

## PLANNING COMMISSION AGENDA

April 10, 2014

7 p.m. Regular Meeting

Newberg Public Safety Building

401 E. Third Street

- I. **CALL MEETING TO ORDER**
- II. **ROLL CALL**
- III. **PUBLIC COMMENTS** (5 minute maximum per person)
  1. For items not listed on the agenda
- IV. **CONSENT CALENDAR** (items are considered routine and are not discussed unless requested by the commissioners)
  1. Approval of January 9 and February 13, 2014 Planning Commission Meeting Minutes
- V. **PLANNING COMMISSIONER TRAINING SESSION**
- VI. **ITEMS FROM STAFF**
  1. Update on Council items
  2. Other reports, letters, or correspondence
  3. Next Planning Commission Meeting: May 8, 2014
- VII. **ITEMS FROM COMMISSIONERS**
- VIII. **ADJOURN**

FOR QUESTIONS PLEASE STOP BY, OR CALL 503-537-1240, PLANNING & BUILDING DEPT. - P.O. BOX 970 - 414 E. FIRST STREET

### ***ACCOMMODATION OF PHYSICAL IMPAIRMENTS:***

*In order to accommodate persons with physical impairments, please notify the City Recorder's office of any special physical accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact the city recorder at (503) 537-1283. For TTY services please dial 711.*

**CITY OF NEWBERG PLANNING COMMISSION MINUTES  
THURSDAY, JANUARY 9, 2014  
7:00 PM REGULAR MEETING  
NEWBERG PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

**I. CALL MEETING TO ORDER**

Vice Chair Art Smith called the meeting to order at 7:00 PM.

**II. OATHS & AFFIRMATION OF OFFICE FOR NEW COMMISSIONERS**

Mayor Bob Andrews administered the Oaths and Affirmation of Office for Commissioners Art Smith, Allyn Edwards and Matthew Fortner to serve on the planning commission.

**III. ROLL CALL**

|                  |                    |                       |            |
|------------------|--------------------|-----------------------|------------|
| Members Present: | Cathy Stuhr, Chair | Art Smith, Vice-Chair | Jason Dale |
|                  | Allyn Edwards      | Matt Fortner          | Gary Bliss |
|                  | Philip Smith       |                       |            |

|                 |  |                               |
|-----------------|--|-------------------------------|
| Members Absent: | Sulamita Barbiyeru, student commissioner | Mayor Bob Andrews, ex-officio |
|-----------------|--|-------------------------------|

|                |   |                                 |
|----------------|---|---------------------------------|
| Staff Present: | Barton Brierley, Planning & Building Director | Steve Olson, Associate Planner  |
|                | DawnKaren Bevill, Minutes Recorder            | Jessica Pelz, Associate Planner |

|                 |   |
|-----------------|---|
| Others Present: | John Bridges, Curtis Goodwin, Jerry Dale, Gerald Logan, Craig Smith, Mike Jackson and David Brittell. |
|-----------------|---|

**IV. ELECTION OF CHAIR AND VICE-CHAIR:**

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|--|
| <b>MOTION:</b> Smith/Edwards nominated Commissioner Art Smith as Chair and Commissioner Gary Bliss as Vice Chair. Motion carried (7 Yes/0 No). |
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**V. PUBLIC COMMENTS**

Chair Stuhr opened and closed the public comments as no one chose to comment.

**VI. CONSENT CALENDAR**

Approval of the planning commission meeting minutes for December 12, 2013.

|   |
|---|
| <b>MOTION:</b> Stuhr/Bliss to approve the Consent Calendar including the planning commission minutes for December 12, 2013. Motion carried (7Yes/0 No). |
|---|



to ensure compatible land uses around airports. He urged the committee to deny a conditional use permit for a daycare center at this location.

Commissioner Philip Smith referred to the airport overlay map and stated in terms of compatibility there are already far more than 31 children in the zone and more housing on the other side of the airport. Mr. Dale stated the mobile home park is for 55 and over with limited children. Commissioner Smith asked Mr. Dale his opinion regarding the hold-harmless condition Mr. Bridges suggested. Mr. Dale replied he would not turn it down if the daycare is approved.

Chair Smith asked if there was any other written correspondence. Mr. Brierley handed out the letter submitted by Mr. Jerry Dale and Ms. Pelz read a letter received on January 7, 2014, from Roger Anderson, President of Vista Balloon Adventures, Inc.

Chair Smith asked Mr. Bridges to come forward for rebuttal. Mr. Bridges said the city has worked with the airport and the airport has a master plan. He pointed out Calvary Church has a daycare and Sunday school in the area of the airport and so does the Chehalem Park & Recreation District buildings. Also, homes have been developed on Airport Way next to the airport.

Chair Art Smith closed public testimony at 7:55 PM.

Ms. Pelz gave final comments from staff, stating the location can be reasonably compatible with the uses and is consistent with the code.

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| <p><b>MOTION:</b> Edwards/Bliss moved to adopt Order No. 2014-15, replacing the condition to conduct a noise study with a hold-harmless agreement. Motion carried (6 Yes/0 No).</p> |
|---|

Chair Smith recessed for five-minutes at 8:05 PM.

|           |   |                           |
|-----------|---|---------------------------|
| <b>2.</b> | <b>APPLICANT:</b> Gerald Logan (Classic Auto Sales)                   |                           |
|           | <b>REQUEST:</b> Conditional use permit for auto sales in the C-3 zone |                           |
|           | <b>LOCATION:</b> 301 W. First Street                                  |                           |
|           | <b>TAX LOT:</b> 3219AB-4500 & 4700                                    |                           |
|           | <b>FILE NO.:</b> CUP-13-005   | <b>ORDER NO.:</b> 2014-14 |
|           | <b>CRITERIA:</b> 15.225.060, 15.220.050                               |                           |

Chair Smith opened the quasi-judicial hearing; read ORS 197.763; and called for abstentions, bias, ex-parte contact, or objections to jurisdiction; none were heard.

Mr. Steve Olson, associate planner, presented the staff report accompanied by a PowerPoint presentation (see official meeting packet for full report). Staff recommended adoption of Order No. 2014-14.

Chair Art Smith opened public testimony beginning with proponents at 8:29 PM.

Mr. Craig Smith and Mr. Mike Jackson shared they are car collectors who found an avenue for those who collect, buy, sell and trade old cars in a safe manner by starting their own company. They have a successful track record in business and will be in Newberg for a long time as it is a vibrant community.

Chair Smith closed the public testimony at 8:39 PM.

Mr. Olson gave the final recommendation from staff, with one modification to the condition 4-C regarding fencing to insert the following language: *“If you install a fence then reuse existing fence post.”*

**MOTION:** P. Smith/Bliss moved to approve Order No. 2014-14 with the conditions in the staff report and modification. Motion carried (7Yes/ 0 No).

**VIII. ITEMS FROM STAFF**

1. Update on Council items

Mr. Brierley reported the Oregon Department of Land Conservation and Development (DLCD) staff has chosen to refer the south industrial urban growth boundary amendment to the DLCD for a hearing on February 13 or 14, 2014. The Terra Estates subdivision was appealed to the city council and the council affirmed the planning commission’s decision. The opponents have appealed and staff expects it will be sent to the Land Use Board of Appeals (LUBA). The zoning use table was also appealed to LUBA.

2. Other reports, letters, or correspondence

No items were brought forward.

3. The next planning commission meeting is scheduled for Thursday, February 13, 2014.

**IX. ITEMS FROM COMMISSIONERS**

No items were brought forward.

**X. ADJOURN**

Chair Smith adjourned the meeting at 8:47 PM.

**Approved by the Planning Commission on this 10<sup>th</sup> day of April, 2014.**

**AYES:**

**NO:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
*Planning Recording Secretary*

\_\_\_\_\_  
*Planning Commission Chair*

**CITY OF NEWBERG PLANNING COMMISSION MINUTES  
THURSDAY, FEBRUARY 13, 2014  
7:00 PM REGULAR MEETING  
NEWBERG PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

**I. CALL MEETING TO ORDER**

Chair Art Smith called the meeting to order at 7:00 PM.

**II. ROLL CALL**

Members Present:     Art Smith, Chair                             Jason Dale                             Allyn Edwards  
                           Matt Fortner                             Philip Smith                             Cathy Stuhr  
                           Mayor Bob Andrews, ex-officio

Members Absent:     Gary Bliss, Vice-Chair (excused)     Sulamita Barbiyeru, student commissioner (excused)

Staff Present:         Barton Brierley, Planning & Building Director     Steve Olson, Associate Planner  
                           DawnKaren Bevill, Minutes Recorder

Others Present:       Peter Fortner

**III. PUBLIC COMMENTS**

Chair Smith opened and closed the public comments as no one appeared to comment.

**VI. WORKSHOP: SUBDIVISION CRITERIA.**

Mr. Steve Olson, associate planner, presented the staff report accompanied by a PowerPoint presentation (see official meeting packet for full report). The workshop is to familiarize the planning commission with Newberg's existing subdivision criteria, the clear and objective legal requirements, and examples of the criteria. Mr. Olson gave background on the development code and how Newberg makes subdivision decisions. The criteria are the legal standards the city uses to make a decision on a subdivision application. State law requires city and county criteria and development standards for needed housing to be clear and objective. Staff also wants to ensure the city's subdivision criteria and development standards function well, clarifying them as needed and making it easier for the public and developers to understand the subdivision approval process. The commission discussed the general direction on potential revisions to the subdivision criteria and the framework of the criteria.

Commissioner Philip Smith suggested two tracks for reaching the purpose statement: (1) clear and legalistic, strict, and (2) the vaguer negotiated track, with perhaps a higher review process. After staff is finished with the draft, it may be advantageous for the planning commission to review it along with developers during a workshop session. Mayor Andrews agreed a town hall with developers would bring good feedback.

Commissioner Edwards stated costs associated with fees and permits can be expensive and suggested one fee to cover costs for Type-3 applications.

Commissioner Cathy Stuhr said the performance agreements section is very vague and asked staff to take another look at the language to consider changes to that section. She also suggested clarification on whether the city is accepting electronic documents and/or paper documents. Mr. Olson said the language should be updated. Commissioner Stuhr suggested stormwater be included under common improvements.

Mr. Olson added the next steps include a recommendation on what approach and options to pursue. Staff will return with a rough draft at a future workshop which could lead to initiating a code amendment and formal hearings.

**V. ITEMS FROM STAFF**

TIME – 8:14 PM

1. Update on Council items

Mr. Brierley reported he spent the day in Salem before the Land Conservation and Development Commission (LCDC) regarding the South Industrial Urban Growth Boundary (UGB). Unfortunately, it did not go well. Many detailed questions were asked and there was a lack of understanding by the LCDC on criteria for creating a UGB; they did not seem likely to recommend approval. The hearing was continued to March 13, 2014, in Coos Bay. One concept the commissioners could not grasp is the UGB is a long range plan for industrial lands that would be developed over time. There was much discussion with the commissioners about farm land impacts and staff showed detailed analysis and findings on farm land and why it would be included.

2. Other reports, letters, or correspondence

Mr. Brierley stated there will be training held on February 24, 2014, at 6:30 PM – 9:00 PM for committee members.

3. The next planning commission meeting is scheduled for Thursday, March 13, 2014.

**IX. ITEMS FROM COMMISSIONERS**

No items were brought forward.

**X. ADJOURN**

Chair Smith adjourned the meeting at 8:33 PM.

**Approved by the Planning Commission on this 10<sup>th</sup> day of April, 2014.**

**AYES:**

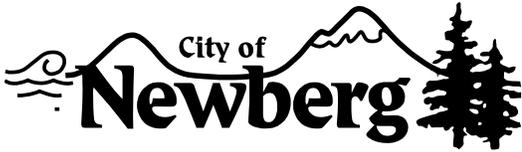
**NO:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
*Planning Recording Secretary*

\_\_\_\_\_  
*Planning Commission Chair*



**Planning and Building Department**  
P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132  
503-537-1240 ▪ Fax 503-537-1272 ▪ [www.newbergoregon.gov](http://www.newbergoregon.gov)

## MEMORANDUM

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TO: Newberg Planning Commissioners  
FROM: Steve Olson  
SUBJECT: Training session  
DATE: April 3, 2014

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We will hold a training session on April 10<sup>th</sup> that will review some basic but important information for the Planning Commission. And, we will try out a new format that we hope will make training more fun (and less like a lecture).

Please read the attached information as homework for the training session. There is some material from Oregon, Georgia and Wisconsin, so we hope you find it interesting.

# OREGON'S STATEWIDE PLANNING PROGRAM

## Introduction

### **The Statewide Planning Goals**

Since 1973, Oregon has maintained a strong statewide program for land use planning. The foundation of that program is a set of 19 statewide planning goals. The goals express the state's policies on land use and related topics, such as citizen involvement, housing, and natural resources.

Most of the goals are accompanied by "guidelines," which are suggestions about how a goal may be applied. As noted in Goal 2, guidelines are not mandatory. The goals are, however, adopted as administrative rules (Oregon Administrative Rules Chapter 660, Division 015).

### **City and County Planning**

Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to have a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect.

The local comprehensive plans must be consistent with the statewide planning goals. Plans are reviewed for such consistency by the state's Land Conservation and Development Commission (LCDC). When LCDC officially approves a local government's plan, the plan is said to be "acknowledged." It then becomes the controlling document for land use in the area covered by that plan.

Oregon's planning laws apply not only to local governments but also to special districts and state agencies. The laws strongly emphasize coordination —

keeping plans and programs consistent with each other, with the goals, and with acknowledged local plans.

### **A Partnership**

Oregon's planning program is a partnership between state and local governments. The state requires cities and counties to plan, and it sets the standards for such planning. Local governments do the planning and administer most of the land-use regulations. The resulting mosaic of state-approved local comprehensive plans covers the entire state.

The state does not write comprehensive plans. It doesn't zone land or administer permits for local planning actions such as variances and conditional uses. And unlike some other states, Oregon does not require environmental impact statements.

### **The Land Conservation and Development Commission**

Oregon's statewide planning program is directed by the Land Conservation and Development Commission (LCDC). The commission's seven members are unsalaried volunteers, appointed by the governor, and confirmed by the state senate. The term of appointment is four years.

### **The Department of Land Conservation and Development**

LCDC's administrative arm is the Department of Land Conservation and Development (DLCD). DLCD is a small state agency with its main office in Salem. The department has regional

offices in Portland, Springfield, Newport, Central Point Bend and La Grande.

### **The Land Use Board of Appeals**

The state has a special “court” — the Land Use Board of Appeals (LUBA). LUBA has three members, known as “referees,” which review appeals of land use decisions. LUBA is based in Salem.

### **Citizen Involvement**

It’s no coincidence that *Citizen Involvement* is the first among Oregon’s 19 statewide planning goals. Extensive citizen participation has been the hallmark of the state’s planning program from the outset. Every city and county has a Committee for Citizen Involvement (CCI) to monitor and encourage active citizen participation. The state’s Citizen Involvement Advisory Committee (CIAC) also encourages such participation in all aspects of planning.

### **The Local Comprehensive Plan**

The local comprehensive plan guides a community’s land use, conservation of natural resources, economic development, and public facilities. Each plan has two main parts. One is a body of data and information called the inventory, background report, or factual base. It describes a community’s resources and features. It must address all of the topics specified in the applicable statewide planning goals. The other part is the policy element. That part of the plan sets forth the community’s long-range objectives and the policies by which it intends to achieve them. The policy element of each community’s plan is adopted by ordinance and has the force of law.

Local plans may be changed through *plan amendments* or *periodic*

*review*. Plan amendments are smaller, unscheduled adjustments to a plan. Periodic reviews are broad evaluations of an entire plan that occur every four to 10 years. A plan may be modified extensively after such a review.

Each plan is accompanied by a set of *implementing measures*. There are many different kinds. The two most common measures are zoning and land-division ordinances. Every city and county in Oregon has adopted such land-use controls.

### **Need More Information?**

If you need information about a certain community’s comprehensive plan or its zoning and land-division ordinances, please contact the appropriate city or county planning department.

If you would like more information about Oregon’s statewide planning program, please contact DLCD.

## A Summary of Oregon's Statewide Planning Goals

1. **CITIZEN INVOLVEMENT** Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local governments to have a committee for citizen involvement (CCI) to monitor and encourage public participation in planning.
2. **LAND USE PLANNING** Goal 2 outlines the basic procedures of Oregon's statewide planning program. It says that land use decisions are to be made in accordance with a comprehensive plan, and that suitable "implementation ordinances" to put the plan's policies into effect must be adopted. It requires that plans be based on "factual information"; that local plans and ordinances be coordinated with those of other jurisdictions and agencies; and that plans be reviewed periodically and amended as needed. Goal 2 also contains standards for taking exceptions to statewide goals. An exception may be taken when a statewide goal cannot or should not be applied to a particular area or situation.
3. **AGRICULTURAL LANDS** Goal 3 defines "agricultural lands." It then requires counties to inventory such lands and to "preserve and maintain" them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.
4. **FOREST LANDS** This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."
5. **OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES** Goal 5 covers more than a dozen natural and cultural resources such as wildlife habitats and wetlands. It establishes a process for each resource to be inventoried and evaluated. If a resource or site is found to be significant, a local government has three policy choices: preserve the resource, allow proposed uses that conflict with it, or strike some sort of a balance between the resource and the uses that would conflict with it.
6. **AIR, WATER AND LAND RESOURCES QUALITY** This goal requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.
7. **AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS** Goal 7 deals with development in places subject to natural hazards such as floods or landslides. It requires that jurisdictions apply "appropriate safeguards" (floodplain zoning, for example) when planning for development there.
8. **RECREATION NEEDS** This goal calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed

standards for expedited siting of destination resorts.

9. ***ECONOMY OF THE STATE*** Goal 9 calls for diversification and improvement of the economy. It asks communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.
10. ***HOUSING*** This goal specifies that each city must plan for and accommodate needed housing types, such as multifamily and manufactured housing. It requires each city to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.
11. ***PUBLIC FACILITIES AND SERVICES*** Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.
12. ***TRANSPORTATION*** The goal aims to provide "a safe, convenient and economic transportation system." It asks for communities to address the needs of the "transportation disadvantaged."
13. ***ENERGY*** Goal 13 declares that "land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles."
14. ***URBANIZATION*** This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an "urban growth boundary" (UGB) to "identify and separate urbanizable land from rural land." It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.
15. ***WILLAMETTE GREENWAY*** Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.
16. ***ESTUARINE RESOURCES*** This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units."
17. ***COASTAL SHORELANDS*** The goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101 ) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water related" uses.
18. ***BEACHES AND DUNES*** Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active foredunes, but allows some other

types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.

19. ***OCEAN RESOURCES*** Goal 19 aims "to conserve the long-term values, benefits, and natural resources of the

nearshore ocean and the continental shelf." It deals with matters such as dumping of dredge spoils and discharging of waste products into the open sea. Goal 19's main requirements are for state agencies rather than cities and counties.

## PLANNING COMMISSION ETHICS

As a planning commissioner, you wield considerable power over how your community grows and develops. With this power comes the expectation that you will hold yourself to the highest ethical standards. Part of being ethical means exercising your power in the public's interests, as opposed to personal self-interest or other narrow, private interests.

There are a number of sources of guidance on your ethical obligations as a planning commissioner. One is the law. The law, however, merely sets a minimum standard for ethical conduct. Just because an action is legal does not mean it is ethical. For example, it may be legal for you to vote on your best friend's project application, but if everyone in the community knows how close the two of you are, will the community truly feel that you were able to put the community's interest ahead of your personal loyalties? Another source of guidance may be your agency's own code of ethics, if it has one. Many cities and counties have adopted codes of ethics to serve as a guidepost in local decision-making.

At some point in your service as a planning commissioner, you will likely face two common types of ethical dilemmas. The first involves situations in which doing the right thing will come at a significant personal cost to you or your public agency. In these situations, the answer is relatively simple. The bottom line is that being ethical means doing the right thing for the community regardless of personal costs.

The second type of ethical dilemma involves those situations in which there are two conflicting sets of "right" values. In these instances, drawing the ethical bottom line is more difficult. If you find yourself faced with a "right versus right" decision, the following questions may help you come to an answer:

- Which ethical values are in conflict (for example, trustworthiness, compassion, loyalty, responsibility, fairness, or respect)?
- What are the facts? What are the benefits to be achieved or the harm to be avoided by a particular decision? Is there a decision that does more good than harm?
- What are your options? Is there a course of action that would be consistent with both sets of values?
- Is there one course of action more consistent with a value that is particularly important to you (for example, promise-keeping or trustworthiness)?
- What decision best reflects your responsibility as an officeholder to serve the interests of the community as a whole?
- What decision will best promote public confidence in the planning commission and your leadership?

For example, as a planning commissioner, you will frequently be asked to make exceptions to your jurisdiction's planning laws. A developer may, for instance, ask for a comprehensive plan amendment to enable a project to be approved. The developer is likely to point to numerous benefits that will flow to the community as a result of the amendment.

In coming to a decision in such a situation, the first step is to consider what ethical values are at stake. One might be fairness to those property owners who developed their properties in accordance with the policies expressed in the comprehensive plan. Another might be compassion for the developer seeking the amendment: if it is not economically feasible to develop the property as envisioned by the comprehensive plan, perhaps an amendment is in order.

The next step is to weigh the competing costs and benefits. Although the developer has identified the benefits to the community associated with approving the amendment, what are the benefits of adhering to the comprehensive plan? Will an amendment in this situation open the door for other amendment requests? How might the planning commission fairly evaluate those requests while still maintaining the overall integrity of the comprehensive plan? Are there options that might enable the community to reap some of the benefits described by the developer while still being consistent with the comprehensive plan as written?

Finally, consider which approach will best promote the public's confidence in the planning process. Will the public's confidence be undermined if the commission doesn't enforce the plan? Or will denying the amendment look so rigid and unfair to the applicant that it will undermine the public's faith in the planning commission as a decision-making body? What decision will best support the commission's stewardship of the community's growth and development?

The answers to the questions listed above will vary with each situation and likely will not always be clear-cut or obvious. However, asking difficult questions and thoroughly evaluating the answers can go a long way in helping you make consistently ethical decisions that further the public's interest.

*Adapted from "Public Service Ethics" from the League of California Cities' Planning Commissioners Handbook*

## Upcoming Events

### Land Use and Growth in Georgia

January 12-13, 2009—Atlanta, GA

For more information visit [www.lawseminars.com](http://www.lawseminars.com)

### Community Planning Institute

January 13-14, 2009—Douglas, GA

For more information visit [www.dca.state.ga.us](http://www.dca.state.ga.us)

### ACCG Winter Training

January 16, 2009—Macon, GA

For more information visit [www.accg.org](http://www.accg.org)

### Community Planning Academy:

- **ArcGIS Desktop I Training**

January 29-30, 2009—Atlanta, GA

- **Training for Planning Officials**

Feb. 19, March 11, April 16, 2009—Atlanta, GA

For more information visit

[www.atlantaregional.com/communityplanningacademy](http://www.atlantaregional.com/communityplanningacademy)

## *Learning to Enjoy Your Service on the Commission*

One would be hard pressed to find another overworked, underappreciated position in a community equal to being a plan commissioner. There is usually no financial remuneration, and the meetings are often tedious, technical, and sometimes contentious. Your best friends may disagree with a decision you make. Why, then, even bother? Surely, there are other uses you can find for your time.

One reason that seems to give commissioners a boost is that little goes on in the community that is not affected somewhat by planning. You have the opportunity to influence and lead the way to change that will be felt for years to come. Look upon these positive attributes as your challenge to execute the obligations of your office so that the experience is, indeed, one you savor.

Some principles to consider:

- *Do not take it personally.*

It would be gratifying if you and the other commissioners could deal only with the big picture, concepts, and ideas. Often, however, it is the nuts and bolts of how individuals use their property that concern the commission, and this can become personal.

When landowners get frustrated or angry, they may express themselves in ways that are not pleasant. You will survive and keep your sanity if you realize it is the system they rail against and the plan commission and staff are convenient targets. Never forget, however, that even words expressed in anger can contain kernels of truth worth being considered.

- *Respect your staff.*

They are human. They err. Sometimes their mistakes are embarrassing or should be overturned. You are entitled, or even expected to question your staff carefully, but do it privately. If you have to overturn their recommendation, vote on the facts as you see them, not hearsay or opinion. Never make them scapegoats in a public setting. This diminishes you in the eyes of the public and also undermines the confidence people will have in your staff in the future.

- *Avoid being seduced by planning jargon.*

The longer you are on the plan commission, the more technical information you will come to understand. However, you are not, nor should you be a professional planner. Put yourself in the shoes of the citizens. In documents that are sent to the public, insist that staff translate planning jargon into plain English. Add a summary page to your meeting agenda or include a glossary of commonly used terms.

- *Maintain collegial relations with other commissioners.*

You may have been appointed to the plan commission because of a particular interest or segment of the community that you represent. Moreover, you may have little in common with fellow commissioners, socially or professionally. Nevertheless, you all have the same title. Your enthusiasm to work for the good of the community binds you, though you may define this in different ways. Show respect for each others' opinions, even if they differ.

Take time for a convivial cup of coffee or tea before or after a meeting to help cement relationships. But check first with your staff or the city attorney to make sure this does not violate open meeting laws or run counter to community norms.

- *Always be prepared.*

Staff spend many hours working on the agenda and supporting documents. Read them over carefully before the meeting and call them for clarification if there is something that you do not understand. Listen attentively to their presentations and those of the public, asking questions that show you have done your homework.

- *Understand the political landscape.*

No one need tell you that planning is far from an ivory tower exercise. The commission is appointed by a political body and does its work within a political environment. That said, it is important that your decisions be the best you can make for the entire community. You need to be very careful not to give even a hint of favoritism. This means, for example, not meeting separately with a buddy of the mayor's or huddling in a corner at a social event with anyone who has a stake in a development or other major decision your commission is being asked to make. Your well-reasoned decisions may be overturned by elected officials, but that is their prerogative for which they have to answer to the public.

In these and other ways, you can enjoy the important role you play in your community.

Adapted from: *The Planning Commissioners Journal*, Number 74, Spring 2009. By Elaine Cogan, partner in the planning firm, Cogan Owens Cogan, LLC.

## ROLE OF THE PLAN COMMISSION

The plan commission performs a wide variety of functions related to community planning and land use development. Formal roles are outlined in state statutes and local ordinances while informal roles evolve as a result of the nature of the plan commission's work. Five general roles are outlined below:

### D Community Planning

One of the primary roles of the plan commission is to prepare community plans and recommend their adoption to the governing body. Important roles for the plan commission include overseeing the development of a request for proposals for professional planning services; designing the planning process; developing a community vision; reviewing community data and trends; developing goals and objectives; and recommending policies, programs and tools to implement the plan.

### D Plan Implementation

The plan commission plays an important role in the adoption and administration of zoning ordinances, land division ordinances, development standards and other related plan implementation tools. While adoption of these tools is a legislative function reserved by state law for the local governing body, the commission's role is nonetheless important. The plan commission may be involved in drafting and reviewing ordinances or amendments, public airing of proposals, and making recommendations to the governing body.

### D Public Participation and Education

The plan commission may be asked to take the lead role in involving the public in developing community plans and implementing programs or ordinances. A well-designed public participation process will identify affected parties, provide meaningful opportunities for public involvement, and ensure that as many points of view as possible are expressed

throughout the process. While involving the public may add significant time, expense, and other challenges to the process, it can also help the community to identify issues of concern, assess the impacts of a proposal on various parties, and garner political support leading to adoption of the plan or ordinance.

### D Development Review

In communities that are experiencing growth and change, the plan commission often spends a majority of its time reviewing specific land development proposals. Requests for zoning amendments, conditional use permits, and subdivision plats appear frequently on the municipal plan commission agenda. Plan commissions may also be involved in other types of development review including but not limited to site plan review, planned unit development review, historic preservation review, and design review.

### D Referrals and Advisory Recommendations

The plan commission reviews a wide variety of matters referred to it. The table on the following page contains a list of items that must be referred to the plan commission before the decision-making body may take action. In most cases, the plan commission is given thirty days to review these matters.<sup>1</sup> If a report is not submitted by the plan commission within that time period, the decision-making body may proceed without it.<sup>2</sup> Failure to refer one of these items to the plan commission may result in a court voiding the action.<sup>3</sup> In addition to the items outlined in this table, the governing body may refer any other matter to the plan commission that it deems appropriate. These referrals may be outlined in a local ordinance or determined on a case-by-case basis.

<sup>1</sup> The governing body may extend this time. Review of amendments to the zoning ordinance and official map are given 60 days.

<sup>2</sup> *KW Holdings, LLC v. Town of Windsor*, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752, 02-0706.

<sup>3</sup> *Scanlon v. Menasha*, 16 Wis. 2d 437, 114 N.W.2d 791 (1962).

**DUE PROCESS**

Adoption of plans, ordinances and other legislative proposals related to land development standards are generally subject to intense public scrutiny because they affect private property rights, personal wealth and other closely held values. Our democratic system of government encourages public discussion of pending legislation. It is perfectly acceptable for individual community members and special interest groups to lobby elected officials for support or opposition of local legislative proposals. However, once proposed policies are adopted and become law, government bodies such as the plan commission must apply them in full view of the public following legal rules of fair play known as due process.

**Quasi-Judicial Decision-Makers Must Follow the Rules of Procedural Due Process**

Not all government actions require compliance with procedural due process principles. A rule or law that applies generally does not trigger due process guarantees. Instead, procedural due process requirements are demanded of government only in cases where the government makes an individualized determination affecting specific individuals or a limited identifiable class of people.<sup>24</sup> In other words, the rules of procedural due process apply to quasi-judicial decision-makers.

<sup>24</sup> Blaesser, Brian W. et al. *Land Use and the Constitution: Principles for Planning Practice*. 1989. Planners Press. pp.42-43; Hunter, Ted and Jim Driscoll. "The Planning Commissioner as Judge." *The Commissioner*, Summer 1996; *Old Tuckaway Assocs. Ltd. Partnership v. City of Greenfield*, 180 Wis.2d 254, 509 N.W.2d 323 (Ct. App. 1993); Stephens, Otis and John Scheb. *American Constitutional Law*, 3ed. 2003. Belmont, CA: Wadsworth.

<sup>25</sup> Fourteenth Amendment to the U.S. Constitution and Article I, Section I of the Wisconsin Constitution.

Due process is a basic concept of fairness in legal proceedings that has its roots in the decision making processes used by the Greeks and Romans. It is also reiterated in the constitutions of the United States and Wisconsin.<sup>25</sup> These constitutional provisions guarantee two distinct forms of due process: substantive and procedural. Substantive due process is concerned with the reasonableness of government action and focuses on assessing the rationality of a government decision. Procedural due process, the focus of this section, is concerned with the means employed to make a government decision.

When the plan commission makes a decision that affects specific individuals (i.e. conditional use, plat review, etc.), it must follow the rules of procedural due process. These rules include:<sup>26</sup>

- Providing adequate notice of pending decisions to affected persons.
- Ensuring that each decision maker is impartial and unbiased.
- Avoiding and disclosing ex parte contacts.
- Providing an opportunity to present at hearings.
- Basing decisions on clear, pre-existing standards and factual evidence in a record that is available for review.

**Ex Parte Communication**

Commission members should not have conversations or receive correspondence regarding a quasi-judicial matter that is pending before the commission or which may come before the commission except during a noticed meeting or hearing on the matter. Such outside contacts are known as "ex parte communication." Ex parte communication

<sup>26</sup> *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 36 S. Ct. 141, 60 L. Ed. 372 (U.S. 1915) and *Londoner v. Denver*, 210 U.S. 373, 28 S. Ct. 708, 52 L. Ed. 1103 (U.S. 1908) cited by Olson, Daniel M. "Procedural Due Process: The Basics plus Town of Castle Rock." *The Municipality*. December 2005. League of Wisconsin Municipalities.

may not be considered in decision-making unless it is disclosed and made part of the official record in the matter. The commission as a whole can then determine the admissibility of the information and individual members can determine its credibility and weight in deciding their vote on the issue.

The reason for exclusion of *ex parte* information is that parties are entitled to know and examine the source of information used by the commission in its decision-making. Outside discussion regarding procedural matters such as scheduling a meeting or explaining how to file an application is permissible. *Ex parte* communication is not a concern when enacting legislation (i.e. plan or ordinance adoption) or making administrative decisions (i.e. issuing simple zoning or building permits).

**Ex Parte** - without the other party being present. Tips for handling *ex parte* communication are provided below:

- Avoid *ex parte* communication by suggesting that members of the public present information in an open meeting or hearing or submit a written comment.
- Disclose *ex parte* communication at an open meeting or hearing and make the information part of the record so that it can be considered in decision-making.

### D Impartiality

Procedural due process requires that plan commission members acting in a quasi-judicial manner be impartial, that is, free of bias and conflicts of interest. Here are two examples of how the courts determined that a land use decision maker was not impartial:

- A zoning board member made negative comments about the applicant and her request, referring to it as a “loophole in need of closing.” The court determined the

applicant was deprived of a fair hearing and required a rehearing without the participation of the member.<sup>27</sup>

- A county zoning committee member, who was also a town board chair, co-signed a letter as town board chair expressing his positive opinion of a gravel company. The gravel company later applied to the county for a conditional use permit and included the town chair’s letter as part of the application. When the town board chair/county zoning committee member voted to grant the conditional use permit, the court determined he was an advocate who had demonstrated an impermissibly high risk of bias.<sup>28</sup>

Local land use decisions are particularly vulnerable to concerns about impartiality because decision-makers are local residents with numerous social and economic ties to their community. It should be noted, however, that personal opinions about specific land use regulations or planning in general do not necessarily disqualify a plan commission member from participating in a matter.

### D Recusal

For each request before the plan commission, individual commission members must decide for themselves whether their relationships or interests could bias their judgment or present an appearance of bias. We recommend that plan commission members use the “sniff test” when determining whether they are biased or impartial. If it would smell fishy for you to vote on the matter at hand, recuse yourself. Another way to determine if you are impartial *and* appear impartial is to think about whether you would be comfortable if the headline in your local newspaper described your background, your personal and professional

<sup>27</sup> *Marris v. Cedarburg*, 176 Wis. 2d 14, 498 N.W.2d 842 (1993).

<sup>28</sup> *Keen v. Dane County Bd. of Supervisors*, 2004 WI App 26, 269 Wis. 2d 488, 676 N.W.2d 154.

relationships, and your participation or vote on the matter at hand. If you are unsure, you should discuss the matter with legal counsel.

If, as a plan commission member, you do not feel you can be and appear impartial in a given decision, the best approach is to recuse yourself. To recuse yourself, do not vote *and* do not have any discussion or involvement in the matter in question. We recommend that you physically remove yourself from the table where the plan commission is seated while the matter is discussed to make it clear you are not serving as a member of the commission. The

meeting minutes should reflect that you have recused yourself. If you have recused yourself on the matter, you may offer testimony as a member of the public.

**Recuse** – to disqualify oneself from *all* official participation in a matter, usually because of a conflict of interest or prejudice. If you recuse yourself:

- Do not vote AND
- Do not discuss the topic as a member of the plan commission.

#### What rules apply when faced with the rezoning of an individual property?

Rezoning is a grey area of the law. In some states they are treated as quasi-judicial, but in Wisconsin they are viewed as legislative. The League of Wisconsin Municipalities recommends a conservative approach is to treat rezonings—particularly those that apply to individual properties—as quasi-judicial decisions.<sup>29</sup> This means that the rules of procedural due process apply, including the need for an impartial decision-maker.

In deciding whether to participate in a rezoning decision, the Local Government Center suggests analyzing whether an individual decision-maker would be affected by the rezoning to a greater extent than others in the community. If, for example, your next door neighbor is asking for the rezoning, you should abstain from any official involvement. If, however, the rezoning is for a major project that affects the entire area where you live and you are not affected more than others, it seems legitimate for you to take part in the decision.<sup>30</sup>

#### May a person vote on an issue twice when serving on both the plan commission and governing body?

A governing body member who serves on the plan commission is disqualified from participating in a quasi-judicial decision that comes before the governing body if the member voted on the matter when it was before the plan commission. A governing body member in the same circumstances would not be precluded from voting on a legislative matter, such as a rezoning, since the requirement of an impartial decision-maker does not apply to legislative decisions.<sup>31</sup>

<sup>29</sup> Witynski, Curtis. "Impartiality in Zoning Decisions." *The Municipality*, May 2000. League of Wisconsin Municipalities.

<sup>30</sup> *Ethics & Conflicts of Interest—FAQs*, James H. Schneider, J.D. April 2008. Local Government Center. The Wisconsin Ethics Board (now GAB Ethics Division) has noted in recent opinions that common law principles may disqualify a member of a body from voting on a matter where the member has a direct pecuniary interest not shared by others similarly situated. See, e.g., *Wis Eth Bd* opinions 200309 and 200317 (citing *Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879) and 36 *Op. Att'y Gen.* 45, 46 (1947)).

<sup>31</sup> League of Wisconsin Municipalities. Legal Caption 445. 3/31/00.

**ETHICS AND CONFLICTS OF INTEREST****D Statutory Conflicts of Interest**

Wisconsin Statutes contain specific conflict of interest provisions that apply to plan commission members and other local officials regardless of the type of the decision-making they participate in. Two primary provisions that apply to the plan commission include:<sup>32</sup>

- Personal financial gain – State law prohibits public officials from taking official action that substantially affects a matter in which the official, an immediate family member or an associated organization has a substantial financial interest. Similarly, an official may not use public office for financial gain or to gain anything of substantial value for the official, an immediate family member or an associated organization. Compliance with the statute will protect a member from prosecution under the statute but does not assure compliance with other fair play and due process requirements.
- Private interests in public contracts – State law also provides for felony prosecution of a public official who engages in specified activities related to public contracts in which the official has an interest. This is an issue, for example, where the commission decides conditional use permits or retains consulting services where a member has an interest. In certain cases abstention will not prevent a violation of the law and the official will have to choose between doing business with the governmental unit and serving as an officer.

**In Summary:**

- Don't participate in decisions that affect you financially.
- Don't accept items or services offered to you because of your position.

**D Ethical Principles in Planning**

The American Planning Association maintains a set of ethical principles to guide the conduct of all who participate in the planning process as advisors, advocates and decision-makers. These principles should be used by certified and practicing planners, appointed and elected officials, and others who participate in the process of planning. The plan commission is urged to discuss and consider adopting these principles.

Key elements include:<sup>33</sup>

- Serve the public interest.
- Recognize the rights of citizens to participate in the process.
- Give full, clear and accurate information.
- Expand choice and opportunity for all persons, including the disadvantaged.
- Assist in the clarification of community goals, objectives and policies.
- Make information available to the public in advance of decisions.
- Protect the integrity of the natural and built environment.
- Pay attention to the interrelatedness of decisions and long-range consequences.
- Achieve high standards of proficiency and integrity.
- Exercise fair, honest and independent judgment.
- Disclose all personal interests, defined broadly.
- Abstain from participation when you have a personal interest.
- Seek no gifts or favors.
- Do not participate as an adviser, decision-maker, or advocate on a policy decision in which you have previously been an advocate.
- Do not use or disclose confidential information.
- Do not misrepresent facts.
- Do not participate unless you are prepared.
- Respect the rights of all persons.

<sup>32</sup> Wis. Stat. §§ 19.59 and 946.13.

<sup>33</sup> [www.planning.org/ethics/ethicalprinciples.htm](http://www.planning.org/ethics/ethicalprinciples.htm).

*Scenario – Conversations about Development*

A plan commission member runs into a citizen at the local market who says, “Wildwood subdivision is really going to ruin that part of town.” “Why?” asks the plan commissioner. “Well, it’s going to break up a large area of winter deer habitat, and you’ll be able to see all those houses from miles away.” The plan commissioner replies, “We might not be able to do anything about this project, but perhaps we need to write some regulations that impose stricter controls on sensitive wildlife areas in town.”

These are the types of conversations plan commissioners might have with their constituents in order to plan for the future. Part of planning for the future involves keeping land use regulations current with trends in land development and with the desires of the community.

However, if the same commissioner will be reviewing the subdivision as part of a plat approval process, the above conversation would be wholly inappropriate. In that context, the commissioner should simply say, “I’m sorry, I can’t discuss this with you unless we’re in an open public hearing. It’s not fair to others who may be interested in the case for me to speak about it with you.” This conversation might be difficult for plan commission members, particularly in small towns, but it’s the only proper way to handle the situation should it arise.

Adapted from *Essentials of Planning and Regulation*, 2007, Vermont Land Use Education and Training Collaborative. [www.vpic.info/pubs/essentials](http://www.vpic.info/pubs/essentials)

*Scenario – My Brother, the Developer*

Your brother has made a small investment in a real estate development that will come before your commission for approval. No one knows that your brother is involved in the project. You believe it is a good proposal and that your brother’s influence has led to a good design. What should you do?

1. Disclose the personal interest and recuse yourself from the case.
2. Disclose the personal interest, speak in favor of the proposal, but then abstain from voting.
3. Disclose the personal interest, but vote on the case because you do not benefit from it financially.
4. Vote on the request because you do not benefit from it financially.

Things to consider:

- You may not realize that your brother has influenced your opinion, since you are around him so much.
- Even if you decide not to participate, your relationship with board members might taint the opinions of others on the board or the public.
- If this is a good proposal, the commission will recognize that. There is no reason to jeopardize your credibility.
- American Planning Association’s Ethical Principles in Planning require that you disclose all personal interests. APA recommends that potential benefits to a family member (even if not part of your household) should be considered a personal interest.
- Local bylaws regarding ethics and conflicts of interest may contain similar language.

Would your answer be different if it were not your brother, but a good friend or neighbor?

Adapted from *Indiana Citizen Planner’s Guide: Part 6, Ethics*. K. K. Gerhart-Fritz, AICP. Indiana Planning Association. [www.indianapanning.org/associations/9760/files/6\\_Ethics\\_2005.pdf](http://www.indianapanning.org/associations/9760/files/6_Ethics_2005.pdf)