



PLANNING COMMISSION / COMMISSION FOR CITIZEN INVOLVEMENT
WORK SESSION
Minutes of April 20, 2011

Members present: Chair Robert Martin, Vice Chair Michael Babbitt, Gail Holmes, Laura Horsey, Christine Steel and Dean Wood

Members absent: Holly Miller

Council Liaison: Teri Cummings (not present)

Staff present: John Sonnen, Planning Director; Chris Kerr, Senior Planner; and Damian Hall, City Attorney

Chair Martin convened the work session at 6:45 p.m. in the Bolton Room of City Hall, 22500 Salamo Road, West Linn, Oregon.

WORK SESSION – PLANNING COMMISSION

Debriefing of recent cases (including immediate debriefing of the Call Center case)

Steel questioned whether the Commissioners should have discussed the call center case just after they decided it, during “Items of interest to the Planning Commission.” Wood recalled some comments had been made about what the Commission could have been done differently in that case that were not really appropriate. Horsey shared their concern. She suggested waiting to debrief until the appeal period had expired or scheduling quarterly debriefings. Hall advised it was legal to talk about the case after the decision had been made. Sonnen suggested waiting until after the appeal period to avoid offering a basis for appeal. Babbitt recalled a lot of the questions had been about the traffic situation in the whole 10th Street corridor. Chair Martin suggested it was beneficial for the Commissioners to talk about a case right after the decision, while they could still remember what parts of the code they had found needed to be fixed. He explained he had found out during Items of Interest period that the Commission could have asked for an intersection study. If he had known that during deliberations he would have asked for one. Steel said she would have asked for one, but did not because the neighborhood association supported the application. Steel did not want to participate in another televised recap following a hearing. The group generally agreed to Chair Martin’s suggestion that right after the hearing they would just identify things they wanted to discuss later, and not discuss them at that time. Horsey wanted to know why the owner would have to apply for a new conditional use permit if they lost that particular tenant. Sonnen advised the traffic impacts generated by each new tenant had to be evaluated. Holmes said she had learned a lot about the land use process from the dialogue with the legal advisor. It would help her in future hearings. Horsey said she was pleased with the value the Commissioners were getting from debriefing sessions.

Horsey explained why she had abstained from voting on the Wildwood extension decision. The applicant had not provided information that proved a hardship. She said that staff's approach to demonstrating hardship took the place of having applicant provide the information, but if staff's approach was rejected -- as some commissioners proposed -- the requirements for hardship would not have been met. She noted the drawing did not have dimensions. As she thought about the case later she realized the Commissioners had not talked about the economic viability of the steep slopes.

Chair Martin recalled cases where the Commissioners had questioned the completeness of an application. Hall and Sonnen distinguished between when an application is "complete" and whether the information it contains is adequate to determine compliance with the approval criteria. An application was "complete" if it contained the entire list of basic documents and components the code said were necessary. The staff had 30 days to determine if they were all there. That was not the same as "error checking" the documents. Hall advised that the legal requirement for approval was that the balance of the evidence was sufficient to demonstrate the application met the code. If the Commissioners believed adequate evidence had not been presented to demonstrate the application met the criteria they could deny the application or suggest the applicant request a clock extension in order to gain time to improve it.

The Commissioners recalled that the Wildwood extension application contained a map without a specific dimension. Hall advised they could find there was insufficient evidence in the record to show the criteria was met, or they could find that the map had been drawn to scale and it was easy to figure out from that what that missing dimension was. Babbitt recalled the Commissioners had discussed whether reformatting a map would constitute "new evidence." Sonnen observed that staff encouraged the applicant to put enough in the record to decide the case. But the applicant might simply say he agreed with the staff report. Chair Martin did not want to have to rely solely on the staff. Horsey said she found preapplication notes helpful and preferred to see them in every case. She reported the online system's organization by pre-app meeting date only made it a challenge to find them.

Discuss and possibly refine Planning Commission procedures (including whether to allow public comments at work sessions, pre-meeting work sessions, start time for stand-alone work sessions, approval of minutes, when to televise meetings, and options for work sessions at regular meetings)

Hall advised current Commission rules called for offering an opportunity for public comment at each regular meeting, but left it to the discretion of the chair whether or not to take public comments at work sessions. Hall and Sonnen advised there was no rule or legal requirement to hold regular meetings or work sessions in the Council Chambers or to televise them. There was no reason other than past practice that would prevent them from approving minutes at a work session. Sonnen advised the Commission could include work sessions as an agenda item at a regular meeting. That way they could open the regular session to take public comments and approve minutes and then hold a work session.

The Commissioners considered whether and when to allow people to speak at work sessions. They recalled the sessions when the former Mayor was allowed to speak about the docketing proposal; when citizens were allowed interrupt a Parks and Recreation director briefing to speak about the proposed trails plan; and when the HRB members participated in a work session. Babbitt wanted the Commissioners to have the flexibility to ask a visiting neighborhood chair for advice or answers to questions. Chair Martin wanted the flexibility to invite people to participate. Steel distinguished between "pre-hearing meetings" and stand-alone or "regular" work sessions. She did not want to take public comments at pre-hearing meetings when the Commissioners were preparing for a hearing. Chair Martin agreed. Wood asked why the trails presentation had been scheduled during a work session. Chair Martin indicated he had invited the Parks and Recreation director to come so he could listen to any concerns any Commissioners had about the process and then refine his proposal to address those concerns. But instead he had given them a slide presentation.

The Commissioners continued to discuss whether to allow public comment at regular work sessions. Chair Martin would continue to leave it to the discretion of the chair. He would invite comments at a regular work session. Holmes suggested that if they did not take public comments orally they should encourage the public to submit questions, concerns and statements in writing. Steel suggested the way the venue was set up sent a message to the public. She did not want to hold work sessions on the Council Chambers dais because people would assume they were hearings. She suggested the Commissioners sit around a table and the sessions not be televised. Horsey recalled the Commissioners had already voted to have work sessions around a table. She had been surprised that a recent work session was in the Council Chambers and televised. Wood suggested the agenda should tell people if public comments would or would not be accepted. Horsey suggested if there were multiple topics a public comment period should be scheduled for each one. Babbitt stressed the procedure should be consistent and it should be fair, so it did not turn into a debate. He wanted to be able to ask a neighborhood president a question or bounce an idea off him/her. He liked the way the current rules were written: the general rule was that no comments would be taken at work sessions. The public could attend as observers. But the chair had the discretion to allow public comment. Horsey and Wood questioned whether that would ensure a level playing field. Horsey said people needed to know in advance if they could speak because that might be how they decided to arrange for a babysitter and attend. Wood was also concerned that would not be fair. Holmes recalled that when she attended City Council sessions she knew she would not have an opportunity to speak unless the Mayor invited her to speak about a specific topic.

Sonnen said his experience was that it was not considered appropriate to take public comment at a "briefing." But the Commissioners could decide to ask questions of anyone in the room. He noted that some jurisdictions do not allow people to comment at work session following public hearings on legislative proposals so those in attendance do not have an undue influence on the outcome. Wood said if the Commissioners decided not to allow public comments they should be consistent and adhere to it. If they decided to take public comments they should say that on

the agenda. Hall suggested just printing the Commission rule on the agenda that the chair had the discretion to take public comments.

Chair Martin said his bias was to encourage as much public comment as possible. He suggested holding the full work sessions in the Council Chambers and scheduling time for public comments on every agenda. He also wanted to be able to invite people to participate in the sessions. If many people came to speak on a high interest topic, the Commissioners should be listening to them. He would just schedule an additional work session. Steel suggested the Commissioners use the table in the Council chambers. Sonnen confirmed for Babbitt that the Commissioners always had the ability to question anyone who could shed light on something under discussion. Hall observed a consensus agreed to Chair Martin's proposal.

Sonnen observed that when the Planning Commission did not have a public hearing they hold a stand-alone work session; and the practice is not to approve minutes at those work sessions. Sonnen and Hall advised not approving minutes at a work session was a self-imposed constraint or practice. There was no other reason it could not be done as long as it was properly noticed. Steel wanted to be able to approve minutes at the very next meeting. Chair Martin proposed to make it standard practice to approve minutes at the next regular meeting or work session.

Wood did not favor televising the work sessions because the Commissioners had to push a button to talk and that constrained the flow of discussion. Sonnen advised the meetings did not have to be televised. Kerr observed a consensus to have work sessions at a table. Steel heard a consensus to televise hearings, but not work session. Chair Martin confirmed that. Babbitt agreed. He said the agenda should clearly say that when the public hearing was over the Commission would go into work session so the public was not confused. Steel did not want to hold a hearing followed by a work session too often because the meeting could go on too late in the evening. Sonnen summarized that he heard the Commissioners wanted public hearings to be televised and they did not want to couple them with unrelated work sessions. Work sessions would not be televised. Work sessions would be at a table, not on the dais. Steel suggested calling the 6:45 p.m. meeting a "pre-hearing session," not a "work session." Sonnen suggested starting a non-hearing-related meetings at 6:45 p.m. Steel asked that pre-hearing sessions be limited to reading the new material and preparing for the hearing. She wanted at least a half-hour to prepare for the hearing.

Chair Martin said he wanted work sessions to be held in the Council Chambers and televised because it increased transparency. All the microphones would be on all the time. Babbitt agreed but cautioned televising meetings had a cost. The Council had not agreed to it in the past. Horsey preferred to be off camera. She hoped the City could invest in better audio equipment. Sonnen offered to find out if the sessions could be televised. Holmes said if they could not be televised the Planning Commission should encourage people to come. Chair Martin said people could listen to the audio on the web if the meetings could not be televised.

Babbitt recalled the Commission used to put together its own findings at the hearing after the decision. They gave specific reasons for the decision. The staff later filled in the technical details. He suggested the Planning Commission go back to doing that. Horsey said it was disconcerting to read findings that did not correlate to the Planning Commission discussions. Hall and Kerr advised that was most valuable in case of a denial or when the decision went against the staff recommendation. The Commissioners could explain how the application did not meet the criteria. Sonnen said it would help staff capture their rationale in the findings.

Steel suggested taking a break ten minutes before the vote for personal deliberation and to prepare to explain why they voted the way they did. Horsey recalled a hearings officer typically "slept on it" before rendering a decision. She agreed with Steel's suggestion. Wood agreed it would be beneficial to have more time before the vote to digest the information. Chair Martin observed a consensus to schedule some reflective time. Sonnen summarized the Commissioners agreed to initial polling and then a break for individual reflection. Chair Martin said he would wait longer before he invited a motion. The discussion would be after the motion. Then the Commissioners would work on findings. Steel wanted more opportunity for discussion. Wood wanted a discussion period after the reflective period.

Chair Martin explained his philosophy that the Commissioners were seven independent judges, not a group of people who tried to sway each other in debate. Hall observed there was a fine line to be aware of between deliberating and heavy lobbying. He outlined the following procedure for deliberations and the Commissioners generally agreed to it: There would be a general round the table discussion and questions for the staff, the attorney, and each other. When there were no more questions or concerns they could address there would be a straw poll. Then there would be ten minutes of personal deliberation time. Then a motion and vote. When Horsey asked, Hall said it was up to the Commissioners to decide if they wanted to add work on findings to the end of the procedure. Steel suggested the rationale each offered for his/her vote might be enough to turn into findings. The Commissioners discussed Chair Martin's concern about avoiding debates. Hall advised that the Commissioners could deliberate in a public hearing. No one was biased unless he/she made his/her decision based on something other than the evidence in the record and the criteria. He expressed his confidence that the Commissioners could continue to avoid the appearance of heavy lobbying, but that was more a question of the tenor of the meeting than a legal matter. Wood indicated that it was a good situation when people with different perspectives offered persuasive arguments. Hall observed that "hard lobbying" during the back and forth of deliberations looked bad. The debate should be based on the evidence in the record. Steel clarified for Holmes that "polling" was not just saying "yes" or "no." It was a time for each Commissioner to reveal his/her thinking to the others. But she advised that she revealed her concerns in the questions she asked too.

Babbitt left the meeting around 9:00 p.m. Chair Martin observed a consensus to incorporate a period for individual reflection into the process, but he noted they had not all agreed on whether to have free range discussion or a straw poll. He wanted to avoid a debate situation

where each side crossed the line and insisted on having the last word on a controversial issue. The perception would be that the applicant's fate was determined by who was the better debater. Hall observed at some point there had to be a discussion or debate. He clarified that it was not a matter of a legal line. It was a matter of avoiding the appearance of impropriety and being professional. But the Commissioners knew that already and they did not cross that line. There was no heavy lobbying or being obnoxious. He acknowledged that whatever process was used it would be susceptible to someone lobbying someone else who was on the fence. Chair Martin observed that so far the Commission had not had a debate. Holmes recalled Commissioners had just brought up things like safety issues, discussed the logic of things, and explained how they saw things.

Sonnen recalled the Commission used to have a practice of closing the public hearing, getting their questions answered, and then someone would make a motion. Roberts' Rules of Order required the discussion following a motion to be just about the motion. It would not allow a more broad-ranging discussion. Roberts' Rules also allowed anyone to force a motion at any point. Horsey suggested all of the Commissioners could informally agree not to jump to a motion during the straw poll. Chair Martin wanted to be able to bring the information out without a debate. Commissioners would express their concerns and thinking. That would inform the motioner and help him/her craft the motion. Hall observed a free-wheeling discussion on the dais was appropriate – it was a natural fleshing out of the issues prior to a motion. The Commission could set a time limit on it. Chair Martin suggested he could ask if there was any more discussion after the straw poll. When Holmes observed the chair had the authority to allocate time and limit repetition, Chair Martin clarified that as long as any Commissioners were punching their buttons he would call on them.

Chair Martin observed the questions were should the Commission add discussion and reflective time to the procedure and make time to work on findings at the end. Holmes suggested they go home and think about it. Horsey and Steel indicated they could explain their votes while casting them. Steel did not want to lengthen the meeting by trying to reach consensus on the findings. Chair Martin observed the Commissioners would have to fashion one set of findings – and some of the Commissioners doing that might have been on the losing side of the motion. He noted Babbitt was no longer there to help the others iron that out. Sonnen said the staff would try to capture the rationale in the draft findings. Then they would send them to each Commissioner to review. Hall advised that was not a problem if it was done individually. Wood anticipated it would be difficult and a lot of work. Hall advised the big picture was they either approved or denied the application. They needed to ensure the individual review process was as legally defensible as possible. It was not a feedback situation. Sonnen said it was enough for the staff to know what each Commissioner's rationale was when they crafted the decision. Chair Martin suggested the Commissioners continue to discuss this at their next meeting.

When Holmes asked, Hall advised that a quorum was four Commissioners. Three of them just talking somewhere about procedure was not a public meeting unless someone was actively lining up votes that will make public hearing a charade. But his general advice was to not

gather in groups of four and not talk about a quasi-judicial case without getting that discussion on the record, even if there were less than four participants.

Updates from Commissioners:

Holmes reported the new owners of the old hardware store in the historic area planned to replace the door with a new glass door. Sonnen said he would have Sara Javoronok look into it.

Horsey was concerned because the City Manager had not provided the Commissioners with a courtesy copy of his memorandum to the Mayor and City Council regarding proposed modifications to the appeals process. Sonnen clarified that the staff had it on their list of things to share with the Commissioners later in the meeting. It was a potential code amendment to replace the *de novo* appeals hearing process. The idea was introduced to Council and they were considering it, but they had not decided whether to pursue a code amendment.

WORK SESSION – COMMISSION FOR CITIZEN INVOLVEMENT

Discuss and refine Commission for Citizen Involvement (CCI) procedures (including how meetings are conducted, basic components of the agenda, opportunities for public comment, and whether and, if so, how to combine CCI meetings with Planning Commission meetings).

This work session was rescheduled.

ADJOURNMENT

There being no other business, Chair Martin adjourned the work session at 10:15 p.m.

APPROVED:



Robert Martin, Chair
Michael D. Babbitt, Vice Chair



Date