



## TUALATIN ARCHITECTURAL REVIEW BOARD MEETING

WEDNESDAY, OCTOBER 02, 2024

TUALATIN CITY SERVICES  
10699 SW HERMAN ROAD  
TUALATIN, OR 97062

OR

**Join Zoom Meeting**

<https://us02web.zoom.us/j/81146767618?pwd=K349qgcSWm3ViPbGfxdA7THiafASoF...>

Meeting ID: 811 4676 7618

Passcode: 310626

Find your local number: <https://us02web.zoom.us/u/kcWQtxl3tY>

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### CALL TO ORDER & ROLL CALL

### ANNOUNCEMENTS & COMMUNICATION

### APPROVAL OF MINUTES

- [1.](#) Review of Minutes from December 13, 2023.

### COMMUNICATION FROM THE PUBLIC (NOT ON THE AGENDA)

### COMMUNICATION FROM CITY STAFF

- [1.](#) Staff will provide a brief legal training to outline the Architectural Review Board's role and responsibilities.

### FUTURE ACTION ITEMS

### ADJOURNMENT

Architectural Review Board

**MINUTES OF December 13, 2023**

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**ARB MEMBERS PRESENT:**

Chair, Cyndy Hillier  
Board Member, Patrick Gaynor  
Board Member, Skip Stanaway  
Board Member, Chris Goodell  
Board Member, Keith Hancock  
Board Member, Kylan Hoener

**ARB MEMBERS ABSENT:**

None

**STAFF PRESENT:**

Steve Koper, Community Development Assistant Director  
Lindsey Hagerman, Office Coordinator  
Madeleine Nelson, Assistant Planner

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**CALL TO ORDER AND ROLL CALL**

The meeting was called to order at 6:30 p.m., and roll call was taken.

**APPROVAL OF MINUTES**

Board Members unanimously voted to approve November 8, 2023 minutes. (6-0)

**DISCLOSURE STATEMENT**

Board Member Stanaway provided a disclosure statement. He disclosed that his business is located adjacent to the development site under consideration at the night's meeting.

**ACTION ITEMS**

- 1. Consideration of an Architectural Review application (AR 23-0004) for a three-building industrial development totaling 199,170 square feet on a 23.8-acre site in the General Manufacturing (MG) zone at 19000 SW 124<sup>th</sup> Avenue (Tax Lot: 2S127BB00100)**

Madeleine Nelson, Assistant Planner, presented an overview of the project. She stated that VLMK Engineering + Design, representing the property owner, has submitted a proposal for the construction of three buildings industrial development. She noted the applicant intends to provide lease space to manufacturing and warehousing tenants accommodating between one

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to four tenants. She also noted that Property Line Adjustment (PLA23-0001) for the site was approved in October and is pending recording with Washington County.

Ms. Nelson explained that the procedures for a Type III land use decision are found in TDC 32.230. She noted the criteria for submittal, notice, public hearing, and final decision dates. She briefly went over approval criteria for an Architectural Review application listed in TDC 73A through 73G including site design, landscaping, parking, and waste & recyclable management standards. She noted conditions of approval may implement identified public facilities and services needed to serve the proposed development through TDC 74 and 75.

Ms. Nelson noted a tree removal permit was submitted in conjunction with the Architectural Review application, as allowed by code. She pointed out the applicant is proposing to remove 159 trees while preserving 17 trees on site. She clarified staff is recommending conditions of approval related to the protection of the remaining trees to fulfill these standards.

Ms. Nelson spoke about zoning standards which can be found in TDC 61 for the General Manufacturing Zone (MG). She noted the site is located in the Natural Resource Protection Overlay (NRPO), specifically the Wetland Conservation District. She highlighted building design proposed. She addressed how the proposal complied with standards for landscaping, recycling and waste management, and public improvements.

Ms. Nelson concluded staff recommends approval of Architectural Review application AR23-0004, as conditioned.

Board Member Goodell asked for clarification on landscaping standards. Ms. Nelson shared the Final Order and outlined the proposed landscaping conditions of approval.

Chair Hillier asked how the trees proposed for retention will be protected. Ms. Nelson answered that the recommended tree protection measures can be found in the applicant's submitted arborist report. She noted staff recommended a condition of approval for the tree protection measures to be shown on a revised grading plan.

Chair Hillier asked for clarification about the timeline for tree protection. Steve Koper, Assistant Community Development Director, briefly went over the permit process.

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The applicant, Halvin Kamp of VLMK Engineering + Design, shared that their client is eager to proceed with the project and is enthusiastic about moving forward.

Board Member Stanaway asked if they could break down the building's scale more. Mr. Kemp answered the company has property in Wilsonville and wanted to keep the design cohesive and will take a look at adding more color depth.

Chair Hillier asked if they plan on implementing the Climate Action Plan. Mr. Kemp answered they plan on putting environmental friendly roofing material and will follow the Development Code.

Chair Hiller asked the Board Members if there were any other questions of the applicant or staff. Seeing none, Chair Hiller closed public testimony and asked the Board Members if they had any deliberations on the proposal.

Board Member Stanaway made a MOTION to approve AR23-0004 with additional conditions of approval to work with City staff on breaking down the building scale of large façade including all four sides. Scale can be broken down with landscape, contrasting in painting, reveals in paneling or other appropriate measures. Board Member Hoener SECONDED the motion. Board Members unanimously voted to APPROVE the application. (6-0)

#### **ADJOURNMENT**

Board Member Stanaway made a MOTION to adjourn. The motion was SECONDED by Board Member Goodell. The Board Members unanimously voted to ADJOURN the meeting at 7:45 p.m. (6-0)

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# ARCHITECTURAL REVIEW BOARD COMMISSION LEGAL TRAINING

OCTOBER 2, 2024 | ARB MEETING



# INTRODUCTION

- **Goals for tonight...**
  - You don't need to be an expert
  - Try to gain tools to recognize issues
  - And then, ask for assistance!
- **Discussion Topics**
  - Authority
  - Public Meetings
  - Land Use Hearings
  - Roles, Criteria, Evidence, and the Final Decision





# AUTHORITY



- **Remember You Can Act Only As A Body...**
  - **The Municipal Code does not grant power to individual Board Members.**
  - **Board Members are expected to abide by Board decisions, whether or not they voted on the prevailing side.**
  - **Personal opinions and comments should be expressed only if the member makes clear that they are acting in an individual capacity and not representing the City's position.**

# OPEN/PUBLIC MEETINGS

- **Generally**
  - Under ORS 192.660 *et seq.*, elected and appointed officials must meet in public to make or deliberate towards decisions.
  - The purpose is to encourage transparency in government.
- **State law addresses public meetings in two ways:**
  - All meetings of a public body must be in public
    - All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except [Executive Sessions]. 192.630(1)
  - A quorum may not meet in private
    - A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating towards a decision on any matter except for [Executive Sessions]. 192.630(2).



# NO PRIVATE MEETINGS

- **So...**
  - **If more than a majority of the Board meets outside an official public meeting and you are making or deliberating towards a decision then you have violated the public meeting laws.**
  - **Example: Assume five of the seven members of the Commission are all at the same school play and start discussing the merits of whether to approve a conditional use permit for the school. Have those members “met” in private for the purpose of deciding on or deliberating toward a decision?**

# “SERIAL” MEETINGS

- **Serial meetings occur when a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action takes place between a quorum of a governing body.**
- **This is true even though at no given time does a quorum of the governing body communicate contemporaneously about the topic in question.**
  - **Example:** A Board Member forwards an email discussion they had with another Board Member regarding a matter that is pending before the Board Member to a third Board Member. The third Board Member then forwards the email chain to a fourth, who then forwards it to a fifth. Because the email messages, in the aggregate, include a quorum of the Board (5 of 7), and the purpose of the communications was to deliberate towards a decision, the email exchanges in the aggregate would likely constitute a serial meeting.

# BEST PRACTICES

- **Board Members should refrain from using the “reply all” function on emails.**
- **Board Members should refrain from “serial communications” via e-mail, telephone, face-to-face or even social media postings, such as Facebook.**
- **Board Members should not use staff or other individuals as intermediaries.**
  - **Board Members can and should ask questions of staff that limits the communication between the staff and the Commissioner asking the question.**
- **Query...how to handle discussions with members of the community that could create a serial meeting...**

# **SOCIAL GATHERINGS**

- **Can a quorum of a governing body meet in social settings?**
- **Yes, with a few caveats:**
  - **Must be purely social.**
  - **Governing body should avoid any discussion of official business.**
  - **At some point, such discussion may turn a social gathering into a meeting**
  - **Attendance at a conferences, trainings, etc. excluded from the definition of “meeting.”**



# QUASI-JUDICIAL DECISIONS

- **Quasi-Judicial hearings require special procedures to protect due process rights of those involved.**
- **Must explain process and criteria (script).**
- **Must make disclosures (ex parte communications; bias and conflicts of interest).**
- **Must hold public hearing to take evidence.**
- **Must close hearing, then deliberate based solely on record and vote.**
- **Must have a final written decision with specific findings related to applicable criteria (staff will have a draft final order or if needed may bring back at future meeting).**

# EX-PARTE COMMUNICATIONS

- **Ex Parte Communications in Quasi-Judicial Hearings:**
  1. **Any communication (written, oral or electronic)**
  2. **Made to a decision-maker**
  3. **Concerning the subject matter of the quasi-judicial hearing; and**
  4. **Occurs while the matter is pending (after a formal application is filed and before the final decision is made)**

# BIAS

- **Bias Issues in Quasi-Judicial Hearings**
- **Bias occurs when a decision-maker does not provide the parties with a fair hearing due to prejudice or prejudgment (this can be in favor or against).**
- ✓ **Personal bias.**
- ✓ **Personal prejudice.**
- ✓ **Interest in the outcome.**
- **Established through actual evidence such explicit statements, pledges, commitments.**
- **Circumstantial evidence not enough.**

# CONFLICT OF INTEREST

- **Conflict of Interests in Quasi-Judicial Hearings**
- **What is a conflict of interest?**
  - **A conflict of interest arises when a decision or recommendation you are making would or could result in a “private pecuniary benefit or detriment” to you, your relatives, or a businesses with which either you or your relatives are associated. Conflicts of interest come in two forms – actual conflicts and potential conflicts.**
- **What is the difference between an actual and potential conflict of interest?**
  - **An actual conflict of interest arises when any decision or act by you would result in a “private pecuniary benefit or detriment” to you, your relatives or an associated business; while a potential conflict arises when a decision or act by you could result in such an outcome.**



# PUBLIC MEETINGS

- **Generally speaking, under state law, the public has a right to attend and observe but not participate in public meetings.**
- **Board may permit limited public participation, i.e., public comment period.**
- **Generally can establish time limits for public comment, but such standards need to be applied equally to all.**
- **May not remove a member of the public from a meeting unless you can clearly demonstrate the individual is disrupting the meeting in a manner that precludes your board or commission from conducting business.**



# ARB MEMBER ROLE

- **Understand land use planning:** Know that planning is evolving and ongoing. Know about the statewide land use program and local land use history. Be aware of interrelationships of planning to community goals, priorities and budget constraints.
- **Reflect the values of the community:** As a volunteer who obviously is committed to your community, you can see or sense what is needed. Use your unique position (separate from the elected “political” process and from the government payroll) to articulate local values.
- **Educate the public on land use:** ARB meetings often are citizens’ first contact with local government and with land use. Act in ways that increase understanding and respect for the responsiveness of government.
- **Understand limits of ARB authority:** Recognize that even in your role as a decision-maker your authority has limits.
- **Interpret and apply zoning ordinance provisions. Apply facts to criteria:** Your planning staff will assist you.
- **Make decisions/recommendations:** Be courageous. Don’t avoid hard decisions.



# STAFF ROLE

Staff Role	Effect on ARB
Explains land use	Staff's explanation affect the tone and content of testimony to ARB
Accepts/rejects applications	Staff insuring that applications are complete saves time and confusion at ARB meetings
Prepares staff reports	Staff provides identification of issues and criteria that assists ARB with decisions and citizens with testimony
Handles public notice and other administration	Avoids legal challenges to ARB decisions; reduces "no one notified me" claims at public hearings
Stays current on regulations court cases, rulings, etc.	Prevents ARB errors from lack of current information

# DECISION-MAKING CRITERIA

- **Application of pre-existing criteria to a set of facts**
- **If the applicant demonstrates compliance with these criteria, the application must be approved even if the decision-maker disagrees with the criteria, or believes that additional, un-adopted criteria should be applied.**
- **Regarding interpretation of criteria, if the wording is clear and unambiguous, it must be followed regardless of legislative intent.**
- **If two provisions conflict, the more specific provision controls.**



# EXAMPLE CRITERIA

- **Example criteria from *Architectural Review (Chapter 33)*:**
  - (d) *Large Commercial, Industrial, and Multifamily Development*. Applications for Large Commercial, Industrial, and Multifamily Development must comply with the applicable standards and objectives in TDC Chapter 73A through 73G
  - (a) Architectural Review decisions may include conditions of approval that apply restrictions and conditions that: (i) Implement identified public facilities and services needed to serve the proposed development; (ii) Implement identified public facilities and services needed to be altered or increased attributable to the impacts of the proposed development; and (iii) Implement the requirements of the Tualatin Development Code.
  - (b) Types of conditions of approval that may be imposed include, but are not limited to: (i) *Development Schedule*. A reasonable time schedule placed on construction activities associated with the proposed development, or portion of the development.



# FINDINGS

- **Findings:** statements of the relevant facts as understood by the decision-maker and a statement of how each approval criterion is satisfied by the facts. A brief statement that explains the criteria accompanies approval or denial and standards considered relevant to the decision, states the facts relied upon and explains the justification for the decision.
- **Common pitfalls:**
  - Failure to identify all applicable standards and criteria.
  - Failure to address each standard and criterion.
  - Deferring a necessary finding to a condition of approval.
  - Generalizing or making a conclusion without sufficient facts.
  - A mere statement that the criteria have been met.
  - Simple restatement of the criterion.
  - Failure to establish causal relationship (direct observation, reports from other people), between facts and ultimate conclusions.



# EVIDENCE

- **The applicant has the burden of proof. The applicant must introduce evidence that shows that all of the approval criteria are satisfied.**
- **The opponents, on the other hand, have the duty to show that the applicant's facts are incorrect or that the applicant has not introduced all of the facts necessary to satisfy the burden of proof.**
- **A statute provides that LUBA may reverse or remand a local government decision when the local government has "made a decision not supported by substantial evidence in the records as whole." The term "substantial evidence" does not go to the volume of evidence. Substantial evidence consists of evidence that a reasonable mind could accept as adequate to support the conclusion.**
- **Where the evidence is such that reasonable persons may fairly differ as to whether it establishes a fact, there is substantial evidence to support the decision. In other words, what is required is enough evidence to show that an approval criterion is satisfied. If two people agree that there is not substantial evidence, there is not enough evidence.**

# FINAL DECISIONS

## A Final Decision may result in:

- 1.Approval.** The reviewing body found that the facts in evidence indicate the criteria are satisfied.
- 2.Approval with conditions.** The reviewing body has found that the facts in evidence do not demonstrate the criteria are fully satisfied, but, through the application of conditions, the criteria can be satisfied. This assumes the ordinance authorizes the application of conditions for approval
- 3.Denial.** The reviewing body has found that the facts in evidence have not demonstrated that the criteria are satisfied and the application cannot be made to comply with conditions attached to it.





# QUESTIONS?

