



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

**DRAFT
 CITY OF CORVALLIS
 PLANNING COMMISSION MINUTES
 July 20, 2016**

Present

Jasmin Woodside, Chair
 Ronald Sessions, Vice Chair
 Carl Price
 Paul Woods
 Tom Jensen
 Jim Ridlington
 Susan Morr e
 Penny York, Council Liaison

Staff:

Kevin Young, Planning Manager
 Sarah Johnson, Senior Planner
 David Coulombe, Deputy City Attorney
 Claire Pate, Recorder

Visitors:

Excused Absence

Jim Boeder
 Rob Welsh

SUMMARY OF DISCUSSION

| | Agenda Item | Recommendations |
|-------|---|---|
| I. | Community Comments | |
| II. | Imagine Corvallis 2040 Update | |
| III. | Question and answer regarding parliamentary procedure and public hearing process | Unanimously approved reappointment of Chair Woodside and Vice-Chair Sessions. |
| IV. | Discussion and Determination of Planning Commission Roles and Responsibilities | |
| V. | Planning Commission Training – Discussion of Chapter 12 – Land Use and Development Programs | |
| VI. | Old Business | Adjourned at 10:00 p.m. |
| VII. | New Business | |
| VIII. | Adjournment | 9:30 PM |

Attachments to the July 20, 2016 Minutes:

A. Deputy City Attorney Coulombe notes entitled "Parliamentary Procedures."

CONTENT OF DISCUSSION.

The Corvallis Planning Commission was called to order by Chair Jasmin Woodside at 7 p.m. in the Downtown Fire Station Meeting Room, 400 NW Harrison Boulevard. The Chair asked to move the Imagine Corvallis 2040 Update to the beginning of the agenda.

I. **COMMUNITY COMMENTS.** None.

II. **IMAGINE CORVALLIS 2040 UPDATE.**

Planner Johnson explained that the City Manager wanted all commissions and boards to get briefed on progress made to date with the Imagine Corvallis 2040 vision project. She acknowledged that Councilor York, as Chair of the Steering Committee, had been giving them updates over the past few months.

She gave an overview of what had been accomplished through Phase 1, in which they had solicited and received an overwhelming amount of public input in response to five central questions: where is Corvallis now as a community; where are we going; where do we want to go; how do we get there; and how do we know that we have achieved our goals? The core leadership team, consultants and the Steering Committee worked together to distill and organize the data into the six specific focus areas and determine what priorities, values and themes emerged from all the input. A draft of beginning vision statements was put together and reviewed by the Steering Committee. A drafting committee composed of the core leadership team and members of the Steering Committee refined the statements into a draft which was unveiled on May 24, 2016, at the City Club. More input was received which resulted in some small revisions. The final first draft, which is included in the packet, was made available on June 1, 2016.

Planner Johnson said that a "word cloud" exercise had identified the most common, or important, words that came up; and she shared what those words were for each focus area. Commissioners discussed whether these words were really good indicators of the intent of comments received, and Planner Johnson said that they were just one of the tools used to form the draft vision statements.

They are now at the point of getting public input relating to the draft statements, and a second survey is on the website. They have had over 700 responses to it, and are doing outreach to ensure that they get more response. The survey will be up on the website until the end of the month, and she urged the commissioners to give their input. She handed out cards with the link to the survey, and asked that they share them with others as well.

The next step will be to solidify the vision statements and continue to work on action items and strategic planning. The vision statements will be presented to Council in August, and they will continue to identify partners to assist with working on the action items.

In response to commissioner questions, staff and Councilor York made the following additional comments:

- They have held or met with several focus groups, including a recent one with OSU students.

- The 2040 vision statement will have the same legal weight as Corvallis' existing vision statement, in that it is mentioned in the Comprehensive Plan. The document is intended to be a springboard and guide for upcoming revisions to the Comprehensive Plan and Land Development Code.
- Imagine Corvallis 2040 will provide a vision for all aspects of the community, not just for land use planning. It will inform priorities for the City organization as well as for other community stakeholders.
- Staff will ensure that the link to the survey is clearly indicated on the website, if it is not already.
- Planning Commission will have a major role in applying the vision statements, especially those in the focus area "Plan and Change."
- The process for updating the Comprehensive Plan and Land Development Code, as guided by the new vision statements, is under discussion. There will likely be a steering committee with subsidiary focus groups appointed, with commissioner representation.
- Unlike with the City's current vision statement, there will be an action plan with metrics applied to monitor progress towards achievement of the vision.

Commissioner Morr  asked that as they identify partners and actions for the work, they consider the work of the Corvallis Sustainability Coalition.

III. QUESTION AND ANSWER REGARDING PARLIAMENTARY PROCEDURE AND PUBLIC HEARING PROCESS. (Script in Packet).

Manager Young referred to the quasi-judicial public hearings script included in the packet, and gave an overview for its use. He noted that City Council was interested in streamlining the public hearing process where appropriate, and had tried out one change which was to consolidate the "staff overview" with the "staff report." The process, then, would be to give the combined staff overview/report prior to the applicant's presentation, take questions of the applicant, and follow with public testimony. City Council had a hearing at its last meeting where this seemed to work well. Chair Woodside, Commissioner Price and several other commissioners expressed their support for trying this out at Planning Commission. Manager Young said staff would amend the script to accommodate the change.

In response to a question from Commissioner Morr , Manager Young said that commissioners always have the opportunity during deliberations to ask questions of staff; this would not go away. Commissioner Woods asked for more discussion about reopening a public hearing in order to ask questions of the applicant on matters that might surface during deliberations. Deputy City Attorney Coulombe affirmed that a commissioner can make a motion to reopen a public hearing and decide whether to limit the discussion to a particular topic. It would then go through the same public hearing process again, and again be open to the possibility of someone asking to hold the record open or having a continuance. In the case of a situation where commissioners are in deliberations and are considering language for a condition of approval, there might be an opportunity for staff to get an indication from the applicant as to whether it might be workable without actually reopening the public hearing.

In terms of parliamentary procedure, Deputy City Attorney Coulombe walked through four points, which are included in his outline/summary (**Attachment A**): 1) why procedures are necessary; 2) what are the principal procedures; 3) a takeaway that the Chair rules on

procedural issues/questions; and 4) the fact that this was not intended to be an exhaustive training on Parliamentary Law or principles.

He emphasized that a Chair's procedural ruling holds, unless the commissioners challenge and overturn the ruling. However, it is the body that has responsibility for determining substantive issues such as whether an application meets criteria. He urged them to contact the CAO - as well as the Chair - for information ahead of time, if they have questions relating to how to procedurally accomplish something during an upcoming public hearing or meeting. If a question comes up during a meeting, it could be accommodated by the Commission taking a brief recess to get a response from the City Attorney and/or staff.

Manager Young said that an example of this happened during the City Council public hearing relating to the Lawndale Annexation. A question came up regarding the Planned Development (PD) Overlay and there was a proposal for a mechanism whereby they might be able to put a structure in place such that the PD Overlay would be invoked only with a change of use or consolidation of lots. The Mayor called a recess, which provided the applicant, attorneys and staff an opportunity to consult on whether it would work. In response to commissioner questions, Deputy City Attorney Coulombe said that it would be a process that the Planning Commission could use, but it would need to be totally transparent and there could not be any new evidence brought into the discussion. It should be used very judiciously. Councilor York reiterated that City Council had had considerable public discussion about the mechanism that could be used prior to taking the brief recess to check in with the applicant. It was very apparent to the public what was under discussion, and it was done transparently.

Chair Woodside said that during the Planning Commission deliberations for the Lawndale Annexation, commissioners were interested in a compromise as well and wondered how they could have gotten to a similar resolution. Manager Young said that at that time the option considered by City Council was not apparent and had not been used before. Deputy City Attorney Coulombe added that staff is sensitive to intruding on the commissioners' domain as decision-makers. The body needs to make it clear to staff that they are looking for a certain mechanism for resolution which then invites staff to interject and participate. It is difficult for staff to discern when it is appropriate to step in and offer assistance.

In response to questions from Commissioner Morr , Deputy City Attorney Coulombe said that a decision by the body is not final until it is in writing, which is usually the day after the hearing. If the body decides that language contained in a condition of approval was not what had been intended, it could conceivably be changed. However, the reality is that in order for the body to schedule another hearing to reopen the matter for reconsideration, there might not be enough time left to meet the 120-day rule. If the body is still in session, but the public hearing and deliberations have closed, the body could reopen deliberations and make a motion to amend the previous language that they wish to change. In a situation where a decision has been finalized in writing, and a commissioner still has the concern that a condition was written in a way that was not what they intended, they could bring this to the attention of staff and ask that their concern be put into the record and passed on to City Council. If the whole body holds that opinion, it would be possible for them to submit a written letter or memo to that effect for Council consideration. It would need to be brought up for discussion at a Planning Commission meeting under old or new business for the body to consider. Unfortunately, this might not be timely enough for any appeal heard by City

Council. Councilor York suggested that it seems more appropriate to bring up issues like this with staff so they can deal with it or disseminate it appropriately. Deputy City Attorney Coulombe agreed that this might be the preferred methodology.

On another matter, Manager Young said that if an initial motion to approve and/or deny an application fails, this does not mean that a decision has been made. A subsequent, alternative motion needs to be made to decide the outcome of the application.

IV. DISCUSSION AND DETERMINATION OF PLANNING COMMISSION ROLES AND RESPONSIBILITIES.

Deputy City Attorney Coulombe gave an overview of the roles and responsibilities of the commission members as well as those that are specific to the offices of Chair and Vice Chair. He followed the outline provided (**Attachment A**), and suggested that commissioners review CMC 1.16.235 which describes the responsibility of the Planning Commission.

Though the Chair's role is detailed in his notes, the Vice Chair's role is to serve as Chair when called upon, so responsibilities mirror those of the Chair. Informally, the Vice Chair should have a good procedural sense of how things should be moving, and might find ways to move the process along when they see no one else is participating. They might offer a motion, or start a discussion. In this way, they can be assisting the Chair.

In addition to the roles and responsibilities of the officers, Deputy City Attorney Coulombe also shared his perspective about the skill set needed to be a good Chair, as outlined in his notes. He stressed the importance for the Chair not to "drive" a discussion by asking all the hard questions with the appearance of arriving at a certain result. It is important for the Chair to operate as a gatekeeper - encouraging discussion and restating questions and information when necessary. At the point that other commissioners have had their say, the Chair can then take the opportunity to ask pertinent questions that might not have been asked so that important issues get addressed. Their overarching goal is to facilitate a good process.

Commissioner Sessions asked that Deputy City Attorney Coulombe's notes be a part of the minutes so they could be referenced.

Manager Young referred to the attachment in the packet outlining current subcommittee and officer assignments, and asked if they wished to consider renewing or making new appointments at this time, even though Commissioner Welsh and newly appointed Commissioner Boeder were not in attendance. Deputy City Attorney Coulombe recommended that there be nominations for and a vote on the officers, but the other assignments could be done through an informal process.

Commissioner Ridlington nominated Chair Woodside and Vice Chair Sessions to continue on as officers. There were no other nominations, and there was a unanimous vote in favor of the appointments. There was agreement to wait until Commissioners Welsh and Boeder could be consulted about potential interest in serving on the Land Development Hearings Board or as a liaison to the Historic Resources Commission or the Housing and Community Development Advisory Board.

V. **PLANNING COMMISSION TRAINING (DISCUSSION OF CHAPTER 12 – LAND USE AND DEVELOPMENT PROGRAMS FROM THE LEAGUE OF OREGON CITIES HANDBOOK, AND STATEWIDE PLANNING GOALS). (Attachment In Packet)**

Manager Young referred to the attachment in the packet which included Chapter 12 of the League of Oregon Cities Handbook and said it does an excellent job of going from the statewide perspective to the local perspective for land use planning. In a few places, it is outdated because of some more recent legislation, which he will highlight. It describes the Oregon land use program, Statewide Planning Goals, and different statutes; and it gives citations for where these can be referenced in the Oregon Revised Statutes (ORS) and in the Oregon Administrative Rules (OAR). He then highlighted and clarified a few points in the document.

Referring to page 12-4, Manager Young gave some additional information relating to types of permits, stating that Type I permits are ministerial and are made on clear and objective criteria, such as issuance of a building permit. Type II permits include noticing but are decisions made at the staff level, such as a Minor Land Partition. Type III land use application are discretionary and typically site-specific. These are the Planning Commission's bread and butter. Type IV permits are generally legislative and are decisions that have broad impact, such as Comprehensive Plan and Land Development Code amendments. The Planning Commission reviews them and makes a recommendation to City Council.

Another point of explanation is that development standards as referenced on page 12-5, apply to more than just infrastructure in Corvallis. The Land Development Code includes standards on Pedestrian-Oriented Design, solar access, and natural features regulations, etc.

In terms of procedural requirements for legislative decisions, the City must allow for review by the Department of Land Conservation and Development. The rules have changed in that the City has to provide notice of a legislative change at least 35 days in advance of the first evidentiary hearing. This is all handled by staff.

With regard to the applicable standards and criteria listed on page 12-8, the first bullet emphasizes that the "Goal Post" rule applies: an application must be reviewed under the criteria in effect at the time the application is filed. This section lists a number of important cases relating to criteria. Deputy City Attorney Coulombe said that recent cases have made some minor changes in these findings. He noted that the City Council's interpretation is given deference because they are elected members. Planning Commissioners are appointed and therefore are not given deference. Additionally, commissioners are subject to the interpretations made by the Council.

Manager Young referred to page 12-10, and noted that Corvallis City Council uses a "de novo" hearing process which means they review the whole application on appeal, and not just the particular aspect of the application that was highlighted on the appeal. It is important that the body be an impartial tribunal. A few years ago, Council reaffirmed that they wanted to do "de novo" hearings as opposed to "on the record." Deputy City Attorney Coulombe said that consideration was complicated by the fact that the City's Charter allows for a matter to go forth before the Council on the petition of ten members of the electorate. In

response to a question from Commissioner Morr , Deputy City Attorney Coulombe said that such a hearing would not be limited to the issues raised during the hearing since it would be a “de novo” hearing. As to whether those ten members have standing under the Charter where they might not have standing under the State Land Use Board of Appeals, he was not certain and would have to research that.

On page 12-11, Manager Young highlighted that “ex parte” contact does not include contact with staff, so commissioners are encouraged to get in touch with staff when they have questions about applications. There is also a good discussion of bias and conflict of interest on this page; and he noted that good practice would be for commissioners – after a disclosure - to add the phrase: “but it will not impair my ability to make a fair and impartial decision.” It is good to get that on the record.

Deputy City Attorney Coulombe said that there was a more recent case on bias involving the LNG pipeline in Clatsop County, which looks at the whole history of bias and notes that the Court of Appeals has never affirmed or found a case of bias, though LUBA has on several occasions. This case raised the bar to bias being what amounts to an actual conflict of interest. Adrian Brockman’s training video shares her perspective about bias and the appearance of impartiality, and implies that a commissioner or councilor should not participate if there is even the appearance of bias. However, making the disclosure and a statement about being able to render a “fair and impartial” decision is better than recusing oneself for other than a substantial reason.

Manager Young referred to page 12-13, and the passage about the “raise it or waive it” law. He was happy to see that a lot of this language was in the scripts they use. It essentially states that LUBA does not need to consider an issue that has been raised on appeal to LUBA if that issue was not raised at a local level with “sufficient specificity to enable the local government to respond.” Deputy City Attorney Coulombe said that from his experience “sufficient specificity” is not always viewed by LUBA through the same prism. A recent case had a mere reference to a topic on one page, and that was cited as sufficiently raising the issue.

Manager Young referred to page 12-14 and the section on written decisions. City Council takes a step where they adopt formal findings following a preliminary decision on a land use application. Staff typically budgets three meetings at City Council to process an application, since if there is a request to hold the record open deliberations are delayed to the next meeting. The reason they go through a process of adopting formal findings at City Council is because the next step is going to LUBA and it is important to have the decision lined out.

Commissioner Morr  referred to the drafting of findings, and asked how often the applicant drafts findings when their land use applications are approved. Manager Young said that common practice is for staff to ask the applicant to draft the findings when their application is approved. The findings are then thoroughly reviewed by staff and vetted with the CAO, to ensure that they correspond to the decision witnessed by staff. They are then taken to City Council for review and determination of whether they correspond to their findings. This saves staff a significant amount of time. When a decision is made to not support an application, staff draft the findings and focus on those that have resulted in the denial. In response to Commissioner Morr ’s concern about an applicant having a bias in drafting findings, staff said that they do a critical review for “over-reaching”, inaccuracy, and

completeness. In addition, staff note that the final review by the City Council allows councilors to offer clarifications and corrections as well. Deputy City Attorney Coulombe added that bias and conflicts of interest are directed to the decision-making body and there is not an expectation that an applicant be unbiased.

Manager Young then reviewed the section on appeals of governing body decisions on page 12-15, and said that there had been changes in the remand deadline from 90 days of a request from the applicant for a decision to 120 days. Deputy City Attorney Coulombe said that LUBA often asks for an extension of time over 77 days to make a final decision.

Manager Young referred to page 12-16, Urban Growth Boundaries, and noted that there is now a new process for amending Urban Growth Boundaries, some of which impacts the Urban Reserves discussion as well.

The concept of “takings” is a Constitutional issue and is covered on page 12-17. For the most part, exactions are a form of “takings” looked at as part of land use decisions. Staff always takes that concern into consideration. The case cited – Dolan v. City of Tigard – is an Oregon case which established the principles of “national nexus” and “rough proportionality.” In this case, the City of Tigard required a hardware store which was expanding to dedicate a bike path as part of their expansion effort. The hardware store took the City to court and said it was not fair, and that it was a “takings.” It went all the way to the US Supreme Court which held that they could not see a national nexus between a hardware store and someone who is walking or biking down a bikepath. There was also a finding about the rough proportionality of how many of the store patrons might be using the path.

Finally, Manager Young reviewed the 19 Oregon Statewide Planning Goals, and said that the last four only relate to coastal areas. It is the framework within which they update the Comprehensive Plan.

VI. OLD BUSINESS.

Chair Woodside asked if the Oregon Supreme Court had ruled on whether to hear the Coronado Tract B case. Deputy City Attorney Coulombe said they had declined to hear it. In response to a question from Commissioner Woods, Manager Young said that it was a reversal decision and the City had not encountered this before. City Council decided that it would be reviewed in a limited public meeting format. LUBA has essentially told the City what is needed, which is to strip all of the discretionary criteria from the decision. The question will be taken back to City Council based on the clear and objective criteria that apply to the application. City Council will be asked to make a decision based on those criteria only. The hearing will be on August 15, 2016. Deputy City Attorney Coulombe added LUBA said with respect to the interpretation involved with Condition 12 and the cul de sac, the mere fact that the City is interpreting standards means that they are not clear and objective on their face. In the context of the Needed Housing statute, the regulations need to be clear and objective. It was not a matter of applying deference.

VII. NEW BUSINESS.

Councilor York announced that she is leaving her role as liaison to the Planning Commission in order to take on the liaison role for the newly created Community Inclusion

and Diversity Advisory Board. Councilor Hann will replace her as liaison for the rest of the year. Chair Woodside thanked her for all of her help and good participation as liaison, and said she would be missed.

Commissioner Woods suggested that they consider having staff provide alternate motions, in addition to recommended motions, when preparing staff reports on land development applications. Commissioners agreed that this would be helpful, and Manager Young said that staff would take this on.

Manager Young said that the OSU Comprehensive Plan amendment package would not be ready for the August 3, 2016, meeting and would be placed on the August 17, 2016, agenda. It was agreed by consensus to cancel the August 3, 2016, meeting since the Commission had met so many times in June and there were no public hearings scheduled.

Manager Young said that he would make available the Adrian Brockman video to anyone who wants to view it, and Commissioner Morr  expressed an interest.

VIII ADJOURNMENT:

The meeting was adjourned at 9:30 p.m.

PARLIAMENTARY PROCEDURES

Content:

1. Why procedures are necessary:

- * Public Meetings Law require Minutes
 - * Capture the business of Public
 - * Minutes–moving member
 - * Subject matter
 - * Vote
- * Public Hearings require certain procedures
 - * Disclosures/Declarations
 - * Warnings to testifiers/applicant
 - * Opportunity for public participation
 - * Fair process for applicant/participants
- * Facilitate the commission's work
 - * Member's have equal rights & obligations.
 - * Majority vote decides
 - * Rights of the minority to participate and be heard
 - * Full and free discussion
 - * Fairness and good faith in decision making

2. What are the principal procedures

- * Motions
 - * Main motions (I move to approve)
 - * Subsidiary motions (I move to amend condition 1 to add...)
 - * Privilege motions: Unrelated to main motion; important (I move for a recess/adjourn)
 - * Incidental motions (I move to bifurcate (separate) a compound question/motion)
- * Move the previous question (Call the question) seeks to end debate (req 2/3 vote)
- * Point of Order (the proposed motion is out of order as a main motion is under consideration)

3. Take away: Chair rules on procedural issues/questions

- * Chair is right, unless and until the body challenges and overturns
- * Body decides substantive motions

- * by majority or 2/3 affirmative vote in some circumstances

4. **Not intended to be an exhaustive training on PARLIAMENTARY law or principles**

- * If you anticipate using the procedures and are unaware of the correct process, please contact CAO before the meeting

COMMISSIONERS ROLES

1. **Commission members role:**

- * Propose planning policy and legislation
- * Assist in detailing functional plans, CIP and make recommendations- annexations
- * Conduct public hearings

LDC 1.1.20 refers you CMC 1.16.235 which provides:

The Planning Commission shall function primarily as a **comprehensive planning body proposing policy and legislation to Council** related to the coordination of the growth and development of the community. The functions of the Planning Commission shall include, but not be limited to, the following:

- a) **Review** the Comprehensive Plan and make **recommendations** to Council concerning Plan amendments which it has determined are necessary based on further study or changed concepts, circumstances, or conditions.
- b) **Formulate** and **recommend legislation** to implement the Comprehensive Plan.
- c) **Review and recommend detailed plans** including functional plans which relate to public facilities and services, and subarea plans which relate to specific areas of the community to implement the Comprehensive Plan.
- d) **Assist** in the formulation of the Capital Investment Plan [**Capital Improvement Program**] and submit periodic reports and recommendations relating to the integration and conformance of the plan with the Comprehensive Plan.
- e) **Review** and make **recommendations** concerning any **proposed annexation**.
- f) **Conduct hearings, prepare findings** of fact, and take such actions concerning specific land development proposals as required by the Land Development Code.
- g) **Advance cooperative** and harmonious **relationships** with other planning commissions, public and semi-public **agencies and officials**, and civic and private organizations to encourage the coordination of public and private planning and development activities affecting the City and its environs.
- h) **Study and propose**, in general, such **measures regarding land development** as may be

advisable for promotion of the public interest, health, safety, comfort, convenience, and welfare.

2. **Officer Roles:**

* Chair

- * Implement parliamentary procedures
- * Guide/lead the meeting
- * Lead legislative meetings & participate
- * Guide quasi-judicial proceedings
- * Presiding Officer does not relinquish membership rights to preside, except the right to:
 - * Nominate and introduce motions
 - * Popular belief that the chair only votes to break ties
 - * Has been the practice of the Commission
- * Presiding officer's function is one of gate keeping to ensure:
 - * All members rights to participate
 - * Protect rights of minority
 - * Ensure debate is procedurally fair
 - * Ensure procedures are followed
 - * Ensure fair, good faith decisions are reached
 - * Ensure members, the public and secretary understands all motions before acting

Skill set:

- * Conceptualize and follow process
- * Good listener
- * Decisive decision maker
- * Experience in leadership
- * Articulate in speech
- * More interested in a fair, correct process than a particular decision
- * Able to summarize or restate difficult questions

Vice Chair: See above