



Planning Commission Minutes  
Thursday, February 15, 2024 – 4:00 PM  
City Hall Council Chambers, 520 E. Cascade Avenue, Sisters, OR 97759

Acting Chairman: Cris Converse  
Commissioners: Sarah McDougall, Rick Retzman, Tom Ries  
Absent: Jeff Seymour, Art Blumenkron, Jeremy Dickman  
City Staff: Scott Woodford, Community Development Director, Matt Martin,  
Principal Planner, Emme Shoup, Associate Planner  
Visitor: City Attorney, Garrett Chrostek  
Recording Secretary: Emme Shoup, Recording Secretary

I. CALL TO ORDER / DETERMINATION OF QUORUM / ADOPTION OF AGENDA

*Acting Chairman Converse* called the workshop to order at 4:00 pm.  
A quorum was established. Adoption of Agenda – February 15, 2024.  
*Commissioner Ries* made a motion to approve the Agenda for February 15, 2024, as proposed.  
*Commissioner Retzman* seconded. Motion passes.

II. VISITOR COMMUNICATION - None

III. WORKSHOP

A. Planning Commission Ethics Training – City Attorney, Garrett Chrostek

*Director Woodford* stated that this is training that we do annually to keep everyone up to speed. We also do training with the new members and cover issues that are touched on during that time. There are some things that you may have had experienced out in the community with certain issues, and this is a great time to ask our legal counsel on how to react in certain situations where a member of the public might approach you on a current application, etc. This is going to be a workshop on ethics training, and if the Commissioners have any questions this would be a good time to get answers to the specific information.

*City Attorney, Chrostek* stated that he was going to go over the purpose and structure of the Planning Commission, talking about rendering decisions, and some of the ethical things that come up in the performance of your duties not only during hearings and meetings, but also extra circular's. The Planning Commission is formed for a variety of purposes – the first is that the City's Comprehensive Plan calls for a citizen input committee and that is one of the functions that the Planning Commission performs and is the body of citizens that advises the

city on various land use matters. It then has some additional responsibilities assigned to it through the Development Code to process various types of applications. Between those types of applications there are basically two primary types – Legislative Decisions which are those dealing with the text of both the Comprehensive Plan and the Development Code, and then there is the Quasi-Judicial Decisions which are when rendering a decision on a particular application. There are competing roles for both of those that will be discussed at a later point.

In going over the Roles and Responsibilities of the Planning Commission, one primary function of the Planning Commissioner is to sit on this body that makes recommendations that decides these decisions, acts in a judicial capacity on individual applications, and as part of that role what you need to be mindful of particularly in the Quasi-Judicial context is that you are supposed to be a neutral decision maker, and informed decision maker, and then need to be the party that implements at least portions of the procedures required for these types of decisions.

A neutral decision maker means that you do not have a conflict of interest, do not have any bias, and that you do not have communications that have occurred outside of the quasi-judicial process – the hearing. The conflict of interest – that does not mean you are free of conflicts, but what that necessarily means is that you do not have a financial interest – either you or an immediate member and the outcome of an application, or that you do not have a relationship directly with the applicant. It does not mean that you are friends with the applicant, does not mean that you go to the same church or in the same social club with an applicant, it literally means that you are going to stand the benefit, or your family is going to stand the benefit from a decision that is going before the Planning Commission. It is not a perception of bias, it is an actual conflict standard, but it is up to the Planning Commission whether you are going to participate, and if it is a close enough call that you do not feel comfortable, it is fine as long as you can maintain a quorum to sit out.

Neutral refers to not having any bias. If there is bias it is because either you have made up your mind about the application before it has been submitted, or that you acted in a manner that is hostile to one or more of the parties before the proceedings. That can play out in the form of having said comments in the public saying that you do not like this applicant, do not like this project and will never agree to these types of developments, etc. It does not mean more general statements such as there are concerns about growth, etc. If it is particularized to an application, then it is likely you have committed bias and that could result in having to recuse yourself.

The ex-parte communications unlike bias or conflicts of interest does not mean that you are going to have to recuse yourself. It may mean that you need to recuse yourself, but what the significance of the ex-parte communications is that it could taint the decision overall. This is communication that has occurred outside of the hearing process whether you talk to a party about the application when you saw them on the street, whether you have independently researched aspects of the application, the applicant, or the party, something that was said, and then looking at information that is not on the record, etc. Those do occur and people will stop you periodically and ask to talk about things, again that not necessarily require recusal, but it does require disclosure, and failure to disclose any of those contacts can ultimately jeopardize the decision if it turns out that the decision was made based on facts and communications outside of the record rather than what is in the record where everybody was

aware of and had an opportunity to refute. When conducting a Quasi-Judicial application – at the start of the hearing, it must be disclosed what conflicts of interest, bias, and ex-parte communications, and then people will be offered an opportunity to challenge not only the disclosure, but also the participation.

*Director Woodford* asked City Attorney Chrostek to explain how to distinguish between a Type IV Legislative application versus a Quasi-Judicial application in terms of conflicts, bias, ex-parte communications apply in those instances.

*City Attorney Chrostek* stated that up to now he has been speaking in the Quasi-Judicial context. In the Legislative context, the only thing that needs to be disclosed, and the only thing that could cause a recusal is a conflict of interest. In the Legislative process, it is understood that we are talking about policies, having citizens participate in those policies, and it is a more open process than the Quasi-Judicial which is acting as if you were a judge and need to be more neutral. You can have a strong position on a Legislative proposal whereas you could not do the same thing about a Quasi-Judicial development application.

*Director Woodford* asked if the conflict provision would still apply if it were Legislative, and if you have a direct financial benefit or a family member who does.

*City Attorney Chrostek* stated that is correct. It needs to be particularized and if we were looking at legislation dealing with Short-Term Rentals, and you owned a Short-Term Rental. That is obviously a conflict of interest. If we were talking about changing the setbacks in the residential zone just because you own a home in the residential zone probably not because it is so generalized basically to everybody in the town. It may implicate property values to some degree, but it is such a broad class that it is not going to rise to the level of conflict of interest.

Legislative is dealing with broad policy topics that are implemented in writing in the form of the amendments to the Comprehensive Plan or Development Code. Quasi-Judicial is a specific proposal, or even a Legislative act but specific to a handful of properties that is supposed to be generalized. Broad scale, re-zoning of the city might be Legislative, but a zone change of two or three properties would be Quasi-Judicial.

By going along with the ex-parte communications aspect, a topic that Director Woodford wanted me to hit on is deliberations outside of the record. Specifically, what we are talking about are email communications amongst the Commissioners. Emails to staff and legal counsel are not ex-parte communications and is understood that you should be able to reach out for technical assistance. Based on the nature of the request, staff and legal counsel need to decide how best to respond whether we want to be on the record in the response, or something that is legal in nature might not have to go on the record because it is privileged.

Communications amongst the Commissioner is always going to be problematic in a Quasi-Judicial and would suggest avoiding it in a Legislative context because the deliberations need to be on the record. Furthermore, you run the risk of violating public meetings law by having to establish a quorum by email, etc. It is best practice in responding to an issue that you want to have addressed whether it is Legislative or Quasi-Judicial context to send an email directly to staff and have staff resolve it rather than sending out a group email and responding a group

email. You are then creating communication outside of the record which could be problematic and certainly if deliberating that is very problematic.

*Acting Chair Converse* asked about two Commissioners sitting down and talking about an application or any other situations would that be alright.

*City Attorney Chrostek* stated that he would advise against it because even though you are not a quorum those are communications about the application and they are occurring outside of the record, and whether they are talking about the facts of the case, or what has not been addressed by the case – in either case you are either deliberating or creating communications that should be occurring in a public forum so that they can be evaluated in certain cases and responded to.

*Commissioner Ries* asked if an application has not come before the Planning Commission, is it ok to talk with a fellow Commissioner regarding an upcoming application.

*City Attorney Crostek* stated that in that context, it is not an ex-parte communication because it has occurred before an application has been filed, and that particular communication is not going to be too problematic, but again, question why you need to reach out when you know that it is likely to become before the Commission. If you do make up your mind and say something like you would not approve that, then you have bias and that is potentially jeopardizing your ability to act as a commissioner on an application that might come before you.

A brief discussion took place regarding land use laws in general in the State of Oregon.

*City Attorney Chrostek* stated that what is problematic is if you establish bias in the communications. Nonetheless, he is advising that when you recognize that it is a Quasi-Judicial application that it is likely to come before you and why take the risk of discussing it because the risk is that if you come out and say you do not like it and that comes to light, you are jeopardizing your ability to sit as a Commissioner in that application in a Quasi-Judicial context. When talking about the Oregon Land Use in general, then you are in the Legislative context and that issue is not an issue in the Legislative context. You can have opinions on policy and where the lines get blurry is if the policy is that we should prohibit this type of use, etc.

*Director Woodford* stated that this might be a good time to discuss the distinction between Legislative amendments where they are broadly applied to many properties and not all of them are created equal. We have an application before us for changes in the Tourist Commercial District which only applies to three (3) properties in town. He asked if this crossed the line into more site specific and maybe we need to adhere to the principles of the ex-parte communication relative to that.

*City Attorney Chrostek* stated that there is definitely not a bright lined rule when you cross over in terms of the number of properties, the number of acres, or something quantifiable, but there is the general principle that the more specific it is to individuals, individual property owners, individual properties, then you are in the Quasi-Judicial realm even if you are doing what is otherwise normally a Legislative act such as amending the Comprehensive Plan or the

Development Code. Yes, out of an abundance of caution, if it is close probably conduct yourselves in a manner more typical to Quasi-Judicial proceedings than Legislative proceedings.

*Director Woodford* stated that we do have an application submitted for some Legislative amendments to the Tourist Commercial zone. You may have read about it in the paper or from a neighbor, but what City Attorney Crostek is saying is to treat it like a Quasi-Judicial application and let the folks know that there is a time and a process for that and want to preserve the opportunities to participate in that and refer all the questions to staff.

*City Attorney Chrostek* stated that when approached by the community, it is a good idea to say that this matter is likely to come before me, or will come before me, and want to avoid creating an issue that might lead to my recusal, and do not want to discuss at this time, but happy to hear your thoughts at the proceedings.

Another topic is the Commissioners acting in an individual capacity. What we are talking about here is if someone wanted to individually testify before the City Council, or individually want to show up to some community event – noting prevents you from doing that, but what the concern is always going to be is the way you participate going to jeopardize future participation. As a commissioner on an application that deals with whatever you were communicating about, the other issue related to that is representing the Planning Commission. If you were going to testify before the City Council on something, you would need to identify that you are a Planning Commissioner but are not speaking for the Planning Commission unless the Planning Commission has given you authority to do so.

*City Attorney Chrostek* stated that another topic on his list is the mechanics of the extended hearing. When we get to the end of the public testimony, the applicant provides the rebuttal, staff makes any final comments, then at that point, the Planning Commission can either close the hearing or move onto deliberations, continue the hearing, etc. The first thing to know is that if any party to the proceedings requests a Quasi-Judicial hearing that the record be left open then the city needs to grant that at an additional evidentiary hearing. If someone does make that request, a decision will not be made that night. What will happen then is that the Planning Commission will have to decide whether they are just leaving it open to written communications from the parties, or if they are going to carry over to another meeting to receive additional oral testimony. Logistically, remember that if you flat out grant a continuation for additional oral testimony then that automatic seven (7) day request to leave the record open is still in play. Keep in mind that the city has a 120-day obligation to process applications so extending out the meetings can certainly eat up that clock. When leaving the record open just for written from a staff standpoint too, it also allows for a final decision to get formulated and adopted at a hearing because it is nice to have something in writing that can be adopted at the end of the hearing. He wanted to make everyone aware of the implications when that decision needs to be made at the end of any hearing, etc.

*Acting Chair Converse* asked for clarification that it is better for the Commission to not leave the record open for oral testimony.

*City Attorney Chrostek* stated that what he is trying to communicate is that when you carry over a meeting for additional oral testimony there is always the risk that there is going to be

yet another meeting because somebody can request that the record remain open. What might come off as a seemingly insignificant extension could be a two-month ordeal and is half of the 120-day right there.

*City Attorney Chrostek* stated that at this point he feels like he has hit most of the items on the list that Director Woodford wanted him to cover.

*City Attorney Chrostek* stated that he could cover one more thing before ending and that is when he shows up at the hearings, and he does not show up at all of them, but when asked to attend by staff. His personal physiology is that he is not conducting the meeting, that is the responsibility of the Chair, and he is there for a resource, to make sure things stay between the lines, but not standing in for the Chair, etc. He stated that he normally does not jump in until asked a question or it is his designated time just because he likes to defer to the Chair to run the meetings. When it is a clear-cut answer, he is happy to give it especially when it is about procedure, when it is on substance, and is very cautious when it is a gray area that it is not going on the record saying one thing and then having to defend a city decision that goes the other way. If there are questions that require legal opinion, he is always happy to answer those through email, or outside of the record because that is privileged. He stated that he is always happy to answer questions one way or another, but when it is in a public forum, he needs to be more careful of how strongly he comes out on the position.

#### IV. STAFF AND COMMISSION COMMENTS

*Director Woodford* stated that we will be having a work session on March 7, 2024, at 4:00 and a public hearing on March 21, 2024. As it stands now, the work session will be on the Tourists Commercial text amendments and then the public hearing will be on the Tourist Commercial text amendments.

*Planner Martin* stated that the Tourists Commercial is a unique district in town and Barclay Dr. and Camp Polk and commonly referred to as the Conklin House property. The purpose was to provide a variety of uses that are oriented to the tourist's economy and currently includes cabins, restaurants, and other associated types of uses. One of the prominent aspects of the proposed changes is to consider allowing an RV Park as one of those allowed uses.

*Commissioner Retzman* asked for clarification on why it only encompasses 1 ½ properties and why is there a special zone for those properties instead of putting them in where everybody else is.

*Planner Martin* stated that the City Council adopted an Ordinance that established that zone as part of the broader Sun Ranch development that extends through the business park area and was a larger holding that involved several zone changes, etc. and was an applicant-initiated proposal. It is kind of a Master Plan but using a broader look at various uses, zones, and districts for those intended development options.

*Commissioner Ries* asked if there is any possibility of getting the information to the Commission earlier than one week before the meeting.

*Planner Martin* stated that we will do our best and we are in the process of developing a website with all the application information on the record to direct the group to that and that will be available for review at any point.

*Director Woodford* stated that we try and do a work session format before a public hearing so that there is time to review the materials, etc. We are still working on the development code amendments including Short-Term Rentals, Defensible Space, and Building Hardening. We had a meeting with the City Council to try to figure out what their direction is in terms of what they want to see as far as changes, but they are needing additional time to do that. That will go back on March 13, 2024, to give them more time and code language to react to and once they get that direction, we will circle back with the Planning Commission.

*Director Woodford* stated that we did get a proposal for the Urban Growth Boundary amendment consultant. We only got one (1) in so it will not be an evaluation, but more of a confirmation whether that group meets the requirements to do the work. It is MIG/APG, Matt Hastie and his group that have done a lot of work for the city.

*Director Woodford* stated that this is the last Planning Commission meeting for Vice Chair Converse, and she will truly be missed. Thank you, Cris, for everything you do and have done for the city.

From Chair Seymour –

I would like to take a moment to recognize Cris Converse for her contributions to the Planning Commission and to the City of Sisters. Cris has served as a Planning Commissioner and Vice Chair since 2017 and has participated in countless impactful land use hearings and development code updates. I remember reading about her appointment in the Nugget where she said, “I actually enjoy reading code”. I knew right then; we had a solid Commissioner coming on board. Cris is a sisters’ institution and a long-time resident who is passionate about the city, she has always been a staunch supporter of the citizenry, she has been integral in the transformation of our little town and has seen more change than most. Cris’ greatest strength is the ability to listen and apply a commonsense approach to the issues at hand. This always resulted in the best decision being made for the city. More than a few times, I found myself listening to her wisdom causing me to question and even change my position. Her embrace of a long-term outlook facing the Commission and how they may impact the city was a welcomed and valuable perspective. As Vice Chair, Cris brought strong leadership to the Planning Commission and did a commendable job of leading hearings and work sessions in my absence. She also provided me with guidance, support, and occasionally, a much-needed shoulder to cry on. Cris, I commend you for your work with the city and the commission and for your contributions to the citizens both present and future – the city is lucky to have you as a volunteer and we are so grateful for your contributions. Best of luck in all your future endeavors. Thank you, Cris, you will be missed.

*Vice Chair Converse* said that she wanted to thank everyone and that the staff at the city is amazing. You are all wonderful to work with and just make everything so much easier. You are all constantly trying to do a better job and finding out what we need. You have added a lot, the city has grown, and have improved things.

V. ADJOURN

*Vice Chair Converse* adjourned the meeting at 5:00 pm.

Respectfully submitted,

Carol Jenkins, Recording Secretary.