



PLANNING COMMISSION  
Minutes of January 19, 2011

Members present: Chair Robert Martin, Vice Chair Michael Babbitt, and  
Commissioners Laura Horsey, Christine Steel and Dean Wood  
Members absent: None  
Staff present: John Sonnen, Planning Director

**WORK SESSION**

Chair Martin called the work session to order in the Rosemont Room of City Hall at 6:45 p.m. The Commissioners and staff discussed the following topics:

**CDC-10-04 amendments/Request to consider comments after close of public hearing**

Sonnen recalled that the Planning Commission had closed the public hearing of CDC-10-04 at their last meeting. They were scheduled to deliberate at their regular meeting later that evening. The staff had followed Commission direction and revised the proposed amendments and the City Attorney's office had reviewed them and found them acceptable.

Sonnen reported that comments had been submitted after the close of the public hearing. He wanted to know if the Commissioners would consider them that evening or forward them to the City Council hearing. He advised that because it was a legislative matter, the Commission could consider the comments at any time, but they were not obliged to. He asked if the Commissioners wanted to see Kari Oakes' comments. They pertained to the final version of the draft amendments. Wood and Steel recalled Oakes' testimony at the hearing had inspired the Commissioners to add the requirement that the Planning Director had to notify the Commission and the neighborhood association president whenever he decided to waive a pre-application conference. The Commissioners had heard her concerns and factored them into their directive to the staff and the revised draft language reflected that. Sonnen noted that the typical procedure was to stop considering new testimony after a hearing was closed and pass it on to the City Council. Wood was concerned about setting a precedent that there was no end point where the Commission stopped taking comments. Babbitt observed that the Commission could not technically enter into deliberations until after it closed the public hearing. Sonnen observed that in this particular case only one person wanted to submit additional comments to the record after close, but in the future there might be a case where many people asked for that. So it might be good practice to cut it off. Horsey explained she was not planning to vote on the matter. But it seemed to her that if state law allowed the Commission to consider additional testimony after close the Commissioners should think harder about whether or not to close in future cases. She observed that in this case Oakes was commenting on material that was not available to her until the revised draft was published. Sonnen confirmed that the Commissioners could decide to entertain Oakes' comments or ask her to take her case to the

City Council. If the Commission entertained them and rejected them she would still be able to take her case to the City Council. He advised the Commission to ensure that everyone had the same expectation regarding whether or not the Planning Commission would take testimony after it closed a public hearing.

Chair Martin wanted to know if the suggested change would cause any problems for City Council. Sonnen advised that Oakes was asking for a change that pertained to who was to be notified if the Planning Director decided to waive a pre-application conference. Martin explained that he leaned toward making the process open to everyone who wanted to be involved and he wanted to give them every opportunity to speak, but he believed the best and fairest course of action was to forward the comments to the City Council. The Planning Commission hearing was closed and Oakes' comments were about Commission deliberations. Steel and Sonnen voiced their agreement. When Horsey asked, Sonnen advised her to rescue herself from deliberations if she had not listened to the audio of the last meeting and was not eligible to participate and vote.

#### **Answers to Commissioners' legal questions**

Sonnen related the City Attorney's answers to legal questions the Commissioners had raised.

- *What to do when a Commissioner questioned the staff report*

In a recent case Horsey believed the staff had used the wrong level of design review. She wanted to know how the Commissioners should address issues like that. The City Attorney advised that any Commissioner with such a concern should raise it to the staff as soon as the report became available and give the staff an opportunity to try to work it out with the applicant. If the issue arose during a public hearing there would be opportunities to amend the application or present evidence to show it was in compliance with the code.

- *Commissioners' latitude to alter what the applicant proposed*

Several Commissioners had asked how much latitude they had to alter what the applicant proposed. Could they probe for an alternative approach? The City Attorney advised that if an application did not comply with the code; if there was a question about whether or not the application complied with the code; or if the applicant was asking for variances to the code it was acceptable to probe for or suggest alternatives to the applicant. But a Commissioner should not imply that he/she would only vote for an application that already met the code if it were altered to conform to the Commissioner's suggested alternative approach. When asked, Sonnen agreed that it had been acceptable to ask Trillium School if a proposed driveway could come in at another place because the applicant was asking for a variance for driveways and the Commissioner was trying to probe for alternatives that would comply with the code requirement to minimize impacts on a wetland. The City Attorney had advised that if the proposed driveways had met the code, the Commissioners could still ask if the applicant had considered alternatives. But they could not require the applicant to do something the code did

not require them to do. Horsey recalled the Commission had approved the Rosemont School application even though the applicant had not explored a larger alternative that would have addressed defensible space, a view line issue, and improved circulation. She had agreed with the staff report that the application did not meet the code. Sonnen agreed it would have been acceptable to ask that. If more than one Commissioner had asked that the applicant might have decided to ask for a continuance in order to explore an alternative or explained why they proposed what they did.

- *Conditioning an approval v. Continuing the hearing*

The City Attorney advised that the Planning Commission could approve an application with conditions of approval if the applicant had demonstrated it was feasible to comply with the code and if the conditions that required something to be supplied later did not necessitate that the staff make judgment calls. It would be best to continue the hearing to get more information from the applicant and allow the Planning Commission to make the judgment calls if the change would necessitate significant changes to proposal and the Commission needed to see the result. The Commission could outright deny an application if the applicant had not demonstrated that conditioning it was feasible and would make it comply with the code. Sonnen advised the Commissioners to raise it as a legal issue when it came up. Horsey anticipated a situation where an applicant demonstrated feasibility but described an element of the plan that had been left out of the material for public review. Sonnen confirmed that any new information in support of the application was a basis for continuation.

- *Are Commissioners' notes part of the public record?*

The City Attorney advised that Commissioners' notes related to applications were technically supposed to be part of the record and the City was obliged to provide them to anyone who requested them. But he was not aware of any cities that required Planning Commission notes to be inserted into the record. He cautioned the Commissioners not to make any notes that could be construed as bias towards an application. Sonnen offered to discuss this further at the next work session. He would research how long the notes had to be retained.

### **Minutes Posting**

The staff was in the process of learning how to post audio on the web. Chair Martin asked if they could send each set of draft minutes to the Commissioners for corrections and then post the final draft on the web.

### **Prioritizing Projects**

Sonnen reported the City Council was preparing for goal setting and had decided not to make any decisions about projects until goals were set. They were aware of Planning Commission priorities. They were talking about ways to associate docketing with budgeting. The Council was interested in examining the potential for eventual redevelopment development in the

Highway 43 corridor. Metro and ODOT supported planning for concentrated, walkable, development and transit service in the corridor. Mayors of cities along the corridor and the state were discussing transferring it to local control. It was estimated that it would cost more than \$20 million to implement the City's plan for Highway 43. Steel observed that drivers used Highway 43 as a short cut to Portland.

### **Learning from LUBA proceedings**

Chair Martin related that a City Councilor had suggested the Planning Commissioners watch a LUBA hearing as part of their training. Sonnen confirmed the "swimming pool" appeal was to be heard on February 10. He advised that if three or more Commissioners attended a LUBA hearing it would constitute a quorum and public notice would be required. Horsey suggested the Commissioners read the legal findings and opinions LUBA published on its website.

### **ADJOURNMENT**

Chair Martin adjourned the work session at approximately 7:26 p.m.

### **REGULAR SESSION**

#### **CALL TO ORDER**

Chair Martin called the Planning Commission meeting to order in the Council Chambers of City Hall at 7:30 p.m.

#### **APPROVAL OF MINUTES**

Vice Chair Babbitt moved to approve the Minutes of October 6, 2010. Commissioner Wood seconded the motion and it **passed** 5:0. Vice Chair Babbitt moved to approve the Minutes of November 3, 2010. Commissioner Steel seconded the motion and it **passed** 5:0.

#### **PUBLIC COMMENTS (None)**

#### **DELIBERATION/ACTION**

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

**CDC-10-04, CDC Amendments to Chapters 25, 52, 58 and 99 regarding pre-application requirements and temporary signs in residential areas on Sundays.** The public hearing had been closed on January 5, 2011. Commissioner Horsey recused herself from hearing the matter because she had not been present at the January 5 hearing.

#### *Staff Report*

Planning Director Sonnen reported that the staff had revised the draft code as the Planning Commission had directed and the City Attorney's office had reviewed it (see January 14, 2011 Staff Memorandum, Attachment A, Proposed Code Amendments 1-14-2011). At the pre-meeting work session the Commissioners had directed the staff to forward an emailed letter that had been received after the public hearing was closed to the City Council with the rest of the record. The staff was to advise the sender that the Planning Commission would not consider it at this meeting and the sender should make his/her views known to the City Council when that body heard the matter. Vice Chair Babbitt clarified that the Commissioners had closed the hearing; what they were going to vote on at the current meeting was not new information; and the comments were about Commission deliberation. The Planning Commission did not take comments or hear testimony about its deliberations.

### *Deliberations*

Commissioners Wood and Steel each indicated the changes the staff had made were acceptable and they appreciated the process that had been used to vet the final language. Vice Chair Babbitt indicated that he was satisfied with the final language. Chair Martin voiced his appreciation that the Commissioners had paid attention to the details and ensured that people would be notified when the Planning Director decided not to require a pre-application meeting.

Vice Chair Babbitt **moved** to forward CDC-10-04 to the City Council and recommend the Council adopt it. Commissioner Steel **seconded** the motion and it **passed** 4:0.

ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

### **Infill/PUD Task Force Update**

Vice Chair Babbitt and Commissioner Steel were also members of the Infill/PUD Task Force. Babbitt reported the task force had looked at criteria used by nearby communities to identify criteria they might want to apply in West Linn. At their next meeting they were going to go through the list and decide what they wanted to incorporate into West Linn code criteria. They were considering an Infill/PUD code that would only apply to residential property – not to commercial or industrial property. They were talking about only applying it to properties over three acres. Smaller properties would be subject to the subdivision code. They were making a list of “parking lot” items, such as how to address flag lots, to be addressed at some future time. They were talking about leaving density transfers out of the PUD chapter. He invited interested parties to view the work materials the task force had available to it on the website and to attend task force meetings on the second and fourth Wednesday of each month. He anticipated the group would present its recommendations to the Planning Commission in the next four or five months. Chair Martin thanked Babbitt and Steel for their efforts.

ADJOURNMENT

Chair Martin adjourned the Planning Commission meeting at 7:50 p.m.

APPROVED:

  
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Robert Martin, Chair

3/2/2011  
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Date