



City of Yachats

YACHATS PLANNING COMMISSION

April 16, 2019

Work Session Approved Minutes

Vice-Chair Lance Bloch called the April 16, 2019 work session of the Yachats Planning Commission to order at 2:07 pm in Room 1 of the Yachats Commons. Members present: Doug Conner, Helen Anderson, Lance Bloch, Jacqueline Danos, Loren Dickinson, Christine Orchard, and Mary Ellen O'Shaughnessey. Absent: Christine Orchard. Staff Present: City Planner Dave Mattison. Audience: 2.

I. Matt Spangler and Hui Rodomnsky, DLCD Oregon Coast

Matt Spangler introduced himself and Rodomsky who represent DLCD (Department of Land Conservation and Development) on the central and south coast.

In his presentation, Spangler:

1. Reviewed the history of zoning and land use planning when, starting in 1973 with the passage of SB 100, that started the statewide planning system and set the oversight with DLCD and the State Goals. In 1977, four goals focusing on coastal issues were added. Spangler noted the Yachats Comprehensive Plan was acknowledged by DLCD in 1980.
2. Explained the state sets policy through the State Goals and statutes and a city's Comprehensive Plan is developed from these goals. Zoning is then created to meet the goals specified the Comp Plan.
3. Stressed the Comprehensive Plan is a legally binding document. In Baker v. City of Milwaukee, the state confirmed that the Comprehensive Plan has authority over code. He stated a Comp Plan generally has three sections:
 - a. Factual Base or Background and Information
 - b. Goals and Policies
 - c. Maps – documents that show where regulations apply
4. Stated the Municipal Code is developed from the Comp Plan. Commissioner Anderson asked if it was common to have specific numbers in the Comp Plan. Spangler stated having specific in the Comp Plan was not uncommon, such as when the Plan has more than an aspirational policy. Commissioner Danos clarified that the Comp Plan is more general and the Code has the specific ways in which the general policy is implemented.

- 1 5. Identified three types of decisions:
 - 2 a. Ministerial – typically handled by staff and are not subject to LUBA appeals
 - 3 b. Quasi-Judicial – exercise of “discretion” with procedural safeguards
 - 4 c. Legislative – making new policy
- 5 6. Noted *Fasano v. Washington County Board of Commissioners* established the boundaries of
- 6 quasi-judicial versus legislative actions.
- 7 7. Identified components of a quasi-judicial hearing:
 - 8 a. Opportunity to be heard
 - 9 b. Opportunity for all parties to present and rebut evidence
 - 10 c. Opportunity Impartial tribunal
 - 11 d. Complete record of proceedings
 - 12 e. Findings
- 13
- 14 8. Added that *Strawberry Hill Four Wheelers v. Benton County* provided more detail on the
- 15 differences between interpretation versus creation of legislation.
- 16 9. Reviewed the procedure for quasi-judicial hearings and explained the “raise it or waive it”
- 17 statement that stipulated all information to be considered must be presented as part of the
- 18 hearing. He also noted a continuance must be to a specific date and time.
- 19 10. Explained the processes for leaving the record open for written testimony, which must be for
- 20 a minimum of seven days and during which anyone can submit new evidence. The
- 21 applicant would have the opportunity to rebut the information. He cited a “7-7-7” rule in
- 22 which the record can be held open for seven days, the applicant can ask for an additional
- 23 seven days to evaluate the new arguments, and the applicant could request seven days to
- 24 draft arguments for their case.
- 25 11. Explained there is a 120-day rule in which a decision must be rendered within 120 days of a
- 26 complete application. This time includes continuances and time to get the case through
- 27 all of the necessary hearings, including appeals to Council.
- 28 12. Stated quasi-judicial hearings requires the absence of ex parte contact. He explained the
- 29 point is to have everyone involved in the hearing to have the exact same information
- 30 available to them. He indicated the ex parte contact rule beings at the time the
- 31 application is complete.
- 32
- 33 Commissioners discussed what constituted ex parte contact and how information should be
- 34 introduced in a hearing. Spangler suggested that Commissioners work with staff to get
- 35 information into the hearing process, and contact with staff is not considered ex parte. He added
- 36 that a site visit is ex parte contact. Danos clarified that the best approach for Commissioners is
- 37 to talk to staff about getting the information they want to see, even if the information was already
- 38 in the public record
- 39
- 40 Spangler explained that the applicant has the burden of proof and if they do not adequately prove
- 41 their case, the Commission does not have to approve the request.
- 42

1 13. Explained conflict of interest under Oregon law, noting the distinction between actual and
2 potential conflict of interest. Actual conflict of interest means one would be financially
3 impacted by a decision. The conflict should be disclosed and the Commissioner should
4 recuse themselves. A potential conflict of interest is a situation where someone could be
5 financially impacted, but the certainty of that is speculative. Commissioner
6 O'Shaughnessey clarified that it was up to the individual to recuse themselves and there
7 was a common law principle in which public official must vote unless legally required
8 not to.

9 14. Stated the legal definition of bias is often misunderstood. He explained bias would exist
10 when a commissioner had prejudged a case to the point that they could not consider all
11 information. He added that only the individual can decide if they are biased.

12 15. Stated findings contain a summary of the relevant facts, how those facts match up to the
13 approval criteria, and the decision reached based on those facts. He explained the
14 standard of proof is "substantial evidence," which means the decision must be defensible
15 and not necessarily the "best" solution. Conflicting evidence does not need to be
16 resolved.

17
18 Danos asked how to best handle a situation where a person applies for a variance on an issue that
19 they know is about to be changed. Spangler stated the City can only require an applicant to meet
20 the code as it exists at the time the application is submitted.

21
22 Anderson asked for clarification on situations where the Commission has worked with someone
23 on a conditional use and then that person applies for a variance. How does the Commission deal
24 with ex parte contact around the variance request? Spangler explained that as long as
25 Commissioners did not discuss the matter once the variance application was submitted, ex parte
26 contact was not an issue.

27
28 Bloch asked how opposing views are introduced if there are no opponents who testify at the
29 hearing. Spangler reminded the Commission that there was a burden of proof from the applicant
30 to make their case, and therefore the Commission could conclude that the established criteria had
31 not been met.

32
33 Danos clarified the Commission can continue a hearing if they needed more time to decide a
34 case.

35
36 The Commission discussed how building plans are enforced once the construction has begun.
37 Mattison noted the Planning Commission has the authority to hold a hearing to revoke a permit if
38 the conditions were not being followed.

39
40 Danos asked for clarification on who has responsibility for the various plans, such as the Village
41 Circulation Plan and Parks Plan. Spangler noted many plans may be referenced in the Comp
42 Plan and that the Comp Plan by ordinance falls under the Planning Commission. He indicated
43 the City would establish who was to review the other plans.

44
45 Conner asked about the Citizens Involvement Committee, which the Planning Commission
46 currently serves as by default. Spangler suggested talking to staff and Council about how to

1 revamp this entity. Anderson noted when the Commission was last reviewing the Comp Plan
2 and noted reference to a Citizens Involvement Plan, she asked staff if they knew what that plan
3 was. She could not find anybody who was aware of such a plan.
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5 The Commission set a work session for April 23, 2019 at 2:00 pm to finish the sign code.
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7 Bloch adjourned the work session at 3:56 pm.
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12 Lance Bloch, Vice-Chair

Date

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14 Minutes prepared by H. H. Anderson on June 18, 2019
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