



WASHOE COUNTY PLANNING COMMISSION (Training Workshop) Meeting Minutes

Planning Commission Members

Sarah Chvilicek, Chair
Larry Chesney, Vice Chair
James Barnes
Thomas B. Bruce
Francine Donshick
Philip Horan
Michael W. Lawson
Trevor Lloyd, Secretary

Monday, October 29, 2018
12:00 p.m. to 2:30 p.m.

Washoe County Administration Complex
Mt. Rose/Slide Mtn. Conference Room
1001 East Ninth Street, Bldg. A
Reno, NV

The Washoe County Planning Commission met in a scheduled session on Monday, October 29, 2018, in the Washoe County Administrative Complex, Building A, Mount Rose and Slide Mountain conference rooms, 1001 East Ninth Street, Reno, Nevada.

1. *Determination of Quorum

Chair Chvilicek called the training workshop to order at 12:05 p.m. The following Commissioners and staff were present:

Commissioners present: Sarah Chvilicek, Chair
Larry Chesney, Vice Chair
James Barnes
Thomas B. Bruce
Michael W. Lawson

Commissioners absent: Francine Donshick
Philip Horan

Staff present: Trevor Lloyd, Secretary, Planning and Building
Mojra Hauenstein, Director of Planning and Building
Bob Webb, Planning Manager, Planning and Building
Nathan Edwards, Deputy District Attorney, District Attorney's Office
Katy Stark, Recording Secretary, Planning and Building
Donna Fagan, Office Support Specialist, Planning and Building
Sarah Tone, Business Facilitator, Planning and Building
Alice McQuone, Administrative Assistant II, Planning and Building

2. *General Public Comment

Chair Chvilicek opened the Public Comment period. There was no public comment.

3. Approval of September 4, 2018 Draft Minutes

Commissioner Chesney moved to approve the minutes for the September 4, 2018, Planning Commission (PC) meeting as written. Commissioner Bruce seconded the motion, which passed with a vote of four for, one abstention (Commissioner Lawson).

4. Approval of Agenda

In accordance with the Open Meeting Law (OML), Commissioner Chesney moved to approve the agenda for the October 29, 2018, training workshop as written. Commissioner Lawson seconded the motion, which passed unanimously with a vote of five for, none against.

5. *Planning Commission Training. This item is for training purposes only and will consist of presentations and discussions. There will be no deliberation or action taken under this item.

Chair Chvilicek opened Item 5.

Mr. Webb provided a general introduction of the training topics and indicated who would be providing the training. For the purpose of adhering to OML, he encouraged the Commissioners to avoid discussion during the topics themselves. He explained that questions would be written down on a sheet of paper in the “parking lot” to be addressed during the question and answer session at the end of the workshop. Additionally, potential future training topics could also be recorded in the “parking lot”.

DDA Edwards said the risk or problem with some discussions is that they can become deliberation. The word “deliberation” is used in the OML and people have varying interpretations of what it means. DDA Edwards said the statutes are aimed at preventing situations where a vote is not taken, but the members of a board all share their position on an issue. By the time the discussion is done, it is very clear that the PC, for example, is five to two in favor of a particular issue. There has been no vote or action taken, but there was a discussion. It is a fine line. That is the risk. The PC was stylized for discussion on most of the workshop agenda items. DDA Edwards was comfortable with the Commissioners bringing up points for him to talk about in the midst of his training segment, as well as during the other training segments that agendized discussion. He asked the Commissioners to be mindful of avoiding the risk of getting around the OML by stating their positions without taking a vote.

DDA Edwards said there is no concept in the OML dealing with workshops or training sessions. There is no provision providing different rules specifically for workshops. The OML treats both meetings and workshops as meetings, which is why the workshop was agendized and carried out in a somewhat formal session. All of the same rules apply. He said there was room for disagreement about how some of the provisions should be applied, but he does not believe there is a watered down approach to workshops/training programs.

***A. Legal Issues (15 minutes)**

- i. Presentation and discussion of disclosures by Planning Commissioners that are required to be made under Nevada’s ethics laws (NRS chapter 281A), including examples of disclosures of pecuniary interest, commitments in a private capacity to the interests of others, receipt of a gift or loan in connection with a matter, and provision of consultation or counseling services to a party for compensation within the preceding year on a matter being considered by the Planning Commission. This presentation will also cover when recusal or disqualification are required for these same types of interests.

DDA Edwards presented information on ethics within NRS chapter 281A. He discussed some of the history of implementing the ethics law announcement at the beginning of each PC meeting and the Chair's call for disclosures at the beginning of each item. He explained the process and purpose of disclosures on the record. Disclosures err on the side of caution. Recusal is, by statute, designed to be the opposite; recusal should only happen when truly necessary.

DDA Edwards discussed the four categories of disclosure: pecuniary interest, commitment in private capacity to others, acceptance of a gift or loan in connection with a matter, and representation of another person for compensation in the previous year on a matter that is before the PC.

Chair Chvilicek asked if it was necessary for the Commissioners to share that they have visited a property during the disclosures. DDA Edwards did not see this as necessary under the ethics law, but he said that some of the PC's Rules, Policies and Procedures mention contact the Commissioners may have had outside of the meeting with people involved. Going out to the site could be a form of contact with the property and the people involved with it. So the Commissioners should consider disclosing site visits under the Rules, Policies and Procedures. DDA Edwards did not see a problem with the disclosure, but if it does not fall within one of the previous four categories of disclosure, then it is not required by state law.

DDA Edwards provided disclosure examples of pecuniary interest. Owning property near a project is a common example. This can refer to positive or negative effects; a new development could either benefit you/your property in some special way or hurt you/your property in some special way. Either requires disclosure.

DDA Edwards discussed commitment in a private capacity: members of the household, business relationships, or substantially similar situations. Substantially similar situations could cover a wide range of situations. DDA Edwards provided an example of a case that made it to the Supreme Court.

DDA Edwards gave examples of the receipt of a gift or loan. He mentioned the receipt of tickets to a show or a ballgame or dinner reservations or drinks that are not available to the general public, but that are given because of a person's roll as a Planning Commissioner. He acknowledged that Reno is a small enough community that people know one another and could give good-natured gifts without ulterior motives. He encouraged paying attention to whether or not the gift giving might be coming from someone connected with an upcoming development project, for example. Disclosure can be simple in this type of situation, but the decision to recuse or not can be more complicated.

DDA Edwards discussed detailed disclosures in order to provide enough information for the public to decide for themselves whether they think it is fair for a Commissioner to hear or not hear an item, or whether they think the Commissioner's vote is tarnished or influenced by their connection in some way with someone else or their money interest. This does not necessitate recusing oneself. DDA Edwards will ask the Commissioner enough questions that the public can see what the disclosure means.

Commissioner Chesney asked DDA Edwards how to handle the situation when you know a project will have a negative financial impact on you. Commissioner Chesney encountered this situation and recused himself, because he determined that he could not make a fair and objective vote. He wanted to make sure it had been the right thing to do. DDA Edwards confirmed that it was and explained that getting the record developed is an important concept in the law. He said that adequate disclosures are to give the public enough information and if

someone does recuse himself/herself, then it establishes in the record that there is a legitimate NRS chapter 281A basis for disclosure. That is important, because it reduces the number needed for a quorum by one. If there is not an adequate basis in the record for recusal, then the quorum number and the number needed to pass are not reduced. The individual who recused himself/herself might leave the room, but the number of required votes might not change. The number goes down if the recusal is based on chapter 281A.

DDA Edwards said that recusals are limited scenarios. Recusal law is favorably written for local government officials once they have made the disclosure. The recusal is required if the conflict is clear and unavoidable. There is a statutory preference expressed in the statute itself that the legislature prefers that members of a public body do their duty, hear matters, and make a decision. It is viewed as harmful to the public process if a Planning Commissioner needs to recuse himself/herself. It is only in rare cases when it is clear and unavoidable that you have a conflict and cannot function independently in a case and need to recuse yourself. The legislature errs on the side of the Planning Commissioners participating as long as the disclosure has been made.

- ii. Presentation and discussion of communications that are prohibited by the Open Meeting Law (OML) (NRS chapter 241) outside of agendaized meetings, such as serial communications via electronic or verbal methods that amount to a constructive quorum.

DDA Edwards gave the example of *Del Papa v. the Board of Regents*. The Nevada Supreme Court decided the case and held that the Board of Regents had committed an OML violation that through serial communications they had created a constructive quorum.

DDA Edwards said this is easy to violate today with cell phones and social media. He gave the hypothetical example of one Planning Commissioner posting something project-related on their Facebook page and three more Planning Commissioners posting comments of agreement. This would amount to a quorum of the PC voicing their support of a project collectively outside of a meeting, outside of an agenda, and it could happen without anyone giving it much thought. Another area where a serial communication constructive quorum could occur is through phone calls. Texts, faxes, and emails are written records, but the law treats verbal conversations the same as written records. "Reply all" is a dangerous feature for OML constructive quorums. Email comes back to everyone expressing a view, and someone replies to that, and a conversation can get started.

Ms. Hauenstein asked about situations when the Planning Commissioners talk about specific items before the meeting at the dais. DDA Edwards answered that if a quorum were to do that before the meeting started, then an argument could be made that it was an OML violation. He said that, in reality, the dais is large and Commissioners tend to congregate in pairs in different locations to have separate conversations. But he said that it is dangerous, because it is easy for another person or two to join the conversation and possibly violate OML. Commissioner Chesney said the PC is very sensitive to this concern and will stop a conversation, even when it is unrelated to the meeting content, if another person joins them. DDA Edwards said that he is attentive to the pre-meeting conversations and would offer a warning if he heard something of concern.

Chair Chvilicek asked if the Commissioners can have privileged attorney-client conversations with DDA Edwards if there are issues of concern. DDA Edwards said he did not have that on the agenda for the day and did not want to have a discussion on the topic. As a matter of law, attorney-client privilege for public bodies deals with pending or threatened litigation in which the public body is involved. It is a very limited scenario, because the County Commission ends up being sued, rather than the PC. The law does not allow the PC as a body to be sued. The topic

was added to the “parking lot” as a future training topic. DDA Edwards said the Commissioners could call him if they had an individual question.

***B. Washoe County Master Plan Discussion and Presentation on the following:
(20 Minutes)**

- i. Purpose and Function of the Master Plan
- ii. Hierarchy of Master Plans
- iii. Master Plan Elements/Area Plans
- iv. Vision and Character Statements
- v. Master Plan Goals and Policies

Mr. Webb said that next year in the spring the PC will have a unique opportunity to evaluate all of the Master Plans. The Regional Plan is undergoing a major update, and the new Master Plan for the region should be adopted in spring of 2019. By state law, the County is required to conform our Master Plan to the Regional Plan. It is an opportunity to make sure the plans fit today, rather than 20 or 30 years ago when they may have been written.

Master Plans rule. Master Plans are the future direction in which we want to go. They show where we want to grow as a community and the services, facilities, and provisions that we need to ensure are available as we grow to fill out those communities. The County depends on other entities, such as water service. Where do we want to extend the water lines? Where do we want to make our facility plans? It all starts in the Master Plan.

The Master Plan is the rational basis on which the PC depends and on which the County Commission depends. It guides where money is spent as a county (police, fire, traffic, libraries, schools, etc.) and where growth will occur. All of it is ultimately in the Master Plan.

Master Plans help coordinate public and private investment. Appropriate zoning is used to minimize conflicts. Benefits and cost effectiveness of public investment is an underlying premise to keep in mind. It is important to look at where it makes the most sense to focus growth, keeping infrastructure in mind. Resources are finite. Part of the challenge is helping to guide development in the Master Plan within our communities. What makes sense? What is our priority? Where are we going to go? Where do we want to put the major roads? Master Plan concepts can take years to come to fruition.

Mr. Webb said it is critical that we maintain a very important component of the County’s Master Planning process, which is involving our citizens and the communities. He said that the PC tasks staff to do this, to be their conduits. Staff goes out, involves the communities, and brings that back to the PC. There should be community input from the Citizen Advisory Boards, public workshops, and other methodologies. The PC can include all of this input in their decision when they pass the Master Plan adoption to the Board.

Mr. Webb said there is not an overarching vision anywhere in the Master Plans. The Regional Planning participants have spent quite a lot of time working to articulate the vision for the region, and Mr. Webb feels it is equally important for us to articulate our vision for the unincorporated County and express it to the citizens. Where are we headed? What do we want to be when we grow up in 20 years? What have we been for the last 20 years, and where are we going in the

next 20 years? What does it look like? Make it clear, concise, jargon free, passionate and emotional.

Mr. Webb said character statements were included in the majority of the Area Plans when they were updated five to ten years ago. A character statement is like taking a vision statement and continuing, because it gets very specific in many areas. But it serves the same function by showing where citizens would like to go as a community and what they cherish in their community. He encouraged the PC to work with the community to validate the character statements when they update the Area Plans. He cautioned the PC to make sure the character statements really are visions and not regulations. Other tools, such as goals and policies, can be used to refine the vision. It should be kept broad, because they will be looking at 20 years from now.

Goals are broad statements, what matters to us and what is desired in the end state, based on the vision. What is important to us? What is our timeframe? They are a target to achieve through a series of actions. Those actions will be policies. Policies are a series of actions in a set timeframe. Goals can be broken out to be specific, such as goals that are conservation specific, goals that are land use specific, and goals that are public services. That is how the current Master Plan is organized.

Policies are the specific actions. They have to be measurable, they are assigned responsibility, and they contain action. Use "shall" rather than "should". "Should" leaves an out.

Everything discussed drives the Development Code. In NRS, the Master Plan rules. The codes and enabling ordinances have to conform to the Master Plan. Once you look at the Master Plan and come up with policies, then the next step is to amend the Development Code to put those policies into code. Land use tables belong in the Development Code, rather than the Master Plan. For example, it would be best to give a policy to limit commercial growth in a particular area and then implement it with a Development Code Amendment to amend the land use tables in the Development Code.

Mr. Webb discussed the Master Plan elements. He showed the elements enabled by state law. He showed elements not currently in the Master Plan, but that are enabled by state law. These elements could be considered in the update to the Master Plan.

Mr. Webb discussed Area Plans. This is where the rubber meets the road. This is where specific community policies are focused and where a lot of community discussion is needed. Our communities are different; each has its own distinct nature and value, which is reflected in the Area Plans.

Mr. Webb discussed Specific Plans. The Specific Plan Master Plan category has been changed into a regulatory zone. Specific Plans were originally Master Plans. Moving forward they will be regulatory zones with a Development Standards Handbook. It looks something like a planned unit development. There are still two Specific Plans, which are Warm Springs and the Reno-Stead Joint Corridor Plan. The Blackrock Station Development Standards Handbook was the first regulatory zone Development Standards Handbook that came out as a planned unit development. That is how the future will look.

Commissioner Chesney said he realized that the Master Plan needs to be a flexible and moving document. The community really participates with the Area Plans and shares their expectations for the area. He provided a scenario: a robust developer comes along with money and asks for the Area Plan and zoning to be amended. The PC sometimes rejects a proposed project based on the Area Plan. When the case reaches the County Commission, the developer's attorney

may claim that their client has the right to receive expected return on their investment. Yet they bought the property when it was zoned agricultural, commercial, etc., but they want to put condos on it. The PC may say that it doesn't fit the area or the Area Plan, but the developer's attorney may prevail. Commissioner Chesney has a problem with continuously amending Area Plans, Master Plans, and zoning because the developer comes in with the big bucks. He wonders if there is somewhere to put on the breaks before it even comes to the PC.

Mr. Webb reflected that this is the PC's roll, and Master Plans were never meant to be static. Master Plans are always meant to be living, breathing documents. People change, and times change. One thing they are recognizing on the Regional Planning working group is that the community is not the same that it was 10 or 20 years ago. There will be growth. Part of the job of the PC is to take the reasonable person approach to listening to all of the input from the citizens, from the developers, from staff, and making a reasoned decision based on their experience. He encouraged the Commission to give their own best effort and to know that they have given their best when the decision leaves their hands.

Mr. Lloyd called a brief recess, and the workshop reconvened at 1:40 p.m.

Mr. Lloyd discussed the role of the Planners. He said the primary role of the Planners is to support the PC. It is the Planners' job to do all of the background and research and to provide clear analysis to the PC. Staff is always open to questions. It is a constant process improvement. He gave the example of constant improvement of staff reports over the years. Input comes from staff, from the PC and from the DDA. Staff reports are written so that they could be defended if a judge looked over the report. Staff also ensures that administrative procedures are followed. A lot of administrative things happen behind the scenes.

Planners analyze projects as the "jack of all trades", but are not specialized in one area. Projects can be very different. Knowledge of radio frequency for communication towers might be necessary for one project, while another project might require knowledge of hydrology, flooding, and geology. Planners rely on the experts in this sort of subject matter. Before the Planning Commissioners receive the staff reports, the Planners have done their homework and have found specialists to answer questions when necessary. Planners prepare detailed analysis and provide this to the Planning Commissioners in a staff report so that the Planning Commissioners can make a decision. Planners justify their recommendations by means of the findings.

Mr. Lloyd moved to the Planning Commission's roles. He encouraged them to understand their roles by looking at the RPPs, the Master Plan, and the Development Code and to prepare beforehand. He explained that there is a tight time frame statutorily with a limited number of days to review an application and get it out and posted for public hearing. He recommended that the Commissioners contact the Planners before the meetings if they have questions. He emphasized sticking to the agenda and keeping discussions focused on items on the agenda. He requested that the Commissioners be objective and dispassionate and that they avoid being swayed by emotional testimony. He called them to look past emotional testimony from either side and to look for evidence of fact. Follow parliamentary procedures. He encouraged the PC to take the lead in promoting civility, especially during some of the emotional cases.

***C. Presentations and Discussion on Findings Required to Support Motions for Approval or Denial of Land Use and Development Applications (40 Minutes)**

- i. What are Findings and Why are they Required?

- ii. Using Findings for Defensible Decisions, including discussion of specificity required to be stated in the record for particular findings
- iii. Findings Exercise: an interactive exercise in which a motion to approve or deny a mock planning item will be reviewed to determine and/or consider strengths and weaknesses of the findings related to the motion

Mr. Lloyd said the findings are the basis for decisions, for an approval or denial. The planners put the burden up front on the applicant to demonstrate how findings can be made by providing evidence. Planning does a lot of vetting of the projects even before applications are submitted. There are pre-application meetings with applicants. There are many projects that never go to public hearing because they have been vetted early on.

Mr. Lloyd said that decisions must be based on facts. Those facts must address the standards. The goals and the policies of the Area Plans are standards. Code provisions are facts. There are other facts that may be provided by reviewing agencies. He gave the example of inadequate capacity in a sewer line or a treatment facility, which would be a basis for a denial. It is key that the Planning Commission make the findings, specifically if it is contrary to the recommendation that is provided by staff. If the PC is going along with staff, then it is easier to prove because staff has already done the work, provided the analysis, and given background on each of the findings and how they can be made; the work has been done. If the PC is going against staff's recommendation, then the burden is on the PC. If the PC provides a decision to deny, then they need to give some background and provide specifics. That is what a judge will look for if it ever gets to a court.

Mr. Lloyd said that information and opinions are not fact. Public sentiment is not a basis for a decision, but the exception is that the public opinion can support evidence or facts. However, in and of itself, public opinion is not considered fact. Stick with the Master Plan, the policies, the Code, and make the findings. The PC's job is to hear fact-based testimony and determine if the standards are being met. A lot of what the PC reviews does not fit in a clean little box, so their decisions will be a bit subjective. Those decisions should be backed up with as much evidence as possible.

Commissioner Chesney referred back to public sentiment. He said the Area Plan has been established with the input of the public. The public has given their vision of what their expectation of the area is to look like over a period of time. A developer comes in with his attorney and requests an Area Plan change, an RZA, etc. The public comes and says they wrote the Area Plan and it remains their expectation of what they want to see in an area. If the public is still supporting the plan to which they provided input, and the developer wants to buy his way into the changes, then why would the PC accept the threat of a lawsuit? Why would the PC not support when the public has told them that they want to maintain their Area Plan as-is? Commissioner Chesney feels that if the public still supports the Area Plan that they wrote, then the PC needs to abide by what the audience wants. Commissioner Chesney said he bases a lot of his decision making process on this. He agreed that the plans should be fluid and adaptable. He feels that public sentiment is a reasonable factor to consider when making decisions.

Mr. Lloyd addressed Commissioner Chesney's comment about the threat of a lawsuit. He said that should never be the determining factor for the PC. DDA Edwards said almost every case is like this; before the matter comes to the public meeting, there have already been threats, often from both sides. Sometimes the County has decided somewhere in the middle, and then they are sued by both sides. It happens all of the time. Mr. Lloyd said they feel that their decisions

and recommendations, and ultimately the PC's decisions, are defensible. He reiterated that the threat of a lawsuit should never influence the PC's decision.

Mr. Lloyd said the Master Plans are dynamic. They are documents that change. Someone cannot be turned away if they want to make an application. They have a statutory legal right to do so. He agreed with Commissioner Chesney that public sentiment is absolutely something that is important in those decisions. When looking at discretionary applications, there should be a real difference in the Commissioners' minds between, for example, a subdivision, a special use permit and a Master Plan Amendment, and particularly a Master Plan Amendment that wants to change a character or a vision that has been established. He said the PC would look at those through two very different lenses.

DDA Edwards said that he enjoys defending the PC's decisions. He said that personal opinions do not matter to him when it comes time to defend a County position or decision. He looks at the law and whether the County has a valid legal basis to do what it did. When the County has made a decision, if there is a valid legal basis for the decision they have made and someone is challenging it, then he will fight hard in defense of the County's position. DDA Edwards said that building a record is critical, because when it comes time to defend what the County has done, then he needs the record to have the necessary information. In Planning, the standard is substantial evidence. The opposite of that is arbitrary and capricious. If there is no substantial evidence to support a decision, then you have acted arbitrarily. This means that there really is not a reason behind a decision. Due process means fairness and a right to be heard, knowledge of the standards that you have to meet. If an arbitrary decision is made, then due process is not being honored. If an applicant is denied and does not know why, then the courts say it is not fair to them. If the applicant is approved and no one can articulate why to the neighbors, then it is not fair to the neighbors. They do not know how to oppose something if standards are not being followed. Substantial evidence is the standard, which means evidence that a reasonable mind would accept as adequate to support a conclusion. That is the Nevada Supreme Court's definition. Everyone has personal opinions, and it does not matter when it comes time to do the job and support or defend what the County has done. It is the same thing for the courts; it does not matter if a judge dislikes a project. It is not relevant. In their published opinions, the Nevada Supreme Court has said that it is not the court's job to say what they think the PC or County Commission should have done or what they would have done if it had been up to them. Their job is to look at the record and see if there is substantial evidence to support what the PC or County Commission did. If the PC approves something, then the court looks for substantial evidence to support that. If the PC denies something, then the court looks for substantial evidence to support that. If that substantial evidence is there, then the court's job is done. They are not supposed to go any further than that, even if the record also includes substantial evidence that would have supported the other decision.

DDA Edwards took the Commissioners through an exercise with a mock planning item. The Commissioners offered various options for decisions they could have made and why. DDA Edwards revealed that the case was the City of Reno v. Citizens for Cold Springs, 2010, and explained the decision that was made by the Nevada Supreme Court.

Ms. Hauenstein provided the Commissioners with a handout with Tips for Finding the Findings and Principles of Findings.

Mr. Lloyd said that a large number of the findings come from state law. Findings have also been added as part of the Development Code. Some of the findings are hidden in the Area Plans. Cell towers, for example, also have their own list of findings. Findings are based on project, based on the area where it is located...there are a number of places they are found.

Commissioner Barnes left the training session to attend another meeting.

Chair Chvilicek brought up the question of safety. She said the PC is looking at current standards of safety, and the plan uses specific language for safety, and the PC is taking in human safety on roads, access points, etc. She said this was a future topic, but safety needs some further review.

***D. Presentation and Discussion of Process for Review of Discretionary Development Project Applications (20 minutes)**

- i. Applications Flowcharts/Development Code Requirements
- ii. Timelines, Noticing and Review Procedures
- iii. Conditions and the need for a Rational Nexus and Proportionality between proposed conditions and the impacts of a particular project
- iv. Meetings and the Sequencing/Timing of Testimony and Deliberations
- v. Appeals

Mr. Lloyd showed a flowchart for a typical development application. He said that, in actuality, the process starts long before an application is submitted, with discussions, pre-development meetings, sit-down meetings, and often going through an application before it is submitted. The flowchart starts at the time of application, and there are many steps, during which facts are gathered. The goal is to give the PC plenty of time to read and absorb the staff report and ask questions. For tentative maps, there are 60 days.

Commissioner Lawson asked if the 60-day regulation comes from Nevada Statute or County Code. Mr. Lloyd answered Statute and said it would be wonderful if it could be changed. Commissioner Lawson sees it as a fundamental problem that action has to be taken so soon after the application is received. Planning does not yet have a staff recommendation when they go to the CABs, but the public does not see any of the things that happen between the time when the project is brought before the CAB and the time when it is brought before the Planning Commission. Mr. Lawson believes this does not provide for the proper public input. He sees a problem with the process that lies in Statute. He said that if part of the fundamental problem that exists is in the law, then that is an avenue for us as citizens to try to effect change through our individual legislators.

Mr. Lloyd believes that staff has done a great job with noticing. There is a really good process using GIS mapping software and linked in with the Assessor's Office. There are two types of noticing. The first is noticing by mail. Variances, abandonments, special use permits, and regulatory zone amendments all require noticing by mail. The second type is legal noticing, which is the noticing found in the newspapers. The noticing for master plan amendments and abandonments is also done by mail, even though master plan amendments are not required to be noticed by mail.

Regarding the review process, applications are accepted on the 15th of every month. The Board of Adjustment is a little different, because they do not meet every month. PC items are taken on the 15th of every month. There is a three-day review to determine completeness and to get out the agency review memo. Courtesy notices are sent at that same time. Then there is the CAB meeting.

Commissioner Chesney asked if it is possible for CABs that do not meet monthly to schedule an additional meeting if there is a significant development that would really create an impact to the area. Mr. Lloyd said that a special meeting could be called if a project rises to that level of significance. Mr. Lloyd introduced Alice McQuone, who administers all of the CABs.

Ms. Hauenstein referred to landmark cases for the purpose of showing how projects are conditioned. The intention is to ensure rational nexus, which came up in *Nollan v. California Coastal Commission*. She said it has to have a nexus; it has to be closely related. The impact we are trying to alleviate through our conditions has to be closely related.

Ms. Hauenstein discussed *Dolan v. City of Tigard* as an example of a situation in which government overstepped its bounds. We learn about proportionality from this case. It is not as precise as a math equation, but there has to be a reason behind what we are asking. We have to be careful about how we use our police powers, which is the municipalities' power.

Ms. Hauenstein provided a visual memory device: object = reflection. The object is the harm or the impact we are trying to alleviate. The reflection is the condition. We want to avoid the object and the reflection being skewed; they need to remain the same. Proportionality talks about the degree to which we condition. We want to ensure in our public meetings that we follow the sequence of testimony and deliberations. That includes staff making their presentation, the applicant making their presentation, and public comment. During that period, the PC can ask questions. Once that period is closed, the PC can ask more questions. But deliberation should not occur before that period is closed. It is important to keep that sequence in order to avoid the appearance of having prejudice or opinion or influencing each other.

Ms. Hauenstein discussed appeals. Typically it is 10 days from the time when the decision is signed off, filed, and mailed to the applicant. An appeal can be filed by an aggrieved person, who is the person who has suffered substantial grievance. It is not someone who is just dissatisfied with the decision. We are always acting like we are in a court of law in front of a judge and we are helping DDA Edwards create a defensible record that is clear and concise.

***E. Question and Answer (25 Minutes)**

Chair Chvilicek called for any questions.

Commissioner Lawson referred to DDA Edwards' comment about representing the County. Commissioner Lawson provided the scenario of the PC coming to a finding, the Board of County Commissioners coming to an alternate finding, and the item being appealed judicially. He asked how DDA Edwards represents the PC and the Commission. DDA Edwards said that he represents the County and the County Commission has the ultimate word, so the County's decision under the law is the decision that the County Commission made. DDA Edwards' role in that situation is to defend the County's position if there is a valid legal basis to do it. He said it is a chain of command issue.

6. *General Public Comment

Chair Chvilicek opened the Public Comment period. There was no public comment.

Commissioner Chesney commented that it was a very good presentation and very educational.

Chair Chvilicek suggested that these trainings be done maybe quarterly. She found it very helpful for the Planning Commissioners. She said that she is still looking forward to the joint meeting with the BCC.

7. Adjournment

Commissioner Chesney moved to adjourn. Commissioner Lawson seconded the motion, which passed unanimously. The training workshop adjourned at 2:31 p.m.

Respectfully submitted,

Katy Stark, Recording Secretary

Approved by Commission in session on January 2, 2019.

Trevor Lloyd
Secretary to the Planning Commission