



PLANNING COMMISSION
Minutes of January 5, 2011

Members present: Chair Robert Martin, Vice Chair Michael Babbitt and Commissioners Dean Wood and Christine Steel

Members absent: Laura Horsey

Staff present: John Sonnen, Planning Director; and Chris Kerr, Senior Planner

Pre-meeting Work Session

Chair Martin called the Planning Commission pre-meeting work session to order at 6:45 p.m. in the Rosemont Room of City Hall. The group examined the upcoming regular meeting agenda. The staff related they had made a few minor changes to the final wording of the amendments the Planning Commission was to review. ODOT had asked them to replace the language, “public right of way” with “City right of way.” The City Attorney had not yet responded to several legal issues the Commissioners had previously raised. When asked, the staff confirmed the Commissioners could make more changes to the amendments at the public hearing that evening. They distributed an email from Kari Oakes and a letter from PMAR. They announced interviews for the open Planning Commission positions would be held on January 18th and the appointments would be made by January 24th.

Sonnen recalled that during a recent debriefing, Commissioner Laura Horsey had expressed concern that in a recent case the staff had used a “rule of thumb” to decide what was subject to design review. He explained that the confusion stemmed from a glitch in Chapter 55.020, Applicability provisions that made two particular provisions hard to reconcile. But he assured the Commissioners that there was clear code authority to allow design review when there was a less than 5% addition to a public structure.

Sonnen discussed the issues Kari Oakes raised in her emailed communication. She questioned the way the Work Session was listed on the agenda. She asked that the evening’s meeting be televised. She asked for more timely minutes. Sonnen advised there was nothing technically wrong with the current agenda format, but he would ask the staff to change it in the future. He explained that the City could not televise the work session. He advised that the chair could call a meeting any time that was not televised. He advised that the Commissioners could not take action at a work session. Chair Martin reported that he had responded to Oakes’ via email to clarify that the Commission would hold a business meeting followed by a work session and the work session would be recorded. The Commissioners agreed with Sonnen that the current practice of posting draft minutes before posting the approved minutes should be discontinued because the drafts could contain errors. Sonnen advised that a new system was about to be implemented that would allow a viewer to find the place in a video of a Commission meeting where the item they were interested in was discussed. The videos would be posted by the

following day. Recordings of work sessions would be made available on the internet. He explained the staff had fallen behind on minutes while working on a LUBA appeal, but they would work to draft timelier minutes.

Commissioner Wood joined the work session. He asked about the status of Rosemont Road and the Solar Highway project. The staff confirmed that the Rosemont Road ownership transfer was done. They understood that the solar project was on hold and state had no intention of applying for land use approval for it any time soon. But they reported that stimulus money had been allocated to design the trail related to that project and the trail would be subject to design review. They reported that the Trails Master Plan had been drafted and the formal adoption process was about to begin. The solar highway trail was a part of the master plan. The Parks and Recreation Director was to brief the Planning Commission about it.

Steel related that Commissioner Horsey had expressed concern after she heard that the PUD/Infill Task Force might not spend much time working on the issue of steep slopes because there were not many of those lots left to develop. Horsey reasoned that the code should address steep slopes in case part of the Stafford triangle was annexed to West Linn in the future.

The Commissioners considered the upcoming election of officers. When asked, Bob Martin and Michael Babbitt indicated if nominated, they would accept.

Chair Martin adjourned the work session at 7:30 p.m.

REGULAR SESSION

CALL TO ORDER

Chair Martin called the Planning Commission meeting to order at 7:30 p.m. in the Rosemont Room of City Hall.

MINUTES

Commission Steel **moved** to approve THE Minutes of November 17, 2010 with one correction. Vice Chair Babbitt **seconded** the motion and it **passed** 4:0. Commissioner Steel **moved** to approve the Minutes of December 1, 2010. Vice Chair Babbitt **seconded** the motion and it **passed** 4:0. Vice Chair Babbitt **moved** to approve the Minutes of December 15, 2010. Commissioner Steel **seconded** the motion and it **passed** 4:0.

PUBLIC COMMENTS

Alice Richmond, 3939 Parker Rd., commended the Commissioners on their professionalism and said they had increased citizen understanding.

Karie Oakes, 1125 Marylhurst Dr., asked the Planning Commission to establish when meeting minutes were to be posted. Chair Martin related the Commissioners had decided to only post approved minutes and to have the video and audio files posted on the web by the day after each meeting. He noted that staffing resources had recently been focused on a LUBA appeal and that had delayed processing of minutes. He indicated he felt two to three weeks was a reasonable time to draft minutes.

ELECTION OF OFFICERS

Vice Chair Babbitt nominated Bob Martin and himself to serve another term as Chair and Vice Chair. Commissioner Steel **seconded** the nomination and Chair Martin and Vice Chair Babbitt were **re-elected** by unanimous vote.

PUBLIC HEARING

CDC-10-04, Amendments to Chapters 25, 52, 58 and 99 regarding pre-application requirements and temporary signs in residential areas on Sundays.

Chair Martin re-opened the public hearing, which was continued from December 1, 2010.

Staff Report

Chris Kerr, Senior Planner, presented the December 17, 2010 Staff Memorandum. An error related to public notice made the current hearing necessary. The staff had revised the pre-application conference related amendments as the Planning Commission had directed them to at the December 1st meeting. The staff advised the Commission to recommend the City Council adopt the December 20, 2010 version of proposed amendments, without the optional "Alternative 1" sign-code-related provision. The City Attorney had advised the City not to adopt that provision. The staff and the City Attorney agreed with the ODOT request to replace "public right-of-way" with "City right-of-way" wherever it appeared in the amendments. Kerr reported the HRB had examined and supported the proposed pre-application amendments. The staff had followed Commission direction and revised the provision that gave the Planning Director the authority to waive the requirement for a pre-application conference. It now allowed him or her to waive the conference for any application if he or she determined such a conference was not warranted. Kerr pointed out the record contained written comments submitted by Karie Oakes and the Portland Metropolitan Association of Realtors. The staff advised the City Council Resolution suspending pre-application conferences for all applications had expired in December. The Council planned to hold its hearing on the amendments on February 14th.

During the questioning period, the Commissioners considered whether it would be clearer and easier for the code reader if the code listed the types of applications where a pre-application conference was not required as well as the types of applications where a conference was

required. The Council resolution had listed kinds of applications where a pre-application conference would not be required. Kerr advised the code typically did not list what did not apply. The staff had looked for all the places in the code that called for a pre-application conference and listed them in the proposed provisions in order to have an inclusive list. The provisions that gave the Planning Director discretionary authority to require or waive a conference would also apply to types of applications that were not on the list.

Public Testimony

Karie Oaks, 1125 Marylhurst Dr., had submitted written testimony (see her December 6, 2010 email). She asked that provisions 99.030 (2) and (3) be removed. She did not favor giving the Planning Director discretionary authority to decide whether a pre-application conference was necessary or not. It would result in gray areas and disagreements and it did not reflect the quasi-judicial method of land use decisions. There was no appeal from that kind of planning desk decision. The City Council resolution did not call for such a broad policy change. She noted the staff report did not list approval criteria for the amendments. The criteria she suggested in her emailed communication would not support giving the Planning Director such broad authority. She was a pre-application conference representative for her neighborhood association. She was concerned that if the Planning Director decided a conference was not necessary the project would remain off the neighborhood's radar.

Chair Martin held that the neighborhood association should be advised of the Planning Director's decision to not require a conference in case the neighborhood wanted one. Oakes suggested that sometimes it might be the applicant who wanted to have the conference. The staff agreed that a developer would want to have one before he took a big risk with a big project. But it would delay and add \$350 to the cost of a small project.

Oakes questioned how the staff knew there was a need for the proposed change if they had not tracked past practice very well. The staff offered some examples of applications that did not need a conference. The discovery of a need for a variance just before a Planning Commission hearing should not delay the process; cost the applicant another \$350.00; and use up more City resources on redundancy. There was no need to hold a conference if a project had gone through the process earlier, nothing had changed and everyone was already informed about it. The information was already out there and there had been a lot of discussion about it. There was no need for a conference for an application by a grocer to change the type of glazing in the windows. They stressed the pre-application conference was the "sketchy beginning" meeting to ensure the applicant understood all the regulations and technical standards that would affect the project and its feasibility. The purpose of the amendments was to save time and money that would be spent on a meeting no one needed.

The Commissioners discussed the question of whether the amendments gave too much power to the Planning Director. Chair Martin was concerned they cut neighborhoods out of the process. The staff observed that they did not remove the requirement for a neighborhood/developer meeting. Babbitt indicated that the Planning Director should be

afforded some discretion. The person holding that position would have to be competent and accountable in order to remain in the position. The provision did not take away neighborhood participation. The pre-application conference was a very preliminary meeting to offer the applicant technical help about what code applied and what type of application to submit. The neighborhood association could tell the applicant what it did or did not like at the neighborhood/developer meeting. Oakes did not agree with that reasoning. She testified that she had attended pre-application conferences where the applicant came in with almost complete plans. Neighborhood representatives were there to offer good recommendations. She recalled conferences where there had been as many as six people from different neighborhoods in the room.

Alice Richmond, 3939 Parker Rd., stressed that the City was paying the Planning Director to know the code, neighborhood plans and county, Metro, and state law. The person in that position had to be competent to keep the job. It was not a job for a neighborhood. She questioned why an individual from the neighborhood should be allowed to redirect staff time at the conference if the neighborhood already had a neighborhood plan for the staff to refer to. She stressed the neighborhood/ developer meeting was recorded for all to hear. Chair Martin explained that building a community – building trust – meant offering opportunity for dialogue. He noted the cost of the conference was borne by the applicant.

Rebuttal

Kerr explained the staff did not want to limit neighborhood association involvement. They would not stop inviting neighborhoods to the conferences. That had worked out well. But some applications required neighborhood contact in addition to the pre-application conference anyway, and some were so “cut and dried” or everyone already knew what was going on that a conference was redundant and superfluous. He said part of discretion was whether or not to notify the neighborhood. Would the neighborhood really want to hear about a waiver related to an application to change the glazing at the grocery store? Sonnen anticipated that if the Planning Director could not exercise discretion it would lead to situations that defied common sense and served no useful purpose. He agreed the compromise to have staff contact the neighborhood association might be workable. His personal approach would be to keep the trust by informally contacting the neighborhood association president to ensure he/she agreed that holding a conference would be a waste of time. Oakes agreed there was a need to build trust in the community.

Deliberations

Chair Martin closed the public hearing. Babbitt indicated he could accept the pre-application conference amendments as proposed, or, he could agree to add another application type list if the Commissioners wanted to. But he did not support reducing the Planning Director’s discretionary authority. The City hired employees to make decisions and there needed to be some level of trust of staff. He was concerned that sometimes the City afforded individual citizens too much power. He did not want one citizen who might have an axe to grind to be

allowed to override the Planning Director after the Director decided a pre-application conference was useless and a waste of time. He indicated he felt there was still enough transparency in City government and ample opportunity for citizen input. Wood agreed that the Planning Director should be allowed to have some discretion. While a new applicant could benefit from a conference it might be a waste of time to require that of an existing applicant who wanted to make a change during the process. Developers of more complex projects – such as the fire station – would likely hold more than one neighborhood meeting. That made it a transparent process. He suggested there could be a requirement to notify the neighborhood of the decision, but not allow one citizen to override. He favored listing both the types of applications where a conference was required and the types where a conference was not required in the proposed amendments. He suggesting adding the language, “but not limited to” to the list of applications that required a conference.

Steel agreed with Wood’s suggestion. She supported the provisions that gave the Planning Director discretionary authority because she believed the City had to trust the knowledgeable professionals it hired enough to allow them to exercise some level of discretion in order to do the job. She noted that nothing would preclude the Planning Director from informally consulting a neighborhood associate president.

Chair Martin held that it was best to create opportunity for dialogue early in the process and give people a meaningful way to be involved. City employees might not have the same vision of what was right for the City as its citizens did and the employees were there to facilitate the citizens’ vision. He argued that if the code allowed one citizen to request the pre-application conference for capricious reasons it would be erring on the side of allowing the citizens’ vision to be the dominant vision. Steel then suggested narrowing the scope of Planning Director discretion a little by specifying that the Planning Director could waive the requirement for the pre-application conference “for applications where such a conference would be redundant.” Babbitt recalled the Planning Commission was notified every time the Planning Director made a decision in a land use case that did not come before the Commission. He could support an amendment that called for the Planning Director to send a notice to the neighborhood association that he was going to waive a pre-application conference. Any interested parties could get more information about the application from the City. Wood indicated he could support that. Chair Martin said that accomplished what he wanted. That would ensure the neighborhood was notified that there was a potential application. If they wanted a conference they could say so and it would be in the applicant’s best interest to agree to it.

Chair Martin directed the staff to redraft the amendments to reflect the changes the Commissioners had agreed to. Kerr summarized them. The proposed list of application types that required a pre-application conference under 99.030(B) Pre-application conferences, (1) would start with “including, but not limited to...” A second list would be added (2), which would list the types of applications where a pre-application conference was not required. Wood noted that way the “default” would be that a pre-application conference was required. The next change was to the provision that allowed the Planning Director to waive the pre-application conference requirement if it was not warranted. The Planning Director was to send

a notice of his/her decision to the Planning Commission and the neighborhood association. Chair Martin wanted the code to require the Director to notify the association that he intended to waive. But Babbitt and Wood supported sending the notice after the decision was made. Someone who had an issue with it could contact the Director and/or the applicant and ask for an opportunity to speak with them. The applicant would not have to pay the \$350 fee for a pre-application conference, but could still arrange to talk with a citizen who raised a red flag. Steel cautioned not to strip away the Director's authority. Chair Martin suggested that whoever asked for the conference could be required to pay for it. He explained that although he had initially supported allowing the neighborhood association to force a conference, he was now suggesting a compromise. The authority to decide was the Director's, but at least he would be aware of neighborhood concern. Sonnen acknowledged the staff did not necessarily know all the concerns in a neighborhood. So he was not adverse to the requirement to notify the association and give the neighborhood an opportunity to explain why a conference was warranted so the Planning Director could take that into consideration. Kerr observed the Planning Director had no incentive to abuse the discretionary provisions and waive a conference when he knew a neighborhood wanted one. He would typically waive it when there was no requirement for a neighborhood meeting and when holding a conference would be a big waste of staffing resources and other City resources. When asked, he recalled the City had been waiving the requirement for some applications since 1983.

In the interest of resolving the discretion issue, Chair Martin indicated he would agree to the amendments if they called for the Planning Director to post notice of his/her decision to waive the pre-application conference requirement on the City website or distribute it via email.

ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION (None)

ADJOURNMENT

There being no other business, Chair Martin adjourned the Planning Commission meeting at approximately 9:34 p.m.

Chair Martin convened the work session at approximately 9:35 p.m. in the Rosemont Room of City Hall.

WORK SESSION

Review and prioritize planning projects for 2011

Planning Director John Sonnen distributed copies of the Planning Department's draft long-range planning work program. The potential projects ranged from mandated projects to projects authorized by the City Council to discretionary projects. During 2010 the City Council had directed the Department to work on a broad policy analysis, commercial building design

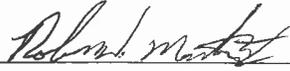
guidelines and Planning Commission-initiated projects related to WRA protection and PUD/Infill. The Department had not had sufficient staffing resources to complete all of the projects in 2010 and they did not have sufficient FTEs to complete all of the potential projects for 2011. Planning had a total of 5.2 FTEs. About 2.3 FTE are available for long-range planning. Sara Javoronok and Chris Kerr devoted most of their time to long range planning projects, but they also had to handle current planning projects. How much long term planning work they could get done was contingent on current planning demand. Sonnen asked the Commissioners to suggest which discretionary projects to prioritize and which to defer before the Council considered the Department's 2011 work program. He clarified that the Council had not scheduled a joint work session prior to goal setting.

When asked how he calculated FTE requirements for specific projects, Sonnen advised the staff tracked their time on a project basis and he had records of years of past projects to refer to when he estimated how much time staff had available to work on long range projects. . Last year an unexpected high demand for staffing resources for an HRB program took several times more resources than had been initially allocated for it. Commissioner Babbitt noted that Commissioner Horsey had questioned in an email why the sign code project needed .9 FTE. Sonnen advised his experience was that work on that type of code work consumed a lot of time because the business community became very involved in it and it typically involved a task force. But he pointed out the work program showed there was an alternative approach that would just deal with specific, pressing, topics and not the entire section. He advised that the City's Sign Code was inconsistent and it was one of the weakest sections of the entire code.

Sonnen related that Peter Spir was doing initial research related to commercial design regulations. But that project could be deferred or replaced by a project to look at potential long term redevelopment of the Highway 43 corridor if the Council made that a goal. Chair Martin related that he would also like to see the Highway 43 master planning effort move forward. Perhaps Metro could provide funds for part of that effort. Sonnen recalled that Metro wanted to see more density planned in transit corridors like that. It was using a consultant to provide models of how areas could be redeveloped. The model tested the relationship between building cost and rents. The City might use it to find out what kind of development would work in West Linn.

Sonnen related that ODOT seemed willing to work with the City's along the corridor. The Commissioners wondered if that agency still offered grants for sidewalks and bike lanes. Sonnen confirmed they were still awarding TGM grants. Metro was offering help funding corridors and main streets, but it expected the recipient to plan for higher density there in return. Chair Martin observed that the corridor plan should be consistent with the neighborhood plan. Mr. Sonnen asked the commission members to forward their comments and priorities regarding the proposed projects to him by the following Tuesday.

APPROVED:



Robert Martin, Chair

3/2/2011

Date