



City of Florence

Community Development Department

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MEMORANDUM

TO: Florence Planning Commission

FROM: Sandra Belson, Community Development Director

DATE: November 3, 2011

RE: Quasi-Judicial Public Hearing Process

As I was working with Commissioner Tilton to chair the last Planning Commission meeting, we reviewed the:

- Script for Public Hearings, Explanatory Version
- Handout for a Quasi-Judicial Public Hearing

We thought it may be helpful for the Planning Commission as a whole to read over these two documents and give you an opportunity to discuss hearing conduct and land use procedures.

P:\Community Development 2\Planning Commission\Agendas\2011 Agenda Packets\11-8-11\Memo on Quasi-Judicial Hearings.doc

Script for Public Hearing – Explanatory Version

This evening we have _____ public hearing(s): _____

These proceedings will be recorded.

These hearings will be held in accordance with the land use procedures required by the City in Florence City Code Title 2 Chapter 10 and the State of Oregon.

The Planning Commission must make its decision based on facts. Prior to the hearing(s) tonight, staff will identify the applicable substantive criteria which have also been listed in the staff report. These are the criteria the Planning Commission must use in making its decision. All testimony and evidence must be directed toward these criteria or other criteria in the Plan or Land Use Regulations which you believe applies to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and parties involved an opportunity to respond to the issue may preclude an appeal of this decision based on that issue. Prior to the conclusion of the initial evidentiary hearing, any participant may request more time to present additional evidence, arguments or testimony regarding the application.

ORS 197.763 (6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval without sufficient specificity to allow the Planning Commission to respond to the issue precludes an action for damages in circuit court.

ORS 197.796 (3)(c) An applicant is not required to raise an issue under this subsection unless the condition of approval is stated with sufficient specificity to enable the applicant to respond to the condition prior to the close of the final local hearing.

(4) In any challenge to a condition of approval that is subject to the Takings Clause of the Fifth Amendment to the United States Constitution, the local government shall have the burden of demonstrating compliance with the constitutional requirements for imposing the condition.

Any proponent, opponent, or other party interested in a land use matter to be heard by the Planning Commission may challenge the qualification of any Commissioner to participate in such hearing and decision. Such challenge must state facts relied upon by the party relating to a Commissioner's bias, prejudgment, personal interest, or other facts from which the party has concluded that the Commissioner will not make a decision in an impartial manner.

Such challenges shall be made prior to the commencement of the public hearing. The Chairperson shall give the challenged member an opportunity to respond. A motion to accept or deny the challenge will be accepted and voted. Such challenges shall be incorporated into the record of the hearing.

A. Open Hearing

I now open the public hearing for Resolution _____. It is _____ o'clock.

Does any Commissioner wish to declare a conflict of interest, bias, ex-parte contact or a site visit?

Does any member of the public wish to challenge a Commissioner's impartiality?

B. Staff Report

Do any Commissioners have questions of the staff?

We will be taking testimony from the applicant, proponents, and opponents. Copies of the written testimony received have been distributed to the Planning Commission. Please sign in and state your name. If someone has made statements with which you agree, please come forward, sign in and state that you agree with those comments. You do not need to restate the previous comments.

C. Applicant's Presentation

Have you read the staff report? Do you understand the conditions of approval as proposed? Commissioners, do you have any questions of the applicant?

D. Proponents

Commissioners, do you have any questions regarding this testimony?

E. Opponents

Commissioners, do you have any questions regarding this testimony?

F. Neutral – Interested persons

Commissioners, do you have any questions regarding this testimony?

Does anyone have anything to add?

G. Rebuttal from Applicant

Commissioners, any final questions of the applicant?

If applicant provides new information in rebuttal, provide others opportunity to respond.

H. Staff Response and Recommendation

I. Close of Hearing

I now close this hearing at _____ o'clock.

J. Commission Deliberation-Direction to Staff

K. 1st and 2nd on Motion

L. Applicant opportunity to respond to any new conditions of approval not already discussed.

M. Vote on Motion

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Quasi-Judicial Public Hearings

Prepared October 10, 2011

Basis for Planning Commission Decisions

The Florence Planning Commission is a volunteer body appointed by the Mayor to make land use decision based on the facts. In making those decisions, we must apply the law. For every land use application, the staff planner has identified the applicable approval criteria (laws that are usually from the Florence City Code or Florence Realization 2020 Comprehensive Plan) that must be met in order to approve the application. Those criteria are listed in the staff report and announced at the beginning of the public hearing. If you think there are other criteria relevant to the decision, you may cite those in your testimony. The Planning Commission can not change the laws. If you think the laws (code or Comprehensive Plan policies) should be changed, you can work with the City to do that, but state law requires that applications be decided based on the laws that were in place at the time the application was filed.

Commissioners are Unbiased

Members of the Planning Commission are to be unbiased. Before the start of each public hearing, the Chairperson will ask the Commissioners whether they have any potential conflicts of interest. These conflicts of interest may be a family, financial or business relationship with any of the applicants or with regard to the land in question. The Chairperson will also ask the Commissioners if they have any bias or ex-parte contacts (independent knowledge of relevant facts such as a site visit, news article, or conversation with an involved party). The Commissioners will then disclose the substance of the site visit or conversation. The Commissioners will also state whether or not this information has resulted in a bias which would require stepping down from the Commission for the duration of the hearing and deliberations. Sharing this information with the others ensures that all Commissioners have knowledge of the same set of facts on which to base the decision. Before the start of the hearing, anyone may challenge the qualification of a Commissioner to participate in the hearing and decision in an impartial manner by stating the facts that show the Commissioner's conflict of interest or bias.

Hearing Process

The Florence City Code Title 2 Chapter 10 sets forth the procedures for quasi-judicial public hearings. Staff will summarize the written report and describe any new information such as written testimony that has become available since the date of the report. The applicant and those in favor of the application testify first. Then those who oppose the application testify second, followed by those who are neither in support or opposition to the applicant, but just have something say. If there is opposition, the applicant will have an opportunity to respond. If it is the first evidentiary hearing, anyone can request that the record be held open to provide more time to submit evidence or arguments regarding the application. Throughout the hearing, the Commissioners may ask questions of staff, or those providing testimony. If someone introduces new evidence in response to opposition or questions, everyone will have an opportunity to respond to the new evidence. Then the applicant can make a closing statement without introducing new evidence. The Chairperson will provide staff with a chance to respond to the

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evidence and provide recommendations to the Commission prior to closing the public hearing. Then the Commission will deliberate about what to do about the application. During deliberations, the Commission may re-open the public hearing to receive additional evidence before making a decision.

Public Hearing Process

- A. Open Hearing
- B. Staff Report
- C. Applicant's Presentation
- D. Proponents
- E. Opponents
- F. Neutral – Interested Parties
- G. Rebuttal from Applicant
- H. Staff Response and Recommendation
- I. Close of Hearing
- J. Commission Deliberation – Direction to Staff
- K. 1st and 2nd on Motion
- L. Applicant's Opportunity to Respond to any New Conditions of Approval
- M. Vote on the Motion

Providing Testimony

Any person affected by in an item before the Planning Commission that is scheduled for a public hearing may offer relevant oral and/or written testimony. Please raise any issue of concern clearly enough and with enough detail so people understand the issue, offering factual evidence in support of your comments. Please make sure your testimony is relevant to the approval criteria. Failure to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and parties involved an opportunity to respond to the issue may preclude an appeal of their decision based on that issue.

If someone has already made the same points you wish to make, you should still go forward to testify, but please limit your comments by saying that you agree with the previous testimony. When you provide testimony, please state your name and sign in with your mailing address and site address. If you represent someone else or a group, please say so. If you have any exhibits you want us to consider, such as a copy of your testimony, photographs, petitions, or other documents, please hand them to Sandra Belson, Community Development Director and she will incorporate them into the record.

Please refrain from audience demonstrations. Comments from the audience will not be part of the record.