

City of Veneta Land Use Handbook



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Introduction

Purpose

This document is intended to help interested citizens participate effectively in land use processes in the City of Veneta. It describes procedures relating to land use issues in the City of Veneta and the public bodies that have jurisdiction over various parts of the process. The handbook identifies those points in the land use process where citizen input is taken and what citizens need to consider when participating in the process.

Persons desiring to testify at land use hearings should become familiar with the Veneta Development Code as it relates to applications. The Development Code is available for inspection and copying at the City of Veneta Community Development Department (CDD) at City Hall, and online at www.venetaoregon.gov.

This handbook attempts to provide accurate, easy-to-understand information about those procedures; it is not an exhaustive reference manual for City land use procedures. It is provided for general informational and educational purposes only and does not constitute legal or other professional advice. You should not act or rely on any information contained in this manual without seeking appropriate legal advice or other professional counseling. The information contained in this manual is intended to be generally correct and current at the time of publication, but no promise, guarantee, warranty or representation is made that the information is correct, complete or current at the time of reading.

Users should consult their own legal or other professional counselor for advice regarding the application of the law to their specific circumstances.

Land Use Rules

The rules that govern the process for land use applications are not just decided by the City of Veneta. Many of the rules we apply locally are based on laws in Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS). The rules that are used in the local land use application process are found in the Comprehensive Plan and the Development Code.

A variety of factors influence a local jurisdiction's land use regulations. First and foremost are Federal and State laws. Anything we adopt locally must be consistent with applicable Federal and State rules. Behind that we have court cases; the decisions from which we call Case Law. If a Federal or State law is challenged, and a court determines that there is a fault in the law, local jurisdictions may have to change the way they administer their local rules as a result. Court challenges may also be brought against local ordinances, with the same effect. Some of the most important land use regulation in this country is a result of case law (decisions) from the United States Supreme Court.

In Oregon, there are 19 [Statewide Land Use Planning Goals](#). Not all Goals apply to every community; Goals 16-19 apply only to coastal areas, and Goal 15 only applies near the Willamette River. All City and County Comprehensive Plans must address and be consistent with any Goals that apply to that community. Because Lane County possesses both coastal areas and the Willamette River, it is the only county where all 19 Goals apply.

Local jurisdictions are given significant leeway when adopting local regulations, provided of course that they are consistent with State and Federal laws. Where many jurisdictions run into trouble is when they decide they do not want to follow the law, or they try to bend it to suit local desires. The State of Oregon has a process that attempts to minimize these problems by at least making sure affected State agencies can review proposed changes in local law prior to adoption. Our Comprehensive Plan must be "acknowledged" by the Land Conservation and Development Commission (LCDC), and any updates must also be submitted to the Department of Land Conservation and Development (DLCD) for review prior to adoption. Concurrent with this review, other State agencies, as well as

interested parties such as 1,000 Friends of Oregon and the Oregon Fair Housing Coalition, may review proposed changes and ask questions. While these outside agencies and parties may not always agree with local desires, it is always beneficial to engage with them to try to avert potential appeals that can cost a local jurisdiction dearly in terms of both time and money, not to mention staff resources that could be better utilized.

Local development regulations are always a delicate balance between those who wish to have completely unrestricted use of their property, and those who don't want to allow anyone else to do anything that bothers them (or might). Obviously we cannot follow either of these options to their full extent. This, in a nutshell, is why different communities look and feel different. Some communities have strong preferences for or against certain types of development, which is why the landscape varies from one town to the next. Unfortunately, some local regulations have consequences that may or may not have been intended, which can result in negative impacts to certain populations, or the entire city or region.

Thankfully, the Comprehensive Plan and the implementing zoning regulations are living documents that can be amended. If there has been a change in market conditions, or we realize that something we did resulted in an undesirable outcome (such as large minimum lot sizes that result in housing costs that exceed local incomes), we have the ability to change the rules. But we must always remember that cities are not developers. We can adopt our own rules, but we are not the ones doing the building. There are a lot of things that influence a decision to develop property that are beyond our control, and we cannot overstate the obvious: development is expensive. The cost of land, materials and labor is increasing faster than wages. And that means that the costs our cities and counties must bear to build and maintain critical infrastructure, such as water, sewer and roads, is also increasing rapidly, often faster than taxes and incomes.

Comprehensive Plan

Local jurisdictions are required by the Oregon State Legislature to enact legislation to implement and administer the statewide land use goals and guidelines, and to fine-tune them to address local issues and concerns. Each jurisdiction accomplishes this by establishing Comprehensive Plans and land use regulations that are acknowledged by the state as being consistent with the statewide program. The Comprehensive Plan incorporates the land use priorities, housing and job targets, transportation and other public facility projects, and other goals set for our city through the long range planning process, which is intended to guide the City over a 20-year planning period. Copies of the Comprehensive Plan are available for viewing at City Hall, and on the city's website at www.venetaoregon.gov.

Development Code

In conjunction with the Comprehensive Plan, the city has implementing regulations in the Development Code. While the Comprehensive Plan describes general land use goals and priorities, the Development Code has more detailed descriptions of its categories, called zoning districts. The Development Code specifies what uses are allowed and prohibited in each zone, and is intended to cover most types of land use issues that may arise. The Development Code specifies procedures for various land use matters, including development and modification of land usage. Given the breadth of issues the Development Code addresses, the procedures defined can be fairly complex. Copies of the Development code can be found at City Hall, and on the city's website at www.venetaoregon.gov.

The Development Code also includes the approval criteria for development applications. These criteria exist to provide a developer with an avenue for approval of a proposed project; if all criteria and standards are met, the project should be approved. If not, it will be denied. The way the applicant, city staff, property owners and citizen participants address the applicable approval criteria in the Development Code during the development review and/or public hearing process affect the ultimate project that may be built. The mechanics of the development process are described in the Application Types and Land Use Process sections.

Decision Makers

The Director

The Community Development Director (the Director), or their designee, makes decisions on all Type I and II (1 & 2) land use applications. Type I/II land use decisions are non-discretionary and must be based on clear and objective standards...you either meet them or you don't, and no discretion is necessary to make the determination. No public hearing is required for the Director to make a Type I/II land use decision.

Planning Commission

The Planning Commission rules on land use and development applications that require public hearings. The Commission also reviews legislative changes to the city's Comprehensive Plan and Development Code. Legislative changes are changes that create or amend land use policies, rules and procedures for development in the city.

The Commission consists of five members appointed by the Mayor and confirmed by the City Council for four-year terms. All commissioners are volunteers who are intended to represent the community at large. Their decisions are final unless appealed. One exception is a land use application that requires the adoption of an ordinance. In those cases, the Commission's decision serves as a recommendation, and the adoption of the required ordinance is placed on the City Council's consent agenda for formal adoption.

Because most decisions made by the Planning Commission are quasi-judicial (the Commission acts "like a judge"), members of the Commission are not supposed to engage with either the applicant or the general public outside of a hearing. This is called an "ex parte" contact, and it is discouraged because there is no opportunity for other interested parties to receive the information presented or offer a rebuttal. Any person who wishes to obtain additional information about a pending decision, or provide written testimony, should contact City staff directly prior to the hearing. Do not attempt to contact Planning Commission members directly regarding a pending decision.

City Council

The City Council reviews appeals of Planning Commission decisions. The City Council is made up of five members, each elected at-large to serve a four-year term. The Council sets policy and oversees the budget for the city. The Mayor sits on the Council and chairs the Council meetings, but does not direct or participate in the day-to-day business of the City.

For any Type III or Type IV quasi-judicial decision that may be presented to the City Council, either directly or on appeal, the rules discouraging ex parte contacts apply. Citizens should not attempt to contact members of the City Council prior to a hearing on a pending application. The City Council is generally able to engage with the public in advance of Legislative (Type V) actions. More information on application types is on the following pages. Citizens are generally able to discuss other, non-land-use issues with Councilors outside of a public hearing, and are encouraged to do so.

The Planning Commission and City Council hear development applications within the city that cannot be approved at the staff level. For information on bodies that make decisions regionally and statewide, refer to the Resources page at the end of this document.

One thing to always remember: your city staff, as well as your elected and appointed officials, are bound by duty to follow the language in the Comprehensive Plan and the Development Code. These documents exist in order to ensure that nobody makes the rules up as they go. This does not mean that the language in our adopted documents cannot be changed. But until they do, we must follow the rules we have in place today, not the rules we wish we had.

Application Types

In general, Type 1 and Type 2 actions are non-discretionary decisions handled by the Community Development Department staff (including Administrative Decisions by the Director). Type 3 and 4 actions are more complex (and often more controversial) decisions, which are heard and decided by appointed or elected officials. The levels of review for each application type differ not only in the public bodies involved, but also in their timelines, the degree of public notice given, and their provisions for citizen input.

Action	Procedure	Action	Procedure
Amendments		Home Occupation (Minor / Major)	Type I / III
- Comprehensive Plan text	Type V	Interpretation of Ordinance	Type II or III
- Comprehensive Plan map	Type V	Mobile Vending	Type I
- Zoning Map (Quasi-judicial / Legislative)	Type IV / V	Modification to Approval - Minor	Type I
- Ordinance Text	Type V	Modification to Approval - Major	Per original review
Annexation	See ORS 222	Sign Permit	Type I
Conditional Use Permit	Type III	Site Plan Review	Type II or III
Extension of Time	Type I or III	Temporary Use	Type I
Floodplain Development	Type I	Tree Removal	Type I

Type I (1) Applications

Type 1 applications are often referred to as “Administrative” or “Ministerial,” and are reviewed by Community Development Department staff. Decisions are based on clear and objective approval criteria and do not require or allow discretion by staff. The approval criteria are found in the Development Code. Type 1 applications do not require public notice, and most Type 1 applications can be approved the same or next day. The Community Development Department Director is the decision-making authority. Type 1 decisions may only be appealed by the applicant. See VLDO §11.05.

Type II (2) Applications

Type 2 applications are reviewed by Community Development Department staff. Decisions are based on clear and objective approval criteria and do not require discretion by staff. Type 2 applications are reviewed by City staff and partner agencies that may have an interest, who evaluate the application and may recommend certain changes to plans or conditions of approval for the application.

Notice is mailed to property owners within 300 feet of the property after the application is deemed complete, at least 20 days before the Director issues a decision. Persons receiving a mailed notice, and any other interested persons or parties, may submit written comments no later than the comment closing date specified on the written notice of application.

Notice of the decision is sent to any parties who submitted written comments. Only those persons who submitted written testimony prior to the Director's decision may appeal the decision. The Planning Commission will only consider a Type 2 decision of appealed. An appeal must be received within 12 calendar days of the date the decision was mailed (not the date it is received, in the mail or otherwise). See VLDO §11.06.

Type III (3) Applications

Type 3 applications are reviewed by the Planning Commission. Decisions are based on specific approval criteria, some of which may be discretionary. Because the Planning Commission members act “like a judge” when weighing evidence and determining compliance with certain specific approval criteria, we call these actions “quasi-judicial.”

Notice of the Type 3 applications is provided after the application is deemed complete. Notice is mailed to property owners within 300 feet of the property, and posted on-site, at least 20 days before the public hearing. Any

interested person or party may submit written comments prior to the public hearing or may provide oral testimony at the public hearing. Public notice is also published in the Fern Ridge-Tribune News at least ten days before the hearing, and occasionally in the Eugene Register-Guard.

Notice of the decision is sent to any parties who provided oral or written public testimony on the record. Only those persons who submitted public testimony prior to the Planning Commission's decision may appeal the decision. The City Council considers the appeal of Type 3 decisions. An appeal must be submitted within 12 calendar days of the date the decision was dated and mailed, not the date it is received in the mail. See VLDO §11.07.

Type IV (4) Applications

Type 4 applications are quasi-judicial in nature, and are fairly rare. Type 4 procedures typically involve an amendment to the Zoning Map but no change to the Comprehensive Plan Map, and generally apply to a relatively small geographic area containing few or only one property owners.

Type 4 applications involve a Planning Commission public hearing and City Council adoption of an Ordinance. The Planning Commission decision is a recommendation forwarded to the City Council, who makes the final decision. Appeals of a City Council decision are made to the Land Use Board of Appeals (LUBA).

Type 4 applications typically only require notice to the applicant and property owners within 300 feet, but also require notice to the Department of Land Conservation and Development (DLCD) at least 35 days before the first hearing. Public notice must be mailed not more than 40 and not less than 20 calendar days before the initial public hearing. Public notice is also published in the Fern Ridge-Tribune News, and occasionally in the Eugene Register-Guard. See VLDO §11.08.

Type V (5) Applications

Type 5 applications are legislative in nature, and create the land use policies, rules and procedures for development in the city. Type 5 applications amend the Development Code and/or Comprehensive Plan. Type 5 procedures generally apply to a relatively large geographic area containing many property owners.

Type 5 applications involve a Planning Commission public hearing and City Council adoption of an Ordinance. The Planning Commission decision is a recommendation forwarded to the City Council. Appeals of a City Council decision are made to the Land Use Board of Appeals (LUBA).

Type 5 applications may require citywide individual property owner notice if new rules are being proposed that constitute a rezoning of land; otherwise, individual property owner notice depends on the topic of the application. Notice is only sent to affected property owners, as determined by the Director. Public notice must be provided to the Department of Land Conservation and Development (DLCD) at least 35 days before the first hearing, and mailed not fewer than 20 calendar days before the initial public hearing. Public notice is also published in the Fern Ridge-Tribune News, and occasionally in the Eugene Register-Guard. See VLDO §11.09.

Land Use Process

Pre-Application Conference

All applicants submitting Type II-V applications are encouraged to hold a meeting with staff prior to submitting an application. Applicants may choose to forego the Pre-Application Conference by submitting a waiver with their application materials. The purpose of the pre-application conference is to acquaint the city, outside agencies and service providers with a potential application and offer preliminary advice to trouble-shoot potential problems. Similarly, the Pre-Application Conference is intended to acquaint the applicant with the requirements of the Development Code, Comprehensive Plan, and other relevant criteria and procedures. Citizens are not allowed at these meetings but may read the notes from them in the application file once the application is submitted.

120-day clock

Once an application is submitted, State law requires city staff to conduct completeness review and provide a written response to the applicant within 30 days as to the application's status. If the application is deemed incomplete, the applicant is notified in writing and allowed 180 days from the original date of submittal to provide items necessary to deem the application complete. After the application is deemed complete, city staff will mail public notice to required parties for Type II/III/IV applications.

Once an application is complete, the city has 120 calendar days to render a final written decision on the application. The 120-day time frame includes local appeals. Only the applicant can extend the 120-day timeframe. If the applicant does not extend the 120-day requirement then the city may face legal action by not signing the final decision within 120 days. Note that the City must issue a decision, but that decision does not have to be an approval. An application lacking sufficient evidence to justify approval will be denied if the City is compelled by writ to issue a decision. The "120 Day Rule" does not apply to Type V decisions. (See [ORS 227.181](#))

Agency Review

Applications may be submitted to partner agencies who review the proposal for conformance with technical criteria, such as streets, traffic, utilities and fire. These may include representatives from various city departments and outside agencies, such as the City Engineer, Transportation agencies (Lane County and/or ODOT), Lane County Sheriff, and Fern Ridge School District

Public Hearings

Land use applications are generally heard before the Planning Commission. The Commission's role is to judge whether or not an application meets the specific approval criteria relevant to the application under consideration. The applicant always has the burden of proof to show that the application meets the criteria of the Development Code. The location of the approval criteria is listed by its Code section number in the public notice.

Public notice must be mailed a minimum of 20 days prior to any public hearing. In order to prepare the notice and determine which properties must be noticed, staff must have an application deemed complete a minimum of 28 days before the hearing (more is better). It can take more than a week to deem an application complete. The Veneta Planning Commission meets on the first Tuesday of every month; potential applicants are advised to submit applications a minimum of 35 days (five weeks) from the next meeting if they wish to allow staff enough time to review the application and put it on the next available agenda.

Staff reports are published at least seven days prior to the public hearing. The staff report includes a summary of the proposal and provides findings on how the proposal meets the applicable approval criteria. Staff's recommendation and proposed conditions of approval are typically listed at the end of the report. Staff reports are published on-line at www.venetaoregon.gov. The applicant's materials, maps and diagrams are only available at the Community Development Department.

Citizens may become a party to the land use proceeding by providing written and/or oral testimony. Written testimony is most effective when it is submitted prior to publication of the staff report and can be reviewed by the Planning Commission before the public hearing. Written testimony received by the city after the date the staff report is published will still be part of the application's public record, but may not reach the Commission before the hearing.

The public hearing generally follows the order below:

- City staff gives their report
- Applicant provides testimony
- Testimony by organized groups or other government organizations
- Testimony by individuals (in favor / against / neutral)
- Applicant's rebuttal of testimony
- Final comments by city staff
- Deliberation by the ruling body
- Decision to approve (with or without conditions), deny, or continue the hearing.

At the conclusion of the public hearing, the Commission may approve the application, approve the application with conditions, deny the application or continue the public hearing to a future date. If the Commission continues the hearing, they will set a date for the continuation of the hearing.

Land Use approvals constitute entitlements and "run with the land," meaning they are linked to the property rather than a person. If the property is sold, the approval is transferred to the new owner. The expiration dates for various land use applications can be found in the Development Code. The city can grant time extensions of land use approvals for certain applications. If the expiration date passes without a request for time extension and substantial construction has not occurred on site, then the land use approval is no longer valid and cannot be transferred.

Land Use Orders

All decisions on Type III land use applications are memorialized in a Final Order that details exactly what was approved and any conditions attached to the approval.

Appeals

Appeals of Type II (staff) decisions are heard by the Planning Commission. Decisions made by the Planning Commission may be appealed to the City Council. The city must receive a completed appeal form and fee, within 12 calendar days from the date the Final Decision or Order was mailed. Only the applicant or parties who provided testimony on the record may appeal a decision.

Note that the grounds for the appeal must be relevant to the decision, and based on the approval criteria. Just as the applicant bears the burden of proof for the initial application, an appeal that does not address how or why the decision was made in error is unlikely to prevail. A filing fee (amount set by the City Council) is due when the appeal is filed. The City provides summary minutes of all public hearings; additional processing fees may be incurred if full transcripts of hearings are requested.

A valid appeal must contain at least the following information:

- The file number for the decision being appealed.
- The name and signature of each appellant.
- Reference to oral or written evidence already given to the Planning Commission that is contrary to the decision.

The Council may decide to:

- Uphold the decision,
- Reverse the decision,
- Amend the decision, or
- Remand the decision to the Planning Commission for another hearing.

The appeal shall designate a contact representative for all contact with the city. All contact with the city regarding the appeal, including notice, shall be through this contact representative. The appeal submittal shall include the specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error. **Failure to comply with the above requirements may force the city to reject an appeal.** Even if the city does not initially reject the appeal, an applicant may argue to City Council that the appeal is not valid and does not meet code. If the City Council should agree that the appeal is invalid, they will not hear the appeal.

Once the City Council has heard an appeal, the decision is considered final. However, appeals may be made to the State Land Use Board of Appeals (LUBA). This board is a state judicial body, which hears land use matters that are appealed beyond the local level. In order to appeal a decision, LUBA must receive a notice of intent to appeal within 21 calendar days after staff mails the City Council Notice of Decision. Following this notice of intent, more extensive information must be submitted and a filing fee paid. Further information about appeals to LUBA may be obtained from LUBA at www.oregon.gov/luba.

How to Participate

At some point you will likely need to request information regarding a land use application from City staff. The following are some general comments, intended to show what to do and how to avoid the most common pitfalls when participating in a public land use process. These are aimed at Type III decisions (applications that are considered by the Planning Commission).

Watch for Public Notices from the City

Watch for public notification that a development application has been submitted. You can contact Community Development Department staff or look online at www.venetaoregon.gov. For Type III-V actions, public notice is published in a local newspaper (usually the Fern Ridge Tribune News) and notice signs are posted on the property a minimum of 20 days prior to the public hearing.

Review the application file

Application files are public information and can be viewed by going to the Community Development Department. You can call Community Development staff to check if an application has been submitted. (Please note that City staff are generally unable to comment on a potential proposal if we have no application in hand.) Reviewing the application materials will familiarize you with the applicant's proposal. It is not uncommon for changes to be made to an application and for additional information to be submitted throughout the review period, so you may want to check the project file periodically for updates. City staff can provide most information by email, but sometimes plans and other materials may not be available electronically.

Understand the approval criteria

The applicant always has "the burden of proof" to meet the approval criteria for each application. The approval criteria are the standards the decision making authority uses to evaluate the proposal. The approval criteria for all land use applications are listed in the public notice and can be found in the Development Code. The approval criteria exist so that the developer knows what must be done in order to get approved. When the project Planner prepares the staff report, they will make findings of fact that relate to each approval criterion.

Be polite, organized and conscientious when speaking with city staff

Your City staff is here to process development applications; they are not the ones proposing new development. Their job is to evaluate proposals for conformance with adopted standards – not to approve or deny something based on their personal feelings. That means sometimes we have to approve proposals we don't like, and deny proposals we want.

Write down questions ahead of time

Citizens frequently feel overwhelmed and even angry when they suddenly discover, for example, that a new subdivision is going in nearby. They may feel that the process that led to the development is beyond their control or is too difficult to understand.

Start with staff at the Community Development Department for general land use questions. For in-depth details of an application, ask to talk to the planner listed on the public notice as they will be most familiar with the project. It is important to be polite, organized, and conscientious when speaking with city staff. Venting frustration is not productive. If you have questions about a specific project, it helps to know how far along the project is in the approval process. It also helps to know what is allowed in the zone where the development is proposed; this information can easily be found in the Development Code and should also be cited in the staff report. This information should be available from the planner in charge of the project. Also, note that in spite of the efforts the City of Veneta has made to make the land use process more accessible to the citizenry, some frustrations may result from the process itself rather than from individual personnel.

Be aware that the Comprehensive Plan and Land Development Code exists to ensure that staff, the Planning Commission, and the City Council all follow the same rules. Those rules exist to prevent City staff from acting arbitrarily, as well as providing the regulatory framework for a development proposal. This sometimes means that the staff report may be a lot longer than the average person may want to read through, but it is useful to ensure that all approval criteria were reviewed and all steps followed.

Participate in Public Hearings

The people who serve on the Planning Commission are unpaid volunteers who live or work in the city and are willing to devote their time to the city. Council members are elected volunteers and receive a modest stipend for their service. Remember that they are all ordinary people – some may be your neighbors who have had training to make these types of decisions. You may wish to testify as an individual in support or opposition of a land use application. You do not have to be the world's most eloquent speaker when giving testimony. The following points should assist you in providing effective public testimony:

Know your facts. Make sure they are consistent with the most current information in the application file. Know the criteria, which will be used in making a decision on this issue. Speak with the planner in charge of the application to understand the specifics of the application. Even if you plan to provide oral testimony, send in written testimony in time to be included with the application package so that it can be read by the decision-makers before the hearing. This usually means getting testimony to the planner for the application AT LEAST 10 DAYS prior to the hearing. If this cannot be done, check with the planner to see if written testimony delivered within 10 days of the hearing can still be included in the hearing packet. If that is not possible, bring at least six copies of your written testimony to the hearing to be distributed to the hearing body that night. The hearing body may not have time to fully read the testimony; however, it will be part of the record and you can refer to it in oral testimony.

Review the Staff Report for additional points that you need to address during your testimony. You have prepared testimony showing where you differ from the applicant's view that the relevant criteria are met. It is also VERY important to compare your arguments with those of the staff. The staff report is published one week before the hearing and may be reviewed at City Hall in its entirety or online on the [Agenda](#) page of the city's website (the full record is typically only available in the office). If you object to one or more parts of the staff report, submit your concerns as soon as possible. Be prepared to testify on them since the decision-makers may not get them prior to the hearing date.

Practice oral testimony to make sure you can present your message clearly and stay within the time limit. Many people get nervous when testifying, but practice helps. If possible, attend a public hearing or view an archived hearing online. Understanding the process will help you prepare and give you confidence.

- Don't make any statements that you would not want to see online or in print.
- Don't make any statements that could be misinterpreted.
- Don't use sarcasm.

Fill out the testimony card

In order to testify at the public hearing, a card at the sign-in table must be filled out and given to the Recorder. After turning in the card you may decide not to testify, but you will not be a party of record unless you've already submitted written testimony. If you fill out a testimony card but do not speak or provide written testimony, you will not have standing to appeal.

Be concise when providing testimony

Since a hearing on a controversial application may last several hours, conciseness in the presentation is helpful. A clearly presented argument that cites the approval criteria and how the application either meets or does not meet each criterion is most effective. Anecdotal statements and value judgments not supported by evidence do not provide the level of precision necessary to make a finding.

Use the application approval criteria

Keep in mind the limitations of what the hearing body can do. Decisions must be made on objective, relevant criteria. If an application meets the objective criteria, the application will likely be approved. It cannot be overstated how important it is to use the applicable criteria in your arguments. If you support an application, you must demonstrate how it meets the criteria; if you oppose it; you must show how the approval criteria are not met. You can spend two minutes or ten providing testimony, but if none of it addresses the approval criteria it can't be factored into the decision.

Be polite, professional, and to-the-point

Remember that decisions are based on the approval criteria. Decision makers must balance different and sometimes conflicting interests. You may only have three minutes to provide your testimony; don't waste that time with an emotional appeal. Just because something may be important to you or other neighbors, that does not mean it is part of the approval criteria.

Ask yourself if your testimony would be any different if the proposed development/project were in the same zone but a different location. Would your testimony be the same? Would you still support or oppose the application? All land inside the City's Urban Growth Boundary is intended for development at an urban scale; just because it has not developed yet, does not mean it will not or should not be developed consistent with what the zoning allows.

Explore your options in case you want to appeal

If you wish to appeal a decision, there are certain requirements that must be met. First and foremost, you must have standing to appeal. That means you must have participated in the proceedings on the record, either by providing written or oral testimony to/at the Planning Commission or City Council public hearings. Comments on social media are not part of the record and do not count as participating. If you submitted written testimony but did not attend a public hearing, you can view all decisions on the [Land Use Decisions](#) page on the City's web site.

Findings of Fact – not Findings of Opinion

What Constitutes Testimony and What Does Not?

Testimony must be “on the record” in order to count. But what does that mean? Testimony for a land use hearing is not the same as it is on the news. Talking to a reporter about something “on the record” does not mean what you say will become evidence. Likewise, discussing a pending decision on social media – Facebook, Twitter, etc. – does not count as testimony. Just as we do in a court trial, only information presented in front of the judge can be counted as evidence. The judge and jury – in this case the Planning Commission or City Council – hears all evidence and decides what is relevant to the decision and what is not.



Making Findings

Findings are the written record showing how the law was applied to the facts, which lead to a conclusion. Findings show how a specific request either meets or does not meet the applicable approval criteria – not how the application satisfies the Court of Public Opinion.



Findings describe the specific reasons behind a decision. The Planning Commission cannot issue a decision like a parent to a child... “just because” doesn’t cut it. The “why” is as important as the decision, sometimes more so. The “why” links the criteria to the finding, and provides the nexus –the connection- that is necessary in order to make a conclusion that a specific criterion is met or not. Findings also establish a connection between a potential impact and a condition of approval, and whether or not the condition imposed is proportional to that impact.

Abstract things like “neighborhood character” and “property values” are not criteria for approval, and cannot be used as the basis for findings. Additionally, information and comments on social media and elsewhere (as referenced above), but not submitted to the Planning Commission as part of the record, cannot be rebutted and cannot be used as the basis for making findings.

Rebuttal

When two people debate, one of them makes an argument, and the other follows with a *rebuttal*, which, plainly put, is the “no, you’re wrong and this is why” argument. In a land use public hearing, the applicant is always provided an opportunity to rebut arguments made against the application. Staff may also rebut testimony presented by either the applicant or any interested party. The rebuttal is one of the most important aspects of the quasi-judicial process, and is the reason why decision-makers are not supposed to receive testimony outside of a public hearing – because nobody is present to rebut any information that may be incorrect, biased or misleading. But remember, like all other testimony, all rebuttal must also address the approval criteria, or show how certain testimony did not, for it to have any impact on Findings or the Decision.

Glossary

This glossary contains some of the more common terms related to land use.

Annexation. The process of expanding the city boundaries to bring adjacent territory under the jurisdiction of the city.

Appeal. The process of having a land use decision by the Director reviewed by the Planning Commission, or a Planning Commission decision reviewed by the City Council. Decisions on land use cases by the City Council may be appealed to the State Land Use Board of Appeals (LUBA).

Comprehensive Plan. The primary planning document guiding land use patterns and development in Veneta. Any change in the plan is subject to the review of neighboring jurisdictions. The plan must conform to the land use planning goals of the state and must periodically go through a formal review and approval process with the state's Land Conservation and Development Commission (LCDC).

Comprehensive Plan Map. A primary component of the Comprehensive Plan, which shows the geographic pattern of the land uses as defined in the Comprehensive Plan. An amendment to the Plan map requires a Type III Public Hearing process and a decision by the Planning Commission.

Conditional Use. A land use which the Development Code permits only after a public hearing and inclusion of appropriate conditions or limitations on the use and development of the land. This occurs when the land use is not an outright allowed use of land in that zone.

De Novo Hearing. A public hearing, or an appeal of a previous decision in which all evidence and comment (previously given or new) is accepted for consideration, without regard as to what evidence has already been presented.

Department of Land Conservation and Development (DLCD). The Department of Land Conservation and Development (DLCD) is a state organization, which provides the staff support to the Land Conservation and Development Commission (LCDC) and reviews city and county land use policy and regulations to ensure that they conform to state statute. (See also LCDC.)

Ex Parte Contact. Any contact outside of the public hearing in a land use case by a member of the decision making body and someone wishing to directly or indirectly influence the outcome of the case. Such contact must be declared. These provisions do not apply to legislative and policy issues in land use, such as citywide code amendments.

Land Conservation and Development Commission (LCDC). The Land Conservation and Development Commission (LCDC) is a state commission that oversees land use planning throughout the state (See also DLCD).

Land Use Board of Appeals (LUBA). A state board that has the authority to review appeals of land use cases decided by the City Council.

Oregon Land Use Act of 1973 (Senate Bill 100). Legislation that put in place the framework necessary to implement and govern statewide land use planning started with Senate Bill 10 passed in 1969. The act established the Land Conservation and Development Commission (LCDC), created the Department of Land Conservation and Development (DLCD), and required all cities and counties to prepare and adopt Comprehensive Plans consistent with statewide goals.

Partition. The division of a parcel of land into less than four parcels in a calendar year.

Pre-Application conference (Pre-App). The city provides for the informal review of development proposals and concepts with a Pre-Application Conference. The Pre-App is not mandatory, but it is encouraged by the city in order to provide an early review of issues, concerns and to advise the potential applicant of the application process that will apply when a formal application is submitted. City staff provide a follow-up letter to the applicant containing the comments described at the meeting or otherwise determined to be useful.

Planned Unit Development (PUD). A type of development (usually residential) in which the Development Code allows more flexibility of development standards than in a conventional subdivision under the standards of the applicable zone. A PUD can occur in any zone.

Planning Commission. An advisory body of five members appointed by the mayor and approved by the City Council to consider land use policy issues and the orderly growth and development of the city. The Planning Commission holds public hearings and renders decisions on specific conditional uses and zone changes that

require a Comprehensive Plan change. The Commission also may hold public hearings on annexations, land divisions and proposed changes in the city's Comprehensive Plan or land use ordinances, and makes recommendations to the City Council on these issues.

Public Hearing. A formal proceeding before the Planning Commission or City Council in which the public is invited to testify. Notice must be given of the hearing, and a formal record of the hearing is made.

Rebuttal. The act of refuting by offering a contrary contention or argument; a statement in legal and logical form stating something on behalf of a party to a legal proceeding.

Record. The Record is an account of all the acts and proceedings in a legal action, including a land use application. It is a written memorial made by a public officer authorized by law to perform that function, and intended to serve as evidence of something written, said, or done. The record includes only information gathered by the final decision-making body. Information gathered during an earlier proceeding will be part of the record only if the final decision-maker adopts that information in its record. *OAR 661-010-0025(1)(b)*

Senate Bill 10 (SB 10). Legislation passed in 1969, which required cities to develop comprehensive land use plans due to concern over the loss of farmland and forests to urban growth. In addition, the first ten statewide planning standards were established. The development of these plans did not get under way in earnest until 1973 when further legislation was passed in the form of the Oregon Land Use Act of 1973 (Senate Bill 100).

Staff Report. A document that contains the review of land use applications by city staff. For development review applications, a staff report contains the staff analysis of development proposals, findings and conclusions for the proposal's conformance to the applicable criteria for approval. Most staff reports are published seven days in advance of a Type III public hearing or concurrent with a Type II decision. (Also referred to as an Agenda Item Summary or AIS when presented to the Planning Commission or City Council)

Standing. The legal designation of those individuals or groups who are entitled to receive notification of a pending land use case, to receive notice of the decision or to file an appeal of the decision. The term also applies to those who are legally entitled to initiate a land use action. Persons and/or parties who lack standing may not initiate an application or appeal a decision.

Subdivision. The division of a parcel of land into at least four lots in a calendar year.

Testimony. Formal statements made at a public hearing before an official body deciding an issue or a land use case. Testimony may be presented in writing or orally, and must be made/submitted to the record prior to the close of a public hearing.

Urban Growth Boundary (UGB). An outer boundary of future urban development. Land within this boundary is planned for eventual urban-scale development and the provision of sewer, water, streets and other public facilities. Also the boundary for the City's anticipated 20-year long range planning efforts.

Variance. An approved deviation from the strict application of the standards in the Development Code.

Zone Change. The reclassification of land from one land use zoning designation to another. A zone change can be either a Type IV or Type V action depending on the circumstances.

Zoning. A system of grouping similar or compatible land uses into geographic areas called "zones" or "zoning districts." The city ordinances governing these land uses are referred to as the Development Code.

Zoning Map. A map that shows the locations of land use zoning districts in the city.

State Land Use History

In 1919, Oregon's first land use regulation required cities and counties to use Planning Commissions and zoning. The Oregon legislature passed legislation that was intended to assist cities in planning for growth. The legislation 1) enabled cities to specify usage of specific sites of land through the use of zoning, 2) established planning commissions, and 3) required Planning Commission approval of subdivision plats. Following this legislation, many cities and counties developed zoning and subdivision ordinances that then constituted the primary planning vehicle.

The state's role in planning was limited to authorizing local control until it became apparent that the local systems did not address the complex pressures and trends created by the population boom following World War II. Between 1950 and 1970, Oregon's population increased by nearly 40%. Of that growth, 80% was in the Willamette Valley. Some of the more visible effects of this growth included increased water and air pollution, increased commercial strip development along the coast, loss of prime productive farmland to subdivisions, and pockets of leapfrog development that required local governments to supply expensive urban services.

The 1969 legislature passed Senate Bill 10, which required cities to develop comprehensive land use plans. Concern over the loss of farmland and forests (traditionally Oregon's largest industries) prompted the 1969 Oregon Legislature to address the management of urban growth, the environment, and the economics of providing public services on a regional and statewide basis. In addition, the first ten statewide planning standards were established. However, the development of the required plans and regulations by each jurisdiction throughout the state did not get under way in earnest until 1973 when it was clear that further legislation was needed to implement the 1969 mandate. Their efforts resulted in passage of Senate Bill 100.

The Oregon Land Use Act of 1973 (Senate Bill 100) put in place the framework necessary to implement and govern statewide land use planning started with SB 10. This Land Use Act:

- Established the Land Conservation and Development Commission (LCDC) and directed the Commission to develop statewide goals.
- Created the Department of Land Conservation and Development (DLCD) to administer the goals and review the Comprehensive Plans for compliance.
- Required all cities and counties to prepare and adopt Comprehensive Plans consistent with the statewide goals, and enact zoning, subdivision and other regulatory ordinances to implement the plans.
- Required state agency plans and actions to conform to the LCDC goals and to city and county Comprehensive Plans.
- Required widespread citizen involvement in the planning process at local and statewide levels.
- Allowed for appeal of local decisions alleged to violate state goals.
- Provided funding to jurisdictions to carry out these mandated responsibilities.

By 1976, the Land Conservation and Development Commission (LCDC) adopted the 19 statewide planning goals that local governments must meet. The first 14 goals were adopted by the Commission on December 27, 1974. The last five were adopted between 1975 and 1976. The goals are general standards for land use planning. Planning remains the responsibility of city and county governments, but must be consistent with these statewide standards. All of the statewide goals, except number 15, are accompanied by "guidelines" which are suggestions about how a local government might comply with the state standards. The goals are mandatory, but guidelines are not.

Each city and county in Oregon must do a periodic review of its Comprehensive Plan every seven years and submit its updated Comprehensive Plan and corresponding land use regulations for review and acceptance by LCDC. Acceptance by LCDC is referred to as acknowledgment and means that the submittal has been accepted as to be in compliance with the statewide goals. After acknowledgment, all amendments are reviewed by the Commission, but on a less formal basis.

Resources

Oregon Department of Land Conservation and Development (DLCD) www.oregon.gov/dlcd

The Oregon Department of Land Conservation and Development (DLCD) is a small state agency. We work in partnership with local governments, and state and federal agencies, to address the land use needs of the public, communities, regions, and the state. The Land Conservation and Development Commission (LCDC) provides policy direction for the land use planning program and oversees DLCD operations.

DLCD carries out the vision and legacy of [Senate Bill 100](#), which for 40 years has contributed to the quality and character of the natural and built environment of the state. The program has been charged by the Legislature with managing urban growth; protecting farm and forest lands, coastal areas, and natural resource lands; and providing for safe, livable communities in concert with the vision of the local communities.

Under the statewide land use planning program, each city and county is called upon to adopt and maintain a comprehensive plan and an implementing zoning code consistent with 19 statewide planning goals. Recognizing that each city and county has unique values and aspirations, our job is to provide planning guidance and technical assistance to help communities plan for their future while considering the needs of the region and the state.

Oregon Department of Land Conservation and Development (DLCD)

635 Capitol St. NE, Suite 150

Salem, OR 97301-2540

Phone: 503-373-0050

Email: dlcd.info@dlcd.oregon.gov

Land Conservation and Development Commission (LCDC) www.lcd.state.or.us

The Land Conservation and Development Commission (LCDC) serves as a hearings board with the bulk of its technical reports coming from the Department of Land Conservation and Development (the state's planning department). Oregon's seven-member Land Conservation and Development Commission, assisted by DLCD, adopts state land use goals, assures local plan compliance with the goals, coordinates state and local planning, and manages the coastal zone program. The Commissioners are unpaid citizen volunteers appointed by the Governor and confirmed by the Senate. Commissioners are appointed to four-year terms and may not serve for more than two consecutive terms. The statute establishing the Commission, Oregon Revised Statute (ORS) 197, also directs that they be representative of the state. The LCDC meets about every six weeks to direct the work of the Department of Land Conservation and Development (DLCD).

Land Conservation and Development Commission (LCDC)

635 Capitol St. NE, Suite 150

Salem, OR 97301-2540

503-373-0050

State of Oregon Land Use Board of Appeals (LUBA) www.luba.state.or.us

Created by the legislature in 1979, the Land Use Board of Appeals (LUBA) was created to simplify the appeal process, speed resolution of land use disputes and provide consistent interpretation of state and local land use laws. LUBA has exclusive jurisdiction to review all appeals of final land use decisions of the city. This tribunal is the first of its kind in the United States.

The governor appoints the three-member board to serve four-year terms. The appointments are confirmed by the Oregon Senate. The board members must be members of the Oregon State Bar. The procedural and substantive grounds that can be used to appeal a local land use decision are set out in the Oregon Land Use Act of 1973. Appeal of a LUBA decision goes to the Oregon Court of Appeals. The Oregon Land Conservation Development Commission itself must use the LUBA process in appealing land use decisions.

Land Use Board of Appeals (LUBA)

DSL Building

775 Summer Street NE, Suite 330

Salem, OR 97301-1283

503-373-1265

Any application that requires a public hearing must be noticed by mail three weeks prior to the hearing. Staff generally requires one week to prepare the notice and generate the mailing list. Planning Commission meetings are the first Tuesday of every month; this puts the deadline to have an application deemed complete at 28 days before the next available hearing. Legislative actions must be deemed complete 40 days before the first hearing.

Please remember that these deadlines assume an application is deemed complete after the initial review. If an application is not complete, additional time may be necessary, and the application will not be scheduled for a hearing. While staff is not here to guarantee an application will be approved, we are likewise hesitant to bring an application before the Planning Commission if the applicant has failed to provide materials and evidence sufficient to justify approval.

All Type I-IV actions are subject to the "120 Day Rule" pursuant to ORS 227.181 (see page 7). Type V Legislative actions are not time-limited.

