



Community Development  
 Planning Division  
 501 SW Madison Avenue  
 Corvallis, OR 97333

Approved as submitted, October 13, 2015

**CITY OF CORVALLIS**  
**HISTORIC RESOURCES COMMISSION MINUTES**  
**September 8, 2015**

**Present**

Lori Stephens, Chair  
 Kristin Bertilson, Vice Chair (left at 8pm)  
 Peter Kelly  
 Mike Wells  
 Kathleen Harris  
 Cathy Kerr  
 Charles Robinson

**Staff**

Carl Metz, Associate Planner  
 Daniel Miller, Deputy City Attorney  
 David Coulombe, Deputy City Attorney  
 Claire Pate, Recorder

**Guests**

Mike Jager

**Absent/Excused**

Roan Hogg, Council Liaison  
 Jim Ridlington, Planning Comm. Liaison  
 Rosalind Keeney  
 Eric Hand

**SUMMARY OF DISCUSSION**

	Agenda Item	Recommendations
I.	Visitor Propositions	
II.	Historic Resources Commission Training: Quasi-Judicial Land Use Decisions	
III.	Minutes Review – August 11, 2015	Approved, with one comment noted by Commissioner Harris.
IV.	Other Business/Info Sharing A. Historic Preservation Plan Status Update	
V.	Adjournment	8:23pm

**CONTENT OF DISCUSSION**

Chair Stephens called the Corvallis Historic Resources Commission to order at 6:30 p.m. in the Madison Avenue Meeting Room, 500 SW Madison Ave.

## I. VISITOR PROPOSITIONS:

At the suggestion of Commissioner Robinson, **Mike Jager** shared information relating to a recent collaborative project he had assisted with and had just completed. He worked with a group of OSU students called the “History Ninjas” on an interactive publication entitled “The Fort Hoskins Walking Tour iBook.” The project was 18 months in the making, and the work was a collaborative effort between Afrana (Alliance for Recreation and Natural Areas), Benton County Natural Areas and Parks, the Benton County Historical Society and Museum, and the History Ninjas. It received financial and logistical support from the Benton County Cultural Coalition. The interactive publication is available as an iBook through iTunes, and is available as a PDF file. He intended to send a link to the commissioners so that they could download it and view it at their own convenience. He also gave them a preview, using his iPad. He invited commissioners to attend any of the upcoming events during which the publication/video would be debuted.

## II. HRC TRAINING: QUASI-JUDICIAL LAND USE DECISIONS (VIDEO/DISCUSSION):

The commissioners viewed Part 1 of a 2007 presentation/lecture by Adrienne Brockman, relating to quasi-judicial land use decision-making. The presentation was part of a lecture series sponsored by the Oregon Chapter of the American Planning Association. After viewing the presentation, Deputy City Attorneys Coulombe and Miller provided clarification of how to apply Corvallis’ local codes and statutes to quasi-judicial land use decision-making processes, and where there were differences from information provided in the video. Some of the highlights of the follow-up discussion are as follows:

- If a jurisdiction does not comply with the “120-day rule” for consideration of an application, the applicant can go to Circuit Court and ask a judge to order the jurisdiction to approve the application. Some “conditions of approval” might be able to be added, but not necessarily all that the jurisdiction might have applied if the application had gone through the public hearings process in a timely manner.
- Generally, a local code needs to be followed; but at times a code provision can be interpreted liberally and if that interpretation were to be appealed to LUBA, the appellant would have to demonstrate that there was substantial prejudice in order for the decision to be overturned. It is not as draconian a result as Ms. Brockman might have implied.
- Public meetings law states that a public meeting cannot be held without a quorum. If there is a quorum for the public meeting but someone recuses themselves from taking part in deliberations of a particular application, the evidentiary portion of the public hearing could take place with a continuation set for a later date to deliberate on the application.
- In terms of ex parte contacts, it is important to disclose all facts learned related to any of the application approval criteria, even if you are not relying on a fact as part of your consideration. The touchstone is whether a fact is material – i.e. related to any of the application approval criteria. Even if you are not relying on it, one of the other commissioners might take it into consideration.
- Fairness of the process is one of the foundations of Ms. Brockman’s presentation. If a commissioner is fundamentally opposed or supportive of an application no matter what the facts presented might be, then there would be actual bias which should be declared. Bias needs to be actual. An appearance of, or a potential for, bias does not discredit someone from considering an application. Recent case law shows that the bar is high for proving bias. Corvallis uses Sturgis’ rules of order which strongly discourages a decision-maker from recusal unless there is an actual conflict of interest. Certainly, if there is pecuniary

interest one might either gain or lose through a decision, this would be considered an actual bias. Commissioners should check in with the City Attorney's office if there are any questions about a potential conflict of interest.

- An example that comes up occasionally: An application comes in from OSU, and a member of the hearings body is an OSU employee. The fact that the person is an employee does not mean there is actual bias, or a conflict of interest, by the mere fact of being an OSU employee. However, other circumstances such as that person having direct involvement with the building or project in some way could be viewed as actual bias and a conflict of interest.
- The presentation was based on 2005 Oregon Revised Statute (ORS) language, and the ORS were revised in 2013. One of the changes was to the definition of "family" which now has a broader application.
- As part of the rebuttal procedure, Corvallis employs "sur-rebuttal" by opponents, which is an additional layer of rebuttal. However, the applicant always has the opportunity to submit final written arguments, though they can waive that right.
- Whenever a quorum (five) of commissioners comes together, even if it is for a social event, it could be considered a public meeting subject to public notice requirements. Commissioners should not discuss pending applications or upcoming legislation with others outside of a public meeting. If it occurs, those conversations should be disclosed during a public meeting so that the content can be considered by all and rebutted by anyone who has a different take on it.
- Commissioners should be fact finders, or evaluators of facts, not fact gatherers. If a commissioner has gathered information for public business, such as a link to a helpful or pertinent article, the best means of dissemination is to forward the information to staff who can include it as part of the next public meeting's agenda.
- Commissioners should be cautious about having "serial" meetings, i.e. talking with another commissioner about a legislative concern (such as replacement windows), followed by meetings with other commissioners to discuss the concern. It is better to have those discussions within the context of a public meeting.
- If a commissioner has overlooked making a disclosure in a timely manner, it is better to make a late disclosure than no disclosure, and staff can help with determining how to proceed. One approach during a public meeting would be to ask the Chair to recess the meeting for a few minutes so they can consult with staff on how best to proceed.
- If a commissioner is approached by someone who wishes to lobby for a legislative change and there is a pending application with considerations that relate to the issue, the commissioner should politely end the conversation and suggest that the person attend the next meeting and address the Commission as a whole.

Part 2 of the training video will be scheduled at a later date.

### **III. MINUTES REVIEW:**

#### **A. August 11, 2015:**

Commissioner Harris noted that during the public hearing for HPP15-00014 she had not declared a previous site visit to the Berman Rental property, though she had made the declaration at the previous

HRC meeting for which there was no quorum. The minutes reflect this correctly, but she wanted to put the site visit on the record. Commissioner Kerr moved and Commissioner Wells seconded to accept the minutes as drafted; motion passed unanimously.

**IV. OTHER BUSINESS/INFORMATION SHARING:**

**A. Historic Preservation Plan Status Update:** Planner Metz stated that it was still going through the internal review process.

**B.** Planner Metz distributed copies of the annual report for the Community Development department.

**V. ADJOURNMENT:** The meeting was adjourned at 8:23 p.m.