



PLANNING COMMISSION / COMMISSION FOR CITIZEN INVOLVEMENT
WORK SESSION
Minutes of March 3, 2010

Members present: Chair Robert Martin, Vice Chair Michael Jones and Commissioners Laura Horsey, Charles Lytle, Lewis McCoy and Christine Steel

Members absent: Commissioner Dean Wood

Guests: Alma Coston, Pat Prichard and Kevin Bryck, Thomas Boes

Staff present: John Sonnen, Planning Director; and Chris Kerr, Senior Planner

CALL TO ORDER

Chair Martin called the meeting to order in the Bolton Room of City Hall at 6:45 p.m.

WORK SESSION

PUD and WRA Regulation Revisions

Sonnen related that the City Council had discussed long-range planning strategy. They did not favor spending resources on fashioning design guidelines for single-family houses, but they did want to look at infill and PUDs and re-evaluate WRA regulations. There was to be an associated public process. The staff asked the Commissioners to help them begin to fashion a work program. Kerr presented talking points to start the brainstorming session. He asked the Commissioners to consider what the scope of the work should be and identify problems, objectives and stakeholders.

The Commissioners saw one issue as the “automatic PUD.” The PUD code forced a developer to propose a PUD if the site contained steep slopes. They wanted the code to distinguish between a PUD and a smaller sized infill development. They suggested setting some sort of threshold. They saw a need to offer the PUD applicant clearer and more objective standards and to ask applicants to provide more information about a development at the Planning Commission approval stage, so the Commissioners understood what the downstream implications would be. They recognized the City was obliged to meet the state requirement to plan for higher density. The approach might be to utilize a study and a public outreach program to identify locations where higher density would be appropriate. The City might allow new housing types, such as cottage, clustered and courtyard housing. Kerr advised compatibility of infill development could be achieved without design review guidelines. Code standards related to floor area ratio, height, size and orientation to the street could be used. Commissioners contributed suggestions that included making PUD development standards “relative to the base zone” so if the base zone changed, they would still work; specifying decent PUD lot sizes and shifting away from the proportional approach; comparing a proposed development with the

area's existing corridor and open spaces; and avoiding damage to adjacent property (such as blocking sunlight or planting trees that would grow tall and block a view corridor). The PUD code was not coordinated with the rest of the code and it was confusing. Part of the work program would be to audit the code. The purpose section did not reconcile with the criteria, so it was a challenge to apply the criteria. The clearer and more objective the standards could be, the better. There was a need to clarify and better measure what a "public benefit" was. It should be clear what was being protected and how. Perhaps conservation areas should have to be protected in a separate tract and not allowed to flow through backyards. Future connectivity should be considered at the time of annexation of land because the roads would create neighborhoods. Alternative street standards might be allowed so fewer private driveways were necessary. The issue of how many dwellings could be on a cul-de-sac needed to be addressed.

The staff suggested one objective should be to consider sustainability as they worked. They suggested the Commissioners consider the issue of affordability of housing. Another objective was to respect the rights of the property owners and the neighbors and look for opportunities to get them involved. The staff planned to research best practices and find out what other communities had done. They planned to analyze City plans (including neighborhood plans), goals and task force recommendations to identify where they were conflicting or inconsistent. The Commissioners agreed this was the time to take another look at aspirational statements and code change recommendations that had been removed from draft neighborhood plans in the past.

The staff and the Commissioners began to compile a list of potential stakeholders to be involved. The staff encouraged the Commissioners to continue to think about stakeholders to add to the list as the staff fashioned the work program. They advised it would be better to put code related to smaller developments in a separate code chapter than in the PUD chapter. They advised the Commissioners to think about how many participants should be on a task force and what interests needed to be represented. The Commissioners suggested 7 to 10 persons was an appropriate size task force. When asked, Sonnen confirmed the Planning Commission could act as the task force. However, Martin wanted to involve more people to gain a broader perspective and Steel suggested balancing developer/architect interests with environmental protection interests. Kerr had envisioned a task force that would be more of a technical advisory group that would collect input and help draft code. The Commissioners suggested using the web to collect citizens' comments. It seemed to be working well for the trails planning effort. Sonnen agreed any input received would be made available to the general public. Kerr was to draft the work plan and bring it back to the Planning Commission for discussion in about 30 days.

Sonnen then reported the City was involved in a case where an owner failed to protect a conservation area on his lot and built a pool on it. The staff was in discussion with state officials about what mitigation and corrective action to require.

Handbook: *Tips for Providing Effective Testimony at Land Use Hearings*

The Commissioners then met as the CCI. Kerr circulated copies of the handbook he had created and asked for comments. The Commissioners offered formatting and wordsmith suggestions. During the discussion the Commissioners wanted to know if they could base decisions on Comprehensive Plan policy. The staff advised that Comprehensive Plan policies were implemented in the Community Development Code. The Planning Commission had to make quasi-judicial findings and decisions based on the criteria in the code.

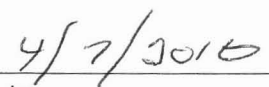
ADJOURNMENT

There being no other business, Chair Martin adjourned the Planning Commission meeting at approximately 9:25 p.m.

APPROVED:



Robert Martin, Chair



Date



PLANNING COMMISSION / COMMISSION FOR CITIZEN INVOLVEMENT
WORK SESSION
Minutes of February 3, 2010

Members present: Vice Chair Michael Jones and Commissioners Laura Horsey, Charles Lytle, Lewis McCoy, Christine Steel

Members absent: Chair Robert Martin and Commissioner Dean Wood

Staff present: John Sonnen, Planning Director; and William Monahan, City Attorney

CALL TO ORDER

Vice Chair Jones called the work session to order at approximately 8:10 p.m.

PLANNING COMMISSION TRAINING

City Attorney Bill Monahan conducted the training session. In his overview he explained the differences between the legislative and quasi-judicial processes. He explained the differences between an actual and potential conflict of interest and what "bias" was. He advised that the DLCDC monitored legislative action to ensure it did not conflict with higher jurisdiction land use requirements. He stressed that in both processes it was important that the staff prepared adequate findings because on appeal, LUBA would look for findings that supported the decision. Monahan advised that state law prescribed the quasi-judicial process. It set a 120-day period for a decision and appeals. If the deadline was not met the applicant could ask the circuit court to decide. If the court found the applicant had properly addressed all the applicable criteria the court would approve it. He stressed all the evidence the Planning Commission considered needed to be in the public record and the decision had to be made in a public setting. He advised the staff's job was to tell the applicant what the applicable criteria was at the preapplication conference and guide the Commissioners by listing and offering an initial evaluation of how the application addressed the applicable criteria. They might also advise the applicant about the likelihood of approval or denial based on how the criteria had been applied to previous applications.

Monahan confirmed that the West Linn City Council had the authority to initiate a Council review of a Planning Commission decision. At least two City Councilors had to ask for that. He advised that in West Linn the Council considered appeals as if the application were brand new (*de novo*). Other jurisdictions only looked at certain elements already in the record during an appeal. The Council had to make their decision based on the same criteria the Planning Commission had applied. LUBA would look to see if the final decision was supported by a record that had adequate findings and a clear connection between the applicable criteria and the decision. Monahan related that conditions of approval were often challenged, so well crafted conditions of approval were very important. The Planning Commission had the

authority to impose conditions of approval that would bring an application into compliance with the criteria if it otherwise would not comply. If the circuit court made the decision to approve an application they did not have to apply any of the recommended conditions of approval.

During the discussion Monahan advised in West Linn it was up to the applicant to decide if they wanted to agree to extend the 120-day time period. The Commissioners had many questions related to how far they could go to influence an application. Could they ask a PUD applicant to show them alternatives the applicant had considered? Could they ask for some other site plan they thought would be better? Could they push for more if the application already met minimum requirements? Monahan observed PUD code language was more aspirational than specific. Instead of setting clear and objective standards, it used discretionary words like "desirable," "attractive," "in harmony with the surrounding area." Sonnen advised the Washington State Supreme Court had discouraged use of such broad terms in code language. Monahan advised that if an application met minimum standards it had to be approved, but in the case of PUD's the Planning Commission had to determine what the minimum was. That was a fine line. He advised the Commissioners against asking the applicant to redesign the project. Instead a Commissioner who had a problem approving some aspect of it might explain that to the applicant and ask the applicant if there was room for modification and if the applicant had considered an alternative that would address that. Then it was up to the applicant to decide whether to risk denial or offer something different. He observed that PUD code was intended to achieve a better product than a standard subdivision. He suggested it would better serve applicants and the community if the Code offered examples and illustrations of what was expected. He advised that if the Commissioners did not feel good about having to approve a PUD at what they considered to be minimum standards, they should try to change the thresholds in the code for future applicants. But they could not apply a code change retroactively. .

Monahan recalled some applicants came forward and simply testified that they agreed with the staff report. He advised that it was the applicant's burden to explain to the Planning Commission how the application met the criteria. Even if they had followed the staff's suggestions the staff never guaranteed approval. They just advised applicants how the criteria had been applied to other applications in the past and what the likelihood was the applicant's proposal would be found to have met the code. He was asked if the Commissioners could rely on precedent. He advised that each and every application had to be reviewed on its own merits against code criteria. Every new application created new impacts. There had to be adequate public facilities to serve it. He explained that the City could not just require the first or the last developer on a roadway to improve all of it. Theoretically the City should know in advance what total build-out of the area would look like and what the cost of infrastructure would be and allocate the cost of public improvements to the developer of each parcel based on rough proportionality. The Commissioners noted that applicants who wanted to put more units on cul-de-sacs than the code allowed typically pointed out the City had allowed the same exception in other developments. Kerr advised the Planning Commission was not obligated to repeat mistakes. They should consider the unique characteristics of a specific site in making the

determination. Monahan advised the City to make legislative changes if something was not working and close the door on something that was not working. If they knew a series of applications would be submitted that would have cumulative impact, they should bring that to the attention of the City Council so it could change the code or impose a moratorium on development until it could review the problem and identify how to make the necessary improvements. However, he cautioned the City could not hold up development too long. Sonnen related his experience in other jurisdictions in Washington that imposed moratoriums so they had more time to address storm water issues and state required downzoning around water bodies. Monahan advised a storm water moratorium likely could be done in West Linn as long as it was a system-wide approach. He said in Oregon periodic review of Comprehensive Plans was how municipalities were brought into compliance with regional and statewide requirements. When asked, Monahan said he did not know of any jurisdiction that did not allow planning staff to make a staff recommendation. He said staff recommendations were valuable to all parties. Not to have them would foster longer discussions and more uncertainty about how close the decision was to the end of the 120-day rule period.

BRIEFING: Commission for Citizen Involvement

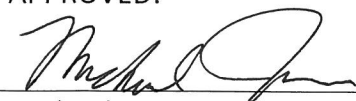
Chris Kerr, Senior Planner, briefed the Commissioners. The Statewide Planning Goal 1 and the Comprehensive Plan both required a citizens involvement program. The purpose was to involve citizens in land use decisions. The Planning Commission had served as West Linn's Commission for Citizen Involvement (CCI) since the City Council created the CCI in 2008. The CCI was required to meet with the City Council once a year, but could otherwise meet on an "as needed" basis. The meetings had to be open and noticed. The CCI could determine for itself what subjects or aspects related to citizen involvement to address. The goal was to ensure the City achieved the most effective public involvement during a process instead of just at the end of it. Kerr had drafted a brochure that offered tips on effective testimony at land use hearings for the Commissioners to examine.

The Planning Commission was about to meet as the CCI and hear the Parks director present the trails master planning process. At that meeting they would also examine the Planning Director's proposal for legislative procedures that would allow the Planning Commission to tailor public involvement methods for each project they worked on. The CCI would also be very involved in the upcoming periodic review of the Comprehensive Plan process.

ADJOURNMENT

There being no other business, Vice Chair Jones adjourned the work session at 9:30 p.m.

APPROVED:



Michael Jones, Vice Chair

4/9/2010
Date