUBA.

Impartial Tribunal

The hearing body must be free of personal interest or bias. Concerns that question whether a tribunal is impartial:

- ex parte contact
- conflicts of interest
- bias

Ex Parte Contacts

- 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.
- Discouraged in favor of the public hearing process.
- If ex parte contact occurs, take action to address the issue

Ex Parte Contacts – how to handle

- Disclose - on the record at the next hearing on the matter before any testimony or proceedings
- Describe the substance of the contact or communication.
- Note in the record of the hearing.
- Provide parties a right to comment on the statement of the communication.

Site Visits

- They are an ex-parte contact
- Good, if disclosed
- Commissioner must state on the record in detail what was observed, who was talked to, what was discussed, etc. during the site visit

Potential Conflict of Interest

- Any decision by a person acting as a public official, 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

Potential Conflict of Interest – What to do


- Announce when the chair calls for declarations before the hearing is opened, provide details, 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
- 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.

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Actual Conflict of Interest

- Any decision by a person acting as a public official, 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

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Actual Conflict of Interest – What to do

- 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
- Recommended: leave the hearing room after making the declaration. You can return for the next agenda item.

Committee / Meeting Name

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Actual Conflict of Interest – 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.

Committee / Meeting Name

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Personal Bias – what to do

- Disclose the nature of the bias
- State whether or not in their opinion it requires disqualification
- When there is a sufficient quorum to conduct business without participation of a commissioner who has been challenged for bias, they should consider recusal.

Committee / Meeting Name 45

Questions now or later – reach out!



CELEBRATING
50 YEARS
DLCD

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