

**CITY OF WEST LINN**  
**PLANNING COMMISSION MINUTES**  
Special Meeting  
**Wednesday, July 23, 2008**

**Draft**

Members present: Chair Michael Babbitt, Vice Chair John Kovash and Commissioners Shawn Andreas, Valerie Baker, Robert Martin, Dean Wood and Ron Whitehead.

Staff present: Bryan Brown, Planning Director; Chris Kerr, Senior Planner; Peter Spir, Associate Planner; and Gordon Howard, Staff Attorney

Members absent: None

**CALL TO ORDER**

Chair Michael Babbitt called the Planning Commission meeting to order at 7:00 p.m.

**MINUTES** (None)

**PUBLIC COMMENTS** (None)

**PUBLIC HEARINGS**

(Note: Full copies of the staff reports and all related documents for the hearings on the agenda are available for review through the Planning Department.)

**CDC-07-04, CDC Amendments to Chapter 27 & 28 Tualatin and Willamette River Protection**

The hearing had been continued from July 2, 2008. Since the last hearing, the staff had prepared Planning & Building Department Memorandum dated July 14, 2008, which addressed questions and issues raised during and after the July 2, 2008 hearing.

Vice Chair Kovash indicated that he was concerned that the proposed Approval Criteria “hardship” provisions in 28.110(E)(1) waived the underlying zone’s Floor Area Ratio (FAR) and Lot Coverage requirements. He recalled that the Commissioners had previously discussed removing E(1)(b), which allowed a property owner to construct a house with at least 70% of the sq. ft. the adjacent property owner enjoyed, and that the staff supported keeping E(1)(a), which allowed reasonable development if there were no other way to develop the parcel. When he asked them, the staff confirmed that (b) created a special category of code that only applied to properties along the river. Vice Chair Kovash recalled testimony asking the City to treat riverfront property owners the same as inland property owners, and he held that riverfront property owners should not enjoy a special privilege to develop to 70%. He said the Planning Commission should strike proposed provision (b). The staff explained that provision clarified and quantified what “economic viability” was. They said it was alluded to in several places in the Code where it was a vague concept that the City had to allow a property owner to have an opportunity to have a home similar to surrounding homes. They said they had fashioned more specific language for this section of Code that would allow an owner to have 70% of what

surrounding owners had. They anticipated they would eventually also clarify the concept in other places in the Code. Vice Chair Kovash observed that the Code already established allowable FAR and he worried that the proposed provision was a “back door” approach and would tend to subvert the code. Commissioner Whitehead said he still wondered how the staff had arrived at the 5,000 sq. ft. maximum. He recalled testimony that a 5,000 sq. ft. limit would constrain development on some lots that could handle a bigger house. Mr. Spir pointed out the Water Resource Area chapter of the CDC provided that the owner of an undeveloped property adjacent to a creek was allowed to build a house with up to a 5,000 sq. ft. footprint. He confirmed that the proposed provision would limit the footprint on all properties along the Tualatin and Willamette Rivers to 5,000 sq. ft., and the footprint was already limited to 5,000 sq. ft. along all Water Resource Areas in the City. He observed that a house could be much larger than 5,000 sq. ft. if it had more than one story, so the proposed limit was not unduly restrictive.

Commissioner Wood observed the proposed hardship provision would essentially waive the Code without requiring the rigorous evidence the staff memorandum advised that a Measure 49 claim required. Commissioner Baker said she was concerned that an owner who developed a vacant parcel could build further into the setback than the neighboring owner of an adjacent existing structure. She asked if the neighbor could use the hardship provision. Mr. Spir explained there were provisions to compassionately address “hardship” situations in many places in the Code. For example, there were provisions that allowed an owner of an existing structure to simply apply for a Building Permit for a small addition, if their plan met the applicable criteria, instead of having to use the costlier and longer land use permit application process.

Vice Chair Kovash held it was inappropriate to allow the 70% waiver provision in this section of Code because that would generate pressure to allow it in other parts of the Code. **Vice Chair Kovash moved to delete provision E(1)(b) of 28.110 and to incorporate E(1)(a) into the paragraph above it. Chair Babbitt seconded the motion and it passed 6:0.**

**Vice Chair Kovash moved to forward CDC-07-04 to the City Council and recommend approval as amended in the previous vote. Commissioner Baker seconded the motion and it passed 6:0.** Chair Babbitt announced a ten-minute recess and then reconvened the meeting at 7:40 p.m.

#### **ITEMS OF INTEREST FROM STAFF**

##### ***MISC-08-04, Commission for Citizen Involvement*** *(Continued from January 2, 2008)*

**Chris Kerr, Senior Planner**, presented the staff report (See Planning & Building Department Staff Report dated June 20, 2008). He addressed written comments that had been received. He said establishing a Commission for Citizen Involvement (CCI) provided an additional process for evaluating the effectiveness of the City’s citizen involvement program, and enhanced communication between the City and its residents. He said it would not weaken the neighborhood association system or reduce neighborhood association access to the staff, the Planning Commission or the City Council. He said it did not cap how many times a year the CCI could meet, but it required the CCI to meet and report to the City Council at least once a year.

He acknowledged there were other cities in the county which did not have such a body, but he said cities such as Beaverton, Lake Oswego, Tualatin, Wilsonville and Portland had sufficient staffing resources and utilized CCIs. He reported that City of Lake Oswego Planning Commission also served as that city's CCI, which was recognized as a model for other cities. He explained the staff had released information regarding the proposal via the agenda, the City website, an article in the newspaper, and they had distributed it to all neighborhood associations.

*Public Testimony*

**Julia Simpson, 1671 Killarney Dr., and Teri Cummings, 2190 Valley St., Co-Chairs of the League of West Linn Neighborhoods**, read aloud the League's "Resolution on CCI Ordinance," dated July 12, 2008, which stated the organization was opposed to the proposed ordinance and reported that none of the 17 incorporated cities in Clackamas County had a CCI. Instead of a CCI, the League asked that neighborhood associations be offered more direct input into land use decision-making. They agreed with a July 2, 2008 email from the Goal 1 Coalition that the CCI should be the Planning Commission, but that if the City wanted some other CCI, that body should have a specific charge and limited life span and be composed of only officers from all eleven neighborhood associations. The resolution said the proposed ordinance was unclear and had not been properly vetted by the neighborhood associations. The League representatives said they were not sure from the documents how the CCI would work. Ms. Cummings stressed the League had supported the resolution by unanimous vote. She said neighborhood association representatives had not been given enough advance notice of the proposal and they had not had adequate time to obtain feedback from their members. She said the concept of a CCI was good, and she recalled that a former West Linn city attorney had advised that was what a planning commission did. She said Oregon land use Goal 1 advocated involving citizens early in all the planning by every means possible and soliciting feedback from them. The representatives suggested the Commissioners not recommend the proposal yet, but allow more time for neighborhood associations to discuss the matter and submit better ideas.

During the questioning period, the League representatives clarified there had been more than eleven people present during the League vote, but there were only 11 voting members. They clarified that they understood that it was common practice in other cities to utilize their planning commission as CCI, and former City Attorney Ramis had advised the West Linn Planning Commission filled that role. However, they said they were not sure the Planning Commission really understood that, and they said the neighborhood association representatives understood that a CCI would not focus as much on land use matters. They suggested that the City put more energy into more transparency and involvement of the public in land use matters. . They saw no urgent need to adopt the currently proposed ordinance.

**Roberta Schwarz, 2206 Tannler Dr.**, recalled that those who attended the City Council work session had left with the impression that the CCI would be another obstacle for neighborhood associations to have to go through to change their name or make minor boundary changes. She reported that a representative of Eugene's Goal 1 Coalition had advised her such a body should be comprised solely of officers of the neighborhood associations; charged with a specific task to accomplish within a limited time frame (perhaps six to nine months); and required to issue a public report. She stressed that West Linn did not want to be like Troutdale, Hillsboro or

Beaverton. She reported that she had called all 17 incorporated cities in Clackamas County and found that none of them had a CCI that did what the West Linn staff proposed, and she said she heard that Oregon City had been unsuccessful in motivating neighborhood association representatives to serve on a CCI. She urged the City to allow the proposal to go through full and complete vetting by neighborhood associations. She submitted the Tanner Basin Neighborhood Association's "Resolution on CCI Ordinance" that stated TBNA opposed the proposed ordinance. She stressed four parameters for a CCI were missing from the proposal: A specific time limit; a specific task; and a required report that was to be a public report. She stressed that even if the Planning Commissioners called themselves the CCI, and that body was tasked with overhauling the neighborhood association system, it should be composed of neighborhood association officers.

During the questioning period, Commissioner Martin recalled the Commissioners had been concerned that a few, vocal, neighborhood association members would present their position as the position of the neighborhood association and "disenfranchise" other neighborhood association members who held dissenting opinions. He asked how the disenfranchised were to be heard. Ms. Schwarz observed that the fact that a few people were actively involved and others might not be due to apathy, schedules, or some other factor., was not a good reason to say neighborhood associations were not truly "representative." She reported neighborhood association representatives and neighborhood association meetings were open to comments from all members, so everyone was represented, but the official neighborhood association position was determined by the majority vote. She agreed with Commissioner Martin that the CCI did not need to be "solely" made up of neighborhood association presidents if other members actually wanted to be involved. She clarified that she had spoken to someone in Oregon City who had told her that city had approached neighborhood associations and found that no one wanted to sit on a CCI, so the CCI "dissolved," and was now in the "lap of the city manager." When asked specifically what in the proposal presented "additional obstacles" to neighborhood associations in land use matters, she explained that she understood from the City Council work session that the CCI would be another entity to have to go through before associations could go to the Planning Commission or the City Council.

Vice Chair Kovash advised the proposal document before the Planning Commission did not say anything about making the CCI an approval body that neighborhood associations had to go through, but it did indicate the CCI would assist in the development of a citizen involvement program to enhance citizen involvement in land use planning. He recalled he and Mr. Brown had once made changes in Planning Commission rules that were intended to increase citizen involvement informally, over lunch. He advised that a citizens group should reflect many different views and not just neighborhood association officers' views. Chair Babbitt said if the Planning Commission also served as the CCI they would hold special meetings to address citizen involvement issues. He pointed out the proposed ordinance did not spell out the rules or procedures to be used. He and Commissioner Baker suggested that if creation of a CCI was approved, neighborhood association representatives could talk to the City Council about how it might be implemented. Ms. Schwarz recalled that some ideas her neighborhood association had submitted to the Commission had never been incorporated into the process.

**Terry Pennington, 19065 Trillium Dr.**, indicated that the CCI was a good idea that needed further vetting. He suggested that if Planning Commissioners were to serve on such a body it should be augmented with other citizens of the community. He reported that citizens were feeling distanced from the decision making process.

**Lynn Fox, PO Box 236, Marylhurst, Oregon, 97036, President of the Hidden Springs Neighborhood Association**, reported the neighborhood association had given the City Manager a list of 15 items to address the fundamental problem of communication. She reported members of neighborhood associations in Lake Oswego had advised that creating a CCI would disenfranchise their neighborhood association. She reported that the Willamette Neighborhood Association chair wanted more time to consider the ordinance. She said the proposal was too “open ended,” and would present another hoop for the neighborhood association to jump through. She recalled the neighborhood association had once submitted a petition directly to the City Council and the Council had responded by directing staff to carry out the neighborhood association's request. She feared that a CCI would cut off their access to the Council. She said she understood that ORS 197 required anyone who served on a CCI to be an elected official.

During the questioning period, Commissioner Baker suggested it would have been helpful to hear directly from the person from Lake Oswego Ms. Schwarz was referring to so it would not be “hearsay.” Ms. Schwarz asked that the record be kept open so she could submit emails. Mr. Howard advised the current proceeding was not a land use hearing and the Planning Commission could, but was not obliged, to agree to her request.

Ms. Cummings read a July 23, 2008 letter from **Karie Oakes, 1125 Marylhurst Dr.**, into the record. In her letter, Ms. Oakes recommended that CCI membership should include pre-application conference representatives from each neighborhood association. She assured those who worried a CCI would be another layer between neighborhood associations and appointed officials that it would not be part of the land use decision process but would assist the City to enhance the process of citizen involvement.

**Michele Blankenheim, 6302 Pony Ct.**, said the CCI should not just be another Planning Commission. She asked how it could accomplish anything if it only met once a year. She said action on the proposal should be postponed to ensure it actually involved citizens and to find out if it actually worked in towns that had a CCI. .

**Alice Richmond, 3939 Parker Rd.**, observed the Planning Commissioners were all were citizen volunteers. She agreed that the Planning Commission typically heard from the same, small group of citizen advocates, who requested a lot of the staff, but she observed that many more people simply depended on the staff to guide the City. She said it was about time that West Linn utilized a CCI. Chair Babbitt announced a short break in the proceedings and thereafter reconvened the meeting.

#### *Staff Response*

Mr. Kerr observed that the reasons given by three neighborhood associations who did not favor the proposal seemed to be based on erroneous interpretation of the proposal and erroneous facts.

He reported that Tualatin, Wilsonville and Lake Oswego did use their Planning Commission as their CCI, but many smaller towns did not have such a body. He pointed to the “Duties” section of the proposed ordinance and noted that although the TBNA resolution said they wanted the process to be left as it was and they wanted more direct input into decision-making, the proposal did not specify a process. He advised that Goal 1 was not a set of specific rules, but a broader goal. He pointed to *Oregon’s Statewide Planning Goals & Guidelines, Goal 1* which had been attached to the staff report. He confirmed the staff was proposing that the Planning Commission also serve as the CCI. and he said that when the Planning Commission met as the CCI they would focus on the specific task of enhancing citizen input within a specific time frame and forward a public report to the City Council. He said the state had required West Linn and other cities to use such a body to determine how to involve the public in the process of creating a comprehensive plan. The group had finished their work, issued a report and then formally disbanded. Mr. Kerr indicated that the proposed CCI would not thwart citizen input, but was to make specific recommendations to the City Council about how citizens could be involved in the land use process. He said that was exactly what Statewide Planning Goal 1 and comprehensive plan action measures called for. He modified the “Duties” section of the ordinance to specify that the CCI would advise the City “regarding citizen involvement issues in general related to land use planning.” He said they would be an advisory body and anyone going before the CCI would have the same right to also go before the Planning Commission and the City Council. He heard consensus that a CCI was, overall, a good idea, but neighborhood associations needed more time to consider it. He clarified that the Mayor had suggested creating a CCI. He explained he had fashioned the proposal using the Mayor’s draft that had been discussed at the joint Planning Commission/City Council work session on June 2<sup>nd</sup> and only made minor changes, and he had taken language from the state document. He stressed the CCI would only focus on matters related to land use planning.

Mr. Kerr recalled that the proposal had been on the agenda for the July 2<sup>nd</sup> joint Planning Commission/City Council work session. The information package for that meeting had been both mailed (June 20) and emailed as a pdf file and link (June 26) to neighborhood association presidents and Commissioners and the list of persons who had signed up to be notified about all land use applications. He said the information had been posted on the City website on June 26. He recalled the City Council had discussed the matter at their July 7 meeting and the Planning Commission had been scheduled to discuss it at their July 14 meeting, but had continued it. He summarized that the staff memo and proposed ordinance had been distributed to neighborhood associations over 30 days ago in several forms. He said he did not know how long it took for neighborhood associations to discuss it with their members.

Commissioner Andreas contrasted written and oral testimony that the proposal would be an obstacle to neighborhood associations with the language in the document the Planning Commission was considering, which said the CCI was to seek to promote citizen input by improving communication and allowing people to participate in the land use process. He noted the CCI would not consider non-land use related matters, such as neighborhood association name changes. He indicated that the proposal was a good starting point and the City could use this tool to establish and follow guidelines designed to get feedback from a greater variety of citizens.

#### *Questions of Staff*

Commissioner Martin wondered if the process of revising Chapter 99 would have been any different if there had been a CCI. Mr. Kerr said the Commissioners could have met as CCI to consider and hear public comments on the aspects of that proposal that affected citizen involvement. Commissioner Baker recalled testimony that there had been a PowerPoint presentation at the joint Planning Commission/City Council work session which had indicated the first goal of the CCI would be to look at the neighborhood association system. She asked the staff to respond to that. Mr. Brown recalled there had been a PowerPoint presentation at some point in time, and he vaguely recalled it had sparked a discussion between the City Manager and the Mayor and one neighborhood association about what kind of process should be used to change the neighborhood association's name. He thought some informal comments might have led some to believe that was something the CCI could address, but since then the staff had advised City officials that the current proposal would authorize the CCI to focus on citizen involve in land use matters only. He said if it were decided that body should also focus on other issues, the current proposal would not do that. Chair Babbitt closed public testimony and opened deliberations

#### *Deliberations/Motions*

Vice Chair Kovash observed that the question of what a CCI might be authorized to do was not before the Planning Commission. He said the question was what should the City do to implement Goal 1? Should it be a CCI, and if so, should it be a CCI composed of Planning Commission Commissioners, or an independent body? He pointed out Statewide Planning Goal 1 provided that if the planning commission was to be used in lieu of an independent CCI, its members were to be selected by an open, well-publicized public process. He noted the staff had not compared the advantages and disadvantages of a CCI composed of Planning Commission Commissioners and an independent body. He said the community and the Planning Commission was aware there was a perception of a communication problem with leaders of the community. He suggested the City Council would be remiss not to create an independent CCI, which he believed could make a more objective case to the City Council than a CCI composed of Planning Commissioners. He said the current issue of miscommunication regarding the current proposal illustrated the problem a CCI was supposed to resolve. He said if the CCI were composed of citizens who currently did not feel they were receiving correct information, the CCI could be more effective than a CCI composed of Planning Commissioners. He noted Statewide Goal 1 said the CCI should be broadly representative, and he did not believe the Planning Commission composition met that goal. He recommended that the City Council create a CCI that reflected the broad representation that component 1 of Statewide Goal 1 called for.

Commissioner Wood worried that an independent CCI might misinterpret what their duties were and become an obstacle. Commissioner Whitehead explained that he did not support using the Planning Commission to serve as the CCI. He recalled he had been advised to avoid going to his neighborhood association meetings because he would have to recuse himself too often. He said the CCI should be fashioned so it was representative of the broader community and multiple disciplines. He suggested it should have elected representatives from each of the eleven neighborhood associations, as well as a representative from the school district and other agencies that were directly impacted by land development.

Commissioner Baker indicated she was concerned about giving the CCI and/or the City Council a “blank check” that would distance citizens from the process. She said she understood from the staff presentation that the CCI would be a task-oriented body with very specific goals. She suggested its existence should be reevaluated annually. She said its most important task was to evaluate the City’s methods of communication with its citizens and determine and recommend ways it could be more effective. She held the Planning Commissioners were ready to take on that task of serving as the CCI, they were versed in land use matters, and they could be fair. She thought they might be able to accomplish the task in a year. She said the CCI should serve all citizens. She said the current process of utilizing neighborhood associations to communicate with citizens and generate participation in the process was seriously flawed because although everyone resident was technically a member of a neighborhood association, they did not all participate in it. She observed that neighborhood associations were already recognized and their representatives testified at Planning Commission meetings, but there were also other entities in West Linn to consider and tap into, such as the especially strong homeowners associations that Lake Oswego and West Linn enjoyed.

Chair Babbitt held that the Planning Commission was already functioning as CCI and there was no need to create new body to do that. He said there could be too many boards working on the same thing and an independent CCI would introduce an additional step and burden. He recalled he had served on a Chamber of Commerce board that had worked on developing an economic development plan while at the same time the City Sustainability task force was creating one, and the Planning Commission was talking about forming a task force to do the same thing. He recalled that Commissioner Whitehead had called for diversity of representation, but he noted the Planning Commission was a diverse group and there was nothing stopping anyone who wanted to from participating in the process. Commissioner Andreas said a separate, independent commission would just be another layer for neighborhood associations to work through. He said the current proposal was a simple one that would lead to guidelines and a process that could enhance citizen participation. He said the Planning Commissioners already understood the development process and were obligated to get as many people involved in it as possible. He agreed that neighborhood associations did a good job representing their own members, but the process should communicate with and involve more people. He said the proposed ordinance would be a stepping-stone to such a process.

Vice Chair Kovash advised the Commissioners to focus on whether the CCI should be an independent body, and not who should serve on it. He held the Planning Commissioners should not appoint themselves to monitor the Planning Commission and the CCI should be an independent body. He said the fact that West Linn had a reputation for having the worst relationship between its leaders and its citizens of any city in Oregon demonstrated the current system was not working. Commissioner Martin agreed the CCI should be an independent, multi-representational, body, and it should not be composed only of neighborhood association presidents. He questioned whether the Planning Commission Commissioners would always recognize a problem if they were the problem. He said how the City was administered operationally also affected citizen involvement. He noted a prevailing perception of mistrust that was symptomatic of a problem of citizen involvement. He saw the current discussion as an opportunity to find another solution. He suggested the Planning Commission form a task force



to recommend the scope of authority of a CCI; how involved in City administration they should be; and better ways to communicate with citizens. He said it was more than just satisfying the state. He suggested the Planning Commission appoint Terry Pennington to serve on the task force.

Commissioner Andreas recalled that the same select group of people came to testify at Planning Commission and City Council meetings. He saw a need to get more people involved. He said the proposal was a first step to accomplish that. He said forming a task force would simply prolong the process and he questioned whether it would be the most cost effective use of taxpayers' money and staffing resources. Commissioner Wood agreed and added that the process of creating a new body and determining its scope would "muddy the waters" and complicate the issue. He said the Planning Commission serving as the CCI was really a task force to find ways to enhance citizen involvement and neighborhood association leaders would have an opportunity to testify. He said the Planning Commission already had a duty to ensure citizen involvement in land use matters and if they found "holes" in the process they had to figure out how to address them. He said the proposed ordinance set citizen involvement as a Planning Commission/CCI priority, and that was a good thing. Chair Babbitt held an independent CCI would not be any more diverse than the Planning Commission was, and if citizens already had scheduling conflicts that kept them from Planning Commission meetings, it would not help to add more CCI meetings to the schedule. He agreed there was a citizen involvement problem. Commissioner Baker recalled that Planning Commissioners often voiced diverse opinions. She indicated she supported the proposal. She agreed it was a starting point and the Planning Commission needed to figure out what kind of program would motivate more people to get involved. Commissioner Martin clarified he was not advocating either a separate board or that the Planning Commission should serve as the CCI, but he was suggesting using a task force to study the problem and look at how well a CCI worked in other cities.

**Commissioner Martin moved to create a task force to study the problem in depth and make an informed recommendation to the Planning Commission. The motion failed for lack of a second.**

Commissioner Andreas moved to recommend that the City Council adopt MISC-08-04. Commissioner Baker seconded the motion and it passed 4:3. Commissioners Martin, Whitehead and Vice Chair Kovash voted against.

#### **ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

Commissioner Martin suggested recommending that the City Council direct the task force that worked on recent Chapter 28 changes to look for places where it was not consistent with Chapters 30 and 32 with regard to setbacks and then recommend code changes to make the Code consistent. Chair Babbitt observed a general consensus to ask the City Council to consider that. Then he directed the staff to convey the suggestions to the Council

**ADJOURNMENT**

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 10:18 p.m.

**APPROVED:**

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**Michael Babbitt, Chair**

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**Date**