

**Minutes**  
**Aurora Planning Commission Meeting**  
Tuesday, January 6, 2015, at 7:00 P.M.  
City Council Chambers, Aurora City Hall  
21420 Main Street NE, Aurora, OR 97002

**STAFF PRESENT** Kelly Richardson, CMC City Recorder

**STAFF ABSENT;** None

**VISITORS PRESENT:** None

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**1. CALL TO ORDER OF THE CITY COUNCIL MEETING**

Meeting was called to order by Chairman Schaefer at 7:03 pm

**2. CITY RECORDER DOES ROLL CALL**

Chair Schaefer  
Commissioner Graham  
Commissioner Fawcett - Absent  
Commissioner Gibson  
Commissioner Rhoden-Feely - Absent  
Commissioner Weidman - Absent  
Commissioner Willman

**3. CONSENT AGENDA**

- a) Planning Commission Minutes Meeting, December 2, 2014
- b) City Council Meeting Minutes, December 2014
- c) Historic Review Board Minutes, NONE

Motion to approve the consent agenda as presented was made by Commissioner Gibson and is seconded by Commissioner Willman. Motion approved by all.

**4. CORRESPONDENCE - NA**

**5. VISITORS**

Anyone wishing to address the Aurora Planning Commission concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora Planning Commission could look into the matter and provide some response in the future.

No comments were made during this section.

## 6. NEW BUSINESS

- a) Discussion and or Action on the Non-Remonstrance Agreement for 21042 Jenny Marie Lane property owner Bill Rosacker.  
Staff recommendation to approve the application based on the staff report presented there were no questions.

Motion is made to approve the Non-Remonstrance Agreement as presented by the staff report with the condition that it must be recorded with Marion County was made by Commissioner Gibson and is seconded by Commissioner Willman. The Motion is passed by all.

- b) Discussion and or Action on Chapter 4 Training Material Land Use and Development. Chair Schaefer went over the following material with the group.

### **Chapter 4: Making Land Use Decisions**

Welcome to Chapter 4 – Making Land Use Decisions. In this section, we discuss the different types of land use decisions made by city and county government, time requirements for these decisions and the public hearing and appeals processes. We have divided them into specific sections for easy reference.

*It is important to note that this chapter is only a general summary of planning procedures and requirements. For information about a specific statute, legal precedent, goal or rule, cities and counties should contact the appropriate governmental agency. If you have legal issues or concerns, consult an attorney who specializes in land use law.*

### **Local Land Use Decisions**

According to state law, there are three main types of land use decisions: legislative, quasi-judicial and ministerial. In most cases, public notice is required. Public hearings are required for certain types of decisions. Although local governments must establish procedures and requirements consistent with state statutes, they have considerable flexibility in assigning appeal to the planning commission. Some planning commission decisions may be appealed to the governing body. Some jurisdictions employ hearings officers to make certain types of land use decisions which are then subject to appeal to the planning commission or governing body. In all cases, local government land use decisions may be appealed to the Land Use Board of Appeals, or LUBA. All decisions must be consistent with state statutes, the statewide planning goals, case law and other applicable legal requirements.

Limited land use decisions and expedited land divisions are special categories of local decisions that are subject to specific procedures and standards outlined in state statutes.

#### **Legislative Land Use Decisions**

Legislative decisions establish local land use policies. They typically become part of the comprehensive plan or zoning code. In the case of map designations, legislative decisions are applicable to broad geographical areas rather than single properties or sites. In most communities, proposed legislative amendments to the comprehensive plan or zoning code are considered first by the planning commission, which holds one or more public hearings. The

commission's recommendation is then considered by the governing body which holds at least one public hearing before taking final action.

#### Quasi-Judicial Land Use Decisions

Local governmental bodies make quasi-judicial decisions when they apply existing policies or regulations to specific situations or development proposals. Other quasi-judicial decisions amend the zoning or comprehensive plan map, policies or regulations in relation to a specific development proposal. Additional examples of quasi-judicial decisions are conditional use permits, variances, partitions, subdivisions, annexations and road and street vacations.

#### Ministerial Land Use Decisions

Ministerial land use decisions are made by local planning staff based on clear and objective standards and requirements applicable to a specific development proposal or factual situation. Examples include building permits for a use permitted by code or a determination that a proposed structure meets setback or height requirements. Ministerial decisions do not require a public notice or hearing.

#### Limited Land Use Decisions and Expedited Land Divisions

To streamline approval of relatively minor actions within an urban growth boundary, or UGB, the legislature has approved two other kinds of decisions. The first, limited land use decisions, are made by the locally designated decision-maker and are subject to procedures and notice requirements outlined in state statutes. Examples include tentative partitions, tentative subdivisions, site review and design review.

The second, expedited land divisions for residential uses within a UGB, are made by planning staff after public notice. They are subject to procedures and requirements outlined in state statutes. The local government may not hold a hearing on such an application and must make its decision within 63 days of the application. Decisions may be appealed to a referee hired by the local government and finally to the State Court of Appeals according to state law.

#### Process

Procedures for legislative and quasi-judicial land use decisions are outlined in statutes and interpreted through case law. These procedures are ultimately incorporated into local plans and ordinances. Legislative procedures are generally more flexible than quasi-judicial procedures because they deal with relatively broad public policy issues. Quasi-judicial procedures are often more complex and specific, and require "due process." This is a legal term that entitles all affected parties prior notification of a proposed action and the opportunity to present and rebut evidence before an impartial tribunal. For quasi-judicial decisions, governing body members, hearings officers and planning commission members should avoid or limit communications outside of the formal public hearing process. They are required to disclose any contact outside the public hearing regarding a specific case in order to provide an opportunity for rebuttal or other corrective action. The local government must maintain a record of the proceedings and adopt findings of fact regarding the reasons for their decision. Within UGBs, this process must be completed within 120 days. Outside UGBs, the process must be completed within 150 days. In both cases, there are specific provisions to extend the time limit.

#### Land Use Application

Legislative land use decisions are subject to post acknowledgment plan amendment (PAPA) requirements contained in state statutes. For quasi-judicial land use decisions, the 120- or 150-day review process begins after the planning staff receives required application forms and supporting information that advocate for a certain land use or proposed development. Many local governments will schedule pre-application conferences with the prospective applicant.

#### Public Notice

Notice for legislative land use decisions must be provided to the public as outlined in local procedures and must be forwarded to the Director of DLCDC as required by the state statute. DLCDC provides notice to those who have requested to be included on the agency's notice list. For quasi-judicial decisions, specific parties must be notified at least 20 days prior to the public hearing: the applicant; property owners within 100 feet of the property if within a UGB, within 250 feet if located outside a UGB and within 500 feet if located within a farm or forest zone; and any neighborhood or community organizations whose boundaries include the site. Some local governments also require that notice be posted on the property.

#### Public Hearing

For legislative decisions, the planning commission usually holds initial hearings on a proposal before forwarding its recommendation to the governing body. Legislative decisions require final action by the governing body. Hearing procedures are relatively flexible and there are no limitations on outside contact between decision makers and the public.

For quasi-judicial decisions, most cities and counties hold at least one hearing before the planning commission or hearings officer prior to forwarding a recommendation or allowing an appeal to the governing body. At the hearing, the presiding officer summarizes the procedures and planning staff describes the case, including the applicable criteria in the comprehensive plan or zoning code, and its recommendation.

Applicants then present their case for approval and others may support them. Opponents then have the opportunity to challenge the applicant's case. All parties have the right to present and advance of or during the hearing precludes appeal to LUBA on that issue. This is commonly referred to as the "raise it or waive it" requirement. Under state law, some types of land use decisions may be made without a hearing if notice is provided and no party requests it.

#### Decision and Findings

Legislative decisions require a record and findings, but the requirements are less rigorous than for quasi-judicial decisions. The record must be adequate to show that the legislative action is within the legal authority of the city or county. The record must show that the jurisdiction followed applicable procedures. Legislative decisions must be consistent with substantive requirements in state statutes and the statewide planning goals. For example, an updated housing element must be consistent with ORS 197.303-314 and Statewide Planning Goal 10 (Housing).

After hearing the staff report and public testimony on an application for a quasi-judicial decision, the hearings body makes its decision. As noted before, this must be based only on applicable criteria in the local code and relevant evidence and testimony. There are four choices of action: approve the application; approve the application subject to specific conditions; deny the application; or continue the review process to obtain additional information. In this case, the applicant may need to agree to a time extension.

The final decision must include findings of fact and conclusions of law that are adequate to explain the basis for the action. Draft findings are often prepared by staff and may be available in advance of the hearing. Adoption of findings may occur immediately following the hearing and include any modifications to the draft, based on additional evidence and testimony. In some cases, the prevailing party, legal counsel or staff are asked to prepare the final version of the findings which are then adopted at a separate meeting before the time limit expires. The final decision must be based on what is known as "substantial evidence" that a reasonable person would rely on in reaching the decision.

#### **Appeals**

Local ordinances specify how initial decisions by local staff, a hearings officer, or the planning commission can be appealed to the local governing body. Certain appeals are limited to evidence submitted to the initial decision-maker and may include an opportunity for additional oral or written argument.

As we have noted before, only parties that have stated their case before the local government have 21 days to file a Notice of Intent to Appeal with LUBA. Following this filing, and during a timeframe prescribed by law the local government must provide the complete record of the proceedings with the board. Once the record is filed and accepted, the petitioner and respondent(s) file their briefs with the board. LUBA will hear oral arguments from the parties and issue a written opinion that either affirms, reverses, or remands the decision for additional consideration. The board's decision may be appealed to the Court of Appeals, or finally, to the Oregon Supreme Court. Specific timelines in state law provide for a speedy review of land use decisions and increase certainty for both the community and applicant.

Alternatives to formal appeals include mediation, which can save all parties time and money. For more information on mediation assistance, contact DLCD.

#### **Staff Role**

Planning staff are usually the first individuals an applicant meets. They are responsible for explaining all procedures and requirements, reviewing the application for completeness and preparing the staff report. Staff presents its report and recommendation to the decision maker. Often, the staff recommendation is accepted with or without conditions. Staff generally prepares the final decision documents and findings of fact documenting the reasoning to support the decision.

A pre-application conference with prospective applicants may help them understand the procedures and requirements for the land use proposal, including any additional research or information that may be needed. In some cases, applicants may be encouraged to meet with neighborhood groups or other affected parties to review their proposal.

Staff prepares a public notice for proposed land use decisions that describes the location of the subject property, the nature of the application and the proposed use. The notice also explains: criteria from the comprehensive plan and land use regulations that pertain to the application; the date, time, and location of the public hearing; the name of a local government representative to contact; and requirements for public testimony and how the hearing is conducted. When a staff report is prepared, it must be made available to all interested parties seven days prior to the public hearing. In some cases, the staff report includes draft findings explaining the reasoning for the recommended decision.

As noted earlier, LUBA may remand or return a case to the local government for additional review. If a decision is remanded, the local government must decide whether to proceed, based

on the existing record or to allow additional evidence and testimony. Legal requirements related to remand may be complicated. Staff should work with their legal counsel to define procedures and requirements before the remand is formally considered.

**Ex Parte Contact, Bias and Conflicts of Interest**

**Ex Parte Contact**

An ex parte contact occurs when a decision-maker receives information, discusses the land use application or visits the site in question outside the formal public hearing. This does not include discussions with and information received from staff. Failure to disclose such contact may result in reversal or remand of the decision. If ex parte contact does occur, the decision-maker must disclose it on the record at the hearing, describe the circumstances under which it occurred and present any new evidence introduced through that contact. The presiding officer must give parties the opportunity to rebut the substance of the ex parte contact. State statutes clearly delineate requirements for ex parte contacts.

**Bias**

Bias occurs when decision-makers have a prior judgment of the case that prevents them from making an objective decision based on the facts. Such decision-makers should excuse themselves from the proceedings. Even though bias is often subjective, not all personal views or positions are actual bias in the eyes of the law. While it is not unusual for decision-makers to have a perspective or background, the threshold test is if this will influence their decision. Decision-makers should carefully consider any issues related to their personal bias and be prepared to step aside if necessary.

**Conflict of Interest**

A conflict of interest occurs if any action by public officials results in financial gain or loss to themselves or a relative or business associate. According to state law, it must be disclosed. There are two types of conflicts of interest, actual and potential. An actual conflict of interest is one that would occur as a result of the decision. If that is likely, the decision-maker must disclose it and not participate in the decision. A potential conflict is one that could occur as a result of the decision. In that case, disclosure is still required, but the decision-maker may participate in the decision.

**Legal Issues Related to Ex Parte Contacts, Bias or Conflicts of Interest**

Decision makers should consult with the local government’s legal counsel if they have any questions or concerns regarding Ex parte contacts, Bias or Conflicts of Interest.

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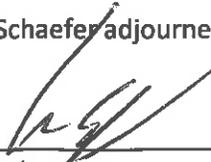
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**7. OLD BUSINESS**

- a) Discussion and or Action on Recreational and or Medical Marijuana regulations. No discussion or action taken at this time.

**8. ADJOURN**

Chair Schaefer adjourned the January 6, 2015 Aurora Planning Commission Meeting at 7:40 P.M.

  
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Chair Schaefer

ATTEST:

  
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Kelly Richardson, CMC  
City Recorder