



PLANNING COMMISSION

**WORK SESSION**

Minutes of August 1, 2012

- Members present: Chair Michael Babbitt , Vice Chair Gail Holmes, Thomas Frank, Robert Martin, and Christine Steel
- Members absent: Russell Axelrod and Holly Miller
- Council Liaison: Mayor John Kovash
- Staff present: John Sonnen, Planning Director; and Damien Hall, City Attorney

**CALL TO ORDER**

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 6:48 p.m.

**PUBLIC COMMENTS**

Kevin Bryck, 18840 Nixon Ave., related that the Great Neighbor Committee wanted the Commission to explain what had occurred and why at the water treatment plant hearing and what the procedure would be at the combined hearing. Mr. Sonnen offered to provide Mr. Bryck with a copy of the staff's written response. He reported that the applicant did not plan to combine the applications. The hearing on both the water plant and pipeline would be in October, but there would be two separate staff reports and decisions. The Commissioners would be briefed on procedure prior to the hearings.

**APPROVAL OF MINUTES**

Commissioner Steel **moved** to approve the Minutes of June 27, 2012. Vice Chair Holmes **seconded** the motion and it **passed** 4:0:1. Commissioner Frank abstained.

55:38

**WORK SESSIONS**

**Discuss Planning Commission decisions and associated findings**

The Commissioners asked questions related to the extent to which the Commission could urge an applicant to change a proposal. One of the concerns was how to proceed when a Commissioner was concerned about a technical aspect of the application that was not directly regulated by the code. Mr. Hall advised the Commission could only unilaterally impose conditions that would bring an application into compliance with code. Beyond that they could suggest ways the applicant could improve the project and the applicant could either decline or volunteer to do it. If the applicant was willing to work with the Commissioners on a non-code-related aspect of the project and agreed it could be addressed in the conditions of approval. Chair Babbitt cautioned the Commissioners not to go so far as to seem to be bullying the applicant.

One of the concerns was that a Commissioner might feel a particular condition of approval was unnecessary and went too far and vote against approval because of that. That would not be fair to the applicant. Mr. Hall advised denial had to be rooted in the code. The only grounds for denial were that the application did not meet all of the applicable code criteria. When a Commissioner wanted to vote against an application he/she should be ready to provide an explanation related to what code was not met. Mr. Sonnen related that if the Chase Bank application had been denied the City would have had a hard time supporting that denial. Chair

Babbitt recalled a time when each Commissioner cited the specific code basis for his position. He advised that 'yes' or 'no' explanations helped clarify which findings each Commissioner supported or did not support and it helped give the Planning Commission more credibility. He cautioned against basing a decision on feelings and hoping the staff would come up with a way to support it.

Mr. Sonnen and Mr. Hall advised that the findings typically offered the underlying rationale for a decision. If a Commissioner had an issue with a staff-proposed finding or condition of approval they should raise it during the hearing before the decision so everyone heard it, it could be determined whether it was part of the position of the entire Commission, and staff could capture it in the decision document.

1:20

### **Debriefing of recent cases – Bland Pump Station and Chase Bank**

The Commissioners postponed discussion of the Bland Pump Station case. They discussed the Chase Bank case. Chair Babbitt expressed his concern that the Commissioners had extensively discussed things that would require changes to the site plan, such as traffic direction and creating new driveways. Mr. Hall advised the Commissioners to keep in mind the distinction between their quasi-judicial and legislative roles. He recalled there had been a legislative type of conversation going on during the hearing about what the city's policy should be for street frontage while the applicant in front of them had to meet a specific code that embodied the city's established policies. That kind of left the applicant 'twisting in the wind.' Mr. Sonnen related it had been particularly troublesome when the applicant was adhering to the code but some Commissioners who clearly did not agree with the code and were basically suggesting the applicant get a variance from meeting the code. The applicant would not have been able to get the variance they seemed to be suggesting. A variance was only to account for things such as not being able to meet the code due to an odd lot configuration or physical constraint. Clearly, there was no physical constraint preventing the applicant from meeting the code. Mr. Hall clarified that there was nothing wrong with questioning the applicant about the thought process and the logic behind whatever they proposed and asking them to provide the Commission with more testimony and evidence that they were complying with a code requirement. However, the discussion should not turn into, 'You should really do it this way.'

Commissioner Martin recalled his concern about the numbers reported by the applicant's traffic expert. Mr. Hall agreed that it would be good for a Commissioner to identify something he did not believe met the standards by sharing that with the applicant up front. The Commissioner could explain that and ask the applicant to convince him/her otherwise. Then the applicant would have an opportunity to either try to convince the Commission otherwise or provide more information to demonstrate that. There would be time for the Commissioners and the applicant to work collaboratively and the applicant could do something to change the project to meet the standards. If the problem was not identified until deliberations the applicant would not be allowed to provide any more information. Commissioner Steel was concerned about Commissioners 'engineering from the dais' and with one Commissioner saying something that gave the impression that was the viewpoint of the other six Commissioners. One suggestion was to voice that concern so the applicant was aware that not all Commissioners were in agreement. The applicant had the responsibility of convincing the majority of Commissioners that the application satisfied the criteria.

### **ITEMS OF INTEREST FROM THE PLANNING COMMISSION**

12:42 to 41:47

The Commissioners edited a draft letter to the City Council regarding sports courts.

41:47 to 55:38

Commissioner Martin suggested crafting an ordinance that would allow someone who perceived an activity was a nuisance to pay a fee and ask the Planning Director to declare the activity a nuisance. The decision would be appealable to the Council. If the Council agreed it was a nuisance the nuisance creator could continue the activity if they came to some agreement with all of their neighbors about how to alleviate the nuisance. The Commissioners asked Mr. Sonnen to find out if the Council would support such an ordinance.

1:37

Mr. Hall was asked if the Commissioners should attend pre-application conferences or neighborhood association meetings that discussed a project that would be heard by the Commission. He advised them to avoid attending either type of meeting. It was not illegal to do so, but the Commissioner who attended would have to keep close track of discussions related to the merits of an application and then accurately disclose them all as *ex parte* communications. From a practical perspective what was discussed at pre-application meetings might look very different from the application that was eventually submitted.

#### **ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT**

See Mr. Bryck's comments under 'Public Comments'.

#### **ITEMS OF INTEREST FROM STAFF**

The Commissioners agreed that Mr. Sonnen could draft changes to Planning Commission rules for them to consider. The changes related to allowing work sessions to be televised and changes in meeting times. Mr. Sonnen had arranged for each Commissioner to be able to access digital back copies of *Planning Commissioners' Journal*. New Assistant City Attorney Megan Thornton was going to be advising the Commission. Mr. Hall was working with her to create a smooth transition. He updated the Commissioners on the status of the WRA recommendations.

#### **ADJOURNMENT**

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 8:45 p.m.

APPROVED:



Michael Babbitt, Chair

9-19-12

Date