

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

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

Attendee Name	Title	Status	Arrived
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

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

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 an 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,

James White
Assistant Planner

Marci Baker
Chair