

SCAPPOOSE PLANNING COMMISSION

WORK SESSION: Thursday, August 12th, 2021 at 6:00 p.m.

1.0 ROLL CALL

Commissioners;

Kevin Freimuth Chair (in-person)
Scott Jensen Vice Chair (in-person)
Bill Blank Commissioner (in-person)
Bruce Shoemaker Commissioner (in-person)
Rita Bernhard Commissioner (virtual/call-in)
Jeannet Santiago Commissioner (in-person)
Marisa Jacobs Alternate Commissioner (in-person)

Staff;

Laurie Oliver Joseph City Planner (in-person)
Elizabeth Happala Office Administrator (in-person)

Excused;

Tim Connell Commissioner

City Attorney;

Peter Watts (in-person)

2.0 TRAINING




2.1 Webinar

Planning Commissioner Training produced by OAPA/DLCD, recorded in September 2020.

~ SLIDE SHOW FROM THE PRE-RECORDED TRAINING VIDEO

Oregon's
Statewide
Planning
Program

Northwest
Oregon
Planners
Network
Meeting

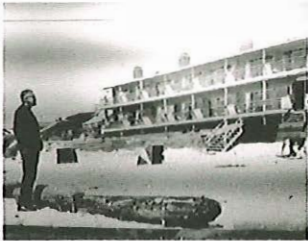


September 16, 2020



Gordon Howard,
Community Services Manager

David Dougherty
BERRY ELSNER & HANSEN, LLP

A little Oregon background



- Planning Commissions came first! (and zoning authority. 1919)
- Oregon Land Use Act of 1973 (SB 100)
 - Concerns about farmland lost to urban development
 - Other concerns, "coastal condomania," "sagebrush subdivisions," "ravaging rampage of suburbia," etc.



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 plan amendments
- Provides technical assistance

Cities and Counties

- Address local vision and needs
- Adopt 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

Comprehensive Plan

- Establishes a community vision
- Relies on a factual base, inventories
- Guides land use, infrastructure, development, conservation of natural resources, economic development, etc.

Comprehensive Plan

- Includes the following components:
 - Factual base – natural, social, and economic information
 - Goals and policies – statements of intent used to guide implementing measures
 - Maps – Plan designation map to indicate future land use

RESIDENTS AND VOTERS OF CITY OR COUNTY

CITY COUNCIL/COUNTY COMMISSION

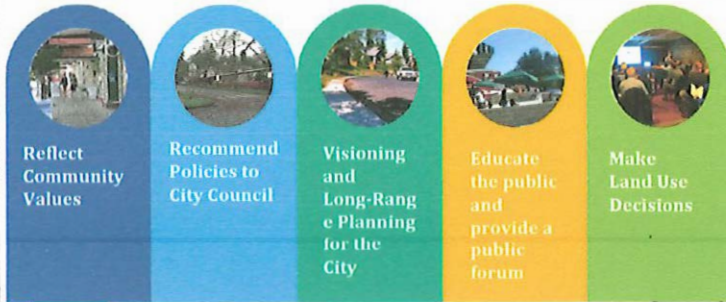
CITY/COUNTY MANAGER

PLANNING COMMISSION

CITY/COUNTY STAFF

Planning Commission - Structurally

PLANNING COMMISSION RESPONSIBILITIES



RELATIONSHIP WITH ELECTEDS

- ☐ Clearly understand your responsibilities and authority, vs. responsibilities and authority of the governing body
- ☐ Make sound recommendations with adequate findings to insure your reasoning is clear to the governing body
- ☐ 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”
- ☐ Respect staff’s competing priorities (applications, public, other city staff)
- ☐ Strongly consider staff advice and recommendations – but take a different tack if your reasoning is grounded



RELATIONSHIP WITH PUBLIC

- ☐ GOLDEN RULE FOR PUBLIC DECISION-MAKING
BE FAIR
- ☐ FOLLOW OPEN MEETING LAW
- ☐ DO YOUR HOMEWORK
- ☐ CONDUCT QUASI-JUDICIAL HEARINGS ACCORDING TO RULES
- ☐ BE RESPECTFUL TO EVERYONE, ESPECIALLY EACH OTHER
- ☐ KEEP TO THE TOPIC –DON’T DIGRESS, AND DON’T LET THE PARTICIPANTS DIGRESS EITHER
- ☐ A “DELICATE BALANCE” BETWEEN THOROUGHNESS AND EFFICIENCY!



Legal Issues for Planning Commissioners in Oregon

September 16, 2020

Presented by David Doughman
BEERY ELSNER & HAMMOND, LLP

Introduction

- What is a “land use decision”?
- Quasi-judicial versus legislative decisions
- Impartiality issues
- Evidentiary issues
- Findings

Land Use Decision Defined

- Term is defined at ORS 197.015(10).
- Simply put, it is a final decision that:
 - Adopts, amends or applies:
 - A statewide planning goal, a comprehensive plan provision or a local land use regulation.

Land Use Decisions (continued)

- Definition is subject to a number of exceptions:
 - Ministerial decisions (involving land use regulations that do not require interpretation)
 - Is a “limited land use decision” (subdivisions and most site plan and design review applications)
 - Approval or denial of final subdivision and partition plats

Land Use Decisions (continued)

- Examples include:
 - Adopting an ordinance to change a zoning or development code; and
 - Adopting an order to approve a conditional use permit.
- “Finality” in this context means in writing and signed by the decision maker.

Legislative Decisions

- Typically involve adoption of new standards that broadly apply to many people or a large geographic area.
 - Plan amendments and code or zoning ordinance text amendments
 - Plan or zoning map amendments that apply to a large geographic area

Legislative vs. Quasi-Judicial Decisions

- *Strawberry Hills* considerations:
 - Is the process bound to result in a decision?
 - Are decision makers required to apply pre-existing criteria to concrete facts?
 - Is the action directed at a closely circumscribed factual situation or a relatively small number of persons?

Quasi-Judicial Decisions

- Majority of land use decisions
- Acting as a judge instead of a legislator
- Applying specific facts to pre-existing criteria
- Must make a decision, usually within a specific time frame (e.g. 120 days or 150 days)

Quasi-judicial Decisions (continued)

- QJ decisions must comply with general standards of due process
 - Opportunity to be heard;
 - Opportunity to present and rebut evidence;
 - An impartial decision maker;
 - A record containing the evidence relied on by the decision maker and a written decision supported by findings

Decision-making Process

- Process is mostly governed by ORS 197.763 and ORS 215.416 (for counties) and ORS 227.175 (for cities)
 - Notice to surrounding property owners summarizing application and applicable standards
 - Decision made administratively with affected persons having right to a hearing; or
 - Decision made after initial evidentiary hearing, which itself can be further appealed

Impartiality Issues

- When making a QJ decision, a decision maker must be impartial
 - Must declare ex-parte contacts
 - Must declare any conflicts of interest, and recuse oneself if there is an actual conflict of interest
 - Must not be biased
- Note for legislative decisions, ex-parte contacts do not need to be disclosed and decision maker can be "biased" but conflicts of interest rules still apply

Ex-parte Contacts

- Ex-parte contacts
 - Generally thought of as a conversation occurring outside of a hearing
 - While true, scope is much broader
 - Best summarized as any evidence or testimony relating to a pending application received outside of a hearing
 - In addition to conversations, examples also include newspaper editorials, social media posts and can include site visits
 - Not unlawful to have them; it is unlawful to not disclose them

Bias

- Bias
 - Often confused with conflict of interest
 - Decision makers may still have opinions, but cannot allow personal opinions to dictate their decision
 - When making a QJ decision, a decision maker must be able to:
 - Set aside personal opinions; and
 - Objectively and dispassionately apply the facts of a given application to the law that governs it
 - No specific disclosure is required but any party to a proceeding may challenge a decision maker as being biased

Conflicts of Interest

- Conflicts of interest
 - Only involve financial interests in a decision
 - Applies to both financial gains and losses
 - Two types:
 - Potential conflict: a decision **could** result in a financial gain or loss to the decision maker, their family, members of their household or business interests
 - Actual conflict: a decision **would** result in financial gain or loss to the decision maker, their family, members of their household or business interests

Conflicts of Interest (continued)

- Potential conflicts must be disclosed but decision maker may participate in decision
- Exceptions exist:
 - The law requires the decision maker to have an interest or membership in a certain business, occupation or industry;
 - Member of a board of a nonprofit corporation; or
 - Decision will equally affect all persons in a particular class

Conflicts of Interest (continued)

- Actual conflicts must also be disclosed, but the decision maker may not participate in the decision, including any deliberation preceding the decision
- Only exception is the “rule of necessity” where a person with an actual conflict is needed in order for a quorum to exist

Evidentiary Issues

- For QJ, “substantial evidence” must exist in the entire record that would support the decision being made
- For legislative, an “adequate factual base” must exist that would support the decision
- Both are relatively deferential standards
- Both terms describe evidence that reasonable people would rely on in making a decision in day-to-day life

Findings

- Legislative decisions are not required to be accompanied by findings, but they are recommended
- QJ decision must be supported with findings that at least:
 - Identify the relevant approval standards and criteria;
 - Summarize the evidence that is relevant to decision; and
 - Explain how the evidence shows whether the relevant standards and criteria are met or are not met

Questions

- Please feel free to call or email with any questions or comments

david@gov-law.com

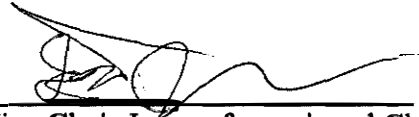
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2.2 Q&A with City Attorney Peter Watts

Commissioners asked City Attorney various questions related to the video slides presented

3.0 ADJOURNMENT

Chair Freimuth adjourned the meeting at 8:02 p.m.



Vice Chair Jensen for resigned Chair Freimuth

Attest:



Elizabeth Happala, Office Administrator