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COMMITTEE FOR CITIZEN INVOLVEMENT MEETING NOTES

Tuesday, August 1, 2017

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

Present: Chair Thomas Tucker, Russ Axelrod, Bob Martin, Ken Pryor, and Gary Walvatne

Citizens Present: Councilor Sakelik, Commissioner Pellett, Pam Yokubaitis.

Staff Present: Megan Thornton, John Boyd

1) Call to Order

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

2) Approval of the July 18, 2017 meeting notes

The minutes for July 18, 2017, were reviewed and members discussed changes. ***Motion to approve the meeting notes by Member Tucker and Seconded by Member Pryor. Motion passed.***

3) Citizen Comments

There were no comments.

4) Planning Process Review: Quasi-Judicial Final Decision (Fifth in a series)

Assistant City Attorney Thornton summarized where the training left off and what would be covered tonight. Highlights of the topics include the quasi-judicial hearing process, criteria for application, the options available for the hearings body to make decisions, adopting conditions of approval, and ends with approval of a findings document containing a final decision and order.

Member Martin asked how and when a citizen would be informed of the applicable criteria. It was explained that the criteria was discussed at the pre-application conference, at the completeness check, and within the staff report findings.

Member Pryor asked about the final decision and order. The difference between the staff report and the decision of the hearing body was clarified. What findings the decision body considered in reaching their decision is typically defined.

Member Axelrod clarified the conditions of approval relate to the requirements for nexus and proportionality. He questioned how those conditions/and direction proportionality criteria are addressed by the decision maker.

City Attorney Ramis spoke to the Supreme Court decision on Nollan (California case) and Dolan (Oregon case) addressed and clarified proportionality and nexus. It was pointed out that the staff

findings often point out the applicable criteria when considering condition to assure the nexus is addressed. The findings also address the requirement and typically address the proportionality of the condition to the request under consideration.

A question arose about the responsibility of resolving the conflicting evidence. It is the role of the hearings body to consider the evidence and identify how that evidence applies to the applicable criteria. It was noted in the end, the decision of the hearings body is subject to an appeal by those parties to the decision.

After the first hearing ends with the completion of the final decision, the appeal process begins. An individual considering appeal must consider what is required to appeal. Do they have standing? What are the issues subject to the appeal? Has the Neighborhood Association held a meeting and will the fee be waived based upon meeting the submittal requirements? It was noted the 120 day rule applies to conclude the appeal, often the applicant has provided additional time to resolve any local appeals. Prior to the end of the final decision period, the Council has the option to review (or call up) a decision by the lower decision making body. This was raised as a discussion point. Both attorney's noted that the process has been in the code for a long time but has rarely been used.

The appeal hearing is held using a similar process to the first hearing at the lower decision making body. The review process by the body hearing the appeal was discussed. It was noted that at the end of the appeal process, any further review must be filed with the Land Use Board of Appeals within 21 days of the final decision on the appeal.

Member Martin asked for a discussion on DeNovo and asked for support of "on the record" decision. Attorney Ramis noted he was ready to make the requested presentation. Before moving to the next agenda item, there was a discussion of the rare occurrence of the review process. It was noted that the time to request a review, and for Council to act on that request was limited.

5) Discussion on the DeNovo Appeal code change process:

Attorney Ramis spoke on the DeNovo appeal process. He started with a discussion of terminology. On-the-record appeal is based upon (in a strict sense) the record of the lower decision making body. A DeNovo is a hearing starting as new. It is possible for Council to have a hearing as if no testimony was taken.

In considering the two types of appeal there are three key questions. He spoke to these three questions as a spectrum. On-the-record is limited to issues raised at the lower level hearing and DeNovo has more flexibility to raise new issues.

First, who can speak on the appeal? This does not address who has the right to appeal. Once the appeal is filed by a party, the city has allowed all people to speak.

Second, what can be raised as an issue? An on-the record appeal limits the issues raised by the lower decision making body.

Third, what evidence may be presented at the hearing? On-the-record limits the information to what was in the lower decision making body's record.

A review of the history considered the evolution of the hearings process from DeNovo, to On-the-Record. It was used to consider the history of the changes, and how the process was perceived over time. Attorney Ramis provided an extensive background that identified this topic is not new, has been considered and reconsidered many times going back in the City's history. It is a complex issue attempting to balance the citizen's needs and the hearing body's needs in reviewing the appeal process.

He attempted to compare and contrast the two systems. On-the-record requires all parties to identify the best evidence at the first review. DeNovo appeal has less certainty as new arguments are raised and more written testimony is provided.

Member Martin noted a concern that the application may change from an application that was presented to the Planning Commission. The concern was the need to respect the citizen input. It

was noted that in a DeNovo appeal there is more room to consider new evidence. But that does not speak to the question of the application as submitted versus as amended throughout the process. It was noted the process is iterative, changes occur to the process over time. However, that change cannot be so substantive it differs from what was originally requested, resulting, in effect, in a different request.

Attorney Ramis noted when you design a system you have many choices in the new design. It is possible to have an open record, but limit the issues raised in the appeal document. It focuses the appeal and recognizes the work completed by the lower hearing body.

Member Axelrod asked about the changes required to the code. Is it as simple to return to DeNovo language or would we want to have an option in the continuum. The point expressed was understanding the goals of Council and incorporating their goals in that code change.

It was understood that each choice made has options with benefits and costs. A discussion considered the City of Portland process that gives option to waive the 120 day clock with the application and if appeals occur have a DeNovo process. Alternately, if the waiver is not granted then any appeal would be on-the-record.

Generally, there was discussion on the option to stay with an on-the-record appeal with a change to the code that allows Council to consider opening the record under a broader option of instances upon appeal. The Members discussed the differences and considered that the land use process is not the best activity to educate the public. A committee of local experts could be used to inform citizens on the process and in a less stressful forum, answer questions. The purpose of a land use hearing is to process a land use decision and doesn't serve well as an educational tool for the public.

The Committee discussed a hybrid of DeNovo and on-the-record that would allow for more information to be included in the appeal and for the hearings body to request additional information. There was considerable discussion on the differences in the two processes, how the processes serve the city and the citizens. It is important to define the steps. Attorney Ramis noted the original code could be reinstated.

The Committee discussed next steps, should the CCI make a recommendation to the Council. Would Council take this to the Planning Commission or would it be retained at the Council level for consideration. Member Martin noted the docket was just changed to add the Economic Development Committee changes. He also noted we have the Chapter 98 changes that address creating a task force. Potentially, Council could have a hearing on the process. To take testimony on whether a task force is needed to collect more information, or if there was no interest, then to take the path of entering into the standard hearings process.

Chair Tucker asked if this should be a topic of discussion at a future meeting. Member Axelrod asked if we made it through the land use process and it was confirmed that was correct.

6) Member Comments

There were none.

Chair Tucker noted there were two letters submitted. One by Councilor Cummings and Member Oakes. Both addressed their opinion on the DeNovo process. He noted this information will be posted on the website with the meeting notes so they will be available to the public to read.

Chair Tucker noted the next meeting is two weeks from tonight. The goal of that meeting will be to finalize the issues list.

7) Adjourn

Meeting adjourned at 7:20 p.m.