

Chapter 17.164

PROCEDURES FOR DECISION MAKING--LIMITED

LAND USE DECISIONS

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17.164.010 Purpose. The purpose of this chapter is to establish procedures for limited land use decisions. (Ord. 634 §1 Exh. A (part), 1995)

17.164.020 General policies. A. A limited land use decision is a final decision or determination made by the planning commission pertaining to a site within the urban growth boundary which concerns: (a) the approval or denial of a subdivision or partition; or (b) the approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including but not limited to site development review.

B. A limited land use decision shall be consistent with applicable provisions of the comprehensive plan and this title consistent with ORS 197.195(1).

C. Such decisions may include conditions authorized by law.

E. A limited land use decision is not subject to the requirements of Chapter 17.162.

F. Approval or denial of a limited land use decision shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth. (Ord. 634 §1 Exh. A (part), 1995)

17.164.025 Consolidation of proceedings. A. Except as provided in subsection C of this section, whenever an applicant requests more than one approval and more than one approval authority is required to decide the applications, the proceedings shall be consolidated so that one approval authority shall decide all applications in one proceeding.

B. In such cases as stated in subsection A of this section, the hearings shall be held by the approval authority having original jurisdiction over one of the applications under Section 17.164.110 in the following order of preference: the council, the commission or the planner.

C. Where there is a consolidation of proceedings:

1. The notice shall identify each action to be taken;
2. The decision on a plan map amendment shall precede the decision on the proposed zone change and other actions. Plan map amendments are not subject to the one hundred twenty-day decision making period prescribed by state law and such amendments may involve complex issues. Therefore, the planner shall not be required to consolidate a plan map amendment and a zone change or other permit applications requested unless the applicant requests the proceedings be consolidated and signs a waiver of the one hundred twenty-day time limit prescribed by state law for zone change and permit applications; and
3. Separate actions shall be taken on each application.

D. Consolidated Permit Procedure.

1. Use of the consolidated permit procedures described in this section shall be at the election of the applicant.
2. When the consolidated procedure is elected, application and fee requirements shall remain as provided by resolution approved by the council. If more than one permit is required by this title or other ordinance to be heard by the planning commission or city council, each such hearing shall be combined with any other permit also requiring such hearing. The standards applicable to each permits by this or any other ordinance shall be applied in the consolidated procedures to each application.
3. In a consolidated proceeding, the staff report and recommendation provided by the planner shall be consolidated into a single report.
4. All rules and ordinances of the city not in conflict with this section shall apply in a consolidated permit procedure. (Ord. 634 §1 Exh. A (part), 1995)

17.164.030 Application process. A. The applicant shall be required to meet with the planner for a pre-application conference. Such a requirement may be waived in writing by the applicant.

B. At the pre-application conference if conducted, the planner shall:

1. Cite the applicable comprehensive plan policies and map designation;
2. Cite the applicable substantive and procedural ordinance provisions;
3. Provide available technical data and assistance which will aid the applicant as provided by the public works director;
4. Identify other policies and regulations that relate to the application; and
5. Identify other opportunities or constraints that relate to the application.

C. Another preapplication conference is required if an application is submitted six months after the preapplication conference.

D. Failure of the planner to provide any of the information required by this chapter shall not constitute a waiver of the standards, criteria or requirements of the applications. Neither the city nor the planner shall be liable for any incorrect information provided in the preapplication conferences.

E. Applications for approval required under this title may be initiated by application of a record owner of property or contract purchaser.

F. Any persons authorized by this title to submit an application for approval may be represented by an agent authorized in writing to make the application.

G. The application shall be made on forms provided by the planner.

H. The application shall:

1. Include the information requested on the application form;
2. Address appropriate criteria in sufficient detail for review and action;
3. Be accompanied by the required fee; and
4. Include a list of names and addresses of all persons who are surrounding property owners of record within one hundred feet. The records of the Columbia County Department Tax Assessors office shall be the official records for determining ownership.

I. The planner may require information in addition to that required by a specific provision of this title, provided the planner determines this information is needed to properly evaluate the proposed development proposal; and the need can be justified on the basis of a special or unforeseen circumstance.

J. The planner may waive the submission of information for a specific requirement provided the planner finds that specific information is not necessary to properly evaluate the application; or the planner finds that a specific approval standard is not applicable to the application.

K. Where a requirement is found by the planner to be inapplicable, the planner shall:

1. Indicate for the record and to the applicant the specific requirements found inapplicable; and
2. Advise the applicant in writing that the finding may be challenged on appeal or at the hearing or decision on the matter and may be denied by the approval authority; and
3. Cite in the staff report on the application the specific requirements found inapplicable, the reasons therefor and the specific grant of authority.

L. An application shall be deemed incomplete unless it addresses each element required to be considered under applicable provisions of this title and the application form, unless that requirement has been waived by the planner. The planner shall not accept an incomplete application.

M. If an application is incomplete, the planner shall:

1. Notify the applicant within thirty days of receipt of the application of exactly what information is missing; and
2. Allow the applicant to submit the missing information.

N. The application shall be deemed complete when the missing information is provided and at that time the one hundred twenty-day time period shall begin to run for the purposes of satisfying state law.

O. If the applicant refuses to submit the missing information, the application shall be deemed incomplete on the thirty-first day after the planner first received the application and returned to the applicant. (Ord. 634 §1 Exh. A (part), 1995)

17.164.040 Time period for decision making. The city shall take final action on an application for a limited land use decision

including the resolution of all appeals within one hundred twenty days after the application is deemed complete, except:

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A. The one hundred twenty-day period may be extended for a reasonable period of time at the request of the applicant; and
B. The one hundred twenty-day period applies only to a decision wholly within the authority and control of the city. (Ord. 634 §1 Exh. A (part), 1995)

17.164.110 Approval authority responsibilities. A. The planner shall have the authority to approve, deny or approve with conditions the following applications:

1. Minor partitions pursuant to Chapter 17.152;
2. Property line adjustments pursuant to Chapter 17.152.

B. The planning commission shall have the authority to approve, deny or approve with conditions the following applications:

1. Subdivisions pursuant to Chapter 17.150;
2. Major partitions pursuant to Chapter 17.152;
3. Site development review pursuant to Chapter 17.120.

C. The decision shall be based on the approval criteria set forth in Section 17.164.150. (Ord. 634 §1 Exh. A (part), 1995)

17.164.130 Notice requirements. A. The planner shall provide written notice to owners of property within one hundred feet of the entire contiguous site for which the application is made. The list shall be compiled from the most recent property tax assessment roll.

B. For purposes of review, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

C. Subdivisions, major partitions and site development review shall require that the applicant post signs provided by the planner displaying notice of the pending decision for at least fourteen days prior to the date of the decision. One sign shall be required for each three hundred feet, or part thereof, of frontage of the subject property on any street. The content, design, size and location of the signs shall be as determined by the planner to assure that the information is legible from the public right-of-way. As a recondition to a decision by the planning commission, the applicant shall file an affidavit of such posting with the planner no less than ten days prior to the scheduled date of decision.

D. Subdivisions, major partitions and site development review shall require notice to be printed in the local newspaper at least fourteen days prior to the hearing clearly identifying the decision that is pending, stating that there is no public hearing, there is a fourteen-day period for public written comment regarding the pending limited land use decision and including the expiration date for receipt of written comments.

E. Notices mailed to property owners shall include the following information:

1. A description of the subject property and a general location which shall include tax map designations from the county assessor's office;
2. A map showing the location of the subject property;

3. A description of what the application will entitle the applicant to do and what the applicable criteria for the decision are;

4. State that a fourteen-day period for submission of written comments is provided prior to the decision;

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5. State the place, date and time that the written comments are due;

6. State that copies of all documents or evidence relied upon by the applicant are available for review, and that copies can be obtained at cost;

7. A statement that issues which may provide the basis for an appeal to the land use board of appeals must be raised in writing during the comment period and comments must be sufficiently specific give the decision maker or hearing body an opportunity to respond to the issue;

8. A statement that a limited land use decision does not require:

a. Interpretation or the exercise of policy or legal judgement, or

b. A public hearing;

9. The address and phone number of the planner's office where additional information can be obtained;

10. A statement that the applicant and any person who submits written comments during the fourteen-day period shall receive notice of the decision.

F. The failure of a property owner to receive notice shall not invalidate the action provided a good faith attempt was made to notify all persons entitled to notice.

G. Personal notice is deemed given when the notice is deposited with the United States Postal Service.

H. In computing the length of time that notice is given, the first date notice is given shall be excluded and the day of the hearing or the date on which the appeal period expires shall be included unless the last day falls on any legal holiday or on Saturday, in which case, the last day shall be the next business day.

I. The records of the Columbia County assessor's office shall be the official records used for giving notice required in this title, and a person's name and address which is not on file at the time the notice mailing list is initially prepared is not a person entitled to notice. (Ord. 634 §1 Exh. A (part), 1995)

17.164.140 Decision procedure. The planning commission limited land use decision shall be conducted as follows:

A. Request the planner to present the staff report, to explain any graphic or pictorial displays which are a part of the report, summarize the findings, recommendations and conditions, if any, and to provide such other information as may be requested by the approval authority;

B. Allow the applicant or a representative of the applicant discuss the application and respond to the staff report;

C. Request the planner read all written comments into the record;

D. Allow the applicant to respond to all written comments;

E. Make a decision pursuant to Section 17.164.150 or continue

the decision to gather additional evidence or to consider the application further. (Ord. 634 §1 Exh. A (part), 1995)

17.164.150 Decision process. A. The decision shall be based on proof by the applicant that the application fully complies with:

1. The city comprehensive plan; and
2. The relevant approval standards found in the applicable chapter(s) of this title and other applicable implementing ordinances;

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B. Consideration may also be given to:

1. Proof of a substantial change in circumstances; and
2. Factual written statements from the parties, other persons and other governmental agencies relevant to the existing conditions, other applicable standards and criteria, possible negative or positive attributes of the proposal or factors in subsections (A) or (B) (1) of this section.

C. In all cases, the decision shall include a statement in a form addressing the requirements or criteria outlined in the planner's staff report.

D. The planning commission may:

1. Adopt findings and conclusions contained in the staff report;
2. Adopt its own findings and conclusions;
3. Adopt findings and conclusions submitted by any party provided all parties have had an opportunity to review the findings and comment on the same; or
4. Adopt findings and conclusions from another source, either with or without modification, having made a tentative decision, and having directed staff to prepare findings for review and to provide an opportunity for all parties to comment on the same.

E. The decision may be for denial, approval or approval with conditions. Conditions may be imposed where such conditions are necessary to:

1. Carry out applicable provisions of the Scappoose comprehensive plan;
2. Carry out the applicable implementing ordinances;
3. Ensure that adequate public services are provided to the development or to ensure that other required improvements are made;
4. Conditions may include, but are not limited to:
 - a. Minimum lot sizes,
 - b. Larger setbacks,
 - c. Preservation of significant natural features,
 - d. Dedication of easements, and
 - e. Conveyances and dedications of property needed for public use;

5. Conditions of approval shall be fulfilled within the time limit set forth in the decision or, if no time limit is set forth, the conditions shall be fulfilled within one year. Failure to fulfill any condition of approval within the time limitations provided may be grounds for revocation of approval, after notice and an opportunity to be heard by the planning commission;

6. Prior to the commencement of development, i.e., the issuance of any permits or the taking of any action under the

approved development application, the owner and any contract purchasers of the property which is the subject of the approved application may be required to sign and deliver to the planner their acknowledgment in a development agreement and consent to such conditions;

a. The city manager shall have the authority to execute such development agreements on behalf of the city,

b.No building permit shall be issued for the use covered by the application until the executed contract is recorded in the county records, and

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c. Such development agreements shall be enforceable against the signing parties, their heirs, successors and assigns by the city by appropriate action in law or suit in equity;

7. A bond in a form acceptable to the city or a cash deposit from the property owners or contract purchasers for the full amount as will ensure compliance with the conditions imposed may be required. Such bond or deposit shall be posted prior to the issuance of a building permit for the use covered by the application.

F. The final decision on the application may grant less than all of the parcel which is the subject of the application. (Ord. 634 §1 Exh. A (part), 1995)

17.164.160 Notice of decision. A. The applicant and any person who submits written comments during the fourteen-day period shall be entitled to receive the notice of decision.

B. The notice of decision shall include:

1. A brief statement of the local decision-making process including the procedures, criteria and standards considered relevant to the decision, the facts relied upon in rendering the decision and an explanation of the justification for the decision based on the criteria, standards and facts set forth;

2. An explanation of the appeal rights. (Ord. 634 §1 Exh. A (part), 1995)

17.164.180 Record of proceeding. The record shall include:

A. A copy of the application and all supporting information, plans, exhibits, graphics, etc.;

B. All testimony, evidence and correspondence relating to the application;

C. All information considered by the planning commission in making the decision;

D. The staff report of the planner;

E. A list of the conditions, if any are attached to the approval of the application; and

F. A copy of the notice advising of the decision which was given pursuant to Section 17.164.160 and accompanying affidavits, and a list of all persons who were given mailed notice. (Ord. 634 §1 Exh. A (part), 1995)

17.164.190 Appeal. A. Standing to Appeal.

1. Any person shall be considered a party to a matter, thus having standing to seek appeal, provided:

a. The person submitted written comments to the commission during the fourteen-day period prior to the decision and the person was entitled as of right to notice and hearing prior to the decision to be reviewed; or

b. The person is aggrieved or has interests adversely affected by the decision.

B. Computation of Appeal Period.

1. The length of the appeal period shall be fifteen days from the date of the decision.

2. In computing the length of the appeal period, the day of the decision is mailed shall be excluded and the last day for filing the appeal shall be included unless the last day falls on a legal holiday for the city or on a Saturday, in which case, the last day shall be the next business day.

C. Determination of Appropriate Appeal Body.

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1. Any decision made by the planner under this chapter may be reviewed by the planning commission by:

a. The filing of a notice of appeal and payment of required fees by any party to the decision by five p.m. on the last day of the appeal period;

b. The council or planning commission, on its own motion, seeking appeal by voice vote prior to the end of the appeal period; or

c. Referral of a matter under Section 17.164.110 to the council when the case presents a policy issue which requires council deliberation and determination, in which case the council shall decide the application.

2. Any decision made by the planning commission under this chapter, may be reviewed by the council by:

a. The filing of a notice of appeal and payment of required fees by any party to the decision before five p.m. on the last day of the appeal period;

b. The council or planning commission, on its own motion, seeking appeal by voice vote prior to the end of the appeal period; or

c. Referral of a matter under Section 17.164.110 to the council when the case presents a policy issue which requires council deliberation and determination, in which case the council shall decide the application.

3. Failure to file an available appeal shall be deemed a failure to exhaust administrative remedies. The filing of available appeals is a condition precedent to appeal to the land use board of appeals.

D. The notice of appeal shall be filed within the appeal period and contain:

1. A reference to the application sought to be appealed;
2. A statement of the petitioner's standing to the appeal;
3. The specific grounds for the appeal;
4. The date of the decision on the action;
5. The applicable fees.

E. The appeal hearing shall be confined to the prior record.

F. Upon appeal, notice shall be given to parties who are entitled to notice under Section 17.164.130.

G. The appellate authority shall affirm, reverse or modify the decision which is the subject of the appeal; however, the decision shall be made in accordance with the provisions of Section 17.164.150; or upon the written consent of all parties to extend the one hundred twenty-day limit, the appellate authority may remand the matter if it is satisfied that testimony or other evidence could not have been presented or was not available at the time of the initial decision. In deciding to remand the matter, the appellate authority shall consider and make findings and conclusions regarding:

1. The prejudice to parties;
2. The convenience or availability of evidence at the time of the initial hearing;
3. The surprise to opposing parties;
4. The date notice was given to other parties as to an attempt to admit; or
5. The competency, relevancy and materiality of the proposed testimony or other evidence.

H. The hearings authority may, after a hearing conducted pursuant to this chapter, modify or revoke any approval granted

pursuant to this chapter for any of the following reasons:

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1. A material misrepresentation or mistake of fact made by the applicant in the application or in testimony and evidence submitted, whether such misrepresentation be intentional or unintentional;

2. A failure to comply with the terms and conditions of approval;

3. A material misrepresentation or mistake of fact or policy by the city in the written or oral report regarding the matter whether such misrepresentation be intentional or unintentional. (Ord. 634 §1 Exh. A (part), 1995)

17.164.200 Denial of the application--Re-submittal. An application which has been denied or an application which was denied and which on appeal has not been reversed by a higher authority, including the land use board of appeals, the land conservation and development commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least twelve months from the date the final city action is made denying the application unless there is a substantial change in the facts or a change in city policy which would change the outcome. (Ord. 634 §1 Exh. A (part), 1995)

17.164.210 Fee waivers. A. Fees for land use applications and appeals of a land use decision shall be waived for a recognized neighborhood planning organization (NPO) if all of the following conditions are met:

1. The appeal or land use application must have been supported by a majority vote of NPO members at a public meeting where a quorum of NPO members was present;

2. A copy of the minutes of the NPO meeting where the appeal or land use application was initiated must be submitted with the appeal or land use application;

3. The appeal or application will be considered valid when conditions (1) and (2) are met and all other filing requirements are met; and

4. The NPO chairperson or designated representative shall appear at the next available city council meeting after the application or appeal is filed to request a waiver. The NPO shall work through the Planning Division to schedule the item on a council agenda.

B. Council may, on its own motion, waive the land use application or appeal fee for other nonprofit organizations. (Ord. 791 §4, 2007)

