

LAND USE BASIC PROCEDURAL ELEMENTS

By: Sydnee Dreyer
JARVIS, DREYER, GLATTE, LARSEN, &
BUNICK, LLP

OVERVIEW OF STATEWIDE GOALS

- Oregon's primary land use policies are expressed in **19 Statewide Planning Goals**
 - Goals 1 and 2 are process goals; Goal 1 pertains to citizen involvement and Goal 2 to comprehensive planning.
 - Goals 3 through 8, 13 and 15 deal with natural resource conservation.
 - Goals 9 through 12 and 14 address housing, transportation, urban growth and economic development.
 - Goals 16 through 19 apply specifically to the resources of the Oregon coast

LAWS AND POLICIES

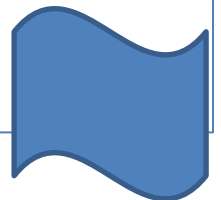
- Requirements for the statewide planning program are set forth in the following statutes:
 - [Chapter 197](#), Comprehensive Planning and Coordination
 - [Chapter 215](#), County Planning and Zoning
 - [Chapter 227](#), City Planning and Zoning
 - [Chapter 195](#), Local Government Planning Coordination
 - [Chapter 196](#), Wetlands, Rivers, Ocean Planning and the Columbia River Gorge
 - [Chapter 92](#), Land Divisions
 - [Chapter 222](#), Annexations

TYPES OF HEARINGS

- LEGISLATIVE HEARINGS:
 - The political process
 - Applies to a larger geographic area
- QUASI-JUDICIAL HEARINGS:
 - Decision maker acts as the judge
 - Applies to a small number of owners or parcels
 - A land use appeal is a quasi-judicial hearing
 - The decision has to comply with existing standards and criteria
 - A decision required

KEY COMPONENTS - LEGISLATIVE

- **WHEN USED:**
 - Amendments to comprehensive plan goals and policies
 - Major map amendments
 - Changes to land use ordinance
- **DISCLOSURE OF EXPARTE CONTACTS NOT REQUIRED:**
 - It is anticipated Council will speak to the public on legislative matters
- **CONFLICT OF INTEREST DISCLOSURE REQUIRED.**
- **NO DECISION REQUIRED**



QUASI-JUDICIAL HEARINGS

- APPLIES TO MOST LAND USE HEARINGS
- PROCEDURE IS GOVERNED BY ORS 197.763
local land development code
- KEY ELEMENTS:
 - Fairness
 - Due Process
 - Unbiased Decision Makers



QUASI-JUDICIAL PROCESS

- DECLARE THE NATURE OF THE HEARING
- REQUIRES READING A PREHEARING STATEMENT OF PROCESS AND HOW TO PRESERVE ARGUMENTS FOR APPEAL
- POLL THE COUNCIL OR COMMISSION FOR BIAS, CONFLICTS, OR EX PARTE CONTACTS
- OPEN PUBLIC HEARING – STAFF REPORT , APPLICANT’S CASE, PROPONENTS/OPPONENTS, APPLICANT REBUTTAL
- ENSURE TESTIMONY IS MADE INTO THE MIC – NO WANDERING OR ADDRESSING AUDIENCE
- **CAUTION** REGARDING STAFF QUESTIONS OUTSIDE HEARING
- **DELIBERATIONS.** A MOTION SHOULD BE ON THE TABLE FOR DISCUSSION

REQUESTS TO KEEP RECORD OPEN

- Before conclusion of a hearing, any participant can request time to submit additional evidence or testimony.
- Planning commission or Council must grant request and can either: 1) continue the hearing to a date certain or 2) keep the record open.
- Best to avoid ex parte contact after record is closed but can be difficult to avoid.

EX PARTE CONTACT – WHAT IS IT?

- A PRE-HEARING CONTACT REGARDING THE MATTER BEFORE YOU
- A SITE VISIT AFTER APPLICATION IS FILED
- CAN BE WRITTEN OR VERBAL
- DISCUSSIONS WITH STAFF NOT AN EX PARTE CONTACT

DISCLOSURE OF EX PARTE CONTACT

BEFORE OPENING THE PUBLIC HEARING

- Report the contact including a summary of what was learned
- Failure to disclose, or to adequately summarize, is substantive error
- Objections to disclosure must be raised by interested parties before the record is closed
- Not prohibited from deliberating

ACTUAL CONFLICT OF INTEREST

“ACTUAL CONFLICT OF INTEREST” means :

- Any action or any decision or recommendation
- by a person acting in a capacity as a public official
- the effect of which **would be** to the private pecuniary benefit or detriment of the person
- or the person’s relative or any business with which the person or a relative of the person is associated.
- ORS 244.020(1)

CONFLICTS CONTINUED

- “**Business**” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.
- “**Business with which the person is associated**” means:
 - (a) Any private business or closely held corporation of which the person or the person’s relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person’s relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;
 - (b) Any publicly held corporation in which the person or the person’s relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
 - (c) Any publicly held corporation of which the person or the person’s relative is a director or officer; or
 - (d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

POTENTIAL CONFLICT OF INTEREST

Means:

any action or decision or recommendation by a person acting in a capacity as a public official,

the effect of which **could be** to the private pecuniary benefit or detriment of the person or the person's relative, or a business ... certain exceptions apply

- ORS 244.020(13)

POTENTIAL CONFLICT – Exceptions

NO POTENTIAL CONFLICT IF POTENTIAL BENEFIT OR DETRIMENT ARISES FROM:

- An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
- membership in or on the board of directors of a nonprofit corporation
- The effect of the decision equally affects all persons in that class such as all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group

DISCLOSURE OF CONFLICTS

- **POTENTIAL CONFLICT OF INTEREST**
 - Announce publicly the nature of the potential conflict prior to taking any action thereon
- **ACTUAL CONFLICT OF INTEREST**
 - Refrain from participating as a public official in any discussion, debate, or vote
 - Unless the vote is needed for a quorum
- **RECORD NOTICE OF CONFLICT IN RECORD**

BIAS

- PREJUDICE OR PREJUDGMENT OF THE FACTS TO SUCH A DEGREE THAT AN OFFICIAL IS **INCAPABLE** OF MAKING AN OBJECTIVE DECISION BASED ON THE MERITS OF THE CASE.
- DOES NOT REQUIRE RECUSAL UNLESS IT IS AN ACTUAL BIAS TO THE DEGREE THAT THE DECISION MAKER CANNOT MAKE A DECISION BASED ON THE RECORD

QUORUM – SERIAL MEETINGS

- A meeting is subject to public meeting law when a quorum of council or commission members are present for the purpose of conducting city business or gathering information to conduct city business.
- Can occur at a teleconference, telephone or electronic communications
- Has been found to exist through “serial meetings”
- Not triggered by social gathering so long as the purpose is not to conduct city business.
- **BEST PRACTICE:** Avoid discussing city business with each other outside a properly noticed public meeting

APPEALS

- An individual or organization must have standing to appeal a land use decision. Generally to establish standing must have:
 - Appeared at the local hearing in writing or in person;
 - Raised issues with enough specificity to preserve the issue.