



CITY OF
West Linn

PLANNING COMMISSION / COMMISSION FOR CITIZEN INVOLVEMENT

Work Session

Minutes of September 16, 2009

Members present: Chair Michael Babbitt, Vice Chair Robert Martin and Commissioners Laura Horsey, Michael Jones, Charles Lytle and Christine Steel

Staff present: John Sonnen, Planning Director; Peter Spir, Associate Planner; and William Monahan, City Attorney

Members absent: Commissioner Dean Wood

Guest: Alice Richmond, 3939 Parker Road

CALL TO ORDER

Chair Michael Babbitt called the Planning Commission work session to order in the Council Chambers of City Hall at approximately 7:00 p.m.

WORK SESSION

Planning Commission recommendation to allow a two-year extension of development approvals

New Planning Director John Sonnen advised that he and the staff would work on ensuring that Planning Commission recommendations were clear and consistent and the final versions were reviewed by the Planning Commission before they were forwarded to the City Council. In keeping with that goal, he had submitted the two-year development approval extension recommendation to legal review. All but two changes in the revised version were not substantive. Peter Spir explained one of the more significant changes was to specify that the date the two-year extension period was to start was the expiration date of the original, three-year approval. That way, everyone's extension would be exactly five years. It would not be shorter or longer, depending on whether it was heard earlier or later. The other change clarified that the Planning Commission had the discretion to deny an extension request if current regulations would not allow the previously approved design. That was the "safety net" the Commissioners wanted, that would make the applicant reapply under the new regulations. Jones confirmed that was the Commissioners' intent. The staff observed the safety net would be useful whenever the economy cycled downward and no "sunset clause" was necessary. During the discussion the staff confirmed there was a trend among local jurisdictions to allow extensions of subdivision approvals, but they said West Linn would also extend approvals for

variances and all types of land use applications that could be affected by the economy. For example, it would extend the time an owner had to complete a small deck project.

Sonnen then talked about procedure in general. His goal was to ensure that all staff and task force reports were subjected to legal review before the Planning Commission considered them. He wanted them to be as tight, precise and consistent with their intent and code language as possible. He suggested the Planning Commission delegate someone to oversee minor, non-substantive, changes directed by the Planning Commission to ensure they were what the Commissioners wanted, and that the full Commission review substantive changes. He asked for direction. Babbitt agreed it was important to vet those documents in a public hearing process before the Planning Commission formally approved and forwarded them to the City Council. The two-year extension recommendation was scheduled for consideration by the City Council on October 12, 2009, but the Commissioners wanted to consider the final version at their next regular meeting, which meant it was likely it would not reach the City Council by the 12th. However, the staff advised they were not aware of anyone who would be harmed by the delay.

Sonnen said he planned to keep the Commissioners updated about what was “coming down the pike,” and find out how involved they wanted to be and where they wanted to spend their time. The Commissioners would control the approach and how it was accomplished. For example, they would decide if they wanted to see a staff draft or utilize a task force. He said he and the legal and planning staff were taking a cold, hard look at what could be improved to make the Planning Commission more effective. They were fashioning a better template for staff reports so the Commissioners found it easier to make informed decisions. It would incorporate consideration of sustainability. The City Attorney would be involved in any code work up front so there was less work to be done on the back end. He planned to report on the changes he had made at an upcoming Planning Commission meeting.

Review Planning Commission goal setting and performance
Discuss potential measures to achieve goals
Discuss past, present and scheduled projects

Sonnen pointed out the staff had formatted the Planning Commission’s goals and priorities table and work program updates so there was a place to show the current status of each project.

Babbitt recalled the Commissioners had been asking for changes in the staff’s “working style” for a while. He agreed they wanted to know what was “coming down the pike.” He said they had been frustrated by a lack of consistency in staff reports. He said they had been asking the staff to find a way to track and enforce conditions of approval that would affect future applications. For example, when the Kasch site was redeveloped, they wanted to be assured there was some way to ensure there was a connecting driveway between that site and the adjoining site, as required in the Kasch development conditions of approval. Sonnen indicated he knew there were automated systems that did that, the City currently did not have one, and he would take on that challenge. Horsey recalled cases where something proposed in a

development application were not made a condition of approval. She wanted to be assured things like that would not be "missed." Sonnen said he and Monahan had discussed that and would focus on ensuring that the conditions of approval and the approved maps showed exactly what was intended. They would also work with the Engineering staff to ensure that conditions of approval were carried forward on engineering plans.

Babbitt recalled the Commissioners wanted to see a checklist that showed an application contained everything necessary to be complete. He suggested putting an index in the staff report that would list the applicable criteria and where the information about how the applicant addressed it could be found. He wanted the Commissioners to be able to easily locate the information when someone raised an issue about it at the hearing. He also asked for consistency in page numbering, because he recalled times when the Commissioners, staff and those who testified were not certain they were looking at the same pages. Steel and Jones agreed with Babbitt's suggestions. Sonnen welcomed the Commissioners' candor and said the staff would continue to refine the documents so the Commissioners could depend on them. Babbitt asked Sonnen to do whatever he could before a hearing to make the Commissioners as informed and educated about it possible. They needed to anticipate and understand the issues people raised in testimony.

Monahan was asked how much the staff could tell the Commissioners at work sessions about a case they would hear. Monahan indicated they could alert the Commissioners to an issue that might have to be considered in making a decision, so the Commissioners would not get caught off guard. But they should not have a discussion that ended with a conclusion about it at a work session. The same information should be replicated in the public forum.

Steel asked about hearings protocol. She wanted to know when was the right time to ask questions and comment on a specific point or topic. She felt that sometimes there had not been enough discussion before a vote was conducted. Babbitt explained that the Commissioners could ask the staff questions during the staff presentation, but it was the applicant's responsibility to meet the burden of proof, so he felt the applicant should address them. The Commissioners could then ask questions of the applicant and any parties who testified. Typically the staff was asked to wrap up before the public hearing was closed, and the Commissioners could ask them questions then, and during deliberations, after the public hearing was closed. The Commissioners could also ask each other questions to find out where they each stood. He said if he saw no lights on to indicate a Commissioner wanted to discuss something at the beginning of deliberations, he typically polled the Commissioners to hear their positions. After a motion was made and seconded there was an opportunity for the Commissioners to discuss the motion. Steel indicated she preferred that the chair slow the pace down and poll each Commissioner by name. Horsey wanted the chair to give each Commissioner his/her chance to speak before he invited a motion. Jones suggested the chair ask if there was any more discussion before he invited a motion.

Martin recalled there were times during deliberations when the Commissioners wanted to hear how the applicant would address concerns they had or ask them for more information. Babbitt

advised the time for that was the questioning period after the applicant's testimony. Monahan and Babbitt recalled times when applicants simply said they agreed with the staff report and recommendation and did not come forward to testify how they had met the burden of proof. They may or may not have met that burden. The public was left with the perception the staff was helping the applicant. Monahan advised that was a tactic used by applicants to avoid opening up any issues. Babbitt said he typically requested that applicants come forward and submit to questioning. Monahan suggested that since an applicant had a limited time in which to present their entire application and highlight what they thought was important, the Commissioners should allow them to do that before they asked the applicant questions.

Horsey asked how to deal with last-minute written evidence or testimony. The Commissioners and the public needed to have time to read and understand it. Babbitt advised that during the first evidentiary hearing any party could request a continuance and it had to be granted. That was state law. Another way of dealing with material submitted just before or during a hearing was for the Commissioners to take a break for the purpose of reading it. Monahan recalled materials received during a hearing were distributed to the Commissioners, but there was no copy machine available to make copies for the applicant and the public. If the last minute written material was supposed to be legal citations he did not have time to verify them at the hearing. He advised the Commissioners to distance themselves from the public and not give the perception of ex parte contact if they took a break to read and understand submittals. He stressed that the City had to decide an application in 120-days. They might not have time to wait until another meeting to read new information in support of the application that changed it or that was relevant to the decision unless the applicant agreed to extend the 120-day rule limit. But in that case it might also be in the applicant's best interest to grant the extension. The Commissioners did not have to continue the hearing if an opponent brought in new information, but the Commissioners should look at it and evaluate it. Monahan advised that members of the public had the right to submit information up to and during a hearing. The Commissioners obligation was to identify whether it had an element of new information in it that supported the application. The staff had a responsibility to help the Commissioners identify new information. Sonnen advised the Commissioners could decide to continue a hearing, but limit it to written testimony and written responses only. Horsey asked for more training on this aspect of procedure and Monahan agreed.

Sonnen said the staff would try to avoid engaging in an alteration of an application after notice was issued and it was distributed to the Commissioners and the public. He said if a change in the application was warranted it could be introduced at the hearing.

Monahan discussed how to avoid ex parte contact via email. His advice was to not open an email if the subject line indicated the email had to do with a case the Planning Commission would hear – just forward it to Teresa Zak. She would then distribute it to everyone. If it became apparent after opening it was about a Planning Commission case, they should forward it to Teresa at that time. He suggested using technology to avoid such contacts by creating an email address only the staff knew so anything that came to that address they could open because they knew where it came from.

Sonnen reviewed with the Planning Commission a document entitled "Planning Commission Goals 2009-2010 From Council Priorities" which listed goals and the status for accomplishing them. He discussed the Planning Commission goal to raise the fee for appeals so it was commensurate with the City's cost. He reported the City Council had decided not to raise it past \$400.00. They knew the actual administrative cost was higher, but they did not want the amount of the fee to deter people from appealing. Babbitt explained that the Commissioners had decided at a work session that was actually a City Council matter the Planning Commission should not address. It was no longer a Planning Commission goal.

Jones observed the top 2009-2010 Planning Commission priority listed was to review and update Planning Commission rules. But the Commissioners had never discussed making that a goal - it was a routine annual business item. He said the Commissioners had made another list of goals and presented them at a joint Planning Commission/City Council work session. The Commissioners had wanted to be sure they and the staff worked on Planning Commission projects that fit City Council goals. However the City Councilors had given the Commissioners no clear direction. The Commissioners were frustrated that the City Council was not giving them clear direction related to planning policies. Did they want the Planning Commission to work on the CDC, or code for trails, or something else? There was a "disconnect" between the City Council and the Planning Commission. Jones opined that the docks code took so long to fashion because the City Council had not initially been supportive of the effort. Sonnen had not seen the Commissioners' version of Planning Commission goals, so Jones offered to send him a copy. Babbitt said after the joint meeting the Commissioners decided their work would be to go through the Comprehensive Plan chapter by chapter. They got about half way through. It could be a standing agenda item to continue to work on the code when Planning Commission meetings left time for it.

Martin indicated he would like to work on infill regulations. Babbitt recalled previous planning directors said they did not have the staffing resources to work on goals like infill regulations because the City Council and City Manager were asking them to work on something else. Sonnen said his philosophy was that the staff and the Commissioners should be on the same page so the products they sent to the City Council were not dead on arrival or did not suffer from insufficient resources. He described how the State of Washington required local jurisdictions to specifically identify what they were going to work on and what staffing resources were to be allocated to those projects. He said he would think about how to structure a system that would reprioritize goals, allocate the necessary FTE's and benefit from a formal City Council endorsement. The highest priority would be projects that accomplished state mandates.

Babbitt observed that Goals #8 - #13 in the document entitled FY 2009-2010 WORK PLAN SUMMARY, Major Planning Division Projects. He noted that the items on the list of Planning Commission Goals 2009-2010 were not identified by the Planning Commission as goals and were likely added by staff. Sonnen said he had discovered

the document Goals document in his office and had believed it was Planning Commission goals. But he intended to collaborate with the Commissioners so they could find what they mutually agreed to work on. Jones added it had to be what the City Council accepted too. Horsey said the approach of allocating FTEs into the planning process made sense, but no one knew how many applications would come in that the staff would have to take time to work on too. Sonnen indicated that he would think about the problems the Commissioners had identified and consider what would be the best course to move forward and how some staffing resources might be dedicated to priority projects. He clarified for Lytle that there were three planner slots besides his. There was currently a lull in current planning projects, but if that changed, more staff might be needed to accomplish periodic review.

Horsey suggested adding two items for the Planning Commission to work on related to the Planned Unit Development (PUD) process and annexed land. She wanted to better understand the PUD process. What changes could be made during the building permit process or other "downstream" stages after the Planning Commission approved a PUD? Sometimes the built result was not what the Commissioners had anticipated. What kind of change would be considered significant enough that the development application would have to be reconsidered by the Planning Commission? Babbitt recalled sometimes the Planning Commission was allowed to look at design and sometimes they were not. He wanted to know why. The Commissioners accepted Sonnen's offer to arrange a training session for them when they could hear from staff involved in those "downstream" decisions. He said if the Commissioners identified the specific development projects they were referring to he could look at them to determine how more effective conditions of approval might have been fashioned. Martin said that knowledge would be useful when the Planning Commission looked at residential infill design standards. He and Horsey agreed that they needed to understand the entire process in order to determine if it was working or needed to be changed. Lytle said he wanted to be briefed on the entire PUD issue because people expected him to understand it as a Planning Commission member. He said citizens tended to view it as a giveaway to developers because it allowed them to change the rules. He wanted to know when a PUD was allowed and when it was not. He asked why a developer would buy 20 acres when 15 of them were swamp? Citizens asked him why. He said there seemed to be a new wave of development in West Linn and he assumed PUDs were intended to help develop the remaining, less than ideal, land. But he wanted to know for certain. Babbitt wanted to understand density transfer and why proximity to transit allowed more density. Martin looked forward to working on infill standards because there had been single-family residential development "blunders" too, such as a four-story house built in a wetland with the first two stories considered basement. That affected the neighborhood and the community. Lytle recalled that people considered a flag lot a "neighborhood wrecker." Horsey agreed and said they thought that about skinny houses, too.

Horsey asked when a parcel was annexed to West Linn did the transit plan extend to it? Would the newly annexed area have the benefit of some prior planning? If so, what was it? Sonnen said he would arrange a training session for the Commissioners.

There being no other business, Chair Babbitt adjourned the Planning Commission work session at approximately 8:46 p.m.

APPROVED:



Michael Babbitt, Chair

10-21-09

Date