



**APPROVED MINUTES
CANBY PLANNING COMMISSION**

6:00 PM – February 10, 2025

City Council Chambers – Virtual Meeting via Zoom

PRESENT – Commissioners: Matt Ellison (Chair), Dan Ewert (Vice Chair), Judi Jarosh, Craig Lewelling, and Hannah Ellison

ABSENT – Michael Hutchinson and Jennifer Driskill

STAFF – Don Hardy, Planning Director, and Emily Sasse, Recording Secretary

OTHERS – Jason Padden, Councilor, and Joshua P. Soper, City Attorney

1. CALL TO ORDER

a. Pledge of Allegiance

2. CONSENT ITEMS – None

3. CITIZEN INPUT ON NON-AGENDA ITEMS – None

4. OLD BUSINESS – None

5. NEW BUSINESS – None

6. PUBLIC HEARINGS – None

PLANNING COMMISSION WORK SESSION

The Planning Commission had a Work Session to discuss the following topic:

- **Land Use Decision-making Framework**, presented by Don Hardy, Planning Director, and Joshua P. Soper from Beery Elsner & Hammond, LLP. The work session included a presentation and discussion on several interrelated aspects of the local land use decision-making process, including:
 - Clear and Objective Standards
 - Quasi-judicial Proceedings
 - Legislative Updates

Presenter: Josh Soper, Beery Elsner & Hammond, LLP

Director Hardy opened the work session by alerting the Commission of significant changes in land use proceedings at the state level, particularly the shift of discretionary reviews to type two reviews.

The presentation covered key aspects of land use law and the Planning Commission's legal responsibilities and discretionary powers, including the ability to grant continuances, reopen hearings, and extend decision deadlines. Soper provided an overview of the topics to be discussed, including land use law basics, important issues, and recent legislative updates. Brief historical context on land use law in Oregon, starting with Senate Bill 100 in 1973 was also provided for additional context. Soper explained the purpose of land use law in Oregon, focusing on balancing livability, economic development, and resource protection.

The State has a significant role in land use, with 19 statewide planning goals and administrative rules implemented by the Department of Land Conservation and Development (DLCD) and the Land Conservation and Development Commission (LCDC). The Land Use Board of Appeals (LUBA) provides a first level of review on appeals from local decisions, taking the burden off the court system. Soper also explained the two types of appeals: de novo and on the record, and the process of appeals to LUBA and the Oregon court system.

Cities adopt comprehensive plans—policy and vision documents for land use—implemented through ordinances and development codes. The 120-day rule for City review of land use applications was emphasized, with failure to meet this deadline potentially resulting in a 50% refund or circuit court intervention. Recent legislative changes were also discussed, including House Bill 3395, which permits a seven-day extension for residential approvals, and Senate Bill 1537, which mandates certain adjustments and broadens the definition of limited land use decisions. The importance of clear and objective code requirements was also highlighted.

Key Ideas and Points:

- Legislative decisions involve adopting policies and standards that apply broadly, while quasi-judicial decisions are based on pre-existing criteria and require a decision from the city.
- Ex-parte contacts include any information received outside the official record, and disclosing the substance of these contacts is required. Conflicts of interest were defined as financial benefits to the decision-maker or their relatives and must be disclosed and potentially recused from. Soper explained the potential personal liability for violating government ethics laws and the importance of contacting the Oregon Government Ethics Commission for advice.
- The role of staff in facilitating communication and the importance of documenting decisions and disclosures was discussed. The use of recesses to manage disruptions and the importance of documenting warnings and actions on the record was discussed while highlighting the chair's inherent authority to create reasonable rules for the conduct of a meeting and to address disturbances.
- Soper outlined the requirements for notice and opening a hearing, including the raise it or waive it rule and identifying criteria. The importance of granting time for additional argument or evidence at the initial evidentiary hearing was emphasized. Two options for granting additional time were discussed:
 1. A continuance and open record period (777 extension)
 2. The applicant's right to a final written argument and the importance of formally asking for a waiver are highlighted.
- The types of decisions that now qualify as limited land use decisions include replats, property line adjustments, and extensions of non-conforming uses.

- House Bill 3395, which allows for a seven-day extension to reduce an approval decision to writing for residential structures.
- House Bill 4063, which allows housing developers to opt into new standards and the impact on completeness reviews and the 120-day clock.
- The “fixed goal post” rule, which requires decisions to be made on the standards in effect at the time of application submission.

Commission Deliberation:

The concept of serial meetings was introduced, and examples of how serial meetings can violate public meetings law and the importance of avoiding such situations were provided. Soper reminded the Commission that if individuals are relaying information between each other to the point where a quorum has been created, then the public meetings law will apply.

Commissioner Ewert asked what the procedure would be if an applicant did not want a Commissioner to participate in the voting of a hearing item. Soper clarified that if a Commissioner refuses to recuse themselves, then the remaining Commissioners will be able to vote on whether to let the Commissioner participate or not.

Questions surrounding the need for additional information from the applicant were brought up by some Commissioners. Soper clarified that if a Commissioner believes more concrete information is needed prior to approval, they have the ability to request a continuance. The Commission must grant a continuance to the applicant which will extend the 120-day deadline. However, if an individual asks for a continuance, then the 120-day deadline is not extended.

Commissioner Jarosh brought up her concerns around the continued use of one firm for traffic studies. She asked what rights she has as a Commissioner to request a different company to complete the study for the applicant. Director Hardy explained that applicants have the option to choose a different firm to complete the study, therefore they are not required to use the City’s contracted traffic firm. However, most applicants choose to use the City’s contracted firm because they created the standards which define the boundaries of traffic scopes done according to the City of Canby code. Soper clarified that disagreement with the outcome of a firm’s study does not warrant enough reason to doubt its credibility or request a second opinion. He also mentioned that in Oregon there is a relatively small number of firms that conduct this type of traffic review. Further discussion took place regarding traffic consulting, followed by the Commissions gratitude for the presentation.

7. ITEMS OF INTEREST/REPORT FROM PLANNING STAFF

- a. The next Planning Commission meeting is planned for **Monday, February 24, 2025**, at 6:00 pm in the Council Chambers.
- b. Planning Director’s Update

Director Hardy mentioned there will be a Public Advisory Committee (PAC) meeting on February 11, 2025, to discuss the Comprehensive plan and Urban Growth Boundary (UGB) updates. Hardy reemphasized the need for a comprehensive code update, including development review and Public Works code, and the potential for an advisory group. He highlighted the importance of updating the code to reflect recent legislative changes and the need for a clear and objective process. The City received \$250,000 in grant funding from the Department of Transportation for concept planning to

address these code issues. An upcoming Council work session is scheduled for February 19th, 2025, to discuss SDCs and the importance of recalibrating these charges for the entire City.

8. ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION

Planning Commissioners suggested various ways that adopted standards, criteria, and objectives could be presented during hearings to ensure that all parties are discussing hearing items consistently.

9. ADJOURNMENT

Motion: A motion was made by Commissioner Ellison and seconded by Commissioner Ewert to adjourn the meeting. Motion passed 5/0.

The meeting adjourned at 8:32 PM.