

AGENDA
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

1. CALL TO ORDER OF THE AURORA PLANNING COMMISSION MEETING

2. CITY RECORDER DOES ROLL CALL

3. CONSENT AGENDA

- a) Planning Commission – December, 2014
- b) City Council Minutes – December, 2014
- c) Historic Review Board Meeting Minutes –

4. CORRESPONDENCE -

- a) Email regarding questions at League of Oregon Cities Meeting

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.

6. NEW BUSINESS

- a) Discussion and or Action on the Non-Remonstrance Application with Bill Rosacker for 21042 Jenny Marie.
- b) Discussion and or Action on Chapter 4 Training Material Land Use and Development.

7. OLD BUSINESS

- a) Discussion and or Action on Recreational and or Medical Marijuana regulations.

8. ADJOURN

Minutes
Aurora Planning Commission Meeting
Tuesday, December 2, 2014, 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; Renata Wakeley, City Planner

VISITORS PRESENT: Bill Graupp, Aurora
Bill Rosacker, Salem

1. CALL TO ORDER OF THE CITY COUNCIL MEETING

Meeting was called to order by Chairman Schaefer at 7:00 pm

2. CITY RECORDER DOES ROLL CALL

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

3. CONSENT AGENDA

- a) Planning Commission Minutes – November 4, 2014
- b) City Council Meeting Minutes – October, 2014
- c) Historic Review Board Minutes – October, 2014

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

4. CORRESPONDENCE –

- a) Real Time Risk Newsletter Article from City County Insurance.

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.

John Berard, Aurora is a new resident in town and asks the Commission who is responsible for the white directional signs in and around Aurora. Chair Schaefer informs him that they would check into it.

Bill Rosacker, informs the Commission that he is a contractor in Aurora and is building a home at 21022 Jenny Marie. He states that he sent his daughter in to find out about everything needed prior to construction he states that he was not informed at that time he neither needed a non-remonstrance agreement nor of the cost involved. He also states that because he has paid so much in system development and permit costs he is asking the Commission to not charge him for the Non-Remonstrance application. Chair Schaefer informs Mr. Rosacker since there is no application before us tonight we cannot make a decision regarding this matter. The charges for the Non-Remonstrance application are what they are and remain so because of the staff time involved.

There is a brief discussion as whether or not these types of agreements are recorded with the property or not.

ACTION ITEM, The Commission would like to look into this matter with the City Planner to see if they should be recorded or not.

6. NEW BUSINESS

- a) Discussion and or Action on Training Information Chapter 3 Implementing Measures and Land Development in Practice. The Commission listens as Chair Schaefer goes over the chapter 3 handouts as follows;

Chapter 3: Implementing Measures and Land Development in Practice

Welcome to Chapter 3 – Land Development in Practice. As we noted in our overview in Chapter 1, local comprehensive plans are the overarching documents cities and counties use to guide and regulate land use and development. The comprehensive plan must be consistent with Statewide Planning Goals and is implemented through zoning ordinances, development codes and other regulations. All cities and counties within Oregon have a comprehensive plan and implementing ordinances. It is important to periodically review and revise plans and regulations to ensure they are consistent with legal requirements and reflect community needs and values. The purpose of this chapter is to explain these practices in more detail.

Comprehensive Plans

Comprehensive plans identify each community's type, location and intensity of future development. Depending on the size of the jurisdiction, plans may be subject to periodic review by DLCD, the State Department of Land Conservation and Development. They are expected to accommodate changing needs over time. Where applicable, comprehensive plans include policy guidance for specific natural resources such as rivers, wetlands, forests, farmland, rangeland, estuaries, shorelands, beaches, and dunes.

Preparation

The process to prepare each comprehensive plan requires several steps. They may overlap and do not necessarily take place in this specific order:

Identifying current conditions and issues

Collecting data

Setting goals and

Preparing the plan

When identifying current conditions and issues, it is important to undertake early and thorough public involvement efforts with citizens, local businesses, community organizations and neighborhood leaders. Public engagement may occur in many ways, from open houses, town hall meetings and workshops, to coffee klatches and personal interviews. Websites, e-mail, and other on-line techniques help broaden public outreach and promote civic engagement.

The second task, data collection, also contributes to identifying issues. Information is most often available from governmental agencies, community resources such as housing inventories, and current and previous policies and plans. After careful review and analysis, the data can show emerging patterns that may help to predict future conditions. Examples include population projections and economic forecasts. Information about natural hazards, geology and topography can help guide decisions about where future development should occur.

The third step is to set goals. What is the community's vision? What kind of community do people favor? How much land should be set aside for future housing needs? Industrial development? Natural resource protection? Recreation? Other uses? The resolution of many of these issues will involve application of requirements contained in the statewide planning goals and state statutes.

The fourth and final step is to prepare or update the comprehensive plan - the document that is reviewed and adopted by the governing body. The plan covers public involvement, key goals and focus areas, and implementation measures. The planning process may require several drafts and take considerable time and effort.

Adoption

Adoption of the comprehensive plan is considered a "legislative" action. It follows public hearings, which provide an opportunity for formal public testimony, and final approval by the city council or county commission. After state review and "acknowledgement," the comprehensive plan becomes the community's guiding policy statement regarding land use and development.

Implementation

Comprehensive plans are implemented through land use regulations such as zoning ordinances and development codes. Other measures may include capital improvement programs, design review ordinances, intergovernmental agreements, refinement plans, and special area management plans.

Updates, Amendments and Periodic Review

State law (ORS 197.628) establishes procedures for periodic review of comprehensive plans and land use regulations. This process is mandatory for some more populated jurisdictions and is optional for others. The purpose of this process is to ensure that comprehensive plans and land use regulations are appropriate for the community, given any changes in local, regional and state conditions and continue to comply with the statewide planning goals. Statewide Planning Goal 2 requires all comprehensive plans to contain a schedule for review and revision on a periodic basis. Plans must continue to provide sufficient land for projected population growth and development and ensure that such growth and development is supported by adequate transportation and public facility infrastructure. Needed amendments must go through the adoption process described previously.

Zoning

The purpose of a zoning ordinance is to carry out the policies and designations contained in the comprehensive plan. Zoning ordinances divide community into various land use zoning districts, such as R-1 residential, or C-1 Commercial. Each specific zone lists uses and activities allowed outright, allowed with conditions, or prohibited. Zones delineate areas where similar types of development are permitted and others are not. For example, a mixed-use housing/commercial district permits a variety of housing types and businesses, but may not allow large-scale industrial manufacturing. Zones can separate conflicting land uses, protect property values, improve predictability in decision-making, increase efficiency of public services and protect natural resources or special types of land. Zoning ordinances

also contain procedures for actions requiring review or hearings; for amendments to the ordinance or map; and for enforcement.

Zoning Map

The Zoning Map is a visual and spatial planning tool that implements the comprehensive plan. The map shows the location and boundaries of base zones and overlay zones covering all geographical areas of the city or county. The zoning map and any changes to zoning designations over time must be consistent with policies and designations in the comprehensive plan. The comprehensive plan and zoning map may be very similar but not necessarily identical.

Zone Types

Basic zone designations typically include general categories of uses such as Residential, Commercial, Industrial, Public, Farm, Forest, and Rural Residential. Overlay zones typically apply to floodplain and natural hazard areas; specific natural resource areas; or, special use areas such as airports. Within the basic zone categories, communities often include several more specific zones. For example, sub-categories of residential zoning may include single-family, multi-family, medium-density, and high-density. While zoning categories are similar statewide, each community creates its own, based on the desired development pattern and policy framework contained in the comprehensive plan.

Conditional Uses and Variances

Local governments may allow certain uses in a zone subject to review and special conditions. The zoning ordinance lists conditional uses that may be authorized within each zone. Conditions of approval may be specified by the zone or imposed by a decision-maker based on the results of a public review and hearing, although in this case the decision-maker will need to justify special conditions by citing an overarching policy or requirement. A variance allows a local government to modify some requirements to account for unique circumstances based on standards outlined in the zoning ordinance. Variances may reduce lot size requirements or coverage standards, off street parking requirements or structural setbacks. Variances do not allow uses not otherwise authorized in a zoning category.

Conditional use provisions generally apply to uses or activities that have potential adverse impacts or compatibility issues and therefore require review. In many cases, adverse impacts and compatibility issues can be resolved or minimized by the application of conditions or limitations. Zoning ordinances specifically list the types of uses and activities that may be authorized through the conditional use review process. Some types of conditional uses, such as those allowed within Exclusive Farm Use zones, are subject to specific state requirements.

Variance provisions provide the opportunity to modify regulations due to unusual circumstances, such as the lot configuration, in order to allow the same use as similarly situated nearby property. For example, a variance may be requested to allow a reduced setback for a home built on an unusually shaped lot. Variances are subject to specific and rigorous approval standards outlined in the zoning ordinance. Decisions require evidence and findings demonstrating the standards are met.

Overlay Zones

Overlay zones modify the regulations in a base zone by allowing or limiting uses or adding specific requirements. For example, an area may be zoned commercial and also be included in a design overlay zone to meet certain community goals. Among the many types of overlay zones are those for floodplains or other hazards, riparian areas or environmental considerations, future urban uses, greenways, main streets, airports and transportation corridors.

Alternatives to Conventional Zoning

Euclidian Zoning is the most common zoning ordinance framework used in the United States. The term "Euclidian" is from the 1926 U.S. Supreme Court case, Village of Euclid, Ohio v. Ambler Realty Co. This style of zoning segregates land uses into use categories based on the type and intensity of allowed uses and activities. Residential zones typically allow the lowest intensity uses and industrial zones typically allow the highest intensity uses. Over time, many communities have chosen to abandon this tiered

approach in favor of more specific and exclusive zoning categories. This approach encourages more efficient uses of land, public facilities and transit.

Local governments also are increasingly considering "Performance Zoning," also known as "Effects-Based Planning," and "Incentive Zoning." Both establish goals and criteria for development and are considered more flexible than more conventional zoning.

Another alternative, "Mixed-Use Zoning," allows compatible but different types of uses in a single area. A mix of housing, retail, and offices often results in a compact pedestrian friendly development pattern with more efficient infrastructure and stronger economic ties within the community. Mixed-use areas can be included within "Form-Based Codes." These codes regulate development form, rather than land use. For example, form-based codes in a densely developed area typically include smaller set-backs, higher residential density and improved pedestrian circulation.

DLCD has prepared a Model Code for use by small cities and provides technical assistance to local governments. For information about the model code or code assistance program, contact the regional representative for your area.

CC&Rs or "Covenants, Conditions and Restrictions" are also known as "private zoning." They are often established and enforced by a homeowners' association formed by the developer. The goal is to maintain high standards of development by prohibiting activities that could degrade the appearance or security of the development. Covenants restricting ownership in the development by certain classes or races of people are illegal.

Land Divisions

Under Oregon law, there are two categories of land divisions: partitions and subdivisions. A partition divides a unit of land into two or three parcels. A subdivision divides a unit of land into four or more lots.

Minimum Lot Size

Minimum lot size is the smallest area allowed for a lot or parcel. In cities, this is the smallest area of land in a particular zone on which a structure may be built. Minimum lot sizes are typically expressed in square feet in urban zones and in acres in rural zones. The minimum lot size in an area determines the density of allowable development. Typical minimum residential lot sizes in urban areas are between 5,000 and 20,000 square feet. In rural farm and forest zones, they are between 80 - 160 acres, and in rural residential areas between 2 and 10 acres. For reference, one acre is 43,560 square feet. If it were square, it would be approximately 209 feet on each side, about the size of a small city block.

Plans and Plats

Partitions and subdivisions undergo two stages of review and approval. A tentative or preliminary plan is a proposal that is reviewed by local officials to ensure conformance with code or ordinance requirements and identify planning issues or problems. After it is approved, the tentative or preliminary plan becomes a final plat with accurate survey lines and dimensions of lots, streets, utilities, and other physical features. This final plat is officially recorded with the county. Detailed standards and procedures governing partitions and subdivisions are found in [ORS Chapter 92*](#).

- b) Discussion and or Action on Renewing Commissioner Graham and Chair Schaefer Terms. There is a brief discussion and it is the, Consensus of the Planning Commission to recommend to City Council to reappoint Commissioner Graham and Chair Schaefer for another 4 year term.

7. OLD BUSINESS

- a) Discussion and or Action on Legislation Regarding Recreational Marijuana, since it has now passed in the election. We now need to look at this at a city level. Also the moratorium on the medical marijuana ends in May of 2015 Chair Schafer states it would be best to look at these items together. There is a brief discussion on the logistics of how to regulate but at this time there is no decision made. It is hoped by all that there will not be a complete rewrite of the code involved as it would be costly.

8. ADJOURN

Chair Schaefer adjourned the December 2, 2014 Aurora Planning Commission Meeting at 8:08 P.M.

Chair Schaefer

ATTEST:

Kelly Richardson, CMC
City Recorder

Minutes
Aurora City Council Meeting
Wednesday, November 12, 2014, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main St. NE, Aurora, OR 97002

STAFF PRESENT: Mary Lambert, Finance
Darrel Lockard, Public Works Superintendent
Kelly Richardson, City Recorder
Dennis Koho, City Attorney
Pete Marcellais, Marion County Deputy

STAFF ABSENT: NONE

VISITORS PRESENT:

1. CALL TO ORDER OF THE CITY COUNCIL MEETING

The meeting was called to order by Mayor Bill Graupp at 7:00 p.m.

2. CITY RECORDER DOES ROLL CALL

Mayor Graupp – present
Councilor Sallee- present
Councilor Brotherton -absent
Councilor Sahlin – present
Councilor Vlcek – absent

3. CONSENT AGENDA

- I.** City Council Meeting Minutes – October 14, 2014
- II.** Planning Commission Meeting Minutes –October 2014
- III.** Historic Review Board Minutes –September 2014

CORRESPONDENCE

I. NA

Motion to approve the consent agenda as presented was made by Councilor Sallee and is seconded by Councilor Sahlin. Motion Approved by all.

For the record it is stated by Mayor Graupp there is a quorum present.

4. VISITORS

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

5. MAYOR'S REPORT, MAYOR GRAUPP

1. Various Discussion Points/Topics

- Recap of election.
- Info regarding church pending/possible improvements.

6. DISCUSSION WITH PARKS COMMITTEE,

No real discussion regarding parks other than Public Works informs Council they have been cleaning up a lot of tree limbs and debris lately.

7. DISCUSSION WITH TRAFFIC SAFETY COMMISSION,

No one is present. Councilor Sallee is interested in possibly installing speed bumps along Liberty Street in hopes to slow traffic down. There is mixed opinions on whether or not they agree with having speed bumps down Liberty Street and if it would do any good or not. Finance Officer, Lambert suggests a blinking speed light that is what they have done in other cities although I don't know what costs would be involved.

ACTION ITEM; The Council decides that something should go in the next city news letter informing the public of what is being discussed so they have an opportunity to voice their concerns if any.

8. REPORTS

A. Marion County Deputy Report – (not included in your packet)

1. Monthly Status Report

- Not a lot has been happening.
- The burglary turned out to be nothing.
- Theft of service was a bounced check.
- Welfare check turned out to be nothing.
- Basic traffic stops.
- Contract doesn't end until July, 2015.

There is a brief discussion regarding a recent newspaper article in the Canby Herald regarding armed security at our local schools. There are mixed opinions on whether or not this is good idea or not.

B. Finance Officer's Report – Financials (included in your packets)

1. Monthly Status Report

- Finance Officer Lambert informs Council that the tax assessor has sent us a bill regarding the franchise revenue. This will need to be budgeted for in the years to come.
- There is also a brief discussion regarding setting some dollars aside for our aging public works vehicles.

C. Public Works Department's Report – (included in your packet)

1. Monthly Status Report discussion,

- The routine water meter installation is going well except that it is taking longer than first expected.
- Reiterates the concern of equipment repairs on the aging vehicles as discuss during the Finance Officers Report.
- Experiencing a high volume of call outs and alarms on both the water and sewer departments. A lot of overtime and comp time are accruing for employee Lowe. We really need to get these issues resolved so the hours will stop accruing for this employee.
- Informs Council that our NPDS permit is up for renewal.
- TMDL report is now finished and submitted.
- Councilor Sallee reiterates the importance of staying within the allotted employee hours. Superintendent Lockard states that at the next budget cycle we may need to re-evaluate setting dollars aside for overtime because currently employee Lowe is forced to take comp time which then results in a lack of employees to get the meters installed quickly. Many of the meters are taking 8 hours or more to install.
- **ACTION ITEM;** Councilor Sallee ask for a detailed list of due dates for test results needed in both water and sewer to assure compliance. Public Works Superintendent informs Council that he has contacted DEQ regarding this list and will present the list when it is ready.

D. City Recorder's Report (included in your packet)

1. Monthly Status Report

- Has nothing new really to report other than routine ongoing items.
- Working still with HD supply regarding software integration. The process had not gone as well as had hoped but was able to work through it all.

E. City Attorney's Report – (not Included in your packet)

1. Monthly Status Report

- Rodger Eddy, claim has been filed with the court on foreclosure issue there has been no response from Tom Davis the attorney for Mr. Eddy he may be contacting the city at some point. There are no additional liens at this time. Working with one judge on this he stated that he will get 180 days to appeal at which point we can then take possession or come up with a plan. Koho confirms that both properties have been filed upon. The hearing will be a fresh start and we may want to have an engineer report on file as well. Councilor Sahlin asks if we can ask the Salinas's engineer to help us out on this. Mayor Graupp points out that on this past weekend there is a large hole in the ground possibly a hole for some type of tank and the cars are gone at this point as well. Councilor Sahlin states that he is trying to show clean up however we should document all activities at this point.
- **ACTION ITEM;** Koho requests Mayor Graupp to put it in writing stating the changes or damage. Councilor Sahlin, if we end up taking possession of the land we should take soil samples to cover us for any possible future expense.

- We have sent letters to both the Kings regarding the deck violation and on several occasions we have attempted contact to a MR. Sills regarding his contributing structure building that he replaced wood windows without permission and or approval, I have asked staff to follow through with the lien process.
- Councilor Sallee suggests that it would be nice if HRB could hold quarterly sessions targeting each home and informing them of what is expected in the district.

9. ORDINANCES AND RESOLUTIONS & PROCLAMATIONS

- A. Discussion and or Action on Second Reading of Ordinance Number 477 An Ordinance Providing for a Cross Connection Program and repealing Ordinance Number 387.

Councilor Sallee is still concerned with the enforcement aspect of this Ordinance and strongly feels that the Council should take advantage of any and all ways to inform the public that this Ordinance has been passed and what is expected of them. Staff is in favor of letters being sent out each year informing citizens that they need to have their backflow devices inspected each year.

Motion to approve the second reading of Ordinance Number 477 is made by Councilor Sahlin and seconded by Councilor Sallee. Passed by all.

10. NEW BUSINESS

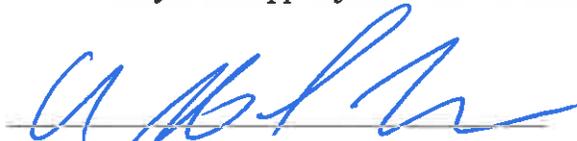
- A. Discussion and or Action on Ordinance Number 477 An Ordinance to Change the Current Cross Connection Program.

11. OLD BUSINESS

- A. NA

12. ADJOURN

Mayor Graupp adjourns the November 12, 2014 Council meeting at 8:25 pm.



Bill Graupp, Mayor

ATTEST:



Kelly Richardson, CMC
City Recorder

Minutes
Aurora Historic Review Board Meeting
Thursday, November 20, 2014, 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: Bill Graupp, Mayor
Alexander Costic, Salem
Richard Rothweiler, Salem
Barry Webb, Aurora
Craig Johnson, Aurora
Deyther Walter, Aurora

1. CALL TO ORDER OF THE HISTORIC REVIEW BOARD MEETING

The meeting of November 20, 2014 was called to order by Chair Abernathy at 7:01 pm

2. CITY RECORDER DOES ROLL CALL

Chair Abernathy – Present
Member Simon – Present
Member Frochen – Present
Member Fraser – Present
Member Townsend - Present

3. CONSENT AGENDA

- a) Historic Review Board Meeting Minutes – October 23, 2014, Place Kuri Gill as a visitor and fix a few typo's on page 2 and remove the sentence that begins with unfortunately.
- b) City Council Minutes – October, 2014
- c) Planning Commission – October, 2014

A motion to approve the HRB minutes of October 23, 2014, with corrections made was made by Member Townsend and is seconded by Member Fraser. Passed by all.

4. CORRESPONDENCE - NA

5. VISITORS

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

6. NEW BUSINESS

- a) None

7. OLD BUSINESS

- a) Continuation Discussion and or Action on Christ Lutheran Church Entry Remodel and Elevator Proposal 15029 2nd Street. The applicant’s architecture firm presents to the board a revision of the original plans with the reworking of the elevations bringing the steeple into compliance of the code along with reworking the flat roof to be screened by a parapet. Over all the board is very pleased with the revisions that are made. We will bring in samples of the materials at a time.

Consensus of the Board is to recommend the revised set of plans to the Planning Commission for approval. At this time we have no more concerns.

- b) Discussion and or Action on Sign Inventory,
 - Member Townsend presents her information to the board; regarding Krista Café, Back Porch Vintage, American Legion Hall, The Colony Pub, and Colony Grocery. The information is placed in the files for use at a later date.

There is no discussion regarding Members Townsends report.

Action: None

- c) Discussion and or Action on Historic Inventory List, no discussion at this time.

ACTION ITEM: Board Member Townsend asks the board if we should discuss the projects that we would like to see for the upcoming grant period and what we would recommend to City Council. The board decides on a few projects as listed;

- Historic Guidelines inventory, in addition define picket fences.
- Any dollars left over would be set aside for pre-application conferences for projects with limited resources available to them.

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8. ADJOURN

Chairman Abernathy adjourned the meeting of November 20, 2014 at 8:45 pm.

Gayle Abernathy, Chairman

ATTEST:

Kelly Richardson, CMC
City Recorder

DRAFT

From: oseph Schaefer
Sent: ednesday, December 31, 2014 2:00 PM
To: eorder
Subject: E: Questions From Yesterday's Meeting in Dayton

yes

From: recorder
Sent: Monday, December 29, 2014 3:31 PM
To: Joseph Schaefer
Subject: FW: Questions From Yesterday's Meeting in Dayton

Would you like this email in the January PC packet

Kelly A. Richardson, CMC
City Recorder
City of Aurora
21420 Main St. NE
Aurora, Oregon 97002
503-678-1283

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From: Craig Honeyman [mailto:choneyman@orcities.org]
Sent: Friday, December 19, 2014 4:29 PM
To: recorder
Subject: Questions From Yesterday's Meeting in Dayton

Three questions were asked of me at the recent LOC Small Cities Regional Meeting in Dayton yesterday which I could not answer. I now have the answers:

1. Can a city seeking to ban dispensaries under Measure 91 simply refer the measure rather than go through the stipulated initiative process?

No. It is clear to us that the process outlined in the measure and as summarized by me must be used.

2. Can the League extend the moratorium on the banning of medical

marijuana dispensaries beyond its 5/31/15 expiration date?

What the League is doing is drafting legislation making Measure 91 silent on the issue of authority to ban, tax or otherwise regulate (time, place and manner) marijuana dispensaries. Our assertion is that cities do not need affirmative authority to do so. We submit that Home Rule already provides that authority.

3. What is the status of the Cave Junction case?

The case is pending before the Oregon Court of Appeals with no time schedule. The lower court has already ruled in favor of the League's position but the state has appealed.

Hope this is helpful.

Craig

[cid:image001.jpg@01D01BA8.F3EFF770]

Craig Honeyman, Legislative Director

choneyman@orcities.org<<mailto:choneyman@orcities.org>>

(503) 588-6550 | (503) 540-6573 direct | (503) 784-3344 cell

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Helping Cities Succeed

**CITY OF AURORA
PLANNING COMMISSION**

STAFF REPORT: Interpretation 2014-04 [INT-14-04]
DATE: December 31, 2014

APPLICANT/OWNER: Bill Rosacker

REQUEST: Interpretation of the Aurora Municipal Code (AMC) by the Planning Commission in regards to approval of a non-remonstrance agreement for sidewalks in lieu of installation.

SITE LOCATION: 21042 Jenny Marie Lane, Aurora, OR 97002 (also known as Map 41W13AC Lot 4800)

SITE SIZE: Approximately 6,970 square feet, or 0.16 acres

DESIGNATION: Zoning: Low Density Residential (R1)

CRITERIA: Aurora Municipal Code (AMC) Chapter 16.34 Public Improvement and Utility Standards

ENCLOSURES: Exhibit A: Assessor Map
Exhibit B: Non-remonstrance Application
Exhibit C: Photos of Jenny Marie Lane

I. REQUEST

Approval of a non-remonstrance agreement in lieu of sidewalk improvements as part of building permit review under AMC 16.34.030.A.2.

II. PROCEDURE

Pursuant to 16.34.030.A.2. and subject to approval of the Planning Commission, the City may accept and record a non-remonstrance agreement in lieu of street improvements. AMC 16.78 requires Limited Land Use Decisions be processed as written notice of a decision to be provided to owners of adjacent property for which the application is made.

The application was received on December 10, 2014. The application was determined complete by Staff and placed on the next available Planning Commission agenda. Notice of the Planning Commission agenda was posted at City Hall on December 30, 2014. Pending a decision from the Planning Commission at the January 6, 2014 meeting, a Notice of Decision will be mailed to adjacent property owners. The City has until **April 5, 2014**, or 120 days from acceptance of the application to approve, modify and approve, or deny this proposal.

III. APPEAL

Appeals are governed by AMC 16.78.120. An appeal of the Commission's decision shall be made, in writing, to the City Council within 15 days of the Planning Commission's final written decision.

IV. CRITERIA AND FINDINGS

The applicable review criteria for non-remonstrance agreements are found in AMC Chapter 16.34 - Public Improvements and 16.78- Limited Land Use Decisions

16.34 Public Improvement and Utility Standards

16.34.030.A.2. Subject to AMC 16.78 and approval of the Planning Commission, the City may accept and record a non-remonstrance agreement in lieu of street improvements if the following conditions exist:

A. A partial improvement creates a potential safety hazard to motorists or pedestrians; or

FINDING: The applicant is requesting that they not be required to install curbs or sidewalks along their frontage of Jenny Marie Lane as the remainder of Jenny Marie Lane does not have them. Staff finds installation of a sidewalk along the frontage of the subject property would result in an unconnected sidewalk along properties to the north and to the south. The property has approximately 70 feet of frontage on Jenny Marie Lane. Staff finds a connected sidewalk could be made and a safety hazard would not be created for pedestrian. Staff finds this criterion is met.

B. Due to the nature of existing development on adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide a significant improvement to street safety or capacity.

FINDING: The property is one of two remaining undeveloped parcels along Jenny Marie Lane. At the time of subdivision approval and development, sidewalk installation was not required although the Transportation System Plan does identify local streets as requiring sidewalks. It is unlikely developed properties along Jenny Marie Lane will undertake frontage improvements in the near future. Installation of improvements by the subject property and other remaining vacant parcels would not necessarily create a significant increase to safety or capacity on this dead end street and staff finds this criterion is met.

16.78 Limited Land Use Decision

16.78.090 Standards for the decision.

A. The decision shall be based on proof by the applicant that the application fully complies with:

1. The city comprehensive plan; and

FINDING: Staff finds the application meets the criteria under 16.34 for approval of a non-remonstrance agreement. The implementing ordinance of the comprehensive plan is included under Title 16- Land Development. A review of Title 16 is included below. Staff finds this criteria is met.

2. The relevant approval standards found in the applicable chapter(s) of this title and other applicable implementing ordinances.

FINDING: The property is zone Low Density Residential (R-1). Staff finds the property meets the size, width, and depth required under the zone. The applicant previously submitted a building permit application confirm compliance with height, setback, and other code requirements. The building permit was conditioned to include installation of curbs and sidewalks prior to occupancy or approval of a non-remonstrance agreement in advance of occupancy permit approval.

AMC section 16.34.060.A. states, "on public streets, sidewalks are required except as exempted by the Aurora Transportation System Plan (TSP) and shall be constructed, replaced or repaired in accordance with the City's public work design standards." While the City TSP does identify Jenny Marie Lane as requiring sidewalks, the AMC does allow the Planning Commission to accept a non-remonstrance agreement in lieu of improvements under certain conditions.

Staff finds the criteria under Title 16 can be met, with conditions.

V. CONCLUSIONS AND RECOMMENDATIONS

Based upon the findings outlined in the staff report, staff recommends Planning Commission action **VI.A.1** as outlined below for the Interpretation application (File No. INT-14-04) with the following conditions of approval:

1. The applicant execute and record a non-remonstrance agreement for sidewalks with Marion County. The non-remonstrance agreement shall be reviewed and approved by the City prior to recording. Recording costs shall be the responsibility of the property owner and evidence of the recorded non-remonstrance agreement with Marion County shall be required prior to building permit approval.

VI. PLANNING COMMISSION SAMPLE MOTIONS

- A. Motion to adopt the findings in the staff report and approve Interpretation 14-03:
 1. As presented by staff, or
 2. As amended by the Planning Commission (stating revisions)

OR

- B. Motion to deny Interpretation 14-03 (stating how the application does not meet the required standards),

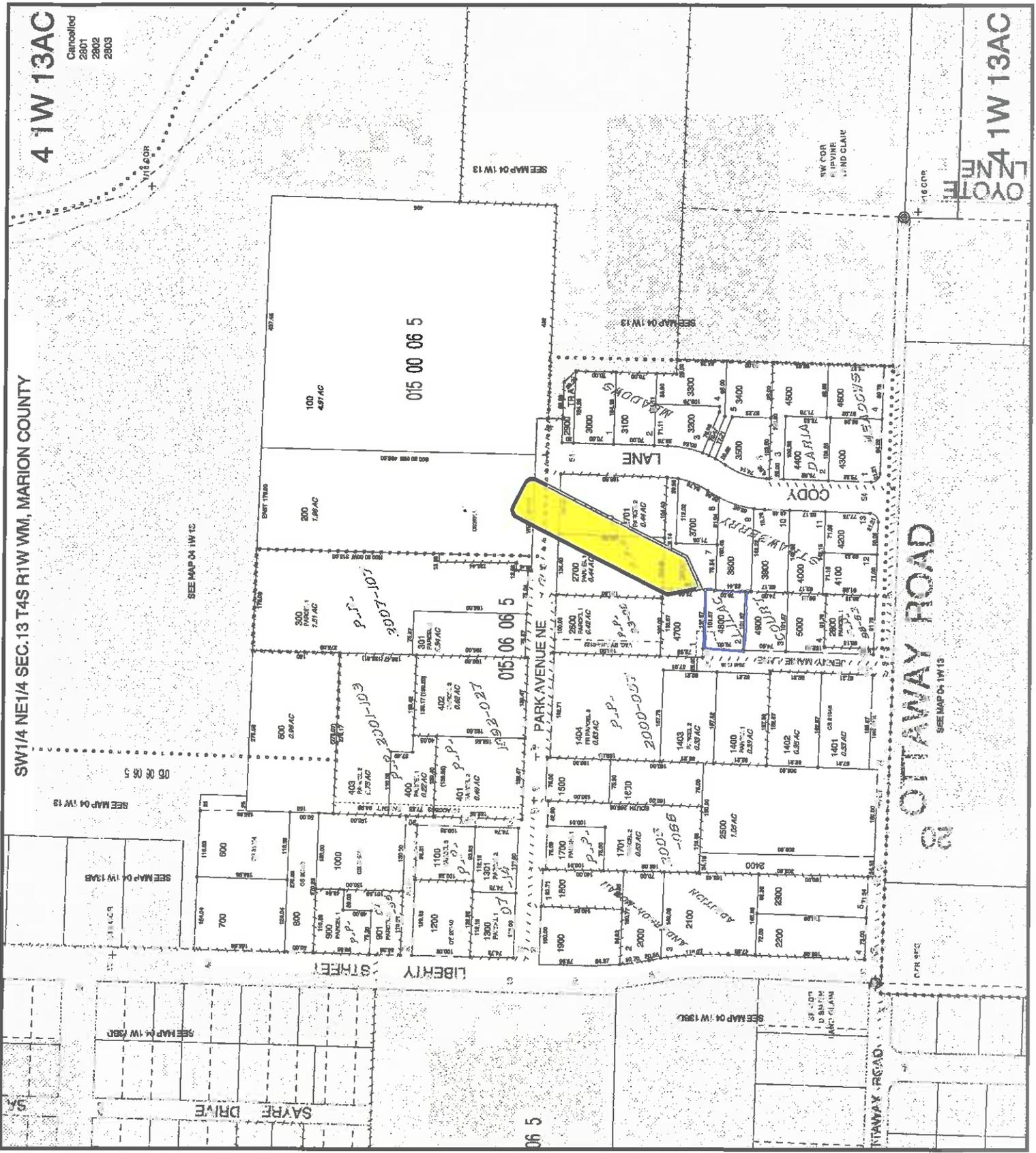
OR

- C. Continue the decision to a time certain or indefinite (considering the 120-day limit on applications) in order to collect additional information from the applicant or staff (stating the information required in order to make a decision)

4 1W 13AC
 Cancelled
 2801
 2802
 2803

SW1/4 NE1/4 SEC.13 T4S R1W WM, MARION COUNTY

4 1W 13AC
 OYOTE
 16 CCR



LEGEND

- LINE TYPES**
- TAX LOT BOUNDARY
 - OLD PROPERTY LINE
 - VACATED RIGHT-OF-WAY
 - RAILROAD RIGHT-OF-WAY
 - STRETA, LAKE, ETC. BOUNDARY
 - SUBDIVISION BOUNDARY
 - TAX COR BOUNDARY
- SYMBOL TYPES**
- D.L.C.
 - CONTROL POINTS
 - SURVEY MONUMENTS
 - C.L.A. CORNERS
 - SECTION
 - 1/4 SEC
 - 1/8 SEC
 - 1/32 SEC

NUMBERS

TAX CODE NO.
 000 00 00 0

ACREAGE - ALL ACREAGE EXCLUDE ANY PORTION THAT MAY BE WITHIN THE INDICATED PUBLIC RIGHT OF WAY.

TICK MARKS - WHEN A TICK MARK IS INDICATED ON THE EXTENSION OF A LINE, THEN THE DIMENSION GOES TO THE TICK MARK, GENERALLY THIS IS USED WHEN DIMENSIONS GO INTO PUBLIC RIGHT OF WAYS.

ARROWS ARE USED WITH DIMENSIONS IN AREAS OF GREATER COMPLEXITY.

NOTICE: This map was created for Assessor's Office use ONLY.



SCALE 1" = 100'
 on 1:1200
 Plot file created: July 31, 2014
 Assessor's Office

City of Aurora Building / Planning Application

(Check appropriate box)

- | | |
|---|--|
| <input type="checkbox"/> SITE DEVELOPMENT REVIEW (AMC 16.58)
<input type="checkbox"/> FLOOD PLAN DEV. PERMIT (AMC 16.18)
<input type="checkbox"/> HISTORIC OVERLAY DISTRICT (AMC 16.20-16.22)
<input type="checkbox"/> Certificate of Appropriateness
<input type="checkbox"/> Demolition Permit
<input type="checkbox"/> Sign Review
<input type="checkbox"/> MANUFACTURED HOME PARK (AMC 16.36)
<input type="checkbox"/> COMPREHENSIVE PLAN AMENDMENT (AMC 16.80)
<input type="checkbox"/> Text <input type="checkbox"/> Map
<input type="checkbox"/> ZONING ORDINANCE AMENDMENT (AMC 16.80)
<input type="checkbox"/> Text <input type="checkbox"/> Map | <input type="checkbox"/> CONDITIONAL USE (AMC 16.60)
<input type="checkbox"/> VARIANCE (AMC 16.64)
<input type="checkbox"/> HOME OCCUPATION (AMC 16.46)
___ Type I ___ Type II
<input type="checkbox"/> NON-CONFORMING USE (AMC 16.62)
<input type="checkbox"/> LAND DIVISION
<input type="checkbox"/> Subdivision (AMC 16.72)
<input type="checkbox"/> Partition (AMC 16.70)
<input type="checkbox"/> Property Line Adjustment (AMC 16.68)
<input type="checkbox"/> APPEAL TO _____ (AMC 16.74-16.78)
<input checked="" type="checkbox"/> OTHER <u>Non Remedial</u> |
|---|--|

APPLICANT GENERAL INFORMATION

Applicant BQC LLC Phone 503-550-7744
 Mailing Address 401 KEMPER CREST DR Newburg 97132
 Property Owner Bill Rosackoy Phone _____
 Mailing Address 401 KEMPER CREST DR Newburg 97132
 Contact person if different than applicant _____ Phone _____
 Mailing Address _____

PROPERTY DESCRIPTION

Address 21042 Jenny Marie Tax Map # _____ Tax Lot # _____
 Legal Description (attach add'l sheet if necessary) _____

Total Acres or Sq. Ft. 7000 Existing Land Use Residential
 Existing Zoning Residential Proposed Zoning (if applicable) _____
 Proposed use Residential

ACTION REQUESTED: (use additional sheets as needed)

NO SIDEWALKS / CURBS

ATTACHMENTS

- A. Plot plan of subject property- show scale, north arrow, location of all existing and proposed structures, road access to property, names of owners of each property, etc. Plot plans can be submitted on tax assessor maps which can be obtained from the tax assessor's office in the Marion County Courthouse, Salem OR.
 B. Legal description of the property as it appears on the deed (metes and bounds). This can be obtained at the Marion County Clerk's office in the Marion County Courthouse, Salem OR.

ADDITIONAL INFORMATION

In order to expedite and complete the processing of this application, the City of Aurora requires that all pertinent material required for review of this application be submitted at the time application is made. If the application is found to be incomplete, review and processing of the application will not begin until the application is made complete. The submittal requirement relative to this application may be obtained from the specific sections of the Aurora Municipal Code pertaining to this application. If there are any questions as to submittal requirements, contact the City Hall prior to formal submission of the application.

In submitting this application, the applicant should be prepared to give evidence and information which will justify the request and satisfy all the required applicable criteria. The filing fee deposit must be paid at the time of submission. This fee in no way assures approval of the application and is refundable to the extent that the fee is not used to cover all actual costs of processing the application.

I certify that the statements made in this application are complete and true to the best of my knowledge. I understand that any false statements may result in denial of this application. I understand that the original fee paid is only a deposit and I agree to pay all additional actual costs of processing this application, including, but not limited to, all planning, engineering, City attorney and City administration fees & costs. I understand that no final development approval shall be given and/or building permit shall be issued until all actual costs for processing this application are paid in full.

Signature of Applicant Walter Rook Date 11/21/14
 Signature of Property Owner Walter Rook Date 11/21/14

Office Use Only: Received By: <u>KR</u>	Date: <u>12-10-14</u>	Fee Paid \$ <u>500.00</u> <u>OK 5334</u>
Receipt # _____	Case File # _____	Planning Director Review _____ Date _____

12/10/14

21042 Jenny Marie Ln AURORA, OR

I am requesting a variance from City Code
requiring SIDEWALKS AND CURBS.

No other Houses on Jenny Marie have
them which would make mine look
funny.

Thank you

Bill Roake



Google earth

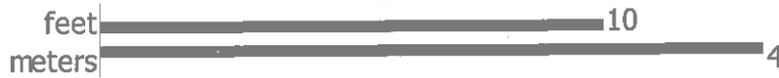


Exhibit CI

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 responsibility for decisions. For example, in many cases, staff makes the initial decision, subject to 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 DLCD as required by the state statute. DLCD 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 rebut evidence directed toward the applicable criteria. Failure to raise an issue orally or in writing in 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.