



# AGENDA

Lincoln City Planning Commission  
Tuesday, May 18, 2021, 6:00 PM  
Zoom, Streamed LIVE on Zoom  
801 SW Highway 101 - 3rd Floor, Streamed LIVE on Zoom, Lincoln City, OR 97367

1. **CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL**
2. **AGENDA CHANGES OR REVISIONS**
3. **MINUTES**
  - 3.1. Planning Commission - Regular Meeting - May 4, 2021 6:00 PM
4. **FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**
5. **PUBLIC HEARINGS/DELIBERATIONS**
  - 5.1. VAR 2021-01 Markin - Setback Variance
6. **OLD BUSINESS**
7. **NEW BUSINESS**
  - 7.1. A Work Session on “Element 1. Citizen Involvement” of the draft Comprehensive Plan - a work session with Planning Commissioners to review, discuss, and improve the Citizen Involvement Program for the draft Comprehensive Plan and future land use changes.
8. **PLANNING COMMISSION TRAINING**
9. **PLANNER COMMENTS**
10. **FUTURE AGENDA ITEMS & NEXT MEETINGS**
11. **ADJOURN**

*All information for this meeting is available on the City of Lincoln City website at [www.lincolncity.org](http://www.lincolncity.org), and this meeting will be televised live on Charter Channel 4 Lincoln City and rebroadcast at various times. Planning Commission meetings are streamed live on the Internet through a link on the City of Lincoln City website, and can also be viewed following the meeting. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, for a hearing impaired device, or for*

*other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the City Recorder, at 541-996-1203.*

**LINCOLN CITY PLANNING COMMISSION  
MINUTES  
May 4, 2021**

**1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, & ROLL CALL**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>	<b>Arrived</b>
Marci Baker	Chair	Present	
Kim Blackerby	Commissioner	Present	
Joshua Brainerd	Commissioner	Absent	
Patti Kroen	Commissioner	Present	
Lenny Nelson	Commissioner	Present	
Miles Schlesinger	Commissioner	Absent	
MacNeale Smith	Commissioner	Present	

Assistant Planner James White relayed a message from Commissioner Brainerd that he would be unable to attend the meeting and that he was resigning from the Planning Commission effective immediately.

**2. AGENDA CHANGES OR REVISIONS**

No changes to the agenda

**3. MINUTES**

**3.1. Planning Commission - Regular Meeting - Apr 20, 2021 6:00 PM**

<b>MOTION:</b>	<b>Approve the April 20, 2021 minutes with edits as identified by Commissioner Blackerby</b>
<b>MOVER:</b>	<b>Lenny Nelson, Commissioner</b>
<b>SECONDER:</b>	<b>Patti Kroen, Commissioner</b>
<b>AYES:</b>	Baker, Blackerby, Kroen, Nelson, Smith
<b>ABSENT:</b>	Joshua Brainerd, Miles Schlesinger
<b>RESULT:</b>	<b>Passed</b>

**4. FINAL ORDERS, RESOLUTION, & WRITTEN COMMUNICATIONS**

None

**5. PUBLIC HEARINGS/DELIBERATIONS**

None

**6. OLD BUSINESS**

None

**7. NEW BUSINESS**

None

## 8. PLANNING COMMISSION TRAINING

### 1. Training from Lisa Phipps, DLCD

Senior Planner Dave Mattison introduced Lisa Phipps, the North Coast Regional Representative for Oregon State Department of Land Conservation and Development (DLCD). He read her bio to the Planning Commission.

Ms Phipps greeted the commissioners and said that the Lincoln City Planning Commission is one of the bodies that she has been hoping to meet. She explained that she was asked to do a 101 presentation and would be covering land use in general, the DLCD in relation to other jurisdictions, and being a planning commissioner. She encouraged the commissioners to ask questions when they had them, rather than save them up.

Ms Phipps started with an overview of land use in Oregon from the 1919 enabling legislation through changes in the 1960s allowing the creation of exclusive farm zones and into the 1970s with Senate Bill 100 in 1973 (which created the Land Conservation and Development Commission) and the adoption of the Statewide Planning Goals in 1975 and 1976. She then explained the Oregon Coastal Management Program, created in 1977, which creates a partnership between coastal local governments, state and federal agencies, and other stakeholders. The program lives within DLCD and is unique in that it is a network with participation from coastal communities and state agencies.

Goal 1, Citizen Involvement, from the Statewide Planning Goals, is the fundamental basis of land use in Oregon. With a successful citizen involvement program, you have successful land use management. Local planning commissions, appointed by local city councils, are a big part of this. The Planning Commission is a partner, but also serves at the pleasure of the elected body. At the end of the day the elected body is the decision-making body. The planning commission is the final decision-maker in quasi-judicial processes. In legislative processes that have a wider effect, the planning commission is advisory. Diversity, equity, and inclusion are fundamental components of Goal 1 - everyone should be able to have a voice in the land use process. When you are going through your land use processes, having those ideals in the back of your mind, the best ways to engage different parts of the community - when you are trying to do your outreach - it is not just one-size-fits-all, but looking at the community and the best ways of engaging people.

Ms Phipps discussed the various state and local responsibilities.

Goal 2 from the Statewide Planning Goals requires local governments to have comprehensive plans. Plans should be consistent with each other where they overlap (e.g. UGBs). Special district and state agency plans and programs must be coordinated with comprehensive plans.

The Comprehensive Plan establishes a vision and is the guiding land use document for local communities. It should include a factual base, goals and policies, implementing measures (code), and both zoning and future land use maps. When something in the Comprehensive Plan doesn't work, or no longer works, the plan can be updated through the post-acknowledgement plan amendment process. Sometimes there are circumstances that could not have been considered when the plans were made which meet the high bar of warranting an exception to override statewide planning goals.

The zoning and development code should have clear and objective standards. This is a requirement in residential zones, and is something that DLCDC will be working with communities to make sure that any zones that allow for housing have those standards.

Legislative land use decisions adopt or amend policies or ordinances and usually are broader than a single ownership. No decision is required for a legislative decision. The elected officials are the final decision makers. There are usually at least two hearings, and often many more than that.

Quasi-judicial land-use processes require the application of pre-existing criteria and the exercise of discretion. A decision on quasi-judicial processes must be made within 120 days unless the applicant has allowed for a time extension. The 120 days is intended to cover the entire process, which can include an appeal. The Planning Commission is the final decision maker, but decisions can be appealed to the City Council

Ministerial actions do not require discretion - an application either meets the criteria or doesn't. These are staff-level decisions and there is no opportunity for appeal. Legislative and quasi-judicial processes require notice. Ministerial actions do not require notice.

Commissioner Kroen asked whether the state goals are ever updated. She said that approximately 45 years seems like a long time to go without new goals. Ms Phipps replied that there have been no new goals since 1976, but there have been changes within those goals - most notably recently around housing. There has been talk of a new Goal 20 related to climate. The question is whether there should be a goal around climate or whether climate should be integrated into the other existing goals. Where it applies to the coast in sea level rise, climate is something that we worry about a lot, and it is something that applies to both Goals 18 and 7. Nothing precludes a local government from adopting maps that take climate change and sea level rise into consideration. We have many maps around our estuaries and natural resources - if a community were inclined, there would probably be support.

Ms Phipps described the hearing process for quasi-judicial processes - The Planning Commission chair opens the hearing, describes the order of proceedings, makes a raise-it-or-waive-it statement, announces the applicable criteria for the hearing, and asks the planning commissioners for declarations of ex parte contact, bias, and conflict of interest. The staff report is next, followed by testimony lumped into proponents, opponents, and parties neutral to the application in question. Then there is a chance for the applicants' rebuttal. Sometimes there is an opportunity for staff to give a last opinion.

Legislative Procedures - conflict of interest still needs to be declared, but not ex parte issues.

Findings are the heart of, and where a planning commission can make or break, a process. Good solid findings don't mean that a decision cannot be appealed - they just mean that the city did its job in coming to the decision that they did. The purpose of the findings is in aiding (and documenting) consideration of the criteria, and in explaining how they are supported by evidence, and how they are not arbitrary. Statements of facts, how each approval criterion is satisfied by the facts, the facts relied on and the justification for the decision. If a party asserts that a criterion is applicable, and the reviewing body disagrees, the findings should explain why the criterion is not applicable. Sometimes there is conflicting testimony and the Planning Commission has to choose one or the other. Then they have to explain in the findings how they came to accepting the one and rejecting the other. The findings also need to articulate the link between a project impact and the conditions being imposed. There has to be some kind of nexus and some proportionality. When thinking about conditions, that is something that you always need to have in the back of

your mind. Findings should not be a restatement of the law. They need to be in clear and understandable language.

When making a decision that deviates from staff's recommendation, it is not staff's job to go back and listen to the hearing and interpret what the Planning Commission was trying to say. You provide that and they put it into the format you need to move forward with the decision.

Common problems with findings include failure to address each criterion, deferring a necessary finding to a condition of approval, generalizing or making a conclusion without sufficient facts, and failure to establish causal relationship between facts and conclusions.

If everything you have heard is positive and supported by criteria, and you go in the opposite direction and cannot explain why, you have not made a good decision.

The Land Use Board of Appeals (LUBA) is a 3-member board appointed by governor. They will hear appeal appeals of land use decisions. Their threshold is whether a reasonable person could have drawn the conclusion that the decision maker made. There is deference to the city in interpreting their own rules. They are going to look at the decision and review the record and hear arguments from the attorneys and.

Ex parte contact only applies in Quasi-judicial processes. Nobody should be talking about an upcoming quasi-judicial hearing. Ex parte contact must be declared and described at the outset of the hearing so that the other Planning Commissioners have the same information that the commissioner with the contact has. Ms Phipps said that she strongly encourages site visits, although they are ex parte contact that needs to be declared. Talking to staff is not ex parte contact. They are the party that has been working with the applicant. They are knee deep in working with the criteria. They have likely been to the site. They are your go to. Do not talk to one another. It results in a lack of transparency. You are not the expert. Staff are the resources and your experts in the matter.

Commissioner Blackerby asked whether site visits need to be as a group or whether commissioners can go out on their own. He said that he finds it hard to make a decision without having seen the site. Ms Phipps said that she personally encourages City Councilors and Planning Commissioners to do site visits. You can do them as a body, but you have to notice it and it becomes a public meeting.

Ex parte contact doesn't mean that you cannot participate. It just means that you have to share. Where it gets difficult is the appearance of bias.

Actual conflict of interest occurs when you or a relative would be directly harmed by a decision. Potential conflict of interest is when you could benefit or be harmed by the decision. If you are unsure, state it. Conflict of interest is the most clear and the most confusing. It is most clear when you have actual financial gains or losses that would impact your ability to make a decision. Potential conflict of interest is a little less clear. Conflicts of interest are around financial matters only. Bias is a little different.

Potential conflict of interest needs to be announced but you can still participate. Actual conflict of interest requires you to refrain from participating as a public official in any discussion, debate, or vote related to the decision unless the vote is needed for a quorum. (This is why it is important to be in contact with staff when get the meeting packet - they will need to make sure that there is a quorum).

Bias is the least clear. Bias is when you have a prejudgment to the extent that you are not capable of making an objective decision based on the merits of the case. It is a high bar to meet, but it is sometimes done. You can be called on it, and when the chair calls you to make your declaration of ex parte and bias, you can be challenged by the other commissioners or members of the public. Whenever you have doubt, it is always good to state the potential bias. For example, personally you struggle with dog parks. You like dogs and all, but do they really need their own park? You need to look deep to decide whether you can hear the staff report, testimony, and criteria and not change your mind. If the answer is that you cannot change your mind, you need to state that. Always if you and staff are wondering where the potential bias falls, the city attorney is the backstop. Their job is to protect the interests of the city and to make sure that all of the processes are being followed. They are the backstop when things are less clear than you would like to be.

Bias does not require recusal.

Ms Phipps talked about the process for updating Comprehensive Plans. A lot of the plans are as much as 40 years old. We are in a time where we are seeing a number of communities updating comprehensive plans. There is no one way to do it. The way to do it is what works best for your community and what needs need to be met. In Clatsop County, there have been a number of piece-by-piece policy changes over the years that have started to become inconsistent. They said that they wanted to take a step back and deconstruct the comprehensive plan and build it back up. What was going to be a 3-year process has expanded to 4-years, a number of committees, and an expensive public-engagement process. DLCDC has been helping to put workshops together in front of each goal to make sure that everyone is using the same language and understands the goal.

Aligning with the statewide planning goals in the format makes things a lot easier. You can have in introductory paragraph that lays everything out.

Partnership with DLCDC is an opportunity to get in front of any issues that might occur. A lot of issues have come up in the last 40 years. Housing and housing stock. A lot of new things that we were not talking about in the 80s. Some of it is state law, some of it is aspirational. As that gets pulled together, the Planning Commission will have opportunities to have workshops and get engaged. There are a lot of different ways to do it. Mostly your end goal is to make changes. Let staff take the first step because they are knee deep in it all the time. One of the things that they have been good at is highlighting what has changed, what is different, who did it, etc.

## **9. REPORTS & COMMENTS**

None

## **10. FUTURE AGENDA ITEMS & NEXT MEETINGS**

The next meeting is a hearing for a side setback variance application. There will also be a presentation and discussion about the citizen involvement program in the comprehensive plan updates.

## **11. ADJOURN**

Adjourned at 7:26

Respectfully submitted,

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James White  
Assistant Planner

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Marci Baker  
Chair

# Planning Commission Communication

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## VAR 2021-01 Markin

Meeting Date: May 18, 2021                      Primary Staff Contact: David Mattison  
 Department: Planning Commission            E-Mail: DMattison@lincolncity.org  
 Secondary Dept:                                      Secondary Contacts:  
 Approval:    Estimated Time:

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### Staff Report

### Planning Commission Hearing on April 20, 2021

### Case File VAR 2021-01

**Date:** May 10, 2021

**Case File:** VAR 2021-01 Markin Deck Setback Variance

**Applicant/Property Owner:** James and Katherine Markin

**Situs Address:** 5340 NE Logan Road

**Location:** The property is located on the north end of a 12 foot access easement that extends north off of Logan Road.

**Tax Map and Lot:** 06-11-35-CC-00800

#### Comprehensive

**Plan Designation:** Single Family Residential Roads End (R-1-RE)

**Zoning District:** Single Family Residential Roads End (R-1-RE)

**Site Size:** 0.1 acres (4,356 sq ft)

**Proposal:** The applicant is requesting a setback variance to allow a proposed structure (second story deck) on the subject property to remain closer to the side lot line than the required 10 ft side yard setback, making an exception to Lincoln City Municipal Code Section 17.17.070 (Lot Requirements), Subsection (E) in order to allow the interior side yard setback greater than one story to be reduced.

The applicants have requested a setback variance (4 ft) allowing them to rebuild the second story deck closer to the property line to match the original deck setback, rather than meeting the required 10 ft setback, and alleviate the hardship.

**Surrounding Land Uses and Zones:** North: Residences (R-1-RE) Single Family Residential Roads Ends (R-1-RE)  
 South: Residences (R-1-RE) Single Family Residential Roads Ends (R-1-RE)  
 East: Residences (R-1-RE) Single Family Residential Roads Ends (R-1-RE)

West: Residences (R-1-RE) Single Family Residential Roads Ends (R-1-RE)

**Public Notice:** The Planning and Community Development Department mailed notice to the owners of all properties within 250 feet of the site on March 31, 2021, and a second notice with corrections was mailed on April 28, 2021. The *News Guard* published the public hearing notice on April 6, 2021, and the corrected notice on May 4, 2021.

**Authority:** Section 17.77.140 of Lincoln City Municipal Code (LCMC) Title 17 authorizes the Planning Commission to authorize variances from the requirements of Title 17 (Zoning) where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship. No variances shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission must find that the request meets all four of the circumstances in §17.68.020 and may attach conditions that it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of Title 17. A previously authorized variance does not set precedent for later variances; all variance requests are judged based on the four circumstances.

**Applicable  
Substantive  
Criteria:**

The variance must be in conformance with the Oregon Statewide Planning Goals, the Lincoln City Comprehensive Plan, and Lincoln City Municipal Code Chapter 17.08 Definitions, Chapter 17.17 Single-Family Residential, Roads End, Chapter 17.64.010, General Provisions for Non-Conforming Situations, and Chapter 17.77.140 Variances.

**BACKGROUND**

The subject property is a developed lot with approximately 4,000 sq ft. In the 1980's a lot line adjustment (between tax lots 600 and 800 (5354 Logan (to the north) and 5340 Logan)) provided the property owner with additional square footage to the north on 5340 Logan so that the lot could be built upon. A second-story deck existed on the north and the west sides of the single family home. The house and the upper story deck were constructed at the same time prior to annexation to the City. The deck to the north was 6 ft from the property line (4 ft under the required 10 ft setback). The grade of the property to the north of the existing house drops dramatically making it unsuitable for use or emergency access.

Last summer, the applicant applied for a building permit for routine repair and renovation of the northern deck. The permit was approved in August 2020 for the deck beam, pillar and footing repair, based on the requirements for routine repair as listed in Section 17.64. However, at the time of the setback inspection, additional work than just the approved footing and beam repair was identified. As work progressed, the applicant extended the work and it became a violation.

It was identified that prior to annexation, prior to the current property owners, the deck has existed as a pre-existing, non-conforming structural issue that has been a part of the house.

On February 19, 2021, the applicant was cited by the City of Lincoln City, and the City staff found that the deck has been entirely replaced and constituted two violations:

1) Violation of nonconforming deck replacement without a permit (Class B violation); and,

2) Violation of side setback requirements and on March 30, 2021, the applicant was taken to court in regard to the violation.

To alleviate the violation, the applicant has requested a setback variance (4 ft) allowing the second story deck to be rebuilt closer to the property line to match the original deck setback, rather than meeting the required 10 ft setback.

## **ANALYSIS**

### **Single-Family Residential Roads End (R-1-RE) Lot Requirements**

Section 17.17.070 lists the setback requirements.

Setback requirements shall be as follows:

- D. The minimum front yard shall be 20 feet. Except that the minimum setbacks from Logan Road need not exceed the average setback of buildings on all lots within 100 feet of the lot on which the proposed building is to be located and that abut Logan Road.
- E. The minimum interior side yard shall be seven and one-half feet for single-story buildings and 10 feet for buildings with more than one-story.
- F. The minimum street side yard shall be 20 feet, except that it may be one foot less for each two feet of front yard setback over the minimum, but not to less than 10 feet.
- G. On corner lots, the clear-vision area requirement of LCMC 17.52.060 and 17.52.070 shall apply.
- H. The minimum rear yard shall be seven and one-half feet for single-story buildings and 10 feet for buildings with more than one-story. In no case shall the distance between residential structures on the same lot or on adjacent lots be less than 10 feet.

Any new development on the site or re-development of the site must meet the requirements of the R-1-RE zone and other regulations referenced by the zone, including among others, those pertaining to landscaping, signs, parking, and site plan/design standards.

The minimum setback of 10 feet is the issue in the proposed setback variance request application.

### **Definitions**

Section 17.08 lists the definitions for “Repair” and “Replace”.

- “Repair” means mending or replacing broken or worn parts or elements with comparable (like for like) materials and like dimensions, while retaining all existing dimensions as well as all sound parts and elements.
- “Replace” means actions to substitute one material or system for another when like for like is not possible.

In this case, the applicant went beyond a routine repair, and therefore, is requesting a setback variance.

### **Non-Conforming Situations**

Section 17.64.010.G describes the requirements for routine repair and maintenance.

G. Routine Repairs and Maintenance. Routine maintenance and repairs may be performed on structures, buildings, or sites that are nonconforming or that house nonconforming uses. Examples of maintenance and repairs are painting, repairing dry rot, and re-roofing. Routine repairs and maintenance do not include expansion of the square foot area of a structure or use, or creation of new units within residential

structures. Routine repairs and maintenance performed in any 12-month period may not exceed 50 percent of the assessed value of the existing building, structure or use.

In this case, the applicant went beyond a routine repair, and therefore is requesting a setback variance.

## **Variations**

Section 17.77.140 grants the Planning Commission the authority to authorize variances in those instances where the strict application of an ordinance would create **an undue or unnecessary hardship** because of circumstances of the property beyond the control of the property owner. It is not necessary for the applicant to demonstrate that there is no reasonable use of the property - only that a property right that is otherwise shared by owners of other property in the same zone or vicinity is made unduly or unreasonably difficult because of the ordinance. The LCMC (17.77.140) sets out four criteria (all of which must be met) to establish whether a variance may be granted:

### **Circumstances for Granting a Variance (17.77.140)**

*1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;*

The existing house is tucked into a 50 ft by 80 ft lot, with a second story deck extending out on the north and west sides. Tax Lot 800 is smaller in size and dimensions than adjacent properties, and the City requirements. The location of the original deck on the north side of the building approximately 6 ft from the property line. Site conditions and the slope of the grade to the north create an exceptional or extraordinary condition. Staff concludes that this exceptional or extraordinary circumstance for granting a variance is met.

According to the applicant, the property is located in Roads End in Lincoln City. The deck is original to the house and built prior to annexation of the neighborhood into Lincoln City. The applicant has stated in the narrative that the location of the home and the original deck are not in the applicant's control. The intent of this project is to repair the deck to its original footprint. The reclassification of the project from a 'repair' to a 'rebuild' was determined after excessive deconstruction of the original deck was done during repair, thus not meeting the 10 ft structural setback requirements.

*2. The variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other property in the same zone or vicinity possess;*

According to the applicant, the original deck, built before annexation, is attached to the west and north sides of the house. The repaired/rebuilt deck is in the exact footprint of the original deck. Many of the houses in the neighborhood built prior to Roads End annexation have decks and other structures (garages, houses, etc) that do not meet the City setback requirements. These can be seen on the aerials on adjacent properties. In the 1980's a lot line adjustment (between tax lots 600 and 800 (5354 Logan and 5340 Logan)) provided the property owner with additional square footage to the north on 5340 Logan so that the lot could be built upon. The applicant states it was a right to build closer to the property line than current requirements that many property owners utilized. Repairing and renovating the pre-existing deck preserves the right for the owner to continue to maintain the deck on the north side of the subject property. Staff concludes that this circumstance for granting a variance is met.

3. *The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy;*

According to the applicant, a setback variance for this deck will not be materially detrimental to adjacent properties because:

- a) the deck footprint is consistent with the pre-existing deck footprint;
- b) the added vertical beams supporting the deck do not impede the view or access to any of the adjacent properties.

In addition, the granting of this variance would not be detrimental to the current setback requirements. The property line between tax lots 600 and 800 (5354 Logan and 5340 Logan Staff) was adjusted in the 1980's in an attempt to accommodate the setback issues. Staff concludes that this circumstance for granting a variance is met.

4. The variance requested is the minimum variance which would alleviate the hardship. (Ord. 84-2 § 8.020)

According to the applicant, granting of this variance request is all that is required to alleviate the hardship created by not replacing the deck. Without this variance, the deck on the north side will not be allowed by the City due to not being designable or buildable. Staff concludes that this circumstance for granting a variance is met.

With the slope, site setback does not function as it is supposed to - for emergency access and/or utility placement - therefore it may be considered space to allow for a setback variance. It is not a necessary area for building, but the applicant can proposed to utilize it with Planning Commission approval. However, this does not mean that this justifies all deck construction in the required setback areas.

### **COMMENTS RECEIVED**

Notice was mailed to adjacent property owners within 250 feet on March 31, 2021 and April 28, 2021, and published on April 6, 2021 and May 4, 2021.

One comment was received on April 16<sup>th</sup>, 2021, from [staff@lincolnhomepage.com](mailto:staff@lincolnhomepage.com) <<mailto:staff@lincolnhomepage.com>>. They stated, 'This looks like people rebuilding a deck in the same place. Pretty much "nothing to see here," correct?'

### **RECOMMENDATION & CONCLUSION**

Section 17.77.140 of LCMC Title 17 states that the Planning Commission shall hold a public hearing before it may act on a request for a variance, and shall in open meeting, recommend the approval or disapproval of the variance.

Staff recommends that the Planning Commission hold a public hearing on the requested setback variance, and recommends that the evidence presented in this report warrants Planning Commission approve of the setback variance request.

Prepared by David Mattison, Senior Planner.

Attachments:

- Aerial map showing the location of property proposed for a variance

- Application materials

**Attachments:**

Presentation VAR-2020-01 (PPTX)

# Setback Variance Request VAR-2021-01

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Tuesday, May 18, 2021

The Lincoln City Planning Commission



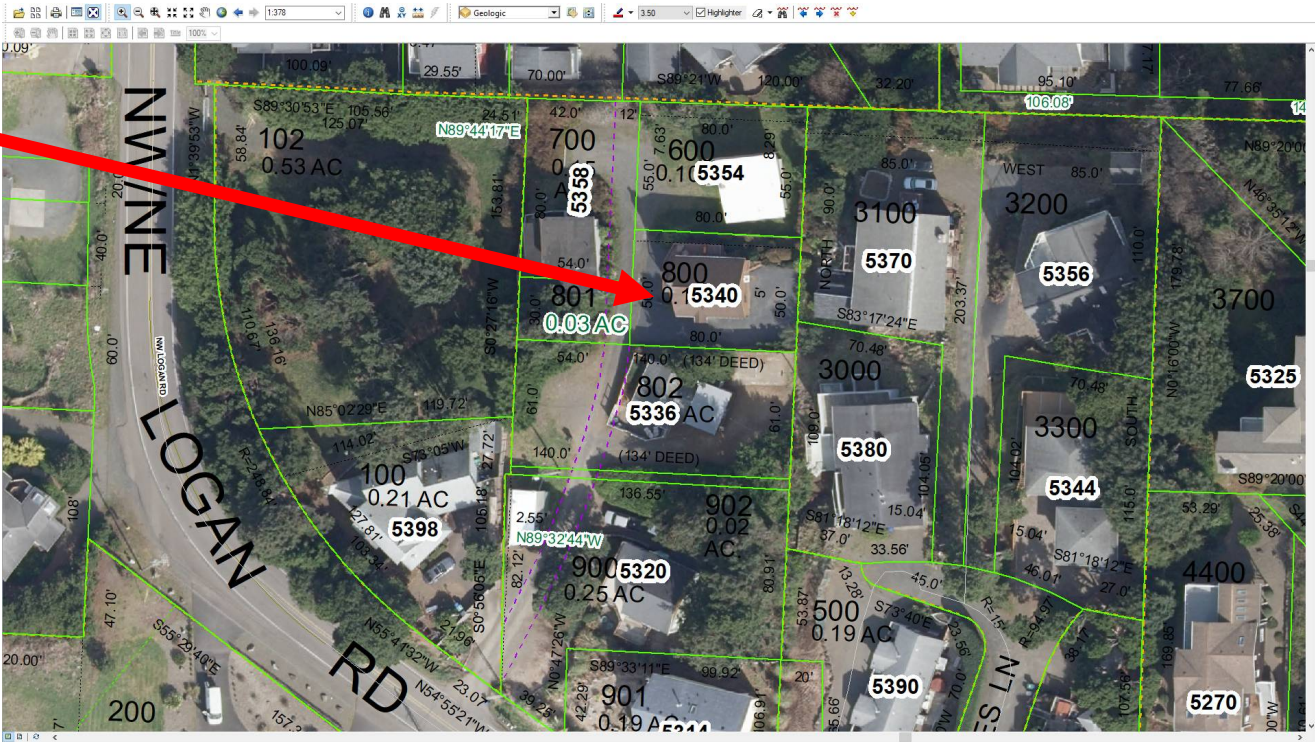
Setback Variance Request #VAR-2021-01

## PROPERTY LOCATION



# Property Location

Subject property



# Property Location

Location of replaced deck and setback variance request

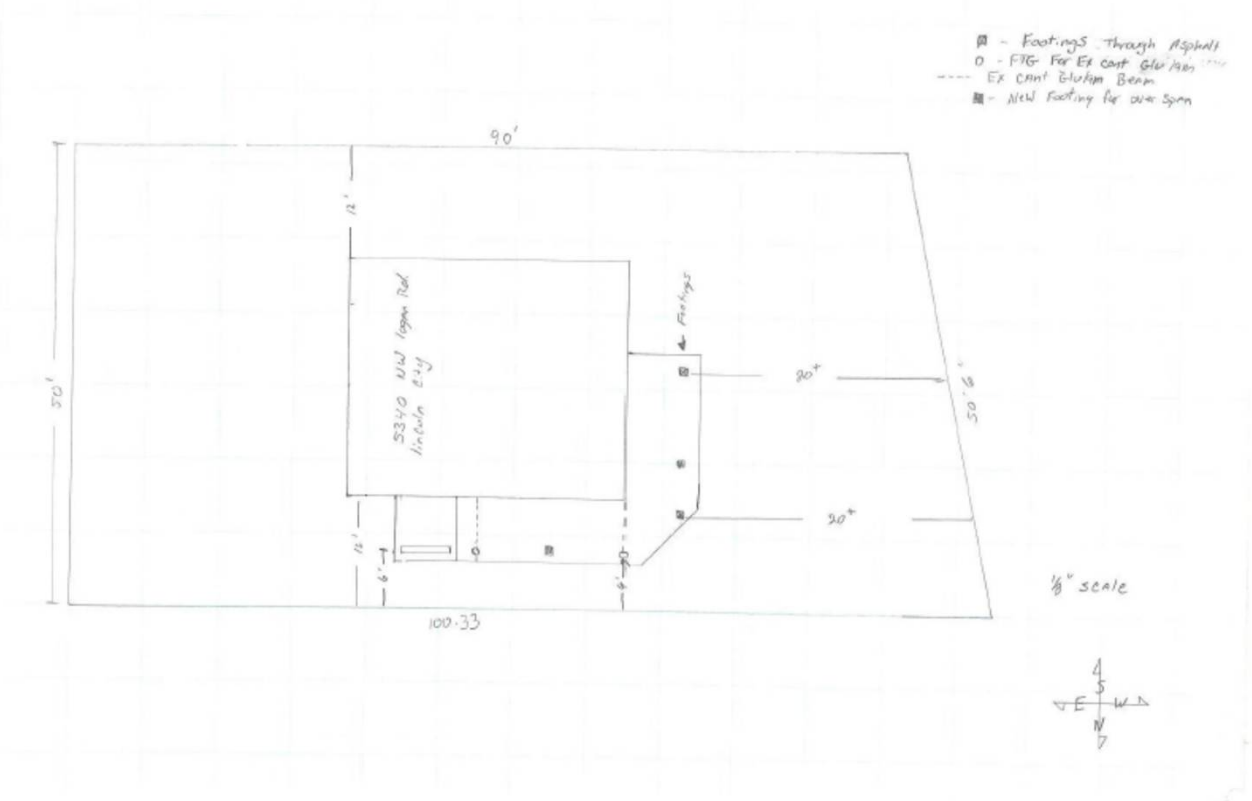


## Issue/Request:

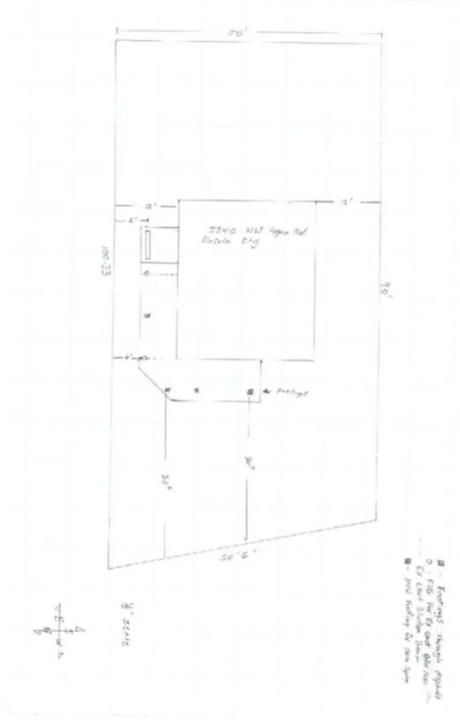
The applicant is requesting a setback variance to allow a proposed structure (second story deck) on the subject property to be built closer to the side lot line than the required 10 ft side yard setback, making an exception to Lincoln City Municipal Code Section 17.17.070 (Lot Requirements), Subsection (E) in order to allow the interior side yard setback greater than one story to be reduced.

The requested setback variance (4 ft) allows them to rebuild the second story deck closer to the property line to match the original deck setback, rather than meeting the required 10 ft side yard setback.

# Approved Plans for Setback Variance Request #VAR-2021-01



# Approved Plans for Setback Variance Request #VAR-2021-01





# Old deck



# The New Construction



# New Construction



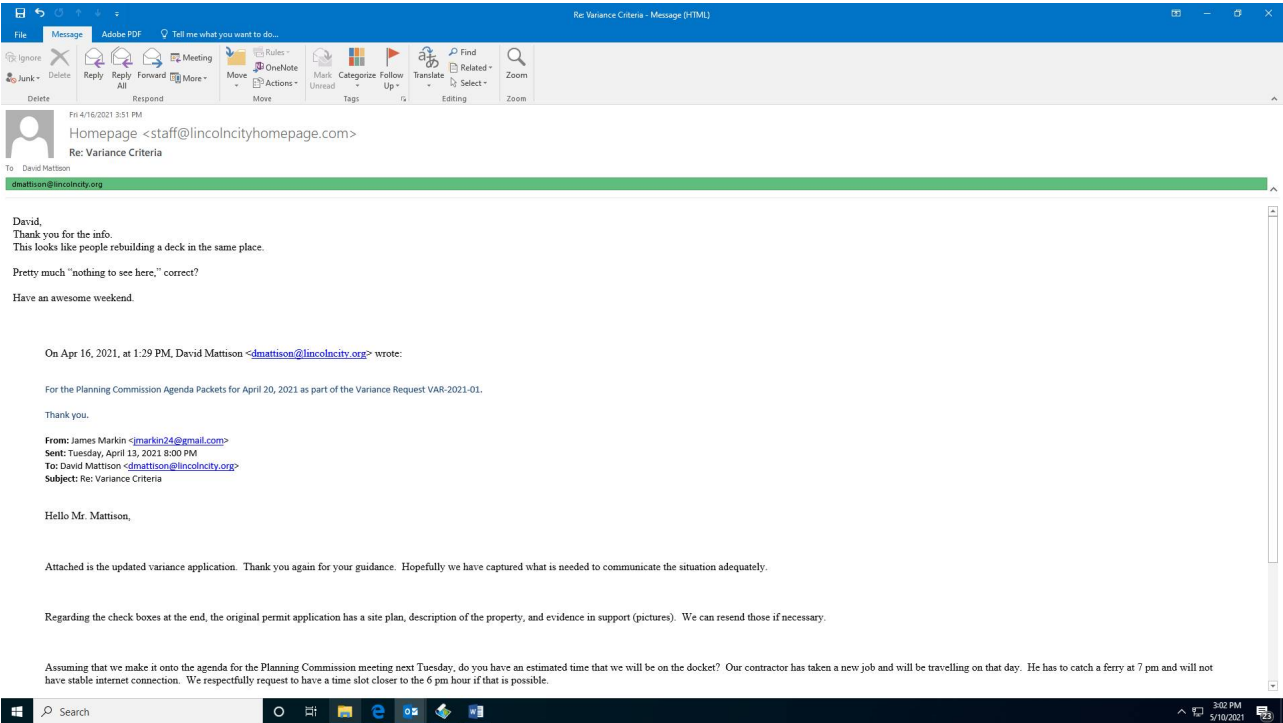
# New Construction



# New Construction



# Comments Received



## Historic Background:

The subject property is a developed lot with approximately 4,000 sq ft. In the 1980's a lot line adjustment (between tax lots 600 and 800 (5354 Logan (to the north) and 5340 Logan)) provided the property owner with additional square footage to the north on 5340 Logan so that the lot could be built upon. A second-story deck has existed on the north and the west sides of the single family home. The deck to the north was 6 ft from the property line (4 ft under the required 10 ft setback). The grade of the property to the north of the existing house drops dramatically making it unsuitable for use or emergency access.

Last summer, the applicant applied for a building permit for routine repair and renovation of the northern deck. The permit was approved in August 2020 for the deck beam, pillar and footing repair, based on the requirements for routine repair as listed in Section 17.64. However, at the time of the setback inspection, additional work than just the approved footing and beam repair was identified. As work progressed, the applicant extended the work and it became a violation.

## Historic Background (cont)

It was identified that prior to annexation, prior to the current property owners, the deck has existed as a pre-existing, non-conforming issue.

On February 19, 2021, the applicant was cited by the City of Lincoln City, and the City staff found that the deck has been entirely replaced and constituted two violations:

- 1) Violation of nonconforming deck replacement without a permit (Class B violation); and,
- 2) Violation of side setback requirements and on March 30, 2021, the applicant was taken to court in regard to the violation.

To alleviate the violation, the applicant has requested a setback variance (4 ft) allowing the second story deck to be rebuilt closer to the property line to match the original deck setback, rather than meeting the required 10 ft setback.

**Required Zoning – Single-Family Residential Roads End (R-1-RE) Lot Requirements (Section 17.17.070) :**

Any new development on the site or re-development of the site must meet the requirements of the R-1-RE zone and other regulations referenced by the zone, including among others, those pertaining to site plan/design standards.

D. The minimum front yard shall be 20 feet.

E. The minimum interior side yard shall be seven and one-half feet for single-story buildings and 10 feet for buildings with more than one story.

H. The minimum rear yard shall be seven and one-half feet for single-story buildings and 10 feet for buildings with more than one story. In no case shall the distance between residential structures on the same lot or on adjacent lots be less than 10 feet.

Conclusion: The minimum setback of 10 feet is the issue in the proposed setback variance request application.

## Definitions

Section 17.08 lists the definitions for "Repair" and "Replace".

"Repair" means mending or replacing broken or worn parts or elements with comparable (like for like) materials and like dimensions, while retaining all existing dimensions as well as all sound parts and elements.

"Replace" means actions to substitute one material or system for another when like for like is not possible.

Conclusion: In this case, the applicant went beyond a routine repair, and therefore, is requesting a setback variance.

## Non-Conforming Situations

Section 17.64.010.G describes the requirements for routine repair and maintenance.

G. Routine Repairs and Maintenance. Routine maintenance and repairs may be performed on structures, buildings, or sites that are nonconforming or that house nonconforming uses. Examples of maintenance and repairs are painting, repairing dry rot, and re-roofing. Routine repairs and maintenance do not include expansion of the square foot area of a structure or use, or creation of new units within residential structures. Routine repairs and maintenance performed in any 12-month period may not exceed 50 percent of the assessed value of the existing building, structure or use.

Conclusion: In this case, the applicant went beyond a routine repair, and therefore is requesting a setback variance.

- **Required Variance Criteria as described in LCMC 17.77.140**
- 1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;
- 2. The variance is necessary for the preservation of a property right of the property owner which is substantially the same as owners of other property in the same zone or vicinity possess;
- 3. The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy;
- 4. The variance requested is the minimum variance which would alleviate the hardship.

## Potential Solution(s)

- Approve Variance request
- Approve Variance request with a condition to limit extent of deck coverage
- Deny variance request

# ANALYSE:

## Compatibility.

The original deck was existing as compliant prior to the property's annexation to the City, and appeared compatible as a non-conforming structure.

## Suitability;

The non-conforming deck appeared suitable for the property and a replacement deck (through routine repair) appeared suitable since it had been pre-existing non-conforming for a number of years.

## Legality;

The deck appears to be legally pre-existing non-conforming.

## ANALYSE:

- Variance Review Criteria
- LCMC (17.77.140) grants the Planning Commission the authority to authorize variances in those instances where the strict application of an ordinance would create **an undue or unnecessary hardship** because of circumstances of the property beyond the control of the property owner. It is not necessary for the applicant to demonstrate that there is no reasonable use of the property – only that a property right that is otherwise shared by owners of other property in the same zone or vicinity is made unduly or unreasonably difficult because of the ordinance. The LCMC (17.77.140) sets out four criteria (all of which must be met) to establish whether a variance may be granted:

## Circumstances for Granting a Variance (17.77.140)

- 1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstances over which the applicant has no control;
- The existing house is tucked into a 50 ft by 80 ft lot, with a second story deck extending out on the north and west sides. Tax Lot 800 is smaller in size and dimensions than adjacent properties, and the City requirements. The location of the original deck on the north side of the building approximately 6 ft from the property line. Site conditions and the slope of the grade to the north create an exceptional or extraordinary condition.
- According to the applicant, the property is located in Roads End in Lincoln City. The deck is original to the house and built prior to annexation of the neighborhood into Lincoln City. The applicant has stated in the narrative that the location of the home and the original deck are not in the applicant's control. The intent of this project is to repair the deck to its original footprint. The reclassification of the project from a 'repair' to a 'rebuild' was determined after excessive deconstruction of the original deck was done during repair, thus not meeting the 10 ft structural setback requirements. Staff concludes that this exceptional or extraordinary circumstance for granting a variance is met.

## Circumstances for Granting a Variance (17.77.140)

- 2. The variance is necessary for the preservation of a property right of the applicant which is substantially the same as owners of other property in the same zone or vicinity possess;
- According to the applicant, the original deck, built before annexation, is attached to the west and north sides of the house. The repaired/rebuilt deck is in the exact footprint of the original deck. Many of the houses in the neighborhood built prior to Roads End annexation have decks and other structures (garages, houses, etc) that do not meet the City setback requirements. These can be seen on the aerials on adjacent properties. In the 1980's a lot line adjustment (between tax lots 600 and 800 (5354 Logan and 5340 Logan)) provided the property owner with additional square footage to the north on 5340 Logan so that the lot could be built upon. The applicant states it was a right to build closer to the property line than current requirements that many property owners utilized. Repairing and renovating the pre-existing deck preserves the right for the owner to continue to maintain the deck on the north side of the subject property. Staff concludes that this circumstance for granting a variance is met.

## Circumstances for Granting a Variance (17.77.140)

3. The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy;

- According to the applicant, a setback variance for this deck will not be materially detrimental to adjacent properties because:

a) the deck footprint is consistent with the pre-existing deck footprint;

b) the added vertical beams supporting the deck do not impede the view or access to any of the adjacent properties.

- In addition, the granting of this variance would not be detrimental to the current setback requirements. The property line between tax lots 600 and 800 (5354 Logan and 5340 Logan Staff was adjusted in the 1980's in an attempt to accommodate the setback issues. Staff concludes that this circumstance for granting a variance is met.

## Circumstances for Granting a Variance (17.77.140)

4. The variance requested is the minimum variance which would alleviate the hardship.

According to the applicant, granting of this variance request is all that is required to alleviate the hardship created by not replacing the deck. Without this variance, the deck on the north side will not be allowed by the City due to not being designable or buildable. Staff concludes that this circumstance for granting a variance is met.

With the slope, site setback does not function as it is supposed to – for emergency access and/or utility placement - therefore it may be considered space to allow for a setback variance. It is not a necessary area for building, but the applicant can proposed to utilize it with Planning Commission approval. However, this does not mean that this justifies all deck construction in the required setback areas.

## Recommended Solution(s):

- Approve Variance request
- Approve Variance request with a condition to limit extent of deck coverage
- Deny variance request

## Consequences of each recommended solution.

- Approve Variance request – the applicant’s deck will remain as a non-conforming issue.
- Approve Variance request with a condition to limit extent of deck coverage – the applicant may appeal the decision to the City Council or be required to remove a portion of the deck to limit deck coverage.
- Deny variance request – the applicant may appeal the decision to the City Council or be required to remove the portion of the deck that exceeds the required side yard setback of 10 feet.
- Staff is recommending the Planning Commission approve the setback variance request.

# Planning Commission Communication

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## A Work Session on “Element 1. Citizen Involvement” of the draft Comprehensive Plan

Meeting Date: May 18, 2021                      Primary Staff Contact: Sungman Kim  
 Department: Planning Commission            E-Mail: SKim@lincolncity.org  
 Secondary Dept:                                      Secondary Contacts:  
 Approval:    Estimated Time:

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### Objective:

The purpose of this work session is to review and discuss about the “Element 1. Citizen Involvement” of the draft Comprehensive Plan.

- Please be advised that the review and discussion will be limited only to “Element 1. Citizen Involvement.”
- Each element of the draft Comprehensive Plan will be discussed and updated from time to time at the separate work session.

### Authority:

Lincoln City Resolution No. 91-02, approved by the City Council on January 14, 1991, designated the Planning Commission as the Committee for Citizen Involvement (CCI) with the following responsibilities.

- Assisting the City Council with the development of a program that promotes and enhances citizen involvement in land use planning;
- Assisting in the implementation of the citizen involvement program (CIP),
- Periodically, every 12 months, evaluating the process being used and effectiveness of the citizen involvement program.
- The Committee is advisory to the City Council.
- Reporting to the Mayor and City Council, regarding the periodic review and the CCI performance, with contact of the participants and a survey questionnaire.

### Attachments:

1. Draft Element 1 - Citizen Involvement (PDF)
2. Current Comp Plan - Citizen Involvement (PDF)
3. Statewide Goal 1 - Citizen Involvement (PDF)
4. LCMC 2.4 Committee for Citizen Involvement (PDF)
5. Resolution 93-12 - Revising Committee for Citizen Involvement (PDF)
6. Resolution 94-33 - Adopting Citizen Involvement Program (PDF)
7. Example of findings from 2014-22 (PDF)
8. Restore Oregon v City of Portland (PDF)



## ELEMENT 1. CITIZEN INVOLVEMENT

### Data & Analysis:

The City of Lincoln City established a Citizen Involvement Program in 1976. According to Lincoln City Municipal Code Section 2.08.015, the Planning Commission may act as the Committee for Citizen Involvement (CCI). In the event the Planning Commission is selected to serve as the CCI, the Commission shall act in accordance with council resolutions setting forth the Citizen Involvement Program, as they may be amended.

Efforts for a comprehensive plan amendment affect a wide variety of people with many different interests. Because of this, it is unlikely that everyone will agree 100 percent with every aspect of the plan. Two-way communication between the planning team and people who may be affected by the plan outcomes is important, to help the team identify and understand different interests and concerns. Getting a handle on potential audiences and interests early will help the planning team pick appropriate outreach strategies and shape the plan to fit the public's overall needs.

To maximize the potential audiences or groups in this planning efforts, the following target population and/or groups have been selected<sup>7</sup>:

- Young People – Coordinate with school districts, colleges and universities, including student body associations and student newspapers; Reach out to high school social studies and civic teachers; Coordinate with Lincoln City Rotary Club, especially with mentoring programs for young professionals.
  - Lincoln County School District
  - St. James Santiago School
  - Seventh Day Adventist (Christian) School
  - Linn Benton Lincoln Educational Service District
  - Oregon Coast Community College
  - Rotary Club Mentoring Program
- Older People – Send notifications to the senior center; Consider large print versions of information.
  - Lincoln City Senior Center
- Low Income People – Coordinate with transit providers to get notifications to riders; Post notices with local offices of Oregon Department of Human Services, Social Security Administration and public libraries; Reach out to neighborhoods with concentrations of low-income populations.
  - Lincoln County Transit
  - Oregon Department of Human Services
  - Driftwood Public Library
  - Housing Authority of Lincoln County
- Disabled People – Make sure all events are ADA compliant and wheel chair accessible; Coordinate paratransit providers and/or local disability support services offices to disseminate notices; Make website accessible.

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<sup>7</sup> DLCD, Putting the People in Planning, June 30, 2019

- Oregon Social Security Field Office at Salem
- People with Limited English Proficiency – Reach out to churches that offer services in languages indicated by the City’s environmental justice scan; Look for radio stations with language programs; Prepare translated hand-out materials; Offer translation services upon request at public meetings.
- Tribal Populations – Coordinate with the tribal planning director for advice on Interacting with tribal members and potential meeting venues; Publish notices in tribal newspapers/newsletters; Request an opportunity to present to the tribal council.
  - Siletz Tribal Business Corporation
  - Chinook Winds Casino Resort
  - Siletz Tribal Gaming Commission
  - Conf. Tribes of Siletz Indians
- Business Interests – Coordinate with Chamber of Commerce to disseminate notices; Request an opportunity to present to Chamber members, or other local business/civic groups; Advertise in the local business journal; Contact leaders of local-chapter professional organizations.
  - Lincoln City Chamber of Commerce
  - Economic Development Alliance of Lincoln County
  - Samaritan North Lincoln Hospital
  - North Lincoln Health District
  - Nelscott neighborhood Association
  - Roads End Improvement Association
  - Indian Shores Association
  - Greater L.C. Neighborhood Association
  - Belhaven Homeowners’ Association
  - Sunridge homeowners’ Association
  - Lincoln Shore Estate HOA

Given the potential audiences and target population, a key objective for the Citizen Involvement Program is to provide clear information about the process and time line for decision-making, including when and how people can weigh in on plan recommendations. See the general process mandated by the 1997 Citizen Involvement Program below:



**Summary:**

The Lincoln City Citizen Involvement Program will promote civic engagement, outreach to others, and celebrate diversity to ultimately create an inclusive community.

The Citizen Involvement Program

**Inclusive Community**

- Promote civic engagement
- Outreach to others
- Celebrate diversity, equity and inclusion

Goal 1: Lincoln City shall maintain a Citizen Involvement Program, which ensures the continued participation of citizens in the land use planning process.<sup>8</sup>

Objective 1.1: The citizen involvement program shall involve a cross-section of affected citizens in all phase of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly representative of geographic areas and interests related to land use and land use decisions.<sup>9</sup>

Policy 1.1.1: Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from the City. The rationale used to reach land-use policy decisions shall be available in the form of a written record.<sup>10</sup>

Policy 1.1.2: Adequate human, financial, and information resources shall be allocated for the citizen involvement program.<sup>11</sup>

<sup>8</sup> The Lincoln City Comprehensive Plan (1998)

<sup>9</sup> Statewide Planning Goals

<sup>10</sup> Statewide Planning Goals

<sup>11</sup> Statewide Planning Goals

Objective 1.2: Lincoln City shall maintain a Committee for Citizen Involvement which is charged with the responsibility for assisting the City Council with the development of a Citizen Involvement Program that promotes and enhances citizen involvement in land use planning, implementation of the program, and a yearly objective evaluation of the process being used and the effectiveness of the program.<sup>12</sup>

Policy 1.2.1: The Committee for Citizen Involvement and its format, responsibilities and the basic element of the Citizen Involvement Program are established by Resolution of the Council.<sup>13</sup>

Policy 1.2.2: Lincoln City shall encourage a variety of citizen programs such as neighborhood associations and other committees to serve in the interest of the community.<sup>14</sup>

Objective 1.3: Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available to the public.<sup>15</sup>

Policy 1.3.1: Lincoln City shall efficiently utilize dissemination and/or collection of information over internet.

Policy 1.3.2: Lincoln City may consider making all approved and published technical information available at the public library.<sup>16</sup>

Policy 1.3.3: The City shall continue developing and using social media as a form of communication.<sup>17</sup>

Goal 2: Lincoln City shall foster an inclusive community where all people are welcomed, engaged, and included.<sup>18</sup>

Objective 2.1: Lincoln City shall place efforts to increase public participation and develop skills for civic engagement.<sup>19</sup>

<sup>12</sup> The Lincoln City Comprehensive Plan (1998)

<sup>13</sup> The Lincoln City Comprehensive Plan (1998)

<sup>14</sup> The Lincoln City Comprehensive Plan (1998)

<sup>15</sup> Statewide Planning Goals

<sup>16</sup> Kirsten Brodbeck-Kenney, Driftwood Public Library

<sup>17</sup> Lincoln City Council Work Session, February 1, 2021

<sup>18</sup> The Lincoln City Community Vision (2018)

<sup>19</sup> Lincoln City Council Work Session, February 1, 2021



Policy 2.1.1: Mechanisms shall be established that provide for effective communication between citizens and elected and appointed officials.<sup>20</sup>

Policy 2.1.2: Citizen shall have the opportunity to be involved in all phases of the planning process.<sup>21</sup>

Policy 2.1.3: City government shall be transparent, collaborative, and efficient in providing information.<sup>22</sup>

Policy 2.1.4: Lincoln City shall reach out to businesses and residents to restore the human touch and create mutual understanding.<sup>23</sup>

Policy 2.1.5: Lincoln City shall consider ways to electronically disseminate and gather information.<sup>24</sup>

Policy 2.1.6: Lincoln City shall review and revise committee rules and regulations for consistency at the same time providing annual training opportunities.<sup>25</sup>

Objective 2.2: Lincoln City shall outreach to agencies and communities as much as possible.<sup>26</sup>

Policy 2.2.1: Lincoln City shall develop multi-media informational programs on the planning process and procedure, such as television and radio talk shows, newsletter, slide and discussion panels.<sup>27</sup>

Policy 2.2.2: The City shall improve communication with constituents.<sup>28</sup>

Policy 2.2.3: Lincoln City shall assure that a reasonable effort is made to encourage and provide the opportunity for citizens to attend public meetings.<sup>29</sup>

Policy 2.2.4: Lincoln City shall work with the school district to establish a Lincoln City Government Educational Program in cooperation with the school curriculum.<sup>30</sup>

<sup>20</sup> Statewide Planning Goals

<sup>21</sup> Statewide Planning Goals

<sup>22</sup> The Lincoln City Community Vision (2018)

<sup>23</sup> Lincoln City Council Work Session, March 15, 2021

<sup>24</sup> Lincoln City Council Work Session, March 15, 2021

<sup>25</sup> Lincoln City Council Work Session, March 15, 2021

<sup>26</sup> Simon Kim

<sup>27</sup> The Lincoln City Comprehensive Plan (1998)

<sup>28</sup> Lincoln City Council Work Session, February 1, 2021

<sup>29</sup> The Lincoln City Comprehensive Plan (1998)

<sup>30</sup> The Lincoln City Comprehensive Plan (1998)

Policy 2.2.5: Lincoln City shall strive to establish a better liaison with other community groups, including but not limited to residents, employers, senior citizens, etc.<sup>31, 32</sup>

Policy 2.2.6: The City should be more active in encouraging the County to extend services to Lincoln City.<sup>33</sup>

Objective 2.3: Lincoln City will strive to express and celebrate diversity, equity and inclusion (DEI) in the community that comprise the City.<sup>34</sup>

Policy 2.3.1: Lincoln City shall build public awareness of DEI issues; promote welcoming climate; and enhance supporting activities.<sup>35</sup>

Policy 2.3.2: Lincoln City shall disseminate information about DEI resources in various media including Facebook, the City website, and other relevant channels.<sup>36</sup>

Policy 2.3.3: Lincoln City shall create a culture of inclusivity and respect within the community and in interactions with others, while increasing its exposure to other cultures and ways of thinking and learning.<sup>37</sup>

Policy 2.3.4: Lincoln City shall recognize the need for public information to be bi-lingual and should provide appropriate measures to support such services.<sup>38</sup>

Policy 2.3.5: Lincoln City should have public art and other visual references that show our connection with the Confederated Tribes of the Siletz Indians and our Hispanic community.<sup>39</sup>

Policy 2.3.6: Lincoln City should encourage events and festivals that celebrate communities that are part of the City.<sup>40</sup>

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<sup>31</sup> The Lincoln City Comprehensive Plan (1998)

<sup>32</sup> Kim Blackerby

<sup>33</sup> Lincoln City Council Work Session, February 1, 2021

<sup>34</sup> Ed Dreistadt, Explore Lincoln City

<sup>35</sup> Simon Kim per the request of DLCD

<sup>36</sup> Simon Kim per the request of DLCD

<sup>37</sup> Simon Kim per the request of DLCD

<sup>38</sup> Simon Kim per the request of DLCD

<sup>39</sup> Ed Dreistadt, Explore Lincoln City

<sup>40</sup> Ed Dreistadt, Explore Lincoln City

## CITIZENS INVOLVEMENT PROGRAM

The Lincoln City Citizens Involvement Program is an ongoing process. The effectiveness of government is only measured by the extent that the citizens participate. Only through citizens' participation can a government determine attitudes, needs, and desires of its public. Without adequate citizen participation, government decisions are made in a void.

### CONCLUSION:

Lincoln City recognizes that citizen involvement is necessary in making wise and legitimate land use decisions.

### Goal - Citizens Involvement

Develop a Citizen Involvement Program (CIP) which ensures the continued participation of citizens in the land use planning process.

### Citizen Involvement Policies

- 1.Lincoln City shall develop multi-media informational programs on the planning process and procedure, such as television and radio talk shows, newsletter, slide and discussion panels.
- 2.Lincoln City shall assure that a reasonable effort is made to encourage the opportunity for citizens to attend public meetings.
- 3.Lincoln City shall work with the school district to establish a Lincoln City Government Educational Program in cooperation with the school curriculum.
- 4.Lincoln City shall strive to establish a better liaison with other community groups and senior citizens.
- 5.Lincoln City shall maintain a Committee for Citizen Involvement which is charged with the responsibility for assisting the City Council with the development of a Citizen Involvement Program (CIP) that promotes and enhances citizen involvement in land use planning, implementation of the CIP, and a yearly objective evaluation of the process being used and the effectiveness of the CIP.
- 6.The Committee for Citizen Involvement and its format, responsibilities and the basic element of the Citizen Involvement Program are established by Resolution of the Council.
- 7.Lincoln City shall encourage a variety of citizen programs such as neighborhood associations and other committees to serve in the interest of the community.

[Citizens Involvement Program amended by Ordinance No. 94-18, adopted November 14, 1994]

# Oregon's Statewide Planning Goals & Guidelines

## GOAL 1: CITIZEN INVOLVEMENT

### OAR 660-015-0000(1)

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

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state and regional agencies and special-purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

**1. Citizen Involvement -- To provide for widespread citizen involvement.**

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized committee for citizen involvement (CCI) broadly

representative of geographic areas and interests related to land use and land-use decisions. Committee members shall be selected by an open, well-publicized public process.

The committee for citizen involvement shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

If the governing body wishes to assume the responsibility for, development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is to be used in lieu of an independent CCI, its members shall be selected by an open, well-publicized public process.

**2. Communication -- To assure effective two-way communication with citizens.**

Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

**3. Citizen Influence -- To provide the opportunity for citizens to be involved in all phases of the planning process.**

Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

**4. Technical Information -- To assure that technical information is available in an understandable form.**

Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

**5. Feedback Mechanisms -- To assure that citizens will receive a response from policy-makers.**

Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policy-makers. The

rationale used to reach land-use policy decisions shall be available in the form of a written record.

**6. Financial Support -- To insure funding for the citizen involvement program.**

Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

**GUIDELINES**

**A. CITIZEN INVOLVEMENT**

1. A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings and meetings).

2. Universities, colleges, community colleges, secondary and primary educational institutions and other agencies and institutions with interests in land-use planning should provide information on land-use education to citizens, as well as develop and offer courses in land-use education which provide for a diversity of educational backgrounds in land-use planning.

3. In the selection of members for the committee for citizen involvement, the following selection process should be observed: citizens should receive notice they can understand of the opportunity to serve on the CCI; committee appointees should receive official notification of their selection; and

committee appointments should be well publicized.

## **B. COMMUNICATION**

Newsletters, mailings, posters, mail-back questionnaires, and other available media should be used in the citizen involvement program.

## **C. CITIZEN INFLUENCE**

**1. Data Collection** - The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing and evaluating the elements necessary for the development of the plans.

**2. Plan Preparation** – The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines, and evaluate alternative land conservation and development plans for the preparation of the comprehensive land-use plans.

**3. Adoption Process** – The general public, through the local citizen involvement programs, should have the opportunity to review and recommend changes to the proposed comprehensive land-use plans prior to the public hearing process to adopt comprehensive land-use plans.

**4. Implementation** - The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out a comprehensive land-use plan. The

general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.

**5. Evaluation** - The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.

**6. Revision** - The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.

## **D. TECHNICAL INFORMATION**

1. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and one changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning.

**E. FEEDBACK MECHANISM**

1. At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policy-makers.

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

**F. FINANCIAL SUPPORT**

1. The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

## Chapter 2.14

# COMMITTEE FOR CITIZEN INVOLVEMENT (CCI)

Sections:

**2.14.010 Established – Purpose.**

**2.14.020 Membership.**

**2.14.030 Powers and duties**

**Code reviser’s note:** Pursuant to LMC 2.08.015, the planning commission is selected to serve as the CCI.

### **2.14.010 Established – Purpose.**

The committee for citizen involvement is hereby established and shall function to assist the city council in monitoring and evaluating city responsibility regarding Goal 1 of Oregon’s Statewide Planning Goals and Guidelines: Citizen Involvement. (Ord. 2017-05 § 5)

### **2.14.020 Membership.**

The committee for citizen involvement is hereby established and shall consist of seven members. Membership should be broadly representative of geographic areas and interests related to land use and land use decisions. The governing body shall appoint two members who are qualified electors from each ward of the city and one qualified elector of the county who resides in the urban growth boundary of the city, but does not reside within the city limits. (Ord. 2017-05 § 5)

### **2.14.030 Powers and duties.**

The CCI shall be directly responsible to the city council and shall have the following powers and duties:

A. Responsibility for assisting the city council with the development of a citizen involvement program that promotes and enhances citizen involvement in land use planning, assisting in the implementation of the citizen involvement in land use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

B. The committee shall operate consistent with citizen involvement Resolution 93-12 and Resolution 94-33 until the comprehensive plan citizen involvement program is amended pursuant to the procedures in ORS 197.610. (Ord. 2017-05 § 5)

1 RESOLUTION NO. 93 - 122 A RESOLUTION RESCINDING RESOLUTION NO. 91-02  
3 AND REVISING THE COMMITTEE FOR CITIZEN INVOLVEMENT (CCI)  
4 FOR THE CITY OF LINCOLN CITY5 WHEREAS, the first statewide planning goal is to "develop  
6 a citizen involvement program that ensures the opportunity for  
7 citizens to be involved in all phases of the planning process."  
8 and9 WHEREAS, the City of Lincoln City established a Citizen  
10 Involvement Program in 1976, the provisions of which became  
11 outdated; and12 WHEREAS, the City Council then designated the Planning  
13 Commission as the Committee for Citizen Involvement by Resolu-  
14 tion No. 91-02 approved on January 14, 1991; and15 WHEREAS, citizens have requested that a Committee for  
16 Citizen Involvement, separate from the Planning Commission, be  
17 established;18 WHEREAS, the Lincoln City Planning Commission has consid-  
19 ered this proposed resolution rescinding Resolution No. 91-02  
20 and revising the Citizen Involvement Program for the City of  
21 Lincoln City and has forwarded to the City Council a favorable  
22 recommendation to adopt this resolution establishing a committee  
23 separate from the Planning Commission as the Committee for  
24 Citizen Involvement for the City of Lincoln City.25 NOW, THEREFORE, BE IT RESOLVED by the City Council of the  
26 City of Lincoln City as follows:

1           SECTION 1.       Committee for Citizen Involvement.    The  
2   Committee for Citizen Involvement shall consist of seven (7)  
3   members whose function is to assist the City Council with the  
4   development of a program that promotes and enhances citizen's  
5   involvement in the land use planning process, to assist with the  
6   implementation of the program, and to evaluate the program. The  
7   committee should be broadly representative of geographic areas  
8   and interests related to land use and land use decisions.

9           SECTION 2.       Membership.    The Council shall appoint two  
10   (2) members who are qualified electors from each ward of the  
11   City and one (1) qualified elector who resides in the Urban  
12   Growth Boundary of the City, but does not reside within the  
13   City.

14           Lincoln County voter registration records may be utilized  
15   to determine residency.

16           No more than two (2) members of the committee may engage  
17   principally in the buying, selling or developing of real estate  
18   for profit as individuals or be members of any partnership or  
19   officers or employees of any corporation that engages principal-  
20   ly in the buying, selling or developing of real estate for  
21   profit. No more than two (2) members shall be engaged in the  
22   same kind of occupation, business, trade or profession. Any  
23   committee member may be removed from the committee by a majority  
24   vote of the City Council.

25           All vacant positions shall be advertised prior to appoint-  
26   ment. To be eligible for appointment to and continued service

1 on the Committee for Citizen Involvement, a person at the time  
2 of appointment and throughout his or her term of service must  
3 meet the relevant qualification requirements set forth above.

4 SECTION 3. Terms of Office. The terms for members of  
5 the Committee for Citizen Involvement shall commence on July 1st  
6 of the first year of each term. The term of office of a member  
7 of the Committee for Citizen Involvement shall be three (3)  
8 years. However, the initial appointments under this resolution  
9 of some members shall be for shorter terms in order to establish  
10 an approximately equal number of expiring terms every year (i.e.  
11 two positions for one year, two positions for two years, and  
12 three positions for three years). All vacancies in office will  
13 be filled following an open application process, which will  
14 include public notice. Following receipt of applications, the  
15 City Council will invite each applicant to be interviewed at the  
16 next regular meeting of the City Council.

17 SECTION 4. Presiding Officers. At its first meeting  
18 after July 1st of each year, the committee shall elect a Chair  
19 and a Vice-Chair from among its members. The officers shall  
20 serve for a term of one (1) year. No person shall serve as  
21 officer in the same position for more than two (2) years.

22 SECTION 5. Meetings. Meetings of the Committee for  
23 Citizen Involvement will be publicized in the local media as to  
24 date, time and place, and a general description of the topic of  
25 discussion. The Committee for Citizen Involvement shall meet at  
26

1 least once every three months at a time and place to be desig-  
2 nated by the committee.

3 SECTION 6. Responsibilities.

4 (a) The committee is charged with the responsibility for  
5 assisting the City Council with the development of a  
6 program that promotes and enhances citizen involvement in  
7 land use planning, assisting in the implementation of the  
8 citizen involvement program, and to periodically evaluate  
9 the process being used and effectiveness of the citizen  
10 involvement program. The committee is advisory to the City  
11 Council only on matters pertaining to citizen involvement  
12 and Goal 1.

13 (b) Every twelve (12) months the CCI will undertake an  
14 objective evaluation of the citizen involvement program and  
15 report the results to the Mayor and City Council and the  
16 state's Citizen Involvement Advisory Committee. The method  
17 of the evaluation shall, at a minimum, be to contact those  
18 citizens and groups who have participated in the process  
19 and seek their evaluation and effectiveness of the program  
20 by means of a survey questionnaire. The results of the  
21 survey will be given to the Lincoln City City Council.

22 SECTION 7. Citizen Involvement Program. The Citizen  
23 Involvement Program established by the City should contain the  
24 following elements:

25 (a) Citizen Involvement. A program for stimulating  
26 citizen involvement should be developed by the City using

1 a range of available media (including television, radio,  
2 newspapers, mailings and meetings).

3 (b) Communication. Newsletters, mailings, posters, mail-  
4 back questionnaires, and other available media are mecha-  
5 nisms which can be utilized in a Citizen Involvement  
6 Program to establish effective communication between  
7 citizens and elected and appointed officials.

8 (c) Citizen Influence. The City will take positive steps  
9 to involve citizens in all phases of the planning process,  
10 including preparation of plans and implementation measures,  
11 plan content, plan adoption, minor changes and major  
12 revisions in the plan and implementation measures. This  
13 involvement will be more than simple communication of what  
14 is planned. It will attempt to assure that the concerns of  
15 the general public are considered.

16 (d) Technical Information. Information necessary to reach  
17 policy decisions shall be available in a simplified,  
18 understandable form. Assistance shall be provided to  
19 interpret and effectively use technical information. A  
20 copy of all technical information shall be available at the  
21 City Library or other location open to the public.

22 (e) Feedback Mechanism. Recommendations resulting from  
23 the Citizen Involvement Program shall be retained and made  
24 available for public assessment. Citizens who have  
25 participated in this program shall receive a response from  
26 policy makers. The rationale used to reach land use policy

1 decisions shall be available in the form of a written  
2 record.

3 (f) Financial Support. Adequate human, financial and  
4 informational resources shall be allocated for the Citizen  
5 Involvement Program. These allocations shall be an  
6 integral component of the planning budget. The governing  
7 body shall be responsible for obtaining and providing these  
8 resources.

9 SECTION 8. Rescission. Resolution No. 91-02, adopted  
10 by the Lincoln City City Council on January 14, 1991, is hereby  
11 rescinded.

12 PASSED AND APPROVED by the City Council of the City of  
13 Lincoln City this 26th day of April, 1993.

14   
15 \_\_\_\_\_  
16 SAM CRIBBS, MAYOR

17 ATTEST:

18   
19 \_\_\_\_\_  
20 D. W. WORKS, CITY RECORDER

*City of Lincoln City*



# **Citizen Involvement Program**

**August, 1997**

RESOLUTION NO. 94 - 33

A RESOLUTION ADOPTING A CITIZEN INVOLVEMENT PROGRAM (CIP) FOR THE CITY OF LINCOLN CITY LAND USE PLANNING PROCESS

WHEREAS, the Comprehensive Plan of the City of Lincoln City, as amended, states that it is the goal of the City to develop a Citizen Involvement Program (CIP) which ensures the continued participation of citizens in the land use planning process; and

WHEREAS, the Comprehensive Plan states that it is a Citizen Involvement Policy of the City that the Committee for Citizen Involvement and its format, responsibilities and the basic elements of the Citizen Involvement Program are to be established by Resolution of the City Council; and

WHEREAS, the Committee for Citizen Involvement has recommended to the City the adoption of a Citizen Involvement Program (CIP); and

WHEREAS, the Planning Commission has forwarded the proposed Citizen Involvement Program to the City Council, with a neutral recommendation; and

WHEREAS, the City Council has reviewed the recommended Citizen Involvement Program and, with minor revisions, wishes to adopt the Program;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Lincoln City as follows:

The Citizen Involvement Program attached hereto as Exhibit "A" hereby is adopted as the Citizen Involvement Program for the City of Lincoln City's land use planning process.

PASSED AND APPROVED by the City Council of the City of Lincoln City this 14th day of November, 1994.

  
SAM CRIBBS, MAYOR

  
D. W. WORKS, CITY RECORDER

## RESOLUTION NO. 93 - 12

A RESOLUTION RESCINDING RESOLUTION NO. 91-02  
AND REVISING THE COMMITTEE FOR CITIZEN INVOLVEMENT (CCI)  
FOR THE CITY OF LINCOLN CITY

WHEREAS, the first statewide planning goal is to "develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process."; and

WHEREAS, the City of Lincoln City established a Citizen Involvement Program in 1976, the provisions of which became outdated; and

WHEREAS, the City Council then designated the Planning Commission as the Committee for Citizen Involvement by Resolution No. 91-02 approved on January 14, 1991; and

WHEREAS, citizens<sup>1</sup> have requested that a Committee for Citizen Involvement, separate from the Planning Commission, be established;

WHEREAS, the Lincoln City Planning Commission has considered this proposed resolution rescinding Resolution No. 91-02 and revising the Citizen Involvement Program for the City of Lincoln City and has forwarded to the City Council a favorable recommendation to adopt this resolution establishing a committee separate from the Planning Commission as the Committee for Citizen Involvement for the City of Lincoln City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln City as follows:

SECTION 1. Committee for Citizen Involvement. The Committee for Citizen Involvement shall consist of seven (7) members whose function is to assist the City Council with the development of a program that promotes and enhances citizen's involvement in the land use planning process, to assist with the implementation of the program, and to evaluate the program. The committee should be broadly representative of geographic areas and interests related to land use and land use decisions.

SECTION 2. Membership. The Council shall appoint two (2) members who are qualified electors from each ward of the City and one (1) qualified elector who resides in the Urban Growth Boundary of the City, but does not reside within the City.

Lincoln County voter registration records may be utilized to determine residency.

No more than two (2) members of the committee may engage principally in the buying, selling or developing of real estate for profit as individuals or be members of any partnership or officers or employees of any corporation that engages principally in the buying, selling or developing of real estate for profit. No more than two (2) members shall be engaged in the same kind of occupation, business, trade or profession. Any committee member may be removed from the committee by a majority vote of the City Council.

All vacant positions shall be advertised prior to appointment. To be eligible for appointment to and continued service

on the Committee for Citizen Involvement, a person at the time of appointment and throughout his or her term of service must meet the relevant qualification requirements set forth above.

SECTION 3.       Terms of Office. The terms for members of the Committee for Citizen Involvement shall commence on July 1st of the first year of each term. The term of office of a member of the Committee for Citizen Involvement shall be three (3) years. However, the initial appointments under this resolution of some members shall be for shorter terms in order to establish an approximately equal number of expiring terms every year (i.e. two positions for one year, two positions for two years, and three positions for three years). All vacancies in office will be filled following an open application process, which will include public notice. Following receipt of applications, the City Council will invite each applicant to be interviewed at the next regular meeting of the City Council.

SECTION 4.       Presiding Officers. At its first meeting after July 1st of each year, the committee shall elect a Chair and a Vice-Chair from among its members. The officers shall serve for a term of one (1) year. No person shall serve as officer in the same position for more than two (2) years.

SECTION 5.       Meetings. Meetings of the Committee for Citizen Involvement will be publicized in the local media as to date, time and place, and a general description of the topic of discussion. The Committee for Citizen Involvement shall meet at

least once every three months at a time and place to be designated by the committee.

SECTION 6. Responsibilities.

(a) The committee is charged with the responsibility for assisting the City Council with the development of a program that promotes and enhances citizen involvement in land use planning, assisting in the implementation of the citizen involvement program, and to periodically evaluate the process being used and effectiveness of the citizen involvement program. The committee is advisory to the City Council only on matters pertaining to citizen involvement and Goal 1.

(b) Every twelve (12) months the CCI will undertake an objective evaluation of the citizen involvement program and report the results to the Mayor and City Council and the state's Citizen Involvement Advisory Committee. The method of the evaluation shall, at a minimum, be to contact those citizens and groups who have participated in the process and seek their evaluation and effectiveness of the program by means of a survey questionnaire. The results of the survey will be given to the Lincoln City City Council.

SECTION 7. Citizen Involvement Program. The Citizen Involvement Program established by the City should contain the following elements:

(a) Citizen Involvement. A program for stimulating citizen involvement should be developed by the City using

a range of available media (including television, radio, newspapers, mailings and meetings).

(b) Communication. Newsletters, mailings, posters, mail-back questionnaires, and other available media are mechanisms which can be utilized in a Citizen Involvement Program to establish effective communication between citizens and elected and appointed officials.

(c) Citizen Influence. The City will take positive steps to involve citizens in all phases of the planning process, including preparation of plans and implementation measures, plan content, plan adoption, minor changes and major revisions in the plan and implementation measures. This involvement will be more than simple communication of what is planned. It will attempt to assure that the concerns of the general public are considered.

(d) Technical Information. Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at the City Library or other location open to the public.

(e) Feedback Mechanism. Recommendations resulting from the Citizen Involvement Program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policy makers. The rationale used to reach land use policy

decisions shall be available in the form of a written record.

(f) Financial Support. Adequate human, financial and informational resources shall be allocated for the Citizen Involvement Program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

SECTION 8. Rescission. Resolution No. 91-02, adopted by the Lincoln City City Council on January 14, 1991, is hereby rescinded.

PASSED AND APPROVED by the City Council of the City of Lincoln City this 26th day of April, 1993.

/s/ Sam Cribbs  
SAM CRIBBS, MAYOR

ATTEST:

/s/ D. W. Works  
D. W. WORKS, CITY RECORDER

## TABLE OF CONTENTS

Introduction . . . . . 2

Citizen Involvement and Influence . . . . . 4

    A. Periodic Review . . . . . 4

    B. Implementation Measures . . . . . 6

    C. Neighborhood Associations . . . . . 10

Communication and Feedback . . . . . 12

Technical Information . . . . . 14

Financial Support . . . . . 15

Bibliography . . . . . 16

Appendices . . . . . 17

CITIZEN INVOLVEMENT PROGRAM (CIP)  
CITY OF LINCOLN CITY, OREGON

INTRODUCTION

The Citizen Involvement Program (CIP) of Lincoln City is designed to afford opportunity for all citizens to participate to the greatest extent possible in all appropriate phases and levels, of the City's public decision-making process.

Lincoln City Resolution No. 93-12, approved by the City Council on April 26, 1993, revised the Committee for Citizen Involvement (CCI) to consist of seven members appointed by the City Council, two from each of the three city wards and one from the Urban Growth Boundary outside city limits. The CCI is charged with the responsibility for assisting the City Council with:

1. the development of a Citizen Involvement Program (CIP) that promotes and enhances citizen involvement in land-use planning,
2. implementation of the CIP, and
3. a yearly objective evaluation of the process being used and the effectiveness of the CIP.

The Citizen Involvement Program of Lincoln City is in compliance with Oregon law and consistent with Lincoln City's comprehensive plan and with the two state planning goals and guidelines which deal with the planning process, Goal 1 (Citizen Involvement) and Goal 2 (Land Use Planning), as directed by the Land Conservation and Development Commission (LCDC).

As stated in the state handbook, *How To Put The People In Planning*<sup>1</sup>, the reasons for involving citizens in the planning process are:

1. "The law *requires* that citizens get that opportunity."
2. "Professional planners and local officials need comments and ideas from those who live and work there."
3. "It creates an informed community, which in turn leads to better planning."
4. "It fosters cooperation among citizens and between them and their government. That leads to fewer conflicts and less litigation."
5. "Having citizens informed about planning laws and giving them access to the planning process ensures that laws are applied properly."

According to the state handbook referenced above, planning is a process made up of many steps, including these:

- gathering technical data and facts needed to make sound policies and decisions;
- evaluating community needs, values and goals;
- adding new policies to the comprehensive plan or amending existing ones;
- adding items to the plan's inventory of community resources;
- periodically reviewing and revising the plan;
- applying the plan's policies to specific land use decisions;
- developing, maintaining, and applying the ordinances used to carry out the plan;
- creating a new element of the plan, such as a transportation plan<sup>2</sup>.

(After input from interested agencies, groups and individuals, the CIP will go through a public hearing process before being approved by the City Council. If the CIP is accepted by the Department of Land Conservation and Development (DLCD), the CIP will need to be adopted by resolution of the City Council and minor revisions would need to be made to the Goal 2 section of the Lincoln City Comprehensive Plan Ordinance. This paragraph will be removed in the final plan.)

## CITIZEN INVOLVEMENT AND INFLUENCE

Included in this section are goals and guidelines for citizen involvement in three areas: periodic review of the city's comprehensive plan, implementation measures to carry out the plan, and the organization and participation of neighborhood associations in the City's public decision-making process.

### *A. Periodic Review*

All Oregon cities and counties are required to reevaluate and update their comprehensive plans every four to seven years to reflect changes in circumstances since the last review, to bring the local plan into conformance with new state goals and rules or specific planning tasks called for by LCDC, and to coordinate the plan with any new state agency plans or programs relating to land use. This process is known as the "periodic review"<sup>3</sup>.

The general public, through the CIP, shall have the opportunity to be involved in the evaluation of the comprehensive land-use plan and the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.

The manner in which the general public can become involved in the periodic review process and the methods of the City will use to encourage such involvement are described in the balance of this section.

The City shall appoint Citizen Advisory Committees for periodic review work tasks to provide an opportunity for citizen involvement in work tasks.

Oregon Administrative Rule (OAR) 660-25-080 requires that Lincoln City shall:

1. Use its acknowledged or otherwise approved CIP to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review.
2. Publish a notice in the newspaper of general circulation within the community informing citizens about the initiation of the periodic review.
3. Provide written notice of the initiation of the periodic review to other persons who, in writing, request such notice.

In addition to the OAR requirements, the City shall provide notice on local radio and television stations. The City shall provide adequate notice (as above), with an easily-understood summary, of each stage in the periodic review process as it begins and of each work task as it is completed.

The stages of the periodic review process are:

- evaluation of the comprehensive plan
- determination and scheduling of work program tasks
- review of and recommendations on proposed changes to the comprehensive plan

Citizens and other interested persons shall have the opportunity to participate, at a minimum, in the following ways:

1. They may comment in writing, in advance of, or at one or more hearings at each stage of the periodic review process.
2. They may present comments orally at one or more hearings at each stage of the periodic review process.
3. They shall receive a response to their comments at, or following, each hearing.<sup>4</sup>

## B. Implementation Measures

"Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions of the Plan, and Implementation Measures."<sup>5</sup>

*"Implementation Measures -- are the means used to carry out the plan. These are of two general types: (1) management implementation measures such as ordinances, regulations or project plans, and (2) site or area specific implementation measures such as permits and grants for construction, construction of public facilities or provision of services.*

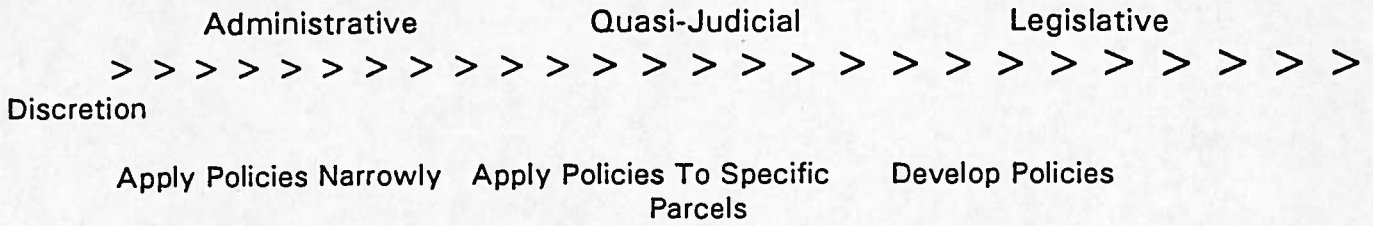
*"Plans -- as used here encompass all plans which guide land-use decisions, including both comprehensive and single-purpose plans of cities, counties, state and federal agencies and special districts."<sup>6</sup>*

These implementation measures include those related to zoning, parks, open spaces, annexations, traffic, public safety, administrative decisions, sanitation, water, sewer, and other services that affect citizens, neighborhoods or business establishments.

The CIP will provide the opportunity for public participation with City government for land use decisions, such as environmental studies, periodic review work tasks, and other projects of wide interest, as designated by City Council.

Citizens shall have the opportunity to be involved in Land Use Decisions, both legislative and quasi-judicial, in Limited Land Use Decisions and in Administrative (Ministerial) Decisions in various ways, as follows:

The statutes and judicial interpretations of the State of Oregon have separated land use decisions into different categories: legislative, quasi-judicial and administrative. The lines separating each category are not clear, and it is more appropriate to think about land use decisions as a continuum along an axis that describes the amount of discretion that may be exercised in making a decision. Visually, land use decisions look like this:



See Appendix A for types of development applications that take place in Lincoln City. An estimate of the time involved and the type of actions taken, including approval, are shown. Administrative and site plan decisions are handled mainly by city staff and the site plan review committee. Planning Commission decisions and City Council decisions may be either quasi-judicial or legislative, depending upon the situation. The attachment also shows the appeal process for each action.

**Administrative Decisions**

An administrative or ministerial decision is one involving little or no discretion on the part of the decision maker - where a decision is routine and there are clear standards that apply or the application of criteria is mechanical. Some examples of ministerial decisions are the issuance of certain building permits and home occupation permits. Staff traditionally makes most of the ministerial decisions which the Planning Commission occasionally reviews upon appeal. Administrative decisions, based upon the municipal code and the comprehensive plan, contribute a high degree of predictability to the planning process.

Appendix B shows the various steps in the Administrative Decision process, with the citizen review opportunities highlighted.

**Quasi-Judicial Decisions**

Once the City has established its regulations and standards, the decisions regarding individual land use applications made by Planning Commission or Council are in a quasi-judicial format.

Quasi-judicial decisions are made when the Council or Planning Commission applies predetermined policies or standards to factual settings to arrive at a decision. The Comprehensive Plan expresses the general City land use policies and the Zoning Ordinance provides the specific approval criteria and standards by which proposals should be evaluated. There is no policy to establish since the policy decisions have already been made and included in the Zoning Ordinance and Comprehensive Plan. There are relatively few properties directly affected by the proposal - the property noted in the application and the surrounding properties. In that situation, the Council or Planning Commission is "judging" whether the application meets the standards that have previously been set. This is not the time to develop standards. It is the time to apply previously adopted standards.

A decision on whether or not a conditional use should be granted is a quasi-judicial decision. The Planning Commission has been granted the authority to make some of the quasi-judicial land use decisions in the City. The Council may review those decisions on appeal.

The courts and the Legislature have established rules by which land use decisions must be made. ORS 227.178 requires the City to take final action on an application for a permit for a land use decision or zone change within 120 days after the application is deemed complete. The statutes define "permit" as a discretionary approval of a proposed development of land.

Appendix C shows the Lincoln City Quasi-Judicial decision process and citizen involvement opportunities.

### **Legislative Decisions**

Council decisions that develop and establish policy are considered legislative decisions. A legislative land use decision creates and adopts as law, policies and regulations for future land use within the jurisdiction. Examples of legislative decisions are adoption and amendment of the text of the Comprehensive Plan or the Zoning Ordinance. In Lincoln City, the Planning Commission can make recommendations to the Council for or against the amendment of certain policies and standards. But only the City Council can amend the Zoning Ordinance or Comprehensive Plan. For example, if the Planning Commission were to recommend to the City Council that the residential front yard setbacks in the City were to be revised, it would be a policy recommendation. However, it is only the Council that could actually adopt legislation necessary to amend the Zoning Ordinance yard setback requirements.

State law requires that the City of Lincoln City comply with its acknowledged Plan in making amendments. Prior to taking final action on a land use legislative decision, the City of Lincoln City must give 45 days notice to DLCD. Even though the process is often times quite technical and subject to state statutes and City standards, the City still has a great deal of discretion in terms of making legislative decisions. Ultimately, it is up to the Council to set the regulatory standards for the City of Lincoln City.<sup>7</sup>

Appendix D shows the Lincoln City Legislative decision process and citizen involvement opportunities.

### **General Considerations**

Citizens have the right to review any development permit application file, the right to make comments in writing to be placed in the file, and the right to have copies of any material in the file at a reasonable cost. Permit applications shall be furnished weekly to the local news media.

In every instance in which City ordinances, resolutions and policies require notification of neighbors of development applications and permits, comprehensive plan map or text amendments or any other land use planning issues, neighbors within 100 ft. (500 ft. for subdivisions and planned unit developments), the appropriate neighborhood association will be notified, and a notice published in the local newspaper.

When such notice relates to the site plan review process, a fourteen (14) day period for submission of written comments, before the site plan review meeting, will be provided. The planning director will provide written notice of the site plan review decision to any person who submitted written comments during the fourteen day comment period.

Affected parties have the right to appeal administrative land use decisions to the Planning Commission.

Citizens have the right to present testimony in favor of, in opposition to, or neutral to any land use issue at all public hearings, orally and/or in writing.

In conjunction with significant enactments, it would be appropriate to hold workshops and/or town hall meetings on legislative land use matters.

The Planning Department shall provide local news media with copies of all legal notices at the same time they are mailed to affected property owners.

1

### C. *Neighborhood Associations*

Since well-organized neighborhood associations are the backbone of any successful Citizen Involvement Program, the CCI encourages their formation throughout the City and the Urban Growth Boundary, their recognition by the City as Citizen Advisory Committees, and their involvement in all phases of the public decision-making process.

A neighborhood association which meets the following requirements for organization and formal recognition may submit a request to the City Manager for recognition by the City Council.

1. The boundaries of a neighborhood association shall specifically define an area of appropriate geographic size and population, never less than 50 households. These boundaries shall take into account natural boundaries, commercial patterns and historical factors. The boundaries should not overlap those of any other neighborhood association, unless any neighborhood association affected agrees in writing.
2. Membership shall be open to any property owner or tenant within the recognized boundaries of the neighborhood association. The neighborhood association may establish additional, reasonable voting criteria, such as requiring attendance at a minimum of one meeting within the year before being allowed to vote.
3. The neighborhood association shall be open to the total area and diversity of interests present within its boundaries, without discrimination as to race, religion, color, sex, sexual orientation, age, disability, national origin, income, means of livelihood, or political affiliation in any of its policies, recommendations or actions.
4. All meetings must be well-publicized in advance and must abide by the public meetings and public records law (ORS 192.410-192.710). The minutes shall include a record of attendance, results of any vote taken, and a record of any official action decided upon, including a summary of dissenting views.
5. The neighborhood association should meet more than once a year and should have an organizational structure that will ensure that recommendations coming from the association truly represent the neighborhood and not just the viewpoints of the board members.
6. The neighborhood association shall prepare and keep on file a complete and up-to-date set of bylaws.

7. Bylaws shall describe means for designating spokespeople and maintain a current mailing address.
8. Bylaws shall describe means for resolving grievances concerning the activities, policies or recommendations of the neighborhood association.
9. If a neighborhood association becomes inactive because of loss of leadership or participation, the City will allow it to reorganize within one year's time, rather than withdrawing recognition.
10. Neighborhood associations shall inform themselves of neighborhood needs and desires and maintain communication with their neighborhood on plans, proposals and activities affecting their area.
11. Neighborhood association officers, directors and volunteers need to determine their legal exposure and their need for liability insurance coverage. Members of Citizen Advisory Committees appointed by the City Council will have liability coverage provided by Lincoln City for claims of property damage, bodily injury, personal injury, or claims of an alleged act or omission occurring in the performance of duty. (ORS 30.285).

Recognized neighborhood associations will serve as Citizen Advisory Committees to the City Council, Planning Commission, and other city boards, commissions, officials and staff on matters affecting their neighborhoods. However, such committees will not have liability coverage provided by the city of Lincoln City:

The City shall notify recognized neighborhood associations of land use applications subject to site plan review regarding sites within the geographic boundaries of the neighborhood association and/or within 100 ft., or within 500 ft. in case of subdivisions and PUDs, outside the neighborhood association boundaries, fourteen (14) days before the scheduled review of the site plan. Written comments may be presented to the site plan review during this 14-day period. The planning director will provide written notice of the site plan review decision to any association that submitted written comments during the 14-day comment period. The City shall notify recognized neighborhood associations of a quasi-judicial land use hearing concerning an application within the geographic boundaries of the neighborhood association and/or within 100 ft., or within 500 ft. in case of subdivisions and PUDs, outside the neighborhood association boundaries, at the same time it notifies the applicant and property owners within 100 ft. (or 500 ft.) of the subject property.

Recognized neighborhood associations shall be notified of proposed changes in projects, services and activities having a significant effect upon their neighborhood (e.g., land use, transportation and traffic, parks and recreation, housing, public services, and urban renewal) in ample time to allow participation in the decision-making process.

## COMMUNICATION AND FEEDBACK

Citizens of the Lincoln City area are valued participants in the local decision-making process. They have the right and responsibility to be fully informed about the process, to express their views and to receive a timely response to their concerns.

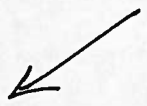
To assure effective two-way communication between citizens and their elected and appointed officials, and City staff, the following mechanisms shall be established:

1. Once a year the CCI will prepare and publish in The News Guard, an objective, mail-back questionnaire for all residents of the Lincoln City area, to get public opinion on how well the Citizen Involvement Program is working and how it can be improved. Results will be quantified, summarized and published in the newspaper.
2. The CCI will prepare a bibliography, with abstracts, of all reference materials relating to Lincoln City available at Driftwood Library, to be posted in the library area set aside for these materials. Copies of the bibliography will be provided upon request.
3. Minutes of meetings of the City Council, Planning Commission, Citizen Advisory Committees, CCI, special districts and any other bodies receiving public funds, will be kept in looseleaf binders in the Lincoln City reference area of the Library.
4. The CCI will assist in the preparation and review the production of an informational brochure about citizen involvement. The CCI will seek community comment before final review and approval of such a brochure.
5. The Planning Department will prepare and make visible at their front counter, a list of categories of documents and files, topographical and zoning ordinance maps, rules and regulations, and a list of photographs, which are available to the public for review, copying, handout, or purchase.
6. The Planning Department shall furnish Planning Commission agendas to local news media.
7. Before the biennial workshop in which the City Council and City staff formulate goals and objectives for the next two years, the City shall solicit input from Citizen Advisory Committees and the general public at a town hall meeting or hearing.
8. City staff will recommend to developers and builders of other than single and two-family homes that they meet to discuss their projects with neighborhood groups prior to the pre-application conference and/or site plan review.

9. The Planning Department will mail its quarterly  
Committees, including neighborhood associations,  
federal agencies with land use programs,  
planning matters, and the CCI. The  
and development applications  
ongoing projects (including

port to all Citizen Advisory  
appropriate county, state and  
city groups interested in  
include a list of building  
studies, reports about  
other planning news.

10. The CCI encourages  
trips and internships to a



schools to coordinate classes, field  
with city government and land use planning.

11. Any parties who testify, at a public hearing orally, or in writing, will receive  
notice of the decision of the hearing body. Any citizens or interested persons who  
comment orally, or in writing, at a public meeting shall receive a response, either at  
or following the meeting. City staff shall make a strong effort to respond to citizens'  
phone inquiries within two working days. Receipt of letters should be acknowledged  
within a week and  
some indication given of action taken, if appropriate.

12. When new plans, policies or regulations relating to the land use process are  
adopted, the City will send a summary and rationale for the decision, to those citizens  
who participated in the process, to show appreciation and to give a sense of  
partnership to those who supported and helped develop them, and to acknowledge  
the interest and active involvement of those who opposed them.

## TECHNICAL INFORMATION

Citizens have the right to information in a simplified, understandable form, and sufficient to make knowledgeable input. Assistance shall be provided by City staff to interpret and effectively use technical information.

"Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, and water construction, transportation, subdivision studies, and zone changes) shall provide assistance to the citizen involvement program. The roles, responsibilities and timelines in the planning process of these agencies shall be clearly defined and publicized.

"Technical information shall include, but not be limited to, energy, natural environment, political, legal, economic and social data, and places of cultural significance, as well as those maps and photos necessary for effective planning."<sup>8</sup>

When the City makes reference to statutes or ordinances in public announcements, legal notices, press releases, and agenda, the City shall inform citizens where the statute or ordinance may be reviewed and make its best effort to clarify the issues to be considered.

In all public notices, references to geographic locations shall clearly mark, in easy-to-read print, street names, addresses, lot numbers, and surrounding landmarks.

When the City includes Resolutions, Amendments, Zone Changes, or any other final decision scheduled for action on its meeting agenda, the City will include the rationale for the discussion and will translate all technical language, including coding, in understandable form for the average citizen.

## FINANCIAL SUPPORT

"The level of funding and human resources allocated to the citizen involvement program shall be sufficient to make citizen involvement an integral part of the planning process."<sup>9</sup>

To insure citizen involvement in planning issues of Lincoln City, line items for appropriate funds, both for the CCI and for the Citizen Involvement Program, must be included as an integral component of the planning budget each year.

To further bolster the CCI and the CIP, a predetermined amount of staff attendance and clerical support from the Planning Department should be provided at CCI meetings when requested by the CCI. Good communication, networking, economy and efficiency are the underlying rationale for the time spent.

## BIBLIOGRAPHY

1. Citizen Involvement Advisory Committee. *How To Put The People In Planning*. CIAC: Salem, Oregon. July 1992.
2. \_\_\_\_\_. pp. 5-6.
3. Department of Land Conservation and Development. *A Citizen's Guide to Oregon's Coastal Management Program*. DLCDC: Salem, Oregon, 1988. p. 5.
4. Oregon State Legislature. *Oregon Administrative Rule (OAR) 660-25-080* State of Oregon: Salem, Oregon, 1991.
5. Land Conservation and Development Commission. *Oregon's Statewide Planning*. Goals. LCDC: Salem, Oregon, 1990. Goal 1, Citizen Involvement.
6. \_\_\_\_\_. Goal 2, Land Use Planning.
7. City Attorney Joan Chambers. Memo to the CCI, April 18, 1994.
8. Land Conservation and Development Commission. *Oregon's Statewide Planning Goals*. LCDC: Salem, Oregon, 1990. Goal 1, Citizen Involvement.
9. Land Conservation and Development Commission. *Oregon's Statewide Planning Goals*<sup>1</sup>. LCDC: Salem, Oregon, 1990. Goal 1, Citizen Involvement.
10. \_\_\_\_\_. Goal 1, Citizen Involvement.

ccilcip.wps

**DEVELOPMENT APPLICATION**

(Time Frame Estimate)

ADMINISTRATIVE:  
 SITE PLAN  
 COMMITTEE  
 (technical)

PLANNING COMMISSION CITY COUNCIL  
 (discretionary) (legislative)

LUMA

Administrative Interpretations	(2 weeks*)		
Home Occupations	(1 day)		
Sign Permits	(1 week*)		
Lot Line Adjustments	(1 week*)		
Minor Partitions	(2 weeks*)		
Occupational Tax Permits	(1 day)		
Special Events Permits	(VCI)		revocation hearing for cause
Street Vendors	(3 to 6 weeks)		
Tree Removal Permits	(1 day)		
Excavating and Grading Permits	(engineering)		
Building Permits (single-family res.)	(3 to 6 weeks*)		appeal to builders board
Demolition Permits	(2 days*)		
Flood damage prevention permits (FEMA)	(w/obj permit)		
Environmental Assessments (EQ zone)	(6 weeks **)		
Vacation Rental Dwellings (VRD)	(4 weeks*)		
Moving buildings	(3 to 6 weeks)		
Site Plan Approval	(4 weeks*)		
Building permits (all others)	(6 to 8 weeks **)		
Major partitions	(8 weeks*)		subl comm
Subdivisions	(prelim approval 8 weeks*)		subl comm
Non-conforming use change	(8 weeks*)		
Variances	(8 weeks*)		
Conditional use permits	(8 weeks*)		
Planned Unit Developments (PUD)	(prelim approval 8 weeks*)		pre-app conf
Comp plan/zoning map amendments	(12 weeks*)		
Comp plan/zoning ord amendments	(12 weeks*)		
Authorization of similar uses	(8 weeks*)		ord change

**LEGEND**  
 Recommended ---  
 Appeal to . . . . .  
 Action ---  
 Approval/Decision A

\*Unless Applicable  
 \*\*Depending on backlog

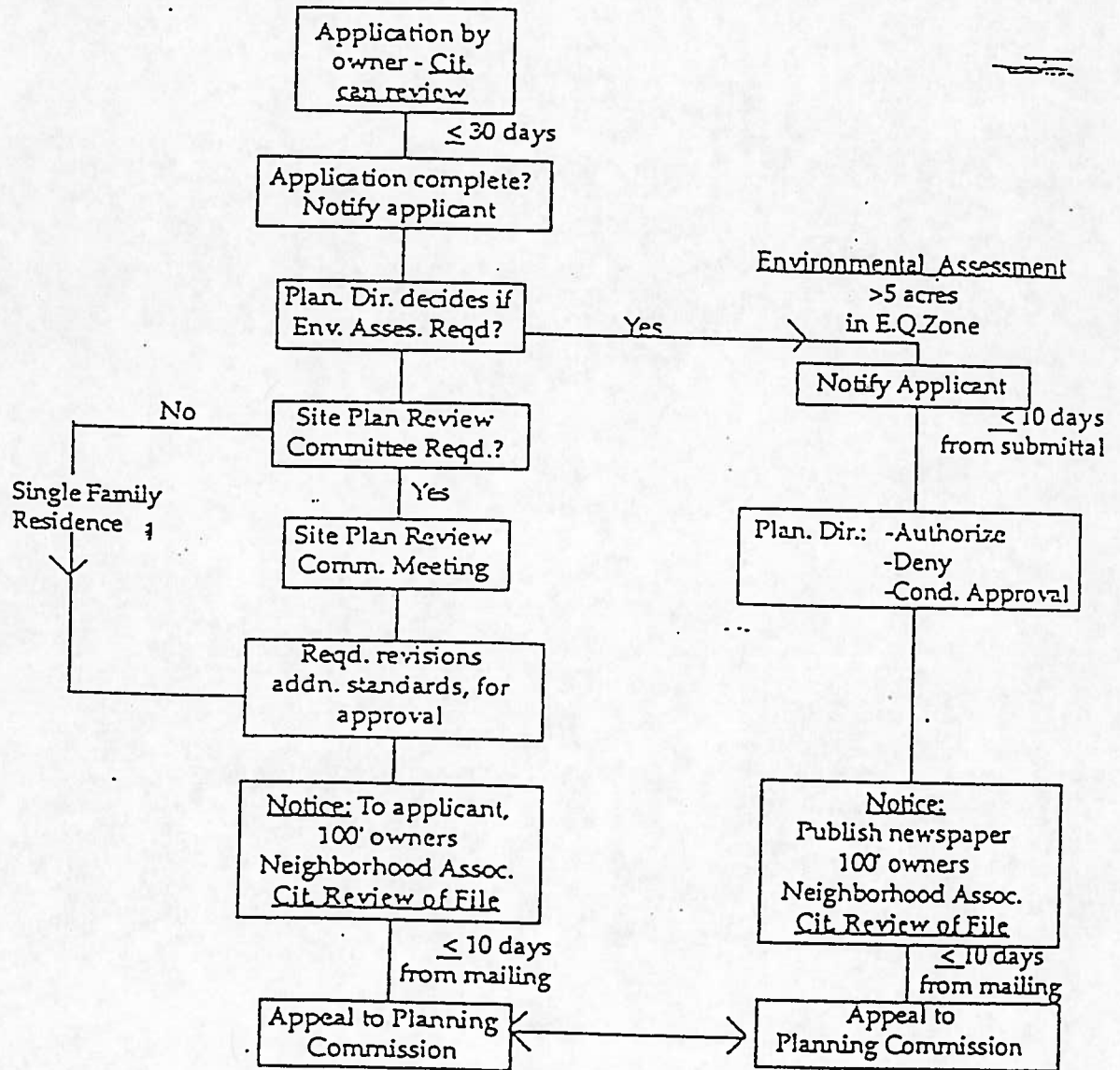
Note:

ONS 227.178 requires final land use decision within 120 days

# LINCOLN CITY DECISION PROCESS COMMITTEE FOR CITIZEN INVOLVEMENT (CCI)

## ADMINISTRATIVE (MINISTERIAL) [STAFF DECISIONS]

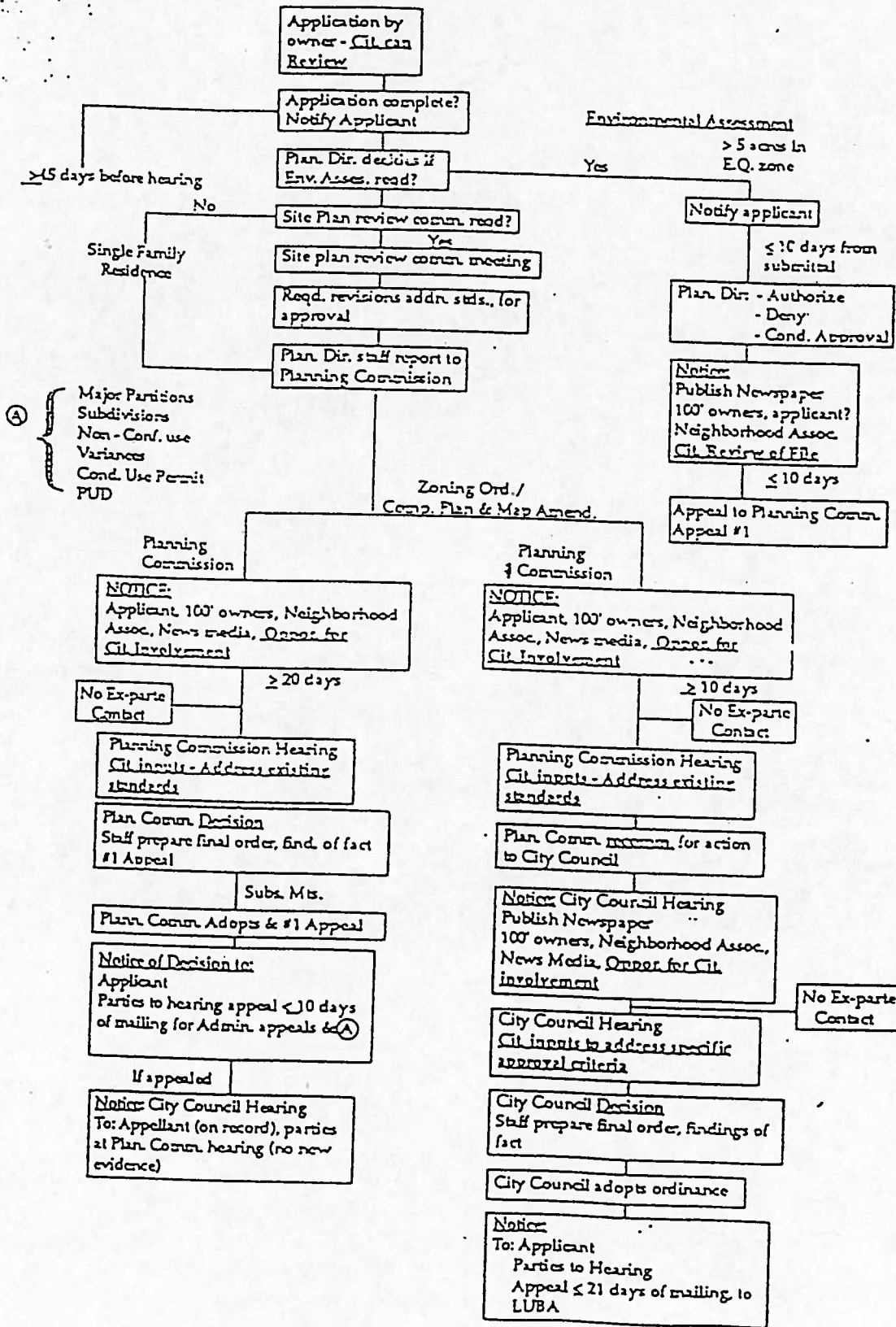
- Little Discretion
- Mechanical
- Routine



QUASI-JUDICIAL DECISIONS (City Council decisions)  
(Planning Comm. decisions)

APPLY: Predetermined - Policies  
- Standards

FOLLOW: Comprehensive Plan - Policy  
Zoning Ordinance - Approval Criteria

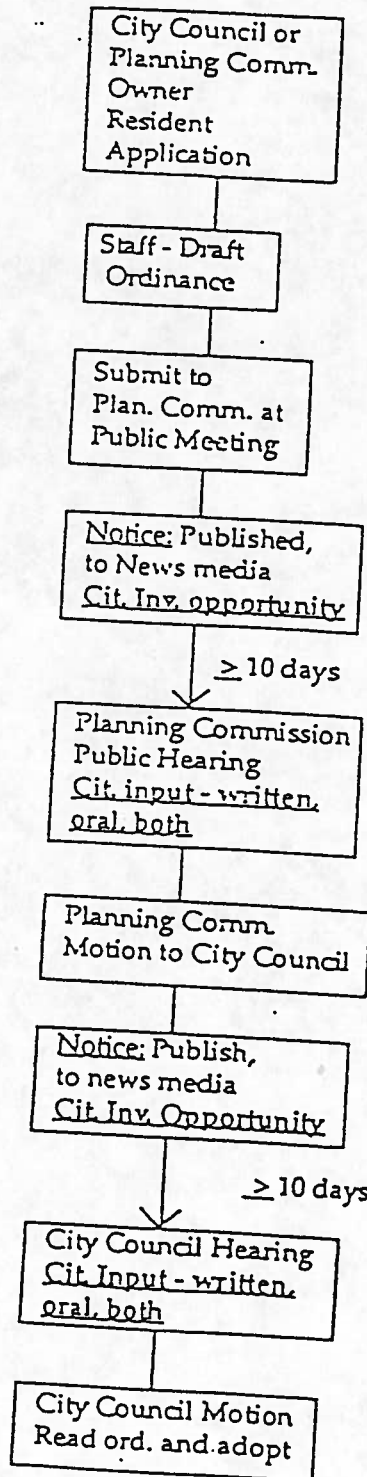


LINCOLN CITY DECISION PROCESS  
COMMITTEE FOR CITIZEN INVOLVEMENT (CCI)

LEGISLATIVE (CITY COUNCIL DECISIONS) - CREATE: LAWS  
POLICIES  
REGULATIONS

- AMEND: ZONING ORDINANCES AND MAPS  
COMP. PLAN AND MAP

Cit ex-parte  
contact okay



**(2) Citizen Involvement Goal**

*“Develop a Citizen Involvement Program which ensures the continued participation of citizens in the land use planning process.”*

The Comprehensive Plan’s Citizen Involvement Program goal is “Develop a Citizen Involvement Program (CIP) which ensures the continued participation of citizens in the land use planning process.” The City has developed a Citizen Involvement Program through Resolution 94-33. The public hearing process for the several proposed alternative ordinances, plan text and map changes included mailed, published, and internet posted notice to the public and property owners, and review of proposals by the Planning Commission and the City Council, consistent with the Plan, Goal and Resolution.

The findings set forth under the Nature of Proceedings and Land Use Planning above including the notice and hearing process for the range of proposed ordinances are incorporated herein by this reference. The Council finds and determines that the Comprehensive Plan and Goal 1 policies concerning citizen involvement are fully met by the proposals.

Among the policies under the City’s Citizen Involvement Program goal is one that says “Lincoln City shall assure that a reasonable effort is made to encourage the opportunity for citizens to attend public meetings.” The Planning Commission and City Council meetings are publicized widely with hearing notices mailed to property owners in the affected area, and published in The News Guard weekly newspaper and on the City’s website. The City holds public hearings in the evening in order to encourage public attendance. Moreover, for those unable to attend in person, the meetings are televised live and rebroadcast on cable television and are streamed live over the internet. Video of meetings and packet materials is also available on the City’s website for review, free of charge. This constitutes a more than reasonable effort to encourage citizens to attend public meetings.

The Plan further provides that “Lincoln City shall encourage a variety of citizen programs such as neighborhood associations and other committees to serve in the interests of the community.” During the hearings, the Council heard from several neighborhood associations, including newly officially- recognized associations.

## Consensus Group.

Attorney Joan Chambers alleges violation of Goal 1 and the City's Citizen Involvement program as follows:

“The City Council established a VRD consensus project staffed by a neutral convener. The committee came up with well-reasoned recommendations which the Council has ignored and is now proposing to adopt ordinances that are not consistent with the recommendations of the Citizens and affected individuals who made recommendations in the consensus project final report. In rejecting that report, the City Council is failing to give appropriate consideration to Goal 1 of the City and Statewide Planning Goals.”

Contrary to Ms. Chambers assertions the Council did not ignore the consensus committee report. The Committee recommendations were the subject of hearings before the Planning Commission and City Council beginning with the draft ordinance 2013-VRD YES/NO zone overlay processed to Planning Commission and Council. Even after those hearings (and the extremely negative response to the YES/NO proposal) the recommendations of the committee were not ignored but were brought forward again with the companion ordinances VRD2 and VRD3 in the second set of hearings. [VRD2, proposed repeal of the existing accessory use limitation (missing from proposed overlay ordinance) and VRD 3 added to the license ordinance to do away with the land use process.]. These companion ordinances were reviewed at hearings before the Planning Commission and City Council, along with the alternative ordinances. However, the City Council had no duty or obligation to defer to the Consensus Group.

Ms. Chambers objection appears to be that the Council did not abdicate its legislative power to a consultant. Nothing in the City's citizen Involvement Program or Goal 1 requires the Council to abdicate its legislative power to a consultant or to a group of financially interested stakeholders. The Council expressly adopts the findings contained in the Council Communication concerning the flaws with the Consensus recommendation particularly the YES/NO overlay and repeal:

- The consensus group recommendation to repeal did not address the land use planning goals, comprehensive plan policies, or code provisions furthered by the existing accessory use limitation or the equity (fairness) issues created by the YES/NO zone proposals. The division of the City into YES and NO zones was reflected on proposed overlay zone maps created by the Consensus Group. The owners in the NO zone came to be referred to as “Losers” and the owners in the YES zone came to be referred to as “Winners.” Despite being located in residential zones, YES

zone VRDs would have the right to operate unrestricted, the same as commercial VRDs. The YES zone cured violation of the accessory use limitation; NO zone would prohibit all VRDs and existing VRDs in the zone were grandfathered until sale or transfer. Owners of property in the NO zones threatened Measure 49 claims, [and] also protested the fairness of dividing residential zones into winners and losers. While separating high intensity VRD use from established neighborhoods is one means to protect established neighborhoods, the Group overlooked the fact that the Code already separated such high intensity VRD use from residential areas by requiring such use to be in commercial zones. Further, (to be fair) the existing Code allowed everyone in a residential zone only a limited amount of low intensity VRD use as a means to protect residential areas from incompatible uses. No one is a “loser” under this existing regulatory framework, if properly enforced.

- While the Council accepted many of the license and land use recommendations of the VRD Consensus Building Working Group, the Council was clearly not bound by the recommendations of the Group. Council did not delegate any legislative authority to the Consensus Group. The Group was significantly constrained by Oregon Government Ethics Laws as many members of the group had actual financial interests in the operation of vacation rentals (as owners and managers) and therefore could take no official actions due to the basic premise of Oregon Ethics Laws, that a public official, including volunteers, may not use their official positions to obtain a financial benefit for themselves or for businesses with which they are associated. The City website describes the group as “not have a superior say in how this process comes out.” “They are merely one more [forum] for discussion. Members do not have 'votes' and they are not a 'mini-City Council.’”

## Measure 56

One principal of citizen involvement is reflected in Measure 56, adopted in 1996. Measure 56 is implemented in ORS 227.186 and requires individual notices be sent to property owners when an ordinance proposes to rezone property, including amendments which limit or prohibit land uses previously allowed in the affected zone. Because the formerly proposed NO zone would prohibit VRD use, in April 2013 notice was sent to all impacted property owners in the applicable zones (5590 notices). Similarly, because the alternative ordinances originally proposed a new numeric limit on VRD use in residential zones, notice of the alternative (and companion ordinances) were mailed to all such property owners impacted in November 2013. (6248 notices including Roads End).

Also related to citizen involvement, Measure 56 contained a limit on how land use matters could be addressed by local governments. Applicable to cities, ORS 227.186(2) provides:

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance.

Some individuals, principally realtors and managers and owners, asserted in these proceedings that there is no limit on operations of vacation rentals in residential zones. They claim that the accessory use limitation on vacation rental operations in residential zones is no longer in effect. However, the record reflects no repeal of this ordinance provision (contained in LCMC 17.80.050.B.2 (VRD Criteria) and LCMC 17.08.010 (Definitions)). To the contrary, the record reflects that the VRD ordinance provisions contained in Title 17 were last amended in July 2009 by ordinance. The findings supporting Ordinance 2009-02 provide:

(10) Goal 10: “Housing” The VRD amendments do not by themselves affect residential development. By themselves the VRD amendments do not affect the availability of housing because they relate only to housing that already is allowed and to **a use that is merely accessory to the primary use of the structures they are in as second homes**. Therefore, the VRD amendments are consistent with Goal 10. (**emphasis added**)

The record reflects no Ordinance repealing or modifying the accessory use limitation. There has been no change to the operative language of the code. The existing City code makes VRD use in residential zones an accessory use. The accessory use limitation in LCMC 17.80.050.B.2 requires that VRD use be “incidental and subordinate to the main use” of the vacation home, the main use being the owner’s own use. [See LCMC 17.08.010 (definitions)]. No resolution, policy, order, memorandum, edict, opinion, proclamation or other writing can change the existing ordinance. Similarly, staff cannot waiver or excuse compliance with mandatory criteria in the Code. Only an ordinance processed in accordance with the code and state law can make such a change or repeal. The assertion by Realtors, property managers and VRD owners that the Code limitation no longer exists is contrary to the citizen involvement goals and contrary to state statute.

The Citizen Involvement Goal is satisfied.

301 Or.App. 769  
Court of Appeals of Oregon.

**RESTORE OREGON**, Bosco-Milligan  
Foundation/Architectural Heritage  
Center, Oregon Nikkei Endowment,  
Portland Chinatown History Foundation/  
Portland Chinatown Museum, and Peggy  
G. Moretti, Respondents Cross-Petitioners,

v.

CITY OF PORTLAND, Respondent  
below Cross-Respondent,  
and  
Guardian Real Estate Services,  
LLC, Petitioner Cross-Respondent.

OSB2LAN IVON, LLC and  
Haithem Toulan, Petitioners,

v.

City of Portland, Respondent.

A172000

|

Argued and submitted October 28, 2019.

|

January 23, 2020

### Synopsis

**Background:** Property owners and nonprofit group sought judicial review of decision by the Land Use Board of Appeals (LUBA), which remanded building height ordinances to city for findings on compliance with comprehensive land use plan.

**Holdings:** The Court of Appeals, *Ortega, J.*, held that:

[1] LUBA did not fail to defer to city's interpretation of comprehensive land use plan;

[2] LUBA did not misapply the substantial evidence standard in reviewing city's decision;

[3] city was not obligated to take additional public testimony regarding the ordinances;

[4] city could base its Economic, Social, Environmental and Energy (ESEE) analysis on average numbers from affected district;

[5] LUBA was not obligated to reverse city's adoption of ordinance based on use of different data for different affected districts;

[6] city did not fail to consider property owner's evidence challenging the ESEE analysis; and

[7] city was not obligated to respond to property owner's evidence.

Affirmed.

West Headnotes (14)

[1] **Zoning and Planning** 🔑 Evidence

An adequate factual base for a legislative land use decision is synonymous with the requirement that a decision be supported by substantial evidence.

[2] **Zoning and Planning** 🔑 Administrative review

The Land Use Board of Appeals (LUBA) determines if a zoning decision is supported by substantial evidence by determining if, viewing the record as a whole, a reasonable person could make the disputed factual finding.

[3] **Zoning and Planning** 🔑 Administrative review

In reviewing city ordinances that limited height of new buildings, Land Use Board of Appeals (LUBA) did not fail to defer to city's express or implicit interpretation of its comprehensive land use plan, and therefore LUBA's remand to city to adopt findings explaining how the ordinances complied with comprehensive plan was compatible with city's interpretation of

the plan; both LUBA and city referred to the base height limitation as a height “allowed by right.” LUBA did not require city to allow buildings which reached the maximum height limit, city implicitly interpreted comprehensive plan to require that new building heights be compatible with scale and character of the area, and LUBA only disputed city's findings as to step down allowances, concluding that city failed to describe how the ordinance preserved historic resources in the area.

**[4] Zoning and Planning** 🔑 Administrative review

In reviewing city ordinance which limited the height of new buildings, Land Use Board of Appeals (LUBA) did not misapply the substantial evidence standard, and therefore LUBA's remand to city for findings as to how ordinance was compatible with comprehensive land use plan; LUBA articulated the proper standard of review and explained that none of city's evidence addressed plan's requirement that underutilized gaps in the urban fabric be utilized and that historic resources be preserved, and city did not make a legislative land use decision.

**[5] Zoning and Planning** 🔑 Substantial evidence in general

In reviewing a decision by the Land Use Board of Appeals (LUBA), an appellate court reviews LUBA's application of the substantial evidence rule for legal correctness and does not review the evidence independently for substantiality; when LUBA properly articulates the substantial evidence standard of review, the court will affirm unless the evidence is so at odds with LUBA's evaluation that the court can infer LUBA misunderstood or misapplied the proper standard.

**[6] Zoning and Planning** 🔑 Validity of regulations

In action for judicial review of decision by Land Use Board of Appeals (LUBA), remanding

building height ordinance to city for findings on compliance with city's comprehensive land use plan, appellate court was not obligated to determine whether substantial evidence supported city's adoption of the ordinance, where the court's role was limited to determining whether LUBA correctly applied its own substantial evidence standard when reviewing the ordinance.

**[7] Zoning and Planning** 🔑 Hearing or meeting in general

City which adopted ordinances limiting new building height was not obligated to take additional public testimony on height limits at city council meeting which amended and finalized the ordinances, and therefore city did not misinterpret goals of its comprehensive land use plan, as to require reversal of city's decision; comprehensive plan required “meaningful opportunities to participate in and influence all stages of planning and decision making” but did not expressly require public testimony at the final city council meeting, and city had already given the community a meaningful opportunity to participate through multiple public hearings.

**[8] Zoning and Planning** 🔑 Construction by board or agency

On review of a city's land use decision, a court must defer to the city's interpretation of its comprehensive plan and land use regulations, unless it determines that the city's interpretation is inconsistent with the express language, purpose, or underlying policy of the comprehensive plan or land use regulation.

**[9] Zoning and Planning** 🔑 Wisdom, Judgment, or Opinion

The standard of review employed by a court in reviewing a city's land use decision is highly deferential to the city, and the existence of a stronger or more logical interpretation than that

used by city does not render a weaker or less logical interpretation implausible.

**[10] Zoning and Planning** 🔑 Height of buildings or structures

**Zoning and Planning** 🔑 Comprehensive or general plan

City which adopted ordinance limiting height of new buildings could base its Economic, Social, Environmental and Energy (ESEE) analysis on average numbers from the affected district, rather than individual characteristics of affected property, and therefore city complied with goal of comprehensive land use plan to protect natural resources and conserve scenic and historic areas and open spaces in adopting the ordinance; comprehensive plan did not expressly require city to conduct ESEE analysis on the basis of individual property impact, but rather contemplated forms of ESEE analysis based on a “matrix of commonly occurring conflicting uses.” *Or. Admin. R. 660-023-0040(4)*.

**[11] Zoning and Planning** 🔑 Administrative review

The Land Use Board of Appeals (LUBA) was not obligated to reverse city's adoption of ordinance restricting new building height based on city's use of the same assumptions for base height, flood to area ratios (FAR), and lot coverage numbers in conducting economic-effects analysis of the affected districts; on review, city was required only to explain its factual position and point to supporting evidence, LUBA was restricted to reviewing whether substantial evidence supported city's findings, and LUBA did not misapply its substandard evidence standard of review.

**[12] Zoning and Planning** 🔑 Preservation before board or officer of grounds of review

On judicial review of decision by the Land Use Board of Appeals (LUBA) regarding city building height ordinance, appellate court was not obligated to consider property owner's

argument that city was prohibited from using different data when analyzing economic impact on one of the affected districts, where owner failed to explain why city was prohibited in this fashion and failed to preserve the argument. *Or. Admin. R. 660-023-0040*.

**[13] Zoning and Planning** 🔑 Hearing or meeting in general

City which adopted ordinance restricting new building height did not fail to consider evidence submitted by affected property owner demonstrating that city's Economic, Social, Environmental and Energy (ESEE) analysis underestimated economic effects on owner's property, and therefore the Land Use Board of Appeals (LUBA) was not required to reverse city's decision; property owner alleged that ordinance resulted in prohibitive redevelopment costs for the property but did not argue that city failed to provide proper notice, city considered owner's public testimony on the matter, and city disagreed with owner's analysis on the basis that a full city block of the property was located outside the district subject to height ordinance. *Or. Admin. R. 660-023-0040, 660-023-0060*.

**[14] Zoning and Planning** 🔑 Hearing or meeting in general

City which adopted ordinance restricting new building height was not obligated to respond to property owner's evidence that city's Economic, Social, Environmental and Energy (ESEE) analysis ignored property-specific environmental and developmental constraints, where ESEE regulations did not require city to conduct a more specific analysis and instead allowed city to conduct a single analysis of uses in the affected area. *Or. Admin. R. 660-023-0040(4)*.

**\*\*705** Land Use Board of Appeals, 2018072, Land Use Board of Appeals, 2018073, 2018086, 2018087

## Attorneys and Law Firms

[E. Michael Connors](#), Portland, argued the cause for petitioners. Also on the brief was Hathaway Larson LLP.

[Timothy V. Ramis](#), Lake Oswego, argued the cause and filed the brief for petitioner-cross-respondent.

[Daniel H. Kearns](#), Portland, argued the cause for respondents-cross-petitioners. Also on the brief was Reeve Kearns, PC.

Linly F. Rees argued the cause for respondent-cross-respondent. Also on the brief was [Lauren A. King](#).

[Kenneth P. Dobson](#) filed the brief amicus curiae for Arbor Lodge Neighborhood Association, Downtown Neighborhood Association, Irvington Neighborhood Association, King Neighborhood Association, Laurelhurst Neighborhood Association, Northwest District Association, Pearl District Neighborhood, and Pearl Neighbors for Integrity in Design.

Before [Ortega](#), Presiding Judge, and [James](#), Judge, and [Mooney](#), Judge.

## Opinion

[ORTEGA](#), P. J.

**\*\*706 \*771** This case is on judicial review from a Land Use Board of Appeals (LUBA) order addressing the City of Portland's (city) Central City 2035 Plan (CC2035). To enact parts of CC2035, the city adopted Ordinance 189000 and Ordinance 189002. Those ordinances, among other things, established new building height limits within the 10-block area of New Chinatown/Japantown Historic District (the District) and, to protect a scenic view of Mt. Hood, established new building height limits in an area on the east side of the Willamette River between the Tilikum Crossing Bridge and the Ross Island Bridge (the Southern Triangle). Petitioners OSB2LAN IVON, LLC and Haithem Toulou (OSB), owners of property in the Southern Triangle, and cross-petitioners Restore Oregon<sup>1</sup> appealed the city's decision to LUBA, and petitioner Guardian Real Estate Services, LLC (Guardian), which owns property in the District, intervened. LUBA affirmed all of the parties' assignments of error, except for one. With respect to one of Restore Oregon's assignments of error, LUBA remanded Ordinance 189000 for the city to adopt findings that explain how the new height limits in the District comply with Portland Comprehensive Plan (PCP) Policy 4.48.

On review to this court, Guardian, Restore Oregon, and OSB each assign error to different parts of LUBA's order. Guardian argues that LUBA erred in remanding Ordinance 189000. Restore Oregon argues that LUBA erred in rejecting its assignment of error that the city failed to comply with the PCP citizen involvement program goals. OSB argues that LUBA erred in approving the Economic, Social, Environmental, and Energy (ESEE) analysis the city prepared to support the building height limits in the Southern Triangle. We review LUBA's order to determine if it is "unlawful in substance or procedure," [ORS 197.850 \(9\)\(a\)](#). Under that standard, we conclude that LUBA did not **\*772** err with respect to the disparate issues raised by petitioners and cross-petitioners. Thus, we affirm.

## I. BACKGROUND FACTS

We take the following background facts from LUBA's order, which the parties do not dispute.

"The challenged ordinances [189000 and 189002] adopted amendments to the Central City Plan, which was originally adopted in 1988 as part of the Portland Comprehensive Plan (PCP). CC 2035 made a number of changes to the existing Central City Plan. \* \* \*

### **"A. New Chinatown/Japantown Historic District**

"As relevant here, \* \* \* CC 2035 amended the height limits that apply to new **\*\*707** buildings in the New Chinatown/Japantown Historic District (District), a ten square block area located west of the Willamette River and north of the downtown area that is listed on the National Register of Historic Places for its cultural and historical significance.

"The District was established in 1989. The base zoning of property in the District at the time it was established and today is Central Commercial Zone with a downtown development overlay. At the time the District was established in 1989, the maximum allowed building height in the District under the Portland City Code (PCC) was 350 feet plus a possible 75 feet of bonus height. New development in the District is subject to discretionary Historic Resources Review under PCC 33.846 and the city's adopted New Chinatown/Japantown Historic Design Guidelines (Guidelines), first adopted in 2017.

"CC 2035 decreased the existing height limits for four blocks on the northern edge of the District, located between

NW Everett and NW Glisan Street and NW 5th and NW 3rd Avenue (North Blocks), from the previous limit of 425 feet (base 350 feet plus 75 feet of bonus height) to 200 feet of base height with no bonus height available. CC 2035 also increased the height on one block in the District, Block 33, located between NW Couch and NW Davis Street and NW 4th and NW 5th Avenue, from its previous maximum height of 100 feet to 125 feet of base height on the entire block, with an available affordable housing bonus on the west half of Block 33, to allow a maximum height of up to 200 feet on the west half of Block 33. [Guardian] owns Block 33.

\*773 \*\*\* \*\* \*

#### **“B. Southern Triangle**

“CC 2035 also amended the comprehensive plan and zoning map for other areas of the central city, including the area that includes OSB’s approximately three-acre property located on the east side of the Willamette River, generally in the area between the Tilikum Crossing Bridge and the Ross Island Bridge (Southern Triangle). CC 2035 amended the plan and zoning map designations for OSB’s property from Heavy Industrial (IH) to Central Employment (EX), with design and river overlays on the entire property, and river environmental and scenic overlays on a portion of the property. The EX zoning applied to OSB’s property prohibits residential uses.

“CC 2035 adopted a Central City Scenic Resources Protection Plan as an update to the previously adopted (in 1991) city-wide Scenic Resources Protection Plan. The new area-specific plan added two scenic resources sites and adopted an Economic, Social, Environmental and Energy (ESEE) analysis. As part of the ESEE analysis, the city mapped and evaluated views and viewpoints within the resource sites, and grouped them into rankings based on quality and quantity. A view of Mt. Hood from the Tilikum Crossing bridge was identified as SW46. The city’s ESEE analysis determined to protect the views of Mt. Hood from SW46 by limiting building height on OSB’s property and some surrounding properties to 60 feet, and by limiting surrounding properties with similar height restrictions. Approximately two acres of OSB’s property are subject to the 60-foot height limit, with one acre of OSB’s property subject to a height limit of 100 feet with available bonus heights of up to 250 feet.”

(Boldface in original; footnote and record citations omitted.)

Restore Oregon challenged Ordinance 189000. As relevant here, Restore Oregon argued that the city’s findings were inadequate to explain how the new height limits in the District satisfied PCP Policy 4.48. Restore Oregon also argued, in a second assignment of error, that the city failed to comply with the PCP citizen involvement program goals. Guardian intervened in support of Ordinance 189000. LUBA determined that the city’s findings were inadequate with respect to Policy 4.48 and remanded Ordinance \*774 189000 on that basis. LUBA rejected Restore Oregon’s second assignment of error.

OSB challenged both Ordinance 189000 and Ordinance 189002. As relevant here, OSB challenged the city’s ESEE analysis, arguing that it failed to comply with Statewide \*\*708 Planning Goal 5 and its implementing regulations by using an inappropriate “area-wide” analysis, by using different building assumptions in the Southern Triangle as compared to other areas, and by failing to take into consideration evidence OSB had submitted about the development constraints on its property. LUBA rejected all of OSB’s arguments.

Guardian, Restore Oregon, and OSB have all sought review of different aspects of LUBA’s order. We address each of their assignments of error below, reviewing to determine if LUBA’s order is “unlawful in substance or procedure,” [ORS 197.850\(9\)\(a\)](#). We also discuss in more detail the city’s actions and LUBA’s order, as necessary to understand the disparate challenges the petitioners and cross-petitioners raise on review.

## II. ANALYSIS

### *A. The District New Building Height Limits*

We first address Guardian’s petition and Restore Oregon’s cross-petition, both of which challenge portions of LUBA’s order relating to the new height limits in the District. With respect to those petitions, we start with Guardian’s challenge to LUBA’s remand of Ordinance 189000 for the city to adopt additional findings to comply with Policy 4.48.

#### *1. PCP Policy 4.48*

To provide context for Guardian’s challenge, we set out a fuller discussion of LUBA’s order with respect to its remand of Ordinance 189000.

458 P.3d 703

Because CC2035 includes a legislative amendment to the PCP, the city was required to find that the amendment is “consistent with the goals and policies of the Comprehensive Plan, Metro’s Urban Growth Management Functional Plan, the Statewide Planning Goals, and any relevant area plans \*775 adopted by the City Council.” PCC 33.810.050(B). At LUBA, Restore Oregon argued that the city had failed to make adequate findings, and failed to develop an “adequate factual base” as required by Statewide Planning Goal 2,<sup>2</sup> that demonstrated that the city had complied with, among other PCP policies, Policy 4.48. That policy provides:

**“Policy 4.48, Continuity with established patterns.**

Encourage development that fills in vacant and underutilized gaps within the established urban fabric, while preserving and complementing historic resources.”

(Boldface in original.)

With respect to Policy 4.48, the city adopted the following written findings:

“224. The Plan responds to the policy through new goals and policies specific to the Central City that call for: the rehabilitation and reuse of historic structures; historic district protection measures; and, incentives to encourage seismic upgrades and other rehabilitation measures for historic resources.

“\* \* \* \* \*

“226. The maximum heights within historic districts have generally been reduced, and in most cases bonus height provisions have been repealed to result in new development that is compatible with the existing scale and character of the Central City’s historic districts.

“227. For instance, in the New Chinatown / Japantown Historic District heights in the northern four blocks have been reduced from a maximum of 350 feet, and the ability to bonus an additional 75 feet in height to a maximum of 425 feet, has been eliminated. Now the maximum height in that area is 200 feet with no ability to bonus to a greater height. Although one block in the district received bonus height to a maximum of 200 feet on the west half of the block and 125 feet on the eastern half of the block, it should be noted that the greater heights allowed on the west half of the block are adjacent to parcels that may build to 460 feet. Further, the new maximum height limits create a step \*776 down from these greater height allowances to the west of the New Chinatown / \*\*709 Japantown Historic

District down to 100 feet maximum to the east of the site in question, and then eventually down to 75 feet to the properties located just east of the district.

“228. Following Council proposing this amendment, testimony was received for and against the increased height. Some testifying was concerned that these heights would not be consistent with the rest of the scale of development elsewhere in the district. However, others noted that the block in question had long been underutilized and that redevelopment of the site would be a catalyst for investment throughout the district, following decades of neglect. In the end, council decided: 1) the heights proposed would still result in a step down from the urban form surrounding the district; 2) the increased height was necessary to incent redevelopment of a catalytic site; and 3) the issue of consistency was best left to the Landmarks Commission who remain charged with reviewing future development proposals on that site and elsewhere in the historic district.

“Thus, on balance, these amendments in New Chinatown / Japantown Historic District and all other Central City Historic Districts further the objectives of Policy 4.48 above.”

In its order, LUBA agreed with Restore Oregon that the city’s findings were inadequate to explain why the adopted maximum heights complied with Policy 4.48. LUBA explained:

“The findings do not describe ‘the established urban fabric’ of the District, do not describe the existing historic resources, and do not explain how 200-foot tall buildings would ‘preserv[e] and complement[ ]’ those existing historic resources. Rather, the findings focus on the importance of creating incentives for development of vacant parcels in the District, determine that the maximum heights in the District are lower than adjacent properties that lie outside the District boundary, and conclude that ‘the issue of consistency was best left to the Landmarks Commission who remain charged with reviewing future development proposals on that site and elsewhere in the historic district.’ Those findings are not adequate to explain that the maximum height limit of 200 feet in the District ‘preserv[es] and complement[s] historic resources.’ Because CC 2035 adopts \*777 base and bonus maximum height limits that apply as of right to all new development across the District, the question of whether those base and bonus maximum heights ‘preserv[e] and

complement historic resources,’ and thus comply with PCP Policy 4.48, is a question that the city council must answer. It may not be deferred to discretionary historic resources review of individual development proposals for compliance with the PCC criteria and the Guidelines.

“The city responds to Restore Oregon’s argument that the 200-foot maximum height limits lack an adequate factual base with citations to a number of record pages. We have reviewed those citations. The material cited by the city is largely focused on maintaining the pre-designation height limits in the North Blocks to encourage development in the District, adopting new height limits to ‘revitalize the area,’ and arguing that the District is less of an architectural district and more a ‘cultural’ district. However, none of that evidence addresses the subject of PCP Policy 4.48, which is to ‘[e]ncourage development that fills in vacant and underutilized gaps within the established urban fabric, *while preserving and complementing historic resources.*’ (Emphasis added.) Stated differently, the materials cited by the city are evidence that supports the city’s findings regarding the ‘[e]ncourage [infill] development’ prong of PCP Policy 4.48, but do not address the ‘within the established urban fabric’ or the ‘while preserving and complementing historic resources’ prongs. In particular, the city does not point to any focused evidence that supports a conclusion that the 200-foot maximum height limit ‘preserve[s] and complement[s]’ District resources.”

(Brackets in LUBA’s order; record citations omitted.) As a result, LUBA remanded Ordinance 189000 for “the city to adopt findings that are adequate to explain why the 200-foot height limit complies with PCP Policy 4.48. **\*\*710** That decision must be supported by an adequate factual base.”

On review, Guardian raises five assignments of error that reduce to a single complaint: LUBA misunderstood or misapplied its standards of review in remanding Ordinance 189000 to the city. More specifically, Guardian argues that LUBA failed to give appropriate deference to the city’s interpretation of the PCP and Ordinance 189000, failed to correctly apply a standard of review for a *legislative* **\*778** land use decision, and failed to correctly apply its substantial evidence standard of review. Thus, we start with a discussion of LUBA’s standards of review.

Ordinance 189000 amended the PCP and city land use regulations. LUBA’s review of those amendments required it to reverse and remand the city’s decision if the amendment to the PCP “is not in compliance with the [statewide land

use planning] goals,” [ORS 197.835\(6\)](#), and if the amendment to the land use regulations “is not in compliance with the comprehensive plan,” [ORS 197.835\(7\)\(a\)](#). In conducting that review, LUBA is required to defer to the city’s interpretations of its own plan and regulations if that interpretation is “plausible,” *i.e.*, it is not “inconsistent with the express language of the comprehensive plan or land use regulation” or inconsistent with the underlying purpose and policies of the plan and regulation. [ORS 197.829\(1\)](#); *Siporen v. City of Medford*, 349 Or. 247, 259, 243 P.3d 776 (2010).

[1] [2] With respect to evidence in the record, Goal 2 requires that an amendment to a comprehensive plan or land use regulation be supported by an “adequate factual base.” An “adequate factual base” for a legislative land use decision “is synonymous with the requirement that a decision be supported by substantial evidence.” *1000 Friends of Oregon v. LCDC*, 244 Or. App. 239, 268 n 11, 259 P.3d 1021 (2011). LUBA determines if a decision is supported by substantial evidence by determining “ ‘[i]f, viewing the record as a whole, a reasonable person could make the disputed factual finding.’ ” *Columbia Pacific v. City of Portland*, 289 Or. App. 739, 755, 412 P.3d 258, *rev den*, 363 Or. 390, 434 P.3d 29 (2018) (quoting *Stevens v. City of Island City*, 260 Or. App. 768, 772, 324 P.3d 477 (2014)).

[3] In its first two assignments of error, Guardian argues that LUBA failed to give appropriate deference to the city’s interpretation of Policy 4.48 and Ordinance 189000. With regard to Ordinance 189000, Guardian contends that LUBA’s statement that the new 200-foot height limits in the District are allowed “as of right” failed to defer to the city’s interpretation of Ordinance 189000. We reject that contention. First, contrary to Guardian’s assertions about how the city interprets Ordinance 189000, the city also referred to **\*779** the 200-foot base height in the District as a height “allowed by right” in its commentary to the base heights maps that are appended to Ordinance 189000. Second, in echoing that language, LUBA did not make a finding or legal interpretation that the city had to allow 200-foot-tall buildings. Rather, LUBA’s decision reflects an understanding that the 200-foot limit is a *maximum* height that *could be* allowed on those blocks, and that the maximum height could be adjusted downward on an individual development proposal basis. LUBA nevertheless explained that the fact that a particular proposed development could be adjusted downward did not answer the question whether the 200-foot height limit allowed by CC2035 complies with Policy 4.48. In so stating, LUBA

458 P.3d 703

did not fail to defer to a city interpretation of a land use regulation.

We next address and reject Guardian's argument that LUBA failed to defer to the city's "implicit" interpretation of Policy 4.48. In its remand to the city, LUBA discussed what it understood Policy 4.48 to require, but did not discuss whether the city had itself interpreted the policy. Guardian thus argues that LUBA's order ignores the city's implicit, plausible interpretation of Policy 4.48. Guardian asserts that the city implicitly interpreted Policy 4.48 to require only that it identify the "vacant and underutilized gaps" in the established urban fabric, and not to require a description of that urban fabric. Guardian further argues that LUBA should have deferred to the city's interpretation of Policy 4.48 that "one compliant method to preserve and complement existing historic resources \*\*711 \* \* \* is to incent redevelopment of a vacant surface parking lot in order to catalyze reinvestment in the surrounding decaying historic structures."

The city did not make the implicit interpretations of Policy 4.48 that Guardian ascribes to it. Focusing on the step-down allowances within the District, the city stated that the 200-foot height limits were "compatible with the existing scale and character" of the District. However, the city did not address the "scale and character" of existing buildings in the District or how the new heights were compatible. Instead, the city found "the issue of consistency is best left to the Landmarks Commission who remain charged \*780 with reviewing future development proposals on that site and elsewhere in the historic district." Although that discussion does suggest that the city made an implicit interpretation of Policy 4.48, it is not the one suggested by Guardian. The city's findings more logically suggest that it interpreted Policy 4.48 to require the new heights be compatible with the "scale and character" of the existing urban fabric and historic resources.

It is the city's findings pertaining to the step-down allowances and its related implicit interpretation that LUBA found inadequate, explaining that the city failed to describe the established urban fabric, the existing historic resources, or how the 200-foot maximum height "preserve[s] and complement[s]" those historic resources. LUBA also stated that the city could not rely on later Historic Landmarks Commission review of individual development proposals as a way for CC2035 to currently comply with Policy 4.48. LUBA's remand is compatible with the city's implicit interpretation of Policy 4.48, and, thus, LUBA did not err in the manner argued by Guardian.

[4] [5] [6] In its third and fourth assignments of error, Guardian asserts that LUBA misunderstood or misapplied its substantial evidence standard of review when it concluded that the city's findings that it complied with Policy 4.48 were not supported by an "adequate factual base," as required by Goal 2.<sup>3</sup> In addressing Guardian's argument, "[w]e review 'LUBA's application of the substantial evidence rule for legal correctness and do[ ] not review the evidence independently for substantiality.'" *Columbia Pacific*, 289 Or. App. at 756, 412 P.3d 258 (quoting *Reinert v. Clackamas County*, 286 Or. App. 431, 446, 398 P.3d 989 (2017)). "Thus, where LUBA 'properly articulates the substantial evidence standard of review, we will affirm unless the evidence is so at odds with [LUBA's] evaluation that we can infer that [LUBA] misunderstood or \*781 misapplied the proper standard.'" *Id.* (quoting *Barkers Five, LLC v. LCDC*, 261 Or. App. 259, 348, 323 P.3d 368 (2014) (brackets in *Columbia Pacific*)).

Here, LUBA correctly articulated its standard of review, and Guardian does not argue otherwise. Rather, Guardian argues that "the record evidence is so at odds with LUBA's evaluation" that LUBA clearly misapplied its standard of review. That is so, argues Guardian, because the record, when viewed as a whole, contains substantial evidence that the city considered all aspects of Policy 4.48 in adopting the height limits. Guardian supports its argument with record citations, primarily to hearing testimony and statements by the city commissioners and the mayor.

Applying our standard of review, we conclude that nothing in the record is "so at odds with" LUBA's decision that we can infer that LUBA misunderstood or misapplied the substantial evidence standard. LUBA explained that none of the evidence cited by the city addressed the "within the established urban fabric" text in the policy or supported a conclusion that the 200-foot maximum height "preserve[s] and complement[s] historic resources." None of the evidence cited by Guardian requires a different conclusion. Significantly, as pointed out by LUBA, and as addressed below, \*\*712 301 Or. App. at 782-84, 458 P.3d at 712-13, the change to a 200-foot maximum height "was introduced and discussed at the very end of a multi-year planning process, prior to which nearly all of the focused testimony focused on a maximum 125 or 160-foot height." LUBA's order demonstrates that LUBA understood and correctly applied its standard of review.

Finally, we reject Guardian's argument that LUBA applied a more exacting standard of review than it should have, because

the city was making a legislative land use decision, and not a quasi-judicial one. First, the city did not identify conflicting policies and then make a decision that harmonized or chose between those conflicting policies. In other words, it did not make an interpretation of its plan or regulations to which LUBA was required to defer and, thus, such a decision was not on review at LUBA. Second, we conclude that LUBA correctly articulated the standards of *\*782* review for a legislative land use decision and applied those standards to its review of the city's decision.

Accordingly, we affirm LUBA's remand of Ordinance 189000 on Guardian's petition.

## 2. PCP Citizen Involvement Program Goals

[7] We next address Restore Oregon's cross-petition, which also concerns the city's adoption of the 200-foot height limits in the District. Restore Oregon argues that the city failed to comply with the PCP citizen involvement program goals when it adopted those heights, and that LUBA erred in concluding otherwise. LUBA summarized the process that led to the adoption of the 200-foot height limitations:

"The 200-foot height limit was proposed at the end of an almost ten-year process that, in part, considered new height limits in the District. The city's planning staff initially developed a concept plan for updates to the existing Central City Plan. The concept plan became a discussion draft of the CC 2035 plan, and the city's Planning and Sustainability Commission (PSC) held two public hearings and nine work sessions on the draft plan. That process resulted in the PSC's recommended draft plan in June 2017, which recommended for the entire District 125-foot maximum building heights with no bonuses available.

"The city council held several public hearings on the draft plan between September 2017 through April 2018. During the March 22, 2018 city council meeting, the city council accepted public testimony on the proposed CC 2035 height limits. Prior to that meeting, height limits of 125 feet had been the focus of much of the discussion, although some discussion focused on 160-foot height limits. The mayor proposed an amendment (C1) to the previously proposed plan to increase the maximum building height limit on the west half of Block 33 to 160 feet. Thereafter, a city commissioner proposed an amendment (C2) to increase the maximum building height on the west half of Block 33 to 200 feet, and to increase the Floor Area Ratio (FAR) on the

entire block from 6:1 to 9:1. No vote was called on either motion.

"At the next city council meeting on April 4, 2018, another commissioner proposed an amendment (C3) to increase the maximum height on the west half of Block *\*783* 33 to 160 feet through bonus height available through an affordable housing bonus. At the conclusion of that meeting, the city council passed the C1 amendment that adopted a maximum building height on the west half of Block 33 of 160 feet.

"A further amendment that would allow maximum building heights of 200 feet was noticed on the agenda for the city council's May 24, 2018 meeting. Opponents of the proposed new amendment and a 200-foot height limit submitted letters in opposition, but no public testimony was taken at the May 24, 2018 meeting. At that meeting, the same commissioner who proposed the C2 amendment proposed a new amendment that would (1) allow a maximum building height of 200 feet on the North Blocks, with no bonus height available, and (2) allow base building height for Block 33 of 125 feet but allow an affordable housing bonus building height of up to 200 feet on the west half of Block 33, and increase the base FAR to 9:1 on all of Block 33 if all floors above the ground floor on the west *\*\*713* half of the block are developed with a residential use. An oral vote was taken and the amendment passed. At its meeting on June 6, 2018, the city council voted to adopt CC 2035."

(Record citations omitted.)

The city made written findings with respect to the PCP citizen involvement program goals. Those findings summarized the different ways that community involvement was sought and obtained during the process that led to the final recommended draft of CC2035. The city then concluded that "the plan and this public engagement process are consistent with Goals 2.A - 2.G of the [PCP]."

At LUBA, Restore Oregon argued that the city's decision failed to comply with Goals 2.C and 2.E when it did not allow public testimony at the May 24, 2018, city council meeting, at which the 200-foot maximum height limit was reintroduced, discussed, and adopted. LUBA rejected Restore Oregon's argument. First, LUBA accepted, as plausible, the city's implicit interpretation of Goal 2.E "to not require the city to accept public testimony in response to every motion or amendment made on a legislative proposal in order to satisfy the requirement to allow 'meaningful participation.'" LUBA then stated that "[n]othing in Goal *\*784* 2.E suggests that

458 P.3d 703

closing the final hearing on a legislative amendment to the comprehensive plan to testimony is inconsistent with Goal 2.E.” Likewise, LUBA agreed with the city that “nothing in Goal 2.C requires the city to accept public testimony in a legislative proceeding, in response to a motion or amendment.”

On review, Restore Oregon asserts that LUBA erred, because the city’s process violated Goals 2.C and 2.E.<sup>4</sup> Restore Oregon argues that the city failed to provide a “meaningful opportunity to participate in and influence *all stages* of planning and decision making,” as required by Goal 2.E (emphasis Restore Oregon’s), when the city did not take public testimony at the May 24, 2018, city council meeting.<sup>5</sup> Restore Oregon also argues that LUBA erred in deferring to the city’s implicit interpretation of that goal, because that interpretation reads “meaningful and critical operative terms out of these policies and denied those most affected by this last-minute major amendment any opportunity to respond[.]”

The city responds that it complied with its **citizen involvement** program, consistent with Statewide Planning **Goal 1**, and that Restore Oregon has not pointed to any law or authority that provides that the city was required to reopen the record and take additional testimony before voting on the amendment. The city further responds that it plausibly interpreted Goals 2.C and 2.E to not require community participation after every amendment made during the final deliberations. As context, the city points out that \*785 PCC 33.740,<sup>6</sup> which governs the city’s process for legislative land use decisions, allows the city council to modify proposals after public testimony has been heard and closed.<sup>7</sup>

**\*\*714** In addressing Restore Oregon’s argument, we first point out what citizen involvement the city allowed with respect to the District building height limits. As acknowledged by Restore Oregon, setting the building height limits in the District was the subject of a significant amount of public testimony prior to the May 24, 2018, city council meeting. Restore Oregon took the position that buildings taller than 125 feet should not be allowed and asserted that, even at that height, it would be difficult to design a building that would be compatible with the District. Also, parties submitted letters in opposition to the amendment to make the heights 200 feet before the May 24, 2018, city council meeting. Restore Oregon’s argument narrows to this: The city’s failure to take *further* public testimony on height limits in the District *during* the May 24, 2018, meeting violated the

PCP citizen involvement program goals. With respect to that issue, we conclude that the city plausibly interpreted the PCP goals as not requiring that further public testimony.

[8] [9] We, like LUBA, must defer to the city’s interpretation of its comprehensive plan and land use regulations, unless we determine that the city’s interpretation is inconsistent with the express language, purpose, or underlying policy of the comprehensive plan or land use regulation. *Siporen*, 349 Or. at 259, 243 P.3d 776. That standard of review is “highly deferential” to the city, and the “existence of a stronger or more logical interpretation does not render a weaker or less \*786 logical interpretation ‘implausible.’ ” *Mark Latham Excavation, Inc. v. Deschutes County*, 250 Or. App. 543, 555, 281 P.3d 644 (2012). Our task then is to determine whether the city’s implicit interpretation that Goals 2.C and 2.E did not require it to take further public testimony plausibly accounted for the text and context of those goals.

Goal 2.C provides:

**“Value community wisdom and participation.** Portland values and encourages community and civic participation. The City seeks and considers community wisdom and diverse cultural perspectives, and integrates them with technical analysis, to strengthen land use decisions.”

(Boldface in original.)

Goal 2.E provides:

**“Meaningful participation.** Community members have meaningful opportunities to participate in and influence all stages of planning and decision making. Public processes engage the full diversity of affected community members, including under-served and under-represented individuals and communities. The City will seek and facilitate the involvement of those potentially affected by planning and decision making.”

(Boldface in original.)

Restore Oregon’s arguments are directed to the text of Goal 2.E, asserting that “meaningful opportunities to participate in and influence all stages of planning and decision making” required the city to take public testimony at the May 24, 2018, hearing. Neither Goal 2.E nor any other goal required public testimony at that hearing. The city gave the community, including Restore Oregon, meaningful opportunity to participate and influence the city’s decision at all stages of the CC2035 planning, including on height

458 P.3d 703

limits for the District, as documented by the city in the record. LUBA did not err in deferring to the city's interpretation of Goals 2.C and 2.E and in concluding that, under that interpretation, the city met those goals.

Accordingly, we affirm LUBA's order with respect to Restore Oregon's cross-petition.

**\*787** B. *The Southern Triangle New Building Height Limits*  
We finally turn to OSB's challenge to the new building height limit of 60 feet that CC2035 places on part of its property in the Southern Triangle to protect a scenic view. In three assignments of error, OSB argues that LUBA erred in concluding that the city's ESEE analysis was adequate to support the city's decision. Before addressing those assignments of error, we first provide **\*\*715** additional legal and factual context for OSB's arguments.

#### 1. *The City's ESEE analysis*

Statewide Planning Goal 5 is a land use planning goal to protect natural resources and conserve scenic and historic areas and open spaces. OAR chapter 660, division 23, provides the procedures and criteria for applying Goal 5 when amending a comprehensive plan and land use regulations. Because the city sought to amend its comprehensive plan with respect to its inventory of scenic resources, the city was required to comply with [OAR 660-023-0030](#) (inventory process), [OAR 660-023-0040](#) (ESEE decision process), and [OAR 660-023-0050](#) (programs to achieve Goal 5). [OAR 660-023-0230\(2\)](#).

As part of the inventory process, the city updated its Central City Scenic Resources Inventory to include the "Viewpoint Boundary" as a resource site. The Viewpoint Boundary includes scenic resources of "[v]iews, viewpoints, view streets, scenic corridors, visual focal points and scenic sites located within the CC2035 boundary" and "also views from viewpoints located outside of the CC2035 boundary," which were included "because development or vegetation within the CC2035 boundary may impact the view." The city mapped and evaluated those scenic resources to determine which were "significant" and assigned quality grading to each resource. As relevant here, river viewpoints were ranked as Group A, B, or C. The viewpoint at issue here—SW46—has a view of Mt. Hood from the Tilikum Crossing Bridge and was ranked with high scores and placed in Group A.

For the ESEE decision process, under [OAR 660-023-0040](#), the city was required to "develop a program to **\*788** achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use." [OAR 660-023-0040\(1\)](#). "ESEE consequences" are "the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use." [OAR 660-023-0010\(2\)](#). The city was then required to "determine whether to allow, limit, or prohibit identified conflicting uses for significant resources sites" based on the ESEE analysis. [OAR 660-023-0040\(5\)](#). Here, the city's ESEE analysis is lengthy and detailed, so we only summarize the portions most relevant to OSB's arguments.

The city identified the conflicts with the significant scenic resources generally as "the height, mass, extent and location of structures and vegetation." The city then conducted an analysis of the ESEE consequences of those conflicting uses. We only discuss the city's economic analysis because that is the focus of OSB's arguments. Part of the economic analysis sought to determine the reduction in development value and job capacity that would result from restricting building height in view corridors. The city set out a methodology that identified specific conflicting uses by comparing the view corridor needed to protect a view with currently allowed building heights and mass in that corridor. To do so, the city identified allowable building heights, floor to area ratios (FARs), and average lot coverage percentages for 10 different city districts. However, because some areas did not have current zoning with height limits set, the city used assumptions. For the Southern Triangle, the city used assumptions of 200-foot base height, 3:1 FAR, and 80 percent lot coverage, which the city explained was a conservative approach. The city also explained that it applied a taller base height to the Southern Triangle than elsewhere in the Central Eastside because "there are larger 'super' blocks and it would be possible to reconfigure these sites to have tall towers on portions of the site."

Applying that analysis, the negative economic effect of protecting views of Mt. Hood from the Willamette River **\*789** were particularly high because those view corridors were not previously protected with building height limits. The analysis identified SW46 as one of the views of Mt. Hood from the river that had the least negative economic effect because "[m]any of the [buildable] sites in the Southern Triangle are larger than the standard block size in

458 P.3d 703

Portland. This provides flexibility in designing buildings and moving **\*\*716** the tallest parts of buildings outside of view corridors.”

The ESEE report then made general ESEE recommendations. “The general ESEE recommendation \* \* \* [wa]s intended to balance across the factors to optimize the positive, negative and neutral consequences associated with conflicting uses. The purpose of the general ESEE recommendation is to set policy direction for categories of scenic resources.” For Group A river views of Mt. Hood, the general recommendation was to prohibit structures or vegetation that blocks or substantially encroaches on the view. The ESEE then took those general recommendations and adjusted and clarified them as to the site-specific views.

SW46 received a site-specific decision to “[p]rohibit conflicting structures and vegetation within [the] view corridor to Mt. Hood” and “[l]imit conflicting structures and vegetation within [the] view corridor to Willamette River, Ross Island Bridge, and South Waterfront skyline.” (Emphases in original.) The report explained:

“This view from the western bump-out on the south side of Tilikum Crossing looks south up the Willamette River toward the Ross Island Bridge. Mt Hood is also visible. Ross Island, the South Waterfront, the West Hills, multiple buttes, and the riverbank are secondary focal features. Tilikum Crossing is one of the few bridges with separated bicycle and pedestrian lanes as well as pedestrian bump-outs, creating a safe place for viewers to stop and enjoy the view. The view from CCSW46 is ranked Group A.

“The general ESEE recommendation for Group A views is to prohibit conflicting structures and vegetation within view corridors to Mt Hood, Mt St Helens, or bridges, and to limit conflicting structures and vegetation within view corridors to other primary focal features. Due to the location of this viewpoint on Tilikum Crossing out over the Willamette River, there’s no potential for structures or vegetation to **\*790** block the view of the Willamette River, Ross Island Bridge, or the South Waterfront skyline. However, structures or vegetation on the east side of the river have the potential to block a view of Mt Hood. This viewpoint was included in the larger analysis of views of Mt Hood from bridges and the Greenway Trail. The results of that economic analysis for views of Mt Hood from the Willamette River results in a ESEE recommendation for CCSW46 to prohibit conflicting uses within the view corridor to Mt Hood (shown in red). The general ESEE

recommendation stands for the river, bridge, and skyline (shown in yellow).”

The city’s program to achieve the protection for SW46 included applying a scenic overlay zone. With respect to OSB’s property, approximately two of its three acres are in the scenic overlay and are limited to 60-foot building heights with no bonus height available. The other acre of OSB’s property, which is outside of the overlay zone, is limited to 100-foot building heights with an available bonus of up to 250 feet. In addition, CC2035 amended the zoning of OSB’s property from Heavy Industrial (IH) to Central Employment (EX), which prohibits residential uses.

## 2. LUBA’s order

At LUBA, OSB argued that the city’s ESEE analysis was flawed and failed to comply with Goal 5 and its implementing regulations. OSB argued that the city used an impermissible “area-wide approach” in its ESEE analysis that was rejected as insufficiently specific in *Columbia Steel Castings Co. v. City of Portland*, 314 Or. 424, 840 P.2d 71 (1992) (*Columbia Steel*). LUBA rejected that argument, distinguishing the impermissible ESEE analysis used in *Columbia Steel* from that used here. Further, LUBA determined that the city’s ESEE analysis complied with OAR 660-023-0040(4), because that regulation allows the approach used by the city to analyze separate districts or subareas, including the Southern Triangle, within the single Viewpoint Boundary resource site.

OSB also argued that the ESEE analysis impermissibly used different assumptions for the Southern Triangle, resulting in an undervaluation of the economic effects of protecting the SW46 corridor. LUBA rejected that argument, **\*791** agreeing with the city that the **\*\*717** ESEE analysis accurately estimated the economic effects. LUBA agreed with the city that the city’s assumptions in its analysis estimated a greater economic effect in the Southern Triangle than if the city had used the assumptions that it applied in other areas of the Central Eastside.

Finally, as relevant on review, OSB argued at LUBA that the city’s ESEE analysis was inaccurate and underestimated the economic effects on OSB’s specific property. In particular, OSB argued that the substantial environmental remediation costs that will be incurred to develop the property makes development cost-prohibitive with the CC2035 restrictions on building heights and prohibition on residential uses. LUBA also rejected that argument, concluding that

“[n]othing in OAR 660-023-0040(4) \* \* \* requires the local government to consider the cost of environmental remediation for properties with conflicting uses, or requires the level of specificity OSB argues is required. In fact, the rule allows the city to analyze the ESEE consequences based on the entire resource site. Accordingly, OSB’s arguments provide no basis for reversal or remand.”

On review, OSB argues that LUBA erred with respect to those three issues. We address each in turn below.

### 3. OSB’s Petition on Review

[10] OSB first argues that LUBA misapplied the applicable law when it determined that the city’s ESEE analysis was consistent with Goal 5 and OAR 660-023-0040. In particular, OSB argues that the city’s analysis was inadequate under the Supreme Court’s opinion in *Columbia Steel*. The city argues that *Columbia Steel* has no application because it was decided under OAR 660, division 16, which does not control here; rather, OAR 660, division 23 controls. We agree with the city that *Columbia Steel* has limited applicability, because its holding was based, at least in part, on rule text that is not in OAR 660, division 23. However, because it provides useful framing for OSB’s argument about the specificity required for an ESEE analysis, we begin with a short discussion of that case.

\*792 In *Columbia Steel*, the city had conducted an ESEE analysis for a part of the Columbia Corridor that encompassed 14,000 acres. The city had divided that area into five subareas and then identified and inventoried 36 resource sites within those subareas. The ESEE analysis was conducted on each of the five subareas, and not on a resource-site by resource-site basis. 314 Or. at 426-28, 840 P.2d 71. The petitioner argued that the analysis was not sufficient because it was not location specific. The court held that the then-applicable rule in OAR 660, division 16, “requires that a conflicting use and an ESEE analysis be done for each resource site.” *Id.* at 431, 840 P.2d 71. To meet that requirement, the court stated that an ESEE analysis must “contain enough information on impacts that resource sites and conflicting uses will have on each other to permit the responsible jurisdiction to have ‘reasons to explain why decisions are made for specific [resource] sites.’ ” *Id.* at 432, 840 P.2d 71 (quoting OAR 660-16-005 (1990)). The court remanded the case to LUBA to determine in the first instance if the ESEE was specific enough with respect to the particular resource site at issue to meet that requirement.

Here, OSB argues that the city’s ESEE is inadequate under *Columbia Steel*, because the city designated the entire Viewpoint Boundary as a resource site and because the city determined economic impact based on averages for a district, instead of using the individual characteristics for affected property. OSB argues that LUBA erred when it concluded that *Columbia Steel* was distinguishable and that the city had complied with OAR 660, division 23.

We conclude that LUBA did not err. As noted, the holding OSB relies on in *Columbia Steel* is of limited applicability because it is based on inapplicable rule text. However, even putting that aside, OSB is mistaken when it asserts that *Columbia Steel* held that an ESEE analysis can never use area-wide considerations. Rather, that case held that an ESEE analysis needs to contain specific enough information so that the local government can conduct a meaningful analysis of the relative effects of the conflicting uses and the identified resource site on each other. \*\*718 The specificity that will be required is thus dependent upon what is being \*793 analyzed. Here, LUBA concluded that the city’s ESEE was specific enough to comply with Goal 5 and its implementing regulations, and we agree.

Although the city defined the Viewpoint Boundary as the resource site, the city, in fact, conducted analyses on a type-of-view basis (for example, Group A river views of Mt. Hood) to determine general recommendations, and refined those recommendations on a site-specific basis, to determine whether to prohibit, limit, or allow conflicting uses relative to a particular view corridor. That analysis included determining the negative economic effect of limiting conflicting uses within particular view corridors, including SW46.

Notably, OSB does not argue that that *process* was not specific enough; rather, OSB argues that the numbers used by the city in its economic-effect analysis were not specific enough because the city used district-wide average numbers instead of numbers specific to each property affected by a view corridor. However, nothing in Goal 5, the implementing regulations, nor *Columbia Steel* required the city to conduct such a narrowly-tailored analysis, and OSB points to nothing in that law that does require it. In particular, OAR 660-023-0040(4) contemplates that an ESEE analysis may be performed in a way that groups conflicting uses that are similarly situated:

“The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single

analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource.”

Here, the city’s ESEE analysis was specific enough to comply with Goal 5 and its implementing regulations, and OSB has not pointed to anything in the law that supports its position that something more property-by-property specific was required.

**\*794** [11] In a second assignment of error, OSB argues that LUBA erred in concluding that it was permissible for the city to use different assumptions for base height, FAR, and lot coverage numbers in the economic-effects analysis for the Southern Triangle than assumptions used elsewhere in the Central Eastside, or than the averages of actual limits used for other districts. OSB also argues that the city’s assumptions and values used for the Southern Triangle were factually flawed.

[12] OSB’s arguments reduce to a substantial evidence or substantial reason challenge to the city’s decision to use the assumptions for the Southern Triangle that it did.<sup>8</sup> *Michaelson/NWDA v. City of Portland*, 296 Or. App. 248, 259-60, 437 P.3d 1215, *rev den*, 365 Or. 556, 451 P.3d 608 (2019) (“ ‘Substantial reason’ is a component of the substantial evidence standard of review and requires an explanation connecting the facts of the case and the result reached.” (Internal quotation marks omitted.)). As set out above, we do not conduct a substantial evidence or reason review for ourselves. Rather, we review whether LUBA properly articulated and applied its own standard of review. *Columbia Pacific*, 289 Or. App. at 756, 412 P.3d 258. LUBA’s standard of review was to determine “[i]f, viewing the record as a whole, a reasonable person could make the disputed factual finding.” *Id.* at 755, 412 P.3d 258 (internal quotation marks omitted).

With respect to OSB’s challenge, LUBA stated:

“We agree with the city that the ESEE analysis accurately estimated the economic impact to properties in the Southern Triangle, including OSB’s property. OSB has **\*\*719** not explained why the ESEE’s assumptions regarding maximum building height, FAR, lot coverage,

and dollars and jobs lost are incorrect or inaccurate for the Southern Triangle, or for OSB’s property. In fact, we agree with the city that the ESEE estimated the economic impact to properties in the Southern Triangle that would be affected by protecting SW46 based on assumptions that led to a **\*795** conclusion of greater economic impact to those properties than if the ESEE used different assumptions that were applied in other areas of the central eastside.”

OSB argues that LUBA’s analysis is flawed because it was the city’s burden to justify using a different methodology for the Southern Triangle, OSB showed that the base height numbers used by the city were inaccurate and based on flawed assumptions, and the ESEE assumptions were not more conservative than other districts. We reject those arguments. First, LUBA did not place any burden on OSB, except to explain its factual position on review and to point to evidence in the record to support it, which was appropriate. Second, OSB’s arguments to us about LUBA’s decision are directed only at the substantiality of the evidence in the record to support the city’s findings and decision. That, as explained, is not our role. With regard to whether LUBA misunderstood or misapplied its application of its own substantial evidence standard of review, which is the question we must answer on review, OSB has not argued or demonstrated that LUBA erred, and we conclude that LUBA did not err in applying its own standard of review.

[13] Finally, in a third assignment of error, OSB argues that the city erred in failing to take into consideration the evidence OSB submitted to the city that demonstrated that the ESEE analysis underestimated the economic effects on OSB’s property. Specifically, OSB argues that the city failed to consider the substantial environmental remediations costs to redevelop OSB’s property and the other development constraints that apply to OSB’s property, including a river overlay setback, greenway trail, and other easements, which combine to make redevelopment cost prohibitive at the 60-foot height limit set to protect the view. OSB argues that, if the city had analyzed that true effect of protecting SW46, the negative economic-effect calculation would have been significantly higher. OSB further argues that LUBA erred in concluding that the city was not required to consider those issues, because [OAR 660-023-0060](#) requires a local government to provide “opportunities for citizen involvement during the inventory and ESEE process,” and [OAR 660-023-0040\(4\)](#) requires the ESEE to include all consequences that “could” result.

**\*796** We begin with OSB's arguments regarding citizen involvement. [OAR 660-023-0060](#) provides:

"Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances."

Here, OSB does not argue that the city failed to provide proper notice or failed to comply with its citizen involvement program or any other statute, rule, or local ordinance. OSB's argument is that the city did not use or respond to the information that OSB submitted in its ESEE analysis. However, the text of [OAR 660-023-0060](#) contains no such requirement, and OSB does not provide a basis on which we could impose such a requirement. Moreover, as the city points out, the city documented and considered OSB's public testimony that the building height restriction, along with other constraints on the property, would make redevelopment impossible. The city, however, disagreed with OSB's analysis and determined that redevelopment was possible because 0.9 acres of OSB's property, the size of a full city block, is located outside of the view corridor, and **\*\*720** other constraints, and can be built up to 250 feet with bonus height.

[14] We next address OSB's argument with respect to [OAR 660-023-0040\(4\)](#). As stated by OSB, that rule provides, in part, that "[l]ocal governments shall analyze the ESEE

consequences that *could* result from decisions to allow, limit, or prohibit a conflicting use." (Emphasis added.) However, as already discussed, that provision goes on to provide that the analysis need not be as specific as OSB contends:

"The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. **\*797** The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource."

[OAR 660-023-0040\(4\)](#). OSB does not explain why it believes the text of that rule requires the city to respond, in the ESEE analysis, to the evidence it submitted on its property-specific environmental and development constraints. Accordingly, we also reject OSB's third assignment of error.

In sum, because OSB has not explained how LUBA erred as a matter of law and because LUBA correctly applied its standard of review in concluding that the city's ESEE decision was supported by substantial evidence in the record, we affirm LUBA's order with respect to OSB's petition.

Affirmed on petitions and cross-petition.

#### All Citations

301 Or.App. 769, 458 P.3d 703

#### Footnotes

- 1 Cross-petitioners include Restore Oregon, Bosco-Milligan Foundation/ Architectural Heritage Center, Oregon Nikkei Endowment, Portland Chinatown History Foundation/Portland Chinatown Museum, and Peggy G. Moretti. For ease of reference, cross-petitioners are referred to throughout this opinion as Restore Oregon.
- 2 Goal 2 calls for "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." (Boldface omitted.)
- 3 In its third assignment of error, Guardian also argues that the city adequately considered Policy 4.48, citing to testimony in the record to support that argument. To the extent Guardian is arguing that we should determine for ourselves whether substantial evidence supported the city's decision, we reject that argument, because it is not our role to do so on review of a LUBA order. *Columbia Pacific*, 289 Or. App. at 756, 412 P.3d 258. Rather, our role is to determine if LUBA correctly applied its own substantial evidence standard of review. *Id.*
- 4 Restore Oregon also suggests that the city violated Goal 2.G and PCC 3.02.040(G). Restore Oregon did not raise at LUBA that the city violated PCC 3.02.040. *Barnes v. City of Hillsboro*, 239 Or. App. 73, 81, 243 P.3d 139 (2010) ("Generally, a party must raise an issue to LUBA to preserve it for judicial review." (Internal quotation marks omitted.)). In addition, Restore Oregon did not develop an argument at LUBA, or now on review to us, that applies to the text of Goal 2.G. See

*id.* (Neither a court or LUBA are “obligated to make or develop a party’s arguments when the party does not endeavor to do so itself.”). As a result, we do not address those provisions.

5 We note that Restore Oregon asserts several times that there was no prior notice of the amendment, calling it a “surprise” amendment. However, Restore Oregon also acknowledges that the noticed agenda for the May 24, 2018, meeting provided that the amendment would be considered, and, as a result, interested parties submitted written letters in opposition of the amendment in advance of the meeting.

6 PCC 33.740.030(C) provides:

“Council decision. At the conclusion of its hearing, the Council may adopt, modify, or give no further consideration to the recommendation. If the decision is to adopt a Code or policy change which was originally authorized by ordinance, the Council must enact its decision by ordinance.”

7 The city also argues that Restore Oregon is claiming that the city made a procedural error and, thus, had to demonstrate that such error prejudiced Restore Oregon’s substantial rights. See [ORS 197.850\(9\)\(a\)](#) (“The court shall reverse or remand [LUBA’s] order only if it finds: (a) The order to be unlawful in substance or procedure, but error in procedure is not cause for reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced thereby.”). Because we conclude that there was no error, we do not address that argument.

8 OSB also suggests that the city was prohibited by [OAR 660-023-0040](#) from using different values in the Southern Triangle as compared to other districts or subdistricts. OSB, however, has not developed an argument that explains how that is so, nor did OSB preserve such an argument below. Thus, we do not address it further. [Barnes, 239 Or. App. at 81, 243 P.3d 139.](#)