

I. Introduction

During 2017, the CCI has conducted an intensive review of the land use process described in Chapter 99 of the Community Development Code (CDC). This document describes the results of that study and makes recommendations for improving citizen involvement as mandated by State Planning Goal 1.

A. Goals

Land Use almost always involves change. Resistance to change is a normal reaction. A primary goal of this study is to create a land use process based on cooperation, not on adversity. We believe that the changes to the process can yield improved citizen involvement, reduced uncertainty for developers, improved applications that require less staff effort, smoother hearings, and fewer LUBA appeals.

B. Method

We approached the effort by first reviewing the existing process in depth. This included sessions with the city attorney, the assistant city attorney, the director of public works and planners. This review occupied XX meetings and YY hours of review. We then took what we had learned and specified six problem areas. In each area we discussed the problem and identified solutions.

C. Organization

Possible solutions were grouped into three areas: Education, Administrative, and Code Changes. Educational changes included the production of pamphlets and web pages as well as ways to teach the 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).

D. 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 sent to a working group charged with examining and developing the proposed code that then goes to the Planning Commission and the City Council for review.

II. Problem Areas

Our review identified six problem areas. While there is inevitably some overlap, this may offer a way to break the study of the process into more manageable pieces. This section will focus on identifying the problems. Section 3 will address potential solutions.

A. Early Involvement

In our current system, neighbors first hear about the application during the Pre-App meeting. The meeting is paid for by the applicant and is intended to teach the applicant how to create an 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.

Our code requires one meeting with the NA prior to application complete. The applicant must submit a recording and minutes of the NA meeting. There are two problems identified:

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. The applicant may not receive adequate instruction on how to submit an application.

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

In addition we noted other problems. As the application evolves, there is a need to communicate changes to the Neighborhood Association. We see 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 all.

B. 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 the Comprehensive plan. In practice, however, the CDC can never be so complete that it guarantees that the vision will be realized. The essence of this problem is that the CDC regulates components while the Comprehensive plan describes the larger whole that emerges from the components.

It is possible for an application to be perfectly consistent with all 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 scale development while still within the 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 around it could easily become too complex to be useful.

The challenge is to find a way to cause a coherent whole (the neighborhood) to emerge from the disparate parts (the individual developments).

C. Availability, Timing and Scope of Staff reports

Staff reports are available 10 days before the PC hearing. They identify and evaluate compliance with germane parts of the CDC. In addition, they make a recommendation about whether the application should be approved or rejected. They may suggest conditions of approval. Since all testimony must be directed toward criteria in the CDC, anyone wishing to testify must either know the CDC well enough to identify the criteria, or they must rely on the staff report to identify the criteria. They then have only 10 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 Comprehensive plan, the Neighborhood plans or the Imagine West Linn vision document.

D. Complexity and Cost of Application

~~While the cost of processing an application is not a significant part of a large-scale project, the fees may be prohibitive for a small development~~ 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~~location, particularly the challenges associated with slope, drainage, natural areas, geotechnical features, and adequate public facilities.

F.E. Changes to Applications

Changes to an application have been shown to disrupt the land use process and adversely impact citizen ~~interests and~~involvement. It is important that an application is allowed to change or adjust during the ~~approval~~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 ~~outreach and involvement~~engagement because the final project may be substantially different in scope and impact from the project that was originally ~~presented to the community~~communicated and reviewed. Reconciling these two needs is the subject of the following section

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.

1. Changes before Application Complete

Once the pre-app conference has been held, it is assumed that the applicant has an initial ~~meeting with the~~neighborhood association (NA) 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 planning commission (PC) hearing. If the meeting is held too late, the applicant may

learn of ~~some required or~~ 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 [Community Development Code \(CDC\)](#), the West Linn Comprehensive Plan (CP), or the Neighborhood Plan (NP). 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. Changes after Application Complete

The application deemed complete milestone certifies that sufficient required information has been submitted, and it starts the 120 (or 100) day city 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 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 city 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](#) extensions, although the burden of demonstrating compliance with code lies with the applicant.

G.F. Appeals

The process used to appeal land use decisions is defined by several factors. Our 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 may be made to the application?

Defining the appeals process involves answering these questions in terms of the listed values.

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 invaded 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 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 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 (the person bringing the original application) may introduce new evidence during the appeal and those in opposition do not have time to refute it. It may be possible to couple the right to introduce new evidence to a requirement to extend the 120 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. Currently 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 results in the public not being aware of the extent of the modifications and thus being denied citizen involvement.

If we feel that 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 clock long enough for the change to be presented and understood.

III. Potential Solutions

The committee has discussed solutions to the above problems. We believe that it is useful to divide the solutions into three categories. 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 considered by a work group and follow the process described in Chapter 98 of the CDC.

A. 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 quick reference guide and web pages on goals, roles and responsibilities during the Pre-application 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-application guide, the CCI should create a guide to the land use process that describes roles of the city, the developer and concerned citizens. The guide provided by 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 can be inferred from the Comp plan. 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 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 supplemented.

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

All relevant land use documents (Comp plan, Neighborhood plan, CDC) should be available online with links from the application.

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

A ~~graphical time line~~ process flow diagram of the land use process like the one attached to this document should be maintained.

B. 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 Comprehensive Plan. The approach in this section is to offer services that are optional, but guide the 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 or both the neighborhood plan and the comprehensive plan. This non-binding commentary might be useful to the planning Commission in discussing potential conditions of approval and could bend applications toward equivalent solutions that are more consistent with our long term vision.

We would encourage a practice of completing all staff reviews (Planning, Engineering, etc) within two weeks of Application Complete.

Project Committee

If the NA wishes, an NA rep for the project could be appointed at the first NA meeting. This rep would be a liaison between the NA and the developer. Working together with the developer and the planner, changes to the application that occur between the first and second NA meetings could be 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 and avoid surprises. The project committee of the Developer, NA rep and Planner should work together between the first NA meeting and Application Review. We anticipate that the Planner would coordinate this group. Participation in this group would be optional. It is designed to assist the developer in working together with the NA to solve 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. 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 attack 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 Comp plan.

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 our long range vision. It may be possible to lower fees to encourage use of the board.

The cost of the pre-application conference, as well as other land use application fees should be reviewed to consider whether they are necessary 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.

C. Code Changes

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 the working group, should the City Council decide to proceed.

Application Review Complete

We suggest 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. It would be expected that all city reviews are completed, the NA's have been informed of the details of the final proposal, and the developer has committed to the final design.

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

We suggest that the CDC require two NA meetings. The first one should come as soon as possible after the Pre-app meeting. This should advise the NA about the proposed idea and be a source of concerns to guide the developer. At this meeting, an NA volunteer is appointed to work with the developer and to take the responsibility of keeping the NA informed as the application changes. This is a vital role in reducing changes late in the process.

The second NA meeting should be held between Application Complete and Application Review Complete. This should communicate the final project information and allow the NA to comment on any changes that might be proposed to solve problems that arise during the Application Review.

An example of this might be that a geotechnical report submitted at Application Complete 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 and they could begin working with the applicant to minimize disruption. Since the problem was identified during the application review, a second NA meeting would insure that the NA is informed and can help find a solution.

Limit Changes after Application Review Complete

Changes that occur after application complete are disruptive because they have not been vetted by the community before the hearing process. This limits the opportunity to solve problems. It is useful to divide changes after Application Review Complete in to three categories:

Minor changes are those that can be dealt with by Conditions of Approval. These changes are minor enough that they can be understood and resolved during the hearing.

Changes that cannot be resolved by 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, and then presenting the modified application at a continued hearing.

Changes that cannot be resolved in this manner should be resubmitted with a new application. We could consider criteria that would waive the one year delay currently specified. Code currently refers to “substantial change”. This should be more clearly defined.

Appeal Process

1. Examine the definition of standing and decide if we want to change it.
2. When the appellant (the person requesting the appeal) is the applicant (the person filing the initial application), 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 will be allowed to the application between the PC hearing and the CC appeal.

IV. Conclusions and Next Steps

A. 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.

B. Administrative

The 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 should be discussed. In addition, there may be alternatives that have not been considered that can reduce staff work and applicant cost.

C. 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 council feels that the problems identified are worth considering, this effort should be approved and the workgroup will develop proposed code to be reviewed by the planning commission and the 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.

V. Final Words

As we stated in the beginning, our overall goal is to create a land use process that guides participants toward cooperation and collaboration rather than confrontation. We believe this can be accomplished through early involvement, improved communication, and active emphasis on activities that protect and promote our collective vision of our city.