

## Memorandum

Date: November 8, 2023

To: West Linn Planning Commission

From: Darren Wyss, Planning Manager

Subject: Community Development Code Process Concepts (11/15/23 Agenda Item 4)

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At its November 15, 2023 meeting, the Planning Commission (PC) will receive a briefing on Community Development Code (CDC) process concepts that were presented to City Council (Council) in October 2023. Council directed staff to explore the topics further and prepare additional materials to discuss at a future Council/PC joint work session. At the joint work session, tentatively scheduled for early 2024, a decision will be made if any, or all, of the concepts should be prioritized on the Planning Docket.

The goals of the briefing are:

1. Get PC members familiar with the concepts
2. Provide PC the opportunity to ask clarifying questions
3. Allow the PC to request additional information for the joint work session materials

The attached concepts stem from development review-related hearings or processes that Council and/or the PC have been involved in recently. Based on Council discussion during these items, there is room for improvement in our Community Development Code to make our process more effective in serving community needs. The processes currently have code requirements that are ambiguous, could lead to legal challenges, or are not aligned with standard planning processes utilized by most cities in the Metro region.

As a result, staff worked with the City Attorney to summarize five CDC process concepts for an initial Council discussion. At a minimum, several of the concepts would lead to clear and objective standards that an applicant, staff, and the community can readily understand and interpret. This could help alleviate potential appeals and the associated costs to the community, applicant, and appellant. Additional benefits could be realized through more efficient and effective decision-making.

If you have questions about the meeting or materials, please feel free to email or call me at [dwyss@westlinnoregon.gov](mailto:dwyss@westlinnoregon.gov) or 503-742-6064. As always, please submit questions before the meeting to increase the efficiency and effectiveness of the discussion as it allows staff to prepare materials and distribute them for your consideration. Thanks, and hope to see everyone at the meeting.

## Community Development Code Process Concepts

City Council Work Session, October 16, 2023

### 1. Appeal Process for Development Projects

[Currently CDC 99.250](#) (Application for Appeal or Review) does not require an appellant to identify the code criteria they feel is proposed to have not been met or have been misapplied. Prior to the adoption of [Ordinance 1663](#), the CDC required an appellant to provide this information. For reference, the last five appeals have been based on:

- AP-21-01 “require a two-way street on east side of property”
- AP-21-02 “the proposed plan failed to meet the goals of WL Comp Plan”, “not opposed to school, but prefer a different configuration”, “fear increased traffic would lock in the exit from cul-de-sac”
- AP-22-01 “I do not believe the denial has legal or factual merit”, “violation of due process provisions of US Constitution”, “code has been interpreted erroneously by the planning director”
- AP-23-01 “inappropriate/incorrect interpretation/application of WRA regulations/code”, “establish precedent that would further threaten the safety/welfare citizens”, “the basis for concerns are found in CDC Chapters 32, 34, 99 and the City Charter”.
- AP-23-02 “We appeal the decision because certain criteria for approval of the permits were not met”.

Not requiring an appellant to identify the grounds for appeal is potentially unfair to some parties as the applicant, staff, public, and City Council cannot reasonably prepare fully and efficiently for the appeal hearing without the benefit of knowing the appellant’s basic argument. The present system essentially sets the City up for an entirely new round of decision-making by a second review authority.

Amending the code to require the appellant to identify the code criteria they believe has been violated and provide at least initial argument as to why the decision is not consistent with the City’s code - that is identify what was code is not met/misapplied - should be considered. That explanation should be required to be submitted with the appeal application so the appeal hearing can be conducted fairly.

The hearing can remain de novo, except that the hearing will be focused on addressing only the limited basis of the appeal as stated by the appellant so any criteria that was not submitted with the appeal application would be off limits. If this change to appeal process is pursued for review, language will need to be developed for consideration saying a decision will only be reviewed on the basis of the code criteria cited by the appellant as not being met or has been misapplied. The hearing will be conducted de novo rather than on the record on the criteria so identified as not being met or has been misapplied.

Some language that could be added to the code might be:

“An appeal shall include a detailed statement describing the basis of the appeal” or  
“An appeal application shall contain the following information:

- a) Date and file number of the decision being appealed.
- b) Documentation that the person filing the appeal application has standing to appeal.
- c) Detailed statement describing the basis of the appeal that is:  
A statement that identifies which approval criterion or development standard is believed by the appellant to have been overlooked or incorrectly interpreted or applied and/or which aspect of the proposal is believed to have been overlooked or incorrectly evaluated by the approval authority.
- d) If the appeal application and applicable fee are not submitted within the established appeal period, or if the appeal application does not contain the required statement with details in item c above, the application shall not be accepted by the City.

2. Appeal Authority

Currently [CDC 99.060.C](#) and [CDC 99.240](#) give authority to the City Council to hold a public hearing and decide on an appeal of a Planning Director, Planning Commission, or Historic Review Board decision. Many jurisdictions have adopted procedures that send an appeal of a non-discretionary decision (commonly known as Type I or Type II decisions) to a Hearings Officer. The City could determine whether to have either or both appeals of Type I and Type II decisions processed using a Hearings Officer. In West Linn’s case, this could be limited to all decisions made by the Planning Director. Decisions from the HRB or PC would continue to be appealed to City Council.

3. Home Occupation Permits (HOP)

- a. Ambiguous Terms. [CDC Chapter 37](#) contains many ambiguous approval criteria that need to be cleaned up to be clear and objective as an HOP Permit should be a Type I Decision (non-discretionary).
- b. Vehicle Trips for Schools. Based on an issue that arose in 2022, the Council also needs to weigh in on the policy question about the code criteria that exempts “home occupations with pupils or students” from the cap on vehicle trips. This has the potential for significant impacts on a neighborhood as there are trends in West Linn and other cities where more types of “schools” are being added to the list of educational or recreational pursuits being offered by instructors in their homes.
- c. Application Process. Another consideration is to return to the traditional application process and review of Type I and Type II decision-making for an HOP. In many cities a home occupation is processed as a land use application that may include notice to the surrounding properties and a staff analysis of the proposed use against established criteria in the CDC. The City moved away from this process several years ago, possibly to reduce the number of land use applications processed by staff. However, the change has resulted in unanticipated consequences as the present system does not provide an opportunity for staff to hold a discussion with an applicant to explain the meaning of code restrictions so the applicant can properly determine whether their proposed use can be allowed as a home occupation, and if approved, whether they can conform to the limits.

The code has certain limitations which an applicant should fully understand to avoid independently concluding that they can meet all code criteria. Without staff input, an applicant could err and violate city standards and community expectations. Without the benefit of staff input, an applicant could interpret the code incorrectly and invest in a

venture that is not approvable under the CDC. Presently, approvals are done through the business license software, which doesn't leave a very good trail and record of what information the applicant reviewed and understood as they accepted the terms associated with being granted a HOP permit. Requiring submittal of an application with more details, which could be kept in perpetuity with other land use records, would be beneficial for any enforcement needs in the future.

4. Expedited Land Divisions (ORS 197.360 to 380)

[ORS 197.365\(4\)\(b\)\(A\)](#) states the local government shall not hold a hearing on an expedited land division application. Currently, [CDC 99.060.E](#) requires an expedited land division to be processed by the Planning Commission without a public hearing. While it may come down to semantics, if a meeting of the Planning Commission is held with seven members of the community deliberating to a decision, even if no oral testimony is taken, such a meeting seems to qualify as a hearing. It is the nature of a Planning Commission to want to know what the approval criteria are that apply to an application, how the staff interprets an application meets or does not meet the criteria, what the public has to say about an application, and what role the Commission has in interpreting the code to apply it to the facts of an application. An expedited land division under Oregon law does not allow for this process and could open the City up to legal challenges. The staff has been processing HB2001/SB458 expedited land divisions as a staff level decision based on legal guidance from the City Attorney's office. Amending the code to eliminate the Planning Commission from approval of expedited land division applications to be consistent with the practice should be considered to avoid potential legal challenges.

5. Extensions of Approval

[CDC 99.325](#) does not specify if an extension must be applied for and approved by the Planning Commission or Planning Director prior to expiration of the approval. Previous direction on an expiring application given by City Attorney Tim Ramis in 2020 was that if the extension application was deemed complete before the expiration date, the applicant had the right to a decision, even if the decision was rendered after the expiration. Mr. Ramis' interpretation of the code and his logic may have been influenced by the unclear language and the additional fact that Covid-19 was affecting development activities, contributing to the need for extensions. Since that time, three additional extension applications have been processed through the Planning Commission where the applications were filed late in the three-year period when development was to have taken place.

Another issue is the circular language in [99.325\(A\)](#) that allows an extension of an extension. Most jurisdictions clearly state only one extension can be granted for an application. The City could benefit by having updated code language so applicants and the community have a clear understanding of the extension process and the number of extensions that can be granted.

Language to be considered could be as simple as:

"An extension may be granted by the original decision-making body for one, but not more than one, additional two-year period to complete the project from the effective date of approval pertaining to ..... upon finding that:

1. ....

2. ....
3. ....

“In order for an extension to be granted, an application for an extension under CDC 99.325 must be filed and approved by the original decision-making body prior to the established expiration date of the effective date of the original decision.”