



PLANNING COMMISSION

Meeting Notes of September 5, 2018

Members present: Jim Farrell, Charles Mathews, Joel Metlen, Carrie Pellett, Bill Relyea and Gary Walvatne.
Members absent: Lamont King
Staff present: John Boyd, Planning Manager
Council liaison: Councilor Rich Sakelik

(00:00:18)

WORK SESSION - CALL TO ORDER

Chair Walvatne called the meeting to order in the Council Chambers at City Hall.

(00:00:26)

APPROVAL OF MEETING NOTES: MAY 16, 2018 (REVISED) AND JUNE 6, 2018

Chair Walvatne explained the reason for the revised meeting notes for May 16, 2018. Councilor Rich Sakelik noted he was in attendance at the May 16 meeting. Commissioner Relyea requested the May 16 meeting notes specify that his comment about habitat restoration was related to the Parks Master Plan.

Vice Chair Charles Mathews **moved** to approve the revised meeting notes of May 16, 2018, and the June 6, 2018, meeting notes, including the changes that were made.
Commissioner Bill Relyea **seconded** the motion.

Ayes: Commissioner Joel Metlen, Commissioner Carrie Pellett, Commissioner Jim Farrell, Vice Chair Charles Mathews, Commissioner Bill Relyea and Chair Gary Walvatne

Nays: None

Abstentions: None

The motion passed 6-0-0

(00:06:56)

PUBLIC COMMENT RELATED TO LAND USE ITEMS NOT ON THE AGENDA

None.

WORK SESSION:

(00:09:06)

A. GENERAL DISCUSSION OF THE OREGON LAND USE SYSTEM

Mr. Boyd explained his goal is to briefly touch on the history of planning, talk about the relationship between the Comprehensive Plan and the Community Development Code (CDC), and discuss the different application types and the application review process. He then walked the commissioners through his PowerPoint presentation (attached).

Commissioner Relyea expressed concern that plans sometimes change after all input is received. He would like to see a dialog before construction begins so everyone can have the opportunity to comment on the final plan.

Vice Chair Mathews questioned if the Planning Commission (PC) has the ability to require off-site and perimeter street plans.

Mr. Boyd reminded the commissioners that an application is subject to clear and objective standards in Chapter 85 (which also requires the Director of Public Works (PW) ensure they are

implemented correctly). He also clarified that PW standards are a part of the Municipal Code and not subject to the PC's review like the CDC.

Commissioner Farrell questioned the requirement of applicants going to the neighborhood associations (NA) with project information. With regards to the Parks Master Plan Update, he is concerned that the Parks Department did not go to each NA. Chair Walvatne clarified that the Parks Master Plan Update is a legislative process and the requirements are not the same. Mr. Boyd explained that Chapter 99.038 requires NA outreach in specific applications. Legislative actions are not included.

Commissioner Relyea doesn't believe there is always meaningful public engagement and it isn't addressed in the code.

Vice Chair Mathews questioned the applicant's NA presentation and what happens if the PC believes there is material misrepresentation. Mr. Boyd explained the application process is fluid: when an application comes in it reflects the general project design and includes the NA meeting information. As different departments review the application for completeness, changes can occur to meet the requirements of each department. It is after the application is deemed complete that the applicant can't make changes without going back to the NA.

Commissioner Metlen noted that the flow chart presented did not represent the PW portion of the process which has caused confusion in the past. More insight into that part of the process would help the PC better understand where PW fits in and how they make their decisions, resulting in fewer surprises and allowing the PC to ask more informed questions. Commissioner Relyea agreed it should be clear where the PW Director is engaged and have that portion of the work completed and included in the report that comes before the PC. He believes this will be important for future land use applications because of the transportation issues involved.

Chair Walvatne shared that the Committee for Citizen Involvement (CCI) has been discussing the land use process for about 18 months. A report resulting from that work will be presented to City Council soon. He explained that the report documents the question of how PW decisions are made without providing background information leaving the PC unable to adequately address PW issues in an application. Council may consider forming a working group to make changes to chapter 99 based on the report. One recommendation is to have PW submit a report to the PC much like the staff report from planning.

Commissioner Relyea questioned when the last updates to the code were made. Mr. Boyd explained that updates are noted at the end of each chapter.

Vice Chair Mathews asked if a second NA meeting would be helpful in the application process. Chair Walvatne shared that is another item in the CCI report going to Council. If there are significant changes made to an application to achieve completeness, the recommendation is to have a second NA meeting prior to the official completeness determination. After the application is deemed complete, the 120-day clock starts and scheduling would be too tight.

Commissioner Pellett shared that during the NA meeting for the Rosemont project, at no time did the developer or NA president say the residents could have a voice in the project. Her concern is that not all NA presidents or participants understand they can have a roll in the process. Mr. Boyd recommended stating the purpose of the applicant presentation (Ch. 99.038) at the opening of NA meetings. Chair Walvatne also pointed out that the CCI discussed new educational materials for the community. Councilor Sakelik suggested a training session for NA representatives.

Mr. Boyd reminded the commissioners they have a joint work session with City Council on October 15. Chair Walvatne suggested the commissioners review of the CCI report prior to the joint session would add to the discussion.

(01:30:50)

B. A DISCUSSION OF ACHIEVEMENTS AND POTENTIAL GOALS, AND ADDITIONAL MISCELLANEOUS CDC CHANGES

Mr. Boyd explained this was to be a follow up discussion from several months ago, but may need to be reviewed at a later date. The first meeting in October is the stormwater discussion and the second meeting in October has two hearings for subdivisions.

Commissioner Relyea inquired if the Parks Master Plan Update would be coming back to the PC for further review to ensure their comments were incorporated into the plan. The tentative Council schedule calls for a work session on October 1 (post PC/PRAB meeting), and a meeting on October 8. Councilor Sakelik related council direction was for Parks and Rec to review the plan with the PC, then bring a redlined version back for a work session.

Vice Chair Mathews expressed concern about the process. That after the hearing on May 16, 2018, the PC voted unanimously that the plan recognize the importance to the city of the local community centers as exemplified by the Sunset, Robinwood and Bolton community centers, which would include budgetary considerations. However, the PC recommendations were not forwarded to Council as a redlined version which would show a positive reflection on the centers rather than a negative reflection on the Plan. Moving forward, Vice Chair Mathews suggests for any legislative hearing the PC holds, if there are conditions of approval, that at the next meeting the applicant must bring back a redline version for PC approval.

After considerable discussion and attempted motions on how to move forward with legislative hearings to include bringing back a redline version of changes, the PC agreed to add verbiage to the legislative scripts. Mr. Boyd will make the script changes and provide a redline version at the next PC meeting.

Commissioner Bill Relyea **moved** to authorize the Planning Commission to prepare a letter to City Council regarding the Parks Master Plan Update.

Vice Chair Charles Mathews **seconded** the motion.

Ayes: Commissioner Joel Metlen, Commissioner Carrie Pellett, Commissioner Jim Farrell, Vice Chair Charles Mathews, Commissioner Bill Relyea and Chair Gary Walvatne

Nays: None

Abstentions: None

The motion passed

6-0-0

(02:09:53)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Commissioner Farrell brought up Highway 43 and asked for an update from Public Works. The commissioners have questions and concerns about the project and would like to know what is happening and where we are in the process.

Commissioner Pellett shared information about Milwaukie's climate action plan and how the state limits cities from increasing their construction standards. As a work around, Milwaukie is offering incentives to builders to voluntarily increase energy efficiency standards in construction.

(02:34:33)


ITEMS OF INTEREST FROM STAFF

Mr. Boyd reminded the commissioners of their next two meetings. October 3 is the stormwater discussion and on October 17 there will be two land use actions.

(02:35:03)

ADJOURNMENT

There being no further business, Chair Walvatne adjourned the meeting.




Oregon Land Use System An Overview

Planning Commission Workshop September 5, 2018

John Boyd AICP CFM, Planning Manager



Workshop Agenda



- ♣ 6:00 – Background Information
- ♣ 6:10 – 6:45 – The Oregon Planning System
 - History and Context for the Oregon Planning Process
 - Long Range Planning
 - Current Planning
- ♣ 6:45 – 8:00 – Planning in West Linn Overview....
- ♣ Questions for future meetings (if needed)

Image: iStockphoto.com

In the early days

1919- Comprehensive planning provisions first appear in Oregon Statutes (ORS)


1928 - The Standard City Planning Enabling Act was published. (This Act was published under the administration of Herbert Hoover who was then Secretary of Commerce.)

The involvement of local governments in Land Use Planning was also promoted by the Federal Housing Acts of 1949 and 1954

1947 Planning and Zoning enabling laws adopted by legislature

Image: iStockphoto.com

The 1970's was a time for change...



1969 Legislature created SB 10 requiring all cities and counties to have planning and zoning.


1973 Legislature created the LCDC and Statewide planning program.

1973- Fasano v Washington County. Supreme Court decision. (Landmark decision outlining Zone Change Procedures)

1973 Senate Bill 100. The Legislature created the Land Conservation and Development Commission (LCDC)


1974 The newly created LCDC adopted the first 14 Statewide Planning Goals.

The State of Oregon began implementing the Uniform Building Code and in July 1974 all cities and counties were required to regulate new construction.



Equal Housing Information


The Evolution of the Oregon Planning System




SB 100 established LCDC. LCDC created the Statewide planning goals

19 goals:

- Two for process,
- Three for resources,
- Two for hazards,
- Seven for urban areas,
- one for the Willamette and
- Four for the coast



So how did we get our Plan – enter the late 70's to the 80's



Oregon's 242 cities and 36 counties all have adopted comprehensive plans, and the state's Land Conservation and Development Commission (LCDC) has reviewed and approved ("acknowledged") them all – most in the 1980s.

The comprehensive plan generally includes the following three elements:

An inventory of existing land uses, housing stock, developable lands, and public facilities such as water, sewer, and storm drainage. natural resources, natural hazards, recreational facilities, transportation facilities, and economics.

Goal and policy statements, which indicate, in a general way, the objectives of the jurisdiction over a specific planning period — normally 20 years from the date of adoption of the plan —and provide guidance on how to achieve those objectives

A comprehensive plan map, which depicts, in a site-specific nature (i.e., to individual property lines), the desired arrangement of uses for the entire jurisdiction.

Equal Housing Information

City of West Linn – Acknowledged May 31, 1984

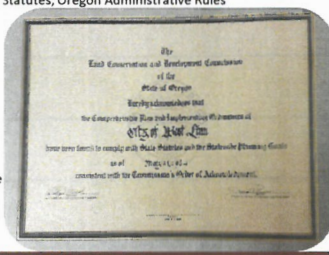
This plaque is presented by the Land Conservation and Development Commission, to the City of West Linn acknowledging the Plan and plan map are consistent with the Statewide Planning Goals, the Oregon Revised Statutes, Oregon Administrative Rules

The Plan consists of the Map

An Inventory

Goal and policy statements, which indicate, in a general way, the objectives of the jurisdiction over a specific planning period

The Community Development Code implements the plan



Local Source Information

LOCAL LAND USE REGULATORY SYSTEM – THE PLAN

Community Development Code: The typical local development code contains more specific regulations designed to implement the broad Comprehensive Plan policies. Such codes are the "nuts and bolts" document: They set forth the criteria or standards that each application must meet in order to be approved. These codes are required by law to comply with the Comprehensive Plan. (ORS 197.175.)

The components of a typical code include:

Zoning – Uses, Uses Permitted with Standards, Conditional Uses

Permitting Procedures (The Types of Review)

Development Standards

Local Source Information

LOCAL LAND USE REGULATORY SYSTEM – THE CODE

The Comprehensive Plan is a local government's chief land use document. Comprehensive Plans establish the policy framework for the local land use program.

Comprehensive Plan policies are typically not directly applicable to individual applications, but this can vary from jurisdiction to jurisdiction.

LUBA has held, however, that a local government may only apply its Comprehensive Plan as a regulatory document if such intent is clearly expressed by the language of the Plan.

Local Source Information

The Community Development Code

- The Plan is implemented using combined regulations contained in the Community Development Code (CDC). The major areas combined code address:
 - zoning regulations,
 - subdivision criteria
- Specialty sections of the code are needed to address:
 - sign placement,
 - historic development and
 - design review code.
- Hazard and open space in the code are addressed in the
 - floodplain, Willamette Greenway
 - or Water Resource Areas.
- The code which may be administered by the planning department or planning commission as a part of the land use process.

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The Development Process

Before the application is complete – the part of process where a project is reviewed for completeness and the applicant has the right to proceed. Completeness check can take up to 180 days.

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    graph LR
      A[Prep-application conference] --> B[Neighborhood Assoc. meeting]
      B --> C[Application submitted & completeness check]
    
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Review Process– Once the application is deemed complete, the 120 day clock begins to complete the land use decision process

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    graph LR
      D[Notice of hearing and preparation of the Staff Report] --> E[Hearing and tentative decision (approval or denial)]
      E --> F[Final Decision and notice of decision. End of 120 days]
    
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Quasi-judicial Development Process:

Pre-application

- Initial contact with City Staff is a call or visit to city hall
- Pre-Application Conference – a formal discussion of the process
- Neighborhood Meeting – explain the project to the NA and get feedback on the design issues.



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Types of Current Planning Actions



- **Ministerial Land Use Decision (No Notice or Hearing)**
 - Building Permit, Sign Permit, Lot Line Adjustment, or LUC's (Type I- Ministerial Review)
- **Administrative Land Use**
 - (Type II Notice & option to appeal) (Type III Notice and Hearing)
 - Design Review (Type II – Administrative review; Type III – QJ Hearing)
 - Conditional Use (Type III – QJ hearing)
 - Variance Type 1 Variance (Type II – Administrative review)
 - Type 2 Variance (Type III – QJ Hearing)
 - Zone Change (Type IV – Legislative Hearing)
- **Land Divisions**
 - Property Line Adjustment (Type II Administrative review)
 - Partitioning (2 or 3 Parcels in calendar year) (Type II Administrative review)
 - Subdivision (4 or more lots in calendar year) (Type III QJ Hearing)

Small graphic of a tree with roots and branches.

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Four Kinds of Applications:



1. **Ministerial (Type I)** decisions are made by City Staff there is no public notice or a public hearing. This procedure is frequently used because there are clear and objective approval criteria and applying City standards or criteria requires little or no discretion.

Examples: building permit, sign permit, land use compatibility certification (LUC's) or Lot Line Adjustment

2. **Administrative (Type II)** decisions are made by the Planning Director with public notice and an opportunity for comment. Generally, an administrative process has objective standards with some level of discretion. An appeal of an Administrative decision provides an opportunity for a hearing before the Planning Commission.

Examples: partition, flood plain development permit

Small graphic of a tree with roots and branches.

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Four Kinds of Applications:



3. **Quasi-Judicial (Type III)** decisions are reviewed by the Planning Commission or Historic Review Board with right of appeal to City Council. Quasi-Judicial decisions generally may have discretionary approval criteria.

Examples: Design Review, PUD, Conditional Use, Variance

4. **Legislative (Type IV)** decisions involve changes to the Plan or Code text and/or Plan or zone map. Legislative matters are reviewed initially by the Planning Commission who transmits their recommendation to City Council. If the Council approves, action on the final decisions is via a required Ordinance.

Examples: Code text amendments, Comprehensive Plan text amendments, Comprehensive Plan Map amendment

Small graphic of a tree with roots and branches.

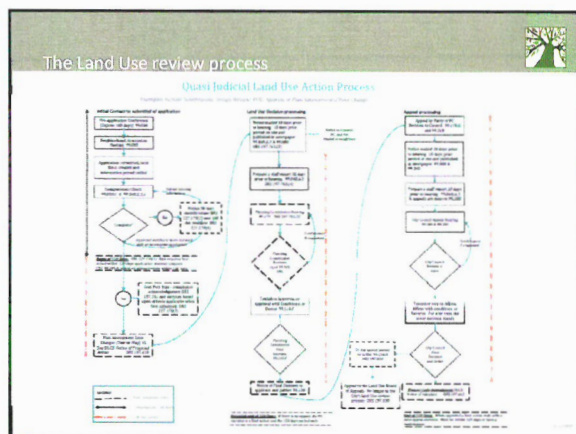
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ADMINISTRATIVE VERSUS QUASI JUDICIAL DECISION

Administrative: an administrative decision on an application without a hearing as long as: there is notice of decision provided to neighbors and an opportunity to appeal decision to a de novo hearing.

What types of actions are these?
An administrative decision is typically a review that have a lower level of discretion, for uses permitted outright or permitted with standards.
Those may includes partitions and Class I Design Reviews.

Quasi-Judicial a QJ decision is reviewed by the Planning Commission (or HRB) as part of a Hearing subject to process in (ORS 197.763). The Planning Commission handles projects with a greater level of discretion for Conditional use permits, subdivisions, Class II Design Reviews or PUD's.
These process in ORS 197.763 include: Notice, Staff Report, Evidence, Rebuttal, Raise it or Waive It, and the final decision with rights to appeal.



Quasi-judicial Development: Application & Notice

An Application is filed

- Review for completeness.
If deemed incomplete applicant is given 180 days to meet deficiencies.
Before the application is accepted as complete the application is reviewed to assure there has not been a material misrepresentation (CDC 99.038).
- Application deemed complete** - 120-day clock generally starts when deemed complete.
- Notice to affected agencies** (ODOT, TVF&R, WES, DSL, WLWV etc.)
- Prepare Staff Report**
- Notice Process:**
 - Notice of filing posted on website
 - Staff report posted and NA Presidents notified
 - Public hearing notice provided to property owners within 500 feet and to NA Presidents, posted on property, and in newspaper.

Quasi-judicial Development Process: Hearing



Hearing and Decision

- Planning Commission hearing
 - Goalpost rule-criteria applicable at time application filed
 - Applicant has burden of proof to demonstrate compliance
 - Process of hearing is ORS 197.763 & 227.185
 - Raise it or waive it
 - To be considered on appeal, a party must raise issue with "sufficient specificity to enable local government to respond"
- Planning Commission decision
 - Decision to approve or deny must be supported by substantial evidence
 - Written Decision in Final Findings and Order.

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Quasi-judicial Development Process: Appeal



Appeal

- Lower Decision is completed
 - Notice of Decisions to all who participated
 - Notices of Decision to Neighborhood Association President(s)
 - Right of appeal by parties with standing
 - Appeal is filed
- Council Hearing
 - Council will review the record of the decision and the appeal request.
 - Process of hearing is ORS 197.763 & 227.185
 - Issues on appeal are addressed by the applicant.
- Council decision
 - Decision to uphold or overturn the lower decision must be supported by substantial evidence
 - Written Decision in Final Findings and Order.

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THE FINAL FINDINGS AND ORDER




The Final Decision is called many things; our community refers to it as the "Findings Decision and Order"

- This document set forth the **relevant criteria**, state the evidence on which the decision maker relied, and explain the justification for the decision based on the criteria and the facts.
- The Comprehensive Plan establish the policy framework for the local land use program. The Plan policies **are typically not directly applicable** to individual applications, **unless the regulatory intent is clearly expressed** by language in the plan.
- Typically, the hearing body will make a **preliminary decision** at the conclusion of the public hearing, **followed up by adoption of a written decision** at a later meeting.
- It is important to remember that the **decision does not become final** until the written order is adopted; during the interim between preliminary decision and adoption of the final order, you should continue to **avoid ex parte contacts**.

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Property Rights Cases NOLLAN v. CALIFORNIA COASTAL COMMISSION



Nollan v. California Coastal Commission, 483 U.S. 825 (1987)


created the “essential nexus” takings test for conditioning development approvals on dedications and exactions. Requiring the conveyance to the public of an easement for lateral beach access as a condition for a permit to replace a one-story beach house with a two-story residence and a two-car garage is a taking without just compensation because it is unrelated to the public interest in protecting the public access to the beach.

<http://laws.findlaw.com/us/483/825.html>

NOLLAN - '87 U.S. Supreme Court, California Coastal Commission, - - - Conditions (exactions) must have a degree of connection to the impact of a development.

Enter Your Information

Property Rights Cases: LUCAS v. SOUTH CAROLINA COASTAL COUNCIL




***Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992)**

Defined categorical regulatory takings and an exception for regulations rooted in background principles of law. Compensation to be paid to landowners when regulations deprive them of all economically beneficial land use unless uses are disallowed by title or by state law background principles of private and public nuisances. <http://laws.findlaw.com/us/505/1003.html>

* - - - Lucas condition of issuance of a building permit to remodel an existing home was dedication of a beach access easement. - - - Conditions (exactions) must have a degree of connection (*essential nexus*) to the impact of a development.

Enter Your Information

Property Rights Cases Dolan v. City of Tigard



***Dolan v. City of Tigard, 512 U.S. 374 (1994)**

Extended *Nollan*'s “essential nexus” test to require “rough proportionality” between development impact and conditions. Permit condition requiring land dedication for pedestrian/bike path is unconstitutional taking when city has not made individualized showing that dedication would “roughly proportionately” lessen traffic generated by proposed new development.

<http://laws.findlaw.com/us/512/374.html>

- '94 U.S. Supreme Court, Dolan v. City of Tigard required dedication of open space greenway along creek and improvement of bikeway as part of building permit to expand a plumbing and electrical store and parking lot.

Enter Your Information

A summary

- The Land Use System is long standing well tested.
- The Plan is the guiding document. It is forward looking and explains where and when objectives are met.
- The Implementing Ordinance (CDC) is an important tool in the day-to-day planning effort. The nuts and bolts.
- The City has worked diligently to put their citizens in the planning process. And it works.

Thanks for Listening

Any questions?

Quasi Judicial Land Use Action Process

Examples include Subdivisions, Design Review, PUD, Appeals or Plan Amendments/Zone Change

