



PLANNING COMMISSION  
**Work Session**  
Minutes of December 2, 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; Chris Kerr, Senior Planner; and Khoi Le, Civil Engineer

Members absent: Commissioner Michael Jones.

#### CALL TO ORDER

Vice Chair Martin called the Planning Commission meeting to order at 6:30 p.m. in the Bolton Room of City Hall. Chair Babbitt joined the meeting later.

#### STUDY TOPICS

##### 1. Briefing: PUD process

Kerr advised the code did not effectively achieve what the purpose statements anticipated it would. He suggested looking at a size threshold, tightening the criteria and specifying what benefits the City wanted in return for approving a PUD. He suggested there were better ways to preserve natural areas than to automatically require a PUD when there was 25% or more Type I and II lands on the site. He saw other issues, including that the current PUD code did not distinguish between large acreage PUDs and smaller acreage PUDs. The City was built out and would see smaller PUDs in the future. Another issue was that the PUD code did not distinguish between commercial, residential and industrial uses. Kerr advised a smaller-acreage site made it hard to design a PUD that offered any community benefit. He suggested not allowing PUDs that did not include a certain number of lots. Such a development would either be a simple subdivision, subject to the standard subdivision requirements, or it could be subjected to new, specific, infill development guidelines.

##### 2. Discussion regarding possible PUD code revisions

Kerr discussed the concept of infill design guidelines. The current code required design review of commercial and multi-family developments, but not single-family homes. Infill standards typically called for compatible design and materials. Some jurisdictions required a PUD to offer an "exemplary design" and that might be easier to accomplish with a large PUD. But a small PUD developer could be asked to demonstrate how the proposed development was compatible

with the surrounding area. Kerr suggested that the PUD code should not try to protect natural resources because other, newer, chapters of the code did a better job of that.

The Commissioners and staff recalled that the City of Lake Oswego had gone through a long process of determining what they wanted to require on infill lots and what was to trigger the requirements. However, they were re-evaluating their infill code because affected neighborhoods were not pleased with the results. West Linn staff agreed to watch for "best practice" recommendations and good ideas for achieving compatibility they saw in other jurisdictions.

The Commissioners wanted to understand the "downstream" implications of a Planning Commission decision on the process that followed. They wanted to know what conditions of approval could be fairly general and what conditions should be explicitly spelled out. Kerr explained that what the Planning Commission approved was a tentative, preliminary, plan. It was a legal document. The developer could not use it to sell individual lots, but they could sell the entire parcel to someone else to develop. The next step in the process was an engineering review of public improvements (such as streets and utilities). Khoi Le handed out a flow chart and discussed it. After plans for public improvements were approved the developer had to post an 18-month performance bond for the public improvements. The staff inspected the public improvements after they were constructed and accepted them if they met City standards and the conditions of approval. The developer then submitted the final plat for review by staff and for review by the county assessor. It rarely looked identical to the plan the Planning Commission approved because it reflected what had actually been built. Construction of buildings could not begin until the final plat was recorded. That was the point in time the lots were legally created and the developer could start selling them. Building plans were submitted to the staff, reviewed and a building permit was issued. The staff inspected what was constructed and compared it to the conditions of approval.

Kerr circulated a copy of the conditions of approval and the final plat for Arbor Cove as an example. He pointed out the conditions of approval were listed in the notes and restrictions section on the front page and the engineering and planning directors and the surveyor had signed the plat. Any required dedications and restrictions were supposed to be listed in the plat notes. If there was to be a dedication it was not official until the final plat was recorded. Kerr pointed out the Arbor Cove plat said, "subject to the conditions in the notice of final decision of the City of West Linn." He advised there was not always such a cross-reference on a final plat, but it was something that should be there to ensure a future purchaser/developer would be aware of what issues the city had resolved before approving the application. He said City planners and engineers always referred to the approved tentative plan and set of conditions of approval whenever they reviewed plans and the final plat. Sonnen assured the Commissioners that his practice was to not sign off on the plat unless it listed all the conditions of approval. Kerr noted some plats did not specify whether dedicated areas were to be deeded to City ownership or were to be easements and that was important for the Planning Commission to specify, especially when they added a new condition during a hearing. He advised that a final plat almost never looked identical to the tentative subdivision plan the

Planning Commission approved because things changed on the ground. But conditions of approval typically offered very little “wriggle room.” He pointed out it was unusual that the storm detention area on the Arbor Cove final plat had been moved from the center to the corner of the site in the final plat. He did not know why. It could have been for engineering reasons. Le recalled that a lot of changes could happen during construction. He tried to get the developer to revise the plan prior to the completeness review so he did not have to require a lot of engineering conditions of approval. The code allowed 10% flexibility, and it was not unusual for lot lines to be “tweaked,” after Planning Commission approval, but a substantial change had to be reviewed by the Planning Commission. Kerr confirmed that developers were required to justify the changes they made, but the related code language was fairly loose. Those types of decisions were left up to the planning staff to make. Sometimes the site had been sold to a different developer and they wanted to modify the plan. The staff knew of two subdivisions that were for sale in West Linn. Kerr suggested the Commissioners think about creating a short process for reviewing changes so the planners did not have to make those decisions. He advised the Commissioners to not be reluctant to establish time frames in the conditions of approval, such as “prior to recording the final plat.”

The staff clarified that the Building Official determined whether a house plan met the Floor Area Ratio (FAR) during the building permit process. It was the staff’s job to advise the Commissioners what sections of the code the Planning Commission decision and findings were to be based on and advise them whether the application conformed to them. They noted that because each PUD was its own zone; because PUDs were allowed to adjust interior lot setbacks; and because many PUDs had been built over the years; they had to maintain a matrix that showed the setbacks that applied to each PUD. Olympia, Washington had changed all of theirs so they all had more uniform standards. When asked, the staff explained that mistakes that happened during construction, such as a house that was built too close to the street, were usually the result of last-minute juggling of features that was not on the construction plan or under the purview of an architect or engineer.

### 3. Debriefing session

The Commissioners added this to the agenda. They discussed questions and concerns they had during recent hearings. Horsey was concerned that the Suncrest application hearing had been continued so many times and she wanted to know why. She recalled a time when the applicant’s attorney had submitted a cryptic letter that had suggested that he and the staff had met, but did not explain what they had talked about. She wanted to know because it caused another continuance. No one present knew for sure. Babbitt advised that the Planning Commission was supposed to decide an application based on what was in the record. He suggested in the future if an applicant asked for a continuance and a Commissioner wanted to know why, they could ask the applicant during rebuttal. Sonnen advised there were opportunities for an applicant to discuss an application with the staff throughout the process. If a Commissioner wanted to know the reason for a request for a continuance they could ask for it or if it had been a written request it would be found in the record.

Steel recalled a recent hearing where the Parks director had offered three options for preserving land for a future regional trail connection. She explained that none of them seemed acceptable to her and she would have preferred it if the Commissioners had taken the time to try to think of better options. Sonnen advised that the Commissioners were not limited to the options offered by the staff, which would offer their best recommendations before a hearing. He observed that the Commissioners might come up with another option or hear another option presented in public testimony. Martin explained he saw another option to not allow a trail through the protected area. Babbitt recalled that he had voted against the proposal and that Commissioner Jones had explained that he did not favor it either, but he felt it was a City policy decision whether or not to take ownership of the land. The Planning Commission should not be setting policy and obligating the City financially to something the Parks Department did not want and said they could not afford.

Martin recalled a developer had located the developed portion of a PUD too close to the road. He would have preferred to see them move it five or ten feet back into the buffer area. He saw that as an example of a development application that met the code, but could have been made better for the community and more in keeping with the Comprehensive Plan. Was it the Planning Commission's role to suggest to a developer how they could improve their lawful application? If so, would it be possible to add that to the process, keep the public informed about it and still meet the 120-day rule? Wood and Lytle indicated they did not favor the Planning Commission inserting itself into the details of the development planning process. The staff explained that if a straight subdivision met the code the Planning Commission would have to approve it, but PUD criteria was more subjective. Horsey pointed out PUD approval criteria used qualitative language such as "desirable, attractive, stable environment in harmony with the surrounding area." Such criteria offered the Commissioners more discretion and flexibility. The Commissioners agreed to talk about Martin's suggestion again in the future when the City Attorney was present to offer them guidance.

Horsey explained her concern that the layout of the Suncrest PUD had been radically different from an R-7 or an R-10 development. Martin and Wood agreed. It was too compacted. The private drive featured no planter strip or sidewalk. Setbacks were reduced. Houses were too close together. It could have been spread out a little more into open space tract area. Kerr advised that PUD criteria offered the Commissioners more leeway and authority to decide a PUD application. For example, the Commissioners might have taken the position that the application should be denied because reducing the private driveway to "x" did not meet the PUD criteria. But they might have taken the position that the application should be approved because an internal private road did not have to meet the public street requirements. He stressed that whatever the final decision was it had to be based on the applicable code criteria. He related that sometimes a PUD applicant did not take the staff's advice and insisted on taking a proposal the staff did not favor to the Planning Commission. But they usually wanted to get a good recommendation from the staff and improved the design before the Planning Commission considered it. However, the Planning Commission did not have carte blanche power and if they felt the PUD code did not work they should work on tightening it. Sonnen offered to look into

whether the regulations currently in place had produced the kind of consistent results the City wanted to see.

Martin wondered if the Planning Commission made a subjective decision, then the City Council made another subjective decision on appeal, would LUBA agree the application met the code? Sonnen acknowledged the code language was fairly vague. The Washington State Supreme Court had found that code that used terms such as “harmony” and “character” was unconstitutionally vague. He anticipated that when the staff rewrote the West Linn code they would tighten it and make it more specific so it offered clear enough guidance that two reasonable people with the same set of facts could reach the same conclusion. Babbitt recalled a previous city attorney had often advised that the Comprehensive Plan could reflect the aspirations of the community, but the development code should be more specific. Martin worried that if West Linn tried to make its code too specific they would fall into the trap of a cumbersome code that Lake Oswego fell into. Babbitt suggested that was because Lake Oswego had tried to legislate design review. But Sonnen advised his experience was that regulations that were pretty prescriptive could work.

Horsey recalled her own experience with LUBA remands and encouraged the Planning Commissioners to understand and apply the code well enough that ordinary citizens would not have to spend money to appeal a decision that the Planning Commission had made. All the Commissioners present agreed they had learned something during the debriefing session and wanted to do it again. They looked forward to trying the new, less formal, open microphone part of deliberations they had agreed on at their last work session. No final motion was to be made during that part of deliberations. Sonnen agreed to brief Monahan on the Commissioners’ debriefing discussion. He suggested they discuss with Monahan how they far they could legally push developers to improve a development without risking a remand. Babbitt suggested Monahan incorporate information about ex parte contact and process into new Planning Commissioner training sessions.

Wood recalled the Commissioners did their best thinking during the regular, pre-meeting work sessions. The Commissioners agreed to make each pre-meeting work session an hour long and change the start time of the regular public meeting to 7:30 p.m. Sonnen would compile a list of key points the Commissioners wanted to talk about prior to each work session. He was also going to seek Monahan’s advice about the legality of re-starting the 120-day rule clock because the application was no longer complete when the applicant changed the application.

4. Discuss procedures for processing legislative amendments and quasi-judicial applications  
(This discussion was postponed.)

5. Discuss Planning strategies and priorities

Sonnen related that the City Council had directed him to recommend planning strategies and priorities at their December 21<sup>st</sup> meeting. He distributed his draft report and asked the Commissioners to let him know if they believed the proposed projects he listed were ones the

City ought to be addressing and to let him know if they thought of a project that should be added to the list by the following Monday.

#### OTHER BUSINESS

The staff announced the appeal of the Planning Commission's Suncrest decision would be heard by the City Council on December 14<sup>th</sup>, and the regulatory package the Planning Commission recommended had recently been approved by the Council with a few minor changes. Two of the changes were that the developer/neighborhood association meeting notice required by Chapter 99 was to be sent to both the association president and one other officer, and the meeting could not be held in a private home. Horsey asked for tighter agendas, so it was less likely that an agenda item would be continued. The Commissioners wanted a better way to organize their agendas and meeting time. Sonnen agreed to alert them to the content of upcoming meetings so they could plan ahead. The Commissioners decided to discuss public involvement in the trails master planning process when they met as the CCI later in December.


#### ADJOURNMENT

The work session was adjourned at approximately 9:30 p.m.

#### APPROVED:



Robert Martin, Chair



Date