STAYTON PLANNING COMMISSION
AGENDA

Monday, July 25, 2011
7:00 pm Stayton Community Center

1. **CALL TO ORDER** — **Chairperson Lewis**
2. **MEETING MINUTES**
   a. **June 27, 2011**
3. **GENEARL LAND USE TRAINING**
   a. **Oregon's Statewide Planning Program**
   b. **The Comprehensive Plan, Development Code and Land Divisions**
   c. **Types of Land Use Applications**
   d. **Types of Procedures (quasi-judicial vs. legislative)**
   e. **Conducting a Public Hearing**
   f. **Bias**
   g. **Conflict of Interest**
   h. ***Ex Parte* Contact**
   i. **Roles and Responsibilities (Tips on making good decisions.)**
4. **ADJOURN**

NEXT MEETING: AUGUST 29, 2011

Planning Commissioner Training
City of Stayton
July 25, 2011

THE OREGON STATEWIDE PLANNING PROGRAM

INTRODUCTION

Oregon is unique in how it addresses growth, development, urban infrastructure, agriculture, forestry, industry and natural resources. The Statewide Planning Goals apply to all Cities and Counties in Oregon. Under Oregon Revised Statute (ORS) Chapter 197.175 Cities and Counties are required to prepare, adopt and amend comprehensive plans in a manner consistent with the Statewide Planning Goals. The plans and their implementing regulations are required to be coordinated with the County and other nearby City plans and regulations and State programs.

Cities are required by the Statewide planning program (Statutes and Administrative Rules) to provide an inventory of land to accommodate a 20-year supply of residential, commercial and industrial growth. An important land use planning tool is the urban growth boundary (UGB) which is established by each City (in coordination with the County) to accommodate future growth. Cities are required to adopt plans for water, sewer, stormwater, and transportation systems to accommodate the projected 20-years of development.

To ensure the Plan, its implementing regulations and the 20-year land supply are up to date cities over 10,000 population must review their documents periodically and update them. The process is called Periodic Review. Cities under 10,000 population can enter the Periodic Review process, but are not required to do so.

In addition to the long range planning requirements noted above, an important element of the Statewide program is that ORS 227 (City Planning) requires development applications to be decided within 120-days of their submittal, including all local appeals. This is called the "120-day Rule." By national standards the 120-day period is extremely fast.

Oregon's program requires every City and County to adopt a comprehensive land use plan and implement the plan with zoning regulations. Oregon's program requires every City to plan for and accommodate growth.

The State's interest in land use planning is set forth in ORS 197.010:

197.010 Policy. *The Legislative Assembly declares that:*

(1) In order to assure the highest possible level of livability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

(a) Must be adopted by the appropriate governing body at the local and state levels;

(b) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

(c)Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans;

(d) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and

(e) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve.

(2) The equitable balance between state and local government interests can best be achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy.

SENATE BILL 100

In 1973 the Legislature passed Senate Bill 100 which created the Oregon Land Conservation and Development Commission (LCDC) and the Department of Land Conservation and Development (DLCD). The structure for Oregon governance typically includes an appointed citizen policy body guiding a State agency. LCDC is the policy and oversight body. It is a 7 member citizen commission. The members are appointed by the Governor and confirmed by the Senate. The terms are for 4-years with a limit of two terms. The Commission has authorities set forth in ORS Chapter 197. DLCD is the State agency. It administers the State's land use program following State statutes and policy direction from the Commission. The Governor appoints the Department's Director and the Department works closely with the Commission, other State Departments, local governments and special interest groups to address land use issues.

The majority of the State's land use laws are in ORS Chapter 197 (Comprehensive Land Use Planning Coordination) with additional provisions in ORS Chapter 227 (City Planning) and Chapter 215 (County Planning). Selected other ORS Chapters address dividing land into lots and parcels through the subdivision and partition processes (ORS Chapter 92), system development charges (ORS Chapter 223) and annexations (ORS Chapter 222).

STATEWIDE PLANNING GOALS

Senate Bill 100 required the LCDC to adopt Statewide Planning Goals. In all, 19 Goals were adopted by LCDC through the Oregon Administrative Rule process which included public hearings around the State. The first 14 Goals were adopted in December 1974. The 15th Goal was adopted in December 1975 and the last four in December 1976.

ORS 197.015 defines Goals and Guidelines as:

(8) "Goals" means the <u>mandatory</u> statewide planning standards adopted by the commission pursuant to ORS chapters 195, 196 and 197. (emphasis added)

(9) "Guidelines" means <u>suggested approaches</u> designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach. (emphasis added)

The purpose of the Statewide Planning Goals is to set minimum state guidance for the preparation of Comprehensive Land Use Plans and their implementing regulations. Once a City has prepared its Comprehensive Land Use Plan and implementing regulations and received acknowledgement (approval) from LCDC, the Goals do not come into play again unless the City proposes changing its Comprehensive Land Use Plan or implementing regulations.

When amendments to a Plan or implementing regulations are proposed, a notice is sent to DLCD 45 days prior to the first hearing (typically at the Planning Commission) informing DLCD of the proposed amendments, showing the amendments and explaining how they are consistent with the Statewide Planning Goals. DLCD can comment on the proposed amendments and if they believe they are not consistent with the Goals they can object to their adoption at the local hearings. When the amendments are adopted another notice is sent informing DLCD the changes have been adopted.

The following is the list of the Goals showing the primary Goal statement. Each Goal includes more language, but it is not included here. The full language is provided separately, except for Goals 14-19, that do not affect Stayton, as they address the Willamette River Greenway and Coastal Resources. The Goals may be found at http://www.lcd.state.or.us/LCD/goals.shtml#Statewide_Planning_Goals.

GOAL 1. **Citizen Involvement.** To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

GOAL 2. **Land Use Planning.** To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

GOAL 3. **Agricultural Lands.** To preserve and maintain agricultural lands.

GOAL 4. **Forest Lands.** To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

GOAL 5. **Open Spaces, Scenic and Historic Areas and Natural resources.** To protect natural resources and conserve scenic and historic areas and open spaces.

GOAL 6. **Air, Water and Land Resources Quality.** To maintain and improve the quality of the air, water and land resources of the state.

GOAL 7. **Areas Subject to Natural Disasters and Hazards.** To protect people and property from natural hazards.

GOAL 8. **Recreation Needs.** To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

GOAL 9. **Economy of the State.** To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

GOAL 10. **Housing.** To provide for the housing needs of citizens of the state.

GOAL 11. **Public Facilities and Services.** To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

GOAL 12. **Transportation.** To provide and encourage a safe, convenient and economic transportation system.

GOAL 13. **Energy.** To conserve energy.

GOAL 14. Urbanization. To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

GOAL 15. Willamette Greenway. To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

GOAL 16. Estuarine Resources. To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

GOAL 17. Coastal Shorelands. To conserve, protect, where appropriate, develop, and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and to reduce the hazard to human life and property and the adverse effects upon water quality and fish and wildlife habitat resulting from the use and enjoyment of Oregon's coastal shorelands.

GOAL 18. Beaches and Dunes. To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

GOAL 19. Ocean Resources. To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

Planning Commissioner Training
City of Stayton
July 25, 2011

THE COMPREHENSIVE PLAN, LAND USE AND DEVELOPMENT CODE AND LAND DIVISIONS

INTRODUCTION

The Comprehensive Plan is a local government's basic land use framework document. It sets forth the local jurisdiction's policies for land use planning. Typically, the policies address issues such as citizen involvement, growth, development, natural resources, and public facility systems (sewer, water, storm drainage and transportation). In Oregon Comprehensive Plans address, at a minimum, the elements in the Statewide Planning Goals.

COMPREHENSIVE PLAN

Oregon Revised Statute (ORS) Chapter 197.015 defines a comprehensive plan as follows.

> *(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.*

A Comprehensive Plan is developed based on inventories and analysis of the data gathered. The heart of a Comprehensive Plan is its policies. Plans typically have policy commitments to encourage/require citizen involvement in the land use planning process, to provide a viable local economy, and to provide sewer, water, storm drainage, transportation and park systems to support the City's residents and businesses. Additional policy commitments address natural resources, wetlands, flood plains, steep slopes, historic resources and any other issue the local jurisdiction deems important.

In addition to the written policy commitments, each Comprehensive Plan includes a Plan Map showing specifically which areas of a City are designated to be Residential, Commercial and Industrial. Other designations can show open spaces, public uses and wetlands.

An important factor inherent in the Plan is that it is coordinated with surrounding Plan's by other jurisdictions. For example, a City Plan is coordinated with the County Plan in terms of the urban growth boundary (UGB). The UGB is established jointly by the City and County. Transportation planning is coordinated so that a City, a County and the State (Oregon Department of Transportation) agree on the hierarchy of roads. Such coordination works to reduce situations where a road is designated as an arterial by one government and as a local street by another government.

LAND USE AND DEVELOPMENT CODE

Stayton's Comprehensive Plan is, in part, implemented by the Land Use and Development Code (Title 17). The Development Code's requirements implement the Plan's policies with regulations that are consistent with the Plan's policies. The Development Code establishes zones, lists the kind of uses that can occur in each zone, sets regulations for developing land and creating lots, and establishes processes to review applications.

The Zone Map implements the Plan Map. The Zone Map shows which zones are on which properties. The zones on the Zone Map must be consistent with the Plan's Map, for example, if the Plan's Map designates a particular area for single family residential uses, then the Zone Map must zone that area for single family uses – the Zone Map cannot place an Industrial Zone on land that the Plan Map designates for residential uses.

Another example would be, if a Plan policy commits the City to be a regional center for retail activity, the Comprehensive Plan's Map would designate an adequately sized area of the city with adequate transportation facilities for the regional center. The Zone Code would implement that policy direction and Map designation by having a Regional Retail Zone that would be applied to that area. The Regional Retail Zone would allow many retail uses in big buildings to encourage the creation of a large commercial retail center in the City to serve a regional market.

If the Plan Map has one "Residential" designation and designates a specific area of the City as "Residential," the Zone Map must zone that area for some type of residential use (single family, multi-family).

If the Plan Map has two "Residential" designations, for example a "Single Family Residential" designation and a "Multi-family Residential" designation, then the Zone Map must zone the "Single Family Residential" area for single family uses such as R-1 with an appropriate single family minimum lot size, and must zone the "Multi-family Residential" area for multi-family uses such as R-2 with an appropriate density.

The Zone Map cannot zone an area for uses more intense than the Plan Map calls for. For example, a commercial zone cannot be applied to land designated "Residential" on the Plan Map and an industrial zone cannot be applied to land designated "Commercial" on the Plan Map. Comprehensive Plans and Zone Code can be as complex as needed to accomplish the City's desires. For example, if a mixed residential/commercial area is desired, the Comprehensive Plan and the Zone Code can be set-up to allow (or require) a part of the City to have commercial on the first floor and residential on the upper floors.

The Zone Code includes many types of applications regarding the use of land. A process is set forth to review and decide each type of application. Notice requirements and criteria for judging each application are established. For example, a process is set forth to change a property's zone (Zone Change Application) or if someone wants to establish a business in their home (Home Occupation Permit). Generally, the least complex applications are reviewed through a simple process (clear and objective criteria with a staff decision – Property Line Adjustment) and the more complex applications are reviewed through a more rigorous process (subjective criteria, public hearings with a City Council decision – Plan Map change).

LAND DIVISIONS – SUBDIVISIONS, PARTITIONS

Another way the Development Code implements the Comprehensive Plan is by establishing regulations regarding the creation of units of land (lots, parcels, tracts). The two ways to create lots, parcels and tracts are through subdividing and partitioning.

A subdivision is defined in ORS Chapter 92.010 as:

(16) "Subdivide land" means to divide land to create four or more lots within a calendar year.

A partition is defined in ORS Chapter 92.010 as:

(8) "Partition land" means to divide land to create not more than three parcels of land within a calendar year, but does not include: [the exceptions are not included]

In an urban area where the units of land are used intensively a subdivision or partition process addresses issues such as providing City sewer, water, storm drainage and streets to support the intense use of the land. Some elements of the subdivision and partition process cover traditional land use issues such as ensuring each lot meets the minimum lot size set in the zone. However, much of the subdivision process, and to a lesser degree the partition process, is devoted to ensuring the needed urban infrastructure is provided and ready to support urban uses when the residents move into homes or employees move into a new commercial or industrial building.

The subdivision and partition processes include two general steps. First is the submittal and review of the preliminary plan. The Planning Commission reviews the proposed tentative plan and approves it, approves it with conditions, or denies it. Second, once the tentative plan is approved, the developer constructs the infrastructure to support the lots and a registered professional land surveyor prepares the Final Plat. Separate plans are reviewed and permits are issued by the Public Works Department before the developer begins constructing the infrastructure. Development Agreements with financial assurances by the developer to the City can be required by the City to ensure the infrastructure will be constructed properly. Once constructed and inspected, the City accepts the sewer, water, storm drainage and streets as public facilities by City Council action. It is important for the City to ensure the facilities it will maintain are constructed properly. The Final Plat is reviewed to ensure it is consistent with the approved tentative plan and the infrastructure is in place. The Final Plat is signed by City and County officials and recorded. The lots are created at the time of recording and then they may be sold.

In addition to the Final Plat, other items such as a document creating a Homeowners Association with By-Laws may be reviewed.

The creation of units of land is not just for residential development. Land in commercial and industrial zones can also be the subject of a subdivision or partition application.

"Lots" are created through the subdivision process. "Parcels" are created through the partition process. Tracts can be created through either process and, generally, they are not buildable. Typically, a tract is shown on the subdivision or partition final plat specifically for open space, water quality pond, storm water detention/retention facility, etc.

PROPERTY LINE ADJUSTMENT

A related action, but different from creating land units is a Property Line Adjustment (PLA). A PLA moves a common property line and does not result in the creation of a new lot. Some cities have determined that State Statute (ORS 92, Subdivisions and Partitions) requires the city to approve the moving of a common lot line, but others have determined they are not required to do so. Stayton, at this time does not regulate PLAs.

PLANNED UNIT DEVELOPMENTS (PUD)

A Planned Unit Development (PUD) is another method of creating lots. (Note that the Stayton Land Use and Development Code refers tot his method as a "Master Planned Development.") It is a variation of a subdivision. The City and the developer each achieve some benefits and, and the residents achieve a higher quality of life due to a more natural environment and possibly lower housing costs.

Typically, subdivisions are regulated by specific regulations that engender uniformity. For example, a minimum lot size requirement of 7,000 square feet means that many lots in every subdivision will be just over 7,000 square feet. Subdivisions, usually, do not allow flexibility, except through the Variance process, to work with issues inherent to the land such as wetlands, streams, slopes and tree groves. Generally, the Variance process includes approval criteria that do not allow new development to not comply with the regulations – the basic concept is the regulations are minimums and must be met.

The PUD process provides a method of creating lots based on flexible requirements. Typically, PUD regulations allow a portion of the lots to be smaller than the minimum lot size provided they are clustered, or provided other lots are larger, or provided a tree grove is retained, or a wetland is not filled that otherwise could be filled, or a creek corridor (riparian area) is not infringed upon.

The urban infrastructure must be provided as in a subdivision, but through clustering the lots, often there are infrastructure savings because the length of pipes and streets is reduced due to the clustering. The City benefits from such reductions because it will have fewer feet of pipes and streets to clean, maintain and patrol.

SUMMARY

The Comprehensive Plan is the basic framework document for land use planning. Its policies and designations on the Plan Map guide the City's land use decisions.

The Comp Plan is implemented by the Development Code with its zones, development requirements, types of land use applications, processes and land division standards.

Planning Commissioner Training
City of Stayton
July 25, 2011

TYPES OF LAND USE APPLICATIONS

As a Planning Commissioner you will make decisions on, or make recommendations to the City Council on, many different types of land use applications. The following are many of the types of applications and brief comments about them.

ACTIONS ADDRESSING THE USE OF LAND

Amending the Comprehensive Plan's Text

An addition, deletion or revision to the text of the Comprehensive Plan is an amendment to the Comprehensive Plan, and typically would be a Legislative process. For example, adding or revising economic development policies. There could be a rare situation where the amendment would apply to a small number of people or properties and would use the Quasi-judicial process. The Planning Commission would make a recommendation to the City Council. Only the City Council can make the decision because it involves changing the City's laws. The document amending the Comprehensive Plan must be an Ordinance because City laws can be adopted only through the passage of an Ordinance. Because the Comprehensive Plan is the basic controlling document and the Zone Code implements the Comprehensive Plan, a concurrent change to the Zone Code language may also occur so the Zone Code language is consistent with the Comprehensive Plan language. A change to the Plan's text must be consistent with the Statewide Planning Goals and meet any local approval criteria.

Amending the Comprehensive Plan Map

A change to the designations on the Comprehensive Plan Map is an amendment to the Comprehensive Plan, and typically would be a Legislative process. For example, changing the designation for many properties from the Single Family Residential Designation to the Multi-Family Residential Designation. If it would change the designation for a small number of properties the Quasi-judicial process could be used. The Planning Commission would make a recommendation to the City Council. Only the City Council can make the decision because it involves changing the City's laws. The document amending the Comprehensive Plan Map must be an Ordinance because City laws can be adopted only through the passage of an Ordinance. Because the Comprehensive Plan and its Map are the basic controlling documents and the Zone Map implements the Comprehensive Plan Map, typically, a concurrent zone change would also occur so the zoning is consistent with the Comprehensive Plan Map Designation. A change to the Plan Map Designations must be consistent with the Statewide Planning Goals and any local approval criteria.

Amending the Development Code's Text

An addition, deletion or revision to the text of the Development Code is an amendment to the Developm;ent Code, and typically would be a Legislative process. For example, adding to the

list of permitted uses in the Commercial Zone. There could be a rare situation where the amendment would use the Quasi-judicial process if it affected a small number of people or properties. The Planning Commission would make a recommendation to the City Council. Only the City Council can make the decision because it involves changing the City's laws. The document amending the Development Code must be an Ordinance because City laws can be adopted only through the passage of an Ordinance. A change to the Development Code's text must meet the local approval criteria.

Amending the Zone Map (Zone Change)

A change to the Zone Map for many properties is a Zone Map Change, and typically would use the Legislative process. For example, changing the Zone for many properties from R-1 to R-2. If the Zone Change is for only a small number of properties, or one property, the Quasi-judicial process would be used. The local Zone Code establishes the decision authority for Zone Changes and it can be the City Council, the Planning Commission, or the Hearings Officer. A City may designate the City Council the decision authority for Legislative Zone Changes and the Planning Commission or Hearings Officer for Quasi-judicial Zone Changes. The City Council need not be the decision maker because Statute allows others to be the decision maker. The document changing the Zone can be a Resolution if the City Council is the decision maker or an Order if it is the Planning Commission or Hearings Officer. Because the Comprehensive Plan and its Map are the basic controlling document and the Zone Map implements the Comprehensive Plan Map, a Zone Change cannot apply a Zone on a property that allows a higher density of use than the Comprehensive Plan Map allows. For example, a property with a Single Family Residential Comprehensive Plan Map Designation cannot be zoned Industrial. A change to the Zone Map must meet the local approval criteria.

Conditional Use Permit

Each Zone includes a list of uses that are permitted outright. Each Zone, typically, also includes a list of uses that are similar in use or in effect to the permitted uses, but because they're not quite the same, a review through a Quasi-judicial public hearing process is required by the local Development Code before they are allowed. A common conditional use is a house of worship. Many years ago houses of worship were small (compared to today's large facilities and operations) and due to their low level of activity they were considered to be similar in their effect to residential uses. Before a house of worship could locate on a property in a residential zone it had to go through a public hearing process and be approved by the Planning Commission or a Hearings Officer. The conditional use permit process allowed the City to include conditions of approval to address any identified effects, hence the name "conditional use." A Conditional Use Permit must meet the local approval criteria.

Variance

The Development Code includes many regulations, for example, setbacks from property lines to building walls. The Variance process is a safety valve to address situations where a regulation doesn't fit well for a given property. A variance cannot be used to allow a use in a zone that is not listed as a permitted or conditional use. A Variance is an important matter because, if approved, it will allow development in the City that does not conform to the City's development regulations. For example, rather than providing the required 20 foot front yard setback, an 18 foot setback is allowed. Typically, a quasi-judicial public hearing process is

used to decide if the regulation should be reduced and if it is reduced what conditions of approval are appropriate. A Variance must meet the local approval criteria. Typically, the basic reason a variance is appropriate is due to some inherent issue with the subject property such as a steep slope that prevents the developer from complying with a regulation. Financial problems of the applicant are not, typically, justification for an approval. If the City is granting a lot of variances, the City should review its regulations to determine if they are appropriate for the City.

Interpretation

As with any regulations there will be words or phrases that are not clear. Two reasonable people will read the language and come to different conclusions regarding what it requires. The Interpretation process can address any language in the Development Code. Typically, these situations arise as part of a Quasi-judicial development application and an Interpretation is made by the decision authority as part of the decision. An Interpretation by staff, the Planning Commission, or the Hearings Officer as part of a development application applies only to that application. It is not a precedent for the future. Following an Interpretation it would be prudent for a Plan Text Amendment or a Zone Text Amendment to be initiated as soon as possible by the City to clarify the language so future decisions would not need to include an Interpretation.

An Interpretation by the City Council is precedent setting because the City Council is the governing body. Again, it would be prudent to amend the unclear text as soon as possible.

In some cases, an Interpretation will not be associated with a submitted development application. A prospective applicant may want to know the answer before submitting an application because if the answer is not favorable they will not spend the money to prepare an application. A stand-alone interpretation should be allowed by the Zone Code to address these situations.

Non-conforming Use

One type of non-conformity is a non-conforming use. A non-conforming use is a use that was legally established at one time, but now does not conform to the list of uses in the zone that has been applied to the property. For example, in an earlier time a property was zoned single family residential and a single family residential dwelling was constructed. Years later the City rezoned the property to Industrial which does not allow single family dwellings as a permitted or conditional use. The planning concept behind non-conforming uses is that it will be replaced by a permitted use, eventually, and the sooner the better. In the meantime, however, because the use was legal at one time, it is allowed to remain. Some say it is "grandfathered-in." The Development Code specifies what may occur with the use for it to retain its non-conforming status and not become illegal. Stayton's Code, the use is allowed to cease for 12 months without losing its status. For example, a single family dwelling in an Industrial Zone is rented and the renters move out. If it is again occupied within 6-months or a year, then it can continue. Sometimes the use might cease due to the structure being burned down or destroyed in an earthquake. Some codes require the use to be removed if the damage is greater than 50% of the value of the structure before the fire, earthquake, etc. Others allow a totally vacated use to return which isn't very effective in achieving a conforming use on the property.

Non-conforming Structure

A second type of non-conformity is a non-conforming structure. A non-conforming structure is one that was legal as to setbacks, height, etc., at one time, but now does not conform to the requirements of the zone that applies to the property. For example, in an earlier time a property was zoned single family residential with a required 5-foot side yard setback. A single family residential dwelling was constructed with a 5-foot side yard setback. Years later the City amended that zone's side yard setback requirement to be 10-feet, thus creating a structure with a non-conforming side yard setback. Or, the property may have been rezoned to another single family residential zone and the new zone required a 10-foot setback, again creating a structure with a non-conforming side yard setback. As with non-conforming uses, the planning concept behind non-conforming structures is that it will be replaced by a conforming structure, eventually, and the sooner the better. In the meantime, however, because the structure was legal at one time, it is allowed to remain. Some say it is "grandfathered." The Development Code specifies what alterations, restorations and replacements are allowed for non-conforming structures. Typically, if the structure is destroyed by an act other than the intent of the owner, it is allowed to be rebuilt within a year. Some codes require the structure to be removed if the damage is greater than 50% of the value before the act of God. Others allow a totally destroyed structure to be rebuilt which isn't very effective in achieving a conforming structure on the property.

Site Plan Review (Limited Land Use Decision)

Many cities require a given level of development to be reviewed to ensure it meets all the city's land use requirements before a Building Permit can be submitted. Often single family dwellings and duplexes are exempt from the review as well as small structures such as accessory structures. The land use decision allows the City to ensure its requirements are met and to place conditions of approval on the development. The conditions can include exactions such as requiring that land be dedicated to the public for a right-of-way and the construction of roads to address the effects of the development. Typically, Development Codes require development to be reviewed, allow conditions to be assigned and require improvements to public facilities as part of the land use decision. If the Site Plan Review process did not exist, the applicant would apply for a Building Permit and most city municipal codes do not give the authority to place such conditions on the issuance of a Building Permit.

ORS 197.195 addresses Limited Land Uses (LLU) and defines site plan review as a LLU and sets a process for their review and approval. For example, before the decision is made owners within 100-feet of the subject property must be notified the application has been received and provided the opportunity to submit written comments to the City within a 14-day comment period. Once the decision is made only those who submitted written comments in the 14-day comment period may appeal the decision to LUBA, unless the local Development Code allows those who did not comment to also appeal. Larger jurisdictions with planning staff often designate the staff or a Hearings Officer as the decision authority and they follow the above process without a public hearing. Other jurisdictions designate the Planning Commission as the decision authority and, often, they use a public hearing, although they are not required to. (Stayton's code designates staff as the decision authority for small projects and minor amendments and the Planning Commission for larger projects and major amendments.)

Some planners and land use attorneys contend a hearing is not allowed and others contend a hearing is allowed. There does not appear to have been a LUBA decision specifically on this point so it is not clear which reading of ORS 197.195 is consistent with the intent of the Legislature. (Stayton's code does not require a hearing for staff-approved projects, but does require a hearing when the Planning Commission is the decision authority.)

Flood Plain Development Permit

For properties in an area with a 1% chance of flooding in any year, a floodplain development permit must be granted before development can occur. All cities in Oregon with floodplains participate in the National Flood Insurance Program which Congress passed into law in 1968 to reduce loss of life and reduce damage to property. The Zone Code requires the issuance of a Flood Plain Development Permit for development in the 100-year flood plain. The purpose is to ensure the federal flood plain regulations are met and that structures in the 100-year floodplain are eligible to obtain flood insurance. (Stayton's Code designates Staff as the decision authority for Flood Plain Development Permits.)

Historic Resources Review

For cities with historic resources designated in their Comprehensive Plan through the Statewide Planning Goal 5 process, the Development Code implements the Plan with regulations that apply to those resources. Typically, an application is required that must show conformance with the City's regulations to alter a designated historic resource. Often the approval criteria are subjective because they relate to the structure's architecture.

Tree Cutting Permit

Some cities require a permit be obtained before trees are removed. Typically, the requirement applies to trees with a diameter greater than 6 inches measured at breast height or 4-feet above grade. Once the local land use regulations regulate tree removal in the City, the Oregon Forest Practices Act's regulations no longer apply. Such regulations are typically set up by the Comprehensive Plan calling for protection of trees and tree groves. Some cities have addressed trees through the Statewide Goal 5, Natural Resources, as part of a habitat program wherein specimen trees, landmark trees and significant groves are designated as significant resources in the Comprehensive Plan and then the Zone Code regulations ensure the trees are protected to the level called for in the Plan. (Stayton's Code provides for the designation of Heritage Trees by the City Council upon the request of the property owner. Permits are required only for designated Heritage Trees)

ACTIONS ADDRESSING THE CREATION OF UNITS OF LAND

Subdivision (Limited Land Use Decision)

Subdividing land is the creation of 4 or more lots (ORS 92.010(16)). It includes providing sewer, water, storm drain and street facilities to support the development. ORS 197.195 addresses Limited Land Uses (LLU) and defines a subdivision as a LLU and sets a process for their review and approval. For example, before the decision is made owners within 100-feet of the subject property must be notified the application has been received and provided the opportunity to submit written comments to the City within a 14-day comment period. Once

the decision is made only those who submitted written comments in the 14-day comment period can appeal the decision to LUBA, unless the local Zone Code allows those who did not comment to also appeal. Larger jurisdictions with planning staff often designate the staff or a Hearings Officer as the decision authority and they follow the above process without a public hearing. Other jurisdictions designate the Planning Commission as the decision authority and, often, they use a public hearing, although they are not required to. Some planners and land use attorneys contend a hearing is not allowed and others contend a hearing is allowed. There does not appear to have been a LUBA decision specifically on this point so it is not clear which reading of ORS 197.195 is consistent with the intent of the Legislature.

Partition (Limited Land Use Decision)

Partitioning land is the creation of 3 or fewer parcels within a calendar year (ORS 92.010(8)), with some exceptions such as lien foreclosures. It includes providing sewer, water, street and storm drain facilities. ORS 197.195 addresses Limited Land Uses (LLU) and defines partitions as a LLU and, as above, sets a process for their review and approval. Larger jurisdictions with planning staff often designate the staff or a Hearings Officer as the decision authority and they follow the above process without a public hearing. Other jurisdictions designate the Planning Commission as the decision authority and use a public hearing.

Property Line Adjustment (PLA)

A property line adjustment is "the relocation or elimination of a common property line between abutting properties." (ORS 92.010(12)) No new lot or parcel or tract is created. LUBA decisions have indicated that a PLA involves only 1 property line at a time and it can only be moved as a whole, i.e., no new angles. If several lines are to be moved, several PLAs must be applied for and the first PLA must be recorded before the next is approved. If more than one line is to be moved at once or if it is to be angled, then a partition should be applied for. As a practical matter some cities do not limit PLA applications to the movement of only 1 line and are not concerned if an angle is straightened or created. The final step is the recording of a survey with the County Surveyor's Office or the recording of a new deed with the new legal description with the County Clerk. Note however, for a complicated PLA, the County Surveyor's Office may require a Partition Plat be recorded at their office rather than just a survey. Some cities do not regulate PLAs because they read ORS 92 to not require cities to approve them before the survey or deed is recorded. Others read ORS 92 to require city approval before an adjusted property line is recorded. If a city does not regulate PLA's the possibility exists that the two parties may move a common property line that results in a lot that is smaller than the required minimum lot size making it a nonconforming lot, or that results in a setback distance smaller than the required minimum setback distance making the structure nonconforming as to the setback. Other problems can result such as a driveway, fence, or drainfield for a septic system being on someone else's property. The property owners that create unintended consequences will, generally, look to the city to solve their problem for them.

Lot Consolidation

In the last few years ORS 92.010(12) was amended and now it appears a lot consolidation is included in the definition of property line adjustment, i.e,. "...or elimination of a common

property line…." (ORS 92.010(12)) Consolidations are needed in some situations to remove a property line so a building is not built over the line thereby violating setbacks.

Planned Unit Development (Limited Land Use Decision)

A Planned Unit Development (PUD) is another method of creating lots. It is a variation of a subdivision. The City and the developer each achieve some benefits and the residents achieve a higher quality of life due to a more natural environment and possibly lower housing costs.

Typically, subdivisions are regulated by specific requirements that engender uniformity. For example, a minimum lot size requirement of 7,000 square feet means that many lots in every subdivision will be just over 7,000 square feet. Subdivisions, usually, do not allow flexibility to work with issues inherent to the land such as wetlands, streams, slopes and tree groves. Any flexibility would be allowed through the Variance process, it includes approval criteria that do not relate to allowing new development to not comply with the regulations. For example, often, one of the criterion is that the problem is not self-imposed, but almost always the problem is self-imposed because the developer knew the steep slope, etc. was on the property.

The PUD process provides a method of creating lots based on flexible requirements. Typically, PUD regulations allow a portion of the lots to be smaller than the minimum lot size provided they are clustered, or provided other lots are larger, or provided a tree grove is retained, or a wetland is not filled that otherwise could be filled, or a creek corridor (riparian habitat area) is maintained.

The urban infrastructure must be provided as in a subdivision, but through clustering the lots, often there are infrastructure savings because the length of pipes and streets is reduced due to the clustering. The City benefits from such reductions because it will have fewer feet of pipes and streets to clean, maintain and patrol.

OTHER ACTIONS

Annexations

Annexations bring land that is outside the City Limits into the City Limits. There is an aspect of annexations that is land use planning and another that is not. The financial implication of annexing land is not a land use decision. For example, if a hundred acres of single family land is annexed it will not, typically, generate enough property taxes to support all the demands placed on the City facilities such as Police, Library, Parks, Recreation and maintenance of the sewer, water, storm drain and street systems. Thus a City Council may decide not to annex an area due to financial reasons. The other aspect of annexations involves land use issues such as the availability of nearby sewer, water and street facilities.

Before the Statewide planning program was adopted in 1973 (Senate Bill 100) the State annexation Statute did not address land use issues – and it still doesn't. Over the years the courts have made it clear that an annexation decision is a land use decision. The land use aspects and non-land use aspects of annexations have not been melded in State Statutes, thus keeping the land use and non-land use aspects separated can be challenging. Additionally, "voter annexation" is another factor in those cities that require a vote before land is annexed.

Vacations

Vacations return public right-of-way back to private ownership. Land owned by the City in fee simple is not vacated, it is sold. If public facilities such as sewer lines, or if public utility facilities such as power lines are in the area to be vacated, the City's Ordinance vacating the right-of-way should retain an easement beneficial to the City or the utility company to allow access into the area to perform maintenance, repair and replacement and to allow new or larger facilities in the vacated area. Similar to annexations, there is an aspect of vacations that is land use planning and another that is not.

Before the Statewide planning program was adopted in 1973 (Senate Bill 100) the State vacation Statute did not address land use issues – and it still doesn't. Over the years the courts have made it clear that a vacation decision can be a land use decision. The melding of the non-land use aspects and the land use aspects can be challenging to ensure all the Statutory requirements are met.

An example of the complications is that ORS 271.110 requires the City Council public hearing to be noticed via a newspaper notice for two consecutive weeks and posting in 2 conspicuous locations in the area to be vacated, but it doesn't address the Planning Commission hearing. Nor does it match-up, necessarily, with the local code's notice requirements for City Council public hearings which may require only 1 newspaper notice, no postings, and a mailed notice to nearby property owners.

The Statute's approval criteria are that the Council "…shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition." (ORS 271.120) A local zone code could augment the above by requiring consideration of connectivity and other factors it believes are applicable.

Planning Commissioner Training
City of Stayton
July 25, 2011

LEGISLATIVE *VERSUS* QUASI-JUDICIAL PROCESSES

When the Planning Commission is considering a land use issue involving the adoption of City laws that regulate land uses, it uses the ***legislative process*** (creating laws). When it is considering applying existing land use regulations (approval criteria) to a specific set of facts, a zone change for example, it uses the ***quasi-judicial process*** (applying laws).

A rule of thumb is that development applications are quasi-judicial and text amendments to the comprehensive plan or zone code are legislative.

There is no State law defining the difference between legislative process and quasi-judicial process. In a rare case a local government's comprehensive plan or zone code provides a local definition for that local government. The Land Use Board of Appeals (LUBA), the Oregon Court of Appeals and the Oregon Supreme Court have addressed the issue and provide the best available guidance to explain the difference between the legislative process and quasi-judicial process.

The criteria to be considered in determining if a decision process is legislative or quasi-judicial come from case law (*Strawberry Hill 4-Wheelers v. Benton County Board of Commissioners*, a 1979Oregon Supreme Court decision).

The quasi-judicial process is to be used if:

(1) the process is bound to result in a decision,

(2) the decision is bound to apply preexisting criteria to concrete facts, and

(3) the action is directed at a closely circumscribed factual situation or a relatively small number of persons.

No one of the three factors is determinative (*ODOT v. Klamath County*, LUBA, 1993).

A zone change initiated by the property owner for one 5-acre property would be a quasi-judicial process, whereas a zone change initiated by the City for 900 acres affecting 100 property owners involving one-third of the City would be a legislative process.

Other cases have addressed the differences. One case indicates that if a quasi-judicial process is used for a legislative application, the quasi-judicial process does not convert the legislative application into a quasi-judicial decision (*Ramsey v. Philomath*, LUBA, 2004). Generally, the notice requirements are much greater for quasi-judicial decisions. If a legislative application is to be reviewed and the City wants to provide the same notice as a quasi-judicial application to ensure the community is better notified, the City's greater notice does not turn the legislative application into a quasi-judicial application.

LEGISLATIVE PROCESS

The legislative process is less restrictive than the quasi-judicial process because it involves the adoption of laws (review by the Planning Commission with a recommendation to the City Council for their decision), whereas the quasi-judicial process is the application of existing law to a set of facts by an

impartial tribunal. The legislative process can be described in terms of the State Legislature where a State Senator or Representative obtains information from site visits, conversations with people throughout the State, public hearings, lobbyists, and any other source. The process of creating laws involves decision-makers who do not sit as an impartial tribunal.

The less restrictive nature of the legislative process allows *ex-parte* contacts to occur. "There is no legal requirement that decision makers disclose the substance of their site observations and provide an opportunity for rebuttal where the decision is legislative." (LUBA Headnotes, 25.7, *Valerio v. Union County*, 33 Or LUBA 604 (1997))

State Statutes do not include specific notice requirements for legislative processes such as are included for quasi-judicial processes in ORS 197.763. The legislative notice requirements in the local code are usually less rigorous than for the State required notice for the quasi-judicial process. For example, in some jurisdictions the subject property for a quasi-judicial decision is posted with a notice of the public hearing before the public hearing whereas there is no posting requirement for a legislative decision.

The legislative process does not include a requirement that a local government adopt findings explaining why the decision complies with applicable approval criteria (*Home Depot v. Portland*, LUBA, 2000; *Andrews v. Brookings*, LUBA, 1994; *Riverbend Landfill v. Yamhill County*, LUBA, 1993). As a practical matter, however, if there are no findings and the decision is appealed, the Land Use Board of Appeals would not have sufficient information to perform their review and could remand it back to the City to adopt findings. An option is for the City to explain in its brief to the Land Use Board of Appeals how the challenged legislative decision complies with applicable legal standards.

There is no statutory requirement that legislative decisions be supported by substantial evidence in the record (*Riverbend Landfill v. Yamhill County*, LUBA, 1993; *Cope v. Cannon Beach*, LUBA, 1992; *Alexiou v. Curry County*, LUBA, 1992). However, if the decision is not supported by substantial evidence the City may not be able to successfully defend an appealed decision.

ORS 197.620(1) states that a decision to deny a legislative amendment cannot be appealed to the Land Use Board of Appeals. Not allowing an appeal may sound odd, but it prevents a situation where a private party's application is submitted to make a change that is clearly not in the public interest with the assumption the City will deny it and with the tactic that on appeal the applicant will convince the appeal body to overturn the City's decision thereby forcing the City to do what is clearly not in the public interest.

QUASI-JUDICIAL PROCESS

The quasi-judicial process is more prescribed because the decision makers sit as an impartial tribunal similar to a judge in a court. The U.S. Constitution's "due process" clause is applicable. Impartiality includes treating all the parties fairly, including allowing all the parties to know what the decision makers know. An *ex-parte* contact is problematic in the quasi-judicial process and must be announced at the beginning of the hearing so all the parties know what information a Commissioner received during the *ex-parte* contact. If that information was nonfactual, it can be corrected at the hearing. Information known by the decision makers should be factual. If the parties don't know what information the decision makers know, the decision makers may make a decision based on nonfactual information resulting in a bad decision.

In the 1973 landmark case *Fasano v. Washington County* the Oregon Supreme Court set forth the basic rules of quasi-judicial land use decision making and made it clear that even though a land use decision maker is not deciding criminal cases or civil lawsuits, the land use decision making process must be fair

and equitable for all the parties. The basic tenants set forth in *Fasano* have been included in Oregon land use Statutes (ORS 197 and 227).

ORS 197.763 sets the requirements for noticing and conducting quasi-judicial public hearings. There is no similar statute for legislative public hearings. It is included here to show the quasi-judicial process is more prescribed than the legislative process. Because it is long, key words and phrases are underlined.

197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures. The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2)

(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

[Note that Stayton's Code requires notice to owners of property within 300 feet of the subject property]

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)

(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 [the 120-day period] and ORS 215.429 or 227.179 [the 120-day period].

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.

[Note that ORS 197.796 (3)(b) requires stating that the failure of the applicant to raise a constitutional or other issue relating to the proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in circuit court.]

(6)

(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the

record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 [120-day period] and ORS 215.429 or 227.179 [120-day period], unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(9) For purposes of this section:

(a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

The requirements for the notice and conduct of quasi-judicial public hearings show every effort is made to ensure the process is fair to all the parties and that the decision makers are an impartial tribunal. Other State laws apply to the quasi-judicial process, such as the need to base decisions on findings, and that the findings and decision be in writing, but they are not shown here.

SUMMARY

The distinction between legislative and quasi-judicial processes is important because their differences affect how a decision is made. Almost always, it is clear which process to use. The Planning Commission and City Council use both processes and it is helpful for Commissioners and Councilors to know the differences.

Planning Commissioner Training
City of Stayton
July 25, 2011

CONDUCTING A SUCCESSFUL PUBLIC HEARING

Everyone that is a party to a public hearing wants the hearing to proceed smoothly and be equitable to all the parties. By following a well scripted step-by-step process the hearing can be conducted successfully. The Planning Commission Chair is an important element in the hearing and can keep all the parties on-script and focused on the issue rather than focusing on personalities and becoming overly emotional.

The Chair opens the public hearing, e.g., "The public hearing is now open."

Introduce the case to be heard. This is Variance 09-01, a request by "applicant" to allow a 4-foot setback when 10-feet are required at 123 4th Avenue.

Ask if any Planning Commissioner :

- Has had an *ex-parte* contact and to state the information received during the contact.
- Is biased regarding the application and to step down if the bias is so strong as to not allow the Commissioner to decide the application on its merits.
- Has a potential or actual conflict of interest and to step down if it is an actual conflict.

Ask if anyone in the audience objects to the jurisdiction of the Planning Commission to decide this case.

Ask if anyone in the audience objects to the notice of the hearing that was provided for this case.

If applicable, the Chair states there is a time limit for testimony. Ideally, the Development Code would give the Commission the authority to limit testimony, or alternatively, the notice of the hearing would state that testimony is limited.

The Chair or staff can make the following statements required by ORS 197.763(5)(a)(b)(c), 197.763(6)(a), and 197.796(3)(b):

- State that the criteria are found in the Development Code Section 17.12.*xxx*.
- Testimony should be directed to the criteria or other criteria the testifier believes are applicable.
- Failure to raise issues in sufficient detail to afford the decision maker to respond to the issues precludes appeal to the Oregon Land Use Board of Appeals on that issue.
- Failure to raise a constitutional or other issue relating to the proposed conditions of approval in sufficient detail to afford the decision maker to respond to the issue precludes an action for damages in circuit court.

- Before the hearing is closed the parties have the right to request additional time to present additional evidence. [The Commission decides if the additional time is a continuance of the hearing to a date/time certain or if it is in the form of leaving the record open for written evidence.]
- Parties have the right to appeal the Commission's decision to the City Council.

The Chair explains the Hearing Process order.

The presentations can be in any order, but typically a logical approach is to hear the staff report first with its analysis of whether the approval criteria are met and its recommendation.

- Staff report.
- Applicant and proponents.
- Opponents.
- Those neither for or against.
- Government agencies.
- Staff response to questions and issues.
- Rebuttal by applicant.

The Chair closes the hearing, e.g., "The public hearing is closed."

The Commission deliberates.

The Commission entertains a motion and makes a decision.

Planning Commissioner Training
City of Stayton
July 25, 2011

BIAS

An inherent role of a Planning Commissioner is to vote on motions resulting in decisions by the Planning Commission. In the process of making decisions the possibility of a public official having bias arises.

"Personal bias" is different from "conflict of interest." Conflict of interest relates to financial benefit or avoiding financial detriment.

Personal bias is related to a person being prejudiced for or against a party or an issue to the extent that they cannot make a fair decision on the merits of the case.

For example, as a Planning Commissioner you're sitting as a member of an impartial tribunal regarding a conditional use application and you feel very very strongly about the applicant or the use at that location. You may be so biased in favor or in opposition to the applicant or application that you are not capable of making a fair, impartial judgment. Commissioners who have a bias that stands in the way of a fair and impartial judgment should not participate in the decision.

"Actual bias" means prejudice or prejudgment of the facts to such a degree that a Planning Commissioner is incapable of rendering an objective decision on the merits of the case. If you have an actual bias, you should step down and not participate as a Commissioner. You may participate as a citizen and sit in the audience and testify and submit factual information.

You need not recuse yourself merely because you have knowledge of the facts or know one or more of the applicants or opponents, or even if you have a leaning to one side or the other. It is understood that everyone has biases. A Planning Commissioner is not bound by the same squeaky-clean standards as a Judge in a court of law, but a Commissioner should step down if the Commissioner believes they cannot make a fair decision based on the merits of the application.

As with any land use issue, one of the parties may have a different opinion as to whether a Commissioner is too biased to make a fair decision. If a party that is on the losing side of a decision believes a Commissioner is too biased, that party may appeal the decision to the appeal authority (generally the City Council for Planning Commission decisions). Once all local appeals have been exhausted a party may appeal to the Oregon Land Use Board of Appeals based on bias.

Bias and its infinite gradations are not easy to nail down. As an example, the following is a link to the Land Use Board of Appeals (LUBA) website and a bias case involving City Councilors. http://www.oregon.gov/LUBA/2007Opinions.shtml. Scroll to the month of May in 2007 and see case number 2006-055, 056 and 057, *Woodward v. City of Cottage Grove.*

OREGON REVISED STATUTE (ORS) 227

ORS 227.180(3) explains how to resolve bias from ex-parte contacts (see bolded italics below):

227.180 Review of action on permit application; fees.

(1) Not shown.

(2) Not shown.

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or <u>bias resulting from ex parte contact</u> with a member of the decision-making body, if the member of the decision-making body receiving the contact: (emphasis added)

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer.

Planning Commissioner Training
City of Stayton
July 25, 2011

CONFLICT OF INTEREST

An inherent role of a Planning Commissioner is to vote on motions resulting in decisions by the Planning Commission. In the process of making decisions the possibility of a public official financially benefiting from a decision arises. Also, the possibility of a public official receiving relief from a loss arises. The term that describes these situations is "conflict of interest."

The Oregon Government Ethics Commission administers the State's ethics laws and can be contacted if you have questions. (503) 378- 5105 or ogec.mail@state.or.us. Their website address is http://www.oregon.gov/OGEC/contact_us.shtml.

"Conflict of interest" is divided into two terms which are defined in Oregon Revised Statutes (ORS) 244.020.

244.020 Definitions.

(1) "***Actual* conflict of interest**" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **would be** to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (11) of this section. (emphasis added)

(12) "***Potential* conflict of interest**" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which **could be** to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following: (emphasis added)

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

ORS 244.020 goes on to define some terms used in the above definitions.

(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) "Business with which the person is associated" means:

(a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth $1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned $100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

(14) "Public official" means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services.

(15) "Relative" means:

(a) The spouse of the public official ...;

(b) Any children of the public official or of the public official's spouse;

...

(d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;

...

(f) Any individual for whom the public official ... has a legal support obligation; or

(g) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment.

ORS 244 provides a method to handle conflicts. See 244.135, below, for Planning Commissioners. ORS 244.120 and 244.130 are included to show the breadth of Oregon's efforts to ensure trustworthy government exists at all levels.

244.135 Method of handling conflicts by planning commission members.

(1) A member of a city or county planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest:(emphasis added)

(a) The member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member;

(b) Any business in which the member is then serving or has served within the previous two years; or

(c) Any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

(2) Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken. (emphasis added)

244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other elected officials or members of boards.

(1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

(b) If the public official is a judge, remove the judge from the case giving rise to the conflict or advise the parties of the nature of the conflict.

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but

not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

(3) Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

(4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.

244.130 Recording of notice of conflict; effect of failure to disclose conflict.

(1) When a public official gives notice of an actual or potential conflict of interest, the public body as defined in ORS 174.109 that the public official serves shall record the actual or potential conflict in the official records of the public body. In addition, a notice of the actual or potential conflict and how it was disposed of may in the discretion of the public body be provided to the Oregon Government Ethics Commission within a reasonable period of time. (emphasis added)

(2) A decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest.

Planning Commissioner Training
City of Stayton
July 25, 2011

EX-PARTE CONTACT

Ex-parte contact occurs when a decision maker who is a member of an impartial tribunal (the Planning Commission) and is acting within a "quasi-judicial" process receives information outside a public hearing. For example, the Planning Commission is scheduled to conduct a public hearing the following week on an application for a Variance. A Planning Commissioner sees a friend at the grocery store and the friend starts talking about how good, or bad, the application is. Any information the Commissioner receives about the case should be received at the public hearing. Other methods of *ex-parte* contact are site visits, emails, phone conversations, newspaper articles, radio and TV broadcasts and the internet.

Contact with City staff or the City's contract staff (City Engineer, Planner, etc.) outside the public hearing is not *ex-parte* contact. A decision-maker can talk to City staff at any time.

Ex-parte contact occurs within the quasi-judicial process, but not within the legislative process. "There is no legal requirement that decision makers disclose the substance of their site observations and provide an opportunity for rebuttal where the decision is legislative." (LUBA Headnotes, 25.7, *Valerio v. Union County*, 33 Or LUBA 604 (1997)) The legislative process is less restrictive because it involves the adoption of laws and the decision-makers are not sitting as an impartial tribunal.

For a quasi-judicial process involving a public hearing (for example, zone changes, subdivisions, site plan review, conditional uses, variances, etc.), once the Chairperson opens the public hearing, the parties present their information. The information is typically in the form of the application materials, staff report, other reports on traffic and wetlands, and written and oral testimony of parties at the public hearing. It is not uncommon for written and oral testimony to be opinions or statements the testifier believes are true, but may not be true. All the information is entered into the record at the public hearing so that all the parties can know what it is and have an opportunity to comment on it.

The reason the impartial decision-maker cannot listen to or read or gather information outside the public hearing is, "due process." The U.S. Constitution and the Oregon Constitution require government processes to be fair and equitable for all the parties. If one party is able to provide information to one or more Commissioners without the other parties' knowledge, the process is not fair and equitable. In the 1973 landmark case *Fasano v. Washington County* the Oregon Supreme Court set forth the basic rules of land use decision-making and made it clear that even though a land use decision maker is not deciding criminal cases or civil lawsuits, the land use decision making process must be

fair and equitable for all the parties. Actually, the Oregon Supreme Court was merely reiterating the "due process" clause of the U.S. Constitution.

Information received outside the public hearing is in a Commissioner's mind and becomes part of the reason the Commissioner votes yes or no. If that information is not true and no other party knows what it is, then the process is not fair because untrue information goes unchallenged and a bad decision can result.

RESOLVING AN *EX-PARTE* CONTACT

To resolve an *ex-parte* contact, after the public hearing has been opened and before the testimony starts, the Chairperson will ask if any Commissioner has any *ex-parte* contacts to disclose. If a Commissioner has an *ex-parte* contact, the Commissioner will state an *ex-parte* contact occurred and generally state what information was obtained. Depending on what the information is, it may be appropriate to specifically state what information was obtained. The announcement takes care of the *ex-parte* contact and all the parties present are aware of it and can address it in their testimony. The disclosure should occur after the hearing is opened so it is part of the hearing record and before any staff reports or testimony is received.

If a Commissioner forgets about the contact and during the testimony remembers it, at the first appropriate opportunity, such as between testifiers, the Commissioner can ask the Chairperson to be recognized and state the contact. If a Commissioner doesn't remember the contact until the hearing is closed and the Commission is deliberating, the Commissioner can ask the Chairperson to be recognized and state the contact during the deliberation. That raises the issue of re-opening the hearing to afford the parties the opportunity to comment. The next step could be to re-open the hearing, or for the Chairperson to ask the audience if anyone wants to comment on the disclosure and if someone wants to comment, then the hearing should be re-opened.

A Commissioner may stop at the subject property. Although there is disagreement whether such a visit is an *ex-parte* contact or not, it is recommended it be considered an *ex-parte* contact. After the hearing is opened the Commissioner must state they stopped at the subject property and what information they learned so any of the parties can address it. A worst case scenario would be a Commissioner visiting the wrong property and having erroneous information in mind.

In some cases the subject property is on a busy road and the Commissioners go by it daily. In that case once the Chairperson has opened the hearing and has asked if there are any *ex-parte* contacts to disclose, each Commissioner can indicate they go by the property daily and generally mention what they noticed. Alternatively, the Chairperson could comment for all the Commissioners saying they all go by it daily, but that may not adequately indicate what each Commissioner sees when they go by it daily. For example, one Commissioner may always focus on a large old tree near the edge of the property while another focuses on the driveway or the buildings.

If you receive a phone call or someone comes-up to you at a store, you can explain the discussion is inappropriate because you have a responsibility to the public to be an objective decision-maker and any information you receive must be through the public hearing process to ensure fairness and equity for all the parties. You could explain that if it was their application being considered, they would want each Commissioner to not be influenced outside the public hearing.

Overall, it is the responsibility of the applicant and others participating in the process to gather all the pertinent information and present it in the application materials and at the public hearing. When a Commissioner is involved in *ex-parte* contact parties on one side or the other can become concerned about the integrity of the process and of the Commissioner involved, whether the concern is warranted or not.

OREGON REVISED STATUTE (ORS) 227

ORS 227.180(3) explains how to resolve ex-parte contacts (see bolded italics below):

227.180 Review of action on permit application; fees.

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

If you receive a phone call or someone comes-up to you at a store, you can explain the discussion is inappropriate because you have a responsibility to the public to be an objective decision-maker and any information you receive must be through the public hearing process to ensure fairness and equity for all the parties. You could explain that if it was their application being considered, they would want each Commissioner to not be influenced outside the public hearing.

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Planning Commissioner Training
City of Stayton
July 25, 2011

ROLES & RESPONSIBILITIES: PLANNING COMMISSION & COMMISSIONERS

State law and local city charters and ordinances set forth the authority and responsibilities of Planning Commissions. For example, the City establishes the Commission, the number of Commissioners and gives the Planning Commission the authority to make decisions for some land use applications, such as a Conditional Use Permit, and make recommendations to the City Council for other land use applications, such as amendments to the Comprehensive Plan.

A Planning Commission and its Commissioners have many roles and responsibilities. A basic statement about the role of the Planning Commission is the Commission represents the public interest. Commissioners are appointed by the City Council, a public body, to represent the public interest in land use planning issues. At the Planning Commission meetings the Commissioners wear their public hats, not their private hats.

The Planning Commission should have a comprehensive view of land use issues and maintain a broad perspective of the community. The Comprehensive Plan is truly comprehensive; it addresses many elements such as housing, economic development, sewer, water, transportation, natural resources and it establishes an urban growth boundary around the City.

The Planning Commission should have a long-term view of land use issues. The planning horizon for the Comprehensive Plan is 20 years. In addition to the long-term view, the Commission must also have a solid current view of the City because the Commission applies the City's development regulations when making decisions about development applications.

The Planning Commission develops, maintains and implements the Comprehensive Plan with the City Council adopting the Plan and any amendments to it.

The Planning Commission develops, maintains and implements the Development Code with the City Council adopting the Development Code and any amendments to it.

The Planning Commission protects the integrity of the community's land use planning process.

Planning Commissioners should understand land use planning.

Planning Commissioners should reflect the values of the community.

Planning Commissioners should educate the public on land use planning.

Planning Commissioners should understand the opportunities and limitations of the Commission's authority. For some land use applications, e.g., an amendment to the Plan or the Development Code, the Commission makes a recommendation to the City Council and the Council is the decision maker.

Planning Commissioners should understand that the Commission will exhibit "small group dynamics."

Planning Commissioners should understand the "legislative" and "quasi-judicial" processes. There is no State law defining "legislative" or "quasi-judicial", but generally, if an existing City law is to be amended or a new City law is to be adopted into the Comprehensive Plan or the Zoning and Development Code (creating law), the "legislative" process is used. If an existing provision is to be applied in deciding a development application (applying the law), then the "quasi-judicial" process is used. Because these two terms are not easily understood the following provides additional information.

The "quasi-judicial" process is prescribed and must be followed so that all the parties are treated equally. The U.S. Constitution's provision regarding "due process" applies to government decision making, including Planning Commission decisions using the "quasi-judicial" process. Equal treatment and basic fairness are important in making land use decisions that affect people who have an interest in how the land in the City is used. A comment period is provided or a public hearing is held that affords the parties an opportunity to be heard. When a decision is made it should be clear and it must be reduced to writing with, in most cases, the opportunity to appeal. Each Commissioner is responsible to ensure they are fair to all parties. Bias and conflict-of-interest can come into play and there are steps to address them in the hearing setting. Other issues such as ex-parte contact are important and there are ways to handle such contact.

The "legislative" process is not as prescribed as the "quasi-judicial" process; it is more akin to a State Legislator weighing information, talking to everyone and finally deciding how to vote. An example of how the "legislative" process is less prescribed is, ex-parte contact is allowed for "legislative" processes.

Overall, a summary statement about the role of the Planning Commission and the Planning Commissioners is, they provide the public with a fair, deliberate and thoughtful approach to land use issues.

How to be a Highly Effective Commissioner

Prepare Yourself

- Be regular in your attendance at Commission meetings.
- Be prompt.
- Conduct yourselves in keeping with the extreme importance your decision has to the parties
- If you or one of your family members has a financial interest in the outcome of a case, you must declare that conflict on the record and not participate in the case.
- Information on a case gained outside of the public hearing must be disclosed on the record to provide the opportunity repudiation. This is called "ex-parte contact." Refer questions and phone calls to city staff to avoid ex-parte contacts.
- Drive by the property if you feel it would assist you but be cautious about ex-parte contact with the applicant, neighbors or other parties to the case. ***You are the decision-maker, and your neutrality must be beyond question.***
- Be familiar with the decision criteria for the case. If there is a written staff report, match the facts in the staff report to the decision criteria. Note which criteria need more facts. During the hearing, you may need to solicit testimony from the parties to provide the missing facts.

Be Fair and Respectful

- Listen; ask questions that honor the concerns being shared; do no lead or argue with those testifying. ***You can disagree without being disagreeable.*** Withhold your judgment until all testimony has been given and the record is closed.

Do Your Job as Best You Can

- Be satisfied with all the decision criteria have been addressed before the record is closed.
- When the Chair closes the record, no more public testimony is taken.
- Don't be afraid to make decisions. Putting off a hard decision doesn't make it easier to make.
- Remember which phase of the hearing you're in: keep the deliberation phase separate from the testimony phase.
- Note errors or inconsistencies within the testimony phase and raise those issues in deliberations, not during the testimony.
- The burden of proof to present the case is on the applicant – not the opponents and not on you.

- The record must contain your reasons for choosing a particular outcome. Avoid reaching conclusions for which the parties and staff must guess at what was in your mind.
- In advance of the vote, if you state ***why*** you favor or oppose an application, you can help generate a discussion that is useful, especially for difficult decisions.
- It takes courage to go first in making the motion or speaking out. Remember that and be courteous with each other, *especially* if you disagree.

Support the Process

- Suggest changes if you see the need.
- Criticize each other and staff, I you must, but constructively, not as a personal attack.
- Remember that "opponents" are invited to attend you public hearings. Avoid treating them with hostility.

"P" Stands for Public

- As planners, strive to serve the public interest. This may require that you take an unpopular position.
- Listen to all people, not just to those who fit into the stereotype of "desirable citizens." Worst traits may come out at a public hearing. Angry noisy, rude people aren't necessarily wrong.
- Those who don't speak English well or who are untidy or poorly dressed are not necessarily wrong.
- Give polite attention to everyone and you may hear something useful for the decision.
- You do not need to like everyone in order to give them a fair hearing.
- Keep a sense of perspective.
- Half of the parties in any controversy will disagree with any given position.
- All of the parties want you to ***fair-minded*** and ***objective*** and to guard you ***neutrality***.

TITLE 2. ADMINISTRATION AND PERSONNEL

CHAPTER 2.36

PLANNING COMMISSION

SECTIONS

2.36.910	Established
2.36.920	Membership, Terms, Filling of Vacancies, Organization
2.36.930	Rules and Regulations
2.36.940	Powers and Duties
2.36.950	Training and Education
2.36.960	Expenditures

2.36.910 ESTABLISHED

There is hereby created a city planning commission, referred to as "the Commission" in this chapter. (Ord. 658, section 1[part], 1989: Ord. 642, section 2[part], 1988: prior code section 2.450)

2.36.920 MEMBERSHIP, TERMS, FILLING OF VACANCIES, ORGANIZATION

1. The commission shall consist of seven (7) adult members and one non-voting high school student of junior level academic standing, enrolled at either Stayton Union High School or Regis High School. Not more than one (1) member of the City Council, if appointed by the Mayor, shall serve as ex-officio, non-voting representatives. Members are appointed in accordance with the Rules of the Stayton City Council. (Ord. 808, January 2000; Ord. 866, August 16, 2004)

2. Terms of office for planning commission members:

   a. The high school student shall hold office for one (1) year commencing at the Commission's January meeting. (Ord. 808, January 2000)

   b. The seven adult Commission members shall hold office for three (3) years on staggered terms. (Ord. 808, January 2000; Ord. 866, August 16, 2004)

   c. Staggered terms shall be accomplished, on a one time basis, by reducing the term of one Planning Commission member's position by one year at the time of the January 2001 appointments. (Ord. 808, January 2000)

3. Any vacancy shall be filled by the mayor for the unexpired portion of the term.

4. All new members shall reside inside the Stayton city limits, except one may reside outside the city limits but within the Stayton urban growth boundary.

5. If any commission member is absent from three (3) or more consecutive regular meetings without excuse from the commission, the commission chair shall declare the position vacant and notify the mayor to appoint someone to fill the unexpired portion of the term.

6. At the annual meeting in January, the commission shall elect its own chair and vice-chair, who shall be voting members of the commission and who shall hold office at the pleasure of the commission.

7. Commission members shall receive no compensation, but shall be reimbursed for duly authorized expenses. (Ord. 658, section 1[part], 1989: Ord. 642, section 2[part], 1988: prior code section 2.455: Ord. 703, section 1, 1992)

2.36.930 RULES AND REGULATIONS

1. Four members of the commission, including the chair, shall constitute a quorum, but a lesser number may adjourn the meeting to a later date. (Ord. 866, August 16, 2004)

2. The commission may make and alter rules and regulations for its government procedure consistent with the laws of this state, with the city charter, and with city ordinances and this code.

3. The commission shall meet at least once a month.

4. Special meetings may be called at any time by the chair of the commission or by any three (3) members by giving notice to each member of the commission and to the media at least twenty-four (24) hours before the time specified for the proposed meeting.

5. An informed public, aware of the deliberations and decisions of the City of Stayton, is beneficial to the community; therefore, the planning commission shall comply with Oregon Open Meetings Law (ORS 192.610 to 192.690). All parliamentary questions which arise, not otherwise provided by rules adopted by the city, shall be governed by *Robert's Rules of Order*. (Ord. 874, section 7, 2004)

6. The council shall assign to the commission a location in which to hold its meetings, transact its business, and keep its records. A secretary shall be

appointed by the city administrator and shall keep an accurate record of all commission proceedings.

7. All recommendations made to the council by the commission shall be in writing. (Ord. 658, section 1[part], 1989: Ord. 642, section 2[part], 1988: prior code section 2.457)

2.36.940 POWERS AND DUTIES

1. The commission has power and authority as follows:

   a. To employ consulting advice on municipal problems, a secretary and such clerks as may be necessary, and to pay for their services and for such other expenses as the commission may lawfully incur, including the necessary disbursements incurred by its members, out of such funds as are placed at the disposal of the commission by the council.

   b. To make recommendations and suggestions to the council, other public officials, and individuals concerning any matter relating to community planning and development.

2. The commission shall also have all the powers which are now or which hereafter may be granted to it by ordinance of this city or by local or state law. (Ord. 874, section 8, 2004)

3. The council and administrative officers shall procure the recommendations of the commission where so required by state laws or city ordinances. (Ord. 658, section 1[part], 1989: Ord. 642, section 2[part], 1988: prior code section 2.460)

2.36.950 TRAINING AND EDUCATION

1. It shall be the responsibility of the city council to make sure that all new commission members receive education on the applicable planning laws of the State of Oregon, County of Marion, and City of Stayton within thirty (30) days of their appointment. (Ord. 874, section 9, 2004)

2. Planning commission members shall be provided all applicable planning and zoning laws of the city. (Ord. 642, section 2[part], 1988: prior code section 2.460; Ord. 658, section 1[part], 1989; Ord. 874, section 9, 2004)

2.36.960 EXPENDITURES

The commission shall have no authority to make expenditures on behalf of the city or to obligate the city for the payment of any sums of money, except as provided specifically in

this chapter, and then only after the council first authorizes such expenditures by appropriate ordinance or resolution, which ordinance or resolution shall provide the administrative method by which such funds shall be drawn and expended. (Ord. 658, section 1[part], 1989: Ord. 642, section 2[part], 1988: prior code section 2.465)

No Strings Attached?

by C. Gregory Dale, AICP

How do you handle gifts or other offers of value that are made to you in your capacity as a planning commissioner?

Consider this scenario. You are invited to attend a local sporting event by a developer who has a development approval pending before the planning commission. The offer involves dinner in the private box of the developer. What is your response? Does your response change if the invitation comes from a local developer who does not have an item pending before the commission? Does it change if the entire commission is invited?

There are many variations on this scenario. Some involve offers to travel to view similar projects by the same developer. Some involve offers to use facilities such as resort condominiums. Some involve something as seemingly harmless as a fruit basket delivered during the holiday season. Certainly developers are not alone in this area. How would you handle a weekend retreat invitation from a conservation group that is active in lobbying local governments?

All of these scenarios raise the same ethical issue. Is there an attempt being made to influence your vote or attitude towards a particular project, individual, group, or issue? I believe the answer to this question *for all of the scenarios described above is "yes."*

> "On coming into public office, I laid it down as a law of my conduct, while I should continue in it, to accept no present of any sensible pecuniary value. ... [T]hings of sensible value, however innocently offered in the first examples, may grow at length into abuse, for which I wish not to furnish a precedent.
>
> —*Letter from Thomas Jefferson to Samuel Hawkins, 1808, sent in response to offered gift of an ivory staff.* The Writings of Thomas Jefferson *(Lipscomb & Bergh, eds.), Vol. 12, p.203.*

Even the holiday fruit basket is being offered to engender good will. Remember that your job as planning commissioner is to be a dispassionate judge of factual evidence presented to you for the purpose of determining compliance with standards or policies adopted by the community.

> AS WITH MANY ETHICAL MATTERS, ONE OF THE BEST WAYS TO PREVENT THE PROBLEM IS TO DEAL WITH IT UP-FRONT IN YOUR REGULATIONS OR COMMISSION'S BY-LAWS.

Any effort to create good will or otherwise color your perception of an individual, company, or group outside of this process of factual consideration creates a clear ethical problem. In addition, as is always the case with ethical issues, the perception of impropriety is as damaging to your reputation and credibility as an actual case of wrongdoing. Acceptance of a gift may also create an atmosphere where even more such offers are made, damaging the planning process further.

It is human nature to enjoy gestures of appreciation. On the other hand, any offer of a gift should be viewed as tainting the process. In fact, it can be more serious than just an ethical problem. Remember that even though you are probably not getting paid as a planning commissioner, you are still considered a public official. Your state may deem your accepting something of value to be an illegal act.

How should one respond to the offer of a gift. First, let me state the obvious: the gift should be refused (and, if delivered to you, returned). Secondly, you may want to consult with your legal counsel. To the extent that the offer occurs outside of a public meeting, it may be viewed as an ex-parte contact — possibly requiring disclosure of the offer at your commission's meeting. *[For more on ex-parte contacts, see my columns in PCJ #2 and 24].*

As with many ethical matters, one of the best ways to prevent the problem is to deal with it up-front in your regulations or commission's by-laws. Consider clearly stating that gifts are unacceptable (or, perhaps, providing that nothing greater than two or three dollars in value can be accepted, allowing commissioners to accept something of nominal value, like a cup of coffee).

The acceptance of gifts or favors in your capacity as a planning commissioner is a serious matter. At best it taints the process and undermines your objectivity. At worst it may be a criminal act. ◆

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