

## SCAPPOOSE PLANNING COMMISSION TRAINING

### OREGON'S LAND USE PLANNING FRAMEWORK

#### STATE OF OREGON

Requires all jurisdictions to have a Comprehensive Plan, urban growth boundaries and implementing ordinances.

#### CITY OF SCAPPOOSE

The City must comply with state planning rules, and does so by adopting land use regulations implementing these requirements.

#### LAND USE REVIEW CATEGORIES:

##### Administrative Decisions

- Type I – No discretionary decision-making and no notice, hearing or appeal.

##### Quasi-Judicial Decisions

- Type II – Limited discretion in decision-making. Notice to neighbors, written comment, Director decision, and appeal rights to the City Council.
- Type III – Discretionary review to determine compliance with criteria. Notice, public hearing by Planning Commission and appeal rights to the City Commission.
- Type IV – Typically, plan amendments and zoning map amendments applied to particular property. Notice, public hearing by Planning Commission with recommendation and final decision by the City Council.

Legislative Decisions – Long-range policy-making decisions including amendments to plan and zoning code text or map. Planning Commission recommendation and final decision by City Council. City Commission review is de novo.

#### ALL DECISION-MAKING BASED ON THE APPLICABLE STANDARDS AND CRITERIA WHICH MAY INCLUDE:

SCAPPOOSE MUNICIPAL CODE – contains land use regulations for public and private property in Scappoose. The SMC implements, among other things:

SCAPPOOSE ZONING MAP – Establishes base zone and overlay districts to property throughout the City and implements:

COMPREHENSIVE PLAN AND MAP - sets forth long-term planning goals and policies for the City - how the City achieves compliance with the Statewide Planning Goals. Includes the Transportation System Plan and various utility master plans. The comprehensive plan implements the statewide planning goals and administrative rules.

#### QUASI-JUDICIAL HEARING DISCLOSURES

- A list of the applicable criteria is provided.

- Staff report prepared 7 days in advance and is available.
- Public Testimony must be directed to the criteria.
- Failure to raise an issue precludes raising it before the Land Use Board of Appeals.
- Failure to raise constitutional issues precludes an action for damages in circuit court.
- The Applicant has a right to an impartial tribunal.

#### IMPARTIAL TRIBUNAL

Decisions must be based on the testimony and evidence that is part of the record:

- Disclose ex parte contacts on the record giving the public an opportunity to question decision-maker further.
- Ex parte contacts are facts gleaned outside the record from newspaper articles, site visits, or attending neighborhood meetings, for example.
- An objection must be made in order to preserve a challenge at LUBA on that basis. Decisions must be free of actual bias:
- “Actual Bias” - A predisposition rendering it impossible to make a decision based on the evidence and argument presented.
- No actual conflict of interest - If the decision is likely to have a direct pecuniary benefit or detriment to the decision-maker or a family member of the decision-maker, the decision-maker may not participate.
- Potential conflict of interest – Announce and determine whether to participate. If you think you may have a conflict CALL THE OREGON GOVERNMENT ETHICS COMMISSION AT (503) 378-5105

#### PUBLIC HEARING PROCEDURES

- Staff Report – Available 7 days before initial hearing
- Applicant’s Presentation
- Testimony by Interested Parties – Proponents and opponents
- Applicant Rebuttal
- Deliberation

#### NEXUS...

- Legal term used to describe a direct connection between a condition of approval and the impact created by the proposal.
- The nexus must be related to the Approval Criteria and must be explained in the findings.
- The nexus must also show that the requirement of the condition is of the same weight as the expected impact.

#### DELIBERATION AND THE DECISION

## DETERMINATION OF WHETHER THE STANDARDS ARE MET INCLUDES:

Interpreting the Applicable Criteria – Apply meaning to ambiguous standards in the purpose or policy of the provision. Focus on the plain meaning of terms taken in context. Adequate findings – An explanation of how the facts satisfy the criteria.

- Findings must explain why and should not amount to mere conclusions.
- Findings should resolve conflicts in facts and explain why one fact was deemed more reliable than another. This is particularly true when you have testimony from multiple experts.
- Findings must address all of the applicable criteria. If the criteria is not applicable, the findings should explain why this is the case.

Based on Substantial Evidence – Is there evidence in the record to support the conclusions identified in the findings. The Planning Commission and City Council are entitled to substantial deference in their determinations, but focusing on specific evidence in the record will give make defending the appeals of decisions substantially easier and may prevent appeals.

- The decision-maker can weigh the evidence and make a choice when the evidence is in conflict.

Conditions of Approval – may be attached to ensure that all applicable approval standards are or can be met. These conditions must be roughly proportionate to the benefit received by the applicant.