

# LAND USE PROCESSES AND OTHER ISSUES

# Legislative/Quasi-Judicial

- Two basic types of land-use decisions:
  - Legislative



- Quasi-Judicial



- Two sets of procedures and standards apply, although there is a lot of overlap

# LEGISLATIVE



- Legislative land use actions are amendments to the comprehensive plan (General Plan), implementing regulations (Development Code and Sign Code), and amendments to plan maps
- Private entities may initiate legislative amendments. BDC 4.1.520
- Most legislative amendments are initiated by the City

# QUASI-JUDICIAL

- Any application for a land use approval other than a text amendment or plan map amendment
  - Appeals or referrals of site plan reviews, conditional use permits, and similar staff decisions
  - Original decisions on WOZ, etc.
- Property owner must consent to the application



# MIXED (HYBRID) DECISIONS

- Some text amendments and map amendments may be sufficiently limited in scope that quasi-judicial processes should be followed
  - Limited area
  - Few landowners
- OSU-Cascades



# LEGISLATIVE PROCEDURES

- Planning Commission holds hearing after public notice and makes recommendation to Council



- Council holds public hearing and makes decision



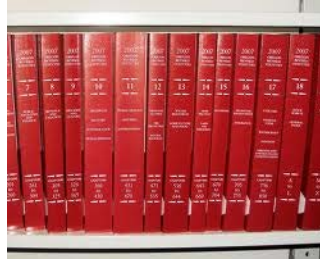
# QUASI –JUDICIAL PROCEDURES



- Planning Commission may be initial decision-maker (e.g. WOZ) or may decide appeals from staff decisions when referred by the CDD Director
  - Some decisions may be referred by staff to the Planning Commission
  - In any quasi-judicial matter heard by the Planning Commission, the Planning Commission is the decision maker, subject to possible appeal to the Council
  - Some appeals are heard by the Hearings Officer

# LEGISLATIVE DECISIONS

- Legislative decisions must be based on applicable provisions of state statutes, the statewide land-use planning goals, state regulations implementing the goals, and unamended provisions of the comprehensive plan



- Legislative land use decisions are not truly legislative because the discretion of the decision-makers is constrained by pre-established standards
- Legislative decisions are not subject to 120-day rule




# QUASI-JUDICIAL DECISIONS

- Quasi-judicial decisions must be based on applicable provisions of the Bend Development Code
  - Direct consideration of the statewide goals is not required
  - Some may argue that comp plan provisions apply to all quasi-judicial decisions, but the General Plan provides general policies for the City, not specific standards or criteria applicable to quasi-judicial applications
    - Comp plan provisions are applicable in some specific situations
  - Quasi-judicial zone changes must be consistent with at least the General Plan map
- Most decisions must be made within 120 days – PC needs to make decision in time to allow for appeal to Council



# DECISION OPTIONS

- The Commission has three options for a quasi-judicial decision:
  - Approval
  - Approval with conditions  +
  - Denial 
- Approvals without conditions are rare
  - Conditions are usually needed to assure ongoing compliance

# QUASI-JUDICIAL DECISIONS

- All discussion and deliberation in a quasi-judicial process should be focused on applicable standards and criteria
  - An application may be denied only for failure to meet an applicable standard or criterion
  - Conditions of approval may be imposed only if authorized by the BDC or if agreed to by the applicant
  - A condition that assures compliance with a code standard is authorized
  - Conditions relied on to meet applicable standards must be supported by a finding that compliance with the condition is feasible and would result in meeting the standard
  - If an application meets all applicable standards and criteria, it must be approved
  - If an application can feasibly meet all applicable standards and criteria by complying with conditions of approval, it must be approved with those conditions (per ORS 197.522, which LUBA has held applies only in the context of moratoria, but arguably always applies)
  - Most decisions involve at least some discretion in applying and interpreting the code



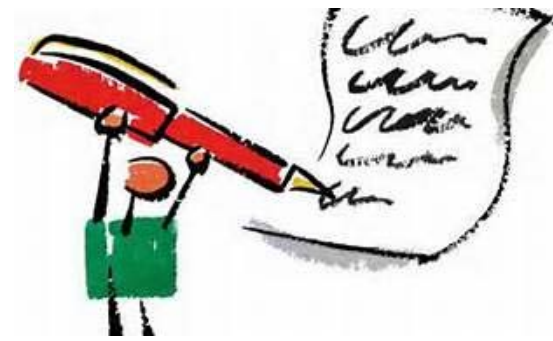
# FINDINGS



## Findings

- Findings are absolutely required in quasi-judicial proceedings
  - Need findings on every applicable criteria and every issue raised
  - Findings include both factual findings and conclusions applying standards and criteria to facts
  - Can get away with conclusory findings on minor/uncontested issues
- In legislative matters, findings are not required by statute or rule but should be adopted to explain the decision and compliance with goals and other standards
  - LUBA will reverse legislative decisions if there is no explanation of compliance with goals, statutes, etc.

# MORE FINDINGS



- Different approaches to findings
  - Applicant includes proposed findings in application or other submittal
  - Prevailing party prepares after decision
  - Staff prepares draft findings in advance of decision
  - Staff prepares final findings after decision
  - Planning Commission orally states its findings, which are then reduced to writing by staff

# EX PARTE CONTACTS

- Decisions must be made on the record
  - Any information obtained outside the record is an ex parte contact
  - Ex parte contacts include:
    - Discussions with parties
    - Discussions with persons who are not parties
    - Site visits
    - Reading about it in a newspaper
    - Getting information online
  - Staff contacts are not ex parte contacts



# PROCEDURAL DIFFERENCES

- Quasi-judicial processes are subject to numerous procedural requirements, mostly set out in ORS 197.763
  - Ex parte contacts discouraged, must be reported if they occur
  - List of rights read at beginning of hearing
  - Right to continue to respond to new evidence/arguments
  - Raise it or waive it applies



- Legislative processes are subject to fewer procedural requirements
  - Simpler script at start of hearing
  - Ex parte rules not rigidly applied
  - Raise it or waive it less strictly enforced between planning commission and City Council

# MEETING PROCEDURE



- The chair runs the meeting and has the authority to make procedural rulings
- If a Planning Commissioner believes that a procedural ruling by the chair was erroneous, the Commissioner may make a motion to overrule the procedural decision and make a different decision
- If that motion is seconded, the motion can be debated and must be put to a vote



# MOTION PROCESS

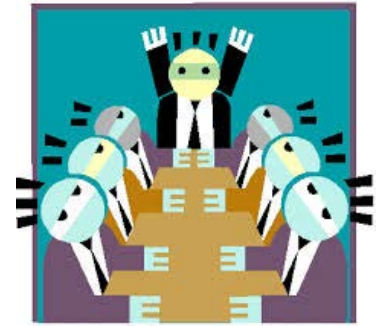


"I make a motion that even if nobody seconds this motion, it passes anyway."

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- Any member can make a motion (although it is rare for a chair to make a motion)
- After a motion is made, it can be seconded
  - If there is no immediate second, the chair should ask if there is a second
  - If there is no second, the motion fails
  - No discussion should occur after a motion until it is determined whether there is a second
  - Once a motion is made and seconded, there should be discussion, and once discussion is exhausted, the motion is put to a vote

# ADDITIONAL MOTION PROCESS



- If there is a tie vote on a motion, it does not pass
- Because the Planning Commission is not a purely legislative body, usually it needs to make an actual decision
  - In quasi-judicial matters, it is required to make a decision
  - In legislative matters, it usually must make a recommendation to council

# Tie-breaking options:



- An altered motion
- Continuing the matter until the next meeting
- Further discussion to see if a compromise can be reached
- A motion to recommend denial based on the lack of a majority to support

# DELIBERATION



- After the public hearing is closed, the Commission deliberates. Different entities have chosen different procedures for deliberation:
  - No deliberation until a motion has been made and seconded (traditional parliamentary approach, mostly **not** adopted by land use decision-makers)
  - Broad discussion by all Commission members, with back and forth discussion
  - Each member is heard once, and then a motion is made, with additional discussion allowed after the motion is made

# PUBLIC MEETINGS



- The Planning Commission can deliberate or take action only in a public meeting
- Discussion or exchange of information when a quorum is present is considered deliberation
- If a quorum is present, there can be no discussion of Planning Commission business
- Electronic communications may constitute a meeting

# PUBLIC RECORDS



- Every written thing you see or create that relates to the Planning Commission or City business is a public record
- Public records are subject to public inspection and copying
- You must retain public records or make sure the City has a copy – you cannot destroy public records until the retention period has passed

# ETHICS



- You are subject to government ethics law
- You cannot participate in any matter that involves an actual conflict of interest (would result in financial benefit or detriment to you or a family member)
- You must disclose all actual and potential conflicts of interest (potential – could result in financial benefit or detriment)

# ETHICS/GIFTS

- You cannot accept gifts of \$50 or more in a calendar years from persons that have a legislative or administrative interest in the City
- Applies to a person who is or will be asking for land use legislation or approval
  - Five \$10 lunches in a year violates the prohibition





# ELECTION ADVOCACY



- You cannot advocate for or against any ballot measure or candidate as a member of the Planning Commission
- You may advocate for or against a measure or candidate as an individual