

Toledo City Hall
Council Chambers
206 N Main St. Toledo OR
January 14, 2026
6:00 pm

AGENDA

TOLEDO PLANNING COMMISSION

The Planning Commission will hold an in-person meeting in City Hall Council Chambers.

Participants can also attend the meeting through the Zoom video meeting platform. Email planning@cityoftoledo.org or call 541-336-2247 ext. 2130 to receive the meeting login information. Participants can also visit www.cityoftoledo.org/meetings for meeting details.

1. CALL TO ORDER AND ROLL CALL
2. VISITORS: (A time set aside to speak with the Planning Commissioners about issues not on the agenda)
3. APPROVAL OF THE NOVEMBER 12, 2025 MINUTES as circulated and reviewed by the Planning Commission
4. TRAINING: Land Use Training Session
5. DISCUSSION ITEMS:
 - a. Updates and Reports
 - i. Building Permit and Land Use Application Updates
 - ii. Parks Master Plan Project Update
 - iii. Grant Projects
 - iv. Lincoln County Natural Hazards Mitigation Plan
6. STAFF COMMENTS
7. COMMISSIONER COMMENTS
8. ADJOURNMENT

* Comments submitted in advance are preferable. Comments may be submitted by phone at 541-336-2247 extension 2130 or by email to planning@cityoftoledo.org. The meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodation for persons with disabilities should be made at least 48 hours in advance of the meeting by calling the Toledo Planning Department at 541-336-2247.

TOLEDO PLANNING COMMISSION MINUTES

A regular meeting of the Toledo Planning Commission was called to order at 6:10 pm by President Cora Warfield. Commissioners present: Brian Lundgren, Anne Learned-Ellis, Ricky Dyson, Dennis Sutherland, and Jonathan Mix.

Staff present: Contract Planner (CP) Justin Peterson and Planning Assistant Arlene Inukai.

VISITORS: Tracy Mix

APPROVAL OF OCTOBER 8, 2025 MINUTES:

It was moved and seconded (Learned-Ellis/Dyson) to approve the October 8, 2025, minutes as circulated and reviewed by the Planning Commission. The **motion passed** unanimously.

DISCUSSION ITEM: Traffic Calming Review: CP Peterson highlighted updates to the draft document, noting the following changes:

- Residents are defined as owners or renters and they would be counted as one resident per household to sign the petition. This is the figure that is used when determining the 51% formula.
- Traffic calming improvements on a collector street could be performed. This makes it clear that improvements can still occur on a collector, as long as it is identified in the Transportation System Plan and the improvement follows the similar process for neighborhood notification and review.
- Reduced average daily traffic volume number from 250 to 100.
- Leading pedestrian intervals are not applicable in Toledo and the language was removed. Some other devices are exempt from certain sections. The various options would have to meet criteria or design/safety standards.
- Public Works can initiate a process, which would be similar to the neighborhood process.
- Community support would come in the form of signed petitions. Staff will create the forms for the applicant to take to their neighbors.
- Boundary Area term was defined.
- If the policies are adopted, the Planning Commission will make the decision on the application. The Commissions' decision could then be appealed to the City Council.

CP Peterson reported that a draft ordinance will be prepared and the goal is to hold a joint Planning Commission/City Council worksession on the traffic calming ordinance and the Toledo Parks Master Plan project in January.

DISCUSSION ITEM: Parks Master Plan:

CP Peterson announced the release of the survey citizens can take for the parks and recreation programs. The survey is available online, but paper copies are available at City Hall and Library. There have been 37 responses so far. Announcements have been provided in the utility bills and Halloween event, and will be sent to the schools. After the survey closes, there will be follow-up

review of the results and a community open house to discuss specific improvements and priorities. The parks plan is funded by an Oregon Parks and Recreation grant.

Commissioners discussed other agency parks, museum spaces, and historic areas. These were not identified in the survey, but they could be identified as a community resource in the plan. Toledo's historical museums are not under the City's facilities or program plans, but would be good to identify them.

DISCUSSION IEM: Updates and Reports:

CP Peterson stated that the Ammon Road annexation request was reviewed and approved by the City Council last week.

STAFF COMMENTS:

CP Peterson reported that the December meeting may be cancelled and that a training session will be held at either the January or February meeting.

COMMISSIONER COMMENTS:

None.

There being no further business before the Commission, the meeting was adjourned at 6:40 pm.

Planning Assistant

President

City of Toledo
2025 Building Permit and Land Use Activity

Building Activity						
Date	Type of Permit	Applicant	Address	Map and Tax Lot	Description	Approved
1/3/2025	Building Permit	Lincoln County School District	295 NE Burgess Road	11-10-08-30-00101-00	Storage building	2/26/2025
1/13/2025	Excavation/Fill	Buzy Bee/Mary Limbrunner	578 W Hwy 20	11-10-07-44-10100-00	Excavate for drainage system	pending
1/15/2025	Work in the Right-of-Way	Central Lincoln PUD	Sturdevant Road	right-of-way	Bore for fiber	1/21/2025
1/21/2025	Building Permit	Wayne burkland	109-115 SE 1st Street	11-10-17-23-03800-00	Deck	2/10/2025
1/27/2025	Building Permit	Sawtooth Holdings	160 N Main Street	11-10-17-22-13300-00	Awning	pending
1/29/2025	Building Permit	Richard Wolff/Matt Moore	810 SE Beaver Street	11-10-17-13-01400-00	House	2/26/2025
2/5/2025	Building Permit	Katrina Theodore	309 N Main Street	11-10-17-22-10200-00	Apartment conversion	3/11/2025
2/20/2025	Work in the Right-of-Way	NW Natural	173 NW 6th Street	11-10-08-33-13000-00	Cut and cap gas service	2/26/2025
2/20/2025	Building Permit	Charles and Deanne Cook	392 SE 3rd Street	11-10-17-24-16400-00	Retaining wall	2/28/2025
2/24/2025	Work in the Right-of-Way	Charter Communication/HHS Constr	1046 NW Sunset Drive	right-of-way	Overhead and anchor line work	2/24/2025
2/25/2025	Building Permit	Virginia Thompson/Hagen Construct	453 N Main Street	11-10-17-22-03900-00	Rpair garage and retaining wall	3/12/2025
2/26/2025	Water/Sewer Connection	Port of Toledo	1000 Altree Lane/625 Bay Blvd	11-10-18-40-00400-00	Sewer connections	pending
2/27/2025	Work in the Right-of-Way	NW Natural	280 S Main Street	11-10-17-23-03100-00	cut gas service	2/27/2025
3/3/2025	Work in the Right-of-Way	Port of Toledo	W Hwy 20	right-of-way	Sewer installation	4/4/2025
3/12/2025	Work in the Right-of-Way	Railroad Signal Construction	Butler Bridge Road	right-of-way	Replace damaged railroad signal	3/13/2025
3/19/2025	Building Permit	Olga Karavaeva	1127/1201 NE Hwy 20	11-10-08-31-01700-00	Retaining wall	pending
3/20/2025	Work in the Right-of-Way	Astound	Hwy 20/NW A/Beech Streets	right-of-way	Install fiber	3/27/2025
3/27/2025	Water/Sewer Connection	Bighorn Construction	810 SE Beaver Street	11-10-17-13-01400-00	New water/sewer service	6/16/2025
3/31/2025	Work in the Right-of-Way	Joe Howry/Gregg Harrison	1352 NW Hwy 20	11-10-07-41-01500-00	Replace sewer lateral	4/1/2025
3/31/2025	Building Permit	Rod and Emeree Cross	931 NE Alder Street	11-10-08-33-05700-00	Deck	4/23/2025
4/17/2025	Demolition Permit	Rod and Emeree Cross	931 NE Alder Street	11-10-08-33-05700-00	Demolish deck	4/23/2025
4/24/2025	Work in the Right-of-Way	Astound	680 NW Hwy 20	11-10-07-44-09601-00	Aerial and bore work	4/22/2025
4/28/2025	Work in the Right-of-Way	NW Natural	640 SE 5th Street	11-10-17-24-10700-00	Cut gas service	4/30/2025
4/30/2025	Building Permit	Northwest Coastal Housing	1585 SE Sturdevant Road	11-10-17-44-06000-00	Apartments	6/3/2025
5/1/2025	Building Permit	First Baptist Church	120 NW 11th Street	11-10-08-32-04700-00	Lighthouse structure	6/4/2025
5/2/2025	Water/Sewer Connection	Larry Harris	534-542 NW Skyline Drive	11-10-07-10-01000-00 & 100	New water and sewer services	5/19/2025
5/5/2025	Building Permit	Jacob Wayman	600 NE Beech Street	11-10-08-33-08900-00	Manufactured home	5/15/2025
5/12/2025	Demolition Permit	City of Toledo	385 NW A Street	11-10-18-11-01600-00	Demolish restroom building	5/15/2025
5/12/2025	Work in the Right-of-Way	Larry Harris/Greg Owczarski	534-542 NW Skyline Drive	right-of-way	New sewer laterals	5/13/2025
5/21/2025	Building Permit	First Baptist Church	1222 NW Spruce Street	11-10-08-32-04800-00	Garage	6/4/2025
6/9/2025	Work in the Right-of-Way	Jaydn Spangler/Howard Rhodes	245 NE East Slope Road	11-10-17-21-05500-00	Tree removal	6/26/2025
6/17/2025	Excavation/Fill	Adam Steller	930 NE Hwy 20	11-10-08-34-00500-00	Excavate to level site	6/26/2025
6/23/2025	Work in the Right-of-Way	Omar Galicia	235 S Main Street	11-10-17-23-06500-00	Sidewalk and driveway repair	6/26/2025
6/24/2025	Building Permit	Kelle Judah	176 SE Beech Street	11-10-17-24-15100-00	Convert garage for ADU	7/17/2025
6/30/2025	Building Permit	Theresa Kessi	535 NW Aspen Street	11-10-07-10-02900-00	Sign	7/16/2025
6/30/2025	Building Permit	Michael Fantazia	1103-1133 NW A Street	11-10-07-41-01100-00	Structural repairs	7/9/2025
7/3/2025	Work in the Right-of-Way	GSI Water Solutions/DEQ	203 and 200 N Main Street	right-of-way	Install vapor pins in sidewalk	7/3/2025
7/7/2025	Building Permit	Foursquare Church	1803 NW Lincoln Way	11-10-07-10-01400-00	Metal storage building	7/18/2025
7/14/2025	Work in the Right-of-Way	NW Natural	797 SE 9th Street	11-10-17-31-06800-00	Abandon gas service	7/16/2025
7/14/2025	Work in the Right-of-Way	NW Natural	746 SE 9th Street	11-10-17-31-06200-00	Abandon gas service	7/16/2025
7/14/2025	Work in the Right-of-Way	GP/Astound	1400 SE Butler Bridge Road	right-of-way	Bore and aerial work	pending
7/17/2025	Building Permit	Kyla Purdum	1642 SE 16th Place	11-10-17-44-05506-00	Carport	9/4/2025
7/28/2025	Building Permit	Richard and Laura Ely	615 SE 2nd Street	11-10-17-24-06500-00	Carport	8/1/2025

Building Activity (cont.)

7/29/2025	Building Permit	Carmen Admire	364 NE Alder Street	11-10-17-22-07400-00	Foundation	8/1/2025
8/6/2025	Work in the Right-of-Way	NW Natural	985 SE Gaither Way	11-10-17-31-06100-00	Replace gas service	8/7/2025
8/11/2025	Building Permit	Richard Hiatt Family Trust	180 SE 2nd Street	11-10-17-23-02901-00	House (renew existing permit)	8/15/2025
8/12/2025	Work in the Right-of-Way	NW Natural	744 SE 9th Street	11-10-17-31-06300-00	Abandon gas service	8/15/2025
8/12/2025	Work in the Right-of-Way	NW Natural	752 SE 10th Street	11-10-17-31-07600-00	Install flow valve at main	8/15/2025
8/12/2025	Work in the Right-of-Way	NW Natural	667 SE 9th Street	11-10-17-31-08900-00	Install flow valve at main	8/15/2025
8/12/2025	Work in the Right-of-Way	Ruddy Duck Properties	320 N Main Street	11-10-17-22-09300-00	Replace sidewalk and trees	8/15/2025
9/15/2025	Work in the Right-of-Way	NW Natural	1063 SE Gaither Way	11-10-17-31-07400-00	Install flow valve	9/17/2025
9/15/2025	Work in the Right-of-Way	NW Natural	1052 SE Gaither Way	11-10-17-42-02400-00	Install flow valve	9/17/2025
9/15/2025	Work in the Right-of-Way	NW Natural	1058 SE Gaither Way	11-10-17-42-02500-00	Install flow valve	9/17/2025
9/15/2025	Work in the Right-of-Way	NW Natural	1023 SE Gaither Way	11-10-17-31-06900-00	Install flow valve	9/17/2025
9/15/2025	Work in the Right-of-Way	NW Natural	1051 SE Gaither Way	11-10-17-31-07300-00	Install flow valve	9/17/2025
9/16/2025	Work in the Right-of-Way	NW Natural	718 SE Fir Street	11-10-17-31-01200-00	Repair service line	9/17/2025
9/23/2025	Work in the Right-of-Way	Richard Hiatt	180 SE 2nd Street	11-10-17-23-02901-00	Install sewer/water lines	9/24/2025
9/25/2025	Work in the Right-of-Way	NW Natural	972 SE Fir Street	11-10-17-31-06400-00	Install flow valve	10/2/2025
9/25/2025	Water/Sewer Connection	Western Cascade Industries	330 S Bay Road	11-10-20-20-08500-00	Replace water meter	9/25/2025
10/1/2025	Demolition Permit	Michael Fantazia	1103-1133 NW A Street	11-10-07-41-01100-00	Demolish for re-construction	10/15/2025
10/8/2025	Demolition Permit	First Commercial Properties NW	260 NW Hwy 20	11-10-07-44-04100-00	Demolish three trailers	10/22/2025
10/13/2025	Work in the Right-of-Way	NW Natural	1086 SE Gaither Way	11-10-17-42-02800-00	Abandon gas service	10/16/2025
10/28/2025	Work in the Right-of-Way	NW Natural	281 NE Beech Street	11-10-17-22-08100-00	Replace gas main valve	10/31/2025
11/3/2025	Work in the Right-of-Way	Alex and Alexa Munsee	515 NW Radio Court	11-10-07-41-07400-00	Excavate and widen driveway	pending
11/3/2025	Work in the Right-of-Way	NW Natural	667 SE 9th Street	11-10-17-31-08900-00	Abandon gas service	11/3/2025
11/12/2025	Work in the Right-of-Way	Carolyn Houck/Joe Howry	2016 SE Laurel Street	11-10-20-14-02800-00	Replace sewer lateral	11/12/2025
11/19/2025	Work in the Right-of-Way	A+ Service/BMO Bank	112 S Main Street	11-10-17-23-04800-00	Replace sidewalk	11/25/2025
11/24/2025	Water/Sewer Connection	Chip Welty	66 Elk City Road	11-10-20-20-01300-00	New water service	12/1/2025
12/3/2025	Building Permit	Peter and Katrina Theodore	309 N Main Street	11-10-17-22-10200-00	Apartment conversion	pending
12/9/2025	Building Permit	Mary Limbrunner	578/580 W Hwy 20	11-10-07-44-101000-00	Retaining wall	pending
12/11/2025	Work in the Right-of-Way	Dave Scholz/Buzy Bee	620 W Hwy 20	11-10-07-44-09800-00	Sewer lateral repairs	12/11/2025
12/12/2025	Work in the Right-of-Way	NW Natural	335 NE Beech Street	11-10-17-22-07900-00	Install flow valve	12/16/2025
12/15/2025	Work in the Right-of-Way	NW Natural	484 NE 1st Street	11-10-17-21-04200-00	Install flow valve	12/16/2025
12/15/2025	Work in the Right-of-Way	NW Natural	442 NE 1st Street	11-10-17-21-04100-00	Install flow valve	12/16/2025
12/15/2025	Work in the Right-of-Way	NW Natural	331 NE 1st Street	11-10-17-21-02600-00	Install flow valve	12/16/2025
12/29/2025	Work in the Right-of-Way	NW Natural	489 NE 2nd Street	11-10-17-21-04401-00	Install flow valve	1/5/2026
12/29/2025	Work in the Right-of-Way	NW Natural	575 NE 2nd Street	11-10-17-21-05801-00	Install flow valve	1/5/2026

Land Use						
Date	Type of Application	Applicant	Address	Map and Tax Lot	Description	Status
8/20/2025	Annexation	City of Toledo	2054 SE Ammon Rd	11-10-16 CB TL 2000	Annex approx. .9 acres for the Ammon Water Tank	PC = Rec. approval CC = Adopted Ord 1432
5/8/2025	Conditional Use	Foursquare Church	1803 NW Lincoln Way	11-10-7 A TL 1400	Modification of an existing conditional use permit to place a new metal building	PC = Approved
3/3/2025	Floodplain Development Permit	Port of Toledo	1000 Altree Lane	11-10-18 D 400	Sewer line work in the floodplain	Staff = Preliminary approval 4/4/2025
4/25/2025	Floodplain Development Permit	Astound	680 Hwy 20	11-10-7 DD 9600	Utility upgrades in the floodplain	Staff = Preliminary approval 5/29/2025
8/15/2025	Floodplain Development Permit	City of Toledo	Sturdevant Road ROW	Sturdevant Road ROW	Utility upgrades in the floodplain	Staff: Preliminary approval 8/27/2025
8/28/2025	Floodplain Development Permit	Dos Bros LLC	1710 NW Hwy 20	11-10-7 A TL 1606	Carport in the floodplain	Staff: Preliminary approval 9/29/25
11/13/2025	Floodplain Development Permit	Georgia Pacific	1400 Butler Bridge Rd & 550 NW 1st St.	11-10-17 TL 1400	Placement of three temporary boilders	pending
8/27/2025	Lot Line Adjustment	Patricia Hassel and Ray Kennedy	868 NW 6th St/ 745 NW I St	11-10-7 DC TLs 5000, 5100, 5200	Lot line adjustment between 3 lots	pending
2/12/2025	Plan Amendment	City of Toledo	City-wide	City-wide	Amend Comp Plan for housing code updates/overlay district	PC=Rec. adoption CC=Adopted Ord. 1428
7/28/2025	Replat	Pacific Inland Holdings	375, 377, 381, 383, 395, 397 SE Alder St	11-10-17 BC 8000	Replat the existing properties into three parcels	Staff: Approved preliminary plat 9/18/2025
8/20/2025	Rezone	City of Toledo	2054 SE Ammon Rd	11-10-16 CB TL 2000	Rezone from County R-1 to City Public Lands Zone	PC = Rec. approval CC = Adopted Ord 1432
7/17/2025	Subdivision	Dewey and Carol Goodell	519, 525 Bay Blvd, 749 Hwy 20, 821, 847, 867 5th St	11-10-7 DC TL 4600	Subdivision to create 7 lots	PC = Approved preliminary plat
1/3/2025	Temporary RV Permit	Brandy Landrum/ Shawn Templeton	420 SE Elder Street	11-10-17 BD TL 7400	Reside in RV	Staff: Approved 2/3/2025
5/15/2025	Temporary RV Permit	Damien Crane, Israel Crane	149 NE 10th Street	11-10-8 CC TL 1000	Reside in RV	Staff: Approved 6/2/2025
5/27/2025	Temporary RV Permit	Abundant Life Center	1154 NW A Street	11-10-8 CB TL 8500	Reside in RV	Staff: Approved 6/12/2025
6/9/2025	Tree Permit	Jaydn Spangler/ Howard Rhoades	245 NE East Slope Rd	11-10-17 BA TL 5500	Remove fir trees	Staff: Approved 6/26/2025
8/12/2025	Tree Permit	Ruddy Duck Properties LLC	316 N Main Street	11-10-17 BB TL 5500	Remove two street trees	Staff: Approved 8/15/2025
10/15/2025	Tree Permit	Katrina Theodore	305 N Main Street	11-10-17 BB TL 10200	Limb/trim Main Street tree	Staff: Approved 10/16/2025
2/12/2025	Zoning Ordinance Amendment	City of Toledo	City-wide	City-wide	Update zoning, land division, and procedures ordinances for housing code updates	PC=Rec. adoption CC=Adopted Ords. 1429, 1430, 1431

Land Use Planning Basic Training

Toledo Planning Commission

January 14, 2026 - 6pm

Topics:

- 1. Oregon's Statewide Planning Program**
- 2. The Comprehensive Plan, Zoning Ordinance and Land Divisions**
- 3. Types of Land Use Applications**
- 4. Types of Procedures (quasi-judicial vs. legislative)**
- 5. Conducting a Public Hearing**
- 6. Bias**
- 7. Conflict of Interest**
- 8. *Ex parte* Contact**
- 9. Roles and Responsibilities
(Tips on making good decisions.)**
- 10. Ethics**

THE OREGON STATEWIDE PLANNING PROGRAM

INTRODUCTION

Oregon is unique in how it addresses growth, development, urban infrastructure, agriculture, forestry, industry, and natural resources. The Statewide Planning Goals apply to all cities and counties in Oregon. Under Oregon Revised Statute (ORS) Chapter 197.175 cities and counties are required to prepare, adopt and amend comprehensive plans in a manner consistent with a set of Statewide Planning Goals. The plans and their implementing regulations are required to be coordinated with the county and other nearby city plans and regulations and State programs.

Cities are required by the statewide planning program (statutes and administrative rules) to provide an inventory of land to accommodate a 20-year supply of residential, commercial, and industrial growth. An important land use planning tool is the urban growth boundary (UGB) which is established by each city (in coordination with the county) to accommodate future growth. Cities are required to adopt plans for water, sewer, stormwater, and transportation systems to accommodate the projected 20-years of development.

To ensure the Plan, its implementing regulations, and the 20-year land supply are up to date, cities over 10,000 population must review their documents periodically and update them. The process is called Periodic Review. Cities under 10,000 may enter the Periodic Review process but are not required to do so.

In addition to the long-range planning requirements noted above, an important element of the Statewide program is that ORS 227 (City Planning) requires development applications to be decided within 120 days of their submittal, including all local appeals. This is called the “120-day Rule.” By national standards the 120-day period is extremely fast. In 2017, the deadline for final action on an application for an “affordable” multi-family housing project was shortened to 100 days.

Oregon’s program requires every city and county to adopt a comprehensive land use plan and implement the plan with zoning regulations. Oregon’s program requires every City to plan for and accommodate growth.

The State’s interest in land use planning is set forth in ORS 197.010:

197.010 Policy. *The Legislative Assembly declares that:*

- (1) In order to assure the highest possible level of livability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:*
 - (a) Must be adopted by the appropriate governing body at the local and state levels;*
 - (b) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;*
 - (c) Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans;*

- (d) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and*
- (e) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve.*
- (2) (a) The overarching principles guiding the land use program in the State of Oregon are to:*
 - (A) Provide a healthy environment;*
 - (B) Sustain a prosperous economy;*
 - (C) Ensure a desirable quality of life; and*
 - (D) Equitably allocate the benefits and burdens of land use planning.*
- (b) Additionally, the land use program should, but is not required to, help communities achieve sustainable development patterns and manage the effects of climate change.*
- (c) The overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection provide guidance to:*
 - (A) The Legislative Assembly when enacting a law regulating land use.*
 - (B) A public body, as defined in ORS 174.109, when the public body:*
 - (i) Adopts or interprets goals, comprehensive plans and land use regulations implementing the plans, or administrative rules implementing a provision of ORS chapter 195, 196, 197, 215 or 227; or*
 - (ii) Interprets a law governing land use.*
- (d) Use of the overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection is not a legal requirement for the Legislative Assembly or other public body and is not judicially enforceable.*
- (3) The equitable balance between state and local government interests can best be achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy.*

SENATE BILL 100

In 1973 the Legislature passed Senate Bill 100 which created the Oregon Land Conservation and Development Commission (LCDC) and the Department of Land Conservation and Development (DLCD). The structure for Oregon governance typically includes an appointed citizen policy body guiding a State agency. LCDC is the policy and oversight body. It is a 7-member citizen commission. The members are appointed by the Governor and confirmed by the Senate. The terms are for 4 years with a limit of two terms. The Commission has authorities set forth in ORS Chapter 197. DLCD is the State agency that administers the State's land use program following State statutes and policy direction from the Commission. The Governor appoints the Department's Director and the Department works closely with the Commission, other State Departments, local governments, and special interest groups to address land use issues.

The majority of the State's land use laws are in ORS Chapter 197 (Comprehensive Land Use Planning Coordination) and 197A (Land Use Planning: Housing and Urbanization) with additional provisions in

ORS Chapter 227 (City Planning) and Chapter 215 (County Planning). Selected other ORS Chapters address dividing land into lots and parcels through the subdivision and partition processes (ORS Chapter 92), system development charges (ORS Chapter 223) and annexations (ORS Chapter 222).

STATEWIDE PLANNING GOALS

Senate Bill 100 required the LCDC to adopt Statewide Planning Goals. In all, 19 Goals were adopted by LCDC through the Oregon Administrative Rule process which included public hearings around the State. The first 14 Goals were adopted in December 1974. The 15th Goal was adopted in December 1975 and the last four in December 1976. Goal 14, on establishing urban growth areas, was most recently amended in 2015.

ORS 197.015 defines Goals and Guidelines as:

- (8) “Goals” means the **mandatory** statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196, 197 and 197A. (emphasis added)
- (9) “Guidelines” means **suggested approaches** designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines are advisory and do not limit state agencies, cities, counties and special districts to a single approach. (emphasis added)

The purpose of the Statewide Planning Goals is to set minimum state guidance for the preparation of Comprehensive Plans and their implementing regulations. Once a City has prepared its Comprehensive Plan and implementing regulations and received acknowledgement (approval) from LCDC, the Goals do not come into play again unless the City proposes changes to its Comprehensive Plan or implementing regulations.

When amendments to a Plan or implementing regulations are proposed, a notice is sent to DLCD 35 days prior to the first hearing (typically at the Planning Commission) informing DLCD of the proposed amendments, showing the amendments, and explaining how they are consistent with the Statewide Planning Goals. Recent changes in the statute and administrative rules have removed the requirement to notify DLCD in advance of minor changes to implementing regulations that do not have an impact on the City’s compliance with the statewide goals. DLCD may comment on the proposed amendments and if they believe they are not consistent with the Goals they can object to their adoption at the local hearings. When the amendments are adopted, another notice is sent informing DLCD the changes have been adopted.

The following is the list of the Goals showing the primary Goal statement. Each Goal includes more language, but it is not included here. The full language is provided separately. The Goals may be found at <http://www.oregon.gov/LCD/OP/Pages/goals.aspx>.

- GOAL 1. Citizen Involvement.** To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.
- GOAL 2. Land Use Planning.** To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.
- GOAL 3. Agricultural Lands.** To preserve and maintain agricultural lands.
- GOAL 4. Forest Lands.** To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on

forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

- GOAL 5. Open Spaces, Scenic and Historic Areas and Natural resources.** To protect natural resources and conserve scenic and historic areas and open spaces.
- GOAL 6. Air, Water and Land Resources Quality.** To maintain and improve the quality of the air, water and land resources of the state.
- GOAL 7. Areas Subject to Natural Disasters and Hazards.** To protect people and property from natural hazards.
- GOAL 8. Recreation Needs.** To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.
- GOAL 9. Economy of the State.** To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.
- GOAL 10. Housing.** To provide for the housing needs of citizens of the state.
- GOAL 11. Public Facilities and Services.** To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.
- GOAL 12. Transportation.** To provide and encourage a safe, convenient and economic transportation system.
- GOAL 13. Energy.** To conserve energy.
- GOAL 14. Urbanization.** To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.
- GOAL 15. Willamette Greenway.** To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.
- GOAL 16. Estuarine Resources.** To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and to protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.
- GOAL 17. Coastal Shorelands.** To conserve, protect, where appropriate, develop, and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property and the adverse effects upon water quality and fish and wildlife habitat resulting from the use and enjoyment of Oregon's coastal shorelands.
- GOAL 18. Beaches and Dunes.** To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

GOAL 19. Ocean Resources. To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

THE COMPREHENSIVE PLAN, LAND USE AND DEVELOPMENT CODE AND LAND DIVISIONS

INTRODUCTION

The Comprehensive Plan is the document that establishes a local government's basic land use framework. It sets forth the local jurisdiction's goals and policies for land use planning. Typically, the policies address issues such as citizen involvement, growth, development, natural resources, and public facility systems (sewer, water, storm drainage, and transportation). In Oregon, Comprehensive Plans address, at a minimum, the elements in the Statewide Planning Goals.

COMPREHENSIVE PLAN

Oregon Revised Statute (ORS) Chapter 197.015 defines a comprehensive plan as follows.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

A Comprehensive Plan is developed based on inventories and analysis of the data gathered. The heart of a Comprehensive Plan is its policies. Plans typically have policy commitments to encourage/require citizen involvement in the land use planning process, to provide a viable local economy, and to provide sewer, water, storm drainage, transportation, and park systems to support the City's residents and businesses. Additional policy commitments address natural resources, wetlands, flood plains, steep slopes, historic resources, and any other issue the local jurisdiction deems important.

In addition to the written policy commitments, each Comprehensive Plan includes a Plan Map showing specifically which areas of a City and its urban growth boundary are designated to be Residential, Commercial, and Industrial. Other designations can show open spaces, public uses, and wetlands.

An important factor inherent in the Plan is that it is coordinated with surrounding Plans by other jurisdictions. For example, a City Plan is coordinated with the County Plan in terms of the urban growth boundary (UGB). The UGB is established jointly by the city and county. Transportation planning is coordinated so that a city, a county, and the State (Oregon Department of Transportation) agree on the hierarchy of roads. Such coordination works to reduce situations where a road is designated as an arterial by one government and as a local street by another government.

LAND USE AND DEVELOPMENT CODE

Toledo's Comprehensive Plan is, in part, implemented in Titles 16 through 19 of the Municipal Code. These Titles include requirements to implement the Plan's policies with regulations that are consistent with the Plan's policies. Title 16 sets regulations for developing land and creating lots, Title 17 establishes zones and lists the kind of uses that can occur in each zone and establishes standards for approval of various types of land uses. Title 18 includes provisions regarding riparian areas and notiviprocesses to review development proposals.

The Official Zoning Map implements the Plan Map. The Zoning Map shows which zones apply to which properties. The zones on the Zone Map must be consistent with the Comprehensive Plan Map designation: for example, if the Comprehensive Plan Map designates a particular area as residential, then the Zoning Map must zone that area for one of the residential zones – the Zoning Map cannot place an Industrial Zone on land that the Plan Map designates for residential uses.

Another example would be, if a Plan policy commits the City to be a regional center for retail activity, the Comprehensive Plan Map would designate an adequately sized area of the city with adequate transportation facilities for the regional center. The Zone Code would implement that policy direction and Map designation by having a Regional Retail Zone that would be applied to that area. The Regional Retail Zone would allow many retail uses in big buildings to encourage the creation of a large commercial retail center in the City to serve a regional market.

If the Comprehensive Plan Map has one "Residential" designation and designates a specific area of the City as "Residential," the Zone Map must zone that area for some type of residential use (single family, multi-family).

If the Plan Map has two "Residential" designations, for example a "Single Family Residential" designation and a "Multi-family Residential" designation, then the Zone Map must zone the "Single Family Residential" area for single family uses such as R-1 with an appropriate single family minimum lot size, and must zone the "Multi-family Residential" area for multi-family uses such as R-2 with an appropriate density.

The Zone Map may not zone an area for uses more intense than the Plan Map calls for. For example, a commercial zone cannot be applied to land designated "Residential" on the Plan Map and an industrial zone cannot be applied to land designated "Commercial" on the Plan Map. Comprehensive Plans and Land Use Codes may be as complex as needed to accomplish the City's desires. For example, if a mixed residential/commercial area is desired, the Comprehensive Plan and the Zone Code can be set-up to allow (or require) a part of the City to have commercial on the first floor and residential on the upper floors.

The Land Use Code includes many types of applications regarding the use of land. A process is set forth to review and decide each type of application. Notice requirements and criteria for judging each application are established. For example, a process is set forth to change a property's zone (Zoning Map Amendment Application) or if someone wants to establish a business in their home (Home Occupation Permit). Generally, the least complex applications are reviewed through a simple process (clear and objective criteria with a staff decision – Property Line Adjustment) and the more complex applications are reviewed through a more rigorous process (subjective criteria, public hearings with a City Council decision – Plan Map change).

LAND DIVISIONS – SUBDIVISIONS, PARTITIONS

Another way the Land Use and Development Code implements the Comprehensive Plan is by establishing regulations regarding the creation of units of land (lots, parcels, tracts). The two ways to create lots, parcels, and tracts are through subdividing and partitioning.

A subdivision is defined in ORS Chapter 92.010 as:

(16) “Subdivide land” means to divide land to create four or more lots within a calendar year.

A partition is defined in ORS Chapter 92.010 as:

(8) “Partition land” means to divide land to create not more than three parcels of land within a calendar year, but does not include: [the exceptions are not included]

In an urban area where the units of land are used intensively, a subdivision or partition process addresses issues such as providing City sewer, water, storm drainage and streets to support the intense use of the land. Some elements of the subdivision and partition review process cover traditional land use issues such as ensuring each lot meets the minimum lot size set in the zone. However, much of the subdivision process, and to a lesser degree the partition process, is devoted to ensuring the needed urban infrastructure is provided and ready to support urban uses when the residents move into homes or employees move into a new commercial or industrial building.

The subdivision and partition processes include three general steps. First is the submittal and review of the preliminary plan. The Planning Commission reviews the proposed tentative plan and approves it, approves it with conditions, or denies it. Second, once the tentative plan is approved, the developer constructs the infrastructure to support the lots and a registered professional land surveyor prepares the Final Plat. Engineered construction plans are reviewed and permits are issued by the Public Works Department before the developer begins constructing the infrastructure. Development Agreements with financial assurances by the developer to the City may be required by the City to ensure the infrastructure will be constructed properly. Once constructed and inspected, the City accepts the sewer, water, storm drainage, and streets as public facilities. It is important for the City to ensure the facilities it will maintain are constructed properly. Thirdly, the Final Plat is reviewed to ensure it is consistent with the approved tentative plan and the infrastructure is in place. The Final Plat is signed by City and County officials and recorded with the County Clerk. The lots are created at the time of recording and then may be sold.

In addition to the Final Plat, other items such as a document creating a Homeowners Association with By-laws may be reviewed.

The creation of units of land is not just for residential development. Land in commercial and industrial zones can also be the subject of a subdivision or partition application.

“Lots” are created through the subdivision process. “Parcels” are created through the partition process. Tracts can be created through either process and, generally, they are not buildable. Typically, a tract is shown on the subdivision or partition final plat specifically for open space, water quality pond, storm water detention/retention facility, etc.

PROPERTY LINE ADJUSTMENT

A related action, but different from creating land units is a Property Line Adjustment (PLA). A PLA moves a common property line and does not result in the creation of a new lot. Toledo regulates PLAs within Chapter 16.28 and approval is a staff-level decision.

PLANNED UNIT DEVELOPMENTS (PUD)

A Planned Unit Development (PUD) is another method of creating lots. (Note that the Toledo Code refers to this method as simply a “Planned Development” in Chapter 16.16) It is a variation of a subdivision. The City and the developer each achieve some benefits and the residents achieve a higher quality of life due to a more natural environment and possibly lower housing costs.

Typically, subdivisions are regulated by specific regulations that engender uniformity. For example, a minimum lot size requirement of 7,000 square feet means that many lots in every subdivision will be just over 7,000 square feet. Subdivisions, usually, do not allow flexibility, except through the Variance process, to work with issues inherent to the land such as wetlands, streams, slopes, and tree groves. Generally, the Variance process includes approval criteria that do not allow new development to not comply with the regulations – the basic concept is the regulations are minimums and must be met.

The Planned Unit Development process provides a method of creating lots based on flexible requirements. Typically, PUD regulations allow the lots to be smaller than the minimum lot size provided they are clustered, or provided other lots are larger, or provided a tree grove is retained, or a wetland is not filled that otherwise could be filled, or a creek corridor (riparian area) is not infringed upon.

The urban infrastructure must be provided as in a subdivision, but through clustering the lots, often there are infrastructure savings because the length of pipes and streets is reduced due to the clustering. The City may benefit from such reductions because it will have fewer feet of pipes and streets to clean, maintain, and patrol.

SUMMARY

The Comprehensive Plan is the basic framework document for land use planning. Its policies and designations on the Plan Map guide the City’s land use decisions.

The Comp Plan is implemented by the Development Code with its zones, development requirements, types of land use applications, processes, and land division standards.

TYPES OF LAND USE APPLICATIONS

As a Planning Commissioner you will make decisions on, or make recommendations to the City Council on, several different types of land use applications. The following are many of the types of applications and brief comments about them.

ACTIONS ADDRESSING THE USE OF LAND

Amending the Comprehensive Plan's Text

An addition, deletion, or revision to the text of the Comprehensive Plan is an amendment to the Comprehensive Plan, and typically would be a Legislative process. For example, adding or revising economic development policies. There could be a rare situation where the amendment would apply to a small number of people or properties and would use the Quasi-judicial process. The Planning Commission would make a recommendation to the City Council. Only the City Council can make the decision because it involves changing the City's laws. The document amending the Comprehensive Plan must be an Ordinance because City laws can be adopted only through the passage of an Ordinance. Because the Comprehensive Plan is the basic controlling document and the Zone Code implements the Comprehensive Plan, a concurrent change to the Zone Code language may also occur so the Zone Code language is consistent with the Comprehensive Plan language. A change to the Plan's text must be consistent with the Statewide Planning Goals and meet any local approval criteria. The adoption of a master plan for the City's utilities or transportation system is accomplished through an amendment of the Comprehensive Plan.

Amending the Comprehensive Plan and Zoning Map

A change to the designations on the Comprehensive Plan and Zoning Map is an amendment to the Comprehensive Plan, and typically would be a Legislative process. For example, changing the designation for many properties from the Residential Designation to the Commercial Designation. If it would change the designation for a small number of properties, the quasi-judicial process would be used. The Planning Commission makes a recommendation to the City Council. Only the City Council can make the decision because it involves changing the City's laws. The document amending the Comprehensive Plan and Zoning Map must be an Ordinance because City laws can be adopted only through the passage of an Ordinance. A change to the Comprehensive Plan and Zoning Map designations must be consistent with the Statewide Planning Goals and any local approval criteria.

Amending the Development Code's Text

An addition, deletion, or revision to the text to any of the various parts of the Development Code is a Legislative process. For example, adding to the list of permitted uses in the Commercial Zone. The Planning Commission would make a recommendation to the City

Council. Only the City Council can make the decision because it involves changing the City's laws. The document amending the Development Code must be an Ordinance because City laws can be adopted only through the passage of an Ordinance. A change to the Development Code's text must meet the local approval criteria.

Conditional Use Permit

Each Zone includes a list of uses that are permitted outright. Each Zone, typically, also includes a list of uses that are similar in use or in effect to the permitted uses, but because they're not quite the same, a review through a Quasi-judicial public hearing process is required by Chapter 17.64 before they are allowed. A common conditional use is a house of worship. Many years ago, houses of worship were small (compared to today's large facilities and operations) and due to their low level of activity they were considered to be similar in their effect to residential uses. Before a house of worship could locate on a property in a residential zone it had to go through a public hearing process and be approved by the Planning Commission. The conditional use permit process allowed the City to include conditions of approval to address any identified effects, hence the name "conditional use." A Conditional Use Permit must meet the approval criteria in Section 17.64.050.

Variance

The Development Code includes many regulations, for example, setbacks from property lines to building walls. The Variance process is a safety valve to address situations where a regulation doesn't fit well for a given property. A variance cannot be used to allow a use in a zone that is not listed as a permitted or conditional use. A Variance is an important matter because, if approved, it will allow development in the City that does not conform to the City's development regulations. For example, rather than providing the required 20-foot front yard setback, an 18-foot setback is allowed. Toledo's Code, in Chapter 17.68, provides for three different classifications of variances, each with a different approval process. Class A variances are issued by Staff without any public process. Class B variances are issued by staff following public notice. Class C variance require approval by the Planning Commission following a public hearing. A Variance must meet the local approval criteria. Typically, the basic reason a variance is appropriate is due to some inherent issue with the subject property such as a steep slope that prevents the developer from complying with a regulation. Financial problems of the applicant are not, typically, justification for an approval. If the City is faced with a lot of variance requests, the City should review its regulations to determine if they are appropriate for the City.

Interpretation

As with any regulations there will be words or phrases that are not clear. Two reasonable people will read the language and come to different conclusions regarding what it requires. The Interpretation process can address any language in the Development Code. Typically, these situations arise as part of a Quasi-judicial development application and an Interpretation is made by the decision authority as part of the decision. An Interpretation by staff, the Planning Commission as part of a development application applies only to that application. It is not a precedent for the future. Following an Interpretation, it would be prudent for a Plan Text Amendment or a Zone Text Amendment to be initiated as soon as possible by the City to clarify the language so future decisions would not need to include an Interpretation.

An Interpretation by the City Council is precedent setting because the City Council is the governing body. Again, it would be prudent to amend the unclear text as soon as possible.

In some cases, an Interpretation will not be associated with a submitted development application. A prospective applicant may want to know the answer before submitting an application because if the answer is not favorable, they will not spend the money to prepare an application. A stand-alone interpretation should be allowed by the Zone Code to address these situations.

Non-conforming Use

One type of non-conformity is a non-conforming use. A non-conforming use is a use that was legally established at one time but now does not conform to the list of uses in the zone that has been applied to the property. For example, in an earlier time a property was zoned single family residential, and a single-family residential dwelling was constructed. Years later the City rezoned the property to Industrial which does not allow single family dwellings as a permitted or conditional use. The planning concept behind non-conforming uses is that it will be replaced by a permitted use, eventually, and the sooner the better. In the meantime, however, because the use was legal at one time, it is allowed to remain. Some say it is “grandfathered in.” The Development Code specifies what may occur with the use in order to retain its non-conforming status and not become illegal. In Toledo’s Code, the use is allowed to cease for 12 months without losing its status. For example, a single-family dwelling in an Industrial Zone is rented and the renters move out. If it is again occupied within 6-months or a year, then it can continue. Sometimes the use might cease due to the structure being burned down or destroyed in an earthquake. Some codes require the use to be removed if the damage is greater than 50% of the value of the structure before the fire, earthquake, etc. Others allow a totally vacated use to return, which isn’t very effective in achieving a conforming use on the property.

Non-conforming Structure

A second type of non-conformity is a non-conforming structure. A non-conforming structure is one that was legal as to setbacks, height, etc., at one time, but now does not conform to the requirements of the zone that applies to the property. For example, in an earlier time a property was zoned single family residential with a required 5-foot side yard setback. A single-family residential dwelling was constructed with a 5-foot side yard setback. Years later the City amended that zone’s side yard setback requirement to be 10 feet, thus creating a structure with a non-conforming side yard setback. Or the property may have been rezoned to another residential zone and the new zone required a 10-foot setback, again creating a structure with a non-conforming side yard setback. As with non-conforming uses, the planning concept behind non-conforming structures is that it will be replaced by a conforming structure, eventually. In the meantime, however, because the structure was legal at one time, it is allowed to remain. Some say it is “grandfathered.” The Development Code specifies what alterations, restorations, and replacements are allowed for non-conforming structures. Toledo’s Code prohibits a nonconforming structure from being rebuilt without obtaining a Class B Variance.

Site Plan Review (Limited Land Use Decision)

Many cities require a given level of development to be reviewed to ensure it meets all the city's land use requirements before a Building Permit can be submitted. Often, single-family dwellings and duplexes are exempt from the review as well as small structures such as accessory structures. The land use decision allows the City to ensure its requirements are met and to place conditions of approval on the development. The conditions can include exactions such as requiring that land be dedicated to the public for a right-of-way and the construction of roads to address the effects of the development. Typically, Development Codes require development to be reviewed, allow conditions to be assigned, and require improvements to public facilities as part of the limited land use decision. If the Site Plan Review process did not exist, the applicant would apply for a Building Permit and most city municipal codes do not give the authority to place such conditions on the issuance of a Building Permit.

ORS 197.195 addresses Limited Land Uses (LLU) and defines site plan review as a LLU and sets a process for their review and approval. For example, before the decision is made owners within 100-feet of the subject property must be notified the application has been received and provided the opportunity to submit written comments to the City within a 14-day comment period. Once the decision is made only those who submitted written comments in the 14-day comment period may appeal the decision to LUBA, unless the local Development Code allows those who did not comment to also appeal. Larger jurisdictions with planning staff often designate the staff or a Hearings Officer as the decision authority and they follow the above process without a public hearing. Other jurisdictions designate the Planning Commission as the decision authority and, often, they use a public hearing, although they are not required to.

Toledo's Code incorporates the site plan review function into the review of building permit by staff. It is a Type 1 procedure without any public notice.

Flood Plain Development Permit

For properties in an area with a 1% chance of flooding in any year, a floodplain development permit must be granted before development can occur. All cities in Oregon with floodplains participate in the National Flood Insurance Program, which Congress passed into law in 1968 to reduce loss of life and reduce damage to property. Toledo's Code (Chapter 15.16) requires the issuance of a Floodplain Development Permit for development in the 100-year flood plain. The purpose is to ensure the federal flood plain regulations are met and that structures in the 100-year floodplain are eligible to obtain flood insurance. Toledo's Code designates Staff as the decision authority for Flood Plain Development Permits.

Historic Resources Review

For cities with historic resources designated in their Comprehensive Plan through the Statewide Planning Goal 5 process, the Development Code implements the Plan with regulations that apply to those resources. Typically, an application is required that must show conformance with the City's regulations to alter a designated historic resource. Often the approval criteria are subjective because they relate to the structure's architecture. Toledo's Comprehensive Plan does not designate any local historic resources.

ACTIONS ADDRESSING THE CREATION OF UNITS OF LAND

Subdivision (Limited Land Use Decision)

Subdividing land is the creation of 4 or more lots (ORS 92.010(16)). It includes providing sewer, water, storm drain, and street facilities to support the development. ORS 197.195 addresses Limited Land Use Decisions (LLUD) and defines a subdivision as a LLUD and sets a process for their review and approval. For example, before the decision is made owners within 100-feet of the subject property must be notified the application has been received and provided the opportunity to submit written comments to the City within a 14-day comment period. The decision must include a statement that explains the criteria and standards relevant to the decision and the facts relied upon in rendering the decision. Once the decision is made only those who submitted written comments in the comment period may appeal the decision to LUBA, unless the local Code allows those who did not comment to also appeal. Toledo's Code (Chapter 16.12) establishes the Planning Commission as the decision authority for subdivisions and requires a public hearing be held prior to the decision (Type III procedure).

Partition (Limited Land Use Decision)

Partitioning land is the creation of 3 or fewer parcels within a calendar year (ORS 92.010(8)), with some exceptions such as lien foreclosures. It includes providing sewer, water, street, and storm drain facilities. ORS 197.195 addresses Limited Land Use Decisions (LLUD) and defines partitions as a LLU and, as above, sets a process for their review and approval. Toledo's Code (Chapter 16.08) establishes staff as the decision authority for subdivisions and does not require a public hearing be held prior to the decision (Type II procedure).

Property Line Adjustment (PLA)

A property line adjustment is "the relocation or elimination of a common property line between abutting properties." (ORS 92.010(12)) No new lot or parcel or tract is created. The final step is the recording of a survey with the County Surveyor's Office or the recording of a new deed with the new legal description with the County Clerk. Note however, for a complicated PLA, the County Surveyor's Office may require a Partition Plat be recorded at their office rather than just a survey. Some cities do not regulate PLAs because they read ORS 92 to not require cities to approve them before the survey or deed is recorded. Others read ORS 92 to require city approval before an adjusted property line is recorded. If a city does not regulate PLAs the possibility exists that the two parties may move a common property line that results in a lot that is smaller than the required minimum lot size making it a nonconforming lot, or that results in a setback distance smaller than the required minimum setback distance making the structure nonconforming as to the setback. Other problems can result such as a driveway, fence, or drainfield for a septic system being on someone else's property. The property owners that create unintended consequences will, generally, look to the city to solve their problem for them.

Lot Consolidation

ORS 92.010(12) was amended and now it appears a lot consolidation is included in the definition of property line adjustment, i.e., "...or elimination of a common property line...."

(ORS 92.010(12)) Consolidations are needed in some situations to remove a property line so a building is not built over the line thereby violating setbacks.

Planned Unit Development (Limited Land Use Decision)

A Planned Unit Development (PUD) is another method of creating lots. (Note that the Toledo Code refers to this method as simply a “Planned Development” in Chapter 16.16) It is a variation of a subdivision. The City and the developer each achieve some benefits and the residents achieve a higher quality of life due to a more natural environment and possibly lower housing costs.

Typically, subdivisions are regulated by specific regulations that engender uniformity. For example, a minimum lot size requirement of 7,000 square feet means that many lots in every subdivision will be just over 7,000 square feet. Subdivisions, usually, do not allow flexibility, except through the Variance process, to work with issues inherent to the land such as wetlands, streams, slopes, and tree groves. Generally, the Variance process includes approval criteria that do not allow new development to not comply with the regulations – the basic concept is the regulations are minimums and must be met.

The Planned Unit Development process provides a method of creating lots based on flexible requirements. Typically, PUD regulations allow the lots to be smaller than the minimum lot size provided they are clustered, or provided other lots are larger, or provided a tree grove is retained, or a wetland is not filled that otherwise could be filled, or a creek corridor (riparian area) is not infringed upon.

The urban infrastructure must be provided as in a subdivision, but through clustering the lots, often there are infrastructure savings because the length of pipes and streets is reduced due to the clustering. The City may benefit from such reductions because it will have fewer feet of pipes and streets to clean, maintain, and patrol.

OTHER ACTIONS

Annexations

Annexations bring land that is outside the City Limits into the City Limits. There is an aspect of annexations that is land use planning and another that is not. The financial implication of annexing land is not a land use decision. For example, if a hundred acres of single family land is annexed it will not, typically, generate enough property taxes to support all the demands placed on the City facilities such as Police, Library, Parks, Recreation and maintenance of the sewer, water, storm drain and street systems. Thus, a City Council may decide not to annex an area due to financial reasons. The other aspect of annexations involves land use issues such as the availability of nearby sewer, water, and street facilities.

Before the Statewide planning program was adopted in 1973 (Senate Bill 100) the State annexation Statute did not address land use issues – and it still doesn't. Over the years the courts have made it clear that an annexation decision is a land use decision. The land use aspects and non-land use aspects of annexations have not been melded in State Statutes, thus keeping the land use and non-land use aspects separated can be challenging.

While Chapter 19.04 indicates that annexation is a Type III or Type IV procedure, there are no other references to annexation in the Toledo Code. Therefore, the annexation of territory into the City is subject only to the provisions of ORS 222.

Vacations

Vacations return public right-of-way back to private ownership. Land owned by the City in fee simple is not vacated, it is sold. If public facilities such as sewer lines, or if public utility facilities such as power lines are in the area to be vacated, the City's Ordinance vacating the right-of-way should retain an easement beneficial to the City or the utility company to allow access into the area to perform maintenance, repair and replacement and to allow new or larger facilities in the vacated area. Similar to annexations, there is an aspect of vacations that is land use planning and another that is not.

Before the Statewide planning program was adopted in 1973 (Senate Bill 100) the State vacation Statute did not address land use issues – and it still doesn't. Over the years the courts have made it clear that a vacation decision can be a land use decision. The melding of the non-land use aspects and the land use aspects can be challenging to ensure all the statutory requirements are met.

An example of the complications is that ORS 271.110 requires the City Council public hearing to be noticed via a newspaper notice for two consecutive weeks and posting in 2 conspicuous locations in the area to be vacated, but it doesn't address a Planning Commission hearing.

The Statute's approval criteria are that the Council "...shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petitioner, the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition." (ORS 271.120) A local land use code could augment the above by requiring consideration of connectivity and other factors it believes are applicable. Toledo's Code does not reference vacations and historically the Planning Commission has not a role in the vacation process.

LEGISLATIVE *VERSUS* QUASI-JUDICIAL PROCESSES

When the Planning Commission or City Council is considering a land use issue involving the adoption or amendment of City laws that regulate land uses, it uses the ***legislative process*** (creating laws). When it is considering applying existing land use regulations (approval criteria) to a specific set of facts, a zone change, for example, it uses the ***quasi-judicial process*** (applying laws).

A rule of thumb is that development applications are quasi-judicial and text amendments to the comprehensive plan or zone code are legislative.

There is no State law defining the difference between legislative process and quasi-judicial process. A local government's comprehensive plan or zone code may provide a local definition for that local government. The Toledo Code makes that distinction in Chapter 17.80. For these types of procedures, a legislative amendment is one that has been initiated by the City Council or Planning Commission, constitutes a change in policy or a correction of an error in the Plan, and affects a wide number of properties. A quasi-judicial amendment is one that is initiated by a property owner or group of property owners and results in a change that impacts a property or a small number of properties.

The Land Use Board of Appeals (LUBA), the Oregon Court of Appeals and the Oregon Supreme Court have addressed the issue and provide the best available guidance to explain the difference between the legislative process and quasi-judicial process.

The criteria to be considered in determining if a decision process is legislative or quasi-judicial come from case law (*Strawberry Hill 4-Wheelers v. Benton County Board of Commissioners*, a 1979 Oregon Supreme Court decision).

The quasi-judicial process is to be used if:

- (1) the process is bound to result in a decision,
- (2) the decision is bound to apply preexisting criteria to concrete facts, and
- (3) the action is directed at a closely circumscribed factual situation or a relatively small number of persons.

No one of the three factors is determinative (*ODOT v. Klamath County*, LUBA, 1993).

A zone change initiated by the property owner for one 5-acre property would be a quasi-judicial process, whereas a zone change initiated by the City for 900 acres affecting 100 property owners involving one-third of the City would be a legislative process.

Other cases have addressed the differences. One case indicates that if a quasi-judicial process is used for a legislative application, the quasi-judicial process does not convert the legislative application into a quasi-judicial decision (*Ramsey v. Philomath*, LUBA, 2004). Generally, the notice requirements are much greater for quasi-judicial decisions. If a legislative application is to be reviewed and the City wants to provide the same notice as a quasi-judicial application to ensure the community is better notified, the City's greater notice does not turn the legislative application into a quasi-judicial application.

LEGISLATIVE PROCESS

The legislative process is less restrictive than the quasi-judicial process because it involves the adoption of laws (review by the Planning Commission with a recommendation to the City Council for their decision), whereas the quasi-judicial process is the application of existing law to a set of facts by an impartial tribunal. The legislative process can be described in terms of the State Legislature where a State Senator or Representative obtains information from site visits, conversations with people throughout the State, public hearings, lobbyists, and any other source. The process of creating laws involves decision-makers who do not sit as an impartial tribunal.

The less restrictive nature of the legislative process allows *ex-parte* contacts to occur. “There is no legal requirement that decision makers disclose the substance of their site observations and provide an opportunity for rebuttal where the decision is legislative.” (LUBA Headnotes, 25.7, *Valerio v. Union County*, 33 Or LUBA 604 (1997))

State Statutes do not include specific notice requirements for legislative processes such as are included for quasi-judicial processes in ORS 197.797. The legislative notice requirements in the local code are usually less rigorous than for the State-required notice for the quasi-judicial process. For example, in some jurisdictions the subject property for a quasi-judicial decision is posted with a notice of the public hearing before the public hearing whereas there is no posting requirement for a legislative decision.

The legislative process does not include a requirement that a local government adopt findings explaining why the decision complies with applicable approval criteria (*Home Depot v. Portland*, LUBA, 2000; *Andrews v. Brookings*, LUBA, 1994; *Riverbend Landfill v. Yamhill County*, LUBA, 1993). As a practical matter, however, if there are no findings and the decision is appealed, the Land Use Board of Appeals would not have sufficient information to perform their review and could remand it back to the City to adopt findings. An option is for the City to explain in its brief to the Land Use Board of Appeals how the challenged legislative decision complies with applicable legal standards.

There is no statutory requirement that legislative decisions be supported by substantial evidence in the record (*Riverbend Landfill v. Yamhill County*, LUBA, 1993; *Cope v. Cannon Beach*, LUBA, 1992; *Alexiou v. Curry County*, LUBA, 1992). However, if the decision is not supported by substantial evidence, the City may not be able to successfully defend an appealed decision.

ORS 197.620(1) states that a decision to *not adopt* a legislative amendment cannot be appealed to the Land Use Board of Appeals. Not allowing an appeal may sound odd, but it prevents a situation where a private party’s application is submitted to make a change that is clearly not in the public interest with the assumption the City will deny it and with the tactic that on appeal the applicant will convince the appeal body to overturn the City’s decision thereby forcing the City to do what is clearly not in the public interest.

QUASI-JUDICIAL PROCESS

The quasi-judicial process is more prescribed because the decision makers sit as an impartial tribunal similar to a judge in a court. The U.S. Constitution’s “due process” clause is applicable. Impartiality includes treating all the parties fairly, including allowing all the parties to know what the decision makers know. An *ex-parte* contact is problematic in the quasi-judicial process and must be announced at the beginning of the hearing so all the parties know what information a Commissioner received during the *ex-parte* contact. If that information was nonfactual, it can be corrected at the hearing. Information known by the decision makers should be factual. If the parties don’t know what information the

decision makers know, the decision makers may make a decision based on nonfactual information resulting in a bad decision.

In the 1973 landmark case *Fasano v. Washington County* the Oregon Supreme Court set forth the basic rules of quasi-judicial land use decision making and made it clear that even though a land use decision maker is not deciding criminal cases or civil lawsuits, the land use decision making process must be fair and equitable for all the parties. The basic tenants set forth in *Fasano* have been included in Oregon land use statutes (ORS 197 and 227).

ORS 197.797 sets the requirements for noticing and conducting quasi-judicial public hearings. There is no similar statute for legislative public hearings. It is included here to show the quasi-judicial process is more prescribed than the legislative process. Because it is long, key words and phrases are underlined.

197.797 Local quasi-judicial land use hearings; notice requirements; hearing procedures.

The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

- (1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.
- (2) (a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:
 - (A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
[Note that Toledo's Code requires notice to owners of property within 300 feet of the subject property]
 - (B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
 - (C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
- (b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- (c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.
- (3) The notice provided by the jurisdiction shall:
 - (a) Explain the nature of the application and the proposed use or uses which could be authorized;
 - (b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;
 - (c) Set forth the street address or other easily understood geographical reference to the subject property;
 - (d) State the date, time and location of the hearing;

- (e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;
 - (f) Be mailed at least:
 - (A) Twenty days before the evidentiary hearing; or
 - (B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;
 - (g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;
 - (h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 - (i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and
 - (j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- (4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.
- (b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 [the 120-day period] and ORS 215.429 or 227.179 [the 120-day period].
- (5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:
- (a) Lists the applicable substantive criteria;
 - (b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and
 - (c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.
- [Note that ORS 197.796 (3)(b) requires stating that the failure of the applicant to raise a constitutional or other issue relating to the proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.]
- (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 or 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 written 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 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 this section.
- (d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 [120-day period] and ORS 215.429 or 227.179 [120-day period], unless the continuance or extension is requested or agreed to 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 215.427 or 227.178 and ORS 215.429 or 227.179.
- (7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.
- (8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.
- (9) For purposes of this section:
 - (a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.
 - (b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

The requirements for the notice and conduct of quasi-judicial public hearings show every effort is made to ensure the process is fair to all the parties and that the decision makers are an impartial tribunal. Other State laws apply to the quasi-judicial process, such as the need to base decisions on findings, and that the findings and decision be in writing, but they are not shown here.

SUMMARY

The distinction between legislative and quasi-judicial processes is important because their differences affect how a decision is made. Almost always, it is clear which process to use. The Planning Commission and City Council use both processes and it is helpful for Commissioners and Councilors to know the differences.

CONDUCTING A SUCCESSFUL PUBLIC HEARING

Everyone who is a party to a public hearing wants the hearing to proceed smoothly and be equitable to all parties. By following a well-scripted step-by-step process the hearing can be conducted successfully. The Planning Commission Chair or Mayor is an important element in the hearing and can keep all the parties on-script and focused on the issue rather than focusing on personalities and becoming overly emotional.

The Chair opens the public hearing, e.g., “The public hearing is now open.”

Introduce the case to be heard: This is Variance 09-01, a request by “applicant” to allow a 4-foot setback when 10-feet are required at 123 4th Avenue.

Ask if any Planning Commissioner (or Councilor):

- Has had an *ex-parte* contact and to state the information received during the contact.
- Is biased regarding the application and to step down if the bias is so strong as to not allow the Commissioner to decide the application on its merits.
- Has a potential or actual conflict of interest and to step down if it is an actual conflict.

Ask if anyone in the audience objects to the jurisdiction of the Planning Commission to decide this case.

Ask if anyone in the audience objects to the notice of the hearing that was provided for this case.

If applicable, the Chair states there is a time limit for testimony. Ideally, the Development Code would give the Commission the authority to limit testimony, or alternatively, the notice of the hearing would state that testimony is limited.

The Chair or staff can make the following statements required by ORS 197.797(5)(a)(b)(c), 197.797(6)(a), and 197.796(3)(b):

- State that the criteria are found in the Toledo Code Section XX.YY.xxx.
- Testimony must be directed to the criteria or other criteria the testifier believes are applicable.
- Failure to raise issues in sufficient detail to afford the decision maker to respond to the issues precludes appeal to the Oregon Land Use Board of Appeals on that issue.
- Failure to raise a constitutional or other issue relating to the proposed conditions of approval in sufficient detail to afford the decision maker to respond to the issue precludes an action for damages in circuit court.

- Before the hearing is closed the parties have the right to request additional time to present additional evidence. [The Commission/Council decides if the additional time is a continuance of the hearing to a date/time certain or if it is in the form of leaving the record open for written evidence.]
- Parties have the right to appeal the Planning Commission’s decision to the City Council and the City Council’s decision to the Oregon Land Use Board of Appeals.

The Chair explains the Hearing Process order.

The presentations can be in any order, but typically a logical approach is to hear the presentation from the applicant followed by the staff report with its analysis of whether the approval criteria are met and its recommendation.

- Applicant
- Staff report
- Proponents
- Opponents
- Those neither for nor against
- Government agencies
- Staff response to questions and issues
- Rebuttal by applicant

The Chair closes the hearing, e.g., “The public hearing is closed.”

The Commission/Council deliberates.

The Commission/Council entertains a motion and makes a decision.

How to Testify at Land Use Hearings

A Resource for Citizens

Prepared by the Oregon Department of Land Conservation and Development

Goal 1 of Oregon's Statewide Planning Goals recognizes the importance of citizen involvement "in all phases of the planning process." One of the principal ways for citizens to be involved is by testifying at local land use hearings.

This brochure is designed to help citizens prepare and deliver testimony, and be effective in these public venues.

HOW TO PREPARE TESTIMONY FOR PUBLIC HEARINGS

Various public bodies, including city councils, planning commissions, local land use and legislative committees, conduct hearings on land use matters. Voicing your opinion at these hearings is a way to influence public decisions. Carefully prepared testimony gives public officials a chance to hear directly from citizens. It also becomes part of the public record, which is a necessity for possible later appeals. Hearings are often covered by media, and offer another way to get a message out to the public. Some guidelines for preparing testimony are:

1. Know your issue

Support opinions with facts. Review the land use file on your case. Read any media reports on it; talk with elected officials, staff and neighbors. Be knowledgeable about the opposition's arguments and be prepared to counter them. The Web may be a useful tool to research planning issues.

2. Know the land use record and regulations

Review the staff report for the hearing body. The staff report is a key document that will inform your testimony. Learn about the requirements for zone changes, conditional use permits, and other land use actions. Refer to the same adopted plans, code requirements and other regulations and criteria that the hearings body must use. Find out if there is a local Committee for Citizen Involvement (CCI), Citizen Area Committee or other local organization covering your geographic area. They are a good resource to contact for advice on how to testify persuasively.

3. Prepare an outline of your testimony to use while speaking

- Develop a full written statement to leave with the body you are addressing
- Address the full hearings body. (i.e.: "Council President and members of the Council...")
- Include your name and address for the record.
- Indicate if you are representing a group or yourself, and give a brief description of your interest.

- Keep your statement short. Begin by saying you support or oppose a particular agenda item, and briefly explain why. Use facts to verify your statements. Describe how this issue affects you personally, what you suggest as a solution and then summarize. Be sure to tell the committee exactly what you wish them to do. If you are opposing, your testimony should discuss why the proposal is inconsistent with the controlling law, rules or ordinances. Don't repeat yourself or ramble; keep your argument concise.

4. Know when, where and before whom you will testify

Be sure you know the facts about the public event. Check on when testimony will be taken, where the venue is and research the responsibilities of the hearing body you will be addressing. Know how much time you will have to speak (often 3-5 minutes).

5. Rehearse your testimony

Practice giving testimony in front of friends and get suggestions for improvement. Make sure your main points will be covered in the time allowed.

HOW TO GIVE TESTIMONY AT PUBLIC HEARINGS

General tips:

- Be polite and project a positive image.
- Maintain eye contact if possible. Prepare an outline so you do not have to read your testimony.
- Arrive early to sign up to testify. This will also allow you to listen to testimony from others and avoid repeating their points.
- Bring multiple written copies of your testimony to leave behind.
- Dress appropriately, so your testimony will be taken seriously.

1. Be familiar with the group's process

If possible, attend one of the group's meetings in advance of the hearing at which you will be testifying to observe procedures and the arrangement of the room. Schedules can change at the last minute, so it is wise to verify with staff or the agency on the day of the meeting. Find out how many copies of your testimony are recommended for the particular meeting and how much time you will have to speak.

2. Address the public body formally and identify yourself

3. Appeal to your audience

Emphasize your commonalities with the public body and act respectfully to those with whom you disagree. The more you know about your audience, the more you can tailor your message to them.

4. Control your feelings

Try to keep your emotion in check when testifying. While you want to speak from the heart, you do not want your feelings to overshadow the content and reason of your message.

5. Anticipate questions

Try to anticipate questions you may receive from the public body and how you would answer them.

6. Thank the group

When you are finished testifying, thank the committee members and offer to answer any questions.

7. If members of a group are testifying

Group members should cover different topics, so testimony is not repetitious. Rather than having every member of your group say the same thing, some members can say they support previous testimony on a topic.

BIAS

An inherent role of a Planning Commissioner is to vote on motions resulting in decisions by the Planning Commission. In the process of making decisions the possibility of a public official having bias arises. “Personal bias” is different from “conflict of interest.” Conflict of interest relates to financial benefit or avoiding financial detriment.

Personal bias is related to a person being prejudiced for or against a party or an issue to the extent that they cannot make a fair decision on the merits of the case.

For example, as a Planning Commissioner you’re sitting as a member of an impartial tribunal regarding a conditional use application, and you feel very strongly about the applicant or the use at that location. You may be so biased in favor of or in opposition to the applicant or application that you are not capable of making a fair, impartial judgment. Commissioners who have a bias that stands in the way of a fair and impartial judgment should not participate in the decision.

“Actual bias” means prejudice or prejudgment of the facts to such a degree that a Planning Commissioner is incapable of rendering an objective decision on the merits of the case. If you have an actual bias, you should step down and not participate as a Commissioner. You may participate as a citizen and sit in the audience and testify and submit factual information.

You need not recuse yourself merely because you have knowledge of the facts or know one or more of the applicants or opponents, or even if you have a leaning to one side or the other. It is understood that everyone has biases. A Planning Commissioner is not bound by the same squeaky-clean standards as a Judge in a court of law, but a Commissioner should step down if the Commissioner believes they cannot make a fair decision based on the merits of the application.

As with any land use issue, one of the parties may have a different opinion as to whether a Commissioner is too biased to make a fair decision. If a party that is on the losing side of a decision believes a Commissioner is too biased, that party may appeal the decision to the appeal authority (generally the City Council for Planning Commission decisions). Once all local appeals have been exhausted a party may appeal to the Oregon Land Use Board of Appeals based on bias.

Bias and its infinite gradations are not easy to nail down. As an example, the following is a link to the Land Use Board of Appeals (LUBA) website and a bias case involving City Councilors. www.oregon.gov/LUBA/docs/opinions/2007/05-07/06055.pdf. In that case, LUBA states

Local quasi-judicial decision makers, who frequently are also elected officials, are not expected to be entirely free of any bias. To the contrary, local officials frequently are elected or appointed in part because they generally favor or oppose certain types of development. Local decision makers are expected, however, to (1) put whatever bias they may have to the side when deciding individual permit applications, and (2) engage in the necessary fact finding and attempt to interpret and apply the law to the facts as they find them so that the ultimate decision is a reflection of their view of the facts and law rather than a product of any positive or negative bias the decision maker may bring to the process. (citations omitted)

CONFLICT OF INTEREST

An inherent role of a Planning Commissioner is to vote on motions resulting in decisions by the Planning Commission. In the process of making decisions the possibility of a public official financially benefiting from a decision arises. Also, the possibility of a public official receiving relief from a loss arises. The term that describes these situations is “conflict of interest.”

The Oregon Government Ethics Commission administers the State’s ethics laws and can be contacted if you have questions at (503) 378-5105 or ogec.mail@oregon.gov. Their website address is www.oregon.gov/OGEC/Pages/default.aspx.

“Conflict of interest” is divided into two terms which are defined in Oregon Revised Statutes (ORS) 244.020.

244.020 Definitions.

- (1) “**Actual conflict of interest**” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **would be** to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (13) of this section. (emphasis added)
- (13) “**Potential conflict of interest**” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **could be** to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following: (emphasis added)
 - (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
 - (b) Any action in the person’s official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the person or the person’s relative is associated, is a member or is engaged.
 - (c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

ORS 244.020 goes on to define some terms used in the above definitions.

- (2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.
- (3) "Business with which the person is associated" means:
- (a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;
 - (b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
 - (c) Any publicly held corporation of which the person or the person's relative is a director or officer; or
 - (d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).
- (15) "Public official" means the First Partner and any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.
- (15) "Relative" means:
- (a) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate;
 - (b) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate;
 - (c) Any individual for whom the public official or candidate has a legal support obligation;
 - (d) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or
 - (e) Any individual from whom the candidate receives benefits arising from that individual's employment.

ORS 244 provides a method to handle conflicts.

244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards.

- (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

- (a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.
 - (b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.
 - (c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.
- (2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:
- (a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or
 - (b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:
 - (A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.
 - (B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.
- (3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.
- (4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.

244.130 Recording of notice of conflict; effect of failure to disclose conflict.

- (1) When a public official gives notice of an actual or potential conflict of interest, the public body as defined in ORS 174.109 that the public official serves shall record the actual or potential conflict in the official records of the public body. In addition, a notice of the actual or potential conflict and how it was disposed of may in the discretion of the public body be provided to the Oregon Government Ethics Commission within a reasonable period of time. (emphasis added)
- (2) A decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest.

EX-PARTE CONTACT

Ex-parte contact occurs when a decision maker who is a member of an impartial tribunal (the Planning Commission) and is acting within a “quasi-judicial” process and receives information outside a public hearing. For example, the Planning Commission is scheduled to conduct a public hearing the following week on an application for a Variance. A Planning Commissioner sees a friend at the grocery store and the friend starts talking about how good, or bad, the application is. Any information the Commissioner receives about the case should be received at the public hearing. Information received outside of the public hearing process (application, staff report, oral and written testimony) is considered *ex-parte*. Other methods of *ex-parte* contact are site visits, emails, phone conversations, newspaper articles, radio and TV broadcasts and the internet.

Contact with City staff or the City’s contract staff (City Engineer, Planner, etc.) outside the public hearing is not *ex-parte* contact. A decision-maker may talk to City staff at any time.

Ex-parte contact occurs within the quasi-judicial process, but not within the legislative process. “There is no legal requirement that decision makers disclose the substance of their site observations and provide an opportunity for rebuttal where the decision is legislative.” (LUBA Headnotes, 25.7, *Valerio v. Union County*, 33 Or LUBA 604 (1997)) The legislative process is less restrictive because it involves the adoption of laws and the decision-makers are not sitting as an impartial tribunal.

For a quasi-judicial process involving a public hearing (for example, zone changes, land divisions, site plan review, conditional uses, variances, etc.), once the Chairperson opens the public hearing, the parties present their information. The information is typically in the form of the application materials, staff report, other reports on traffic and wetlands, and written and oral testimony of parties at the public hearing. It is not uncommon for written and oral testimony to be opinions or statements the testifier believes are true, but may not be true. All the information is entered into the record at the public hearing so that all the parties can know what it is and have an opportunity to comment on it.

The reason the impartial decision-maker cannot listen to, read, or gather information outside the public hearing is “due process.” The U.S. Constitution and the Oregon Constitution require government processes to be fair and equitable for all the parties. If one party is able to provide information to one or more Commissioners without the other parties’ knowledge, the process is not fair and equitable. In the 1973 landmark case *Fasano v. Washington County* the Oregon Supreme Court set forth the basic rules of land use decision-making and made it clear that even though a land use decision maker is not

deciding criminal cases or civil lawsuits, the land use decision making process must be fair and equitable for all the parties. Actually, the Oregon Supreme Court was merely reiterating the “due process” clause of the U.S. Constitution.

Information received outside the public hearing is in a Commissioner’s mind and becomes part of the reason the Commissioner votes yes or no. If that information is not true and no other party knows what it is, then the process is not fair because untrue information goes unchallenged and a bad decision can result.

RESOLVING AN *EX-PARTE* CONTACT

To resolve an *ex-parte* contact, after the public hearing has been opened and before the testimony starts, the Chairperson will ask if any Commissioner has any *ex-parte* contacts to disclose. If a Commissioner has an *ex-parte* contact, the Commissioner will state an *ex-parte* contact occurred and generally state what information was obtained. Depending on what the information is, it may be appropriate to specifically state what information was obtained. The announcement takes care of the *ex-parte* contact and all the parties present are aware of it and can address it in their testimony. The disclosure should occur after the hearing is opened so it is part of the hearing record and before any staff reports or testimony is received.

If a Commissioner forgets about the contact and during the testimony remembers it, at the first appropriate opportunity, such as between testifiers, the Commissioner can ask the Chairperson to be recognized and state the contact. If a Commissioner doesn’t remember the contact until the hearing is closed and the Commission is deliberating, the Commissioner can ask the Chairperson to be recognized and state the contact during the deliberation. That raises the issue of re-opening the hearing to afford the parties the opportunity to comment. The next step could be to re-open the hearing, or for the Chairperson to ask the audience if anyone wants to comment on the disclosure and if someone wants to comment, then the hearing should be re-opened.

A Commissioner may drive by or stop at the subject property. Although there is disagreement whether such a visit is an *ex-parte* contact or not, it is recommended it be considered an *ex-parte* contact. After the hearing is opened the Commissioner must state they stopped at the subject property and what information they learned so any of the parties can address it. A worst case scenario would be a Commissioner visiting the wrong property and having erroneous information in mind.

In some cases, the subject property is on a busy road and the Commissioners go by it daily. In that case once the Chairperson has opened the hearing and has asked if there are any *ex-parte* contacts to disclose, each Commissioner can indicate they go by the property daily and generally mention what they noticed. Alternatively, the Chairperson could comment for all the Commissioners saying they all go by it daily, but that may not adequately indicate what each Commissioner sees when they go by it daily. For example, one Commissioner may always focus on a large old tree near the edge of the property while another focuses on the driveway or the buildings.

If you receive a phone call or someone comes up to you at a store, you should explain the discussion is inappropriate because you have a responsibility to the public to be an objective decision-maker and any information you receive must be through the public hearing process to ensure fairness and equity for all the parties. You could explain that if it was their application being considered, they would want each Commissioner to not be influenced outside the public hearing.

Overall, it is the responsibility of the applicant and others participating in the process to gather all the pertinent information and present it in the application materials and at the public hearing. When a Commissioner is involved in *ex-parte* contact parties on one side or the other can become concerned about the integrity of the process and of the Commissioner involved, whether the concern is warranted or not.

OREGON REVISED STATUTE (ORS) 227

ORS 227.180(3) explains how to resolve ex-parte contacts

227.180 Review of action on permit application; fees.

- (3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:
 - (a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and
 - (b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance 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 related.
- (4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

ROLES & RESPONSIBILITIES: PLANNING COMMISSION & COMMISSIONERS

State law and local city charters and ordinances set forth the authority and responsibilities of Planning Commissions. For example, the City establishes the Commission, the number of Commissioners and gives the Planning Commission the authority to make decisions for some land use applications, such as a Conditional Use Permit, and make recommendations to the City Council for other land use applications, such as amendments to the Comprehensive Plan.

Chapter 2.04 of the Toledo Municipal Code addresses the creation, membership in, and responsibilities of the Planning Commission.

A Planning Commission and its Commissioners have many roles and responsibilities. A basic statement about the role of the Planning Commission is the Commission represents the public interest. Commissioners are appointed by the City Council, a public body, to represent the public interest in land use planning issues. At the Planning Commission meetings the Commissioners wear their public hats, not their private hats.

The Planning Commission should have a comprehensive view of land use issues and maintain a broad perspective of the community. The Comprehensive Plan is truly comprehensive; it addresses many elements such as housing, economic development, sewer, water, transportation, natural resources and it establishes an urban growth boundary around the City.

The Planning Commission should have a long-term view of land use issues. The planning horizon for the Comprehensive Plan is 20 years. In addition to the long-term view, the Commission must also have a solid current view of the City because the Commission applies the City's development regulations when making decisions about development applications.

The Planning Commission develops, maintains and implements the Comprehensive Plan with the City Council adopting the Plan and any amendments to it.

The Planning Commission develops, maintains and implements the Development Code with the City Council adopting the Development Code and any amendments to it.

The Planning Commission protects the integrity of the community's land use planning process.

Planning Commissioners should understand land use planning.

Planning Commissioners should reflect the values of the community.

Planning Commissioners should educate the public on land use planning.

Planning Commissioners should understand the opportunities and limitations of the Commission's authority. For some land use applications, e.g., an amendment to the Plan or the Development Code, the Commission makes a recommendation to the City Council and the Council is the decision maker.

Planning Commissioners should understand that the Commission will exhibit "small group dynamics."

Planning Commissioners should understand the "legislative" and "quasi-judicial" processes. There is no State law defining "legislative" or "quasi-judicial", but generally, if an existing City law is to be amended or a new City law is to be adopted into the Comprehensive Plan or the Zoning and Development Code (creating law), the "legislative" process is used. If an existing provision is to be applied in deciding a development application (applying the law), then the "quasi-judicial" process is used. Because these two terms are not easily understood the following provides additional information.

The "quasi-judicial" process is prescribed and must be followed so that all the parties are treated equally. The U.S. Constitution's provision regarding "due process" applies to government decision making, including Planning Commission decisions using the "quasi-judicial" process. Equal treatment and basic fairness are important in making land use decisions that affect people who have an interest in how the land in the City is used. A comment period is provided or a public hearing is held that affords the parties an opportunity to be heard. When a decision is made it should be clear and it must be reduced to writing with, in most cases, the opportunity to appeal. Each Commissioner is responsible to ensure they are fair to all parties. Bias and conflict-of-interest can come into play and there are steps to address them in the hearing setting. Other issues such as *ex-parte* contact are important and there are ways to handle such contact.

The "legislative" process is not as prescribed as the "quasi-judicial" process; it is more akin to a State Legislator weighing information, talking to everyone and finally deciding how to vote. An example of how the "legislative" process is less prescribed is, *ex-parte* contact is allowed for "legislative" processes.

Overall, a summary statement about the role of the Planning Commission and the Planning Commissioners is, they provide the public with a fair, deliberate and thoughtful approach to land use issues.

Just What Is the Job of a Planning Commissioner?

by PCJ Editor, Wayne Senville

The primary goal of the *Planning Commissioners Journal* has always been to help citizen planners – especially members of local planning and zoning boards – do their job better. But just what is the job of a planning commissioner?

We want to re-examine this broad question in light of what our talented contributors have had to say over the past twenty years. So go get yourself a cup of coffee or tea, sit back, and thumb through the following pages.

Some of the keenest observations on the role planning commissioners play have – not surprisingly – come from commissioners themselves. Over the years, many planning board members have drawn on their own experiences in writing for the PCJ.

An Obligation to Contribute

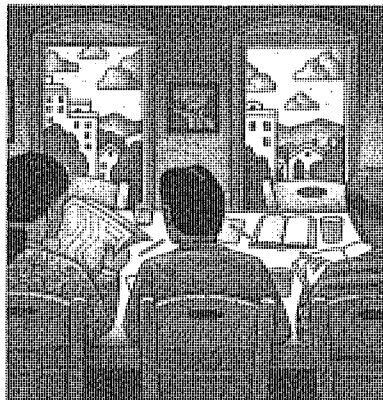
“Recognize that you have an obligation to contribute to your planning and zoning meeting, even if you don’t have a set of initials following your name and can’t name the planner who laid out the streets of Paris. It’s not a ‘chance’ to contribute; it’s an ‘obligation’ by virtue of your appointment. Study any staff reports, maps, and the like, and come prepared to contribute ... Planning commissions are places for people who care and want to make a difference to their communities.” – *Steven R. Burt, Sandy City, Utah* {100}

Ask Questions

“Once appointed, don’t be reluctant to ask questions of other board members and the planning staff. The staff is there to assist and advise the board. At your board’s public meetings, ask questions. Other board members, or citizens in attendance, may have the same question in the back of their mind. The old adage ‘the only dumb question is the one not asked’ is true.” – *Stephen F. DeFeo, Jr., Methuen, Massachusetts* {234}

Think Before You Respond

“Think carefully before you respond to demands from citizens and developers. Often a salient issue will come to the attention of citizens before you, as a board member, have all the



facts. Resist the urge to express your opinion until you are sure about where you stand on the issue.” – *Cheryl R. Roberts, Huntersville, North Carolina* {234}

Put Aside Your Own Biases

“Put personal preferences and prejudices aside to deliberate on technical issues and application merits, and be proactive to seek changes to local zoning laws where deficiencies have been identified.” – *Louis Joyce, Alloway Twp., New Jersey* {467}

“Try very hard to see both sides of an issue. It’s easy to vilify developers as uncaring, manipulative, and simply out

to make a profit. But remember that it is not a crime to make a reasonable profit ... With this said, commissioners have a duty to protect the public, follow the general plan, and enforce the city code – and sometimes a project just does not conform to that mandate.” – *Fedolia “Sparky” Harris, Elk Grove, California* {467}

Make the Right Decision, Not the Popular One

As Carolyn Braun noted in “Planning From Different Perspectives” {170}:

“As planning commissioners, I’m sure you have heard difficult requests from friends or neighbors that do not comply with the code. It is hard not to be empathetic with your neighbors. They stand before you, looking at you, hoping you – of all people – will understand and help them. After all, you live there. Silently, you wonder whether granting the request would be that bad. After all, it really wouldn’t hurt

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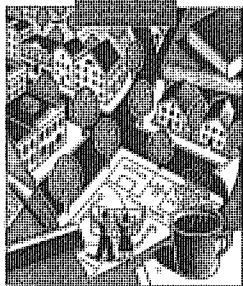
Throughout this article you’ll see brackets with a number inside like this: {467}. This is the identifying number we’ve given to each article we’ve published.

When you or your community join our new *PlannersWeb* service you will be able to access the full text of each article simply by going to our web site: www.plannersweb.com; then logging in as a *PlannersWeb* member; and then inserting the article number (or the article title) in the search field.

We’ll also be posting on the *PlannersWeb* site a copy of this article – complete with hyperlinks.

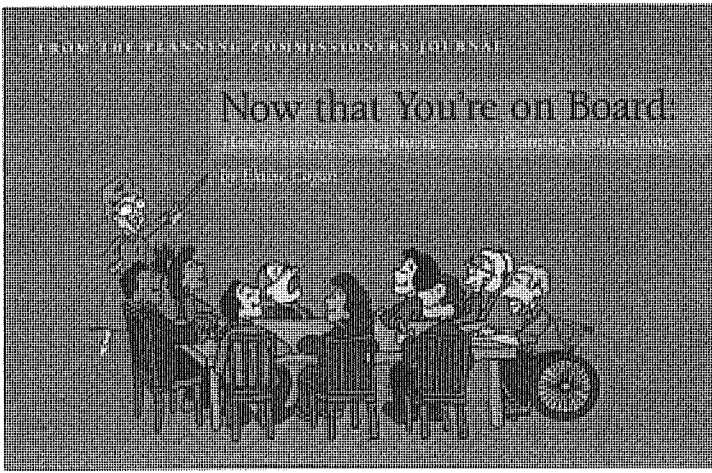
PLANNING COMMISSIONERS
Journal

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anyone. What's a couple of feet in the greater scheme of things?

Similarly, you may be called on to decide applications that have evoked strong neighborhood opposition. ... Silently, you wonder how you can approve this request with so many people in opposition. How could this possibly be best for the community? ...

It is tempting as a commissioner to simply make a popular decision. It has been my experience, however, that in the long run, consistent decisions give you more credibility. Rest assured, it won't always be easy."

"The Effective Planning Commissioner"

That's the title of a column Elaine Cogan wrote for the *PCJ* for some eighteen years. Cogan, who is a founding partner in the Portland, Oregon, planning and communications firm of Cogan Owens Cogan, has for more than thirty years served as a consultant to communities undertaking strategic planning or visioning processes. She's also the author of *Now that You're on Board: How to Survive ... and Thrive ... as a Planning Commissioner* – which will be available on our *PlannersWeb* site.

In her *PCJ* column, Cogan often focused on those special attributes that can help planning commissioners be more effective – such as patience and passion:

Patience

"Patience is an essential attribute if you are to be an effective decision maker, especially in the contentious situations that often confront the planning board. You need to exercise patience over your own desire to rush to judgment after a cursory review of the 'facts' as they are presented by staff or an applicant, or seem to be borne out by your own experience. You also need to be patient with other board members who may have a different perspective or be slower to grasp complicated concepts.

Most importantly, you must be patient with the public at that inevitable public hearing or meeting. ... Each citizen deserves to be heard with patience, no matter how misguided you may think they are." – from "What Counts Most as a Planning Commissioner" (249)

Passion

"Passion is a powerful and admirable quality if it is not

expressed in a hysterical or zealous, take-no-prisoners mode. It can be a positive model when you as a commissioner show a calm but passionate advocacy for the value of planning as a vital contribution to your community's present and future livability – and when you recognize that citizens can also be rightfully passionate about their neighborhoods, the natural environment, schools, playing fields, or other matters of concern. ...

Sometimes passion can cause you to be a loner. You may have patiently listened to all the arguments on a contentious issue, weighed the information, debated openly and fairly with your colleagues, and still reached a conclusion that is not supported by the majority on the planning board. This may not be a comfortable position and would be ineffective if you are too often on the losing side. However, if you can express that passionate disagreement with conviction while not disparaging those who have other points of view, you will engender respect, and may even win over others." – from "Making the Case for Passion" in *Now that You're on Board*.



Consensus-Builders

Elaine Cogan has also written about the different roles members of a planning commission

can play. You'll read later about the role of the chair, but as she noted in "... And the Consensus Is" (311), there's also an important role for the consensus-builder:

"Knowing when to vote and when to rely on consensus can contribute substantially to the smooth running of your planning board. First, it is important to acknowledge that most, if not all, decisions on legal matters require a recorded vote. Some issues require a simple majority; others two-thirds or more. These procedures should be spelled out clearly and followed precisely.

Many other issues, however, are best resolved without a vote. Voting can polarize people and create a winner/loser environment. Consensus implies that the group can come to general agreement without forcing individuals to take sides.

Is there a consensus-builder on your board? If you are the chair, do not assume you have to take that role if it is not a comfortable position for you. Your primary responsibility is keeping order and giving everyone a fair opportunity to speak. If you are not the chair but have that skill, do not hesitate to use it. The consensus-builder can be anyone on the board who has the patience, aptitude, and interest. ..."

Since our very first issue in 1991, we've invited com-

ments from planners and planning commissioners on the first drafts of all articles submitted for publication. When space has allowed, we've also included some of these comments

alongside the published article – as was the case with Cogan’s article on consensus building: “As Chairman of the Plan Commission in the Town of Dodgeville, Wisconsin, my conviction about the value of consensus building couldn’t be stronger. Democracy is, at its heart, dependent upon good citizens with fair minds who can work their way through all of the information and arguments and come to an agreement about their decision.”

– Lois Merrill, Dodgeville, Wisconsin.
 “Regardless of the circumstances our Chairman will go out of his way to assure that whoever wants to be heard receives their opportunity. We seem to reach consensus, at least to a great degree, in near all of our deliberations without a specific ‘consensus builder.’ ... Any of our members will take the lead as they deem necessary.” – Bob Steiskal, Jr., Gulf Shores, Alabama.

Getting Prepped

How to run, participate in, and benefit from meetings are topics we’ve regularly covered. But it’s important to remember that the “job” of a planning commissioner doesn’t start when the meeting is called to order and end when it is adjourned.

James Shockey – who’s served as both a planner and a plan-

ning commissioner in Colorado – reminded commissioners to: “Make sure to take the time to read and understand the information presented in the staff reports prior to the meeting. Staff really appreciates commissioners who have read their packet and we can always tell by the questions asked at the meeting who has or hasn’t.” – from “Sitting on Both Sides of the Table” {467}

Along similar lines, Cynthia Eliason – another planner who’s also served as a planning commissioner (in California) – emphasized:

“Do your homework! There is nothing worse than coming to the meeting and hearing the ripping open of meeting packets for the first time.” {467}

What’s On Your Agenda?

How much thought do we give to our meeting agendas? In many cases, not enough. As Elaine Cogan described in “First on the Agenda is the Agenda” {251}:

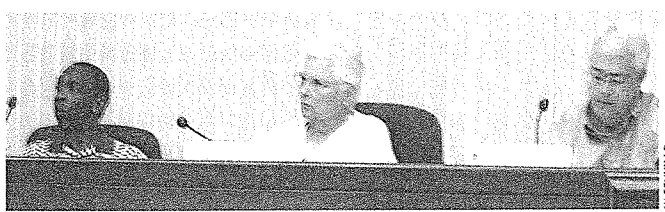
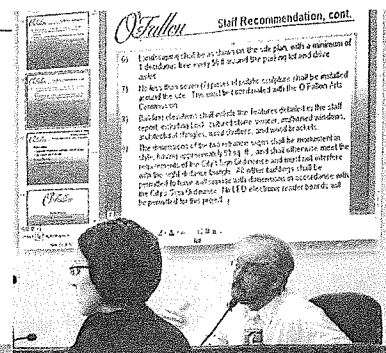
“The agenda is the template for your meetings. It should be developed thoughtfully so that the planning board has adequate time for matters that require attention and/or decisions and less time for ‘house-keeping’ or more routine subjects. It should delineate plainly when public comment is invited and the actions

expected of each item (review only; action; referral).

Many commissions leave the agenda writing to staff and may see it for the first time when they come to the meeting. This does not serve you or the public well. The best approach is for the chair, or a committee of your board, to review the agenda before it is final and for commissioners to receive it and any backup materials several days in advance.

Allow ample and early time for issues which most concern the public. ... Put the contentious or controversial issues on the agenda early, and give them the time they deserve. Do not be offended if most of the crowd leaves as soon as you turn to other matters.”

Meeting of the O’Fallon, Illinois, Planning Commission. Chairman Gene McCoskey is at far right of photo at bottom. Note how staff uses the large screen to allow the public to easily view information about the project under review.



Setting the Right Tone

One of the most important steps a planning commission can take is to set the right tone at the very start of a meeting. During my 2007 cross-country trip on U.S. Route 50, I attended a meeting of the O’Fallon, Illinois, Planning Commission. Chairman Gene McCoskey did a terrific job in creating a welcoming atmosphere. He opened the meeting by providing brief introductions of the commissioners and staff; a review of how the meeting would be run and when public comment would be taken; and an explanation of the planning commission’s role in the project review process.

McCoskey and his fellow commissioners listened intently during lengthy, sometimes angry, public comments about a development proposal on the

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evening's agenda. They asked a few questions to clarify points, but basically sat and listened, and then offered the developer and his team the chance to respond. By showing an open mind and being respectful to all, the commission left those attending – whatever side they were on – knowing they had been heard.

You can listen to a four minute audio clip of McCoskey's opening remarks. Go to: <www.rte50.com>, then in the left sidebar scroll down to June 12: Introductions. You can also access the nearly one hundred posted Route 50 trip reports.

For more on the importance of setting the right tone at the start of the meeting, see Elaine Cogan's "... In the Beginning" {352}

Chairing the Commission

One place where leadership skills are especially important – along with sound judgment and an even temperament – is in the role of chair. Here's some of what Carol Whitlock, long-time chair of both the City of Merriam (Kansas) and Johnson County Planning Commissions, had to say:

"Always be fair. This is perhaps the most important responsibility of the chairperson.

Remember it is your job to give everyone their 'day in court,' not to decide who is right or wrong. (You will do that also, but outside of your job as chairman). ...

Do not allow the audience to break in when someone else has the floor. If patiently telling members of the public to wait their turn doesn't work, stop the meeting and let everyone sit and stew until it comes back under control. No need to yell, pound the gavel, or demand control. Things will settle down if all business stops until peace reigns. Only one time have I ever had to threaten to get the police to clear the room. ...

Patiently listen until every person who wishes to speak has had their say. This is where [a] time limit comes in to help you out. But more importantly, if everyone understands that they will be heard, they are much more apt to sit patiently and not disrupt the meeting.

Develop a good working relationship with your planning director (or whoever is your key staff support person). This is vital. In my years' of experience as chairperson, I have also found that meeting with our planning director before each public meeting has strengthened our relationship, while

providing me with a heads up about any unique or 'hot' items on the agenda." – from "Chairing the Commission" {183}

Show Respect

As Whitlock noted, one of the essentials of running a good meeting is showing respect to members of the public. This is important not just as a matter of civility, but also because you might actually learn something from your fellow citizens – even if you disagree with what they're saying. What's more, if the commission is to be effective in its job of planning for the future of the community, it needs the respect and support of the public.

Elaine Cogan has often spoken on the importance of respect, as in her article, "Meaningful Dialogue With the Public" {153}:

"To keep and maintain the trust of the public, it is imperative that your planning commission understands – and practices – the fine art of inviting their comments and questions and responding in a cordial and respectful manner.

It is most important to establish ground rules and enforce them. Ask people who wish to speak to sign in ahead of time and refer to that list throughout the meeting. You can then call on each one by name. If you accompany your words by a

nod or a smile, you show a welcoming acceptance. ...

Show by your body language that you are listening. Lean forward, with hands discretely on the table or in your lap. Never roll your eyes, shake your head, or tap a pencil or pen – all sure signals you are impatient or distracted.

Do not fall for 'red herrings' or baited questions. If necessary, repeat what you or other commissioners have said or explain your answer in more detail. ...

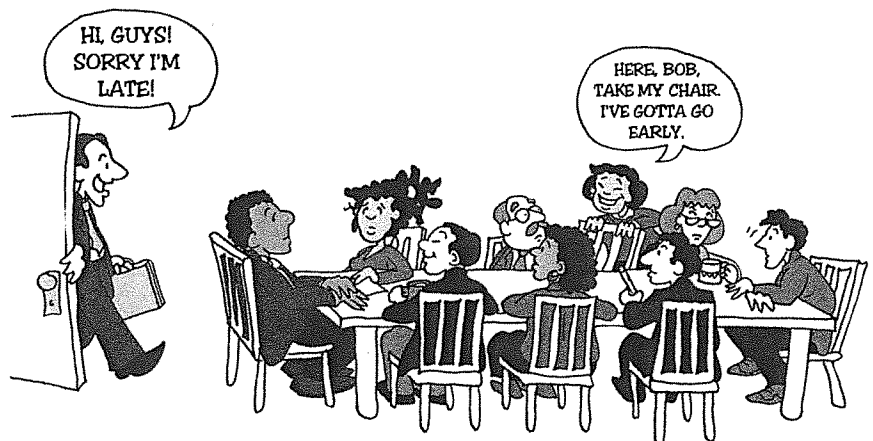
Always be polite. You may have to agree to disagree, but insults and innuendo are never appropriate. ..."

The "Riggins Rules"

Eighteen years ago we heard about the "Riggins Rules" from Arizona planner Bev Moody. They were put together in 1967 by the late Fred Riggins, then Chairman of the Phoenix Planning Commission, who titled them "Suggested Do's & Don'ts for the Conduct of Public Hearings and the Department of Members of Boards, Commissions, & Other Bodies." They've since been re-titled as the "Riggins Rules" in his honor.

While we hope you'll read all 39 of the Riggins Rules {513}, here are a few excerpts:

"• Do be on time. If the hearing is scheduled at 7:30, the gavel should descend at the



exact hour, and the hearing begin, if there is a quorum. If you have to wait ten minutes for a quorum and there are 100 people in the room, the straggler has ... created a very bad beginning for what is a very important occasion for most of those present.

- Don't mingle with friends, acquaintances, unknown applicants or objectors in the audience before the meeting or during a recess period, if it can be politely avoided. You will invariably create the impression ... that there is something crooked going on, especially when you vote favorably on the case of the applicant you were seen conversing with.

- Do your homework. Spend any amount of time necessary to become thoroughly familiar with each matter which is to come before you. It is grossly unfair to the applicant and to the City for you to act on a matter with which you have no previous knowledge or with which you are only vaguely familiar. And you will make some horrible and disturbing decisions.

- Do be attentive. Those appearing before you have probably spent hours and hours preparing and rehearsing their arguments. The least you can do is listen and make them think that you are as interested as you should be. Refrain from talking to other members, passing notes and studying unrelated papers.

- Don't use first names in addressing anyone at all during the course of the hearing. This includes audience, applicants, members of your particular body, even if the person concerned is your brother or your best friend. Nothing, repeat nothing, creates a more unfavorable impression on the public than this practice.

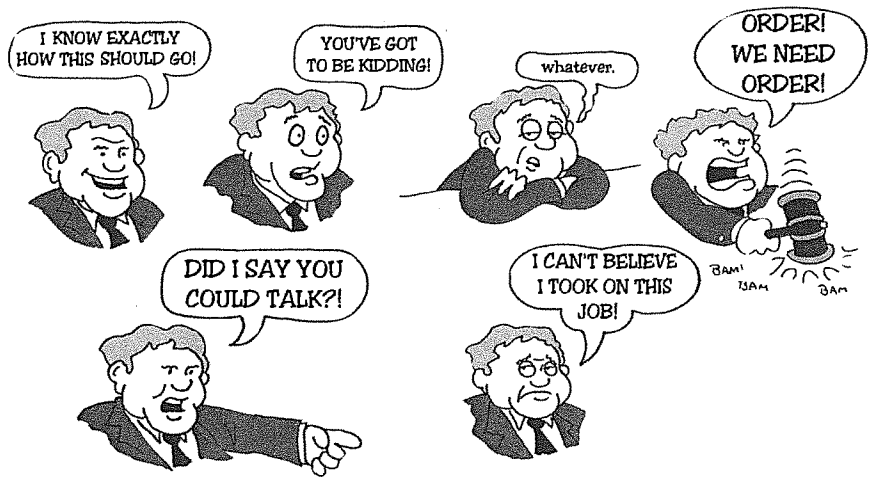
- Don't try to make the applicant or any other person appearing before you look like a fool by the nature of your questions or remarks. This is often a temptation, especially when it is apparent that someone is being slightly devious and less than forthright in his testimony. But don't do it.

- Don't forget that the staff is there to help you in any way possible. It is composed of very capable professional people with vast experience. Lean on them heavily. They can pull you out of many a bad spot if you give them a chance. Or they may just sit and let you stew, if you do not give them the respect which is their due."

If Our Meetings Could Talk

Quite a few of the Riggins Rules relate to two critically important topics we've covered extensively: ethical matters (such as ex parte contacts and conflicts of interest) and the relationship between commissioners and staff. We'll turn to them shortly. But first, allow us a few minutes to talk more broadly about the nature of meetings – and how they can be made more productive.

On this point, we need to introduce (or re-introduce) you to Mike Chandler, who for eleven years wrote "The Planning Commission At Work" column for the *PCJ*. During this time, Chandler was also the "go to" speaker at planning commission training workshops around the country. In one of his *PCJ* columns he asked what we'd hear if our meetings could talk:



"During our planning commission training sessions we spend a considerable amount of time exploring the nature of meetings. One of the more interesting exercises involves having the participants complete the following question: 'If our planning commission meetings could talk what might they say?'

As you might suspect, this question has generated some very interesting responses. We've had meetings tell us: 'I'm happy that's over. I feel good. I've got more to do. What a great meeting. I need a drink. If that happens one more time I'll do something you will regret.' Who ever said meetings don't have a sense of humor!

Another exercise that generates much discussion involves determining why some planning commission meetings succeed while others fail. Commonly cited reasons for successful commission meet-

ings include: the meeting started on time; the commission followed the agenda; the public was able to participate; the meeting accomplished a predetermined task; and, the meeting did not last too long.

Reasons for meeting failure usually include the absence of the attributes listed above. In addition, commission meetings may not be successful if commissioners fail to do their homework; if the commission chair is weak or ineffectual; or if the meeting sequence is haphazard or disjointed.— from "Making the Most of Your Meeting Time" {451}

Before leaving behind the arena of meetings, there are two more "pieces of business" we want to bring to your attention – first, the importance of rules of order, and second, the danger of ex parte contacts.

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For more on how to hold effective public meetings and hearings:

- Wayne Senville, "Dealing With Contentious Public Hearings" {380}
- Ric Stephens, "Ten Things to Avoid" {347}
- Elaine Cogan, "Meeting Formats Should Follow their Functions" {248}
- Ric Stephens, "Late Nights with the Commission" {138}
- Debra Stein, "Dealing With An Angry Public" {233}
- Elaine Cogan, "How Well Do You Use Your Time?" {474}



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Rules of Order

Many planning commissioners are not familiar with the mechanics of rules of order. But they can be quite important.

As then planning commissioner Steven Burt reminded readers in "Being a Planning Commissioner" (100):

"Be aware that the motion maker has a decided advantage in influencing the outcome of a vote. Often, if there is indecision on the part of one or more commissioners, the person making a clear, strong motion will carry votes to his or her position."

In "The Commission Will Come to Order" (388) the late David Allor provided a very helpful two page "Model Outline of Motions for Planning Commissions and Zoning Boards," which he specially adapted from Robert's Rules of Order. We urge your planning commission to take a look.

Ex Parte Contacts

For many years, planner Greg Dale has been our "in-house" expert on ethical questions facing planning board members. Dale is a founding partner of the Cincinnati-based firm of McBride Dale Clarion, and a regular at planning commissioner training workshops. He's covered topics ranging from conflicts of interest, to bias, to dealing with confidential information. But perhaps the most important subject Dale's reported on involves "ex parte" contacts. From his most recent article on the topic, "Revisiting Ex Parte Contacts" (129):

"Fifteen years ago, one of my first *Planning Commissioners Journal* articles dealt with the topic of 'ex parte contacts.' I defined this as any contact that you have with the party involved, or potentially involved, in a matter before the planning commission outside of the public hearing process. I pointed out the perils of ex parte contacts, both from a

legal and an ethical perspective. ... As I think further about the issue, there are several reasons why I feel more strongly about the problems with ex parte contacts now.

First, over the last fifteen years, I have continued to conduct numerous planning commission training sessions at the local, state, and national level. I always discuss ex parte contacts with commissioners and it is striking how almost universal their reaction is against allowing them. Perhaps I am just preaching to the choir at planning commissioner workshops, but there appears to be a very broad recognition that ex parte contacts are potentially damaging to the process.

Second, public interest in planning and development decisions has increased as development pressures in many places have continued to mount. As many of us realize, development decisions are being made under increasingly intense scrutiny. This often includes a focus on the fairness of the process.

Quite simply, in my opinion, ex parte contacts are a bad idea and ought to be avoided... My concern is not so much with the legality of ex parte contacts

in this situation – that is for your legal counsel to address – but with how the public is likely to perceive such contacts even if they are legally permissible. ...

The simplest, clearest, and best policy is for a commission to agree not to engage in ex parte contacts. That means telling people who contact you that you cannot talk to them about a matter pending before the commission, while encouraging them to come to the commission meeting to ask their questions or give their opinion.

... One other caution on ex parte contacts ... treat email communications just as you would hard copy or oral communications. It is amazing to me how people tend to view emails as somehow being under the radar screen. The reality is that email communications ... about matters before you are likely to be considered public records, and you may be required to produce them."

Remember that your job is to make decisions or recommendations based on the evidence presented to you during the public review process, and that the public has a right to know what information you use as the basis for your decision."



Not Ex Parte Contacts

I recall when Greg Dale submitted the first draft of this article, one concern I had was to be sure planning commissioners realized that there are, in fact, many times when they can and should speak with others about planning issues. Dale agreed, and added the following section:

“It might seem to some that the concerns I’ve expressed about ex parte contacts would result in planning commissioners being insulated from the community, at the same time that we are asking them to reflect its planning values. Here is an important distinction to make: ex parte concerns relate primarily to matters that are pending before the commission, primarily related to requests for development approvals such as zone changes, planned unit developments, site plan approvals, and other similar requests that involve a specific, legally prescribed process of review.

On the other hand, we do expect planning commissions to concern themselves with long range, community-wide planning policies and issues outside the development review process. This requires planning commissioners to be in tune, and in touch, with citizens who are interested in planning issues. ...

It is entirely appropriate for commissioners to participate in community organizations and to use those opportunities to discuss planning issues ... as long as these do not involve specific case matters pending before the commission.”

Citizen Planners

In thinking about the role of planning commissioners, how

many of us are aware of the early history of planning commissions in America? Let’s take a short trip with planning historian Laurence Gerckens – national historian for the American Institute of Certified Planners and a frequent contributor to the *PCJ* – as he recounts how citizen planners helped turn around one Midwestern city {392}

“It’s easy to sit back and wait for problems to arrive at the planning commission. All of a commissioner’s time can be spent stamping out brushfires and processing standard reviews. But it is worth recalling that citizen planning commissioners were put in that position ... to provide insights into the problems and potential of the community, and to provide leadership in the solution of problems before they arise.

Consider the history of the Cincinnati Planning Commission: On January 4, 1914, a group of civic minded individuals and representatives of the community development committees of a number of Cincinnati organizations founded the

‘United City Planning Committee.’ ... Through the medium of community planning, these Cincinnatians were seeking a more rational, publicly open, and less expensive system for the provision of needed capital facilities than the system of secret agreements, payoffs, and bribes that determined public development policy in Cincinnati at the time. ...

The Committee charged [Alfred] Bettman with drafting state enabling legislation authorizing the creation of local, citizen dominated municipal planning commissions, giving these groups the power to create and adopt a general development plan for their communities. ... In May of 1915 the Ohio legislature enacted the first planning enabling law in the United States ...

The Cincinnati City Planning Commission ... helped bring order, rationality, and economy to Cincinnati through: the integration of future land-uses, transportation facilities, and public utilities and facilities in a long-range comprehensive plan; the use of the land-use

zoning power to shape future community form; and the use of carefully prepared six year capital budgets designed to allow for development while keeping tax expenditures at a low, even rate.

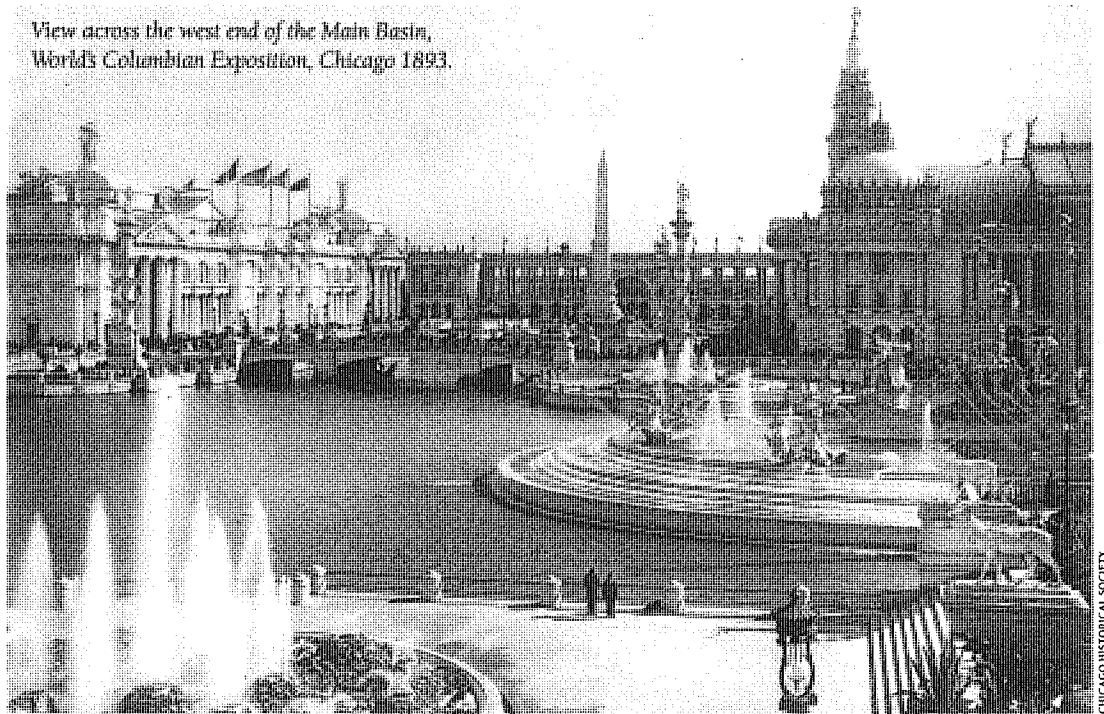
The bold and creative efforts of the citizen-member dominated Planning Commission shaped not only the city of Cincinnati, but also, through its example and leadership, the community planning practices of the entire country.”
– from “Community Leadership & the Cincinnati Planning Commission” {392}

It Happened In Chicago

Let’s take one step even farther back in time. In 1893 an event occurred in Chicago that profoundly affected the role citizens would come to play in shaping the future of their communities. Americans in the late 19th century were wrestling with the effects of rapid urban growth and development. But when they came to visit Chicago that year – as they did by the

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View across the west end of the Main Basin, World’s Columbian Exposition, Chicago 1893.



CHICAGO HISTORICAL SOCIETY

Just What is the Job...?
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millions – they were moved by a strikingly beautiful vision of the future.

As one reporter described the scene: “The world has been vouchsafed one perfect vision which will never suffer from decay ... then or now, no words can express the beauty of the Dream City, for it is beyond even the unearthly glamour of a dream.”

– Candace Wheeler writing for *Harper's New Monthly Magazine*, May 1893.

As you've probably guessed – especially if you've taken a look at the photo! – the vision of the future was found at the World's Columbian Exposition, the great Chicago World's Fair of 1893.

Gerckens put the Chicago World's Fair in perspective for planners:

“Architect Daniel Hudson Burnham, Director of Works for the Chicago World's Fair of 1893 undertook to realize the first city-scale unified design of buildings, pedestrian plazas and public monuments in America. Painted all in white, this ‘Great White City’ thrilled visitors with its beauty, cleanliness and order. It initiated the City Beautiful Movement in the United States and catapulted Burnham into leadership of the newly emerging city planning profession.

Thousands of visitors left Chicago with the belief that things could be made better back home. They began to organize local groups to plan for a visually and functionally unified new ‘civic center,’ for metropolitan park systems and tree-lined boulevards with coordinated public benches, street lights and transit stations. They sought to realize architecturally integrated

streets through laws regulating building heights and setting building setback lines.

Led by major businessmen, unofficial City Plan Committees undertook to raise the quality of the public environment to make physical America a fitting subject for public-spirited support and patriotic respect, capable of inspiring both the ambitions of youth and the visions of the industrious. The idea of America would take positive physical form through the effort of community planning commissions; it would be realized in community actions directed toward shaping and protecting the public environment. ...

The modern American planning commission is the guardian of the public physical environment. When this responsibility is forsaken, all citizens of the community, present and future, suffer losses that are ecological, cultural, and economic, as well as aesthetic.” – from “*Community Aesthetics & Planning*” [461]

Leadership

After reading Gerckens' remarks, we might ask ourselves whether we have visionary leadership in our cities and towns today – and whether planning commissioners should aspire to take on this role? As civic consultant Otis White has noted:

“The planning commission can be the perfect place for ... leadership to emerge. First, because it's where many community disputes receive their earliest hearings, so if the community needs to learn new ways of resolving disagreements, the commission can be where it learns them. Second, with its mandate for planning, the commission is already concerned with the community's future. If new ideas are needed, where better for them to be developed and aired?

What's needed in those circumstances, though, are commissioners with an interest in broader community leadership, along with the temperament,

experiences, and skills to take a leadership. ... The key is to understand how communities navigate change and where your own talents and interests lie. ... You have to be part analyst (What is my community's greatest needs? Where is it stuck?), part strategist (How could we get past this sticking point?), and part self-critic (What am I good at?).” – from “*Making a Difference: The Planning Commissioner As Community Change Agent*” [586]

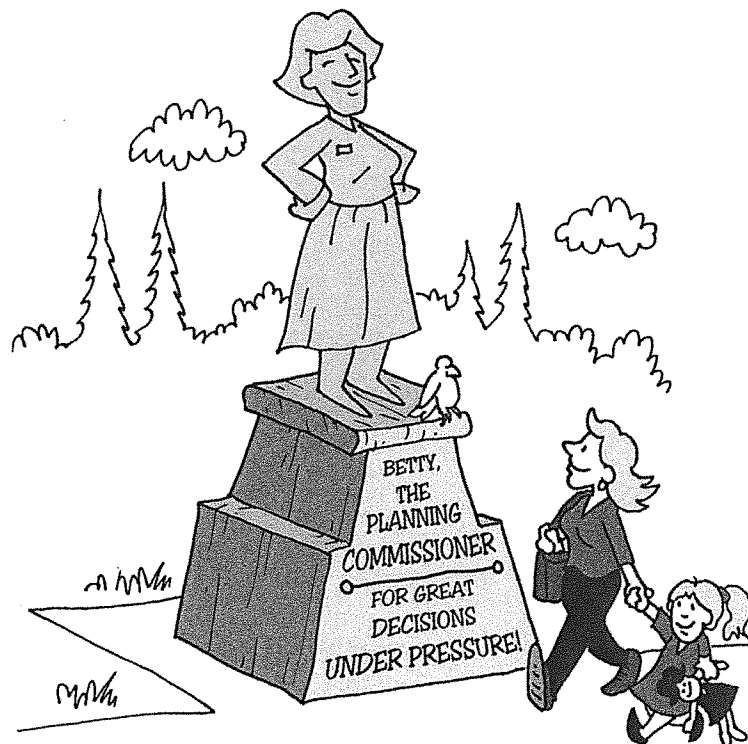
The Big Picture

Over the years PCJ articles have focused not just on the role of the individual planning commissioner, but also on the role of the planning commission as a body – and how it can be more effective.

Many planning commissions spend much of their time in reviewing development applications or rezoning requests. Yes, these are important responsibilities, but one of the biggest challenges facing commissions is keeping their eye on the “big picture.”

That was the theme of one of the very first articles we published – written by the late Perry Norton, one of America's most respected planners. Norton not only served as the first Executive Director of the American Institute of Planners in the 1950s, but three decades later in his retirement pioneered the use of online forums to discuss planning issues.

In his first PCJ article, “Remembering the Big Picture” [468], here's some of what Norton had to say:



“When a shopping center is proposed, when the question of what is wetland and what isn’t hits the fan, when people line up to protest the conversion of a single family residence to some sort of a group home, the local area newspapers are quick to point out that the ‘planners’ did this, or the ‘planners’ did that.

And who are these planners? Well, they’re not those professionally trained planners, with degrees in planning. They are the members of local planning boards or commissions. They are, for the most part, volunteers, unpaid volunteers I might add, who give hours of their time, mostly in the evenings – carrying out the mandates of local and state land use planning laws.

The work, at times, gets tedious. Hours and hours of discussion as to whether a proposed land use meets the requirements of the zoning or subdivision ordinance, is consistent with all the codes, is not discriminatory, is or isn’t a landmark, and so on. There are, indeed, so many items on the agenda that board members sometimes wonder what happened to the Big Picture.

The Big Picture is, indeed, a vital part of a planning board’s responsibilities. ... The public, through legislatures, gives planning boards broad mandates. Again, the specifics vary from

one location to another, but the fact remains that people turn to planning boards to secure a high quality of living environment.

You get the picture. What society wants from its planners is something more than the processing of permits. It would like the processing of some vision, as well. Not an easy row to hoe. But enormously fruitful if faithfully tended.

The question is often posed, however: how do we deal with the Big Picture when there are so many little pictures we’re lucky to get home in time for the 11 p.m. news? One thing is certain: the board has to make it happen.”

The Planning Universe

If you’ve been a regular reader of the *PCJ*, you know that we’ve often focused on what we’ve called the “planning universe” – those individuals and groups (or planets, if you will) in the planning commission’s orbit: lawyers; developers; planning consultants; the media; and so on.

But there are three that are especially important to planning commissions: citizens; the governing body; and last, but not least, planning staff.

Citizen Input

We’ve already touched on the need to be respectful to citizens

during public hearings, in listening to what they have to say. But gaining input from citizens outside the formal hearing process is just as important.

As then Arlington County, Virginia, planning commissioner Monica Craven explained:

“An effective planning commission reaches out to the community and does not limit its interaction with the community to a single public hearing. With the help of the planning staff, the planning commission can organize and participate in outreach efforts such as public forums and walking tours, to name a few.” – from “*Planning Commissioner Perspectives*” {322}

Along similar lines, Elaine Cogan spoke of the value in planners and planning commissioners going out to actively solicit public feedback:

“It was a sunny Friday.

People were at their local mall as usual, shopping, strolling, meeting their friends and neighbors. Prominent among the storefronts, in the center of all the activity, was something new: a display about Our Town – what it is and what it might become, depending on the planning decisions that soon would be made.

Maps and drawings and possible alternatives in simple text were displayed attractively. Staff and commissioners stood nearby to engage onlookers in conversation and entice them to participate.

People were invited to stay as long as they liked – to write their comments on the displays and handy pads of paper, talk to planners, fill out questionnaires, and otherwise participate in a low-key but important exercise to help determine their community’s future.

From more than 25 years experience designing and facilitating public participation processes, it is obvious to me that the most successful are those where we go out to the people – not expect them to come to us.” – from “*Getting Out to Where the People Are*” {383}

Engage the Community

As Otis White noted in “*Getting Power By Giving It Away*” {313}: “By itself, a planning commission has limited powers. But allied with an involved and supportive community, its powers can be enormous.”

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More articles on citizen involvement in planning:

- Michael Chandler, “Citizen Planning Academies” {309}
- Thomas Miller, “Citizen Surveys: Taking Your Community’s Pulse” {377}
- Elaine Cogan, “Habla Usted Espanol?” {112}
- Elaine Cogan, “On Gauging Public Opinion” {314}
- Kathleen McMahon, “Public Outreach Through Video” {256}
- Kit Hodge, “The Next Generation of Your Planning Commission” {250}



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That means that neighborhood associations and other community groups should be places planning commissioners are familiar with.

In “Engaging the Public” {161}, planner Larry Frey pointed out that:

“One of the best ways to engage citizens in planning is by going out to their neighborhoods. Neighborhood-based planning is an old concept with tremendous power, but it is not used enough. While it may work best in municipalities which tend to have more distinct neighborhoods, rural areas can benefit as well, by identifying activity centers that target organized groups. ... Meetings should be held in the neighborhood, allowing input to flow more freely and pertinent issues to unfold.”

For more on how neighborhood associations and groups can help strengthen the local planning process, take a look also at Lila Shapero’s “Bowling Together: The Role of Neighborhood Associations” {371} As Shapero noted:

“Bringing neighborhood associations on board helps makes them part of the solution, rather than an obstacle, in planning the community’s future. At the same time, their input can deepen planners’ and planning commissioners’ understanding of neighborhood issues.”

Lisa Hollingsworth-Segedy drew our attention to another way of better understanding peoples’ issues and concerns:

“My grandmother used to tell me, ‘We have two ears and one mouth because listening is twice as important as talking.’ ... A few years ago, Jim [Segedy] was working with a rural Midwestern community to develop a new comprehen-

sive plan. The interviews with elected and appointed officials had gone well, and the public meetings were well attended, but the actual usable community input was sparse. So in an infrastructure focus group, I asked, ‘What was the most exciting day in your town?’

Right away several folks talked about the tornado that had hit a few years before. From their stories of the storm striking with no warning, residents suddenly realized that a storm warning siren network was an important infrastructure and public safety need they had overlooked when writing their new plan. ... The act of listening to someone’s story allows them to listen to it as well – this is empowerment at the most basic level.” – from “Inviting Them In: Using Story as a Planning Tool” {421}

Planning Commissions & Governing Bodies

In thinking about the relationship between a planning commission and the local governing body, it’s important to recognize the very different roles each plays – while also keeping in mind how the two are intertwined.



In one of the early issues of the PCJ we ran an article by Pamela Plumb, who had served both as Mayor of Portland, Maine, and on the City Council – and was also a past president of the National League of Cities. Plumb provided an overview of the relationship between the two bodies:

“There has always been a delicate dance in the relationship between Town Councils and their appointed Planning Boards. Perhaps it comes from the community emotion that inevitably surrounds local land use issues. Perhaps it is rooted in a lack of clarity about their different roles. Whatever the origins of this tension, the relationship is frequently a source of debate and occasionally a source of friction. ...

The two groups have distinctly different jobs. Councilors are policy makers. They are elected by and are responsive to the public whom they represent in all its various constituencies. The Board members, on the other hand, are not policy makers. They are appointed to work within the ordinances adopted by the Council. They work within already established policy and do not change policy based on public comment.

Even if the room is packed with citizens arguing that a permitted use be denied in a site plan hearing, it is not the Planning Board’s role to change what is or is not permitted. It is their role to apply the given ordinance. If the public does not like what the ordinance permits, then the Council is the place to get it changed. Similarly, if the Board is concerned about the impacts of applying a given ordinance, their option is to recommend changes to the Council.

Even in the process of rewriting or developing new ordinances, the Council is still the policy maker ... [it] gives a sense of direction to the Board. The Board then uses its specialized background and expertise to make recommendations back to the Council. The recommendations may be creative and far reaching. They may be more complex or technically innovative than the Council ever imagined. But, it is the Council that makes the final decision with whatever political considerations it deems appropriate.

Each role is vital to a smoothly functioning community. But they are separate. If the Board tries to set policy or the Council tries to interfere with the application of the ordinance or fails to value the technical advice of the Board, confusion and trouble will follow.” – from “Town Councils and Planning Boards: A Challenging Relationship” {584}

Not Having the Final Word

As Mike Chandler once observed: “Not having the final word can be a difficult thing – especially when the commission expends great amounts of time and energy only to have its advice rejected by the governing body (though, hopefully, this

will not happen too often).”

But, as he added: “Don’t let this discourage you. Instead, look for ways your commission can advance the cause of good planning, and strengthen its relationship with the governing body. Remember that as a planning commissioner you’re responsible for focusing on the long-term. Most elected officials appreciate this forward thinking role because it allows them to gauge the public’s receptivity to future courses of action.” – from *“Linking Elected Officials with Planning”* {139}

Remain Above Politics

Don’t forget this advice from Jim Segedy:

“The planning commission’s marching orders are to provide the best advice to the governing body as laid out in the comprehensive plan, mindful of the potentially evolving notion of the health, safety, and welfare of the whole community. Planning commissioners MUST remain above politics.” – from *“Putting Some Oomph Into Planning”* {560}

Consider also some cautionary words Greg Dale wrote about the relationship between elected officials and planning commissioners.

“As an appointed planning commissioner you are not designated to represent any special interest group. Neither are you appointed to represent the ‘voice’ of an elected official. More specifically, as a planning commissioner you have an ethical obligation to remain in a position of objectivity and fairness.

Your position should not be used to seek political favors, nor should you create a perception that you are seeking political goodwill in your action. Any time you take a position at the urging of an elected official,

WE ARE A GREAT TEAM
TOGETHER! WE CAN DO THIS!



you run the risk of tainting your credibility as an objective decision-maker. In addition, contacts that you have outside of the public meeting process may fall in the category of ex parte contacts.” – from *“Who Do You Work For?”* {545}

Staff Relations

It almost goes without saying that if planning commissioners and staff don’t have a good working relationship, the community’s planning efforts will be badly handicapped. It is essential for both commissioners and staff to understand their respective roles, and to work cooperatively.

In “Sitting on Both Sides of the Table” {467}, several planning commissioners who have also worked as professional planners spoke to this:

- “The ideal situation is that the board and staff see themselves as a team, each with distinct but equal roles. Staff is there to do the heavy lifting regarding the board’s submission standards and plan reviews and the board’s job is to determine if the submission meets the relevant approval criteria.” – Aaron Henry, Danvers, Massachusetts.

- “Open communication is the best way to have a great

working relationship. Talking outside of the monthly meetings is a great way to build a rapport between staff and commissioners. Communication is the key.” – Austin Bleess, Winnebago, Minnesota.

- “Don’t take the staff or the professional planner’s word on everything. Ask for an explanation. Commissioners need to understand that the staff’s job is to interpret the regulations but the decision making process is not just a checklist. There is room for subjectivity as well, otherwise there is no need for the commission.” – Tim Jackson, New Orleans, Louisiana.

Along these lines, Greg Dale in “Independent and Informed” {133} noted that: “Planning commissions should take full advantage of staff expertise in making decisions. However, both commission and staff should recognize the obligation of the commission to act in an independent manner.”

We’ll leave the final word in our overview of the role of the planning commissioner with Elaine Cogan. In “Staff Needs a Little TLC, Too” {440} Cogan reminded planning commissioners to:

- “Resist the temptation to ‘micro-manage’ ... you are not expected to be a professional

planner. Indeed, you would be less effective as a citizen planning commissioner if you were. Even if you are a successful professional or businessperson, it is not appropriate to try to tell the planning director whom to hire or fire or how you think the agency should be managed. You should have more than enough to do studying the issues and making policy decisions.”

From my own experience as a planning commissioner, I can say “amen” to Elaine Cogan’s remarks – and to the many thoughtful comments and suggestions we’ve heard from commissioners, staff, and others across the country over the past twenty years. Thank you all for making my job as editor of the PCJ so much easier.

PlannersWeb

We hope you enjoyed this overview of what planning commissioners do. As we mentioned at the start, when our redesigned and updated *PlannersWeb* site is up and running this summer, you’ll be able to access the nearly 500 articles we’ve published – including all the articles referenced in what you just read. Join us as charter members as we move online. ♦

Wayne M. Senville has been publisher and editor of the *Planning Commissioners Journal* since its founding in



1991. Senville was also honored to serve as a member of the Burlington, Vermont, Planning Commission for eleven years, including three as Chair.

Join us at:
PlannersWeb.com

How to be a Highly Effective Commissioner

Prepare Yourself

- Be regular in your attendance at Commission meetings.
- Be prompt.
- Conduct yourselves in keeping with the extreme importance your decision has to the parties
- If you or one of your family members has a financial interest in the outcome of a case, you must declare that conflict on the record and not participate in the case.
- Information on a case gained outside of the public hearing must be disclosed on the record to provide the opportunity repudiation. This is called “ex-parte contact.” Refer questions and phone calls to city staff to avoid ex-parte contacts.
- Drive by the property if you feel it would assist you but be cautious about ex-parte contact with the applicant, neighbors or other parties to the case. ***You are the decision-maker, and your neutrality must be beyond question.***
- Be familiar with the decision criteria for the case. If there is a written staff report, match the facts in the staff report to the decision criteria. Note which criteria need more facts. During the hearing, you may need to solicit testimony from the parties to provide the missing facts.

Be Fair and Respectful

- Listen; ask questions that honor the concerns being shared; do not lead or argue with those testifying. ***You can disagree without being disagreeable.*** Withhold your judgment until all testimony has been given and the record is closed.

Do Your Job as Best You Can

- Be satisfied with all the decision criteria have been addressed before the record is closed.
- When the Chair closes the record, no more public testimony is taken.
- Don't be afraid to make decisions. Putting off a hard decision doesn't make it easier to make.
- Remember which phase of the hearing you're in: keep the deliberation phase separate from the testimony phase.
- Note errors or inconsistencies within the testimony phase and raise those issues in deliberations, not during the testimony.
- The burden of proof to present the case is on the applicant – not the opponents and not on you.

- The record must contain your reasons for choosing a particular outcome. Avoid reaching conclusions for which the parties and staff must guess at what was in your mind.
- In advance of the vote, if you state **why** you favor or oppose an application, you can help generate a discussion that is useful, especially for difficult decisions.
- It takes courage to go first in making the motion or speaking out. Remember that and be courteous with each other, *especially* if you disagree.

Support the Process

- Suggest changes if you see the need.
- Criticize each other and staff, if you must, but constructively, not as a personal attack.
- Remember that “opponents” are invited to attend your public hearings. Avoid treating them with hostility.

“P” Stands for Public

- As planners, strive to serve the public interest. This may require that you take an unpopular position.
- Listen to all people, not just to those who fit into the stereotype of “desirable citizens.” Worst traits may come out at a public hearing. Angry noisy, rude people aren’t necessarily wrong.
- Those who don’t speak English well or who are untidy or poorly dressed are not necessarily wrong.
- Give polite attention to everyone and you may hear something useful for the decision.
- You do not need to like everyone in order to give them a fair hearing.
- Keep a sense of perspective.
- Half of the parties in any controversy will disagree with any given position.
- All of the parties want you to **fair-minded** and **objective** and to guard your **neutrality**.

No Strings Attached?

by C. Gregory Dale, AICP

How do you handle gifts or other offers of value that are made to you in your capacity as a planning commissioner?

Consider this scenario. You are invited to attend a local sporting event by a developer who has a development approval pending before the planning commission. The offer involves dinner in the private box of the developer. What is your response? Does your response change if the invitation comes from a local developer who does not have an item pending before the commission? Does it change if the entire commission is invited?

There are many variations on this scenario. Some involve offers to travel to view similar projects by the same developer. Some involve offers to use facilities such as resort condominiums. Some involve something as seemingly harmless as a fruit basket delivered during the holiday season. Certainly developers are not alone in this area. How would you handle a weekend retreat invitation from a conservation group that is active in lobbying local governments?

All of these scenarios raise the same ethical issue. Is there an attempt being made to influence your vote or attitude

towards a particular project, individual, group, or issue? I believe the answer to this question *for all of the scenarios described above* is "yes."

Even the holiday fruit basket is being offered to engender good will. Remember that your job as planning commissioner is to be a dispassionate judge of

AS WITH MANY ETHICAL MATTERS, ONE OF THE BEST WAYS TO PREVENT THE PROBLEM IS TO DEAL WITH IT UP-FRONT IN YOUR REGULATIONS OR COMMISSION'S BY-LAWS.

factual evidence presented to you for the purpose of determining compliance with standards or policies adopted by the community.

Any effort to create good will or otherwise color your perception of an individual, company, or group outside of this process of factual consideration creates a clear ethical problem. In addition, as is always the case with ethical issues, the perception of impropriety is as damaging to your reputation and credibility as an actual case of wrongdoing. Acceptance of a gift may also create an atmosphere where even more such offers are made, damaging the planning process further.

It is human nature to enjoy gestures of appreciation. On the other hand, any offer of a gift should be viewed as tainting the process. In fact, it can be more serious than just an ethical problem. Remember that even though you are probably not getting paid as a planning commissioner, you are still considered a public official. Your state may deem your accepting something of value to be an illegal act.

How should one respond to the offer of a gift. First, let me state the obvious: the gift should be refused (and, if delivered to you, returned). Secondly, you may want to consult with your legal counsel. To the extent that the offer occurs outside of a public meeting, it may be viewed as an ex-parte contact — possibly requiring disclosure of the offer at your commission's meeting. [For more on ex-parte contacts, see my columns in PCJ #2 and 24].

As with many ethical matters, one of the best ways to prevent the problem is to deal with it up-front in your regulations or commission's by-laws. Consider clearly stating that gifts are unacceptable (or, perhaps, providing that nothing greater than two or three dollars in value can be accepted, allowing commissioners to accept something of nominal value, like a cup of coffee).

The acceptance of gifts or favors in your capacity as a planning commissioner is a serious matter. At best it taints the process and undermines your objectivity. At worst it may be a criminal act. ♦

C. Gregory Dale, AICP, is Director of Planning with the planning and engineering firm of Pflum, Klausmeier & Gehrum, and works in their Cincinnati, Ohio office. Greg is also a past president of the Ohio Chapter of the American Planning Association, and frequent speaker at planning and zoning workshops. His column appears regularly in the Journal.



"On coming into public office, I laid it down as a law of my conduct, while I should continue in it, to accept no present of any sensible pecuniary value. ... [T]hings of sensible value, however innocently offered in the first examples, may grow at length into abuse, for which I wish not to furnish a precedent.

—Letter from Thomas Jefferson to Samuel Hawkins, 1808, sent in response to offered gift of an ivory staff. The Writings of Thomas Jefferson (Lipscomb & Bergh, eds.), Vol. 12, p.203.



TOLEDO PLANNING COMMISSION

Land Use Training Session

January 14, 2026

Agenda

- Oregon's Land Use Planning Framework
- Types of Land Use Decisions
- Decision Matrix
- Application Process
- PC & CC Responsibilities
- Legal Issues
- Wrap Up
- Adjourn

Why are we here tonight?

- Purpose:
 - Orientation for New & Long-Time members
 - Provide an Overview of Land Use Issues
- Ask Questions
- Share ideas and issues

A Little History

- 1919 – Oregon legislature permits cities to zone private land
- 1947 – Oregon legislature permits counties to zone private land
- 1963 – Oregon legislature establishes the Exclusive Farm Use (EFU) zone and the uses it allows



A Little History

- 1973 – Senate Bill 100 creates the Land Conservation and Development Commission (LCDC) charging it with adopting statewide planning goals
- 1975 – First 14 goals adopted
- 1975 – Goal 15 adopted
- 1976 – Goals 16-19 adopted (coastal resource goals)
- 1976-86 – LCDC acknowledges all city and county comprehensive plans
- 1977 - The Oregon Coastal Management Program was created to “to work in partnership with coastal local governments, state and federal agencies, and other stakeholders to ensure that Oregon's coastal and ocean resources are managed, conserved, and developed consistent with statewide planning goals.”



STATEWIDE PLANNING GOALS

- **Goal 1 – Citizen Involvement** - To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.
- **Goal 2 – Land Use Planning** - To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.
- **Goal 3 – Agricultural Lands** - To preserve and maintain agricultural lands.
- **Goal 4 – Forest Lands** - To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.



STATEWIDE PLANNING GOALS

- **Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces - To protect natural resources and conserve scenic and historic areas and open spaces.**
-
- **Goal 6 – Air, Water, and Land Resources Quality - To maintain and improve the quality of the air, water and land resources of the state.**
- **Goal 7 - Areas Subject to Natural Hazards - To maintain and improve the quality of the air, water and land resources of the state.**
- **Goal 8 - Recreation Needs - To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.**
- **Goal 9 – Economic Development - To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**
- **Goal 10 – Housing - To provide for the housing needs of citizens of the state.**



STATEWIDE PLANNING GOALS

- **Goal 11 - Public Facilities and Services - To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**
- **Goal 12 – Transportation - To provide and encourage a safe, convenient and economic transportation system.**
- **Goal 13 – Energy Conservation - To conserve energy.**
- **Goal 14 – Urbanization - To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.**
- **Goal 15 – Willamette Greenway - To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.**



STATEWIDE PLANNING GOALS

- **Goal 16 – Estuarine Resources - To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.**
- **Goal 17 – Coastal Shorelands - To conserve, protect, where appropriate, develop, and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property and the adverse effects upon water quality and fish and wildlife habitat resulting from the use and enjoyment of Oregon's coastal shorelands.**



GOAL 12: TRANSPORTATION

OAR 660-015-0000(12)

To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Transportation -- refers to the movement of people and goods.

Transportation Facility -- refers to any physical facility that moves or assists in the movement of people and goods excluding electricity, sewage and water.

Transportation System -- refers to one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

Mass Transit -- refers to any form of passenger transportation which

carries members of the public on a regular and continuing basis.

Transportation Disadvantaged -- refers to those individuals who have difficulty in obtaining transportation because of their age, income, physical or mental disability.

GUIDELINES

A. PLANNING

1. All current area-wide transportation studies and plans should be revised in coordination with local and regional comprehensive plans and submitted to local and regional agencies for review and approval.

2. Transportation systems, to the fullest extent possible, should be planned to utilize existing facilities and rights-of-way within the state provided that such use is not inconsistent with the environmental, energy, land-use, economic or social policies of the state.

3. No major transportation facility should be planned or developed outside urban boundaries on Class 1 and II agricultural land, as defined by the U.S. Soil Conservation Service unless no feasible alternative exists.

4. Major transportation facilities should avoid dividing existing economic farm units and urban social units unless no feasible alternative exists.

5. Population densities and peak hour travel patterns of existing and planned developments should be considered in the choice of transportation modes for trips taken by persons. While high density developments with concentrated trip origins and destinations should be designed to be principally served by mass transit,

low-density developments with dispersed origins and destinations should be principally served by the auto.

6. Plans providing for a transportation system should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. The number and location of major transportation facilities should conform to applicable state or local land use plans and policies designed to direct urban expansion to areas identified as necessary and suitable for urban development. The planning and development of transportation facilities in rural areas should discourage urban growth while providing transportation service necessary to sustain rural and recreational uses in those areas so designated in the comprehensive plan.

2. Plans for new or for the improvement of major transportation facilities should identify the positive and negative impacts on: (1) local land use patterns, (2) environmental quality, (3) energy use and resources, (4) existing transportation systems and (5) fiscal resources in a manner sufficient to enable local governments to rationally consider the issues posed by the construction and operation of such facilities.

3. Lands adjacent to major mass transit stations, freeway interchanges, and other major air, land and water terminals should be managed and controlled so as to be consistent with and supportive of the land use and development patterns identified in the comprehensive plan of the jurisdiction within which the facilities are located.

4. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

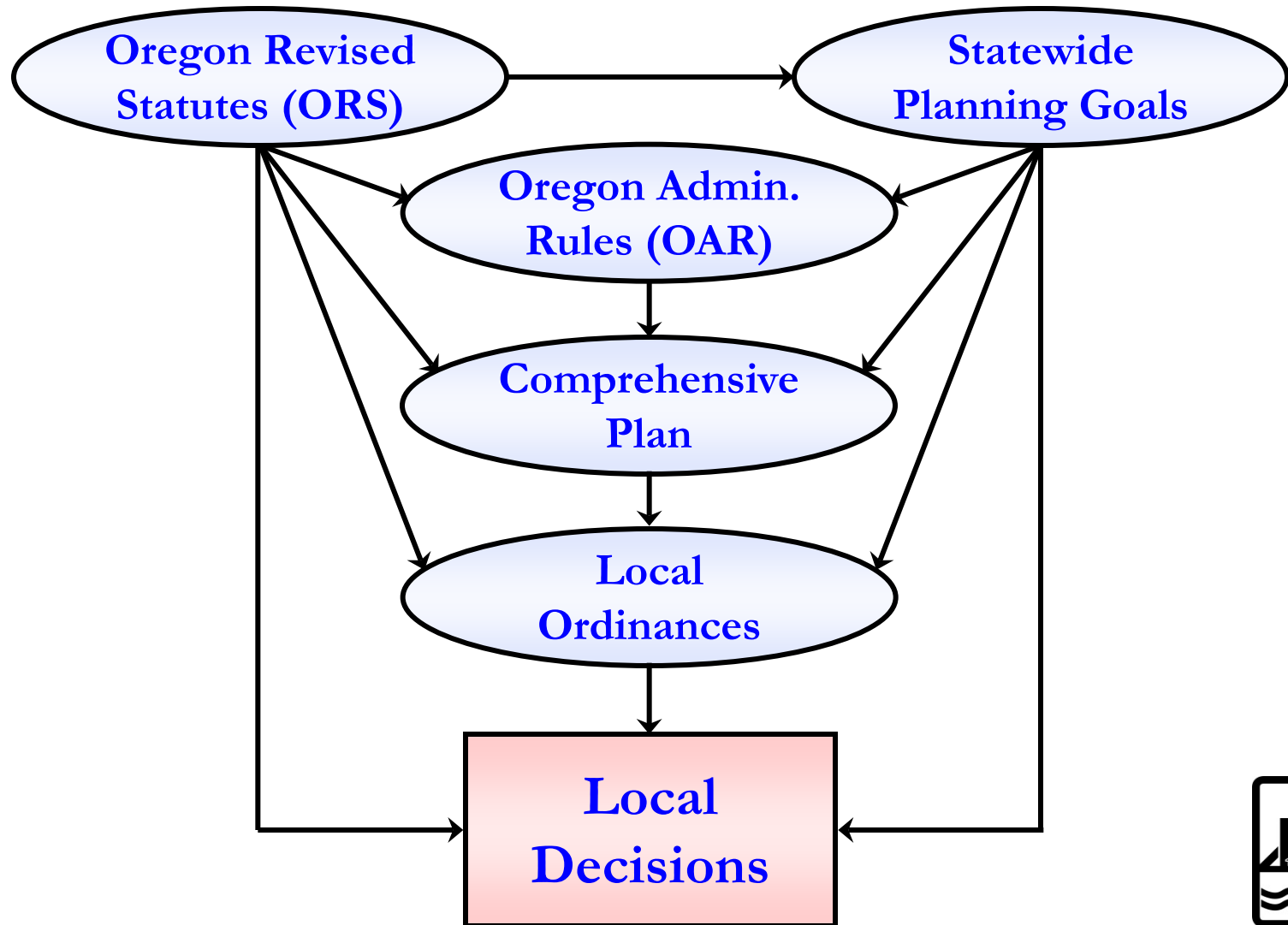


Diversity, Equity, and Inclusion

- **Diversity:** Diversity is the presence of difference within a given setting.
- **Equity:** Equity is an approach that ensures everyone access to the same opportunities
- **Inclusion:** Inclusion is about folks with different identities feeling and/or being valued, leveraged, and welcomed within a given setting



HOW IT TIES TOGETHER



State Responsibilities

➤ State

- DLCD is the statewide land use agency and governed by the Land Conservation and Development Commission
- Sets land use policy (goals and rules)
- Acknowledges city and county plans
- Enforces goals
- Reviews plan amendments
- Administers periodic review requirements
 - No longer a requirement for Cities with a population of less than 10,000 (including the UGB)
- Provides technical assistance to cities and counties
 - North Coast Regional Representative
 - Dollars
 - Technical support



Local Responsibilities

➤ Cities and Counties

- Adopt plans and codes in compliance with statewide goals
- Address local vision and needs
- Make land use decisions
- Enforce codes and ordinances
- Provide assistance to the public



GOAL 2

WHAT DOES IT DO?

- **Goal 2 requires local governments to have comprehensive land use plans and implementing ordinances that comply with the applicable Statewide Planning Goals.**



Comprehensive Plan

- Establishes a “vision”
- Guiding land use document for local government
- Comprehensive document that guides land use, infrastructure, development, conservation of natural resources, economic development, etc.



Comprehensive Plan

- A comp plan includes the following components:
 - Factual base – natural, social, and economic information that supports the maps and policies
 - Goals and policies – statements of intent used to guide implementing measures and must comply with the requirements of each statewide planning goal
 - Implementing measures – zoning and development codes, land division ordinances, etc.
 - Maps – future land use and zoning
- City and county plans must be consistent with one another. Special district and state agency plans and programs must be coordinated with comprehensive plans.



GOAL 2: ARE WE STUCK WITH WHAT WE'VE GOT?

- What is a Post-Acknowledgement Plan Amendment?
 - Comp plans can be updated through the Post-Acknowledgement Plan Amendment process
 - Sometimes the Comp Plan needs to be updated to comply with current state law
 - Or the community has had enough change that the Comprehensive Plan no longer reflects the community's vision
 - Or the piecemeal approach makes it difficult to interpret...

[OAR 660-018](#) – *Post-Acknowledgement Plan Amendments*



GOAL 2 :

WHAT IF SOMETHING DOESN'T MAKE SENSE?

➤ What is an “Exception”?

- Sometimes, local governments may want to take an exception to one of the land use goals when unique circumstances warrant a local override of the statewide goal to create a better outcome

[OAR 660-004](#) – *Interpretation of Goal 2
Exception Process*



Zoning & Development Code

- Specific regulations designed to implement comprehensive plan policies
- Regulates uses, location, density, height, setbacks, etc.
- Sets forth the criteria or standards that each application must meet in order to be approved
- Includes zoning, permitting procedures, development standards, and subdivision and partition standards



OTHER OARS LINKED TO GOAL 2

[OAR 660-025](#) – *Periodic Review –no longer a requirement (for now...)*

[OAR 660-030](#) – *Review and Approval of State Agency Coordination Programs* – Twenty-six state agencies besides DLCD have programs that affect land use and they must be coordinated. In other words, they must be consistent with the statewide planning goals and compatible with local comprehensive plans.

[OAR 660-031](#) – *State Permit Compliance and Compatibility*



WHAT DOES LUBA MEAN?

- Prior to the Land Use Board of Appeals (LUBA) creation, land use appeals were heard by the Land Conservation and Development Commission (LCDC) and the circuit courts. LUBA was created to simplify the appeal process, speed resolution of land use disputes and provide consistent interpretation of state and local land use laws. The tribunal is the first of its kind in the United States.
- The governor appoints the three-member board to serve four-year terms.
- The Rules of Procedure for Appeals can be found in OAR Chapter 661.



Types of Land Use Decisions

- Ministerial
- Quasi-Judicial
- Legislative

Ministerial Decisions

- A Ministerial Decision is administrative
- It involves little or no discretion on the part of the decision maker
- Issued “over the counter” with no public process
- **Examples:** Building permits, sign permits, change of use permits

Quasi-Judicial Decisions

- A **Quasi-judicial Decision** is similar to a judicial proceeding with procedures, testimony and evidence
- Quasi-judicial decisions are made when the planning commissioner or city council considers a typical land use application
- The PC/CC apply previously adopted comprehensive plan policies or zoning/subdivision standards to facts to arrive at a decision
- **Examples:** Land divisions, site plan review, conditional use permits, variances

Legislative Decisions

- A **Legislative Decision** is a decision where the City Council establishes policy.
- Legislative decisions create policy. They affect the community as a whole.
- **Examples:** Adoption or amendment of Comprehensive Plan, Land Use & Development Code, Master Plans, Parks Plan, etc.

Decision Authority

Type of Ministerial Decision	Zoning/Building Official	PC/Council
Sign Permit	Approve / Deny	Appeal
Change of Use	Approve / Deny	Appeal
Code Interpretation	Approve / Deny	Appeal
Building Permits	Approve / Deny	Appeal

Decision Authority

	Planning Commission	Council
Legislative Decisions	Recommend	Adopt
Quasi-Judicial Decisions		
Annexation	Recommend	Approve/Deny
Comp Plan & Zone Map Amendment (Site Specific)	Recommend	Approve/Deny
Comp Plan Text Amendment (Affects Specific Properties)	Recommend	Approve/Deny
Land Division	Approve / Deny	Appeal
Conditional Use Permit	Approve / Deny	Appeal
Variance	Approve / Deny	Appeal
Site Plan Review	Approve / Deny	Appeal

Application Process

- Applicant
- Planning Dept Staff
- Public Works Staff/City Engineer
- City Attorney
- Agency Review
- Planning Commission
- City Council

Applicant Responsibilities

Subdivision Example

- Complete City Application Forms & Fee --- \$\$\$\$
- Preliminary Subdivision Plan w/ lot layout
- Show all existing buildings, utilities, drainage ways or site features
- Vicinity Map
- Narrative findings explaining proposal
- Consultant reports [Wetlands, Geotech, etc.]

Planning Dept Staff

- Mandatory pre-application meeting
- Review application for completeness
- Set up land use file
- Notice of public hearing –notice to owners of adjacent properties; sign on property
- Agency Notice to utilities, County, ODOT, etc.
- Packet to Public Works, City Engineer, etc.
- Staff Report (7-days prior to hearing)
- Prepare Order / Notice of Decision

PW Staff / City Engineer

- Pre-app meeting w/ applicant
- Engineer's Report to City
- Review & approve engineering plans
- Inspect Public Facilities construction

City Attorney

- Provide legal advice throughout process
- Talk to Staff
- Attend Public Hearing (if needed)
- Attend Appeal Hearing
- Review Notices of Decision, Conditions of Approval (if needed)

Agency Reviews

Utilities, Fire Department, Lincoln County, ODOT, State Agencies

- Respond to 20-Day Notice prior to hearing
- Testify at hearing
- Approve required permits (DEQ, DSL, etc.)
- Communicate w/ city staff & consultants

Planning Commission

- Hold Public Hearing per Rules of Procedure
- Ask Questions of Applicants
- Participate in Deliberations
- Make a Decision – 120 Day Rule for Most Apps
(100 days for affordable multifamily)
- Vote – Explain why you vote yes or no

City Council

- Decision Authority for Type IV Permits/Decisions – Annexations, Code Amendments, Map Amendments
- Appeals body for Planning Commission decisions

Land Use Hearing Agenda

Opening Statement for Public Hearing & Rules of Conduct

Purpose: The purpose of this meeting is for the Planning Commission to hold a public hearing to consider an application from JKL, Inc. for a 14-lot subdivision on 6th Avenue in Toledo.

Criteria: The decision criteria can be found in Title 16, Section 16.12.090.

Burden of Proof: The burden of proof lies with the applicant to prove why the proposal complies with the city's comp plan, land use ordinances and criteria. There is no assumption that the applicant is entitled to an approval.

Public Testimony:

- * Address the chairman
- * Limit remarks to 3-5 minutes
- * Focus testimony on issues and criteria
- * No repetitive testimony

Land Use Hearing Procedures

- A. Presiding Officer's Introduction with Opening Statement**
- B. Declarations of *Ex Parte* Contact, Conflicts of Interest, or Bias Regarding the Application**
- C. Applicant's Presentation of the Application**
- D. Staff Report**
- E. Questions from Planning Commission/Council**
- F. Proponents' Testimony**
- G. Opponents' Testimony**
- H. General Testimony of Other Individuals**

Land Use Hearing Procedures

- I. Questions of Clarification from Planning Commission**
- J. Applicant's Summary and Rebuttal**
- K. Staff Summary**
- L. Continuation of Public Hearing to Date Certain or Close of Public Hearing**
- M. Deliberation.** No public testimony is permitted during the discussion and deliberations of the Planning Commission.
- N. Decision.** The Planning Commission may either approve, deny, or continue consideration of the application to a specific date and time.

Decisions and PC Orders

Orders consist of three parts:

- The **facts** relied on in making the decision.
- **Conclusions** regarding how the facts address the criteria that apply to the application.
- **Decision** of denial, approval, or approval with conditions.

Criteria

- The City must identify the criteria upon which it will base its decision in advance of the decision.
- The Comprehensive Plan, and the Land Use and Development Code contain the substantive policies and standards used to judge a development proposal.

Findings of Fact

- Facts are found in the application, the staff report, the evidence submitted at the hearing, and the testimony presented.
- The Order identifies each criterion and the facts related to it.
- Facts that are important to the decision should be stated during the deliberations so that the minutes of the meeting reflect the basis for the decision.

General Findings

III. FINDINGS OF FACT

A. GENERAL FACTS

1. The owners of the property are Scott and Tadd Humphreys.
2. The applicant is the owner.
3. The property can be described as tax lot 2100, on Map 91W10CD.
4. The property is zoned Medium Density Residential (MD).
5. The property is located at 318 N Birch Ave.
6. The property is 10,000 square feet in area and is currently developed with a 900 square foot single family dwelling. The property has 100 feet of frontage on N Birch Ave and 100 feet of frontage on W Ida St. There is a 16-foot wide alley on the east side of the property.

Specific Findings Relative to the Criteria of Approval

k. Trim. The purpose of this standard is to require the design of buildings, particularly the use of trim around major building elements, to follow original traditions established by older buildings in downtown Stayton. Trim must mark all building rooflines, porches, windows and doors on all elevations. The trim must be at least 3½ inches wide. Buildings with an exterior material of stucco or masonry are exempt from this standard.

Finding: Trim is shown around all doors and windows, rooflines, porches and corners, with a specified width of 4 inches.

l. Roof-mounted equipment. The purpose of this standard is to minimize the visual impact of roof-mounted equipment. All roof-mounted equipment, including HVAC facilities and satellite dishes and other communication equipment, must be screened in one of the following ways. Solar heating or solar electric panels are exempt from this standard:

Finding: No roof-mounted equipment is proposed.

m. Exterior stairs and fire escapes. The purpose of this standard is to minimize the visual impact of fire escapes and exterior stairs. Exterior stairs, other than those leading to a main entrance, must be at least 40 feet from all streets. Fire escapes must be at least 40 feet from all streets.

Finding: No fire escapes or exterior stairs are proposed.

Conclusions

- Tie the facts and the criteria together and express the decision authority's judgment on the merits of the case.
- If the decision authority concludes criteria are not met, the conclusions explain, in reasonably clear and understandable terms, what the applicant must do to meet those criteria. This becomes the basis for a condition of approval.

Conclusions

III. CONCLUSION

Based on the facts above, the Planning Commission concludes that the application meets the requirements established in SMC Section 17.12.220, and Sections 17.20.060, 17.20.080, 17.20.090, 17.20.170, and 17.26.020, except for the following:

1. 17.20.060.9-A. This standard requires a minimum of bicycle parking space per 50 seats in a religious institution. The site plan did not include any bicycle parking. This standard could be met if the site plan is revised to include a minimum of 11 bicycle parking spaces.
2. 17.20.090.7. This section requires newly planted landscaped area to have permanent underground or drip irrigation. No irrigation plan was submitted. This standard could be met if an irrigation plan is submitted.
3. 17.20.090.8. This standard establishes the requirements for plant materials in landscaped areas. It cannot be determined whether this standard is met because planting sizes were not provided with the landscape plan. This standard could be met if the landscape plan is revised to indicate that the plant size required by this section will be met.

Decision

- If the conclusion is that all criteria have been met, then the decision is to approve the application.
- If decision authority concludes that some criteria have not been met, then the decision is either denial of the application or approval with conditions to bring application into compliance with criteria.

Order and Conditions

IV. ORDER

Based on the conclusion above, the Planning Commission approves the application subject to the City's Standard Conditions of Approval, as attached, and the following specific conditions of approval:

1. Prior to the submittal of the application for a building permit, the applicant shall submit the following engineered plans and supporting documentation:
 - a. Street improvement plans conforming to Public Works Standards for the construction of a 5-foot property line sidewalk within the Pacific Ct right of way and for the driveway approach within the right of way.
 - b. Water system plans conforming to Public Works Standards and meeting the requirements of the Fire Code Official and Building Official. The Design Engineer shall review and coordinate with the Fire Code Official to ensure compliance with applicable fire codes and regulations. The applicant shall provide any necessary fire access, protection devices, and system modifications and meet all other fire protection requirements of the Fire Code Official. A utility easement in accordance with PWDS 102.08 shall be provided if a public

Notices of Decision

- Written Notice to Applicant (3 days)
- Notice to all parties who participated in hearing
- Notice includes:
 - Date the decision is effective
 - Conditions of approval (if any)
 - Next steps (if any)
 - Appeal procedures and deadlines

Eight Commandments for Land Use Decisions

- Parties must be notified of proposed land use actions.
- Opportunity to be heard
- Decisions must be based on standards
- Decisions must be based on all the evidence

Eight Commandments for Land Use Decisions

- Burden of Proof is on the Applicant.
- Quasi-Judicial Decisions must be made impartially.
- *Ex Parte* Contacts are prohibited.
- Decisions must be supported by findings of fact

Open Meetings Law Requirements

ORS 192.660

- A Public Meeting occurs if a quorum of Planning Commission is present & public business is discussed.
- It is not a Public Meeting if there is a social gathering where a majority of members are present and there is no discussion or deliberation on public business.

Open Meetings Law Requirements

ORS 192.660

- Public Notice
 - Actual Notice to media & interested parties
 - Not less than 24 hours before meeting
 - Written Agenda available
- Open to the Public
 - Public Location within Jurisdiction
 - Accessible to Disabled

Open Meetings Law Requirements

ORS 192.660

- All Votes are Public Votes in Open Session
- Minutes
 - Members present
 - Motions & Results of All Votes
 - Substance of Discussion
 - References to Documents Discussed/Reviewed
- No Executive Sessions for Planning Commission

Ex Parte Contact

- Quasi-Judicial decisions must be based on information in the record
- *Ex parte* contact results from information a decision-maker receives off the record
- *Ex parte* contact must be revealed and the information placed on record

Toledo Planning Commission

(TMC 2.04)

- 7 Members (at least 5 must reside inside City; 2 may be nonresidents)
- 4-Year Terms
- President & Vice President elected in July
- Quorum = 4 members

Planning Commission General Powers (TMC 2.04.050)

- Recommend and make suggestions to Council regarding:
 - Streets and traffic congestion
 - Housing and sanitation
 - Zoning
 - Future growth
 - Economic Development

Planning Commission Specific Duties (TMC 2.04.060)

- Decision Authority for:
 - Exceptions to Zoning requirements
 - Conditional Use applications
 - Land divisions
- Recommend to Council regarding:
 - Comprehensive Plan amendments
 - Zoning text and map amendments
 - Vacation of land
 - Annexations

Oregon's Ethics Law ORS 244

- Public Official – includes any person appointed to a local government board or commission.
- *Public officials are prohibited from using or attempting to use their position for the financial benefit or gain of themselves or an immediate family member. (ORS 244.020)*

Oregon's Ethics Law ORS 244

- Conflicts of Interest (General Rule of Thumb)
 - Declare a “*potential conflict of interest*” where the public action could have a financial benefit or detriment to the public official, family member or business interest.
 - You must announce the potential conflict of interest.
 - You may participate in the deliberation and action of the board.
 - Declare an “*actual conflict of interest*” where the public action will have a financial benefit or detriment to the public official, family member or business interest.
 - You must announce the actual conflict of interest.
 - Step away and do not participate in either the deliberation or action of the board.

Oregon's Ethics Law ORS 244

- Gifts

- \$50 maximum gift (cumulative total) during a single calendar year.
- Gift would be given because of your public position and is not generally available to members of the general public. Gift-giver has an administrative or financial interest in the City.
- Does not apply to gifts such as Christmas gifts between family and friends, where there is not an administrative or financial interest (clarified in 2009).

Oregon's Ethics Law ORS 244

- Statement of Economic Interest
 - Annual filing.
 - Complete in April of each year.



Questions?

Thank you!