



CITY OF West Linn

PLANNING COMMISSION

WORK SESSION

Minutes of July 31, 2013

Members present: Chair Michael Babbitt, Vice Chair Christine Steel, Lorie Griffith, and Robert Martin.

Members absent: Russell Axelrod, Nancy King, and Holly Miller

Staff present: John Sonnen, Planning Director; Chris Kerr, Economic Development Director; and Megan Thornton, Assistant City Attorney

CALL TO ORDER

Chair Babbitt called the meeting to order in the Council Chambers of City Hall at 6:30 p.m.

PUBLIC COMMENT

Karie Oakes explained the neighborhood associations had not had enough time to consider and comment on the proposed “cut the red tape” amendments. She asked the Commission to slow the process down to allow time for that. Her neighborhood association had heard Mr. Kerr’s presentation on Tuesday, but they had not had the red-lined version the Commissioners were looking at that night. It was reasonable to expect them to know more about it so they could comment to the Planning Commission on legislative matters. She talked about notification. The process had begun in March. She knew the Planning Director had notified the neighborhood association presidents’ group at the end of the previous month. That was the first time she had heard of the proposal. She asked the Commission to remember the citizens were the biggest stakeholders and deserved better. She asked them not to make economic development a larger goal than maintaining quality of life. She related that the Savannah Oaks Neighborhood Association was going to discuss the proposal the following week. She reported that it had been a challenge to find the material on the website. Chair Babbitt said he appreciated her comments. He related that the Commissioners had just received the code package. The point of this work session was to take a first look at it prior to the hearing.

APPROVAL OF MINUTES

Commissioner Martin **moved to approve the Minutes of June 19, 2013.** Vice Chair Steel **seconded** the motion and it **passed 4:0.**

WORK SESSION

Review and discuss the proposed CDC amendments prior to the hearing on August 7

Mr. Kerr reported that in the past two weeks he had removed some items originally proposed to be included in the cut the red tape project because the Commissioners’ suggested the package should focus on amendments that were more directly related to the stated purpose. There had also been a City Council work session which resulted in elimination of some items.

The idea of a special waiver for commercial development the Commissioners had suggested had been well received by the Council. He clarified for Commissioner Martin that the proposed amendments did not propose a process that would allow the Commission to listen to and provide feedback to a potential applicant about their conceptual plan. Mr. Kerr was not sure how to achieve that. Ms. Thornton advised that type of process really did not give an applicant anything to hang their hat on and an application had to be complete before it came to the Commission. Commissioner Martin asked the Commissioners to think of other ways to remove some of the uncertainty for the applicant. Mr. Kerr added that he was scheduled to present the project at the Savannah Oaks and the Willamette Neighborhood Association meetings. Mr. Kerr clarified for Chair Babbitt that the list of potential amendments had been compiled by an Economic Development Committee work group that had surveyed the business and development community. He assumed neighborhood associations had gotten the information from people who saw the proposal on the agendas for all of the Committee meetings and five Planning Commission and City Council meetings; because they were among the 9,000 households on the mailing list and 2,300 people on Facebook; and via the e-blast.

Chair Babbitt clarified that the purpose of the work session was to look at and offer suggestions to the staff regarding the document that had been prepared for the public hearing. The Commissioners then discussed the following aspects.

Removing the City Council Goals from 2003 in the Comprehensive Plan. Mr. Kerr recommended deleting it. He related the Councilors had differing opinions about that. He and Ms. Thornton advised against having it in the Plan because then the Plan would have to be changed each year to reflect goal changes; it would be a moving target; it was not necessary to have them in the Plan; and City Council goals were usually meant to achieve some kind of specific, shorter-term, end result. Mr. Sonnen observed each Council reset its goals each year. It was not a long-term guidance document binding future Councils.

Commissioner Martin wanted to have the goals in the Plan so they could be used to influence development decisions; provided something to measure against; and offered the vision/direction the City aspired to go toward. He wanted, for example, to be able to base the determination regarding whether conditional use of the police station met the criterion that called for meeting a community need. He also wanted the goal to oppose urbanization of the Stafford triangle in the Plan.

Vice Chair Steel and Commissioner Griffith each indicated she could agree with deleting the goals section from the Plan. Commissioner Griffith considered the goals section more of a working document than a visionary document. Chair Babbitt anticipated it could be confusing if the goals changed during an application process. He noted they were so broad and generic that it would be messy and difficult to come up with facts and findings to support a decision. He advised that if there was a City Council goal that required a Comprehensive Plan change they could go through the public process to do it. Then it would be implemented in the CDC and could be used for Planning Commission decisions.

Vice Chair Steel suggested terms such as 'exemplary quality of life' and 'spread wealth' implied greed or an exclusive area and were not necessary. Ms. Thornton clarified the proposed modified definition for Conditional Use was the current CDC definition. They should be consistent. The Commission had to base its decisions on the CDC definition and the criteria in CDC 60.070, not the definition in the Plan.

Goal 9: Economic Development. Chair Babbitt objected to removing a paragraph that explained that the residents of the City had clearly expressed an interest in retaining the City's quiet residential character. Mr. Kerr indicated that could be elsewhere in the Plan but he recommended against having it in the Economic Development section of the Plan. He referred to the community survey where people indicated they wanted to see a mix of uses and more vitality in commercial areas along Highway 43 for example. Chair Babbitt commented that people would indicate they wanted economic development, but not at the cost of increased noise, traffic and pollution.

The Commissioners examined the economic development policies. Commissioner Martin suggested they should call for the City to provide high speed internet infrastructure as a public utility. It would be a bold step, but other cities were doing it. It would help West Linn attract more low-impact, home based, businesses. Chair Babbitt and Commissioner Griffith observed there were recommended action measures that would allow the City to explore the kind of thing Commissioner Martin was suggesting. Vice Chair Steel would keep the policies more general to avoid unintended consequences. She questioned whether what he suggested should be the City's responsibility. She recalled the challenge of approving a cell phone tower due to concern about the effect of waves on people. She liked the fact that staff had added a policy regarding promoting tourism.

1:07

LAND USE APPEALS

Mr. Kerr talked about a change in how to gain standing to appeal a decision. It meant that people would only have standing if they completed the Testimony Form. Chair Babbitt and Commissioner Martin noted that meant the Commission would need to change the chair's script to explain that.

The proposed amendments changed the type of appeal hearing from *de novo* to on-the-record. Neighborhood associations would no longer be able to appeal for free. They would have to pay the filing fee. Mr. Sonnen advised charging a fee would deter frivolous appeals. He recounted some egregious appeals that had cost the taxpayers and applicants a lot. It could be a nominal fee. The City provided a stipend to neighborhood associations they could use to pay the fee. Mr. Kerr asked why neighborhood associations should be allowed to appeal for free when homeowners associations could not. He advised neighborhood associations had another no-cost avenue if they could convince the City Council or the Planning Commission to revisit their decision. He and Mr. Sonnen explained that a \$400 fee would not come close to capturing the cost to the City. The intent was not to recoup the cost, but to try to avoid unnecessary cost.

Mr. Sonnen recalled a previous City Attorney had advised that *de novo* appeals were an anomaly. He anticipated an on-the-record appeal would encourage people to argue their best case at the Planning Commission level. He said staff would not be averse to having a lower appeal fee threshold for on- the-record appeals.

Commissioner Martin indicated he agreed with the change from *de novo* appeal but he was concerned it would discourage neighborhood association involvement if it was more difficult for them to appeal because of the fee and requiring the appeal to be based on specific criteria. Vice Chair Steel suggested cutting the fee in half for them. She indicated that changing to an on-the-record appeal might help. Commissioner Griffith indicated if the City wanted to cut red tape and tighten up in order to be more efficient and fiscally responsible closing loopholes people used to abuse the process would help. She noted a neighborhood association that did not have the funds to appeal could ask the City Council to waive the fee. Commissioner Martin cautioned they needed to create more opportunities for review and involvement, not lock people out. If an association did not have \$400 to pay for an appeal and the other avenues were not available to them they would have to get the money from their members. He would have it on the record that any neighborhood association that did not have \$400 to pay for an appeal could come to him and he would give them the money.

1:31

VARIANCES AND SPECIAL WAIVERS

Vice Chair Steel suggested making it clearer that the special waiver was for commercial planned developments.

The Commissioners discussed Class II Variance Approval Criteria. Criterion (a) called for the variance to be *the minimum variance necessary to make reasonable use of the property*. It listed factors that might be considered in making that determination. The discussion was primarily focused on a factor that related to the economic impact on the person who requested the variance if the variance was denied. Ms. Thornton explained that when she crafted this section her goal had been to move away from 'economically viable use' being the smallest and least impactful use possible. The new language would give the Commission more discretion and flexibility in determining if something was reasonable use. The listed factors were just examples for the applicant's benefit of the kinds of evidence the Commission would be expecting to see that demonstrated the applicant proposed reasonable use. She offered the example of an applicant who had purchased a property for a restaurant to serve a certain number of patrons and then found they could not have that many of patrons. They could ask the City to allow them to seat a few more people in their restaurant. She clarified the applicant would have to show it was reasonable use in that zone and that they met all of the other criteria as well.

Vice Chair Steel and Chair Babbitt viewed this as too open-ended and problematic. She suggested the hypothetical applicant should have considered that before they bought the property or considered another type of restaurant or another kind of enterprise. Commissioner

Martin indicated he liked the concept of reasonable use, but he was not sure about the factors. He recalled when the Commission looked at economic viability as just the minimum economic use allowed to avoid a taking, a hotel and an office building applicant had each stated what they proposed was the smallest hotel or office building they could build. He referred to the factors and commented that the City should not be in the business of subsidizing bad decisions. Commissioner Griffith questioned why a purchaser should get a Go Card because they had not done due diligence when they bought the property. Vice Chair Steel characterized it as using a sob story as a trump card. Mr. Sonnen observed that the basic idea with the current code was to avoid a taking and allow some minimal economic use that would hold up under a legal challenge. He noted that was very different from trying to provide a lot of flexibility.

Chair Babbitt was concerned every applicant would start asking for waivers if it was easier to get a waiver than a variance. The result would be subpar development. He preferred the concept they had put in the PUD code. It offered flexibility if the applicant proposed a design that was superior to what could be built under the code and met the intent of that code. Commissioner Martin suggested having waivers negotiated through the Economic Development Department before they came to the Planning Commission. Mr. Kerr explained he was not sure how to incorporate that component into the code. Commissioner Martin suggested that if waivers served no constructive purpose they were better off just staying with variances. Mr. Kerr distinguished between waivers and variances and explained the variance criteria were about hardship - not a better design. He planned to work on language that called for a design that furthered the intent and purpose of the regulation being waived so it was better than what would result under the code. The Commission then took a five minute break.

2:06

Commissioner King's comments. Chair Babbitt called attention to comments Commissioner King had emailed. One was that she still wanted to get a sense of where the vision for development would be focused. He agreed with her that a lot of what they were doing was related to streamlining the process and making it easier for commercial development. He noted some of it would definitely save the City money, but saving money and economic development almost seemed like two different things. He noted businesses were constantly failing down in Willamette and on top of the hill because they could not afford the high rents. He hoped in all of this they tied economic development to helping the City's businesses and residents prosper and it was not just about fast-tracking to save money and get more development. Mr. Kerr agreed to explain the bigger picture that this was about removing regulatory barriers and adding more flexibility to the code; and, yes, it would make it easier to do things. There was not much land available for commercial uses, so the City could expand the development potential on the land it had to provide a greater variety of services and more opportunity for businesses.

Commissioner Martin was concerned the City would get the kinds of businesses it did not want, such as auto repair and used car sales. Ms. Thornton and Mr. Kerr advised that the code specifically listed permitted uses and uses that could be permitted with a conditional use permit for each zone. If a use was not listed it was not allowed in that zone. They clarified that

variance criteria were not for use so there was no way to get a variance to have a use that was not allowed in a zone. Mr. Kerr agreed with Chair Babbitt that the City could use waivers to encourage developers to provide a superior design and benefit to the community. One past situation where waivers might have been used, for example, was Chase Bank's request to have a water feature in front. Mr. Kerr agreed to work on the language so it was clearer that a waiver was for an applicant who could meet the code, but wanted to do something differently. Commissioner Martin inquired how that would bring businesses to the City that had not considered coming or were not able to come today because of the code.

2:30

APPROVAL AUTHORITY

The proposed amendments would give the Planning Director authority to decide some types of applications the Planning Commission currently decided. Commissioner Martin was concerned that made the applications subject to much less public scrutiny. He would continue to have the Commission hold public hearings when parks were proposed, for example, because people were passionate about them and that kind of scrutiny resulted in better parks. He would have the Planning Commission do design review, because they caught errors. He questioned how this change related to Economic Development. Ms. Thornton advised the director would decide cases when there was little or no discretion involved. The applicant (even if it was the City) would either have met the criteria and the application had to be approved, or they would have not met it and it could be denied or conditioned to meet the criteria. The Planning Commission would still hear applications that required more discretion, such as requests for variances, conditional use, and PUDs. Vice Chair Steel had similar concerns as Commissioner Martin. She did not support the change that would allow the Planning Director to review subdivisions with as many as 25 lots. That was too large to not be decided in a public hearing process. Chair Babbitt agreed with Commissioner Martin and Vice Chair Steel. He recalled that citizens at public hearings had charged that the Commission was letting the staff make the decisions. The City had been trying to regain citizens' trust. Giving the decision-making power to one person could violate that trust. He agreed errors got caught in public hearings and sometimes the result was better development. When applicants knew they were going to be in a public hearing with an audience and public testimony they tended to put their best foot forward. He observed the majority of Commissioners were concerned about the proposed change.

2:55

BUILDING PERMITS FOR AN APPROVED CONDITIONAL USE

Approval criteria A.3 and A.7 were proposed to be changed as follows:

~~3. The granting of the proposal will provide for a facility that is consistent with the overall needs of the community. The proposal will not have significant adverse impacts on the livability or usability of nearby properties due to issues such as, but not limited, to: noise, glare from lights, late-night operations, odors, litter, or privacy and safety issues.~~

7. The use will comply with the applicable policies of the Comprehensive Plan. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, or precludes the use of surrounding properties for permitted uses in the zone.

Vice Chair Steel observed the two versions of A(3) were completely different. She would keep the current one. Chair Babbitt recalled in the water treatment plant case the City Council had disagreed with the Planning Commission's definition of what overall benefit to the community was. The proposed criterion was more specific. Vice Chair Steel recalled the City Council's interpretation was that the 'community' was a larger community than just West Linn. She felt the intent of the existing language was that the neighborhood that was hosting the utility would also benefit from it on a day-to-day basis.

Ms. Thornton offered a legal perspective. The existing language was incredibly nebulous and could be interpreted a number of ways. After all of the water treatment plant hearings and in preparing the LUBA documents she still did not know that there had been an interpretation of or full agreement about exactly what 'community' meant. The proposed language had been prepared to get away from the issue. It was not quite so open to interpretation and offered some grounding as to what it was looking for without losing the discretionary ability to decide if something was a good fit, which was the ultimate goal of the conditional use process. She thought the proposed language for A(7) got at exactly what the Comprehensive Plan was trying to do but was more straightforward about what they were looking for.

Vice Chair Steel explained she felt the concept in the existing A(3) language was that there was an advantage to (a trade-off for) the disadvantage being imposed on the community. That concept would be lost if they removed the existing sentence. Perhaps they could keep it and try to replace 'community' with some other word that was more specific. Commissioner Martin interpreted the existing language as saying, "Do no harm, but also do some good." He contrasted that with the proposed language that indicated just, "Do no harm." They would not be able to require anything beyond that. Chair Babbitt noted that schools, churches, and fire and police stations were conditional uses that implied benefit to the community. He tried to think of some that did not have that implied benefit. Mr. Sonnen suggested major facilities like water or transmission line that crossed jurisdictional boundaries and provided a benefit to some other community. If the Commissioners wanted to consider that approach staff would re-craft the language to be more explicit about it rather than having this so broadly interpreted. Chair Babbitt asked staff to work on recommended language.

Commissioner Martin was concerned about loopholes in the CDC that would require the Commission to allow uses (such as a used car lot on Highway 43) that were not on the list and not wanted. Ms. Thornton advised a use would never be allowed that was not on the list of uses in each zone in the CDC; and a use had to be listed as a conditional use before the conditional use criteria were applied. She and Mr. Kerr advised if the Commission did not want to see a particular listed GC use along Highway 43 they should strike that use from the list so it

could never be there. She advised the Commissioners against trying to use the Comprehensive Plan instead of the CDC to get out of something they did not like.

3:11

GREATER FLEXIBILITY

Permitted Uses. The proposed amendments listed uses that would be permitted outright and uses that would be permitted as conditional uses in the GC zone. Extended-hour businesses were currently permitted (with CUP required if new a building was constructed or an existing building was expanded). Staff proposed to strike the CUP qualifier. They also proposed to change hotel/motel to permitted use. They noted the City was interested in having a hotel. At the end of this discussion Mr. Kerr observed the Commissioners wanted staff to craft language that made all extended-hour businesses get conditional use permits, with the exception of a hotel/motel.

3:20

Dimensional requirements. Mr. Kerr pointed out the proposed height limits in some multifamily and commercial areas were going to be expressed as number of stories. Developers had suggested that. They had explained it was important to increase the density in corridors and town centers in order for developments there to be successful. Chair Babbitt and Vice Chair Steel were concerned that 'stories' did not really define the height. Mr. Sonnen related what he had read. Measuring height to the top of the roofline encouraged people to build flat roofs. The City currently measured height that way. Allowing three stories, for example, with a kind of lofting on top, would make a building look more architecturally interesting. He understood that an elevator had to be put in at some point and the building would have to be of sufficient size to justify that cost. What was proposed allowed a development to hit the 'sweet spot' where it penciled out at five or six floors. He suggested the City could be selective about where that was allowed to occur. He related that in the past a mixed-use development had been considered at Central Village that he believed everyone would have been pleased with but the application had never been submitted. Being allowed to build 35' to the eave would have satisfied that developer. Chair Babbitt suggested that 'story' should be defined and it should be clear if the underground level was counted as a story. Mr. Kerr anticipated the language could say something like, 'four stories, not to exceed x feet'.

Commissioner Martin was concerned about what kind of lots neighborhoods would see if the standard that prescribed relative proportions of lots was struck. Without it, there was nothing the Commission could do to prevent incompatible infill the neighborhood did not want. Mr. Kerr clarified for Chair Babbitt that he had not received much feedback on the issue of transition area height. Mr. Kerr related that builders had asked for relief from prescribed lot depth because it was a very restrictive requirement. His goal was to allow more flexibility. He clarified the existing standard did not keep houses from being really close together because people could build to the minimum setback from the property line no matter how large their lot was. Chair Babbitt indicated he did not want to remove the standard entirely. He suggested staff look for language that did not require perfectly rectangular lots but did not allow lots that were especially narrow and deep either.

At 10:20 p.m. the Commissioners agreed to end the work session and looked forward to the hearing on August 7.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Mr. Sonnen clarified that a recommendation forwarded by the Planning Commission would be a separate, stand-alone document. If staff wanted to recommend alternative code language it was to be forwarded in a staff memorandum. He confirmed IT had received the electronic tablets. He and Mr. Kerr reported negotiations over Library offsite parking were ongoing and the contract to build the new Library parking lot had been let. Ms. Thornton confirmed she was working on legal aspects of the Trails Master Plan. Vice Chair Steel asked if any Commissioners had gone to the open house. None of them had.

ITEMS OF INTEREST PERTAINING TO THE COMMISSION FOR CITIZEN INVOLVEMENT

Mr. Kerr confirmed that all neighborhood associations had been notified and had a copy of the draft amendments.

ITEMS OF INTEREST FROM STAFF

None.

ADJOURNMENT

There being no other business, Chair Babbitt adjourned the Planning Commission meeting at approximately 10:30 p.m.

APPROVED:



Michael Babbitt, Chair

10-16-13

Date