



## PLANNING COMMISSION

Minutes of April 6, 2011

Members present: Chair Robert Martin, Vice Chair Michael Babbitt, Gail Holmes, Holly Miller, Laura Horsey, Christine Steel and Dean Wood

Members absent: None

Staff present: John Sonnen, Planning Director; Chris Kerr, Senior Planner; Damian Hall, City Attorney; and Ken Worcester, Parks Director

### PRE-MEETING WORK SESSION

Chair Martin convened the work session in the Rosemont Room of City Hall at 6:45 p.m.

#### Trails Master Plan

City Parks Director Ken Worcester briefed the Planning Commission on the draft trails master plan. Mr. Worcester advised that the Parks Board was in the process of refining the plan and he expected to present it to the Planning Commission for a hearing in a couple of months. He indicated that the purpose of the briefing was to familiarize the Planning Commission with the project and to identify and discuss any issues, concerns, or questions the commissioner's might have prior to the public hearing. While giving an overview of the process to develop the draft plan and some of the preliminary trail alignments, Mr. Worcester explained that several ideas for pedestrian and bike paths raised during the project would be addressed in the upcoming Transportation System Plan update. Mr. Worcester said that the plan represented a vision for future trail connections but that detailed alignments and trail specifications would be determined later and they would be subject to land use approval. Chair Martin asked that efforts be made to contact potentially affected property owners prior to the hearing. Mr. Worcester explained that this is a City-wide project and all citizens have had an equal opportunity to participate. Any further notices regarding this plan would also be City-wide.

Chair Martin adjourned the pre-meeting work session at approximately 7:30 p.m.

### REGULAR MEETING

Chair Martin called the Planning Commission meeting to order in the Council Chambers of City Hall at 7:30 p.m.

### MINUTES

The Commissioners corrected the drafts. Then Vice Chair Babbitt **moved to approve the Minutes of February 16, 2011** as corrected. Commissioner Horsey **seconded** the motion and it **passed** 4:0:1. Commissioner Wood abstained. Vice Chair Babbitt **moved to approve Minutes of March 2, 2011** as corrected. Commissioner Wood **seconded** the motion and it **passed** 6:0. Vice Chair Babbitt **moved** to approve the Minutes of March 16, 2011 as corrected. Commissioner Miller **seconded** the motion and it **passed** 5:0:1. Commissioner Wood abstained.

#### PUBLIC COMMENTS

Norm King, 19420 Wilderness Dr., wanted to know what process was to be used for the docketing proposal. Planning Director Sonnen anticipated the CCI would receive public comments that would help the staff craft the proposal. Then the proposed code amendments would be heard by the Planning Commission. City Attorney Hall confirmed the CCI could receive comments. Chair Martin observed that the public would have three different opportunities to comment on the proposal: at the CCI meeting; at the Planning Commission hearing; and at the City Council hearing. King indicated he was glad to see the Commissioners meeting as CCI. He had pushed for that when he served as mayor. Citizen involvement was a big problem for the City. However, he held that docketing was a waste of time for the Planning Department and the Council. The Planning Department would be the only department in the City that sent its work plan to the Council to be approved. It was the responsibility of the department head to fashion its work plan and work it out with the city manager. He did not support removing the ability of the Planning Commission to suggest code changes. Doing that was its duty. It was a big mistake to take away the only way for citizens to make suggestions.

#### WORK SESSION

The Commissioners discussed the format of the agenda and questioned whether a work session should be combined with a regular meeting; whether minutes could be approved at a work session; and whether a work session should be televised. Chair Martin observed the combined Planning Commission meeting gave the Commissioners a chance to approve and publish the minutes in a timely manner. He added two agenda items that invited comments from the staff and from the Commissioners. Babbitt indicated it was confusing to start a regular meeting, go into a work session and then reconvene as CCI. Sonnen advised the Planning Commission and CCI meetings were two, separate, back-to-back meetings that would be televised. There was no need to adjourn to go in and out of a work session.

#### Procedures for Written Testimony

Senior Planner Chris Kerr distributed his March 31, 2011 memorandum and copies of applicable sections of the Municipal code. The memorandum offered an overview of current practice, highlighted how some other nearby cities received and distributed public testimony, and suggested options. He advised that the City's current practice was good and could be tweaked and formalized. The important thing was to ensure the procedure was clear, predictable and applied equally and consistently. He acknowledged that there would always be information

submitted right up to the last minute at a public hearing. The "Options" section of his memorandum described the procedure he suggested. It gave the staff three days to address material in submittals received up to 15 days prior to the hearing in the staff report. It scheduled a second distribution of submittals on the Friday before the hearing. It continued the current practice of distributing material that came in after that at the pre-hearing work session. If significant testimony was submitted during a public hearing the Commissioners could decide to take a 15-30 minute break to look at it.

Kerr advised that state law allowed any party to request that the record be held open for additional evidence or testimony at the first evidentiary hearing or at any hearing in which new evidence was offered. He suggested that instead of continuing a public hearing over and over the Commissioners could leave the record open for seven days for additional written evidence or testimony; then give the applicant seven days to respond; then close the public hearing and deliberate. He clarified that state law required the staff report be distributed seven days prior to the hearing. The CDC calls for 10 days. West Linn practice was to publish it 12 days prior to the hearing.

During the questioning period, the City Attorney clarified that the Commission was obliged by state law and West Linn code to keep the record open for seven days at the first or subsequent hearings if new evidence was presented and anyone asked to keep it open. The Commissioners could also decide to continue a hearing to a date certain whenever they felt they needed more time to digest new information. But they should keep in mind that the City had 120 days to make a quasi-judicial decision. He observed it was very likely the Commission would receive new evidence in each new round of oral testimony. That would mean some party could ask for the record to be kept open. The hearing might have to be continued multiple times. The alternative was to keep the record open for only written evidence or testimony for seven days; give the applicant seven more days to respond to it; then close the public portion of the hearing. No testimony would be taken at the next hearing.

When asked if a redrawn map or a map that combined what had been on two different maps was "new" evidence, Hall saw that as a fine line to be determined at the hearing. He clarified that when someone raised a new issue in argument that was also "new evidence." When asked how to deal with ongoing dialogue between the staff and other parties after the seven day cutoff, Hall advised that if the Commission directed the staff not to respond, the result could be that a staff response would not be in the record the Commission used to make its decision.

Babbitt and Horsey were concerned that the general public would not see or be aware of materials submitted during the seven day periods. If they did they might see new evidence they wanted to comment on. Hall observed that one of the functions of keeping the record open was to give the public seven days to look at something and decide if they wanted to respond to it. He advised the code also gave the applicant seven days after the record was closed to submit a final written argument, but it could not include any new evidence. Sonnen related his experience that the public had no opportunity to review evidence that was submitted to a hearings examiner at the last minute before the examiner made his decision.

Horsey suggested making it Commission practice to keep the record open for seven days any time it identified information as new information. That was open and fair process. Babbitt was concerned about both those who were not aware there was new evidence and those who knew there was new evidence but could not speak to it because the public record had been closed. Hall advised the Commission could decide to reopen the record if they felt that was warranted. Chair Martin observed the Commission had the flexibility and discretion to ask the applicant to extend the 120-day period to ensure the public heard and had an opportunity to respond to new testimony. Wood observed the Commission had the ability to make judgment calls to continue a hearing or hold the record open and that addressed Babbitt's and Horsey's concerns. He recalled the Commissioners had lengthened their pre-meeting work sessions to look over new information. The public could attend and see the information too,

Horsey advocated formally incorporating an automatic continuance into the procedure when the Commission received new evidence. Sonnen advised that if new information came in the day of the hearing the Commissioners did not have to make a decision that night if they felt the amount of material was too large for them and the public to digest. He related that everything that came in in time to be distributed with the staff report and everything that came in later that was distributed with the Friday mailing was posted on the website. Material that came in after that was available to members of the public who came to look at the file. It was placed on an outside table for the public the night of the hearing at the same time it was given to the Commissioners at the pre-hearing work session. If the staff had not had an opportunity to digest new material with new issues in it that was submitted just before the hearing they would alert the Commissioners what the topic was at the work session and lay out the information and respond to it at the hearing. Then the Commissioners and the public would hear it at the same time. Either the Commission or some other party could respond to it by asking for a continuance. Chair Martin observed what Sonnen described did not require a formal change of procedure. Horsey suggested making the process clearer for everyone by describing it in the public hearing brochure and on the website. Steel indicated that she believed Kerr's suggested process made sense. She wanted to try it to see how well it worked. Babbitt indicated he generally supported it, but he was still concerned that if new evidence were submitted during the seven day period for written testimony and then the record was closed, no one would have a right to ask for a continuance. Wood observed the Commission could decide to reopen the record in that case. Hall confirmed the Commission could be in deliberations and decide to reopen the record and allow more public testimony. But there would not be an automatic legal right to a continuance for any other parties. He acknowledged that some parties who knew the record had been closed might not come to the next hearing. So they might not know they had another opportunity to testify. That was a fairness issue. There was no legal standard regarding how and when the Commission did that. It was discretionary.

The Commission took a break between 9:00 p.m. and 9:10 p.m. When it reconvened, Horsey still wanted to formalize automatically reopening a hearing if new evidence was submitted during the seven day period for additional written evidence and testimony. Chair Martin preferred to leave that up the Commissioners to consider and decide in each case rather than codify it. Babbitt indicated he supported codifying it because the members of the Commission

would change over time and because sometimes there were as few as three Commissioners at a hearing to make that judgment. Sonnen cautioned that could lead to an unending cycle that could extend past the 120-day deadline. Hall cautioned against a policy that could lock the Commission into a perpetual loop of multiple continuances it could not stop unless it broke its own rule. He advised there had to be a point for the Commissioners to finally say where the record stopped. But Horsey saw the possibility for that same kind of circularity using the seven day procedure. New information received during that period would trigger reopening the record. Babbitt then agreed with the staff that if there was a rule that new evidence automatically triggered reopening the public hearing that could result in a perpetual cycle of continuances. If the cycle exceeded 120 days the application would be granted without a Commission decision. The procedure the staff was suggesting would mean, for example, that that after the third continuance the Commission could decide to leave the record open for seven days and then close it and make a decision. Hall observed the Commission would have options regarding which way to go at each hearing. Chair Martin observed a consensus to keep doing things the way the Commission had been doing them. Hall suggested it would be helpful to flesh out what the options were and make them clear to everyone. They should understand that at the end of a hearing the Planning Commission needed to make a choice.

#### ITEMS OF INTEREST FROM STAFF (None)

#### ITEMS OF INTEREST FORM THE PLANNING COMMISSION

Babbitt observed the format of the agenda and the fact that a work session had been televised (when they usually were not) had been confusing. The procedure needed to be clearer. Horsey agreed. She had emailed her concerns about the agenda. She explained she had not been prepared to consider minutes at a work session. She preferred the informal atmosphere of untelevised work sessions. If the Commission wanted to change its current practice it should make that very clear on the agenda. Chair Martin said he would pay more attention to the agenda in the future. Sonnen had created the agenda. He advised the code did not constrain the Commission from combining and televising public meetings. Other jurisdictions did that too. It helped the Commissioners deal with minutes more frequently as well. They did not need to be shackled by past practices. He suggested the Commissioners schedule time to talk about what protocol they wanted. Chair Martin suggested putting the topic on a future meeting agenda. Babbitt clarified that he was not opposed to doing things differently, but there was a connection between confusing process and the level of citizen distrust of the Commission and Council. The Commission should ensure people understood a change. It did not promote citizen involvement to go in and out of work sessions and change the agenda to approve minutes at work sessions. Some people might be more likely to want to contribute at untelevised work sessions than televised work sessions. Chair Martin observed the Commissioners did not want to eliminate flexibility, but they wanted to improve how what they were doing was communicated.

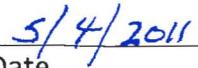
#### ADJOURNMENT

There being no other business, Chair Martin adjourned the Planning Commission meeting at 9:35 p.m. The Commissioners then convened as the CCI.

APPROVED:



Robert Martin, Chair



Date