



Planning Commission Agenda

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Planning Commissioners:

Greg James, Chair
Nick Nelson, Vice Chair
Johnny Kirschenmann
Steve Moe
Stacy Salladay
Tim Vohs
Denise Bean

The meeting location is wheelchair-accessible. For the hearing-impaired, an interpreter can be provided with 48 hours notice prior to the meeting. For meetings in the Council Meeting Room, a "Personal PA Receiver" for the hearing impaired is available. To arrange for these services, call 541.726.3710.

Meetings will end prior to 10:00 p.m. unless extended by a vote of the Planning Commission.

All proceedings before the Planning Commission are recorded.

April 15, 2014

**6:00 p.m. Work Session
Jesse Maine Room**

(Planning Commission work sessions are reserved for discussion between Planning Commission, staff and consultants; therefore, the Planning Commission will not receive public input during work sessions. Opportunities for public input are given during all regular Planning Commission meetings.)

CONVENE AND CALL TO ORDER THE WORK SESSION OF THE SPRINGFIELD PLANNING COMMISSION

ATTENDANCE: Chair James ____, Vice Chair Nelson ____, Kirschenmann ____, Moe ____, Salladay ____,
Vohs ____, and Bean ____.

WORK SESSION ITEM(S)

- 1. Planning Commission Training- Legal updates, Guidance on drafting motions and other procedural questions.**

**Staff: Lauren King, City Attorney's Office
60 Minutes**

ADJOURN WORK SESSION OF THE SPRINGFIELD PLANNING COMMISSION

MEMORANDUM

OFFICE OF CITY ATTORNEY

DATE: April 9, 2014
TO: Planning Commission
FROM: Lauren A. King
RE: April 15, 2014 Work Session

During the April 15, 2014 Planning Commission work session, the City Attorney's Office will present the following: legal updates; guidance on drafting motions; and other procedural questions raised by Commissioners.

In advance of the work session, our legal extern—Elizabeth Berg— prepared the enclosed memo that reviews both case law and legislation that we believe is particularly relevant. Elizabeth Berg and I will review memo in the work session and address any of your questions or concerns.

Additionally, the Commission requested guidance as to how to draft motions. Generally, a motion should be such that another Commissioner, the audience, or a person reading the minutes would clearly understand the purpose of the motion. This is particularly important when making motions in quasi-judicial decisions that apply a criteria of approval to a specific piece of property. The motion should clearly describe the property (through either the address or the map and tax lot number). Additionally, the motion should address any conditions of approval. If the conditions of approval are the same as those recommended by staff, the motion can simply indicate that the decision applies the conditions of approval as recommended by staff. However, any different conditions of approval should be stated. We look forward to discussing further during Tuesday's work session.

LAK:ljc

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DATE: April 8, 2014

TO: Springfield Planning Commission

FROM: Elizabeth Berg, Public Law Extern
Lauren King, Assistant City Attorney

RE: Legislative Update & LUBA Case Review

LUBA DECISIONS 2013

***Warren v. Josephine County*, ___ Or LUBA ___ at 7, (LUBA No. 2012-028, January 31, 2013)**

Standing to appeal to LUBA – A land use consultant that assisted landowners in applying for zoning map amendments did not have standing to appeal the land use decision as required by ORS 197.830(2)(b),¹ because appearing before LUBA as a consultant is not sufficient to constitute the personal appearance required by ORS to confer standing to appeal.

In *Warren*, two landowners submitted an application for a zone change on their property that would allow them to subdivide and develop the property. During planning commission hearings regarding the issue, the landowners were represented by a land use consultant. Although he was not the applicant, he claimed that he had standing to appeal because LUBA’s decision would affect his ability to effectively represent his clients. The consultant’s appearance as a representative of the applicant was insufficient to establish standing to appeal

***Purtzer v. Jackson County*, ___ Or LUBA ___ at 5 (LUBA No. 2012-090, March 26, 2013)**

Final Argument for Applicant Only – The hearing officer adhered to applicable procedures when he refused to review petitioner’s final argument because final argument is reserved for the applicant only.²

In *Purtzer*, a landowner-applicant applied to have a second dwelling on the property, which was tentatively approved by the county planning commission. A neighbor, who holds an easement over the landowner’s property, appealed the decision. In response, the hearings officer provided two open record periods to allow the parties to submit new evidence and testimony.

¹ “[A] person may petition the board for review of a land use decision . . . if the person . . . [a]ppeared before the local government, special district, or state agency orally or in writing.” ORS 197.830(2)(b).

² ORS 197.763(6)(e) states that, “Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application.”

However, upon closing the record, the hearings officer only accepted the applicant's final written arguments, and not the neighbor's final arguments. The neighbor appealed the decision claiming that the hearings officer erred when he did not accept the neighbor's final arguments. However, pursuant to ORS § 197.763(6)(e), the hearings officer was only required to accept final argument from the applicant; therefore, the hearings officer did not err by only accepting the applicant's final argument.

***Wal-Mart Stores, Inc. v. City of Hood River*, ___ Or LUBA ___ at 9, 16-17 (LUBA No. 2013-009, May 21, 2013)**

Wal-Mart appealed a decision by the city council that Wal-Mart had lost its vested right to expand its existing Wal-Mart store. A council member initially recused herself from the application hearing because, prior to joining the council, she had actively opposed the Wal-Mart application prior. However, the council deadlocked on the issue of whether Wal-Mart had lost its vested right, and the council invoked the "rule of necessity" to allow the council member to participate in the decision. Once the councilor became a decision maker, she failed to disclose her ex parte contacts with Wal-Mart. On appeal, LUBA addressed whether the council's decision could be remanded where a council member had ex parte contacts with one of the parties and that council member participated in the final decision.

Ex Parte Communications – A commissioner is not required to disclose ex parte contacts if they do not participate as a decision maker on the matter at issue; however, once a commissioner elects to participate in the decision, he or she must (1) disclose any ex parte communications as soon as possible after choosing to participate as a decision maker and (2) give all parties an adequate opportunity to respond to or rebut those communications.

The Rule of Necessity – Where a vote resulted in a 3-3 tie, the decision-making entity prematurely invoked the rule of necessity where circumstances indicated that the entity was willing to renegotiate, resulting in a majority vote to resolve the issue. Additionally, once a biased decision maker is authorized to vote under the rule of necessity, that decision maker is precluded from participating in the discussions prior to the vote according to ORS 244.120(2)(b)(A).

***Poe v. City of Warrenton*, ___ Or LUBA ___ at 5-6 (LUBA No. 2012-029, August 16, 2012)**

Review of New Evidence – Once new evidence has been submitted to the governing body, the decision maker must allow the parties to review the additional material as required by ORS 197.763(4)(b). If the governing body is concerned about meeting the deadline required by ORS 227.181,³ the governing body could reject the new evidence, leave the record open, or extend the 90-day deadline required by ORS 227.181.

³ "Pursuant to a final order of the Land Use Board of Appeals . . . remanding a decision to a city, the governing body of the city or its designee shall take final action on an application for a permit, limit land use decision or zone change within 90 days of the effective date of the final order issued by the board." ORS 227.181(1).

In *Poe*, LUBA remanded a City decision to approve a conditional use permit. On remand, the City conducted a hearing on the 90th day after the remand was initiated, which is the last day allowed for a city to resolve a decision on remand as allowed under ORS 227.181. Because the City believed it had to make a decision on the 90th day, it did not allow the applicant to submit additional evidence related to an outstanding issue as required by ORS 197.763(4)(b). On appeal, LUBA explained the City's other options to address this kind of conundrum.

***Kaiser Permanente v. City of Portland*, ___ OR LUBA ___ at 4-5 (LUBA No. 2012-087, February 13, 2013)**

Reviewable Land Use Decision is not an Advisory Opinion – Pursuant to Portland's Early Assistance Program, the City's letter to petitioner concluding that petitioner's master plan had expired was not a reviewable land use decision because the letter did not constitute the city's final word on petitioner's proposed project.

The petitioner, owner of a medical facility, applied to the city to expand its campus and included a development plan (the master plan) with its application. However, the city planners determined that the facility's master plan had expired and notified the petitioner through a letter. The letter was determined to not be a reviewable land use decision.

***Friends of Douglas County v. Douglas County*, ___ Or LUBA ___ at 3 (LUBA No. 2012-053, January 8, 2013)**

Moot Review – Appeals on decisions that become moot, such as when an applicant voluntarily withdraws his application, will not be reviewed by LUBA. The one exception to that case is when a decision is "capable of repetition yet evading review." Denying review of a forest template dwelling application for the same property will not "evade review" and is not exempt from the moot review doctrine.

In *Friends of Douglas County*, the County approved a permit without proper notice and an opportunity for hearing, and Friends of Douglas County appealed the decision. However, because the applicant withdrew the application, the County's decision was invalid; therefore, LUBA did not have jurisdiction because the issue was moot.

***Southeast Neighbors Neighborhood Association v. City of Eugene*, ___ Or LUBA ___ at ___ (LUBA No. 2013-004, July 12, 2013).**

Preserving Issues for Appeal to LUBA – The prevailing party at the lowest level of local approval who *cross-appeals* to a higher local decision maker (e.g., a planning commission) has an obligation to alert the higher level decision maker to an issue where it prevailed at the first level in order to preserve the issue for appeal to LUBA.

In *Southeast Neighbors Neighborhood Association* (SNNA), the hearings officer approved a portion of an applicant's PUD permit for a specific piece of land and denied a permit for another adjoining piece of land. In approving a portion of the PUD, the hearings officer applied EC 9.8325(13), finding that the PUD would not damage natural drainage courses. Both the applicant and SNNA, which participated in the application process, appealed the decision to the planning commission. SNNA then appealed the commission's decision to LUBA and the applicant cross-appealed.

On appeal to LUBA, the applicant challenged the hearings officer's application of EC 9.8325(13) to his permit. However, the applicant did not raise this issue before the planning commission. The applicant claimed that because he prevailed on that portion of his application before the hearings officer, it was a non-issue and that he did not need to raise on appeal to the planning commission. Rather, the argument was only a "backup defense."

LUBA disagreed. The applicant should have alerted the planning commission of this issue so that the decision maker had an opportunity to consider the argument. Notably, SNNA raised the issue before the hearings commission, but did not appeal the issue to the planning commission either.

***Koontz v. St Johns River Water Management District*, 133 S. Ct. 2586 (2013)**

Unconstitutional Permit Conditions – A Florida water district imposed an unconstitutional condition of approval on a construction permit to develop 3.7 acres of a 14.9 acre tract of land when the district provided that it would not approve the permit unless the applicant: (1) paid for off-site mitigation projects designed to protect water quality (that would have enhanced 50 acres of district-owned wetland); or (2) reduced the size of the develop to one acre and deeded to the district a conservation district on the remaining 13.9 acres.

The Court rejected the Florida Supreme Court's ruling that the conditions imposed were different from the conditions at issue in *Nollan* and *Dolan* because: (1) the permit here specified that the permit would be "denied until" applicant agreed to the condition rather than "approved if" applicant agreed; and (2) monetary exaction is different than *per se* taking of land.

LAND USE LEGISLATIVE HIGHLIGHTS 2013

SB 253 (Ch. 764) Requires Oregon Business Development Department to establish and administer Oregon Industrial Site Readiness Assessment Program providing grants from funds available in Oregon Industrial Site Readiness Assessment Program Fund

This bill directs the Oregon Business Development Department to establish and administer a new program – The Oregon Industrial Site Readiness Assessment Program. The program is designed to provide grants up to \$100,000 to qualifying public owners or public entities that are interested in developing regionally significant industrial sites that have not yet been certified as ready for development. Funding will be used to conduct due diligence assessments on those sites, to create detailed development plans for those sites, and to conduct regional industrial land inventories.

SB 246 (Ch. 763) – Requires Oregon Business Development Department to enter into tax reimbursement arrangements with, or to make loans to, qualified project sponsors for development of certified regionally significant industrial sites as a part of the Oregon Industrial Site Readiness Program

The program is designed to provide tax reimbursement arrangements or loans to qualified project sponsors for development of certified regionally significant industrial sites. A project sponsor is a public owner of a regionally significant industrial site that is investing in preparation of development of that site or a public entity that has entered into a similar agreement with a

private owner of property. A regionally significant industrial site is one that is planned and zoned for industrial use. Project sponsors do not have to claim personal income tax revenue attributable to revenues arising from a loan or tax reimbursement agreement pursuant to this act.

HB 2839 (Ch. 279), codified in ORS 195.305(3)(e)-(f) – Amendments regarding compensation for industrial rezoning

A city or state does not need to provide just compensation as required by ORS 195.305, commonly referred to as Measure 49, for a land use regulation that (1) “plan and rezone land to an industrial zoning classification for inclusion within an urban growth boundary;” or (2) “plan and rezone land within an urban growth boundary to an industrial zoning classification.”

SB 260 (Ch. 765), codified in ORS 367.080(3)(e) – Provides that qualifying bicycle and pedestrian projects may receive loans from Multimodal Transportation Fund

This bill extends funding from the Multimodal Transportation Fund to pedestrian and bicycle projects. The Oregon Transportation Commission may consult the Bicycle Lane and Path Advisory Committee before selecting a project and will also weigh a number of factors included in the statute.

HB 2253 (Ch. 574) – Portland State University to issue population forecasts

Portland State University Population Research Center will generate a population forecast for a 50-year period for most areas of the state, including Springfield, for the purposes of land use planning. The forecasts will be available within the next four years. A local government has 45 days to challenge the proposed forecast once it becomes available.

HB 2254 (Ch. 575) – Simplifies the UGB amendment process for cities outside Metro

The Land Conservation and Development Commission (LCDC) is directed to develop and adopt by rule simplified methods for a city to evaluate or amend the UGB of a city. If the city currently has a pending UGB amendment that has not been adopted, the city can withdraw the proposed UGB amendment and apply the LCDC’s new UGB amendment process so long as the city notifies LCDC. The land that the city identifies to be included within the UGB must be anticipated to be serviceable (*i.e.*, adequate sewer, water, and transportation services) within a 14-year period, or LCDC may require that the non-serviced land is removed from the UGB. Section five provides LCDC with guidelines for developing UGB methods for cities with a population greater than 10,000.

Cities no longer need to engage in periodic review when evaluating or amending the UGB. The LCDC is directed to create new rules regarding reevaluation. This Act is meant to supplement, not replace, ORS §§ 197.295 – 197.314 and the statewide planning goals. The Act will take effect on January 1, 2016.