



PLANNING COMMISSION
Work Session
Minutes of November 18, 2009

Members present: Chair Michael Babbitt, Vice Chair Robert Martin and Commissioners Laura Horsey, Charles Lytle, Christine Steel and Dean Wood

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

Members absent: Commissioner Michael Jones

CALL TO ORDER

Vice Chair Martin called the Planning Commission work session to order in the Bolton Room of City Hall at 6:00 p.m. Chair Babbitt joined the meeting later.

STUDY TOPICS

Briefing: PUD and Annexation Process

Kerr recalled that a Planned Unit Development (PUD) became a popular planning tool about 25 years ago. A PUD was an overlay over the base zone that allowed more flexibility than the base zone did in order to produce a result as good as or better than what could be developed under to base zone standards. It might offer extra community benefits such as a great design, open space, a mix of housing types, and dedication of land for civic use. It could serve as a transition between different intensity uses. The PUD code had been originally fashioned for large, multi-acre sites. A large PUD could offer things like space for a new fire station, or park, that a two-to four-acre PUD parcel could not. A small PUD could not offer much of a transition between uses. The current Chapter 24 PUD code did not protect natural resources very well.

Kerr and Sonnen related their experiences in other jurisdictions which had reduced the flexibility allowed PUDs and made it a more prescriptive process in which very little had to be negotiated. The communities had a checklist of what they would trade for approving a PUD. Some jurisdictions required a large PUD to be "village" type development. The prescriptive approach gave both the community and the developer a greater sense of certainty. But making those code changes had taken a lot of time.

The staff pointed out Chapter 24 started out by describing the purpose of the PUD overlay and subsequently listed the seven approval criteria (24.100, A-G). They advised that the Planning Commission had to base a PUD decision on those criteria. When decisions were appealed to the Land Use Board of Appeals, LUBA looked at whether the City's decision had been based on

the criteria. It was a legal requirement that the staff report for each application had to address each criterion, one by one. Horsey observed that the approval criteria did not reflect the Purpose statements. Sonnen advised that the decision makers could use the Purpose statements to resolve an issue related to interpretation.

The Commissioners asked who suggested a PUD – the staff or the applicant? The staff explained the code required a PUD if the site featured more than 25% Type I and II lands. Most PUDs were proposed as PUDs because of that 25% provision. They observed that (newer) Chapter 32 protected more than just Type I and II lands.

The Commissioners commented that the PUD code allowed developers to build to more density than the zone allowed, with no setback requirements. But the staff clarified there was no additional density allowed except in the rare event a developer got a density bonus. They clarified a PUD developer was allowed to flex three aspects of the development: lot size, lot shape and setbacks. They referred to the table under 24.130, Allowable Density on Type I and II Lands to explain how Density Transfer was calculated. The process started by calculating how many units the base zone would allow on the site if it were totally developable. The table showed what percentage of density of different types of constrained areas of the site could be transferred to the developable area. That varied between 50% and 100%, depending on what the type of constraint was. The Commissioners questioned giving a developer any density credit at all for land that was “un-buildable” anyway. But the staff observed that some types of constrained land had marginal development value. Areas of steep slopes and flood plains were tougher and more costly to build on, but it was not impossible. They were generally appraised at a lower value.

The Commissioners were concerned that density transfer allowed development that was denser than the Comprehensive Plan called for and the result was incompatibility. The staff reiterated that a land use decision had to be based on the applicable CDC criteria. Then they talked about the Comprehensive Plan. When the Comprehensive Plan called for R-7.5 housing, for example, it called for a low-density residential housing type that was not town homes or apartment buildings. But it could be different sizes of single-family homes and duplexes. The staff explained after the density was transferred to the developable portion of the site, the PUD gave a developer greater flexibility of lot sizes, lot configuration and setbacks so the developer could build the same number of lots the zone would have allowed if the entire site were developable. That was all the developer got from a PUD. The Commissioners then observed that if the undevelopable part of an R-10 site was the equivalent of four lots worth of area, and the code table allowed 50% density transfer, that meant the developer got to transfer two more units onto the developable part and the lots there had to get a little bit smaller to fit into it. When asked why have R-10 zoning if the PUD overlay allowed a higher density type of housing, Kerr clarified that the PUD did not change the allowable number of lots on a site, it just allowed the lots to be smaller. The City used zoning density to plan how many dwelling units the transportation system and water and stormwater management plans had to account for. It did not matter if those units were on smaller or larger lots. Babbitt recalled a time when the City considered eliminating the PUD chapter from the code. Kerr advised against that because

then the code would never allow a different housing type, such as town homes. Sonnen advised that density was typically stated in terms of units per acre. Lytle related that his neighborhood association had been concerned because a Rosemont development featured three lots that were larger than 10,000 sq. ft., but many more lots that were smaller than 10,000 sq. ft. Horsey observed that a PUD changed the character of the neighborhood when it featured smaller setbacks and larger houses on small lots.

Discussion regarding possible PUD code revisions

The staff related that some communities required transition areas and applied architectural design controls to protect local character. The new development might be tighter and denser, but still in character. Lake Oswego was involved in a lengthy process of revising their infill regulations to achieve better infill compatibility. Martin suggested the staff look at the "Living Neighborhoods" approach to code some consultants had applied in another city in southern Oregon. Kerr suggested the code should treat small infill developments differently than large PUD developments. He thought a good threshold would be five acres. He recalled West Linn had a lot of small infill parcels. He suggested inventorying vacant sites, assessing the opportunities for infill and then writing the regulations.

Kerr said a density bonus was available for going above and beyond code. But he opined that should be the requirement for every PUD. The City should tell developers specifically what the City desired to see and offer incentives for it, such as the opportunity to change driveway widths or financial incentives. Those were the "carrots." The "stick" would be tighter criteria.

Horsey responded to the statement that all a developer got from a PUD was the opportunity to change lot size, lot shape and setbacks. She recalled the Suncrest developer was allowed to build to R-7.5 density in an R-10 zone. That was like a zone change. It conflicted with what the Comprehensive Plan prescribed for that area. The developer also got the equivalent of a variance to setbacks. Kerr explained that what developers cared most about was how many units they got to build on a site. The staff report had calculated how many units the Suncrest developer could have developed on that site, but that developer actually proposed fewer units. Technically there was another part of the site they could have developed if they built a bridge to access it. Wood estimated they could have configured the lots farther into Tract C and met the zone's 10,000 sq. ft. lot size requirement. Kerr recalled the 7,500 to 8,000 sq. ft. lots that developer proposed were of similar size as the lots next to the development. Horsey explained that the fact that the surrounding area was not developed like an R-10 area had been a factor she had considered when she voted for the development. But what the Comprehensive Plan prescribed there and what had developed on the ground was entirely different. Kerr advised the Commissioners to judge a PUD application by whether or not the PUD was compatible with the existing, built, surroundings. He noted that some people might think an 8,000 sq. ft. lot next to a 10,000 sq. ft. lot was reasonably compatible. Martin agreed the code had to be applied and the Planning Commission had to approve the development, because under the code the density was right if all the units the zone allowed on the entire site were put on a percentage of the site. He suggested the code needed to be changed to give more weight to

compatibility. Horsey stressed the Commissioners should not shy away from applying the compatibility criteria in the code. Sonnen confirmed that it was possible to raise the standard regarding compatibility. He recalled court rulings that code should offer sufficient guidance that two reasonable people could come to the same conclusion given the same set of facts. He cautioned against using lot size as the primary factor in determining compatibility. The City had to plan to accommodate more density in order to comply with Metro minimum density requirements. He suggested using infill standards and identifying places where higher density was acceptable.

The Commissioners discussed the last two hearings. Lytle had recused himself from hearing one of the applications because he was an active member of the neighborhood association, which opposed it. But he said if he had participated he would have voted against making only six homeowners responsible for taking care of so much land. He said that was bad City policy and a bad precedent. It was a huge financial drain on the owners - similar to double taxation. Wood observed the previous owners of that land also had that responsibility and had not taken care of it. Now that the conditions of approval defined the homeowner's association obligations and it was enforceable the property was more likely to be taken care of. Steel indicated she would have preferred that the Commissioners had taken the time to discuss and question the Parks Department memorandum and not let themselves be limited to the three options it offered. She would have appreciated getting a fuller explanation of why the code limited the number of residences on a cul-de-sac. Sonnen explained there had not been enough time to research the archives to find the reasons for the ordinance change before the hearing. He said the staff would work on getting the Commissioners answers to questions they posed well in advance of a hearing before the hearing.

Steel suggested the Commissioners find a way to have adequate time and a more free flowing, face-to-face, exchange of ideas and positions during deliberations. The Commissioners commented that they were more comfortable sitting face-to-face around a table with an open microphone than sitting in line behind the bench, where they had to push a button before they could speak. That constrained discussion. They considered adopting a new procedure to relocate to a table during deliberations, but accepted Babbitt's suggestion that they stay at the bench, but turn all their microphones on during deliberations. Sonnen agreed to look into whether they could use stand microphones rather than earpieces. Horsey asked the chair to allow each Commissioner to explain his/her position before the vote and not accept a motion too early. The staff was to alternate the order of voting so no one Commissioner was always the first person to vote.

Discuss procedures for processing legislative amendments and quasi-judicial applications.

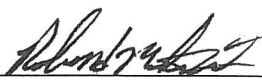
Sonnen reported that the City Council had asked him to outline a big picture strategy at their December 21st meeting. He asked the Planning Commission to brainstorm and give him their best ideas about what should be shorter and longer-term projects and housekeeping fixes. He wanted to fashion a strategy that made sense, align staffing resources with it, and gain the City Council's commitment to it. Babbitt suggested the code should specify that another

completeness letter was required when an applicant submitted a new site plan. Then the 120-day rule period should have to start over. Sonnen agreed to consult City Attorney Monahan about that. Babbitt also suggested that the record should contain a TVF&R signoff letter by ten days prior to the hearing and that should not be left to be accomplished later as a condition of approval. The Commissioners observed the neighborhood planning process was not working well. Local plan goals and policies had not been accepted or implemented. Sonnen anticipated the City had three years to prepare for periodic review of the Comprehensive Plan. He saw a need to reconcile it with other documents, including the Sustainability Plan, Imagine West Linn, and regional plans. He said the City Council wanted the staff to work on updating the code. He and Kerr were the long-range planners. He was going to hire another associate planner who would focus 50% of his/her time on historic resources. A contract planner was working on the transportation component and trails plan. Meanwhile, the planners also had to staff the planning counter.

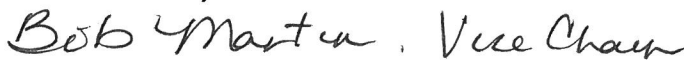
Sonnen said he planned to brief the Commissioners prior to each Comprehensive Plan amendment or code revision project. He would ask them to suggest the scope and approach to each. What kind of public involvement did they want? Who were the stakeholders to involve? How much did the Planning Commission want be involved and how much could be done by staff or a task force? He said when the Planning Commission directed the staff to draft something he would ensure that the draft he presented to them and that they forwarded to the City Council was legally solid and captured their intent. His goal was to identify people who would be affected by new regulations and involve them in the process. Martin commented that the weakness of the current system was that people tended to feel regulations were imposed upon them.

The Commissioners agreed to continue the work session on December 2nd. There being no other business, Chair Babbitt adjourned the work session at approximately 9:20 p.m.

APPROVED:



Michael Babbitt, Chair





Date