



CITY OF
**West
Linn**

City of West Linn

Historic Review Board Legal Training

March 11, 2026



🌱 Tonight's agenda

- About me
- Goals
- Public meetings
- Advisory vs. quasi-judicial decisions
- HRB and staff roles
- Ex parte/bias/conflicts
- Comprehensive plan and development code
- Evidence/findings and decisions
- Recap and questions





🌿 About me:

- About 20 years of experience working with appointed community review board and elected bodies
- Experience having cases appealed to City Councils and to LUBA
- Annual legal trainings
- We have access to legal support and resources such as Oregon Government Ethics Commission





What to expect
tonight:

- You won't need to be an expert
- You will be able to help recognizing issues [before they arise]
- You will be empowered to ask staff for help

Expert?





🍃 Board Member Authority

- Remember You Can Act Only As A Body...
- The Municipal Code does not grant power to individual Board Members.
- Board Members are expected to abide by Board decisions, whether or not they voted on the prevailing side.
- Personal opinions and comments should be expressed only if the member makes clear that they are acting in an individual capacity and not representing the City's position.





Public Meetings

- Under ORS 192.660 *et seq.*, elected and appointed officials must meet in public to make or deliberate towards decisions.
- The purpose is to encourage transparency in government.
- State law addresses public meetings in two ways:
 - *All **meetings** of a public body must be in public*
 - *All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except [Executive Sessions]. 192.630(1)*



Public Meetings

- Generally speaking, under state law, the public has a right to attend and observe but not participate in public meetings (quasi-judicial meetings are an exception).
- BOARD may allow limited public participation, i.e., public comment period.
- Generally, can establish time limits for public comment, but such standards need to be applied equally to all participants.
- May not remove a member of the public from a meeting unless you can clearly demonstrate the individual is disrupting the meeting in a manner that precludes the Board from conducting business.



🍃 No “Private” Meetings

- If more than a majority of the Board Members meets outside an official public meeting and you are making or deliberating towards a decision, then you have violated the public meeting laws.
- A quorum of Board Members may also meet for a social gathering or for the purposes of training.
 - *Scenario: Assume five of the seven members of the Commission are all at the same school play and start discussing the merits of whether to approve a conditional use permit for the school. Have those members “met” in private for the purpose of deciding on or deliberating toward a decision?*



Serial Meetings

- Serial meetings occur when a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action takes place between a quorum of a governing body.
- This is true even though at no given time does a quorum of the governing body communicate contemporaneously about the topic in question.
 - *Scenario: A Board Member forwards an email discussion they had with another Board Member regarding a matter that is pending before the Board to a third Board Member. The third Board Member then forwards the email chain to a fourth, who then forwards it to a fifth. Because the email messages, in the aggregate, include a quorum of the Board (5 of 7), and the purpose of the communications was to deliberate towards a decision, the email exchanges in the aggregate would likely constitute a serial meeting.*



🌿 Recap/Best practices

- Board Members should refrain from using the “reply all” function on emails.
- Board Members should refrain from “serial communications” via e-mail, telephone, face-to-face or even social media postings, such as Facebook.
- Board Members should not use staff or other individuals as intermediaries.
 - *Board Members can and should ask questions of staff that limits the communication between the staff and the Board Member asking the question.*



Historic Review Board Member roles

- Two types of roles in the Municipal Code: “Advisory” and “Quasi-Judicial” decision-maker?
 - “Advisory”: advises the City Council on the preservation and use of historic sites, structures, and districts within the City.
 - “Quasi-judicial”: sit as a judge; consider a request by an applicant by applying evidence to pre-existing criteria applicable to decision (state law, city code); typically affects only one or a small group of properties; final decision including appeal to City Council must reach a decision (typically within 120 days).



🍃 Advisory role guidelines

- Similar to a legislative hearing, which is conducted as a public meeting with fewer procedural requirements.
- Does not require explanation of process and criteria; they are available in the staff report.
- Disclosures not required but encouraged (ex parte communications; bias and conflicts of interest).
- Note required to accept public testimony but highly encouraged.
- It is a best practice to identify the basis for deliberations and vote, but not a strict as requirements for quasi-judicial decision making.
- Written decision on recommendation is not required.



🍃 Quasi-judicial role guidelines

- Quasi-Judicial hearings require special procedures to protect due process rights of those involved.
- Must explain process and criteria (script) including disclosures (ex parte communications; bias and conflicts of interest).
- Must hold public hearing to take evidence. At close of hearing, must deliberate based solely on record and vote.
 - Applicant and all parties have the right to request for a continuance at the first evidentiary hearing.
 - After the first hearing, the Board may grant a continuance subject to adequate time in the 120-day deadline.
- Must have a final written decision with specific findings related to applicable criteria.



🍃 Ex Parte Communications in Quasi-Judicial Hearings:

- Any communication (written, oral or electronic)
 - Includes anything not in the record such as research or visiting the property or reading a Facebook post about the application
- Made to a decision-maker
- Concerning the subject matter of the quasi-judicial hearing; and
- Occurs while the matter is pending (after a formal application is filed and before the final decision is made)
- Resolved simply by disclosure of the specific nature of the ex parte communication
 - This gives all parties access to the information and an opportunity to respond



🍃 Bias Issues in Quasi-Judicial Hearings:

- Bias occurs when a decision-maker does not provide the parties with a fair hearing due to prejudice or prejudgment (this can be in favor or against).
 - Personal bias.
 - Personal prejudice.
 - Interest in the outcome (different than a conflict of interest).
- Established through actual evidence such explicit statements, pledges, commitments.
- Circumstantial evidence not enough.
- Resolved most typically by the decision-maker recusing themselves from the hearing, stepping down from the dais.



🍃 Conflicts of Interest in Quasi-Judicial Hearings:

- What is a conflict of interest?
 - A conflict of interest arises when a decision or recommendation you are making **would or could** result in a “private pecuniary benefit or detriment” to you, your relatives, or a businesses with which either you or your relatives are associated. Conflicts of interest come in two forms – actual conflicts and potential conflicts.
- What is the difference between an actual and potential conflict of interest?
 - An actual conflict of interest arises when any decision or act by you **would** result in a “private pecuniary benefit or detriment” to you, your relatives or an associated business; while a potential conflict arises when a decision or act by you **could** result in such an outcome.
- Actual conflict resolved most easily through recusal; may be rebut potential conflict



🌿 Advice from the Ethics Commission:

- The Oregon Government Ethics Commission (OGEC) is an independent state agency that administers and enforces three areas of law, Oregon Government Ethics Law, Lobby Law, and Public Meetings Law. One of the core functions of OGEC is to provide guidance. Advice given by the Commission or OGEC staff is based on the information and specific facts provided to OGEC.
- Types of advice given
 - Staff advice
 - Informational letter of advice
 - Staff advisory opinion
 - Commission advisory opinion
- City staff can help to facilitate



🌿 Board Member role:

- General understanding of land use planning: Know about the statewide land use program and local land use history. Be aware of interrelationships of planning to community goals, priorities and budget constraints.
- Reflect the values of the community: As a volunteer who obviously is committed to your community, you can see or sense what is needed. Use your unique position (separate from the elected “political” process and from the government payroll) to articulate local values.
- Educate the public on land use: Act in ways that increase understanding and respect for the responsiveness of government.



🍃 Board Member role cont'd:

- Understand opportunities and limits of HRB authority: Recognize there are limits to what you can do. Be clear about when your role is advisory on historic resources and when it is that of the final decision maker on design decisions.
- Interpret and apply zoning ordinance provisions. Apply facts to criteria: Your planning staff will assist you.

Historic Review Board

Legal Training



Staff Role	Effect on Hearing Body
Explains land use	Staff's explanation guides the tone and content of testimony to the hearing body
Deems applications complete or incomplete	Staff's ensuring applications are complete saves time and confusion at hearing
Prepares staff reports	Staff provides identification of issues and criteria that assists hearing body with decisions
Handles public notice and other administration	Avoids legal challenges to hearing body's decisions
Stays current on regulations, court cases, rulings, etc.	Prevents hearing body from making errors



🍃 Comprehensive Plan and Development Code:

- Comprehensive plans identify each community's type, location, and intensity of future development and, generally, include policy guidance. Comprehensive plans are implemented through zoning maps and land use regulations in the development code.
- The purpose of the development code is to carry out the policies and guidance contained in the comprehensive plan. Examples:
 - **HISTORIC AREAS RECOMMENDED ACTION MEASURE 1.** Maintain the Willamette Historic District as delineated in the Community Development Code, and establish development standards[.]
 - **58.030 APPLICABILITY (A).** The provisions of this chapter shall apply to all new commercial construction, alterations, and remodels on Willamette Falls Drive between 10th and 15th Streets. Properties that are historic resources shall comply with the provisions of Chapter 25 CDC, as applicable.



🍃 Criteria:

- Application of pre-existing criteria (approval standard) to a set of facts.
- If the applicant demonstrates compliance with these criteria, the application must be approved even if the decision-maker disagrees with the criteria, or believes that additional, un-adopted criteria should be applied.
 - If a condition of approval can be imposed to satisfy a criterion, then it is met.
 - Conditions of approval must be related to an approval criteria and be reasonably certain to occur
- Regarding interpretation of criteria, if the wording is clear and unambiguous, it must be followed regardless of legislative intent.
- If two provisions conflict, the more specific provision controls.



Evidence:

- The applicant has the burden of proof. The applicant must introduce evidence that shows that all of the approval criteria are satisfied.
- The opponents, on the other hand, have the duty to show that the applicant’s facts are incorrect or that the applicant has not provided evidence for an applicable standard.
- A statute provides that LUBA may reverse or remand a local government decision when the local government has “made a decision not supported by substantial evidence in the record as whole.” The term “substantial evidence” does not go to the volume of evidence.
- “Substantial evidence” consists of evidence that a reasonable mind could accept as adequate to support the conclusion. Even if the evidence is such that reasonable persons may fairly differ as to whether it establishes a fact, that means there is substantial evidence to support the decision.



- ◆ A word about “clear and objective” criteria for residential uses in a historic area:
 - ORS 197.400(A)
 - (1) ... [A] local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing, on land within an urban growth boundary. sonable cost or delay.
 - **(2)** The provisions of subsection (1) of this section do not apply to:
 - **(b)** An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.



Final Decision options:

- Approval: The reviewing body found that the facts in evidence indicate the criteria are satisfied.
- Approval with conditions: The reviewing body has found that the facts in evidence do not demonstrate the criteria are fully satisfied, but, through the application of conditions, the criteria can be satisfied. This assumes the ordinance authorizes the application of conditions for approval and that the conditions are tied to a specific approval criterion and are reasonably assured to occur.
- Denial: The reviewing body has found that the facts in evidence have not demonstrated that one or more specific criteria (approval standards) are satisfied, **and** the application cannot be made to comply with the applicable criteria through application of conditions.



Recap:

- Flag potential issues and ask staff to help
- Make sure you're not discussing business outside of a meeting except to staff
- Know when you're in an advisory vs. quasi-judicial role
- Ex parte contacts can generally be cured by fully disclosing them on the record
- Bias and conflict of interest are generally cured by recusal from the hearing
- Board role: balance community values with impartiality
- Staff role: manage process and minimize legal risk
- Comp plan = policy/development code = implementation
- Decisions: remember and apply the “substantial evidence” standard



🍃 Questions?

🍃 Thank you, thank you!