REVIEW OF THE WEST LINN LAND USE PLANNING PROCESS

Committee for Citizen Involvement Report

July 2018

Acronyms

CCI  Committee for Citizen Involvement
CDC  Community Development Code
CP  Comprehensive Plan
CUP  conditional use permit
FAR  floor to area ratio
LCDC  Land Conservation & Development Commission
LOC  League of Oregon Cities
LUBA  Land Use Board of Appeals
NA  Neighborhood Association
NP  Neighborhood Plan
ORS  Oregon Revised Statute
PC  Planning Commission
TVFR  Tualatin Valley Fire & Rescue
I. EXECUTIVE SUMMARY

The City of West Linn’s Committee for Citizen Involvement (CCI) received an informal request from the City Council (CC) in 2017 to review the city’s Land Use Process (LUP). An integral component of a community's stability and quality of life, land use is a melding of local, state and federal regulations impacting a broad spectrum of the community and stakeholders. In practice LUP engages a broad spectrum of government; city offices of planning, engineering, planning commission, appeals, comprehensive plan, city attorney, city development code, seek to create and equitable environment of growth and development while simultaneously conforming to local municipal codes, Oregon State Land Use regulations, and Federal environmental statutes.

It was in this climate West Linn elected officials implemented CCI; chief among CCI tenet objectives, as mandated in Goal One, was to establish CCI as an independent citizen watchdog to insure wide spread citizen involvement, assuring citizen participation in all phases of the Land Use Planning process. Though established in 1976, through the years CCI has experienced varying levels of implementation and indeed a period of hiatus; as a result of several controversial and alarming development projects and radical changes to CDC rifts have developed in citizen’s confidence of city staff and the LUP. Citizens recognize constraints of CDC and state statute but expect city officials to adhere to regulation and also to be stewards of West Linn’s quality of life. Though steps have been taken to restore CDC to its former prominence, none the less the perception of city officials to be overly committed to the zeitgeist of densification and an opaque LAP persist. To allay those concerns CCI and city staff with this report began the task of repairing those rifts and commit to transparency and the de-mystification of a LUP that supports the rights of citizen participation, stakeholders, fiscal and ecological sustainability.

That said the elected bodies of West Linn acted to reinvigorate CCI. During 2017 and early 2018, the CCI conducted an intensive review of the land use process described in Chapter 99 of the Community Development Code (CDC) and began to re-establish citizen’s rightful involvement in all phases of the planning process.

Ambiguity in city code, deficiencies in reporting, availability and notification of critical events, and lack of coordination were observed; then too discussions revealed potential innovations such as an optional second Neighborhood Association meeting suggests substantial gains in communications among all parties. Given the breadth, complexity and interdependency of regulation and implementing organs of governance this document’s findings and recommendations are not a panacea but the early steps of an iterative process of continuing process improvement and review with particular emphasis for improving integrating critical citizen involvement into the City’s Land Use Process as mandated by State Planning Goal 1.

That said this document serves as a roadmap for the education of layman and stakeholders. This report list findings and recommendations but also a set of “Deliverables”. These “Deliverables” are seen as tasks, practices, policies, and changes to code, essential to the intended broad involvement in the LUP. To facilitate such change the CCI strongly urges the City Council to require City Administrative management adopt goals and objectives to effect recommendations.
and “Deliverables” discussed in this report and subsequent results born by efforts of an established Working Group.

The CCI thanks the citizens and city staff that have given of their time and effort to the formulation of this report to re-establish citizen’s rightful involvement in all phases of the LUP.

The Committee for Citizen Involvement (CCI) spent almost two years reviewing West Linn’s Land Use Process with the goal to improve the process for all parties involved in building and development proposals, including West Linn citizens, staff, and applicants. In particular, this review was conducted to make the process more effective and to better support fairness, equity, transparency, accountability, and citizen participation.

This evaluation is core to the CCI’s objectives for our City as mandated by State Planning Goal One - to serve as an independent “watchdog,” to provide education, and ensure citizen involvement and participation in all phases of the LUP. This review addressed the many aspects of the LUP which have at times failed the citizenry and adversely impacted our community at times during the City’s development history. The goal in this review is thus to improve all aspects of the LUP by establishing a better framework and protocols for future land use development projects.

In practice, the LUP can be complex as it involves a broad spectrum of governmental oversight, including local, regional and state regulations, laws, codes, planning directives, and aspirations. The process also integrates many technical disciplines that are sometimes complex or conflicting, including traffic engineering, geotechnical engineering, hydrology, law, and land and water resource planning. These broad disciplines and complexities can sometimes be difficult to reconcile, but they must be reasonably documented and effectively communicated among the interested stakeholders and citizens to improve the LUP overall.

This report documents problem areas in the LUP and makes recommendations and suggested “Deliverables” to be further evaluated and addressed in a coordinated effort by staff, a future Working Group, and by the CCI—the CCI will oversee this process. These recommendations include the need for better defined protocols and code refinements to ensure adequate and comprehensive reviews and compliance for future development projects. These refined approaches will assist the community and staff with the added goal of working together better to improve staff efficiency and West Linn quality of life.

The CCI thanks the citizens and staff that have given their time and effort to the formulation of this report to improve the LUP and fully incorporate citizen participation in all phases of the process.
A simple roadmap highlighting important milestones and landmarks in the land use planning process:

**Milestones**
- Application
- Review
- Outcome
- Appeal

**Landmarks**
- Filing
- Pre-Application Process*
- Technical*
- Legal & Regulatory*
- Administrative*
- Neighborhood Associations
- Planning Commission*
- Approval
- Conditional Approval
- Denial
- City Council
- LUBA

*indicates multistep process.
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.

2. Historical Background

In order to understand the scope of the CCI’s current review, the reader of this report needs to view the land use process and the legal and the regulatory (local and state) frameworks controlling it had been subjected to several important changes in the recent past, particularly the “Cut the Red Tape” revisions to the Community Development Code (CDC) in 2014. Many of these changes limited the ability of the citizenry to engage and influence the land use process, which led to some adverse impacts on our neighborhood communities. The CCI spent much of the past year identifying and considering these past harmful changes to the CDC, as well as considering and process deficiencies that provided for limited citizen participation – especially for example prior to a land use application being deemed complete by City planning staff, consumed enormous review time of the Committee this past year. In addition, the City Council (CC) also assumed that the CCI would on its own review the LUP and advise the CC on its recommendations to improve the process, before leading to the preparation of this LUP Report.

3. Goals

Land Use almost always involves change. Resistance to change is a normal reaction. A primary goal of this review was to foster 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, and improved applications that require less staff effort, smoother hearings, and fewer appeals.

Objectives/Goals of CCI: Review all pertinent aspects of the West Linn Land Use Process, as well as related State and municipal codes, and optimize, enhance, and empower public/citizen involvement in all phases of the West Linn Land Use Process.
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, who are not formal members of the CCI, also attended many of the meetings and provided feedback to the CCI. Based on this review, the CCI identified six key problem areas (see Section 5.2). For each problem area, the CCI has identified recommendations and potential solutions (see Section 6.3).

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

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 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 Council-appointed working group charged with examining and developing the proposed code, which is then considered by the Planning Commission (PC) and the City Council for review and adoption, as appropriate.

5. FINDINGS

The CCI review identified six key problem areas in the current land use process in West Linn:

- 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 land use process steps in more manageable pieces. This section will focus on identifying findings. Section 6.4 addresses recommendations and potential solutions.

Figure 1 was prepared by staff and presents a flow chart and timeline of the City’s current land use process, which was the focus of the CCI’s review.

Additional miscellaneous items identified by the CCI to be addressed to improve the land use planning review process, in no particular order, include:
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. Staff reports from departments other than planning (e.g., public works) should be prepared in the staff review process.

7. Determine if an official sign-in form should replace (or supplement) the individual half-page forms currently used to document persons or entities participating in hearings and appeals by the PC or City Council. If used, an official form should have ample room for documenting pertinent information for the project record.

8. Policies and procedures should include periodic review of experiences and lessons learned during PC and City Council hearings. The goal of such reviews is to improve performance for the community and Applicant, and to identify changes to procedures or code that may be needed.

5.1 EARLY INVOLVEMENT

In our current system, neighbors first hear about a development application during the City’s Pre-Application (Pre-App) conference. The Applicant pays for the meeting, which is intended to inform the Applicant on the requirements or recommendations needed to prepare and submit materials to form a complete application. The Pre-App conference may serve as an opportunity to learn about a project and share concerns - de facto early NA meeting attended by citizens desiring to understand and perhaps favorably influence a 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.

Two key problem areas were identified in this current process:

- The lack of guiding principles for citizen’s role and participation at Pre-App meetings has sometimes led to confusion and frustration which has disrupted the Pre-App and one of its objectives - for Applicants to receive adequate information and 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 could 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 may be 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.

5.2 CONSISTENCY WITH COMMUNITY VISION

Every application is evaluated against the criteria contained in the CDC. Ideally, these criteria 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 NPs will be realized in every instance. The challenge is to find a reasonable balance between the code and other visionary or aspirational documents in land use decision making.

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.

5.3 AVAILABILITY, TIMING AND SCOPE OF STAFF REPORTS

In the current process, staff reports are available a minimum of ten days before the PC hearing. The staff reports identify and evaluate compliance of an application with germane parts of the CDC. In addition, these reports 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 or NPs or the Imagine West Linn vision document, which may be of key interest to the community.

5.4 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.

5.5 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.

5.5.1 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 subsequent changes made to the project until the PC hearing. If the meeting is held closer in time to the PC hearing, 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 Comprehensive Plan, or a Neighborhood Plan. Other public agencies, such as 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, such as traffic or geotechnical, may identify areas where potential changes are required.

5.5.2 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 must 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 limited changes to the application at anytime prior to the hearing. These changes may conflict with some of the information presented to the planning staff and/or to the NA, potentially making the land use application 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 reasonable changes to the application 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, however, An Applicant may do anything that is not specifically forbidden by the CDC or the CP and its supporting documents, although the burden of demonstrating compliance with the code lies with the Applicant.

5.6 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 that spans from 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.

5.6.1 Who can file an appeal?

In order to file an appeal, the Appellant must have standing. In Oregon land use cases, we can look to the criteria used by the Land Use Board of Appeals (LUBA) to determine who has standing (see ORS 197.830.4.b). LUBA simply requires that the person filing the appeal has appeared before the local land use board (e.g., PC) and offered testimony either orally or in writing.

West Linn currently adopts the same LUBA criteria for an appeal made to the PC or the City Council. The CCI finds that the LUBA approach to determining standing is acceptable in both cases.

5.6.2 What is the scope of the appeal?

The goal of an appeal is to ensure that an objective decision has been made. Possible reasons for an appeal to a decision are:

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

While it is often easier to identify or interpret 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 hydrologic 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, particularly as it relates to the 120-day clock and additional expense potentially required for citizens. This may create a situation where the Applicant may introduce new evidence during the appeal and those in opposition do not have time or adequate capability 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 adequate time for response.

The question to be assessed is whether there might possibly be any benefits appeals procedure in the future should, to limit limiting the scope of any the appeal to issues raised in the previous PC hearing within the spectrum of the de novo process. In the current de novo process established by council in 2017, the scope is not limited.

5.6.3 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 consider better-defined 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 may result in better projects. However, a modification to the application may result in the public not being informed of the extent of the modifications in a timely manner, 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 measurable. 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.

### Appeal Process

Below are elements that should be reviewed by the Working Group in any future refinements to the Appeal Process protocols.

1. **Examine** the definition of standing and decide if any change to the code is needed. Does merely signing in as attending a hearing qualify someone as standing?

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.

### 6. 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 Working Group as described in Chapter 98 of the CDC.

#### 6.1 Education

Many of the problems in land use arise because the participants do not understand the requirements of the process. The land use planning process is defined under Oregon statute and allows 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 planning process steps and opportunities for citizen engagement. Review the pamphlet briefly before each Pre-App conference.

Devise a method to better track projects by, 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 planning process that describes roles of the City, the Applicant or developer, and concerned citizens. The guide developed 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 Comprehensive Plan or Neighborhood Plan. The Applicant should understand that small compromises and sympathetic listening to neighbors may 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 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’s presentations to NAs. This may include specifying visual aids and provide guidance on the level of information that should be provided.

All relevant land use documents (e.g., Comprehensive Plan, Neighborhood Plan, CDC) should be readily available online to the public and Applicant. Also, copies of these documents should be retained at the front desk of the Planning Department at City Hall and the City Library.

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 planning process, as depicted in Figure 1 attached to this document, should be maintained and readily available to the public.

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.

6.2 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 may 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 Comprehensive Plan or Neighborhood Plan. The approach in this section is to offer approaches or services that are optional, but guide the Applicant toward the community vision.
The City administration should review the suggested changes with the CCI and discuss how and whether they can be implemented. 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 may reduce staff work and application costs.

**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 Neighborhood Plan and the Comprehensive Plan. This non-binding commentary may 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 NA rep would be a liaison between the NA, staff, and the Applicant 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 between the interested stakeholders. 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 PC hearing.

**Architectural Review Board**

One of the difficulties in planning is that we are trying to create a city, but we must do it by only regulating the individual components of the city at different times and at variable locations. An example of this is the City’s requirement for sidewalks in front of individual properties, but the City does not act to insure continuous sidewalks throughout a neighborhood. The City’s approach is based on incremental action and that the continuity of sidewalks within the community will emerge from a series of 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 may become cumbersome.
We suggest the Working Group explore the possibility of creating 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 Comprehensive Plan and Neighborhood Plan, if available.

The Applicant would then 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 is fair and objective for both small and large development projects. Scaled fee structures should be considered.

6.3 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

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 recommends the CDC require an Applicant to conduct two meetings with the NA if the proposed development involves land uses specified in 99.038. An NA should also be able to 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 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 (i.e., form a Project Committee) can be made to better facilitate the application processing. This is deemed a critical step toward reducing changes to applications, or more importantly surprises 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 suggested changes or adjustments that may be considered to solve problems that arose since the Pre-App or first NA meeting. The CDC should reflect the importance of timeliness and reasonableness in the response time for NA review to support a fair process for the Applicant, as well as citizen involvement. For example, it may be beneficial to hold the second NA meeting within a set number of days of staff determining an application qualifies as being Deemed Complete.

An example of this may be that a geotechnical report submitted during the application review showed unstable soil. The city may direct the Applicant to remove the soil and develop an appropriately-designed solution. The second NA meeting would alert the NA to this increased impact and the NA would then have the option to offer suggestions that may be addressed early or to take steps, if necessary, to address the changed conditions in time for the PC hearing. Since the problem was identified during the application review phase, a second NA meeting would ensure 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 have been previously 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. Based on the nature of the planning review process, it is still likely that some changes will arise after an application is Deemed Complete or after the Application Review Complete phase. It is useful to divide these changes into three categories:

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.

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 determines 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.

**Deliverables**

This report is a road map to highlight observations of the CCI membership, city staff and involved citizens that create value and benefit pursuant to the objectives and goals as stated above. Upon approval of the City Council, these findings will be examined by a City Council appointed Working Group and codified into appropriate measures to satisfy stated objectives/goals.

The following additional precepts were identified for future consideration by the Working Group. While the greater substance of this report provides detail on methodology and findings, the overwhelming CCI membership also arrived at specific precepts. Though not sacrosanct, these precepts reflect and/or greatly facilitate enhanced citizens/public involvement in the LUP. The overwhelming majority of the CCI membership strongly urge adoption of these precepts.

A. Implementation of Process Improvement Program and Key Performance Indicators for all city departments involved in land use planning process (e.g., Planning, Public Works, Engineering).

B. Creation of Mission Statements for key departments involved in the land use planning process to assure alignment with the Comprehensive Plan, and Neighborhood Plans, for example.

C. Incorporating in LUP an independent, unbiased and well defined and transparent process (studies/models) for assessing the True Cost of Development (TCD) in West Linn.

D. Implementation Assess the function and potential value of using web-compatible project management software to schedule and monitor the current status and progress of an application through the land use planning process; to depict critical milestone events of the process thereby enhancing visibility and education of the public of the status of any project in the land use process.

E. Reinstatement of CDC 99.140, the “two-person call up rule” in the City Charter (Chapter IV, Section 13) that permits two City Council members to quickly convene a meeting to review the Planning Commission’s approval of a potentially controversial/potentially damaging hotel application was withdrawn in part due to the “two-person call up” rule."

Commented [AR5]: I’m unclear when this vote occurred but some of these should be evaluated further before they are implemented as some may have significant cost implication or raise other issues that should be assessed by knowledgeable group before they are “implemented” or “selected” or “adopted” or “created” etc.

Commented [AR6]: This shouldn’t be required for the process steps, but is more a policy issue to discuss as it relates to fees, SDC’s etc.

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F. Adopting LUBA’s (the Land Use Board of Appeals) simple definition of “standing” as a person who has appeared before the local land use board (PC) and offered testimony either orally or in writing, as the criteria for determining eligibility for filing an appeal for consideration by both PC and City Council process.

G. Refine publication and dissemination of and make available a linear timeline depicting the critical milestones of the LUP land use planning process. (Depicting various applications, PUB, conditional use, land division, etc.—Figure 1 attached was prepared by planning staff and is recommended starting point). (Corvallis model).

H. Review definitions used in the land use planning process for completeness and, at minimum, development and implementation of technically sound and legally valid definitions of “technical adequacy,” “deemed complete,” and “substantive or substantial change,” and where practicable integrates into CDC to expedite more information to decision makers prior to start of the 120 day clock.

I. Retain the currently existing definition and the use of De Novo that was reinstated by the current City Council.

7. ADDITIONAL ITEMS TO ADDRESS

Additional miscellaneous items were identified by the CCI to be addressed in the future to improve the land use planning review process. These elements should be addressed by either the CCI, staff, or Working Group, as appropriate. In no particular order, these additional items include:

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 representatives, or others.

3. 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.

4. Explore the option to modify (expand) the notification area for expedited land use applications.

5. Staff Reports from departments other than planning (e.g., public works) should be prepared in the staff review process.

6. Determine if an official sign-in form should replace (or supplement) the individual half-page forms currently used to document persons or entities participating in hearings and appeals by the PC or City Council. If used, an official form should have ample room for documenting pertinent information for the project record.
7. Policies and procedures should include periodic review of experiences and lessons learned during PC and City Council hearings. The goal of such reviews is to improve performance for the community and Applicant, and to identify changes to procedures or code that may be needed.

REFERENCES