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# COMMITTEE FOR CITIZEN INVOLVEMENT MEETING NOTES

Tuesday, June 20, 2017

5:30 p.m. - Meeting –Bolton Conference Room

Present: Chair Thomas Tucker, Russ Axelrod, Bob Martin, Ken Pryor, Karie Oakes (arrived late Emily Smith and Carrie Pellett.)

Citizens Present: None

Staff Present: Megan Thornton

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## 1. Call to Order

Meeting called to order at 5:30 p.m.

## 2. Approval of the May 16, 2017 minutes

The minutes for May 16, 2017, were reviewed and minor grammatical changes were incorporated. Motion to approve the minutes by Member Martin and Seconded by Member Pryor. Motion passed with one abstention (Oakes).

## 3. Citizen Comments

There were no citizens present to comment.

## 4. Planning Process Review: Quasi-Judicial Process (Fourth in a series)

Attorney Thornton summarized the progress made to date in this review. Application completeness review and consideration of the application by Public Works was completed at the last meeting. Once the application review is deemed complete, the applicant is notified and the 120 day clock begins.

Member Martin asked when the staff report would be made available. It was explained that the material provided in the application is posted online 20 days in advance of the hearing, and the staff report is provided ten days in advance of the hearing. Follow up questions by Member Martin related to review of the applicable criteria. Staff noted that

the staff report also reviews and addresses the applicable criteria. The question was raised about the adequacy of the submittal in providing responses to the criteria. In the pre-application conference the criteria related to the proposed application is discussed. In the end, the applicant must respond to the applicable criteria and those criteria they believe are applicable. Staff noted the applicant is responsible to defend their application. If there were missing responses, those would be addressed at the time of completeness check.

A short discussion on the differences between a de novo versus an on the record decision was held.

Returning to the agenda item, Attorney Thornton began to speak to the quasi-judicial process. Mayor Axelrod summarized that the material was placed on the website 20 days in advance, the notice was mailed and the staff report was provided ten days prior to the hearing. He asked about preparing the staff report sooner than ten days.

Attorney Thornton reminded the committee that all material is available 20 days in advance. Staff needs time to review the submitted material, analyze the criteria and present the report. There are many duties that compress time and makes that request challenging. She explained also the notice mailing is extensive. In addition to the 500 foot notice, it is mailed to standing groups (i.e. NA presidents, TVFR, utilities, etc.). An example notice was provided along with a sample script to allow the committee to better understand the process.

She began reviewing the hearing script. The hearing follows the same sequence each time. That order is also set in the Community Development Code (CDC). After the Planning Commission is qualified, the staff provides their report and then the applicant will provide their presentation. It is the applicant's responsibility to defend their application. Following the applicant's presentation, the public is invited to speak. The Planning Commission has an opportunity to ask questions of staff. The next step is rebuttal. Attorney Thornton noted the applicant will always speak last. It is their opportunity to respond to issues raised at the meeting.

It was noted that all information received prior to the hearing is provided to the Planning Commission at the hearing. During the hearing, additional written materials may be submitted into the record. There are multiple methods for citizens to provide testimony. They can provide written testimony without choosing to attend, they can speak at the hearing or they can both speak and provide written testimony up to the point the record is closed.

Under state statute anyone has the right to request a continuance at the first hearing. It allows more time to review information. Attorney Thornton noted this occurs at the first evidentiary hearing and is for a minimum of seven days. The hearing body has discretion to determine the continuance period (above the minimum seven days). This

recognizes the need to complete the process within the required 120 days. Usually, the Planning Department considers the full process when setting the hearing date. It considers the potential for appeal, and allows time to process an additional hearing through the council. This process is not perfect, there are many delays that may occur during the process that impacts the 120 day clock. When those issues occur, an extension to the 120 clock is considered.

When a continuance is requested (minimum of seven days) the Planning Commission must decide if the hearing will be left open to a date certain, or if the public hearing is closed but the record is open for written comments only with dates specified for the public to submit and the applicant to respond.

There was a question raised about leaving the record open. The material is not readily available for the public to review. It was noted that the material will be posted following the submittal dates provided by the Planning Commission. There was a discussion about differing options to allow time for submittal and review prior to the opening of the hearing. This is a technical process that can be confusing to the public. The process is clearly discussed at the beginning of the hearing. An important point is that the hearing process is followed and they must discuss and determine what type of continuance will be granted.

If new testimony is submitted at the first continuance, a second continuance may be requested only if it is made clear what new evidence was presented. The hearing body determines if the item raised is new evidence.

There was a discussion of the term "new evidence". The definition was discussed from statute. There are a number of factors that can be used to screen out what is new evidence. One point was that new information could be discounted if it was unrelated to criteria. The point was this decision on new evidence is the responsibility of the hearings body. There was a suggestion to include information in the CDC, however it was noted we must follow the Oregon Revised Statute on this very technical point. Additional discussion is needed to consider differing ways to make this clear to the public: a flier, more information in the script or other options.

Finally, there was a discussion of what happens when new information is submitted against the instructions of the hearings body. The hearings body has the option to recognize that information submitted and note that it will not be considered in rendering a decision. This avoids any procedural complications. A question was raised on additional options for continuance to consider that information. The 120 day rule comes back into play here. The decision making body must recognize the limitations of time to complete their decision when reviewing the options available for a continuance. If the applicant concurs with additional continuances and potentially grants an extension of the 120 days, additional time may be allowed. The summary was there is a process that is

outlined in statute and in the CDC that should be followed by decision making bodies. There was a general discussion on the technical basis for these hearings. The first evidentiary hearing is important and appeals are important. There are differences in the two types of review.

Attorney Thornton reviewed the progress made in the review of the quasi-judicial process. They walked generally through the hearings process. She noted that at the next training meeting the final decision component for the quasi-judicial process will be discussed. Consider what the hearings body is looking for and how the testimony can be more persuasive when addressing the criteria. The next step after this process is to consider the appeal process.

There was a general discussion of the technical merits of the hearings process and how difficult it is for the lay public to understand this process.

## 5. Member Comments

Members discussed the next meeting. The first meeting in July is cancelled. There was a discussion for meeting on the 11<sup>th</sup> of July for the CCI to discuss what they have heard to date and create a list of their concerns. Staff was asked to poll the members to see if there would be a quorum available. Member Axelrod noted that the members could provide their list of information to raise at the meeting. Chair Tucker agreed that it would be beneficial for members to bring information ready to discuss at the next meeting.

There was a discussion raised to the Planning Commission representative regarding "Commissioner Comments" reviewing the hearings process just completed and asking what could have been done better and if they were satisfied with the process. Member Martin noted in the past they had completed a review and considered changes to the process. He noted he would remind the Planning Commission of that opportunity. Member Oakes raised an issue of the progress made toward the CCI's goals. The committee is working on education of the process. The next step is to consider changes needed to the code and asked when that process would commence. The focus of her questions was to ask for consideration of change in the CDC to restore de novo process in the review of appeals. Members discussed the new code provision and potentially a parallel process to consider restoration of the de novo process. There was a general discussion of the past cases and the need for more information and broader discussion.

## 6. Adjourn

Meeting adjourned at 7:45 p.m.

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