

**CITY OF WEST LINN  
PLANNING COMMISSION MINUTES**

**Wednesday, September 17, 2008**

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; 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.

**APPROVAL OF MINUTES**

Commissioner Martin **moved** to approve the Minutes of July 23, 2008. Commissioner Kovash **seconded** the motion and it **passed** 7:0.

**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.)

**ZC-08-01/PLN-08-06, Zone change and Comprehensive Plan Map change at 18270 & 18340 Willamette Drive and 18395 Shady Hollow Way**

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, bias, or ex parte contact (including site visits). Commissioner Martin, Vice Chair Kovash and Commissioner Whitehead each reported he had visited the site. Commissioner Whitehead reported he lived across the street from the site, and he had met and talked with a representative of the Police Department at the site. He said during their discussion they witnessed illegal turns at the highway intersection and talked about an unsafe corner on Shady Lane, saving trees along Willamette Drive and where there should be sidewalks. 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 August 12, 2008). He said the applicant proposed to change the zoning of the two-acre parcel at the corner of Willamette Drive and Shady Hollow Way from R-10 to R-4.5. He advised that the R-4.5 zone was medium density residential use and allowed single-family attached dwellings, duplexes and professional office use (as a Conditional Use). He described surrounding uses, noting that nearby land along Lazy River Drive had been zoned R-4.5 and

featured mixed uses for years. He said staff found the proposal met the applicable criteria including Comprehensive Plan housing policies that encouraged variety and affordability of housing; and the Robinwood Neighborhood Plan's intent to maintain residential zoning and encourage affordable housing on land near the north end of the existing commercial corridor. He said they found the development would not have a significant impact on traffic and residents there would have good access to mass transit and could walk to nearby shopping opportunities. He recommended the Planning Commission recommend that the City Council approve the application.

*Applicant*

**Michael Robinson, Perkins Coie, 1120 NW Couch St., 10th Fl., Portland, Oregon, 97209-4128; and Martha F. Stiven, Stacey Sacher Goldstein, Stiven Planning & Development service, LLC, 148 B Avenue, Ste. 100, Lake Oswego, Oregon, 97034** represented the applicant. Mr. Robinson said they agreed with the staff recommended conditions of approval, including those that limited the allowable building types. He said nearby R-4.5 zoning had existed compatibly with the neighborhood for a long time and fit the Comprehensive Plan and the neighborhood association plan. He said ODOT agreed with the traffic consultant's conclusion that the development would not generate enough additional traffic to change the acceptable Level of Service (LOS) of affected intersections. He said the traffic report showed that Shady Hollow Way was capable of handling the traffic. Ms. Stiven related that the applicant had discussed developing a higher density, mixed use plan with the neighborhood association but found they seemed more willing to support the currently proposed development that featured fewer units and purely residential density. She said they would continue to consult the neighborhood as they designed the development.

During the questioning period, Mr. Robinson referred to a request from the Robinwood Neighborhood Association and clarified that the applicant could not concurrently apply for the zone change and a development review permit because city regulations and court precedents required the zone change first. However, he and Ms. Stiven stressed that the staff-recommended conditions of approval that required a buffer and limited what could be built on the site offered the neighbors more certainty. He confirmed that the development would be accessed from Shady Hollow Way and not Highway 43. When asked, Ms. Stiven advised that duplex height limit was the same in the R-4.5 and R-10 zones.

**Frank Charbonneau, Charbonneau Engineering, 9370 SW Greenburg Rd. Ste. 411, Portland, Oregon 97223,** confirmed that he recommended cutting back vegetation to clear driver line of sight at a corner of Shady Hollow Way that featured a tight turning radius and obscuring vegetation. He confirmed that he had measured peak hour traffic past the highway intersection and factored that into his analysis of impacts and delays at affected intersections. Commissioner Whitehead recalled seeing northbound drivers stopping illegally in a non-turn lane area between the north and south travel lanes to prepare to turn onto Shady Hollow. He clarified that it was legal to turn left there from the southbound lane, but not to drive onto the mid-lane area to do so. He said there should be a turn lane there. He also wanted to see sidewalks. Mr. Charbonneau agreed that was a safety issue but he noted that City and ODOT

engineers had reviewed his report that 70% of trips generated by the development would be drivers going south or coming from the south.

Vice Chair Kovash asked if the applicant would agree to never propose lots smaller than the R-4.5 zone's minimum 4,500 sq. ft. lot size. Mr. Robinson explained that it would make more sense to allow the applicant to fashion a site plan to propose during the development review process that showed how the density could be clustered closer to the highway in smaller lots that would leave more room on the site to accommodate the required open space; buffer residential neighbors; and maximize tree protection. He reported that the applicant would not agree to a condition of approval that specified the minimum size of PD lots. He advised that if the zone change were approved with the two conditions of approval that limited building types, that limitation would apply to the site no matter who owned it. Any owner who wanted to change that in the future would have to apply for a zone change and demonstrate why it should be permitted. Ms. Stiven explained that the applicant had shown the neighborhood association photographs of what the site would look like if it were developed in the R-2.1 zone because that would have been a significant increase in density, but they had not shown photographs of what an R-4.5 development would look like.

*Proponents*

**Kevin Bryck, 18840 Nixon Ave., representing the Robinwood Neighborhood Association,** explained the Association wanted the Planning Commission to simultaneously assess the zone change request and a development plan because that would guarantee that the neighbors would get what they thought they were agreeing to. He stressed there was no hurry now to settle for less than that, but once the zone had been changed the 180-day rule "clock" would start ticking and they would experience pressure to settle. He questioned why the site should be used to satisfy a "vague yearning for transition zones." He reported that the Association had adopted a resolution at their August meeting that called for buffering the tree canopy along Highway 43 because they feared a significant tree might not be protected if it had a little rot in it. They wanted conditions of approval that all riparian areas were to be managed in a manner that was consistent with how riparian areas were managed under R-10 zoning because they had heard such areas were not as protected under R-4.5 zoning. He said they questioned why a zone change should be allowed before the Highway 43 corridor plan was complete. He concluded by commenting that everyone knew that the language in the neighborhood association plan that called for increased density was only "boilerplate" language the staff had added.

**Alice Richmond, 3939 Parker Rd.,** recalled the community had once anticipated denser residential use in that area of the corridor. She noted the application reflected the intent of the Comprehensive Plan and the Robinwood Neighborhood Plan, and the applicant would have to remove line of sight obscuring vegetation and plant mitigation trees. She suggested installing a blinking yellow light at the intersection.

**Terry Pennington, 19065 Trillium Dr.,** observed that Highway 43 was a state highway and not a residential street. He questioned the thoroughness of the traffic survey. He advised that the law and court precedents would not prevent the applicant from voluntarily agreeing to submit the zone change request and the development review permit application at the same time. He

suggested the conditions of approval could specify that the development would not change even if the property were sold. He stressed that the applicant knew the site was zoned R-10 when he purchased it.

*Rebuttal*

Mr. Robinson referred to testimony questioning the traffic report. He pointed out that the record showed that ODOT had found the intersection had a low accident rate for entering vehicles. That rate was 30% below the threshold for mitigation set by traffic engineering standards. He said ODOT had also concluded the change would have no significant effect on the transportation system. He said the applicant would improve intersection sight distance and propose right-of-way improvements, including sidewalks, during the development review permitting process. He advised that state law specified that development review applications were to be judged according to the standards and criteria in effect on the date they were submitted. Hence, if a zone change and Planned Development were approved on the same date, the zoning regulations in effect before the zone change would apply to that PD. He agreed the applicant knew the site was zoned R-10 when he purchased it, but he said the issue in the current process was whether what they proposed was the most suitable zoning district under the Comprehensive Plan. He noted the staff reported it did meet the locational criteria in the Comprehensive Plan. He said the applicant had worked with the neighborhood association in good faith and would continue to work with them as they fashioned the development review permit application. He said they could not guarantee the site would never be sold. He said it was logical in the current process to focus on whether or not the proposed zoning fit the concept described in the Comprehensive Plan, instead of whether or not a window was in the right location on a building. He said the applicant wanted to protect the tree canopy, which added value to the site, and did not want to remove any more trees than necessary along the highway. He acknowledged that he had not understood testimony asking for riparian protection to be tied to R-10 zoning, but he said site development would conform to R-4.5 regulations. He acknowledged that he did not know how the density language in the neighborhood plan got there, but he said the proposal helped implement that policy. He concluded that the applicant proposed the right use in the right location, which was on a busy highway and across the street from Burgerville. He said the fact that the applicant would agree to the staff recommended conditions of approval gave the neighbors more certainly than they might otherwise have.

When asked, the staff advised that if the application were approved with conditions of approval that limited building types, those conditions would apply to the land, whoever owned it, unless and until the owner applied for another rezone. They acknowledged that in years past the City had concurrently approved a zone change and development review permit, but they agreed with the applicant's attorney that state law did not allow that. They said the Commissioners could consider a conceptual site plan at the same time, but it would not be enforceable. When the Commissioners wanted assurance the conditions of approval would not be forgotten in future years, the staff said they planned to notate "R-4.5-cond." over the site on the zoning map. They clarified that how a riparian area was treated depended on its classification, not the zone the creek was in. The Commissioners asked if some other zone would give the City the same building type result, without the conditions of approval. Mr. Spir said R-5 would not allow office use, but did not limit single-family attached development. He pointed out the site was

surrounded by R-4.5 zoning. He advised that a developer could apply for a PD in any zone that would allow them to have smaller lots in order to accomplish density transfer on the site. He said they could configure the site to cluster smaller lots near Burgerville and with larger lots than the zone minimum size near the existing adjacent single-family homes. He recalled the neighborhood association wanted a site plan to be approved at the same time as the zone change so they could be know for certain what would be built on the site. But the staff offered the building type limiting conditions of approval with the zone change and the details of tree protection and roadway improvements would be addressed during the design review phase. The staff explained they found R-4.5 zoning fit the Comprehensive Plan's intent to locate medium density development proximate to commercial development and transit. Mr. Howard advised the Commission was not allowed to approve a formal design review application concurrently with a zone change plan amendment. But he said they could examine a conceptual site plan and put conditions of approval on the rezone that would apply to the land, whomever owned it.

#### *Deliberations/Motions*

Chair Babbitt closed the hearing to public testimony, announced a ten-minute recess, and then reconvened the hearing. Commissioner Baker explained she would have preferred to be able to select another zone rather than apply conditions of approval to the R-4.5 zone, but the R-5 zone would not have eliminated the need for all the building types conditions of approval. She wanted the City to find a way to ensure that anyone interested in the site would know about the conditions of approval attached to it. Mr. Howard related that he understood that the County Recorder would record conditions of approval on the title to the land so future owners would be notified that they existed.

Vice Chair Kovash agreed with the concept that highway corridors were an excellent place for increased housing density and offices, but he indicated that he was aware that increased density was not what the citizens of West Linn really wanted. He pointed out the letter from ODOT that concluded that trips generated by the site would have no significant effect on the transportation system had been written by someone who did not correctly identify the highway or the county. He said it was not the applicant's fault that the City had a transportation problem and the zone they asked for was appropriate, based on applicable planning criteria. Commissioner Andreas commended the applicant, staff and neighborhood association for working together. He saw the conditions of approval as the staff's way of trying to address the neighborhood's concerns. He observed that both traffic reports came to the same conclusion. He noted that the application met the Code and the staff recommended approval. Commissioner Wood said the issue seemed to be more of a transportation issue than a zoning issue. He said R-4.5 would be appropriate because there was other R-4.5 land and commercial use land in the area and it would encourage development of affordable housing.

Commissioner Whitehead pointed to the location of his home and explained that he had a personal stake in the decision. He reported that he could agree to R-4.5 zoning to create affordable housing near the university, and as long as safety improvements were made at the 90-degree turn on Shady Lane and the highway intersection, and sidewalks were installed to encourage more pedestrian traffic in the area.

Commissioner Martin observed that Commissioner Whitehead had was a conflict of interest and his participation should have been challenged at the start of the hearing. Mr. Howard confirmed that would have been the appropriate time to challenge the Commissioner's participation. He recalled that Commissioner Whitehead had disclosed his proximity to the site and stated that he could make an unbiased decision. He noted that for Commissioner Whitehead to recuse himself at this point in the hearing would complicate the record. He advised that the only time a Commissioner was required to recuse him/herself was in case of an actual conflict of interest, such as a financial interest, but it would not likely be necessary to do that just because he lived near the site. Commissioner Whitehead declared he had no financial investment there other than living across the street

Commissioner Martin also observed the ODOT representative who wrote the letter from that agency had misidentified the highway and the county. He recalled that Robert Stowell, who had served on the City Council at the time zoning was established, had written to support a change to R-4.5 or R-5. He anticipated when the Highway 43 plan was implemented it would improve traffic conditions and he said increased density in the area would encourage people to walk to the market and they would feel less isolated. He commended the parties for working together.

When asked, Mr. Howard confirmed that if the Commissioners found the application met the applicable criteria they had to approve it, but he noted the criteria were very broad. Chair Babbitt observed that the Commission could not deny the application based on traffic as long as the Level of Service of nearby intersections would remain at an acceptable LOS. He proposed new Condition 4 to require the conditions of approval to be recorded with the deed. He noted the requested zoning fit the intent of the Comprehensive Plan and the neighborhood plan. But he questioned whether the City should change the zone just for a single development proposal and create "patchwork" zoning. Commissioner Martin, however, saw zoning as an "organic," and "evolutionary" process. He observed that a pattern of commercial uses had developed nearby and the site could serve as transitional use. When Vice Chair Kovash inquired, Mr. Howard explained that the Code required traffic impacts related to a development to be mitigated and the City had a history of approving projects on Highway 43 with conditions of approval that made incremental changes intended to improve local traffic conditions along the highway.

Chair Babbitt **moved** to add new Condition 4 to require Conditions 1-3 to be recorded with the deed. Commissioner Martin **seconded** the motion and it **passed** 7:0.

Commissioner Whitehead **moved** to recommend that the City Council approve ZC-08-01/PLN 08-06 with Conditions of Approval 1-4. Commissioner Martin **seconded** the motion and it **passed** 7:0.

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**ITEMS OF INTEREST FROM STAFF (None)**

**ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

Chair Babbitt and Commissioner Baker asked the Planning Department to fashion a formal procedure for tracking conditions of approval that were to run with the land so they would never be overlooked by new property owners and City staff.

Commissioner Martin stressed it was the responsibility of each Commissioner to make a site visit and be thoroughly prepared to make a decision.

**ADJOURNMENT**

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at 9:35 p.m.

**APPROVED:**

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**Michael Babbitt, Chair**

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**Date**