Oregon Planning Commissioner Handbook

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Planners Training Team

ACKNOWLEDGEMENTS

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This manual is designed to assist those who deal with Oregon's land use program including planning commissioners, city and county governing bodies, members of advisory committees (design review boards, historic landmark commissions etc.), professional staff, and interested citizens. Its purpose is to serve as an initial introduction to newly elected or appointed officials and be a useful reference for those with more experience.

Additional information regarding statewide planning is available from the Department of Land Conservation and Development at www.lcd.state.or.us and from the Oregon Chapter of the American Planning Association at www.oregonapa.org.

*The **Department of Land Conservation and Development** helps communities and citizens plan for, protect, and improve the built and natural systems that provide a high quality of life. In partnership with citizens and local governments, we foster sustainable and vibrant communities and protect our natural resources legacy.*

Visit us at www.lcd.state.or.us.

*The **Oregon Chapter of the American Planning Association** is an independent, statewide, not-for-profit educational organization that provides leadership in the development of vital communities by advocating excellence in community planning, promoting education and citizen empowerment, and providing the tools and support necessary to meet the challenges of growth and change.*

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CHAPTER 1: Introduction to Planning

Congratulations and thank you for having the courage to make a commitment to your community and all the people of the great state of Oregon. You are now part of a large family composed of planning commissioners from throughout our state. Like all families, it has many individuals, each with their own particular skills and priorities. Yet all are bound together by important responsibilities, traditions, legal and economic concerns, as well as common needs and experiences. Some will function in large, diverse communities that are facing rapid change, others will fight the battles associated with static or declining populations. Everyone will likely work in an environment with insufficient resources to do all of the important work they'd like to do. What are the issues you and your fellow planning commissioners face? What are the resources that effective land use planning can bring to bear to help solve those problems?

Land use planning is not an answer to every concern. However, good community plans can do much to help a community face the issues that need to be confronted. Effective decision-making that involves the community members avoids the worse hazards, and optimizing local resources is what planning can do to make your city or county a better place.

Every community must develop its own list of issues and concerns, find its own solutions, and, most importantly, identify a vision for its future than can be accepted and achieved by the community's current and future residents. In Oregon, that process also includes complying with the Statewide Planning Goals using a set of policy statements that serve as parameters for city and county comprehensive land use plans and development regulations.

The following chapters are designed to help you understand how to make the Oregon planning program work for your community. This document is not meant to replace actual experience in working with your comprehensive plan and development regulations. Time will cure that deficiency in your knowledge. The information here will help you to understand the basics, and help you through the initial adjustments you will be making to fulfill your new responsibilities.

As you gain experience and comfort with land use processes, regulations, and other duties in your position as a planning commissioner, you will want to explore your ability to craft effective, long-range plans for your community and to broker agreements between people and organizations within your area. A clear vision for what your community is to become, an understanding of the political and fiscal realities of your area, as well as knowledge of the Statewide Planning Goals, will be important parts of how you approach your planning commission duties. Because you are part of a bigger system, you will be expected to represent all of your community and not just yourself.

This chapter will provide you with some basic information and understanding to help you carry out your duties. As you gain experience, you will develop the vision and knowledge required to fashion a pathway into the future for your community that is composed of many individual site decisions and a commitment to longer-term community-wide goals.

Before we progress any further in discussing land use planning, it is appropriate to understand the basic foundations for the process and the institution. The following sections will describe what land use planning is, how the process works, some of the reasons for planning, as well as a history of planning in Oregon. With this information you can understand the character of, and context for, planning in Oregon. While this foundational information will be relatively comprehensive, it will only be a simple introduction sufficient to help you and those you work with to understand the reasoning for planning and its basic processes.

LAND USE PLANNING - WHAT IS IT?

Planning itself is about making decisions. Those judgments may be about community priorities, or about housing needs, natural resource protection, or appropriate widths for local streets. Whatever the content of the decision, they are primarily about making effective, efficient, and appropriate determinations that achieve the desired results. Planning is therefore a decision-making process.

Land use planning is about making quality decisions about how the land is to be used. Every activity that occurs on the planet has to take place somewhere. That place may be a home, office, business, factory, or public service building – whatever the place, it will use a piece of land, need to be supported by services, have an impact on others and need to avoid certain hazards. Planning can help achieve those needs more efficiently than would occur without planning.

Planning is also more complex than just making land use decisions. There are responsibilities to others (the public, government entities, current and future generations, etc.) and values that need to be addressed in the process. The following is a listing of how planning has been described by some leading professionals in the profession:

Planning is:

- Determining community needs and setting goals in an organized manner
- Organizing events and activities
- The art and science of anticipatory problem solving
- A forward thinking process
- A tool to bridge the gap from now to then – from today's realities to tomorrow's possibilities
- Deciding in advance to do something
- Defending the common interest in the face of parochial/special/individual interests.

If the preceding is what planning is to accomplish, then it must have certain characteristics or conditions in place in order to accomplish those ends. Planning is a process that recognizes it must affect the future by analyzing the past within the context of today's realities and perceptions. Planning must be composed of the following if it is to be successful:

- Be a rational process
- Use facts as the basis for all decisions
- Create a common understanding of what the community needs versus what individuals may need
- Believe in the importance of involving people in a complex process that balances all interests
- Consider all reasonable alternatives
- Prepare a program to take action

While the previous definitions consider planning generally, this handbook is meant to focus on land use planning because that field is the medium for the state's goals and the overall planning program. In addition, Oregon's approach to planning is reflective of our citizens' political and philosophical beliefs.

The following definition provides some insight not only about planning, but also about how Oregonians like to see planning conducted.

Definition of Land Use Planning

Land use planning:

- Is a process occurring within a public forum
- Where factual information is gathered
- Where community needs are identified and prioritized
- Is based upon a values consensus resulting in a community vision
- Is used to make decisions regarding particular activities or issues as they pertain to a specific geographic location, with the intent to achieve the best possible long-term outcome.

The preceding wordy definition contains several important concepts that are identified separately below:

- **Process.** A system for making decisions with predictable steps and responsibilities.
- **Public forum.** Oregon believes in public involvement and in an informed citizenry.
- **Factual information.** The use of scientifically confirmable information, rather than perceptions or assumptions.
- **Community needs.** The overall community, not just particular groups or individuals.
- **Decisions.** Decision-making is what the process is all about and by making them in advance, it is more likely they will meet the community needs and be more equitable than incremental individual decisions.
- **Particular activities or issues.** By defining the concern to a particular permit or use, the issue can be more effectively defined and objectively decided.
- **Geographic location.** The land is the focus for these decisions, and the venue for considering the impact on others.
- **Long-term outcome.** The building, use or impact will be in place for some time – maybe generations – and this is the opportunity to decide whether that will be beneficial or not.

The Land Use Planning Process

The land use planning process can be diagramed to demonstrate how the various elements tie together. These steps must occur in the correct sequence if the process is to be successful. It can be too easy to "skip ahead" and to forget the thoughts and issues that needed to be considered at each point in the process. This continuity is particularly important to assure that all elements of the community are brought into the process and that they are part of, and committed to, the consensus that is developed.

The International City/County Management Association describe the steps to create a typical general plan process:

- Step 1: Identify issues, opportunities, and assumptions
- Step 2: Formulate goals
- Step 3: Collect and analyze data
- Step 4: Revise goals and determine objectives
- Step 5: Develop and evaluate alternative plans
- Step 6: Select and adopt the preferred plan
- Step 7: Implement the plan
- Step 8: Monitor and amend the plan

Everyone of these steps should include public participation and interagency coordination. While it is can be used as a general framework for many planning processes, each jurisdiction is likely to modify it to fit their particular circumstances and needs.

Why Plan?

Now that you know something about what planning is and how it occurs, you should consider why you should undertake such a complex, expensive, and time consuming activity. Communities plan for a variety of reasons and the particular combination of concerns will fluctuate with the needs of local people, conditions within the community, state law or other mandates, and the basic values and history of the local area's residents.

Some of the common reasons for communities to plan are to:

- **Accommodate the present.** Particularly to assure that the public facilities are effective and efficient
- **Prepare for the future.** Wise choices improve everyone's future
- **Anticipate change.** Its coming whether you are ready or not
- **Maximize community strengths.** Planning can leverage more benefits
- **Minimize community weaknesses.** Local deficiencies can be reduced or overcome
- **Identify and seize opportunities.** Consensus can help assure the right course can be taken when the chance is presented
- **Respond to mandates.** Legislation, Statewide Planning Goals, and other relevant state and federal requirements
- **Protect scarce resources.** Knowing what you have and what you want to keep helps to assure the things you need will be there when required
- **Build a sense of community quickly when people are uncertain.** They often create less productive social and political conditions within the community
- **Provide for the public's health, safety, and welfare.** Each community defines this separately and it changes as time progresses, but it is this mandate from the federal and state constitutions that creates the basis for planning and related activities

Why is your city or county planning? What is it that you want to protect? When the future is the present what will you and your community be doing, and is that what you value? Take a few minutes to think about these questions.

THE NEED FOR LAND USE PLANNING IN OREGON

It is unthinkable that a builder would attempt to construct a building without having a set of drawings, plans, and specifications. For a residence, the plans would be designed to accommodate the various activities and needs of a family – shelter, warmth, eating, sleeping, leisure time, entertaining, recreation – and the plumbing and electrical systems would be designed to support those activities at the various locations within the structures.

On a much larger scale, a state and its communities cannot develop in a logical, coordinated manner to accommodate the needs and activities of their citizens unless some advance planning is done to guide the continuing development and change that occurs.

There are relatively few individuals who may be responsible for making decisions relative to the construction of a residence. However, there is a very large number of diverse individuals, organizations, businesses, public agencies, corporations, etc., which have various responsibilities for making decisions relative to the development of a community and the state.

These decisions represent a wide variety of beliefs and priorities as to what, where, how, and when development should occur, what is most important and what is less important, and who should have what responsibilities.

In Oregon, the consequences of a lack of coordinated planning became evident to a majority of the state's residents, and its citizens determined that land use planning guided by statewide policy is the most logical way to assure that development will be guided in a direction that will provide maximum satisfaction of the needs and desires of everyone. The Oregon Land Use Act of 1973 is the basis for this coordinated land use planning effort.

Roots of Land Use Planning In Oregon

Land use planning in Oregon began in the cities of our state. Urban settings created urban needs for coordinated approaches to particular uses of the land.

Recognizing this, the 1919 Oregon Legislature passed enabling legislation allowing cities in Oregon to plan in an orderly way for the challenges that resulted from steady growth. This legislation enabled cities to establish planning commissions and required planning commission approval for subdivision plats. After World War II, Oregon counties were similarly authorized to establish planning commissions, at a time when rapid growth created increasing urban problems in many unincorporated areas.

Through most of the 20th century, Oregon state government's role in planning was limited. The state legislature authorized local planning to occur and provided for coordination with the federal government when the need arose (during depression-era dam building projects, for example), but did not preempt or control local guidance of development and growth.

However, as Oregon grew dramatically in population and income during and after World War II, it became increasingly evident that our system of permissive, local-option planning was not adequate to accommodate complex regional and statewide pressures and trends that crossed many jurisdictional boundaries.

State government during this period began slowly, but with growing speed spurred by popular concern, to respond to the challenges resulting from rapid growth and development. A Department of Environmental Quality was established, backed by clean air and water laws as well as pollution bonds; landmark Oregon legislation created significant laws on beaches, bottle deposits, bike paths, and billboard removal.

It was apparent that land use difficulties were at the root of many of the problems resulting from growth. Oregon's most productive farmland, the 100-mile-long Willamette Valley, was also home to 80 percent of the state's population. Oregon's population increased by nearly 40 percent between 1950 and 1970, and 80 percent of that occurred in the Willamette Valley. The result was significant growth in cities of the Valley, with the subsequent loss of prime farmland.

Spurred by the losses of farmland and prodded by first-term Governor Tom McCall, the 1969 Oregon Legislature passed Senate Bill 10, which required all cities and counties to adopt comprehensive land use plans and zoning regulations. SB 10 ended the view that selective local option planning alone would suffice to meet regional and area-wide land use challenges, which could significantly affect the economic and environmental bases of this state.

Not only were zoning and subdivision regulations required of every jurisdiction in the state, but statewide goals were set out which addressed conservation of prime farm and forest lands and other vital state concerns, including air and water quality, open space, natural scenic resources, timely development of public facilities, well-considered transportation systems and orderly transition from rural to urban uses with a careful view to protecting the basic character of Oregon.

Unfortunately, the 1969 legislation contained no assistance to meet the cost of compliance, and its enforcement provisions proved inappropriate. This led to a strong effort on the part of Governor McCall and key state legislators to work together to develop an acceptable proposal that would make statewide land use planning a reality, rather than a platitude, in every jurisdiction in the state.

The Oregon Land Use Act of 1973

The 1973 Legislature convened with bipartisan support for strengthening state oversight of local planning. The result of its effort, the Oregon Land Use Act of 1973 (Senate Bill 100), established the framework that in major part governs and guides land use planning in Oregon today.

The Act was passed by substantial margins in both chambers of the legislature. It remains a controversial piece of legislation but has withstood numerous challenges in the legislature, in courts, and at the polls. It also represents the concerns, and has received the support of various groups representing agriculture, business, homebuilders, local governments, and environmental organizations.

Developing the Statewide Planning Goals

Once the Land Use Act was on the books, sleeves were rolled up throughout Oregon as the work of implementation began. The first task for the Land Conservation and Development Commission (LCDC) was creation of the Statewide Planning Goals against which each local comprehensive plan would be measured.

After more than a year of public workshops and hearings in 20 locations around the state involving over 3,000 Oregonians, LCDC adopted 14 statewide land use-planning goals in late 1974. Later, coastal goals and a Willamette River Greenway goal were added to bring the total to 19 goals.

LCDC'S Responsibilities

LCDC itself acts mainly through the acknowledgement (initial approval), periodic review, and post-acknowledgement review processes. It may issue enforcement orders, which specify areas of noncompliance in local planning decision, and specific corrective actions required.

LCDC conducts studies through its staff (the Department of Land Conservation and Development, or DLCD) and writes administrative rules refining the provisions of the goals. Often it is in this forum where discussion and consensus building can take place that best works to define Oregon's planning program.

All city and county comprehensive plans and implementing regulations were "acknowledged" by LCDC as complying with the Statewide Planning Goals. Acknowledgment was needed before the local government could rely on its plan for making land use decisions without showing goal compliance for every land use decision. Once a comprehensive plan (including the implementing ordinances and regulations) gains acknowledgment, the plan – not the statewide goals –

controls land use decision-making for the local government. Any amendment to an acknowledged plan must be shown to comply with the goals so that the whole plan maintains acknowledgment.

It is important to note that LCDC's enforcement powers relate primarily to city and county compliance with the land use statutes and the goals. Cities and counties themselves remain responsible for assuring that individual land use actions comply with their local comprehensive plan. Local government is the primary enforcement entity, and appeals of final local decisions go to the Land Use Board of Appeals (LUBA), not LCDC.

Purpose of the Goals: Development and Preservation

Taken as a whole, the goals are best understood as devoted to creating and maintaining sustainable, livable, and equitable communities. First, they seek to protect the natural resources on which much of Oregon's economy depends (in particular, farm and forest land) and our environmental quality. Second, the goals promote efficient urban development and an orderly transition from rural to urban use.

Implicit in both purposes of the goals is the encouragement of economic development through orderly growth. That change must occur in a manner that does not threaten the long-term economic foundations of Oregon.

The twin concerns – development and preservation – meet in Goal 14. This urbanization goal requires that a city, in consultation with the county, local special districts, and neighboring jurisdictions, draw a boundary around itself to establish the projected limits of urban growth for about 20 years. Data to support the boundary is required, including 20-year growth forecasts. All land within the boundary – called an urban growth boundary (or UGB) – will be considered either urban or potentially urban, while land outside the UGB must remain predominantly rural in character.

The 19 Statewide Planning Goals can be generally grouped into three categories:

1. **Process Goals**, which ensure citizen participation and set forth basic requirements and procedures for local planning and development regulations (Goals 1 and 2)
2. **Development Goals**, which address the interrelated factors of economy, housing, public facilities, transportation, energy, and urbanization (Goals 9-14)
3. **Conservation Goals**, which address the preservation of natural resources of various types:
    - Land resources – agricultural and forest (Goals 2 and 4)
    - Coastal resources – estuaries, shorelines and dunes, and the ocean (Goals 16-19)
    - Managing resources – environmental quality; recreational and resort areas; scenic, historic, and natural resource areas, and natural hazards (Goal 5-8)
    - Willamette River – special regulations relating to particular concerns and values of this major waterway (Goal 15)

UNDERSTANDING THE TOOLS OF PLANNING

What is a Comprehensive Plan?

Your comprehensive plan is a series of generalized, coordinated policy statements, accompanied by a land use map, through which your community has set out its vision of its future. It includes a text describing goals and policies, and the factual data and projections on which the policies were based, together with a map, which generally designates future locations of various types of public and private uses of the land for residential, commercial, industrial, open space, and public uses.

The first element of all comprehensive plans include for factual information, with which you should become familiar. That "facts" chapter or series of chapters outlines the basic characteristics of the community. The facts contained within the document will set the basic parameters for the later decisions and priorities in the plan. Check to see that the important trends and statistics are there and are accurate. For example, population growth, new job development, housing inventories, historical listings or locations of gravel deposits are the foundation upon which you will build the future. Also, the people of your city or county will expect you to be familiar with what is happening and to be able to use that information in making your decisions.

Comprehensive plan goals provide the basic parameters for your community's future. The statewide goals help to define your options locally but it is the local goals that will set the agenda for your jurisdiction. While the state goals set minimum expectations, they are not the most that you can do. Take the opportunity to advocate for your community's needs. The people who placed you in authority will expect you to address their needs. Properly written, local goals will provide a clear vision of what your citizens desire for the future.

Types of Land Use Regulations

Though each comprehensive plan contains a map and general policy statements, the implementing ordinances establish the

particular criteria, standards, and procedures through which the plan will be carried out. These ordinances prescribe laws governing the way in which land may be used and divided.

The most common types of regulation are the zoning and subdivision regulations. You will encounter both of these traditional forms of land use regulation frequently as you go about your duties, although some communities have combined the two related measures into a single "land development code."

Zoning is the placement of various land use "labels" (such as residential, commercial, or exclusive farm use) on particular geographic areas in your community. Zoning describes the uses permitted and generally establishes criteria and standards for each use (such as lot size, setbacks, and parking). In designating these areas and establishing the conditions, the zoning ordinance will usually allow for flexibility and accommodation of special concerns. Typically, provisions for variances, nonconforming uses, conditional uses, design review and other special provisions will be built into the zoning ordinances.

Subdivision regulations control the particular ways in which parcels of land are divided. Typically, provision is made for design and layout of sites, roads, utility easements, public areas, etc. Many subdivision and partitioning regulations require that the applicant make or guarantee certain public improvements upon dividing the property.

Non-regulatory measures include a wide array of government programs that assist a city or county in carrying out is comprehensive plan. They may include incentive programs for economic development, capital improvement programs, and low-income housing programs.

Intergovernmental agreements seek to ensure the consistency of neighboring or overlapping jurisdictions' planning with each other, describe the relationship between cities and counties, and establish priorities for extending city services into unincorporated areas. LCDC acknowledgment of city plans requires a growth management agreement between each city and its county. This describes the coordination of plan implementation in areas between city limits and the UGB, as well as methods for coordinating future plan amendments. Cooperative agreements with all special districts providing urban services also are required.

AMENDING AN ACKNOWLEDGED PLAN

A change to the text of the comprehensive plan (including goals, policies, and the factual base), the comprehensive plan map, zoning regulations, or the zoning map The Oregon Legislature has created two processes for changing local plans: post-acknowledgement review and periodic review.

Post-Acknowledgement Review

Post-acknowledgement review allows cities and counties to prepare amendments to comprehensive plans and associated inventories, studies, and implementing codes (i.e., zoning, subdivision, etc.) and then consider the amendment in a public process. Adoption of a post-acknowledgment plan amendment can be completed only by the governing body (city council or board of county commissioners) at public hearing.

Cities and counties are required to submit changes to plans and codes to DLCD. DLCD provides notice of all plan amendments throughout the state and publishes them on its Web site. DLCD may review and evaluate the amendment for compliance with the goals. Changes not involving the topics within the Statewide Planning Goals do not have to be submitted to DLCD.

If a party (such as a citizen, an advocacy group, or DLCD) believes the plan amendment does not comply with applicable goals, administrative rules, or land use statutes, the recourse is the appeal the amendment to LUBA.

Land Use Board of Appeals

The Land Use Board of Appeals, or LUBA, is a panel of administrative hearings officers charged with deciding appeals of local government land use decisions, including plan amendments, zone changes, and permits. LUBA was created to simplify the appeal process, speed resolution of land use disputes, and provide consistent interpretation of state and local land use laws.

Prior to LUBA's creation, land use appeals were heard by LCDC and the circuit courts. The tribunal is the first of its kind in the United States. The governor appoints the three-member board to serve four-year terms. The appointments are confirmed by the Oregon Senate. The board members must be members of the Oregon State Bar.

Periodic Review

Periodic review is required for certain cities based on population. The process begins with an evaluation of the plan to determine how well the comprehensive plan is serving local needs and whether it continues to comply with state law. The plan evaluation must be completed in public to determine what changes are needed or desired by the community. Once the local government has developed a work program, DLCD will review the proposed work scope and any objections to it. If complete, the DLCD director will approve the work program.

Monitoring Change

Your plan contains a variety of assumptions and projections regarding the nature and magnitude of change and development. Regular monitoring of real work experience will help you to keep the plan on track. Not only are monitoring and small updating activities less expensive, but also they are often more accepted within the community you serve. Annual or bi-annual reviews allow the creation and evaluation of a database describing your community. Often this is as simple as tracking land use applications, population, and economic changes, along with working with state or local agencies concerning particular environmental or social issues.

CHAPTER TWO: Planning Values

"Planning is a process" is a phrase that you will hear constantly with your new responsibilities, because that is the basis for planning. But process is not all there is to planning. If that were true, planning could be left to the courts and attorneys. Planning is much more than just good process; it is the achieving of good results.

The planning process must continuously pursue and faithfully serve the public interest.

Achievement of that goal requires a clear understanding of the public need (sometimes called the public interest). Public needs include long-term health, safety, and welfare. A planner or planning commissioner must try to understand the values that motivate and guide the people of your community. This is not an easy task, and it will be subject to continuous and sometimes acrimonious debate.

To help you in that process, the American Planning Association (the national entity created to promote the interests of planning and those involved with planning) and the American Institute of Certified Planners (an organization chartered for professional planners to promote and certify their competency) have prepared inventories of planning values, which serve as a basis for the following lists.

The planning process should:

- Recognize the rights of citizens to participate in planning decisions
- Strive to give citizens, including those who lack formal organization or influence, full, clear, and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs
- Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantage groups and persons
- Assist in the clarification of community goals, objectives and policies in plan making
- Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision
- Pay special attention to the inter-relatedness of decisions and the long range consequences of present actions
- Provide for a rational system of management decisions that relies on facts, reasonable conclusions and predictable application of standards

While the preceding values address how the planning process should be conducted, there are also substantive values that should be considered by planners (appointed, elected, or professional) as they make planning decisions. Planners are selected to make their community a better place – now and for future generations. The following are some of the values commonly used by planners in the United States to create the kind of places that people and their children want to live.

It is the responsibility of planning commissioners, planning staff, and elected officials to:

- **Protect the public health, safety, and welfare.** Arising from U.S. and Oregon Constitutions, this is the reason for local government and the authority to conduct planning activities is provided to achieve these basic goals.
- **Conserve resources.** If a community is to survive and prosper over time, the materials and environment that make a community possible must be preserved, which sometimes means protecting those resources that provide identity and a sense of community as well as those with an economic basis.
- **Seek efficiency in the use of the land and public facilities.** Activities that use the land ineffectively or spoil the land for future uses, as well as the location or sizing of utilities so that they do not need to be replaced.
- **Foster beauty.** The protection and enhancement of a community's aesthetic qualities can do much to make life in that place more productive, satisfying and thereby ultimately more efficient and beneficial.
- **Assure equity.** Basic to making the American system of government work is that all people in similar circumstances will be treated the same.
- **Recognize pluralism.** Associated with equality is the importance of providing for the great variety of cultures and perspectives that are blended into the fabric of our society and communities.
- **Promote individuality.** Protection of the basic rights of the individual is important to our society and preparation of good plans – plans that preserve resources needed for future options for those many individuals that are yet unborn, rather promoting the interests of the few, as always the needs of the few must be balanced against the common good.
- **Encourage democratic participation.** To make the system work people need to be involved in an effective and meaningful way, but they must take on the burden of behaving in a responsible manner)

- **Assure that a long-term perspective is taken in the decisions:** It is not easy to remember that decisions must be made with those not at the hearing and those yet unborn in mind, as well as the applicant.

Using these values will not always be easy, but they will provide the effective principles needed to make good decisions and to guide your part of Oregon towards the future it wants and deserves.

It is the combination of good process with good values that will lay the foundation for good planning in your community. With the help of decades of diligent effort, one decision at a time, the kind of future the people in your family, neighborhood, district, city, county, region, and state want and deserve can be obtained.

CHAPTER THREE: Roles and Responsibilities

SUMMARY OF ROLES AND RESPONSIBILITIES

Responsibilities of the various participants in local land use planning are discussed in detail in following pages of this chapter. However, this list has been developed over the years by participants in planning commission training sessions and is included at the request of many of those participants.

Planning Staff

- Administer the land use process (including staff reports and notices)
- Advise and assist planning commission
- Educate and assist the public
- Know laws and ordinances
- Long range planning (including studies and analysis)
- Negotiate and facilitate
- Coordinate with other departments and units of government
- Enforcement of conditions
- Continuity (policy, documents, people)

Governing Body

- Represent constituents
- Set policy and enact ordinances
- Set budget
- Hire and fire the manager
- Appoint planning commission
- Act on recommendations and appeals

Planning Commission

- Reflect community values
- Recommend policies
- Interpret and apply ordinances
- Educate public/provide forum
- Do homework
- Make land use decisions
- Communicate with staff, elected officials
- Visioning/long range planning

Planning Commission Chair

- Conduct meeting (the only task that is the sole responsibility of the chair)
- Diffuse hostility
- Elicit relevant testimony
- Keep commission on track
- Ensure participation among all commissioners
- Lead commission to conclusions
- Define issues
- Promote planning
- Set agenda (often a staff function)

ROLES AND RESPONSIBILITIES

Land use planning, as described earlier, is a process by which factual information is applied to a particular issue or set of land use issues in a rational manner and within a public forum, in order to achieve the best possible long-term outcome. This process can be summarized in the following seven steps:

1. Gather facts
2. Determine goals
3. Identify alternatives
4. Select preferred alternative
5. Implement
6. Evaluate
7. Return to Step 3

Planning commissioners, elected officials, citizens, and staff all have roles in this process. The preparation and update of a plan is an integral part of the process, but often the only portion of planning seen by the public is the permitting on the lot next door. Part of the responsibilities of participants in the community's planning process is to help the public better understand planning, and that understanding needs to begin with you. Your job of making land use decisions will be made easier with some understanding of the groups with whom you will work and the roles and responsibilities of each.

RESPONSIBILITIES OF THE GOVERNING BODY

Duties of city and county governing bodies include:

1. Adopt and amend comprehensive plans and implementing ordinances and approve related ordinances and policies (such as for parks, public facilities, transportation, and economic development). At the local level planning primarily involves the city or county elected officials, the professional staff (public

employees or contract consultants) and the appointed planning commission. Each fills a different but vital role.

2. Establish planning commissions, hearing officer positions, standing and ad hoc committees, and other bodies as needed, and appoint members to them.
3. Adopt and provide adequate support for a public involvement program.
4. Hear and decide appeals of staff or planning commission decisions, if so provided by local ordinances.
5. Support the planning program with an adequate budget and monitor local planning and development activities.

Another way of looking at the responsibilities of the elected officials is to consider them in terms of their affect on the planning commission:

Role of Elected Body	Effect on Planning Commission
Represent Constituents	Because they are elected, they are "political," therefore, responsive to local concerns and political pressure.
Adopt Plans & Ordinances	Only the elected body can enact plans, etc. Know when the PC has final authority and when it recommends.
Hear Land Use Appeals	Know if appeals are "de novo" or "on the record". If de novo, know the governing body may hear different information. If on the record, make adequate findings and conclusions to support PC's decision.
Adopt Local Budget	Budget decisions affect the quality and quantity of staff, ability to enforce conditions of approval, opportunities for professional development, etc.
Hire City/ County Manager	The manager's attitude about planning can affect staff levels. The manager, not the PC, hires/fires staff.
Appoint Planning Commissioners	For appointed planning commissioners, this may be the most important role. For PCs with vacancies, there may be a concern about governing body responsibilities.

Working Relationships

As a planning commissioner, do you feel that too may of your recommendations or decisions are overturned by the elected officials? Or, as an elected official, do you wonder what "wild" direction the planning commission will take next? The following eight ideas to improve working relationship focus on what planning commissions can do, but also apply to city councils and county boards.

1. Clearly understand the responsibilities and authority of the planning commission.
2. Clearly understand the responsibilities and authority of the governing body.
3. Remember that the planner's first responsibility is to the manager or other supervisor.
4. Make sound decisions with adequate findings to insure that the reasons for your actions are clear to the elected officials.
5. Ask for clarification of the governing body's policies or actions that are unclear.
6. Include questions or points of view that are not obvious in your decisions and findings in the planning commission minutes.
7. Request annual joint work sessions to discuss priorities, communications, etc.
8. Recognize the elected officials' responsibilities to the voters.

PLANNING STAFF RESPONSIBILITIES

The planning staff plays a vital role in the land use planning process and the effectiveness of the planning commission. It is the staff's responsibility to perform the tasks associated with administering the land use regulations. The staff performs necessary research, prepares plans and reports, as well as distributing and explaining the results of that work.

As professional planners, they have been trained to perform research, write reports, make public presentations and carry out the routine tasks of their jobs. They will do this utilizing their training in economics, geology, landscape design, law, statistics or other education and experience. All of this talent is ready to serve your needs – if you know how to use it.

To be really effective, the planning commission and staff must work as a team. The commission provides perspective on community needs and attitudes points out work that needs to be done and gives endorsement to plans, reports, and recommendations.

The staff provides technical advice on procedure and content and keeps the commission informed of developments in the community. Planning commissioners can expect that minutes accurately reflect your deliberations and actions, and that

staff reports are readable and are received with adequate time for review (but recognize that sometimes flexibility is need if things are to be accomplished).

To work well as a team, both groups must treat each other with respect and consideration. Demeaning or rude behavior from either side creates tension and unproductive work environments.

As a commission member, do not hesitate to call on the staff for research information, advice on law, history, land use or other pertinent information. But remember, the staff has real time and budget restraints and must deal with the attitudes and priorities of the governing body and the bureaucracy in city hall or the courthouse. (Small hint: if you see an error or omission in a staff report, tell the staff about it before the public meeting. If you wait for the meeting to bring it up, you may appear rude, embarrass the staff, and discredit the professionalism of your community's planning program.)

Consider the staff's advice and, if you reject it, give your reasons so that everyone can learn from the experience. In quasi-judicial situations, give your reasons for changes to the staff report to assure adequate findings.

Do not hesitate to tell staff your perceptions of community needs, attitudes, concerns and priorities. The staff needs that information, although they may not always like to hear it. Candor and honesty help to establish a lasting, cooperative team.

Finally, remember, the staff is human too. They have good days and bad. Treat them as you wish to be treated.

The affects the staff and its work may have on Planning Commission include the following:

Staff Role	Effect on Planning Commission
Explains land use at the counter	Staff's explanation and attitude affect the tone and content of testimony to PC
Accepts/rejects applications	Staff insuring that applications are complete saves time and confusion at PC meetings
Prepares staff reports	Staff provides identification of issues and criteria that assists PC with decisions and citizens with testimony
Handles public notice and other administration	Avoids legal challenges to PC decisions; reduces "no one notified me" claims at public hearings
Stays current on regulations court cases, rulings, etc.	Prevents PC errors from lack of current information

Clear understandings by the planning commissioners and staff of one another's roles will increase the effectiveness of both. Be sure that everyone has the same expectations.

PLANNING COMMISSION RESPONSIBILITIES

State statutes and local charters or ordinances define the authority and responsibilities of planning commissions – duties, number of commissioners, terms and manner of appointment, etc. Planning commissions should also have bylaws that provide further detail. Beyond these legal requirements, planning commissioners have roles which, when fulfilled, enhance their individual and collective effectiveness.

The role of planning commissions is to develop, maintain, and implement the comprehensive plan, to protect the integrity of your community's planning process, and to foster the community's long-term interests.

Planning commissioners roles, as defined by more than 1,000 land use officials at past training events, are these:

- **Understand land use planning:** Know that planning is evolving and ongoing. Know about the statewide land use program and local land use history. Be aware of interrelationships of planning to community goals, priorities and budget constraints.
- **Reflect the values of the community:** As a volunteer who obviously is committed to your community, you can see or sense what is needed. Use your unique position (separate from the elected "political" process and from the government payroll) to articulate local values.
- **Educate the public on land use:** Planning commission meetings often are citizens' first contact with local government and with land use. Act in ways that increase understanding and respect for the responsiveness of government.
- **Understand opportunities and limits of PC authority:** Recognize that you can be proactive – the initiator of new or changed policies -- and that there are limits to what you can do. Be clear about when your role is advisory and when it is that of the final decision maker.
- **Understand the legislative and quasi-judicial processes:** See the "Land Use Decisions" chapter.
- **Interpret and apply zoning ordinance provisions. Apply facts to criteria:** Your planning staff and legal counsel and the information in this manual will assist you.
- **Make decisions/recommendations:** Be courageous. Don't avoid hard decisions.

APPLICANT RESPONSIBILITIES

Applicants for land use approvals have significant

responsibilities just as do the planning commission, elected officials, and staff. The applicant bears the burden of proof!

If what the applicant wants to do with the land were allowed outright, there would be no need for an application. The request (for a zone change, conditional use permit, etc.) is for a change in what is customarily allowed. The one asking for the change is responsible for demonstrating that the request conforms with your comprehensive plan and ordinance requirements.

Property owners who are unfamiliar with the land use process may be daunted by the requirement that they prove their case. Generally staff works hard to help applicants understand the criteria on which a decision will be based and offer advice on the kind of information to present.

HEARING OFFICER RESPONSIBILITIES

Some local jurisdictions hire a hearings officer to conduct quasi-judicial land use hearings while the planning commission considers legislative issues.

Generally, the hearing officer is an attorney with land use experience. It is this individual's job to weigh an application against the local comprehensive plan and ordinances, determine the findings of fact, and require appropriate conditions of approval. There are several benefits to having a hearings officer:

- Planning Commissions in communities with high levels of land use activities can be freed of time-consuming quasi-judicial hearings to concentrate on long-range planning and updating of plans and ordinances.
- Jurisdiction in which land use is a hot political issue can benefit from transferring controversial issues to a trained legal practitioner.
- Some decisions may be made more quickly when only one person (the hearings officer) rather than several (the planning commission) needs to approve a final order.

ROLES AND RESPONSIBILITIES OF OTHERS

Others – in addition to staff, elected and appointed officials – often are concerned with land use decisions. Being aware of who these interests are can assure better decisions.

State and federal agencies often are involved in local decisions. Frequently, state and federal regulations require their involvement. For example, the Oregon Department of Transportation cares when a land use action involves access to a state highway. Development in natural resource lands may involve the Corps of Engineers, Department of State Lands, or the Oregon or U.S. Department of Fish and Wildlife. There are many other examples. These agencies have missions to carry out that are affected by local land use decisions, so they may participate in hearings.

Neighboring property owners are entitled to mailed notice if their property is within a certain distance of the site for which a quasi-judicial land use action is proposed. State law sets the distances for various types of proposals. In addition, voters approved an amendment to the Oregon Constitution that establishes requirements for mailed notice. Legislative rezones now require notice to every affected property owner.

City-county coordination is required for land use actions that involve urban growth boundaries or unincorporated land within the urban growth boundary. Coordination is desirable in many instances even when it is not required. Overlooking this coordination and ignoring mutual interests usually will cause problems.

Citizens and neighborhood groups can be strong advocates or opponents of an application. They also can create political pressure for their positions.

LCDC Goal 1 (Citizen Involvement) and Goal 2 (Planning Process) are good starting points for decisions on what groups to involve in land use actions and how to do it. DLCD offers two useful publications: *How to Put the People into Planning* and *Collaborative Approaches to Decision Making and Conflict Resolution.*

In addition, see the "Effective Participation Citizen Involvement" section of this manual.

Characteristics of Quality Planning Commissions

- A conviction that planning is important
- The ability to make decisions
- Time and energy to devote to the commission
- Ability to accept the will of the majority
- Courage
- Professional respect for the staff
- Ability to communicate well

These characteristics apply to successful government bodies too. Planning commissioners and elected officials become ineffective when they:

- Become involved in office administration
- Allow personal feelings towards peers or staff to affect their judgment
- Allow personal interest to control public policy interests
- Neglect their duties
- Are afraid to make decisions or take firm stands
- Adopt an arrogant or paternalistic attitude toward the

public or staff

BUILD A BETTER COMMISSION

Finally, in this discussion of roles and responsibilities, the Institute for Education in Local Government at Berkeley, California, offers these 14 ways to build a better planning commission:

1. Develop and adopt bylaws and procedures and stick to them.
2. Develop good and reliable information, data, and maps and make them available to anyone who wants them.
3. Prepare and maintain an adequate general plan, refer to it, make decisions that are consistent with its policies, and implement them.
4. Annually reexamine what you are doing as a commissioner, how well you are doing it and how to do it better.
5. Outline a year's work on active planning and stick to it. Do not confuse development permit processing (reactive planning or plan review) with real planning.
6. Ask to participate in preparing the planning agency's budget.
7. Meet periodically with your city council or county board to exchange ideas and to assess your mutual objectives.
8. Consider a public forum every year or so. Ask people ("your clients") how things are going and what they want done (if anything)
9. Tell your staff what you want, how you want materials presented to you, etc. Do not be a passive commission that waits for "the experts" to tell you what to do next.
10. Attend some short courses on new planning techniques or the latest in land use law, and expect your staff to do the same.
11. Tour about as a commission to see what others are doing. Sometimes you will be uplifted to find out how many light years ahead of your neighbors you really are, and sometimes you'll get some ideas worth borrowing.
12. Appoint a commission representative to appear before the elected body when it is necessary to explain or sell an action. Don't expect staff to do your job.
13. Lobby for good planning. If you won't, who will?
14. Take time to orient new commissioners to the job. (Remember how tough it was to get the hang of it when you were a new member of your commission)

CHAPTER 4: Making Land Use Decisions

A newly elected or appointed official often takes his or her seat on the decision-making body under the belief that land use decisions are made based on each individual's opinion. That is, each person votes according to what he or she thinks is in the best interest of the community. It is a surprise to learn that state law requires that there be standards or criteria against which the decision must be made and procedures that must be followed. Consequently, jurisdictions must make their decisions accurately and consistently. This section outlines the role of the comprehensive plan, the classification of land use decisions, how to make a decision correctly, and the essential steps in conducting a public hearing.

THE ROLE OF THE COMPREHENSIVE PLAN

The comprehensive plan and the zoning code play important roles in each land use decision. However, zoning code is often seen as the controlling document. Nevertheless, three Oregon court cases confirmed that the plan is the legally controlling document.

The courts have stated that the comprehensive plan controls land use decisions. Zoning controls only to the extent that it is in accord with the plan. In summary:

- The comprehensive plan is the controlling document.
- Zoning cannot allow more intense use of the site than the plan allows, but it can limit the use to less intense use. This is often done where the services are not available.
- The plan policies control over the plan map and zoning map, unless specifically exempted by the Oregon Legislature.

It is important to ensure that the comprehensive plan and the zoning code are consistent with each other.

TYPES OF LAND USE DECISION

The first step in making a decision is determining what type of decision the request involves. The statutory definition of a "land use decision" is long, detailed, and legalistic (see ORS 197.015(10)). To summarize for our purposes here, a land use decision is a final decision that concerns the adoption, amendment or application of the Statewide Planning Goals, a comprehensive plan provision, a land use regulation; or a new land use regulation and that requires the use of discretion.

Land use decisions are either "legislative" or "quasi-judicial." Approval of a use based on clear and objective standards (i.e., one that does not require discretion) is "ministerial" and is not a land use decision. (See the chart on the following page for definitions.) Each of these types is covered in some detail in this manual.

Law provides for two other types of decisions: limited land use decisions and expedited land divisions. They are mentioned here for completeness but, since they are seldom used, this manual does not cover them in detail.

Limited land use decisions apply inside urban growth boundaries (UGBs) and are a final decision made by the local government. This type of decision can apply to preliminary subdivision and partition plats and to discretionary design standards that apply to an outright permitted use (ORS 197.020). Limited land use decisions are similar to a quasi-judicial decision because of process and notice, but appeals of local decisions bypass LUBA and go straight to the Court of Appeals.

Expedited land divisions (ORS 197.360) apply to partitions of residential land inside a UGB, when the action creates parcels at 80 percent of the maximum allowed density or higher, and satisfies street standards. These are considered neither a land use nor a limited land use decision. Decisions must be made within 63 days and no hearing is required. A special appeal process is provided.

Quasi-judicial Versus Legislative Land Use Decisions

What are the differences between a quasi-judicial and a legislative decision? The Oregon Supreme Court set this three-part test for a quasi-judicial decision: It is quasi-judicial if:

- The process is bound to result in a decision
- The decision is bound to apply pre-existing criteria to concrete facts.
- The action is directed at a closely circumscribed factual situation involving a relatively small number of persons.

Many cases are not clear-cut. The more definitively the above factors are answered in the negative, the more likely the decision is legislative. Otherwise, the decision is quasi-judicial. No single answer controls.

The second factor – whether the decision is bound to apply pre-existing criteria – is present to some extent in most land use decisions, so it is given less weight by the courts. Generally, if the first and third factors are answered negatively, it is a legislative decision.

Kinds of Decisions and Their Characteristics

	Legislative	Quasi-Judicial	Ministerial
Who makes the decision?	Elected officials Planning Commission makes recommendations	Staff, hearings officer, or planning commission Local appeals go to hearings officer, planning commission, and/or elected officials	Staff
Subject of the decision	Adoption and amendment of policies and ordinances and, on appeal of a quasi-judicial decision, the definitive local interpretation of those policies and ordinances	Application of pre-existing criteria and requiring the exercise of discretion Usually initiated by an application from a property owner	Implementation of zoning provisions by applying pre-existing criteria that require no exercise of discretion
Scope	Large geographic area Many ownerships	Single or few ownerships	Usually site specific
Action required?	No	Yes	Yes
Examples	Comprehensive Plan text amendment such as a new policy or an updated transportation system plan New or amended ordinance implementing the plan such as adding or deleting a permitted use or changing a height limitation	Zone change for one or a few properties Permits such conditional use and variance Land divisions	Site plan review Building permit Enforcement
Public involvement and notice	Substantial, with published notice, and with multiple public hearings by multiple bodies; mailed notice under certain circumstances	Opportunity for at least one public hearing with mailed notice to area property owners and to neighborhood associations	None
Decision-maker considerations	No limits on contacts State ethics laws apply	Declare ex-parte contacts No bias or actual conflicts Unlimited staff contact	No limits on contacts

Quasi-Judicial Land Use Decisions

Oregon Supreme Court decisions provide the basis for quasi-judicial procedural requirements. These requirements establish the framework for the land use hearings process and the rights to which the parties are entitled. The rights are:

Procedural requirements:

1. An opportunity to be heard
2. An opportunity to present and rebut evidence
3. A right to an impartial tribunal having had no pre-hearing or ex-parte contact concerning the land use action at issue
4. A right to findings of fact, and
5. A right to a record of the proceedings

The right to an impartial tribunal has been modified by the legislature. The statutes provide that no decision shall be invalid due to an ex-parte contact or to bias resulting from an ex-parte contact with a member if the member:

- Places on the record the substance of a written or oral ex-parte communication concerning the decision, and
- Has made a public announcement of the content 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 is related.

Applicable Standards and Criteria

Statutes require a land use decision to be based on approval criteria. The decision must apply the approval criteria to the facts. The decision-maker must apply the adopted criteria for approval that are contained in the zoning code. If the applicant demonstrates compliance with these criteria, the application must be approved even if the decision-maker disagrees with the criteria, or believes that additional, un-adopted criteria should be applied. Conversely, if the applicant fails to demonstrate compliance with the applicable criteria, the decision-maker must deny the application even if it believes that the applicable criteria are unreasonable.

Regarding interpretation of criteria, if the wording is clear and unambiguous, it must be followed regardless of legislative intent. A hearing body may not insert what has been omitted or omit what has been inserted. If two provisions conflict, the more specific provision controls. For example, if a property is located in a zone that allows certain uses, but is subject to an overlay zone that restricts several of those uses, the overlay zone restrictions will control.

Findings

Findings are statements of the relevant facts as understood by the decision-maker and a statement of how each approval criterion is satisfied by the facts. A brief statement that explains the criteria accompanies approval or denial and standards considered relevant to the decision, states the facts relied upon and explains the justification for the decision.

The purposes of findings are to:

- Ensure that the hearings body applied the criteria prescribed by statute, administrative rule, and its own regulations and did not act arbitrarily or on an ad hoc basis.
- Establish what evidence the reviewing body relied on in making the decision
- Inform the parties why the hearings body acted as it did and explain how the conclusions are supported by substantial evidence.
- Demonstrate that the reviewing body followed proper procedures.
- Aid careful consideration of criteria by the reviewing body.
- Keep agencies within their jurisdictions.

Statutes require:

- An explanation of the standards considered relevant to the decision.
- A statement of the facts supporting the decision.
- An explanation of how the standards and the facts dictate the decision.

The words "brief statement" indicates the legislative intent that the statement need not be exhaustive, but rather that it contain a summary of the relevant facts. No particular form is required, and no magic words need be employed. Judicial review will look for:

A clear statement of what the decision-making body found, after hearing and considering all of the evidence, to be the relevant and important facts upon which its decision is based and

The reasons these facts support the decision based on the relevant criteria. Conclusions alone are not sufficient.

The findings must address all of the applicable criteria. Failure to make a required finding creates a void in the record and renders the order legally insufficient. It is a defect that alone will result in a remand.

A remand takes time and adds expense because it generally requires gathering more evidence, mailing additional notice, and holding another hearing. In addition, the local government may decide to change the decision after a remand if the record cannot be developed to support the original decision. Such delays or reversals are costly. The best course of action is to determine whether the criteria can be satisfied before the initial hearing is held. This requires the applicant to submit a complete application.

The best way to prepare findings is to:

1. Identify all of the applicable criteria
2. Start with the first criterion and deal with each element separately; for example, "The criterion is that the property is not subject to landslides, floods, or erosion."
3. State the criterion as a conclusion; e.g., "The property is not subject to landslides because..."
4. State the fact that leads to the conclusion the property is not subject to landslides; e.g., "...because the topography on the property has a 0% grade and the property is located on a lava bed."
5. Repeat the process for each element of every applicable criterion.
6. Where there is a criterion or element of a criterion that is not applicable, state why it is not applicable.
7. Where there is conflicting evidence, the safest course is to state there was conflicting evidence, but the hearings body believed certain evidence for certain reasons. This however, is not required.

Common problems with findings include:

- Failure to identify all applicable standards and criteria.
- Failure to address each standard and criterion.
- Deferring a necessary finding to a condition of approval.
- Generalizing or making a conclusion without sufficient facts.
- A mere statement that the criteria have been met.
- Simple restatement of the criterion.
- Failure to establish causal relationship (direct observation, reports from other people), between facts and ultimate conclusions.

To survive a legal challenge, keep these tips in mind:

- State all assumptions.
- Articulate the link between the project impact and the conditions being imposed.
- If project is modified, add new findings.
- Make sure findings address criteria.
- Avoid findings that restate the law.
- Put in clear, understandable language.
- Make sure it is not class-specific discrimination (or PC may be liable).

Past Decisions as Precedent

A planning commission is not bound by an interpretation of a provision made in a prior case, as a matter of law, unless the particular provision has been construed by LUBA or the courts. As a matter of policy, however, consistent application of the same rules is desirable. Be mindful of the need to be consistent, but do not let consistency blind you to arguments that a clearly erroneous past interpretation should be corrected. Do not perpetuate a mistake!

Although the governing body also is not bound by its past interpretations of a provision, the planning commission should heed interpretations by the elected officials and let the disagreeing party argue to the governing body that it should change its mind.

Evidence

The applicant has the burden of proof. The applicant must introduce evidence that shows that all of the approval criteria are satisfied. The opponents, on the other hand, have the duty to show that the applicant's facts are incorrect or that the applicant has not introduced all of the facts necessary to satisfy the burden of proof. The questions that arise are:

- What is relevant evidence in the record?
- How much evidence is required to support a finding; that is, what does substantial evidence mean?
- How does the reviewing body address conflicting evidence in the findings?

The decision must be based on **relevant evidence** in the record. Evidence in the record is evidence submitted to the reviewing body. The reason for limiting the basis for the decision to evidence in the record is to assure that all interested persons have an opportunity to review the evidence and to rebut it.

A reviewing body may support an application in concept or members may have personal knowledge of facts that would satisfy the approval criteria, but it cannot approve the application on that alone. There must be substantial evidence in the record. Personal knowledge is not evidence in the record. In reality, such applications are approved but they will be remanded if appealed to LUBA. It is also important to note that an application cannot be denied on the basis of facts not in the record.

Relevant evidence is evidence in the record that shows an approval criterion is or is not satisfied. Testimony about effects on real estate values is not relevant unless the approval criteria require a finding on the effect on real estate values.

A statute provides that LUBA may reverse or remand a local government decision when the local government has "made a decision not supported by **substantial evidence** in the records as whole." The term "substantial evidence" does not go to the volume of evidence. Substantial evidence consists of evidence that a reasonable mind could accept as adequate to support the conclusion.

Where the evidence is such that reasonable persons may fairly differ as to whether it establishes a fact, there is substantial evidence to support the decision. In other words, what is required is enough evidence to show that an approval criterion is satisfied. If two people agree that there is not substantial evidence, there is not enough evidence.

When the applicant's evidence is countered by the opponents, there is **conflicting evidence**. Where there is conflicting testimony based on different data, but any of the data is such that a reasonable person might accept it, a conclusion based on any of the data is supported by reasonable evidence. That is, the hearings body may select any of the information for its decision provided it is reasonable that a person would accept the data as correct. The best course of action is for the hearings body to state what evidence it believes and why when it prepares its findings of fact.

The Decision

The job of the reviewing body is to ascertain the facts and to apply the approval criteria to the facts. The decision (due

within 120 days of complete application for cities and 150 days for counties) will take one of three forms:

1. **Approval.** The reviewing body found that the facts in evidence indicate the criteria are satisfied
2. **Approval with conditions.** The reviewing body has found that the facts in evidence to not demonstrate the criteria are fully satisfied, but, through the application of conditions, the criteria can be satisfied. This assumes the ordinance authorizes the application of conditions for approval
3. **Denial.** The reviewing body has found that the facts in evidence have not demonstrated that the criteria are satisfied and the application cannot be made to comply with conditions attached to it.

Conditions of Approval

Many decisions come with a list of conditions tied to the approval. Once the conditions have been satisfied, the land use or building permit may be issued. Jurisdictions should exact conditions carefully, based on local or statutory authority. Conditions should not be a replacement for adequate findings of fact. Conditions or exactions should have a clear relationship to the applicable standards and criteria. They should relate to the evidence relied upon for the decision. The conditions should be enforceable by the administrator. The original approving body should typically make any changes to conditions.

Conditions or exactions should also meet the traditional constitutional tests of the Fifth and Fourteenth Amendments (due process and civil rights). Two important U.S. Supreme Court cases, Nollan v. California Coastal Commission, 1987, and Dolan v. City of Tigard, 1994, provide guidelines for the constitutional limits test.

The Nollan case said there must be a connection (a "rational nexus") between the condition and the applicable regulations and that there must be a legitimate public purpose for the condition. Most importantly, the public purpose must be related to the impact of the specific proposal. The Nollan case involved a building permit for a beachfront residence and the California Coastal Commission's requirement that the applicant dedicate a 10-foot wide pedestrian easement across the parcel's beach frontage. The condition was based on a finding that the house would block the view of the beach and would be a "psychological barrier" because the public could not see the beach. The court held the trail dedication constituted a taking. Nollan tells local governments that there must be a connection between the condition and the applicable regulations.

The Dolan case also provides a constitutionality test and said there must be a "reasonable proportionality" between the exaction and the condition based on an individualized determination of the property's impact. The case involved the doubling of an existing 9000 square-foot plumbing supply store and addition of 39 paved parking spaces. The city required a 7000 square-foot dedication for storm water and a bicycle path, based on drainage and bicycle master plans, under the assumption customers and employees could use the path and it would offset some traffic impact. The city held that flood protection and reduction in traffic congestion are legitimate public purposes and that the conditions would substantially advance those purposes. The U.S. Supreme Court held that:

> *We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development....*

Both cases reinforce a shifting of the burden to the local governments when it comes to developing exactions.

The Final Order

The preparation of a final order can be time-consuming and costly to local governments. There are three ways to reduce the time and costs:

1. Require the applicant to submit a complete application, which includes facts relevant to each of the approval criteria.
2. Limit the preparation of in-depth detailed final orders to those matters that are anticipated to be appealed.
3. Require the winning party to prepare the final order.

Minor or less complex decisions can be made at the hearing based on findings and the hearings body official must sign them.

Appeals of Quasi-Judicial Decisions

The law requires that notice of a quasi-judicial decision be sent to all parties to a proceeding. Local zoning codes provide for internal appeals (for example, from the planning commission to the board of commissioners) before the decision is final. In that case, the applicant has a certain number of days from the time of receiving the notice of decision in which to file notice of appeal, but any internal appeal procedure must be completed within 120/150 days from the time a complete application was filed.

Several variations and levels of review exist among Oregon's cities and counties. The scope of your jurisdiction's appellate review is defined by local ordinances, and can range from a

review of the previous hearing record to a de novo hearing, which is held as if the prior decision had not been rendered. The latter has the advantage of providing an opportunity to correct bad decision or procedural errors. But it can be costly, repetitious and time-consuming.

A final quasi-judicial land use decision can be appealed to the Land Use Board of Appeals. Notice of an appeal to LUBA must be filed within 21 days of a final decision. A person may appeal if he or she appeared at the local level, either orally or in writing, and was entitled to notice and a hearing or has interests adversely affected by the decision.

Tort Liability

Sovereign immunity is a common law doctrine based on the theory that "the king can do no wrong" and under this doctrine, government cannot be sued unless it consents to it. The Oregon Tort Claims Act enacted by the Legislature in 1967 is consent to be sued, and it abolished sovereign immunity in Oregon. There is however, a second kind of common law immunity, not to be confused with sovereign immunity, called public official immunity. The Tort Claims Act does not abolish it. Rather, it is specifically incorporated into the Act in the provisions of ORS 30.265(2).

The rationale underlying the public official immunity is based on a public policy favoring freedom of action. Public officials would be unduly hampered and intimidated in the discharge of their duties if they were continually subject to suit. The threat of vexatious lawsuits might discourage public service and might influence decisions.

Immunity is given because there is no way to determine guilt or innocence without a trial and, in the words of Judge Learned Hand, "Subjecting an official to the burden of a trial and to the inevitable danger of its outcome would dampen the ardor of all but the most resolute or the most irresponsible, in the unflinching discharge of their duties. Again and again, the public trust calls for action which may turn out to be founded on a mistake, in the face of which an official may find himself hard put to it to satisfy a jury or his good faith."

Judges and legislators are granted absolute immunity while they are acting within the scope of their duties. Absolute immunity means they are immune no matter the motivation for their action. The question is whether this immunity extends to lesser legislative bodies and whether it extends to quasi-judicial bodies.

Planning commission members and elected officials have public official immunity while acting on planning matters in their official capacity. Acting in their official capacity means acting on a land use matter in a public meeting called for the purpose of deliberating toward a decision on the matter. Public official immunity does not extend to actions taken outside a public meeting.

The Public Hearing

Many applicants and most citizen opponents have never before testified at a hearing. They come to the hearing with no knowledge of how the hearing will be conducted, what they should do and say, and how the decision will be made. They find it very confusing and the confusion leads to frustration and hostility and, in some cases, suspicion about how the decision was made.

The situation is further complicated by the testimony being irrelevant and repetitious. The reviewing body members find it difficult to concentrate on the testimony, and people leave feeling they weren't heard. This further convinces them that "you can't fight city hall."

These problems can be overcome by having a chairperson give a thoughtful and careful explanation of the hearings process. The explanation should explain:

- How the hearing will be conducted
- Parties' rights and responsibilities
- How the decision will be made
- What constitutes relevant testimony

Regarding relevant testimony, state statute requires that a statement be made at the outset of the hearing that:

1. Lists the applicable substantive criteria
2. States that testimony, arguments and evidence must be directed toward those criteria or other criteria in the plan or land use regulation that the person believes to apply to the decision
3. States that failure to raise an issue in enough detail to allow the decision-maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue ("raise it or waive it").

The explanation of relevant testimony is supported if the approval criteria are posted on the wall. The chairperson should read the approval criteria – usually by section number, but if they are few they can be recited in full – and then give examples of relevant and irrelevant testimony. Relevant testimony relates to whether one of the criteria is satisfied. People often want to talk about property values. If maintenance of property values is not a criterion, testimony on this subject would be irrelevant. In other words, any testimony that does not show that one of the criteria is or is not satisfied is irrelevant testimony.

Imposition of time limits is another factor that creates hostility. It is at the discretion of the chairperson whether to impose them. Often, a simple explanation that they can be

imposed will cause people to limit their testimony.

State land use law does not provide detailed hearing procedures, but following the outline below will ensure that the process is fair and that the general requirements will be satisfied. Once the opponents hear the staff report and applicant's presentation, they have an understanding of the probable outcome. In some situations, the opponents at this point realize it is in their interest to focus on recommending conditions of approval that will make the proposal an integral part of the neighborhood. The end result is a better decision and a project that through its design takes into consideration the needs of the community.

State law is quite specific regarding parties' rights to present and rebut evidence and to have the record left open for additional testimony. Before the chair closes the hearing, any participant may request an opportunity to present additional evidence or testimony regarding the application. The reviewing body must grant the request by continuing the public hearing or by leaving the record open for additional written evidence or testimony.

If the reviewing body 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 hearing. An opportunity to present and rebut new evidence or testimony must be provided at the continued hearing. If new written evidence is submitted at the continued hearing, anybody 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 or testimony for the purpose of responding to the new written evidence.

If, after the initial hearing, the reviewing body leaves the record open for additional written evidence or testimony, the record must be left open for at least seven days. Any party 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 reviewing body must reopen the record.

Unless the applicant waives its right, the reviewing body must 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.

Outline for Conduct of a Quasi-Judicial Public Hearing

1. Chair opens hearing
2. Chair describes procedures for testimony, evidence, and making the decision, including required statements
3. Declare actual or potential conflicts of interest, ex parte contact or personal bias
4. Staff report
   a. Approval criteria
   b. Proposed findings
   c. Conclusion and recommendation
5. Applicant's testimony
6. Proponents' testimony
7. Opponents' testimony
8. Neutral testimony
9. Applicant's rebuttal
10. Consider requests for continuance or for the record to be left open

If the hearing is continued, the process starts again at step 1 at the commencement of the next hearing. Step 3 does not need to be repeated.

11. Close the hearing

If the hearing is not continued, but the record is left open for further testimony or evidence, the initial meeting will end here.

12. Discussion
13. Motion and second
14. Deliberation, amendments to motion (if any)
15. Vote

It is common that discussion will commence prior to the motion, but there should always be an opportunity for deliberation of the motion before the vote. The chair should restate the motion on the table to make sure the members understand it.

LEGISLATIVE LAND USE DECISIONS

As explained earlier in this chapter, legislative proceedings relate to policy issues or matters that affect a broad area, or both. An amendment to the text of the comprehensive plan or zoning code is nearly always a legislative matter. A plan or zoning map amendment may be legislative depending on its scope and whether it is initiated by an applicant or the local government. The procedures for hearing a legislative matter are different from those for a quasi-judicial proceeding. The laws are less detailed and the hearings less structured.

Notice of Legislative Decisions

Individual mailed notices must be sent to all property owners whose property would be rezoned by a legislative action. This includes a change to the base zoning designation and a change to text "in a manner that limits or prohibits land uses

previously allowed in the affected zone." This is commonly referred to as "Measure 56 notice." The individual notice specifically must inform the owner that a rezoning "may reduce the value of your property." If no property is to be rezoned, local legislative hearing notice requirements need to be followed.

Legislative Hearings

In a quasi-judicial setting, there are always proponents and often opponents to the proposal. In a policy matter, an individual may support part of the proposal and object to others. Parties may support the objective but disagree with some of the wording. Therefore, testimony at a legislative hearing is more open. There is no "raise it or waive it" requirement. Segmenting testimony into "proponents" and "opponents" is inappropriate.

Since legislative matters affect policy or a broad area, an individual's rights are handled differently from a quasi-judicial process. There are no limits on ex parte contact so there is no time set aside for ex parte declarations at the commencement of the hearing.

While the Statewide Planning Goals and perhaps statutes apply to many legislative matters, criteria are not as central to these hearings as they are in quasi-judicial matters. Since the planning commissioner is not applying facts to criteria, bias and objectivity are not as tightly controlled. The correct policy is what matters, not whether a criterion is satisfied. Decision-maker opinions in this arena are acceptable – even expected. Conflicts of interest still matter, however.

A planning commission does not decide a legislative matter, but rather makes a recommendation to the elected body. However, as the dedicated planning body for the jurisdiction, the elected officials depend on the planning commission to fully consider matters and forward thoroughly evaluated, reasoned recommendations.

Outline for Conduct of a Legislative Public Hearing

1. Chair opens hearing
2. Chair describes procedures for testimony and outcome of the hearing
3. Staff report
4. Testimony from citizens, interest groups, state agencies, and other units of government

Requests to continue the hearing do not need to be observed, but the planning commission may continue a legislative hearing as needed. If the continuance is to a date, time, and place certain, no new notice is required.

5. Close the hearing
6. Discussion
7. Motion and second
8. Deliberation, amendments to motion (if any)
9. Vote on a recommendation

APPEALS AND TIMING

The "120-Day Rule"

A city's final land use decision must be made within 120 days from acceptance of a complete application including time needed for appeal. Most city ordinances allow the staff 30 days to determine that what was submitted is complete and then to send written notice to the applicant. Date of that notice starts the 120-day clock. Counties face similar requirements but are allowed 150 days rather than 120 for cases outside UGBs.

If a decision cannot be made within the time limits, the local government can ask the applicant if he or she will waive the rule. Often that is agreeable since the alternative may be denial of the application. If the clock runs out and the deadline has not been waived, the applicant may ask the court to grant a writ of mandamus. If granted, the writ allows the application to proceed without local government approval.

Appeals

The final consideration in a legislative or quasi-judicial decision is the potential of an appeal – from a staff decision to the planning commission or hearings officer, from the planning commission to the governing body or from the elected officials to LUBA. Time frames for these actions are set out in state law and local ordinances.

CHAPTER FIVE: Ethical Principles of Planning

According to the Oregon Ethics Guide for Public Officials, "a public office is a public trust." Planning issues commonly involve a conflict of values, and often there are significant private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

The American Planning Association (APA) and the American Institute of Certified Planners (AICP) have adopted a Code of Ethics and Professional Conduct (https://www.planning.org/ethics/ethicscode.htm) which we recommend all professional planners and planning commissioners follow when making land use decisions.

PRINCIPLES TO WHICH WE ASPIRE

1. Our Overall Responsibility to the Public

Our primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate. We shall achieve high standards of professional integrity, proficiency, and knowledge. To comply with our obligation to the public, we aspire to the following principles:

- We shall always be conscious of the rights of others.
- We shall have special concern for the long-range consequences of present actions.
- We shall pay special attention to the interrelatedness of decisions.
- We shall provide timely, adequate, clear, and accurate information on planning issues to all affected persons and to governmental decision makers.
- We shall give people the opportunity to have a meaningful impact on the development of plans and programs that may affect them. Participation should be broad enough to include those who lack formal organization or influence.
- We shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs.
- We shall promote excellence of design and endeavor to conserve and preserve the integrity and heritage of the natural and built environment.
- We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.

2. Our Responsibility to Our Clients and Employers

We owe diligent, creative, and competent performance of the work we do in pursuit of our client or employer's interest. Such performance, however, shall always be consistent with our faithful service to the public interest.

- We shall exercise independent professional judgment on behalf of our clients and employers.
- We shall accept the decisions of our client or employer concerning the objectives and nature of the professional services we perform unless the course of action is illegal or plainly inconsistent with our primary obligation to the public interest.
- We shall avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.

3. Our Responsibility to Our Profession and Colleagues

We shall contribute to the development of, and respect for, our profession by improving knowledge and techniques, making work relevant to solutions of community problems, and increasing public understanding of planning activities.

- We shall protect and enhance the integrity of our profession.
- We shall educate the public about planning issues and their relevance to our everyday lives.
- We shall describe and comment on the work and views of other professionals in a fair and professional manner.
- We shall share the results of experience and research that contribute to the body of planning knowledge.
- We shall examine the applicability of planning theories, methods, research and practice and standards to the facts and analysis of each particular situation and shall not accept the applicability of a customary solution without first establishing its appropriateness to the situation.
- We shall contribute time and resources to the professional development of students, interns, beginning professionals, and other colleagues.
- We shall increase the opportunities for members of underrepresented groups to become professional planners and help them advance in the profession.
- We shall continue to enhance our professional education

and training.

- We shall systematically and critically analyze ethical issues in the practice of planning.
- We shall contribute time and effort to groups lacking in adequate planning resources and to voluntary professional activities.

OUR RULES OF CONDUCT

We adhere to the following Rules of Conduct, and we understand that our Institute will enforce compliance with them. If we fail to adhere to these Rules, we could receive sanctions, the ultimate being the loss of our certification:

1. We shall not deliberately or with reckless indifference fail to provide adequate, timely, clear and accurate information on planning issues.
2. We shall not accept an assignment from a client or employer when the services to be performed involve conduct that we know to be illegal or in violation of these rules.
3. We shall not accept an assignment from a client or employer to publicly advocate a position on a planning issue that is indistinguishably adverse to a position we publicly advocated for a previous client or employer within the past three years unless (1) we determine in good faith after consultation with other qualified professionals that our change of position will not cause present detriment to our previous client or employer, and (2) we make full written disclosure of the conflict to our current client or employer and receive written permission to proceed with the assignment.
4. We shall not, as salaried employees, undertake other employment in planning or a related profession, whether or not for pay, without having made full written disclosure to the employer who furnishes our salary and having received subsequent written permission to undertake additional employment, unless our employer has a written policy which expressly dispenses with a need to obtain such consent.
5. We shall not, as public officials or employees, accept from anyone other than our public employer any compensation, commission, rebate, or other advantage that may be perceived as related to our public office or employment.
6. We shall not perform work on a project for a client or employer if, in addition to the agreed upon compensation from our client or employer, there is a possibility for direct personal or financial gain to us, our family members, or persons living in our household, unless our client or employer, after full written disclosure from us, consents in writing to the arrangement.
7. We shall not use to our personal advantage, nor that of a subsequent client or employer, information gained in a professional relationship that the client or employer has requested be held inviolate or that we should recognize as confidential because its disclosure could result in embarrassment or other detriment to the client or employer. Nor shall we disclose such confidential information except when (1) required by process of law, or (2) required to prevent a clear violation of law, or (3) required to prevent a substantial injury to the public. Disclosure pursuant to (2) and (3) shall not be made until after we have verified the facts and issues involved and, when practicable, exhausted efforts to obtain reconsideration of the matter and have sought separate opinions on the issue from other qualified professionals employed by our client or employer.
8. We shall not, as public officials or employees, engage in private communications with planning process participants if the discussions relate to a matter over which we have authority to make a binding, final determination if such private communications are prohibited by law or by agency rules, procedures, or custom.
9. We shall not engage in private discussions with decision makers in the planning process in any manner prohibited by law or by agency rules, procedures, or custom.
10. We shall neither deliberately, nor with reckless indifference, misrepresent the qualifications, views and findings of other professionals.
11. We shall not solicit prospective clients or employment through use of false or misleading claims, harassment, or duress.
12. We shall not misstate our education, experience, training, or any other facts which are relevant to our professional qualifications.
13. We shall not sell, or offer to sell, services by stating or implying an ability to influence decisions by improper means.
14. We shall not use the power of any office to seek or obtain a special advantage that is not a matter of public knowledge or is not in the public interest.
15. We shall not accept work beyond our professional competence unless the client or employer understands and agrees that such work will be performed by another professional competent to perform the work and acceptable to the client or employer.
16. We shall not accept work for a fee, or pro bono, that we know cannot be performed with the promptness required by the prospective client, or that is required

by the circumstances of the assignment.

17. We shall not use the product of others' efforts to seek professional recognition or acclaim intended for producers of original work.

18. We shall not direct or coerce other professionals to make analyses or reach findings not supported by available evidence.

19. We shall not fail to disclose the interests of our client or employer when participating in the planning process. Nor shall we participate in an effort to conceal the true interests of our client or employer.

20. We shall not unlawfully discriminate against another person.

21. We shall not withhold cooperation or information from the AICP Ethics Officer or the AICP Ethics Committee if a charge of ethical misconduct has been filed against us.

22. We shall not retaliate or threaten retaliation against a person who has filed a charge of ethical misconduct against us or another planner, or who is cooperating in the Ethics Officer's investigation of an ethics charge.

23. We shall not use the threat of filing an ethics charge in order to gain, or attempt to gain, an advantage in dealings with another planner.

24. We shall not file a frivolous charge of ethical misconduct against another planner.

25. We shall neither deliberately, nor with reckless indifference, commit any wrongful act, whether or not specified in the Rules of Conduct, that reflects adversely on our professional fitness.

26. We shall not fail to immediately notify the Ethics Officer by both receipted Certified and Regular First Class Mail if we are convicted of a "serious crime" as defined in Section D of the Code; nor immediately following such conviction shall we represent ourselves as Certified Planners or Members of AICP until our membership is reinstated by the AICP Ethics Committee pursuant to the procedures in Section D of the Code.

CHAPTER SIX
Effective Participation - Be Fair

Other sections of this manual provide information on land use planning, legal requirements, public hearing procedures, etc. However, effective participation requires more, particularly in terms of how applicants, proponents, opponents, "interested citizens," elected officials, and others view your work.

Golden Rule for Public Decision-Making: Be Fair

Unpopular decisions will be more readily accepted when people see the process as fair – when people understand the basis of the decision and feel that they had an opportunity to be heard. How meetings are conducted, how you listen and what you say affects your credibility and your image of fairness.

DOS AND DON'TS FOR CONDUCTING FAIR MEETINGS

Do

- **Arrive early.** If the hearing is scheduled for 7:00 p.m., the hearing should start at 7:00 p.m. If you have to wait for one or two others to have quorum, you are being unfair to all the people who came on time.
- **Dress appropriately.** If the shirt and tie are typical apparel, showing up in a tired Mickey Mouse tee shirt does not create the impression of much respect for the people at the hearing.
- **Your homework.** It is unfair to the applicant and your community to act on issues without adequate preparation and you may make some terrible decisions.
- **Focus on issues, not personalities.** Discussion and decisions will be more rational if they are impersonal.
- **Treat everyone with courtesy and respect.** The nasty neighbor, the sneaky business competitor, or the rude gadfly may not deserve it, but they should be treated with the same respect as the community's leading citizen, the best friend or your mother.

Don't

- **Use body language that suggests boredom, anger, disbelief, etc.** The Mickey Mouse shirt wearer will not improve the impression he makes by burying his head in his hands while people are testifying.
- **Mingle with people in the audience before the meeting or during a recess.** Others may assume something secret is taking place.
- **Assume the role of fairy godmother.** It is not your job to "save" people from making bad decisions or to take on the applicant's burden of proof.
- **Let personal feelings dictate decisions.** How you feel about preserving wetlands or locating convenience stores in residential areas are not criteria for decisions unless ordinance standards say they are.

TIPS FOR GOOD COMMUNICATION

Our communication is 55 percent body language – posture, expression, gestures, breathing – and 38 percent how we say it – tone, speed, volume. Only 7 percent of our communication is in the choice of words.

Do

- **Be attentive.** Those presenting testimony probably have spent hours in preparation. The least you can do is listen and make them think you are as interested as you should be.
- **Actively listen.** Focus on what is said not on what you expect to hear or what reply you'll make.
- **Paraphrase what was said to confirm what was meant.** If someone wants "more professional development," does that mean design review standards or training for staff and planning commissioners?
- **Summarize what you have heard.** Comment on which facts are important to the decision and which are not.
- **Show respect for the chair.** Say Madam Chair, Mr. Chair, Chairman Brown or whatever. This sets an example for applicants and encourages orderliness.
- **Treat people equally.** Don't use first names. If the first to testify is referred to as Mr. Jones, refer to the next as Mrs. Smith even if she's Mary, your sister-in-law.
- **Avoid the appearance of prejudging before a public hearing is closed.** Saying "this project will increase traffic" implies a decision is made. Instead say approval of this project would increase traffic.

Don't

- **Be trapped by "listening blocks."** Be aware that most of us tune out comments we don't want to hear or ideas from people we don't like. Recognition of our personal listening blocks helps us hear in spite of them.
- **Make assumptions about what you hear.** Instead, ask open, rather than closed, questions. "Open" questions include words who, how, what, where, when and why and cannot be answered yes or no.
- **Interrupt a presentation except for essential and brief**

questions. People generally arrange their comments in a logical sequence and probably will get to your concern if you are patient.

- **Speak "Plannerese."** Not everyone knows the meaning of UGB, LID, PUD, etc. The first time you use an acronym, be sure to explain what it means. (See Appendix for "Plannerese" and translations).

Try to answer technical questions, even if you know the answer. That's the staff's job; yours is to reflect community values and apply the plan and ordinances. When you give technical answers, you undermine the staff and diminish your real role.

Some of the above ideas may not fit your community or your planning commission, but we hope they alert you to thinking about how the public perceives how you work. You want to not only be fair, but be seen as fair, too.

OREGON'S OPEN MEETING LAW

Oregon's open meeting law (ORS 192.610–192.690) requires that decisions of any "governing body" be arrived at openly so that the public can be aware and informed of the body's deliberations and decisions.

A governing body is one with two or more members that decides for or recommends to a public body. The law applies to the state, cities and counties, and advisory bodies to those jurisdictions. Not only must meetings of city councils and boards of county commissioners be "open" – the meetings of planning commissions, design review boards and other appointed boards or commissions with the authority to make decisions or recommendations are also subject to the requirements.

With a few exceptions, a meeting exists any time a quorum of the body's membership is present. "Closed meetings" (or executive sessions) are allowed to discuss employment, discipline or labor relations but decisions on these issues must be made at a public (open) meeting. Planning commissions will rarely hold business in an executive session.

Notice of public meetings is required, and the notice must include the time and place and principle subject to be discussed. Notice should be timed to give "reasonable" advance notice to the public. For "emergency" or special meetings, the law calls for 24 hours advance notice.

What's required at the meeting?

Any public body must provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings must be available to the public within a reasonable time after the meeting, and shall include at least the following information:

- All members of the body present
- All motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition
- The results of all votes and the vote of each member by name
- The substance of any discussion on any matter, and
- A reference to any document discussed at the meeting

Because a meeting is open to the public, it means that anyone can attend. But "open" does not mean that anyone has the right to speak. Planning commissions and governing bodies may hold work sessions and other meetings without allowing public comment.

Site Visits

Oregon's open meeting law exempts "site inspections" from the meeting requirements. That means that the planning commission or governing body could go as a group, as a quorum, to visit a site. However, site visits are considered ex parte contact and should be disclosed at the first public hearing.

A second consideration is the assumptions, which may be made by the public when they realize that a majority of the decision-making body visited the site without everyone else who might be interested in having an opportunity to be there. What did they see? What was discussed? What did they decide?

RESOLVING LAND USE CONFLICTS

Land use issues can generate conflicts. We need to recognize issues that may produce conflicts, anticipate opportunities to deal with the problems and use techniques that encourage "win-win" solutions.

Elements in Every Conflict

- **Issues.** The "what" of a dispute (e.g. the wetland impact of proposed development)
- **Positions.** The "how" – a specific proposal about how to solve the dispute ("This wetland permit cannot be issued")
- **Interests.** The "why" – the expression of needs that drive a person's behavior (Why do you want…? Why is that important?)

Only by identifying the interest(s) underlying the issues and positions and recognizing the different levels of importance each party gives to these interests can the disputing parties create mutually satisfying, durable solutions to conflicts.

Interests may be:

- **Procedural.** Do people feel they are being treated fairly?
- **Psychological.** Do people feel they are listened to and their ideas respected?
- **Substantive.** Do people feel they will benefit from the result?

The above are excerpts from Collaborative Approaches to Decision making and Conflict Resolution for Natural Resource and Land Use Issues, published by the Oregon Department of Land Conservation and Development, June 1996.

POTENTIAL CONFLICTS IN LEGISLATIVE DECISIONS

Local jurisdictions generally set the schedule for legislative land use decisions. There is no 120-day rule. By identifying stakeholders, clearly presenting facts and alternatives, and really listening and responding to the ideas and suggestions from all of the interested parities, decisions will be made that people see as fair. Even when people disagree with the results, it's difficult to generate a conflict over a "fair" decision.

Opportunities to Resolve Potential Conflicts in Quasi-Judicial Decision

A pre-application meeting with neighbors, required by some jurisdictions, allows the applicant to identify any special neighborhood concerns and lets neighbors (who may be potential opponents) become part of developing solutions before positions solidify.

The pre-application conference is the first opportunity for the city or county to identify potential issues. Staff and the applicant often can find alternatives that avoid problems in a manner that is far more comfortable than as part of a public hearing.

Staff review of application, before "deeming it complete" and thereby triggering the start of the review clock, may be able to identify the stakeholders who might object, and initiate a collaborative approach to resolving conflicts.

Staff recommendations in the staff report may trigger conflict. If issues can be resolved easily, solutions can be presented at the public hearing.

Prior to an appeal to LUBA, the various parties to a conflict may have the greatest interest in resolving problems and saving the time and dollars that result in going to court.

Let Space Set Tone: Six Truisms

1. **The more crowded the space, the more emotional the crowd!** Crowding people together can encourage the enthusiasm of a pep rally or the anger of a lynch mob. Vacant space creates calm and quiet. Select meeting place and space accordingly.
2. **The hotter the room, the hotter the audience.** Hot, stuffy rooms increase anger; cool rooms decrease it. Set the thermostat for the results you want.
3. **The more neutral the meeting site, the more neutral the crowd.** People who distrust government may become more distrustful when they step into city hall or the courthouse. Those who are suspicious of an individual become more so in that person's office or home. A neighborhood school can create a neighborly feeling.
4. **The more formal the seating arrangement, the more intimidated the participants.** A stage or raised platform separates "them" from "us." Everyone on the same level suggests equality. A speaker's rostrum suggests a shield for officials to hide behind, but also offers a prop for a nervous citizen.
5. **The bigger the desk, the more defensive the visitor.** The visitor sitting on the other side of an executive desk is less comfortable than one sitting across a clerk's desk. Even more comfortable is sitting at a conference table or side-by-side. And the person facing a window is at a disadvantage.
6. **The greater the distance between speaker and audience, the less the audience will participate, comment or question.** If you want participation, set up a minimum number of chairs, individually ask those in back to move up "so I'll be sure you can hear everything," and make your presentation from a spot 12 feet from the first occupied row. If you want little or no participation, do the opposite.

Techniques for a No-Conflict Style

- Lower your voice
- Speak more slowly
- Don't blame
- Paraphrase
- Don't challenge
- Use short sentences
- Pause between sentences
- Don't bait or be baited
- Play dodge ball- Mentally step aside
- Use deep breathing
- Don't answer non-questions, just acknowledge you heard
- Use "broken record" (I see. Yes, I understand, etc.)
- Disagree Diplomatically
- Find common ground before dealing with points of

disagreement

- Stick to the issue. Don't bring up minor details or past history
- Say what you mean in a simple straightforward manner
- Really listen to understand where the other person is coming from
- Be willing to change your mind if the other person's points are valid
- Look for compromise – the consensus both of you can live with

MEDIATION

Mediation is an important alternative to adversarial conflict. One of the signs of a thriving community is the ability to "think outside the box." Inside the box, people's positions can get stuck, making progress hard to define and harder to achieve.

For instance, two groups could take opposing positions regarding whether development should or should not occur at a site rich with wetlands – a site which is also critical to an overall development vision for the heart of town. If the atmosphere is right for "thinking out of the box", then the parties will be willing to relax a bit about their positions and talk about their interests.

It turns out the wetland group is most interested in these wetlands as an educational opportunity for urban kids. Others had a position that the site ought to be commercially developed, but their underlying interest is to see the city grow in a way that builds community. To achieve that, both sides agree, eventually the city will have to invest in a new library and an up-to-date commercial area.

And the upshot is a library designed to integrate with the wetlands and provide a starting-off point for wetland tours. The commercial area will go where the library had originally been intended. This is not compromise. Neither "side" gave up its interests. But together they made their mutual world of opportunities greater, and they each got a lot of what they want – and maybe more than they ever dreamed.

Creating the right atmosphere – the mix of structure and skills to support the type of expansive negotiation – is what mediation is all about. Mediation is a tool that can be used equally well when writing a new, controversial ordinance, or for any complex policy decision, as well as for specific land use issues. Perhaps the most important thing that mediation does is to take the energy behind conflict and use it to build community, rather than to tear it down. That's really thinking outside the box!

CHAPTER SEVEN: Public Involvement

ENCOURAGING EFFECTIVE CITIZEN INVOLVEMENT

How, and if, citizens become involved in your land use decisions can significantly affect results. The best road to success is to provide opportunities for meaningful public involvement throughout the process. Recognition of that fact may be the reason that the people of Oregon decided to make citizen involvement the first of the statewide land use planning goals.

Effective citizen involvement requires public awareness of:

- What is proposed?
- Who will be affected and how?
- Criteria for decisions
- Who makes decisions, when and where, and with what time line?

How to get feedback

The type of land use decision influences the approach to public participation.

For legislative decisions, be creative! Get outside the box. Choices are available when considering an amendment to the comprehensive plan or zoning code, adoption of a sign ordinance, and the like. The local elected and appointed officials need a broad range of ideas. There are no questions of ex parte contacts and there is no requirement that a decision be reached. (For example, if people don't like the idea of a new or revised ordinance, the idea can be dropped). Questionnaires, surveys, or focus groups can help identify the level of interest in an issue of proposal. Town hall meetings, forums, and open houses (with staff available to answer questions), as well as printed material, can attract interest prior to public hearing. Feedback will let citizens know that their opinions were heard and considered. Provide a summary or "feedback report" that lists major comments and impact, if any, on decisions.

People need to know what is proposed, why, and what alternatives exist. Describe how a decision may be reached and list timeframes. Provide this information several times in several ways. Notice of legislative hearings should be provided to those who have an interest, including residents, businesses, interest groups, neighborhood associations, state and federal agencies, and other local governments. Since passage of Ballot Measure 56, property owners who may be affected receive direct, mailed notice.

For quasi-judicial decisions, follow the rules! Procedures for making these decisions are proscribed by law and local ordinances and limit involvement choices. (See Chapter 4). For example, when an applicant requests approval for a permit or a zone change for a specific area, criteria dictate the basis for a decision and a decision – approve, deny, or approve with condition – must be made. Minimum hearing opportunities must be offered, but these are minimums, not maximums! A local government can encourage or even require an applicant to provide public-involvement opportunities in the form of neighborhood meetings or open pre-application conferences, or through social media or direct mail. Public involvement in quasi-judicial decisions is ultimately at the public hearing(s).

HELP CITIZENS HELP YOU

Goal 1 requires opportunities for public involvement in land use planning. There are benefits beyond complying with that legal requirement:

- Citizens know their neighborhoods and community best.
- Residents and property owners can offer ideas on what is needed, what works and what doesn't.
- Members of the public who participate in development of a plan or ordinance take pride in their work and support the results
- Public involvement increases understanding of, and potentially support for, local government.

Explain the System

Citizens can make their greatest contributions to the planning process when they understand the system. How staff handles questions at the planning department and how planning commissioners conduct meetings can contribute to public understanding. Several local jurisdictions go beyond that and make special efforts to educate people on planning.

Stress Criteria for Decisions

A citizen whose testimony does not connect to the applicable criteria then sees the testimony dismissed and becomes frustrated, angry and distrustful of both local officials and local land use planning. The public needs to know that decisions are based on criteria in local ordinances. Make criteria stand out in the staff's written report, the oral presentation and in comments by the chair.

APPENDIX A: Oregon 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, NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES: 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 HAZARDS: To protect people and property from natural hazards.

GOAL 8, RECREATIONAL 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, ECONOMIC DEVELOPMENT: 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 CONSERVATION: 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 RIVER 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.

APPENDIX B: Glossary of Common Land Use Planning Terms

Many specialized terms are used in issues related to land use. The terms listed here are among those more commonly used.

Accessory Use/Building: A use or structure associated with and incidental to the main use on the lot. Examples: private garages, fences, decks, tool sheds. Also known as secondary or ancillary uses.

Acknowledgement: An order of the Land Conservation and Development Commission that certifies a comprehensive plan and land use regulation or an amendment to a plan or regulation complies with the Statewide Planning Goals.

Annexation: The process of expanding the city boundaries to bring adjacent territory under the governmental jurisdiction of the city.

Appeal: The process of having a land use decision by the planning administrator, planning commission or hearings officer reviewed by the city council or county board of commissioners. Council and commission decisions may be appealed to the Land Use Board of Appeals (LUBA).

Buildable Lands: Lands in urban and urbanizable areas that are suitable, available and necessary for residential use. Hazard areas (steep slopes, floodplains, etc.) and natural resource lands (wetlands and riparian areas) are excluded.

Capital Improvement Program (CIP): A plan describing some or all of a community's planned capital improvements (roads, water, sewers, storm drains, etc.) including costs and timeframes.

Cluster Development: The concentration of structures on one part of a parcel to preserve the remainder of the property for open space, usually permitted under planned unit development ordinances.

Common Wall: A wall shared by two buildings and that lies along the property line between them.

Comprehensive Plan: An official document adopted by a local government, which sets forth general long-range policies on how the community's future development will occur.

Comprehensive Plan Map: A primary component of the comprehensive plan, which shows the geographic pattern of the land uses as defined in the comprehensive plan.

Conditional Use: Zoning ordinances generally specify two types of uses for each zone – uses that are permitted outright and those that may be permitted after review and approval by the local government. Those in the last category are often described as conditional uses. The list of conditional uses for each zone typically includes uses that may be appropriate for the zone, but case-by-case evaluation is needed to ensure compatibility with the neighborhood, and uses for which no specific zone exists (e.g., schools, churches, parks) and which may need specific development conditions. A conditional use procedure provides an opportunity for public review of any development being considered.

Conditions of Approval: Development requirement(s) in which the applicant, in order to adhere to standards of approval established by local governments in land use ordinances, must satisfy as a part of the approval and permit process.

Density: The measure of intensity of residential development on a particular piece of land, usually expressed in number of dwelling units per acre.

De Novo Hearing: A public hearing in an appeal in which all evidence and comment is accepted for consideration – not an appeal based on the record from a previous hearing (see "On the Record Hearing").

Design Review: Review of certain types of development proposals to insure compliance with adopted standards for site layout, design and aesthetics (style, landscaping, building materials, parking, pedestrian circulation, etc.).

DLCD: The Department of Land Conservation and Development provides staff support to the Land Conservation and Development Commission, reviews plan and code amendments, provides technical assistance on planning matters, and manages grants to local jurisdictions for plan updates.

Down-zoning: Changing a zone from one allowing more intensive uses to one of less intensive use (e.g., a commercial zone to a residential zone).

Economic Opportunities Analysis (EOA): An element of an urban-area comprehensive plan that explains economic trends affecting the area, a description of employment land site needs, an inventory of employment lands and their development potential, and an assessment of community economic development potential. An EOA is used to establish the need for employment (i.e., commercial and industrial) land when reviewing whether to amend an urban growth boundary.

Eminent domain: A government's power to take private property for public uses if it pays "just compensation."

Exactions: The charges, conditions and dedications demanded from a developer by a local government in return for approval of some development proposal.

Exception Area: An area for which a local jurisdiction has demonstrated that one or more Statewide Planning Goal should not apply. The term is most commonly used for a rural area with an acknowledged exception to Goal 3 (Agricultural Lands) or Goal 4 (Forest Lands) or both.

Exclusive Farm Use (EFU): A zoning district applied to agricultural land. Uses in EFU zones are prescribed in statute and regulated by administrative rules.

Ex Parte Contact: Contact outside of a public hearing or review conference in a land use case by a member of the decision making body and someone wishing to directly or indirectly influence the outcome of the case. This does not apply to legislative or policy issues such as code amendments nor does it apply to pre-hearing contact with staff.

Flag Lot: A lot that is mostly separated from the street by other lots but that has a long, narrow extension (the flag pole) that reaches to the street for access.

Floodplain: The area adjoining a stream, tidal estuary, or coast that is subject to regional flooding. The "100-year floodplain" is a standard statistical calculation used by engineers to determine the probability of severe flooding. It represents the largest flood which has a one percent chance of occurring in any one year as a result of periods of higher than normal rainfall or streamflows, extremely high tides, high winds, rapid snowmelt, natural stream blockages, tsunamis, or combinations thereof.

Floodway: The normal stream channel and that adjoining area of the natural floodplain needed to convey the waters of a regional flood while causing less than one foot increase in upstream flood elevations.

Functional Plan: A set of detailed information, policies and standards regarding some function of local government - transportation for example.

Grandfathered: Permitted to continue, despite the imposition of new laws that would otherwise prohibit the activity. A land use operating under a grandfather clause is often referred to as a "nonconforming use."

Hearings Officer: An appointed official who conducts public hearings and renders a decision on land use cases involving discretionary permits and zone changes not requiring a comprehensive plan change.

Infill: Development that occurs on isolated vacant lots in a city. Such development usually is considered to be a boon to the community because it conserves land and reduces sprawl.

Infrastructure: The public facilities and services that support the functions and activities of a community (sewers, roads, water lines, storm drainage, etc.)

LCDC: Land Conservation and Development Commission is the state commission that establishes land use planning policy for the state and decides some land use cases. Its members are appointed by the Governor and confirmed by the senate.

Land Use Board of Appeals (LUBA): A state board comprised of three members appointed by the Governor that has authority to review appeals of final land use decisions made by local jurisdictions.

Legal Description: A description of the precise location and boundaries of a particular parcel of land.

Local Improvement District (LID): A small district formed for the purpose of carrying out local improvements (paving a street, developing a park, constructing a sewer system, etc.) Property owners within the LID are assessed for the costs of the improvements.

Lot: A legally defined unit of land that is the result of subdividing land.

Nonconforming Use: A use that was allowed by right when established or a use that obtained a required land use approval when established, but that subsequently, due to a change in the zone or zoning regulations, is a use that is now prohibited in the zone.

On the Record Hearing: A public hearing in an appeal in which evidence is limited to that presented at the previous public hearing in the land use case.

Ordinance: A law enacted by a local legislative body such as a city council or board of county commissioners.

Parcel: A legally defined piece of land that is the result of partitioning land.

Partition: The division of land into two or three parcels.

Planned Unit Development (PUD): A type of residential development in which the zoning code allows more flexibility of development standards than in a conventional subdivision, typically as a trade-off for a development amenity.

Plat: A map of a partition or subdivision. The plat usually shows the location of all public rights-of-way, the dimension of lots and various other items required by the local land division ordinance.

Pre-existing Use: A use that existed prior to the enactment of a land use regulation that now applies to it. Such a use can be one that conforms to the regulation, but most often this

phrase means a nonconforming use.

Public Facility Plan: A support document or documents to a comprehensive plan that describes the water, sewer, and transportation facilities that support the land uses designated in the comprehensive plan(s) within an urban growth boundary.

Public Hearing: A formal proceeding before the planning commission, hearings officer or governing body in which the public is permitted to provide testimony to be entered into the official record.

Public Meeting: A formal or informal proceeding before a public body without testimony to build a record. Typical public meetings include work sessions where the public may attend but not testify.

Quasi-Judicial Action: A legal action that involves the application of pre-existing criteria to specific properties. This type of action can be contrasted with legislative actions, which involve the creating policies and laws, and with ministerial actions, which involve routine administration of clear and objective requirements.

Rights-of-Way: A public or private area that allows for the passage of people or goods, such as freeways, streets, bike paths, alleys, and walkways. A public right-of-way is dedicated or deeded to the public for public use and is under the control of a public agency.

Riparian: Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

Senate Bill 100 (SB 100): A bill passed into Oregon law in 1973, it established the Land Conservation and Development Commission and the legal framework for the statewide planning program.

Setback: The placement of a building a specified distance away from a road, property line, or other structure.

Standing: The legal designation of those individuals or groups who are entitled to receive notification of a pending land use case, to receive notice of the decision or to file an appeal of the decision. The term also applies to those who are legally entitled to initiate a land use action. Sanctioned or officially recognized neighborhood associations often have standing to be notified in all cases within their boundaries. The area of notification of property owners varies, depending on the type of land use case.

Subdivision: The division of land into four or more lots, usually including a street system.

Systems Development Charge (SDC): Also called a systems charge or impact fee, it is a fee charged by a local government to a developer in order to recoup some of the local government's general capital cost for sewer, water, storm drainage, streets, and parks.

Testimony: Formal statements made at a public hearing before an official body deciding an issue or a land use case. Testimony may be either presented in writing or orally prior to the close of the hearing.

Transportation System Plan (TSP): A plan for transportation facilities that are planned, developed, operated, and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic areas.

Urban Growth Boundary (UGB): A line surrounding the land needed to accommodate 20 years of population and employment growth and related uses for an urban area. Land within this boundary is planned for eventual urban development and the provision of sewer, water, streets and other public facilities. Most UGBs include one city, but two or more cities are within one UGB in some cases.

Urban Area: Land inside an urban growth boundary.

Variance: An allowable deviation from the strict application of land development standards in the zoning or development code.

Vested Right: The right to continue to build a structure that does not conform to regulations imposed upon it after its construction was begun.

Zone Change: The reclassification of land from one zoning designation to another.

Zoning: A system of grouping similar or compatible land uses into geographic areas called "zones" or "zoning districts." The ordinances governing these land uses are referred to as the zoning or development code.

Zoning Map: A map showing locations of zoning districts in the jurisdiction.

APPENDIX C: Sample Opening Statement for a Quasi-Judicial Land Use Hearing

Ladies and gentlemen, I call this hearing of [date] to order. My name is [your name]. I am the chair of the planning commission for [name of jurisdiction], Oregon. The members of the planning commission are appointed by the [title of the governing body] and serve as volunteers.

Our role is to conduct public hearings and to make decisions about land use matters in [name of jurisdiction]. In making those decisions, we must apply the law of [name of jurisdiction] and cannot vary from or change that law. If you think the law should be changed, you can work with the [city/county] to do that, but state law provides that applications must be judged based on the law that existed when the application was filed.

Members of the planning commission are to be unbiased. Before the start of the hearing on each item, I will ask the members of the planning commission whether they have any potential conflicts, such as family, financial, or business relationship with any of the applicants or with regard to the land in question. If such a potential conflict exists, I will ask whether the commissioner in question believes he or she is without actual bias or whether he or she would like to step down from the planning commission during the case.

I also will ask whether any of the planning commissioners have discussed the application in question with any of the parties or have independent knowledge of relevant facts, such as from a visit to the site in question. If any of the planning commissioners have had such contacts, I will ask the planning commissioner to disclose the substance of that contact.

If a planning commissioner has independent knowledge of relevant facts, I will ask the planning commissioner to summarize those facts.

During the testimony, a witness may challenge the impartiality of a planning commissioner and may rebut the substance of a planning commissioner's knowledge of the facts. The commissioner in question may respond to such a challenge.

A copy of the rules of procedure for the hearing, the agenda for today's hearing and copies of the staff reports are available [on the table in the back of the room]. We will consider cases one at a time in the order listed on the agenda.

I will start each case by asking staff to summarize its written report. Then the applicant and those in favor of the application testify. Then, witnesses who oppose the application or who have questions or concerns testify. If there is opposition or there are questions, the applicant can respond to them. The planning commissioners may also ask questions of the staff and the witnesses throughout the hearing until the record closes. If a witness introduces new evidence in response to opposition or questions, everyone gets a chance to respond to the new evidence. Then the applicant can make a closing statement without introducing new evidence. Then I will close the public portion of the hearing and the planning commission will deliberate about what to do with the application. During deliberations, the planning commission may re-open the public portion of the hearing if necessary to receive additional evidence before making a decision.

Any person with an interest in today's agenda may offer relevant oral or written testimony, or both. But please only speak when I identify you for that purpose. You must testify orally or in writing before the close of the public record to preserve your right to appeal my decision to [governing body] or the Land Use Board of Appeals, known as "LUBA." You must raise an issue clearly enough so people can understand what it is and offer evidence in support of it, or else you cannot raise that issue before the [governing body] or LUBA.

It is also important that you make your best case to the planning commission, because, although all of our decisions are subject to appeal, the [governing body] will decide the appeal based solely on the evidence in the record before us [note: local code may be different than the hypothetical]. If you feel you need more time to prepare, you can ask the planning commission to hold open the record or to continue the hearing. You must make that request before we close the public portion of the hearing.

If the planning commission holds open the record, you can submit additional written testimony and evidence into the record before the commission makes a decision.

If the planning commission continues the hearing, it means oral and written testimony, including new evidence, can be offered at a future hearing.

Regardless of whether the hearing is continued or the record is held open for any other reason, state law provides that we must hold open the record for at least seven days after it is closed to all other parties to allow the applicant to submit final written arguments in support of an application unless the applicant waives that right.

We also must comply with state law that requires the [city/county] to make a final decision, including all appeals,

within [120/150] days after the [city/county] staff found the application was complete, unless an applicant waives that right. So generally we cannot continue a hearing or hold open the record for very long.

Please make sure your testimony is related to applicable criteria. Planning staff will identify those criteria at the beginning of the hearing on each item.

Testimony also should not be repetitious. Please do not repeat testimony offered by yourself or earlier witnesses. If we think your testimony is irrelevant or repetitious, I may interrupt and ask you to continue with another subject.

Demonstrations from the audience are prohibited. Please refrain from them. Comments from the audience will not be part of the record.

If you wish to testify please fill out a [sign-up sheet or card] and hand it to the secretary. When you testify, please come forward to the podium. Please begin your testimony giving your name and give your address. If you represent someone else, please say so. If you have any exhibits you want us to consider, such as a copy of your testimony, photographs, petitions, or other documents or physical evidence, please hand it to the secretary. The planning staff will keep exhibits until appeal opportunities expire, and then you can ask them to return your exhibits.

[Any questions?]

That concludes the introduction. We will begin with the first item on tonight's agenda, which is [name and/or number of case]. Does any planning commissioner wish to declare any potential conflict of interest, ex parte contact, or independent knowledge of relevant facts? No? Then would the staff please proceed with a summary of their written report?

APPENDIX D:
Planners' Acronyms and Translations

BLI: Buildable Lands Inventory

CCI: Committee for Citizen Involvement (advisory to local governments)

CIAC: Citizen Involvement Advisory Committee (to LCDC)

CIP: Capital Improvement Plan or Program

COG: Council of Governments

CPO: Community Planning Organization or Citizen Planning Organization

CU: Conditional Use

DRB: Design Review Board or Development Review Board

DU: Dwelling Unit

EESE: Economic, Environmental, Social, and Energy (LCDC Goals 2, 5, 14 and 16)

EIS: Environmental Impact Statement

EFU: Exclusive Farm Use

EOA: Economic Opportunities Analysis

FY: Fiscal Year

HO: Hearings Officer

LID: Local Improvement District

PC: Planning Commission

PFP: Public Facilities Plan

PUD: Planned Unit Development (also Public Utility District)

ROW: Right of Way

SDC: Systems Development Charge

TIF: Tax Increment Financing

UGB: Urban Growth Boundary

UGMA: Urban Growth Management Agreement

ZDO: Zoning and Development Ordinance

APPENDIX E:
Federal and State Agency and Statewide Land Use Related Organization Abbreviations

AOC: Association of Oregon Counties

BCD: Oregon Building Codes Division

BLM: Bureau of Land Management, U.S. Department of the Interior

COE: U.S. Army Corps of Engineers, U.S. Department of Defense

COG: Council of Governments

DEQ: Oregon Department of Environmental Quality

DLCD: Oregon Department of Land Conservation and Development

DOF: Oregon Department of Forestry

DOGAMI: Oregon Department of Geology and Mineral Industries

DSL: Oregon Department of State Lands

LCDC: Land Conservation and Development Commission

LOC: League of Oregon Cities

LUBA: Land Use Board of Appeals

LWCF: Land and Water Conservation Fund

NPS: National Park Service, U.S. Department of the Interior

OAPA: Oregon Chapter of the American Planning Association

OBDD: Oregon Business Development Department, dba Business Oregon

ODA: Oregon Department of Agriculture

ODF: Oregon Department of Forestry

ODFW: Oregon Department of Fish and Wildlife

ODOE: Oregon Department of Energy

OHCS: Oregon Housing and Community Services

OPRD: Oregon Parks and Recreation Department

OWRD: Oregon Water Resources Department

USFS: US Forest Service, Department of Agriculture