

**MINUTES**

**PLANNING COMMISSION MEETING**

April 20, 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, John Grant, Philip Mascher, Mark Poppoff  
**COMMISSIONERS ABSENT:** Maria Pena, Nik Portela  
**STAFF PRESENT:** Director Joshua Chandler, City Attorney Jonathan Kara,  
Associate Planner Kaitlyn Cook, Secretary Paula Webb

**CALL TO ORDER**

The meeting was called to order by Chair Cornett at 5:30 p.m.

**PLEDGE OF ALLEGIANCE**

Chair Cornett led the Pledge of Allegiance.

**APPROVAL OF AGENDA**

It was moved by Poppoff and seconded by Case to approve the agenda as submitted. The motion carried 5/0; Case, Cornett, Grant, Mascher, and Poppoff voting in favor, none opposed, Pena and Portela absent.

**APPROVAL OF MINUTES**

It was moved by Mascher and seconded by Poppoff to approve the minutes of April 6, 2023 as submitted. The motion carried 5/0; Case, Cornett, Grant, Mascher, and Poppoff voting in favor, none opposed, Pena and Portela absent.

**PUBLIC COMMENT**

None.

**QUASI-JUDICIAL PUBLIC HEARING**

CUP 204-22, Maul, Foster & Alongi, Inc., 2650 River Road, 2N 13E 33 tax lot 200  
Request: Applicant is requesting approval to site and construct a municipal water pump station. Once completed, these improvements will be owned and maintained by the City of The Dalles.

Approval of the Conditional Use Permit (CUP) will establish a Community Facilities Overlay (CFO) on a proposed future parcel.

Chair Cornett read the rules of a public hearing. He then asked if any Commissioner had ex parte contact, conflict of interest, or bias which would prevent an impartial decision. Hearing none, he opened the public hearing at 5:37 p.m.

Associate Planner Cook provided the staff report and presentation, Attachment 1.

Planner Cook noted the property does not abut the right-of-way. Right-of-way improvements would be addressed with Parcels 2 and 3, as they abut rights-of-way. Plans for Parcels 2 and 3 have not yet been submitted.

*Cem Gokcora, Senior Engineer, Maul Foster & Alongi for Design, LLC, 6074 NW Tollbridge Road, Portland, Oregon 97229*

Mr. Gokcora stated his team has coordinated with Public Works and the City Engineer. The final design will follow all applicable regulations.

*Heather Hafey, Portfolio Manager, Design, LLC, 5105 West Street, Oakland, California 94608*

Ms. Hafey stated she was happy to provide answers to any questions.

There were no proponents or opponents.

The public hearing closed at 5:52 p.m.

It was moved by Grant and seconded by Mascher to approve Conditional Use Permit 204-22, with the proposed Conditions of Approval included with this report, based upon the findings of fact and conclusions of law set forth in the Agenda Staff Report. The motion carried 5/0; Case, Cornett, Grant, Mascher, and Poppoff voting in favor, none opposed, Pena and Portela absent.

## **LEGISLATIVE PUBLIC HEARING**

### **ZOA 108-23, City of The Dalles**

Request: Approval of proposed changes to The Dalles Municipal Code (Code), Title 10 Land Use and Development. The amendment purpose is to maintain clear terminology, adapt to modern technology, increase flexibility in housing development, and reassign plan requirements.

Chair Cornett read the rules of a public hearing. He then asked if any Commissioner had ex parte contact, conflict of interest, or bias which would prevent an impartial decision. Hearing none, he opened the hearing at 5:55 p.m.

Associate Planner Cook provided the staff report and presentation, Attachment 2.

There were no proponents or opponents.

The public hearing closed at 6:07 p.m.

It was moved by Mascher and seconded by Poppoff to recommend to City Council the approval of Zoning Ordinance Amendment 108-23, adopting amendments and findings attached herein. The motion carried 5/0; Case, Cornett, Grant, Mascher, and Poppoff voting in favor, none opposed, Pena and Portela absent.

**RESOLUTION**

Resolution PC 614-23: Adoption of Resolution PC 614-23 for approval to site and construct a municipal water pump station.

It was moved by Case and seconded by Poppoff to adopt Resolution PC 614-23 as stated. The motion carried 5/0; Case, Cornett, Grant, Mascher, and Poppoff voting in favor, none opposed, Pena and Portela absent.

Resolution PC 615-23, Approval of ZOA 108-23, City of The Dalles

It was moved by Grant and seconded by Case to adopt Resolution PC 615-23 as written. The motion carried 5/0; Case, Cornett, Grant, Mascher, and Poppoff voting in favor, none opposed, Pena and Portela absent.

**DISCUSSION ITEM**

Second discussion and review of Land Use and Development Ordinance (LUDO) text amendments to The Dalles Municipal Code regulating Recreational Vehicle (RV) Parks. Clarifications were requested by the Planning Commission in February, 2023.

Director Chandler stated at the February 16, 2023 Planning Commission meeting, Staff facilitated a discussion regarding proposed amendments for Recreational Vehicle (RV) Parks. This discussion was requested by the Commission at the January 5, 2023 meeting, following approval of recent RV Park proposals.

Director Chandler summarized the proposed amendments:

- Zoning – Amendments include the prohibition of RV Parks within all residential zoning districts. New RV Parks may be permitted only within the General Commercial, Commercial Light Industrial, Recreational Commercial and Industrial zones.
- Review Process – RV Parks will be processed as a Site Plan Review rather than a Conditional Use Permit. There is also a provision for quasi-judicial review through the Conditional Use Permit in the event there are stays longer than one year.
- Development Standards additions:
  - Prohibited siting – RV spaces and park buildings may not be located in the flood plain, stream corridors or wetlands.
  - Screening – Expanded to clearly define requirements for surfacing, parking, landscaping, minimum shade tree requirement, pedestrian circulation, lighting, and garbage collection.
- Park Operations – Includes requirement for an on-site park host, hours of operation, quiet hours, the prohibition of outside storage, and noise impacts.
- Length of Stay – Amendments include expanding length of stay provisions with the addition of utility calculations, transient room taxes, and annual reporting requirements.

## MINUTES

### Planning Commission Meeting

April 20, 2023

Page 4 of 30

- Revocation Process – This process is a reminder to the Operator to meet the approved conditions or face possible revocation.

Director Chandler emphasized these are suggested recommendations; this is not the final product. He encouraged the Commission to share any revisions or additions.

- Zoning – Added a provision to allow the expansion of existing parks in all zones if the expansion complies with standards. An expansion must bring the entire park up to Code.
- Screening – Rather than referring to a separate section of the Code, requirements are now included in Chapter 10.12, Recreational Vehicle Parks. This section expanded to include Operational Standards.
- Length of Stay – Individuals may request from the Planning Commission stays over one year through a Conditional Use Permit.
- Annual Reporting – Provides opportunity to check for accuracy and ensure the park adheres to the Code.
- Parking – A minimum of .5 spaces must be provided for each RV space; the maximum is 1.5 spaces for each RV space. Minimum spaces do not account for parking provided for park administration.

#### Discussion:

- Shade trees are included under Landscaping. One tree for every five RV spaces is required. Currently, shade trees are not defined in the Code. Staff will review the specifics and return to the Commission.
- The .5 spaces per RV space will be rounded up.
- A recent applicant spoke at length about RV tenant law. Will that be disregarded? Director Chandler replied the current Code states, “Except for a park manager, no space may be used for permanent residency.” That statement was removed. This Code may be affected by Senate Bill 2634.
- Why will expansion be allowed in residential zones? What is the difference between improvement and expansion? Should a park in a residential zone be allowed to increase the number of units?

Commission consensus was to remove the expansion language.

Director Chandler stated a definition would be created for shade trees.

Prior to proceeding with a formal land use application, Staff will ensure consistency, grammar, and legal sufficiency. Because RV Parks will be removed from residential zones, a Ballot Measure 56 notice is required. Each residentially zoned property will receive a notice prohibiting an RV Park on their property. The notice includes specific language, “This change may impact your property value.” Following that, DLCD and County Planning will be noticed for their comments and the changes will go through the Legislative Public Hearing process. A

reasonable timeline anticipates adoption in June or July, followed by City Council adoption in September. The amendments will then go into effect in October.

### **ACTION ITEM**

#### **Bylaws of the Planning Commission**

Director Chandler provided the staff report. He stated the Planning Commission is directed by a set of bylaws providing rules and procedures for meetings. As a result of COVID-19, public meeting format and procedures have changed. These changes are not currently addressed in the PC Bylaws. To address these changes and improve efficiency, Staff conducted a comprehensive update of these Bylaws. Proposed changes include:

- Organization –
  - Powers and duties will follow ORS Chapter 227 and The Dalles Municipal Code.
  - Term lengths.
  - Removal of the anticipation that the Vice Chair will be the incoming Chair.
  - Attendance and notice requirements – It is expected Commissioners will attend in person. Video conferencing is available with the following requirements: a stable internet connection, no background noise, no visual distractions, and remaining on screen.
  - A 24-hour notice is required for absences.
  - The definition of quorum was expanded to cover Commission vacancies.
  - Public comment provisions were added. Public comment and public testimony was reduced from five minutes to three minutes.
- Commission Appointments – Enhanced the selection to change from very specific requirements to any reasonable means.
- Public Hearings – Removed the 45-day hearing expectation. The Community Development Department follows State law for land use timelines. It is CDD policy to process each land use application within 45 days, but it is not a requirement.
- Staff will analyze Planning Commission conditions of approval the night of a meeting to ensure there are no adverse impacts on any local agency or local departments, and to ensure all conditions are applicable to state law.
- Ethics – City Attorney Kara expanded on ethics at the last meeting; this section will remain in the bylaws.
- Repeal, Limitations and Conflicts of Law – Expanded language.

Chair Cornett requested Attorney Kara's memo (Attachment 3) be provided along with the Bylaws. Commissioner Case suggested the Commissioners sign an acknowledgement stating they have received and read both documents.

Attorney Kara suggested Commissioners receive a “welcome packet” providing information on the Planning Commission and Commissioner responsibilities. Attorney Kara will follow up with Staff.

Commissioner Grant referred to Section 1. B. which crossed out “...shall be composed of seven members appointed by the Mayor.” Director Chandler clarified the Bylaws refer the reader to The Dalles Municipal Code (Code). Should City Council decide to amend the Code, the amendments will be reflected in the Code, removing the necessity of updating the Bylaws.

Attorney Kara noted not all of the Bylaws are defined by the Code. Essential components of any commission are included in Chapter 11.04 of the Code. Requirements exclusive to the Planning Commission are included in the Bylaws.

It was moved by Cornett and seconded by Poppoff to adopt the proposed Bylaws. The motion carried 5/0; Case, Cornett, Grant, Mascher, and Poppoff voting in favor, none opposed, Pena and Portela absent.

#### **STAFF COMMENTS / PROJECT UPDATES**

Director Chandler noted the May 4 meeting will be cancelled to avoid a scheduling conflict with City budget meetings.

The May 18 meeting will include the Housing Needs Analysis, led by consultant Matt Hastie. The Commission will be joined by the Technical Advisory Committee.

The League of Oregon Cities will provide training for Commissioners in late May. Please contact Staff if interested in attending.

Associate Planner Kaitlyn Cook and Planning Technician Brad Mead have created a story map for density requirements. The story map will lead an applicant through the process of determining density.

The Urban Renewal Agency (Agency) recently approved the new Incentive Program to incentivize development in the urban renewal area. Eligible projects within the area may qualify for property improvements. The Agency will pay up to \$10,000 for each eligible housing unit in the urban renewal boundary. Guidelines and the application will be available on the City’s website in early May.

The City is engaged in bid process for abatement and demolition of the Tony’s Building. The site visit received a fair amount of interest. The Agency’s goal is to demolish the building and research development of the site. Business Oregon awarded \$60,000 for the project.

#### **COMMISSIONER COMMENTS / QUESTIONS**

None

#### **ADJOURNMENT**


Chair Cornett adjourned the meeting at 7:22 p.m.

MINUTES  
Planning Commission Meeting  
April 20, 2023  
Page 7 of 30

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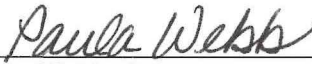
Submitted by/  
Paula Webb, Secretary  
Community Development Department

SIGNED:

  
Cody Cornett, Chair

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ATTEST:

  
Paula Webb, Secretary  
Community Development Department

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# City of The Dalles Planning Commission

THURSDAY, APRIL 20, 2023 | 5:30 PM

## Conditional Use Permit No. 204-22

**Applicant:** Maul, Foster, & Alongi, Inc

**Address:** 2650 River Road

**Assessor's Map and Tax Lot:** 2N 13E 33 taxlot 200

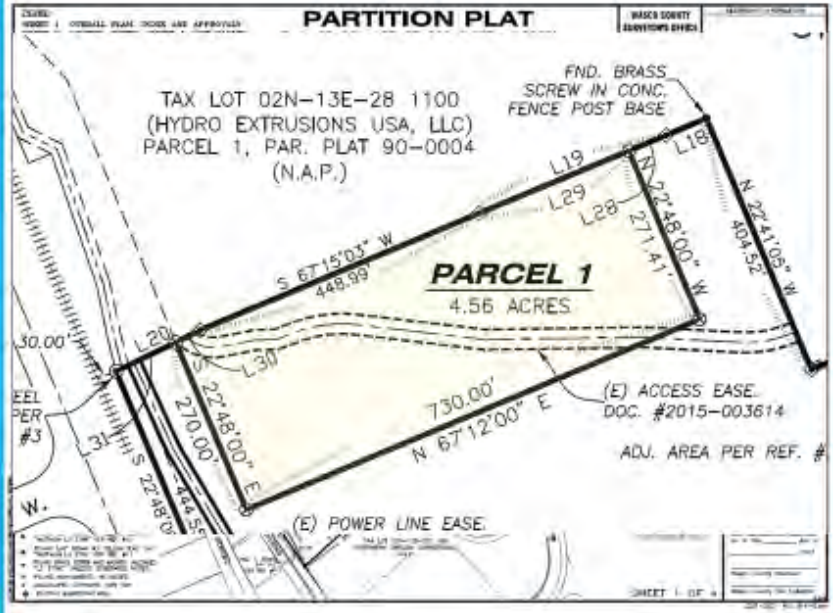
**Zoning District:** Industrial "I"

**Proposal:** Approval to site and construct a municipal water pump station. Once completed, these improvements will be owned and maintained by the City of The Dalles. Approval of the Conditional Use Permit (CUP) will establish a Community Facilities Overlay (CFO) on a proposed future parcel.



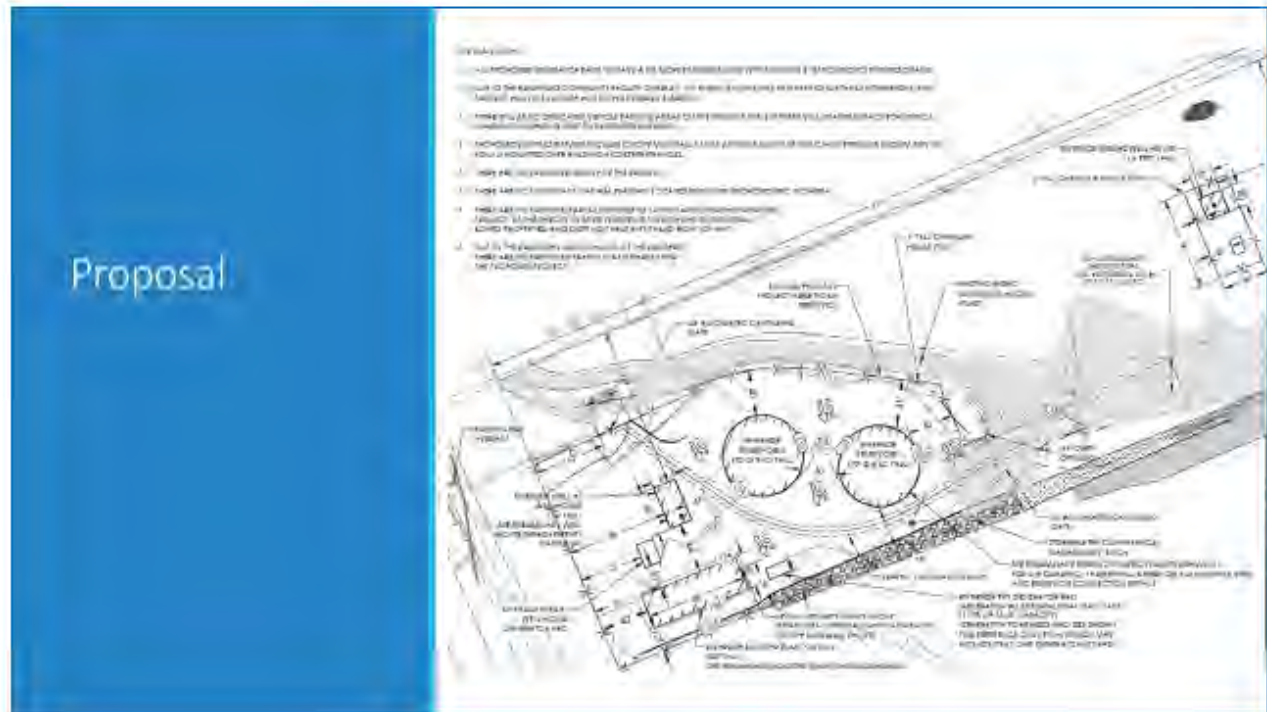
## Background

Subject to approval of minor partition application.  
Community Facilities overlay will be established upon approval.



## Proposal





## Impact (TDMC 10.3.050.040)

1. Noise impacts across the property line shall not exceed 60 decibels. Noise related to traffic impacts shall not be included in this determination. Nothing in this Article shall modify other noise ordinance standards as adopted by the City.

### Mitigation:

- Pumps enclosed in concrete buildings.
- Sound attenuating barrier along the southern property line.

## Impact (TDMC 10.3.050.040)

- Lighting impacts across the property line shall not exceed 0.5 foot-candles (a foot-candle is the amount of light falling upon a 1-square-foot surface which is 1 foot away from a 1-candlepower light source.)
- Dust and other particulate matter shall be confined to the subject property.

## Impact (TDMC 10.3.050.040)

- The following odors shall be completely confined to subject property:
  - Industrial and/or chemical grade chemicals, solvents, paints, cleaners, and similar substances;
  - Fuels; and
  - Fertilizers, manure, or other animal waste products, other than for landscape installation and maintenance.
- Vibrations shall not be felt across the property line.

## Impact (TDMC 10.3.050.040)

6. The transportation system is capable, or can be made capable, of supporting the additional transportation impacts generated by the use. Evaluation factors shall include, but are limited to:
- 6.1 Street designation and capacities;
  - 6.2 On-street parking impacts;
  - 6.3 Bicycle safety and connectivity;
  - 6.4 Pedestrian safety and connectivity

## Exceptions to Standards

### Section 10.5.090.060 B. Parking

B. *Parking. The following permitted and conditional uses may be exempted from the off-street parking requirements of this Title as follows:*

1. *Vehicles and Bicycles.*
  - 1.1 *Uses which the Director determines have no employees on site and are not open to the public.*
  - 1.2 *Wireless communication facilities.*

## Proposed Conditions Required Prior to Final Plan Approval:

1. Final plan submission must meet all the requirements of The Dallas Municipal Code, Title 10 Land Use and Development, and all other applicable provisions of The Dallas Municipal Code.
2. All final plans consistent with all Conditions of Approval shall be approved by the Community Development Director and the City Engineer prior to the issuance of a building permit.
3. The sound attenuating barrier along the southern property line must be shown on a revised site plan.
4. All construction/design plans for public infrastructure, improvements, or rights-of-way (ROW) shall be approved by the City Engineer.
5. Applicant is required to coordinate any franchise utility requirements, timing of installation, and payment for services with the appropriate utility provider.
6. MIP 4 (19-27.004) be approved and the final plat shall be recorded.

## Commission Alternatives

1. **Staff recommendation** The Planning Commission move to approve Conditional Use Permit 204-22, with the proposed Conditions of Approval included with this report, based upon the findings of fact and conclusions of law set forth in the Agenda Staff Report.
2. If the Planning Commission desires to deny Conditional Use Permit 203-22, move to direct staff to prepare a resolution of denial. The Planning Commission shall identify the specific criteria concerning this decision.



# City of The Dalles Planning Commission

THURSDAY, APRIL 20, 2023 | 5:30 PM

## Zoning Ordinance Amendment 108-23

The proposed zoning ordinance amendments aim to maintain clear terminology, adapt to modern technology, and restructure a portion of the code. In addition to reorganizing sections of the Title 10 land use ordinance.

## Terminology Changes

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### 10.3.020.010 Purpose

- A. This Article describes the review procedures required to make final decisions regarding applications for ministerial actions, **planning administrative** actions, and legislative actions, and to provide for appeals from aggrieved persons or parties.

### 10.6.010.050 Screening – Hedges, Fences, Walls other than Retaining Walls, Berms

1. Residential **Areas Zones**.
2. Commercial and Industrial **Areas Zones**. Barbed wire may be allowed above the fence or wall height requirement.

## Review Procedure Changes

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### 10.3.030.020 Review Procedures

- B. Applications. In addition to the requirements of Article 3.010: Application Procedures, site plan review applications shall be accompanied by **one electronic copy of plans consistent with Article 6.180. Paper copies may be required as a condition of approval with all applications.** ~~at least 15 copies of the design package and 10 copies of the plans, as well as 10 copies of the design package and 10 copies of the plans are now only 5 copies of the design package and 5 copies of the plans are now only 5 copies of the design package and 5 copies of the plans~~

## Review Procedure Changes

### 10.3.020.040 Administrative Actions

~~D. Time Limits. All applications processed as administrative actions shall be approved, approved with conditions, denied, or postponed with consent of the applicant within 45 days after the filing of a complete application.~~

### 10.3.020.050 Quasi-Judicial Actions

#### C. Public Hearings.

~~1. Complete applications for quasi-judicial planning actions shall be heard at a regularly scheduled Commission or Council meeting within 45 days from the date the application is deemed complete.~~

## Entrance Standards Changes

### 10.5.010.060 Development Standards

#### Building Orientation

The ~~front building line shall be~~ **building shall be oriented** parallel to the street or private accessway. Orientation on private accessway is allowed only if there is no street frontage. Practical adjustments may be made to accommodate street curvature. ~~The front building line shall include the front door.~~ **Primary building entrances are required to have a clear pedestrian connection to the street/sidewalk constructed of concrete, asphalt, pavers, or other hard surface. Primary entrance located on the rear building face is prohibited.** ~~Front building orientation cannot be modified from its original design to meet this section.~~



## The Dalles Comprehensive Plan Goals

### **Goal #1. Citizen Involvement.**

- **Policy 3.** *The land-use planning process and policy framework shall include opportunity for citizen input as a part of the basis for all decisions and actions related to the use of land.*

### **Goal #2. Land Use Planning.**

- **Policy 6.** *Implement this Plan through appropriate ordinances and action. Implementing measures shall be developed to allow administrative review and approval authority.*
- **Policy 8.** *Implementing ordinances shall be consistent with this plan.*

## The Dalles Comprehensive Plan Goals

### **Goal #10. Housing.**

- **Policy 8.** *Flexibility in implementing ordinances is needed to accommodate infill and to foster a variety of development scenarios and housing options.*
- **Policy 16.** *Development standards in all density areas shall be revised in order to permit more flexibility in site planning and development. New standards shall consider flexibility for lot sizes, setbacks, accessory residential uses on the same lot, parking, alleyways and other development features.*
- **Policy 17.** *Development compatibility standards shall be implemented for all density areas. Compatibility standards are intended to ensure that new development is compatible with its surroundings and enhances the character it is located within. New standards shall consider landscape, building setback, building height and bulk, main entrance, parking, building design and additional standards applicable in historic districts.*

## The Dalles Comprehensive Plan Goals

### **Oregon Revised Statute (ORS) 197.307(4)**

*A local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:*

- a) May include, but are not limited to, one or more provisions regulating the density or height of a development.*
- b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.*



# City of The Dalles Planning Commission

THURSDAY, APRIL 20, 2023 | 5:50 PM



**CITY ATTORNEY'S OFFICE**  
**CITY OF THE DALLES**  
313 COURT STREET  
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1150  
FAX (541) 296-6906

## MEMORANDUM OF LAW

**TO:** Planning Commission  
**FROM:** Jonathan Kara, City Attorney  
**DATE:** April 6, 2023  
**RE:** *Legal Requirements for Land Use Decisions*

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This Memorandum provides Commissioners with the fundamentals on the decision-making expectations imposed by Oregon law on the City and its Planning Commission and is intended to be shared with future Commissioners prior to their attendance at their first meeting after appointment. Any Commissioners with any questions at any time are encouraged to contact the City Attorney's Office for advice on these matters of law.

### I. WHAT IS A *LAND USE DECISION*?

#### A. Land Use Decision

A *land use decision* is a discretionary decision by the City applicable to the City's land use regulations, unless exempt under one or more of the statutory exceptions (discussed below). The statute establishing that definition and its exceptions is codified as ORS 197.015(10)(a).

In simplified and non-exhaustive terms, a *land use decision* is:

1. a final discretionary decision or determination;
2. made by the Community Development Department (**CDD**), Planning Commission, or City Council; and
3. concerning the adoption, amendment, or application of Statewide Planning Goals, The Dalles Comprehensive Land Use Plan (**Comprehensive Plan**) provisions, or the City's Land Use and Development Ordinance (**LUDO**, Title 10 of The Dalles Municipal Code).

#### B. Limited Land Use Decision

Oregon law distinguishes a *land use decision* from a limited land use decision in ORS 197.015(12). The key distinctions are: (1) a *limited land use decision* involves land within an urban growth boundary (**UGB**) and (2) the procedural requirements are less cumbersome for a *limited land use decision*.

Specifically, a *limited land use decision* involves:

1. a final decision or determination;
2. made by CDD, Planning Commission, or City Council regarding a site within the City's UGB; and

3. concerns the approval or denial of a tentative subdivision or partition plat, or the approval or denial of an application based on discretionary standards regulating physical characteristics of an outright permitted use (e.g., site or design review).

Examples of limited land use decisions include tentative subdivision plats for land within the UGB, plan review decisions, and review of uses permitted outright based on discretionary standards (e.g., approval of residential use in a residential zone).

The review process for *limited land use decisions* is less formal and shorter than for land use decisions. ORS 197.195 requires written notice to property owners within 100 feet of the site for which the application is made, a 14-day comment period, a written list of the applicable criteria upon which the decision will be made, and notice of the final decision. The City may, but is not required, to provide a hearing before the City on appeal of the final decision. However, if a local hearing is provided, it must comply with procedural requirements in ORS 197.763. The final decision is not required to have complete or exhaustive findings and may take the form of a “brief statement” explaining the relevant standards and criteria, states the facts relied upon in reaching the decision, and explains the justification for the decision based on those criteria, standards, and facts. However, as a practical matter, the findings for a *limited land use decision* will look nearly identical to the findings for a standard land use decision.

### **C. Land Use Decision Does Not Include...**

One reason for the relative complexity of defining a *land use decision* in Oregon is the statute provides an extensive list of what it does not include. The list below is not comprehensive but describes the actions you are most likely to encounter that are not land use decisions per ORS 197.015(10)(b). The Planning Commission’s decision is not a *land use decision* if it:

1. involves land use standards not requiring interpretation or the exercise of policy or legal judgment (i.e., ministerial decisions);
2. approves or denies a building permit under clear and objective land use standards;
3. is a limited land use decision;
4. involves a transportation facility otherwise authorized by and consistent with the Comprehensive Plan and LUDO;
5. is an expedited land division as described in ORS 197.360; or
6. approves or denies approval of a final subdivision or partition plat, or determines whether a final subdivision or partition plan substantially conforms to the tentative plan.

## **II. LAND USE BASICS**

### **A. City Authority**

In Oregon, several levels of government simultaneously regulate land use — the state, cities, counties, and special districts. A local government, such as a city or county, adopts its own land use plan as well as regulations to implement the plan. However, the local government’s plan and regulations must be consistent with and implement state policies set forth in the Statewide Planning Goals and Oregon Administrative Rules. Additionally, those cities and counties located within Metro must meet regional requirements established by Metro.

Oregon law requires coordination between cities and counties. Except for cities and counties within Metro, counties are responsible for coordinating all planning activities impacting land within the county, including planning activities of cities, special districts, and state agencies. Within Metro’s boundary, Metro is designated by statute to coordinate planning activities.

State law imposes substantial procedural requirements for local land use decisions, depending on the type of land use decision being made. Due to the complexity involved in determining what type of decision is being made, the CDD Staff and the City Attorney will generally evaluate the nature of the particular decision in any given case.

## **B. State's Role in Local Land Use**

### *1. Land Conservation and Development Commission.*

The Oregon Land Conservation and Development Commission (**LCDC**) adopts the statewide land use goals and administrative rules, assures local plan compliance with applicable land use laws, coordinates state and local planning, and manages the coastal zone program. LCDC comprises seven appointed volunteer members and meets about every six weeks to direct the work of the Department of Land Conservation and Development (**DLCD**).

DLCD is the state agency administering the state's land use planning program. DLCD works under and provides staff support for LCDC. DLCD is organized into five divisions: Community Services, Planning Services, Ocean and Coastal Services, Measure 49 Development Services, and Operations Services.

Under ORS 197.090(2), DLCD is authorized to participate in local land use decisions involving statewide planning goals or local acknowledged plans or regulations. With LCDC approval, DLCD may initiate or intervene in the appeal of a local decision when the appeal involves certain pre-established factors laid out in ORS 197.090. DLCD is also involved in reviewing and acknowledging local comprehensive plans.

When *good cause* exists, LCDC may order a local government to bring its plan, regulations, or decisions into compliance with statewide planning goals or acknowledged plans and regulations: this is known as an *enforcement order* and can be initiated by LCDC or a citizen but is infrequently used. LCDC may also become involved in a local government action if a petitioner requests an enforcement order and LCDC finds there is good cause for the petition. If LCDC determines there is good cause, LCDC will commence proceedings for a contested-case hearing under ORS 197.328. Failure to comply with an enforcement order under ORS 197.328 may result in the loss of certain public revenue, including state shared revenue. *Good cause* indicia include (a) the Comprehensive Plan or LUDO provision is not in compliance with the goals by the date set in statute, (b) the City does not make satisfactory progress toward coordination, or (c) the City engaged in a pattern or practice violating the Comprehensive Plan or LUDO.

### *2. Land Use Board of Appeals.*

Most appeals of a local land use decision go to the Land Use Board of Appeals (**LUBA**). LUBA comprises three board members appointed by the governor and confirmed by the state senate. Anyone who participated in a local land use decision may appeal the decision to LUBA within 21 days of the date the decision becomes final. **Note:** the date the decision becomes "final" is when it is put in writing and signed by the decision-maker (e.g., CDD Director, Planning Commission Chair, Mayor).

Once notice of appeal is served, the City must compile and submit the record of the decision to LUBA within 21 days. LUBA is required to issue a decision on the appeal within 77 days after the record is transmitted, though there are some exceptions to this deadline. Finally, LUBA's decision may be appealed to the Oregon Court of Appeals.

An important aspect of an appeal is LUBA’s review is limited to the contents in the record. Therefore, it is important the Planning Commission and City Council ensure all applicable criteria, goals, arguments, staff reports, studies, etc. are included in the record in the event of an appeal. Such care can impact the outcome of any appeal.

For example, the Oregon Court of Appeals found the City of Salem’s interpretation of its local code provisions was not a “new” issue and prohibited the appellant from raising the issue on appeal because, even though the provision was not specifically referenced in the city’s notice of hearing, the record showed a member of the city council raised the provision at the hearing and thus placed the provision in the record.

Because of the specific procedural requirements for an appeal to LUBA, CDD staff and the Planning Commission Chair work closely with the City Attorney on any appeals. It is important to notify the City Attorney immediately upon receipt of an appeal.

### 3. *Statewide Planning Goals.*

The purpose of the Statewide Planning Goals is to implement and consistently apply state land use policies throughout Oregon. The Statewide Planning Goals emphasize citizen involvement, a public planning process, management of growth within UGBs, housing and preservation of natural resources, and specific types of lands called *resource lands*.

Most of the goals are accompanied by “guidelines,” which suggest how to apply a goal but are not mandatory. The goals have been adopted as administrative rules codified as OAR Chapter 660, Division 015. The City’s Comprehensive Plan and LUDO must be consistent with the goals and are periodically reviewed by LCDC for compliance. Oregon’s 19 Statewide Planning Goals comprise:

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

### III. TYPES OF LAND USE DECISIONS

#### A. Quasi-Judicial Process and Appeals

##### 1. Overview.

A quasi-judicial decision typically applies pre-existing criteria to an individual person or piece of land. Determining whether a proceeding is *quasi-judicial* turns on whether the decision displays the characteristics of such decisions identified by the Oregon Supreme Court in 1979:

- (a) the proceeding must be *bound to result in a decision*;
- (b) the local government must be *bound to apply preexisting criteria to concrete facts*; and
- (c) the decision must be *directed at a closely circumscribed factual situation or a relatively small number of persons*.

While the court held no single factor is determinative, the more closely a local decision comes to meeting these criteria, the more likely the decision is quasi-judicial. Typical examples of quasi-judicial decisions include design review, partition and subdivision, a zone change for a small number of lots or parcels, and development permits and variances.

In Oregon, a quasi-judicial decision must comply with general standards of due process. This requirement arises from a 1973 Oregon Supreme Court decision. Due process standards typically include providing applicants:

- (a) an opportunity to be heard;
- (b) an opportunity to present and rebut evidence;
- (c) an impartial decision-maker; and
- (d) a record and written findings adequate to permit judicial review.

##### 2. Oregon Law Procedural Requirements.

The procedures applicable to the City's review of quasi-judicial applications are largely determined by ORS 197.763. For example, at the *initial evidentiary hearing*, the Planning Commission Chair must read a statement listing the applicable criteria in the LUDO, ask that testimony and evidence be directed at the applicable criteria (or other criteria in the Comprehensive Plan or LUDO the person believes apply to the decision), and stating the failure to raise an issue with sufficient specificity to allow the City and other parties an opportunity to respond prohibits an appeal to LUBA based on that issue. The Planning Commission Chair must also be advised of the requirement to raise any constitutional claims at the beginning of the hearing under ORS 197.796. Typically, these statements are included in a script for the Planning Commission Chair but also may be presented by CDD staff or the City Attorney.

At the close of the *initial evidentiary hearing*, any participant may request the record be held open in order to allow additional evidence regarding the application. The City can either hold the record open for a specific period to allow additional written evidence or continue the hearing to a specific date, time, and place at least seven days in the future. It is the City's choice whether to continue the hearing or leave the record open, which may depend on the nature of the evidence to be submitted and the time available in which to render a final decision.

If new written evidence is submitted at the continued hearing, a person may request the record be left open for at least seven days to submit additional written testimony/evidence. Then, after all of the written evidence has been submitted and the record is closed to all other parties, the

applicant is allowed at least seven days to submit a final written argument in support of the application.

Approval or denial of a quasi-judicial land use application must be based on standards and criteria set forth in the LUDO. The City's interpretation of its LUDO must be consistent with the express language. The courts will defer to a City's interpretation of its own code, provided the interpretation is made by the City Council. Conversely, the courts do not defer to an interpretation made by a lower body such as the Planning Commission or CDD Director.

The City's final decision must include a brief description of the criteria, a description of the evidence addressing each criterion, and the reasoning for approving or denying the application. This part of the decision is generally referred to as the *findings*. The legal requirements applicable to the City's findings may not be cursory or conclusory or arbitrary or capricious.

### 3. *LUDO Requirements.*

Under ORS 227.170(1), a city may establish its own hearing procedures provided they are consistent with ORS 197.763. The LUDO's review procedures are codified as TDMC Chapter 10.3 (*Application Review Procedures*) and the City's quasi-judicial process is detailed in TDMC 10.3.020.050.

#### **B. Final decision (Quasi-Judicial)**

ORS 227.173(4) requires the final decision on a *permit* application be made in writing and sent to "all parties to the proceeding." A *permit* is a discretionary approval of development, excluding limited land use decisions (which have their own statutory process). TDMC 10.3.020.020 details the City procedures for issuing a final decision for different types of decisions.

Pursuant to Oregon law, the City must make a final decision within 120 days of the date the application was *deemed complete*, including resolution of all local appeals. While the applicant may choose to extend the deadline in writing, the total of all extensions may not exceed 245 days. Accordingly, the City must reach a final decision on an application for a *permit*, *limited land use decision*, or *zone change* within one year from the date the application is deemed complete.

#### **C. Legislative Process**

The procedural requirements for a *legislative* land use decision differ from the procedural requirements for a *quasi-judicial* decision. Legislative decisions typically involve the adoption of more generally applicable policies or standards applicable to a variety of factual situations and a broad class of people and land. Common examples include amending the Comprehensive Plan, a zone change applicable broadly to large areas within the city limits, or text changes to the LUDO. TDMC 10.3.020.060 details the City's review procedures and process for legislative actions. Because a legislative decision is the expression of City policy, the City is not required to reach a decision on a legislative proposal and may table the issue or decline to review it altogether.

## **IV. EX PARTE CONTACTS, CONFLICTS OF INTEREST, AND BIAS**

### **A. Right to an Impartial Decision**

The purpose of declaring ex parte contacts, conflicts of interest, and bias is to ensure quasi-judicial land use applications are decided by an impartial hearing body. Your declaration of any



ex parte contacts, conflict of interest, or bias is required prior to conducting a hearing on any quasi-judicial land use decision.

**Note:** as a resident of the community, Commissioners frequently have personal beliefs, business associations, membership with organizations, and relatives living and working within the community who may be impacted directly or indirectly by issues presented by a land use application. Disclosing these beliefs or associations is required only where such beliefs or associations will impact your ability to render an impartial decision. The exception to this general rule is ex parte contacts: in a quasi-judicial setting, you must disclose any ex parte contacts regardless of whether the ex parte contact impacts your impartiality.

Once a Commissioner discloses an ex parte contact, conflict of interest, or bias and announces publicly their ability to render an impartial decision, the burden shifts to the public to prove the person is not capable of making an impartial decision. However, the mere possibility an improper ex parte contact occurred is not sufficient for the public to meet its burden.

With respect to bias or a conflict of interest, a Commissioner may abstain and not participate in a decision if they believe their bias or a potential conflict of interest will prevent them from being impartial. Where a Commissioner (including relatives and business associates) will financially benefit from the decision, Oregon law prohibits them from participating in the decision unless a class exception exists. Bias and conflict of interests are discussed in more detail below.

Although not required, a person who recuses themselves from the decision may step down from the dais and join the general public seating during the discussion and decision. There is no legal requirement preventing an abstaining Commissioner from participating as an interested citizen; however, when a Commissioner would realize an *actual* financial benefit, the City discourages them from so participating as a citizen in an effort to preserve the integrity of these public processes.

## **B. Ex Parte Contacts**

An ex parte contact is commonly understood as a meeting, written communication (including email), or telephone conversation between a Commissioner and an interested party outside of the public hearing process. While this is generally true, the scope of ex parte contacts is actually much broader and encompasses *any evidence (not fully disclosed) relating to a pending application and relied on by a Commissioner in making a final decision*. The purpose of disclosure is to provide interested parties an opportunity to consider and rebut evidence.

**Note:** ex parte contacts are not unlawful. While contact with interested parties to broker a behind-the-scenes deal on a particular decision is often a political disaster, legally such contact is a problem only where the substance of the meeting is not disclosed during a public hearing and recorded as a part of the public record (i.e., in the minutes). In most cases, the better approach is to rely on City staff to work directly with interested parties and avoid the risk of engaging in ex parte discussions.

### *1. Statutory Provisions.*

Consistent with ORS 227.180(3), and with respect to the City's decision-making, no Planning Commission decision or action is invalid due to a Commissioner's ex parte contact if the contacted Commissioner places on the record the substance of any written or oral ex parte communications concerning the decision or action and makes a public announcement of the content of the communication and of the parties' right to rebut its substance at the initial evidentiary hearing on the subject following the communication.

(a) Full Disclosure

Ex parte contact does not render a decision unlawful so long as there is full disclosure. Disclosure must occur at the earliest possible time in the decision-making process. There are two components to full disclosure: (1) placing the substance of the written or oral ex parte contact on the record and (2) a public announcement of the ex parte contact. Both requirements are satisfied by disclosure at the initial public hearing (public announcement included as a part of the record). In addition, the Planning Commission Chair is required to provide the general public with an opportunity to rebut the substance of the ex parte contact.

(b) Communications with Staff

Communications with City staff are not considered an ex parte contact. However, City staff may not serve as a conduit for obtaining information outside of the public process unless that information is disclosed. In practice, decision makers may freely discuss issues and evidence with staff. Where an interested party requests City staff to communicate with a decision maker or other evidence is obtained through City staff the decision maker relies on without disclosure (or is not otherwise included as a part of the public record, such as the staff report), an ex parte contact problem occurs. Because an ex parte contact is a procedural error, the party appealing a decision must show the ex parte contact was prejudicial. In general, evidence a relevant ex parte contact was not disclosed should be regarded as enough to require remand of a decision.

2. *Common Sense.*

Common sense judgment can go a long way in deciding what should be disclosed. Generally, a decision maker's instincts are correct about whether information is relevant to the decision and should be included as a part of the record through disclosure. The ex parte contact rules should not be viewed as an impediment to the Planning Commission's ability to conduct its business. The majority of information used to form general opinions existing prior to but which may impact a decision are not subject to disclosure. Specific information obtained in anticipation of or subsequent to an application being filed directly relevant to the decision and unavailable to the rest of the interested parties should always be included in the public record through disclosure.

3. *Scope of Ex Parte Contacts.*

As indicated, ex parte contacts are not limited to conversations with interested parties or other members of the community. The concept of ex parte contacts is much broader. For example, consider the following when not fully disclosed:

- (a) A site visit is not in itself an ex parte contact unless it involves communication between a decision maker and a party or other interested person. However, site visits do invoke procedural requirements of disclosure and opportunity to rebut. If a site visit is conducted and conversations take place between decision makers and applicants and/or opposition that are then used in making the final decision, or give the appearance of so being used, the content of those conversations must be disclosed or the decision will be remanded.
- (b) Communications with City staff can be ex parte contacts if the staff member acted as a conduit for the transfer of information from persons for or against the proposal or where the contact occurred after the record closes (e.g., staff submittal of evidence after the record closes could prejudice parties' substantial right to rebut evidence and requires remand).

- (c) Allegations CDD staff, who were not the final decision makers, were biased in favor of an application are insufficient (even if true) to demonstrate the final decision makers were biased.
- (d) Newspaper articles and television or radio broadcasts are ex parte contacts when they relate to a pending application and are relied on by a Commissioner in making a final decision.
- (e) All other outside discussions of a pending application are ex parte contacts when they relate to a pending application and are relied on by a Commissioner in making a final decision.

### **C. Conflict of Interest**

The Oregon Government Ethics Commission (**OGEC**) oversees the implementation of the conflict of interest statutes under ORS Chapter 244. OGEC imposes personal liability on a Commissioner's violation of the statute or its regulations. The City Attorney's Office represents the City, including its Planning Commission, in all legal matters but does not represent any Commissioner as an individual with respect to any personal liability.

#### *1. Actual vs. Potential Conflict of Interest.*

An actual conflict of interest is defined under ORS 244.020 as any decision or act by a public official that would result in a *private pecuniary benefit or detriment*. An actual conflict extends not only to financial gain or loss to individual Commissioners but also to any relative, household member, or any business with which the Commissioner or relative is associated. A potential conflict of interest is distinguished from an actual conflict of interest in that the benefit or detriment **could** occur, while the benefit or detriment **would** occur in an actual conflict of interest situation.

In the case of an actual conflict of interest, a Commissioner must both:

- (a) announce the actual conflict of interest; and
- (b) refrain from taking official action.

In the case of a potential conflict of interest, a Commissioner must announce the conflict but may still take action on the issue. The disclosure requirements for both potential and actual conflicts do not apply to *class exceptions*.

#### *2. Class Exceptions.*

Often a land use decision has at least some indirect financial impact on an individual Commissioner and other members of the community. For example, legislative rezoning and LUDO text amendments often entail changes to the development rights of property owners throughout the City. To address this issue, Oregon law provides a class exception to such conflicts of interest. If the Commissioner is part of a class consisting of a larger group of people impacted by a decision, no conflict exists. There is no hard and fast rule on the size or type of class to which the conflict exemption applies. In general, legislative rezoning decisions impacting the community as a whole are exempt. The class exemption depends on the facts of each case. Several examples are provided below.

#### *3. Examples.*

- (a) Commissioners living within proximity of an application for the continuance of a nonconforming mining operation failed to disclose the location of their residences during the local process, so LUBA remanded and required disclosure.
- (b) If the City develops an ordinance limiting development in proximity of streams and other water bodies, a Commissioner who owns property including an intermittent stream impacted by the ordinance clearly falls within the class exception because they are one of thousands of landowners impacted by the ordinance.
- (c) If a Commissioner owns commercial property in the City and the City considered establishing an urban renewal area including 260 acres of land, but the Commissioner owns two tax lots of approximately 122 acres of commercial area within the proposed urban renewal area, Oregon law provides the class exemption applies so long as the benefits from the urban renewal area apply equally to all owners.
- (d) If a Commissioner owns property directly impacted by the development of a manufactured home park (e.g., by traffic from the proposed development), Oregon law provides the Commissioner may actively oppose the application because the number of property owners impacted by the development was of a sufficient size to trigger the class exception. (**Note:** this example does not address the issue of *bias* at all. Although the OGEC found a class exception in this case, there is a very real chance a Commissioner's participation with an opposition group is evidence of actual bias that would preclude their participation in the final decision.)

#### **D. Bias**

A biased decision maker substantially impairs a party's ability to receive a full and fair hearing. Bias can be in favor of or against the party or the application. Generalized expressions of opinions are not bias.

Local quasi-judicial decision makers are not expected to be free of bias but they are expected to (1) put whatever bias they may have aside when deciding individual permit applications and (2) engage in the necessary fact finding and attempt to interpret and apply the law to the facts as they find them so the ultimate decision is a reflection of their view of the facts and law rather than a product of any positive or negative bias the decision maker may bring to the process.

##### **1. *Actual Bias.***

Actual bias means prejudice or prejudgment of the parties or the case to such a degree the decision maker is incapable of being persuaded by the facts to vote another way, including:

- (a) personal bias;
- (b) personal prejudice; or
- (c) an interest in the outcome.

The standard for determining actual bias is whether a Commissioner *prejudged the application and did not reach a decision by applying relevant standards based on the evidence and argument presented during quasi-judicial proceedings*. Actual bias strong enough to disqualify a decision maker must be demonstrated in a clear and unmistakable manner.

The burden of proof a party must satisfy to demonstrate a Commissioner's prejudgment is substantial. The objecting party need not demonstrate a majority of the Commission were influenced by the bias of one Commissioner to warrant a remand: the bias of one Commissioner is enough.

2. *Appearance of Bias.*

Appearance of bias will not necessarily invalidate a decision. However, the appearance of bias may call into question a Commissioner's ultimate decision. The main objective is to maintain public confidence in public processes.

3. *Examples.*

- (a) General Expressions of Opinion Do Not Invalidate Decisions. The Mayor of the City of Beaverton commented on an adult video store in the City: "While on a personal basis, I think the Council and I \* \* \* don't want these businesses in the community, the fact is our personal [feeling] versus our obligation as elected officials to uphold the law is very different, and so we can't base any decisions tonight based on content." Statements by City officials, including Commissioners, they would prefer a privately funded convention center, rather than a publicly financed one, also do not demonstrate the City decision makers are biased and incapable of making a decision on the merits.
- (b) Mere Association with Membership Organization Not Enough. An applicant for a dog raising farm alleged a county planning commission chair was biased by association with a nonprofit Friends of the Animals. The applicant speculated the chair gave money to this organization and opponents to the application were also members of the association. LUBA found there was no evidence provided of any communications and adequate disclosure was provided by the chair. Also, where a Commissioner is a member of a church congregation and the church applied for a land use permit, and the Commissioner has expressed concern regarding the impact proposed conditions of approval would have on church operations but nevertheless declares they are able to render a decision regarding the church's application based on the facts and law before them, the Commissioner has not impermissibly prejudged the application.
- (c) City May Adopt Applicant's Findings in Support of Decision. CDD staff accepting, reviewing, and adopting findings from the applicant is not evidence of prejudgment or bias.
- (d) Prior Recusal Does Not Prohibit Participation in Subsequent Hearing. LUBA found no error where a county commissioner failed to abstain from a decision even though the commissioner voluntarily withdrew from a prior hearing involving the same matter because of their friendship with an opponent of the proposed change.
- (e) Commissioner May Not Prejudge Applications. A planning commissioner's prior actions and written statements amounted to prejudgment of an application for a business license to operate a real estate office within a residential planned unit development. In this case, the commissioner wrote a letter to the mayor stating that there was no legal basis for permitting the office. Subsequent correspondence also revealed the antagonistic relationship between the

commissioner and the applicant. LUBA found “[i]n view of his history of actively opposing the siting of a real estate sales office within the [planned unit development], it is clear that he had prejudged the application and was incapable of rendering an impartial decision based on the application, evidence and argument submitted during the [c]ity’s proceedings on the application.”

- (f) Commissioners May Not Seek Additional Evidence. Two commissioners sought and obtained additional evidence not in the record and relied on that evidence to make a decision on a permit application. LUBA noted “[t]he role of the local government decision maker is not to develop evidence to be considered in deciding a quasi-judicial application, but to impartially consider the evidence that the participants and City planning staff submit to the decision maker in the course of the public proceedings.”