



Memorandum

Date: August 16, 2013
To: West Linn Planning Commission
From: Chris Kerr, Economic Development Director
Subject: CDC-13-01 – Email testimony regarding proposed “Cut the Red Tape” amendments to the West Linn Community Development Code (CDC).

Attached is public testimony received via email since the August 7 public hearing regarding CDC-13-01. Public testimony documents delivered to the Planning Commission at the August 7 hearing and at the August 14 worksession are not included in this packet as they are not available to staff at this time. Staff intends to include these documents with the packet of correspondence delivered to the Planning Commission before the September 4 hearing.

Pelz, Zach

From: Sonnen, John
Sent: Wednesday, August 14, 2013 5:59 PM
To: Pelz, Zach; Thornton, Megan; Kerr, Chris
Subject: FW: Letter about "Cut the Red Tape" Amendments
Attachments: Oakes_PC_NAs_08_14_2013.pdf

John Sonnen, Planning Director
Planning and Building, #1524

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Public Records Law Disclosure This e-mail is subject to the State Retention Schedule and may be made available to the public.

From: Karie Oakes [<mailto:kariookee@aol.com>]
Sent: Wednesday, August 14, 2013 3:42 PM
To: CWL Planning Commission
Subject: Letter about "Cut the Red Tape" Amendments

Please find my letter to the Planning Commission attached.

Karie Oakes
1125 Marylhurst DR, West Linn
August 14, 2013

Re: "Cut the Red Tape" Amendments- improper process and improper notice.

Dear Planning Commissioners:

This is to follow up on neighborhood association and citizen involvement; and the noticing. At your last meeting on August 7, Commissioner Martin asked what happens when the municipal code is violated, in this case where neighborhood associations were no involved in the planning process. He was asked to hold his question until the time for questions of staff, but it was forgotten when he questioned if the notice was proper and that was sorted out. I have given it more thought in light of your deliberation, citizen testimonies, and having since discussed it with other citizens.

It seemed that the Commission may be satisfied that the delay to cure for the improper notice also cured for the improper process. I submit that it is not and ask you to consider what your mother would have done. I think she would have given a logical consequence to correct the action with the intent to teach the proper action and avoid re-offense. By solely providing extra time with the hope that neighborhood associations will respond and without specific direction to staff of the Commission's expectations is ineffective.

Ideally, we would have a do over, and the Economic Development Committee would be made to involve neighborhood associations and re-vote on its recommendations to the Commission. In the very least, the Commission should consider directing staff and the EDC to schedule a meeting with each neighborhood association to gather information about how citizens foresee economic development in their neighborhoods and in the City. It is the critical piece of information that is missing from this process.

In addition, the EDC and staff should be made to explain to neighborhoods and citizens that the proposed amendments go beyond the purpose of economic development. They will change the quiet residential character of our city to dense commercial areas of six story height, centered about the interchanges of I-205 and along Hwy. 43. Auto-commuters will be speeding in and out of our City, from the airport and cities between; from Hillsboro to Gresham, and Vancouver to Willsonville, to these employment centers. Yes, they will have to speed if they expect a 20 to 30 minute commute time, as touted by the amendment to Goal 9 of the Comprehensive Plan.

Neighborhood associations and citizens should understand the amendments that will change citizen involvement in deciding how development will occur. The EDC and staff should specifically solicit input about how removing de novo and lowering the standards of process and oversight will affect citizen involvement.

I ask the Commission to adopt these reasonable expectations in order to meet the intent of Municipal Code 2.085(S)(2). The Commission could better determine the amount of time needed for neighborhood association involvement if it were to assess the efforts of staff/EDC since last week when it became known that only three neighborhood associations had met on these amendments and one more would meet tonight.

Personally, as a member of the Marylhurst Neighborhood Association that is counted as having met, I am very disappointed in Mr. Kerr's presentation because it omitted several revisions to the required neighborhood contact by developers. It will no longer be required for the meeting minutes and an audio tape of the meeting to be included with the application, in order that they may be reviewed by staff and the Planning Director to ensure the purpose of 99.038 (section A) is met and to ensure it was accurately represented.

Mr. Kerr did also not inform MNA of the amendment for park developments to be approved by the Planning Director instead of the Planning Commission, and in so doing; he missed a good opportunity to get input from our association which is experienced in the development of Marylhurst Heights Park. Coupled with the revisions to have all design review applications approved by the Planning Director instead of the Planning Commission that were also not disclosed to MNA, I wonder if MNA wouldn't like to better understand these amendments and be given adequate opportunity to make recommendations.

While I appreciate it was a challenge for Mr. Kerr to summarize this extensive package of amendments to an audience with no or little knowledge of them in a short amount of time, I think he could have done better if he had the perspective and interests of neighborhoods in mind.

Neighborhood associations shouldn't be expected to jump on board now without a concentrated effort by the EDC and staff to involve them. I suspect that it will take more time than you anticipated. The Commission was not obliged to set the date of the hearing to a time certain when it decided on September 4 because this is not a continued hearing, but a new one. While I respect there is a tentative schedule for these amendments to proceed, it should not be held in higher regard than the respect due the neighborhood associations.

Thank you for considering my comments. I appreciate your genuine desire to listen to citizens and support their participation in this process that will result in legislation directly affecting their lives.

Sincerely,

Karie Oakes

Peiz, Zach

From: Sonnen, John
Sent: Wednesday, August 14, 2013 5:58 PM
To: Peiz, Zach; Kerr, Chris; Thornton, Megan
Subject: FW: Proposed Amendments to Comprehensive Plan, additional comments

John Sonnen, Planning Director
Planning and Building, #1524

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From: Tony_Brenda [<mailto:aperryb3@gmail.com>]
Sent: Wednesday, August 14, 2013 3:56 PM
To: CWL Planning Commission
Subject: Proposed Amendments to Comprehensive Plan, additional comments

I would like to make additional comments to my original email (8/7/13) on the Proposed Amendments to the Comprehensive Plan, now that I have had more time to consider the proposals.

Planning Director Authority (pg 23, li)

Under the Planning Directory authority section, the Planning Director will have the sole authority to approve or deny a proposed development of 25 or fewer lots. This represents a very large area. Based on a current proposal in our area of 10 units on approx 3 acres (Bland Circle), I would estimate this to be 8 acres with infrastructure. To have one person approve this size of development without input from the general public, local neighborhood association or the Planning Commission itself is unacceptable.

On-Street Parking (pg 42, E)

The proposal is to include on-street parking towards the minimum parking requirement for a new development. Where do you draw the line on this one? An apartment block will require at least one parking space per family. Most of these spaces could end up on the street under this proposal. Allowing developers to provide the bare minimum would be detrimental to the immediate neighborhood.

“Maintain and protect West Linn’s quality of life and livability.”

This is the first Council Goal of the Comprehensive Plan that was approved by the City in 2003. It has been thrown out together with 10 other adopted Goals under the new Proposed Amendments. Is the City to abandon these principles in favor of easier development?

Anthony Perry

2286 Haskins Road
West Linn
OR 97068

Pelz, Zach

From: Sonnen, John
Sent: Wednesday, August 14, 2013 3:39 PM
To: Pelz, Zach; Kerr, Chris; Thornton, Megan
Subject: FW: Will this help or hinder West Linn?

John Sonnen, Planning Director
Planning and Building, #1524

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From: Julia Simpson [mailto:juliasimpson.pdx@gmail.com]
Sent: Wednesday, August 14, 2013 3:37 PM
To: CWL Planning Commission
Subject: Fwd: Will this help or hinder West Linn?

Dear Michael Babbitt and the Planning Commission,

I would urge you to keep citizen rights at the forefront of your discussion tonight. Saving money at the expense of citizen rights, such as de novo, is not the way we want to save money! I am in full agreement with this letter from Teri Cummings.

I am speaking as a private citizen here.

Thank you.

Julia Simpson

----- Forwarded message -----

From: <teric518@comcast.net>
Date: Wed, Aug 14, 2013 at 3:23 PM
Subject: Fwd: Will this help or hinder West Linn?
To: Julia Simpson <juliasimpson.pdx@gmail.com>

New revisions put more decision-making on planning director's desk, impacts NHA involvement in land-use decisions, especially appeals.
Ambiguous tree code changes bear watching, aarghh ! Can you help?
Teri

From: teric518@comcast.net
To: "cwl planningcommission" <cwl_planningcommission@westlinnoregon.gov>
Sent: Wednesday, August 14, 2013 3:11:57 PM
Subject: Will this help or hinder West Linn?

August 14, 2013

Will this policy or action foster or hinder the vision we have for West Linn?

Imagine West Linn –Adopted by the West Linn City Council, Feb.1994 and Updated Sept. 2008

Dear Chair Michael Babbitt and members of the Planning Commission,

Thank you for allowing more time to properly notice and digest these proposed amendments to the Comprehensive Plan and CDC. I plan to touch on just a few key areas until a re-organized staff report comes out. In general, I am very concerned that nearly every item proposed for revision either diminishes or restricts citizen participation in land use decisions, and the right to appeal. The fact that this “Cut the Red Tape” project rolled out last April without including neighborhood associations indicates a shift away from public involvement is already underway. Since staff has not really offered any explanation or facts to justify this new direction, a joint session could be held, before proceeding further, so City Council can explain their position.

As members of the Citizens Involvement Committee(CIC) you are probably particularly aware of the importance our key planning documents have placed on Citizen Involvement in land use processes:

1. Oregon's Statewide Planning Goal One,Citizen Involvement, calls for “the opportunity for citizens to be involved in all phases of the planning process.” Citizen Advisory Committees (CAC)- a group of citizens organized to help develop and maintain a comprehensive plan and its land use regulations. Local Governments usually establish on such group for each neighborhood in a city or district in a county. CACs may also be known as neighborhood planning organizations, area advisory committees or other local terms. CACs also convey information from local officials to neighborhood and district residents.
2. West Linn's Comprehensive Plan Goal One, Citizen Involvement, supports neighborhood associations many times as a vital means of communication between citizens and the City, particularly with regard to land use planning.
3. In 1995, Neighborhood Associations were adopted in West Linn Municipal Code 2.10. The Economic Development Committee was added in 2010 to Municipal Code 2.085. Section S. (2) states: The Economic Development Committee will function to bridge the gap between the business community and the City, and work in close partnership with the West Linn Chamber of Commerce, neighborhood associations, and general public.

4. Vision document, Imagine West Linn; “The City supports its eleven neighborhood associations by providing timely information, opportunities for citizen involvement, and technical expertise for addressing local issues. Public meeting rooms are provided in each of the neighborhood community centers, and a civic center has opened in the Bolton area citywide forums. Neighborhood-level planning is promoted to create plans and regulations unique to the respective neighborhoods while serving the community as a whole. A League of Neighborhood Associations has been formed to address citywide issues from the grassroots level. Neighborhood associations must meet similar tests for public notice and inclusive citizen involvement as is in place for city government. Neighborhood associations are no longer just watchdogs of public institutions; through partnerships, they identify needs of the community and develop and implement plans to meet those needs. Neighborhood associations take an active role in emergency response planning and crime prevention through programs like ‘Neighborhood Watch.’”

Overview of proposed Comprehensive plan amendments:

1. The 2003 Goals provide a relevant value statement, and could simply be re-formatted as a mission or explanatory statement for the Comprehensive Plan.
2. The language that defines Conditional Use Permits (CUP) provides a relevant explanation and expectation that a CUP meet the needs of the overall needs of the community, and should be retained.
3. Goal 9 objectives contain too many vague assumptions, should not reduce community values for protecting livability by eliminating language pertaining to adverse impacts, should not be limited to Arch Bridge area and language supporting citizen and NHA involvement in planning process should be added.

Land Use Appeals:

The ultimately denied Holiday Inn application of 2009 is a perfect example of how DeNovo appeals can result in a better decision. Because two City Councilors, John Kovash and I, Teri Cummings called the decision forward for City Council review, same as appeal, the City was able to not only correct the procedural error of not properly filed as a Conditional Use Permit and several other unmet criteria, but worst of all, TVFR Fire Marshall had refused to sign off due to insufficient ability to provide fire and safety service to the proposed hotel. Without allowing only two Councilors to call for a review and without DeNovo information a fire-trap hotel could have accidentally been approved !

1. Claims that eliminating DeNovo appeals will reduce cost has never been substantiated. Land use appeals are necessary because they provide the opportunity to correct errors of decision. The purpose of DeNovo is to achieve the best local decision based on the most complete and accurate information possible. The best method of reducing appeals is to avoid errors in procedure and criteria. DeNovo is not, as Mr. Kerr’s claims, that “exactly as if everything is started from scratch”. Chapter 99.120 provides limits on the extent that an approved application can be altered before a new application must be filed. Staff claims on page seven that an application can be changed after a denial by the PC but no code is cited. Codes do not allow unlimited opportunity to change the application after the clock has started.

I recommend that a definition of DeNovo be added to the CDC and other planning documents. In addition, similar language regarding limits for changing a denied application might be necessary to insure that the application itself remains consistent from beginning to end.

2. "Frivolous" appeals can be avoided by requiring applicants to provide a basis for filing an appeal without limiting possibility that other issues may be raised.
3. The City recognizes and supports NHA for the purpose of citizen involvement in land use processes, and should not charge a fee if a NHA finds it is in best interest of NHA to appeal a decision.
4. A new requirement that three Councilors, not two, must call an application forward for review inappropriately creates the impression of an unfair quorum already formed and also unwisely reduces the chance to correct errors.

Variances and Special Waivers:

I would prefer to with hold comments until after having an opportunity to review proposed changes in a more organized staff report. In general, the more that land use criteria can be clear, consistent and fair to all interested parties the better. Everyone is expected to meet the codes. It is important to remember that variances and waivers afford applicants the ability to avoid code compliance to some extent or another. The city has the right to ask for something in exchange for such benefits. What may seem fair to some may not to others. Therefore it would seem that most of the decisions involve a discretionary process and that is best done as openly as possible by public officials such as the PC.

Procedural Amendments:

1. The more that land use decisions are done behind closed doors by staff the more citizens lose the right to be openly and actively involved in decisions that might affect them. Citizens also develop more trust and understanding in the public process when they can see elected and appointed officials go through the process of decision-making. No more decisions should be turned over to the Planning Director.
2. The definition of "non-discretionary" decisions ought to be more tightly limited to only "ministerial" type decisions that involve actual predetermined criteria and guidelines such as, " curbs must be 8" wide."

Flexibility and potential removal of "ineffectual" code;

1. The meaning of "ineffectual" is not universal, therefore, I ask that none of these proposals ` move forward except e. A-frame signage until further details and a broader discussion about proposed changes come forth.

Thank you for your precious time and careful consideration,

Teri Cummings

Pelz, Zach

From: Sonnen, John
Sent: Wednesday, August 14, 2013 3:35 PM
To: Pelz, Zach; Kerr, Chris; Thornton, Megan
Subject: FW: Will this help or hinder West Linn?

John Sonnen, Planning Director
Planning and Building, #1524

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From: teric518@comcast.net [mailto:teric518@comcast.net]
Sent: Wednesday, August 14, 2013 3:12 PM
To: CWL Planning Commission
Subject: Will this help or hinder West Linn?

August 14, 2013

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Thank you for your precious time and careful consideration,

Teri Cummings

Peiz, Zach

From: Sonnen, John
Sent: Friday, August 09, 2013 9:31 AM
To: Peiz, Zach; Kerr, Chris; Thornton, Megan
Subject: FW: Cut the red tape

John Sonnen, Planning Director
Planning and Building, #1524

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From: Scott Gerber [<mailto:jumpin@cmn.net>]
Sent: Friday, August 09, 2013 9:24 AM
To: CWL Planning Commission
Subject: Cut the red tape

Please confirm receipt of the below letter and its entrance into the record
Thank you,
Scott Gerber

TO WEST LINN PLANNING COMMISSION:

I am writing in response to Commissioner Martin's question related to my testimony of August 7. The subject of the question was related to my comments that the Comprehensive Plan should be the definitive document in land use cases. I brought this up as an objection to one of the proposed changes in the "cut the red tape" program which called for "adding clarifying language stating that the definition of terms used in the plan are only applicable when used in the plan and not to other documents in the city". I refer to the below:

From the Citizen's Guide to Land Use Appeals by 1000 Friends of Oregon:

"Be aware that provisions of different laws may conflict with each other. For example, a development allowed by a local ordinance may be prohibited by the local comprehensive plan. In such cases (known as "Baker conflicts"), the comprehensive plan, and not the ordinance implementing the plan, controls. Likewise, in all but the most extraordinary circumstances, a city or county cannot amend its plan based on the authority of a zoning ordinance; rather, the plan amendment will be governed by the statewide planning goals or statutes".

Also from this guide: "However, land use regulations are subordinate to the comprehensive plan; to the extent they authorize more intensive uses than are permitted in the plan, they are invalid. *Baker v. City of Milwaukee*, 271 Or500,533 P2d 772 (1975)

Also from *Baker v. City of Milwaukee*: "A comprehensive plan, although denominated a resolution, is the controlling land use planning instrument for a city; upon its passage, the city assumes responsibility to effectuate the plan and conform zoning ordinances, including prior zoning ordinances, to it.

From "Twenty Years After---Renewed significance of the Comprehensive Plan Requirement" by Laurence Kressel and Edward J. Sullivan:

Referring to *Baker*, "Furthermore the court found that a plan, as a 'constitutional' document for land use planning, was superior to zoning regulations, due to the inherent relationship of the two functions, whether the plan was adopted by resolution or by ordinance".

I once again urge the Planning Commission to proceed with caution on the "cut the red tape" program. There are many important proposed changes that the city does not need to pursue in order to promote economic development.

I want to thank the Commission for its time and devotion to hearing the voice of the citizenry of West Linn.

Respectfully,

Scott Gerber

West Linn

Pelz, Zach

From: Sonnen, John
Sent: Thursday, August 08, 2013 10:08 AM
To: Pelz, Zach; Kerr, Chris; Thornton, Megan
Cc: Jordan, Chris
Subject: FW: Proposed Amendments to Comprehensive Plan

John Sonnen, Planning Director
Planning and Building, #1524

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From: Tony_Brenda [mailto:aperryb3@gmail.com]
Sent: Wednesday, August 07, 2013 6:30 PM
To: CWL Planning Commission
Subject: Proposed Amendments to Comprehensive Plan

The Planning Committee is proposing to overturn the City's Comprehensive Plan (adopted Feb 5, 2003) and replace the City Goals with what is effectively a Developers' Charter. The emphasis will be on commercial development with little regard for the qualities that define West Linn for the majority of its residents. And this is being undertaken with undue haste – a public meeting within two weeks of the Draft being released.

I object to the following proposed changes:

- Eliminating “de novo” hearings which allow Neighborhood Associations and individuals the right to present new information in an appeal to the City Council
- No longer allowing Neighborhood Associations the right to appeal planning decisions at no cost
- Subdivision applications and design reviews would no longer be heard in public by the Planning Commission but would be decided by the Planning Director,
- Eliminating the requirement that applicants proposing new developments smaller than 25 units meet with Neighborhood Associations
- Changing the requirements for applicants requesting a meeting with the neighborhood associations
- Loosening the tree protections that help keep the West Linn tree canopy coverage one of the best in the Portland Metro area
- CDC 99.160 – Increasing from two to a majority the number of Planning Commissioners required to call up for review a decision from the Planning Director
- CDC 99.170 – Increasing from two to a majority the number of City Councilors required to call up for review a decision made by the Planning Commission.

I also object to allowing residents to raise chickens in a residential area. I don't want to be next door to the smell, noise and flies associated with raising them in my neighbor's back yard. Keep chickens to the rural areas where they belong. They are not pets.

Anthony and Brenda Perry
2286 Haskins Road
West Linn
OR 97068