

MEMORANDUM OPINION NO. 2023-01

TO: Woodburn Planning Commission,
Scott Derickson, City Administrator
Chris Kerr, Community Development Director

FROM: N. Robert Shields, City Attorney *NRS*

DATE: May 4, 2023

RE: Tentative Decision v. Final Land Use Decision

Background

On April 27, 2023, the Planning Commission held a public hearing on land use applications related to the development of Phase 6 of the Boones Crossing Development Agreement (DR 22-18, MOC 22-02, and VAR 22-16). Two commissioners were absent. After completion of the public hearing, the commissioners who were present made a tentative decision to deny the application by a 3-2 vote. Subsequent to the tentative decision, the Planning Commission voted 5-0 for staff to prepare a final land use decision, supported by findings, for presentation at a future meeting.

This opinion was requested by the Planning Commission Chair and the Community Development Director in order to clarify the applicable legal procedures when the final land use decision is brought before the Planning Commission.

Discussion

Question No. 1: Did the Planning Commission make a final land use decision at its meeting on April 27?

No.

Legally, a final land use decision is not made until it is reduced to writing. The motion passed on April 27 constitutes a tentative decision.

Question No. 2: Must the Planning Commission vote on the final land use decision document?

Yes.

The second motion made related to these land use applications unanimously directed staff to prepare a written land use decision and bring it back to the Planning Commission for consideration at a future meeting.

Question No. 3: When the final land use decision is presented to the Planning Commission at a future meeting, who are the commissioners allowed to vote?

Legally, all commissioners present at the future meeting are allowed to vote if they have considered the evidence in the record.

Question No. 4: Does this mean that a commissioner who did not attend the April 27 meeting could vote on the final land use decision?

Yes, qualified.

Any commissioner who was absent from the April 27 meeting and wants to vote on the final land use decision is legally required to review the evidence in the record prior to voting on the final decision document.

Question No. 5: Is it legally possible for the tentative decision to be different than the final land use decision?

Yes.

The initial action on the land use applications was labeled as “tentative” because it is a preliminary decision that could change.

Question 6: Are there legal implications if the final land use decision differs from the tentative decision?

Yes.

If the final land use decision differs from the tentative decision (i.e., the Planning Commission changes its position on whether the land use applications should be granted or denied) this creates an instance where the final land use decision document presented by staff differs from what the Planning Commission subsequently decided to do. In this situation, the Planning Commission must make another tentative decision and direct staff to prepare a final land use decision that is consistent with its new tentative decision.