

CITY OF COTTAGE GROVE PLANNING COMMISSION

Minutes of the Regular Public Hearing

August 17, 2022

CALL TO ORDER

Chair Valley called the meeting to order at 7:03 p.m.

ROLL CALL

Recording Secretary Angela Keppler called the roll. The following were:

PRESENT IN THE COUNCIL CHAMBERS: Darby Valley, Ashley Rigel, and Garland Burback, Tim Burns, and David Christopher

PRESNET VIA GOTOMEETING Beau Solesbee,

ABSENT: Blake Hoskin

STAFF PRESENT IN THE COUNCIL CHAMBERS: City Planner-Eric Mongan, Assistant Planner -Matt Laird, Public Works & Development Director- Faye Stewart, City Attorney-Carrie Connelly and Recording Secretary-Angela Keppler

STAFF PRESENT VIA GOTOMEETING:

APPLICANT:

MEDIA PRESENT: None

Staff advised that this hearing had been advertised and publicized and notices posted as required by law. It was asked that any correspondence received be noted as a part of the item on the agenda.

ITEMS TO BE ADDED

None

MINUTES

May 18, 2022

IT WAS MOVED BY COMMISSIONER GARLAND BURBACK AND SECONDED BY COMMISSIONER TIM BURNS TO APPROVE THE MINUTES FOR MAY 18, 2022.

Vote on the motion as follows:

VOTE	Commissioner Valley	Commissioner Burback	Commissioner Rigel	Commissioner Burns	Commissioner Hoskin	Commissioner Solesbee	Commissioner Christopher
AYES	X	X	X	X		X	X
NAYES							

Minutes for May 18, 2022 are approved

OLD BUSINESS

None

EX PARTE CONTACT

None

Land Use Training, Focus on Quasi-Judicial Procedure

City Attorney Carrie Connelly presented a power point on *Land Use Training, Focus on Quasi-Judicial Procedure* to the Planning Commission.

Planning Commission Bylaws

Eric and Carrie discussed proposed changes and updates to the *Planning Commission bylaws* with the Commission.

INFORMATION FROM STAFF

Eric said the Urban Forestry Committee is embarking on a process to draft an Urban Forest Management Plan and is asking for volunteers from the Planning Commission to be on this new Urban Forestry Advisory Committee. David Christopher and Ashley Rigel volunteered.

COMMISSION COMMENTS

Tim Burns will not be at the next Planning Commission meeting scheduled for September 14, 2022 due to previous plans out of state.

ADJOURNMENT

There being no further business, Commissioner Darby Valley adjourned the Planning Commission meeting at 9:05 p.m.

ATTEST:

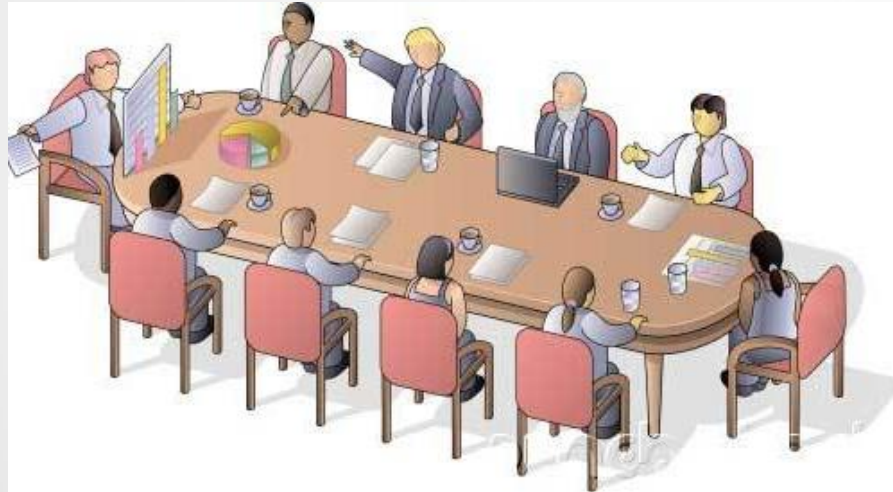
APPROVED:

Angela Keppler, Recording Secretary

Darby Valley, Chair

LAND USE TRAINING

focus on Quasi-Judicial Procedure



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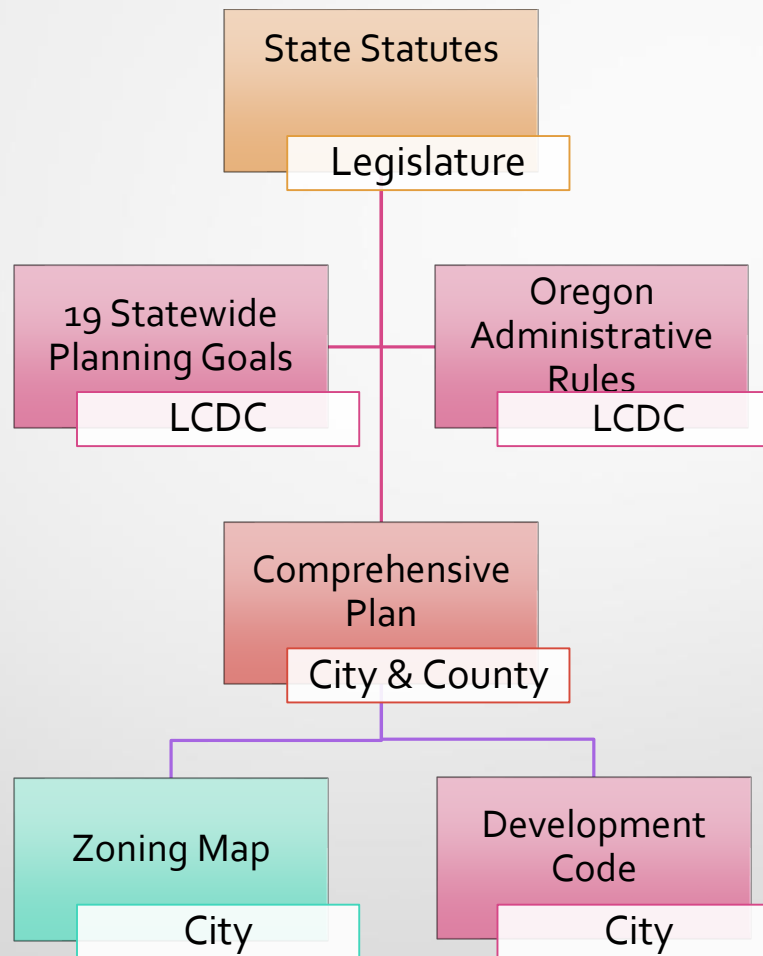
Land Use

Heavily Regulated by State Law

- Substantively
How cities must plan for the way land is used
- Procedurally
How cities must make land use decisions



Sources of Law



State Statutes

- Chapter 92, Land Divisions
- Chapter 195, Local Government Planning Coordination

Directs LCDC to adopt statewide land use planning goals and administrative rules to direct how to meet goals and statutes.

- Chapter 197, Comprehensive Land Use Planning
- Chapter 222, Annexations
- Chapter 227, City Planning and Zoning



Statewide Planning Goals

- Goals 1 and 2 : Process:
 - Goal 1 – Citizen Involvement
 - Goal 2 – Comprehensive Planning
- Goals 3-8, 13 and 15: Natural Resource Conservation
- Goals 9-12 and 14: Housing, Transportation, Urban Growth and Economic Development
- Goals 16-19: Oregon Coast Natural Resources



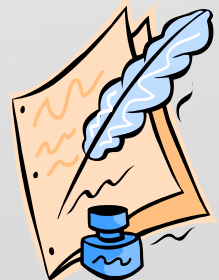
Agencies

- Land Conservation and Development Commission (LCDC)
 - Oversees state policy, goals, and guidelines
 - Acknowledges local comprehensive plan and implementing land use regulations
- Department of Land Conservation and Development (DLCD)
 - Provides administrative oversight and technical/financial assistance to update and implement plans.
- Land Use Board of Appeals (LUBA)
 - Reviews local land use decisions for compliance with local regulations, comprehensive plans, goals, and statutes.



Local Regulations

- Comprehensive Plan
 - Generalized, coordinated land use map and policies that establish City's vision for the type, location and intensity of future development.
 - Implements statewide planning goals.
- Land Use Development Code
 - Zoning and land division regulations that implement comprehensive plan, policies and designations.
- Functional Plans
 - Site Specific designs and requirements. Examples: Parks Master Plan, Capital Improvement Programs, Transportation System Plans, and Public Facilities Plans (i.e., for sewer or water).



Land Use Procedures

- Legislative (Type IV)
- Ministerial/Non-discretionary (Type I)
- Administrative Actions (Type II)
- Quasi-Judicial Actions (Type III)

Legislative Actions – Type IV

CGMC 14.41.500

- Making policy decisions that apply to many
- Development code text / Comprehensive plan text
- Planning Commission recommends / City Council acts
- City Council hearing and decision
- Discretionary within limits of state law

Administrative Actions – Type II

CGMC 14.41.300

- Decided by staff.
- Appealed to Planning Commission
- Possible “on the record” appeal to Council

Quasi-Judicial Procedures – Type III

CGMC 14.41.400

- Making a decision on a specific land use proposal that will apply to one or a few (Type III applications under CGMC 14.41.400)
- Acting as appeal body, reconsidering Type II Community Development Director decisions (CGMC 14.41.300).
- Must apply criteria in Municipal Code – Limited discretion.
 - Opposition testimony may or may not be relevant to applicable criteria.



Quasi-Judicial Procedures (continued)

- Applicant-initiated applications
- Notice to Public
- Public Hearing
- Script for Chair
- Written decision & findings required
(Determine compliance with applicable criteria)
- 120-day deadline from date of completeness
(ORS 227.178)
*100-days for certain residential applications
(197.311)



Quasi-Judicial Tribunal

- Impartial Decision-making
 - No *Bias* – must be able to be fair and impartial.
 - No *Ex Parte Contacts* – decision must be based on information in record.

ORS 227.180(3)

- No *Conflict of Interest*



Decision Making

Does application meet applicable criteria?

If so, vote to approve notwithstanding:

1. Personal concerns;
2. Feelings/impressions based on material outside of record;
3. Personal research;
4. Applicant's track record or financial wherewithal.

Prejudgment Bias

- Incapable of basing decision on evidence and argument presented.
- If you cannot be fair and impartial, you must not participate.
- Could you be persuaded to overcome your preconceived thoughts?
- Prior statements may be used as evidence of prejudgment bias, but disqualification “high bar,” which can be overcome.
- Rehabilitate by stating on record that decision-maker can make a fair and impartial decision based solely on the record.
- If biased, disclose and step down.

Ex Parte Contacts

- Verbal, written, visual contact not on record
 - Examples: Newspaper articles, site visits, conversations with neighbors
- Avoid and keep track—no good deed goes unpunished
- Must disclose context and substance at meeting when public may respond, before record is closed
 - If decision postponed, even if record closed, be sure to double check ex-parte contacts, to ensure they do not influence the decision and tribunal remains impartial with decision based solely on the record.

Conflict of Interest

“Actual or Potential Conflicts”

(Will or Could Happen)

- An action, decision, or recommendation
- By a *public official*
- Will (Actual) or Could (Potential) result in a financial benefit or detriment for PO or a relative or business associated with PO or relative

Conflict of Interest

Conflict of Interest Rules (Both Actual and Potential)

When in Doubt: Shout it Out!

- State the nature of your conflict
 - Do it before voting or discussing the matter
 - Do it on the record
 - Do it each meeting issue is discussed
- Actual Conflict **Only**
- When in Doubt, Shout It Out...and then press "mute."
 - Same rules as Potential Conflict, but **no** talking and **no** voting...
 - Unless City cannot act without you (only vote, don't talk)

Conflict of Interest

EXCEPTIONS TO THE CONFLICT RULES

It is not a conflict if the financial benefit happens because of:

- Membership in a class (any large, distinguishable group of citizens that the **Commission** determines is a class);
- Membership in a non-profit (501(c) status)



Conflict of Interest

EFFECT OF FAILING TO DISCLOSE CONFLICT:

- Decision will not be invalidated
- Personal liability up to \$1,000 per violation

Process

- Staff Report
 - Available to public 7 days before hearing (ORS 197.763 and CGMC 14.41.600.E.4)
 - Sets out all / only applicable material
 - Provides proposed decision with supporting findings and conditions



Hearing

Chair Follows Script for Hearing

- Ensures fair, equal process for every applicant and interested parties
- Criteria
- Ensures PC discloses bias, ex parte contacts and conflicts
- Statutory notifications

Hearing

After Testimony

- Staff comments/120-day status
- Potential next steps “initial evidentiary hearing”
 - Continue hearing to specific date and time
 - Close hearing but leave record open for written testimony
 - Close hearing and close record

STATUTES DICTATE OPTIONS! ORS 197.797

Deliberation/Findings

- Decisions must be made based on approval criteria (as identified by the City Planner).
- Planning Commission may not consider factors outside of approval criteria, such as impact on property values.
- Findings show why approval criteria are met or not met.
- Each decision should include findings supporting the decision.

Deliberation / Findings (Continued)

- Address every argument made by participants
- Interpret any ambiguous criteria
- Choose between conflicting evidence (“substantial evidence” / “reasonable decision maker”)

Deliberation / Findings (Continued)

- For each criterion
 - list relevant facts
 - Apply facts to criterion
 - Determine whether criterion is satisfied or can be satisfied with a clear condition of approval

Quasi-Judicial Decision

- Conditions must impose clear, nondiscretionary requirements
- Conditions requiring the applicant to dedicate private property or work to the public (“exactions”) require constitutional “*Nollan*” and “*Dolan*” findings
- Cottage Grove does not regularly exact property; but be aware, federal and state constitutions limit what the City can require applicants to pay for or dedicate

Needed Housing Overview

- “Needed housing” defined:
 - All residential housing determined to meet need shown for housing within an urban growth boundary at price ranges and rent levels affordable to a variety of incomes. ORS 197.303. Local gov’ts must:
 - Adopt and apply only ***clear and objective*** standards, conditions, and procedures regulating housing, including needed housing. ORS 197.307(4).



Needed Housing Overview

- “Clear and objective” defined:
 - Standards **not** clear and objective if they impose “subjective, value-laden analyses that are designed to balance or mitigate impacts of development.”
Rogue Valley Assoc. of Realtors v. City of Ashland, 35 LUBA 139, 158 (1998) (i.e. aesthetics)
- 120-day clock *may* shorten to 100 days
 - *“Multi-family”- 5 or more units, with 50% sold or rented as “affordable housing”



Needed Housing Overview

When will Cottage Grove's Planning Commission apply needed housing?

- Appeals of Type II decisions.
- Type III decisions.



Land Use Appeal

- Consider on Appeal:
 - Are appealed criterion satisfied?
 - If unsatisfied, can the criteria be satisfied by imposition of conditions?
 - If criterion is unsatisfied and cannot be satisfied by a condition, deny the application.

Anticipate:

1. Requesting and announcing ex parte contacts; bias; conflicts
2. Controlling rowdy crowd
3. Closing hearing and record



Quick Ethics Blast – Beyond Conflicts

ORS 244

and

Oregon Government Ethics
Commission (OGEC)



Statement of Economic Interest

City councilors, planning commission members, the municipal judge and the city administrator are required to file.

Statements due April 15, yearly.

Financial Gain

The “BUT-FOR” Test 244.040(1)

A public official (PO) cannot use position

- To get \$ or to avoid losing \$
- For the PO, for the PO's relative, a member of the PO's household, or business with which any of these is associated
- If that opportunity would not be available BUT FOR your position

Gifts

Gifts are Limited (\$50 per year, per interested giver)



The GIFT RULE:

1. You (your relative or a member of household)
2. Cannot ask for, receive, or give
3. Or even hint at getting/giving
4. Gifts over \$50 from any single source in one year
5. IF your source has an interest in *your* official actions (i.e., a decision or vote)



Questions?

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CITY OF COTTAGE GROVE, OREGON

PLANNING COMMISSION

Sections:

- 2.24.010 Establishment.
- 2.24.020 Membership.
- 2.24.030 Terms of office.
- 2.24.040 Vacancies and removal.
- 2.24.050 Staff services.
- 2.24.060 Rules of procedure.
- 2.24.070 Ratification of prior appointments.

2.24.010 Establishment.

There is established a city planning commission for the city. The purpose of this commission is to act as an advisory body to the city council and to make known to that body its decision on items within the commission's authority and to refer findings and recommendations for requests which require the council's final action.

2.24.020 Membership.

The commission shall consist of seven voting members appointed by the city council and such nonvoting advisory members as may be designated by the city council to provide technical advice to the voting members. Members shall not be officials of the city nor employees of the city. Up to two members may reside outside the city limits, but at least five shall reside within the city.

A. The voting members of the commission living outside the city limits shall reside within a six-mile radius of the city limits or have/own a business or property within the city limits at the time of appointment and maintain that residence/business subject to further conditions as herein established.

B. No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession.

2.24.030 Terms of office.

A. The term of office of the commission shall be three years.

B. No member shall be eligible for more than one full term unless appointment has been re-applied for as a new applicant and approved by city council.

2.24.040 Vacancies and removal.

A. Any member may be removed from office by the city council during his/her term for:

1. Any reason set forth in ORS 236.010 after a public hearing to evaluate those reasons;

2. For failure to attend any three regular meetings of the commission in a six-month period, with or without an excused absence;
3. For failure to attend four regular meetings of the commission in a twelve-month period, with or without an excused absence; or
4. For missing six meetings and work sessions within a twelve-month period, with or without an excused absence.

B. **Excused Absence Defined.** An excused absence shall be granted only for the following reasons:

1. Illness;
2. Medical emergency in immediate family;
3. One or two consecutive meetings for vacation;
4. Work-related requirements and emergencies;
5. For a reason which the commission may deem to be sufficient by the votes of not less than two-thirds of the other six commissioners.

C. Seven days' prior notification is recommended when not available for meetings.

2.24.050 Staff services.

The public works department's administrative secretary or such other person as is designated by the city manager shall act as secretary to the commission. The city manager shall also delegate staff to provide such other services to the commission as may be appropriate.

2.24.060 Rules of procedure.

Except as otherwise established by the council, the planning commission may adopt rules governing the conduct of its business.

2.24.070 Ratification of prior appointments.

All prior and current planning commission appointments are hereby ratified and affirmed.

CITY OF COTTAGE GROVE PLANNING COMMISSION

RULES OF PROCEDURE

ARTICLE 1. OFFICERS

Section A. The officers of this Commission shall consist of a Chair, Vice- Chair and Recording Secretary.

Section B. The Chair and Vice-Chair shall be elected from the voting membership of the Commission at its first regular meeting of each year. The term of office shall be for one year. No member shall serve more than two (2) consecutive terms without a unanimous affirmative vote of the Commission. In case of

vacancy occurring in any office, the Commission shall fill the same by an election at its next regular meeting. Such appointment shall be for the unexpired term of the predecessor.

Section C. The Public Works & Development Department Administrative Aide or other person designated by the City Manager shall serve as the Planning Commission Recording Secretary.

ARTICLE 2. OFFICER'S DUTIES

Section A. The Chair shall preside at all meetings of the Commission; to enforce observance of the rules of procedure; to decide questions of order; offer for consideration all motions regularly made; apportion duties of the members, appoint all necessary subcommittees; perform such other duties as the office may require.

Section B. The Vice-Chair shall have all the powers and shall perform all of the duties of the Chair in the absence of the Chair or the Chair's disability or inability to act, or refusal to act.

Section C. The Planning Commission Recording Secretary shall keep a fair and correct record of all the Commission's meetings and shall give notice of all meetings to the Commission. The Secretary shall be responsible for maintaining files on all minutes and other documents relating to the meetings of the Commission, and for maintaining files on all official papers, contracts and other documents related to the conduct of business between the Commission and other bodies, public or private.

Section D. In the absence of the Chair and Vice-Chair, the Commission shall elect a temporary Chair for the particular meeting in question.

Section E. Commissioner Duties: ?

- Notify the Recording Secretary by the Monday proceeding the Regular Meeting whether or not you will be in attendance at the Regular Meeting.

ARTICLE 3. MEETING SCHEDULE

Section A. A regular meeting of the Commission shall be held on the third Wednesday of each month unless canceled or rescheduled by the Chair, for lack of a quorum or agenda items, at 7:00 p.m. in the City Hall, Cottage Grove, Oregon. Special meetings may be called by the Chair provided Public Meetings Laws requirements are met.

Section B. A work session and/or an educational meeting of the Commission may be held on the second Wednesday of each month at 7:00 p.m. in City Hall or at such other place and time as the Commission may establish.

Section C. The place and hour of any meeting may be changed by affirmative action of the Commission, and the hour of any meeting may be changed by the Recording Secretary if adequate notice can be given to the public and interested parties.

Section D. All meetings shall adjourn not later than 11:00 p.m. unless the Commission, by majority vote, decides to extend the business beyond that time.

Section E. Other meetings as may be called by City Council and/or the Commission Chair.

ARTICLE 4. QUORUM AND VOTING

Section A. The majority of the members of the Commission shall constitute a quorum for the transaction of business, and a majority of the quorum may act for the Commission; except a majority of the Commission shall be required for final action on the adoption or amendment of the Comprehensive Plan, Zoning Ordinance or Rules of Procedure.

Section B. Voting by members on all matters before the Commission shall be by open ballot.

Section C. Members, including the presiding officers, shall be required to vote on all matters before the Commission unless prohibited by Oregon's ~~Ethics~~ Laws.

ARTICLE 5. AGENDA AND HEARING PROCEDURES

Section A. Except as otherwise provided to the contrary by these rules of procedure, Robert's Rules of Order shall be used as a general guide for conducting Planning Commission meetings except where they conflict with any other required procedures or these rules. The Planning Commission shall avoid invoking the finer points of parliamentary procedure to obscure issues or delay decisions.

Section B. The City Planning Staff shall prepare an agenda for each meeting of the Commission. The presiding officer may modify the agenda with the consent of a majority of the Commission members present.

Section C. Planning staff reports made available to the Commission prior to the meeting shall also be made available to the applicants and to any interested parties, and so noted on any required public hearing mailing notice.

Section D. The order of the agenda shall be as follows:

- Call to Order
- Roll Call
- Report from Staff
- Approval of Minutes
- Items of Old Business
- Items of New Business
- Information Report from Staff
- Audience Participation
- Commission Comments
- Adjournment

Section E. Any interested party may appear in person at the public hearing or be represented by a person of his or her choosing. Any person speaking at a public hearing shall first identify himself or herself by name and address, state his or her interest in the property, and if appearing in a representative capacity, identify whom he or she represents.

Section F. Procedure for all matters considered by the Commission shall be as follows:

1. The Chair shall announce the rules of conduct for the public hearing.
2. The Chair will announce each item of business prior to the formal public hearing on that item and

may establish, when necessary, additional rules limiting the length of testimony or repetitive testimony.

3. The Chair shall request any members of the Commission to publicly declare any ex parte contacts or conflicts of interest regarding the request before the Commission.
4. The City Planner, or a member of the City staff, will present relevant information regarding the item of business. This presentation will include ordinance criteria and material necessary to establish appropriate considerations prior to the hearing along with the Staff's study and recommendation.
5. The Commission will first hear testimony from the proponents, or those speaking in favor of the item and the Commission may ask questions of the speaker at this time.
6. The Commission will then hear from the neutral parties, or those speaking neither for nor against the item and the Commission may ask questions of the speaker at that time.
7. The Commission will then hear from the opponents, or those speaking against the item and the Commission may ask questions of the speaker at that time.
8. The Commission may ask or answer additional questions of clarification from the public.
9. The City staff, if necessary, will present a summary of points.
10. The applicant will then have the opportunity for rebuttal to items brought up during the course of the hearing.
11. The public hearing shall be closed prior to discussion among the Commission and no additional testimony or information from the audience shall be accepted without the chair reopening the public hearing.

ARTICLE 6. SPECIAL REPORTS

Section A. Special records shall be maintained by the Recording Secretary for the following matters:

- Reports by the planning staff and Planning Commission;
- All policy statements of the Commission;
- Planning Commission interpretations of the ordinance requirements; and,
- Staff interpretations of the ordinance requirements.

* Section B. On January 1st of each year the Planning Commission Recording Secretary shall prepare, for Commission approval, an annual report of the year's activities and other matters for submission to the City Council. The report shall include pertinent information on:

- Comprehensive plan revisions;

- Subdivision and zoning activity;
- Progress reports on Commission projects;
- Miscellaneous studies and reports prepared by the Commission and staff;
- Areas that need future attention; and,
- Suggested work program for the following year.

ARTICLE 7. ADOPTION OR AMENDMENT OF THE RULES OF PROCEDURE

Section A. The adoption or amendment of these Rules of Procedure shall require the affirmative vote of at least four members present at a regular meeting, prior to which the proposed rules or amendments have been distributed to all members of the Commission at least five days in advance of said meeting.

ADOPTED BY MEMBERS PRESENT AT THE REGULAR PLANNING COMMISSION
MEETING OF _____, 2022.

Darby Valley, Chair

Ashley Rigel, Vice-Chair