



# CITY OF West Linn

## PLANNING COMMISSION

Minutes of July 20, 2011

Members present: Chair Robert Martin, Vice Chair Michael Babbitt,  
Gail Holmes, Holly Miller, Christine Steel and Dean Wood  
Members absent: Laura Horsey  
Staff present: John Sonnen, Planning Director; Tom Soppe, Associate Planner;  
and Damien Hall, City Attorney

### PREHEARING MEETING

At 6:45 p.m., the Planning Commission convened a prehearing meeting and discussed procedural information pertaining to the upcoming hearings and the Commission's schedule.

### CALL TO ORDER

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

### PUBLIC COMMENTS (None)

### PUBLIC HEARINGS

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

### Proposed amendments to Planning Commission Policies and Procedures

Chair Martin opened the public hearing. Planning Director Sonnen reported the staff had drafted the amendments the Commissioners had discussed at their July 6, 2011 meeting. He described each of the proposed changes, which related to the following topics: agenda; meeting time; minutes, public comments at pre-hearing meetings, briefings and during deliberation; quasi-judicial hearing procedure; and televising of meetings.

Vice Chair Babbitt **moved** to approve Planning Commission Policies and Procedures (revised July 7, 2011). Commissioner Steel **seconded** the motion and it **passed** 5:0.

### CUP-11-01/DR-11-06, Conditional Use and Design Review approval for existing and proposed development at the Public Works Operations Facility located at 4011 Norfolk Street

Chair Martin opened the public hearing and outlined the applicable criteria and procedure. He asked the Commissioners to declare any conflict of interest, bias, or ex parte contact(s). Vice Chair Babbitt and Commissioners Miller, Holmes, Steel, Vice Chair Babbitt and Chair Martin each reported making a site visit. Chair Martin reported he had talked with the head of public works about screening and the height of the shed but received no new information. When invited by the Chair no one present challenged the authority of the Planning Commission or the ability of any individual Commissioner to hear the matter.

### *Staff Report*

**Associate Planner Tom Soppe** presented the staff report (see his July 20, 2011 staff report and July 19, 2011 Memorandum). The Public Works Department proposed to make changes to its existing facility, which was an existing, nonconforming site. The original facility had been approved in a previous conditional use process. The staff found the currently-proposed changes would not increase the existing nonconformity except that some recently planted arborvitae along Sussex driveways were in the clear vision area. A new condition of approval would require them to be removed. The applicant had agreed to that. He advised the carport and proposed shed were not part of the Design Review because they fit the definition of accessory structures, which were exempt from design review in that they were accessory to the main structure and had less than 1,500 square feet each. The site was in the R-10 zone in the Sunset neighborhood and it was close to the BHT Neighborhood. It met zone criteria. The design was subject to Class 1 Design Review because no new non-accessory buildings were proposed – just accessory structures, fences, walls and fill. Soppe discussed the site plan and an aerial view of the facility and pointed out the locations of existing and proposed expanded and new site components. His report included photographs from the neighbors' perspective of the shed, existing wall and existing vegetation in the southeast corner. He noted the shed stuck out above the other components. He showed visual simulations of the new carport and larger replacement fuel tanks. He noted the tanks would be visible from the Norfolk driveway. However, they could not be screened because the driveway could not be screened. He advised the wash rack could be screened and the shed could be better screened. The recommended conditions of approval called for that. The only new impervious area to be added was the shed. A new rain garden would not treat the shed itself, but it would treat an equal-sized area of the parking lot. That met CDC and Engineering standards. Soppe added a communication from Alice Richmond in support of the application to the record. He reported the staff found the application would meet the applicable criteria with the recommended conditions of approval.

During the questioning period, Soppe confirmed the rain garden would not treat the entire parking lot - only an area of the lot the same size as the proposed shed. He clarified that the shed and carport were exempt from Design Review because they did not meet the 1,500 sq. ft. size threshold. The tanks were not listed as subject to Class I Design Review under Chapter 55 and he interpreted this aspect of the code to mean they were not subject to Class I or Class II design review. He suggested they be reviewed as a general change in aesthetics. But that was open to interpretation. Babbitt observed that might be a "hole" in the code the Commission should look at in the future: it allowed a multitude of accessory structures on one site if they

were each smaller than 1,500 sf. Babbitt questioned why the rain garden was not large enough to treat the entire parking lot, especially if the lot was being used illegally. He recalled the Commission typically strived not only to not make nonconformity worse, but to try to improve it. Soppe indicated the City could not go beyond requiring the applicant to treat the equivalent of the area of new impervious surface they proposed. He noted that some changes to the site may have been made before today's drainage standards were adopted. Sonnen acknowledged that since original CUP approval in the 1970s other changes to the site had been made without approval for some reason. He advised that any change that was not already a legal nonconforming use was subject to review. The applicant was required to treat stormwater released by any new facilities or any previously unpermitted facilities. Staff had found it would be more beneficial to treat the dirtier water coming off the parking lot than cleaner water coming off the roof. He confirmed that any portion of the gravel parking lot that was not legally established – such as the fill area – should also be treated. The rain garden should be of commensurate size. Soppe confirmed for Steel that the conditions of approval could call for the applicant to keep the vegetation in the clear vision areas under three feet high instead of calling for its complete removal.

#### *Applicant*

Environmental Supervisor Mike Cardwell and Transportation Supervisor Jeff Randall represented the applicant. Cardwell explained that since the mid-1990s the facility has been subject to DEQ National Pollution Discharge Elimination System Permit (NPDES) requirements. The requirements to make water cleaner were getting progressively more stringent. The operation had complied with those requirements through its maintenance practices, addressing the wash area, and using higher walls to better separate materials to reduce contamination. By 2007 all the Jersey barriers and the wash area were in place. He had not been aware he needed to go through the CUP process for them. He said the higher walls also helped the operation reduce waste and served as screening. The wash rack had been enhanced in order to keep material from going into the neighbors' yard and to make the water cleaner. The applicant had been proactive in trying to send clean water out from the site. He explained the sewer line checking truck and the street sweeper each had a lot of electronics in it so those trucks needed to be kept under cover. Sand and rock trucks should be kept inside in freezing weather so the sand in them and their augers did not freeze. He said the building would be a visual and noise buffer for the southern neighbor. After Cardwell had heard a call for more screening along Sussex during the last review he had planted arborvitae the entire length. He confirmed he was willing to keep them trimmed to below three feet. He had also planted additional arborvitae along each driveway and in the southeast corner of the yard. The southern neighbor had confirmed he was ok with what they had done. Cardwell advised that the applicant was already thinking about enlarging the rain garden to treat more of the yard because the NPDES Permit required them to retrofit some areas that were not getting treatment (areas that were legal when they were put in).

During the questioning period, Cardwell confirmed for Steel that the facility had a protocol for watering, trimming and care of the more recently planted arborvitae along Sussex. They would

agree to keep the ones in the clear vision area under three feet high, but the reality was that when trucks went out the back gate they were well past the arborvitae before they got to the point where they had to look both directions to prepare to turn. They did not water the larger, established arborvitae on Norfolk side. The City Arborist had found a couple of dead ones that had been infested by a bug. The applicant would be happy to replace them with new trees as tall as they could put there. Cardwell clarified for Chair Martin that the applicant planned to follow the Fire Marshal's recommendation and configure a catch basin to contain an accidental fuel tank spill. The tank itself was double wall construction to make it less likely the tank would rupture if it were accidentally hit. Cardwell clarified for Holmes that the applicant was not changing any parking because it was not adding any more employees or vehicles.

#### *Public Testimony*

Lisa Cozzi, 4151 Norfolk St., explained her concerns about the landscaping. She was pleased that the applicant had added arborvitae along the Norfolk Street driveway. She suggested they replace the dead trees. She suggested they clean up the weed-covered berms more often so the site looked better. She suggested planting a lower growing shrub along Sussex Street that would grow to less than three feet at maturity. She asked that the arborvitae be kept in place for screening and so there was something pleasant to look at.

#### *Rebuttal*

Cardwell said the applicant would be happy to clean the weeds up. He explained it would be difficult to just one dead arborvitae out because all their roots were intertwined. If it could be removed it would leave a hole about two feet wide. He would consult the arborist to see if there was some other remedy for that and to find out what plants the arborist would recommend that would only grow to 3 feet tall. He could agree to whatever was easiest to maintain and worked best.

#### *Staff Response*

Soppe advised the Commissioners to make some changes to the conditions of approval if they wanted to address the vegetative screen. The Commissioners discussed how to address it. The suggestions included calling for the Sussex Street arborvitae to be replaced with a lower growing shrub recommended by the City Arborist; just trimming the arborvitae on the ends down; replacing existing vegetative screening that was dead or dying; providing that all new and existing vegetative screening was to be watered and fertilized on a regular basis; calling for the applicant to ensure that all or a certain percentage of new vegetative screening lived for at least a year or two; planting a row of newer shrubs in front of the old arborvitae along Norfolk; and asking the City Arborist for a recommendation regarding rejuvenating or augmenting the screening along Norfolk. Steel recalled the some of the other plants along Norfolk looked really leggy. She advised it would be a challenge, but not impossible, to make that area look very nice. She recalled most nurseries guaranteed shrubs for a year. She held the City should maintain its vegetative fencing to be a good neighbor. Babbitt agreed the City should set a

good example. He did not want to dictate exactly how applicants were to maintain their vegetation; he just wanted to require them to ensure it lived.

### *Deliberations*

Chair Martin closed the public hearing and polled the Commissioners. Miller was concerned that there were areas of nonconformance the Commission could not address. She preferred to see an expansion of the rain garden. She wanted the applicant to set a good example and be a good neighbor and regularly maintain the vegetative screening. She was inclined to make a few tweaks in the conditions of approval and approve the application. Babbitt was concerned about the approach related to nonconformity and exemptions. But he concluded the code was not directly violated – it was just bent. He would agree to the Condition 3 language the staff recommended. He did not want to make it a practice to police the way applicants maintained landscaping. He suggested adding the following language to the end of Condition 2: "Existing and new vegetative screening shall be kept healthy and maintained for a period of one year." Then, he would approve the application. Holmes agreed with Miller's and Babbitt's comments. She was concerned that requiring the screening vegetation to be cut down to 3 feet would not work because it would shock the plants. It was important that it did work for the neighbors. She wanted to ensure the new 15 foot tall shed at the corner along Norfolk would be adequately screened for the benefit of the neighbor at 4092 Norfolk and from the street. She suggested if the applicant were required to ensure the vegetation lived it should be for a two year period because trees often needed two years to become stable. She would agree to the application. Steel explained she appreciated that Public Works kept the streets swept. She agreed its expensive equipment should be protected and maintained for citizens' benefit. She had suggested the conditions call for the applicant to water and fertilize on a regular basis, but she would now agree to just call for existing and new vegetation to be maintained on a regular basis. She did not want to put a time limit on it. She would approve the application with such conditions. Chair Martin favored the application. He stressed maintaining the vegetation was more than just a landscaping matter - its purpose was to limit the impact of the facility. He thanked Public Works for being efficient and doing an excellent job, in spite of its small staff. He reasoned that if it could not also maintain the vegetation in front of its building the City had a much bigger problem. He knew they would find time to do that.

Chair Martin then called for the open discussion to begin. Babbitt and Miller each indicated he/she would not put a time limit on the survival of the vegetation. They would just call for existing and new vegetation and screening to be maintained. Steel then suggested "Existing and new vegetation shall be maintained in healthy condition." Babbitt and Chair Martin agreed. Chair Martin observed putting that in the conditions of approval would give the neighborhood something to base a complaint on if they ever became concerned about the screen. When he asked if the Commissioners wanted a few quiet moments to think about their decision no one requested it.

Vice Chair Babbitt **moved** to approve CUP-11-01/DR-11-06 subject to the three conditions of approval the staff recommended, but modified as follows:



- Condition 2. Add the following language to the end: "Existing vegetative screening that is dead or dying shall be replaced. Existing and new vegetative screening shall be maintained in a healthy condition.
- Condition 3. Add the following language to the end: "and replace these with a limited growth shrub recommended by the City Arborist."

Commissioner Miller **seconded** the motion and it **passed** 5:0.

ITEMS OF INTEREST FROM STAFF (None)

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Babbitt recalled the Commissioners had decided to add "Items of Interest from the CCI" to each agenda. Chair Martin invited CCI comments but there were none.

ADJOURNMENT

There being no other business, Chair Martin adjourned the Planning Commission meeting at approximately 8:32 p.m.

APPROVED:

  
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Robert Martin, Chair

9/7/2011  
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Date