



CITY OF
West Linn

PLANNING COMMISSION

SPECIAL MEETING

Minutes of September 11, 2013

Members present: Russell Axelrod, Lorie Griffith, Nancy King and Robert Martin
Members absent: Chair Michael Babbitt, Vice Chair Christine Steel and Holly Miller
Staff present: John Sonnen, Planning Director; and Zach Pelz, Associate Planner

CALL TO ORDER

The Commissioners convened in the Council Chambers of City Hall at 5:42 p.m. Commissioner King **moved** to designate Commissioner Martin to serve as chair for this work session. Commissioner Axelrod **seconded** the motion and it **passed** 4:0. Acting Chair Martin then called the meeting to order.

APPROVAL OF MINUTES

Commissioner King **moved** to approve the Minutes of July 17, 2013 with changes by Commissioner Axelrod. Commissioner Griffith **seconded** the motion and it **passed** 4:0.

WORK SESSION

Discuss proposed CDC and Comprehensive Amendments intended to eliminate ineffectual and inefficient regulations to encourage positive economic development (“Cut the red tape project”)

The Commissioners discussed the August 23, 2013 version of the proposed amendments [also referred to as the September 4, 2013 hearing draft]. Commissioner Axelrod had missed two prior work sessions. During this work session the Commissioners considered his questions, suggestions and comments. He indicated he disagreed with the overall approach. He preferred to take a targeted approach to individual districts rather than a one-size-fits-all approach. He noted areas such as Arch Bridge, Robinwood, and Willamette would need to be addressed differently. Commissioner King was concerned they did not know if a code change would be good for one district and bad for another. Commissioner Martin suggested they craft the proposed amendments the best they could and then each write to the City Council expressing their concerns. Commissioner Axelrod suggested Citizen Vision Goals should be identified as something the Planning Commission was proposing.

GOAL 9: ECONOMIC DEVELOPMENT

Under Background and Findings the Commissioners considered removing a specific reference to the Arch Bridge on page 5, but did not after noting it was just used as an example. Commissioner Axelrod suggested ‘within 20 minutes of the Portland International Airport’ was actually more like 30 minutes. The Commissioners discussed the paragraph on page 5 to the

effect that 'the residents of the city have clearly expressed an interest in retaining the city's quiet residential character.' Staff had recommended deleting it. Commissioner Martin would retain it because it reflected the values of the citizens in that it reflected the results of the last real survey in 1998. The more recent survey of 60 business owners was not a real survey of the citizens. Mr. Pelz advised that a professionally conducted, statistically valid, survey had been done to gauge public opinion before the City Council set priorities. Economic development was the second of the four top priorities of residents. The Commissioners asked for the details of that survey. Commissioner Martin recalled the survey he had cited asked them where they were on the trade-off between economic development and preserving the character of the City. They said they wanted to concentrate on existing businesses and preserve what they had.

Policies

- 4. Provide adequate commercial and industrial land for a range of employment opportunities in the City.**
- 5. Make the most efficient use of our existing commercial and industrial lands.**

The Commissioners asked if staff intended these policies to mean rezoning. Mr. Sonnen advised that state law and Metro required the City to demonstrate it had the capacity to satisfy metropolitan housing and employment projections. Typically that meant maximizing the utility of existing spaces. He advised there was no harm in removing the goal that just parroted state law. Mr. Pelz advised rezoning was not part of this proposal. Commissioner Martin observed the Commission would keep this language.

Recommended Action Measures (RAMs)

RAM 9: 'Develop and maintain a good working relationship with the West Linn-Wilsonville School District.'

Commissioner Axelrod noted this was one of the old City Council goals. Mr. Pelz explained staff's objection to having City Council goals in the Comprehensive Plan was strictly a matter of legal technicality. They supported the ideas, but thought they were in the wrong place. The Commissioners did not change this RAM.

RAM 12: 'Create a special mixed-use zone and framework plan for the Arch Bridget area.'

The Commissioners agreed to add a similar RAM to do that in the City's other commercial centers as well.

37:02

LAND USE APPEALS

This version of the draft amendments required three members of the Commission to request a review of a planning director decision. The staff recommended requiring a majority. Mr. Sonnen and Mr. Pelz recalled Ms. Thornton had pointed out the Commission could not make a decision without majority agreement on any other matter. She was concerned the existing provision that required two members was not legally appropriate. They asked the

Commissioners to think pragmatically about what the chances were of a director's decision being upheld when an individual Commissioner asked for the review, but the majority of Commissioners did not support having that review. Commissioner Martin recalled the Commissioners had made it three, rather than 'a majority' due to the difficulty of communicating with the majority within the 14 day time period. He indicated he would now agree to say 'a majority' because the planning director himself had the ability to send the matter to the Commission if a Commissioner asked for that; and because if most were not inclined to hear the matter there was no sense in hearing it. Commissioner Martin polled the Commissioners and observed unanimous agreement to make that change.

Commissioner Axelrod suggested appeals of a planning director decision should be *de novo* hearings. Commissioner Martin noted if appeals of a Planning Commission decision were on-the-record hearings and appeals of a planning director decision were *de novo* hearings then all decisions would at some point have been made in a *de novo* type hearing by elected or appointed officials. Mr. Sonnen acknowledged there was no opportunity for a public hearing with oral testimony when the planning director made the decision. He felt that was a deficiency if the planning director was going to decide projects on the scale of a 25-unit subdivision. He would either want to have a public hearing by the planning director or cure the deficiency with a *de novo* appeal hearing. Mr. Pelz pointed out the planning director decided only non-discretionary matters. He cautioned that a *de novo* appeal hearing would give the applicant a 'do-over' at the City Council where they could totally revise their application. Commissioner Martin asked staff to insert language in the document calling for a *de novo* appeal hearing of a planning director decision and an on-the-record appeal hearing of a Commission decision.

VARIANCES AND SPECIAL WAIVERS

Commissioner Axelrod referred to criteria under Classification of Variances and suggested D. Landscaping requirements, 3. 'Will have no adverse effect on adjoining property' might not be strong enough. Points raised during that discussion were that 'no adverse effect' would not allow even an insignificant effect; and what was 'adverse impact' could be interpreted very broadly.

57:00

C. Special Waivers

This section listed what the applicant would have to demonstrate to be granted a waiver:

- a. **Demonstrates that the proposed development can comply with the regulation to be waived, but the waiver will provides an alternative means of furthering the purpose of the regulation to be waived; and,**
- b. **Will not be materially detrimental to the public welfare or injurious to other property in the area when compared with the impacts of development otherwise permitted; and,**
- c. **Provides adequate area for aesthetic design treatment to mitigate potential visual impacts from the use on surrounding properties and uses; and,**

d. The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, and natural features.

Commissioner Axelrod held the Commission should also be able to look at whether the waiver that was requested was compatible with Comprehensive Plan goals and policies. He would incorporate that into the language. He referred to (c.) and commented that there were more impacts to be considered than just visual impact. He referred to (b.) and commented it would be a challenge for the Commission to determine what was 'materially detrimental' and 'injurious'. Staff explained the change he was suggesting would make the City more vulnerable to overturn on appeal. The staff would have to go through the Comprehensive Plan and use a lot of staff interpretation and discretion to produce findings about which goals and policies were applicable. Commissioner Martin supported Commissioner Axelrod's suggestion because he wanted the Commission to be able to look at the Comprehensive Plan, which was the expression of the community's values. When Mr. Sonnen advised the language under (a.) 'furthering the purpose of the regulation to be waived' was comparable to the purpose of the Comprehensive Plan, Commissioners Martin and Axelrod agreed that was the link they needed.

A proposed Chapter 75 provision (E.) would not allow more than two Class II variances to be approved for any one lot in a 12-month time period. Commissioner Axelrod questioned why the code should allow two per year. He held the applicant should only get one shot. Mr. Pelz advised current code did not place any limit on the number of variances an applicant could get. Mr. Sonnen related that a proposal had come in that asked for a variance that affected several lots. He suggested this was too arbitrary and recommended eliminating it. He recalled Mr. Kerr's intent was to make people build to code by putting a cap on the number of variances. Commissioner Martin recalled when the Commissioners had previously discussed this they had agreed to the change.

PROCEDURAL AMENDMENTS (Chapter 99)

Commissioner Martin confirmed for Commissioner Axelrod that the Commission was not recommending any changes to the provisions related to neighborhood association involvement. He noted the EDC had not involved neighborhood associations in the process so it seemed inappropriate to recommend the changes now. Commissioners King and Griffith agreed. Mr. Pelz explained staff felt there were procedural hang-ups in the current language that opened the door to appeals. There were aspects of the noticing requirements that an applicant could easily miss. Commissioner Axelrod suggested providing them with a checklist. Commissioner Martin commented that he would include a requirement that the record of the neighborhood meeting had to be included in the hearing materials. That had been very helpful to the Commissioners because it showed what issues had come up that the Commission should focus on. Commissioner Axelrod did not support reducing the Commission's approval authority at all. Commissioner Martin recalled they had unanimously agreed it was not in the public interest to do that.

1:25

GREATER FLEXIBILITY

General Commercial Permitted Uses (Chapter 19)

Commissioner Axelrod questioned permitting 'Hotel/Motel' in every commercial area. He would remove 'Lodge, fraternal, community center, and civic assembly' and 'Religious Institutions' from the Permitted Uses list and make them conditional uses. At the end of this discussion Commissioner Martin observed all four Commissioners present (who were a majority of the Planning Commission) agreed with that. Points raised during the discussion were that those uses might be allowed if they met the vision for some of the targeted areas [referring to Commissioner Axelrod's earlier suggestion to establish special districts]; and as conditional uses the Commission could evaluate each proposal as it came forward and decide if it fit the proposed location. Mr. Sonnen distinguished between Highway 43, which was auto-oriented, Willamette, where people parked and walked to businesses. He advised if a use created a dead area it weakened that commercial area. Mr. Pelz recalled the rationale for making those permitted uses had to do with impacts. Their impacts were similar to the impacts of other uses in the commercial areas.

1:33

Zoning / Lot dimensions

~~4. The lot depth comprising non-Type I or II lands shall be less than two and one-half times the width, and more than an average depth of 90 feet.~~

Commissioner Axelrod asked the Commissioners to discuss keeping this requirement. At the start of the discussion Commissioner Martin clarified for Commissioner Axelrod that this draft needed to be corrected to reflect that the Commissioners had previously agreed to take (4.) out of the lowest density zones, because the math did not work, but retain (4.) in higher density zones starting with R10. At the end of the discussion Commissioner Martin summarized they would retain (4.) in zones R10 and below until the next round of EDC proposed code because it needed to be looked at in greater depth. Points made during the discussion were that a one-size-fits-all approach could allow uncontrolled skinny lot development where the residents did not want to see it; an analysis was needed to show what areas would be affected and how; there might be cases where this might make sense and the result might be compatible; it might fit the vision for some special districts with mixed-use; the City should not use this to see how loaded it could make the tax roll; and a developer could apply for a variance.

Staff's rationale for the change was that it would allow a little bit more flexibility in the configuration of subdivisions. Mr. Pelz explained it allowed a narrow average lot width but the width could not be less than the minimum allowable frontage and the developer had to meet the existing lot square footage and setback requirements. Mr. Sonnen advised that many jurisdictions focused on the width at the street and not the width further back on the lot because it was the spacing of houses along the street that was important to the character of the neighborhood; developers tried to create marketable lots that had a shape that would accommodate most building plans and was relatively flat; and there were existing zero lot line

developments. Mr. Pelz and Mr. Sonnen discussed example situations involving parcels constrained by Type I and II lands or infill between two streets. Mr. Sonnen advised if they retained (4.) they should include some specific exceptions for situations where the lot creation was constrained by things like existing road alignment. He suggested the Commission could look at where to allow smaller lots in certain areas in a separate effort. Commissioner Axelrod asked for an analysis. He explained he was concerned about the combined impacts on neighborhoods of this change together with the proposed changes related to parking and tree management. He noted in higher density zones, starting with the R7 zone, minimum lot width would go from 50 ft. to 35 ft.

1:49

Parking (Chapter 46)

Computation of required parking spaces and loading area

Commissioner Axelrod was concerned about on-street parking. He noted the proposed Minimum Parking Space Requirements for Multi-family residences could mean that a 20-unit complex of two bedroom apartments whose residents might have a total of 40 cars would require ten cars to be parked on the street. He was also concerned about the change that allowed stacking one car behind the other when the parking spaces were allocated to specific apartments. He advised that should depend on them being appropriately designed for aesthetics and safety.

Mr. Pelz clarified the on-street parking change would not apply in any residential zone, but it would apply to commercial/residential buildings in mixed-use zones. He noted the current code did not allow any on-street parking to count toward the parking requirement. The current requirement for a mixed-use building was the sum of the parking requirements for all of its uses. Adopting this proposal would mean the residential portion of a mixed-use building would have to have enough off-street spaces but the commercial portion could count on-street spaces. He noted the City could not guarantee that its residents would not park on the street. He advised there were existing parking design standards that would apply. He noted some townhouses with garages on the first floor featured stacked parking. Commissioner Axelrod inquired about the reason for the proposed rate changes. He commented they did not leave much room. Mr. Pelz explained the proposed rates in this section were consistent with Metro's Regional Transportation Plan, which required one parking space per 1,000 s.f. of gross leasable area. He advised the regional goal was to reduce the amount of land dedicated to parking. The calculations were typically based on Institute of Transportation Engineers (ITE) calculations. The Commissioners recessed for about 14 minutes and then reconvened the work session.

2:11

Tree Protection (Chapter 55)

Existing language (proposed to be struck) under 55.100(B):

~~PROTECTED AREA = DRIPLINE + 10 FEET~~

~~b. Non-residential and residential projects on non-Type I and II lands shall set aside up to 20 percent of the area to protect trees and tree clusters that are determined to be~~

~~significant, plus any heritage trees. Therefore, in the event that the City Arborist determines that a significant tree cluster exists at a development site, then up to 20 percent of the non-Type I and II lands shall be devoted to the protection of those trees, either by dedication or easement. The exact percentage is determined by establishing the driplines of the trees or tree clusters that are to be protected. In order to protect the roots which typically extend further, an additional 10-foot measurement beyond the dripline shall be added. The square footage of the area inside this "dripline plus 10 feet" measurement shall be the basis for calculating the percentage (see figure below). The City Arborist will identify which tree(s) are to be protected. Development of non-Type I and II lands shall also require the careful layout of streets, driveways, building pads, lots, and utilities to avoid significant trees, tree clusters, heritage trees, and other natural resources pursuant to this code. Exemptions of subsections (B)(2)(c), (e), and (f) of this section shall apply. Please note that in the event that more than 20 percent of the non-Type I and II lands comprise significant trees or tree clusters, the developer shall not be required to save the excess trees, but is encouraged to do so.~~

Proposed language:

- c. New development shall preserve existing trees where feasible and shall plant new trees if needed.**
- a. At least 20 percent of the significant trees on non-Type I and II Lands shall not be removed, unless the City Arborist determines these trees are hazardous to public health, safety or welfare. The City Arborist shall identify the tree(s) to be preserved.**

At the end of this discussion the Commissioners agreed to retain the existing code but asked staff to work on language to the effect that *the tree protection set-aside was to be at least 20% of significant trees or 20% of the area, whichever was more ecologically beneficial, at the discretion of the City Arborist.* During the discussion the Commissioners looked at the City Arborist's memorandum and table. Commissioner Axelrod advised tree protection was about more than just protecting isolated trees. It was about preserving other aspects such as habitat, understory, and the soil quality of undisturbed lands. He said the existing code recognized that. He recalled Julia Simpson's testimony that they had compiled a lot of research and it was the basis for the current code. He suggested the Commissioners look at it. He asked to see an analysis of whether saving 20% of the trees or saving 20% of the area of the trees would preserve larger areas. He assumed the objective of the proposed change was to expand the area of developable land. He did not support making the change if that was the basis for it. He advised that protecting the root zone was very important. The zone might be a little different for some trees, but for the most part the existing protection area protected the roots of the kinds of trees that comprised the majority of trees in West Linn's tree canopy: firs, oaks, maples and alders. He was concerned about the combined impact on neighborhoods of this change and allowing skinny lots. He would keep the existing code. He noted an applicant could

apply for a variance to address a hardship and then the City Arborist could provide an evaluation and a potential alternative approach.

During the discussion Mr. Pelz clarified the proposed code would potentially apply on any lot that was large enough to partition or subdivide. He advised regarding the statewide mandate to protect rural farmlands and focus development within the Urban Growth Boundary. He advised there would be a million more residents in the metropolitan area by 2035. To accommodate those people and take pressure off of areas outside the UGB they had to think about ways to make development of land less restrictive. Staff's perspective was that setting aside wholesale areas of a site to protect trees might not be the most efficient use of that land. He noted in certain cases what was proposed might better protect trees. He related that staff had seen developers work hard to keep trees even when they were not required to because they knew that the presence of trees on a property added value to it. He showed aerial photos of the metropolitan area's existing tree canopy and advised that a large portion it was protected in parks and natural areas. He confirmed that West Linn had the highest percentage of total acres consumed by tree canopy of all cities in the region. 33% of West Linn's canopy was within the City's parks and open spaces and 7% of the City's total canopy was in Mary S. Young Park. Additional canopy in WRAs and on steep slopes was protected by other city regulations. What was proposed would not change that. It would give the City Arborist more opportunity to pick and choose which trees should be protected. Mr. Pelz showed a graphic to illustrate that because some trees had deep roots and required a smaller protection area than the current code prescribed, what was proposed could actually result in protecting a larger area when trees were scattered around a site. He advised the proposal gave the City a legal basis for protecting trees. Staff had historically misinterpreted the existing code, which specified the set-aside was 'up to 20% of the site for tree protection.' That did not necessarily mean 20% was required. Many applicants had not understood that. Some who did suggested saving a lower percentage during preapplication conferences. But they were usually willing to work with staff because they understood trees added to the value of the property. The proposal was to change the code to indicate that the City Arborist could require at least 20% of the trees to be set aside. He noted that an applicant would tend to save whatever 20% worked best for their development. It might not include trees the City Arborist had determined were extremely significant.

2:28

The Commissioners indicated this change and how it was related to economic development was hard for them to understand and explain to citizens. There was a need for better communication. Staff clarified the protections for WRA areas would remain. They discussed the details of the 'hardship' provision that allowed encroachment of up to 5,000 s.f. into a WRA and displacing whatever trees were necessary for that. They discussed the details of how the City would avoid 'taking' property ['taking' was a legal term meaning not allowing owners minimal use of their property]. Mr. Sonnen assured Commissioner Griffith that if allowing minimal use of WRA property would have disastrous implications on an entire canyon the City would buy the property instead of allowing it. He related that other jurisdictions had found it was necessary to identify contiguous areas of connecting habitat corridor to protect because

patchwork protections did not save the kinds of sensitive-intolerant animals they wanted to save. He advised from the hydrological standpoint the layer under the trees provided a drainage benefit that they could not get from a lawn.

Commissioner Martin offered the points that the City Arborist understood the natural areas system and what was necessary to sustain the tree canopy as older trees died over the years. The Arborist could help manage it so the City always had a tree canopy. Commissioner Martin suggested at the very least the Commissioners should fix the existing code to mean what it was clearly intended to mean: that a minimum of 20% was to be protected. Commissioner Axelrod noted preserving 20% of the area would preserve both big and small trees so the small trees would grow to replace the big ones when they died.

The question of whether Measure 56 notice would be required for that was discussed. Mr. Sonnen suggested it could be required. He noted the intent was not to make the code more burdensome on properties, but what was proposed had the potential to be more burdensome if it would require protecting a bigger area. He clarified the notice would be necessary when the next draft went to the City Council level. It was not required at the Planning Commission level.

The Commissioners then looked at the existing code language to determine how to modify it to fix it (close the loophole) and give the City solid legal grounds for protecting trees. Commissioner Martin recalled the Commission had struggled with the 20% language for years and had applied it as 20% of the area. The Commissioners discussed the City Arborist's suggestion to save trees based on a priority ranking (which was trees next to WRAs; tree clusters; then individual significant trees) and that he might identify an area to be protected that was different from the area the applicant proposed to protect. Perhaps the code should specify that the City Arborist had to concur with their plan. The Commissioners then agreed to retain the existing code but ask staff to work on language to the effect that *the tree protection set-aside was to be at least 20% of significant trees or 20% of the area, whichever was more ecologically beneficial, at the discretion of the City Arborist*. Commissioner Axelrod suggested providing the information in Ms. Simpson's notes to the City Council.

2:59

REMOVAL OF INEFFECTUAL AND REDUNDANT CODE

Grading Plan (55.130)

The grading and drainage plan shall be at the same scale as the site analysis (CDC 55.110) and shall include the following...

Commissioner Axelrod advised that often the scale of the site analysis was not detailed enough for a grading plan. He would incorporate language calling for it to be of sufficient scale and detail to evaluate all aspects of the proposal, including the grading plan.

TIMING OF DISTRIBUTION OF THE STAFF REPORT

The current code called for the staff report in a quasi-judicial process to be distributed ten days in advance of the hearing. The Commissioners had previously asked for it to be distributed 21 days in advance because the public had asked for more time to read it. Mr. Sonnen advised that based on his analysis regarding the average timing of the process in past cases and based on current staffing levels they could distribute the staff report up to 15 to 16 days prior without jeopardizing the process under the 120-day rule. Commissioner Martin indicated he could agree to a compromise of 15 days.

3:09

HOW TO PRESENT THE PLANNING COMMISSION RECOMMENDATIONS

Commissioner Martin stressed that it was important to format the document to make it clear to the City Council what the Commission recommended and what the staff recommended. He did not think it was appropriate for staff's recommendations to have the same weight as the Commission recommendations. Mr. Sonnen said they could provide the City Council with both a "pure" document from the Planning Commission and one that had embedded links to the staff recommendations.

COMMISSIONERS' POINT OF VIEW

Commissioner Martin asked the Commissioners to be thinking about how to communicate this to the Council and discuss it at their next meeting. He noted they did not support the scope of the amendments, but the amendments were still on the table. Some would dramatically change the role of the Planning Commission. Mr. Sonnen suggested the City Council might agree to hear the Commissioners' point of view at the briefing before the Council hearing, or they could send a transmittal letter signed by the chair that presented the perspectives of the voting majority (and also perhaps any perspectives of a strong minority) of the Commission.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

The Commissioners and Mr. Sonnen discussed the future schedule. The next hearing on the proposed code amendments was on October 2. The written record was open until 2:00 p.m. that day. Commissioners were advised to forward related emails they got to Mr. Sonnen for the record. Staff would post the most recently revised draft on the website. The Trails Master Plan was ready to review. Mr. Sonnen would poll the Commissioners and then set the date for it. WRA and PUD codes were not ready for review. They would be considered together so overlapping provisions could be addressed. *Commissioner Griffith left the meeting.

ITEMS OF INTEREST FROM THE COMMISSION FOR CITIZEN INVOLVEMENT

None.

ITEMS OF INTEREST FROM STAFF

None.

3:40

ADJOURNMENT

There being no other business, Acting Chair Martin adjourned the meeting at approximately 9:22 p.m.

APPROVED:



Robert Martin, Acting Chair

11/20/2013

Date

Cut the red tape project website: <http://westlinnoregon.gov/planning/economic-development-code-amendments>