CCI REPORT

Findings and Recommendations from Review of Land Use Planning Process

March 2018_Draft_v5
### ACRONYMS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CCI</td>
<td>Committee for Citizen Involvement</td>
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<tr>
<td>CDC</td>
<td>Community Development Code</td>
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<td>CP</td>
<td>Comprehensive Plan</td>
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<td>CUP</td>
<td>Conditional use permit</td>
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<td>FAR</td>
<td>Floor to area ratio</td>
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<td>LCDC</td>
<td>Land Conservation &amp; Development Commission</td>
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<td>LOC</td>
<td>League of Oregon Cities</td>
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<td>LUBA</td>
<td>Land Use Board of Appeals</td>
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<td>NA</td>
<td>Neighborhood Association</td>
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<td>NP</td>
<td>Neighborhood Plan</td>
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<td>ORS</td>
<td>Oregon Revised Statute</td>
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<td>PC</td>
<td>Planning Commission</td>
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<td>PUD</td>
<td>Planned unit development</td>
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<td>TVFR</td>
<td>Tualatin Valley Fire &amp; Rescue</td>
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I. INTRODUCTION

During 2017 and early 2018, the Committee for Citizen Involvement (CCI) conducted an intensive review of the land use process described in Chapter 99 of the Community Development Code (CDC). This document describes the findings of that review and makes recommendations for improving the City’s land use process and citizen involvement as mandated by State Planning Goal 1.

1.1 GOALS
Land Use almost always involves change. Resistance to change is a normal reaction. A primary goal of this review was to create a land use process based on cooperation, not on adversity. The CCI intends that constructive changes to the City’s process can yield improved citizen involvement, reduced uncertainty for developers, improved applications that require less staff effort, smoother hearings, and fewer appeals.

1.2 METHOD
The CCI approached the effort by first reviewing the existing land use process in depth. This included sessions with the city attorney, the assistant city attorney, the director of public works and planners. Interested citizens not on the CCI also attended many of the sessions or meetings and provided feedback to the CCI. This review occupied XX meetings and YY hours of review. Based on this review the CCI identified six key problem areas (see Section 2). For each problem area the CCI has identified recommendations and potential solutions (see Section 3).

1.3 ORGANIZATION
Possible solutions were grouped into three areas: Education, Administrative, and Code Changes. Educational changes include such actions as the production of pamphlets and web pages as well as ways to teach the land use process to citizens and neighborhood associations (NA’s). Administrative solutions are those that may be implemented by the City Manager through administrative procedures and changes to practice. Code changes are those that require a change to the CDC (usually chapter 99) to be initially drafted by staff.

1.4 OUTCOMES
The outcome of this first stage of the work is threefold. The educational changes should yield a work plan for the CCI going forward. The administrative changes should hopefully lead to modifications to City practices and procedures that will result in more efficiency in dealing with applications. The suggested code changes should be drafted by staff and then refined by a working group charged with examining and developing the proposed code that then goes to the Planning Commission (PC) and the City Council for review and adoption, as appropriate.
2. PROBLEM AREAS

The CCI review identified six problem areas in the land use process:

- Early Involvement
- Consistency with Community Vision
- Availability, Timing and Scope of Staff Reports
- Complexity and Cost of Application
- Changes to Applications
- Appeals

While there is some overlap among the problem areas, this approach helped to identify and address the process steps into more manageable pieces. This section will focus on identifying the problem areas. Section 3 addresses recommendations and potential solutions.

Figure 1 was prepared by staff and provides an overview of the City’s land use process reviewed by the CCI.

2.1 EARLY INVOLVEMENT

In our current system, neighbors first hear about a development application during the City’s Pre-App meeting. The meeting is paid for by the Applicant and is intended to inform the Applicant on the requirements or recommendations needed to prepare and submit materials to form a complete application. Because the Applicant may not conduct a NA meeting until the application is almost complete, the Pre-App meeting may become a de facto early NA meeting attended by citizens desiring to understand and perhaps influence the project.

The City’s code currently requires one meeting with the NA prior to an application being deemed complete by the City. The Applicant must submit a recording and minutes of the NA meeting. There are two key problems identified in this current process:

First, discussion of the proposed project’s pros and cons with the citizens at the Pre-App may interfere with the intent of the meeting. As a result, the Applicant may not receive adequate instruction on how to submit a complete application.

Second, if the NA meeting is held too late in the process, for example right before an application is deemed complete, the Applicant may be in a position where it is too late to make changes that would accommodate citizen concerns. For example, needed studies may have already been completed and would have to be re-done to allow changes to be considered.

In addition the CCI noted other problems. As the application evolves in the land use process, there is a need to communicate potentially problematic or significant changes to an application to the NA’s. The CCI finds a need to educate both the Applicant and
concerned citizens about roles and responsibilities during the process, and the status of each project should be readily available to the public.

2.2 Consistency with Community Vision

Every application is evaluated against the criteria contained in the CDC. Ideally, these criteria perfectly reflect the values and the vision of West Linn’s Comprehensive Plan (CP) and/or other neighborhood plans (NPs). In practice, however, the CDC can never be so complete that it guarantees that the vision of the CP or NP will be realized. The challenge is to find a reasonable balance between the code and other visionary or aspirational documents in the land use decisionmaking.

It is possible for an application to be perfectly consistent with all code criteria and still fail to achieve the larger goal of contributing to the emergent properties of the neighborhood. Examples of this are vastly different architectural styles, different scales of development while still within the floor to area ratio (FAR) requirements, and flag lot developments in older neighborhoods.

The CDC is required to provide clear and objective standards. An attempt to add code that specifically deals with the compatibility between a development and those existing features around it would quickly become too complex to be useful.

The challenge is to find a way to maintain neighborhood integrity while accommodating disparate developments in space and time.

2.3 Availability, Timing and Scope of Staff Reports

In the current process, Staff reports are available ten days before the PC hearing. The staff reports identify and evaluate compliance of an application with germane parts of the CDC. In addition, they make a recommendation about whether the application should be approved or rejected. The staff reports also may suggest conditions of approval to satisfy certain code requirements. Since all testimony must be directed toward criteria in the CDC, anyone wishing to testify must either know the CDC well enough to identify and evaluate the criteria, or they must rely on the staff report to identify and adequately address the criteria. Citizens then have only ten days to prepare their response. As mentioned above, the staff report is restricted to a strict interpretation of the CDC and does not address compatibility with the CP, possible NPs or the Imagine West Linn vision document of key interest to the community.

2.4 Complexity and Cost of Application

The scale and location of a project are significant factors in the complexity and cost of a land use permit application. However, even smaller land use proposals in West Linn may face a level of complexity and cost on par with larger projects. This is usually a function of location, particularly the challenges associated with slope, drainage, natural or sensitive areas, geotechnical features, and adequate public facilities.

The pre-application process provides the novice and experienced Applicant with opportunities to be educated on project-specific planning requirements through no-cost
discussions with Planning Department staff at the “window” in City Hall. If the Applicant proceeds with the application, a fee-based Pre-App conference is held with planning staff, in accordance with CDC 99.030, to identify the minimum requirements for the proposed development.

Novice Applicants may learn that professional assistance is required to turn their proposal into a suitable application. These Applicants may choose to retain consultants and legal counsel for assistance, or they may give up due to the time, resources, and cost required by the application process.

Experienced Applicants are typically aware of the complexity of the application process and come to the Planning Department with consultants, legal counsel, and financial backing. Consequently, experienced Applicants typically propose larger, more complex projects, both in terms of scale and the permit application requirements.

2.5 CHANGES TO APPLICATIONS

Changes to an application have been shown to disrupt the land use process and adversely impact citizen involvement. It is important that an application is allowed to change or adjust during the review process, in order to accommodate revisions to an Applicant’s goals, citizen requests and City mandated compliance with codes and standards. On the other hand, changes can invalidate citizen engagement because the final project may be substantially different in scope and impact from the project that was originally presented to the community. Reconciling these two needs is the subject of the following discussion.

During CCI review of the planning process, several problem areas have been identified involving changes to applications. We can divide them roughly into changes before an application is deemed complete and changes after an application is deemed complete.

2.5.1 Changes Before Application Deemed Complete

Once the Pre-App conference has been held, it is assumed that the Applicant has an initial meeting with the relevant NA(s) prior to the application being deemed complete. Depending on when this meeting is held, certain risks arise. If the meeting is held too early, the NA may not be aware of changes made to the project until the PC hearing. If the meeting is held too late, the Applicant may learn of desired changes too late to be able to adequately respond to citizen concerns.

In addition to the changes that may arise from the NA meeting, the City may request changes to bring the development into compliance with other standards or guidance – for example, the CDC, the CP, or a NP. Agencies like Tualatin Fire & Rescue (TVF&R) may also require changes. While the project is in this dynamic state, it is still desirable to have affected citizens aware of the changes being considered.

Finally, the information obtained from city mandated studies, like traffic or geotechnical, may identify areas where potential change is required.
2.5.2 Changes After Application Deemed Complete
The application deemed complete milestone certifies that sufficient required information has been submitted, and it starts the 120 (or 100) day review clock. At this point, the actual reviews of the information by Planning and Engineering can begin if they have not already started.

These reviews may cause the city to request additional changes to the application. Problems can arise when city requested changes occur after the required NA meeting. Despite the level of citizen interest, the public’s first awareness of such changes may not come until just 10 days before the PC hearing when the city posts its Staff Report, or at the PC hearing.

In addition, the Applicant may make certain changes to the application at anytime prior to the hearing. This may negate some of the information that was presented to the planning staff and/or to the NA, making the hearing more confusing and contentious.

Although the CDC makes oblique reference to “substantial change” as a trigger to cause the application to be resubmitted, there does not appear to be a “clear and objective” definition of “substantial change.” Consequently, neither the Applicant nor the NA is protected from some changes that may be in this “gray” area.

The essential challenge is to allow sufficient change to allow the application to be reasonably adjusted while keeping everyone involved and educated within the 120 day review period. This is complicated by the realization that an Applicant only has to cooperate up to the limits of the code. An Applicant can do anything that is not specifically forbidden by the CDC or the CP and its supporting documents, although the burden of demonstrating compliance with code lies with the Applicant.

2.6 Appeals
The process used to appeal land use decisions is defined by several factors. The City Attorney has defined the possible appeal processes as a spectrum which spans limited review to a completely new hearing depending on how the factors are chosen. This discussion is focused on the implications and consequences of the choices.

There are several core values that the appeal process should attain:

- It should be fair and unbiased.
- It should be well defined.
- It should give both parties enough time to prepare their arguments.
- It should not place an undue burden on either party.
- It should provide a meaningful role for citizen involvement.

In addressing these values, the process may choose various alternatives. It should decide:

- Who can file an appeal?
- What is the scope of the appeal?
- What changes can be made to the application?
Defining the appeals process involves answering these questions in terms of the core values listed above.

**Who can file an appeal?**

In order to file an appeal, the Applicant must have standing. The definition of standing is actually quite restrictive, requiring that the person bringing the appeal must have a person legal interest that is violated by the decision being appealed. It is not enough to be just interested in the case. The appellant must show that they would be substantially adversely affected by the decision.

In Oregon land use cases, we can look to the criteria used by the land use board of appeals (LUBA) for a possible definition. LUBA simply requires that the person filing the appeal has appeared before the local land use board and offered testimony either orally or in writing.

We currently adopt the same criteria for an appeal to the City Council.

Changing these criteria would seem to complicate matters as the application moves through the review process.

**What is the scope of the appeal?**

The goal of an appeal is to insure that a correct decision has been made. Possible reasons for the incorrect decision are:

- Incorrect evidence.
- Incomplete evidence.
- Faulty interpretation of the criteria.

While it is not difficult to interpret the idea of incorrect evidence, the concept of incomplete evidence is more problematic. One can imagine a case where the additional evidence is not just to further an argument on an existing issue, but it actually raises a new issue. For example, a new hydrologist study may influence a part of the decision that affects whether a storm water criterion is satisfied, but might also raise a new issue involving slope stability.

Allowing new evidence to be introduced places a burden on both parties to respond. This could create a situation where the Applicant may introduce new evidence during the appeal and those in opposition do not have time to rebut it. It may be possible to couple the right to introduce new evidence to a requirement to extend the 120 day clock to allow time for response.

The question to be examined is whether the appeals procedure should limit the scope of the appeal to issues raised in the previous PC hearing. In the current process, the scope is not limited.

**What changes can be made to the application after the PC hearing and pending the appeal?**

If the application is changed after the PC hearing and before the appeal, the public’s right to review and comment on the application is compromised. For this reason, we
should have strict limits on the types of changes that can be made. From the Applicant's point of view, there is a desire to amend a denied application to correct the basis for denial. Allowing this might result in better projects. However, a modification to the application can result in the public not being aware of the extent of the modifications, and thus being denied citizen involvement.

If it is beneficial to allow changes, several questions need to be addressed. First, the scope of allowable changes should be defined. This may be difficult since not all changes are measureable. How much can an application change before it should be a new application? Second, the modified application should be presented to the NA and there should be sufficient time for the NA to prepare a response. This would imply that the Applicant would suspend the 120 day clock long enough for the change to be presented and understood.

3. POTENTIAL SOLUTIONS

The CCI has discussed the problem areas and identified recommendations and possible solutions to address them. The CCI found it useful to divide these into three categories: Education, Administrative, and Code. Those identified as Education can be addressed by the CCI. Administrative changes pertain to procedures and practices within the operational purview of the City Manager. Code changes should be initially drafted by staff and further refined by a work group as described in Chapter 98 of the CDC.

3.1 EDUCATION
Many of the problems in land use arise because the participants do not understand the requirements of the process. The process is a finely crafted method that allows significant citizen input while protecting the rights of the Applicant. It is important that all participants understand their roles at each phase of the process. The following are suggestions that may move us toward that understanding:

- Prepare a pamphlet or quick reference guide and web pages on goals, roles and responsibilities during the Pre-App Conference. Describe the land use process steps and opportunities for citizen engagement. Review the pamphlet briefly before each Pre-App conference.
- Devise a method to track projects, for example, using a project dashboard and make it available to all citizens through the web.

In addition to the Pre-App guide, the CCI should create a guide to the land use process that describes roles of the City, the Applicant or developer, and concerned citizens. The guide provided by the City of Corvallis is a good starting point. Citizens should understand that their rights to influence a project are limited by what is specified in the CDC or State Law (ORS), or can be inferred from the CP or NP. The developer should understand that small compromises and sympathetic listening to neighbors can build support for the project. The City should see itself as both a defender of the City through
the codes, a mediator between the Applicant/developer and the citizens, and as the keeper of the larger vision of the community.

A series of instructional videos could be developed that introduce the basic concepts of Oregon land use law. These may already exist through existing organizations (LOC, LCDC or other cities) and may just have to be procured or supplemented.

The CCI should develop a standard format for Applicant/developer presentations to NAs. This could include specifying visual aids and give guidance to the level of information that should be provided.

All relevant land use documents (e.g., CP, NP, CDC) should be readily available to the public and Applicant online and a copy of these documents should be retained at the front desk of the planning department at City Hall.

A simple electronic inventory of all buildable land in West Linn should be on file, including current market value.

A process flow diagram of the land use process like the one attached to this document should be maintained and readily available to the public.

3.2 ADMINISTRATIVE
The CCI has identified several areas and ideas for changes in the review process that may be implemented without making changes to the CDC. These changes involve subjective judgments that might not satisfy the requirements for “clear and objective standards” that are required for the CDC. Ignoring these potential areas for improvement may leave us with a CDC that does not necessarily achieve the vision of the CP or NP. The approach in this section is to offer approaches or services that are optional, but guide the Applicant/developer toward the community vision.

Application review
Currently, the staff report evaluates the application against the requirements of the CDC. While this is essential and required by law, we would suggest that the staff report include an additional section that evaluates the application in terms of the vision of both the NP and the CP. This non-binding commentary might be useful to the PC in deliberating on “gray” areas in the code or in the development of potential conditions of approval, and could influence applications toward equivalent solutions that are more consistent with the City or neighborhood long term vision.

The CCI would encourage a practice of completing all staff reviews (Planning, Engineering, etc) within two weeks of an application being deemed complete.

Project Committee
If the NA wishes, an NA rep for a development project could be appointed at the first NA meeting with the Applicant or at a prior NA meeting in time for participation at the Pre-App meeting with the City. This rep would be a liaison between the NA, staff, and the Applicant/developer forming a Project Committee. Working together with the Applicant and the planner, changes to the application that occur between the first and (potentially)
second NA meeting could be more effectively communicated to the NA. This does not empower the NA with any official veto power over aspects of the application. The liaison role should function to keep the NA informed on the state of the changes to the application to avoid surprises. The Project Committee should work together throughout the planning review process. We anticipate that the staff would coordinate the committee’s activities and function. The formation of a Project Committee would be optional. It is designed to assist the Applicant in working together with the NA to identify and potentially resolve or mitigate problems before the application hearing.

**Architectural Review Board**

One of the difficulties in planning is that we are trying to create a city, but we have to do it by only regulating the individual components of the city at different times and at variable locations. Examples of this are that we require sidewalks in front of individual properties, but do not act to insure continuous sidewalks. We hope that the continuity will emerge from the individual decisions.

It is extremely difficult to realize the emergent vision in this way. No matter how carefully the code is written, some aspect will be neglected and the piece will not fit into the whole.

One way to address this problem is to look at how the pieces fit together directly. This is problematic because, especially with in-fill, every piece is different, thus clear and objective standards become cumbersome.

We suggest the creation of a volunteer Architectural Review board that is charged with the responsibility to review the application for compatibility with the surrounding neighborhood, and with the goal of realizing the values of the NA and CP and NP if available.

The Applicant would have the option of using the board’s suggestions but would not be bound to implement them. This is a service that the City would provide to help achieve its long range vision. It may be possible to lower certain fees to encourage use of the board.

The cost of the Pre-App conference, as well as other land use application fees should be reviewed to consider whether they are necessary or are at an appropriate level to support the application process. This suggested review should also consider whether the level of fees are fair and objective for both small and large development projects. Potential scaled fee structures should be considered.

**3.3 Code Changes**

The CCI review has identified several areas where changes to the CDC would be beneficial. This section discusses those changes in general. The specific language to implement these changes is the task of staff and the working group, should the City Council decide to proceed with implementing the recommendations in this report.

**Application Review Complete**
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The CCI suggests that Chapter 99 be modified to describe the addition of a new milestone called Application Review Complete. At this milestone, all documentation (other than letters of testimony) will be available to the public. It would be expected that at this stage all staff reviews are completed, the NA's have been informed of the details of the final proposal, and the Applicant has committed to the final design to be presented at the PC hearing.

Noticing to properties within 500 feet would be done immediately after this milestone, rather than 10 days before the PC hearing to give everyone as much time as possible to review the finished application.

Two NA Meetings

The CCI suggests that the CDC require the Applicant to conduct two meetings with the NA(s) if the proposed development involves a subdivision, a planned unit development (PUD), or a conditional use permit (CUP). A second NA meeting would also be conducted if specifically requested by an NA(s) associated with the proposed project. An NA can also waive the need for a second meeting with the Applicant.

The first NA meeting should occur as soon as possible after the Pre-App meeting. This should advise the NA about the proposal and be an opportunity for the NA(s) to make clear its concerns with an application. At this meeting, or a prior meeting, the option to appoint an NA rep to work with the Applicant and staff (Project Committee) can be made to better facilitate the application processing and changes. This is deemed a critical step toward reducing changes to applications, or more importantly surprise or significant changes to applications, late in the process.

The second NA meeting should be held before an Application is Deemed Complete by staff. This meeting should communicate the final project information and allow the NA to comment on any changes or adjustments that might be considered to solve problems that arose during the Application Review.

An example of this might be that a geotechnical report submitted during the application review showed unstable soil. The city might direct the Applicant to replace the soil with something more stable. The second NA review would alert the NA to this increased impact so the NA would have the option to take steps, if necessary, to address the changed conditions. Since the problem was identified during the application review, a second NA meeting would insure that the NA is reasonably informed ahead of the PC hearing.

Limit Changes after Application Review Complete

Significant or substantive changes that occur after an application is deemed complete are disruptive because they have not been understood by the community before the hearing process. This limits the opportunity to solve problems that otherwise might be reasonably addressed in the planning review process. It is useful to divide changes after Application Review Complete into three categories:

Commented [AR1]: Need to clarify btw App Deemed Complete vs App Review Complete?
1. Minor changes are those that can be dealt with by minor design adjustments or by Conditions of Approval. These changes are minor enough that they can be understood and resolved during the hearing.

2. Changes that cannot be resolved by minor design changes or Conditions of Approval can be resolved by allowing the Applicant to suspend the 120 (or 100) day clock, revise the application working with the Project Committee, if formed, and then presenting the modified application at a continued hearing.

3. Changes that cannot be resolved by the procedures under 1 or 2 could be resubmitted with a new or revised application. Criteria could be developed that would waive the one-year delay currently specified in the code. Code currently refers to “substantial change”; however, “substantial change” needs to be more clearly defined.

Appeal Process

1. Examine the definition of standing and decide if any change to the code is needed.

2. When the appellant (the person requesting the appeal) is the Applicant, couple the right to introduce new evidence to an extension of the 120 day clock to insure that there is time to allow a response to the evidence.

3. Specify the amount of change (if any) that would be allowed to an application between the PC hearing and an appeal to the City Council.

4. CONCLUSIONS AND NEXT STEPS

4.1 CCI
Several documents have been identified in the “Solutions/Education” section above. The CCI will prioritize these documents and take on the task of producing them.

4.2 ADMINISTRATIVE
The city administration should review the suggested changes with the CCI and discuss how and whether they can be implemented. In particular, the proposed deadlines for city required changes, including impacts to staff time, fee assumptions, etc. should be discussed. In addition, there may be alternatives that have not been considered that can reduce staff work and application costs.

4.3 CODE
The changes suggested in the Code Changes section above require the appointment of a workgroup as specified by Chapter 98 of the CDC. If the City Council feels that the problems identified are worth considering, this effort should be approved and the workgroup will work with staff on proposed code to be reviewed by the PC and the City Council.
The CCI has spent over a year studying these problems. The most expedient way forward is to let the CCI (or a subset of the CCI) form the core of the working group. This core should be augmented by representatives from the development community. Ideally, both the large scale developers and small scale developers would be represented on the working group.

5. **ADDITIONAL ITEMS**

This section describes additional miscellaneous items identified by the CCI to be addressed to improve the land use planning review process, in no particular order:

1. Modify the project tracking/labeling system at the city so that is readily understood by the public (i.e., tracking projects by numbers only does not work).
2. Address education/training needs for certain staff, NA reps, or others.
3. Define as needed the terms “material representation”, “substantive or substantial change”, others?
4. Further explore with the City Attorney the criteria and legal parameters related to defining when an application is deemed complete. This may explore and better qualify or quantify any criteria or issues when determining technical adequacy vs. when an application is deemed complete.
5. Explore the option to modify (expand) the notification area for expedited land use applications.
6. Evaluate whether staff reports from departments other than planning (e.g., public works) should be prepared in the staff review process.
7. Others?