



PLANNING COMMISSION Minutes of July 21, 2010

Members present: Commissioners Michael Babbitt, Laura Horsey, Christine Steel, Dean Wood and Jennifer Tan
Members absent: Chair Robert Martin and Vice Chair Michael Jones
Staff present: John Sonnen, Planning Director; Sara Javoronok, Associate Planner; and William Monahan, City Attorney

CALL TO ORDER

John Sonnen, Planning Director, called the Planning Commission meeting to order in the Council Chambers of City Hall at 7:30 p.m.

Commissioner Steel **nominated** Michael Babbitt to serve as Acting Chair. Commissioner Horsey **seconded** the nomination and Acting Chair Babbitt was **elected** by unanimous vote.

APPROVAL OF MINUTES

The vote on the Minutes of June 2, 2010 was postponed so all the Commissioners would have an opportunity to read the draft.

PUBLIC COMMENTS (None)

BUSINESS MEETING

Ratification of InFill/PUD Task Force

Commissioner Wood **moved** to approve Resolution 2010-10. Commissioner Steel **seconded** the motion and it **passed** 5:0

PUBLIC HEARING

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

CDC-10-01 - Review of draft code amendments to establish an Historic Review Board

Acting Chair Babbitt opened the public hearing and outlined the applicable criteria and procedure. He asked the Commissioners to declare any conflicts of interest. None were declared. No one present challenged the authority of the Planning Commission or the ability of any individual Commissioner to hear the matter.

Staff Report

Sara Javoronok, Associate Planner, presented the staff report [see the July 9 and July 19, 2010 Staff Memorandums and the July 12 and July 21, 2010 versions of draft amendments]. The Clackamas County Historic Review Board had served as the City's review board for many years under an intergovernmental agreement that was to terminate on September 30, 2010. Meanwhile, the Historic Resources Advisory Board (HRAB) had worked on preservation planning projects such as national designation of the Willamette Historic District. The proposed amendments would establish a West Linn Historic Review Board (HRB), define its powers and duties, and bring the code into better compliance with state and federal regulations. Besides serving as the local historic review body, the new HRB would continue the HRAB's efforts to survey and register Landmarks, historic districts and archeological sites.

The City Council, the Planning Commission and the HRAB had each had an opportunity to offer suggestions and direction and several Commissioners and HRAB representatives had met to discuss the proposed amendments at a joint work session on July 12th. Although work session participants had reached consensus regarding how to process those applications that would require both HRB and Planning Commission review, the staff had found some aspects of it were not legal, so they suggested seven alternatives in their July 19th memorandum.

The Commissioners and the staff discussed the seven alternatives. Javoronok reported that her research revealed that some communities used a review process that started with HRB review of the historic aspects of an application and then the Planning Commission reviewed the other aspects (Alternative 1). Salem reversed the process and held the Planning Commission hearing first. They had found a joint hearing process did not work very well. Javoronok had not found information relating what was "best practice," but communities she had talked with seemed to prefer the parallel review in Alternative 4. In that process the Planning Commission processed an application and the HRB processed an application and each body looked at different issues. Both processes could start at the same time and each had its own on 120-day clock. That way the Planning Commission decision could be imposed even if the HRB had not made a decision within 120-days. Babbitt was concerned the parallel process would require more staffing resources and confuse the public. The staff confirmed that the applicant would pay the normal Planning Commission application-processing fee plus another fee for HRB design review. They anticipated there would only be four or five of those kinds of applications per year. Tan observed Alternative 2 would give the HRB full authority - even over Chapter 55 Class II design review. That would make the Board a "mini " planning commission. Javoronok pointed out that Alternative 7 gave Class II design review authority to the staff, instead of the Planning Commission. Alternative 6 was a combination of 1 and 4.

Public Testimony

Charles Awalt, 1847 5th Ave., testified that the neighborhood had taken a big risk allowing businesses to be so close to residences because they knew that was necessary in order to keep the businesses healthy and they had trusted the county board to manage them. He wanted the

new HRB – not the Planning Commission – to make binding decisions regarding applications for conditional uses and Class II design review. He clarified that he was speaking for himself. When asked, he confirmed that he did not see any conflict of interest between the board’s quasi-judicial role and its role of managing, or working with, applicants to ensure they made good decisions in keeping with the historic nature of the area when they improved their homes. He recalled it was typical for an historic review board to do both.

Acting Chair Babbitt observed that if the HRAB wanted the HRB to have authority to make binding decisions that could only happen in a quasi-judicial process. City Attorney Monahan advised that a quasi-judicial decision-making authority had to follow statewide land use rules meant to ensure that the decision-makers did not come to the hearing already biased. They were to make their decision based on the information presented at the public hearing, where members of the public could participate and would have an opportunity to contradict other’s testimony. Awalt anticipated that only part of the work the HRB would do would be quasi-judicial. If the staff did their job right, the process would be smooth and the board would have no problem making a decision. He had served on the county board for eleven years. He held that design review was a fairly simple process and he did not advocate “doubling up” on it by involving the Planning Commission and the City Council. He advised that the HRB would make it easier for the neighborhood to participate in the review process and the neighborhood would appreciate the HRB’s ability to manage situations and solve issues because HRB members would understand historic preservation and the specialized terms related to preservation. There was no one else at the hearing to offer testimony.

Deliberations

Acting Chair Babbitt closed the public hearing and polled the Commissioners. Tan favored the Alternative 4 parallel review process that seemed to be working well in Oregon City and Albany. It would leave Class II design review to the Planning Commission and allow the HRB to review specific projects in the historic district. She indicated she could also support Alternative 6, which was a combination of 1 and 4. Horsey explained that she had applied three principles to the alternatives: Protect historic design, uphold the authority of the Planning Commission to conduct Class II design review, review variances and review the broader issues; and avoid a process that was too logistically cumbersome. She found many of the alternatives cumbersome, but she understood there would only be a small number of cases to apply the process to. She encouraged the HRB to work on improving CDC Chapter 25 to better protect historic property. The Planning Commission did not have that level of knowledge and expertise and would value the HRB’s input. She favored Alternative 1, but was willing to consider (combination) Alternative 6.

Wood observed it was the Planning Commission’s charge to decide Class II and variance applications. He was concerned that parallel review would increase the staff’s workload and could generate conflict. But he recalled the county board had not had to hear many of those types of cases. He leaned toward (combination) Alternative 6, but he wanted to be able to read the draft code text first. Steel was most comfortable with Alternative 1. She recalled that was

the process the participants had discussed at the July 12th work session. It allowed the HRB to educate and influence the Commissioners. They would have a place at the staff table and unlimited time for rebuttal at the Planning Commission hearing. The interaction could result in more consensus between the two bodies, no matter who served on them in the future. She agreed with Horsey that the HRB could also help shape the historic district by recommending code changes.

Acting Chair Babbitt recalled the Planning Commission had once considered whether to split the Commission into two bodies but the Commissioners and the City Council had concluded that the people writing the code should also be the ones making the decisions because they understood the code. He said he favored Alternative 1 because it addressed the HRAB's desire to allow the HRB to make binding decisions. That would happen because the HRB design review recommendation would be incorporated into the Planning Commission hearing staff report and the recommended conditions of approval would implement it. He said the Planning Commission never got down to the level of detail of design review the HRB would. That was their expertise. He said he would not be opposed to (combined) Alternative 6 if the other Commissioners favored it, but he was concerned about the amount of resources it would require and the possibility it would confuse the public. He did not support Alternative 2 that would give the HRB authority to make land use decisions based on Chapter 55 because it was the Planning Commission that was charged with making those decisions. He did not support Alternative 5 because that was a Planning Commission responsibility. He was concerned that the joint hearing process in Alternative 3 could result in logistical problems when two seven-member boards heard and decided an application. The Alternative 7 process seemed backwards when it called for an initial Planning Commission review and then let the HRB make the final decision. The separate, parallel, processes in Alternative 4 made this option too complicated and costly and could confuse the public. Horsey agreed that the potential for public confusion was an important factor to consider. But Wood commented that could be addressed by making it clear what the Planning Commission was to review and what the HRB was to review. He recalled that the process would only be used to process a few applications each year. Javoronok clarified that although the county board typically heard four or five applications per year that were the types of applications the new process would apply to, so far this year only three applications had been submitted to the county board. None of them was the type of application that would have required a Planning Commission review. Horsey noted that Alternatives 1 and 4 each allowed the HRB to make binding decisions regarding single-family homes. Steel advised that the simplest solution was usually the best. Alternative 1 was a simple process that did not involve multiple tracks and multiple reviews.

Acting Chair Babbitt observed the majority of Commissioners favored Alternative 1 or 6. The draft document was based on Alternative 1, but the staff had also provided draft code language to implement each of the other alternatives, including 6. Horsey and Wood suggested the Commissioners examine the draft language to implement 6. Sonnen confirmed that the City had until September 30th to implement the HRB and the Planning Commission could continue the hearing to August 4 and still meet that deadline. Steel recalled Chair Martin and Vice Chair Jones had favored the Alternative 1 type process at the work session.

Steel **moved** to recommend that the City Council adopt the public hearing draft dated July 21, 2010 to establish an Historic Review Board with the changes proposed to 99.060 on page 5 of the July 19, 2010 staff memorandum. Horsey **seconded** the motion and discussion followed. Babbitt recalled all the Commissioners at the July 7th and July 12th meetings - including Chair Martin and Vice Chair Jones - were in agreement about the direction the group was going at the time. Tan indicated she appreciated Acting Chair Babbitt's point that the parallel review in 4 could result in conflict and she could now support Alternative 1 or 6. She wanted to make sure the HRAB was still comfortable with the draft that incorporated Alternative 1 because the staff had made some changes to it. **Acting Chair Babbitt conducted the vote and the motion passed 5:0.** The Planning Commission recommendation to the City Council was to be considered at a Council work session on August 2nd and at a Council public hearing on August 9th.

ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Acting Chair Babbitt invited the Commissioners to discuss the process leading up to the vote at the public hearing that evening. Tan explained she had wanted to communicate to the HRAB that the Planning Commission had a relationship with the board and a legal responsibility for review. She indicated she was influenced by Steel's and Babbitt's points about simplicity and cost and she saw the merits of Alternative 1. Horsey explained that she would have been willing to examine the draft text for Alternative 6 that evening, but she would not have been willing to continue the hearing to examine it. She recalled there had been enough momentum for Alternative 1 that the Planning Commission had not stopped to examine the detailed language for Alternative 6. Wood indicated he appreciated Steel's point regarding simplicity. He clarified he preferred Alternative 1, but saw merits in 6 to consider. When the majority of Commissioners seemed to support Alternative 1 he decided to support it too.

ADJOURNMENT

There being no other business, Acting Chair Babbitt adjourned the Planning Commission meeting at 8:52 p.m.

APPROVED:



Michael Babbitt, Acting Chair

10-6-10

Date