

CITY OF WEST LINN
PLANNING COMMISSION / COMMISSION FOR CITIZEN INVOLVEMENT

Minutes of April 15, 2009

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

Staff present: Chris Kerr, Acting Planning Director/Senior Planner; Peter Spir, Associate Planner; and William Monahan, City Attorney

Members absent: Commissioners Shawn Andreas and Valerie Baker

CALL TO ORDER

Chair Babbitt called the Planning Commission meeting to order in the Council Chambers of City Hall at 6:55 p.m.

APPROVAL OF MINUTES

Martin moved to approve the Minutes of February 4, 2009. Jones seconded the motion and it passed 4:0. Wood abstained.

Jones moved to approve the Minutes of February 18, 2009. Martin seconded the motion and it passed 4:0. Wood abstained.

Jones moved to approve the Minutes of March 4, 2009. Martin seconded the motion and it passed 5:0

Jones moved to approve the Minutes of March 23, 2009. Martin seconded the motion and it passed 5:0

PUBLIC COMMENTS (None)

PUBLIC HEARING

(Note: The staff reports and all related documents for the hearings are available through the Planning Department.)

CDC-09-04 Proposal of two-year extension of original land use approvals, code amendments CDC Chapters 24, 55, 60, 75, 85 and 89

Chair Babbitt opened the public hearing, explained the applicable criteria and procedure, and announced the time limits for testimony. He asked the Commissioners to declare any conflict of interest. None were declared. When invited by the Chair, no one in the audience challenged the authority of the Planning Commission or the ability of any individual Commissioner to hear the matter.

Staff Report

Peter Spir, Associate Planner, presented the staff report. (See Planning & Building Department Staff Report dated March 30, 2009). Developers currently had three years to make improvements after their application was approved. Otherwise the approval was voided. The proposal would allow the Planning Director to extend the deadline for two more years as long as the circumstances and applicable regulations or statutes were still the same. The change would

apply to all types of land use approvals, from large subdivisions to small remodeling projects. It was a response to the current state of the economy in which a developer might have to wait longer to get the necessary funding to move ahead with the project. The broader interest of the community was protected because an extension would not be granted if the code had been changed since approval. Nearby jurisdictions also allowed extensions. He recommended the changes. He said the Planning Commission could decide to insert a "sunset" provision that would end two-year extensions on a specific date, such as January 1, 2012.

During the questioning period, the Commissioners wanted to know how much the city charged an applicant. Spir said the original application fee depended on the size of the site, the number of lots and the complexity of the package of requests. It could be \$1,800 for a small projects or \$20,000 for a large project. The fee for the extension application had not yet been determined. The applicant would be advised in the preapplication conference if regulations had changed in the interim and the staff would recommend denial of an extension.

Proponents

Ernie Platt, Home Builders Association of Metropolitan Portland, 15555 SW Bangy Rd., Lake Oswego, Oregon, 97035, said the proposal was a reasonable solution to the current economic situation in which projects were "on hold." He hoped two years would be enough. He said without an extension developers might not even propose projects they were not sure they could get done in three years. He advised against inserting a sunset clause because that would mean next year there would no longer be a five-year window to complete a development.

Jeff Smith, 23600 Salamo Rd., and Michael Robinson, Perkins Coie LLP, 1120 NW Couch St, Tenth Floor, Portland, Oregon, 97209. Smith, a homebuilder, said he hoped five years would be enough time. Loan originators were very reluctant to make new construction loans. A subdivision developer could no longer gain development approval and finish the site work within 18 months. Robinson, his attorney, distributed copies of Hillsboro's extension ordinance. He said the proposed changes made sense and he agreed with the proposed criteria. The City of Portland Planning Commission had just recommended a change that meant the final plat had to be approved, surveyed and recorded in three years. Other cities had adopted an extension and the state legislature was to consider mandating one. Without it, few developers would take the risk of starting a new subdivision project. His client had spent \$140,000 on the land use development approval process and would risk about \$2 million to finish it when there might not be a market for it. He understood from Building Department staff that seven land use development permits (with a total of 53 lots) would expire this year and the city would lose about \$1.25 million in Systems Development Charges.

Questions of Staff

Spir clarified that the proposed change only applied to approved projects and would only be granted when there had been no change in the circumstances or applicable regulations. That would safeguard the community from sub-par subdivisions. The developer could only ask for one extension. The proposed process would be simpler and take less staff and developer time and resources than the full-fledged hearing re-opening in the Conditional Use Permit "renewal" hearing process. Even though a provision in CDC 89.010 that required the final plat to be recorded within one year conflicted with Chapter 85, the City had historically used the three-year-period set in Chapter 85. The staff suggested the sunset deadline if the economy was expected to recover in two to four years. Both Portland and West Linn currently set the deadline at three years, and Portland was about to adopt a two-year extension. Even though other

nearby cities accepted a bond after one year to ensure completion of the actual physical improvements and West Linn had once allowed that, the city now required the physical improvements to be completed in three years.

Jones wanted assurance that the extension would not mean that West Linn allowed more time for completion than surrounding cities did. Martin observed to allow bonding would give a developer more time to find financing for the improvements while knowing with some level of certainty that the city would allow them to finish the project. Spir advised the proposed time extension would help people who had received approval to do small home remodeling projects more than bonding would. Monahan advised that a change in the code today to allow bonding would not apply retroactively.

The proposed language allowed the Planning Director to make a ministerial decision and specified the extension could be granted if there had been no change in circumstances or the applicable regulations or statutes since approval, but it excluded engineering standards. The Commissioners wondered if the extension decision would involve so much discretion that it should be made by the Planning Commission and they worried about the consequences to the community of excluding newer engineering standards which might, for example, require a larger water pipe size. Spir related that it was not unusual to modify some technical specifications during the Building Permit process to conform to engineering and TVF&R requirements. Monahan advised that each developer would have to apply for an extension and the decision would hinge on whether any code changes were likely to necessitate modification or changes in the conditions of approval. Martin was concerned about unintended consequences and lack of certainty. He suggested a blanket one-year extension for every approved development. If the economy was not in recovery at that point in time the city could extend it for another year. Spir advised the community might be better served if the extension depended on no significant, intervening, applicable code changes. Other jurisdictions conditioned an extension on that too. Monahan advised each developer would still have to ask for the extension – it could not be “automatic.”

Chair Babbitt held that changes in traffic were as significant as changes in things like setbacks. Spir said the term “no change in circumstances” addressed that. He said if street or drainage standards had changed the applicant would have to meet them without making any significant change to the development. He clarified that the language that excluded engineering standards was intended to refer to in-ground improvements. Monahan advised that if the changes were so significant the applicant had to reconfigure the development the extension would be denied, but if the applicant could show the changes could be accommodated the extension would not have to be denied. Chair Babbitt saw that as one reason for the Planning Commission to review the request instead of the Planning Director. He also wanted more assurance that the code would require the applicant to increase the size of pipe to meet new engineering standards, especially if the developer would have up to five years to complete the development. Spir advised that kind of change was typically made in the process that followed preliminary approval by the Planning Commission.

The phrase, “unless an extension is granted per CDC 99.335” was proposed to be inserted into multiple chapters of the code. Chair Babbitt thought there might be a “cleaner” way to incorporate that information.

The Commissioners generally indicated they thought the Planning Commission should review extension applications because the decisions would be very subjective if the applicant had to prove the approved development could incorporate the changes. When the Commissioners

talked about waiting until the legislature mandated an extension, Spir pointed out that other nearby cities were not waiting to see if the bill would be passed by the state legislature. When asked, Spir advised that in the next six to nine months minor partitions and subdivisions with a total of 54 lots would be impacted by the three-year deadline. He also explained that other staff had been working on the proposal until he had been assigned to it and the subject had been discussed at a City Council meeting last November.

The Commissioners agreed to hold a work session to discuss staff responses to their questions regarding what changes in engineering standards should be considered; whether the Planning Director or the Planning Commission should decide; why the city eliminated the bonding option years ago; if an applicant should be given a choice of more time or bonding; and what other communities did.

Additional Testimony

Mike Robinson came forward again to ask the Commissioners to open the upcoming work session to public comment. Chair Babbitt agreed. Robinson suggested giving applicants the option of more time or bonding. He explained his experience with differences between West Linn and other jurisdictions was that West Linn set a three-year deadline by which a tentatively approved land division had to be recorded as a final plat or expire. Other jurisdictions let the developer either bond or complete the public improvements and submit the final plat within a one or two year period. West Linn required the plat to be recorded by the third anniversary, which typically meant that the developer had about 18 months to have everything done: construct the improvements, have them accepted, submit the final plat, get it approved, get it to the county surveyor for approval, then get it in the queue for recording. The result was it was much more difficult to meet West Linn's deadline.

Motion

Martin moved to continue CDC-09-04 to May 6, 2009. Wood seconded the motion and it passed 5:0.

ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Jones had drafted a memorandum from the Planning Commission to the City Council offering feedback regarding their joint session.

Motion

Jones moved for the Planning Commission to send the memorandum to the Mayor and City Council. Martin seconded the motion and it passed 5:0.

ADJOURNMENT OF PLANNING COMMISSION

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 8:45 p.m.

=====

COMMISSION FOR CITIZEN INVOLVEMENT

CALL TO ORDER

Chair Babbitt called the Commission for Citizen Involvement meeting to order at 8:50 p.m.

BUSINESS MEETING

Review of draft information packets for citizens

Chris Kerr stated that no recording for the meeting, but that he would take notes. CK noted that no members of the public had yet provided any testimony to CCI, even though all NA's have been encouraged to do so, and the agendas state - public testimony is welcome. The CCI members discussed several outreach methods for land use items, particularly those in the public that don't often attend the meetings. These included additions into the water bills, handouts on 'typically asked' information (fence ht, signage, keeping chickens) for individuals, regular updates in the newspaper, and in more accessible place on the website. The CCI recommended adding a 'Question for Director' as a way to accomplish this. It was agreed by the CCI to not use a 'FAQ' category.

ADJOURNMENT OF COMMISSION FOR CITIZEN INVOLVEMENT

There being no other business, Chair Babbitt adjourned the Commission for Citizen Involvement at 9:15 p.m.

APPROVED:



Michael Babbitt, Chair



Date