

MEETING MINUTES
Benton County Planning Commission
Regular Session
June 4th, 2024

Benton County Planning Commission Vice Chair Hamann called the meeting to order at 6:00 pm. The meeting was open to the public virtually via a published Zoom link.

COMMISSION MEMBERS

Nicholas Fowler, *Chair (virtual)*
Greg Hamann, *Vice Chair*
Catherine Biscoe
John Wilson
Evelyn Lee
Sara Cash *(virtual)*
Andrew Struthers
Ed Fulford

STAFF

Petra Schuetz, *Planning Official*
Linda Ray, *Recorder*

Absent: Liz Irish

MINUTES

Commissioner Fulford **MOVED** to **APPROVE** the April 30, 2024; Minutes as written.

Commissioner Wilson: **SECOND**.

APPROVED AS WRITTEN 6-0. (Commissioner Struthers abstained)

Commissioner Struthers **MOVED** to **APPROVE** the May 4, 2024; Minutes as written.

Commissioner Lee: **SECOND**.

APPROVED AS WRITTEN 8-0.

TRAINING

Petra Schuetz gave a brief update on the effort to provide training for the planning commissioners. DLCD, as well as other agencies, have been contacted on potential resources for training. At this time, staff has not found any resource that is sufficient for the need but will bring back more ideas in the future.

See exhibits A to D for training documents provided by staff.

QUESTIONS REGARDING TRAINING

Development Code Update Process:

Phase 1 is approximately 9 months. Commission and staff will look over what portion of the code the county would like the contractor to focus on. Contractor MIG will prepare draft code for review at the end of phase 1.

Phase 2 is approximately 18 months. Draft code will be prepared for review through this phase. RFP will be opened for phase 2 contractor applications.

Long Range Planning Update

Commissioners discussed the Comprehensive Plan Update, including unincorporated and incorporated cities. Making note of administrative areas that need corrected. Commissioners can choose what goals are priorities within the code.

Staff's goal is to take the code update to the next level, especially in making sure that the smaller communities are represented in the code, whether incorporated or unincorporated. Benton County has the opportunity to help create a state model. The commission and staff have the responsibility to interact with the local communities, the contractor will be providing technical support. Second deliverable of the RFP contractor is that they will provide a work plan for community outreach. Expectation of staff would be for the consultant to listen to commission feedback on how to reach each individual community.

Commissioners requested a guided discussion through comprehensive plan to help commissioners think more strategically on how they'd like to contribute collaboratively. Staff will send commissioners staff level notes for insight on suggested edits, ask that public request this information via public records request for any staff level notes.

Planning Staff Responsibilities for Meetings

Questions regarding ensuring that public record and legal record showing the comments that refer specifically to the code and those that are more "feeling" based. Those comments will be included but are not used in relation to decision making. The commission is to make decisions from an unbiased position. How can the public be better educated to understand how to prepare their comments in a way that their testimony is part of the legal record vs the public comment. The commission has more flexibility than staff to help the public with the commission's expertise with comments that will make the comment a legally defensible.

Planning commissioner Responsibilities for Meetings

Clarifying discussion regarding questions from commissioners while the record is open and when it is closed regarding documentation for decision making. Commissioners can ask clarifying questions after the record is closed but may not ask for any new evidence. Commissioners requested some clarifying information regarding research by planning commissioners. Staff will follow up with County Counsel for any specific examples.

SUBCOMMITTEE UPDATES

Vice Chair Hamman: Code Update Subcommittee

First Goal: make the development code searchable and available online for more informed and focused conversations regarding applications.

Second Goal: long history of concerns and comments from staff regarding discrepancies and ambiguity in the code. Staff is working to create more consistency within the code itself.

Third Goal: collect and incorporate community involvement in this process, this will begin with the consultant when they are on board. Goal will be to hear those voices that are not typically heard from unincorporated communities.

Staff suggested holding a work session to review items in the code that Commission would like to see the consultant focus on, specifically those things that are missing from the code but applicable now.

Commissioner Fulford: Housing Subcommittee

Working on socialization for the next 3 months or so, continuing to speak with groups and stakeholders in the community. Next phase will then move into meetings and speaking with agency partners. Will conduct a land use inventory in the region and infrastructure gap analysis. Hoping to get some matching funds from the government for the 2025 session, will need to submit that by September/October timeframe for the legislative session.

Discussion among commissioners regarding who socialization should include, to include the bigger employers in the county and have them share in the responsibility of work force housing.

- Are local governments being involved in the socialization process?
- How are the subcommittees tracking recommendations for the greater Planning Commission?
- How is the public able to stay apprised of the work going on in subcommittees?
- Can commission raise the level of public transparency?

Chair Fowler response: Subcommittee operate under the aegis of the Planning Commission. Planning Commission is the governance body for each of these subcommittees. Our sessions now have a standing topic on the agenda, these updates are where the work product is reported to not only the commission, but also becomes part of the public record at that time. Those things that require governance decisions will come to the Planning Commission to make those decisions.

STAFF UPDATES

Schuetz-will send out summary email of meeting:

- Notes on development code references,
- Update on searchable code status on the website.

Vice Chair Hamman **ADJOURNED** at **8:07 pm**.



4500 SW Research Way
 Corvallis, OR 97333
 (541) 766-6819
 co.benton.or.us/cd

Glossary of Land Use and Planning Terms

Acronyms and Abbreviations | 2024

<https://www.oregon.gov/DAS/pages/acronyms.aspx>

[dc_ch_51_amended_12.15.22.pdf \(bentoncountyor.gov\)](#)

Benton County Zones

Exclusive Farm Use (EFU)	Philomath Low-Density Residential (PR-1)
Multi-Purpose Agriculture (MPA)	Philomath Medium-Density Residential (PR-2)
Floodplain Agriculture (FPA)	Philomath High-Density Residential (PR-3)
Forest Conservation (FC)	Philomath General Commercial (PC-2)
Open Space (OS)	Philomath Light Industrial (PLI)
Rural Residential (RR)	Philomath Heavy Industrial (PHI)
Urban Residential (UR)	Village Residential (VR)
Urban Commercial (UC)	Village Commercial (VC)
Rural Commercial (RC)	Special Use (SU)
Urban Industrial (UI)	[Ord 90-0069, Ord 2009-0233; Ord.2012-0247; Ord 2013-0253]
Rural Industrial (RI)	
Agricultural Industrial (AI)	
Landfill Site (LS)	
Public (P)	
Rural Service Center (RSC)	

Overlay Zones

Floodplain Management (/FP)
Greenway Management (/GM)
Willamette River Greenway (/WRG)
Flexible Industrial (/FI)

Airport (/A)

(/U), Natural Hazards (/NH), Natural Resource (/NR)

Goal 5 Resources; Wetland (/W), Surface Mining (/SM), Sensitive Fish and Wildlife Habitat (/FW), Fender's Blue Butterfly, Use

[Ord 97-0131; Ord 2004-0196; Ord 2006-0214, Ord 2009-0233; Ord 2013-0253]

Acronyms

A	Agricultural
AA	Alternative Analysis
ADA	Americans with Disabilities Act (1990)
ADT	Average Daily Trips made by vehicles or persons in a 24-hour period
AADT	Average Annual Daily Traffic
ADU	Accessory Dwelling Unit
AIA	American Institute of Architects
AICP	American Institute of Certified Planners
ALUC	Airport Land Use Commission
AMR	Annual Monitoring Report
APA	American Planning Association
AQMD	Air Quality Management District.
ASCE	American Society of Civil Engineers
BANANA	Build Absolutely Nothing Anywhere, Near Anyone
BAT	Best Available Technology
BFE	Base Flood Elevation
BID	Business Improvement District
BLM	Bureau of Land Management
BMP	Best Management Practices
BMR	Below-Market Rate dwelling unit or interest rate

BOC	Board of Commissioners
BP	Building Permit
BRT	Bus Rapid Transit
C	Commercial zone use of specified intensity
CAA	Clean Air Act
CAC	Citizen Advisory Committee
CAD	Computer Aided Design
CBD	Central Business District
CC&Rs	Covenants, Conditions, and Restrictions
CDBG	Community Development Block Grant
CFM	Certified Floodplain Manager
CIP	Capital Improvements Program Plan
CMAQ	Congestion Mitigation and Air Quality Improvement Program
CMP	Congestion Management Plan
CNEL	Community Noise Equivalent Level
CPI	Consumer Price Index
CO	Certificate of Occupancy
COG	Council of Governments CWCOC Cascades West Council of Governments (serves Linn, Lincoln, Benton Counties)
CRA	Community Redevelopment Agency
CSA	Community Service District
CUP	Conditional Use Permit
CWA	Federal Clean Water Act
dB	Decibel dB(A) Decibel (A-weighted)
DLCD	Department of Land Conservation and Development

DOE	Department of Energy (U.S.)
DOGAMI	Department of Geology and Mineral Industries
DP	Demolition Permit
DU	Dwelling Unit
EDA	Economic Development Administration
EFU	Exclusive Farm Use
EIR	Environmental Impact Report
EIS	Environmental Impact Statement (Federal)
EJ	Environmental Justice Title VI
EPA	Federal Environmental Protection Agency
ESA	Federal Endangered Species Act
EZ	Enterprise Zone
FAA	Federal Aviation Administration
FAR	Floor Area Ratio
FC	Forest Conservation Zone
FEMA	Federal Emergency Management Agency
FHA	Federal Housing Administration
FHLMC F	Federal Housing Loan Mortgage Company “Freddie Mac”
FHWA	Federal Highway Administration
FIA	Fiscal Impact Analysis also Federal Insurance Administration
FIR	Fiscal Impact Report
FIRE	Finance, Insurance and Real Estate
FIRM	Flood Insurance Rate Map
FmHA	Farmers Home Administration

FMV	Fair Market Value
FNMA	Federal National Mortgage Association “Fannie Mae”
FONSI	Finding of No Significant Impact
FTA	Federal Transit Administration
FWS	U.S. Fish and Wildlife Service
GFA	Gross Floor Area
GHG	Greenhouse Gas
GIS	Geographic Information Systems
GLA	Gross Leasable Area
GNMA	Government National Mortgage Association “Ginnie Mae”
GPS	Global Positioning System
HAP	Housing Assistance Plan
HCP	Habitat Conservation Plan
HIA	Health Impact Assessment
HOA	Homeowners’ Association
HOP	Home Occupation Permit
HOV	High-Occupancy Vehicle
HTF	Housing Trust Fund
HUD	U.S. Department of Housing and Urban Development Industrial
ISA	Impervious Surface Ratio
ISTEA	Intermodal Surface Transportation Efficiency Act
ITE	Institute of Transportation Engineers
LAFCO	Local Agency Formation Commission
LCDC	Land Development Commission

LLA	Lot Line Adjustment
LUBA	Land Use Board of Appeals
Ldn	Day-Night Average Sound Level
LEED	Leadership in Energy and Environmental Design LEED-ND LEED for Neighborhood Development
LHA	Local Housing Authority
LID	Low Impact Development Stormwater Management
LOS	Level of Service
LRT	Light-duty Rail Transit
M-1,2	Manufacturing Zone
M37	Measure 37
M49	Measure 49
MEA	Master Environmental Assessment
MEIR	Master Environmental Impact Report
MF	Multifamily
MGD	Millions of Gallons per Day
MH	Manufactured Housing
MOU/A	Memorandum of Understanding Memorandum of Agreement
M-PA	Multipurpose Agricultural Zone
MPD	Master Planned Community
MPO	Metropolitan Planning Organization (federal) Albany, AAMPO & Corvallis, CAMPO
MXD	Mixed Use Development
NAHB	National Association of Home Builders
NAHRO	National Association of Housing & Redevelopment Officials
NCCP	Natural Communities Conservation Plan

NEPA	National Environmental Policy Act
NGO	Nongovernmental Organization
NIMBY	Not In My Backyard
NHPA	National Historic Preservation Act
NOC	Notice of Completion
NOD	Notice of Determination Decision
NOP	Notice of Preparation
NPDES	National Pollution Discharge Elimination System
NRCS	National Resources Conservation Service
OAR	Oregon Administrative Rules
ODA	Oregon Department of Agriculture
ODF	Oregon Department of Forestry
ODFW	Oregon Department of Fish and Wildlife
ODOT	Oregon Department of Transportation
OHCS	Oregon Housing and Community Services
ORS	Oregon Revised Statutes
P&Z	Planning and Zoning
PC	Planning Commission
PCD	Planned Commercial Development
PDR	Purchase of Development Rights
PE	Preliminary Engineering
PHA	Public Housing Agency
PHT	Peak Hour Traffic (or Peak Hour Trips)
PID	Planned Industrial Development

PM	Particulate Matter
PPB	Parts Per Billion
PPM	Parts per Million
PUD	Planned Unit Development
QOL	Quality of Life
R	Residential
R-1,2..	Residential Zone/use of specified intensity
RDA	Redevelopment Agency
RFP	Request for Proposal
RFQ	Requests for Qualifications
RHNA	Regional Housing Needs Assessment Allocation
RLUIPA	Religious Land Use and Institutionalized Persons Act
ROW	Right-of-Way
RR	Rural Residential
SHPO	State Historic Preservation Office
SFD	Single-Family Dwelling
SP	Sign Permit
SPR	Site Plan Review
SRO	Single-Room Occupancy
STIP	State Transportation Improvement Plan
SUP	Special Use Permit
TAZ	Transportation Analysis Zone
TDM	Transportation Demand Management TO Transportation Options (modernized term)
TDR	Transfer of Development Rights

TGM	Transportation Growth Management Program (ODOT & DLCD)
TIA	Transportation Impact Analysis
TIF	Tax Increment Financing
TMA	Transportation Managemnt Area
TMDL	Total Maximum Daily Load
TOD	Transit-Oriented Development
TOT	Transient Occupancy Tax
TSM	Transportation Systems Management
TUP	Temporary Use Permit
UBC	Uniform Building Code
UFA	Urban Fringe Agreement
UGB	Urban Growth Boundary
UHC	Uniform Housing Code
USDA	U.S. Department of Agriculture
USDI	U.S. Department of the Interior
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey
V/C	Volume to Capacity Ratio (Transportation)
VAR	Variance
VLF	Vehicle License Fee
VMT	Vehicle Miles Traveled
WQMP	Water Quality Management Plan
ZLL	Zero Lot Line

ZO

Zoning Ordinance



4500 SW Research Way
Corvallis, OR 97333

(541) 766-6819

co.benton.or.us/cd

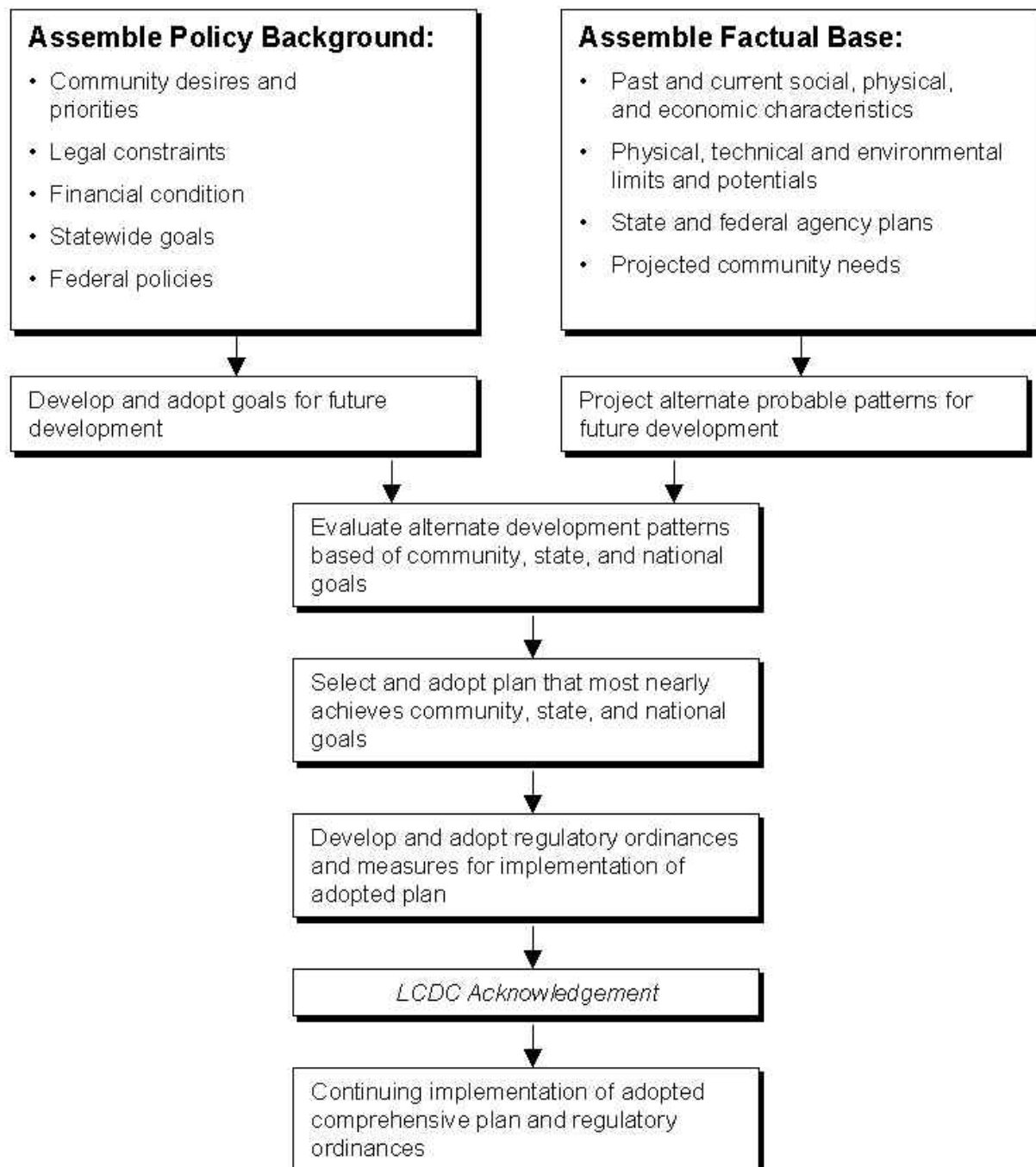
The Comprehensive Plan Update Process in Oregon

- **Develop factual base** - includes inventories of communities' physical and human resources, analysis of past trends, and projections of future trends usually for a 20-year period.
- **Develop functional elements** - this is the main body of the plan where the goals are addressed. Plans are generally (although not always) organized by goals (e.g., land-use, natural resources, transportation, economic development, housing, etc.).
- **Develop local goals** - these determine the relative emphasis a community will place on economic growth, energy conservation, urbanization, alternative transportation modes, and many other matters of local concern.
- **Develop Plan Map and Policies** - local goals are addressed in the physical development pattern and in a set of written plan policies. Specific policies are further reflected in development criteria and standards contained in the communities' implementing ordinances.
- **Citizen Participation and Intergovernmental Coordination** - are required under the Oregon system. Each plan must make specific provisions for citizen involvement and intergovernmental coordination in the planning process.
- **Formal Adoption and Acknowledgment** - the plan must be adopted by the appropriate decision-making bodies. The plan is then forwarded to DLCDC for review and acknowledgment for consistency with Statewide Planning Goals.

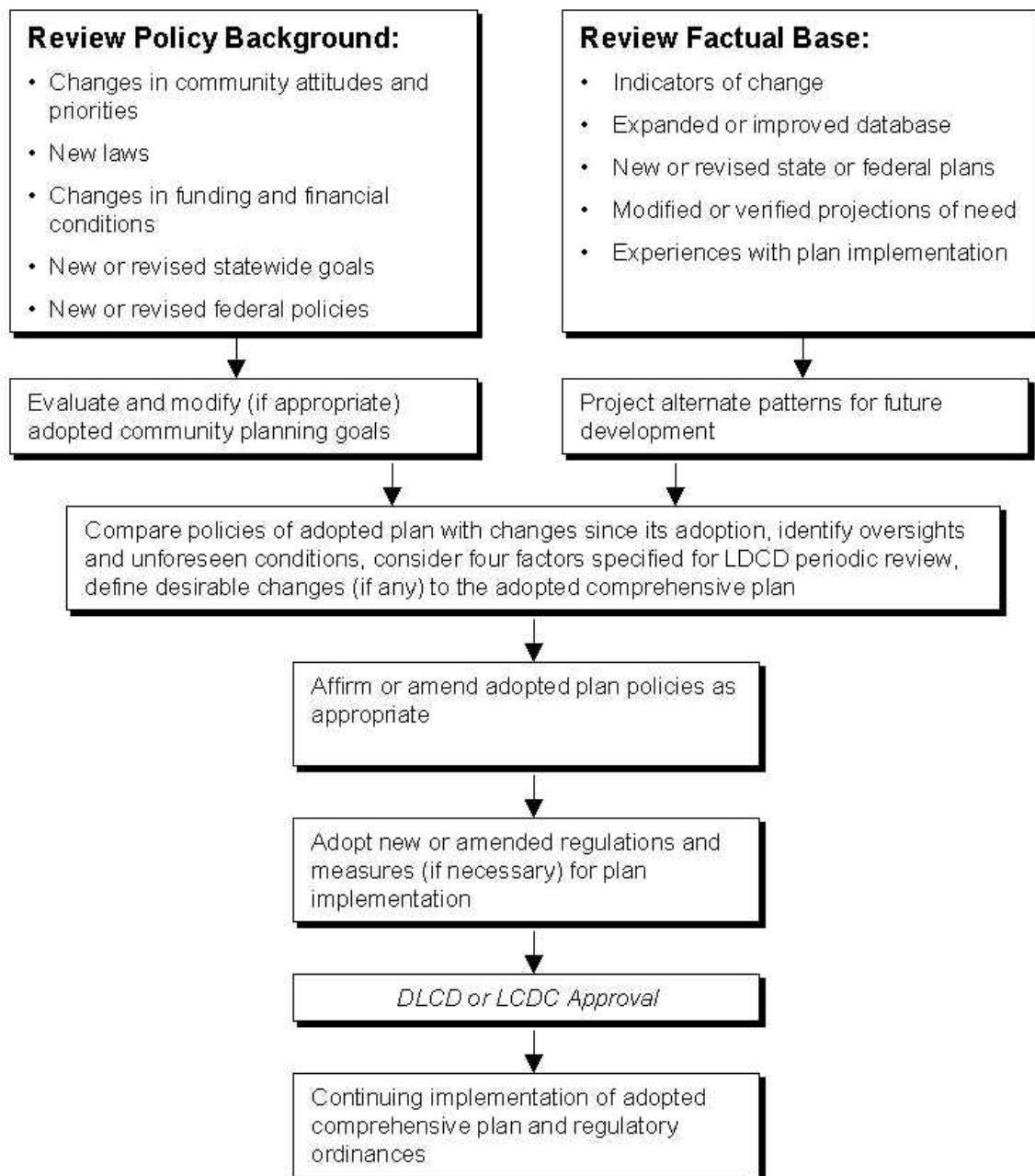
Comprehensive plan components

- Citizen Involvement
- Housing
- Commercial
- Industrial
- Recreation and Open Space
- Agriculture
- Forests
- Historic Resources
- Public Facilities
- Transportation
- Urban Growth
- Land Use | Zoning

Steps in the Comprehensive Planning Process



Steps in the Comprehensive Plan Review and Update Process



Ordinances and measures for comprehensive plan implementation

- Land use regulations—land divisions, zoning, plan map
- Zoning regulations—zoning map, text
- Subdivision regulation

- Nonregulatory approaches

What is Zoning?

1. The division of a municipality (or other governmental unit) into districts, and the regulation within those districts of:
2. The height and bulk of buildings and other structures;
3. The area of a lot which may be occupied and the size of required open spaces;
4. The density of population;
5. The uses of buildings and land for trade, industry, residence, or other purposes.

What special circumstances do zoning ordinances usually address?

- Conditional uses—zoning ordinances specify three types of permitted uses for each zone: outright uses, prohibited uses, and conditional uses. Conditional uses are uses that would not be appropriate throughout the zone but would be beneficial to the community if their number, location, design, and relation to surrounding property were controlled.

Typical review criteria require the use be compatible with and have a minimal impact on the livability of abutting properties and the surrounding neighborhood. Examples of uses that are frequently conditional uses include churches, schools, nursing homes, fraternal organizations, public offices, etc.

- Variances—most zoning ordinances allow deviation for some standards in limited instances. The unique conditions where variances are allowed typically include instances where the application of the standards would cause unnecessary hardship, such as the size or topography of a lot.
- Design review—many communities have design review to ensure that development is consistent with the communities' vision. Under design review, the design of the development, including site design, and sometimes, off-site facilities, is evaluated for compliance with requirements such as density, preservation of light and air, provision of facilities, vehicle access, open space, landscaping, and visual screening.
- Planned unit development (PUD)—most communities have planned unit development ordinances. PUDs typically are applied to larger developments and are intended to allow developers flexibility in meeting standards of building siting, density, access, etc.
- Nonconforming uses—all communities have uses that do not conform with zoning standards when the zoning ordinance is adopted. These uses are called nonconforming uses. Most zoning ordinances have provisions for the continuance, expansion, rebuilding, or discontinuance of nonconforming uses.
- Exclusive farm use zones (EFU)—all counties are required to have exclusive farm use zones. Beyond the intent of preserving agricultural land, EFU zones also allow landowners to have

their property assessed at its value for agriculture. This deferral of taxation reduces the impact of property values on farmers and reduces incentives to convert farmland to urban uses.

Related Zoning Provisions

- Floodplain regulation
- Sign control
- Geologic hazards regulation
- Historic, archaeological, and cultural preservation
- Airport approach control
- Architectural control
- Estuary, beach, dunes, and coastal related regulations

Subdivision Regulations

Controls partitioning of land including standards for:

- Street widths
- Street alignments and grades
- Curbs
- Sidewalks
- Lighting
- Dedication of land

Nonregulatory Measures

- Capital improvement program
- Conservation easements
- Economic development program
- Public and publicly assisted housing
- Land banking and greenbelts

Land-Use Decisions

ORS 197.015 Defines land use decisions to:

(a) Include:

(A) A final decision or determination made by a local government or special district that concerns the adoption, amendment or application of:

(i) The LCDC Goals;

(ii) A comprehensive plan provision;

(iii) A land use regulation; or

(iv) A new land use regulation; or

(B) A final decision or determination of a state agency other than the Commission with respect to which the agency is required to apply the goals.

(b) Not include a ministerial decision of a local government made under clear and objective standards contained in an acknowledged comprehensive plan or land use regulation and for which no right to a hearing is provided by the local government.

Types of Land-Use Decisions

Legislative - create and adopt as law general policies and regulations for future land use within a jurisdiction. Examples include the adoption or revision of a comprehensive plan, zoning regulations, or a subdivision ordinance. LCDC goals must be considered for legislative land-use decisions.

Quasi-Judicial - apply the law to specific land development or use proposals. Examples of quasi-judicial decisions include small-tract zoning designations, conditional use permits, and major land divisions. They typically involve the exercise of discretion by the decision-making official or body in applying general criteria of the plan or ordinance to the facts of a land development application. Quasi-judicial decisions always involve the property rights of specific persons.

Ministerial or Administrative - apply "clear and objective standards" for which the local government provides no right to a hearing. These decisions that are delegated to staff with the appropriate safeguards for the rights and interests of the affected parties. Examples include partitions or certain minor variances from standards.

Summary of Decision Requirements

Type of Decision	Notification	Hearings	Findings	Appeal
Legislative	Notice must be provided consistent	All local legislative land -use actions are required to be	Goal 2 requires land-use decisions have an "adequate	Land use decisions are subject to appeal only to

	with local policies—but also to specific groups, agencies and LCDC if application of goals is involved	taken <u>after</u> a public hearing.	factual base". These decisions must be supported by written findings.	LUBA. The scope of review only includes a determination of consistency with LCDC goals and the local comprehensive plan
Quasi-Judicial	Must identify the type of land use decision to be made and the time and place of the hearings	Parties are entitled to present and rebut evidence presented by others. The proponent has the burden of proof. Evidence that is not included in testimony or as part of the record may not be cited as a basis for the decision.	Decisions are not final until written findings have been adopted by the decision-making body. Failure to prepare and adopt "adequate" findings can result in reversal or remand of a decision.	The law requires that a notice of a quasi-judicial decision be sent to all parties of the preceding. Decisions can be appealed directly to LUBA, but jurisdictions can provide more than one level of appeal.
Ministerial or Administrative	No required, but generally provided	Not required.	Not required.	Can be appealed to the appropriate decision-making body.



4500 SW Research Way
Corvallis, OR 97333

(541) 766-6819

co.benton.or.us/cd

Staff Responsibilities for Quasi-Judicial Decision-Making at Planning Commission

A planning commission is a standing committee of appointed responsible for guiding land use and development. The commission works in partnership with Benton County staff, and community members to develop policies and plans that promote orderly and sustainable growth within the community.

The planning commission has two roles; to review and consider land use proposals, such as rezoning requests, land use plans, and subdivision plans. Second, the Planning Commission plays a role providing recommendations development policies. The meetings are public hearings, allowing community members to voice their opinions and concerns regarding proposed development projects.

Staffing an effective planning commission is vital, as it encourages lawful execution of public meetings law, fosters different types of civic engagement.

1. Agenda Setting

At least 10-14 business days before a regularly scheduled meeting, staff sends a draft agenda to the Chair.

The Chair reviews, suggests amendments if needed, and notifies staff with **at least nine (9) business days** before the meeting.

Creating a clear and comprehensive meeting agenda in a timely manner is essential for a successful planning commission meeting. The agenda includes a list of the topics to be discussed and the amount of time allocated for each item.

After agreeing to the final agenda, staff has **four to two (4-2) business days** to develop staff reports, draft meeting minutes from prior meetings, collect written public comment, and coordinate other meeting materials.

2. Posting Notice

At least seven (7) days prior to the meeting, staff distributes meeting materials to members, applicants, and interested parties.

Staff posts meeting Notice to Benton County website **seven (7) days prior** the meeting.

3. Amendments to Agenda

Amendments to an agenda or the meeting materials should be avoided unless there is an emergency because it is confusing to the public, difficult for staff to react to in a timely manner and increases notice mistakes and interferes with staff ability to meet notice requirements of, e.g., the paper of record. These situations invite distrust and optics of unreliability by the public, interested parties, staff and planning commissioners.

4. The Meeting

Staff sets the room, monitors the virtual element, and records the meeting.

Staff is available to answer questions, know the breadth of relevant law, and facilitate when needed.

Planning commission should follow the agenda, avoid conversations not on the agenda.

5. Capture Accurate Meeting Minutes

Staff records and takes meeting minutes, distributes, and posts them to staff and public in a timely manner.

6. Send Post-Meeting Action Items

Following the meeting, staff will send post-meeting action items to all members if necessary. Staff will include a list of action items, deadlines, and all other relevant information. Sending post-meeting action items helps to ensure all members are on the same page and that progress is being made toward the goals discussed during the meeting.

7. What to expect in a Quasi-Judicial Land Use Staff Report

- A. Cover sheet.
- B. Project description, legal description (required for a rezoning).
- C. Factual information about the site and surrounding area, including:
 - the current zoning districts of involved properties
 - description of the site including on a site visit and survey by the planning staff
 - surrounding land use(s)
 - recent land-use actions, including rezonings, conditional uses, code violations, non-conformity, and variances affecting the area
 - existing and proposed public facilities serving the site, including sizes of water and sewer lines, and classification and condition of roads
 - identification of other services, such as public transit traffic counts, if relevant
 - floodplain or wetlands information, if relevant
 - presentation of decision-making criteria from plans or development codes with comment on how the project meets or does not meet criteria (for rezonings, variances, conditional uses)
 - specialized impact analyses, if necessary

- evaluation of consistency of proposed action with all applicable plans, ordinances, and regulations. This section would include statements of comprehensive plan map designations, written policies, and excerpts of relevant sections of ordinances and regulation.

D. Description of information yet to be submitted.

E. Comments from other agencies.

F. Staff recommendations, including conditions, as appropriate.

G. Maps displaying subject property.

H. Photographs of the property, if appropriate.

I. Information submitted by applicant (as attachments).

J. Written comments from citizens (as attachments). Staff should delineate public comments that address Development Code criteria and those that do not. The comments directly related to Code criteria may be used within the legal record.



4500 SW Research Way
Corvallis, OR 97333

(541) 766-6819

co.benton.or.us/cd

Policy on Planning Commission Communications

05 | 21 | 2009; updated 12 | 02 | 2011; 10 | 30 | 2014

The following policy is based on discussion with Benton County Counsel.

Regarding matters – typically land use applications – that are before the Planning Commission:

1. **Communication with Staff.**

Planning Commissioners may communicate with staff, ask questions, request information. Information requests will generally be copied to all Planning Commissioners so that all have the same factual basis upon which to consider the application.

2. **Communication between Planning Commissioners outside of hearings.**

Discussions between Planning Commissioners regarding issues upcoming before the Commission is strongly discouraged.

By law, any discussion involving a quorum of the Planning Commissioners occurring outside a meeting is improper. In the interest of fair, transparent and impartial decision-making, we strongly encourage Planning Commissioners to discuss matters only at public meetings.

Deliberations must occur as part of a duly noticed public meeting. Email discussions that constitute deliberations outside of a noticed meeting are not permitted under Oregon's Public Meeting Law.

3. **Planning Commissioner participation in decision-making.**

To participate, a commissioner must have reviewed the record and heard all testimony presented to the commission. If a commissioner is absent from a hearing that is continued, and the commissioner wishes to participate in the decision at the continued hearing, he/she needs to listen to the audio recording of the missed hearing and review any materials submitted.

Providing input if absent. If a Planning Commissioner is unable to attend a hearing but wants to provide input, he/she may participate at the continued hearing (if there is a Continuance) as described above or, alternatively, may recuse themselves from the

decision-making process and instead provide testimony as a member of the public. A Planning Commissioner providing testimony may not later resume a role in Planning Commission discussion, deliberation, nor decision.

4. Research by individual Planning Commissioners.

Personal research into the applicable law is okay. For example, looking at LUBA (Land Use Board of Appeals) case law to see how a particular law has been interpreted.

Research into the facts is generally improper, because it results in the individual Planning Commissioner having facts that could influence his/her decision and that are not in the record (meaning they are not available to all and are not open to scrutiny and refutation by parties involved).

If Planning Commissioners want information, request it from Staff. Staff will make sure it is properly handled.

5. Site Visits.

Individual Planning Commissioners – such visits are acceptable, provided the Planning Commissioner *discloses* this at the hearing as an ex parte contact. The Planning Commissioner should avoid discussing the matter with the property owner or anyone else encountered during the site visit.

Sub-quorum – This is acceptable, again provided the involved members disclose the visit. We strongly recommend that group site visits be accompanied by a staff member. Limited discussion during the site visit appears to be allowable.

Quorum – This constitutes a meeting of the Planning Commission and must be noticed in the newspaper. Staff should accompany. This is best arranged as part of a regularly scheduled meeting.

6. Ex Parte Contact.

Quasi-judicial: Ex parte contact is contact with one side without the other side being able to hear the conversation and rebut what was presented. Ex parte contact can be grounds for overturning a decision upon appeal. This can be avoided by the member of the decision-making body receiving the contact:

Placing on the record the substance of any written or oral ex parte communications concerning the decision or action; and

Making a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

Note that a communication between county staff and the planning commission or governing body shall not be considered an ex parte contact.

Legislative. The rules regarding ex parte contact do not apply in legislative proceedings. The state statutes lead County Counsel to conclude that the ex parte rules are designed to prevent outside communications from unduly influencing land use decisions or limited land use decisions only (not legislative decisions).

In a legislative proceeding, the governing body is not hearing the case of one side vs. the other (approve or not approve a specific land use action) but is rather considering whether and in what form to adopt a broadly applicable policy or regulation. In a sense, there is no such thing as ex parte contact in such a setting.

7. What constitutes new evidence?

Once the record is closed (public comment closed), the planning commission may not take any more testimony or evidence. That means no new documents may be submitted, no oral testimony presented and no new information may be elicited from prior testifiers. That means as long as the record is closed, the PC may not ask questions of anyone who provided written or oral testimony.

The only way the PC may ask questions of the audience is to reopen the record, ask questions and then ask if anyone else has additional testimony it wishes to present. And then, after that "solicitation" is complete, the PC should probably keep the record open for a period of time to allow anyone to submit evidence or testimony in response to information presented during the question-and-answer session and/or renewed open record period.

Reopening the record to allow the PC to ask questions is really a slippery slope. When does the circle of evidence and response end? I advise not reopening the record to allow the PC to ask questions, because then it'll have to offer anyone else an opportunity to testify, regardless of whether they were asked questions. The good news is that by keeping the record closed and not asking questions of prior presenters, those "foreclosed" presenters still have another opportunity to present testimony - at the Board hearing. So, they have another chance to offer evidence/testimony, not only the Planning Commission.

Questions of staff are encouraged. Such questions typically do not result in new evidence, so they rarely pose a problem.