

PLANNING COMMISSION

TRAINING MANUAL

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the



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2006

Planning Commission

Training Manual

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The Planners Training Team**

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FORWARD

This manual is designed to assist those who deal with Oregon's land use program including planning commissioners, city and county governing bodies, members of advisory committees (design review boards, historic landmark commissions etc.), professional staff and interested citizens. Its purpose is to serve as an initial introduction to newly elected or appointed officials and be a useful reference for those with more experience.

We welcome your comments on the manual's content and format.

Additional information regarding statewide planning is available at www.lcd.state.or.us and the statutes and administrative rule are available at www.leg.state.or.us/ors/home.html

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CHAPTER ONE

INTRODUCTION TO PLANNING



AN INTRODUCTION TO LAND USE PLANNING
OREGON STYLE

Introduction

The Planners Training Team would like to take this opportunity to both congratulate and thank you for having the courage to make a commitment to your community and all the people of the great state of Oregon. You are now part of a large family composed of planning commissioners from throughout our state.

Like all families it has many individuals, each with their own particular skills and priorities. Yet all are bound together by important responsibilities, traditions, legal and economic concerns, as well as common needs and experiences. Some will function in large, diverse communities that are facing rapid change, with all of the resulting problems of inadequate services to meet growing demand, perceived loss of identity, and loss of important natural and cultural resources. Others will fight the battles associated with static or declining populations, insufficient resources to maintain current services, economic and/or social stagnation and insufficient financial resources to take advantage of available natural or human resources. Others will have all of the above to face while some will live in areas with few significant difficulties. What are the issues

you and your fellow planning commissioners face? What are the resources that effective land use planning can bring to bear to help solve those problems?

Land use planning is not an answer to every concern. However, good community plans can do much to help a community face the issues that need to be confronted. Effective decision-making that involves the community members avoids the worse hazards, and optimizing local resources is what planning can do to make your city or county a better place.

Every community must develop its own list of concerns, find its own solutions, and most importantly identify a vision for its future than can be accepted and achieved by the current and future residents. However, in Oregon that process also includes complying with the State Land Use Goals using a set of policy statements that serve as parameters for land use plans, and decisions for all of Oregon's cities and counties.

The following chapters are meant as an aid to you in understanding how to make the Oregon planning system work for your community. This document is not meant to replace actual experience in working with your plan and/or development regulations. Time will cure that deficiency in your knowledge. The information here will help you to understand the basics, and help you through the initial adjustments you will be making to fulfill your new responsibilities.

As you gain experience and comfort with the regular land use or other duties in your new position, you will want to explore your ability to craft effective long-range plans for your community and to broker agreements between people and organizations within your area. A clear vision for what your community is to become, an understanding of the political and fiscal realities of your area, as well as knowledge of the state Land Use Goals, will be important parts of how you approach your goals. Because you are part of a bigger system and have been given power over your community members, you will be expected to represent all of your community, and not just yourself.

This chapter will provide you with the basic information and understanding required to carry out your duties. As you gain experience, you will develop the vision and knowledge required to fashion a pathway into the future for your community that is composed of many individual site decisions and a commitment to longer-term community-wide goals.

Before we progress any further in discussing land use planning, it is appropriate to understand the basic foundations for the process and the institution. The following sections will describe what land use planning is, how the process works, some of the reasons for planning, as well as a history of planning in Oregon. With this information you can understand the character of, and context for, planning in Oregon. While this foundational information will be relatively comprehensive, it will only be a simple introduction sufficient to help you and

those you work with to understand the reasoning for planning and its basic processes. If you want more in-depth information, the American Planning Association maintains a bookstore you can access by calling 312-431-9100, and Oregon has accredited planning schools at Portland State University and the University of Oregon.

Land Use Planning – What Is It?

Planning itself is about making decisions. Those determinations may be about the land, or about community priorities, or about housing needs, or appropriate widths for local streets. Whatever the content of the decision, they are primarily about making effective, efficient and appropriate determinations that achieve the desired results. Planning is therefore a decision making process.

Land use planning is about making quality decisions about how the land is to be used. Every activity that occurs on the planet has to take place somewhere. That place may be a home, office, business, factory, or public service building – whatever the place, it will use a piece of land, need to be supported by services, have an impact on others and need to avoid certain hazards. Planning can help achieve those needs more efficiently than would occur without planning.

Planning is also more complex than just making land use decisions. There are responsibilities to others (individuals, agencies, current and future generations, etc.) and values that need to be addressed in the process. The following is a listing of how planning has been described by some leading professionals in the profession:

Planning is:

- Determining community needs and setting goals in an organized manner
- Organizing events and activities
- The art and science of anticipatory problem solving
- A forward thinking process
- A tool to bridge the gap from now to then – from today's realities to tomorrows possibilities
- Deciding in advance to do something
- Defending the common interest in the face of parochial/special/individual interests.

If the preceding is what the planning is to accomplish, then it must have certain characteristics or conditions in place in order to accomplish those ends. Planning is a process that recognizes it must affect the future by analyzing the

past within the context of today's realities and perceptions. Planning must be composed of the following if it is to be successful:

- Be a rational process
- Use facts as the basis for all decisions
- Creation a common understanding of what the community needs versus what individuals may need
- Believe in the importance of involving people in a complex process that balances all interests
- Considers all alternatives
- Prepare a program to take action.

While the previous definitions consider planning generally, this manual is meant to focus on land use planning because that field is the medium for the state's land use goals and the overall planning program. Land use planning also has some specific characteristics and needs – important to those involved. In addition, Oregon's approach to planning is reflective of our citizens' political and philosophical beliefs.

The following definition provides some insight not only about planning, but also about how Oregonians like to see planning conducted.

Land Use Planning

Land use planning is a process occurring within a public forum, where factual information is gathered, where community needs are identified and prioritized, is based upon a values consensus, resulting in a community vision, is used to make decisions regarding particular activities or issues as they pertain to a specific geographic location, with the intent to achieve the best possible long-term outcome.

The preceding wordy definition contains several important concepts that are identified separately below:

Process – a system for making decisions with predictable steps and responsibilities.

Public forum – Oregon believes in public involvement and in an informed citizenry.

Factual information – the use of scientifically confirmable information, rather than perceptions or assumptions.

Community needs – the overall community, not just particular groups or individuals.

Decisions – decision making is what the process is all about and by making them in advance, it is more likely they will meet the community needs and be more equitable than incremental individual decisions.

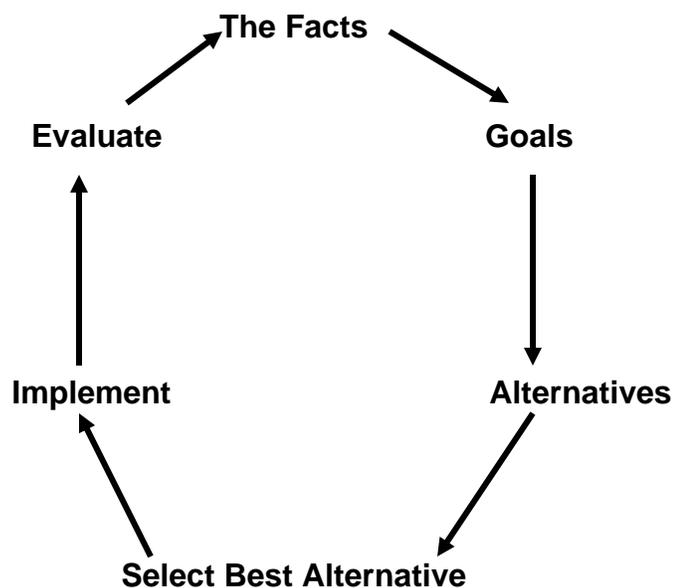
Particular activities or issues – by defining the concern to a particular permit or use, the issue can be more effectively defined and objectively decided.

Geographic location – the land is the focus for these decisions, and the venue for considering the impact on others.

Long-term outcome – the building, use or impact will be in place for some time, maybe generations and this is the opportunity to decide whether that will be beneficial or not.

The Land Use Planning Process

The land use planning process can be diagrammed to demonstrate how the various elements tie together. These steps must occur in the correct sequence if the process is to be successful. It can be too easy to “skip ahead” and to forget the thoughts and issues that needed to be considered at each point in the process. This continuity is particularly important to assure that all elements of the community are brought into the process and that they are part of, and committed to, the consensus that is developed.



Why Plan?

Now that you know something about what planning is and how it occurs, you should consider why you should undertake such a complex, expensive and time consuming activity. Communities plan for a variety of reasons and the particular combination of concerns will fluctuate with the needs of local people, conditions within the community, state law or other mandates, and the basic values and history of the local area's residents.

Some of the common reasons for communities to plan are to:

- Accommodate the present (particularly to assure that the public facilities are effective and efficient);
- Prepare for the future (wise choices improve everyone's future);
- Anticipate change (its coming whether you are ready or not);
- Maximize community strengths (planning can leverage more benefits);
- Minimize community weaknesses (local deficiencies can be reduced or overcome);
- Identify and seize opportunities (consensus can help assure the right course can be taken when the chance is presented);
- Respond to legislative mandates (state land use goals and other relevant state and federal requirements);
- Protect scarce resources (knowing what you have and what you want to keep helps to assure the things you need will be there when required);
- Build a sense of community quickly when people are uncertain (they often create less productive social and political conditions within the community);
- Provide for the public's health, safety and welfare (each community defines this separately and it changes as time progresses, but it is this mandate from the federal and state constitutions that creates the basis for planning and related activities).

Why is your city or county planning? What is it that you want to protect? When the future is the present what will you and your community be doing, and is that what you value? Take a few minutes to think about these questions.



THE NEED FOR LAND USE PLANNING IN OREGON

Some of the material in this section is based upon work originally created by the Bureau of Governmental Research and Service. This pioneering agency's efforts in land use planning in Oregon did much to lay the foundation for many aspects of Oregon's current planning program.

It is unthinkable that a builder would attempt to construct a building without having a set of drawings, plans, and specifications. For a residence, the plans would be designed to accommodate the various activities and needs of a family – shelter, warmth, eating, sleeping, leisure time, entertaining, recreation – and the plumbing and electrical systems would be designed to support those activities at the various locations within the structures.

On a much larger scale, a state and its communities cannot develop in a logical, coordinated manner to accommodate the needs and activities of their citizens unless some advance planning is done to guide the continuing development and change that occurs.

There are relatively few individuals who may be responsible for making decisions relative to the construction of a residence. However, there is a very large number of diverse individuals, organizations, businesses, public agencies, corporations, etc., which have various responsibilities for making decisions relative to the development of the state.

These decisions represent a wide variety of beliefs and priorities as to what, where, how, and when development should occur, what is most important and what is less important, and who should have what responsibilities.

In Oregon, the consequences of a lack of coordinated planning have become evident to a majority of the state's residents, and its citizens have determined that land use planning on a statewide basis is the most logical way to assure that development will be guided in a direction that will provide maximum satisfaction of the needs and desires of everyone. The Oregon Land Use Act of 1973 is the basis for this coordinated land use planning effort.

Roots of Land Use Planning In Oregon

Land use planning in Oregon began in the cities of our state. Urban settings created urban needs for coordinated approaches to particular uses of the land.

Recognizing this, the 1919 Oregon Legislature passed enabling legislation allowing cities in Oregon to plan in an orderly way for the challenges that resulted from steady growth. This legislation enabled cities to establish planning commissions and required planning commission approval for subdivision plats. After World War II, Oregon counties were similarly authorized to establish planning commissions if they so chose, at a time when rapid growth created increasing urban problems in many unincorporated areas.

Through most of this century, Oregon state government's role in planning was limited. The State Legislature authorized local planning to occur and provided for coordination with the federal government when the need arose (during depression-era dam building projects, for example), but did not preempt or control local guidance of development and growth.

However, as Oregon grew dramatically in population and income during and after World War II, it became increasingly evident that our system of permissive, local option planning was not adequate to accommodate complex regional and statewide pressures and trends that crossed many jurisdictional boundaries.

State government during this period began slowly, but with growing speed spurred by popular concern, to respond to the challenges resulting from rapid growth and development. A Department of Environmental Quality was established, backed by clean air and water laws as well as pollution bonds; landmark Oregon legislation created significant laws on beaches, bottle deposits, bike paths and billboard removal.

But it was apparent that land use difficulties were at the root of many of the problems resulting from growth. Oregon's primary and most productive farming land, the 100-mile long Willamette Valley, was also home to 80 percent of the state's population. Oregon's population increased by nearly 40 percent between 1950 and 1970, and 80 percent of that occurred in the Willamette Valley. The result was significant growth in cities of the Valley, with concomitant losses of prime farmland.

Spurred by the losses of farmland and prodded by first-term Governor Tom McCall, the 1969 Oregon Legislature passed Senate Bill 10, which required all cities and counties to adopt comprehensive land use plans and zoning regulations. SB 10 ended the view that selective local option planning alone

would suffice to meet regional and area-wide land use challenges, which could significantly affect the economic and environmental bases of this state. Not only were zoning and subdivision regulations required of every jurisdiction in the state, but statewide goals were set out which addressed conservation of prime farm and forest lands and other vital state concerns, including air and water quality, open space, natural scenic resources, timely development of public facilities, well-considered transportation systems and orderly transition from rural to urban uses with a careful view to protecting the basic character of Oregon.

Unfortunately, the 1969 legislation contained no assistance to meet the cost of compliance, and its enforcement provisions proved inappropriate.

This led to a strong effort on the part of Governor McCall and key state legislators to work together to develop an acceptable proposal that would make statewide land use planning a reality, rather than a platitude, in every jurisdiction in the state.

The Oregon Land Use Act of 1973 – Senate Bill 100

The 1973 Legislature convened with bipartisan support for strengthening state oversight of local planning. The result of its effort, the Oregon Land Use Act of 1973, established the framework that in major part governs and guides land use planning in Oregon today.

The Act was passed by substantial margins in both chambers of the Legislature. It remains a controversial piece of legislation but has withstood numerous challenges in the Legislature, in courts and at the polls. It also represents the concerns, and has received the support of various groups representing agriculture, business, homebuilders, local governments and environmental organizations.

Developing the State Goals

Once the Land Use Act was on the books, sleeves were rolled up throughout Oregon as the work of implementation began. The foremost immediate task for the Land Conservation and Development Commission (LCDC) was creation of the statewide planning goals against which each local comprehensive plan could be measured.

After more than a year of public workshops and hearings in 20 locations around the state involving over 3,000 Oregonians, LCDC adopted 14 statewide land use-planning goals in late 1974. Later Coastal Goals and a Willamette River Greenway Goal were added to make a grand total of 19 statewide land use planning goals.

LCDC'S Responsibilities

LCDC conducts studies through its staff (Department of Land Conservation and Development or DLDC) and writes rules for how planning should occur in Oregon. Often it is in this forum where discussion and consensus building can take place that best works to define Oregon's planning program.

LCDC itself acts mainly through the acknowledgement (initial approval), periodic review and post-acknowledgement review processes. It may issue enforcement orders, which specify areas of noncompliance in local planning decision, and specific corrective actions required. In proceedings against local jurisdictions found not to be in compliance with the Act, LCDC can make formal findings and limit or prohibit land use actions of the local government including subdivision approvals and issuance of building permits. In addition, LCDC is empowered to withhold a local jurisdiction's share of state revenue from gasoline taxes, liquor taxes and the like.

It is important to note that LCDC's enforcement powers relate only to cities' and counties' compliance with the Land Use Act and the goals. Cities and counties themselves remain responsible for assuring that individual land use actions conform with their local comprehensive plan. Local government is the primary enforcement entity, and appeals of final local decisions go directly to the Land Use Board of Appeals (LUBA).

Purpose of the Goals: Development and Preservation

Taken as a whole, the land use aspects of the goals are best understood as devoted to two primary purposes. First, they seek to protect the natural resources on which much of Oregon's economy depends (in particular, farm and forest land) and our environmental quality. Second, the goals seek to concentrate urban development within areas inside or adjacent to Oregon cities.

Implicit in both purposes of the goals is the encouragement of economic development through orderly growth. That change must occur in a manner that does not threaten the long-term economic foundations of Oregon.

The twin concerns – development and preservation, meet in Goal 14. This urbanization goal requires that the city, in consultation with its county, local special districts and neighboring jurisdictions draw a boundary around itself which is intended to establish the projected limits of urban growth for about 20 years. Data to support the boundary is required, including 20-year population and growth forecasts. All land within the boundary – called urban growth boundary (UGB) will be considered either urban or potentially urban, while land outside the UGB must remain predominantly rural in character.

The 19 statewide land use goals can be generally grouped into three categories:

Process Goals, which ensure citizen participation and set forth basic procedures for local planning and development regulations (Goals 1 and 2).

Development Goals, which address the interrelated factors of economy, housing, public facilities, transportation, energy and urbanization (Goals 9-14).

Conservation Goals, which address the preservation of natural resources of various types:

- Land resources: agricultural and forest (Goals 2 and 4);
- Coastal resources: estuaries, shorelines and dunes and the ocean itself (Goals 16-19);
- Managing resources: environmental quality, recreational and resort areas, scenic, historic and natural resource areas and natural hazards (Goal 5-8)
- Willamette River: special regulations relating to particular concerns and values of this major waterway (Goal 15).

Portland Regional Planning

The Portland metropolitan area has the only elected regional government in the United States. Metro is chartered to plan for regional growth and is responsible for establishing one urban growth boundary (UGB) for all the jurisdictions within the more heavily populated portions of Clackamas, Multnomah and Washington counties. Metro's responsibilities are to manage the UGB, including creating the 2040 Urban Growth Concept Plan and to develop functional plans, which are mandatory for the cities and counties within the boundary. Not all aspects of the state goals are contained within the functional plans, and each government can choose to use the methods outlined in the plans to demonstrate an equally viable alternative that meets the Regional Urban Growth Goals and Objectives (RUGGO).

ENTERING THE POST ACKNOWLEDGEMENT ERA

The Oregon Legislature has created two forms of changing local plans, Post Acknowledgement Review and Periodic Review.

Post Acknowledgement Review

Post Acknowledgement Review allows local governments to prepare amendments to local comprehensive (or other land use) plans and associated implementing codes (zoning, subdivision, etc.) then submit those changes to the DLCDC for review and evaluation for compliance with the State Land Use Goals. Changes not involving the topics within the 19 statewide goals do not have to be submitted. Forms for use when submitting changes are available from DLCDC.

Periodic Review

Periodic Review is required for cities with an urban area population of over 2,500 and counties with a population of over 25,000. Local jurisdictions can opt to initiate periodic review or wait until the state mandates an updating of the local plans and codes, which will occur every five to fifteen years. The process begins with an evaluation, using state provided forms, as to how well the local jurisdiction is complying with state law. In addition, public hearings are required to determine if other changes are needed or desired. Once the local government has developed a work program (usually two or three years long), the LCDC will review the proposed work scope and if complete, approve the program for completion by the local government. One of the important advantages of Periodic Review is that state grants are available to hire consultants and other experts to assist in the development of plan amendments or code changes.

Monitoring Change

Your plan contains a variety of assumptions and projections regarding the nature and magnitude of change and development. Regular monitoring of real work experience will help you to keep the plan on track. Not only are monitoring and small updating activities less expensive, but also they are often more accepted within the community you serve. Annual or bi-annual reviews allow the creation and evaluation of a database describing your community. Often this is as simple as tracking land use applications, population and economic changes, along with working with state or local agencies concerning particular environmental or social issues.

THE OREGON PLANNING SYSTEM IN 2003

Land use planning in Oregon is in a considerably different condition than existed in its early years. Planning is now an accepted part of how decision-making occurs, particularly for local governments. Many of the rules and processes that seemed so radical to some in its early years have now been accepted and integrated into most communities. No longer are direct attacks on the validity of the process or program likely to be successful. Even indirect tactics such as employed in Measure 7 (the regulatory takings initiative recently invalidated by the Oregon Supreme Court), appear to be aimed more at correcting or “tweaking” the system than destroying it.

Yet, land use planning continues to be controversial and to consume much of the public’s interest and concern. Many charge that the system has failed to fulfill some of its early promises and others suggest that new, more sophisticated approaches are needed to bring the system into relevancy in this new age. Is all of this bad? Probably not. Planning is a decision-making and regulatory system. If there were not complex and controversial issues to resolve, and new challenges to face, the process of planning would undoubtedly disappear. It is because land use planning is so necessary and the challenges we Oregonians face so important that planning continues to be relevant and important to the people of our state.

That is not to say that some of the critics are not raising important issues. The Oregon Chapter of the American Planning Association engaged in a multi-year process to evaluate Oregon’s planning system and recently released a report entitled, “An Evaluation of Planning Oregon, 1973-2001.” This report was prepared by The Committee on the Oregon Planning Experience (COPE) and most often referred to as the COPE Report. The report identified three basic strengths of the Oregon planning system:

- Uniformity and consistency of the statewide goals.
- Contribution to livability.
- Efficiency and better definition of land uses and the development process.

The Committee also found that the program faces serious challenges, most notably:

- A perception of unfairness.
- A lack of vision and purpose that is responsive to current political and social views of Oregonians.
- An increasing population with changing issues pertinent to the 21st century.

- A need to enhance the roles and associated regional differences of regional and local governments.

As a result of their evaluation, the COPE Report makes seven important recommendations for the statewide planning program:

1. Develop a vision for Oregon's future in the next 20-30 years.
2. Expand planning education to professional planners, citizens and all others involved with the planning process.
3. Consider whether state standards should be differentiated for varied physical and geographic circumstances.
4. Streamline the development permit process.
5. Explore regionalism and regional planning, both in terms of regional scale planning and distinctions between rules by regional.
6. Increase the focus on urban regions so cities are seen as desirable places to live.
7. Address fairness and equity.

Oregon is a great place to live. To keep it that way, the promises of Goal 1, Citizen Participation, will need to become a reality. Planning can only prosper if it is a system truly understood, modified, and used by the people of Oregon.

The seven ideas above can bring that ideal closer to reality. But it will take the concerted efforts of all Oregonians to refine, improve and implement these concepts. That is where planning can really work, as a system for bringing people together and focusing their energies for the community's betterment.

UNDERSTANDING THE TOOLS OF PLANNING

What is a Comprehensive Plan?

Your comprehensive plan is a series of generalized, coordinated policy statements, accompanied by a land use map, through which your community has set out its vision of its future. It includes a text describing goals and policies, and the factual data and projections on which the policies were based, together with a map, which generally designates future locations of various types of public and private uses of the land for residential, commercial, industrial, open space and public uses.

The first element of all comprehensive plans include for factual information, with which you should become familiar. That “facts” chapter or series of chapters outlines the basic characteristics of the community. The facts contained within the document will set the basic parameters for the later decisions and priorities in the plan. Check to see that the important trends and statistics are there and are accurate. For example, population growth, new job development, housing inventories, historical listings or locations of gravel deposits are the foundation upon which you will build the future. Also, the people of your city or county will expect you to be familiar with what is happening and to be able to use that information in making your decisions. Furthermore, the LCDC will check to see if your inventories are correct and consistent with state requirements.

Goals provide the basic parameters for your community’s future. The state goals help to define your options locally but it is the local goals that will set the agenda for your jurisdiction. Please review the State Land Use Goals and those goals in your comprehensive plan. While the state goals are minimums they are not the most that you can do. Take the opportunity to advocate for your community’s needs. The people who placed you in authority will expect you to address their needs. Properly written, these goals will provide a clear vision of what your citizens desire for the future.

Types of Land Use Regulations

Though each comprehensive plan contains a map and general policy statements, it is the implementing ordinances, which establish the particular criteria, standards and procedures through which the plan will be carried out. These ordinances prescribe laws governing the way in which land may be used and divided.

Let us look at the most common type of regulation: zoning and subdivision regulations. You will encounter both of these traditional forms of land use regulation frequently as you go about your duties, although some communities have combined the two related measures into a single “land development code.”

Zoning is the placement of various land use “labels” (such as farming, residential, commercial) on particular geographic areas in your community. Zoning describes the uses permitted, and generally establishes criteria and standards for each use (such as lot size, setbacks and parking). In designating these areas and establishing the conditions, the zoning ordinance will usually allow for flexibility and accommodation of special concerns. Typically, provisions for variances, nonconforming uses, conditional uses, design review and other special provisions will be built into the zoning ordinances.

Subdivision regulations control the particular ways in which parcels of land are divided. Typically, provision is made for design and layout of sites, roads, utility easements, public areas, etc. Many subdivision and partitioning regulations require that the applicant make or guarantee certain public improvements upon dividing the property.

Non-regulatory measures include a wide array of government programs that assist a city or county in carrying out its comprehensive plan. They may include incentive programs for economic development, capital improvement programs and low-income housing programs.

Intergovernmental agreements seek to ensure the consistency of neighboring or overlapping jurisdictions' planning with each other, describe the relationship between cities and counties, and establish priorities for extending city services into unincorporated areas. LCDC acknowledgment of city plans requires a growth management agreement between each city and its county. This describes the coordination of plan implementation in areas between city limits and the UGB, as well as methods for coordinating future plan amendments. Cooperative agreements with all special districts providing urban services also are required.

TRANSPORTATION PLANNING RULE

Since 1993 cities and counties in Oregon's urban areas must make sure that new development is pedestrian, bicycle and transit friendly. Generally, this means to plan walkways and bikeways to provide short, direct routes for pedestrians and cyclists. Additional requirements are mandated on larger jurisdictions.

These regulations are intended to make our neighborhoods more livable by increasing people's transportation options to make it safer and easier for people to make trips by walking, cycling, or taking transit. These rules are needed because in the past many zoning codes gave little thought to how people get around, except by car. The predictable result was that most people drive almost all of their trips. This has undesirable consequences as our urban areas grow: traffic increases, more traffic means increased congestion, noise and air pollution increases, livability of neighborhoods declines, while demand for expensive roadways increases.

Building neighborhoods, which are safe for car travel alone, also isolates the parts of the population without cars. Almost one of every four Oregonians (most elderly and children) cannot or do not drive.

The idea behind these ordinances is to build into our cities the opportunities for walking and cycling. The ordinance does this by making sure streets and new

buildings and developments are laid out in a way that provides good routes for walking and cycling within neighborhoods and shortens vehicle trips.

These changes will not dramatically change suburban development, but they can help make a big difference in the way people get around in two ways. First, relatively minor changes in the way we lay out streets and orient buildings and developments to one another can make a big difference in pedestrian, bicycle, and transit use. Second, if safe, convenient routes are provided, people will walk, cycle and take transit more and drive less. In short, if we build it right, they will come. Consider these facts:

- Most trips are short trips – less than two miles from home.
- If a short direct route is available, people are more likely to walk or ride a bike or bus.
- Walking for recreation is the most popular recreational activity in our country and 75% of us own a bicycle.

The major reason people do not walk or ride a bike for short trips is not that they cannot or do not want to, but because there is no safe and easy way to get from one place to another. The proof: in neighborhoods in Oregon that have good bike and pedestrian amenities, people do walk, ride bikes and take transit more and drive less.

Additional information about the Transportation Planning Rule (TPR-OAR Division 12 Transportation) and advice on developing ordinances to implement the rule is available from several sources. The Oregon Department of Land Conservation and Development has overall responsibility for the TRP and can be contacted at 503-373-0050.

The Oregon Department of Transportation (ODOT) has developed and maintains a “best management practices” handbook, which illustrates how various requirements in the TPR, can be carried out. ODOT maintains an extensive literature collection on information related to the issues and ideas contained within the Rule. Information can be obtained from ODOT in Salem at 503-373-1541 or at any of the regional offices throughout Oregon.



Note: The Transportation Planning Rule effectively applies only to cities with an urban area population of 2,500 or more and to counties with populations of over 25,000.

CHAPTER TWO

PLANNING VALUES



PLANNING VALUES

PLANNING IS A PROCESS is a phrase that you will hear constantly with your new responsibilities, because that is the basis for planning. But process is not all there is to planning. If that were true, planning could be left to the courts and attorneys. Planning is much more than just good process; it is the achieving of good results.

PROCESS: The planning process must continuously pursue and faithfully serve the public interest.

To achieve that goal requires a clear understanding of the public need (sometimes called the public interest). Public need is knowing about and providing for the public's long-term health, safety, and welfare. Most importantly it is understanding the basic values that motivate and guide the people of your community. This is not an easy task, and it will be subject to continuous and sometimes acrimonious debate.

To help you in that process, the American Planning Association (the national entity created to promote the interests of planning and those involved with planning) and the American Institute of Certified Planners (an organization chartered for professional planners to promote and certify their competency) have prepared inventories of planning values, which serve as a basis for the following lists.

The first list relates to planning processes and assuring the process will work well.

The Planning Process should:

- Recognize the rights of citizens to participate in planning decisions
- Strive to give citizens, including those who lack formal organization or influence, full, clear, and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs

- Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantage groups and persons
- Assist in the clarification of community goals, objectives and policies in plan making
- Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision
- Pay special attention to the inter-relatedness of decisions and the long range consequences of present actions
- Provide for a rational system of management decisions that relies on facts, reasonable conclusions and predictable application of standards

While the preceding values address how the planning process should be conducted, there are also substantive values that should be considered by planners (appointed, elected or professional) as they make planning decisions. Planners are selected to make their community a better place – now and for future generations. The following are some of the values commonly used by planners in the United States to create the kind of places that people and their children want to live.

It is the responsibility of planning commissioners, planning staff and elected officials to:



Protect the public health, safety and welfare (arising from U.S. and Oregon Constitutions, this is the reason for local government and the authority to conduct planning activities is provided to achieve these basic goals)

Conserve resources (if a community is to survive and prosper over time, the materials and environment that make a community possible must be preserved, which sometimes means protecting those resources that provide identity and a sense of community as well as those with an economic basis)

Seek efficiency in the use of the land and public facilities (activities that use the land ineffectively or spoil the land for future uses, as well as the location or sizing of utilities so that they do not need to be replaced).

Foster beauty (the protection and enhancement of a community's aesthetic qualities can do much to make life in that place more productive, satisfying and thereby ultimately more efficient and beneficial)

Assure equity (Basic to making the American system of government work is that all people in similar circumstances will be treated the same)

Recognize pluralism (associated with equality is the importance of providing for the great variety of cultures and perspectives that are blended into the fabric of our society and communities)

Promote individuality (protection of the basic rights of the individual is important to our society and preparation of good plans – plans that preserve resources needed for future options for those many individuals that are yet unborn, rather promoting the interests of the few, as *always the needs of the few must be balanced against the common good*)

Encourage democratic participation (to make the system work people need to be involved in an effective and meaningful way, but they must take on the burden of behaving in a responsible manner)

Assure that a long-term perspective is taken in the decisions (it is not easy to remember that decisions must be made with those not at the hearing and those yet unborn in mind, as well as the applicant)

Using these values will not always be easy, but they will provide the effective principles needed to make good decisions and to guide your part of Oregon towards the future it wants and deserves.

It is the combination of good process with good values that will lay the foundation for good planning in your community. With the help of decades of diligent effort, one decision at a time, the kind of future the people in your family, neighborhood, district, city, county, region, and state want and deserve can be obtained.



CHAPTER THREE

ROLES AND RESPONSIBILITIES

Summary of Roles and Responsibilities

Responsibilities of the various participants in local land use planning are discussed in detail in following pages of this chapter. However, this list has been developed over the years by participants in Planning Commission training sessions and is included at the request of many of those participants.

Planning Staff

Administer the Land Use Process (inc. staff reports & notice)

Advise & Assist Planning Commission

Educate & Assist the Public

Know Laws and Ordinances

Long Range Planning

Negotiate/Facilitate

Coordination

Enforcement (of conditions)

Continuity (policy, documents, people)

Governing Body

Represent Constituents

Set Policy and Enact Laws

Set Budget

Hire/Fire Manager

Appoint PC

Act on PC Recommendations or Appeals

Develop Vision

Planning Commissioner

- Reflect Community Values
- Interpret/Apply Ordinances
- Recommend Policies
- Educate Public/Provide Forum
- Do Homework
- Make Decisions
- Communicate with staff, elected officials
- Visioning – Long Range Planning

Planning Commission Chair

- Conduct Meeting *
- Educate Public (and PC)
- Diffuse hostility
- Get Relevant Testimony
- Keep PC on track
- Get all PC opinions
- Help PC to Conclusions
- Define Issues
- Promote Planning
- Set Agenda (often a staff function)

***- The only task that is the sole responsibility of the Chair**

ROLES AND RESPONSIBILITIES

Land use planning, as described earlier, is a process by which factual information is applied to a particular issue or set of land use issues in a rational manner and within a public forum, in order to achieve the best possible long-term outcome.

The process;

1. Gather facts
2. Determine goals
3. Identify alternatives
4. Select preferred alternative
5. Implement
6. Evaluate
7. Return to Step 3

Planning commissioners, elected officials, citizen and staff all have roles in this process. The preparation and updating of a plan is an integral part of the process, but often the only portion of planning seen by the public is the zoning on the lot next door. Part of the responsibilities of participants in the community's planning process is to help the public better understand planning, and that understanding needs to begin with you. Your job of making land use decisions will be made easier with some understanding of the groups with whom you will work and the roles and responsibilities of each.

RESPONSIBILITIES OF THE GOVERNING BODY

Duties of city and county governing bodies include:

1. Adopt and amend comprehensive plans and implementing ordinances and approve related ordinances and policies (such as for parks, public facilities, transportation and economic development). At the local level planning primarily involves the city or county elected officials, the professional staff (public employees or contract consultants) and the appointed planning commission. Each fills a different but vital role.
2. Establish planning commissions, hearing officers or other entities and make appointments to them.
3. Adopt and provide adequate support for a public involvement program.
4. Apply local plans and ordinances to specific proposals, either directly or by delegating authority to staff or planning commission.

5. Hear and decide appeals of staff or planning commission decisions, if so provided by local ordinances.
6. Support the planning program, with a budget adequate to administer the program, and monitor local planning and development activities.

Another way of looking at the responsibilities of the elected officials is to consider them in terms of their affect on the planning commission:

Role of Elected Body	Effect on Planning Commission
Represent Constituents	Because they are elected, they are “political”, therefore, responsive to local concerns and political pressure.
Adopt Plans & Ordinances	Only the elected body can enact plans, etc. Know when the PC has final authority and when it recommends.
Hear Land Use Appeals	Know if appeals are “De Novo” or “On the Record”. If De Novo, know the governing body may hear different information. If on the record, make adequate findings and conclusions to support PC’s decision.
Adopt Local Budget	Budget decisions affect the quality and quantity of staff, ability to enforce conditions of approval, opportunities for professional development, etc.
Hire City/County Manager	The manager’s attitude about planning can affect staff levels. The manager, not the PC, hires/fires staff.
Appoint Planning Commissioners	For appointed planning commissioners, this may be the most important role. For PCs with vacancies, there may be a concern about governing body responsibilities.

Council/Planning Commission Working Relationships

As a planning commissioner, do you feel that too many of your recommendations or decisions are overturned by the elected officials? Or, as an elected official, do you wonder what “wild” direction the planning commission will take next? The following eight ideas to improve working relationship focus on what planning commissions can do, but also apply to city councils and county boards.

1. Clearly understand the responsibilities and authority of the planning commission.
2. Clearly understand the responsibilities and authority of the governing body.
3. Remember that the planner’s first responsibility is to the manager or other supervisor.
4. Make sound decisions with adequate findings to insure that the reasons for your actions are clear to the elected officials.
5. Ask for clarification of the governing body’s policies or actions that are unclear.
6. Include in planning commission minute, questions or points of view that are not obvious in your decisions and findings.
7. Request annual joint work sessions to discuss priorities, communications, etc.
8. Recognize the elected officials’ responsibilities to the voters.

PLANNING STAFF RESPONSIBILITIES.

The planning staff plays a vital role in the land use planning process and the effectiveness of the planning commission. It is the staff’s responsibility to perform the tasks associated with administering the land use regulations. The staff performs necessary research, prepares plans and reports, as well as distributing and explaining the results of that work.

As professional planners, they have been trained to perform research, write reports, make public presentations and carry out the routine tasks of their jobs. They will do this utilizing their training in economics, geology, landscape design, law, statistics or other education and experience. All of this talent is ready to serve your needs – if you know how to use it.

To be really effective, the planning commission and staff must work as a team. The commission provides perspective on community needs and attitudes points out work that needs to be done and gives endorsement to plans, reports and recommendations.

The staff provides technical advice on procedure and content and keeps the commission informed of developments in the community. Planning commissioners can expect that minutes accurately reflect your deliberations and actions, and that staff reports are readable and are received with adequate time for review (but recognize that sometimes flexibility is need if things are to be accomplished).

To work well as a team, both groups must treat each other with respect and consideration. Demeaning or rude behavior from either side creates tension and unproductive work environments.

As a commission member, do not hesitate to call on the staff for research information, advice on law, history, land use or other pertinent information. But remember, the staff has real time and budget restraints and must deal with the attitudes and priorities of the governing body and the bureaucracy in city hall or the courthouse. (Small hint: if you see an error or omission in a staff report, tell the staff about it *before* the public meeting. If you wait for the meeting to bring it up, you may appear rude, embarrass the staff and discredit the professionalism of your community's planning program.)

Consider the staff's advice and, if you reject it, give your reasons so that everyone can learn from the experience. In quasi-judicial situations, give your reasons for changes to the staff report to assure adequate findings.

Do not hesitate to tell staff your perceptions of community needs, attitudes, concerns and priorities. The staff needs that information, although they may not always like to hear it. Candor and honesty help to establish a lasting, cooperative team.

Finally, remember, the staff is human too. They have good days and bad. Treat them as you wish to be treated.



The affects the staff and its work may have on Planning Commission include the following:

Staff Role	Effect on Planning Commission
Explains land use at the counter	Staff's explanation and attitude affect the tone and content of testimony to PC
Accepts/rejects applications	Staff insuring that applications are complete saves time and confusion at PC meetings
Prepares staff reports	Staff provides identification of issues and criteria which assists PC with decisions and citizens with testimony
Handles public notice and other administration	Prevents legal challenges to PC decisions, reduces "No one notified me" claims at public hearings
Stays current on regulations court cases, rulings, etc.	Prevents PC errors from lack of current information

Clear understandings by the planning commissioners and staff of one another's roles will increase the effectiveness of both. Be sure that everyone has the same expectations.

PLANNING COMMISSION RESPONSIBILITIES

State statutes and local charters or ordinances define the authority and responsibilities of planning commissions – duties, number of commissioners, terms and manner of appointment etc. Some planning commissions also have bylaws that provide further detail. Beyond these legal requirements, planning commissioners have roles which, when fulfilled, enhance their individual and collective effectiveness.

In simplest terms, the role of a planning commission is to keep things in perspective for the community, and not become lost in the daily decisions and detail of life.



A more specific role for local government planning commissions would be to:

develop, maintain and implement the comprehensive plan, to protect the integrity of your community's planning process and to foster the community's long-term interests.

Planning commissioners roles, as defined by more than 1,000 land use officials at Planners Training Team programs are these:

- **Understand land use planning**

Know that planning is evolving and ongoing. Know about the statewide land use program and local land use history. Be aware of interrelationships of planning to community goals, priorities and budget constraints.

- **Reflect the values of the community**

As a volunteer who obviously is committed to your community, you can see or sense what is needed. Use your unique position (separate from the elected "political" process and from the government payroll) to articulate local values.

- **Educate the public on land use**

Planning commission meetings often are citizens' first contact with local government and with land use. Act in ways that increase understanding and respect for the responsiveness of government. (See this manual's chapter on "Effective Participation").

- **Understand opportunities and limits of PC authority**

Recognize that you can be proactive – the initiator of new or changed policies, and that there ARE limits to what you can do. Be clear about when your role is advisory and when it is that of the final decision maker.

- **Understand the legislative and quasi-judicial processes**

See the "Land Use Decisions" chapter.

- **Interpret and apply zoning ordinance provisions. Apply facts to criteria**

Your planning staff, legal counsel and the information in this manual will assist you.

- **Make decisions/recommendations**

Be courageous. Don't avoid hard decisions.

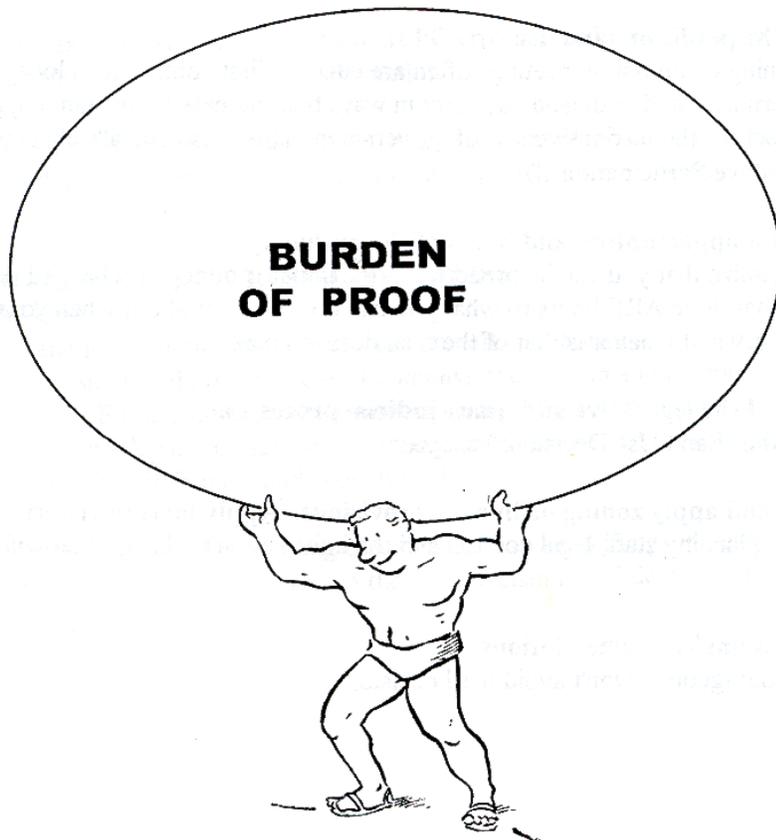
APPLICANT RESPONSIBILITIES

Applicants for land use approvals have significant responsibilities just as the planning commission, elected officials and staff do.

The applicant bears the burden of proof!

If what the applicant wants to do with the land were allowed outright, there would be no need for an application. The request (for a zone change, conditional use, etc.) is for a change in what is automatically allowed. The one asking for the change is responsible for demonstrating that the request meets your comprehensive plan and ordinance requirements.

Property owners who are unfamiliar with the land use process may be daunted by the requirement that they prove their case. Generally staff works hard to help applicants understand the criteria on which a decision will be based and offer advice on the kind of information to present. However, it is not the staff's job to justify every application, nor is the Planning Commission (or governing body) responsible for that burden of proof.



HEARING OFFICER RESPONSIBILITIES



Some local jurisdictions hire a Hearings Officer to conduct quasi-judicial land use hearing while the Planning Commission considers legislative issues.

Generally, the Hearing Officer is an attorney with land use experience. It is his job to weigh an application against the local comprehensive plan and ordinances, determine the finding of fact and require appropriate conditions of approval.

Advantages

- Planning Commissions in communities with high levels of land use activities can be freed of time-consuming quasi-judicial hearings to concentrate on long range planning and updating of plans and ordinances.
- Jurisdiction in which land use is a hot political issue can benefit from transferring controversial issues away from appointed and elected officials.
- Some decisions may be made more quickly when only one person (the Hearings Officer) rather than several (the Planning Commission) needs to approve a final order.

Roles and Responsibilities of Others



Others in addition to staff, elected and appointed officials, often are concerned with land use decisions. Being aware of who these interests are can assure better decisions.

State and Federal Agencies often are involved in local decisions. Frequently, state and federal regulations require their involvement. The Oregon Department of Transportation cares when a land use action involves access to a state highway. The Department of Land Conservation and Development needs to know about proposed changes to local comprehensive plans. Development in State Goal 5 resource lands may involve the Corps of Engineers, Division of State Lands, State Department of Fish and Wildlife, the Department of Geology and Minerals and others. If you're uncertain about the role or responsibilities of agencies in a particular decision, ask your staff or DLCD at (503) 373-0050.

Property Owners are entitled to mailed notices if their property is within a certain distance of the site for which a quasi-judicial land use action is proposed. Local ordinances state the distances for various types of proposals. In addition, voters in 1998 approved an amendment to the Oregon Constitution that increases requirements for mailed notice. Legislative rezones now require notice to every affected property owner.

City – County Coordination is required when land use actions involve urban growth boundaries or land within urban service areas. In PTT training sessions, we find this coordination is sometimes overlooked. Ignoring mutual interests usually will cause problems.

Citizens and Neighborhood Groups can be strong advocates or opponents of an application. They also can create political pressure for their positions.

LCDC Goal #1 (Citizen Involvement) and Goal #2 (Planning Process) are good starting points for decisions on what groups to involve in land use actions and how to do it. DLCD offers two useful publications: *How to Put the People into Planning* and *Collaborative Approaches to Decision Making and Conflict Resolution*.

In addition, see the “**Effective Participation Citizen Involvement**” section of this manual.

Characteristics of Quality Planning Commissions



- A conviction that planning is important
- The ability to make decision
- Loyalty to the democratic process
- Time and energy to devote to the commission
- Ability to accept the will of the majority
- Courage
- Professional respect for the staff
- Ability to communicate well

These characteristics apply to successful government bodies too. **Planning Commissioners and elected officials become ineffective when they:**

- Become involved in office administration
- Allow personal feelings towards peers or staff to affect their judgment
- Allow personal interest to control public policy interests
- Neglect their duties
- Are afraid to make decisions or take firm stands
- Adopt an arrogant or paternalistic attitude toward the public or staff

PC CHAIR RESPONSIBILITIES

The following responsibilities of the Planning Commission Chair reflect ideas gleaned in years of our training staff, planning commissioners and elected officials.



The Chair

- Conducts the meeting (maintaining “order and atmospheres”)
- Educates the public and fellow commissioners about land use planning
- Defines issues
- Encourages relevant testimony by making clear the criteria for decisions
- Diffuses hostility (See chapter on Effective Participation)
- Sees that any time limits are met
- Sees that pros and cons and alternatives are considered
- Keeps discussion of commissioners on track
- Summarizes as needed
- Asks ideas or opinions of each commissioner
- Helps commission reach conclusions
- Promotes land use planning

Other Planning Commissioners

- Contribute ideas
- Keep on the subject
- Assist the Chair



BUILD A BETTER COMMISSION

Finally, in this discussion of roles and responsibilities, the Institute for Education in Local Government at Berkeley, California, offers these 14 ways to build a better planning commission:

1. Develop and adopt bylaws and procedures and stick to them.
2. Develop and make available to anyone who wants them, good and reliable information, data and maps.
3. Prepare and maintain an adequate general plan, refer to it and make decisions that are consistent with its policies and also implement them.
4. Annually reexamine what you are doing as a commissioner, how well you are doing it and how to do it better.
5. Outline a year's work on active planning and stick to it. Do not confuse development permit processing (reactive planning or plan review) with real planning.
6. Ask to participate in preparing the planning agency's budget.
7. Meet periodically with your city council or county board to exchange ideas and to assess your mutual objectives.
8. Consider a public forum every year or so. Ask people ("your clients") how things are going and what they want done (if anything)
9. Tell your staff what you want, how you want materials presented to you, etc. Do not be a passive commission that waits for "the experts" to tell you what to do next.
10. Attend some short courses on new planning techniques or the latest in land use law, and expect your staff to do the same.
11. Tour about as a commission to see what others are doing. Sometimes you will be uplifted to find out how many light years ahead of your neighbors you really are, and sometimes you'll get some ideas worth borrowing.
12. Appoint a commission representative to appear before the elected body when it is necessary to explain or sell an action. Don't expect staff to do your job.

13. Lobby for good planning. If you won't, who will?
14. Take time to orient new commissioners to the job. (Remember how tough it was to get the hang of it when you were a new member of your commission)

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CHAPTER FOUR

MAKING LAND USE DECISIONS

MAKING LAND USE DECISIONS



The Planners Training Team offers special thanks to Adriannne Brockman AICP for her commitment to land use planning, the law and teaching others. We are indebted to her for much of the information in this section of the manual.

A newly elected or appointed official often takes his or her seat on the decision-making body under the belief that land use decisions are made based on each individual's opinion. That is, each person votes according to what he or she thinks is in the best interest of the community. It is a surprise to learn that state law requires that there be standards or criteria against which the decision must be made and procedures that must be followed.

Further, recent trends are greatly increasing the importance of how jurisdictions make land use decisions. These include increased judicial scrutiny, an expanding number of factors that can and often must be taken into account when acting on a land use application and, finally, increased community sophistication and involvement. Consequently, more than ever before, jurisdictions must make their decisions accurately and consistently. This section outlines the role of the Comprehensive Plan, the classification of land use decisions, how to make a quasi-judicial decision correctly, and the essential steps in conducting a public hearing.

The Role of the Comprehensive Plan

The Comprehensive Plan and the Zoning Code play important roles in each land use decisions. However, often the Zoning Code is seen as the controlling document. Nevertheless, three Oregon court cases confirmed that the Plan is the legally controlling document.

The courts in **Fasano v. Washington Co. Comm.** , **Baker v. City of Milwaukie** and **Philippi v. City of Sublimity**, have stated that the comprehensive plan controls land use decisions. Zoning controls only to the extent that it is in accord with the plan. In summary:

1. The comprehensive plan is the controlling document.
2. Zoning cannot allow more intense use of the site than the plan allows, but it can limit the use to less intense use. This is often done where the services are not available.

3. The plan policies control over the plan map and zoning map, unless specifically exempted by the Oregon Legislature.

It is important to assure that the Comprehensive Plan and the Zoning Code are consistent with each other.

Classification of a Land Use Decision

The first step in making a decision is determining what type or classification of land use decision the request involves.

Decisions are either

- Legislative
- Quasi-judicial or
- Ministerial

(See chart on the following page for definitions)

Other types of decisions

In 1993, the Oregon Legislature created the **Limited Land Use Decision**. This applies inside an urban growth boundary and is a final decision made by the local government. It applies to a subdivision, partition and to a site plan for an outright permitted use (ORS 197.020). It is like a quasi-judicial decision because of process, notice and appeal rights, but is decided ministerially by the government

In 1995, the Oregon Legislature created an **Expedited Land Division**. This applies to urban lands not involving resource lands and when creating no more than three parcels. These are now considered neither land use nor limited land use decisions, are not subject to the local comprehensive plans, and no hearing is required.

The various decision types have different review procedures. If there is any doubt as to which procedure to use, it is safest to use the more elaborate quasi-judicial procedures. This procedure requires public notice and a public hearing, guaranteeing the right for citizen input.

What are the differences between a quasi-judicial and a legislative decision? In 1979 the Oregon Supreme Court set this three-part test for a quasi-judicial decision: It is quasi-judicial if:

- The process is bound to result in a decision
- The decision is bound to apply pre-existing criteria to concrete facts.
- The action is directed at a closely circumscribed factual situation involving a relatively small number of persons.

Kinds of Decisions and Their Characteristics

Legislative	Quasi-Judicial	Ministerial
Board of Commissioners (Planning Commission) Interest Groups (Court) (Staff)	Board of Commissioners Planning Commission Hearings Officer (Staff) (Other Bodies/Agencies)	Staff (Other Bodies/Agencies)
Adopt policies and ordinances and, on appeal, adopt the definitive local interpretation of those policies and ordinances	Administer those laws requiring the exercise of substantial discretion about matters that may or may not be technical	Administer and enforce those laws requiring exercise of substantial discretion about matters that are technical or limited discretion about other matters
Large geographic area Many ownerships No action required	Site specific Single or few ownerships Action required	Site specific Single or few ownerships Action required
Comprehensive Plan Ordinances and Policies Capital Improvement Plans Budgets	Small area map amendment Zone change Conditional use Planned unit development Subdivision Major variance Appeal of Ministerial action or quasi-judicial decision by lower tribunal	Classification of land uses Administrative use decisions Site plan review Grading permit Building permit/inspection Drainage/erosion control Enforcement Notices/posting/publications Minor variance interpretation
Substantial public involvement with published notice, but limited mailed or posted notice, and multiple public hearings by multiple bodies	At least one hearing with published, posted and mailed notice to area owners and to neighborhood association	No or limited mailed notice subject to participation or appeal rights
No limits on contacts State ethics laws apply	Declare ex-parte contacts No bias or actual conflicts Unlimited staff contact	No limits on contacts

Recent Changes on Decision Characteristics

In addition to the characteristics listed on the previous page, voters in 1998 approved changes in notice provisions. No longer is general published notice enough.

Notice of Legislative Decisions

Now, individual mailed notices must be sent to all property owners whose property would be affected by a change in the text or map of the Comprehensive Plan or the provisions of the Zoning Code. The voter-approved measure includes rezoning and limits or prohibitions on land uses allowed in an affected zone.

The individual notice specifically must inform the owner that a rezoning “may reduce the value of your property.” ORS 215.503 Legislative Act By Ordinance; mailed notice to individual property owners required by county for land use action, and ORS 227.175 for cities describes the notice requirements and actual wording that must be included.

Basis for a Quasi-Judicial Land Use Decision

The Fasano decision is the root of the quasi-judicial procedural requirements in Oregon. These requirements establish the framework for the land use hearings process and the rights to which the parties are entitled. The rights are:

Procedural requirements:

1. An opportunity to be heard
2. An opportunity to present and rebut evidence
3. A right to an impartial tribunal having had no pre-hearing or ex-parte contact concerning the land use action at issue
4. A right to findings of fact, and
5. A right to a record of the proceedings

The right to an impartial tribunal has been modified by the Legislature. The statutes provide that no decision shall be invalid due to an ex-parte contact or to bias resulting from an ex-parte contact with a member if the member:

Places on the record the substance of a written or oral ex-parte communication concerning the decision and

Has made a public announcement of the content of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication is related. (See ORS 215.422(3) for counties, ORS227.180(3) for cities, and ORS 197.835(11) for LUBA's scope of review.)



Decision Basics



Statutes require a land use decision to be based on approval criteria. The decision must apply the approval criteria to the facts. See ORS 215.416(6) and ORS 227.173(1).

Applicable Standards and Criteria

The Planning Commission (and Governing body) must apply the adopted criteria for approval contained in the Comprehensive Plan and Zoning Code. If the applicant demonstrates compliance with these criteria, the application must be approved even if the planning commission disagrees with the criteria, or believes that additional unadopted criteria should be applied. Conversely, if the applicant fails to demonstrate compliance with the applicable criteria, the planning commission must deny the application even if the planning commission believes that the applicable criteria are unreasonable.

Basic rules for interpreting criteria:

Language: If the wording is clear and unambiguous, it must be followed regardless of legislative intent. A hearing body may not insert what has been omitted or omit what has been inserted.

Specifies Control: If two provisions conflict, the more specific provision controls. For example, if a property is located in a zone, which allows certain uses, but is subject to an overlay zone that restricts several of those uses, the overlay zone restrictions will control.

Findings

Findings are statements of the relevant facts believed by the hearings body and a statement of how each approval criterion is satisfied by the facts. A brief statement that explains the criteria accompanies approval or denial and standards considered relevant to the decision, states the facts relied upon and explains the justification for the decision.

Purpose of Findings:

1. To assure that the hearings body applied the criteria prescribed by the statute and by its own regulations and did not act arbitrarily or on an ad hoc basis.
2. To aid the reviewing body or court in determining what evidence was believed and whether the conclusions were supported by substantial evidence.

3. To aid the reviewing body or court in determining whether proper procedures were followed and proper legal standards applied.
4. To aid judicial review to avoid usurpation of administration functions, to assure more careful consideration, to help parties plan their case, and to keep agencies within their jurisdictions, and
5. To inform the parties why the hearings body acted as it did.

The statutes, ORS 215.416(7) and ORS 227.173(2), require:

1. An explanation of the standards considered relevant to the decision.
2. A statement of the facts supporting the decision, and
3. An explanation of how the standards and the facts dictate the decision.

The words “brief statement” indicate the legislative intent that the statement need not be exhaustive, but rather that it contain a summary of the relevant facts. No particular form is required, and no magic words need be employed. What is needed for adequate judicial review is a clear statement of what specifically, the decision-making body believes, after hearing and considering all of the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient.

The findings must address all of the applicable criteria. Failure to make a required finding creates a void in the record and renders the order legally insufficient. It is a defect that alone will necessitate a remand. A remand takes time because it requires gathering more evidence, mailing notice, and holding a hearing. Therefore, it delays the proposal. In addition, the decision may be changed on remand if the facts are such that the approval criteria cannot be satisfied. Such delays or reversals are costly. The best course of action is to determine whether the approval criteria can be satisfied before the initial hearing is held. This requires the applicant to submit a complete application.

Preparation of Findings:

The best way to prepare findings is to:

1. Identify all of the applicable criteria;
2. Start with the first criterion and deal with each element separately, e.g., the criterion is that the property is not subject to landslides, floods, or erosion;

3. State the criterion as a conclusion; e.g., the property is not subject to landslides because...;
4. State the fact that leads to the conclusion the property is not subject to landslides, i.e., because the topography on the property has a 0% grade and the property is located on a lava bed;
5. Repeat the above process for each element of every applicable criterion;
6. Where there is a criterion or element of a criterion that is not applicable, state why it is not applicable, and
7. Where there is conflicting evidence, the safest course is to state there was conflicting evidence, but the hearings body believed certain evidence for certain reasons. This however, is not required.

Pitfalls:

A pitfall in the preparation of findings can arise when the approval criteria require a finding, for example, that the use will not adversely affect the public interest. In this situation the elements of the public interest are defined by the applicants and opponents testimony (i.e. the opponents allege the public interest is adversely affected because the site is a slide area, there is a traffic hazard, and property values will be reduced). The findings must address each of these factors. If the decision is for approval, the finding must state the reasons the opponents' evidence does not adversely affect the public interest. On the other hand, the testimony may be grounds for denial. Nevertheless, to withstand an appeal to LUBA, each of the factors must be addressed.

Summary of Common Problems with Findings:

1. Failure to identify all applicable legal standards and criteria.
2. Failure to address each standard and criteria.
3. Deferring a necessary finding to a condition of approval.
4. Using generalizations without sufficient facts.
5. Mere statement that the criteria have been met.
6. Failure to establish causal relationship (direct observation, reports from other people), between facts and ultimate conclusions.

So to survive a legal challenge:

1. State all assumptions.
2. Articulate the link between the project impact and the conditions being imposed.
3. If project is modified, add new findings.
4. Make sure findings address criteria.
5. Avoid findings that restate the law.
6. Put in clear, understandable language.
7. Make sure it is not class-specific discrimination (or PC may be liable).

Past Decisions as Precedent?

Unless a particular provision has been previously construed by LUBA or the Courts, as a matter of law, the planning commission is not bound by an interpretation of a provision made in a prior case. As a matter of policy, however, consistent application of the same rules is desirable. Be mindful of the need to be consistent, but do not let consistency blind you to arguments that a clearly erroneous past interpretation should be corrected.

Although the governing body also is not bound by its past interpretations of a provision, the planning commission should heed interpretations by the elected officials and let the disagreeing party argue to the governing body that it should change its mind.



EVIDENCE

The applicant has the burden of proof. The applicant must introduce evidence that shows all of the approval criteria are satisfied. The opponents, on the other hand, have the duty to show that the applicant's facts are incorrect or that the applicant has not introduced all of the fact necessary to satisfy the burden of proof. The questions that arise are:



1. What is relevant evidence in the record?
2. How much evidence is required to support a finding, i.e., what does substantial evidence mean?
3. How does the hearings body address conflicting evidence in the findings?

The decision must be based on relevant evidence in the record. Evidence in the record is evidence submitted to the hearings body. The reason for limiting the basis for the decision to evidence in the record is to assure that all interested persons have an opportunity to review the evidence and to rebut it.

A hearings body may support an application in concept or members may have personal knowledge of facts that would satisfy the approval criteria, but it cannot approve the application on that alone. There must be substantial evidence in the record. Personal knowledge is not evidence in the record. In reality, however, such applications are approved, but they will be sent back to the local government (remanded) if appealed to LUBA. It is also important to note that an application cannot be denied on the basis of facts not in the record.

Relevant evidence is evidence in the record that shows an approval criterion is or is not satisfied. Testimony about effects on real estate values or traffic impacts is not relevant unless the approval criteria require a finding of no effect on real estate values or not traffic impacts.

There is a pitfall. It is when the approval criterion is stated in terms of the public interest (i.e. the use will not adversely affect the public interest). What is the public interest? It will be different in each case. The opponents may allege that allowing the use is against the public interest because the site is a slide hazard area, there will be hazardous traffic conditions because the site is on a curve, and the use will block views and reduce property values. This testimony, along with any testimony by the applicant, defines what the public interest and

considerations are in this case. Therefore, in this situation, all of the testimony regarding the adverse effects on the public interest is relevant testimony.

Substantial Evidence:

The statutes, ORS 197.835(8)(a)(c) provide that LUBA may reverse or remand a local government decision when the Board finds the local government has “made a decision not supported by substantial evidence in the records as whole.” The term “substantial evidence” does not go to the volume of evidence. Substantial evidence consists of any evidence that a reasonable mind could accept as adequate to support the conclusion.

Where the evidence is such that reasonable persons may fairly differ as to whether it establishes a fact, there is substantial evidence to support the decision. In other words, what is required is enough evidence to show that an approval criterion is satisfied. If two people agree that there is not substantial evidence, there is not enough evidence.

Conflicting Evidence:

When the applicant’s evidence is countered by the opponents, there is conflicting evidence. Where there is conflicting testimony based on different data, but any of the data is such that a reasonable person might accept it, a conclusion based on any of the data is supported by reasonable evidence. That is, the hearings body may select any of the data for its decision provided it is reasonable that a person would accept the data as correct. The best course of action is for the hearings body to state what evidence it believes and why when it prepares its findings of fact.

The Decision:

Therefore, the job of the hearings body is to ascertain the facts and to apply the approval criteria to the facts. The decision (due in 120 days for cities and 150 days for counties from application acceptance) will take one of three forms:

1. **Approval** meaning that the hearings body has found that the approval criteria are satisfied by the facts;
2. **Approval with Conditions** meaning that the hearings body has found approval criteria are not satisfied by the facts, but through the application of conditions, approval criteria can be satisfied. This assumes the ordinance authorizes the application of conditions or approval; or

3. **Denial** meaning that the hearings body has found that the approval criteria are not satisfied by the facts and the application cannot be made to comply with conditions attached to it.

In spite of all the procedures and facts, the tenor of the decision is the key. In one attorney's opinion, "It is more important how the decision appears than whether it technically covers every issue." It is the "reasonable person" standard that often prevails in court. More than one attorney has said that, "If an appeal is unlikely, don't worry about every procedural detail."

CONDITIONS OF APPROVAL

Most decisions come with a list of conditions tied to the approval. Once the conditions have been satisfied, a land use or building permit may be issued. Jurisdictions should exact conditions carefully, based on local or statutory authority. Conditions should not be a replacement for adequate findings of fact. Conditions or exactions should have a clear relationship to the applicable standards and criteria. They should relate to the evidence relied upon for the decision. The conditions should be enforceable by the administrator. The original approving body should typically make any changes to conditions.

Conditions or exactions should also meet the traditional constitutional tests of the Fifth and Fourteenth Amendments (due process and civil rights). Two important U.S. Supreme Court cases, Nolan v. California Coastal Commission, 1987 and Dolan v. City of Tigard, 1994, provide guidelines for the constitutional limits test.

The Nolan case said there must be a connection (rational nexus) between the condition and the applicable regulations and that there must be a legitimate public purpose for the condition. Most importantly, the public purpose must be related to the impact of the specific proposal.

The Nolan case involved the demolition of a beach cabin and a single family building permit and the California Coastal Commission's requirement that the applicant dedicate a ten-foot wide pedestrian easement across the parcel's beach frontage. The condition was based on a finding that the house would block the view of the beach and would be a "psychological barrier" because the public could not see the beach. The court held (5 to 4) the trail dedication constituted a taking.

Nolan is a warning to local governments that conditions that require the dedication of property cannot be used to implement other programs. There must be a connection between the condition and the applicable regulations. A condition of approval would probably be upheld under Nolan in each of the

following situations. (Note: The first (a.) has the greatest probability of being upheld, while the last (c.) has the least probability of being upheld).

- a. The proposal cannot satisfy the approval criteria; however, by placing the condition on it, the criteria can be satisfied. In this case the condition will satisfy the standards in Nolan. (Note: these approval criteria may be a plan policy or an ordinance provision).
- b. The proposal creates a need or places a burden on a public service and, therefore, providing for the service is made a condition. The greater the factual basis documenting the need or burden, the greater the chances it will be upheld. The second basis for applying a condition is when the proposal creates an off-site deleterious effect. Again, the findings should document the impacts and support the condition.
- c. The proposal conflicts with the purposes of the regulation. Nolan seems to say that a condition may be imposed if there is a direct nexus between the condition and the purpose of the regulation.

The Dolan case also provides a constitutionality test and said there must be an *essential nexus, a reasonable proportionality*, between the exaction and the condition, based on an individualized determination of the property's impact.

The case involved the doubling of an existing 9000 square foot plumbing supply store and addition of 39 paved parking spaces. The City required a 7000 square foot dedication for storm water and pedestrian/bicycle pathway based on drainage and bicycle master plans under the assumption customers and employees could use the pathway and it would offset some traffic impact. The City held that flood protection and reduction in traffic congestion are legitimate public purposes. The proposed condition would substantially advance those purposes. But there was not an essential nexus between the condition and the impacts of the proposed development.

The issue was, does the City's requirement violate the Fifth Amendment? The U.S. Supreme Court held that:

“We think a term such as “rough proportionality” best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the City must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development....”

Both cases reinforce a shifting of the burden to the local governments when it comes to developing exactions.

The Final Order

The preparation of a final order is time-consuming and, therefore, it is costly to local governments. The problem is further complicated by the fact that many planning departments have experienced a reduction in staff. There are three ways to reduce the time and costs:

1. Require the applicant to submit a complete application, which includes facts relevant to each of the approval criteria.
2. Limit the preparation of in-depth detailed final orders to those matters that are anticipated to be appealed, and
3. Require the winning party to prepare the final order.

Minor or less complex decisions can be made at the hearing based on findings and the hearings body official must sign them.

Appeals of Quasi-Judicial Decisions

The law requires that notice of a quasi-judicial decision be sent to all parties to a proceeding. Your jurisdiction may provide for its own internal appeals (for example, from the planning commission to the board of commissioners) before the decision is final. In that case, the applicant has a certain number of days from the time of receiving the notice of decision in which to file notice of appeal, but any internal appeal procedure must be completed within 120/150 days from the time a completed application was filed.

Several variations and levels of review exist among Oregon's cities and counties. The scope of your jurisdiction's appellate review is generally defined by local ordinances, and can range from a review of the previous hearing record to a de novo hearing, which is held as if the prior decision had not been rendered. The latter has the advantage of providing an opportunity to correct bad decision or procedural errors. But it can be costly, repetitious and time-consuming.



Final quasi-judicial land use decision can be appealed directly to the Land Use Board of Appeals. Notice of an appeal to LUBA must be filed within 21 days of a final decision. A person may appeal if he or she appeared at the local level, either orally or in writing, and was entitled to notice and a hearing or has interests adversely affected by the decision.

Tort Liability

Overview of Public Official Immunity: Sovereign immunity is a common law doctrine based on the theory that “the king can do no wrong” and under this doctrine, government cannot be sued unless it consents to it. The Oregon Tort Claims Act enacted by the Legislature in 1967 is consent to be sued, and it abolished sovereign immunity in Oregon. There is however, a second kind of common law immunity, not to be confused with sovereign immunity, called public official immunity. The Tort Claims Act does not abolish it. Rather, it is specifically incorporated into the Act in the provisions of ORS 30.265(2).

The rationale underlying the public official immunity is based on a public policy favoring freedom of action. Public officials would be unduly hampered and intimidated in the discharge of their duties if they were continually subject to suit. The threat of vexatious lawsuits might discourage public service and might influence decisions.

Immunity is given because there is no way to determine guilt or innocence without a trial and, in the words of Judge Learned Hand, “Subjecting an official to the burden of a trial and to the inevitable danger of its outcome would dampen the ardor of all but the most resolute or the most irresponsible, in the unflinching discharge of their duties. Again and again, the public trust calls for action which may turn out to be founded on a mistake, in the face of which an official may find himself hard put to it to satisfy a jury or his good faith.”

Judges and legislators are granted absolute immunity while they are acting within the scope of their duties. Absolute immunity means they are immune no matter the motivation for their action. The question is whether this immunity extends to lesser legislative bodies and whether it extends to quasi-judicial bodies.

Planning Commission members and elected officials have public official immunity while acting on planning matters in their official capacity. Acting in their official capacity means acting on a land use matter in a public meeting called for the purpose of deliberating toward a decision on the matter. Public official immunity does not extend to actions taken outside a public meeting.

The Public Hearing

Many applicants and most citizen opponents have never before testified at a hearing. They come to the hearing with no knowledge of how the hearing will be conducted, what they should do and say, and how the decision will be made. They find it very confusing and the confusion leads to frustration and hostility and, in some cases, suspicion about how the decision was made.

The situation is further complicated by the testimony being irrelevant and repetitious. The hearings body members find it difficult to concentrate on the testimony, and people leave feeling they weren't heard. This further convinces them that "you can't fight city hall."

These problems can be overcome by having a chairperson give a thoughtful and careful explanation of the hearings process. The explanation should explain the following:

1. How the hearing will be conducted
2. How the decision will be made, and
3. What constitutes relevant testimony

The explanation of relevant testimony is simplified if the approval criteria are posted on the wall. The chairperson should read the approval criteria and then give examples of relevant and irrelevant testimony. Relevant testimony is testimony that shows whether one of the criteria is or is not satisfied. People often want to talk about property values. If maintenance of property values is not a criterion, testimony on this subject would be irrelevant. In other words, any testimony that does not show that one of the criteria is or is not satisfied is irrelevant testimony.

Imposition of time limits is another factor that creates hostility. It is at the discretion of the chairperson whether to impose them. Often, a simple explanation that they can be imposed will cause people to limit their testimony.

OUTLINE FOR HOW TO CONDUCT A QUASI-JUDICIAL * OR LEGISLATIVE PUBLIC HEARING

Follow Oregon Public Meetings Law

Order of the Hearing

1. Chair opens hearing
- *2. Hearing Disclosure Statement (ORS 197.763)
3. Declare Actual or Potential Conflicts of Interest, Ex Parte Contact or Personal Bias
4. Staff Report
 - a. Approval Criteria
 - b. Findings
 - c. Conclusion and Recommendation
5. Applicant's Testimony
6. Proponents' Testimony
7. Opponents' Testimony
8. Neutral Testimony
9. Applicant's Rebuttal
10. Consider hearing continuance request
11. Close Hearing
12. Commission Deliberation
13. Decision Notice or Final Order (sent to all party to the hearing)
14. Appeal to (Commission, Council or LUBA)

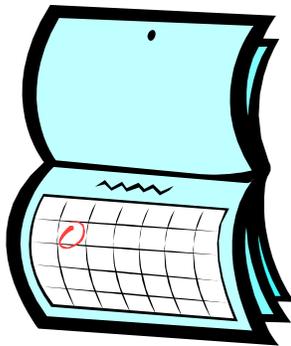
An explanation of the hearings process (also see "Script for Planning Commission" and sample Hearing Disclosure Statement in the Appendix) and posting the approval criteria often leads to a better decision. They help to focus the citizens' testimony and the hearings body deliberations.

In addition, once the opponents hear the staff report and applicant's presentation, they have an understanding of the probable outcome. In some situations, the opponents at this point realize it is in their interest to focus on recommending conditions of approval that will make the proposal an integral part of the neighborhood. The end result is a better decision and a project that through its design takes into consideration the needs of the community.

APPEALS AND TIMING

The final item in a legislative or quasi-judicial hearing is the potential of an appeal----- from a staff decision to the planning commission, from the planning commission to the governing body or from the elected officials to the Land Use Board of Appeals. Time frames for these actions are set out in state law and local ordinances.

The 120-Day Rule



A city's final land use decision must be made within 120 days from acceptance of a *complete* application including time needed for appeal. Most city ordinances allow the staff 30 days to determine that what was submitted is complete and then to send written notice to the applicant. Date of that notice starts the 120-day clock.

Counties face similar requirements but are allowed 150 days rather than 120.

What happens if a decision cannot be made within the time limits? The city or county can ask the applicant if he or she will waive the rule. Often that is agreeable since the alternative may be denial of the application. If the clock runs out and the timing rule has not been waived, the applicant may ask the court to grant a writ of mandamus. If granted, the writ allows the application to proceed without local government approval.

Continuance of a Public Hearing

According to ORS 197.763 (6)(a), "prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority **shall** grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments of testimony pursuant to paragraph (c) of this subsection.

- (b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new evidence.
- (c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to the new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection 7 of the section.
- (d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.428 or 227.178, unless the continuance or extension is requested or agreed by the applicant.
- (e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.428 or 227.178.

MAKING LAND USE DECISIONS

Steps to a Decision

1. Identify standards and criteria
2. Gather evidence
 - a. Direct observation
 - b. Reports from other people
 - c. Reasoning from other knowledge
3. Establish relationship of facts and law
4. Organize and articulate decision

Things to avoid:

Lack of direct observation of facts
that can be observed

Lack of quality or qualification

Lack or inadequacy of reasoning



Guidelines for Writing Findings, Conditions, etc.

Goals

- 1. To be read**
- 2. To be understood**
- 3. To convince**
- 4. To cause some action**

Objectives

- 1. Organize - organize - organize**
- 2. Don't use words that say nothing**
- 3. Don't say something you already said**
- 4. Use small words when you can**
- 5. Use few words**
- 6. Keep the length of sentences short**
- 7. Keep the length of paragraphs short**
- 8. Use active verbs and forceful sentence structure**
- 9. Use transitional words to send the reader signals**

CHAPTER FIVE

ETHICAL PRINCIPLES OF PLANNING

ETHICAL PRINCIPLES FOR PLANNING

According to the *Oregon Ethics Guide*, “A public office is a public trust.” Planning issues commonly involve a conflict of values, and often there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants. The APA and AICP recommend the following ethical principles be followed in decision-making.

Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest, and independent judgment in their roles as decision-makers and advisors.
2. Make public disclosure of all “personal interests” they may have regarding any decision to be made in the planning process in which they serve, or are required to serve, as advisor or decision-maker.
3. Define “personal interest” broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision.
4. Abstain completely from direct or indirect participation as an advisor or decision-maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer; if any, has given approval, and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation.
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant’s objectivity as an advisor or decision-maker in the planning process.
6. Not participate as an advisor or decision-maker on any plan or project in which they have previously participated as an advocate.
7. Serve as advocates only when the client’s objectives are legal and consistent with the public interest.

8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision-maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision-maker.
9. Not use confidential information acquired in the course of their duties to further a personal interest.
10. Not discuss confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to their persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions.
11. Not misrepresent facts or distort information for the purpose of achieving outcome.
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service.
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics, which are protected under civic rights law and regulations.



Summary of Ethical Principles of Planning

1. Planning officials ought to serve the public interest.
2. Planning officials ought to recognize the right of citizens to influence decisions.
3. Planning officials ought to recognize the long-range nature of planning decisions.
4. Planning officials ought to strive to expand choice and opportunity for all persons.
5. Planning officials ought to encourage the coordination of activities and efforts in accommodation of all interests.
6. Planning officials ought to avoid conflicts of interest.
7. Planning officials ought to be thorough and diligent.
8. Planning officials ought not to seek or offer favors to special interests.
9. Planning officials ought not to disclose or improperly use confidential information for financial gain.
10. Planning officials ought to insure equal access to public records.
11. Planning officials ought to insure that all relevant information is disclosed at public meetings.
12. Planning officials ought to maintain the public confidence.
13. Planning officials ought to respect the professional code of ethics (published by the American Institute of Certified Planners as a guide to its members).

ETHICAL ISSUES AND THE LAW

Ethics laws are designed to ensure that you do not misuse your position as an official in land use decisions, and that you apply and advocate proper planning principles. The following are three ethical categories of concern, followed by a brief definition and state statute reference.

1. **Personal Bias**

Prejudice or prejudgment of the facts to such a degree that an official is incapable of making an objective decision based on the merits of the case.

2. **Actual or Potential Conflict of Interest (ORS 244 and 227.035)**

An actual conflict is when a decision **would** result in financial benefit or avoidance of financial detriment to the official, a relative or a business with which the official or relative is associated. If so, disqualify yourself for actual conflict.

A potential conflict is when a decision **could** result in financial benefit or avoidance of financial detriment to the official, a relative or a business with which the official or relative is associated. If so, disclose the potential conflict.

Conflict of interest does not exist when financial gains or losses are shared equally with other members of a group or class.

3. **Ex-Parte Contact (ORS 227.180 (3))**

Communication involving the merits of the case that will come before the official outside the presence of all interested parties.

When there has been an ex-parte contact, disclose it and offer the right for rebuttal.

For a complete copy of the "Oregon Government Standards and Practices Laws"
Call 1-503-378-5105.

Exceptions and Warnings

Oregon's Open Meeting Law specifically exempts **site visits** from the law's requirements.

Example: Three of five planning commissioners visit the site of a land use application. Their inspection does not constitute a public meeting unless they deliberate toward a decision.

Training Sessions and **conferences** also are exempt. Again, this is not a public meeting unless there is discussion of official business.

Minutes are available within a "reasonable time" after each meeting. The law does not specify the time, but Attorney General's office suggests not more than three weeks. Also, minutes must be preserved for a "reasonable time" – generally interpreted as at least one year. The Open Meeting Law requires that minutes be kept and be made available within a reasonable time.

No Secret Ballots are allowed. Minutes must include the results of all votes by name of each member (except for public bodies consisting of more than 25 members).



The Planners Training Team strongly recommends site visits prior to public hearing. We also recommend that decision makers DO NOT go as a group even though it is legal to do so. By making individual visits the Appearance of Fairness is increased. (See Chapter on Effective Participation).

CHAPTER SIX

EFFECTIVE PARTICIPATION – BE FAIR

EFFECTIVE PARTICIPATION – BE “FAIR”

Other sections of this manual provide information on land use planning, legal requirements, public hearing procedures, etc. However, effective participation requires more, particularly in terms of how applicants, proponents, opponents, “Interested citizens”, elected officials and others view your work.

Golden Rule for Public Decision Making: Be Fair

Unpopular decisions will be more readily accepted when people see the process as FAIR – when people understand the basis of the decision and feel that they had an opportunity to be heard. How meetings are conducted, how you listen and what you say affects your credibility and your image of fairness.

Dos and Don'ts for Conducting Fair Meetings:

DO

- 1. Do be on time.** If the hearing is scheduled for 7pm, the hearing should start at 7pm. If you have to wait for one or two others to have quorum, you are being *unfair* to all the people who came on time.
- 2. Do dress appropriately.** If the shirt and tie are typical apparel, showing up in a tired Mickey Mouse tee shirt does not create the impression of much respect for the people at the hearing.

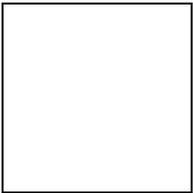
DON'T

- 3. Don't use body language that suggests boredom, anger, disbelief, etc.** The Mickey Mouse shirt wearer will not improve the impression he makes by burying his head in his hands while people are testifying.
- 4. Don't “mingle”** with people in the audience before the meeting or during a recess. Others may assume something secret is taking place.
- 5. Do your homework.** It is *unfair* to the applicant and your community to act on issues without adequate information and you may make some terrible decisions.
- 6. Don't assume the roll of fairy godmother.** It is not your job to “save” people from making bad decisions or to take on the applicant's burden of proof.

7. Do focus on issues not personalities. Discussion and decisions will be more rational if they are impersonal.

8. Treat everyone with courtesy and respect. The nasty neighbor, the sneaky business competitor or the rude gadfly may not deserve it, but they should be treated with the same respect as the community's leading citizen, the best friend or your mother.

9. Don't let personal feelings dictate decisions. How you feel about preserving wetlands or locating convenience stores in residential areas are NOT criteria for decisions, unless ordinance standards coincide with how you feel.



REMEMBER HOW WE COMMUNICATE

**55% body Language – Posture,
Expression, Gestures, Breathing
38% How we say it – Tone, Speed,
Volume
7% Words**

1. Do be attentive. Those presenting testimony probably have spent hours in preparation. The least you can do is *listen* and make them think you are as interested as you should be.

2. Do listen actively. Focus on what is said, not on what you expect to hear or what reply you'll make.

3. Don't be trapped by "Listening Blocks." Be aware that most of us tune out comments we don't want to hear or ideas from people we don't like. Recognition of our personal listening blocks helps us hear in spite of them.

4. Don't make assumptions about what you hear. Instead, ask open, rather than closed, questions. "Open" questions include words *who, how, what, where, when* and *why* and cannot be answered *yes* or *no*.

5. Do paraphrase what was said to confirm what was meant. If someone wants "more professional development", does that mean design review standards or training for staff and planning commissioners?

DOS and DON'Ts for What You Say

- 1. Do explain meeting procedures at the beginning.** See the Appendix for specific suggestions.
- 2. Do stress standards and criteria for decisions.** Testimony will be more relevant when people understand the basis for the decision.
- 3. Don't interrupt a presentation** except for essential and brief questions. People generally arrange their comments in a logical sequence and probably will get to your concern if you are patient.
- 4. Don't speak planner-ese.** Not everyone knows the meaning of UGB, LID, PUD, etc. The first time you use an acronym, be sure to explain what it means. (See Appendix for "Planner-ese" and translations).
- 5. Do show respect for the Chair.** Say Madam Chair, Mr. Chair, Chairman Brown or whatever. This sets an example for applicants and encourages orderliness.
- 6. Do treat people equally; don't use first names.** If the first to testify is referred to as Mr. Jones, refer to the next as Mrs. Smith even if she's Mary, your sister-in-law.
- 7. Don't try to answer technical questions,** even if you know the answer. That's the staff's job; yours is to reflect community values and apply the Plan and ordinances. When you give technical answers, you undermine the staff and diminish your real role.
- 8. Do avoid prejudging** (or appearing to prejudge) before a public hearing is closed. Saying "This project will increase traffic" implies a decision is made. Instead say approval of this project *would* increase traffic.
- 9. Do summarize what you have heard.** Comment on which facts are important to the decision and which are not.

Some of the above ideas may not fit your community or your planning commission, but we hope they alert you to thinking about how the public perceives how you work. You want to not only be fair, but be seen as fair too. (The Planners Training Team would like to hear your ideas on these Dos and Don'ts).

OREGON'S OPEN MEETING LAW

Oregon's Open Meeting Law (ORS 192.610 – 192.690) requires that decisions of any "governing body" be arrived at openly so that the public can be aware and informed of the body's deliberations and decisions.

A governing body is one with two or more members, which decides for or recommends to a public body. The law applies to the state, cities and counties and advisory bodies to those jurisdictions.

Not only must meetings of city councils and board of county commissioners be "open", but also the meetings of planning commissions, design review boards and other appointed boards or commissions which have the authority to make decisions or recommendations. (In Clackamas County, legal counsel has determined that the official recognized citizen groups – community planning organizations – are subject to the open meeting requirements).

Any time a quorum of the body's membership is present a meeting exists with a few exceptions. "Closed meetings" (or executive sessions) are allowed to discuss employment, discipline or labor relations but decisions on these issues must be made at a public (open) meeting.

Notice of public meetings is required, and the notice must include the time and place and principle subject to be discussed. Notice should be timed to give "reasonable" advance notice to the public. For "emergency" or special meetings, the law calls for 24 hours advance notice.

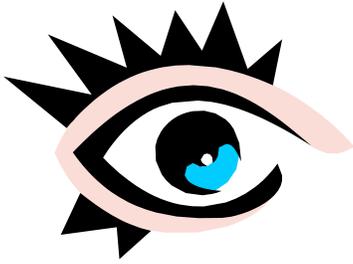
What's required at the meeting?

Written minutes, which give a true reflection of matters discussed must be kept and made available to the public within a reasonable time. However, neither a full transcript nor a recording is required.

Include in the minutes:

- Names of members present
- Motions, resolutions, etc., and their disposition
- Substance of discussions and references to documents

Because a meeting is open to the public, it means that anyone can attend. But "open" does not mean that anyone has the right to speak. Planning commissions and governing bodies may hold work sessions and other meetings without allowing public comment.



Q: Are Site Visits Subject to the Oregon Open Meeting Law?

A: No, but....

Oregon's Open Meeting Law specifically exempts site visits from the meeting requirements. That means that the Planning Commission or governing body could go as a group, or a quorum, to visit a site. However, site visits are considered **Ex Parte Contacts** and should be disclosed at the first public hearing.

A second consideration is the assumptions, which may be made by the public when they realize that a majority of the decision-making body visited the site without everyone else who might be interested in having an opportunity to be there. What they see? What was discussed? What did they decide?



Q. Do Planning Commissions Hold Closed Meetings?

A: No, why should they?

The state's meeting law allows for closed meetings or executive sessions to discuss employment, legal actions, real estate contracts, etc. However, these exempt activities are not actions of the planning commission. As important as planning commission activities are, they do not include hiring or firing employees, suing people or buying/selling materials or property. (See Oregon's Open Meeting Law in Chapter 6).



Resolving Land Use Conflicts

Oregon's 30 years of experience with out state land use laws certainly demonstrates that land use issues can generate conflicts. We need to recognize issues that may produce conflicts, anticipate opportunities to deal with the problems and use techniques that encourage "win-win" solutions.

Elements in Every Conflict

Issues: the "*what*" of a dispute (e.g. the wetland impact of proposed development)

Positions: the "*how*" – a specific proposal about how to solve the dispute ("This wetland permit cannot be issued")

Interests: the "*why*" - the expression of needs that drive a person's behavior (Why do you want...? Why is that important?)

Only by identifying the interest(s) underlying the issues and positions and recognizing the different levels of importance each party gives to these interests, can the disputing parties create mutually satisfying, durable solutions to conflicts.

Interests may be:

Procedural: Do people feel they are being treated fairly?

Psychological: Do people feel they are listened to and their ideas respected?

Substantive: Do people feel they will benefit from the result?

The above are excerpts from *Collaborative Approaches to Decision making and Conflict Resolution for Natural Resource and Land Use Issues*, published by the Oregon Department of Land Conservation and Development, June, 1996



How to Deal with Potential Conflicts in Land Use Issues The sooner the better

Sometimes conflicts and uproars can be anticipated well in advance of the public hearing on a legislative or quasi-judicial land use hearing.

Potential Conflicts in Legislative Decisions:

Generally local jurisdictions set the schedule for legislative land use decisions. There is no 120-day rule. By identifying stake holders, clearly presenting facts and alternatives, and really listening, and responding to the ideas and suggestions from all of the interested parties, decisions will be made that people see as fair. Even when people disagree with the results, it's difficult to generate a conflict over a "fair" decision.

Opportunities to Resolve Potential Conflicts in Quasi-Judicial Decisions:

Pre-application meeting with Neighbors, required by some jurisdictions, allows the applicant to identify any special neighborhood concerns and lets neighbors (who may be potential opponents) become part of developing solutions before positions solidify.

Pre-application conference is the first opportunity for the city or county to identify potential issues. Staff and the applicant often can find alternatives that avoid problems in a manner that is far more comfortable than as part of a public hearing.

Staff Review of Application, before "deeming it complete" and thereby triggering the start of the 120-day clock, may be able to identify the stakeholders who might object, and initiate a collaborative approach to resolving conflicts.

Staff recommendations in the staff report may trigger conflict. If issues can be resolved easily, solutions can be presented at the public hearing.

Prior to an Appeal to LUBA, the various parties to a conflict may have the greatest interest in resolving problems and saving the time and dollars that result in going to court.

Let Space Set Tone: Six Truisms

- 1. The more crowded the space, the more emotional the crowd!**
Crowding people together can encourage the enthusiasm of a pep rally or the anger of a lynch mob. Vacant space creates calm and quiet. Select meeting place/space accordingly.
- 2. The hotter the room, the hotter the audience.**
Hot, stuffy rooms increase anger; cool rooms decrease it. Set the thermostat for the results you want.
- 3. The more neutral the meeting site, the more neutral the crowd!**
People who distrust government may become more distrustful when they step into city hall or the courthouse. Those who are suspicious of an individual become more so in that person's office or home. A neighborhood school can create a neighborly feeling.
- 4. The more formal the seating arrangement, the more intimidated the participants!**
A stage or raised platform separates "them" from "us". Everyone on the same level suggests equality. A speaker's rostrum suggests a shield for officials to hide behind, but also offers a prop for a nervous citizen.
- 5. The bigger the desk, the more defensive the visitor!**
The visitor sitting on the other side of an executive desk is less comfortable than one sitting across a clerk's desk. Even more comfortable is sitting at a conference table or side-by-side. And the person facing a window is at a disadvantage.
- 6. The greater the distance between speaker and audience, the less the audience will participate, comment or question.**
If you want participation, set up a minimum number of chairs, individually ask those in back to move up "so I'll be sure you can hear everything", and make your presentation from a spot 12 feet from the first occupied row. If you want little or no participation, do the opposite.

Techniques for a No-Conflict Style

- Lower your voice
- Speak more slowly
- Don't blame
- Paraphrase
- Don't challenge
- Use short sentences
- Pause between sentences
- Don't bait or be baited
- Play dodge ball- Mentally step aside
- Use deep breathing
- Don't answer non-questions, just acknowledge you heard
- Use "broken record" (I see. Yes, I understand, etc.)



Disagree Diplomatically

- Find common ground before dealing with points of disagreement
- Stick to the issue. Don't bring up minor details or past history
- Say what you mean in a simple straightforward manner
- Really listen to understand where the other person is coming from
- Be willing to change your mind if the other person's points are valid
- Look for compromise – the consensus both of you can live with

MEDIATION

Mediation is an important alternative to adversarial conflict. One of the signs of a thriving community is the ability to “think outside the box.” Inside the box, people’s *positions* can get stuck, making progress hard to define and harder to achieve.

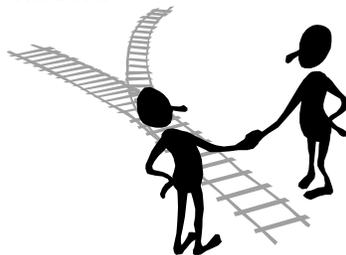
For instance, two groups could take opposing positions regarding whether development should or should not occur at a site rich with wetlands – a site which is also critical to an overall development vision for the heart of town. If the atmosphere is right for “thinking out of the box”, then the parties will be willing to relax a bit about their positions and talk about their *interests*.

It turns out the wetland group is most interested in these wetlands as an educational opportunity for urban kids. Others had a position that the site ought to be commercially developed, but their underlying interest is to see the city grow in a way that builds community. To achieve that, both sides agree, eventually the city will have to invest in a new library and an up-to-date commercial area.

And the upshot is a library designed to integrate with the wetlands and provide a starting-off point for wetland tours. The commercial area will go where the library had originally been intended. This is not compromise. Neither “side” gave up its interests. But together they made their mutual world of opportunities greater, and they each got a lot of what they want – and maybe more than they ever dreamed.

Creating the right atmosphere – the mix of structure and skills to support the type of expansive negotiation – is what mediation is all about. Mediation is a tool that can be used equally well when writing a new, controversial ordinance, or for any complex policy decision, as well as for specific land use issues. Perhaps the most important thing that mediation does is to take the energy behind conflict and use it to *build* community, rather than to tear it down. That’s really thinking outside the box!

PTT sees this alternative to adversarial conflict as important enough to include mediation in some of its training sessions. LCDC sees mediation as such an important means of resolving land use issues, that it provides financial support and maintains a list of trained mediators. Call PTT, DLCD in Salem or your field representative for more information.



CHAPTER SEVEN

PUBLIC INVOLVEMENT

Encouraging Effective Citizen Involvement

How, and if, citizens become involved in your land use decisions can significantly affect results. The best road to success is to provide opportunities for meaningful public involvement throughout the process. Recognition of that fact may be the reason that the people of Oregon decided to make citizen involvement the first of the statewide land use planning goals.

Effective Citizen Involvement requires Public Awareness of:

- What is proposed?
- Who will be affected and how?
- Criteria for decisions
- Who makes decisions, when and where, and with what time line?
- How to get feedback

The type of land use decision influences the approach to public participation.

Legislative Decisions: Be creative! Get outside the box.



Choices are wide open in considering amendment to the comprehensive plan or zoning code, adoption of a sign ordinance, etc.

The city or county wants a broad range of ideas. There are no questions of ex parte contacts and there is no requirement that a decision be reached. (For example, if people don't like the idea of a new or revised ordinance, the idea can be dropped).

Quasi-Judicial Decisions: Follow the Rules! Play it safe.

Procedures for making these decisions proscribed by law and local ordinances, limit involvement choices. (See Chapter 4).

An applicant requests approval for a zone change, conditional use, etc. in a specific area. Criteria exist that dictate the basis for a decision. The decision maker must declare any ex parte contacts at the first opportunity. And a decision – approve, deny, or approve with condition – must be made.

Who Receives Notice?

Legislative: Those who have an interest (residents, businesses, special interest groups, neighborhood associations, state/federal agencies, the county, other local governments) and since passage of Ballot Measure #51 **property owners** who may be affected.

Quasi-Judicial: Legally, notices must be sent to property owners within a certain radius of the property that is subject to the requested change. The local government may decide to exceed this minimum.

How is Notice Distributed?

Legislative: Choices include newspaper articles, ads, newsletters, radio spots, posters, direct mail, personal “invitations” as well as legal notices.

Quasi-Judicial: Direct mail to property owners. Sometimes sign posted on the site. Other methods are optional.

Content & Timing of Notice

Legislative: People need to know what is proposed, why and what alternative exist. Then describe how a decision may be reached and list time frames. Provide this information several times in several ways.

Quasi-Judicial: Most important in the public notice is the list of criteria on which a decision will be based, and that the staff report will be available *seven days* prior to the public hearing.

Public Hearing & Other Events

Legislative: Questionnaires, surveys or focus groups can help identify the level of interest in an issue of proposal. Town Hall meetings, Forums, and Open Houses (with staff available to answer questions) as well as printed material can attract interest prior to public hearing.

Quasi-Judicial: Public involvement in quasi-judicial decisions is at the public hearing(s), (See previous chapters). Some jurisdictions also require applicants to meet with property owners or a recognized neighborhood association prior to a pre-application conference with staff.

Feedback

Legislative: Feedback will let citizens know that their opinions were heard and considered. Provide a summary or “Feedback Report” that lists major comments and impact, if any, on decisions.

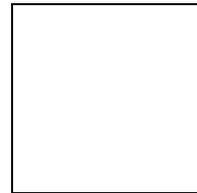
Quasi-Judicial: As part of the public hearing, either in response to an individual’s testimony or after public testimony is closed, comment on what testimony affected your decision.

HELP CITIZENS HELP YOU

Why?

LCDC's Goal #1 requires opportunities for public involvement in land use planning. And there are benefits beyond that legal requirement.

- Citizens know their neighborhoods and community best.
- Residents and property owners can offer ideas on what is needed, what works and what doesn't.
- Members of the public who participate in development of a plan or ordinance take pride in their work and support the results
- Public involvement increases understanding of, and potentially support for, local government.



Explain the System

Citizens can make their greatest contributions to the planning process when they understand the system. How staff handles questions at city hall and how planning commissioners conduct meetings can contribute to public understanding. Several local jurisdictions go beyond that and make special efforts to educate people on planning.

Gresham publishes *Land Use & Development Community Involvement Workbook* and *How to Play the Planning Game*. These describe both citizen involvement opportunities and the city's planning process. There's even a description of a Planning Staff Report.

Clackamas County has conducted annual workshops for interested citizens and regularly exceeds state public notice requirements to let more people know about pending decisions.

Stayton has sponsored Planning Commission Training sessions for its citizens and dozens of other cities in the mid Willamette Valley.

Dozens of other examples exist. All start with the premise that public understanding promotes informed, useful participation.

Stress Criteria for Decisions

A citizen who testifies about how a land use decision will affect his property values and then sees the testimony ignored becomes frustrated, angry and distrustful of both local officials and local land use planning. He needs to know that decisions are based on criteria in local ordinances and that “property values” is not a criterion. Make criteria stand out in the staff’s written report, the oral presentation and in comments by the chair.

Check List for Giving Testimony

A Handout prepared by Washington State University Cooperative Extension Service

- Arrive early and sit near the front of the hearing room
- Dress conservatively so that your appearance doesn’t detract from your testimony
- Record the hearing with a tape recorder
- Listen objectively and take notes on arguments presented during the hearing
- State your purpose clearly
- Begin with a clear statement of the purpose of your testimony
- Show how your viewpoint will be of benefit to the public interest.
- Back up your ideas and statements with short examples
- Be positive and avoid using words such as “maybe” or “could”
- Don’t “ad lib” more comments than necessary
- Watch for reactions from the hearing body and adjust accordingly
- Maintain eye contact with the people you are speaking to
- Don’t put people to sleep with a long, dull testimony – be clear and to the point
- Thank the hearing body for listening to your testimony

Presentation Dos & DON'Ts

DO

Know your topic,
Believe what you're saying

Plan strong first, last sentence

Use audience language

Focus on issue/problem

Stand/sit up straight

Remember to breathe and,
pause between paragraphs

Look at your audience

Speak Conversationally

Use visual aids

Time use of visuals/handouts

DON'T

Apologize

Say "I guess I'm here to ..." or
"That's all I have to say."

Avoid jargon

Focus on person/personalities

Jingle pocket change, arrange hair

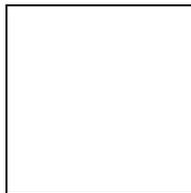
Fear silence

Stare at floor, ceiling or your papers

Read

Stand between visuals and audience

Expect people to read and listen
simultaneously



APPENDIX

GLOSSARY

SAMPLE OPENING STATEMENT FOR A QJ HEARING

“SCRIPT” FOR THE HEARING FORMAT

LCDC GOALS

“PLANNER-ESE” ACRONYMS

OREGON AGENCY ABBREVIATIONS

Glossary of Common Land Use Terms

Many specialized terms are used in issues related to land use. The terms listed here are among those more commonly used.

Accessory Use/Building: A use or structure associated with and incidental to the main use on the lot. Examples: private garages, fences, decks, tool sheds. Also known as secondary or ancillary uses.

Annexation: The process of expanding the city boundaries to bring adjacent territory under the governmental jurisdiction of the city.

Appeal: The process of having a land use decision by the Planning Administrator, Planning Commission or Hearings Officer reviewed by the City Council or County Court. In Oregon the Council or Court decisions may be appeals to the State Land Use Board of Appeals (LUBA).

Arterial: A major road whose primary function is to efficiently move traffic with little or no direct access to adjoining properties.

Buildable Lands: Lands in urban and urbanizable areas that are suitable, available and necessary for residential use. Hazard areas (steep slopes, flood plains, etc.) are excluded.

Capital Improvement Program (CIP): A plan describing some or all of a community's planned capital improvements (roads, water, sewers, storm drains, etc.) including costs and time frames.

Cluster Development: The concentration of structures on one part of a lot to preserve the remainder of the property for open space, usually permitted under planned unit development ordinances.

Common Wall: A wall shared by two buildings and that lies along the property line between them.

Comprehensive Plan: An official document adopted by a local government, which sets forth general long-range policies on how the community's future development will occur.

Comprehensive Plan Map: A primary component of the comprehensive plan which shows the geographic pattern of the land uses as defined in the comprehensive plan.

Conditional Use: Zoning ordinances specify three types of uses for each zone: uses that are permitted outright, those that are prohibited, and those that may be permitted after review and approval by the local government. Those in the last category are described as conditional uses. The list of conditional uses for each zone typically includes activities for which no specific zone exists (e.g. schools, churches, etc.) and which may need specific development conditions. A conditional use procedure commonly provides for public review of any development being considered.

Conditions of Approval: Development requirement(s) in which the applicant, in order to adhere to standards of approval established by local governments in land use ordinances, must satisfy as a part of the approval and permit process.

Density: The measure of intensity of residential development on a particular piece of land, usually expressed in number of dwellings per acre. A typical low-density suburban subdivision has three or four units per acre.

De Novo Hearing: A public hearing in an appeal in which all evidence and comment is accepted for consideration – not an appeal based on the record as a previous hearing (“On the Record Hearing”).

Design Review: Review of certain types of development proposals to insure compliance with adopted standards for site layout, design and aesthetics (style, landscaping, building materials, parking, pedestrian circulation, etc.)

Down Zoning: Changing a land use zone from one allowing more intensive uses to one of less intensive use (e.g. a commercial zone to a residential zone).

Eminent domain: A government’s power to take private property for public uses if it pays “just compensation.”

Exactions: The charges, conditions and dedications demanded from a developer by a local government in return for approval of some development proposal.

Ex Parte Contact: Contact outside of a public hearing or review conference in a land use case by a member of the decision making body and someone wishing to directly or indirectly influence the outcome of the case. This *does not apply* to legislative or policy issues such as code amendments nor does it apply to pre-hearing contact with staff.

Flag Lot: A lot that is mostly separated from the street by other lots but that has a long, narrow extension (the flag pole) that reaches to the street.

Functional Plan: A set of detailed information, policies and standards regarding some function of local government - transportation for example.

Grandfathered: Permitted to continue, despite the imposition of new laws that would otherwise prohibit the activity. A land use operating under a grandfather clause is often referred to as a nonconforming use.

Hearings Officer: An appointed official who conducts public hearings and renders a decision on land use cases involving variances, conditional uses and zone changes not requiring a comprehensive plan change.

Infill: Development that occurs on isolated vacant lots in a city. Such development usually is considered to be a boon to the community because it conserves land, reduces sprawl and uses lots that otherwise become weed-filled, eye-sores or attractive nuisances.

Infrastructure: The public facilities and services that support the functions and activities of a community (sewers, roads, water lines, storm drainage, etc.)

LCDC/DLCD: Land Conservation and Development Commission is the state commission that oversees land use planning throughout the state. The Department of Land Conservation and Development provides staff support to the commission and reviews city and county land use policies and laws.

Land Use Board of Appeals (LUBA): A state board that has authority to review appeals of land use cases decided by local jurisdiction.

Legal Description: A description of the precise location and boundaries of a particular parcel of land. The description usually is written in one of three general forms – Metes-and-bounds, plat and township-and-range survey system.

Local Improvement District (LID): A small district formed for the purpose of carrying out local improvements (paving a street, developing a park, constructing a sewer system, etc.) Property owners within the LID are assessed for the costs of the improvements.

Lot: A legally defined piece of land that is the result of subdividing or partitioning land. A lot of record is a lot or parcel for which the deed, or other instrument dividing the land, is recorded with the county.

Nonconforming Use: A use that was allowed by right when established or a use that obtained a required land use approval when established, but that subsequently, due to a change in the zone or zoning regulations, is a use that is now prohibited in the zone.

On the Record Hearing: A public hearing in an appeal in which evidence is limited to that presented at the previous public hearing in the land use case.

Ordinance: A law enacted by a local legislative body such as a city council or board of commissioners.

Partition: The division of a parcel of land into two or three lots.

Planned Unit Development (PUD): A type of residential development in which the Zoning Code allows more flexibility of development standards than in a conventional subdivision, typically as a trade-off for a development amenity.

Plat: A map of a subdivision. The plat usually shows the location of all public rights-of-way, the dimension of lots and various other items required by the local subdivision ordinance.

Pre-existing Use: A use that existed prior to the enactment of a land use regulation that now applies to it. Such a use can be one that conforms to the regulation, but most often this phrase means a **nonconforming use**.

Public Hearing: A formal proceeding before the Planning Commission, Hearings Officer or governing body in which the public is permitted to provide testimony into the record.

Public Meeting: As above, but without public testimony. Typical public meetings include work sessions where the public may attend but not testify.

Quasi-Judicial action: A legal action that involves the application of general policies or laws to specific persons or properties. This type of action can be contrasted with legislative actions, which involve the creating of policies and laws, and with ministerial actions, which involve routine administration of clear and objective requirements.

Rights-of-Way: A public or private area that allows for the passage of people or goods, such as freeways, streets, bike paths, alleys and walkways. A public right-of-way is dedicated or deeded to the public for public use and is under the control of a public agency.

Riparian: “Of, pertaining to, or situated on the edge of the bank of a river or other body of water” (definition from the LCDC Goals).

Senate Bill 100 (SB 100): passed into Oregon law in 1973, it established the Land Conservation and Development Commission and statewide land use planning goals.

Setback: The placement of a building a specified distance away from a road, property line or other structure.

Special Use: A land use, which the Zoning Code permits when certain prescribed conditions in the code are fulfilled.

Standing: The legal designation of those individuals or groups who are entitled to receive notification of a pending land use case, to receive notice of the decision or to file an appeal of the decision. The term also applies to those who are legally entitled to initiate a land use action. Sanctioned or officially recognized neighborhood associations often have standing to be notified in all cases within their boundaries. The area of notification of property owners varies, depending on the type of land use case.

Subdivision: The division of a parcel of land into at least four building lots, usually including a street system. The ordinance governing this process is referred to as the Subdivision Code, which may be included in a Development Code.

Systems Development Charge (SDC): Also called a systems charge or impact fee, it is a fee charged by a local government to a developer in order to recoup some of the local government's general capital cost for sewer, water, storm drainage, streets, and parks.

Testimony: Formal statements made at a public hearing before an official body deciding an issue or a land use case. Testimony may be either presented in writing or orally prior to the close of the public hearing.

Urban Growth Boundary (UGB): An outer boundary of future urban development near the city. Land within this boundary is planned for eventual development and the provision of sewer, water, streets and other public facilities.

Variance: an allowable deviation from the strict application of land development standards in the zoning or development code.

Vested Right: The right to continue to build a structure that does not conform with regulations imposed upon it after its construction was begun.

Zone Change: The reclassification of land from one land use zoning designation to another.

Zoning: A system of grouping similar or compatible land uses into geographic areas called "zones" or "zoning districts". The ordinances governing these land uses are referred to as the Zoning or Development Code.

Zoning Map: A map showing locations of land use zoning districts in the jurisdiction.

GENERIC OPENING STATEMENT FOR A QUASI-JUDICIAL LAND USE HEARING

Ladies and gentlemen, I call this hearing of [*date*] to order. My name is [*your name*]. I am the chairperson of the Planning Commission for [*name of jurisdiction*], Oregon. The members of the Planning Commission are appointed by the [*title of the governing body*] and serve as volunteers.

Our role is to conduct public hearings and to make decisions about land use matters in [*name of jurisdiction*]. In making those decisions, we must apply the law of [*name of jurisdiction*] and cannot vary from or change that law. If you think the law should be changed, you can work with the [*city/county*] to do that, but state law provides that applications must be judged based on the law that existed when the application was filed.

Members of the Planning Commission are to be unbiased. Before the start of the hearing on each item, I will ask the members of the Planning Commission whether they have any potential conflicts, such as family, financial or business relationship with any of the applicants or with regard to the land in question. If such a potential conflict exists, I will ask whether the commissioner in question believes he or she is without actual bias or whether he or she would like to step down from the Planning Commission during the case.

I also will ask whether any of the Planning Commissioners have discussed the application in question with any of the parties or have independent knowledge of relevant facts, such as from a visit to the site in question. If any of the Planning Commissioners have such contacts, I will ask the Planning Commissioner to disclose the substance of that contact.

If a Planning Commissioner has independent knowledge of relevant facts, I will ask the Planning Commissioner to summarize those facts.

During the testimony, a witness may challenge the impartiality of a Planning Commissioner and may rebut the substance of a Planning Commissioner's knowledge of the facts. The commissioner in question may respond to such a challenge.

A copy of the rules of procedure for the hearing, the agenda for today's hearing, and copies of the staff reports are available on the table in the back of the room. We will consider cases one at a time in the order listed on the agenda.

I will start each case by asking staff to summarize their written report. Then the applicant and those in favor of the application testify. Then, witnesses who

oppose the application or who have questions or concerns testify. If there is opposition or there are questions, the applicant can respond to them. The Planning Commissioners also may ask the staff and the witnesses questions throughout the hearing until the record closes. If a witness introduces new evidence in response to opposition or questions, everyone gets a chance to respond to the new evidence. Then the applicant can make a closing statement without introducing new evidence. Then I will close the public portion of the hearing and the Planning Commission will deliberate about what to do with the application. During deliberations, the Planning Commission may re-open the public portion of the hearing if necessary to receive additional evidence before making a decision.

Any person with an interest in today's agenda may offer relevant oral and/or written testimony. But please only speak when I identify you for that purpose. You must testify orally or in writing before the close of the public record to preserve your right to appeal my decision to [*governing body*] or the Land Use Board of Appeals, known as "LUBA". You must raise an issue clearly enough so people can understand what it is and offer evidence in support of it, or else you cannot raise that issue before the [*governing body*] or LUBA.

It is also important that you make your best case to the Planning Commission, because, although all of our decisions are subject to appeal, the [*governing body*] will decide the appeal based solely on the evidence in the record before us [note: *local code may be different than the hypothetical*]. If you feel you need more time to prepare, you can ask the Planning Commission to "hold open the record or to continue the hearing". You must make that request before we close the public portion of the hearing.

If the Planning Commission holds open the record, you can submit additional written testimony and evidence into the record before the Commission makes a decision.

If the Planning Commission continues the hearing, it means oral and written testimony, including new evidence, can be offered at a future hearing.

Whether or not the hearing is continued or the record is held open for any other reason, state law provides that we must hold open the record for at least 7 days after it is closed to all other parties to allow the applicant to submit final written arguments in support of an application unless the applicant waives that right.

We also must comply with state law that requires the City to make a final decision, including all appeals, within 120 days after the City staff found the application was complete, unless an applicant waives that right. So generally we cannot continue a hearing or hold open the record for very long.

Please make sure your testimony is relevant to applicable standards for the item in question. Planning staff will identify those standards at the beginning of the hearing on each item.

Testimony also must not be unduly repetitious. Please do not repeat testimony offered by yourself or earlier witnesses. If we think your testimony is irrelevant or repetitious, I may interrupt and ask you to continue with another subject.

Demonstrations from the audience are prohibited. Please refrain from them. Comments from the audience will not be part of the record.

When you testify, please come forward to the podium. Please begin your testimony giving your name, please spell your last name, and give your address. If you represent someone else, please say so. If you have any exhibits you want us to consider, such as a copy of your testimony, photographs, petitions, or other documents or physical evidence, please hand it to me [*or staff*]. I [*or they*] will mark it as part of the record. The planning staff will keep exhibits until appeal opportunities expire, and then you can ask them to return your exhibits.

[Any questions?]

That concludes the introduction. We will begin with the first item on tonight's agenda, which is [*name and/or number of case*]. Does any Planning Commissioner wish to declare any potential conflict of interest, ex parte contact, or independent knowledge of relevant facts? No? Then would the staff please proceed with a summary of their written report?

“SCRIPT FOR THE PLANNING COMMISSIONER CHAIR”

(The city of Gladstone uses the following format as a guide to the Chair)

Knowing what to say and when you can make quasi-judicial public hearings run more smoothly. Following is a “script” that you may want to adapt for your use and sample motions for decisions.

1. Public Hearing is now open for the purpose of considering (read from agenda).



2. The procedure I would like follow tonight is in this manner.
 - A. Planning Department Report
 - B. Applicant’s testimony
 - C. Other members of the audience who wish to speak on the proposal
 - D. Applicant’s rebuttal
 - E. Other public agency reports
 - F. Close Hearing

3. Now does any commission member wish to disqualify him or herself for any personal or financial interest in this matter before us tonight, or does any commission member wish to report any significant ex parte or pre-hearing contacts?

Does any member of the audience wish to challenge the right of any commissioner to hear this matter?

Is there any member of the audience who wishes to question the jurisdiction of this body to act on behalf of the City Council in this matter?

4. Oregon Land Use Laws require that all issues be raised if the issues are to be appealed; failure to raise the issues at this hearing may invalidate their further appeal.
5. Will the staff please present their report....Any questions from the commission?
6. Is the applicant, or his representative, present?
 - A. Do you wish to add anything to the staff report?
 - B. Please stand and give your name and address for the record.
 - C. Testimony
 - D. Does the commission have any questions of the applicant?

7. Now is the time for public testimony. Are there any members of the audience who wish to speak in favor of this proposal?...Are there any questions of the applicant? Are there any members of the audience who wish to speak against the proposal? Any questions of the applicant?
8. Does the applicant have any further comments?
9. If there is no further testimony, the Public Hearing is now closed. What's the pleasure of the commission?
10. Discussion. Decision. Next item.

Motions to Approve or Disapprove a Proposal

1. No Changes or Additions. If the commission has no changes or additions to the staff report, the following motion is appropriate:

I move that the Planning Commission (approve/deny) this application for a development permit based on the standards, findings, conclusions and recommendation stated in the staff report.

2. Changes or Additions: If the Commission has changes or additions to the staff report, the following motion is appropriate:

I move that the Planning Commission (approve/deny) this application for a development permit based on the standards, findings, conclusions and recommendation stated in the staff report, except for the following items (or with the addition of the following items):

List items

PLANNERS' ACRONYMS AND TRANSLATIONS

CCI	Committee for Citizen Involvement (advisory to local governments)
CIAC	Citizen Involvement Advisory Committee (to LCDC)
CIP	Capital Improvement Program
COG	Council of Governments
CPO	Community Planning Organization or Citizen Planning Organization
CU	Conditional Use
DLCD	Department of Land Conservation and Development
DOGAMI	Department of Geology and Minerals Industries
DRB	Design Review Board or Development Review Board
EESE	Economic, Environmental, Social and Energy (LCDC Goal 5)
EIS	Environmental Impact Statement
EFU	Exclusive Farm Use
FY	Fiscal Year
HO	Hearings Officer
LCDC	Land Conservation and Development Commission
LID	Local Improvement District
LUBA	Land Use Board of Appeals
NA	Neighborhood Association
ODOE	Oregon Department of Energy
ODOT	Oregon Department of Transportation
PC	Planning Commission
PO	Property Owner

PUD	Planned Unit Development – also Public Utility District
SDF	Systems Development Fee
TIF	Tax Increment Financing
UGB	Urban Growth Boundary
UGMA	Urban Growth Management Agreement
ZDO	Zoning and Development Ordinance

OREGON AGENCY ABBREVIATIONS

AAA	School of Architecture and Allied Arts, University of Oregon
AOC	Association of Oregon Counties
BLM	Bureau of Land Management, U.S. Department of the Interior
COE	U.S. Army Corps of Engineers, U.S. Department of Defense
COGs	Councils of Government (County)
DEQ	Oregon Department of Environmental Quality
DLCD	Oregon Department of Land Conservation and Development
DOF	Oregon Department of Forestry
DSL	Oregon Division of State Lands
EEAO	Environmental Education Association of Oregon
LOC	League of Oregon Cities
LWCF	Land and Water Conservation Fund
METRO	Metropolitan Service District
NPS	National Park Service, U.S. Department of the Interior
ODFW	Oregon Department of Fish and Wildlife
ODOE	Oregon Department of Education
OEDD	Oregon Economic Development Department
OFC	Oregon Forest Council
OFIC	Oregon Forest Industries Council
OPA	Oregon Parks Association
OPRD	Oregon Parks and Recreation Department
ORPA	Oregon Recreation and Park Association

ORTAC	Oregon Recreation Trails Advisory Council
OSU	Oregon State University
OTD	Oregon Tourism Division
PSU	Portland State University
SMB	Oregon State Marine Board
SOSC	Southern Oregon State College
U of O	University of Oregon
USFS	US Forest Service, Department of Agriculture
USF&WS	US Fish and Wildlife Service, Department of the Interior